Kootha Perumal vs State Tr.Insp.Of Police Vig.& Anti ... on 15 December, 2010

Equivalent citations: AIR 2011 SUPREME COURT 356, 2011 (1) SCC 491, (2011) 72 ALLCRIC 419, 2011 (1) SCC (CRI) 418, (2011) 98 ALLINDCAS 198 (SC), (2011) 1 MH LJ (CRI) 588, (2011) 1 ALLCRILR 60, (2011) 1 CRILR(RAJ) 45, (2011) 48 OCR 389, (2011) 1 KER LT 20, 2011 ALLMR(CRI) 670, 2011 CRILR(SC&MP) 45, (2011) 1 UC 291, (2011) 1 CRIMES 52, (2012) 2 LAB LN 318, (2011) 1 RECCRIR 278, (2010) 4 DLT(CRL) 903, (2010) 13 SCALE 350, 2011 CRILR(SC MAH GUJ) 45

Author: Surinder Singh Nijjar

Bench: Surinder Singh Nijjar, B.Sudershan Reddy

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1923 OF 2008

Kootha Perumal ..Appellant

VERSUS

State Tr. Inspector of
Police, Vigilance & Anti Corruption ..Respondent

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. This appeal is directed against the judgment of the Madras High Court, Madurai Bench dated 7th March, 2007 in Criminal Appeal (MD) No.821 of 1999 by which the High Court affirmed the conviction and sentence recorded by the learned Special Judge-cum-Additional District Judge-cum-Chief Judicial Magistrate, Pudukottai in Spl.C.C.No.1 of 1994. By the aforesaid judgment, the Special Judge convicted the appellant for offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short `the Act') and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.500/-, in default of payment to undergo three months rigorous imprisonment and convicted him for the offence under Section 7 of the Act

and sentenced him to undergo six months rigorous imprisonment and to pay a fine of Rs.300/-, in default of payment to undergo one month rigorous imprisonment.

2. The prosecution case, briefly stated, is as follows :

> The prosecution case as narrated by PW2, the complainant, has been extensively noticed by the trial court as also by the High Court. For the purposes of this appeal, we may very briefly touch upon on the relevant facts. The complainant PW2, Nayinar Mohammed, is a resident of Pudukottai. His father is the owner of house property at door No.36, Mamundi Madam, Adappan Vayal, Pudukottai. Since his father was seriously ill, he needed Rs.75,000/- for his treatment. He approached a financial institution for a loan. The institution asked him to furnish property certificate and Municipality Tax Extract of the house owned by his father. He gave a petition through his friend Noorul Ameen on 17th August, 1993, with the requisite Rs.15/- court stamp affixed on the same (Ex.P3). His friend paid Rs.15/- to the Municipality and obtained a challan Ex.P4. PW4, who was the writer in the record room, knew the accused and made the necessary entry in the ledger at page No.40 on 19th August, 1994. The application of the complainant was given as No.C.A.2650 of 1993. Similar entry was made with regard to payment of Rs.15/- on 17th August, 1993 by the cashier of Pudukottai Municipality (PW6). The payment was made through challan No.6789 (Ex.P4). Govindrajan, PW5, was a Junior Assistant in the Municipality compared the copy of the tax extract No.2650 with the original and found the same to be correct and put his signature. Ex.P7 is the signature of the aforesaid Junior Assistant.

3. When the complainant enquired about the progress of the petition, the appellant informed him that the file will only come to him on 23rd August, 1993. He demanded a sum of Rs.50/- as a bribe from the complainant for delivery of the tax extract which, according to him, was ready for delivery. On that date, the complainant did not have any money. In any event, he was not inclined to give any bribe to the appellant. He, therefore, made a written complaint to the Inspector (PW8) Anti Corruption, Rajagopalapuram. The complaint is Ex.P5. A case was duly registered by PW8 as Crime No.4 of 1993 under Section 7 of the Act. The First Information Report (Ex.P10) was duly signed by the complainant. Thereafter, another Inspector in Anti Corruption, Pudukottai recorded the statements of PW2 and PW3 on 24th August, 1993. Similarly the statements of PWs.4, 5, 6 and 7 were also recorded. Information about the registration of the FIR was duly sent to the higher officials.

4. Subsequently, a trap was arranged, wherein one Sridhar (PW4) who was working as a Junior Assistant in Pudukottai Public Works Department and one Balakrishnan, Junior Assistant from Water Supply and Drainage Board were engaged as trap witnesses. The FIR was got duly verified from the witnesses. Thereafter, the complainant produced five ten rupees notes totaling Rs.50/- (M.O.1). The notes were duly treated with Phenolphthalein Power. A demonstration was also given to the complainant as to how the hands of anybody who receives the aforesaid currency when washed in water would turn red. Thereafter, PW8, the Inspector, instructed the complainant to go to the office of the appellant and hand over the amount.

5. On directions of the police, the complainant along with the trap witnesses went to the office of the appellant on 23rd August, 1993. He was directed to hand over the money to the appellant and to give a signal by folding his shirt. At about 3.15 to 3.30 p.m., the complainant and PW4 Sridhar went to the Municipality by cycle, they were followed by other jeep.

6. At about 4 p.m. PWs.2 and 3 entered into the office of the appellant and met him. The appellant received the amount and put it in his pocket. At 1610 hrs., the witness came out from the office and gave the necessary signal by folding his shirt, as directed by PW8.

7. On receipt of the signal, PW8 along with the other witnesses and police party went inside the office of the appellant. They introduced themselves. The appellant was found to be nervous and sweating. PW9 prepared the Sodium Carbonate mixture in two glass tumblers and asked the appellant to dip his two fingers separately into the mixture. The mixture turned light red. The mixture was poured into a bottle and duly labeled `R' (M.O.3). Another sample was similarly prepared with label `N' and marked (M.O.2).

8. He thereafter asked the appellant about the money he has received from PW2 and the appellant took the currency notes M.O.1 from his pocket and presented it before PW8. On comparison, the numbers in the said currency notes recovered from the appellant tallied with the numbers mentioned in the mahazar Ex.P7. The appellant was thereafter asked to remove his shirt (M.O.5). The pocket of the shirt was also subjected to Sodium Carbonate mixture test, and the solution turned into light red colour. The solution was duly sealed in a separate bottle as M.O.4 and given the label `S'. The bottle was duly signed by PW8.

9. On completion of certain other formalities, the appellant was arrested and released from bail at 1930 hrs. On completion of the entire investigation, the appellant was duly put on trial.

10. The trial court convicted the appellant and sentenced him as noticed above. Aggrieved by the judgment of the trial court, the appellant challenged the same before the High Court in appeal. The High Court upon a detailed consideration of the evidence affirmed the findings recorded by the trial court. Consequently, the conviction and the sentence were confirmed. Hence the present appeal.

11. We have heard the learned counsel for the parties.

12. Learned counsel for the appellant submitted that the entire proceedings were vitiated, as previous sanction to prosecute the appellant was not legally obtained as required under Section 19 of the Act. The second issue raised by the appellant is that there was no demand of bribe made by the appellant. Thus the conviction recorded by the courts below is perverse and deserves to be set aside.

13. We may first consider the issue as to whether sanction was duly obtained prior to the prosecution of the appellant. It is the case of the appellant that the order for sanction of the prosecution produced in this case is signed by the Municipal Commissioner of Pudukottai. According to him, a perusal of the same would show that it suffers from non application of mind. According to the learned counsel, the sanction order must disclose that the sanctioning authority

has duly applied its mind and the same must be stated in the sanction order. In support of this submission, learned counsel has relied on a judgment of this Court in the case of Jaswant Singh Vs. State of Punjab1. Undoubtedly, in the aforesaid judgment, this court observed as follows :-

> "The sanction under the Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness; Basdeo Agarwala v. King Emperor (1945) F.C.R. 93. The object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In Gokulchand Dwarkadas Morarka v. The King (1948) L.R. 75 I.A. 30 the Judicial Committee of the Privy Council also took a similar view when it observed :
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> [AIR 1958 SC 124] "In their Lordships' view, to comply with the provisions of clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were plakhed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction."

It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case. In Yusofalli Mulla Noorbhoy v. The King (1949) L.R. 76 I.A. 158 it was held that a valid sanction on separate charges of hoarding and profiteering was essential to give the Court jurisdiction to try the charge. Without such sanction the prosecution would be a nullity and the trial without jurisdiction."

14. Keeping in view the aforesaid statement of law, it would not be possible to conclude that the sanction order in the present case was not valid. Ex.P2 with the present appeal is the copy of the sanction order. A perusal of the same would show that the sanctioning authority has adverted to all the necessary facts which have been actually proved by the prosecution in the trial. Upon examination of the material facts, the sanctioning authority has certified that it is the authority competent to remove the appellant from the office. It is specifically stated that the statements of the witnesses have been duly examined. Sanction order also states that the other materials such as copy of the FIR as well as other official documents such as the different mahazars were carefully examined. Upon examination of the statements of the witnesses as also the material on record, the sanctioning authority has duly recorded its satisfaction that the appellant should be prosecuted for the offences, as noticed above. We, therefore, find no merit in the submissions of the learned

counsel that the sanctioning order to prosecute the appellant was not legal.

15. We may also notice here that although the issue with regard to the illegality attaching to the order of sanction was raised before the trial court, it was not raised before the High Court. The trial court, on examination of the issue, also negated the submission of the appellant about any illegality attaching to the sanction order. Even though we do not have the benefit of the opinion of the High Court as the appellant has not raised issue with regard to the illegality of the sanction order before the High Court, we are satisfied that the sanction order has been issued in according with law.

16. Learned counsel for the appellant secondly submitted that the judgment recorded by both the courts below is contrary to the evidence on record. We have examined the entire issue. We are of the considered opinion that the trial court as well as the High Court have analyzed the entire evidence and clearly held that a demand was definitely made by the appellant for delivery of the tax certificate. The trial court as well as the High Court have made a reference to the evidence given by PWs.2 and 3 who have categorically stated that the demand was made by the appellant. No other point was urged before us.

17. We may notice that the entire trap have been meticulously orchestrated by the prosecution authority. We are unable to discern any arbitrariness or inconsistencies in the concurrent findings recorded by the courts below. We find no merit in this appeal. The appeal is dismissed.

.....J. [B.Sudershan Reddy] .....J. [Surinder Singh Nijjar] New Delhi;

December 15, 2010.