

Madras High Court

Sankaralingam vs Deputy Superintendent Of Police on 19 March, 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19/03/2010

CORAM

THE HONOURABLE MR.JUSTICE G.M.AKBAR ALI

Crl.A.(MD)No.82 of 2005

and

M.P.(MD)No.1 of 2009

Sankaralingam

... Appellant/
Accused No.1

Vs.

Deputy Superintendent of Police,
(V & AC) Tirunelveli.

... Respondent/
Complainant

PRAYER

The Appeal is filed under Section 374(2) of Criminal Procedure Code, against the conviction and sentence dated 31.01.2005 made in Special C.No.1 of 1997 on the file of the learned Chief Judicial Magistrate cum Special Judge, Tirunelveli.

!For Appellant ... Mr.H.Arumugam for
Mrs.Uma Ramanathan
^For Respondent ... Mr.L.Murugan
G.A.(Crl.Side)

:JUDGMENT

The appeal is filed against the conviction and sentence dated 31.01.2005 made in Special C.C.No.1 of 1997 on the file of the learned Chief Judicial Magistrate cum Special Judge, Tirunelveli. The first accused is the appellant. The appellant was charged for an offence under Section 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act. The appellant was a public servant and was working as Thasildar at Radhapuram, Tirunelveli District.

2.The brief facts of the prosecution case is as follows:

One Subbaiya, who was the resident of Keeraikaran Thattu, applied for a solvency certificate on 25.04.1995 at Taluk office, Radhapuram. However, he gave an application only on 10.05.1995 and paid the necessary fee and the same was processed by one George (second accused) and on his direction the de facto complainant met the Village Administrative Officer and also the Revenue Inspector and obtained necessary certificates and resubmitted the application on 15.05.1995. He met the appellant and requested for the solvency certificate. According to the de facto complainant the appellant demanded Rs.1,000/- on 16.05.1995 as illegal gratification. Again he met the appellant on 18.05.1995 at his house and the appellant demanded Rs.500/- as illegal gratification and Rs.200/- towards Flag Day donation. The de-facto complainant not willing to pay the bribery went to the Vigilance and Anti Corruption Office, Palayamkottai and met the Deputy Superintendent of Police and gave a complaint. On the same day the Deputy Superintendent of Police called one Mohan and Nagarajan, who are the gazetted rank officers and decided to prepare a trap proceeding. The Deputy Superintendent of Police explained the trap proceedings to the de-facto complainant and to the two witnesses. The de-facto complainant produced seven One hundred rupees currency notes. The pre-trap procedures were conducted and the Deputy Superintendent of Police explained the phenolphthalein test to the witnesses and to the de-facto complainant. After following the formalities, the currencies were given back to the de-facto complainant and he was directed to go along with the said Nagarajan, an independent witness to the Thasildar's Office.

3.The de-facto complainant and the witness Nagarajan went to the appellant's office. The de-facto complainant went to the appellant's room and tendered the tainted money. The appellant directed the de facto complainant to hand over the same to the Clerk viz., George and accordingly, the money was put into a cover and was handed over to the said George. He took Rs.200/- and directed the de facto complainant to pay the same to the Clerk in charge of Flag Day donations and obtain a receipt. The said George went inside the Thasildar's office and gave him the cover which contained the tainted money. He brought the certificate and gave it to the de facto complainant.

4.After giving the illegal gratification, the de facto complainant signalled and the DAVC team headed by the Deputy Superintendent of Police entered the office and confronted the appellant. The tainted money was produced by the appellant from a drawer on the side of his table. The post phenolphthalein test was conducted and the appellants left hand turned positive for the said test and the said George also found dealt with the tainted money. The tainted money was seized under magazor and the appellant and George were explained about the offences and were arrested.

5.The Deputy Superintendent of Police investigated and recorded the statements of the witnesses and on completion of the investigation laid the charge sheet against the appellant and the said George for the offence stated above.

6.The Chief Judicial Magistrate who took the case in Special C.C.No.1 of 1997 framed charges and on denial of the charges the Trial was conducted. In order to prove the prosecution case, 15 witnesses were examined and 20 exhibits were produced and 20 material objects were marked.

7. On the basis of the oral and documentary evidences and more particularly relying on the trap proceedings and recovery of the tainted money and also on relying on the witness for trap the learned Chief Judicial Magistrate found the appellant guilty under Section 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act and convicted him one year R.I. of each offence and a fine of Rs.1000/- with default sentence. The other accused, the said George was acquitted .

8. Aggrieved by the conviction and sentence the appellant has preferred the present appeal on various grounds. Pending appeal, the appellant died and his son had filed an application in M.P.(MD)No.1 of 2009 to permit him to proceed with the appeal and the said application was allowed. However, in this appeal the deceased appellant is referred as appellant.

9. Mr. H. Arumugam, learned counsel for the appellant would submit that the de fact complainant had a motive of vengeance against the appellant and he has falsely implicated the appellant. The learned counsel pointed out that there are discrepancies in the evidence of the de fact complainant and P.W.3 the said Nagarajan, who was accompanying the de fact complainant in trap proceedings. The learned counsel pointed out that the entire prosecution case is based on the evidence of P.W.2 the de fact complainant and P.W.3 the witness for trap proceedings and once there are contradiction in their evidence both the evidences has to be disregarded.

10. The learned counsel pointed out that there is no corroborative evidence for the alleged demand by the appellant. The learned counsel relied on 2010(1) MLJ (Cri.) 541 (A.V. Vijayarangan and others Vs. State Rep. by Inspector of Police, Vigilance and Anti Corruption, Salem) wherein this Court has held as "17. Regarding the alleged demand made by A1 and the indirect demand made by A2 on 02.09.1989 at about 5.30 p.m. in the guest house of Indian Cements Factor, there is no other evidence excepting the oral testimony of P.W.2. The testimony of P.W.2 is also found to contradict with Exhibit P.2 complaint and his statement recorded under Section 161 Cr.P.C. The veracity of P.W.2 in this regard has become more questionable in the light of the above cited evidence of P.Ws.9 and 13. Therefore, this Court has to come to a necessary conclusion that the alleged demand made by A1, who was supported by A2 as per the evidence of P.W.2 is highly improbable."

11. The learned counsel also pointed out that if the demand is not proved a serious doubts arises against the prosecution case and relied on another decision reported 2009(4) MLJ (Criminal) 335 SC (State of Maharastra Vs. Dnyaneshwar Laxman Rao Wankhede) wherein the Supreme Court has held as "16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstance brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would different. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if

any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

12.The learned counsel also relied on 2008 Crl.L.J. 1825 (Anand Parkash and another Vs. State of Haryana) wherein the Punjab and Haryana High Court has observed the ruling of the Apex Court as "mere recovery of the currency notes and positive result of the phenolphthalein test is not enough to establish the guilty of the appellant on the basis of perfunctory nature of materials and prevaricating type of evidence."

13.The learned counsel also relied on AIR 1992 SC 665 (Som Parkash Vs. State of Punjab) wherein the Supreme Court has held as "...We agree with the learned counsel for the appellant that in the face of the finding that the witnesses who formed part of the raiding party were not independent and the evidence regarding handing over money to the appellant being unbelievable, the conviction of the appellant cannot be sustained. The guilty of the appellant has not been proved beyond reasonable doubt and as such the benefit must go to him."

14.The learned counsel relied on 2008(1) TNLR 224(S.D.Amalraj Vs. State through Inspector of Police) wherein this Court has held that when the accused has already passed an order to issue licence, nothing remains to be done thereafter and therefore, the payment of bribe after completion of the official favour is a serious lacuna in the prosecution case.

15.Mr.Murugan, learned Government Advocate (Crl.side) submitted that the appellant was found receiving the tainted money and the said test turned positive and it is a case of trap and the prosecution has proved the case beyond reasonable doubt.

16.Heard both the sides and perused the materials available on record.

17.According to the de fact complainant, there was a demand by the appellant on 16.05.1995. As rightly pointed out by the learned counsel for the appellant except the evidence of P.W.2 there is no other witness to speak about the demand. According to him, he met the appellant on 18.05.1995 at his house and that day also he demanded Rs.500/- as bribe and Rs.200/- for Flag Day donation. On 19.05.1995, he went to the office of P.W.12, the Deputy Superintendent of Police and gave a complaint and he has also taken along with him the demanded Rs.700/-. One Mohan and Nagarajan were requested to be the trap proceedings and the said Nagarajan alone was sent along with the de fact complainant to tender the bribe to the appellant.

18.According to the prosecution, the de fact complainant met the appellant in his office and on tendering the money the appellant directed him to give the money to the second accused and accordingly, he went to the seat of the second accused and tendered the money. P.W.3 would state that he was watching the entire proceedings and the second accused directed the de fact complainant to get a paper cover and put the money inside the cover. It is only the second accused who received the tainted money and took out Rs.200/- and gave it the de- facto complainant to tender the same to P.W.6, Sudalaimuthu towards Flag day donation. According to P.W.3, the second accused took the cover to the appellant and came back with the insolvency certificate which was

given to the de fact complainant. However, when the de fact complainant was examined in chief, he would state that he gave the money to the appellant and after receipt of the tainted money the appellant took out Rs.200/- with a direction to the de fact complainant to pay for the Flag day donation. He had totally exonerated the said George from the allegations. In other words he had chosen to be a partisan witness.

19.As far as P.W.3 is concerned he was standing outside the office of the Thasildar and he is not an eye witness for handing over the money by the de fact complainant. The evidence of P.W.2 is against the version of P.W.3. The material contradiction is so evident which falsifies the evidence of P.W.2. The only circumstances against the appellant is that his left hand was positive for the test and he had took out a cover which contained the tainted money from the side drawer of the table. The mere production of a cover with tainted money without direct evidence of receipt the money cannot be relied on.

20.In 2000(5) SCC 21 (Meena (Smt) W/o Balwant Hemke Vs. State of Maharastra) the Supreme Court has held as follows:

"...Mere recovery of the currency note of Rs.20 denomination, and that too lying on the pad on the table, by itself cannot be held to be proper or sufficient proof of the acceptance of the bribe, in the peculiar circumstances of this case which lend also credence to the case of the appellant that it fell on the table in the process of the appellant pushing it away with her hands when attempted to be thrust into her hands by P.W.1. The results of phenolphthalein test, viewed in the context that the appellant could have also come into contact with the currency note when she pushed it away with her hands cannot be itself be considered to be of any relevance to prove that the appellant really accepted the bribe amount. ..."

21.In 2000(5) SCC 21 : (2000 Cri L.J. 2273) it was held that mere recovery of the currency notes and positive result of the phenolphthalein test is not enough to establish the guilty of the appellant on the basis of perfunctory nature of materials and prevaricating type of evidence.

22.According to P.W.3, the money was handed over to the said George and who took out Rs.200/- for Flag day donation and gave it to the de facto complainant and there after had taken the tainted money to the appellant. What transpired inside the office of the appellant was not spoken by any witness. But according to the de facto complainant, the tainted money was received by the appellant directly and not by the said George. His evidence is unreliable. As stated earlier the only circumstances against the appellant is that the left hand of the appellant was positive for the test and he produced the cover. The mere production of the tainted money and positive result of the phenolphthalein test is not enough to establish the guilty of the appellant. It is well settled law that demand of illegal gratification is sine qua non for constitution of the offences under Prevention of Corruption Act and the prosecution has to prove the case beyond reasonable doubt and only one circumstance is not enough to fix the guilt of the accused. Therefore, the Trial Court is wrong in holding that the prosecution has proved the case beyond reasonable doubt.

In the result, appeal is allowed and the conviction and sentence is set aside. Consequently, connected M.P. is closed.

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