

State Vs M. Muniappan Thevar

Court: Madras High Court

Date of Decision: Aug. 5, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 161(3), 197, 378

Penal Code, 1860 (IPC) â€” Section 21

Prevention of Corruption Act, 1988 â€” Section 10, 11, 13, 13(1), 13(2)

Hon'ble Judges: T. Mathivanan, J

Bench: Single Bench

Advocate: A.N. Thambidurai app, for the Appellant; K. Venkataramani, for the Respondent

Final Decision: Dismissed

Judgement

The Honorable Mr. Justice T. Mathivanan

1. Challenge is made in this criminal appeal to the order of acquittal dated 19.10.2005 and made in C.C. No. 5 of 2002 on the file of the Learned

Special Judge/Chief Judicial Magistrate-I, Charmapuri District at Krishnagiri acquitting the respondent/accused of the charges under Sections 7

and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988.

2. The facts in brief for the disposal of the appeal are as under;

2.1. That on 28.12.2000 on the eve of Ramzan festival PW 6 Kumar and his brother Muthusamy had brought Ganja from Andra and alighted at

Hosur and thereafter they had been to the house of PW 5 Mehaboob for selling the contraband. She had told that she had stopped the business

long before and therefore, they had come back to Sulagiri By-pass road.

2.2. On receipt of the message PW 7 proceeded to Sulagiri By-pass road and searched the bags which were possessed by PW 6 and his brother.

While so, Ganja was found in their bags and hence they were brought to Sulagiri police station in an auto driven by PW 14. Thereafter PW 6 and

his brother were entrusted with PW 12 Arulraj Station Writer.

2.3. At that time Mr. M. Muniappan who is the respondent/accused herein was functioning as the Inspector of Police at Sulagiri Police Station. At

about 10.30pm., when he was on patrolling duty, PW 12 had informed him through phone that two persons were brought to station along with

Ganja for which the respondent had instructed PW12 to keep them in police lock-up and that he would come and enquire them on the next day

morning. Prior to this at about 08.00pm., when PW 5 Mehaboob Bibi was present in her house two police officers from Sulagiri Police Station

came there and asked her to come to police station as they had received a message that she was selling Ganja. For that PW 5 had told them that

she stopped that business even 10years before and thereafter the police officers returned back. Subsequently, PW 5 came to the house of PW 2

who is non other than her son-in-law and informed him about the incident. He told her that it could be conversed on the next day morning. At that

time PW 3 Srinivasan was also present in PW 2's house.

2.4. On the next day morning 1.e., on 29.12.2000, the respondent/accused came to Sulagiri Police Station and enquired PW 6 and his brother.

Thereafter, the respondent/accused had taken PW 6's brother Muthusamy in the Jeep driven by PW 10, Govindaraj to PW 5 Mehaboob's house

and brought her to police station.

2.5. When PW 5 was taken to Police Station, Pws 2 and3 also came there. It is alleged that at about 10.00 am., the respondent/accused

Muniappan had demanded a sum ofRs.50,000/-. To release PW 5. On bargaining the demand was reduced to Rs.27,000/-which was agreed to

be paid by PW 5in two installments before and after Pongal. At about10.30am., the respondent/accused had let off PW 5 without registering any

case, on her undertaking. On his direction cases were registered against PW 6 Kumar and his brother Muthusamy in Crime No. 502 & 503 of

2000 u/s 4(1)(A) of TNP Act.

2.6. That on 10.01.2001 morning, Mr. M. Muniappan, the respondent/accused (Inspector of Police) had instructed PW3 Srinivasan to collect the

amount from PW 5 and that he would come to his residence and collect the amount. Since PW 5 was not willing to pay the amount demanded,

with the help of PW 2 and PW 3 she had arranged a sum of Rs.8,000/-and went to the Vigilance and Anti Corruption Office, Dharmapuri at about

11.45am., along with PW 2 and PW 3wherein she had lodged an oral complaint which was reduced in writing by PW 19, Inspector of Police,

attached to Vigilance and Anti Corruption Office, Dharmapuri, and obtained her signature in the complaint. While signing PW 5had put her

signature in Urdu language. The complaint was marked as Ex.P27. Based on Ex.P27, PW19 had registered a case in Dharmapuri Vigilance and

Anti Corruption Office Crime No. 2/AC/2001 u/s 7 of Prevention of Corruption Act. The printed first information report was marked as Ex.P28.

Thereafter, PW 19 had sent Ex.P28 to Court and the copies of the same were also sent to police higher officials.
Thereafter, PW 19 had planned

to organize a trap and arranged official witnesses from the offices of Assistant Director of Statistics and Chief Director of Agricultural Department

at Dharmapuri. PW 4,N.Muthukrishnan was drawn from the office of Assistant Director of Statistics, Dharmapuri wherein Mr. Jaichandran was

drawn from the office of Chief Director of Agricultural Department at Dharmapuri.

2.7. After following all the preliminary formalities PW 19, had asked PW 5, as to whether she had brought the amount demanded for which she

answered yes; and produced sixteen, numbers of five hundred rupee currency notes. Then PW 19 had demonstrated Phenolphthalein test on the

currency notes and he had also explained the witnesses about it's importance and intrinsic value. Then he had prepared an entrustment mahazar

under Ex.P6 and all the witnesses had signed in it. Thereafter, he had examined PW 5 and recorded her statement, and subsequently, he had

handed over the tainted currency notes to PW 3 Srinivasan and instructed him to hand over the amount to the respondent/accused. He had also

instructed PW 3 to give a signal by rubbing the back side of his head, no sooner than the amount is received by the respondent/accused.

2.8. Thereafter, PW 19 and other witnesses had proceeded to PW 3's house located at Sulagiri By-Pass Road, wherein PW 3 had sit in front of

his house along with PW 4.PW 19 and other witnesses had taken position on the right side of PW 3's house watching the hands of Srinivasan and

the other police parties were standing on Sulagiri By-pass Road. At about 07.00pm., the respondent/accused came to PW3's house and

conversed with PW 3 and thereafter he went away. After 15minutes PW 3 came to PW 19 and told that the respondent/accused had asked him

to come to his house located near Sulagiri Police Station with money at about 10.00pm.

2.9. At about 09.30pm., PW 19 had sent PW 3 and PW 4 to the house of the respondent/accused. They were followed by PW 19 and other

witnesses. Exactly at about 10.00pm PW3 and PW 4 had entered the house of the accused. While so, the respondent/accused was found standing

in the veranda of his house. On seeing them the respondent/accused had asked PW 3 as to whether he had brought the amount for which PW

3 said "yes" and handed over the amount to the respondent which was received by him and kept in the pocket of his Safari Shirt kept hanging on

the wooden door of the almira.

2.10. The respondent had also asked PW 3 about the balance for which PW 3 had replied that since they were struggling they would pay the

remaining balance soon. Then PW 3 came out of the house of the respondent/accused and gave the pre-arranged signal. On noticing this PW 19

and the other witnesses along with the other police parties had entered the house of the respondent/accused. While so, the respondent/accused

was found sitting on an iron cot. After identifying the respondent PW 19 had asked PW 3 to go to his house. Then he himself had introduced to the

respondent/accused and the other witnesses. While so the accused got perplexed and got up from the cot. PW 19 had made him to sit and

subjected his both hand fingers to Phenolphthalein test and the test was also proved positive. The solution of right hand fingers was collected in a

bottle and marked as S1 and the solution of his left hand fingers was collected in a separate bottle and marked as S2. Those bottles were marked as

MO1 and MO2 in which PW19 and other witnesses had signed. When enquired the respondent/accused had accepted that he had received the

amount and produced the same from the left side front pocket of his Safari Shirt which was hung on the wooden door of the almira.

2.11. On receipt of the currency notes PW 19 had compared the numbers with the numbers already noted in Ex.P6 entrustment mahazar and found

tallied. For the purpose of investigation PW 19 had recovered the amount of Rs.8,000/- which was marked as MO3 series. Then the left side front

pocket of the Safari Shirt of the accused was also subjected to phenolphthalein test and it was also proved positive. That solution was preserved in

a bottle, numbered as S3 and marked as MO 4. The shirt (MO 5) was also recovered under the mahazar.

2.12. At about 00.55am., during the course of search a sum of Rs.2,000/- was recovered from a suit case which was kept in a room of his house.

Subsequently, the respondent/accused was arrested. PW 19 had prepared a recovery mahazar under Ex.P7 and the copy of the same was

furnished to the respondent/accused. After sending prior intimation to Court under Ex.P29, PW 19 had searched the house of the

respondent/accused as well as Sulagiri Police Station. While so, he had also drawn a rough sketch under Ex.P10, in respect of the house of the

respondent. On search no incriminating materials were seized. The search list was marked as Ex.P13. During the search of Sulagiri Police Station

3Kgs. of Ganja was found placed in a gunny bag with an inscription as Koromandal Cements. When enquired PW 8 Nagarajan Police Constable

had replied that he did not know anything about the contraband. No records were maintained in respect of the said Ganja. The search list in

respect of the Sulagiri Police Station was marked as Ex.P32. Under the search list the above said contraband was also seized. At about 02.00am.,

PW 2 had reached the Vigilance and Anti Corruption Office at Krishnagiri. On the next day i.e., on 11.01.2001, the respondent/accused was sent

to the Court for being remanded to Judicial custody. Thereafter the case records were entrusted with PW 20 Mr. K. Balan Deputy Superintendent

of Police, Vigilance and Anti Corruption Office, Krishnagiri. He had examined the witnesses and recorded their statements.

2.13. He had also submitted a requisition to the Learned Special Judge/Chief Judicial Magistrate, Dharmapuri District, Krishnagiri to send the

material objects for chemical examination. After the completion of his investigation he had obtained Ex.P1, an order of sanction to launch

prosecution against the respondent/accused from PW 2 Mr. I. Raja IPS, Deputy Inspector General of Police Salem Range, Salem on 30.01.2002.

Thereafter, he had laid a final report against the respondent/accused on 12.03.2002 under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of

Corruption Act 1988. With the evidence of PW 19 the prosecution has closed its side.

2.14. When the incriminating circumstances arising out of the testimonies of the prosecution witnesses were read over and explained the

respondent, while denying their testimonies, had replied that this case was foisted against him. Though he had replied that he wanted to examine

witnesses on his side, neither oral nor documentary evidence was led on his part.

2.15. On evaluating the evidences both oral and documentary, the Learned Special Judge/Chief Judicial Magistrate-I, Dharmapuri District at

Krishnagiri has found the respondent/accused not guilty and acquitted of the charges under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of

Corruption Act 1988 on the ground that PW 5, the defector complainant had not lodged the complainant to set the law in motion on her own

volition and that the testimonies of PW 4, PW 6 to PW 14 are not sufficient to bring home the guilt of the accused beyond all reasonable doubts.

The Learned Special Judge/Chief Judicial Magistrate-I Dharmapuri District, at Krishnagiri has also found that the testimonies of the prime

witnesses viz., PW2, PW 3 and PW 5 are having a lot of confliction and contradiction with the testimonies of PW 7 to PW 13 who are all the

Head Constables and Constables attached to Sulagiri Police Station. The learned trial judge has also found that the prosecuting agency has

miserably failed to prove the alleged demand said to have been made by the respondent/accused from PW 5 and also has failed to establish the

fact that the respondent/accused had received the bribe from PW 3.

3. Being dissatisfied with the order of acquittal passed by the Learned Special Judge/Chief Judicial Magistrate-I Dharmapuri at Krishnagiri, the

Deputy Superintendent of Police, Vigilance and Anti Corruption Department Krishnagiri has preferred this appeal after invoking the proviso to

Section 378 of Cr.P.C.

4. Heard Mr. A.N. Thambidurai the learned Additional Public Prosecutor appearing for the appellant and Mr. K. Venkataramani learned counsel

for the respondent/accused.

5. Ex.P1 is the proceedings of the Deputy Superintendent of Police, Salem Range, Salem dated 30.01.2002 and thereby PW 1 seems to have

accorded sanction for prosecution of Mr. M. Muniappan, Inspector of Police, Sulagiri Police Station, Dharmapuri District, at Krishnagiri for the

offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988. He has stated that he is having the authority to remove

Mr. M. Muniappan, who is the respondent herein from office after carefully examining the materials placed before him in regard to the said

allegation and circumstances of the case such as first information report, statements of witnesses, mahazar and other documents and he is fully

satisfied that the accused/respondent should be prosecuted for the offences under Sections 7 and 13(1) r/w 13(1)(d) of Prevention of Corruption

Act 1988. He has been examined as PW 1 in this case. He has simply stated that he had considered the documents relating to this case and

accorded sanction to launch prosecution.

6. The previous sanction u/s 19 of the Prevention of Corruption Act is necessary only for the offences under Sections 7, 10, 11, 13 and 15 alleged

to have been committed by a public servant. No doubt the respondent/accused who was officiating as an Inspector of Police is a public servant as

defined u/s 21 of IPC. The object and purpose of Section 197 Cr.P.C. is to afford protection to public servants against frivolous, vexatious or

false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The

efficiency of a public servant demands that he should be free to perform his official duty fearlessly and without any favour. The apprehension that

there is possibility of public servants facing prosecution at the instance of private parties to whom annoyance or injury may have been caused while

discharging their legitimate duties would hamper their efficiency. In short, Section 197 Cr.P.C. provides an umbrella of protection to a public servant

to facilitate effective and unhampered performance of their official duty. Section 197, Cr.P.C. thus, mandatorily requires a prior sanction of

superior authority before any prosecution is launched against a public servant. To put it in short it is not the "duty" performed while discharging his

official duty as well as dereliction of it.

7. In this connection this Court finds that it may be quite relevant to refer the decision of the Apex Court in Bhagwan Prasad Srivastava Vs. N.P.

Mishra, in which the Apex Court has observed as follows;

Broadly speaking, with us no man, whatever his rank or condition is above the law and every official from the highest down to the lowest asunder

the same responsibility for every act done without legal justification as,, any other citizen. In construing S. 197, CrP.C., therefore, a line has to be

drawn between the narrow inner circle of strict official duties and acts outside the scope of official duties.

8. The object of this section is to guard against any vexatious proceedings against any public servant without securing the opinion of his superior

authority as to whether there should be prosecution or not.

9. It is also more relevant to refer the decision in Rajju and Others Vs. State of U.P., in which it is held that;

Section 197 Cr.P.C. Has been enacted with the wholesome object of protecting official of higher categories, who are required to discharge higher

responsibilities, from being unduly harassed or pressurized by motivated quarters for distracting them from proper discharge of their official

responsibilities.

10. From the above context it is thus clear that the officer who has competency to accord sanction to launch prosecution against a public servant

must take utmost care in application of his mind on the materials placed before him before the sanction is accorded.

11. On coming to the instant case on hand on perusal of Ex.P1 which is purported to have been issued by PW 1 and also on perusing his evidence

(PW1) this Court is of considered view that PW 1 has not applied his mind while according the sanction to launch prosecution against the

respondent/accused.

12. Insofar as this case is concerned the evidence of PW 6 Kumar has given a starting point. As it is seen from his evidence that on 28.02.2000 he

along with his brother Muthusamy had brought Ganja from Andhra and met Mehaboob to sell it. It is alleged that she had refused to purchase the

Ganja as she had stopped the business 10 years before. It is also revealed that on their return to village they were caught by PW 7 Grade-I Police

Constable Mr. Parthiban, attached to Sulagiri Police Station at Sulagiri By-pass Road and brought them to Sulagiri Police Station.

13. Then the case of the prosecution starts as if on the information received from PW 6, PW 5 was brought to the Police Station. It is also alleged

that on 29.12.2000 at about 10.00am., the respondent/accused had demanded a sum of Rs.50,000/-from PW 5 to release her without registering

the case. In this connection PW 2, who is the son-in-law of PW 5, PW 3 who is an associate of PW 2 and PW 5 has in fact not supported the

case of the prosecution as they have turned hostile. Further it is alleged that PW 4 had accompanied PW 3 to the residence of the

respondent/accused wherein it is alleged that the respondent/accused had demanded money from PW 3 and thereafter PW 3 had also handed

over the money which was received by the later and put it in the left side front pocket of his Safari Shirt which was hanging on the wooden door of

the almira. But in this connection PW 3 has contradicted the evidence of PW 4. PW 4 has deposed that the respondent/accused had demanded

money from PW 3 and PW 3 had also handed over the money and that the respondent had received the same and put it in the left side front

pocket of his Safari Shirt which was hung on the wooden door of the almira. He along with PW 4 had been to the house of the

respondent/accused while PW 4 was staying outside, PW 3 alone had entered the house wherein, the respondent/accused was found standing in

the veranda. Thereafter, PW 3 was made to sit and he had requested to provide some water and after drinking water he had placed the currency

notes in the pocket of the shirt of the respondent which was found hanging there. Thereafter he had come out of the house and shown the pre-

arranged signal.

14. Here PW 3 does not speak about the demand said to have been made by the respondent/accused. On a combined reading of the testimonies

of PW 3 and PW 4 it could be understood that a lot of infirmities and confusions found in between these two witnesses.

15. Similarly PW 2 has also not supported the case of the prosecution and most interestingly PW 5 who is the complainant in this case has given a

complete goodbye to her statement u/s 161(3) Cr.P.C. Given before the investigating officer, in Ex.P9 she has deposed that she did not know

anything about the contents of the complaint. Under these circumstances, the learned Special Public Prosecutor has sought the permission of the

Learned Special Judge to cross examine PW 5. When the material witnesses have not supported the case of the prosecution the evidence of other

witnesses are not sufficient to maintain conviction on the respondent/accused.

16. Insofar as the charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 are concerned the following three

ingredients are very much essential to constitute the offence.

1. Demand

2. Acceptance

3. Recovery

It is significant to note here that these three ingredients are absent in the present case on hand. Merely proving of the phenolphthalein test in positive

is nonsufficient to rope the respondent/accused into the culpability. It is the burden of the prosecution to establish the charges as against

respondents/accused beyond all reasonable doubts.

17. In this connection it may be relevant to refer the proviso to Section 20(1) of the Prevention of Corruption Act 1988. Section 20(1) enacts as

follows;

Section 20 Sub-Clause (1)

Section 20 -Presumption where public servant accepts gratification other than legal remuneration.

(1) Where, in any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 it is proved that an

accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification

(other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or

obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is

mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate.

18. As revealed from the above context, where it is proved that an accused person has accepted any money or any gratification, it shall be

presumed unless the contrary is proved that he had accepted that gratification or money as the case may be as motive or reward. In the present

case the prosecution has not proved that the respondent/accused had demanded and accepted the money as an illegal gratification other than the

legal remuneration. In case if it is presumed that the prosecution has proved the charges against the respondent/accused then the

respondent/accused are entitled to rebut that presumption. When the prosecution itself is not able to prove the charges beyond all reasonable

doubt, the question of rebuttal presumption does not arise in this case because the initial burden to prove the guilt upon the accused rests upon the

prosecuting agency.

19. This Court has carefully considered the submissions made by the Mr. Mr. A.N. Thambidurai the learned Additional Public Prosecutor

appearing for the appellant as well as Mr. K. Venkataramani learned counsel for the respondent/accused. After giving careful consideration and on

scrutinizing the evidences both oral and documentary, this Court finds that the order of acquittal passed by the trial court does not require any

interference.

20. In the result the appeal is dismissed. The judgment dated 19.10.2005 and made in C.C. No. 5 of 2002 on the file of the Learned Special

Judge/Chief Judicial Magistrate No. 1, Dharmapuri District at Krishnagiri is confirmed.