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Madras High Court

Case No: Criminal A. No. 375 of 2006

State APPELLANT

Vs

M. Muniappan Thevar RESPONDENT

Date of Decision: Aug. 5, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161(3), 197, 378
- Penal Code, 1860 (IPC) - Section 21
- Prevention of Corruption Act, 1988 - 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 2002on 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 12Arulraj 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. Jaichandranwas 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 about10.00pm.

2.9. At about 09.30pm., PW 19 had sent PW 3 and PW 4to 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 3said "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 lift hand fingers was collected in a separate bottle and marked asS2. 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 inEx.P6 entrustment mahazar and found tallied. For the purpose of investigation PW 19 had recovered the amount ofRs.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 underEx.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 12.03.2002under 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 dated30.01.2002 and thereby PW 1 seems to have accorded sanction for prosecution of Mr. M. Muniaapan, 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 provide 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 his 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 out side, 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 conflictions 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. Me reproving 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.