(2009) 07 MAD CK 0468

Madras High Court

Case No: Criminal A. No. 1690 of 2003

R. Krishnamurthy		APPELLANT
	Vs	
State of Tamil Nadu		RESPONDENT

Date of Decision: July 6, 2009

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: R. Shunmugasundaram, for Mr. Govi Ganesan, for the Appellant; N. Kumanan, Government Advocate (Criminal side), for the Respondent

Final Decision: Allowed

Judgement

M. Jeyapaul, J.

The first accused who was convicted for offence punishable u/s 7 and sentenced to undergo six months rigorous imprisonment with fine of Rs. 500/- in default to undergo one month rigorous imprisonment and convicted for offence u/s 13(2) read with Section 13(l)(d) of P.C. Act, 1988 and sentenced to under go one year rigorous imprisonment with fine of Rs. 500/- in default to undergo one month rigorous imprisonment, moves this appeal before this Court. The second accused was acquitted by the Trial Court.

2. 0n the side of the prosecution, 9 witnesses were examined and 14 documents and 5 material objects were marked. Fuse Call Register and page No. 71 of the said register were marked as Exs. Dl and D2 on the side of the accused.

3. The sum and substance of the case of the prosecution as reflected from the evidence reads as follows :-

a) P.W.2 - Omer Sheriff is serving as the Manager of Fahimas Jewel House located at Usman Road, T. Nagar, Chennai. On 20.05.1999 at about 06.00 p.m., the power supply to the air conditioning plant was cut off. He contacted Krishnamurthy, the first accused herein over phone. But he instructed him to come over to the office the next day morning.

b) As instructed, he proceeded to the electricity office at Thanikachalam Road and met the first accused. P.W.2 asked the first accused to change the meter box. He demanded a sum of Rs. 4,000/- for supply of the meter box. As the electricity supply was not immediately restored, P.W.2 got angry and proceeded to the office of the Vigilance and Anti Corruption. He met Mr. Ramachandran, the Deputy Superintendent of Police - P.W.8 over there. He prepared the complaint Ex.P.3 and P.W.2 subscribed his signature over there. A. Srinivasan, P.W.5 as instructed by the first accused, proceeded to Fahimas Jewel House. But, he, having found that the shop was closed during the lunch hours, returned to the office where he found that the Investigating Officials started enquiry on the complaint given by P.W.2.

c) Mr. Ramachandran - P.W.8, having received the complaint from P.W.2, got permission from the Superintendent of Police attached to Vigilance and Anti Corruption Department and registered a case u/s 7 of the Prevention of Anti Corruption Act. He prepared printed First Information Report Ex.P.12. He arranged the witnesses P.W.3 and P.W.4 for the purpose of trapping the accused. The P.W.2 brought a sum of Rs. 3,000/- in various denominations. P.W.8 demonstrated the Phenolphthalein test to P.W.2, P.W.3 and P.W.4 and thereafter, they proceeded to the office of the first accused at about 04.30 p.m. The first accused was found attending office work. P.W.3 was introduced as Accountant to the first accused by P.W.2. After the first accused completed his telephonic conversation, he asked P.W.2 whether he brought money. P.W.2 handed over the amount, which was already treated with phenolphthalein powder, to the first accused. He, having ascertained that a sum of Rs. 3,000/- was brought by P.W.2 asked P.W.2 to put the amount in a cover supplied by him and thereafter, the second accused was directed to receive the said cover, who put the cover in his right side pant pocket. The first accused passed on a receipt for installing a new meter box.

d) P.W.2 thereafter gave a signal to P.W.8 who came along with P.W.4. P.W.8 himself introduced to first and second accused and introduced the witnesses also to them. Both the accused were arrested. Then the second accused was subjected to phenolphthalein test. Sodium Carbonate solution used for the test was packed in three bottles viz., M.O.2, M.O.3 and M.O.4. The aforesaid material objects were recovered under mahazar Ex.P.7 in the presence of P.W.3 and P.W.4.

e) The currency notes M.O.I were also recovered under relevant seizure mahazar.

f) Mr. Murugesan, P.W.9, the Deputy Superintendent of Police attached to Vigilance and Anti Corruption Department took up the case for further investigation in this matter. He examined the witnesses and recorded their statement.

g) P.W.7, Kasthuri Bai, who analyzed the material objects M.Os.2 to 4, has returned a finding that Phenapthalin Sodium Carbonate elements were found in the material objects sent for chemical examination. The report submitted by him was marked as Ex. P.ll.

h) Mr. Ramachandran, P.W.I, gave sanction for prosecution having gone through the materials collected by the Investigating Agency. The order of sanction passed by him was marked as Ex. P.l.

i) P.W.9, having completed the investigation, laid the final report as against the accused Nos. l and 2 for offence punishable u/s 7 and 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988.

j) The Trial Court, having adverted to the evidence on record, has chosen to acquit the second accused, but convict the first accused and sentenced him to undergo the imprisonment as stated supra.

4. The learned Senior Counsel appearing for the first accused would submit that the complainant P.W.2 has completely given a go-by to the case of demand of bribe for giving direct connection to the air conditioning plant and restoration of electricity. He has come out with a case that the first accused received the sum of Rs .3,000/- only for fixing a new meter box in the jewellery premises of P.W.2. It is his further statement that the trap witness P.W.3 has come with a new case during the course of evidence that the first accused also handled the trap money and thereby his hand also was tainted. Drawing the attention of this Court, to the evidence of P.W.5, he would submit that the fault directed to be attended to was set right by P.W.5 as per his evidence. Referring to the evidence of P.W.8 and P.W.9, the learned Senior Counsel would submit that there is violation of instructions found in the Vigilance manual inasmuch as oral permission alone was obtained and not written permission as per the instruction found in the vigilance manual. Referring to the evidence of the Sanctioning Authority examined as P.W.I in this case, the learned Senior Counsel would submit that he has categorically admitted that had Ex. D.l produced before him, he would not have given any sanction for prosecution. Both in the charge sheet as well as in the sanction order, the new meter box theory, which was projected by P.W.2 was completely suppressed by the prosecution, it is lastly submitted by the learned Senior Counsel for the petitioner.

5. Per contra, the learned Government Advocate (Criminal side) would strenuously submit that the demand and acceptance were amply demonstrated before the trial Court through the evidence of P.W.2 and P.W.3. It is his submission that there is no reason for demanding Rs. 4,000/- for purchasing a new meter box, which cost less than Rs. 900/-. As regards discrepancy with respect to the phenolphthalein test conducted immediately after the receipt of the amount, he would submit that P.W.4 the mahazar witness has categorically spoken to the fact that the second accused alone was subjected to the test and not the first accused. Referring to the statement given by the first accused u/s 313 Cr. P.C. he would submit that he had come out with a total denial of receipt of any money. In the written submission also, the first accused came out with a different story. Referring to the evidence of P.W.6 he would submit that the shortage of supply of meter box had ceased six months prior to the occurrence. Therefore, there would have been no occasion for the first accused to

demand money for fixing a meter at the premises of the P.W. 2, he contends.

6. The fact remains that the P.W.2 has turned hostile with respect to the demand of bribe made by the first accused for giving direct connection and restoration of electricity. It is his categorical version that only for the purpose of purchasing a new meter box, a sum of Rs. 3,000/- was paid during the course of trap. Therefore, the foundation made by the prosecution that there was a demand of bribe for the purpose of giving direct connection and restoration of electricity is found shaking. Further, P.W.2 has also given a go-by to the case of the prosecution found in the complaint lodged by him that the money was demanded only for direct connection and restoration of electricity.

7. P.W.6 is a Commercial Inspector who is in-charge of stores. It is his version that there had been shortage of supply of meter box to the Department six months prior to the occurrence. Though P.W.6 has not specifically stated that there was no short supply on the date of occurrence, we can easily presume that the Department had faced short supply of new meter box. At any rate, the prosecution cannot traverse beyond the evidence of P.W.2 who would state that only for the purpose of purchasing new meter box, the amount was demanded and paid. The trap witness P.W.3 also has lent corroboration to the evidence of P.W.2 with respect to the version of P.W.2 that the money was paid for the purpose of purchasing a new meter box. His testimony with regard to the fact that the money was paid for purchasing of new meter box was not subjected to cross examination by the Investigating Agency, though he was treated as hostile later and cross-examined.

8. The prosecution has come out with the case that the first accused never handled the money. But the evidence let in on the side of the prosecution indicates a contrary story. P.W.3 is very category that the first accused handled the money and therefore, his hands were subjected to the Sodium Carbonate solution test. He goes a step further to fortify such a version that the Sodium Carbonate solution, which was used for dipping the hands of the first accused, was collected in one bottle. P.W.4, Panch witness, would account only for two bottles. Part of the chief examination of P.W.3 was over on 02.11.2001, the prosecution which had been very alert sensing the tendency of P.W.3 abruptly stopped the chief examination portion and continued the chief examination and subjected him on his exhibition of hostility, to cross examination only on 20.11.2001, after about 18 long days. During the course of cross examination, after treating him hostile, of course, P.W.3 would state that the first accused hand was not dipped in the Sodium Carbonate solution prepared for test at the office of the first accused. Such a contradictory version of P.W.3, in fact, cast a cloud on the case of the prosecution, with respect to Sodium Carbonate solution test, conducted on the accused in the presence of P.W.3 and P.W.4.

9. The learned Government Advocate (Criminal side) would appeal to the Court to go by the evidence of P.W.4, with respect to the seizure of three bottles which

contained the Sodium Carbonate solution. It is not the case of the prosecution that P.W.3 was not present when the Sodium Carbonate test was conducted immediately after the occurrence. It is also the case of the prosecution that P.W.3 also subscribed his signature as one of the witnesses to the seizure mahazar. To top it all, P.W.3 also has spoken to the entire proceedings that transpired in the office premises of the first accused. Further P.W.4 also has come out with a nebulous version as to the number of bottles, in which the Sodium Carbonate solution was collected.

10. It is true that the version projected by the first accused through his answer to the questionnaire put to him u/s 313 does not fall in line with the evidence of P.W.2 that the amount was collected for the purpose of purchasing a new meter box. The accused may take different stands at different stages, in order to wriggle out of the complicity in the crime alleged against him. The contradictory stand taken by him will not give rise to any presumption that he accepted not the version of the hostile witness P.W.2.

11. The Honourable Supreme Court in Gulam Mahmood A. Malek v. State of Gujarat reported in 1981 SCC (Cri.) 568 observed as follows:

...The High Court based the conviction mainly on the ground that the marked notes were recovered from the person of the accused and that Panch witness has spoken to the recovery of the money. In assessing the evidence of a witness the entire background of the prosecution story should be kept in mind. It is seen the complainant has no regard for truth and his preferring a false complaint about payment of bribe on July 7, 1972 and making the present complaint after ten days of the alleged demand cannot be ignored. In the circumstances, we do not think that it was safe for the High Court to base the conviction solely on the testimony of the Panch witness....

12. Similar is the situation prevailed in the case on hand. The evidence of P.W.2, who has come out with a totally contradictory version, supporting not his version in the complaint persuades this Court to believe that he is not a truthful witness at all. The payment of money by P.W.2 was not towards bribe, but towards fixing a new meter box has been categorically spoken to P.W.2 during the course of evidence, taking a total departure from his case in the complaint. The foundation made by the prosecution has been completely shattered by P.W.2. The prosecution has built up the superstructure with the evidence of trap witnesses viz., P.W.3 and P.W.4. Mere demand of money and acceptance of the same will not constitute an offence under the Prevention of Corruption Act. The demand of money by first accused has been accounted properly by P.W.2 himself. In view of the above facts and circumstances, this Court finds that it is totally unsafe to refer conviction solely based on the Panch witnesses in this case.

13. The Honourable Supreme Court in State of Andhra Pradesh v. M. Radha Krishna Murthy reported in 2009 (2) Crimes 14 (SC) has observed as follows:

5.0n a bare reading of the judgment in Hari Dev Sharma''s case (supra), it is clear that no rule of universal application was laid down that whenever a part of the case relating to demand and acceptance is not acceptable, the whole case would fail even if the case relating to trap, recovery of money and chemical test by the prosecution is established. When part of the prosecution version relating to demand and acceptance of bribe stands by itself, the ratio of the decision does not apply. Unfortunately, in the instant case the High Court has lost sight of the aforesaid aspects and by placing reliance on the aforesaid decision has directed acquittal.

14. That was a case, where the accused first received a sum of Rs. 2,000/- as gratification, and the balance amount of Rs. 2,000/- was received by him as bribe when the trap was laid. In that case, the High Court, having observed that the first vital part of the prosecution version that a sum of Rs. 2,000/- was earlier paid and accepted by the accused was not proved, disbelieved the subsequent part of the prosecution story as regards demand and acceptance of money and laying of trap. In such circumstances, the Honourable Supreme Court has held that just because a part of the case was not established by the prosecution, there is no universal rule that the other part of the prosecution case, which was well established, should be thrown away. Therefore, the above ratio does not apply to the facts and circumstances of the case.

15. The learned Government Advocate (Criminal side) would cite yet another authority in T. Shankar Prasad Vs. State of Andhra Pradesh, . In a similar case, a belated plea was taken by the accused that he did receive the amount, but the said amount was received towards tax. The plea of such a defence was rejected in the said case as the said plea was taken up belatedly and there was no tax due on that date payable by the accused. Further, in the said case, there was acceptable evidence to show that the first and second accused cleverly managed to invent a device to systematically collect money. In this case, the second accused, from whose possession the money was collected was set free by the trial Court. P.W.I has completely left the prosecution in the lurch during the course of trial inasmuch as he has come out with a different case that the amount was paid only for purchasing meter box. This Court is confronted with not the belated plea of the accused, but the concrete version of P.W.2 during the course of trial of the case. Therefore, this Court finds that the above ratio is factually distinguishable.

16. P.W.1 is the authority for sanctioning prosecution. He comes out with a dramatic reply during the course of cross examination that had Ex. Dl - the Fuse Call Register been brought to his notice at the time of according sanction he would have refused to give sanction.

17. In this context, the learned Government Advocate (Criminal side) referred to a decision in State by Police Inspector v. T. Venkatesh Murthy reported in 2004 SCC (Cri.) 2140 wherein, it has been held as follows:

14. In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional court....

18. Mere irregularity in according sanction or certain omissions committed by the sanctioning authority would not always nullify the sanction accorded by the authorities concerned. If the accused is prejudiced and failure of justice ensued on account of such material omission or irregularity committed by the sanctioning authority, the sanction accorded will have to be treated as a nullity.

19. In the case on hand, the fate of the accused would have been totally different, even according to the evidence of P.W.I, the sanctioning authority in this case had Rx. D.l been produced before him. Great injustice had been committed to the accused as the relevant document Ex. D.l was not seized by the Investigating Official and produced before the sanctioning authority for his consideration. Under such circumstances, the Court will have to hold that the sanction is tainted with irregularity.

20. Considering the above facts and circumstances of the case, this Court finds that the prosecution has miserably failed to establish that the first accused did commit the offences punishable u/s 7 and 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988.

21. Therefore, the conviction recorded u/s 7 and Section 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo six months rigorous imprisonment with fine of Rs. 500/- in default to undergo one month rigorous imprisonment u/s 7 and one year rigorous imprisonment with fine of Rs. 500/- in default to undergo one month rigorous imprisonment u/s 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988, respectively, imposed on the first accused by the Trial Court stands set aside and the appeal is allowed. The bail bond, if any, executed by the first accused shall stand annulled. The fine amount, if any, paid by the first accused shall be refunded forthwith.