



CrI.A.No.352 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.02.2023

PRONOUNCED ON: 16.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

CrI.A.No.352 of 2015

State represented by
The Public Prosecutor
High Court,
Madras – 600 104.
[V & AC, Chennai]

... Appellant

Vs.

V.D.Mohanakrishnan

... Respondent

Prayer:

Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment of acquittal of the respondent/accused passed by the Special Court for the Cases under Prevention of Corruption Act, Chennai in C.C.No.150 of 2011 (Old C.C.No.20 of 2007) dated 12.01.2015.



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For Appellant : Mrs.G.V.Kasthuri
Additional Public Prosecutor

For Respondent : Mr.R.M.Meenakshi Sundaram

JUDGEMENT

This Criminal Appeal has been filed against the order dated 12.01.2015 passed in C.C.No.150 of 2011 (Old C.C.No.20 of 2007) on the file of the Special Court for the Cases under Prevention of Corruption Act, Chennai.

2. The appellant police registered a case against the respondent in Crime No.8/AC/05/CC-I for the offence under Sections 420 IPC and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The appellant police after investigation laid a charge sheet and filed a final report against the respondent before the Principal Sessions Judge, Chennai and the same was taken on file in C.C.No.20 of 2007 and the learned Principal Sessions Judge made over the case to the I Additional Sessions/Special Court, Chennai. Subsequently, the case was transferred to Special Court for the Cases under Prevention of Corruption Act at Chennai and renumbered as C.C.No.150 of 2011.



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3. After completing formalities, during trial, before the trial court, in order to prove the case of the prosecution, on the side of the prosecution, as many as twelve witnesses were examined as P.Ws.1 to 12 and sixteen documents were marked as Exs.P1 to P16. No material object was exhibited.

4. After completing the examination of prosecution witnesses, incriminating circumstances were culled out from the evidence of prosecution witnesses, put before the accused, by questioning under Section 313 Cr.P.C., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, no oral evidence was let in and two documents were marked as Exs.D1 and D2.

5. On completion of trial, after hearing the arguments advanced on either side, considered the material facts, the trial court concluded that the prosecution failed to establish the guilt of the accused punishable under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act and 420 IPC and acquitted the accused by extending the benefit of doubt on him. Challenging the judgment of acquittal, the State has preferred the present Criminal Appeal.



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6. Specific case of the prosecution is that the accused was working as Court Officer before this Court. He misrepresented that he will secure a job in the High Court of Madras for witness Kumar/complainant, by using his office power and he demanded Rs.40,000/- from the witness Kumar. Due to which, he agreed to obtain Rs.20,000/- as portion of the said amount from the witness Kumar and he instructed to pay the balance amount of Rs.20,000/- later. In pursuance of the said demand, the respondent received sum of Rs.20,000/- on 20.12.2002 and later he received sum of Rs.18,000/- from the witness Kumar. He falsely represented that the appointment order was made ready and also received sum of Rs.2,000/- from the witness Kumar. Further, accused who is a public servant has abused his official position and obtained the said amount of Rs.40,000/- from the complainant. Hence, the complaint.

7. Learned Additional Public Prosecutor appearing for the appellant submitted that the prosecution has proved all the essential ingredients to constitute the offences charged under Section 420 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act against the respondent. The defacto complainant who gave complaint against the respondent was examined



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as P.W.1. He has clearly deposed that the respondent demanded money and

accepted the illegal gratification of Rs.20,000/- to secure job in the High Court

of Madras. Further he stated that he met the respondent several times in

connection to secure job and the respondent demanded bribe on various dates.

P.W.2 who also accompanied with P.W.1 has deposed about the demand and acceptance of the amount by the respondent from the defacto-complainant.

Evidence of P.W.2 corroborated with the evidence of P.W.1. P.W.3 who is the

wife of the defacto-complainant has clearly deposed about the payment of

Rs.20,000/- to the respondent in order to secure job for P.W.1. P.W.3 has also

corroborated the evidence of P.W.1. P.W.6 and P.W.7 have deposed about the

Modus Operandi of the respondent/accused who used to deceive persons by

stating that he is working in the High Court and he will secure job and after

getting money when pressure was given to return the money, he used to give

cheque. After considerable time, when the complainant questioned about the

job, the respondent issued cheque in order to return the money. When the

cheque was presented for collection by the complainant, the same was

dishonored. Taking advantage of illiteracy of P.Ws.1 to 3, the respondent

cheated the witness P.W.1. Already, disciplinary proceeding was initiated as



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against the respondent, however he continued the act of cheating innocent persons. The trial court failed to consider the nature of the complaint and antecedents of the respondent, acquitted the respondent, which warrants interference of this Court.

8. Learned counsel for the respondent submitted that absolutely there is no materials to show the respondent obtained bribe from the complainant by making false representation. He has not misused his official position. He borrowed money from the complainant as hand return. Due to some reason, he could not repay the same. When the complainant asked to repay the money, he issued cheque. The money transaction between the respondent and the complainant is purely a loan transaction. Hence the act of the respondent is not come under illegal gratification. As soon as when the complainant could not get the loan amount advanced to the respondent and when the cheque issued by the respondent was bounced, he has to workout his remedy in the manner known to law by filing civil suit, instead, he has filed the criminal complaint, which is abuse of law. The trial court rightly appreciated the evidence and acquitted the respondent. There is no merit in the appeal and the same is liable to be dismissed.



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9. Heard the learned Additional Public Prosecutor appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

10. Specific case of the prosecution is that the respondent/accused was working as court officer in this Court. Taking advantage of his official position, he misrepresented the complainant that he can secure job for him by using his influence and demanded and accepted an amount of Rs.40,000/- from the defacto complainant on two occasions. Since he has not made any arrangement for securing job, the complainant asked him to return the money. Hence the respondent issued cheque in favour of the complainant and when the cheque was presented for collection, it was dishonored. Hence the complaint.

11. In order to substantiate the charges framed against the respondent, during trial, on the side of the prosecution, 12 witnesses were examined and 16 documents were marked. P.W.1 is the complainant, who sets the law into motion by filing the complaint, has deposed that the respondent misrepresented that he will secure job for the complainant, for which the respondent obtained



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initial payment of Rs.20,000/- from the complainant. The eye witness who

accompanied with the complainant was examined as P.W.2, has corroborated

the evidence of P.W.1. P.W.3, who is the wife of P.W.1 has clearly stated that

the respondent went to their house and in her presence, the respondent received

money. P.W.3 has also stated in her evidence that the respondent received

money from her husband by promising to secure job for her husband. From the

evidence of P.Ws.1 to 3, it is clear that the respondent initially received a sum

of Rs.20,000/- from the defacto complainant and also promised to secure job

and fixed the amount of Rs.40,000/- for the post. From the defence taken by

the respondent, receipt of money and the issuance of cheque by the respondent

are proved. Once the respondent admitted the receipt of money and the

issuance of cheque, it is clear that there is a money transaction between the

respondent and the defacto-complainant. According to prosecution, money

received by the respondent from the defacto-complainant is a bribe and it is

illegal gratification. According to the learned counsel for the respondent, the

amount received by him is only loan amount. The only question has to be

decided as to whether money received by the respondent is a bribe /illegal

gratification for the purpose of securing job or it is a loan/money transaction.



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From the evidence of P.Ws.1 to 3, it is clear that the respondent has not borrowed any loan, which clearly shows that the respondent received money to secure a job for the complainant/P.W.1. It is not in dispute that the respondent is a public servant. He should not have any financial transaction with the private party without prior permission from the department. There is no material to show that the respondent obtained permission from the department or competent authority for borrowal of money. It is for the respondent to prove that the money received from the defacto complainant is a loan amount. Earlier, disciplinary proceeding was initiated as against the respondent for similar allegation. It is seen from the said departmental proceedings, it is proved that the respondent received sum of Rs.30,000/- on 30.09.1999 from one Rajamanickam assuring him to secure the job for his son. Since he failed to do so, on demand, the respondent issued cheque in favour of Rajamanickam for a sum of Rs.30,000/- which was returned by the Bank for want of sufficient fund. On earlier occasion also, the respondent misrepresented another person and obtained money and failed to secure the job for him and thereafter he issued the cheque and the same was also bounced. Hence they filed a petition before the Registry and the Registry issued memorandum and also initiated



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Disciplinary proceedings. From Disciplinary proceeding, it is found that the respondent has committed offence. Likewise, the respondent cheating the illiterates by making false representation that he would secure the job for which he demanded money and if he failed to do so, in order to repay the money, he issued cheque. Evidence of P.W.6 and P.W.7 have clearly proved the Modus Operandi adopted by the respondent. Once the respondent admitted the money received from the defacto complainant/P.W.1, it is for the respondent to prove the money transaction between them is not an illegal gratification. There is no material available on the side of the defence to prove the same. The defacto complainant has filed a private complaint under Section 138 of the Negotiable Instruments Act does not mean that the money given by the defacto complainant is a loan amount.

12. The appellate court is the fact finding court, it has to re-appreciate and revisit the entire evidence and give independent finding. Considering the facts and circumstances of the case, and from the evidence of P.Ws.1 to 3 and P.Ws.6 and 7, this Court finds that the prosecution has proved its case beyond reasonable doubt. On a perusal of evidence of P.Ws.1 to 3, 6 and 7, this Court



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is the appellate court, final court of fact finding, re-appreciated the evidence finds that the respondent has committed charged offences. The prosecution has proved its case beyond all reasonable doubt.

13. Further it is a well settled proposition of law that in appeal against the order of acquittal, the accused is getting double presumption. Fundamentally the accused is presumed to be innocent and when the Court below confirmed his innocence and acquitted him, the appellate court while reversing the judgment of acquittal, has to find out the compelling circumstances and give reasons for rebutting the presumption of innocence. Though the learned counsel for the respondent vehemently contended that in this case, the respondent marked two documents Exs.D1 and D2 which clearly shows that the defacto complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, which shows that there is a loan transaction between the respondent and the defacto complaint, as already stated, as a public servant, while dealing with any loan transaction with private person, the respondent should get permission from the concerned department. Without getting prior permission from the department, the money transaction itself is



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illegal. Even otherwise, he has not produced any documents like income tax returns or assets and liabilities statement filed before the department to prove the loan transaction between them. The defacto complainant is neither a banker, pawn broker nor money lender and he is a jobless and very poor person. It is highly improbable that the respondent being a government servant, would have approached a poor person like the defacto complainant, seeking financial assistance.

14. Therefore, under the facts and circumstances of the case, this Court finds that the transaction between the respondent and the defacto-complainant is not loan transaction or money transaction. From the evidence of P.Ws.1 to 3, the respondent has committed charged offences. The trial court failed to appreciate the evidence and also antecedents of the respondent and simply acquitted the accused. This Court has carefully gone through the entire materials and the antecedents of the respondent and finds that the respondent not only cheated the defacto complainant and committed offence under Sections 420 IPC, but also, as a public servant, he obtained other than the legal remuneration and committed offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.



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WEB COPY 15. In view of the above, this Criminal Appeal is allowed. The order of acquittal dated 12.01.2015 passed in C.C.No.150 of 2011 (Old C.C.No.20 of 2007) on the file of the Special Court for the Cases under Prevention of Corruption Act, Chennai is set aside. Consequently, connected miscellaneous petition, if any, is closed.

16. For a reversal judgment, before imposing sentence, the accused have to be heard. Hence, the respondent is directed to be appear before this Court on 20.02.2023 **“for hearing on the question of sentence”**.

16.02.2023

mfa

Index:yes/No

Internet:yes/No

To

1. The Special Judge,
Special Court for the Cases under Prevention of Corruption Act,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

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Pre-delivery judgment made in

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Today, in compliance with the order of this Court dated 16.02.2023, the respondent/accused appeared before this Court and he has been questioned regarding the sentence to be imposed on him. The respondent stated that a false case has been foisted against him and infact, he had borrowed money from the defacto-complainant as hand loan only and not as projected by the prosecution and that he has not committed any offence as alleged by the prosecution. Further he stated that he is suffering from neural problem and prays mercy of this Court.

2 This Court heard the respondent/accused and perused the materials available on record. The respondent/accused who was working as a public servant, has misused his official position and cheated the innocent, illiterate and poor man as if he will secure job for him and obtained other than legal remuneration.

3 Therefore, considering the serious nature of the offence, this Court does not find any mitigating circumstances to award lesser punishment. The respondent is convicted for the offence under Section 420 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only), in default, to



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undergo rigorous imprisonment for a further period of one year. Further for his conviction for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 he is sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only), in default, to undergo rigorous imprisonment for a further period of one year which would meet the ends of justice. The sentences are ordered to run concurrently. The period of remand will be set off under Section 428 Cr.P.C.,

20.02.2023

Note :

- (i) Registry is directed to issue copy of the judgment by today itself **(i.e, on 20.02.2023)**.
- (ii) Appellant/Police is directed to secure the custody of the respondent to execute the period of imprisonment.

Copy To

The Superintendent,
Central Prison-I,
Puzhal, Chennai.



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