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KOOTHA PERUMAL

v.

STATE TR. INSPECTOR OF POLICE, VIGILANCE & ANTI
CORRUPTION

Criminal Appeal No.1923 of 2008

B

DECEMBER 15, 2010

**[B.SUDERSHAN REDDY AND SURINDER SINGH
NIJJAR, JJ.]**

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Prevention of Corruption Act, 1988:

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ss. 7 and 13(2) r/w s. 13(1)(d) and 19 – Demand of illegal gratification – Trap laid – Accused caught red handed – Conviction by trial court – Affirmed by High Court – Pleas that the sanction order was not legally obtained and that there was no demand of bribe made by accused – HELD: The sanctioning authority adverted to all necessary facts and duly recorded its satisfaction that the accused should be prosecuted – Both the courts below analysed the entire evidence and clearly held that a demand was definitely made by the accused – No arbitrariness/inconsistencies discernible in the concurrent findings recorded by the courts below.

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The prosecution case was that the appellant demanded Rs.50/- from the complainant for delivery of the municipality tax certificate in respect of the house of his father. The complainant complained to the Inspector, Anti-corruption. A trap was laid. The appellant was caught with the phenolphalein powder treated currency notes. The chemical test was positive. The trial court convicted the appellant of the offences charged. The High Court affirmed the conviction.

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In the instant appeal filed by the accused, it was contended for the appellant that the entire proceedings

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were vitiated as previous sanction to prosecute him was not legally obtained as required u/s 19 of the Act; and that there was no demand of bribe made by the appellant.

Dismissing the appeal, the Court

HELD:

1. It cannot be said that the sanction order in the instant case was not valid. A perusal of the sanction order would show that the sanctioning authority has adverted to all the necessary facts which have been actually proved by the prosecution in the trial. Upon examination of the material facts, the sanctioning authority has certified that it is the authority competent to remove the appellant from the office. It is specifically stated that the statements of the witnesses have been duly examined. Sanction order also states that other materials such as copy of the FIR as well as other official documents such as the different mahazars were carefully examined. Upon examination of the statements of the witnesses as also the material on record, the sanctioning authority has duly recorded its satisfaction that the appellant should be prosecuted. [para 14] [871-F-H; 872-A-B]

Jaswant Singh Vs. State of Punjab 1958 SCR 762 =AIR 1958 SC 124 – referred to.

2. The trial court as well as the High Court have analyzed the entire evidence and clearly held that a demand was definitely made by the appellant for delivery of the tax certificate. Both the courts have made a reference to the evidence given by PWs.2 and 3 who have categorically stated that the demand was made by the appellant. The entire trap has been meticulously orchestrated by the prosecution authority. No arbitrariness or inconsistencies are discernible in the

A **concurrent findings recorded by the courts below. [para 16-17] [872-E-G]**

Case Law Reference:

B **1958 SCR 762 referred to para 13**
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1923 of 2008.

C From the Judgment & Order dated 07.03.2007 of the High
Court of Madras, Madurai Bench in Criminal Appeal (MD) No.
821 of 1999.

S. Mahendran for the Appellant.

S. Thananjayan for the Respondent.

D The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. This appeal is directed
against the judgment of the Madras High Court, Madurai Bench
dated 7th March, 2007 in Criminal Appeal (MD) No.821 of
E 1999 by which the High Court affirmed the conviction and
sentence recorded by the learned Special Judge-cum-
Additional District Judge-cum-Chief Judicial Magistrate,
Pudukottai in Spl.C.C.No.1 of 1994. By the aforesaid judgment,
F the Special Judge convicted the appellant for offences
punishable under Section 7 and 13(2) read with Section
13(1)(d) of the Prevention of Corruption Act, 1988 (in short 'the
Act') and sentenced him to undergo one year rigorous
imprisonment and to pay a fine of Rs.500/-, in default of
payment to undergo three months rigorous imprisonment and
G convicted him for the offence under Section 7 of the Act and
sentenced him to undergo six months rigorous imprisonment
and to pay a fine of Rs.300/-, in default of payment to undergo
one month rigorous imprisonment.

H 2. The prosecution case, briefly stated, is as follows :

The prosecution case as narrated by PW2, the complainant, has been extensively noticed by the trial court as also by the High Court. For the purposes of this appeal, we may very briefly touch upon on the relevant facts. The complainant PW2, Nayinar Mohammed, is a resident of Pudukottai. His father is the owner of house property at door No.36, Mamundi Madam, Adappan Vayal, Pudukottai. Since his father was seriously ill, he needed Rs.75,000/- for his treatment. He approached a financial institution for a loan. The institution asked him to furnish property certificate and Municipality Tax Extract of the house owned by his father. He gave a petition through his friend Noorul Ameen on 17th August, 1993, with the requisite Rs.15/- court stamp affixed on the same (Ex.P3). His friend paid Rs.15/- to the Municipality and obtained a challan Ex.P4. PW4, who was the writer in the record room, knew the accused and made the necessary entry in the ledger at page No.40 on 19th August, 1994. The application of the complainant was given as No.C.A.2650 of 1993. Similar entry was made with regard to payment of Rs.15/- on 17th August, 1993 by the cashier of Pudukottai Municipality (PW6). The payment was made through challan No.6789 (Ex.P4). Govindrajan, PW5, was a Junior Assistant in the Municipality compared the copy of the tax extract No.2650 with the original and found the same to be correct and put his signature. Ex.P7 is the signature of the aforesaid Junior Assistant.

3. When the complainant enquired about the progress of the petition, the appellant informed him that the file will only come to him on 23rd August, 1993. He demanded a sum of Rs.50/- as a bribe from the complainant for delivery of the tax extract which, according to him, was ready for delivery. On that date, the complainant did not have any money. In any event, he was not inclined to give any bribe to the appellant. He, therefore, made a written complaint to the Inspector (PW8) Anti Corruption, Rajagopalapuram. The complaint is Ex.P5. A case was duly registered by PW8 as Crime No.4 of 1993 under Section 7 of the Act. The First Information Report (Ex.P10) was

A duly signed by the complainant. Thereafter, another Inspector in Anti Corruption, Pudukottai recorded the statements of PW2 and PW3 on 24th August, 1993. Similarly the statements of PWs.4, 5, 6 and 7 were also recorded. Information about the registration of the FIR was duly sent to the higher officials.

B 4. Subsequently, a trap was arranged, wherein one Sridhar (PW4) who was working as a Junior Assistant in Pudukottai Public Works Department and one Balakrishnan, Junior Assistant from Water Supply and Drainage Board were engaged as trap witnesses. The FIR was got duly verified from
 C the witnesses. Thereafter, the complainant produced five ten rupees notes totaling Rs.50/- (M.O.1). The notes were duly treated with Phenolphthalein Powder. A demonstration was also given to the complainant as to how the hands of anybody who receives the aforesaid currency when washed in water
 D would turn red. Thereafter, PW8, the Inspector, instructed the complainant to go to the office of the appellant and hand over the amount.

E 5. On directions of the police, the complainant along with the trap witnesses went to the office of the appellant on 23rd August, 1993. He was directed to hand over the money to the appellant and to give a signal by folding his shirt. At about 3.15 to 3.30 p.m., the complainant and PW4 Sridhar went to the Municipality by cycle, they were followed by other jeep.

F 6. At about 4 p.m. PWs.2 and 3 entered into the office of the appellant and met him. The appellant received the amount and put it in his pocket. At 1610 hrs., the witness came out from the office and gave the necessary signal by folding his shirt, as directed by PW8.

G 7. On receipt of the signal, PW8 along with the other witnesses and police party went inside the office of the appellant. They introduced themselves. The appellant was found to be nervous and sweating. PW9 prepared the Sodium Carbonate mixture in two glass tumblers and asked the
 H appellant to dip his two fingers separately into the mixture. The

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mixture turned light red. The mixture was poured into a bottle and duly labeled 'R' (M.O.3). Another sample was similarly prepared with label 'N' and marked (M.O.2).

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8. He thereafter asked the appellant about the money he has received from PW2 and the appellant took the currency notes M.O.1 from his pocket and presented it before PW8. On comparison, the numbers in the said currency notes recovered from the appellant tallied with the numbers mentioned in the mahazar Ex.P7. The appellant was thereafter asked to remove his shirt (M.O.5). The pocket of the shirt was also subjected to Sodium Carbonate mixture test, and the solution turned into light red colour. The solution was duly sealed in a separate bottle as M.O.4 and given the label 'S'. The bottle was duly signed by PW8.

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9. On completion of certain other formalities, the appellant was arrested and released from bail at 1930 hrs. On completion of the entire investigation, the appellant was duly put on trial.

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10. The trial court convicted the appellant and sentenced him as noticed above. Aggrieved by the judgment of the trial court, the appellant challenged the same before the High Court in appeal. The High Court upon a detailed consideration of the evidence affirmed the findings recorded by the trial court. Consequently, the conviction and the sentence were confirmed. Hence the present appeal.

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11. We have heard the learned counsel for the parties.

12. Learned counsel for the appellant submitted that the entire proceedings were vitiated, as previous sanction to prosecute the appellant was not legally obtained as required under Section 19 of the Act. The second issue raised by the appellant is that there was no demand of bribe made by the appellant. Thus the conviction recorded by the courts below is perverse and deserves to be set aside.

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13. We may first consider the issue as to whether sanction

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- A was duly obtained prior to the prosecution of the appellant. It is the case of the appellant that the order for sanction of the prosecution produced in this case is signed by the Municipal Commissioner of Pudukottai. According to him, a perusal of the same would show that it suffers from non application of
- B mind. According to the learned counsel, the sanction order must disclose that the sanctioning authority has duly applied its mind and the same must be stated in the sanction order. In support of this submission, learned counsel has relied on a judgment of this Court in the case of *Jaswant Singh Vs. State of Punjab*¹.
- C Undoubtedly, in the aforesaid judgment, this court observed as follows :-

- D "The sanction under the Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness; *Basdeo Agarwala v. King Emperor* (1945) F.C.R. 93. The object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself the evidence before it comes to
- E a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In *Gokulchand Dwarkadas Morarka v. The King* (1948) L.R. 75 I.A. 30 the Judicial Committee of the Privy Council also took a similar view when it
- F observed :

- G "In their Lordships' view, to comply with the provisions of clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the

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 1. [Air.1958 SC 124]

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facts constituting the offence charged are not shown A
on the face of the sanction, the prosecution must
prove by extraneous evidence that those facts were
plakhed before the sanctioning authority. The
sanction to prosecute is an important matter; it
constitutes a condition precedent to the institution B
of the prosecution and the Government have an
absolute discretion to grant or withhold their
sanction."

It should be clear from the form of the sanction that the C
sanctioning authority considered the evidence before it
and after a consideration of all the circumstances of the
case sanctioned the prosecution, and therefore unless the
matter can be proved by other evidence, in the sanction
itself the facts should be referred to indicate that the
sanctioning authority had applied its mind to the facts and D
circumstances of the case. In *Yusofalli Mulla Noorbhoy
v. The King* (1949) L.R. 76 I.A. 158 it was held that a valid
sanction on separate charges of hoarding and profiteering
was essential to give the Court jurisdiction to try the charge.
Without such sanction the prosecution would be a nullity E
and the trial without jurisdiction."

14. Keeping in view the aforesaid statement of law, it would
not be possible to conclude that the sanction order in the
present case was not valid. Ex.P2 with the present appeal is F
the copy of the sanction order. A perusal of the same would
show that the sanctioning authority has adverted to all the
necessary facts which have been actually proved by the
prosecution in the trial. Upon examination of the material facts,
the sanctioning authority has certified that it is the authority G
competent to remove the appellant from the office. It is
specifically stated that the statements of the witnesses have
been duly examined. Sanction order also states that the other
materials such as copy of the FIR as well as other official
documents such as the different mahazars were carefully H

A examined. Upon examination of the statements of the witnesses
as also the material on record, the sanctioning authority has
duly recorded its satisfaction that the appellant should be
prosecuted for the offences, as noticed above. We, therefore,
find no merit in the submissions of the learned counsel that the
B sanctioning order to prosecute the appellant was not legal.

15. We may also notice here that although the issue with
regard to the illegality attaching to the order of sanction was
raised before the trial court, it was not raised before the High
C Court. The trial court, on examination of the issue, also negated
the submission of the appellant about any illegality attaching to
the sanction order. Even though we do not have the benefit of
the opinion of the High Court as the appellant has not raised
issue with regard to the illegality of the sanction order before
the High Court, we are satisfied that the sanction order has
D been issued in according with law.

16. Learned counsel for the appellant secondly submitted
that the judgment recorded by both the courts below is contrary
to the evidence on record. We have examined the entire issue.
E We are of the considered opinion that the trial court as well as
the High Court have analyzed the entire evidence and clearly
held that a demand was definitely made by the appellant for
delivery of the tax certificate. The trial court as well as the High
Court have made a reference to the evidence given by PWs.2
F and 3 who have categorically stated that the demand was made
by the appellant. No other point was urged before us.

17. We may notice that the entire trap have been
meticulously orchestrated by the prosecution authority. We are
unable to discern any arbitrariness or inconsistencies in the
G concurrent findings recorded by the courts below. We find no
merit in this appeal. The appeal is dismissed.

R.P.

Appeal dismissed.