

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1684 OF 2010
(Arising out of SLP(CRL.) No.7130 of 2008)**

BALASUBRAMANIAN

.....APPELLANT.

VERSUS

**STATE: THR. INSPECTOR
OF POLICE**

.....RESPONDENT

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted.
2. Being aggrieved by the Judgment and Order passed in Criminal Appeal No.765 of 2000 by the Madras High Court, the appellant has

approached this Court by way of this appeal. By virtue of the impugned judgment, the High Court has confirmed the Order of conviction dated 25th August, 2000, passed by the First Additional District Judge-cum-Chief Judicial Magistrate, Karur, whereby the appellant has been convicted under the provisions of Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as 'the Act') sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months for each of the offences and ordered both the sentences to run concurrently.

3. The facts giving rise to the said criminal case in a nutshell are as under:

i) On 11th March, 1991, the premises of Hotel Aristo Restaurant at Karur had been raided by the officers of the Commercial Taxes Department (Enforcement Wing) and as a result of raid, it was found that a fraud was committed in relation to payment of tax. Upon detection of the said fraud, Commercial Taxes Department had taken appropriate action and as a result of which tax liability of the proprietor was likely to be enhanced substantially. The appellant, being an

employee of the Commercial Taxes Department, was connected with the aforesaid raid. He sent a message through the accountant of the aforesaid Hotel to Shri Thamilarasan (P.W.3), proprietor of the said hotel, to meet him personally so that the matter can be settled. Intention of the appellant allegedly was to have some illegal gratification from the proprietor of the said hotel under a pretext that he would do the needful for reduction of the amount of tax which was claimed by the Department from the proprietor of the Hotel.

ii) P.W.3 thereafter met the appellant on 11th December, 1991, and at that time the appellant demanded a sum of Rs.5,000/- by way of illegal gratification so as to do the needful for reducing the tax and/or penalty. P.W.3 was not inclined to give the said amount as illegal gratification and, therefore, he contacted the Anti Corruption Department (Vigilance Police) and gave a complaint. The said complaint had been registered as C.R.No.8/91 V & AC, Tiruchy Dist. Under Section 7 of the Act and in pursuance of the said complaint a trap had been laid by the Anti Corruption Department. In pursuance of the said trap P.W.3 had paid a sum of Rs.5,000/- to the appellant who had accepted the said amount and had thereafter kept the amount in the left pocket of his trousers. At that time, the pre-determined

signal was given by P.W.3, to the trap team and therefore, the Members of the trap team raided the place and caught the appellant red handed. The Sodium Carbonate Solution test was carried out and the same was found to be affirmative denoting acceptance of the amount by the appellant.

iii) Necessary investigation was made by the Inspector of Police (P.W.12) and ultimately charge sheet was filed and on examination of witnesses and upon careful consideration of the entire evidence, the learned First Additional District Judge-cum-Chief Judicial Magistrate, Karur, found the appellant guilty of the charges levelled against him and accordingly the order of conviction dated 25th August, 2000, referred to hereinabove was passed by the learned judge.

4. Being aggrieved by the Order dated 25th August, 2000, passed by the First Additional District Judge-cum-Chief Judicial Magistrate, Karur, the appellant filed Criminal Appeal No.765 of 2000, before the Madras High Court but the same was dismissed and being aggrieved by the Order of dismissal passed by the Madras High Court dated 10th December, 2007, this appeal has been filed.

5. The learned counsel appearing for the appellant has vehemently submitted that it is not established that a sum of Rs.5,000/- which was paid to the appellant was paid towards illegal gratification. It was also submitted by him that the said amount was paid to him by P.W.3, towards his liability to pay tax. The next submission was that the appellant is an employee working in the Commercial Taxes Department (Enforcement Wing) and it was an admitted fact that P.W.3 had to pay a huge amount towards tax and, therefore, P.W.3 had attended the office of the appellant to make part payment of said amount of tax. It was submitted by the counsel that as an employee of the Commercial Taxes Department, it was the duty of the appellant to accept the amount as part payment of tax paid by P.W.3 and there was nothing wrong in accepting the amount on behalf of the Department and that the aforesaid relevant fact had not been considered either by the First Additional District Judge-cum-Chief Judicial Magistrate, Karur or by the High Court and, therefore, the courts below committed a serious error which has resulted into gross injustice and conviction of the appellant. Except the aforesaid submission, no other submission was made by the learned counsel appearing for the appellant.

6. The learned counsel representing the State, on the other hand, submitted that the submission made by the learned counsel appearing for the appellant before this Court had never been advanced before the trial court or before the High Court. Even while giving an explanation under Section 313 of the Cr.P.C., the appellant had not given any such explanation with regard to receipt of the amount. Had the submission made before this Court been true, the said fact would have been stated at the time of trial by the appellant particularly while giving a statement under Section 313 of the Cr.P.C. It was, therefore, submitted that the afore-stated submission, made for the first time and that too without any support, should not be accepted by this Court and the Order of the High Court confirming the conviction should be confirmed.

7. We heard the learned counsel and also noted the fact that the submission made by learned counsel appearing for the appellant had not been made earlier. Had the submission made before this Court been correct, the appellant would have made such a statement at the time of the trap or he would have revealed the said fact while making the statement under Section 313 of the Cr.P.C.

8. It is a known fact that the accused is given an opportunity to explain the circumstances appearing in the evidence against him after the witnesses for the prosecution are examined. The appellant was also given such an opportunity as per provisions of Section 313 of the Cr.P.C. but the appellant did not give any explanation in relation to the amount accepted by him. We have carefully gone through the said Statement but we could not find such an explanation given by the appellant and, therefore, at this stage we can not accept the submission made by the learned counsel for the appellant that the said sum of Rs.5,000/- was paid to him by P.W.3 towards his tax liability.

9. From what has been stated hereinabove, it is crystal clear that for the first time the learned counsel appearing for the appellant has made an effort to make out a different case to an effect that the appellant had accepted the amount of tax payable by P.W.3 and the amount was not received as an illegal gratification. We do not find any substance in the aforesaid argument.

10. Having gone through the records, we are satisfied that

prosecution was able to prove their case to the hilt. There is no error in the judgment of the High Court.

11. The order of conviction passed by the First Additional District Judge-cum-Chief Judicial Magistrate, Karur and the order of the High Court confirming the above-stated order are just and proper. The appeal is dismissed accordingly.



.....J.
(Dr. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

New Delhi
September 06, 2010.

JUDGMENT