

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.11.2017

Pronounced on : 04.12.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.A.Nos.233 and 285 of 2010

Anitha

.. Appellant in
Crl.A.No.233 of 2010

Subash

.. Appellant in
Crl.A.No.285 of 2010

/versus/

State: represented by
Deputy Superintendent of Police,
Department of Vigilance & Anti-Corruption,
Crime No.5/AC/02
Dharmapuri District.

.. Respondent in
Crl.A.No.233 of 2010

State
Inspector of Police,
Deputy Superintendent of Police
Vigilance and Anti-Corruption Dept.
Dharmapuri.
(Crl.A.No.5/AC/02)

.. Respondent in
Crl.A.No.285 of 2010

Common Prayer: Criminal Appeals are filed under Section 374(2) of the Code of Criminal Procedure praying to set aside the conviction and sentence passed against the appellants on 12.03.2010 by the Chief Judicial Magistrate, Dharmapuri in C.C.No.5 of 2008.

For Appellant :Mr.R.Johnsathyan
in Crl.A.No.233/2010
Mr.V.Suthakan in Crl.A.No.285/2010

For Respondent :Mr.P.Govindarajan, APP for (crl.side)

COMMON JUDGMENT

These two appeals are arising from the judgment of the Chief Judicial Magistrate, Dharmapuri dated 12.03.2010 in C.C.No.5 of 2008, wherein the trial Court has found both the accused guilty of offences under Sections 7 and 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 and sentenced the accused as under:-

"A-1 [Subash] in Crl.A.No.285 of 2010 is sentenced to under Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/- in default, 6 months Simple Imprisonment for offence under Section 7 of Prevention of Corruption Act, 1988 and 3 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default, to undergo 6 months Simple Imprisonment for offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

A-2 [Anitha] in Crl.A.No.233 of 2010 is sentenced to under Rigorous Imprisonment a period of 1 year and to pay a fine of Rs.5,000/- in default, 6 months Imprisonment for offence under Section 7 of Prevention of Corruption Act, 1988 and to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.5,000/- in default, 6 months Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988."

2. Case of the prosecution as spoken by the witnesses is as follows:

PW-2 [Tmt.K.Therasal] being a Post Graduate Assistant Teacher in Avvaiyar Government Girls Higher Secondary School, Dharmapuri, was allotted a house bearing No.610-I, Virupatchipuram, Dharmapurai in the year 2000 by the Tamil Nadu Housing Board. For payment of cost Rs.4,61,500/-, she applied to the District Collect for Housing Loan and the same was sanctioned by order dated 14.03.2002. The School Management has forwarded the bill to Sub-Treasury along with request to issue Demand Draft for Rs.4,61,500/- in favour of Tamil Nadu Housing Board. When

PW-2 [Dr.K.Therasal] could not get her bill from the Treasury till 22.03.2002, she went to the Sub-Treasury, Dharmapurai and enquired Subash (A-1). She was informed by A-1 [Subash] that in the release order, instead of marking it to Sub-Treasury, the District Treasury is marked, therefore, it will not apply to Sub-Treasury. So, the bill has to be returned. If the bill is audited, she will not get the money before the end of the accounting year, instead, if she gives bribe of Rs.500/-, he will pass the bill, without auditing the bill. PW-2[Dr.K.Therasal] was not inclined to give bribe, so, she gave a complaint Ex.P-2 to the Inspector of Police, District Vigilance and Anti Corruption, on 26.03.2002 at 8.45 a.m stating that A1[Subash] demands Rs.500/- to pass her bill and threatens, if she fails to give bribe by 26.03.2002, he will audit the bill and prevent her from getting the money before end of the accounting year.

3. Based on the complaint, PW-11 [Mr.Somasunderam], Inspector of Police, Vigilance and Anti-Corruption, Dharmapuri, has registered First Information Report Ex.P-4 and had proceeded with the investigation. T.Rajan Ajaikumar from the Forest Department and T.Raja [PW-3] from the Agricultural Department were called to be as witnesses to the trap

proceedings. Five numbers of hundred rupee notes were smeared with phenolphthalein and entrusted to the defacto-complainant. The pre-trap proceedings completed by 11.40 am and the same was reduced into a writing, which was marked as Ex.P-5.

4. Thereafter, the trap team has gone to the Sub-Treasury at the Court Complex along with PW-2 [Dr.K.Therasal] and PW-3 [Mr.Raja] at about 12.15 hours. The first accused [Subash], on seeing PW-2 [Dr.K.Therasal], told her to wait and left the office hurriedly. He returned to his seat at 3.00 pm. He demanded bribe and told PW-2 [Dr.Therasal] to keep the money inside his table drawer. After PW-2 [Dr.Therasal] placed the money, the first accused asked PW-2 [Dr.Therasal] whether she has any more money with her? When PW-2 [Dr.Therasal] said that she is having one hundred rupee note for her personal expense, then, A1[Subash] told her to takeout one hundred rupee note from his drawer and give it to the Treasury Officer(A2) together with the hundred rupees, she have with her. The Treasury Officer (A2) told PW-2[Dr.K.Therasal] that her bill was passed by her without audit, so, demanded Rs.200/-. Then, PW-2[Dr.K.Therasal] put Rs.200/- in the table drawer of A-2[Anitha] as

instructed by her. After receipt of the money, A-2[Anitha] told PW-2[Dr.K.Therasal] to wait and collect the Demand Draft from the Accountant Mr.Muniraj, who was not in his seat at that time. PW-2[Mr.Dr.K.Therasal] and PW-3[Mr.Raja] came out from the office and gave a pre-arranged signal to the trap team.

5. After conducting test of the hand fingers with sodium carbonate solution for presence of phenolphthalein, four numbers of hundred rupees note are tallying with the numbers mentioned in the entrustment mahazar Ex.P-5, which was recovered from A-1's table. Similar test with the hand fingers of A-2[Anitha] was conducted and two numbers of hundred rupees currency were recovered from A-2[Anitha] table. One note tallied with the number noted in the entrustment mahazar Ex.P-5. The hands wash of A-1[Subash] and A-2[Anitha] were collected separately in bottles for chemical analysis. Mahazar prepared for the recovery of Rs.400/- from the table of A-1[Subash] and Rs.200/- from the table of A-2[Anitha] in the presence of witnesses and the accused, which is marked as Ex.P-12 .

6. PW-2[Dr.K.Therasal] and PW-3[Mr.Raja] have deposed about the demand and acceptance of bribe by A-1[Subash] and A-2[Anitha] as stated above. The recovery of tainted money from A-1[Subash] and A-2[Anitha] table is deposed by the accompanying witness[PW-3. Mr.Raja] and the trap laying officer [PW-11,Mr.Somasunderam]. Rest of the witnesses had deposed about the procedure for passing bills in the Sub-Treasury, Ex.P18-indent from Sub Treasury for cheque books, Ex.P19-receipt of 6 cheque books from the District Treasury on 22.03.2002 and Ex-P23-chemical analysis report, which did not detect the presence of phenolphthalein in the hand wash solution collected from the accused persons. Accepting the evidence of PW-2 [Mr.K.Therasal] and PW-3[Mr.Raja], the trial Court has held that the prosecution has proved the guilty of the accused beyond reasonable doubt.

7. Whereas the said finding of the trial Court is challenged by the appellants pointing out the error in the sanction orders, failure to explain the presence of extra 100/- rupee note in possession of the decoy witness, the evidenciary value of the interested witness PW-2[Dr.K.Therasal], who had strong motive against the accused and improbabilities bristling with the prosecution case.

8. The point for consideration in these two appeals is whether the prosecution case as spoken by PW-2[Dr.Therasal] and PW-3[Mr.Raja] is sufficient to hold the accused guilty of the charges of demand and acceptance of illegal gratification ?

9. The learned counsel appearing for the appellant in CrI.A.No.285 of 2010 contented that the charge levelled against the appellant/A1 is that he demanded and accepted illegal gratification of Rs.400/- for passing bill towards house building advance. The alleged acceptance is dated 26.03.2002. Whereas, the bill for releasing the house building advance to the defacto complainant was made ready on 22.03.2002 itself.

10. Therefore, the contention of the defacto complainant that when she met the appellant on 22.03.2002, he threatened her, if bribe is not paid, bill will be returned, is falsified. The contention of the prosecution is that the decoy witness was sent to the office of the accused with five hundred rupees note smeared with phenolphthalein and she had no money in her possession. However, PW2[Dr.K.Therasal] has deposed that she had

one extra hundred rupee note with her for her personal expenses and that, one extra hundred rupee note was given by her to A2 [Anitha] along with 100 rupees note tainted with phenolphthalein taken from the drawer of the A1[Subash]. PW2[Dr.K.Therasal], while deposing before the Court that her previous statement recorded under Section 161 Cr.P.C., by the Police during the course of investigation has wrongly stated that A1[Subash] from out of five hundred rupees kept in his table drawer, took out one hundred rupee note and gave it to A2[Anitha] along with extra one hundred rupee note, which she had in her possession for her personal expenses . Whereas, she has contradicted her previous statement and had deposed that she herself took one hundred rupee note, as per the instruction of A1 [Subash] from his drawer and gave it to A2 [Anitha]. This embellishment by PW2 [Dr.K.Therasal] is to get over chemical analysis report Ex.P23, which has categorically stated that no phenolphthalein was detected in the hand wash solution of A1[Subash].

11. The admission of PW11 [Mr.Somasunderam] that he has not recorded the statement of the accused person immediately after the trap violates the Vigilance Manual and had deprived the accused person to

record their explanation, immediately after the trap proceedings. If the evidence of PW2[Dr.K.Therasal] is true, then her bill would not have been passed by the Treasury on 22.03.2002 itself. The very fact that the Demand Draft Ex.P16 was made ready on 22.03.2002 itself, indicates, that her bill was not withheld for any reason as PW2[Dr.K.Therasal] has invented.

12. More particularly, it is the specific allegation of PW2[Dr.K.Therasal] that A1[Subash] demanded Rs.500/- to clear her bill and threatened her that he will audit the bill, if the bribe money of Rs.500/- is not paid before 05.00 p.m., of 26.03.2002. The trial Court miserably failed to appreciate the fact that the money was not touched by both the accused and it was recovered from their table. If the accused persons were interested in getting any bribe, they would have not prepared the Demand Draft on 22.03.2002, without receiving the bribe.

13. Further, even according to the prosecution, the Demand Draft of Rs.4,61,500/- bearing No.796949 issued in favour of the Executive Engineer, Tamil Nadu Electricity Board is dated 22.03.2006 and the cheque

book containing cheque leaves from No.796901 to 797200 were received from the District Treasury only on 22.03.2002. The fact being so, there was neither delay in clearing the bill nor any intention to cause delay could be inferred from the evidence of PW1[Tmt.Qudsia Gandhi], who in his cross examination admits that any advise note presented will be cleared within 3 days, if it is not audited.

14. Admittedly, in this case, the advise was presented only on 20.03.2002 by one Abirami Sundari, Junior Assistant to the Sub Treasury, Dharmapuri and on 22.03.2002 immediately after receiving the cheque book from the District Treasury, the Demand Draft has been preferred. Hence, the trial Court ought not have been relied upon the deposition of PW2[Dr.K.Therasal] alleging delay in paying her bill.

15. The learned counsel appearing for the appellant contended that there is no allegation of demand by A2[Anitha] neither in the complaint nor the recovery is from A2[Anitha]possession. The name of the accused is mentioned for the first time in the seizure mahazar marked as Ex.P5 where it is contended that from out of five numbers of hundred rupees tainted

money smeared with phenolphthalein, one note was taken out and PW2[Dr.K.Therasal] added one more extra hundred rupee note, which was in her possession and gave it to A2[Anitha] on her demand. This version of PW2[Dr.K.Therasal] has not even been corroborated by PW3[Mr.Raja], who supposed to have the witness to the said transaction. PW3 [Mr.Raja], in his evidence, has not whispered about the demand of bribe by A2[Anitha], but had only deposed that on the instruction of A1[Subash], she took one hundred rupee note from A1 [Subash], which was smeared with phenolphthalein and PW-2[Dr.K.Therasal] added one hundred rupee note more and moved towards the table of A2[Anitha] and A2[Anitha] asked PW2[Dr.K.Therasal] to put that money inside her drawer.

16. Thus, it is clear that there was no demand from A2 [Anitha] either prior to 20.03.2002 or on 22.03.2002. The money was recovered not from her possession, but alleged to have been recovered from the drawer of A2[Anitha]. PW6 [Tmt.Meerabai], in her evidence, has clearly stated that the advice note for issuing Demand Draft for Rs.4,61,500/- received from Avvaiyar Higher Secondary School, Dharmapuri on 20.03.2002. The said bill was passed on 22.03.2002. The demand draft

bearing No.796949 dated 22.03.2002 was marked under Ex.P16 (series). The cheque book containing particular cheque leaf was received from the District Treasury on 22.03.2002 and she was present, while the Vigilance Police came to her office on 22.03.2002, she is a signatory to the mahazar Ex.P12. However, pointing out that this witness though a signatory in the mahazar Ex.P12, she has not spoken about anything about the payment and acceptance of bribe money by the accused or the alleged recovery from the table drawer of the respective accused persons. In such circumstances, the trial Court ought not to have been convicted the appellant, based on the uncorroborated testimony of PW2[Dr.K.Therasal] and contradictory version of PW3[Mr.Raja].

17. Per contra, the learned Additional Public Prosecutor (Crl.Side) appearing for the respondent submitted that A1[Subash], taking advantage of not marking the bill to the Sub-Treasury, had threatened the defacto complainant that he will audit the bill and send it back, so that, the defacto complainant cannot get the housing loan advance in time. Since it was end of the account year, taking advantage of some omission in the advise, A1[Subash] wants to make pecuniary advantage illegally. Hence,

he has demanded bribe of Rs.500/-. When PW2[Dr.K.Therasal] gave money smeared with phenolphthalein on 22.03.2002, cleverly he did not touch the money and ask the defacto complainant to put it in his table drawer. After placing the money in his drawer, he has contemplated for a minute and he enquired PW2[Dr.K.Therasal], whether she have any other money with her. When PW2[Dr.K.Therasal] told, she have one more hundred rupee note for her personal expenses, he immediately told PW2[Dr.K.Therasal] to take one hundred rupee note from five hundred rupees note, from his drawer, put along with the extra hundred rupee note, which PW2[Dr.K.Therasal] had for her personal expenses and gave it to A2[Anitha], who is the Senior Officer of A1[Subash]. A2[Anitha] who was seated next to A1[Subash] demanded Rs.200/-. After ascertaining whether PW2[Dr.K.Therasal] is the Post Graduate Assistant Teacher of Avvaiyar Government Girls Higher Secondary School, Dharmapuri, then told the witness to place the money in her table drawer and collect the Demand Draft from Muniraj. Since the evidence of PW2[Dr.K.Therasal] is naturally and un-impeached, the finding of the trial Court holding the accused person guilty need not be interfered with.

18. Regarding the extra hundred rupee note, which alleged to have been given to A2[Anitha], the learned Additional Public Prosecutor (Crl.Side) appearing for the respondent submitted that, the money was kept separately by the decoy witness for her personal expenses. Just because, she had extra hundred rupee note with her, apart from the money smeared with phenolphthalein, the case of the prosecution need not be disbelieved.

19. On considering the oral and documentary evidence let in by the prosecution as well as the explanation given by the accused persons, besides the documents relied by them, which are marked as Exs.D1 and D2 and the deposition of DW1[Mr.Kalyanasunderam], this Court finds that the prosecution case is solely based on the testimony of PW2[Dr.K.Therasal] and to some extent, testimony of PW3[Mr.Raja]. On analyzing the testimony of PW2[Dr.K.Therasal] and the other connected evidence, this Court finds that the trial Court has miserably failed to appreciate the evidence placed before him holistically before arriving at the conclusion. The complaint of PW2 [Dr.K.Therasal], which is marked as Ex.P2 say that her bill, which was sent to Sub-Treasury on 20.03.2002 was

not cleared within 3 days. She went to Sub-Treasury on 22.03.2002 at 1.00 p.m., and enquired A1[Subash] regarding the bill. She alleges that at that time, the first demand was made by A1[Subash] and he has also threatened that if the money was not paid to him at 5.00 pm., of 26.03.2002, he will audit the bill and return it. Her presence at Sub-Treasury Office on 22.03.2002 at 1.00 pm. itself appears to be doubtful, since the attendance register of the defacto complainant's school, which has been marked as Ex.D1, does not indicate that he was on leave on that day or left the School with permission of her Superior.

20. Furthermore, as elucidated from her own mouth, the work pertaining to Sub-Treasury was taken care by one of the School staff by name Abirami Sundari and she submitted her bill on 20.03.2002. She also admits that it will take minimum 3 days to clear the bill in the Sub-Treasury from the date of its presentation. In the cross examination, she admits that the bill was presented on 20.03.2002 and she was informed by Abirami Sundari on 22.03.2002 at about 11.30 a.m that her bill was not passed. The said Abirami Sundari was not examined by the prosecution. Ex.P16 reveals that the Demand Draft for Rs.4,61,500/-had been prepared

and kept ready on 22.03.2002. If really PW2[Dr.K.Therasal] had gone to the Sub-Treasury and A1[Subash] demanded any bribe, she could have given the complaint on the same day to the police but, she has waited for 4 days to give the complaint. Only on 26.03.2002 she has given the complaint against the A1[Subash]. During the entrustment procedure or prior to that, she had not disclosed to the trap laying officer that she is having one hundred rupee extra in her possession.

21. It is the case of the prosecution that PW2[Dr.K.Therasal] and PW3[Mr.Raja] went to the appellant's office by 12.15p.m., saw A1[Subash] leaving the office hurriedly and they were waiting for him till his arrival. For nearly 3 hours, the accused was not in his seat and not in the office at all. Whereas PW2[Dr.K.Therasal] and PW3[Mr.Raja] were in the office premises and the trap laying officer team was waiting out side the Sub Treasury Office. The absence of the accused A1[Subash] in his seat and the presence of PW2[Dr.K.Therasal] and PW3[Mr.Raja] near his table for nearly 3 hours and the absence of phenolphthalein in the hand wash of the accused persons makes the case of the prosecution highly doubtful. Therefore, the fact that the absence of A1[Subash] in his seat between

12.15 p.m., to 3.00 p.m. and the presence of PW2[Dr.K.Therasal] and PW3[Mr.Raja], within the vicinity of A1[Subash] table raises doubt that the tainted money could have been planted in his table drawer. Further, the suppression of having extra hundred rupee note in her possession to the trap laying officer makes the credential of PW2[Dr.K.Therasal] doubtful.

22. In these circumstances, when the demand and acceptance is not proved by the prosecution, the trial Court ought not to have been arrived at the conclusion that the prosecution has proved the case beyond reasonable doubt. The trial Court ought to have looked into the suggestions and facts elucidated by the defence during the cross examination, which indicates that on 22.03.2002 there was some wordy quarrel between the defacto complainant and A1[Subash]. Hence, A2[Anitha] had interfered and reprimanded PW2[Dr.K.Therasal] to behave properly. This has infuriated PW2[Dr.K.Therasal] to lodge the complaint. Therefore, on cumulative assessment of the evidence, this Court hold that the trial Court judgment bristles with infirmity and improper appreciation of the evidence, which deserves to be set aside.

23. In the result, in both the appeals, the conviction and sentence imposed on the appellants by the trial Court in C.C.No.5 of 2008, dated 12.03.2010 are set aside and ***these Criminal Appeals are allowed.*** Bail bond if any executed by the appellants is cancelled. Fine amount, if any, paid by the appellants shall be refunded to the appellants.

04.12.2017

Index:yes
Internet:yes
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To

1. The Deputy Superintendent of Police,
Department of Vigilance & Anti-Corruption,
Crime No.5/AC/02,Dharmapuri District.

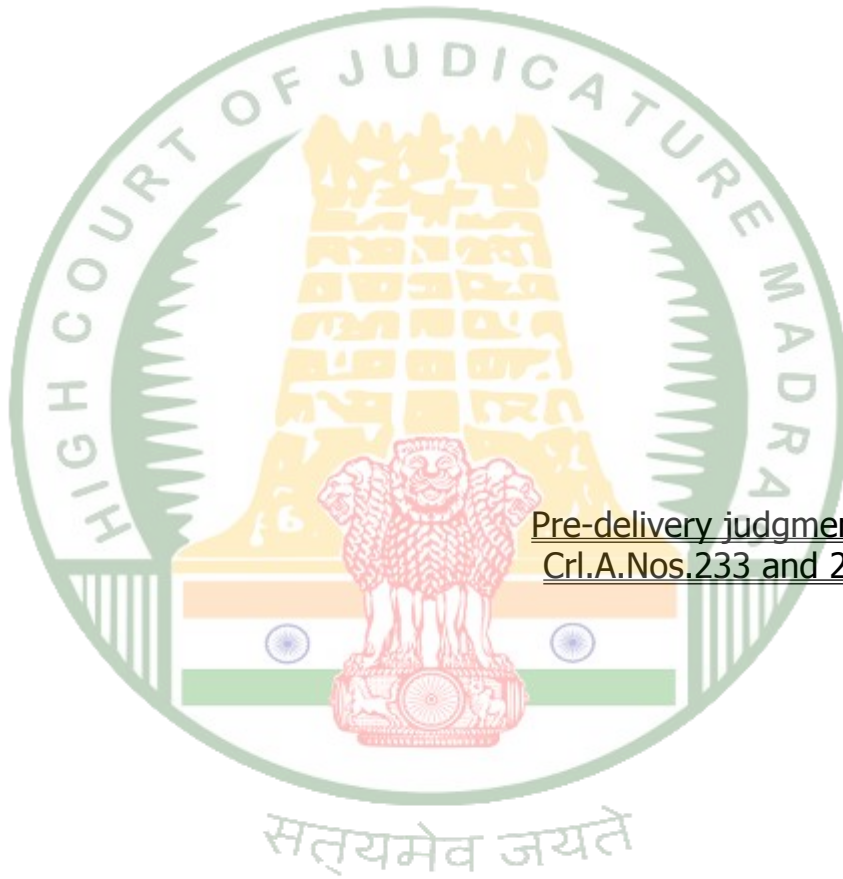
2.The Inspector of Police, Deputy Superintendent of Police
Vigilance and Anti-Corruption Dept.
Dharmapuri. (Crl.A.No.5/AC/02)

3.The Public Prosecutor, High Court, Madras.

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Dr.G.Jayachandran,J.

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Pre-delivery judgment made in
Crl.A.Nos.233 and 285 of 2010

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