BAIL SLIP

The Petitioner/Appellant viz, M/s.Radhabai, D/o.Santhanam, W/o.Venkatasubramanian, is directed to be released on bail in M.P.No.1 OF 2013 IN CRL.A.No.210 of 2013, dated 19.03.2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.10.2017
PRONOUNCED ON : 27.10.2017

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

CRL.A.NO.210 OF 2013

Radhabai .. Appellant

/versus/

State Rep.by
Inspector,
Vigilance & Anti Corruption Department,
Cuddalore,
Crime No.4/AC/98/SA .. Respondent

Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code against the judgment dated 27.02.2013 made in Spl.Case No.1 of 2002 on the file of the learned Special Judge-cum-Chief Judicial Magistrate, Cuddalore.

For Appellant :Mr. S.Ashokkumar, Senior Counsel for Mr.D.Ravichander

For Respondent :Mr.C.Iyyapparaj, Addl.Public Prosecutor



JUDGMENT

The appellant, who is the accused in Spl.C.No.1 of 2002 on the file of the learned Special Judge cum Chief Judicial Magistrate, Cuddalore, was found guilty of the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 for demand and acceptance of Rs.1000/- from one Gangadharan for disbursement of Rs.10,000/- under Moovalur Ramamirtham Ammaiyar Memorial Marriage Assistant Scheme. Questioning the legality of the said judgment, the present appeal is filed.

2. According to the prosecution, one Gangadharan resident of Killairailyedi, Chidambaram Taluk applied for grant under Moovalur Ramamirtham Ammaiyar Memorial Marriage Assistant Scheme for his daughter Selvi.Bhuvaneswari marriage and approached the appellant/accused Radhabai, Extension Officer, Social Welfare Office, to recommend his application and to expedite the process. For which, the appellant/accused has demanded a bribe of Rs.1000/-.

3. Thiru.Gangadharan was not inclined to give the bribe,hence, he reported the matter to the Vigilance and Anti Corruption Police at Cuddalore on 24.07.1998. Based on his complaint, a case was registered by the prosecution on that day and a trap was arranged by Mr.Mani, Inspector of Police. The trap team followed the defacto complainant and the accompanying witness to State Bank of India, which is situated at South Car Street, Chidambaram where the appellant/accused asked the defacto complainant to meet. The appellant/accused took the defacto complainant to the bank and assisted to encash the cheque amount of Rs.10,000/-. Thereafter, she demanded and accepted the bribe of Rs.1000/- and handed over to Gangadharan the original school certificate of his daughter Bhuvaneswari. Later, the trap team recovered the tainted money from the appellant/accused under mahazar. The hands and purse where the tainted money kept by the accused were subjected to phenolphthalein test and proved to be positive. After obtaining opinion of the chemical analyst and the sanction order to prosecute, the final report was laid.

4. Based on the final report and the documents relied on by the prosecution, the trial Court has framed two charges against the appellant/accused viz., (1) under Section 7 of the Prevention of Corruption Act, 1988 for demand of illegal gratification of Rs.1000/- and acceptance of the same on 24.07.1978. (2)under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 for misconduct to make pecuniary advantage by abusing her official position.

5. To prove the charges, the prosecution has examined 22 witnesses, marked 41 exhibits and 6 material objects. The trial Court, after appreciating the evidence, has held that the prosecution has proved the guilt of the accused beyond reasonable doubt and held the accused guilty of both the charges and sentenced her to under 6 months RI and to pay a fine of Rs.1,000/- in default, to undergo 2 months RI for the offence under Section 7 of the Prevention of Corruption Act, 1988 and to undergo one year RI and to pay a fine of Rs.1,000/- in default to undergo 2 months RI for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and ordered the sentence of imprisonment for both the charges shall run

concurrently and the period of sentence, if any already undergone by the accused ordered to be set off.

6. The above said judgment is challenged by the appellant/accused on the ground that the animosity between the defacto complainant[P.W.2]and the accused/appellant has not been taken note by the trial Court. The heated exchange of words between them, due to delay in processing the application, has been admitted and proved by the defence. However, the same has not been taken note by the trial Court. While PW-2[Gangadharan] himself has admitted that there was a heated wordy quarrel between him and the accused, the motive to lodge the complaint is well found. Hence, benefit of doubt ought to have been given to the appellant/accused.

7. The trial Court has failed to take note of discrepancies regarding the date of preparation of the complaint which was marked as Ex.P3. The said complaint is dated 24.07.1998. However, the official witnesses were informed the previous day itself i.e on 23.07.1998, as per the deposition of PW-3 [Sakthivel,Tahsildar]. From the evidence of PW-2 [Gangadharan], it appears that he has given a complaint on 23.07.1998, which has been burked by the prosecution. The oral evidence of PW-2 [Gangadharan] is not in consonance with his written complaint marked as Ex.P3 regarding demand of bribe. Hence, his evidence is liable to be disbelieved.

8. According to the prosecution, the marriage assistance of Rs.10,000/- was sanctioned and a cheque was issued on 23.07.1998. Thereafter, there is no duty on the part of the appellant/accused in the said matter. Therefore, any transaction which took place subsequent to 23.07.1998 does not form part of the discharge of official function. Hence, the Prevention of Corruption Act, 1988 does not get attracted. This fact has not been taken note by PW-1 [Subramanian], Commissioner of Social Welfare Department, the authority who had granted sanction to prosecute the appellant/accused under the Prevention of Corruption Act, 1988. The discrepancies in the evidence of PW-2 and PW-3 regarding the arrival of official witnesses to the Vigilance and Anti Corruption Office on the date of trap makes the case of the prosecution highly doubtful.



9. The learned counsel appearing for the appellant submitted that from the records relied on by the prosecution, it is clearly proved that the application of the defacto complainant seeking marriage assistance was received by the Social Welfare Office on 26.11.1997. After verifying the information furnished in the application, it was registered as per the seniority and assigned Sl.No.105. There was a delay in sanctioning the fund by the Government. The defacto complainant used to pester the

appellant/accused frequently about his application. Unable to bear his pestering, the appellant/accused gave him a sum of Rs.1000/- and she asked him to wait till the Government sanction the money. Immediately after the Government sanctioned money, she sent word to the defacto complainant informing him to come to the panchayat union office on 23.07.1998. After informing PW-2[Gangadharan] that the amount has been sanctioned, took him to the Social Welfare Office at Cuddalore. The Social Welfare Officer issued cheque to the defacto complainant and got his signature acknowledging the receipt of the cheque. The defacto complainant being an illiterate person sought help of the appellant/accused to encash the same. So, on the next day, she went to the bank to identify Gangadharan and assisted him to encash the cheque. He has already borrowed Rs.1,000/- from her, so she collected the money which she gave to PW-2[Gangadharan] earlier. The District Social Welfare Officer has received several applications for grant of marriage assistance and the same has been registered seriatim as per the seniority and after allocation of fund, cheques were prepared and given to the beneficiaries. The documents collected by the prosecution in the course of investigation clearly reveal that on the said date, apart from the defacto complainant, several other persons were also issued cheques and there was no complaint from any quarters. There is no scope of demanding any gratification as reward or motive, since the application has been processed as per law and cheques were given as per the seniority. The trial Court failed to appreciate properly the discrepancies in the prosecution evidence and the explanation given by the appellant/accused regarding the money recovered from her.

10. The learned Additional Public Prosecutor for the respondent submitted that PW-2/defacto complainant has categorically stated in his complaint marked as Ex.P3 that his daughter got married on 08.12.1997. Since his income was only Rs.7,500/- p.a. and his daughter had completed 8$^{th}$ standard, she was entitled to get the marriage assistance of Rs.10,000/-. Hence, he went to the panchayat union office during the month of November 1997 and gave the application and requested the appellant/accused to assist him to get the grant. Thereafter, he met her several times and requested for processing his application, but she has insisted to pay bribe of Rs.1000/- or else she will not process the same. When he met her on 23.07.1997, she informed him that order has been passed to issue cheque and she took him to Social Welfare Office at Cuddalore. The Social Welfare Officer gave cheque for Rs.10,000/- and got his signature. When he came out from the room of the Social Welfare Officer, the appellant/accused took his signature on the back side of the cheque and also collected the original certificate of his daughter Bhuvaneswari and told him to come on the next day to State Bank of India, Chidambaram

Branch at about 10.00 a.m., and collect the cheque as well as the original school certificate after giving bribe of Rs.1000/-.

11. With this averment, Gangadharan has given written complaint Ex.P3 to the Inspector of Police on 24.07.1998. Based on the complaint, the District Superintendent of Police has authorised PW-20 Mr.Mani,Inspector of Police to register the case and investigate the same. Accordingly, the case was registered and investigation was taken up by conducting pre trap proceedings in the presence of witnesses and proceeded to State Bank of India, Chidambaram Branch. The appellant/accused was sitting near the bank and on seeing PW-2[Gangadharan], she took him to the Bank, gave the cheque to Gangadharan and asked him to present the cheque to the staff at the counter. By 11.00 a.m. when his turn came, Gangadharan encashed the cheque and went to see the appellant/accused, who was waiting for him. The appellant/accused in the presence of PW-3[Sakthivel] demanded and received the tainted money from PW-2[Gangadharan] and thereafter, gave the original school certificate of Bhuvaneswari to Gangadharan[PW-2]. The appellant/accused, who received the tainted money, kept it in her money purse and placed inside her jacket. The demand and acceptance were witnessed by PW-3 [Sakthivel], who has clearly deposed about it corroborating PW-2 version.

12. PW-3, a responsible officer in the rank of Tahsildar has no reason to say any falsehood against the appellant/accused. The theory of the defence that she has received the money from the defacto complainant as a repayment of loan advanced by the appellant/accused earlier, is an afterthought to escape from the clutches of criminal prosecution. The conduct of the appellant/accused retaining the cheque and the original certificate, without handing it over to PW-2[Gangadharan] on 23.07.1998 itself speaks volume. In order to ensure the payment of bribe money, the appellant/accused has retained the cheque and the original certificate and asked PW-2/defacto complainant to come on the next day, so that she can collect bribe, immediately after the cheque is encashed by PW-2[Gangadharan]. Therefore, the learned Additional Public Prosecutor submitted that the trial Court has properly appreciated the evidence and on a cumulative consideration of evidence, he has arrived at a right conclusion of holding the appellant/accused was guilty of the charges.

13. Point for determination:-

1. Whether the explanation of the defence is plausible or probable to hold her not guilt of the offence? and
2. Whether the discrepancies pointed out by the appellant/accused is worth impeaching the credibility of

the prosecution witnesses.?

14. The theory projected by the appellant/accused as defence for receipt of the money from PW-2[Gangadharan] is totally baseless borne out of futile imagination. The reason for advancing Rs.1000/- to PW-2[Gangadharan] is unbelievable because the appellant/accused being the Extension Officer, Social Welfare Office, she has no proximity with the beneficiary has no obligation to advance money based on the application.

15. It is contended that PW-2[Gangadharan] after applying has consistently pestering the appellant/accused in drunken mood, so she gave Rs.1000/- to him. If fund was not allotted by the Government and disbursement of grant was delayed for that reason, mere explaining the reason to the applicant is sufficient and no further gesture is required on the part of the public servant. If PW-2[Gangadharan] had quarrelled with her in drunken mood the course open to her is to resort police assistance but no necessity to passify him by paying Rs.1000/-. Therefore, the reason for receiving Rs.1000/- does not synchronize with normal conduct of a public servant.

16. Having accepted the receipt of money and the explanation given by him being highly imaginary one and contra to normal human behaviour, the minor discrepancies indicated in the grounds of appeal as well as in the oral submission pales to insignificance. Likewise, the doubt projected upon the date of complaint or the date and time of intimation to the official witness to accompany the trap team does not discredit the prosecution witness. Since the contemporaneous documents bear their signature and date besides cogent ocular evidence in this regard, the cheque is dated 23.07.1998 and the register maintained at the Social Welfare Office also indicates that on 23.07.1998, the cheque was given to Gangadharan, F/o Bhuvaneswari on 23.07.1998. While Gangadharan has signed on the revenue stamp, the accused has also signed in the last column as Extension Officer of Social Welfare Office. If, as contended by the appellant that her duty was over by 23.07.1998 immediately after issuance of the cheque to PW-2[Gangadharan], there is no necessity for her to wait for PW-2 near the bank on the next day and further wait for him to encash it and also there is no reason for her to retain the original certificate of Bhuvaneswari, beyond 23.07.1998. Retaining the cheque and the original certificate beyond 23.07.1998 itself indicates that she was in expectation of reward or pecuniary advantage. She had retained the valuable security namely, the cheque and the original certificate, which are clear proof of misconduct of a public servant, to make pecuniary advantage by abusing her office. The recovery of tainted money from her position strengthens the charge of misconduct, which is well proved

through the witnesses and scientific analysis report.

17. On a holistic appreciation of the evidence, the facts proved shows that the appellant/accused had received the money only as a reward to do her official function and to ensure payment, she had retained cheque and original certificate with her. Since the demand and acceptance is proved through cogent and reliable evidence, the burden to prove that the money was not received as illegal gratification, falls upon the appellant/accused. The appellant/accused has attempted to discharge the burden, but failed since it is far from any preponderance of probability.

18. For the said reason, this Court is not inclined to interfere with the well considered judgment of the trial Court. Hence, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant/accused by the trial Court viz., the learned Special Judge-cum-Chief Judicial Magistrate, Cuddalore in Spl.Case No.1 of 2002, dated 27.02.2013 are confirmed.

19. The substantive sentence shall run concurrently. Period of sentence already undergo shall be set off under Section 428 of Cr.P.C. The bail bond, if any stands cancelled.

20. The appellant is hereby directed to surrender within 2 months from the date of this judgment to under the remaining period of sentence. In case she fails to surrender within 2 months, the respondent shall secure her and remand her to prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To
1.The Special Judge-cum-Chief Judicial Magistrate, Cuddalore.
2.The Inspector, Vigilance and Anti-Corruption Department, Cuddalore
3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.76080

Crl.A.No.210 of 2013

PPA(CO)
CS/06/12/17