Bail Slip

The Appellant/Accused namely Mrs.Mohanmeda Bee be and hereby directed to released on bail vide order dated 15.03.2012 in MP 1/2012 in Crl.A.No.190 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.06.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.190 of 2012

Mohanmeda Bee ...Appellant

Vs.

State rep.by
The Inspector of Police,
Vigilance and Anti-corruption,
Villupuram. ... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to to set aside the conviction and sentence imposed on the appellant in Special Case No.1 of 2007 on the file of the learned Special Judge/Chief Judicial Magistrate, Villupuram dated 05.03.2012.

For Appellant : Mr.V.Krishnamoorthy
For Respondent : Mr. K.Prabakar
Additional Public Prosecutor

JUDGMENT

This appeal is directed against the judgment of conviction and sentence passed by the learned Special Judge cum Judicial Magistrate, Villupuram in Special Case No.1 of 2007 dated 05.03.2012.

2 The brief facts leading to the appeal is that Tmt.Chitra, W/o. R.Selvam was serving as Nutritious Meal Organizer at Avanthur, Rishivanthiyam panchayat Union died in harness on 19.06.2005. As per the welfare scheme of the Government, the family of the deceased Government servant is entitled for the financial assistance of Rs.1,00,000/- if the Government servant dies in harness. Accordingly, Mr.R.Selvam, H/o Smt.Chitra had intimated the death of his wife to the Children Development Programme Officer, Rishvanthiyam and also

requested for disbursement of Government financial assistance.

3 The case of the prosecution is that immediately on the death of Chitra to meet out her funeral expenditure Rs.5,000/- was disbursed to her husband and for the balance of Rs.95,000/-, Selvam was made to run from pillar to post. The accused/appellant has served as Child Development Officer, Rishivanthiyam block between 08.09.2005 and 28.12.2005 had kept the file pending expecting illegal gratification. On 27.12.2005, when Selvam met her at office, she demanded Rs.2,000/- as illegal gratification to pass the bill. Mr.Selvam was not inclined to give bribe and get the financial benefits. So, he approached to the Vigilance and Anti-Corruption office at Villupuram and gave a complaint against the accused about the demand of illegal gratification. His complaint was taken up for investigation by the Inspector of Police on 28.12.2005. In the presence of independent witnesses, the trap laying officer has demonstrated the significance of phenolphthalein test and arranged for pretrap proceedings. He entrusted the bribe money of Rs.2,000/- spread with phenolphthalein to the Defacto-complainant Selvam. Entrustment Mahazar was also prepared in the presence of independent witnesses namely Padmanabhan and Karunakaran. Thereafter, the defacto complainant accompanying witness Padmanabhan had gone to Children Development Programme Office at Rishivanthiyam and had met the accused/appellant. They were followed by the trap team awaiting out side the office. At about 3.55 p.m., the defacto complainant-Selvam and the accompanying witness Padmanabhan came out of the office and gave the prearranged signal to the traping. The trap laying officer enquired the accused/appellant, who was identified by the defacto complainant as the person who demanded and received bribe money from him. After conducting Phenolphthalein test in the hands of the accused/appellant, which proved positive to the presence of phenolphthalein in her hands. The sodium carbonate solution, which turned into pink on the accused dipping her hand, was collected for chemical analysis. Thereafter, the accused was interrogated about the money she received from the defacto complainant. The accused took out Rs.2,000/- from her black colour rexine vanity bag and gave it to the trap laying officer. The chamber of the rexine where the tainted money was kept was subjected to the phenolphthalein test by dipping it in the sodium carbonate solution. The solution turned into light pink colour, the sample solution was drawn and sealed. The numbers in the currency recovered from the accused and the currency numbers already mentioned into Entrustment Mahazar tallied. The explanation given for the possession of the tainted money was not satisfactory and therefore, she was arrested and remanded. In the course of trap proceedings, the records pertaining to the application made by the defacto complainant-Selvam, the cheque for Rs.95,000/- and other documents were

seized. The recovery proceedings were reduced in writing by way of Mahazar in the presence of the independent witness and the accused. On completion of the investigation, final report was filed after obtaining sanction to prosecute the accused/appellant.

4 The trial Court, on considering the material placed by the prosecution framed charges under Section 7 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act and tried the accused. To prove the charges, the prosecution has examined 12 witnesses. 20 Exibits and 5 material objects were marked through these witnesses.

5 The Trial Court considering evidence, concluded that the accused is guilty of offences under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced her to undergo six months Rigorous Imprisonment and pay a fine of Rs.1,000/-; in default to undergo one month Simple Imprisonment for the offence under Section 7 of Prevention of Corruption Act; to undergo one year Rigorous Imprisonment and also to pay a fine of Rs.2,000/-; in default three months Simple Imprisonment for the offences under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Both the sentences were ordered to run concurrently.

6 Aggrieved by the conviction and sentence, the accused has preferred the present appeal on the ground that the Trial Court has failed to appreciate the facts and evidence placed by the prosecution in a proper perspective. As a result of improper application of fact, the Trial Court has arrived at a wrong conclusion and had convicted the accused/appellant.

7 The learned counsel for the appellant would submit that the Trial Court has failed to consider the fact that before the trap there was no allegation or evidence to show that the accused/appellant had demanded any illegal gratification. The evidence of PW2 is totally untrustworthy and he had turned hostile. The sole evidence for prosecution was the deposition of PW3-the accompanying witness, who was said to be present during the trap proceedings. However, the rough sketch marked as Ex.P3 and the evidence of PW2, would go to show that there is no possibility of PW3 witnessing the occurrence as he was present in the room, where the bribe money was allegedly exchanged. Therefore, the prosecution did not prove through reliable evidence, the alleged demand and acceptance of illegal gratification by the accused.

8 According to the prosecution the tainted money was recovered from the vanity bag kept in the middle room of the office. The further case of the prosecution is that the tainted money was given to the accused by PW.2 in the inner room. The

explanation given by the accused at the time of seizure that PW2 tried to thrust the money, she refused and hit his hand. The money fell on the ground, PW2 took it and planted it in her bag, which was kept on the table in the middle room.

9 The learned counsel for the appellant would further contend that the trial Court failed to take note of the explanation offered by the accused during the under Section 313 Cr.P.C. questioning. The learned counsel for the appellant summarized his submission that when the defacto complainant has turned hostile, the prosecution cannot succeed on the basis of the evidence of PW3, the accompanying witness, who is an official witness, procured by the Trap laying officer, and very much interested in the success of the prosecution. The uncorroborated version of the prosecution witness ought to have been disbelieved by the trial Court. The contradiction regarding the place where PW3 stood during the alleged transaction of the money coupled with the sketch marked as Ex.P13, which does not indicate the place where PW3 stood has not been considered by the trial Court while appreciating the evidence of PW3. The motive for giving complaint has been well established by the defence. The trial Court failed to see the accused/appellant, who joined duty just prior to the incident, had engaged a staff to clear of the backlogs. According to the prosecution witness PW.7, he prepared the bill during the month of November at the request of the defacto complainant. Therefore, the judgment of the trial Court requires interference and the appellant is to be acquitted.

10 Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the trial Court had gone into the evidence of the prosecution in proper perspective and after giving due consideration to the prosecution case has rightly held the accused guilty. The hostility of PW.2 would not confer any benefit to the accused, since even during his chief-examination he admits that he gave oral complaint to the Inspector alleging that the accused demanded money. When he gave Rs.2,000/- to her, first she refused but he entrusted it to her and came out of the office. State was permitted to cross-examine after declaring him as hostile witness. In the cross-examination PW.2 admits the case of prosecution substantially, including the demand of illegal gratification by the accused. The recovery of tainted money from the hand bag which was in possession of the accused is undisputed and there is no plausible explanation from the accused about this. The Mahazar marked as Ex.P.12 is a contemporaneous document prepared in the presence of the accused and the independent witness would show that the accused was enquired about the money found in her possession and she had

admitted that Rs.2,000/- was given by PW.2 to her and she received and kept in the hand bag.

11 The learned Additional Public Prosecutor would also submit that the phenolphthalein test conducted on the hands of the accused and the chamber of her hand bag proved positive. While the prosecution has clearly established about the demand and acceptance of illegal gratification by the accused/appellant through PW.2 and PW.3, the recovery is proved through the evidence of independent witness and the trap laying officer. Possession of tainted money in her bag is tale evidence against the accused. The numbers of M.O.1 series recovered from the bag of the accused tally with the numbers found in Entrustment Mahazar. This would clearly establish the case of the prosecution beyond any reasonable doubt.

12 Point for consideration:-

(i) Whether the prosecution at the first place proved the demand and acceptance of the illegal gratification by the accused with cogent evidence to presume that the money was received by the accused, a public servant, towards illegal gratification?

(ii) Whether recovery of tainted money from the bag of the appellant sufficient to draw presumption under Section 20 of the Prevention of Corruption Act?.

13 The learned Additional Public Prosecutor would submit that since the prosecution had proved the demand and acceptance of illegal gratification with cogent and reliable evidence, the presumption is against accused. The accused had not come forward with any plausible explanation to justify the receipt of tainted money from the defacto complaint, which was later recovered from her bag.

14 Heard the learned counsel for both sides and perused the records.

15 It is settled preposition of the law that even if any witness turned hostile, the portion of the evidence, which support the prosecution case, can be accepted and same can be held against the accused to substantiate the prosecution version.

16 In this case, law has been set into motion by PW.2, Mr.Selvam through his complaint dated 28.12.2005 marked as Ex.P.2. Mr.Venkatesh, PW.9-Inspector of Police has received the complaint with an endorsement statement recorded and registered a case in Cr.No.6 of 2005 under Sections 7 and 13 of Prevention of Corruption Act at 10 hrs on 28.12.2005. In the said complaint PW.2 has alleged that Tmt.Mohanmeda Bee (accused/appellant) recently joined duty after leave for the past two months driving

him without disbursing the cheque. On 27.12.2005, when he met her, she demanded Rs.2,000/-. Thus, the first demand of illegal gratification is indicated in his complaint itself, which was marked as Ex.P.2. However, while deposing before the Court, PW2 has not mentioned about the alleged demand of Rs.2,000/- by the accused/appellant on 27.12.2005 and he has said that he gave the tainted money of Rs.2,000/- to the accused when she demanded for it. Contrarily, he has deposed that when he offered Rs.2,000/, she refused. He compelled her and thrusted it in her hand. This has made the prosecution to treat him as hostile witness. The Court has permitted to cross-examine PW.2. In the cross-examination, he admits his previous statement made to the police including the demand made by the accused for preparing the cheque. He had reiterated his version made in the complaint. As far as demand and receipt of the bribe amount of Rs.2,000/-, on 28.12.2018 PW2 had deposed that when he offered Rs.2,000/-, the accused refused to receive it, so he kept the money on her table and told her to engage some one to prepare the bills and came out to give the pre-arranged signal.

17 If the evidence of PW.3, who accompanied PW2 is trustworthy and reliable, the Court can ignore the hostility of PW.2. But, in this case, PW.3 would say that he and PW2 left to the office of the accused. On 28.12.2005 at 2.30 p.m. Met the accused at 3.45 p.m., she was sitting on a chair in the left side of the veranda. After exchanging pleasantry, the accused signalled PW.2 to come over to the center room of the office. PW.2 followed her and he followed PW.2. Thereafter, the accused further went inside the inner room, the defacto complainant followed her. He heard the accused enquiring PW.2, whether he bought the money. PW.2 handed over the money to the accused. The accused received the money in her right hand and came out from the inner room and went to the center hall and kept the money in the black colour rexine bag found on the table.

18 In this regard as pointed out by the learned counsel for the appellant, the rough sketch marked as Ex.P.13 gains significance. Apart from the non mentioning of the place where PW.3 stood, the sketch itself clearly indicates that there are three sections with partition and the inner room, which the sketch indicates as the place where the accused receipt the money cannot be seen from the center room from all angles. Unless there is some specific indication, where PW.3 stood, the impossibility of PW.3 witnessing the receipt of money or hearing the demand of money cannot be ruled out. Therefore, the version of PW.3 that he witnessed the transaction could not be accepted. Yet another point which causes grave doubt in the mind of this Court is the manner in which tainted money was found in a black colour rexine bag kept on the table kept in the middle room, when the witness say the seat of the accused was at the left

side of the veranda. The accused has denied the prosecution version regarding the presence of money found in her rexine bag. One version is that she refused the money and threw it on the floor, PW.2 himself took it and planted it in the rexine bag, the other version is that she refused to receive the money, but PW.2 voluntarily trusted the money in her hand for the expenses to prepare the bill. While questioning her about the incriminating evidence against her under Section 313 of Cr.P.C., she has given a written submission that the money was planted by PW.2 with motive being aggrieved by the delay in preparing the bill. From the evidence of prosecution, the fact that the application of PW.2 was kept pending for more than four months for want of staff is well established. It could be seen from the evidence of PW.7 that the bills were made ready only during the month of November. The accused has requested him to prepare the bills since there is no staff to attend the work. This may be a reason for PW.2 to lodge the complaint. Whether the money recovered from the accused person was on her demand or was thrusted on her or planted in her bag is not certain. PW-2 deposition in deviation to his version as found in the complaint, renders his evidence unreliable without corroboration. PW.3 is the right person to corroborate PW-2 regarding the allegation of demand and acceptance. However, his very presence at scene of crime and witnessing the transaction is doubtful as discussed earlier. Since, the defacto complainant-PW.2 had turned hostile and the portion of the evidence even if accepted in favour of the prosecution, those favorable portion lacks corroboration. Contrarily, the trial Court has held that the tainted money was recovered from the possession of the accused person, the explanation offered by the accused is not satisfactory, so the presumption is to be drawn against the accused, since Prevention of Corruption Act being social welfare legislation, a liberal view in favour of the accused cannot be drawn.

19 This view of the trial Court is incorrect in the given facts and evidence. Mere recovery of tainted money is not suffice to draw inference under Section 20 of the Prevention of Corruption Act. On appreciation of evidence, this Court of appeal finds that the evidence available does not rule out the demand and acceptance of illegal gratification by the accused and the prosecution failed to prove the case beyond reasonable doubt and therefore, the appellant is entitled for the benefit of doubt.

20 Hence, the Criminal Appeal No.190 of 2012 is allowed. The judgment of the trial Court passed by the learned Special Judge/Chief Judicial Magistrate, Villupuram in Spl.Case No.1 of 2007 dated 05.03.2012 is hereby set aside. The fine amount if any, paid by the appellant shall be refunded.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1 The Special Judge/Chief Judicial Magistrate,
Villupuram.

2 The Chief Judicial Magistrate, Villupuram.

3 The Inspector of Police,
Vigilance and Anti-corruption,
Villupuram.

4 The Public Prosecutor,
High Court, Madras.

5 The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.V.KRISHNAMORTHY, Advocate, S.R.No.37258

Crl.A.No.190 of 2012

KJI(CO)
TR(05/07/2018)