BAIL SLIP

The Appellant/Accused namely L.Rajeshwari, Female, aged 55 / 2014, D/o.Lakshmanan, was directed to be released on bail as per the order of this Court dated 09.10.2014 in MP(MD).1 of 2014 in CRL A (MD).276 of 2014 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.09.2019

PRONOUNCED ON : 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.276 of 2014

L.Rajeshwari ... Appellant / Sole Accused

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption Wing, Trichy.
[Crime No.12 of 2009] ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment dated 09.09.2014 made in Special Case No.74 of 2011 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Trichy and set aside the same and allow this appeal.

For Appellant : Mr.Veerakathiravan, Senior Counsel for M/s.Veera Associates

For Respondent : Mr.K.K.Ramakrishnan, Additional Public Prosecutor

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JUDGMENT

The appeal is arising out of the conviction and sentence imposed by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli in S.C.No.74 of 2011. By order dated 09.11.2014, the trial Court found the appellant guilty for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and convicted and sentenced her to undergo one year rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for one month. The appellant was also found guilty for the offence punishable under Sections 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and convicted and sentenced to undergo two years rigorous imprisonment with a fine of Rs.500/- and in default of payment, to undergo simple imprisonment for one month and the above said sentences are ordered to run concurrently.

2. The case of the prosecution, in brief, is as follows:

2.1. The *defacto* complainant [PW2] namely S.Ilayaraja is a resident of Soorampatti Village, Musiri Taluk, Trichy District. He had proposed to apply for a passport, for which he was in need of his birth certificate. As his birth was not registered earlier, he filed a petition before the Judicial Magistrate, Musiri, for registering his birth on 29.05.1990, wherein summons were issued to the Thasildar, Musiri, who, in turn, called for a report from the Revenue Inspector, Thumbalam, vide memo 30.01.2009 [Ex.P6]. Thereafter, on 28.05.2009, PW2 went to the office of the appellant, wherein, PW2 was informed to meet the appellant at her residence. Accordingly, PW2 went to the residence of the appellant and made enquiry with regard to the report called for by the Thasildar, Musiri and the appellant directed him to get a report from the Village Administrative Officer, Soorampatti and accordingly, PW2 met the Village Administrative Officer and got the report. Along with the report, he met the appellant on 03.06.2009 at 07.00 am in her residence and the appellant demanded Rs.250/- as bribe for sending her report. However, he expressed his inability to pay the bribe amount and left.

2.2. Unwilling to pay the bribe demanded by the appellant, PW2 approached the Vigilance and Anti Corruption Wing, Trichy and made an oral complaint, which was reduced into writing as complaint [Ex.P2] and based on the complaint, First Information Report was registered in Crime No.12 of 2009 [Exs.P3 and 12].

2.3. Based on the FIR, a trap was planned by the Inspector of Police, Vigilance and Anticorruption Wing, Trichy [PW7] / Trap Laying Officer [Trap Laying Officer]. Based on the request of the Trap Laying Officer, the official witnesses, namely Baskar [PW3], Junior Assistant at the Office of the Joint Director of Co-Operative Societies, Trichy and one Sugumaran, Assistant, Public Works Department, Trichy were present at the Office of the Vigilance and Anti Corruption, Trichy, on 04.06.2009 at 05.30 am and the defacto complainant was also present. The Trap Laying Officer explained about the complaint given by PW2 to the official witnesses and conducted a pre-demonstration about the trap. Thereafter, the Trap Laying Officer had obtained Rs.250/- [Rs.100 X 2 and Rs.50 X 1] [MO2] intended to be given to the appellant and the serial number of the currencies were noted down in the entrustment mahazar [ExP4]. The Police party coated the phenolphthalein powder on the currencies and gave it to PW2. The Trap Laying Officer instructed PW2 to meet the appellant and if the appellant demands the money, then only he should give the money to the appellant. PW3 was also directed to accompany PW2 and the Trap Laying Officer instructed them to show signal, after the appellant received the money. Accordingly, on 04.06.2009, PW2 along with PW3 went to the house of the appellant. On seeing PW2, the appellant enquired whether he had brought Rs.250/- and after confirming that he has the money, she gave her report to PW2 after affixing her seal and asked him to give the money. After her demand, PW2 gave the tainted money of Rs.250/- to the appellant, who, in turn, received the money with her right hand, counted the same and kept it in her left hand.

2.4. Thereafter, PW2 came out of the appellant's house and shown the pre-arranged signal to the Trap Laying Officer that the appellant obtained the tainted money. On noticing the signal from PW2, the Trap Laying Officer along with the official witness entered into the house of the appellant, introduced himself to the appellant and conducted phenolphthalein test on left and right hands of the appellant. The solutions turned into pink in colour and the solutions [MOs.2 and 3] were recovered and sealed. Then the Trap Laying Officer recovered the tainted money through recovery mahazar [Ex.P5], prepared an observation mahazar [Ex.P16], a rough sketch [Ex.P17] obtained signatures from the appellant and official witnesses and collected personal register of the appellant [Ex.P5]. He arrested the appellant and remanded her to judicial custody. Then the Trap Laying Officer placed the matter before the Investigation Officer [PW8]. The Investigation Officer after completing the investigation filed a final report as against the appellant for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, before the Special Court for trial of Cases under Prevention of Corruption Act, Tiruchirapppali and the same was taken on file in S.C.No.74 of 2011.

3. During the trial, on the side of the prosecution nine witnesses were examined, twenty five documents were marked and three material objects were produced.

4. The available prosecution evidence are as follows:

(i) PW1 is the then District Revenue Officer, Tiruchirappalli and he has accorded sanction [Ex.P1] for prosecuting the appellant.

(ii) PW2 is the defacto complainant. He speaks about the demand made by the appellant, lodging of complaint [Ex.P2] before the Vigilance and Anticorruption Wing, Tiruchirappalli, acceptance of the bribe money by the appellant and recovery of the money from the appellant.

(iii) PW3 is the shadow witness and he speaks about the demand and acceptance of the money by the appellant from PW2.

(iv) PW4 is the then Thasildar, Musiri, who has deposed about calling for the report from the Revenue Inspector, Thumbalam with regard to the registration of birth of PW2.

(v) PW5 is the then Village Administrative Officer of Soorampatti and he speaks about the report submitted by him in respect of PW2.

(vi) PW6 is the Scientific Assistant at the Forensic Science Department, Chennai and she speaks about the presence of the phenolphthalein in MOs.1 and 2 and she has issued the Chemical Analysis Report [ExP11].

(vii) PW7 is the Inspector of Police, Vigilance and Anticorruption Wing, Tiruchirappalli and he speaks about the complaint lodged by PW2, registration of FIR, preparation of entrustment mahazar, the trap executed by him, preparation of observation mahazar and rough sketch and the arrest of the appellant.

(viii) PW8 is the Investigation Officer, who conducted the investigation, filed the final report.

(ix) PW9 is the Scientific Officer and Document Expert in Forensic Lab, Madurai.

5. After completion of the prosecution side evidence, the incriminating circumstances were put before the appellant and the same was denied as false. On the side of the appellant/accused, two witnesses were examined and one document was marked.

6. The trial Court, after completion of the trial and after hearing the arguments on either side, found the appellant guilty, convicted and sentenced as stated supra. As against the conviction and sentence, the appellant has preferred the present appeal.

7. Heard Mr.Veerakathiravan, learned Senior Counsel appearing for M/s.Veera Associates, for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State.

8. The learned Senior Counsel appearing for the appellant has raised the following points:-

(i) According to PW2, he met the appellant on 28.05.2009 in respect of his birth certificate and the appellant gave three forms to be filled by Village Administrative Officer. PW2 stated that he met the Village Administrative Officer on 29.05.2009 and the Village Administrative Officer enquired the neighbours and prepared a report on 29.05.2009, but, contrary to the same, the report [ExP9] shows that it was signed by the Village Administrative Officer on 28.05.2009 itself and therefore, the entire prosecution case itself is doubtful.

(ii) The proceedings for issuance of birth certificate was initiated by one Sadayapillai, father of the defacto complainant, but he has not been examined and cited as witness.

(iii) The evidence of the Tahsildar [PW4] and Village Administrative Officer [PW5] creates doubt about the bona fide of PW2, since, PW2 stated that he went to the Taluk Office, wherein, he was told to meet the appellant, but the Village Administrative Officer stated that they never disclose the official information.

(iv) According to PW2, he met the Village Administrative Officer on the instructions of the appellant and the Village Administrative Officer after enquiry, issued a report, whereas, the Village Administrative Officer [PW5] has never stated that PW2 met him.

(v) There are discrepancies with regard to Ex.P6, which is alleged to be recovered from the house of the appellant and there is no signature of the appellant in Ex.P6.

(vi)There are contradictions between the evidence of PW2 and PW3 in respect of the appellant signing the documents and receiving the money at the time of occurrence.

(vii) According to PW3, the appellant had taken the money from the table, but, according to PW7, the appellant had taken the money from her left hand.

(viii) It is the case of the appellant that PW2 had received Rs.10,000/- from the appellant on 11.05.2008 for interest at 2.5% per month and the amount recovered from the appellant on the date of trap is the interest amount paid by PW2 to the appellant. According to the prosecution, the signature of the complainant in Ex.P2 and the signature in the promissory note [Ex.D1] is tallying and PW9 gave a report [Ex.P24] that the person who signed the complaint did not sign the promissory note [Ex.D1]. As per Ex.P25, the signatures of the appellant were sent to Forensic Science Department for comparison, but, PW9 has failed to compare the signature of PW2 and the appellant cannot be put to suffer, for the fault of PW9.

(ix) The learned Senior Counsel for the appellant has also relied on the following judgments:

a.***C.Sukumaran Vs State of Kerala*** reported in ***(2015) 4 SCC (Cri) 415.***

b.***N.Sunkanna Vs State of Andhra Pradesh***, reported in ***(2016) 1 SCC 713.***

c.***Mukhtiar Singh Vs State of Punjab***, reported in ***(2017) 8 SCC 136.***

9. Per contra, the learned Additional Public Prosecutor appearing for the State submitted that the prosecution has proved the demand, acceptance and recovery of tainted money from the appellant in this case through the evidence of defacto complainant [PW2], shadow witness [PW3], Scientific Assistant [PW6] and the Inspector of Police / Trap Laying Officer [PW7] and through the documents, namely, the complaint [Ex.P2], FIR [Ex.P12] and the chemical analysis report [Ex.P11]. Therefore, the trial Court has rightly found the appellant guilty, convicted and sentenced her as above.

10. This Court has paid it's anxious consideration to the rival submissions made on either side and perused the materials placed on record.

11. The case of the prosecution is that PW2, who was in need of a birth certificate for obtaining a passport, approached the learned Judicial Magistrate, Musiri, for registering his birth. The learned Magistrate issued summons to the Tahsildar [PW4] to ascertain the averments in the petition and in turn, the Tahsildar forwarded the same to the Village Administrative Officer [PW5] and the Revenue Inspector / appellant herein for their respective report. PW2, the defacto complainant, when approached the Revenue Inspector / appellant herein, she demanded a sum of Rs.250/-, for forwarding her report. PW2, who was not willing to pay the bribe demanded by the appellant, lodged the complaint before the Vigilance and Anticorruption Wing and a trap was successfully laid. The appellant / accused officer demanded and received the bribe amount of Rs.250/- in the presence of the official witness, PW3 and the money was recovered from her by the Trap Laying Officer [PW7] and the phenolphthalein test is also proved to be positive.

12. In this case, the accused admitted the demand, receipt and recovery of the sum of Rs.250/-, from her, on the date of trap. However, she has taken out a defense that this sum of Rs.250/- is meant for interest on the money borrowed by the complainant [PW2]. The defense theory is that the complainant [PW2] borrowed a sum of Rs.10,000/- on 11.05.2008 in the presence of DWs.1 & 2 and this amount demanded and paid on the date of trap is the interest amount towards the amount borrowed. In support of this theory, the defense has also examined DWs.1 & 2 and also marked the pro note [Ex.D1].

13. A bare perusal of the document [Ex.D1] would show that the complainant, who is a resident of Surampatti Village, has obtained a loan of Rs.50,000/- from the appellant / accused officer on 11.05.2008, at 2.5% interest for every hundred rupees, per month. It means, at the rate of 30% interest per year.

14. This Court is surprised as to how such a suicidal defense has been taken by the appellant / accused officer, being a responsible Government Servant, who is guided by the Conduct Rules. As per the Conduct Rules, the Government Servant is not supposed to conduct any such money lending business and that too, for an exorbitant interest at 30% per year. On this ground alone, the appellant / accused is liable to be prosecuted under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

15. Moreover, the appellant / accused officer assumed office as Revenue Inspector, Thumbalam, only from 05.11.2008 and it is strange as to how she lend this amount of Rs.10,000/-, as on 11.05.2008, to a stranger. In fact, it is the case of the accused that the complainant borrowed Rs.10,000/-, but the document [Ex.D1] shows that Rs.50,000/- has been borrowed. That apart, this defense is also taken as a belated defense and not during the trap. The trap was laid in the house of the appellant / accused officer. During the trap, the Trap Laying Officer [PW7] has also recovered the memo

issued by the Tahsildar [PW4] calling for a report on the registration of the date of birth of PW2, which is marked as Ex.P6. At that time, this document, pro note [Ex.D1] was not available and was not placed before the Trap Laying Officer [PW7]. In this regard, the Hon'ble Supreme Court in ***State of Madras v. A. Vaidyanatha Iyer***, reported in ***AIR-1958-SC-61***, has held as follows:

> *"19. On November 6, 1951, the Sub-Inspector Munisami contacted the complainant and arrangement was made for Rs 1000 to be paid by the complainant to the respondent and the money was actually taken by the complainant and offered to the respondent on November 8, which the respondent did not accept as he had received an anonymous letter Ex P-18 which was dated November 6, 1951, in which the respondent had been warned that Malayalam people were attempting to "ruin him". Inspite of this warning the respondent continued to have truck with the complainant and actually accepted Rs 800 from him. It is true that when soon after the money was paid and the Inspector PW 12 and the Magistrate PW 13 arrived at the house of the respondent and asked him about this money he stated that he had taken it as a loan but in the context it assumes a different complexion. The statement of the Magistrate PW 13 was:*
>
> > *"While the mahazar was being prepared the accused volunteered and told me that he had received the 800 rupees as a loan from PW 8 — the complainant."*
>
> *This witness had also stated that when he went into the verandah of the house, he asked the respondent whether he had received an illegal gratification from the complainant and also asked him to produce the money. The accused did not say anything but got up from the chair and tried to go inside the house which he was prevented from doing by the Inspector PW 12. The witness added:*
>
> > *"The accused was seen trembling and meddling with something under the towel. I asked the accused to remove the towel. The accused removed the towel. I saw some bulging at his waist in the dhoti he was wearing. I asked him again to produce the currency notes. He produced them from the folds of the dhoti he was wearing. When producing the currency notes the accused did not say anything."*
>
> *No real cross-examination was directed against these portions of the statement of the Magistrate PW 13 nor has the High Court correctly appreciated them or given them due weight. The respondent produced before the Special First Class Magistrate on July 11, 1952 an unsigned pronote for Rs 1000 executed by him in favour of the complainant. That pronote was not found in the house when the search was made by the Deputy Superintendent of Police on November 19, 1951 and it is not explained why the pronote should have been made for Rs 1000 when actually the amount paid was only Rs 800 and why the respondent offered to give this pronote to the complainant without receiving full consideration."*

16. The signatures in the document [Ex.D1] was also referred for comparison with the signatures of the complainant found in the complaint [Ex.P2]. The Handwriting Expert [PW9] marked the disputed signatures found in the pro note [Ex.D1] as Q1 & Q2 and the admitted signatures of the complainant in the complaint [Ex.P2] as A1 & A2 and analyzed the same scientifically and submitted a report dated 10.06.2014, in Ex.P24, as follows:

*"**A1 & A2 did not write the signatures marked Q1 & Q2.***

The standard signatures have been freely written showing natural variations and they agree in the handwriting characteristics on inter se comparison. The questioned signatures differ significantly from the standard in the handwriting characteristics. The characteristic differences include among other things the following:

1. The skill of writing.

2. The line quality of the letters in the signatures.

3. The slope of the letter "S" in the signatures.

4. The alignment between the letters in the signatures "S.Ilayaraja".

5. The location and manner of making dots in the signatures.

6. The relative sizing between the letters "S & I"; "I & l"; "a & i"; "a & a"; "y & j".

6. The manner of connecting the letters I, l, a, I, y, a, r, a, j & a.

7. The manner of terminating the letters S, a, signatures.

8. In the detailed designs such as the beginning and formation of loops and curves of the letters S, I, l, a, i, y, r, j."

Therefore, the prosecution has disproved the defense theory sufficiently and on the other hand, has established its case beyond any reasonable doubt.

17. From the memo [Ex.P6], it could be seen that PW2's father, Sadayapillai approached the learned Judicial Magistrate for registering the date of birth of his son, Ilayaraja [PW2]. The learned Judicial Magistrate issued a notice calling for a report of the Tahsildar [PW4] in C.M.P.No.4520 of 2008, dated 27.11.2008. Based on the notice, the Tahsildar, Musiri [PW4] sent the memo [Ex.P6] to the Village Administrative Officer as well as to the Revenue Inspector / appellant herein on 30.01.2009. The Thasildar [PW4] has also confirmed that he sent the memo [Ex.P6] to the concerned officials as on 30.01.2009 itself.

18. The Tahsildar [PW4] in his evidence has stated that the Village Administrative Officer, after examination, has submitted his report to the Revenue Inspector / appellant herein. But the

appellant has not submitted her report till the date of trap on 04.06.2009 and the document [Ex.P6] was also recovered from the house of the appellant. That itself would show that this appellant has delayed her report for certain extraneous consideration.

19. PW2 lodged the complaint before the Vigilance and Anticorruption, Tiruchirappalli, on 03.06.2009 and on the same day, the First Information Report has been registered and a trap has also been laid in the presence of the official witness [PW3]. PW2 along with the official witness [PW3], a Joint Registrar of Co-operative Societies, went to the appellant's house on 04.06.2009 at about 08.30 am and this appellant ascertained whether he has brought the money, demanded, received the same and thereafter, taken out a file and handed over the certificate. After the pre-arranged signal, the Trap Laying Officer [PW7] entered into the house of the appellant, taken out the phenolphthalein test, recovered the tainted money from the appellant / accused, compared the same with the entrustment mahazar, which is a match. The phenolphthalein samples collected from the hands of the appellant / accused has also proved to be positive. Therefore, the prosecution has substantially proved the demand, receipt and acceptance of the tainted money from the complainant [PW2] on 04.06.2009 in the presence of the official witness [PW3].

20. When the prosecution has established its case beyond any reasonable doubt and it is also an admitted case of recovery, the grounds raised by the appellant, viz., the father of the complainant [PW2], Sadayapillai, was not examined, the non-examination of the Village Administrative Officer and other grounds are insignificant. In fact, it is the defacto complainant, who approached the appellant and from him only, the appellant had demanded money. Therefore, non-examination of the appellant's father would not affect the case of the prosecution.

21. The corruption has ruined the system. Despite implementation of the Prevention of Corruption Act, corruption has not been eradicated and it has become a common affair. Nobody is having the sense of fear to the prevailing Act. The higher officials must act as an example to their subordinates in discharge of their duties. If the higher officials themselves commit mistakes, then they loose their morale to question their subordinates. Ultimately, the system fails. The Hon'ble Apex Court in *Niranjan Hemchandra Sashittal* v. *State of Maharashtra* reported in (2013) 4 SCC 642, painfully discussed the gravity of the corruption in the following terms:

> *"26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of*

the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered."

22. In this case, the prosecution has proved the demand, acceptance and the recovery of the tainted money from the appellant and there is no reason to interfere with the findings of the trial Court.

23. In the result, the appeal is dismissed. The conviction and sentence imposed by the Special Court for Trial of Cases under the Prevention of Corruption Act, Trichy, dated 09.09.2014 in Special Case No.74 of 2011 is hereby confirmed. The bail bonds, if any executed, shall stand terminated. The trial Court is directed to secure the appellant and confine her to prison, to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk/gk

To

1.The Special Court for Trial of Cases under the Prevention of Corruption Act, Trichy

2.The Inspector of Police,
Vigilance and Anti Corruption Wing, Trichy.

3.The Additional Pubic Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Record Keeper (2 Copies), Criminal Section (Records),
Madurai Bench of Madras, Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-106452[F] dated 26/12/2019)

Judgment made in
Crl.A.(MD)No.276 of 2014
20.12.2019

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TR(04.01.2021) 10P 7C