

**BAIL SLIP**

The Appellant/Sole Accused B.G.Varalakshmi, W/o.Durai Subramanian, Female was directed to be released on bail order of this Court dated 06.06.2016 and made in Crl MP(MD)No.4203 of 2016 in Crl A(MD)No.188 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 14.12.2020****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL A (MD) No.188 of 2016**

B.G.Varalakshmi

... Appellant /
Accused**Vs.**

The State, rep.by the Inspector of Police,
Vigilance & Anti Corruption Department,
Tiruchirappalli.
(Crime No.34 of 2010)

... Respondent /
Complainant

Prayer : This Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in S.C No.5 of 2014 dated 18.05.2016 on the file of the learned Chief Judicial Magistrate and Special Judge, Karur and set aside the same.

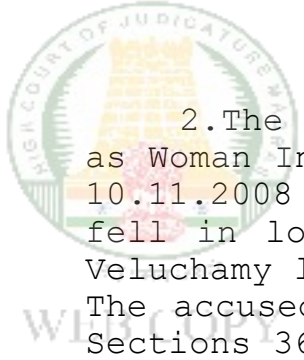
For Appellant : Mr.S.Parthasarathi
for Mr.KPS.Palanivelrajan

For Respondent : Mr.A.Robinson,
Government Advocate (crl.side)

JUDGMENT

This Criminal Appeal is directed against the judgment dated 18.05.2016 in S.C No.5 of 2014 on the file of the learned Chief Judicial Magistrate/Special Court, Karur. By the impugned judgment, the appellant was convicted and sentenced as follows :

Offence	Sentence imposed
Under Section 7 of the Prevention of Corruption Act, 1988	One year rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
Under Section 13(2) r/w.13(1) (d) of the Prevention of Corruption Act, 1988	Two years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.



2.The case of the prosecution is that the appellant was serving as Woman Inspector of Police, AWPS, Kuzhithalai, Karur District from 10.11.2008 to 23.12.2010. The defacto complainant/PW.2/E.Anand fell in love with one Abirami D/o.PW.7 P.Veluchamy. They eloped. Veluchamy lodged a complaint against Anand before AWPS, Kuzhithalai. The accused Varalakshmi registered FIR in Crime No.5 of 2010 under Sections 366 (A) & 109 of IPC on 08.07.2010. She arrested Anand on 18.11.2010 and he was remanded. Anand was granted bail by the Sessions Court on 06.12.2010 and he was directed by the Sessions Court, Karur to appear before the accused officer until further orders. On 22.12.2010, at about 10.00 A.M, Anand came to sign before the appellant/accused. On 13.12.2010, the matter was compromised and both Anand as well as P.Velusamy presented affidavits before the Sessions Court, Karur stating that Anand would marry Abirami on her attaining majority on 23.05.2011. According to PW.2 Anand, on 22.12.2010 at 10.00 A.M, he had gone to the station for signing. Varalakshmi called him to her room and demanded a sum of Rs.10,000/- and two sweaters as bribe for closing the case and for not laying the final report. She demanded payment of Rs.5,000/- as the first installment and the balance of Rs.5,000/- was to be paid later.

3.Since PW.2 was not willing to pay the bribe, he lodged a complaint before the respondent on 23.12.2010 at about 08.00 A.M. Crime No.34 of 2010 was registered under Section 7 of the Prevention of Corruption Act, 1988 by the respondent at 09.00 A.M. PW.11 Pandithurai, the trap laying officer obtained permission from his superior officer and recorded the statement of PW.2. He sent requisition to the Executive Engineer, TWAD Board and the Assistant Commissioner, Abisekapuram, Trichy Corporation to send shadow witnesses for the trap. PW.3 Manivannan and Rasitha Begham were deputed and they arrived at around 12.00 Noon on 23.12.2010. They were introduced to PW.2 and the usual pre-trap formalities were concluded. Entrustment mahazar was also prepared (Ex.P4). The complaint as well as the FIR were forwarded to the jurisdictional court. By 14.30 hrs, the trap laying party left for AWPS, Karur. They reached the spot at around 15.45 hrs. PW.2 and PW.3 Manivannan were reminded of the procedures. The two reached the station by walk at around 04.00 P.M.

4.Varalakshmi/appellant reiterated her earlier demand and accepted the bribe amount and also the two sweaters by 04.15 p.m. PW.2 came out of the station and gave the pre-arranged signal. Thereupon, PW.11 and others entered the station and subjected the accused Varalakshmi to phenolphthalein test. It proved positive. The bribe money was recovered from Varalakshmi. The khaki uniform shirt worn by her was also subjected to test and the same was also seized. The solutions were put in two bottles and sealed. They are MO.3, MO.4 and MO.5. The two sweaters were also seized and they were also marked. Seizure mahazar was prepared. Varalakshmi was arrested and remanded to custody. PW.12 Ramachandran took over the investigation and examined the other witnesses and filed the



final report after obtaining Ex.P1 sanction order from PW.1. Cognizance of the offences was taken and summon was issued to the accused. Charges were framed for the offences under Sections 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The accused denied the charges and claimed to be tried. The prosecution examined PW.1 to PW.12 and marked Exs.P1 to P.39. MO.1 to MO.7 were also marked. Incriminating circumstances were put to the accused and she denied the same. On behalf of the accused, DW.1 to DW.3 were examined and Ex.D1 was marked. The learned Trial Judge after a detailed consideration of the evidence on record, convicted and sentenced the accused as mentioned above. Challenging the same, this Criminal Appeal has been filed.

5.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and the written submissions. The learned counsel wanted this Court to set aside the impugned judgment, acquit the appellant and allow this appeal. Per contra, the learned Government counsel submitted that the impugned judgment does not warrant any interference and wanted me to dismiss the appeal.

6.I carefully considered the rival contentions and went through the evidence on record. Interestingly, the accused did not deny receipt of a sum of Rs.5,000/- as well as the two sweaters from PW.2/the defacto complainant Veluchamy. As regards the obtaining of the two sweaters, the accused stated that she had already paid for the same. Now, the question that arises for determination of this Court is as to whether this explanation of the accused is probable. It is only the prosecution that has to prove its case beyond reasonable doubt. The accused can establish her defence by balance of probabilities.

7.The learned counsel for the appellant would draw my attention to the personal background of PW.2. PW.2 had earlier eloped with the daughter of a former MLA prior to his eloping with Abirami/PW.9. The said issue was compromised. PW.8 is the sister of PW.2. Her husband was a Head Constable. Her father in law is also a retired Head Constable. The defence of the accused is that since PW.2 had eloped with a minor girl, she had to arrest him notwithstanding the request made by PW.8's family. The accused was in custody from 18.11.2010 till 06.12.2010. Thus, PW.2 did have a motive to take revenge on the accused. Ex.P16 is the relevant case file in Crime No.5 of 2010. It was seized immediately after the trap. In the said case diary, as early as on 06.12.2010, the accused made entry regarding the developments in the case. PW.2 Anand who was A1 in Crime No.5 of 2010 had filed a bail petition. Though both sides reported amicable resolution of the issue, the Sessions Judge noted that Abirami was born on 23.05.1993. She had not attained majority and after she attained majority which was four months away, the accused had to marry her and register the same. ~~Then, the accused has to sign before the AWPS, Kuzhithalai and after the marriage is solemnized, statements should be recorded and~~



further action should be dropped. The direction given by the Sessions Judge was referred to in extenso and report had been prepared to the effect that the case will be treated as "Action Dropped" after PW.2 married Abirami PW.9.

8. The allegation of PW.2 is that for closing the case, the accused Varalakshmi demanded a sum of Rs.10,000/- from him and wanted him to pay a sum of Rs.5,000/- as first installment. PW.2 is not a rustic villager or a novice ignorant of the affairs of the world. He had already eloped with the daughter of a former MLA. His sister's family has a police background. His brother-in-law is serving as Head Constable in another District. The Sessions Judge while granting bail had given a direction for dropping action after PW.2 married PW.9 Abirami after she attained majority. Compromise affidavits have been filed. The complainant Veluchamy PW.7 had also filed an affidavit. In these circumstances, there was really nothing which the accused Varalakshmi could have done. She was bound to comply with the direction of the Sessions Judge. She had no choice in the matter. Therefore, it is height of improbability that she could have demanded bribe from PW.2 for closing the case.

9. The next question that this Court has to go into is as to whether the amount of Rs.5,000/- received by the accused from PW.2 was a reimbursement or bribe. It is an admitted fact that PW.2 had run away with Abirami, the daughter of PW.7 Veluchamy. Veluchamy had lodged a complaint and the same was registered as Crime No.5 of 2010 by the accused officer. The court was also seized of the matter. Therefore, the accused was obviously under real pressure to secure the victim. The whereabouts of the victim was not known. Therefore, the appellant had to engage a private taxi to go to Kovilpatti, Virudhunagar District in search of PW.2 and PW.9 Abirami.

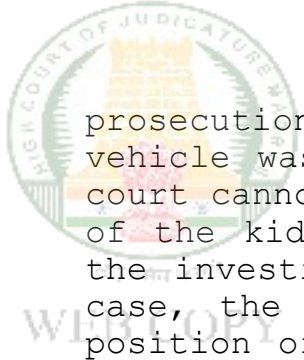
10. That two such visits were made has been clearly established. It is not the case of the prosecution that the appellant had engaged the official vehicle for this purpose. PW.7 Veluchamy had admitted that Varalakshmi/the appellant had taken the private taxi driven by DW.1 Kannan @ Karnan. He also would state that PW.7 did not initially make the full payment. He appears to have paid only a sum of Rs.1,200/- to DW.1. Obviously, the sum of Rs.1,200/- would not cover the conveyance charges for making two trips from Karur to Kovilpatti. The appellant's counsel would claim that the appellant had paid the amount to taxi driver/DW.1 and that she had only taken Rs.5,000/- on the trap day by way of reimbursement. I find it little difficult to buy this story as it is. In all probability, the appellant must have engaged DW.1 by promising to give the payment later in point of time and in order to settle his claim, she must have insisted for payment of the balance amount. Since Veluchamy and Anand had compromised the matter between themselves, she must have sent word to Veluchamy through Anand.



11. I am satisfied that the accused had clearly shown that the amount of Rs.5,000/- received by her from PW.2 does not represent illegal gratification, but only payment towards conveyance charges for the trips undertaken by her from Karur to Kovilpatti. That still does not explain the receipt of two sweaters. The appellant states that since PW.7 Veluchamy is a lorry driver who would go on all India trips, she had given the said amount to him to get her two sweaters. I can take judicial notice of the fact that we have a fascination for getting things from the original places. There are many localities which are known for particular goods and items. Of course, following the economic developments in the country, almost everything is available everywhere. The movement of consumer goods and delivery of services has remarkably developed. But such was not the case some ten years ago. Suppose somebody known to us who tell us that they are going to Kolhapur, we would ask them to get chappal. Suppose they intend to visit cold regions, we would ask them to get us sweaters. This was the natural mentality. The accused was therefore tempted to ask for sweaters since PW.7 Veluchamy was in the transport business and travelling all over India. Her claim is that she had paid a sum of Rs.300/- to Veluchamy and asked him to get sweaters in advance. It does not sound convincing. PW.7 Veluchamy was already obliged to pay a few thousand rupees towards conveyance charges. Therefore, it is not probable that the accused had paid a sum of Rs.300/- to him and asked him to get two sweaters. However, the items received by her in my view are trivial. Receiving diary on the occasion of new year and receiving sweet box on the occasion of diwali, though to be discouraged, cannot be characterized as instances of corruption. I would apply the very same yardstick to this acceptance of two sweaters also. If it is an expensive gift, then the approach of the court would have been different.

12. The testimony of PW.7 is particularly relevant. PW.7 was obviously obliged to support the prosecution. It was because his daughter's life was at stake. In the cross examination also, he had stood by the prosecution. However, a few answers given by him are a clear give-away. He admits that if he went on his trips, it would clearly take 15 to 20 days to return. He admitted that though he denied that he accompanied the appellant in the trips to Kovilpatti, he admitted that the appellant made trips from Karur to Kovilpatti quite a few times. He also stated that he paid a sum of Rs.1,200/- through another person. He admitted that on 22.12.2020, he left for his usual trip from Karur. He frankly stated that he felt sorry for the appellant and also expressed his regret to PW.2 as to why he had done so.

13. From a careful perusal of the cross examination of PW.7, one can come to the conclusion that the defence of the accused is corroborated in broad particulars. It is admitted that the accused/appellant made trips from Karur to Kovilpatti. The



prosecution had not adduced any evidence to show that the official vehicle was utilized by the accused to make the said trips. This court cannot lose sight of the reality obtaining on ground. In view of the kidnapping of the minor Abirami/PW.9, the pressure was on the investigation officer to trace her at the earliest. In this case, the court was also seized of the matter. Therefore, the position of the appellant can very well be imagined. It would be unrealistic to assume that all logistical facilities are readily available for the investigation for the asking. Often they have to arrange things on their own. In fact, it is this that leads to corruption. Since the prosecution has not shown that the trips undertaken by the appellant from Karur to Kovilpatti were by utilising the official vehicle, I have to accept the version of the accused that she had taken the private taxi of DW.1. In fact, PW.7 also states that he passed on a sum of Rs.1,200/- to DW.1. This amount was obviously insufficient to cover the taxi charges in full.

14. Therefore, I come to the conclusion that the accused had established her defence on the balance of probabilities. Though acceptance of two sweaters cannot be appreciated, I am of the view that it is rather trivial and therefore need not be put against the appellant. In this view of the matter, the judgment made in S.C No.5 of 2014 dated 18.05.2016 on the file of the learned Chief Judicial Magistrate and Special Judge, Karur is set aside. This criminal appeal is allowed. The appellant is acquitted. The bail bond executed by her shall stand cancelled. Fine amount if any paid by her shall be refunded.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Inspector of Police,
Vigilance & Anti Corruption Department,
Tiruchirappalli.

2.The Chief Judicial Magistrate and Special Judge, Karur.

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

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai (2C)

+1CC TO MR.K.P.S.PALANIVELARAJAN,ADVOCATE,SR NO.25480

CRL A (MD) No.188 of 2016
14.12.2020

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KMK(CO)

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