

BAIL SLIP

P.Rajeswari, Female aged 66/2018, W/O.Nagarajan was released on bail vide this Courts Order dated 18.09.2018 made in CRL MP(MD).7395 of 2018 in CRL A(MD).433 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.A.(MD).No.433 of 2018

P.Rajeswari

... Appellant/Sole Accused

Vs.

State rep. By,
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Virudhunagar.
(Crime No.1 of 2009)

... Respondent/Complainant

PRAYER : Criminal appeal is filed under Section 374 of Cr.P.C., to set aside the conviction and sentence imposed by the Special Court for Prevention of Corruption Cases and Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur in Special C.C.No.39 of 2014 on 21.08.2018 and allow this criminal appeal.

For Appellant : Mr.Saravanakumar
For Respondent : Mr.A.Robinson,
Government Advocate(Criminal Side)

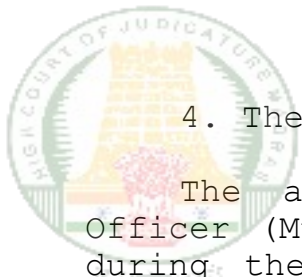
JUDGMENT

Heard the learned counsel appearing for the appellant and the learned Government Advocate(Criminal Side) appearing for the respondent.

2. This appeal is directed against the Judgment dated 21.08.2018 passed by the learned Chief Judicial Magistrate/Special Court for Prevention of Corruption Act Cases, Virudhunagar District at Srivilliputhur in Special C.C.No.39 of 2014.

3. By the impugned Judgment, the appellant has been convicted and sentenced as follows:-

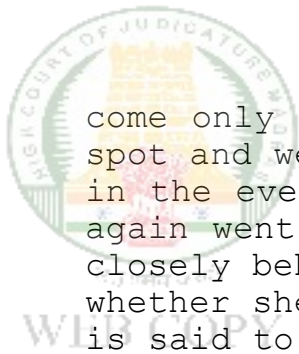
Offence u/s.	Punishment
7of Prevention of Corruption Act 1988	To undergo 3 years R.I., to pay a fine of Rs.10,000/- and in default, to undergo six months R.I.
13(1)(d) r/w. 13(2) of Prevention of Corruption Act 1988	To undergo 3 years R.I., to pay a fine of Rs.10,000/- and in default, to undergo six months R.I.



4. The case of the prosecution is as follows:-

The accused/appellant P.Rajeswari was working as Extension Officer (Mukhya Sevika) in Panchayat Union office, Srivilliputhur, during the relevant period. She is a public servant within the meaning of Section 2(c) of Prevention of Corruption Act, 1988. The defacto complainant (P.W.2) Umashankar is a resident of Srivilliputhur. He got married to one Gnanapandi. They begot two female children. Gnanapandi who was examined as P.W.4 underwent family planning operation. The Government of Tamil Nadu had introduced a scheme granting monetary benefit for such female children whose parents had undergone family operation after the birth of two female children. The parents also have to give an affidavit of undertaking not to adopt any male child. The financial assistance to be granted by the Government will be in the form of Fixed Deposit in the names of female children which can be withdrawn by them after they attain majority of twenty years.

5. The defacto complainant went to the office of Srivilliputhur Panchayat Union on 28.01.2009 for getting the said financial assistance. According to the defacto complainant, the applications submitted by him was taken up for enquiry and the accused Tmt.P.Rajeswari conducted a house visit. She asked the defacto complainant to come to the office on 12.02.2009 for further formalities. When on 12.02.2009 at about 4.00 p.m., P.W.2 Umashankar and his mother Subbulakshmi (P.W.5) met the accused, she is said to have demanded bribe of Rs.300/- for sending the petition for further action. Since P.W.2 was not willing to make the said payment, he approached the respondent on 19.02.2009 at about 10.30 a.m. and lodged a complaint before the Inspector of Police, Vigilance and Anti-corruption Wing, Virudhunagar (P.W.14). The complaint of P.W.2 (Ex.P.3) was registered as Crime No.1 of 2009 for the offence under Section 7 of Prevention of Corruption Act, 1988 (Ex.P.29). P.W.14 telephonically as well as in writing requested the higher officials of H.R.&C.E Department and Khadi Board to depute the officials to act as shadow witnesses. Thereupon, P.W.3 Devaraj from Khadi Board and one Banumathi from H.R.&C.E. Department came to the office of the respondent to act as shadow witnesses. P.W.14 completed the usual pre-trap formalities and explained the procedure to be followed, to the defacto complainant and to the shadow witnesses. P.W.2 had taken 3 Hundred Rupee notes and Phenolphthalein powder was also duly applied thereon. Entrustment Mahazar was prepared (Ex.P.5). The details of the currency notes were entered in the said Ex.P.5. Ex.P.3 Complaint, Ex.P.29 First Information Report and Ex.P.5 Mahazar were also sent to the jurisdictional Court and the same reached the jurisdictional Court on the same day at about 4.30 p.m. on the same day. Thereafter, the trap laying officer, the defacto complainant and the two shadow witnesses left for the office of the accused. The defacto complainant accompanied by P.W.3 had gone to the office of the accused at around 1.30 p.m. It was

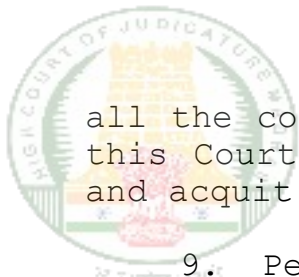


come only in the evening. Therefore, the trap laying party left the spot and were waiting in the Court complex. They once again returned in the evening and at around 4.30 p.m, the defacto complainant once again went to the office of the accused. P.W.3 Devaraj followed him closely behind. When the defacto complainant asked the accused as to whether she had already sent his application for further action, she is said to have asked him as to whether he had brought the amount of Rs.300/- demanded by her earlier. The defacto complainant answered in the affirmative and took out the Phenolphthalein applied currency notes from his shirt packet. P.W.3 would state that the accused received the tainted notes, counted them and kept them beneath the file on the table. Later she stated that it was kept in the Almirah behind her. P.W.3 Devaraj observed the same. Thereafter, they came out of the office and gave a pre-arranged signal. Thereupon, P.W.14/trap laying officer along with the shadow witness Banumathi came to the Panchayat Union office and asked P.W.2 as to what happened. P.W.2 narrated what actually happened. P.W.3 also identified the accused to the trap laying officer. P.W.2 was asked to leave the spot.

6. Phenolphthalein test was conducted on the accused and it turned out to be positive. The solution in which the accused took her hands was sealed in two bottles, namely, M.O.2 and M.O.3. Labels were affixed thereon and the signatures were also taken. The tainted money of Rs.300/- was also recovered from the wooden rack behind the chair of the accused. P.W.6 Sundararajan who was the Deputy Block Development Officer in Srivilliputhur Panchayat Union witnessed the entire proceedings. The entire proceedings were reduced into writing vide Ex.P.9 Mahazar. Various documents were also seized from the hands of the accused in the said office. Thereafter, P.W.15 took over the investigation and he examined various witnesses and filed final report before the jurisdictional Court. The Special Judge took cognizance of the offences under Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act. Summons were also issued to the accused and copies were also served under Section 207 of Cr.P.C. Charges were framed against the accused. The accused when questioned, denied the charges and claimed to be tried. The prosecution examined as many as 15 witnesses(P.W.1 to P.W.15). Ex.P.1 to Ex.P.32 were marked. M.O.1 to M.O.3 were also marked. On the side of the accused, no evidence was adduced.

7. All the incriminating circumstances were also put to the accused during her examination under Section 313 of Cr.P.C. The accused characterised those circumstances as false. The learned trial Judge after a consideration of the evidence on record came to the conclusion that the prosecution had established its case beyond reasonable doubt and convicted and sentenced the accused/appellant as already mentioned. Challenging the same, this appeal came to be filed.

<https://hcservices.courts.gov.in/hcservices/> learned counsel appearing for the appellant reiterated



all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned Judgment and allow the appeal and acquit the appellant.

9. Per contra, the learned Government Advocate(Crl. Side) submitted that the impugned Judgment does not call for any interference and he wanted this Court to dismiss the appeal.

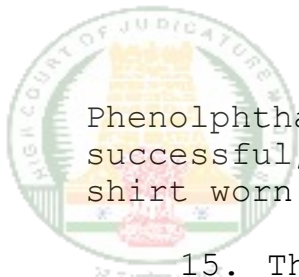
10. I carefully considered the rival contentions and went through the evidence on record.

11. The learned counsel appearing for the appellant would contend that the delay has vitiated the proceedings in this case. He would point out that for the demand allegedly made on 12.02.2009, Ex.P.3 complaint was lodged only on 19.02.2009. Sanction was given after a lapse of 26 months. He also pointed out that the statement in terms of paragraph No.47 of the Vigilance Manual was obtained only on 11.03.2009 from the accused.

12. The contention grounded on delay does not appeal to me. According to the defacto complainant, the accused made the demand for payment of illegal gratification on 12.02.2009 and asked him to come with the bribe amount on 19.02.2009. The position of the defacto complainant had to be taken note of. The reaction of the person would be one of shock and surprise. But he would not know as to what course of action he should adopt. Normally in such cases, before a day or two, the accused asks the defacto complainant to meet him. In this case, the complaint was given in the morning on 19.02.2009.

13. Therefore, I am of the view that there is no merit in the contention that Ex.P.3 was not lodged immediately. Likewise, the delay in according sanction cannot be a point in favour of the accused. The statute is very clear. It states that without sanction from the competent authority, cognizance of the offence cannot be taken. Therefore, the delay in obtaining sanction cannot in any way go to the benefit of the accused. As regards the delay in obtaining a statement in terms of paragraph No.47 of the Vigilance Manual, as rightly pointed out by the learned Government Advocate(Crl. Side), the provisions set out in the Vigilance Manual are only directory and not mandatory. In this case, it is seen from the evidence on record that after the trap, the trap laying officer had questioned the accused officer to explain. It is stated that not only by the trap laying officer, P.W.14 also and P.W.6 Thiru.Sundararajan, Deputy Block Development Officer stated that the accused had virtually admitted that she had received the bribe amount. Therefore, there is no merit in this contention also.

14. The learned counsel would contend that the shirt owned by P.W.2 was not sent for Phenolphthalein test. I fail to understand as

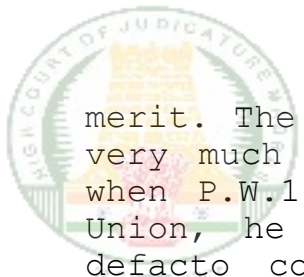


Phenolphthalein test to which the accused was subjected to was successful, it would not make much difference by not sending the shirt worn by the defacto complainant for such a test.

15. The learned counsel appearing for the appellant would also claim that a sum of Rs.300/- was actually left by the defacto complainant himself without the knowledge of the accused in the wooden rack located behind the chair of the accused. He also would state that in the hall in which the accused was working, large number of other officials were working. In fact the other employees were sitting and that therefore, when they were working in such close proximity, it is inherently improbable that the accused would have made a demand for payment of illegal gratification or accepted the same. This contention deserves to be formally recorded only to be rejected. What clinches the case against the appellant is that Phenolphthalein test was done even before the recovery of the tainted amount. P.W.6 Sundararajan categorically deposed as to the sequence of events that had taken place on 19.02.2009 in their office. P.W.6 cannot have any motive against the accused. P.W.6 had also stated that the trap laying officer P.W.14 entered the office and straightaway subjected her to Phenolphthalein test and when the accused dipped her hand, the Sodium Carbonate solution turned pink. This clearly confirms that the tainted amount had been received by the accused. Only thereafter, the trap laying party went about searching for the currency. In fact both Banumathi, one of the shadow witnesses and the accused searched for the currency notes. It was Banumathi who recovered the currency notes from one of the files in the wooden rack behind the chair of the accused.

16. The stand of the accused is that she had not received the currency notes and that it was the defacto complainant who had without the knowledge of the accused, kept the current notes in the file in the wooden rack behind her chair. This version of the accused appears to be too farfetched and improbable. According to the accused, there were many officials present in the hall. When the defence is that the accused could not have made the demand for payment of illegal gratification in the presence of other officials, I failed to understand as to how the defacto complainant could have crossed her chair and accessed the wooden Almirah and managed to keep 3 Hundred Rupee notes in a file. The defence of the accused is simply impossible to accept.

17. The learned counsel appearing for the appellant would claim that as per the scheme, the defacto complainant is not eligible. He would claim that the revenue certificate issued by the revenue authority shows his income as Rs.18,000/- p.a. According to the accused, those who are getting annual income above Rs.12,000/- are not eligible to avail the financial assistance. Angered by the stand of the accused that the defacto complainant was not eligible to receive financial assistance, in order to take revenge on her, the



merit. The other officials have categorically deposed that P.W.2 is very much eligible for getting the financial assistance. In fact when P.W.10 Samuthirakani was employed in the very same Panchayat Union, he had also dealt with the application submitted by the defacto complainant. He had already mentioned that the defacto complainant and his wife were very much eligible for getting financial assistance. This was not challenged by the accused in the cross examination. Ex.P.26 is the certificate issued by the Tahsildar, Srivilliputhur. It is clearly stated that it has been issued to enable the defacto complainant and his wife to avail the financial assistance. More than anything else financial assistance was eventually disbursed. This has also been brought out in evidence. Therefore, there is no merit in the contention that out of frustration P.W.2 had engineered the instant prosecution.

18. The learned counsel would strongly impugn the character and credibility of P.W.2. There appears to be some substance in this contention. P.W.2 does not appear to be a man of good character. He appears to have been implicated in a few theft cases. In fact this has been admitted by the wife of P.W.2 herself. But I fail to understand as to how this will advance the defence of the accused. The defacto complainant may not be a good person. But then, if from such a person, a public servant had demanded bribe, the bad character of the complainant cannot become a shield for the accused. Here the only question is whether the accused made the demand for payment of bribe and whether she accepted or not. The character of the complainant is relevant only for the purpose of scrutinising his testimony. Beyond that, it holds no relevance. The learned counsel appearing for the appellant also contended that no independent witness has been examined. I do not find any merit in the said contention. P.W.3 Devaraj is certainly an independent witness. He is from Khadi Board and he has no motive against the accused. This Court should also take note of the overall sequence of events. The trap laying officer recovered the file pertaining to the defacto complainant only from the accused. The defacto complainant had given an application as early as on 28.01.2009. The Block Development Officer, namely, Sornappan(P.W.7) had initialed the same and handed it over to the clerk Muthaiya on the same date. It was entered in the Distribution Register(Ex.P.7). It was thereafter handed over to the assistant Samuthirakani(P.W.10) which was entered in the Personal Register. These documents have been marked as Ex.P.7, Ex.P.13 and Ex.P.15. It had reached the accused officer also on the same date (i.e.) on 29.01.2009. Thus, it was the accused officer who was dealing with the application of the accused from 29.01.2009. Therefore, the accused cannot feign ignorance. The application submitted by the defacto complainant was forwarded to the accused officer and it was the accused officer who made the spot visit and it was she who had to put up the application for other officers for further action. The file containing the application of the defacto complainant was stagnating in the table of the accused from 29.01.2009 to 19.02.2019. In order to send the application for



further action, she had demanded bribe of Rs.300/- from the defacto complainant.

19. It is true that a mere recovery of the tainted money is not sufficient and that the prosecution has to independently establish the factum of demand. Of course as pointed out by the learned counsel appearing for the appellant, P.W.2 Umashankar is the defacto complainant and P.W.4 Gnanapandi is his wife and P.W.5 is his mother. P.W.5 states that she accompanied her son on 12.02.2009 and on that day, the accused officer made the demand. Of course as rightly pointed out by the learned Government Advocate(Crl. Side), corroboration can be inferred by the Court from several circumstances. The fact that the file was kept pending for 20 days in the table of the accused officer lends corroboration to the prosecution case. More than anything else, as already noted, recovery of tainted notes was subsequent to holding of the Phenolphthalein test. The test turning positive clinching the case against the accused. As rightly pointed out by the learned Government Advocate(Crl. Side), Section 20 of Prevention of Corruption Act would then spring into action. Section 20 of Prevention of Corruption Act reads as follows:-

"20. Presumption where public servant accepts gratification other than legal remuneration.-(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-



sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

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20. Since *prima facie* material regarding demand had been established and since acceptance and recovery had been proved, it was entirely for the accused to rebut the statutory presumption raised against her. The accused did not enter the witness box and did not adduce evidence. Having considered the evidence on record, the Court below had rightly come to the conclusion that the prosecution had established its case beyond reasonable doubt. On a careful re-appreciation of the entire evidence on record and after considering the contentions urged by the learned counsel appearing for the appellant, I am not in a position to take any different view on the appellant. I hold that the prosecution had established its case against the appellant beyond reasonable doubt. Therefore, the conviction imposed on the appellant is confirmed. However, taking note of the fact that the appellant is a woman aged about 70 years, I am inclined to show indulgence in the matter of sentence.

21. Taking note of the mitigating circumstances pleaded by the appellant, the sentence of imprisonment imposed on the appellant is reduced to one year Simple Imprisonment under both the heads. The sentence under both the heads will run concurrently. In all other respects, the Judgment passed by the trial Court is confirmed.

22. With this modification in the matter of sentence, this criminal appeal is partly allowed. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar (CS)

PMU

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Special Judge for Prevention of Corruption Cases
and Chief Judicial Magistrate Court,
Virudhunagar District at Srivilliputhur.

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

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

4. The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai. (2-copies)

+1CC to Mr.P.SARAVANA KUMAR, Advocate (SR-25381[F] dated 14/12/2020)

+1 CC to M/s.G.M. LAW OFFICE, (SR-25034[F] dated 11/12/2020)

Order made in
CRL.A. (MD) .No.433 of 2018
10.12.2020

TP (CO)

SRS (17/03/2021) 9P : 8C