BAIL SLIP

The Appellant/Accused K.JEYALAKSHMI,Female,Aged about 65 Years,W/o.VIBHAKARAN is released on bail order dated 11/07/2016 made in Crl.MP(MD)No.5434 of 2016 in Crl.A(MD)No.245 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2022

DELIVERED ON: 14.07.2022

CORAM :
THE HONOURABLE MR.JUSTICE G.ILANGOVAN
Crl.A.(MD) No.245 of 2016

K.Jeyalakshmi ... Appellant/Accused(Single)

vs.

State represented by
The Inspector of Police,
Vigilance and Anticorruption Detachment,
Nagercoil,
Kanyakumari District.
Crime No.6 of 2006 ... Respondent/Complainant

PRAYER:- This Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment rendered by the learned Special Judge, Special Court for trial of Cases under Prevention of Corruption Act, Tirunelveli, Tirunelveli District in Spl.Case No.30 of 2014 vide judgment dated 17.06.2016 and set aside the same and consequently, acquit the appellant.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.R.Meenakshi Sundaran
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed to set aside the judgment that has been passed by the learned Special Judge, Special Court for trial of Cases under Prevention of Corruption Act, Tirunelveli, Tirunelveli District in Spl.Case No.30 of 2014 dated 17.06.2016.

2.The case of the prosecution is that the accused, who was working as Deputy Tahsildar, has demanded and accepted the bribe amount of Rs.100/- for discharging her official duty. So, on the basis of the complaint given by P.W2, a case in Crime No.6 ... 06 was registered and after completing the formalities of pre-trap, trap arrangement and investigation, final report was filed stating that the accused has committed the offences punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. After completing the formalities and after framing the charges, the accused claimed to be tried and denied the charges.

3.The trial started to prove the charges, the prosecution has examined 11 witnesses, marked 19 documents and on the side of the accused, 2 witnesses were examined and one document was marked and two material objects were also exhibited.

4.At the conclusion of the trial, the trial Court found that the guilt of the accused has been proved by the prosecution beyond all reasonable doubt and thereby, convicted and sentenced the accused to undergo **(*)3** years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 5 months simple imprisonment for each of the offences under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. Against the conviction and sentence, this appeal has been preferred by the accused.

5.The case of the prosecution as narrated through the evidence in brief is as follows:-

P.W2, by name Suresh, is a resident of Ambasasmudaram. His son was studying 6th std., in the Kamaraj Higher Secondary School, Sivanthipuram. For scholarship benefit, his son required community certificate. After enclosing relevant documents, on 11.08.2006, P.W2 put a petition in the box. Later, he was informed that on 18.08.2006, the accused, namely K.Jeyalakshmi, visited the house of P.W2 and made an enquiry. So, on 22.08.2006, at about 10.30 am., P.W2 went to the Taluk Office, Ambasamudram and introduced himself to the accused. At that time, the accused has stated that a recommendation has been made by the Village Administrative Officer and Revenue Inspector and for issuing the certificate, he must pay Rs.100/- as bribe amount. On 25.08.2006, P.W2 approached the Vigilance Department, since he was not willing to give the bribe. The complaint was received by the respondent police, which is Ex.B2.

6.Further event is spoken by P.W10, by name Rajakumar. He was working as Inspector during the relevant period in the Vigilance Department. He received the complaint from P.W2 and registered the case in Crime No.6 of 2006 for the offences punishable under Section 7 of Prevention of Corruption Act, 1988. He prepared the First Information Report and took up further formalities of trap arrangement. For that purpose, he requested deputation of two official persons to assist the respondent police in making the trap.

7.On his request, the witnesses, namely Kesavamoorthy and Ashok Kumar came to the office and P.W2 was introduced to them and further process of trap was arranged. P.W2 handed over two 50 rupees currency notes (totally Rs.100/-) to P.W10, for which a Mahazar has been prepared by noting the currency numbers. Phenolphthalein powder was smeared in the currency notes and further process of sodium bicarbonate demo was undertaken. He informed P.W2 and other official witnesses about the importance of the sodium bicarbonate solution demonstration and advised them to follow his instructions.

8.At about 02.45 pm., they started from the Vigilance Department and reached the office of the accused at about 03.45 pm., As instructed, P.W2 and other witnesses went inside the office of the appellant and the police team were hiding nearby.

9.Further event is spoken by P.W2. He would say that at about 03.50 pm., he went to the office of the accused and at that time, the accused enquired P.W2 as to whether he has brought the money. He handed over the money and thereafter, came out from the office and made signal as instructed.

10.Further event is spoken by P.W10. He would say that on getting a signal from P.W2, they went inside the office of the accused and the accused was identified by P.W2. He made enquiry and prepared the sodium bicarbonate solution and the accused was advised to wash her left hand. It turned pink. That was collected in a container, sealed and labeled. Similarly, another sodium bicarbonate solution was prepared and she was also advised to wash her right hand. It also turned pink. That was collected in another container, sealed and labled. On enquiry, the accused handed over Rs.100/- of two 50 rupees each to P.W10. He compared the serial numbers with the currency note serial numbers, which were noted in the Mahazar that was prepared at the time of pre-trap arrangement. It was found tallied. The accused was arrested and remanded to judicial custody and the house of the accused was searched and nothing was found.

11.Investigation was undertaken by P.W11, by name Sparjan Rajan Rai. He recorded the statement of the witnesses, submitted the material objects for chemical examination and finally, after completing the formalities of investigation and obtaining sanction order, laid the charge sheet stating that the accused has committed the offences punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

12.P.W3, by name K.Ashok Kumar was the shadow official witness. He would corroborate the evidence of P.W2 in material particulars with regard to the pre-trap arrangement, actual trap and arrest etc facts. P.W4, by name Murugeswari, was working as Junior Assistant in Ambasamudram during the relevant period. She has spoken about the visit of the Vigilance Department and the sodium bicarbonate solution was also tested.

13.P.W5, by name Vetriselvi, was working as Firka Revenue Inspector during the relevant time. She has spoken about the issue of community certificate. Similarly, P.W6, by name Kamala, was working as Headquarters Deputy Tahsildar in Ambasamudram. She was the witness to the visit of Vigilance Department officials.

14.P.W7, by name Amutha, was working as Scientific Assistant. She has spoken about the examination of the material objects. P.W8, by name Madurai is not a material witness. P.W9, by name Paramasivan, has spoken about the application submitted by P.W2 and the attendance register. With this examination of these witnesses, prosecution side evidence was over and the accused was put on Section 313 Cr.P.C. questioning. She denied the incriminating evidence.

15.On the side of the accused, 2 witnesses have been examined. D.W1, by name Arunachalam, has spoken about the travel allowance claim made by the accused for the period from June, 2006 to August 2006. D.W2, by name Kumaresan, has spoken about the attendance register during the relevant period. He explained the short forms used in the attendance register. So, after the examination of the witnesses were over and after hearing the arguments on either side, the trial Court recorded the finding of guilt and sentenced the accused to undergo imprisonment as noted above. Challenging the conviction and sentence, this Criminal Appeal has been preferred by the accused.

16.It is a case of P.W2, the defacto complainant turned hostile during the course of cross-examination for the reason unknown. He was examined on chief on 31.08.2010 and later, recalled and cross-examined on 25.06.2017 after about 7 years. During the time, he has given a complete go by statement over his earlier statement to the effect that fearing that he cannot get the SC certificate, he has given a complaint as if the appellant demanded Rs.100/- as bribe amount. According to him, his father belongs to Kerala and menon community, which in Kerala is a forward community.

17.P.W2 wanted to say that since the appellant visited his house for enquiry through auto, he handed over the money only towards the auto fare and at that time, the police team entered, but that amount was not accepted by the appellant and he pushed the money aside and he was also involved in more than one criminal case and originally he was a history-sheeter and later that was also removed. So, he was treated as hostile and the prosecution has cross-examined him. A suggestion was made to him that since because the appellant is facing the criminal prosecution, she may not get the pensionary benefit, only on that ground, a request has been made by the appellant, for which he also considered and so, turned hostile. So, as I mentioned earlier, why he turned hostile has not been properly brought on record. Probably as suggested by the prosecution, this might have been the reason. So, the question, which arises for consideration, is whether a man such character can be believed by taking into account his examination in chief. During chief, he was very clear to the effect that only this petitioner demanded Rs.100/- for the purpose of issuing the certificate. Not only there was an initial demand but also at the time of trap also there was demand and acceptance of money.

18.Now, let us go to the evidence of the official shadow witness namely P.W3. He would say that on the date at about 03.45 pm., P.W2 and himself entered into the office of the appellant and P.W2 made an enquiry with regard to the community certificate of his son and at that time, the appellant enquired him whether he has brought the money, which was demanded by her. After that, P.W2 put the money on the table, which was also hidden by the appellant below the tray. So, the prosecution has heavily relied upon the evidence of P.W3 to sustain their argument that there was a demand on the part of the appellant and acceptance of bribe amount also. So, the question, which arises for consideration is whether his evidence can be relied for the purpose of sustaining the conviction and sentence. When P.W2, who is the defacto complainant, himself turned hostile and was not willing to help the case of the prosecution, it may not be proper on the part of this Court to rely upon the shadow witness. The shadow witness has given a usual evidence to the effect that there was a demand and acceptance of money by the appellant.

19.However, the appellant would heavily rely upon the evidence of D.W1, who was working as Headquarters Deputy Tahsildar and also the Public Information Officer during the relevant period. He received a request for giving information with regard to the travelling allowance and bill claim of the appellant.

20.He would say that on 22.08.2006, the appellant said to have visited Tirunelveli on duty and returned to the office in the evening. So, according to the appellant, on 22.08.2006, she was not available in the office till evening. So, the evidence of P.W2 to the effect that there was initial demand on 22.08.2006 at about 10.30 am., by the accused is not at all reliable. So, according to the auused, when the initial demand fails, automatically the demand that is said to have taken place on the date of trap ie., on 25.08.2006 must also fail.

21.No doubt that from this document we can say that on 22.08.2006, the appellant was away from the office on other duty. She came to the office only in the evening. When the official document is taken into account, then the evidence of P.W2 to the effect that there was initial demand on 22.08.2006 at about 10.30 am., has naturally failed. When the initial demand fails, the only evidence that is available on record is now the evidence of P.W3. However, as I mentioned earlier, it is a routine and usual statement that has been given by P.W3 as usual in all the trap cases, which are experienced as to how they are giving evidences.

22.No doubt, the money was recovered from the appellant. Here also, we find some contradiction between the evidence of P.W2 and P.W3. P.W2 in chief examination has stated that after receiving the money, the appellant put the same below a tray. P.W3 would say that the money was received by the appellant by the left hand and it was put by her below a tray. P.W10, the Trap Laying Officer, would say that the money was handed over by the appellant, which was put below a tray, but quite contra to this, as I mentioned earlier, P.W2 during the course of cross-examination has stated that the appellant refused to receive the money and pushed it aside when he placed the same in the table.

23.So, from the evidence of Trap Laying Officer, it is seen that the money was recovered from the appellant, but when P.W2 has stated that the money was given by him towards the expenses that was incurred by the appellant for auto fare, the mere recovery of money is not sufficient enough to record the finding of guilt under Section 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 as has been settled position of law right from the case in ***B.Jayaraj Vs. State of Andhra Pradesh*** reported in ***(2014) 13 SCC 55*** up to the case in ***N.Sunkanna Vs. State of Andhra Pradesh*** reported in ***(2016) 1 Supreme Court Cases (Cri) 544.***

24.As pointed out by the learned counsel for the appellant, *Jayaraj's case* was followed by a later judgment, which was rendered in may 2014, whereas *Jayaraj's case* was decided on March 2014, wherein the Hon'ble Supreme Court has pointed out that when the initial demand has not been properly proved and when the defacto complainant himself turned hostile, the accused was acquitted. So also in *N.Sunkanna's case,* the same view has been taken. So, mere recovery of money is not sufficient enough to convict the accused.

25.In the facts and circumstances of the case, it may not be safe to convict the appellant for the offences punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. As I mentioned earlier, P.W2, who is the defacto complainant, turned hostile and the reason for him to turned hostile has been stated by the prosecution. If it is so, the only course available to the prosecution is to proceed the case against the defacto complainant, namely P.W2 for perjury. Such a course was also adopted by this Court in Crl.A (MD) Nos.61 & 138 of 2016 ***(R.Rajendran Vs. The State, rep.by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Nagercoil and another),*** vide order dated 11.12.2020.

26.In the result, this Criminal Appeal is allowed. The judgment of conviction and sentence passed by the trial Court dated 17.06.2016 in Spl.C.No.30 of 2014 is set aside and the accused is acquitted from the charges that have been framed against him. The fine amount paid already, if any, shall be refunded to the appellant and the bail bond shall stand discharged.

Sd/-

Assistant Registrar (CS III)

(*)Corrected as per the order of this court dated 18/08/2022 made in CRL.A.(MD.No.245 of 2016

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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(*) to be substituted the order already despatched on 04/08/2022

To

1.The Special Judge,
Special Court for Trial of Cases undertaken
Prevention of Corruption Act,
Tirunelveli.

2.The Inspector of Police,
Vigilance and Anticorruption Detachment,
Nagercoil,
Kanyakumari District.

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

+1 CC to M/s.R.KARTHIKEYAN, Advocate (SR-32020[F] dated 15/07/2022)

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14.07.2022

MGJ(27.07.2022) 7P 5C

KB(29.08.2022) 7P 5C