BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 29.04.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.94 of 2016

The State Rep by
The Public Prosecutor,
High Court, Madras,
(V&AC, Sivagangai, Crime No.6 of 2000)
: Appellant/Complainant

Vs.

M.Selvakumari
W/o.K.Illangovan,
Formerly E-1 Section Assistant,
Tahsildar Office, Karaikudi,
Sivagangai District. : Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code to set aside the judgment of acquittal of the respondent/accused passed in Special C.C.No.3 of 2014, dated 05.08.2015, on the file of the Special Court for Trial Cases under Prevention of Corruption Act, Sivagangai, and convict the respondent/accused for the offence framed against him in accordance with law.

For Appellant : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For Respondent : Mr.M.Subash Babu

JUDGMENT

The appeal has been preferred by the State against the judgment of acquittal that has been passed by the learned Special Court for Trial Cases under Prevention of Corruption Act, Sivagangai, in Special C.C.No.3 of 2014, dated 05.08.2015.

2.The case of the prosecution:-

P.W.2 lodged a complaint with the Inspector of Police, Vigilance and Anti Corruption, Sivagangai, stating that the respondent had demanded a sum of Rs.350/- for the purpose of issuance of a Community Certificate. On the basis of the complaint given by the defacto complainant, a trap was laid while the respondent accepted the bribe amount of Rs.350/-. Further proceedings were undertaken and the respondent was arrested; After completing the investigation, final report was filed before the Special Court for Trial Cases under the Prevention of Corruption Act, Sivagangai, stating that the respondent herein has committed the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, and the same was taken on file in Spl.C.No.3 of 2014 and framed the following charges as against the accused.

3.Charges against the respondent:-

(i) The first charge against the accused person, respondent herein is that she demanded a sum of Rs.350/- as bribe amount for the purpose of issuance of a Community Certificate, on 03.11.2000, thereby, she has committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

(ii) The second charge is that by demanding and accepting Rs.350/- as bribe amount, she has committed criminal misconduct and thereby, she is liable to punish for the offence under Section 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

4.After framing the above said charges, the respondent was questioned and she denied the charges. For proving the above said charges, the prosecution has examined 23 witnesses and marked 41 documents. On the side of the accused, no witness was examined and no document was marked and 3 Material Objects were exhibited by the prosecution.

5.The case of the prosecution in brief as narrated through examination of witnesses:-

P.W.2, Michael Basco is a resident of Kalluppatti, Karaikudi Taluk, Sivagangai District. He applied for the Central Reserve Police Force. For that purpose, he was required to submit his Community Certificate. An application seeking for Community Certificate was submitted by him before the Tahsildar, Karaikudi Taluk, Sivagangai District, on 21.03.2000. There was a delay in issuance of certificate. So, again on 01.11.2000, he submitted another application before the Deputy Tahsildar by enclosing the certificate issued by the Village Administrative Officer and the Revenue Inspector along with the relevant documents. That application was received by the Deputy Tahsildar who in turn, had handed over the same to one lady Clerk. On 02.11.2000, again, he approached the above said lady Clerk. At that time, she demanded a sum of Rs.350/- as bribe amount. Earlier occasion, when he approached the above said lady clerk, she demanded Rs.350/-. P.W.2 stated that he can only pay a sum of Rs.100/-. That was not accepted by the lady Clerk and at that time, some people in the office called the above said lady Clerk by her name as Sasikala. Later, he came to know that her name is Selvakumari. He was not willing to give bribe to the respondent. So, he consulted the issue with his friend namely, Kumar. Thereafter, they approached the Inspector of Police, namely, Mrs.Fathima Rohini, Vigilance and Anti-corruption Department, Sivagangai, with a complaint. She registered a case in Crime No.6 of 2000, which was marked as Ex.P.3 and further, trap process have been undertaken.

6.P.W.12 Mrs.Fathima Rohini, who was working as Inspector of Police, Vigilance and Anticorruption Department, Sivagangai, during the relevant point of time took the further process. She requested two official witnesses to assist the team for laying the trap. Upon which, two official witnesses namely, Ravichandran and Megalingam, were also secured. When the official witnesses appeared, she introduced them to P.W.2. P.W.2 also handed over the amount of Rs.350/-, which was having denomination of 2 hundred rupee notes (2x100)and three 50 rupee notes (3x50). She prepared the mahazar noting down number of the currency notes and prepared Sodium Bicarbonate Solution. The above said Ravichandran has smeared the phenolphthalein powder on the currency notes and further process has been undertaken and advised P.W.2 and the official witnesses with regard to the trap process. After completing the above said preliminary work, at about 02.15 p.m, all of them started from the office. At about 03.30 p.m, as instructed by her, P.W.2 and the witness Ravichandran had entered into the office of the accused.

7.**The further events were spoken by P.W.2**:-

When they entered the office, the concerned lady Clerk was not available in her seat. Then at about 05.45 p.m, Sasikala and the Tahsildar came to the office. At that time, he asked the Sasikala to issue the Certificate. She enquired whether the money was brought by him and asked him to keep the money in the table. He put the money in the table and came out of the office and made a signal as instructed by P.W.17, Fathima Rohini.

8.**Further events were spoken by P.W.17 Fathima Rohini**:-

She has stated that on seeing the signal of P.W.2, the Police Team entered into the office. The accused was identified by P.W.2. On seeing the Police Team, the respondent was found tensed. They prepared a solution containing Sodium Bicarbonate. They asked the respondent to dip her right hand. The respondent has also dipped her hand. It turned light purple colour. That solution was collected in the container and the same was sealed and labelled. Similarly, another solution was also prepared and her left hand fingers were required to dip. She also washed her left hand in the above said solution. That also turned in light purple colour. She collected the same in the another container. Sealed and labelled the same. The accused was arrested and further process of investigation was undertaken. The accused handed over the bribe amount, which was received by her. She compared the note number with that of the number that has been mentioned in the Mahazar, which was prepared in the office. It was found tallied. Recovery mahazar was prepared and also recovered the relevant documents from the office. For that also, they prepared the mahazar. They also searched the residence of the respondent and no incriminating documents or object was recovered or seized. Later, she recovered the relevant articles from the Taluk office, finding the correct name of the accused as Selvakumari and recorded the statement of the defacto complainant.

9.Further investigation was undertaken by P.W.22, Mohan, who was working as Deputy Superintendent of Police, Sivagangai, during the relevant point of time. He recorded the statement of witnesses and collected the relevant documents and filed the final report stating that the accused has committed the offence punishable under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Anticorruption Act, 1988.

10.P.W.3, Kumar is the friend of P.W.2. He has stated the whereabouts the application that was submitted by P.W.2 and demand of bribe by the accused.

11.P.W.4, Ravichandran, is a shadow witness. He assisted the Police during the pre-trap arrangement and trap arrangement also. As advised by the Trap Laying Officer, he along with P.W.2 went into the office of the respondent.

12.P.W.5, Megalingam is the another official witness and he has corroborated the Trap Laying Officer with regard to the pre-trap arrangement as well as the trap process.

13.P.W.6 Thiyagarajan, was working as an Employee in Head Quarters of Deputy Tashildar Office, Karaikudi, and he received the application from P.W.2 on 31.10.2000 and handed over the same to Selvakumari. He made relevant entries in the records.

14.P.W.7, who was also working as Junior Assistant in Tahsildar Office, Karaikudi on 06.11.2000, he was informed about the arrest of the accused.

15.P.W.8, who was also an employee of the Taluk Office, Karaikudi, and she heard that the accused was arrested.

16.P.W.9, who was also working as a Junior Assistant in Taluk Office, Karaikudi, who prepared the distribution record.

17.P.W.10, who was working as Tahsildar in Karaikudi, had issued the certificate on 05.11.2000.

18.P.W.11, who was working as a Village Administrative in Kallupatti Village, had recommended issuance of Community Certificate.

19.P.W.13, who was working as an Assistant in the Chief Judicial Magistrate Court, Thiruppathur, had received and sent the Material Objects for chemical examination.

20.P.W.14, Sasikala was working as an Assistant in Taluk Office, Karaikudi. She has stated that she was not working in the branch, where the OBC Certificates are issued.

21.P.W.15, who was working as a Scientific Assistant in the Forensic Science Laboratory, Chennai, had examined the material Objects and sent the relevant documents. P.W.16 also.

22.P.W.18, who was working as a Tahsildar in Taluk Office, Karaikudi, Sivagangai, had orally instructed the accused to be in-charge of community certificate issuing branch also.

23.P.W.19, who was working as a Record Clerk in Taluk Office, Karaikudi Taluk, Sivagangai District, had spoken about the official formalities with regard to the process of entry in the distribution records.

24.P.W.20, who was working as a Revenue Inspector in Karaikudi Taluk, Sivagangai District, had stated that he had handed over the file pertaining to P.W.2 and at that time, he informed him that another file is also pending.

25.P.W.21, who is the mother of P.W.2 and she had identified the signature.

26.With these examination of witnesses, the prosecution evidence was over. The accused was subjected to questioning under Section 313 Cr.P.C. She denied the allegation that was made against her by the prosecution.

27.On the side of the respondent, no witness was examined and no document was marked. At the conclusion of trial, the Trial Court found that the charge against the respondent were not proved beyond all reasonable doubts and acquitted the respondent. Against which, this appeal has been preferred by the State.

28.Heard both sides.

29.The appeal is against the acquittal. So, the power of the Court in respect of appeal against the acquittal has been well settled, more particularly, in the recent judgment of Hon'ble Supreme Court in the case of **N.Vijayakumar Vs State of Tamil Nadu in Crl.A.@S.L.P.(Crl.)Nos.4729-30 of 2020.** In the light of the above said guidelines that has been issued by the Hon'ble Supreme Court, now, let us go into the factual aspects.

30.It is not in dispute that P.W.2, the defacto complainant, submitted an application before the Taluk Office, Karaikudi, for the purpose of getting Community Certificate. According to him, two applications were given by him. Only in second application, action was taken. At that time, one lady Clerk, who was available in the office demanded Rs.350 as bribe. So, according to him, the demand was made on 01.11.2000, again on 02.11.2000. Along with P.W.3, he again went to the office and enquired with regard to the certificate from the concerned lady Clerk. Again, there was a demand of Rs.350/-. In pursuance of the above said demand only, a complaint was given by him before the appellant. So, according to him, on 01.11.2000 and 02.11.2000, Rs.350/- was demanded by the concerned lady Clerk. At that time, the name of the concerned lady Clerk was not known to him. But, however, he heard some staff in the office, called the above said lady Clerk as Sasikala. But, later only, he came to know the correct name of that lady is Selvakumari.

31.A reading of this portion of his evidence shows that he has not identified the concerned lady Clerk, who demanded bribe amount. But, that concerned Sasikala has been examined as P.W.14. She has stated in her evidence that she was not working in the Certificate issuing Branch in Karaikudi. But, how P.W.2 stated that the concerned Clerk was called by the staff as Sasikala is not understandable. Now, explanation has also been forthcoming. Even though, the Investigating Officer and the Trap Laying Officer has not verified this aspect as to how the confusion has occurred.

32.But, P.W.18, who was working as Tahsildar, Karaikudi, has stated that he directed the accused to look after the branch of Certificate Issuing Section from 22.04.2000. So, from his evidence, it is seen that the accused was directed to look after the above said Section from 22.04.2000. So, it is seen that only this accused was looking after the above said branch. Then, how the above said

Sasikala demanded the bribe amount, this aspect has not been properly looked into by the Trap Laying Officer and the Investigating Officer.

33.Let us go to the complaint given by P.W.2. He stated that the concerned Clerk name is Sasikala. This has been clarified by him during the course of evidence as stated above. Now, whatever it may be, it is clarified during the course of evidence that only the respondent was looking after the above said branch. So, according to the learned Additional Public Prosecutor, only the respondent had demanded money. But,P.W.2, during the course of evidence has stated that the respondent has not demanded any money or accepted the same as bribe. He also did not identify the accused during the course of trial. So, this is the major lacuna, which is available on record.

34.Let us, ignore the evidence of P.W.2 for a while since the learned Additional Public Prosecutor has stated that he was won over by the accused taking advantage of delay in prosecution.

35.But, P.W.3, who is the friend of P.W.2 has also turned hostile. He did not support the case of the prosecution case as to the demand of bribe amount by the accused. So, the original demand that has been allegedly made by the respondent on 01.11.2000 and 02.11.2000 has not been properly established.

36.With this handicap in mind now, let us go to the trap occurrence.

37.Here, again, P.W.2 has given a contra statement before the Court. So, at that time, the accused enquired him whether he has brought the money. He put the money in the table and went out of the office.

38.Another shadow witness namely, Ravichandran, who was examined as P.W.4 has stated that he approached the accused and enquired about the certificate. At that time, the respondent enquired whether he has brought the money. When P.W.2 try to pay the money, he was taken to another area and asked him to put the money in the table. P.W.2 had handed over the money and the accused had received it and put the same beneath the type writer.

39.The learned Additional Public Prosecutor would submit that now, the demand and acceptance of money on the date of trap has been clearly established by the prosecution. But, that was not taken into account by the Trial Court.

40.The question which arises for consideration is that **whether from the evidence of P.Ws.2 & 3, the demand and acceptance of money on the date of trap is established beyond all reasonable doubts.**

41.Here, comes identification of the person, who demanded the bribe amount on 02.11.2000, the concerned staff was called as Sasikala as mentioned above. That name was also mentioned in the complaint on 03.11.2000. When the trap was laid, how the name of the concerned lady has been correctly identified is not clear on record. Absolutely, this important aspect has been omitted to be taken notice of by the Trap Laying Officer. Even P.W.4 has not stated anything about this important aspect. As mentioned earlier, he has stated that the accused Selvakumari, enquired P.W.2 whether he has brought money. But, her name was identified only after the arrest.

42.It has been pointed out by the learned counsel for the respondent to the effect that when the accused was brought to remand, finding the issue of name change of the accused, the concerned Magistrate asked the police to rectify the same. Only subsequent to that, it was rectified. So, who actually demanded money is not clear on record. Because P.W.2 is the competent person to speak about the above said demand. But, as mentioned earlier, he has not supported the prosecution case and not even identified the accused as mentioned earlier. But, in the recovery mahazar, the respondent has signed as Selvakumari. So, it is seen that only she was identified by P.W.4 and P.W.2. But, P.W.4 was not very clear in his evidence to the effect that whether the money was placed by the respondent behind the type writing machine and that was not informed to P.W.17 also. So, it is not safe to rely upon P.W.4 fully for finding that the respondent had enquired P.W.2 as to whether he has brought the money and accepted the same.

43.Where money was actually put up by P.W.2 is also a contradictory version. He has stated that P.W.4 stood near the Computer, he only went inside the place; where P.W.4, Ravichandran was standing was not visible from the place, where he put the money. So, this important piece of evidence of P.W.2 shows the material contradiction between the evidence of himself and P.W.4. So, even though, the Sodium Bicarbonate Solution test shows positive result, but, in the circumstances of the case, it is not safe to rely upon the evidence of P.W.4. When there are contradictory version with regard to the identification of the person, who demanded the money.

44.In the light of the above said discussion, the contention on the part of the appellant that since another view is also possible, when the Trial Court judgment is perverse, the interference by this

Court is required, is not acceptable. No doubt, there are two views possible in the peculiar facts and circumstances of the case. But, this Court cannot substitute its own view finding that the view has been expressed by the Trial Court is not correct one. That has been uniformly held that mere recovery of money is not sufficient to prove the guilt of money demand and acceptance.

45.Here, not even recovery has been effected from the respondent. Only the Sodium Bicarbonate Solution Test turned positive. So, I am of the considered view that this is not a fit case to interfere on the judgment of acquittal that has been passed by the Trial Court.

46.In the result, the appeal fails and dismissed. The judgment of acquittal that has been passed by the Special Court for Trial Cases under Prevention of Corruption Act, Sivagangai, in Spl.C.No.3 of 2014, is confirmed.

Sd/-

Assistant Registrar(AD-I)

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Sub Assistant Registrar(CS)

dss

To

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

2. 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.(2 copies)

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-22786[F] dated 29/04/2022)

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