IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.06.2023

Pronounced on :09.06.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.633 of 2016

Maruthavani @ Maruthammal .. Appellant/Accused

/versus/

State Represented by
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-IV,
Chennai 600 035. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the judgment passed against the appellant, convicting and sentencing the appellant by the learned Court of Special Judge for Prevention of Corruption Act cases Chennai 104 by the judgment dated 08.08.2016 made in C.C.No.101 of 2011/Old C.C.No.19 of 2009 and acquit her from all the charges.

For Appellant :Mr.K.Shankar

For Respondent :Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)

JUDGMENT

The appellant, Maruthavani @ Maruthammal is a public servant working as Multi Purpose Village Health Worker in Tiruvallur District. She was convicted by the trial Court for receiving a bribe of Rs.300/- from Tmt.P.Indra for handing over the cheque of Rs.3000/- meant for women under the Government Dr Muthulakshmi Reddy Maternity Scheme.

2. Against the conviction and sentence of six months Rigorous Imprisonment and fine of Rs.250/- in default, one month Simple Imprisonment for the offence under Section 7 of Prevention of Corruption Act,1988 and One year Rigorous Imprisonment and fine of Rs.250/- in default, one month Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the accused has preferred the above Appeal.

3. The case of the prosecution is that the defacto complainant got conceived in the year 2007. The Government of Tamil Nadu, provide financial assistance to poor pregnant women under Dr. Muthulakshmi Reddy Maternity women welfare Scheme. and to avail the said benefit, the defacto complainant got herself registered with the help of the accused, who is the Multi purpose Village Health Worker of that area. On registration, she received Rs.3000/-, during the pregnancy and soon after the delivery of a male baby on 08/04/2008, she was entitled for another instalment of Rs.3000/-. The complainant, on 07/11/2008 at about 10.00 A.M. was informed by the accused that the cheque for Rs.3000/- is ready and to get the cheque she should pay Rs.300/- as bribe. The accused told the the defacto complainant to be ready with the bribe money and she will come on 13.11. 2008 at 10.00 A.M to collect the bribe money and give the cheque.

4. Not interested in giving bribe to get the financial assistant provided by the Government, the defacto complainant went to the office of the Vigilance and Anti-Corruption on 12/11/2008 and reported about the demand of illegal gratification. The Deputy Superintendent of Police registered the complaint under Section 7 of the Prevention of Corruption Act, 1988. He arranged two official witnesses working in the Tamil Nadu Housing Board and conducted pre-trap demonstration on 13.11.2008. Three hundred rupees notes were smeared with phenolphthalein powder and entrusted to the defacto complainant and was instructed to offer it to the accused if she demands.

5. The defacto complainant along with the official witnesses and the trap team proceeded from the Directorate of Vigilance and Anti-Corruption office to the house of the defacto complainant, where the accused was supposed to come to give the cheque after collecting the bribe. The defacto complainant and the shadow witness were in the house expecting the accused, but the accused did not turn up till 9:35 A.M. So, the de facto complainant went to the nearby provision stores and called the accused over the PCO phone to ascertain when the accused will come to her house to give the cheque and collect the bribe money. The accused informed the de facto complainant that she is in the house at Nehru Nagar, where she gave the green card and Rs.600/- to the de facto complainant and told the de facto complainant to come to that house and collect the cheque after giving the bribe money.

6. The defacto complainant informed this to the Trap Laying Officer waiting near her house and at around 10.15 a.m reached the place mentioned by the accused at Nehru Nagar, The complainant met the accused at the house of Mariammal at Nehru Nagar. The accused received the bribe money of Rs.300/- and gave the cheque to the defacto complainant and got the signature of the complainant in the photocopy of the cheque as an acknowledgement for receiving the cheque. After giving the bribe money, the de facto complainant gave the pre arranged signal to the trap team waiting outside and the trap team headed by the Trap Laying Officer, went to the accused and asked her to hand over the money received from the defacto complainant.

7. The accused handed over Rs 300/- to the Trap Laying Officer. The right and left hand of the accused was tested with sodium carbonate solution separately. The colour of the solution turned light red confirming the presence of phenolphthalein. For chemical analysis, the solution was collected in the bottles separately and sealed. The accused was taken to the Ayanavaram hospital, where she was working. The Medical Officer was informed about the trap and the arrest of the accused. The house of the accused was searched, but no incriminating material recovered.

8. On completion of investigation, after obtaining sanction for prosecution Final Report was laid. On perusing the records, the trial Court framed charges under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of

Corruption Act,1988. The Prosecution, to prove the charges examined 11 witnesses. marked 15 exhibits and 3 Material Objects. In defence the accused, examined 2 witnesses and marked 2 Exhibits.

9. The trial Court on appreciation of the evidence held that, Ex.P-4, cheque drawn in favour of Indra (PW-2) is dated 29/08/2008. Ex.P-9, the photo copy of the MTR register indicates that Rs.3000/- to be paid to the defacto complainant and to that effect, the bill was passed on 23/08/2008 and the cheque prepared thereafter. According to the medical officer (PW-8), the cheque was handed over to the accused on the day the cheque drawn, with an instruction that the cheque should be handed over to the de facto complainant. However, till the day of trap (13/11/2008) the accused was withholding the cheque and had not handed it over to the de facto complainant. Therefore, the direct and circumstantial evidence prove that, expecting bribe, the cheque was not given to the beneficiary and only after obtaining the bribe money of Rs.300/- the accused had given the cheque. Hence, held the accused guilty of offences of demanding and obtaining bribe.

10. Being aggrieved, the accused has preferred the appeal on the ground that there is material lapse in the case of the prosecution, which has been overlooked by the trial Judge. According to the learned counsel appearing for the appellant, PW1 has not applied his mind while granting sanction to prosecute. Though the accused has duly explained the circumstances under which the tainted money was recovered from her possession at the time of trap, the sanctioning authority had not considered the explanation. PW-2 came to collect the cheque belatedly though she was admittedly informed about it to collect the cheque on 07/11/2008 itself. Therefore, no adverse inference could be drawn agains the accused as if she was withholding the cheque expecting bribe. The defacto complainant has not explained why the complaint was given belatedly on 12/11/2008 for the alleged demand of bribe on 07/11/2008. The tainted money in the purse was left with the accused by the defacto complainant. The TLO asked to take the money and give accordingly, she took out the money and gave it to the TLO. The said explanation given at the earliest point of time to the Trap Laying Officer soon after the trap suppressed. Mere recovery of tainted money cannot be a reason to hold the accused guilty of receiving bribe. The trap site which was originally fixed at the house of the defacto complainant suddenly shifted to the house of PW-6 at Nehru Nagar and there is no acceptable explanation, why the trap site was shifted. The official witnesses admit that they were present in the office of Vigilance and Anti-Corruption on 12.11.2008 itself and signed in the complaint. Whereas the Trap Laying Officer (TLO) had deposed that these two witnesses came only on the day of trap. Further, there is no document to show that the Trap Laying Officer made request to the higher official of the shadows witnesses to spare their service to be as witnesses. PW-3 [Kalaiselvi], who is one of the official witness and asked to be the shadow witness, had turned hostile. PW4 [T.R.S.Vijayabalan] the other official witness had not seen the demand or acceptance of the money by the accused. His testimony about the recovery of the tainted money from the purse of the accused is unbelievable. PW-4 in the chief examination had deposed that the accused took out the tainted money from her purse. Whereas, in his previous statement recorded under Section 161 Cr.P.C, he has not stated about where the accused had the tainted money. Therefore, the evidence of PW-4 due to the embellishment has lost reliability. The tainted money alleged to have been recovered from the purse of the accused by PW-3 and PW-4. But, the purse was not recovered. No whisper whether the accused had any other money or other articles in her purse. To overcome this lapse, the TLO had deposed that the accused was keeping the money in her right hand and asked her to give soon after the defacto complainant identified the accused. The TLO, Saraswathi (PW-10) before conducting the sodium carbonate test, had asked the accused to touch the currencies smeared with phenolphthalein. This has rendered the sodium carbonate- phenolphthalein test redundant. PW-2, the de facto complainant has deposed that the accused after receiving the bribe money was keeping it in her hand. PW-3 and PW-4 had deposed that the accused had the money in her purse. TLO had deposed that the money was in the right hand of the accused. If the money was kept in the purse of the accused and later recovered, The contradiction is fatal to the prosecution case. Having failed to prove the fundamental fact of demand of bribe and obtainment of bribe, mere recovery of money is not sufficient proof of offence under Section 7 or 13(1)(d) of the Prevention of Corruption Act, 1988.

11. Per contra, the learned Government Advocate (Crl.Side) submitted that the complainant PW-2 got conceived in the year 2007. Knowing that, the accused came to the PW-2 house and collected documents required for registering her name for the financial benefit provided by the Government. PW-2 delivered a male baby on 07/11/2008. The accused informed PW-2 that a cheque for Rs.3000/- is ready and if she could arrange for Rs.300/- as bribe, she will get the cheque. PW-2 sought time to arrange the money and for which the accused told PW-2 that she will come to her house on 13/11/2008, at that time, to keep bribe money ready and she will collect the bribe money and handover the cheque. These are the fundamental facts required to be proved by the prosectuion and the same has been duly proved through the testimony of PW-2. The cheque dated 29/08/2008 marked as PW-4. Expecting bribe it was not given to the PW-3 till 01/08/2008. Based on the complaint Ex.P-2, the trap was laid. The accused was caught red handed with Rs.300/- marked currency. The accused admits that the money was recovered from her possession. Her explanation for the possession is against all probability. Therefore, neither the sanctioning authority PW-1 nor the Court accepted the explanation as sufficient to rebut the presumption. The complaint was received on 12/11/2008 at 15.00 hours. PW-10, arrange for independent witnesses from the Housing Board office which is located in the same building where the Vigilance and Anti Corruption office is located. These official witnesses when informally reported to PW-10 and she asked them to come on the next day at 7.00 am.

12. The learned Government Advocate (Crl.Side) further submitted that the trap site got changed because the accused who earlier informed the de facto complainant that she will come to the defacto complainant-(PW 2) house and collect the bribe money, did not turn up and when contacted over phone by PW-2 the accused told PW-2 to come to the house of PW-6 at Nehru Nagar and collect the cheque after giving the bribe money. This fact been proved by PW-5 the provision shop/PCO owner from where PW-2 called the accused and by PW-6 the house owner of the trap site. The accused having admitted the recovery of M.O-1 series currency from her possession, the contradiction whether it was recovered from the purse or from the right hand of the accused pales to insignificance.

13. The point for determination in this case is, whether the prosecution has proved the fundamental fact required for presuming that the accused demanded bribe of Rs.300/- to give the cheque of Rs.3000/- to the defacto complainant and on pursuant to the demand on 07.11.2008, whether she received Rs.300/- on 13.11.2008?

14. It is the case, where the prosecution has alleged that the accused demanded Rs.300/- on 07.11.2008 from the defacto complainant and pursuant to that, on 13.11.2008, she received the bribe money of Rs.300/-. The defacto complainant Tmt.P.Indira, who was not inclined to give bribe, has gone to the office of the Directorate of Vigilance and Anti-Corruption and given the complaint Ex.P-2, about the demand of bribe and as a sequence of the complaint, trap has been laid and the tainted money smeared with phenolphthalein found in possession of the accused was recovered from the accused on 13.11.2008.

15. According to the prosecution, the scene of trap was the residence of PW-6 (Tmt.Mariammal) where the accused normally used to meet the villagers to give the health tips as Multi-purpose Health Worker. The finding of the trial Court faulted by the learned counsel appearing for the appellant on the ground that as per the complaint, it is stated that the accused will come to the house of the defacto complainant to collect the bribe money. Accordingly, the trap team were waiting for the accused near the house of the defacto complainant till 10' o clock, but all of the sudden, the trap site was shifted to the house of PW-6 (Tmt.Mariammal) at Nehru Nagar. PW-2, the defacto complainant had informed the Trap Laying Officer about her telephonic conversion with the accused and proceeded to Mariammal house at Nehru Nagar along with the shadow witness (Tmt.Kalaiselvi, PW-3) followed by the trap team. Though the learned counsel appearing for the appellant heavily harp on shifting of the trap site, it is not unusual. The prosecution has clearly explained the reason for shifting the trap site and it was not done on their discretion but the accused has called the defacto complainant to the residence of Mariammal (PW-6) at Nehru Nagar and that was the place, earlier the defacto complainant received Rs.600/- cheque from the accused.

16. The further contention of the learned counsel appearing for the appellant is that the accused soon after the trap has explained to the Trap Laying Officer that she refused to receive the money offered by PW-2, but the money was thrusted. This explanation form part of the record sent to the sanctioning authority (PW-1) and he has admitted in the cross examination that the statement of the accused was sent along with the other papers for his consideration and he saw the explanation of the accused, however, he accorded sanction being *prima facie* satisfied that the accused is liable to be prosecuted for the offence under the

Prevention of Corruption Act,1988. The learned counsel appearing for the appellant contended that it is proof of non-application of mind, The sanctioning authority has failed to call for explanation from the accused before according sanction,

17. The contradiction among the prosecution witnesses regarding the recovery of tainted money is glaring in this case. Firstly, PW-2 (Tmt.P.Indira) as well as the entrustment mahazar marked as Ex.P3 and the evidence of shadow witness Tmt.Kalaiselvi (PW-3) consistently say that the bribe money smeared with phenolphthalein was entrusted to the defacto complainant (PW-2) and the money was kept in her empty purse with an instruction that she should take the money out only if the accused demands bribe. While so, PW-2 in her deposition had stated that after calling the accused on 13.11.2008, she went to the house of Mariammal (PW-6) at Nehru Nagar at about 10'0 clock. The defacto complainant handed over all the documents like, bank passbook, green colour card and then the accused enquired whether she has brought the bribe money of Rs.300/- for which the defacto complainant took out Rs.300/- from her purse and gave it to the accused. The accused counted the money and kept in her right hand. After signing the photocopy of the cheque and the acknowledgement of receiving the original cheque of Rs.3000/-, the defacto complainant has come out and shown pre-arranged signal to the trap team. PW-3[Tmt.Kalaiselvi] shadow witness who accompanied PW-2 to the house of Mariammal to give the bribe money and collect the cheque, had deposed that when the accused enquired whether PW-2 had brought the money, PW-2 opened the purse and showed the money to the accused. Thereafter, the accused received it in her right hand and after counting it, she kept it in her bag. PW-3 was declared as hostile and subject to cross examination. This witness had deposed that after getting pre arranged signal, the trap laying officer came to the spot and the defacto complainant Tmt.P.Indira identified the accused. Soon thereafter the Deputy Superintendent Police/ the Trap Laying Officer enquired the accused and asked the accused to take out Rs.300/- from the bag. After some hesitation, the accused took out the money from the purse and gave it to the Trap Laying Officer.

18. The prosecution has examined the other shadow witness Tr.T.R.S.Vijayabalan, (PW-4), who is an official witness working as Assistant in the Housing Board. He was present when the Trap Laying Officer recovered the money from the accused. He had deposed that when the Trap Laying Officer enquired the defacto complainant, whether the accused received the money, the defacto complainant answered in affirmative and told the Trap Laying Officer that the accused received the money and kept in her purse and thereafter, the Deputy Superintendent Police enquired the accused about the money and recovered the money from the accused which was kept in the purse.

19. As far as the recovery of the money from the accused, there is contradiction. Whether the money was kept by the accused in her hand or in her purse is not certain. The accused by way of explanation had said that, the money was forcibly thrusted on her by the defacto complainant and she had never demanded the money. Since the recovery of the money is admitted but the possession denied as not a conscious possession but forcibly thrusted possession, it is necessary to test the veracity of the prosecution witnesses.

20. While scrutinising their testimony, the evidence for first demand of bribe emanates from the testimony of PW-2 and for the second demand from PW-2 and PW-3.

21. As far as PW-3's testimony is concerned, she is an official witness and was sent to assist the prosecution, to oversee the trap and report to the Trap Laying Officer. There is no evidence to show that the Trap Laying Officer made a request to the higher official of PW-3 and PW-4 to spare their service to be as shadow witnesses and further, there is a contradiction in the evidence of PW-3 and PW-4 regarding their reporting to the Trap Laying Officer (PW-10) The presence of shadow witnesses on 12.11.2008 is admitted by PW-3 and PW-4 but denied by PW-10,the Trap Laying Officer. In this regard, though it is stated by PW-3 that there was a written communication from the Trap Laying Officer to her higher official and an order from the higher official to her to attend the DV and AC office, no such document marked by the prosecution. PW-2, the defacto complainant, who gone to the DV and AC office on 12.11.208 at 3.00 p.m and lodged the complaint, had not stated anything about the presence of the official witnesses PW-3 and PW-4 on the date of his complaint. However, this Court finds, the signatures of the official witnesses Tmt.Kalaiselvi and Tr.Vijayabalan in the complaint marked as Ex.P2 dated 12.11.2008, received at 3.00 pm. PW-3 had deposed that she visited the DV and AC office only on 13.11.2008 on the day of trap and signed on the bottom of the complaint. PW-4 had also deposed that he went to the DV and AC office only on 13.11.2008. However, during the cross examination, PW-4 admits that he and PW-3 went to the DV and AC office on 12.11.2008 at 06.00 p.m in the evening and met the Trap Laying Officer PW-10-Tmt.S.Saraswathy and on her instruction, they both went to the DV and AC office on the next day i.e 13.11.2008 and stood as witnesses for the pre trap proceedings and recovery proceedings.

22. Mere recovery of tainted money from the accused is not sufficient proof for demand and acceptance of illegal gratification. In ***Arokiaraj and another -vs- State by Inspector of Police, Vigilance and Anti Corruption, Chennai City-I Detachment, Chennai*** reported in ***2014 SCC OnLine Mad 13046,*** the Hon'ble Supreme Court has held that:-

> *"15. Mere proof of receipt of money by the 2nd Appellant, in the absence of proof of demand of illegal gratification is not sufficient to prove guilty of the accused. It is well settled by a catena of decisions of the Honourable Supreme Court that mere proof of receipt of money by an accused, in the absence of proof of demand and acceptance of money as illegal gratification will not be sufficient to*

establish the guilt of the accused in a corruption case. The Honourable Supreme Court has held in T. Subramanian v. State of Tamil Nadu ((2006) 1 LW (Cri) 269 : (2006) 1 SCC (Cri) 401) thus:

> *"Mere proof of receipt of money by accused, in the absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilty of the accused. If accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification accused would be entitled to acquittal."*

23. It is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to following observation in ***Mukut Bihari and Anr. v. State of Rajasthan*** reported in ***[(2012) 11 SCC 642]***, wherein it was held as under:-

> *"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe.*
>
> *Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any*

> *evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act.*
>
> *While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."*

24. This Court finds that the lapse on the part of the prosecution to prove that the money recovered from the accused was received by her on demand and she demanded it as illegal gratification stands highly doubtful. According to PW-3 and PW-4, the tainted money was kept by the accused in her purse and from the purse she took out the money and gave it the Trap Laying Officer. Whereas the Trap Laying Officer (PW-10) had deposed that the accused was having the money in her right hand. If the money was kept in the purse by the accused, the Trap Laying Officer (PW-10) ought to have recovered the purse. This omission gains much significance in this case, because according to the entrustment mahazar, the tainted money was kept in the empty purse of the defacto complainant and she was instructed to take out the money and gave it to the accused, if she demands the money. That purse has also not been produced before the Court. PW-2 the defacto complainant in her evidence had stated that the accused received the money and kept in her hand, she came out and gave the pre arranged signal to the trap team and the trap team entered into the house of PW-6(Tmt.Mariammal) and she identified the accused. She did not depose that the accused had kept the tainted money in the purse. The contradiction between PW-2 and the testimony of PW-3 and PW-4 regarding purse of the accused and conduct of the Trap Laying Officer commanding the accused to take out the money and hand over it even before conducting sodium carbonate test probabilise the case of the defence that the money was thrusted by the defacto complainant to the accused who was sitting on the floor dealing with files and before she could realise, she was caught by the Trap Laying Officer.

25. The explanation given by the accused at the time of trap not placed before this Court. For the said reason, the infirmity in the prosecution case and the contradiction among the key witnesses regarding recovery renders the prosecution case highly doubtful. Therefore, the judgment of the trial Court deserves to be reversed.

26. Accordingly, the judgment of conviction and sentence imposed by the Special Judge for Prevention of Corruption Act Cases, Chennai made in C.C.No.101 of 2011/old C.C.No.19 of 2009 dated 08.08.2016 is hereby set aside. ***The Criminal Appeal 633/2016 is allowed.*** Fine amount if any paid by the appellant shall be refunded to her. Bail bond if any executed by the appellant shall stand cancelled.

09.06.2023

Index:yes
speaking order/non speaking order
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To:
1.The Special Court for Prevention of Corruption Act Cases, Chennai.
2.The Deputy Superintendent of Police, Vigilance @ Anti-Corruption, Chennai City-IV, Chennai.
3.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Delivery judgment made in
Crl.A.No.633 of 2016

09.06.2023