IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.06.2023	Pronounced on:21.06.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.772 & 780 of 2016

Crl.A.No.772 of 2016:-

N.Rajalakshmi,
W/o. Mr.T.Nanadagopal,
Junior Assistant (Under suspension),
Office of the Regional Transport Office,
Chennai South, ECR Road,
Thiruvanmiyur,
Chennai – 600 078. ... Appellant/Accused in Crl.A.No.772 of 2016

/versus/

The State represented by:
The Deputy Superintendent of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption Police,
Chennai – 600 028.
(Ref Crime No.6 of 2008 dated 19.09.2008) ... Respondent/Complainant in Crl.A.No.772 of 2016

Prayer in Crl.A.No.772 of 2016: Criminal Appeal has been filed under Section 374 r/w 382 of Cr.P.C., pleased to set aside the conviction and sentence of 1 year and 6 months R.I besides fine of Rs.1000/- in default 2 months R.I imposed in C.C.No.99/2011, dated 2nd November 2016 by the Special Judge for the cases under Prevention of Corruption Act, Chennai, for the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, Chennai.

For Appellant in Crl.A.No.772 of 2016 : Mr.A. Ramesh, Senior Counsel for Mr.C.Arun Kumar.

For Respondent in Crl.A.No.772 of 2016 : Mr.S.Udaya Kumar, Government Advocate (Crl.Side)

Crl.A.No.780 of 2016:-

P.Starven Cyril,
S/o. Parthose,
No.2/927, Eshwara Avenue,
Molachur, S.V.Chatram,
Kancheepuram District – 602 106. ... Appellant/Accused 2 in Crl.A.No.780 of 2016

/versus/

State by:
Deputy Superintendent of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption Police,
Chennai – 600 028.
(Crime No.6 of 2008) ... Respondent/Complainant in Crl.A.No.780 of 2016

Prayer in Crl.A.No.780 of 2016: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., against the judgment of the Special Court for the cases under Prevention of Corruption Act, Chennai, made in C.C.No.99 of 2011 (Old C.C.No.2

of 2010), dated 02.11.2016, convicting the appellant/accused No.2 under Section 12 of Prevention of Corruption Act, 1988 sentencing him to undergo six months R.I and also to pay fine of Rs.500/- in default to undergo for a further period of one month.

For Appellant in Crl.A.No.780 of 2016	: Mr.C.Arun Kumar, for Mr.R.Rajasekaran
For Respondent in Crl.A.No.780 of 2016	: Mr.S.Udaya Kumar, Government Advocate (Crl.Side)

C O M M O N J U D G M E N T

These two Criminal Appeals are directed against the judgment rendered by the Special Court for Prevention of Corruption Act Cases, Chennai, in C.C.No.99 of 2011, dated 2nd November 2016 holding the 1st appellant guilty of offences under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and sentenced her to undergo 6 months R.I and to pay fine of Rs.500/-, in default to undergo 1 month S.I for the offence under Section 7 of the Prevention of Corruption Act, 1988 and 1 year R.I and to pay fine of Rs.500/-, in default, to undergo 1 month S.I for the offence under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. As far as 2nd appellant is concerned, the Trial

Court found her guilty of offence under Section 12 of the Prevention of Corruption Act, 1988 and sentenced him to undergo 6 months R.I and to pay fine of Rs.500/-, in default, to undergo 1 month S.I. The period of sentences was ordered to run concurrently.

2. Based on the complaint given by one Gnanaprakasam(PW-2) informing about demand of bribe in RTO office for transfer of permit in respect of his Maxi Cab bearing Regn.No.TN-20-AF-6754 in his name. In the complaint, he stated that he gave his application on 20.08.2008 at RTO Office, Thiruvanmiyur. The lady, who was dealing with the transfer of permit of Maxi Cab had not processed the application, in spite of his repeated visit to the RTO Office, Thiruvanmiyur. On 18.09.2008, at about 11.00 am, when Gnanaprakasam met the said lady, she told him to come at 4.00 p.m and then, changed to 7.00 p.m. He met the said Lady on 7.00 p.m and enquired about his application, at that time, she demanded Rs.600/- as bribe to process the permit transfer application and told him to come on 19.09.2008 at 6.00 p.m with money. She also told that, if she is not present in her seat, he can give the bribe money to the person, who is standing nearby her, who was later came to be known as Tr.P.Starven Cyril(A2). Not interested to give bribe, the defacto complainant had sought the Vigilance Inspector to take action against that Lady for demanding illegal gratification for processing his transfer permit application.

3. Based on the complaint, First Information Report was registered against the woman clerk (name not known), Maxi Cab Section, RTO Office, Thiruvanmiyur and Tr.Starven Cyril acted as a tout. The Inspector of Police, arranged two Official witnesses and laid trap for the accused. On 19.09.2008 at about 18.15 hours at RTO, Thiruvanmiyur, A1 (Tmt.J.Rajalakshmi), the clerk dealing with Maxi Cab Section, demanded the bribe money and when it was offered by the defacto complainant, Gnanaprakasam, she told the defacto complainant that she had instructed A2, he will collect the money then A1 left the office at about 6.40 p.m. 2/Starven Cyril, to receive the money. A2/Starven Cyril came and received the bribe money. He kept it in his right side pant pocket, after counting the same. The transfer permit was handed over to the defacto complainant by A2/Starven Cyril. The trap team, after receiving pre-arranged signal from the defacto complainant, entered the RTO Office, Thiruvanmiyur, introduced themselves to A2. The tainted money of Rs.600/- was recovered from

A2/Starven Cyril. The hands of A2/Starven Cyril and his right side pant pocket were subjected to phenolphthalein test by dipping it in the Sodium Carbonate solution. The test turned to be positive and therefore, the solutions were collected for chemical analysis. The tainted money of Rs.600/- was seized and Rs.6,450/- not satisfactorily explained by A2/Starven Cyril was also seized.

4. After completion of investigation, Final Report was filed stating that, A1/Rajalakshmi, Junior Assistant at Regional Transport Office, Thiruvanmiyur, Chennai, is a public servant. She with the aid of A2/Starven Cyril, a private individual, who acted as a tout, in the RTO Office, Thiruvanmiyur, had demanded and received bribe of Rs.600/- as a reward or motive to process the transfer permit application submitted by the defacto complainant.

5. The trial Court, after considering the materials collected by the prosecution in the course of investigation, has framed charges against A1/Tmt.Rajalakshmi for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and as against A2/ Starven Cyril, for the offence under Section 12 of the Prevention of Corruption Act, 1988.

6. To prove the charges, the prosecution examined 11 witnesses (P.W.1 to P.W.11), marked 11 Exhibits (Ex.P.1 to Ex.P.11) and 6 material objects (M.O.1 to M.O.6). On the side of the defence, A2/Starven Cyril was examined as D.W.1, Mr.Kathirvelu and Mr.Paulraj was examined as D.W.2 and D.W.3 and 4 exhibits were marked (Ex.D.1 to Ex.D.4).

7. On appreciating the documentary evidence and the oral arguments of the learned counsel appearing for the appellants and the Learned Government Advocate (Crl.side) for the respondent, the Court below held both the accused guilty and sentenced them as stated above.

8. Being aggrieved by the order of the trial Court, the present Criminal Appeals are preferred by the appellant/accused.

9. The gist of the prosecution case unravelled through the witnesses:-

P.W.2 [Tr.Gnanaprakasam] purchased a maxi cab bearing Regn.No.TN-20-AF-6754 in the month of May 2008. He submitted requisite application for name transfer, cancellation of HP termination endorsement, permit transfer and

Insurance at Thiruvanmiyur RTO office, during the month of June 2008, since he resides within the jurisdiction of Thiruvanmiyur RTO Office. He paid Rs.625/- fees for name transfer of the vehicle and transfer of jurisdiction from Thiruvallur to Thiruvanmiyur. In the month of August 2008, he received a letter from Thiruvanmiyur, RTO office and he was instructed to submit the application in the tapal Section of RTO office, Thiruvanmiyur. When he went to RTO office and enquired, he was instructed to hand over the application form and other documents to A1/Rajalakshmi, who was dealing with the Maxi Cab Transfer Application. A1/Rajalakshmi told the complainant to come after one week. When he met her after one week, she told him to come next week. Third time, when he met her again, she told him to come on some another day. Likewise, he was made to come to the RTO Office, on different dates but there was no progress in his application. At last, on 18.09.2008, at about 11.00 a.m, when P.W.2 met A1/Rajalakshmi, she told him to come at 4.00 p.m. When he met at 4.00 p.m, she asked to come at 7.00 p.m and when he was at 7.00 p.m, he assured that the papers will be ready and for that purpose, she must be paid Rs.600/- as reward. She also instructed that if she is not present in the office, the money shall be given to A2, who was standing near her. When P.W.2 enquired the name of the person, he told his name is Tr.Starven

Cyril and said to go what A1 instructs. Then A1 told P.W.2 to come on 19.09.2008 at 6.00 p.m along with money. Not interested in giving the bribe, he has gone to Vigilance Office at Greenways Road and gave a written complaint marked as Ex.P.2.

10. Based on the above complaint, the First Information Report was registered and PW-2 affixed the signature in the FIR at about 3.45 p.m. Two Official witnesses Sridhar (not examined) and Balagurunathan (P.W.3) were organised by the Inspector of Police and they were introduced to P.W.2. The entrustment mahazar was prepared narrating the demonstration of phenolphthalein–sodium carbonate test and handed over to PW-2 six Rs.100/- currency smearing it with phenolphthalein. After the numbers noted in the mahazar, the entrustment mahazar signed by P.W.2 is marked as Ex.P.3. Thereafter, P.W.2 (Gananaprakasam) and P.W.3 (Balagurunathan) were asked to meet the accused at her Office. The team reached the RTO Office, Thiruvanmiyur, between 6.15 p.m to 6.20 p.m. P.W.2 (Gananaprakasam) and P.W.3 (Balagurunathan) met A1/Rajalakshmi. On seeing P.W.2, A1 informed that, the papers are ready, whether he has brought the money demanded. After ensuring that PW-2 had brought the bribe money, told PW-2 to wait soon A2/Tr.Starven Cyril will come and deal with them. As told by A1, P.W.2 and P.W.3 were waiting outside the accused room. At about 6.40 p.m, A2/Tr.Starven Cyril came to the Office. P.W.2 introduced Tr.Starven Cyril/A2 to P.W.3/Balagurunathan and both the witnesses followed A2/Tr.Starven Cyril to A1's seat. They found, A1/Rajalakshmi not in her seat, then, A2/Starven Cyril told P.W.2 that, A1/Rajalakshmi has informed everything to him. A2 asked the defacto complainant, whether he brought the money, then P.W.2 took out the tainted currency and handed over to A2/Starven Cyril. On receiving the money, A2/Starven Cyril kept it in his left side pant pocket. Initially, PW-2 had deposed that, the money was kept in the right side pant pocket, but soon corrected as left side pant pocket. Thereafter, A2 took out the RC Book, permit tax receipt, insurance from the table of A1 and handed it over to P.W.2. The RC book and copy of permit marked as Ex.P.4 and Ex.P.5. They were the documents seized at the RTO office at the time of trap.

11. The evidence of P.W.2-Gnanaprakasam substantially corroborated by P.W.3 Balagurunathan, the shadow witness. P.W.10 the Trap Laying Officer had deposed about the registration of the complaint, arrangement of official witnesses, pre-trap proceedings reduced into entrustment mahazar and thereafter, in the said trap proceedings, recovery of tainted money of six numbers of hundred rupees notes and Rs.6,450/- from the possession of A2/Starven Cyril along with the vehicle document of P.W.2. The phenolphthalein–sodium carbonate solution conducted with the figures of the two hands of A2 and his pant pocket prove positive. The collection of sample solution are the facts spoken by the Trap Laying Officer [P.W.10]. Further, pursuant to the trap leading to the arrest of A2/Starven Cyril, P.W.10, the Trap Laying Officer, on 20.09.2008, at about 7.30 a.m searched the house of A1/Rajalakshmi. Nothing incriminating was recovered from her house. However, pursuant to the materials available, A1/Rajalakshmi was arrested and sent to judicial custody, after obtaining chemical analysis report given by P.W.9 Tmt.L.CAmudha and recovery of files relating to the transfer of permit in respect of vehicle maxi cab bearing Reg.No.TN-20-AF-6754. Final Report filed getting sanction to prosecute A1.

12. P.W.10-Deputy Superintendent of Police, who has taken up further investigation had filed the final report. In defence, A2/Starven Cyril had mounted the witness box and had projected the case of motive between him and the defacto complainant and alleged that, P.W.2 in connivance with the Trap Laying Officer P.W.10 had employed him by foisting a false case. On behalf of A1/Rajalakshmi, it was contended that, she never met P.W.2 and she never demanded any money from him. According to the accused, P.W.2, who submitted his application on 20.08.2008, taken it back on the same day giving a letter marked as Ex.D.1 and thereafter, he has not re-submitted his application. Therefore, there was no occasion for A1/Rajalakshmi to process the transfer application and she has also taken a defence that the papers submitted by the defacto complainant [P.W.2] was sent to the higher Officials immediately and there was no scope or opportunity to deal with the papers submitted by the defacto complainant. When no money was recovered from her, the case of the prosecution has to fail as against her.

13. The trial Court, after considering the evidence, has accepted the prosecution case and sentence imposed on the accused, as stated above.

14. The learned Senior Counsel appearing for the appellant/A1 commenced his argument by questioning the sanction to prosecute A1 accorded by

PW-1. He contended that, without applying the mind regarding the alleged demand, sanction order was issued. Doubting the credibility of the evidence of PW-2 and PW-3 (the defacto complainant and the shadow witness respectively). The learned Senior Counsel appearing for the appellant submitted that in spite of specific admission that he is frequently visited the RTO office, prior to the complaint, the complaint [Ex.P2], without proper description of the person, who allegedly demanded money from him, is vague. This also prove that no preliminary enquiry conducted about the veracity of the complaint. After submitting his application for change of his permit, the complaint took back by giving a letter to the RTO on the pretext that, he need the document for the movement of the vehicle on a particular day deliberately the defacto complainant had suppressed this fact. Likewise, the shadow witness [PW-3] admits that in the entrustment mahazar, first page, he signed in Tamil and in the second page, he signed in English. This leads to an inference that the entrustment mahazar, page Nos.1 and 2 were not contemporaneously prepared.

15. While PW-2 had deposed that on the day of trap, when he went to the RTO office, he first saw the accused and had interacted with her. At that time, the first accused instructed the defacto complainant to give money to A2 and collect the permit, thereafter, she left the office. However, PW-3, who supposed to be the shadow witness, had deposed that he did not see A1 leaving the office. The demur of witness noted by the trial Court, when he was confronted about this fact, though noted in the evidence, while appreciating the witness, it was not considered.

16. The sketch prepared does not identify the seat of A1 and other details, which are required to be mentioned and essential to appreciate the evidence. The prosecution had not filed the entire documents recovered during the course of trap. In the file marked as Ex.P7, the letter of the defacto complainant seeking return of the document was totally suppressed by the prosecution. PW-7, the Superintendent at Thiruvanmiyur RTO Office, had deposed that she and A1 left the RTO office together at 05.45 p.m. Her evidence disprove the case of the PW-2 and PW-3 that A1 was present in her seat at 06.00 p.m, when they went to the RTO office, Thriuvanmiyur. The testimony of PW-10, the Trap Laying Officer is highly unbelievable, since he claims that soon after receiving the complaint at 12.00 noon, he registered the First Information Report, also says that, before registering First Information Report, he conducted preliminary enquiry, which is not possible. A person immediately, after receiving the complaint, if really, had conducted verification/preliminary enquiry, to prima faciely accept the complaint, it needs time to register the First Information Report. It is not possible to record FIR soon after receiving the complaint. Further, the complaint does not mention the name of A1 or her physical feature. Except mentioning a female clerk (name not known), aged about 35 years, Maxi Cab Section. No detail available in the complaint or FIR about A1. How her identity fixed is mysterious. If PW-10 had really made proper verification about the complaint, he ought to have known the name of the female clerk mentioned in the complaint. Further, if his intention was to trap the person, who demanded and expected to receive the money, being a lady, he should have anticipated that he may require an alternative dress to offer the lady, if the trap money is concealed in her body or at least, he should have taken a woman officer, so as to satisfy the requirement under Section 100(3) of Cr.P.C. While he had taken a dothi with him to provide an alternate dress to the anticipated accused A2, he should have consciously taken an alternate dress for the suspected. This would show that the trap laying officer had pre-supposed that during the trap he cannot fix the lady officer mentioned in the complaint.

17. According to the learned Senior Counsel appearing for the appellant, admittedly, the tainted money was given to A2, who is not a public servant. A2 has mounted the witness box and had plausibly explained about the tainted money recovered from his possession and the motive to fix him. A2, who mounted the witness box and subjected himself for cross examination had deposed that, the tainted currency was planted in his pocket by PW-2, due to previous enmity and had explained the reason for his presence in the RTO at the relevant point of time. Apart from Rs.600/-, which is marked as M.O.1, he had in his possession of Rs.6450/- which was given to him by one Paulraj, LIC Agent, for LIC premium payment. The animosity between the second accused and the defacto complainant been deposed by DW1 (2nd accused) and the same is corroborated by DW-2[Kathirvelu].

18. The learned Senior Counsel appearing for the appellant/first accused contended that, the charge is the alleged demand of Rs.600/- on 18.09.2008 by the first accused in the presence of the second accused. PW-2 in his chief examination had stated that he was frequently visiting Thiruvanmiyur RTO Office for change of permit and his last visit to the office was on 18th September 2008 at 11.00 a.m.

When he met the first accused, he was asked to come at 4'0 clock in the evening. When he went to the office at 4'0 clock, he was instructed to come again at 7'0 clock. When he met the first accused for the third time at 7'o clock, there was a demand by the first accused to give bribe of Rs.600/- and also, told PW-2 that the papers are ready, he can collect it, after giving the bribe money. PW-2 was instructed when he come with money, if she is not available, he can give it to A2, who was standing nearby. Further, she told him to come on 19th Evening by 6'o clock with money. When there is no proof for the demand of Rs.600/- on 18.09.2008, at 07.00 p.m., as found in the charge, and only the person, who is competent to speak about the said payment on the particular date and time, is PW-2, the defacto complainant who has failed to depose the first demand. This makes the entire case of the prosecution fails.

19. The learned counsel appearing for the second accused/appellant submitted that, the Court below failed to note that, the second accused is not a public servant and he could not be allowed to enter the Government Office and do official work without the permission or any authorisation of the Government. Registering the First Information Report against the private person by name and the public servant by the designation without name, coupled with the evidence given by the defence witness that the defacto complainant and A2, had personal animosity and rivalry, A2 was fixed under the Prevention of Corruption Act. When PW-2 was specifically instructed by the trap laying officer to give the tainted money to A1, only if she demands. Therefore, the money to A2 is a clear indication of the motive behind this complaint.

20. The learned counsel appearing for the second accused further states that , the 2nd accused was doing liaison work for the members of the Cab Owners Association. He visited the RTO office on 19.09.2008 to collect the papers and submitted to him by Kathirvel (DW-2). DW-3 [Paulraj] is a LIC agent, who had deposed, he gave a sum of Rs.4,826/- to A2 to pay the premium on behalf of his two customer by name Sisilia and John Fernando. A2 paid the premium and gave back the receipts. On the same day (i.e.) on 19.9.2008, afternoon, he gave Rs.6450/- to the second accused to pay premium for a different policy holder but A2 did not remit the money and on the next day, by seeing newspaper, he came to know that A2 was arrested by seeing newspaper.

21. Therefore, the learned counsel submitted that Rs.4650/- found in possession of the private person was duly explained but been seized by the trap laying officer and marked as M.O.6. The perversity in the investigation initiated with malafide intention could be easily seen from the conduct of the trap laying officer who had illegally seized cash of Rs.6450/- kept by the second accused and properly explained.

22. Heard the learned counsels representing the appellants and the learned Government Advocate (Crl.Side) appearing for the respondent.

23. Point for consideration is, whether Rs.600/- recovered from A2 on 19.09.2008 at RTO Office, Thiruvanmiyur, at about 7.00 p.m. is the bribe money demanded by A1 on 18.09.2008 and reiterated that 19.09.2008 at about 6.15 to 06.20 by A1, with instruction to collect the permit papers, after giving the money to A2?.

24. The bribe takers have different style of demanding bribe and receiving it with a long in dealing with such cases, it will be very childish for a Court to believe that the bribe takers will receive the money directly and if collected through agent, the Court has to acquit them for want of proof for demand and acceptance. In the era of digital transfer of money, the conventional method of trap itself is slowing getting redundant. For demand, negotiate, fix and receive bribe engaging brokers/tout/middleman/facilitators/go getter what other name called, is very common and a technic adopted by bribe takers. In the case in hand, pursuant to the complaint given by PW-2, the trap laying officer-PW-10 had arranged for a trap and accordingly, on 19.09.2008 the trap team accompanied with two official witnesses along with the defacto complainant. They had gone to the RTO office, Thiruvanmiyur and reached the spot at about 06.00 p.m. According to PW-2 and PW-3, they met A1. She informed that the papers are ready and enquired them, whether they have brought money. For that, PW-2 has answered in positive. Thereafter, A1 has asked both PW-2 and PW-3 to wait outside. For A2 to come PW-2 and PW-3 were waited till 06.40 p.m. At that time, A2 came to the office. When all three went to the room of the first accused, they found, she was not in her seat. As per PW-2, A2 received Rs.600/- smeared with phenolphthalein and entrusted to him. In turn, A2 took the RC permit tax and insurance paper from the table of A1 and gave it to him.

25. Ex.P7 is the file related to the application made by the defacto complainant for transfer of permit. The trap team entered the RTO office soon after receiving the signal had conducted search on A2. The file marked as Ex.P7 recovered from the table of A1. RC book, xerox copy of the permit was found in possession of PW-2, which was received by him from A2 after he gave the bribe money to A2.

26. PW-7 Amudha, working as Superintendent at the RTO Office, Thiruvanmiyur, at the relevant point of time, had deposed that A1 was working as Junior Assistant under her. In the cross examination, she admits that on 19.09.2008 at about 05.45 pm. She together with A1 left the office. It is the contention of the learned Senior Counsel appearing for the accused, referring the evidence of PW-7 that A1 left the office much before the trap team reached the RTO Office.

27. In contrary to PW-7 evidence, we find the evidence of PW-8 [Ashokram] another Junior Assistant working in the RTO Office at the relevant point of time and examined as PW-8. He had deposed that on 19.09.2008 at about

06.00 pm, when he was about to leave the office, he saw the first accused in her seat.

28. The case of the prosecution consistently is that PW-2 and PW-3 met A1 at about 06.15 to 06.20 p.m., when A2 came to the office at 06.40 p.m., A1 was not in her seat. None of the members in the trap team had seen A1 leaving the RTO office. The pointed question raised by the learned Government Advocate (Crl.Side) is that, how come the public document, which is under the custody of A1, was allowed to be dealt by A2, who admits on oath that he used to do liaison work for vehicle owners and he used to frequently visit the RTO Office and also without any compunction, admits that he had in possession of certain documents relating to vehicles owned by DW-2[Kathirvel] and in that connection, he went to RTO Office on 19.09.2008, after working hours. He claims that the tainted money was planted in his pant pocket. The learned counsel appearing for the appellants is not able to find out any answer for the pointed questions raised by the learned Government Advocate (Crl.Side).

29. This Court, on scrutinising the evidence, find PW-2 had deposed about the demand on 18.09.2008 and had categorically said that the last demand by A1 before the trap was on 12.09.2008 and the demand on 19.09.2008 been spoken by him. Though plea of Alibi was raised by A1 through PW-7, the same is contradicted by another witness PW-8. The movement of the file in connection with the application made by PW-2 is spoken by PW-4. He had deposed that on 11.08.2008, a joint application from Ganaprakasam and the owner of Gem Carrier was received at RTO Office, Thriuvanmiyur. The said Maxi Cab vehicle bearing Reg.No.TN 20 AM 6754 was registered at Thiruvanmiyur RTO. Therefore, the transfer of ownership, after being recorded at Thiruvanmiyur RTO, the papers were sent to Thiruvanmiyur RTO office and it was received at RTO, Thriuvanmiyur, on 20.08.2008 by A1. After processing the application on 10.09.2008, the first accused has forwarded the file to Mohanavelu, RTO (PW-5). On receiving the proposal in the file, PW-5 had ordered to transfer the permit in favour of Ganaprakasam. On the same day, the file was sent back to the first accused. She on receiving the file, ought to have informed the applicant within 3 days about the name transfer effected and to collect the permit. PW-5, Mohanavel, who was serving as RTO had deposed that, on the date of trap, he was on leave.

He had corroborated the evidence of PW-4. He had categorically deposed that the proposal sent for the name transfer of the permit in favour of Ganaprakasam reached his table on 10.09.2008. He on the same day issued an order of permit in the name of the defacto complainant and sent it back to the first accused, who was dealing with the file. As per the office procedure, within three days of issuance of order, the permit must be despatched to the owner of the vehicle. The evidence of PW-4 and PW-5 clearly establishes that A1, who had been entrusted to despatch the permit holding it on her table till 19.09.2008. She had allowed A2 to handle the file. A2 admits that on 19.09.2008, he came to the RTO office at 06.40 p.m and he was caught by the Vigilance Police and Rs.600 and Rs.6450/- recovered from him.

30. Though some doubt raised on behalf of the accused regarding the presence of A1 on 19.09.2008 and demand, the circumstantial evidence prove that A1 was present in the office on that day till evening. Even according to PW-7, she was in the office till 05.45p.m. The file connected with the application of PW-2 was found on her table and recovered at the time of trap. The said file, which was received on 10.09.2008 by A1 was supposed to have been despatched within three days, neither A1 despatched it to tapal nor handed over to PW-2 in person even after 9 days.

31. The complaint Ex.P2 reporting the demand of bribe by a female staff dealing with Maxi Cab Section was lodged on 19.09.2008 at about 12 noon. According to PW-10, he conducted preliminary enquiry, before registering the First Information Report. However, the time gap does not soundly vouchsafe the said claim. Even then, the case of the prosecution cannot be disbelieved, when the evidence clearly shows that the file, which was supposed to despatch at least by 13.09.2008, not been despatched by the accused (A1) and it was on her table and the same was handled by A2 a private person, in the absence of A1 and given to PW-2 , after collecting the bribe money of Rs.600/-.

32. A2 admits that, he is an inter mediator in the RTO office. He was permitted to deal with the file by A1, in her absence. In the complaint itself, PW-2 had specifically stated that A1 told him, even if she is not present, he after giving the money to A2, can collect the permit from A2, who will be having the documents. As pointed out in the beginning of this judgment, receiving bribe through agent is not uncommon. The scheme of engaging inter-mediator for collecting pecuniary advantage by abusing the official position is an offence which is well defined under the Prevention of Corruption Act, 1988.

33. The inter-mediator is an abettor, who assists the public servant to oversee the process of demand and obtainment of illegal gratification. Section 12 of the Prevention of Corruption Act, 1988 deals with the abettor. Section 13(1)(d) of the Prevention of Corruption Act, 1988 includes the obtainment of pecuniary advantage by corrupt or illegal means for himself or for any other person, is a criminal misconduct of a public servant.

34. In the instance case, the prosecution has proved the obtainment of Rs.600/- by A2 and he handing over the permit and RC book to PW-2. The receipt of Rs.600/- by A2 is pursuant to the earlier demand made by A1, a public servant. The absence of A1 in the RTO office, at the time of trap cannot be a ground to presume that she is an innocent. Though a clear description of A1, not found in the First Information Report, this Court had time and again, reiterated that the First Information Report is not an encyclopaedia of the offence or offender. The suspect in this case been referred as female staff dealing with the Maxi Cab Section. The

Staff working in the RTO Office, Thiruvanmiyur, who were examined as PW-4, PW-5, PW-6 and PW-7 had deposed that A1 was the person, who was dealing with the Maxi Cab Section, at the relevant point of time. In view of the above evidence, though FIR does not contain the name, it has provided enough information to identify the person, who demanded money from PW-2. Hence, this Court holds that the trial Court judgment is to be confirmed.

35. In the result, **These Criminal Appeals are dismissed.** The judgment of conviction and sentence passed by the Special Judge for the cases under Prevention of Corruption Act, Chennai, in C.C.No.99 of 2011 dated 02.11.2016 is confirmed. Bail bond, if any executed by the accused, shall stand cancelled.

36. The respondent is directed to remand the accused for the judicial custody to undergo the remaining period of sentence. The period of sentence already undergone by the accused is ordered to be set off.

21.06.2023

Index :Yes
Neutral Citation :Yes/No.
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To,

1. The Special Court under Prevention of Corruption Cases, Chennai,
2. The Deputy Superintendent of Police, Special Investigation Cell,
Vigilance and Anti-Corruption Police, Chennai – 600 028.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
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delivery Common Judgment made in
Crl.A.Nos.772 & 780 of 2016

21.06.2023