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Crl.A.No.811 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.A. No.811 of 2016

State represented by:
The Public Prosecutor,
High Court of Madras -600 104.
(V & AC., Cuddalore
Crime No.3 of 2009)

.. Appellant

Vs.

Ms.K.Vijaya

..Respondent

PRAYER : Criminal Appeal has been filed under Section 378 (1) (b) of Criminal Procedure Code, to allow the appeal and set aside the judgment of acquittal of the accused passed in Special Case No.07/2010 dated 04.05.2016 by the Court of Special Judge/Chief Judicial Magistrate, Cuddalore District and convict the respondent/accused as charged.

For Petitioner	: Mr.S.Udaya Kumar, Government Advocate (Crl.Side)
For Respondent	: Mr.S.Ashok Kumar, Senior Counsel for Mr.T.R.Ravi.



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ORDER

This appeal preferred by the State being aggrieved by the order of acquittal passed by the trial Court.

2. The sum and substance of the prosecution case is that one Ms.Anbukkarasi, D/o.Balakrishnan drownsed herself with kerosene on 24.03.2009 at her residence. She was immediately taken to the hospital for treatment but brought back to home since the Doctors adviced to admit her in Head Quarters Hospital. Thereafter, she was taken to Cuddalore Government Hospital but she succumbed to the burn injuries on 29.03.2009 at about 01.40 p.m.

3. Thereafter, Mr.Balakrishnan, father of the deceased went to the Kurinjipadi Police Station and reported about the death of his daughter. The case under Section 174 of Cr.P.C was registered in Crime No.62 of 2009 by the appellant herein.

4. The complaint against this respondent emanated from Mr.Balamurugan, who is the nephew of Balakrishnan. In the complaint its was alleged that on 30.03.2009 when the complainant and his uncle went to the police station to report about the death of Anbukkarasi the



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respondent, Sub Inspector of Police demanded one quire paper, pen and Aircel top up card for Rs.100/- and thereafter, asked them to come after one week.

5. When they met her again after one week, she informed them that she has obtained the Post Mortem Certificate and to close the case, she need Rs.500/- or else, she will convert the case as abatement to commit suicide, as if, the father of the deceased scolded the deceased and forced her to commit suicide. After giving evasive reply they came back from Police Station. However, the accused called him over the phone and demanded money and asked them to come near Matha Church at about 2.30 p.m on 15.04.2009.

6. When the defacto complainant Balamurugan alongwith Sowrirajan went to Matha Church and met the accused at 2.30 p.m, she made demand of illegal gratification for third time and cautioned, if money is not given there will be problem for Balakrishnan, the uncle of the defacto complainant. Again on 22.04.2009, the accused called the defacto complainant over the phone and forced him to give money on ensuing Tuesday.



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7. Not willing to pay any bribe money, on 27.04.2009, Balamurugan contacted vigilance police and gave a complaint at about 04.30 pm and the same was registered and taken up for investigation. The trap was organized by the Inspector of Police. The trap money of Rs.500/- was smeared with phenolphthalein and entrusted to the defacto complainant Balamurugan.

8. On 28.04.2009 at about 09.15 hours, the defacto complainant alongwith shadow witness and the trap team went to Kurinchipadi Police Station to meet the accused. The accused was not in the station, therefore they waited for her to come. At about 10.15 hours, the defacto complainant received a phone call from the accused who informed him that she is in Vadalur Police Station and asked him to come to Vadalur Police Station to hand over the money. Accordingly, the trap team went to Vadalur Police Station and the defacto complainant met the accused. When the accused enquired whether he has brought Rs.500/-, the defacto complainant took out the tainted money from his shirt pocket and gave it to the accused who received it, counted it and kept it in her pant pocket. Thereafter, the trap team came and recovered the money from the



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accused after conducting the phenolphthalein test and the same was proved positive. After getting sanction to prosecute the accused and the chemical analysis report Investigating Officer filed his final report against this respondent.

9. The trial Court framed charges under Section 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and tried the accused. To prove the charges, 17 witnesses (PW.1- PW.17) were examined, marked 13 Exhibits (Ex.P1-P13) and 4 material objects (M.O.1 to 4) were seized.

10. The trial Court, on appreciation of evidence acquitted the accused on the ground that the sanction to prosecute is defective and the explanation given by the accused for possession of the tainted money not been duly recorded as per the vigilance manual. Further the trial Court satisfied with the explanation given by the accused which has been elucidated by way of suggestion in the cross examination of the witnesses, that Rs.500/- which she received was the hand loan given to Balakrishnan, the father of the deceased who had shortage of money to take her daughter's copse back to the village from the Cuddalore



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Government Hospital. To pay the ambulance charge, the accused gave Rs.500/- to him. That was returned to the accused on 27.04.2009.

11. The learned Government Advocate appearing for the State submitted that the explanation is highly improbable and the trial Court ought not to have accepted her explanation. If a hand loan is given out of sympathy, there is no need to lodge a false complaint against the accused and force the Vigilance Department to lay the trap. Furthermore, the trial Court erred in holding that sanction order is defective, inspite of the fact that PW.1 being DIG, is the competent authority to remove officers in rank of Sub Inspectors. The consultation process with the Investigating Officer cannot be construed as the competent authority acted on the dictate of Investigating Officer.

12. The learned Senior Counsel appearing for the Appellant submitted that the prosecution through witnesses not able to establish the foundational fact of demand and acceptance. The application of mind by the competent authority not independent but on a borrowed wisdom by consulting the Inspector of Police who is an interested party in the investigation and this results in the violation of the manual regarding



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recording the explanation given by the public servant regarding money recovered from her. The said violation is fatal to the case of the prosecution. Referring the testimony of the PW.16/IO that he had not recorded any statement from the accused during the trap and recovery process, in contradiction with the testimony of PW.1 who had categorically stated that he has gone through the statement of the accused before arriving at a conclusion to grant sanction to prosecute and the statement recorded in the seizure mahazar marked as Ex.P5 wherein, a truncated explanation of the accused/respondent been recorded.

13. The learned Senior Counsel for the respondent submitted that the view of the trial Court accepting the explanation is sufficient to discharge the burden of presumption and it is a possible view. Therefore, there is no necessity to interfere the order of acquittal.

14. This Court on perusing the records and the evidence let in by the prosecution finds basic flaw in the case of the prosecution. The following are the flaws in the case of the prosecution which goes to the root of the matter.

(i) There is material to show that the accused soon after recovery of money from her possession had



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given some explanation for receiving the money that explanation not been recorded by the trap laying officer or he had not produced before the Court which was available for the sanctioning authority for his perusal.

(ii) There is a specific averment by PW.2 that the accused been contacting him over phone and demanding money. The said call details not recovered and placed before the Court. The accused has suggested to the witnesses that the phone number which the PW.2 alleges as that of the accused actually belongs to one Srinivasan and he was not examined by the Investigating Officer. From the material placed by the prosecution, this Court could not find what is the phone number used for calling the defacto complainant and when he called. The non recovery or non production of the call details makes the case of the prosecution unbelievable.

(iii) The trap spot initially expected to be the Kurinchipadi Police Station had been shifted to Vadalur Police Station. The Rough Sketch marked as Ex.P7 shows that the spot of trap is inside the Sub Inspector room, Vadalur Police Station whereas the General Diary maintained in the Kurinchipadi Police Station indicates that the petitioner was asked to go for a



Highway Patrol Duty on the previous day at 03.00 pm and she was in the highway patrol duty.

(iv) Furthermore, the case of the prosecution is that the demand of illegal gratification was to drop action against Balakrishnan in the case investigated for unnatural death of his daughter Anbukkarasi. The CD file in connection with the case registered for the unnatural death of Anbukkarasi indicates that the action was dropped on 15.04.2009, which is much prior to the date of complaint. The accused, after completing the investigation proceeded under Section 174 of Cr.P.C has submitted a report to the Executive Magistrate on 15.04.2009 itself and the same form part of the General Diary maintained in the station and also relied by the prosecution as Exhibits.

15. For the aforesaid reasons, this Court finds the trial Court judgment of acquittal need no interference in the appeal since no perversity or illegality observed in the judgment. The view of the trial Court is a view also possible, therefore, this appeal is dismissed.

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Internet : Yes/No

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Dr.G.JAYACHANDRAN, J.

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To

1. The Special Judge/Chief Judicial Magistrate,
Cuddalore District.
2. The Public Prosecutor,
Madras High Court,
Madras.

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