



Crl.A.No.165 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.07.2023

Pronounced on :19.07.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.165 of 2019

A.Seetharaman(aged 65/2019)

S/o Anandan,

Formerly Village Administrative Officer,

Vikravandi (i/c) Koothampoondi,

Villupuram District.

.. Appellant/accused

/versus/

State Represented by

Inspector of Police,

Vigilance and Anti Corruption,

Villupuram,

(Crime No.1/2011)

.. Complainant/Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of the Cr.P.C., against the judgment of conviction and sentence in Special Case No.18/2014 dated 19.03.2019 on the file of the learned Special Court for Prevention of Corruption Act Cases, Villupuram.

For Appellant :Mr.V.R.Balasubramanian

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



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J U D G M E N T

Thiru.Seetharaman, the appellant herein, while working as Village Administrative Officer in Vikravandi, Koothampoondi Village, Villupuram District, was arrested by the vigilance police on 07/01/2011 for receiving Rs.1,000/- from one Rajiv Gandhi to discharge his official function namely, to recommend and forward the application of his niece Miss.Thendral to get financial aid from the Government under 'Ramamirthammal Nianivu Thirumana Nidhi'. The trial Court convicted the appellant under Sections 7 and 13 (2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. On being aggrieved by the conviction and sentence, the present Criminal Appeal is filed.

2. The case of the prosecution:

Miss.Thendral, the daughter of Anjalaksham marriage with Murugan was fixed to be solemnized on 24/01/2011. Miss.Thendral being eligible to get the financial aid under the scheme for the poor girls marriage expense, applied to the Government through the Village Administrative Officer. On 06/01/2011, Rajiv Gandhi, the defacto complainant met the accused and enquired about the status of Miss.Thendral application. On that day, the accused demanded Rs.1,500/- as illegal gratification to forward the application. Later, he reduced it to Rs.1,000/-.



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Rajiv Gandhi was not interested to give bribe, went to the Inspector of Vigilance and Anti Corruption at Villupuram on 07/01/2011 and gave a written complaint.

The Inspector of Police received the complaint at about 10:00 a.m. and registered it in Crime No.01 of 2011 and took up the investigation.

3. Assistance of two official witnesses by name, Deivanayagam and Jayabalan was obtained and pre-trap proceedings was conducted by the Inspector of Police in the presence of witnesses, after explaining to the witnesses the significance of the phenolphthalein – sodium carbonate test. Two 500 rupees notes were smeared with phenolphthalein and entrusted to the defacto complainant Rajiv Gandhi with a specific instruction to give that money, only if the accused demands for it. Narrating the demonstration of phenolphthalein- sodium carbonate test, and the entrustment of the two marked currencies a mahazar was prepared. Thereafter, the trap team proceeded to the Village Administrative Office at Vikravanandi and reached the Village Administrative Office at 13.50 hours. The defacto complainant Rajiv Gandhi and the shadow witness Deivanayagam went inside the Village Administrative Office and met the accused at about 2.00 p.m. The other members of the trap team took position outside the VAO office and were awaiting for the



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signal from the defacto complainant.

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4. The accused was busy engaged in distributing free TV tokens for the public. The accused asked the defacto complainant to come at 5:00 o'clock and meet him. Therefore, the defect of complainant and the shadow witness Deivanayagam came out and at 5:00 pm they both again went to the VAO office . On seeing the defacto complainant, the accused enquired whether the defacto complainant has brought the bribe money. The defacto complainant took out the marked currency smeared with phenolphthalein and gave it to the accused.

5. The accused received the money in his left hand and kept it in his left side pant pocket. Then, he showed the application and instructed the defacto complainant to come on the next day to collect it. Thereafter, the defacto complainant and the shadow witness came out from the office, gave the pre-arranged signal to the trap team. The trap laying officer, Inspector, Venkatesan on confirming that the accused has received the bribe money, interrogated the accused. The left hand of the accused was tested with sodium carbonate solution kept in the tumbler. The colour less solution turned light red. Then, the inspector



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asked the accused about the money he received from Rajiv Gandhi. The accused took two 500 rupees notes from his left side pant pocket and gave it to the trap laying officer. One of the shadow witness verified the number found in that currency with the number noted in the entrustment magazar and they both found tally. Then the accused was arrested. Thereafter, lungi was given to him and he was asked to remove his pant. The left side pocket portion of the pant was subjected to test with sodium carbonate solution, the colour was changed pink. The hand wash and pant wash solutions were collected in bottles separately. The bottles were marked and labelled. Both the witnesses signed in the labels. The application and the other enclosures like mark sheet, community certificate, ration card copy and marriage invitation of Miss.Thendral kept in a plastic cover was seized from the accused.

6. The solutions collected in the bottles were sent for chemical analysis through Court. The Tamil Nadu Forensic Laboratory, which received the solution bottles conducted analysis and gave a report that the solution contains phenolphthalein and sodium carbonate. The accused being a public servant sanction to prosecute was obtained from the Revenue Divisional Officer,



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Villupuram and on completion of the investigation Final report has been filed.

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7. Prosecution examined 11 witnesses, marked 10 exhibits and four material objects. In defence, Gunasekaran, the husband of the Village Assistant who was present at the time of arresting the accused was examined as DW1. The trial Court convicted the accused and sentenced him to undergo four years RI and a fine of Rs.1000/- in default, to undergo three months Simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to undergo five years RI and to pay a fine of Rs.5,000/-, in default to undergo six months Simple Imprisonment for offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act,1988.

8. The officer, who accorded sanction was examined as PW-1 and the sanction order is marked as Ex.P-1. The defacto complainant Rajiv Gandhi was examined as PW-2, his complaint is marked as Ex.P-4. The shadow witness Deivanayagam examined as PW-3. The entrustment mahazar, seizure mahazar and the file containing the application and other documents of Miss.Thendral are marked as exhibits and the prosecution witnesses have identified those documents.



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The Scientific Assistant Mrs.P.Kalarani examined as PW-9 and the analysis report

is marked as Ex.P-14.

9. The learned Counsel appearing for the accused submitted that the trial Court failed in appreciating the evidence properly. The defecto complainant Rajiv Gandhi examined as PW2, alleges that on 06/01/2011 at about 5.00p.m the accused at his office demanded Rs.1500/- and reduced it to Rs.1000/- to forward the application of his sister's daughter Thendral. This allegation is disproved by examining DW-1 who had deposed that on 06/01/2011 at 5.00 pm, the accused was in a meeting at Vikravandi in connection with the distribution of free colour TV, since there was complaints about the distribution of colour TV. The proceedings issued by the accused on instruction of the Thasildar that all the persons concern should be present for the meeting at Vikravandi on 06/01/2011 annexed the answer to the Section 313 Cr.P.C, questioning been erroneously rejected as self serving document.

10. The learned counsel for the appellant contended that the trial Court



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failed to see that the defacto complainant [PW-2] is a wholly unreliable witness and his evidence is not worth considering. In the complaint Ex.P-4 as well as in his chief examination, PW-2 had stated that Miss.Thendral is the daughter of Anjalaksham (PW-6) and she is his own sister. In the cross examination, when he was asked to tell the name of Anjalaksham, he admits that he does not know the name of Anjulaksham. He is not brother of Anjalaksham. He and Anjalaksham belong to same caste and the same village except this, there is no proximity with them. The case of the prosecution is that PW-2 and PW-3 met the accused on 07/01/2011 2.00 pm at his office. Whereas in the cross examination, PW-2 admits what he said in the chief is wrong, in fact at that time the accused was distributing tokens at community hall and was not in his office.

11. Anjalaksham examined as PW-6, in her chief examination claimed that PW-2 is her brother. She requested him to follow the application given by her for marriage assistance. PW-2 took Rs.1000/- from her for expenses. When she came to know that the VAO was arrested, she reprimanded her brother (PW-2) why he got involved in unwanted deed. The Court after putting Court questions to the witness, had recorded her demeanour and expressed that the witness is trying to



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hide the truth. This witness was declared hostile and allowed to be cross examined. In the cross examination she admits that PW-2 is not her brother. He is friend of her son. So, she used to call him Thambi (brother).

12. Miss.Thendral, the applicant examined as PW7 had deposed that PW-2 is the friend of her brother. So she used to call him 'mama' (uncle). She did not support the case of the prosecution and she was also declared hostile.

13. As far as the alleged demand and acceptance of the bribe money, the learned counsel for the appellant/accused submitted that the contradiction between the testimony of PW2, the defecto complainant and the evidence of PW 3, the shadow witness not been considered by the trial Court and this failure has led to miscarriage of justice. According to learned counsel for the appellant, on the day of trap till 5.00 pm, the accused was busy in distributing Tokens for the public in connection with the distribution of colour TV in the community hall near his office. There was a crowd in the Community Hall. There was some commotion and complaints regarding the choice of the beneficiaries and the local politicians interference was not entertained. So,there was grudge against the accused. The



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accused was arrested, when he was about to leave after completing the distribution of tokens. At that time, Gunasekaran (DW-1) who is the husband of the Village Assistant was present. The Deputy Tahsildar was also present. In the arrest memo the trap laying officer got the signature of Thirunavukarasu, Deputy Tahsildar. However, Thirunavukarasu was not examined. The tainted money was inserted into the pant pocket of the accused by PW-2 and soon thereafter, he was arrested. A sum of Rs.1,15,000/- meant for Flood Relief to the farmers recovered from the accused and that was given back to Thirunavukarasu. To conceal this fact, prosecution has not examined Thirunavukarasu. The defacto complainant had acted as a stooge of the local politicians and had given the false complaint against the accused. The trap laying officer has violated the vigilance manual guidelines by registering the First Information Report without making preliminary enquiry about the accused as well as the defacto complainant, if he had followed the manual, he could have come to know that the defacto complainant is not the brother of Anjalaksham and he had falsely claims himself as blood brother of Anjalaksham. He would have come to know that the accused is an honest officer and not demanded any money from PW-2. Without making any preliminary enquiry about the credential of the complainant as well as the accused, PW-10 had



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registered the case and to make the trap a success, documents were created.

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14. The case of the appellant is that, the money was forcibly and stealthily inserted into his pant pocket while he was keeping flood relief money in his TVS 50 vehicle. In support of his arguments, the statements elucidated during the cross examination of PW-2, PW-3 and PW-10 are relied. In addition the evidence of DW-1 relied to discharge the reverse burden.

15. The learned Government Advocate (Crl.Side) appearing for the State submitted that, the prosecution has proved that application of Miss.Thendral for the Government aid was kept pending by the accused and the file was recovered from his possession at the time of Trap. The tainted money was recovered from his possession and the accused does not deny the recovery of tainted money marked as M.O.1 from his possession. His explanation that the money was stealthily inserted in his pant pocket while he was busily keeping the money meant for flood relief in his TVS 50 vehicle is not believable and there is no proof. The testimony of DW1, who is the husband of the Village Assistant working under the accused is an interested witness. His testimony has been rightly rejected by the trial Court



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stating that if at all anybody can give evidence about the trap other than the witnesses examined by the prosecution, it could only be the Village Assistant, who is expected to be with the VAO and not the husband of Village Assistant. The trial Court considering the falsehood in the evidence of PW-2 claiming as brother of PW-7, the trial Court has rightly pointed that the principle of *falsus in uno falsus in omnibus* not applicable to the Indian Evidence Act.

16. The point for consideration is whether the trial Court appreciated the evidence on law and facts sustainable ?

17. According to the prosecution, the first demand of illegal gratification was made by the accused on 06/01/2011 when PW2 met the accused in his office at 5.00 pm and the second demand was on 07/01/2011 at 5.00 pm.

18. For the first demand, which has triggered the defacto complainant to give the complaint Ex.P-4 on the next day at 10:30 a.m, there is no direct evidence except the allegation of PW-2. Contrarily, the accused has put a defence of alibi by examining DW-1 and annexing the proceedings indicating the meeting scheduled



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at Vikravandi Tahsildar office at 4.00 pm.

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19. For the second demand, though PW-2 and PW-3 speak about the demand and acceptance, the place of demand and acceptance not corroborated. Whether it was at community hall or at VAO office, not clearly spoken by the witnesses to add, the rough sketch marked as Ex.P-16 only mark the occurrence place and it does not indicate the place where the accused PW-2 and PW-3 were standing.

20. PW-2, PW-3 as well as PW-10 admits that on the day of trap, the accused was busy in distributing tokens and there was public crowd for collecting tokens. PW-2 and PW-3 admits that at 5.00 pm when the accused caught for taking bribe, there was another staff present in the VAO office. PW-10 the Inspector of police admits that Deputy Tahsildar, Thirunavukarasu, was present when he arrested the accused at 6.00 p.m. Therefore, he got the signature of Thirunavukarasu in the arrest memo marked as Ex.P-20.

21. In the above said background of facts, the contention of the appellant



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about the credential of PW-2 has to be tested whether his testimony to be accepted or to be rejected. PW-2 has set the law into motion impressing upon PW-10, by falsely claiming the applicant Thendral is his niece. He was following her application and in that context, he met the accused and he demanded bribe for processing the application. The defence from the horse's mouth had proved that PW-2 is not even a distant relative of Miss.Thendral. The application for Financial Aid was given to at VAO office by PW-6 and her husband. PW-6 not sure who received the application. She did not complaint about any demand of bribe. PW-7 Thendral, had deposed that she did not go to VAO office. She never seen the accused.

22. It is to be noted that PW-2 had received Rs.1000/- from PW-6 for expenses. Even to her he did not say that the accused is demanding Rs.1000/- as illegal gratification on 06/01/2011, when he met him in his office. On the other hand, the accused by examining DW-1 had probablised that on 06/01/2011 at 5.00 p.m, he was not at VAO office.

23. PW-2 by claiming that he is the blood brother of Anjalaksham had



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caused perjury and his falsehood cannot be brushed aside by saying a single false will not render his other part of evidence which are true at naught. The said falsehood is deliberate and with malicious intention. Without any demand of illegal gratification, without any truth in the content of the complaint except the fact that the pendency of the application with the accused, the case has been fabricated.

24. The prosecution has failed to first ascertain the veracity of the complaint by conducting preliminary enquiry, next not proved the acceptance of illegal gratification beyond doubt. Mere recovery of tainted money will not give a presumption that the money was obtained as illegal gratification. The defence through DW-1 and through the cross examination of the prosecution witnesses had by preponderance of probability had established that there is a motive for this complaint which is apparently false. Therefore, the judgment of the trial Court which has failed to take note of certain facts on record is liable to be reversed.

25. As a result, **this Criminal Appeal is allowed.** The conviction and



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sentence imposed on the accused/appellant by the Special Court for Prevention of Corruption Act Cases, Villupuram in Spl.C.No.18 of 2014 dated 19.03.2019 is set aside. Bail bond executed stands cancelled. Fine amount paid if any, to be refunded. The appellant is at liberty forthwith, unless his presence is not required in connection with any other criminal case.

19.07.2023

Index:yes
speaking order/non speaking order
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To:

- 1.The Special Court for Prevention of Corruption Act Cases, Villupuram.
- 2.The Inspector of Police,Vigilance and Anti Corruption, Villupuram.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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delivery Judgment made in
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