IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2023

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.No.287 of 2019

R.Pathmavathi
W/o.R.Mani ... Appellant

Vs

The State by
The Inspector of Police,
Vigilance and Anti Corruption,
Vellore, Vellore District,
(Crime No.12 of 2014) ... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire records in connection with the Spl. Case No.2 of 2016 on the file of the learned Special and Chief Judicial Magistrate, Vellore, Vellore District and set aside the judgment dated 14.05.2019.

For Appellant : Mr.V.Parthiban
For Mr.E.Kannadasan

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

JUDGMENT

This appeal is preferred by the sole accused aggrieved by the judgment of conviction and sentence, dated 14.05.2019, passed by the learned Special and Chief Judicial Magistrate, Vellore, in Spl. Case No.2 of 2016, for the offences under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1998 (herein after referred to as “the PC Act”) .

2. The case of the prosecution is that the appellant while working as a village health nurse at Pallavallui and also discharging duty of Madapalli health sub centre as additional charge, demanded a sum of Rs.1,500/- as bribe to process the application of the defacto complainant for getting benefits under Dr.Muthulakshmi Maternity Benefit Scheme. Since the defacto complainant was not inclined to give bribe of Rs.1,500/-, he gave a complaint to the Inspector, Vigilance and Anti Corruption, Vellore, on 24.12.2014. Soon after the complaint, a trap was arranged and when the appellant came to the State Bank of India, Kurisilapet, in an auto to collect the bribe money, she was caught red handed with the bribe money.

3. The defacto complainant died before trial commenced. To prove the charge against the appellant, the prosecution has examined 10 witnesses and marked 14 exhibits and 3 material objects. As per the testimony of the prosecution witnesses, particularly the Investigating Officer, which is substantially corroborated by P.W.2, the shadow witness, the defacto complainant viz., Muniyappan on 30.09.2014, registered his wife name for getting treatment during the gestation period and also for the benefits extended by the Government for pregnant women who are living below the poverty line. He submitted documents before the accused/appellant herein during the month of September, 2014. For a long time his application was not processed and hence he approached the appellant/accused and she informed that his application will be soon processed. On 22.12.2014, when the said Muniyappan met the appellant, she demanded a sum of Rs.2,000/- to process his application. The next day, he went and negotiated with the appellant and she reduced the bribe amount from Rs.2,000/- to Rs.1,500/- and asked Muniyappan to come with money on the next day.

4. Thereafter, the defacto complainant pledged his jewels and raised fund of Rs.2,000/- and gave it to the vigilance Inspector, P.W.10 for

the trap proceedings. P.W.2, Jayaprakash, Revenue Inspector and P.W.3, Srinivasan, Superintendent, Fire and Rescue Department were requested to be shadow witnesses for the trap proceedings. The phenolphthalein- sodium carbonate test demonstrated to the shadow witnesses and the defacto complainant on 24.12.2014 between 8.15 a.m., and 9.00 a.m. The sum of Rs.1,500/- (2 Nos. of 500 notes and 5 Nos. of 100 notes) were smeared with Phenolphthalein powder and entrusted to the defacto complainant with instruction to give only if the accused demands for it. Thereafter, the trap teem proceeded to Kurisilapet Village.

5. The defacto complainant called the accused over cell phone and informed her that he has come with money. As per her instructions, the defacto complainant and the shadow witnesses were waiting near the State Bank of India, Kurisilapet, and other trap team members took their position around the place. At about 11.30 a.m., the accused came in an auto and the defacto complainant went to her and gave the tainted money of Rs.1,500/-. The accused received it and kept the money under her lap. The trap team rushed to the auto and caught the accused. The tainted money was recovered from her. Phenolphthalein-sodium carbonate test was conduced at the hands

of the accused. The colour of the sodium carbonate solution turned into light red. In the presence of independent witness P.W.4 viz., Rajivi Gandhi and other shadow witnesses, the tainted money was recovered from the accused. The house of the accused was also searched and certain incriminating materials including the application of the defacto complainant were recovered.

6. The trial Court relying upon the evidence of P.W.2 the shadow witness has held that the demand as well as the acceptance of bribe money proved and the witness of P.W.3 corroborated the evidence of P.W.4, the independent witness for the recovery. Based on the evidence, the trial Court found the accused guilty of the offence under Sections 7, 13(2) r/w 13(1)(d) of the PC Act and convicted her to undergo three years simple imprisonment and to pay a fine of Rs.2,500/- in default to undergo months simple imprisonment for the offence under Section 7 of the PC Act. Further convicted her to undergo three years simple imprisonment and to pay a fine of Rs.2,500/- in default to undergo months simple imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the PC Act and ordered the period of sentence to run concurrently.

7. Aggrieved by the conviction and sentence, the present Criminal Appeal has been filed.

8. The learned counsel appearing for the appellant submits that the prosecution miserably failed to prove the demand and the acceptance of money as illegal gratification which is the prime ingredients to be proved for the offence under Sections 7, 13(2) r/w 13(1)(d) of the PC Act. He further submits that the defacto complainant died and the only eye witness, according to the prosecution, for the demand and acceptance, is P.W.2 the shadow witness. Even if the testimony of the evidence of P.W.2 is accepted in toto, it is only acceptance of the money is proved and not demand of the money towards illegal gratification. Pointing of the admission of the witness P.W.2 in his cross-examination that the auto, in which the accused came, stopped around 50-60 feet away from the place where he and the defacto complainant were standing. The defacto complainant ran towards the auto and gave the money to the accused. The witness P.W.2 followed the defacto complainant 5 to 6 feet away. By the time, when P.W.2 could reach the auto, the defacto complainant had given the money and returned back. There is no

evidence to prove that the accused received the tainted money as bribe and that was offered by the defacto complainant pursuant to the demand made by the accused.

8.1. Further the learned counsel appearing for the appellant would submit that plausible explanation has been given by the accused soon after the recovery and that plausible explanation is sufficient to rebut the presumption. Referring the Constitutional Bench judgment of the Supreme Court, reported in ***CDJ 2023 SC 232*** in the case of ***Neeraj Dutta Vs. State,*** the learned counsel appearing for the appellant would submit that the fundamental fact of demand has not been proved by the prosecution. Therefore, the presumption under Section 7 of the PC Act cannot be drawn.

8.2. The learned counsel appearing for the appellant would also point out that the case of the prosecution is that the defacto complainant and the accused were in contact through their cell phones and the cell phone numbers of the complainant as well as the accused are mentioned in the FIR itself. It is averred by the prosecution that soon before the trap, the defacto complainant called the accused and on her request, the defacto complainant and P.W.2 along with trap team were waiting near the State Bank of India, Kurisilapet. But the call details of the defacto complainant and the accused were not collected by the Investigating Officer to prove that the accused came near the State Bank of India, Kurisilapet, in auto pursuant to the cell phone conversation. The non-examination of the auto driver and the unreliable testimony of P.W.4 viz., Village Administrative Officer, who stated that he came to the spot after hearing that the accused was caught red handed by the vigilance Police near the State Bank of India, Kurisilapet, for receiving bribe money and thereafter he went to the place and introduced himself as Village Administrative Officer and put his signature as a witness for the Recovery Mahazar marked as Ex.P.3 and the house search Mahazar, Ex.P.4.

8.3. The learned counsel appearing for the appellant would also state that the application form of the defacto complainant for his wife Sathya also was not fully filled up. Except the signature of the beneficiary, no information found in the form. He further submits that the accused was on medical leave from 29.11.2014 to 23.12.2014 for the treatment of her fractured leg and only on the date of trap she joined the duty. Therefore, the case of the prosecution that the accused demanded gratification on 22.12.2014 and she reduced the demand to Rs.1,500/- on the next day are all baseless. Not been proved or spoken by any of the witnesses.

9. The learned Government Advocate appearing for the State would submit that the accused had made five demands before she was caught red handed. The first demand was on 02.12.2014, when the defacto complainant enquired about his application and sanction of benefit. The next demand was on 22.12.2014, when the defacto complainant called the accused over phone, she demanded Rs.2,000/- and the defacto complainant expressed his inability to pay Rs.2,000/-. On the next day viz., 23.12.2014, when the defacto complainant met the accused at the residence of the accused without money, she has reprimanded him for coming without money and at last she agreed to get Rs.1,500/- to accomplish the request of the defacto complainant. This has induced the defacto complainant to approach the Vigilance Police and give the complaint which is marked as Ex.P.11, which narrates the demand of bribe by the accused. Though the defacto complainant died, the shadow witnesses P.W.2 and P.W.3 viz., Jayaprakash & Srinivasan, had spoken about the entrustment proceedings as spelt out in Ex.P.1 and

recovery of tainted money has spoken in the search mahazar marked as Ex.P.3.

9.1. The learned Government Advocate appearing for the State further submits that non-examination of defacto complainant owing to death is not fatal to the case of the prosecution for the offence under Section 7 and 13(2) r/w 13(1)(d) of the PC Act, in view of presumption under Section 20 of the PC Act. This position has been well settled by the recent judgment of the Constitutional Bench of the Supreme Court, reported in ***CDJ 2023 SC 232*** in the case of ***Neeraj Dutta Vs. State.*** The foundational fact that there was a demand and acceptance in pursuant to the said demand the money which was marked as M.O.3 is spoken by P.W.2, P.W.3, P.W.4 & P.W.10. No plausible explanation offered by the accused to rebut the presumption. The bare explanation offered by her only incriminate her for receiving illegal gratification.

10. Heard the learned counsel appearing on either sides and perused the documents available on record.

11. This Court on considering the material evidence placed finds that the trial Court has laid undue reliance on the testimony of P.W.2, who was suppose to be a shadow witness and followed the defacto complainant. Admittedly, he was not along with the defacto complainant, when the money given to the accused. He was more than 5 to 6 feet away from the auto. By the time he reached the auto, the money was transferred from the defacto complainant to the appellant/accused. He has not whispered anything about the conversation while transferring the money from the defacto complainant to the accused.

12. Even earlier to this transaction, prosecution say, there was telephonic conversation allegedly between the defacto complainant and the accused. In the cross examination, P.W.2 admits that he did not know about the conversations. While so, the fundamental fact regarding demand is totally absent and the circumstantial evidence is only to the fact that the accused had received a sum of Rs.1,500/- from the defacto complainant.

13. The explanation offered by the accused is that she received money whichthe defacto complainant voluntarily offered. This would be an

explanation sufficient to rebut the presumption. It should have been received by the accused as *quit pro quo* for her service. Whether receiving remuneration or reward for the service is legally permissible or not is a question which not been established by the prosecution. The only incriminating evidence against the appellant which could be taken as circumstantial evidence is the recovery of the application from her house. But that application form was not duly filled. The application form was recovered from her house and the tainted money recovered from her possession has to be linked by acceptable evidence to hold that the accused received money to do favour in respect of the application. In this case, there is no link evidence to correlate the pending application form and the tainted money recovered from the appellant.

14. Finally, this Court finds that while the prosecution has come out with specific allegations that there was telephonic conversation between the accused and the defacto complainant prior to the trap and few days earlier to that, the production of the call details of those two telephone numbers would have substantially enhanced the case of the prosecution. Further the claim of the defacto complainant that he raised funds by pledging jewels to be used

for the trap proceedings could have been proved by collecting the evidence regarding where and when he pledged the jewels. Since, the defacto complainant died before commencement of trial, the prosecution ought to have proved the circumstances in better manner to draw presumption against the accused.

15. In this case, the broken chain of fact doesn't prove the foundational fact that Rs.1,500/- recovered from the appellant was the bribe money given as illegal gratification. For the above said reasons, the conviction and the sentence of the trial Court is liable to be set aside. Accordingly, the judgment dated 14.05.2019 passed by the learned Special and Chief Judicial Magistrate, Vellore, in Spl. Case No.2 of 2016 is hereby set aside. The appellant/accused is acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

16. In fine, the present Criminal Appeal stands allowed.

11.04.2023

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
rts

Dr.G.JAYACHANDRAN, J.,

rts

To

1. The Special and Chief Judicial Magistrate,
   Vellore.

2. The Inspector of Police,
   Vigilance and Anti Corruption,
   Vellore, Vellore District,

3. The Public Prosecutor,
   Madras High Court,
   Chennai.

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