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CrI.A.No.439 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2023

CORAM :

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

CrI.A. No.439 of 2017

State represented by:
The Public Prosecutor,
High Court, Madras -104.

.. Appellant

Vs.

Palaniappan

..Respondent

PRAYER : Criminal Appeal has been filed under Section 378 (1) (b) of Criminal Procedure Code, to set aside the acquittal judgment dated 07.11.2016 in Special C.C. No.02 of 2015 on the file of the Assistant Sessions Court, Udhagamandalam.

For Petitioner	: Mr.S.Udayakumar, Government Advocate (CrI.Side)
For Respondent	: Mr.K.V.Sridharan

ORDER

Being aggrieved by the Judgment of the trial Court acquitting the respondent, this appeal is preferred by the State. The case tried against the respondent for the offences under Sections 7 & 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.



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2. The sum and substance of the prosecution case as spoken by the witnesses is that the respondent was working as overseer in the Panchayat Union Board, Coonoor and had demanded a sum of Rs.2,500/- from the defacto complainant Shanmugam @ Sivashanmugam who organized workers for food for work scheme sponsored by the Central Government under the scheme Sampoorna Grameen Rozgar Yojana (SGRY).

3. According to the complainant for cleaning the bushes in the footpath at Oonjilaraicombai for 11 days, he and 10 other workers were entitled for a sum of Rs.1,344/- besides rice which was already disbursed to them by way of token to be collected by the PDS shop. For preparing the bill, it is alleged that the respondent made his first demand of Rs.2,500/- on 08.10.2003 as bribe. When the defacto complainant explains his inability to pay that amount, he reduced it to Rs.1,000/-. Once again the defacto complainant enquired about the bill on 14.10.2003, and at that time, there was a second demand made by the accused. The defacto complainant was not willing to pay the bribe money and went to Vigilance Office at Ooty on 16.10.2013 and gave a



written complaint.

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4. The complaint was received and registered at 8.00 hours in Cr.No.7 of 2003. The two official witnesses were called for the trap proceedings. The complaint (Ex.P2) were read over to them, being satisfied, they agreed to be the shadow witnesses for the trap proceedings. The bribe money of Rs.1,000/- (One 500 Rupee Note and five 100 Rupee Notes) were smeared with phenolphthalein and entrusted to the defacto complainant (PW.2). The Entrustment Mahazar Ex.P4 was prepared and completed at 09.00 hours. Thereafter, the trap team proceeded to the Panchayat Union Office at Coonoor College Road and arrived the trap spot at 10.25 hours. The respondent received Rs.1,000/- from PW.2 that was witnessed by PW.3. After receiving the pre-trap signal, the trap laying officer Mr.Kanagarajan, (P.W.13) entered the office and conducted phenolphthalein test in the hands of the accused and tainted money of Rs.1,000/- was recovered from the respondent. The recovery Mahazar Ex.P5 was prepared and completed at 13.00 hours. The hand wash samples was sent for chemical analysis found the presence of phenolphthalein and Sodium Carbonate and after receiving



the chemical analysis report a sanction was granted to prosecute the respondent who being the public servant and final report been laid.

5. The prosecution examined 14 witnesses (P.W.1 to P.W.14) and were marked 26 Exhibits (Exhibit P1 to P26), 8 Material Objects (M.O.1 to M.O.8) were recovered and on the side of the defence, 3 Exhibits (Ex.D1 to D3) were marked.

6. The accused in defence had specifically stated that he received Rs.1,000/- from PW.2 that being a part of the repayment of the loan received by the defacto complainant for the medical expenses of his wife who was admitted in the hospital. The said explanation also forms part of the Mahazar marked as Ex.P5,

7. The trial Court after considering the evidence found that there is lacunae in the case of the prosecution. The charge of demand and acceptance of illegal gratification as a reward to pass the bill has not been proved beyond doubt. Being aggrieved, the present appeal came to be filed by the State.



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8. Learned Government Advocate appearing for the State submitted that the trial Court failed to appreciate the evidences properly let in by the prosecution. The testimony of PW.2 was fully corroborated by PW.3 and PW.4 and that ought not to have been disbelieved by the trial Court. Ex.P.10, Ex.P.12 and Ex.P.14, testimony of P.W.5 if read conjointly, the factum of demand and acceptance of illegal gratification for passing the bill gets established. However, the trial Court had failed to appreciate this evidence.

9. Per contra, the learned Senior Counsel appearing for the respondent/accused, submitted that the case of the prosecution suffers fundamental defect. While the sanctioning authority PW.1 had specifically mentioned in the sanction order that he has perused Ex.P.1, the statement of the accused before arriving at satisfaction to accord sanction, the said statement of the accused had not seen in the later day. Contrary to the evidence of P.W.1, the trap laying officer has deposed that he did not record separate statement of the accused except recording his explanation in the Mahazar.



10. According to the learned counsel for the respondent, even going by the explanation given by the accused which form part of the Mahazar and the evidence of P.W.11, the wife of the defacto complainant, P.W.2, proved that there was money transaction between the defacto complainant and the accused and Rs.2,000/- was earlier borrowed by the accused for his wife's medical treatment and the said sum of Rs.1,000/- was given to him. Regarding the motive for giving the false complaint, the learned counsel would rely upon the cross examination of PW.14, wherein, it is elucidated that accused was an active Union Member and participated in the Government staff agitation and also the defacto complainant is the husband of the Panchayat Ward Member had animosity against the respondent who was working as a overseer.

11. Heard the learned counsel for the appellant and the learned Government Advocate appearing for the respondent and records perused.

12. While the Vigilance manual Rule 47 directs that the trap laying officer in the cases of trap should record the explanation given by the public servant for the possession of the money. In this case admittedly,



there is no separate statement of the accused recorded. However, PW.1 who is a sanctioning authority in his sanction order mentioned that he has proved the statement of the accused.

13. Regarding the possession of tainted currency of Rs.1,000/-, a possible explanation has been given by the accused and the same is substantially supported by PW.11 Saroja, who is none else than the wife of PW.2 defacto complainant. Above all, it has rightly been pointed out by the trial Court that the defacto complainant Sivasanmugam is not the contractor for the said work. He claims to be the representative of the other 11 workers. PW.10 Chinnasamy, who is one of the workers found in the list examined by the prosecution but he has turned hostile.

14. This Court also notes that though the complaint was on 16.10.2013 at about 07.00 hours, one of the official witnesses examined as P.W.4 in the cross examination stated that he was informed by the superior officer on the previous day directing to attend the vigilance office, next day by 08.00 a.m. This admission by PW.4 goes to the very root of the prosecution case regarding the presence of shadow witnesses



Dr.G.JAYACHANDRAN, J.

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during the trap proceedings and the date and time of receiving complaint.

15. The defence Exhibits Ex.D1 to D3 relate that for the said work, Rs.5,000/- only was allotted and it is also improper for cash about Rs.1,400/-, a demand of Rs.2,500/- by overseer defies logic. Therefore, the reason given by the trial Court for acquitting the respondent is possible and therefore, there is no necessity to interfere the findings of the trial Court. Hence the appeal is dismissed.

15.09.2023

Internet : Yes/No

Index: Yes/No

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To

The Assistant Sessions Judge,
Udhagamandalam.

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