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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.11.2022

Pronounced on : 10.02.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Cr1.A(MD)No.317 of 2017

Tmt.Tamilarasi : Appellant/Accused

Vs.

State rep. By
The Inspector of Police,
Vigilance Anti-Corruption,
Madurai.
(In Crime No.17 of 2009)

: Respondent/Accused

Prayer: Criminal Appeal filed under section 374(2) of the Criminal Procedure Code, to call for the records relating to the judgment, dated 31/07/2017 in Special Case No.74 of 2021 on the file of the Special Judge for Trial of Prevention of Corruption Act cases, Madurai and to set aside the conviction and sentence.



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For Appellant : Mr.B.Saravanan
for Mr.S.Thirupathy

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

J U D G M E N T

This criminal appeal has been preferred against the judgment of conviction and sentence that has been passed by the Special Judge for Trial of Prevention of Corruption Act cases, Madurai, in Special Case No.74 of 2011, dated 31/07/2017.

2.The case of the prosecution in brief:-

PW2 is the de-facto complainant. She lodged a complaint stating that the accused demanded Rs.1,000/- as bribe for extending the benefit of the Government Scheme, since she gave birth to a female child and underwent sterilization surgery. On the basis of the complaint given by PW2, the case was registered and trap was laid and after completing the formalities of investigation, final report was filed against the accused by the Investigating officer stating that the accused has committed the offences under sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. After completing the formalities of supply



of copies to the accused, framed charges under sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

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3.To prove the charges, on the side of the prosecution, 12 witnesses have been examined and 23 documents marked, apart from 7 material objects. On the side of the defence, one witness was examined and 6 documents marked.

4.The case of the prosecution, as narrated through the examination of the witnesses:-

PW2 is the resident of Anuppanadi. She gave birth to two female children. A scheme was announced by the Government of Tamil Nadu, by which, benefits are given to the people like PW2. She presented a request for getting the above said benefit before the concerned officer working in Thiruparankundram Panchayat Union. On 17/07/2009, again she contacted the above said officer. At that time, she told her that she can make recommendation, if she pays Rs.500/-. So because of her inability to pay Rs.500/-, it was reduced to Rs.300/-. She came to the house and discussed the same with her husband. So again with her husband, she visited the Panchayat Union Office and met Tamilarasi. Even at that time, she demanded Rs.300/-. They



were unable to pay the above said amount, on 20/07/2009 at about 01.30 pm, she lodged a complaint with the Vigilance Inspector. At the time of the above said occurrence, she was unaware of the correct name of the officer, who demanded the above said bribe. Later, only she came to know that her correct name is Tamilarasi. Only on the basis of the information given during the above said occurrence by the other persons, she mentioned the officer's name as 'Saraswathi'.

5. Further investigation is undertaken by PW12, who was working as Inspector of Police, Vigilance Department during the relevant period. He received the complaint, on 20/07/2009 and registered a case in Crime No.17 of 2009 under section 7 of the Prevention of Corruption Act. The original FIR was submitted to the concerned court and copies to the higher officials as per the procedure. He made request to the Government Department to depute two responsible officers for assisting the trap proceedings. In pursuance of the above said request, at about 02.40 pm, one Sankarammal and one Ibrahim visited the office. As per the procedure, he took up the pre-trap arrangement, introduced the witnesses to PW2 and also conducted demo by using the sodium carbonate solution. He told the importance of the above said demo to the witnesses and he received Rs.300/-



currency notes from PW2, which was demanded by the accused.

He prepared a mahazar by noting about the currency note numbers and he advised the witnesses to follow the instructions and go to the office of the accused and hand over the money if demanded and make a signal. For all these events, a detailed mahazar has been prepared, in which all the witnesses signed. In pursuance of the above said pre-trap arrangement, all of them started towards the office of the accused in a Government vehicle at about 04.05 pm. They reached the place of occurrence at about 4.30 pm and other witnesses to follow the instructions. At about 04.45 pm, PW2 and other witnesses went inside the office of the accused.

6. Further event is spoken by PW2 and she has stated that as advised by PW12, she along with other witnesses namely PW3 went inside the office of the accused and she enquired about her application. The accused enquired whether she has brought money as demanded by her. In pursuance of the above said demand, she handed over the money, which was accepted by the accused. Later, returned Rs.100/- for purchasing sweets for her children. Both of them came out of the office and made hand signal.



7. Further event is spoken by PW12. He would say that on getting the hand signal from PW2, along with police team, he entered into the office of the accused. The accused was identified by PW2. He advised PW2 to go out of the office and take up the further process and prepared the sodium carbonate solution and the accused was advised to wash her hands. Two separate solutions were prepared and the right and left hands were advised to be washed by the accused and both the solutions turned pink. So both the solutions were collected in separate containers, labelled and sealed. He made enquiry with regard to the money, which was stated to be accepted by the accused. The accused handed over the money, which was received by her from PW2. He compared the same with that of the currency note numbers, which were mentioned in the mahazar, which was prepared at the time of pre-trap arrangement. It was found to be tallied. He also recovered Rs.2,350/- from the accused, for which, no proper explanation was offered by the accused. That amount was also seized, for which separate mahazar has been prepared. Later, he collected all the revenue records from the office and also made search in the house of the accused, but no documents were recovered. The accused was arrested and remanded to judicial custody. At the time of trap, the correct name of the accused was brought to notice, since the accused was identified by PW2.



8. Further investigation was undertaken by PW13, who was working as Inspector of Police, Vigilance Department during the relevant time and he recorded the statement of the witnesses, submitted the material objects for chemical examination through the court. After completing the formalities of investigation, and obtaining sanctioning order, he filed final report.

9. PW3 is a shadow witness, who corroborated PW2 and PW12 with regard to the pre-trap and trap events and materially corroborated their evidence.

10. PW4 was working as District Welfare Officer and she has stated that during the relevant period, the accused was working as Extension Officer, Thiruparankundram Block. She has also stated about the procedure to be taken to sanction the benefit of the Government scheme to the parents. She has further stated that the above said request, that was made by PW2 was forwarded to the accused for further process.

11. PW5 was working as Village Welfare Officer and on that particular day of trap, he visited the office of the accused and came to know about the events.



12.PW6 witnessed the search that was made by the Vigilance Department officials in the house of the accused.

13,PW7 was working as Teppakulam Police Station during the relevant time. She signed in the arrest memo prepared by PW12.

14.PW8 was working as Block Development in Thiruparankundram Panchayat Union and he has spoken about the duties assigned to the Extension Officers.

15.PW9, who is not the material witness. She sent the material objects for chemical examination, when she was working as Head Clerk in the Special Court.

16.PW10 was the Scientific Assistant, who worked in the Forensic Science Laboratory, Chennai and sent a report on the basis of the chemical examination made by him over the material objects.

17.PW11 is the husband of PW2 and he corroborated the evidence of PW2 with regard to the material witnesses, etc.



18. After examining the witnesses on the side of the prosecution was over, the accused was put to section 313 Cr.P.C questioning. She denied the facts stated by the witnesses.

19. Now at the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced to undergo simple imprisonment for two years and imposed a fine of Rs.2,500/- with default clause for the offence under section 7 of the Prevention of Corruption Act, 1988; to undergo simple imprisonment for two years and imposed a fine of Rs.2,500/- with default clause for the offence under section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. Both the sentences were ordered to run concurrently.

20. Challenging the above said conviction and sentence, this criminal appeal has been preferred.

21. Heard both sides.

22. The admitted facts may be kept in mind, so that the continuation of the discussion will be easy.



23.It is not in dispute that PW2 gave birth to two female childrens. She applied for Bond introduced by the Government of the Tamil Nadu for the welfare of the above said female childrens, as per the Scheme introduced in 2006.

24.It is also not in dispute that she made a request with the accused officer for extending the benefit. It is also seen that the husband of PW2, who has been examined as PW11 namely Ravichandran was already married and through the first wife, he had four childrens, among which, three were female childrens and one male. For the second time, he married PW2 during the life time of the first wife.

25.It is also not denied that both of them were living separately. PW2 was shown as head of the family in the separate Ration Card, which was issued to her. But this important fact has not been disclosed by PW2, at the time of making the request for issue of the Bond. More particularly, PW11 has not disclosed to any one, till the above said Bond was cancelled subsequent to the above said occurrence of bribe. On further enquiry, all the Bonds have been cancelled. This is the important factor, which was not properly taken care by the Prosecuting



Officer/Investigating Officer. Why proper action was not taken, either against PW11 or PW2 for suppressing the true facts, tried to get the benefit by illegal means. Now whatever it may be, the State has not chosen to prosecute PW2 and PW11 for their illegality.

26.Now with this in mind, let us go to the accusation against the accused officer.

27.It is not denied by the accused that during the relevant time, she was working as Social Welfare Officer. But in the complaint, the name of the officer, who demanded illegal gratification was shown as 'Saraswathi'. But with regard to the identification of the officer, who alleged to have demanded the bribe was verified and confirmed at the time of the actual trap, which was laid, on 30/07/2009.

28.Even though, much argument was advanced by the learned counsel appearing for the accused with regard to the identification of the officer, who demanded the bribe, but during the course of trap process, identification was verified. So the accused officer cannot take advantage of the wrong name, which was mentioned in the complaint. It is not her case, even to the fact that at the time of the above alleged occurrence, some other officer by name



Saraswathi was working in the office during the relevant time.

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29. Now let us go to the evidence of the co-officer and PW4-Jayalakshmi, who was working as Social Welfare Officer in Madurai. She would say that Madurai District had 30 blocks and each block was having one Social Extension Officer. In Thiruparankundram Block, request that was made by PW2 for the benefit in the office and she had signed in it and before that, the above said request was verified, the verification was made by the accused officer by making spot inspection; on the recommendation made by the accused officer on spot verification, the Bond was issued through the accused officer. So from her evidence, it is very clear on this issue that this accused officer was working as Social Welfare Extension Officer during the relevant time. So the accused officer cannot dispute her identity now, by taking advantage of the wrong name mentioned in the complaint.

30. The identity of the accused officer was not also put to PW4 during the course of cross examination. In the mahazar prepared at the time of trap, he has mentioned as 'Tamilarasi'. For that, the learned counsel appearing for the accused officer would submit that her signature has



been obtained by the Vigilance Department officials on compulsion and she being an officer was not able to make any objection at that time. But now, it is too late for the accused officer to raise this point at this stage. So this argument is rejected outright.

31. Now let us go back to PW2. Before we go into the evidentiary value of PW2, the character, as mentioned above assumes importance. She wanted to cheat the Government with the support of her husband namely PW11-S. Ravichandran.

32. The question, which arises for consideration is whether a person, who gave false information to the Government Department for getting the assistance can be relied for any purpose.

33. No doubt that PW2 is not a reliable person because of her conduct. So also the accused person. Because at the time of trap, not only the tainted money, but also Rs.2,800/- has been recovered from her. So far as the money viz., Rs.2,350/- is concerned, she was not able to give proper explanation. This shows that the accused officer was also not honest during the service period. So all namely PW2, PW11 and accused officer are not reliable persons at all.



34. Now with regard to the demand, PW2 has stated that within a week from the date of the surgery, she presented the petition. On 17/07/2009, she met the accused officer. At that time, she alleged to have demanded Rs.500/-. Even at the time of making petition, she already paid Rs.100/-.

35. In the light of the above said evidence, now let us go back to the complaint under Ex.P2.

36. In the complaint, it has been stated that even at the time of presenting the petition, she paid Rs.1,000/- under compulsion. After sometime, she was informed that Bonds were ready to be issued. So on 07/07/2009, again she approached the accused officer. At that time, she demanded Rs.500/-.

37. With regard to the payment of Rs.1,000/- at the time of making the petition, it appears that no complaint was made by her. PW11 has stated that PW2 received Rs.500/- from him for two times for giving the same to the accused person. But there was no direct evidence to the above said payment of Rs.1,000/- at the first instance.



38. With regard to the present demand, PW2 has stated that she informed the demand made by the accused officer to her husband on the same day itself. Again, in the evening, she approached her to issue the Bond. At that time, she insisted for payment of Rs.300/-. On 20/07/2009, she lodged a complaint. On this evidence, it has been contended by the accused that this portion is contrary to the charge as well as the evidence on record. PW11 has stated that on 20/07/2009, he went along with PW2 and enquired the accused officer. At that time, she demanded Rs.500/- and later, it was reduced to Rs.300/-. When they came out of the office, they were told that her name was Saraswathi. So they approached the Vigilance Department and lodged the complaint. So his evidence is contrary to PW2's evidence. PW2 has not stated anything to the effect that on 20/09/2010, she met the accused officer along with her husband. So there are some confusion with regard to the visit of PW11 along with PW2.

39. Now we can discard the evidence of PW11, since he suppressed the true facts at that time of giving the petition.

40. But from this, the accused cannot take advantage of it. So with regard to the initial demand, demand on



20/07/2009 in the morning, can be disbelieved. So far as the trap is concerned, the evidence was very cogent and convincing. Even if we ignore the evidence of PW2 for her conduct, PW3 who is the shadow witness has given cogent evidence with regard to pre-trap arrangement and actual trap. She would say that at about 04.30 pm along with PW2, she went inside the office of the accused and enquiry was made by PW2 for issuing Bonds and at that time, she handed over the Xerox copy of the Bonds. She also enquired whether she brought money as demanded by her. In response to the demand, PW2 handed over Rs.300/-.

41. Further conversion revealed that PW2 and the accused officer belong to the very same village. So as a goodwill gesture, she returned Rs.100/- to PW2 advising her to purchase sweets for her children. So this portion of her evidence cannot be discarded on any ground.

42. The learned counsel appearing for the appellant would submit that this portion of her evidence is quite contrary to the evidence of PW2.

43. With regard to the time factor, PW2 has stated that at 04.30 pm, they started from the Vigilance Office, whereas PW3 has stated that at about 04.30 to 4.35 pm, they



reached the office of the accused and went inside. The time factor may not assume importance, in view of the fact that the trap proceedings itself is supported by the evidence of PW5, the Rural Welfare Officer, Thiruparankundram and she has stated that on 20/02/2009, the Vigilance Department officials came there, the relevant documents have been recovered from her, the accused officer was also found surrounded by many people. She has also spoken about the Attendance Register. She would say that on 20/02/2009, the accused officer has not signed in the Attendance Register. On 14/07/2009, the accused officer was on leave. This portion of evidence was relied by the accused officer to argue that the initial demand, that has been alleged to have been made by the accused officer, on 17/07/2009, is falsified her evidence. Because PW2 has stated that on 07/07/2009, she visited the office and enquired about the Bond. At that time, the accused officer demanded Rs.500/- as bribe.

44. With regard to the initial demand, we disbelieved the evidence of PW2. So from the above said factual aspect, the trap that was undertaken by the Vigilance Department cannot be doubted and disbelieved, simply because there is contradiction in the time factor with regard to the actual trap.



45.PW3 has further deposed that after receiving the money, the accused officer put Rs.200/- in her hand bag and Rs.100/- returned to PW2 and this piece of evidence is relied by both the prosecution as well as the defence.

46.The learned Additional Public Prosecutor would submit that this shows the acceptance of money by the accused person. But the defence would say that this piece of evidence is quite contrary to the evidence of PW2. PW2 has stated that after receiving the money, the accused put the same in her hand bag. But the non-recovery of the hand bag of the accused officer where the above said money was put was made a ground attack. It is not necessary for the Trap Laying Officer to recover her hand bag. The tainted money was handed over by the accused officer. That is sufficient.

47.The appellant would also rely upon the contradiction between the evidence of PW2 and PW3 with regard to the conversation that when PW2 enquired about the Bonds, the accused officer stated that the Bonds are ready. But PW3 has stated that only Xerox copy of the Bonds were given to PW2.



48.No doubt that there are some contradictions with regard to the above said fact. But the fact remains that the Bonds were recovered by the Trap Laying Officer and produced at that time of the trial also. PW2 has stated that she received the Bonds from the accused officer. From her only, the above said Bonds have been recovered by the Trap Laying Officer. So the contradictions may not assume any importance.

49.Now let us go to the evidence of the Trap Laying officer namely PW12. He would say that at about 02.40 pm, officials from the other Departments, attended the office and the trap arrangement was made. After completing the above said formalities, they started from the office at 04.05 pm. They stopped the vehicle in Pandian Nagar and PW2 and PW3 were instructed to go to the office of the accused officer and they were hiding nearby place. This portion of the evidence has been attacked by the appellant to the effect that only five minutes has been taken by PW2 for making trap arrangement. According to her, this is not reliable and probable also. Because, PW3 has stated that at 02.35 pm, she was asked to go to the office of the Vigilance Department by her higher officials. A small difference in time cannot be given any importance at all. Because the events cannot be expected to be taken



in a mathematical precision. With regard to the trap event also, I find nothing to disbelieve his evidence. Nothing is brought on record to disbelieve the pre-trap arrangement and actual trap, etc., facts. So from the evidence of Trap Laying Officer and PW3, it can be safely concluded that the accused officer demanded money from PW2 as bribe for issuing the Bond and accepted the same. There is no proper explanation on the part of the accused about the recovery of the money itself. It is simply stated that when the illegal act of PW2 was brought to light, the accused officer refused to hand over the Bond. Only to escape from the criminal liability and for non-issuing of the bond, the above said complaint has been given. But this sort of contention is very remote to be accepted.

50.As mentioned earlier, not only PW2, but also PW11 is not reliable as well as the accused officer. Even though the money involved is meagre, but considering the fact that the accused officer was also found in possession of Rs.2,800/-, which was an un-accounted money, shows that she is also equally not reliable.



51. In the light of the above said evidence PW3 and PW12, it can be safely concluded that the accused officer demanded and accepted Rs.300/- as bribe amount. Since the sodium carbonate solution test turned pink, in the light of the above said, naturally section 20 of the Prevention of Corruption Act comes into play.

52. In the light of the above said discussion, I find no reason to differ from recording of conviction. But regarding the sentence for both offences two years SI each has been imposed. The learned counsel appearing for the appellant would submit that the alleged occurrence took place during 2007 and the appellant was aged about 56 years in 2011 and now she is aged about 69 years.

53. Considering the age of the appellant and the manner in which, the offence said to have taken place, in my considered view that the imprisonment of two years, which imposed upon the appellant can be reduced to **six months of simple imprisonment** for the offence under section 7 of the Prevention of Corruption Act and to undergo **one year simple imprisonment for the offence section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.** In so far as the fine, the order of the trial court is confirmed.



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5r3.With the above modification, this criminal

appeal is **partly allowed**.

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10/02/2023

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

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To,

- 1.The Special Judge for Trial of
Prevention of Corruption Act cases,
Madurai.
- 2.The Inspector of Police,
Vigilance Anti-Corruption,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J. ,

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