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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	09/11/2022
Date of Pronouncement	25/01/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.A(MD)No.331 of 2017

The State represented by
The Public Prosecutor,
High Court, Madras.
Inspector of Police,
Vigilance and Anti Corruption,
Pudukkottai. : Appellant/Complainant

Vs.

Tmt.P.Banu : Respondent/Accused

Prayer: Criminal Appeal is filed under section 378(1)(b) of the Criminal Procedure Code, to set aside the judgment of acquittal of the respondent passed by the Court of the Special Judge and Chief Judicial Magistrate, Pudukkottai, in Special CC No.2 of 2013, dated 28/02/2017.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For Respondent : Mr.D.Ramesh Kumar

J U D G M E N T

This Criminal Appeal is preferred against the judgment of acquittal passed by the Court of the Special



Judge/Chief Judicial Magistrate, Pudukkottai, in Special
CC No.2 of 2013, dated 28/02/2017.

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

The appellant filed a final report stating that the
accused, while she was serving as Sub Inspector of
Police, attached to Adhanakottai Police Station,
Pudukhottai District, demanded and accepted Rs.5,000/-
other than her legal remuneration from the complainant
namely Muthukumar for not registering the case against
him, on the basis of the complaint given by one
Purushothaman and thereby, committed the offence
punishable under section 7(1) and 13(1)(r/w 13(1)(d) of
the Prevention of Corruption Act, 1988.

3.After appearance of the accused person and after
completing 205 Cr.P.C proceedings, she was charged for
the offense of public servant taking gratification other
than legal remuneration in respect of an official act
punishable under section 7 of the Act and the offense of
criminal misconduct by public servant punishable under
section 13(2) r/w 13(1)(d) of Prevention of Corruption



Act, 1988. She denied the above said charges and claimed to be tried.

4. On the basis of the above said, final report and charges, the prosecution examined 14 witnesses and marked 25 documents, apart from 5 material objects.

5. At the conclusion of the prosecution witnesses, the accused was put to section 313 Cr.P.C question and she denied and disputed facts stated by the prosecution. Thereafter, she entered the defence and on her side, two documents were marked and no witness was examined.

6. At the conclusion of the trial process, the trial court found that the charges framed against the accused were not proved beyond all reasonable doubt and acquitted the accused. Now challenging the above said acquittal, the State preferred this appeal.

7. The case of the prosecution, as narrated through the examination of the witnesses is briefly stated as follows:-



PW2 is the de-facto complainant. His brother is one Purushothaman. In 1998, there was a partition with regard to the family properties. On 09/09/2012, the above said Purushothaman cut and removed the standing tree. He objected and caused assault. He sustained injury. Over the above said occurrence, he lodged a complaint, on 09/09/2012 before the Sub Inspector of Police, namely Banu, who is the respondent herein. But no action was taken. He admitted in the hospital for about 5 days and discharged, on 13/09/2012. So over the in-action on the part of the respondent, he again sent a complaint to the Deputy Superintendent of Police, Pudukkottai, on 18/09/2012, Thereafter, only the case was registered against the above said Purushothaman and he was arrested and released on bail, on 24/09/2012.

8. On the next day namely 25/09/2012 at about 8.00 pm, the respondent came to the house and stated that his brother has given a complaint against him and asked him to come and meet her privately. On 26/09/2012 at about 12.00 noon, he went to see the respondent. At that time, she demanded Rs.5,000/- for not registering the case against him. He was not willing to bribe the respondent,



on 27/09/2012, he lodged a complaint with the Vigilance Department.

9.The further event is spoken by PW11 and he has stated that when he was working as Inspector of Police, Vigilance Department, on 20/09/2012 at about 06.00 pm, he received the complaint from PW2 and registered a case in Crime No.6 of 2012 for the offence under section 7 of the Prevention of Corruption Act. He submitted the original FIR to the concerned court and copies to the higher officials as per the procedure.

10.He made a request to the Government Department to depute two persons to assist the prosecution for process of trap. That was made by him, on 22/11/2012. In pursuance of the above said request, on 28/09/2011 at about 9.00 am, one Periyannaraj and Murugesan attended the office. He introduced the above said witnesses to PW2 and made a pre trap arrangement. For that purpose, PW2 handed over Rs.5,000/-, which was demanded by the accused person as bribe. He prepared a mahazar by noting down the currency note numbers. He prepared the sodium carbonate solution and also conducted demo. He explained the



importance of the above said test to the witnesses and the above said Rs.5,000/- was smeared with Phenolphthalein power and he advised PW1 and other witnesses to follow is instructions.

11.He advised them to go and meet the accused and if demands any bribe amount, they must hand over the same and soon after handing over the same, they must give a signal. For the above said process, they prepared a detailed mahazar, in which the above said witnesses signed.

12.In pursuance of the above said pre-trap process, at about 10.30 am, they started from their office towards the police station and at about 11.15 am, they reached the Adhanakottai Police Station. PW2 and the shadow witnesses were going inside the police station and followed his instructions.

13.The further event is spoken by PW2. He has stated that he along with the witness Murugesan went in side the police station. At that time, the accused enquired, whether he brought Rs.5,000/-. He handed over



the above said money, which was accepted by the accused and put the same in her uniform pocket. They came out of the office and made a signal as instructed by PW11. The further event has spoken by PW11. After getting the signal from PW2, he along with the entire police team went in side the office of the respondent. The accused was identified by PW2. He advised PW2 to go out of the office. He informed the Deputy Superintendent of Police through out about the above said occurrence. He prepared the sodium carbonate solution and the accused was advised to wash her both hands in separate solutions. Both the solutions turned pink. Both were collected separately in separate containers, sealed and labelled.

14. On enquiry, she handed over the above said Rs. 5,000/-. He compared the same with that of the currency note that was mentioned in the Mahazar and found to be tallied. The above said amount was seized and for that purpose also, the mahazar was also prepared. Again her pant pocket was also subjected to the above said test. It was turned pink. That solution was collected in another container, sealed and labelled. The above said uniform pant was also seized through mahazar.



15.He also seized the relevant documents with regard to the complaint in CSR No.123 of 2012 on 31/12/2019 in Crime No.20 of 2012 and other relevant documents. Later the Deputy Superintendent of Police transferred and he handed over the above said documents to the above said Deputy Superintendent of Police. He prepared the parvai Mahazar, rough sketch and the accused was arrested at about 2.30 pm and search was also made in the house of the accused.

16.The further event was spoken by PW12. He would say that in pursuance of the information furnished by PW11, he went to the office of the respondent and arrested the accused and took up the further investigation. He submitted the material objects to the court. The further investigation was undertaken by PW13. He would say that in pursuance of the above said and on the basis of the direction of the Vigilance Department, he took up the further investigation and submitted the request to the court to send the MOs for chemical examination. He recorded the statement of the witnesses and after completing the investigation, and after the official formalities, he filed a final report. In the



meantime, he was transferred and finally, PW14 received the file and on going through the records, he obtained sanction order and he filed a final report, on 04/07/2013.

17.PW3 as mentioned above, is the shadow witness, who corroborated PW2 and PW4 with regard to the the material evidence and pre- trap arrangement, etc. PW4 was working as Special Sub Inspector of Police in Keeranur Police Station. He has stated that when he was in the office, PW2 and other persons visited the police station and later, the above said trap took place and he witnessed the same. He came to know that PW5 is the brother of PW2 and he spoken about the issue between them. He has stated that he was arrested in pursuance of the complaint given by PW2 and during his custody period, PW2 cut and removed the standing trees after coming out of bail. He lodged a complaint with the accused, on 24/09/2012. But she refused to receive the same stating that no action can be taken by her.

18.PW6 is the Village Administrative Officer of Audhanakottai. He spoken about the frequent trouble between PW2 and PW5.



19.PW7 has spoken about the arrest of PW5 etc, facts. He handed over the relevant documents to the Department. PW8 has also spoken about the complaint given PW2 against PW5. PW9 attached to Police station has written note as spoken. On the material objects submitted by the Investigating Officer through the concerned Court.

20.PW10 was working in Authanoor Police station, on 28/09/2017. She witnessed the trap and arrest of the accused. She has also spoken about the complaint given by PW2 against his brother etc.,

21.With these, the prosecution side evidence was over. As stated above, he was put to section 313 Cr.P.C questioning.

(1)The point for consideration is whether the prosecution has established the case beyond all reasonable doubt?

(2)Whether the judgement of acquittal passed by the trial court is sustainable in law.



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22.It is a case of acquittal.

23.Before we go into the factual aspect, let may extract the principle that has been laid down by the Hon'ble Supreme Court in the judgment reported in the case of Neeraj Dutta Vs. State (Government of N.C.T. Of Delhi) in Criminal Appeal No.1669 of 2009, wherein it has been held in para 70 as follows:-

"70.Accordingly, the question referred for consideration of this Constitution Bench is answered as under:-

In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant Under Section 7 and Section 13(1) (d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."

24.In the light of the above said settled principle of law, let us go to the evidence on record.



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25. The admitted facts are that PW2 was having some sort of issue with his own brother, over the ownership of the land. PW2 says that on 09/08/2012, his brother namely Purushothaman cut and removed the standing trees in respect of the ancestral properties. He was assaulted and admitted in the hospital and no action was taken by the accused. On the basis of the complaint made by him to the Deputy Superintendent of Police, FIR was registered against his brother. Again a complaint was given by Pusushthaman against him. But on the basis of the complaint given by Purushothaman, no case was registered by the accused officer. It is also not in dispute that during the life time, the accused officer was working as Sub Inspector of Police, Adhannorkottai police station, who was the competent authority to register the FIR. The documents with regard to the case and counter case and the entire CD file has been produced before this court. All these facts are not disputed by the accused. Now according to PW2, over the above said counter complaint, the accused demanded Rs.5,000/- as bribe on 26/09/2016. On the next day, he lodged a complaint as narrated in the preamble portion. Trap was laid by PW11.



26. Now let us go to the point that was raised by the learned counsel appearing for the respondent with regard to the fabrication of records by the trap laying officer namely PW11 before going into the other aspects. The reason for taking this issue at the first instance is that in a criminal prosecution, the prosecution must come to the court with clean hands. The State is prosecuting the alleged offender and it should not indulge in fabrication of records and if anything is brought on record to show that the prosecuting agency has fabricated records with the aid of the investigating officer, then it has to be viewed seriously. As it is stated that prosecutorial manipulation is a very serious issue which got to be taken serious note.

27. The reason for my observation is that the learned counsel appearing for the respondent has brought to the notice of this court the manipulation of PSR namely the Prisoner Search Register maintained by the appellant, which is marked as Ex.D2. This aspect was also taken note by the trial court.



28.The relevant discussion can be extracted for better appreciation of the issue involved, which would run thus:-

"50.Another issue has been raised by the learned counsel for the accused that the prosecution agency removed the particular pages and newly written pages were annexed by pasting in the P.S.R and the same creates doubt on the prosecution case. Here it is relevant to mention the statement, while she was examined u/s 313 CrI.P.C, it is stated in the statement as that she was brought to the V & A.C office for inquiry and booked in this case.

51.This court has ratiocinated in significant length on the above issue raised by the defense, on thorough perusal of D1 and D2, it is apparently clear that the particular pages, which was used for entering details of the accused has been removed and re-pointed the same, for which no plausible explanation from the prosecution. On considering the foregoing discussion, this court is of the view that the place of trap proceedings shifted by the prosecution at the whims and fancies of the investigating agency.



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52. What is much disturbing in this case is that the learned counsel for the accused has filed a petition in Crl.M.P No. 1227/16 on 06.10.2016 for protection of Prisoner Search Register and the counter has been filed on 15.11.2016, which is after a long 50 days and after hearing of both sides, an order has been passed by this court for production of the P.S.R on 23.11.2016. Though V & A.C Wing police are attending this court daily, the said P.S.R has been produced before this court on 06.01.2017, which is after another 40 days. viewing the same this court is of the opinion that if the P.S.R in order, it would have been produced, immediately after the order has been passed before this court, but here it was tampered and re-pointed the same and produced before this court. Though the Special wing said to be all officers in the wing vested with power of monitoring the other officials in the state, they have indulged in tampering the Register named P.S.R, which is the property of state Government, by cleaving pages and pasting for the purpose of succeeding a case, now dare the Vigilance Wing, which got the faith of the state and as a special duty cast upon them to monitor with the great task of eradicating corruption by



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booking the erred state officials, indulged such vexatious activity to the extent of manipulating records, at their will and pleasure. The attitude of the Vigilance wing is not desirable and cannot be encouraged. The conduct of the investigating agency seem to be that they did not act in a forthright manner in investigating this case.

53.On the aforesaid discussion of the evidence and materials on record, it is evinced that the prosecution took the accused on uniform to the V & A.C Office. Here one version is true, either the entire trap proceedings would not have been taken place in the Adhanakottai police station as stated by the defense or if the same was taken place at the Adhanakottai police station, certainly, the prosecution agency failed in trap proceedings. In such situation the evidence of P.W.3 Tr.Murugesan, which is the star witness of the prosecution cannot be taken into consideration.

54.On considering the material facts, it is superficially seen that the case of the prosecution has bee backed by suspicion and surmises and as such this court has got



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no hesitation to hold that in this case the entire investigation lost its credibility as every thing was done in lethargic manner and this court is not able to appreciate the way in which the investigation agency handled this case. And it is well settled principle if a case developed suspicious circumstances, the benefit is to be given to the accused. In such position, the probability of the defense case has got some legal force."

29.Perusal of the document by this court also points to this manipulation. On no ground, this can be explained by the prosecution stating that it is not relevant to the demand of bribe, etc. I find no reason to differ from the well considered finding of the trial court. From the circumstances stated above, the very trap event itself is a doubtful one.

30.Even in the grounds of appeal, this particular issue has not been explained or clarified. Para 11 of the grounds of appeal is devoted to this issue, which can be extracted herein.

"11.The trial court erroneously gave adverse findings with regard to Ex.D.1 and



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Ex.D2 and blamed the V & A.C agency on that aspect, which is totally unwarranted."

31.This will amount to nothing, but evasive explanation. It on its own as mentioned earlier is sufficient enough to throw the prosecution case out of the court. Similarly the character of PW2 has also been brought on record during the course of trial and he is in the habit of making allegation against each and every one.

32.PW6 has stated that in respect of the above said issue between himself and his brother, he demanded assessment of tax in his name. But he refused. So he gave a complaint against him to CM Cell as if he demanded Rs. 30,000/- as bribe amount. But that complaint was enquired and closed as mistake of fact.

33.PW5 the brother of PW2 has also given evidence to the effect that on more than one occasions, the accused officer refused to receive the complaint stating that it is a civil dispute between them, at one point of time. Then she received the complaint from him.



34.This also shows that because of frequent trouble between the brothers repeated complaints were given not only against him, but also against the Government officials. So apart from that, the trial court has also found that the sanction is not valid and and effective order, since the sanction authority PW11 has not taken into account the relevant document. The discussion and finding of the trial court with regard to the sanction may be extracted hereunder for better appreciation.

"20.By keeping the above golden principles in mind, this court is convinced with regard to the competency, it is not in dispute that P.W.1 Tr.Amalraj, the Deputy Inspector General of Police got power of granting sanction as against the Sub-Inspector of Police to launch prosecution. But whether the sanction was accorded as per law? and whether there is any failure of Justice? The learned counsel for the accused has condensated his argument to the point of non-application of mind. The learned counsel for the accused has further submitted that as per the prosecution version that P.W.1 received Ex.P.22 F.R.I., Ex.P.3 Entrustment mahazar, Ex.P4 Recovery Mahazar, statements of witnesses and statements of accused from the Directorate



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of Vigilance and Anti Corruption and then on direction of P.W.1, the P.W.12 Tr.Retnavel, the Deputy Supt. Police met him and produced the some other connected documents and then he perused the same and the sanction was accorded, but as per the evidence of P.W.12, the records could not have been submitted by the P.W.121 as the records were not in the possession of P.W.12 on 4.6.2013 and as such even as per the evidence of P.W.1, he got no chance of perusing the entire documents. Further it has been argued that if at all presuming for argument sake that the P.W.12 met the P.W.1 Tr.Amaraj, the sanctioning authority with the documents of this case, it has been admitted that P.W.1 has discussed the case with the P.W.12, who was one among the officers, who handled the case for investigation, which is not permissible by law."

35. Para 24 of the trial court judgment runs like this:-

"24. On careful securitization of testimonies of P.W.1 and P.W.12, it is manifestly clear that on 4.06.2013, no document was in possession of P.W.12, Tr.Retnavel, the Deputy Supt. Of police as all the documents had already been handed



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over to Tr.Uma Maheswaran P.W.13, the Inspector of Police. It be so P.W.12 could not have produced the same before the P.W. 1 and P.W.1 could not have perused the necessary materials on 4.06.2013 and as such it cannot be safe to conclude that P.W.1 applied his mind properly.

36.So the finding of the trial court on re-appraisal of the evidence on record shows that a correct conclusion has been reached. I find no reason to differ from the finding. Not only that even the statement of the accused which was recorded at the time of trap was not submitted before the court. But whereas the exercise that was done by PW1 by scrutinizing the records was not proper and legal.

37.It is a well considered judgment, which requires no interference at the hands of this court.

38.In the light of the above said factual circumstances and the prosecutorial manipulation, I am of the considered view that no case has been made out by the appellant to interfere into the order of acquittal. So it deserves dismissal.



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39. In the result, this criminal appeal fails and the same is **dismissed**.

25/02/2023

Index: Yes/No
Internet: Yes/No

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- 1.The Special Judge/Chief Judicial Magistrate,
Pudukkottai.
- 2.The Inspector of Police,
Vigilance and Anti-Corruption,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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