IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM : JUSTICE **N.SESHASAYEE**

Crl.A.No.232 of 2018

R.Sasikala ... Appellant / Accused

Vs

State by
The Inspector of Police
Vigilance and Anti Corruption
Namakkal, Namakkal District.
[Cr.No.4/AC/2001) ... Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the order passed in Spl.C.C.No.02 of 2003 dated 28.03.2018 on the file of the Special Judge / Chief Judicial Magistrate, Namakkal, Namakkal District and pass such further or other orders as this Court may deem fit and proper under the circumstances of the case.

For Appellant : Mr.P.John Sathyan, Senior Counsel
for Mr.C.Prakasam

For Respondent : Mr.K.M.D.Muhilan
Government Advocate [Crl. Side]

JUDGMENT

The appellant herein challenges the judgment of the Special Court for V&AC cases (Chief Judicial Magistrate), Namakkal dated 28.03.2018 made in Spl.C.C. No.2 of 2003 against the conviction and sentence imposed on her for offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. By virtue of this judgment, the appellant was directed to undergo three years rigorous imprisonment for each of the charges and to pay a fine of Rs.2,500/- to each of the charges with a default sentence of one month simple imprisonment in case of default in payment of fine. All sentences were directed to run concurrently.

2. The prosecution case runs as below:

a) The appellant was an elected Panchayat President of Kondichettipatti Panchayat, Namakkal District between 1996 and 2001. Her term was to expire that year.

b) PW2 and PW4 are brothers and both of them are Advocates as well. Sometime in 1999, there had taken place a partition in the family of PW2 and PW4 along with their another brother and their father. The property was agricultural land and these brothers thought it fit to convey the property to PW5 as non-agricultural land. The sale deed in favour of PW5 was scheduled to be executed on 31.08.2001.

c) It is in this setting, on 24.08.2001, PW2 approached the appellant at her residence with Ext.P2, application seeking a NOC for conversion of their agricultural lands into non-agricultural lands. The appellant then was said to have demanded Rs.1,500/- for issuing the NOC. Subsequent demands were made on 27.08.2001, 30.08.2001, 05.09.2001. When she made last demand, the appellant informed PW2 that out Rs.1,500/-, Rs.500/- was contribution towards collection by the Panchayat and Rs.1,000/- for her.

d) Unwilling to pay the bribe money, PW2 approached the respondent with Ext.P3, complaint, receiving which, PW13 registered Ext.P27, FIR.

e) PW13 is the TLO who chose to trap the appellant on 06.09.2001. After completing the pre-trap protocol, he led the trap-team to the house of the appellant. The team included PW2, the complainant, PW3, and certain Dhanapal as shadow witnesses. At 11.15 a.m, PW2 entered the house of the appellant along with PW3 and he handed over 15 x 100 rupees notes, all smeared with phenolphthalein powder to the appellant. She counted it and told PW2 that she would come and prepare the receipt. No sooner PW2 alerted PW13, he arrived there and completed the rest of the trap procedures. The trap indeed was successful and PW13 seized the currency notes under Ext.P13, seizure mahazar.

f) Thereafter the investigation was taken over by PW14, who after completing the investigation laid the final report.

3. On taking cognizance of the final report of the investigating agency, the trial court proceeded to frame charges as outlined in the opening paragraph of this judgment, and proceeded to try the appellant for the charges so framed. During trial, the prosecution examined PW1 to PW14, produced Exts.P1 to P30 and MO1 to MO5. On the side of the defence, Ext.D1 to D4 came to be marked. After appreciating the evidence before it, the trial court found the appellant guilty of the offences, and sentenced her in the manner already stated and the judgment of the trial court is now in appeal.

4. Mr.P.John Sathyan, the learned senior counsel made the following submissions:

a) The case is tainted in malafides and extremely motivated. Both PW2 and PW4, are advocates and they conceded in their cross-examination that they knew the appellant since their childhood days and the term of the appellant as the Panchayat President was due end shortly and that the election would become due, sometime in October 2001. The constituency from which the appellant was elected as Panchayat President was reserved for women. PW2, however, did not want the appellant to contest in the election. He therefore, had been persuading the appellant not to contest in the election, but the appellant was not interested to oblige such persuasion. It is in this setting the trap had taken place.

b) The case of PW2 is that right from 24.08.2001 to 05.09.2001, the appellant was stead fast in her demand for Rs.1,500/- and this money was paid and the appellant did receive it. Now even though the statutory presumption contemplated under Section 20 of the PC Act will come to play, it is still a rebuttable presumption and the facts that may tilt the balance against the prosecution are:

i. that in the Panchayat, there has been a practice of collecting contributions from any member of panchayat, who approach it for anything to be done through the panchayat in purposes associated with the Panchayat. PW2 and PW4 admit to this fact. Indeed PW11, who is the Secretary of the said Panchayat, states that a separate register is being maintained for recording these contributions. PW2, in particular admits that he was aware of such fund being recorded in register. Though he says that he did not know who was in custody of these funds, PW4 had testified in his chief examination that the brothers were not averse to pay Rs.500/- towards the Panchayat fund. Even though this fund is not a statutory fund and PW11 has deposed that this fund will be in the custody of the Panchayat President and that the decision as to how the money should be spent would be taken by a committee comprising the President along with two other ward councillors. All that the appellant as Panchayat President required PW2 to contribute to the Panchayat fund. Indeed on 06.09.2001 when PW2 tendered, the appellant did issue a receipt for Rs.100/- received it under the miscellaneous head and affixed signature and the seal of the Panchayat. She was to collect the remaining sum of 1,400/- rupees in the Panchayat fund account but, before that the trap had taken place. In this regard, neither PW13 nor PW14 had seized those registers maintained by the Panchayat and produced it before the court.

ii. Therefore, what was paid and received was purely towards the official charges payable as evidenced by Ext.P8, receipt, and the rest was intended to be credited to the Panchayat fund account which the Panchayat in question had been practising. Therefore, there was no intent on the part of the appellant to receive the sum paid to him by PW2 as bribe money, no matter what the intent of PW2 was.

c) For proving an offence under Section 7 of the PC Act, it is imperative that the triple criteria i.e. demand for bribe money, payment of bribe money and its acceptance by the person/accused receiving of the bribe must be simultaneously present. Here in this case, the intent behind the acceptance is not conclusively established by the prosecution and it therefore, upsets the entire equation.

d) Vis-a-vis establishing the motive for implicating the appellant in a well designed and planned case is that once he entered the house of the appellant, he waited 20 minutes for the arrival of the father of the appellant. PW3 also concedes that the appellant was seated in the same room and looked disturbed. It is therefore this 20 minutes, PW2 was urging the appellant not to contest in the election and sadly PW13 joined it. Nothing prevented PW13 from completing the trap proceedings by requiring the appellant to dip her hands in the Sodium Carbonate solution.

e) PW2 is no angel since he had at least some four criminal cases to his credit as evidenced by Exts.D1 to D4. In Ext.D4 case even

PW4 is a co-accused and all the accusations in those cases relate to cheating and land grabbing.

f) Yet another conduct of PW2 which may have a bearing on the believability of the prosecution case is that in his cross-examination, PW2 has deposed that though payments were made on five different dates, not one he had not discussed the same with anyone. This is however, contradicted by his brother PW4, that PW2 too had shared the demand with him.

5. Per contra, the learned prosecutor submitted that it is not in dispute that the appellant was under an obligation to perform certain official duty, but the official charges payable was only Rs.100/- where as she had demanded Rs.1,400/- additionally. And that she had received this additional sum was not even disputed by the appellant. And she also did not even dispute the result of the trap test. However, she brings in two theories in aid of her defence: (a) that the additional sum was collected was towards, what the appellant claim as the Panchayat fund, but there is no legal sanction for the same; and (b) that she attributes motive to P.W.2 in relation to certain local body election issue, which the appellant could not prove. When the trap test is proved positive, then the presumption under Sec.20 of the PCA

automatically gets invoked, but the explanation offered by the appellant has not been able to rebut the said presumption.

Discussion & Decision

6. Rival submissions are carefully evaluated. What is not in dispute is that the appellant had touched the planted currencies and that the trap test was proved successful. The issue is merely because the trap test was proved positive, does it *ipso facto* imply that the appellant could be held guilty of receiving bribe? When the trap test is proved successful, it immediately set in motion the presumption under Sec.20 of the PC Act. However, if the appellant could give a probable explanation which is also believable as a fact on an appreciation of evidence on the touch stone of ordinary course of human conduct as to how the money came to her hand, then the presumption under Sec.20 of the PCA will stand rebutted. But has the appellant been able to rebut the presumption with her explanation?

7.1 On this point P.W.11 admits that there is in vogue in the Panchayat concerned a practice of collecting fund for the purpose of conducting festivals and also for certain common good of the Panchayat. P.W.2 and P.W.4 also admit to the fact that a fund of the nature as explained above was being maintained. P.W.11 in particular has testified that a register of such payments made was also maintained and that the fund was being managed by a committee comprising the President and two councillors. When the very witnesses for the prosecution concede to the existence of the Panchayat fund, then the prosecution, it must be said, walks on the lane which the defence has laid. It is not about whether there was a legal sanction for maintaining any such fund in the Panchayat, but it is all about whether there was in vogue a practice of collecting funds at the Panchayat level for conducting festivals in the Panchayat.? When this fact is established then it probabilises the believability of the defence version, which necessarily imply that the prosecution has not been able to establish the guilt of the accused persons beyond all reasonable doubts.

7.2 What lends credence to the defence theory is that, according to it there is no official charges required to be paid for issuance of the NOC as required by P.W.2, and that Rs.500/- was towards the Panchayat Fund and Rs.1,000/- was the bribe, where as Ext.P-8 receipt for Rs.100/- shows that the way the prosecution divided the said sum is not true. And admittedly the appellant was arrested immediately when the trap-test was proved positive. Where then is the time to make an entry in the register where the receipt of contribution to Panchayat Fund is recorded? Given the facts as established, this Court holds that the presumption under Sec.20 fo the PC Act stands rebutted. And, necessarily, it cannot be held that the prosecution has been able to establish the guilt of the appellant beyond all reasonable doubts.

8. To conclude, the appeal is allowed and the judgment of the Special Judge/Chief Judicial Magistrate, Namakkal, Namakkal District, in Spl.C.C.No.02 of 2003 dated 28.03.2018, is hereby set aside and the appellant is acquitted. The bail bond executed by the appellant is cancelled.

20.11.2024

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Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To:
1.The Special Judge / Chief Judicial Magistrate
Namakkal, Namakkal District.

2. The Public Prosecutor
High Court, Madras.

N.SESHASAYEE.J.,

ds

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