IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2024

CORAM : MR. JUSTICE N.SESHASAYEE

Crl.A.No.93 of 2018

B.Nirmala (died)

1.Aravind
S/o.Late Nirmala (accused)

(Appellant No.1 impleaded as per order
in Crl.M.P.No.4070/2022 in Crl.A.No.93
of 2018, dt.08.04.2022 by GCSJ) ... Appellant

Vs.

State represented by
The Inspector of Police
Vigilance and Anti Corruption
Namakkal
(Cr.No.5/AC/2006) ... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C. r/w Section 27 of P.C.Act, to set aside the judgment of conviction and sentence under Section 7 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act in Spl.C.C.No.21 of 2007 on the file of the learned Special Judge cum Chief Judicial Magistrate, Namakkal and acquit her.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

JUDGMENT

This appeal was preferred by the 2nd accused challenging her conviction along with the 1st accused for offences U/s.7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, in Spl.C.C.No.21 of 2007 on the file of the Special Court, V & AC Court (Chief Judicial Magistrate Court), Namakkal.

2.The prosecution case runs as follow:

- A certain Palaniappan had an electricity service connection. His son is PW2, the defacto complainant. PW2 is a small time weaver and he had a power loom. So far as small time weavers are concerned, at the relevant time Government had launched a policy of granting 500 units of free electricity once in every two months. Be that as it may, Palaniappan passed sometime in 2005. After the demise of Palaniappan, PW2 was in need of an electricity service connection and since his father had passed away, he approached the Electricity Board with his application for transfer of electricity service connection to his name. On 19.12.2006, he had also made necessary remittance. On the same day, he had met the 1st accused and the 1st accused is alleged to have demanded Rs.500/-, but more significantly towards office expenses. This the prosecution construed as a first demand for bribe. Couple of days later, on 23.12.2006 to be precise, PW2 met the 2nd accused and shared the demand made by the 1st accused. It is alleged that the 2nd accused also made a similar statement that PW2 ought to pay Rs.500/- to the 1st accused towards office expenses.

- Unwilling to pay the said sum, on 27.12.2006 at around 8.00 p.m. PW2 preferred Ex.P3 complaint, receiving which PW13 registered Ex.P14, F.I.R. He is also a trap laying officer.

- On 28.12.2006, PW13 began his pre-trap proceedings and after completing the same, he constitutes to the trap team which included PW2 and two official witnesses namely PW3 and PW4. The entire team descended the office of the 2nd accused. There PW2 and PW3 would first meet the 2nd accused to whom PW2 had informed that he had brought Rs.500/-. The 2nd accused, however, directed him to meet the 1st accused. PW2 along with

PW3 met the 1st accused and paid Rs.500/- and as was planned he signalled PW13, who without loss of time descended at the spot and completed the trap procedure. He caused the seizure of the currency notes which are planted for the purpose of trap along with the sample of the sodium bicarbonate mixed with water. PW14, the DSP commenced his investigation, recorded the statements of witnesses, forwarded the material objects to the forensic department and received the report and finally laid a final report.

3. Before charges could be framed, the 1st accused passed away, and as a result, the case against him was abated. The charge was framed only against the 2nd accused for offences U/s. 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

4. During trial, prosecution examined PW1 to PW14, produced Ex.P1 to Ex.P24 and MO1 to MO10. For the defence on her side the 2nd accused examined DW1 and DW2 and produced Ex.D1 to Ex.D7.

5. After appreciating the evidence, the trial Court found that the 2nd accused is guilty of committing offences under both the heads and imposed two (2) years Simple Imprisonment and a fine of Rs.1,000/- in default to undergo one (1) month Simple Imprisonment, separately for both the heads of charges. This is now under challenge.

6. During the pendency of the appeal, the appellant had passed away and it is now prosecuted by her legal heir, essentially to restore honour and dignity to the 2nd accused.

7.The learned counsel for the appellant made the following submissions:

a) The triple criteria required to complete an offence of taking bribe is that there should be a demand for bribe, payment of bribe and acceptance of bribe money. The prosecution is not able to establish that the 2nd accused had made any independent demand either for her benefit or has she made a demand for and on behalf of the 1st accused. The prosecution version of the narration only informs that the 1st accused has demanded Rs.500/- for office purposes and when this was complained to the 2nd accused, the 2nd accused merely has supported it. This can never be construed for demand by the 2nd accused. In fitness of things, the prosecution ought to have investigated if there are any incidental office expenses, but it did not expertise it to ascertain it. When none of the triple criteria is present, necessarily there is no justification for convicting the 2nd accused.

b) Even this apart, if evidence of PW2 is scanned in his chief examination, he would say that he has paid Rs.500/- to the 1st accused, but in the cross examination, he somersaults and would say that the money was paid to some staff of the electricity board. Therefore, even on merit, the case of the prosecution wobbles.

c) PW3 in his evidence would say that he was telephonically required to come to the office of the respondent even at around 3.00 p.m. on the previous day, whereas the F.I.R. itself came to be registered some five hours thereafter. Therefore, the prosecution case wobbles even at the point of commencement of the case.

d) This apart, at the relevant time, the 2nd accused was not even in the office as she had gone for providing electricity connection to DW1 and DW2, through which she had produced Ex.D1 to Ex.D7.

8. Dr.C.E.Pratap, the learned Government Advocate (Crl. Side), however, made his submission on the line adopted by the prosecution before the trial Court.

9.After weighing rival submissions, it becomes increasingly evident that the case as fashioned and presented by the prosecution does not indicate that the 2nd accused / appellant could be convicted. The prosecution was not able to establish the triple criteria for constituting an offence U/s.7 of the Prevention of Corruption Act, 1988. Even if the prosecution story is trusted on its face value, yet the 2nd accused could be proceeded against only U/s.12 of the Prevention of Corruption Act, 1988, and not for

Section 7 of Prevention of Corruption Act, 1988. More so, there is no case of conspiracy between the 2nd accused and the 1st accused projected by it. But, there is neither any charge U/s.12 of Prevention of Corruption Act, 1988 nor U/s.7 of Prevention of Corruption Act r/w 120 (B) I.P.C. In view of the same, this Court does not even incline to enter into an elaborate discussion on the other aspects argued by the appellant.

10. To conclude, this appeal stands allowed. The conviction and sentence imposed on the 2nd appellant in Spl.C.C.No.21 of 2007 on the file of the Special Court, V& AC (Chief Judicial Magistrate), Namakkal is set aside. Fine amount if it had been paid is directed to be refunded to the legal heir of the said appellant.

06.09.2024

kas

Index : yes / no
Neutral Citation

To

1.The Special Judge cum
Chief Judicial Magistrate
Namakkal

2.The Inspector of Police
Vigilance and Anti Corruption
Namakkal
(Cr.No.5/AC/2006)

N.SESHASAYEE, J.

kas

Crl.A.No.93 of 2018

06.09.2024