IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.09.2024

PRONOUNCED ON : 27.09.2024

CORAM : **JUSTICE N.SESHASAYEE**

Criminal Appeal No.467 of 2020

A.Kala Ponnusamy @ Kala
formertly Assistant (Stores Section)
O/o.The Deputy Director of Medical and Rural
Health Services & Family Welfare
District Family Welfare Bureau, Salem ... Appellant

Vs.

The State
Rep by Inspector of Police
Vigilance and Anti-Corruption
Salem District
(Crime No.10/AC/2011/SL) ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records pertaining to the order in Spl.C.C. No.99 of 2014 dated 07.10.2020 on the file of Special Judge (Special Court for Trial of Cases under Prevention of Corruption Act), Salem to set aside the same by allowing the present criminal appeal.

For Appellant	:	Mr.L.Infant Dinesh
For Respondent	:	Dr.C.E.Pratap Govt. Advocate (Crl. Side) Assisted by Ms.J.R.Archana, Advocate

JUDGMENT

This appeal is preferred by the sole accused in Special C.C. No.99 of 2014, challenging her conviction for offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act as well as the sentence imposed on her for these offences.

2.1 The prosecution case runs as below:

- The appellant herein was working as an Assistant in the Stores Section in the office of the Deputy Director of Medical and Rural Health Services, Salem. For the present she does not have an immediate role. How the de-facto complainant came into contact with the appellant herein may have to be now stated.
- A certain Maheswari (PW4) underwent tubectomy sometime in December, 2005. However, in March 2011, she again conceived. This conception got aborted and she again underwent a second tubectomy. The surgical

process took place on 02.04.2011 and PW4 was in the Government Hospital, Tiruchencode between 02.04.2011 and 10.04.2011.

- For compensating a woman whose tubectomy has failed, Government has floated an insurance scheme. PW4 made a claim for the insurance money vide Ext.P2, application dated 02.04.2011, and submitted it to the Government Hospital, Tiruchencode. She was asked to come three days later. Therefore, on 14.04.2011, PW4 went to the hospital along with her husband, PW3 and her father, PW2. The hospital authorities had informed PW4 that her papers had been forwarded to the Department of Family Welfare, and also told them to contact the office of the Deputy Director of Medical and Rural Health Services, since a decision on payment is taken by that office.
- This is how the scene moves from the Government Hospital, Tiruchencode to the office of the Deputy Director of Medical and Rural Health Services (henceforth would be referred to as DDMR office), where the appellant was working as Assistant in the Stores section.
- On 15.04.2011, PW2 (father of PW4) met the appellant at her office. The appellant was then alleged to have made a demand of Rs.4,000/- as bribe. This, according to the prosecution is the first demand made by the

appellant, and PW2 was required to bring his daughter as she had to sign some papers.

- Later, on 20.04.2011, to be precise, at around 11.30 hours, PW4 met the appellant along with PW2 and PW3. They would now make a fresh petition. The appellant would reiterate her demand for the bribe money, this according to the prosecution constituted the second demand. The appellant also told her visitors that they needed to contact her after three months, since the procedure for approving the claim and preparation of cheque would take about three months.
- On 26.07.2011 at around 10.30 a.m, PW2 met the appellant at her office. The appellant was now said to have made a claim-down in her demand for bribe money as she had now given a discount of Rs.1,500/- to P.W.2 and insisted that the latter pay her Rs.2,500/-. This according to the prosecution is the third demand.
- On 28.07.2011, PW2 again met the appellant in her office and the appellant insisted for the payment of Rs.2,500/- as bribe as she was not in a mood to give any further discount.
- In this setting, on 29.07.2011, PW2 preferred a complaint based on which P.W.18 registered Ext.P25, FIR, in Crime No.10/AC/2011/SL.

- P.W.18 was the TLO, and he commenced his proceedings for laying the trap. After completing the pre-trap procedural formalities for trapping the appellant, PW18 led his team to the office of the appellant. PW5 and Selvam were the official witnesses. He also planted 4 notes of Rs.500/- denomination, and 5 notes of Rs.100/- denomination and left them with PW2 after coating it with naphthalene powder.
- At about 15.20 hours on that date, PW2 along with PW5 met the appellant and paid the naphthalene coated Rs.2,500/-. Unaware about the consequences awaiting her, the appellant received the money and PW2 promptly signalled PW18 and the latter completed the rest of the formalities.
- Thereafter PW19 took up the investigation, recorded the statements of PWs2, 3, 4, 5 besides quite a few staff/officials in the office of the appellant and laid his final report. Charges were duly framed by the Special Court for offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

2.2 After appreciating the evidence before it, the trial court found her guilty of the offences of which the appellant was charged, and sentenced her as below:

Accused	Offence	Sentence imposed
Sole Accused	U/s.7 of the Prevention of Corruption Act	Rigorous imprisonment for 1 year and a fine of Rs.5,000/- in default to undergo further period of 3 months simple imprisonment
	U/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act	Rigorous imprisonment for 2 years and a fine of Rs.10,000/- in default to undergo further period of 6 months simple imprisonment

This appeal is now preferred challenging the said judgment.

3.1 The learned counsel for the appellant made the following submissions :

- It is not in dispute that the appellant was working as an Assistant in the office of the Deputy Director of Medical and Rural Health Services, Salem and her colleagues in that office *inter alia* were PW6 to PW9, and PWs.12, 13 and 15 were mere hearsay witnesses. So far as the prosecution case goes, the demand for bribe was alleged to have been made by the appellant in two stages. The first stage of the demand was made on 15.04.2011 and on 20.04.2011, when the appellant was alleged to have demanded Rs.4,000/- as bribe money from PW2. That demand however, did not lead to any payment to complete the offence under Section 7. If this is excluded, then the prosecution case can be pivoted on the second leg of the demand, which according to the prosecution was on 26.07.2011 and on 28.07.2011. The issue is whether there could have been a demand at all made by the appellant in the second occasion, which in terms of the evidence on record does not indicate that there could have been a demand for payment of Rs.2,500/- as alleged by the prosecution. This can be explained as below:

(i) It is an admitted fact that PW4 underwent tubectomy twice and if the tubectomy done at the first instance failed, then the woman concerned would be entitled to be compensated through an insurance scheme, which the Government has devised for that purpose, and PW4 has made an application and this is also not in dispute. However, so far as the actual payment of the compensation amount payable in such circumstances is concerned, it has to undergo a two stage procedure. This is spoken to by PW6. According to PW6, when once an application is made by a claimant to the hospital concerned, then it will be routed to the insurance company through the office of the Deputy Director of Medical and Rural Health Services. This involves certain processing work at the office of the Deputy Director of Medical and Rural Health Services and when once the Deputy Director recommends the claim to the insurance company, then the role of Deputy Director's office is limited to issuing the cheque, which the insurance company makes available to its office. The testimony of PW6 makes it amply evident that only up to the stage of processing the papers for recommending the claim the office of the Deputy Director is involved and not thereafter.

(ii) So far as processing these papers is concerned, the responsibility is entrusted to PW8 and the appellant's role is minimal to the extent of assisting PW8 in the sense that she will prepare necessary notes for PW8 to apply her mind to that. Therefore, if at all there is a role which the appellant may have to play, then it is limited to a stage when the papers are prepared for making recommendation to the insurance company by the office of the Deputy Director of Medical and Rural Health Services. Now, PW2 to PW4 allege that Rs.4,000/- was demanded by the appellant for preparing the papers in phase 1. Yet it was not accompanied by a demand, and even if the same is presumed to have been made, it was neither followed by payment of bribe money nor acceptance of the bribe money, therefore, the offence is incomplete in Phase 1.

(iii) Turning to the second phase, PW6 explains that when once the insurance company favourably considers the recommendation for payment of the claim amount by the office of the Deputy Director of Medical and Rural Health Services then it would issue a proceeding in triplicate, one to the claimant/beneficiary, second one to the hospital through which application for the claim was made, and the third one to the office of the Deputy Director of Medical and Rural Health Services. The procedure envisaged for issuing the cheque is that the beneficiary needs to take a nurse from a Govt. Hospital concerned along with the photographs of both the beneficiary as well as the accompanying nurse to the office of the Deputy Director of Medical and Rural Health Services, and only after ascertaining the compliance of this procedure, the Deputy Director of Medical and Rural

Health Services would issue the cheque to the beneficiary. Therefore, in the second phase, the appellant does not even have a role. Therefore there is no meaning in making a demand for the bribe money in the second phase when the appellant did not have any role to play.

Now, in these circumstances, even if the correctness of the trap is considered as acceptable, then at the best it only proves payment and acceptance but not any demand.

3.2 Unless the triple criteria envisaged for establishing the crime under Section 7 of the Prevention of Corruption Act is proved, namely the demand followed by payment and acceptance of the bribe money, the offence is incomplete, and going by the line of prosecution case, the demand for bribe money is not established. At any rate, alongside the procedures for issuance of the cheque as envisaged, the possibility of making a demand by the appellant is extremely suspicious which indeed creates a probability in favour of the appellant, which in turn will blunt the presumption which Section 20 of the Prevention of Corruption Act creates in favour of the prosecution. This apart, there is an issue on PW2's ability to mobilise the fund, since his testimony introduces him more as a person below the poverty line. Reliance was placed on the decision of the Hon'ble Supreme Court in ***K.Shanthamma Vs State of Telangana*** [(2022) 4 SCC 574] and ***Neeraj Dutta Vs State (Government of NCL of Delhi)*** [(2023) 4 SCC 731].

4. Per contra, the learned Government Advocate (Crl. Side) submitted that the appellant has not challenged the trap proceedings and the result of the trap proceedings. This implies there has been payment of money by P.W.2 and there is also acceptance of the money by the appellant. There is no case for the appellant for him to explain how and why the money came into his hands. So far as demand goes, one bribe taker will never make a public demand for a bribe and it has to be inferred only from the acceptance of the bribe money. Therefore, it is not just adequate for the appellant to rely on the procedure for issuing the cheque or absence of any role for her in the entire exercise but was there a demand. And inasmuch as the bribe money has been accepted, it has to be presumed that there indeed was a prior demand for bribe money. He also placed reliance on ***Neeraj Dutta case*** [(2023) 4 SCC 731].

5. In reply, the learned counsel for the appellant submitted that the minimum the prosecution is required to make out is that PW2 had visited the office of the

Deputy Director of Medical and Rural Health Services on 26.07.2011 and 28.07.2011. Despite examining seven official witnesses from the office of the Deputy Director of Medical and Rural Health Services, Salem, the prosecution has not been able to establish that PW2 visited the office on any of these two dates.

Discussion & Decision

6. The law on Sec.7 does not require any newer exposition, since the triple criteria of demand for bribe, payment of bribe and acceptance of bribe are far too firmly entrenched in the jurisprudence of the PC Act. Set in the context, if the rival submissions are scanned, it raises a solitary central issue: How to prove the demand for bribe money? The appellant's counsel would contend that the demand for the bribe money should be proved first, followed by payment and acceptance of the same, whereas the prosecutor contends that the demand for bribe money can be inferred from the payment and acceptance of bribe money. And, both rely on the ratio in ***Neeraj Dutta case*** [(2023) 4 SCC 731].

7. The Constitutional Bench of the Supreme Court had held in ***Neeraj Dutta case*** that demand for bribe can be proved both through direct evidence or

through circumstantial evidence. The relevant passage reads:

> *"88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of courts, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands."*

In terms of the above dictum, the prosecution necessarily has to establish the foundational facts, namely any fact which goes to establish the triple criteria required to constitute a crime under Sec.7 of the PC Act, either through direct or through circumstantial evidence. Direct evidence for any demand for money is nigh difficult to establish through direct evidence, unless a bribe taker is stupid enough to demand it through telephone or cell phone which conversation if recorded, or through any written document, or e-mail, WhatsApp messages etc. Otherwise, it can be established only through circumstantial evidence. In all cases of trap, bribe given and taken alone will be seen and not the demand for bribe. It is therefore, the law presumes a demand for bribe money based purely on the acceptance of bribe money under Sec.20 of the Act, requiring the accused to offer his or her rebuttal evidence. Sec.20 reads:

> *"20. Presumption where public servant accepts any undue advantage:- Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other persons, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11."*

8. Why should the appellant receive the bribe money. Indeed she had hidden it inside her blouse. Why should it happen? Therefore, it is not so much about whether the appellant held any responsibility to do P.W.2 or P.W.4 a favour on the date the bribe was given (29.07.2011) but why should she accept it and hide in her blouse? Could it have happened without a demand. If only she had not demanded but still P.W.2 was offering the money, she could have instantly rejected and could have even laid a complaint against the bribe giver under

Sec.7A of the Act. The presumption under Sec.20 of the Act acts very strongly, and the appellant comes a crop in explaining it. An allied argument was that the appellant did not have any official duty to do P.W.2 or P.W.4 any favour on the date trap was laid, but then only the appellant knew she did not have role to play on that date but not P.W.2 or P.W.4

9. This Court is not convinced that the explanation of the appellant to the taking of money is hardly adequate to create a probability of her case and to discredit the prosecution version. This appeal is dismissed, and the judgement of the trial Court convicting and sentencing the appellant is hereby confirmed. The trial Court is directed to take steps to secure the custody of the accused / appellant to undergo the remaining period of sentence.

27.09.2024

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

To:

1. The Special Judge
(Special Court for Trial of Cases under
Prevention of Corruption Act), Salem.

2. The Inspector of Police
   Vigilance and Anti-Corruption
   Salem District.

3. The Public Prosecutor
   High Court, Madras.

N.SESHASAYEE, J.

Asr

Pre-delivery Judgment in
Criminal Appeal No.467 of 2020

27.09.2024