BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2024

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl. A.(MD)No.218 of 2018

V.Revathy : Appellant/A1

Vs.

State rep. by the Inspector of Police,
Vigilance and Anti-Corruption,
Madurai.
(Crime No.3 of 2010) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records and to set aside the conviction and sentence passed in Special Case No.72 of 2011, dated 24/04/2018 passed by the Special Judge for Trial of Preventison of Corruption Act cases, Madurai.

For Appellant : Mr.R.Anand
for Mr.T.Balakrishnan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is filed against the conviction and sentence passed in Special Case No.72 of 2011, dated 24/04/2018 passed by the Special Judge for Trial of Prevention of Corruption Act cases, Madurai.

2.**The case of the prosecution in brief:**-

The first accused was working as Extension Officer (Social Welfare) in Madurai West Panchayat Union. On 21/01/2010, he alleged to have demanded a sum of Rs.5,000/- from the de-facto complainant, when he applied for Rs.20,000/- as Government assistance under Moovalur Ramamirtham Ammaiyar Memorial Marriage Assistance Scheme. On 25/01/2010, the complainant lodged a complaint against one Susila. Upon the above said complaint, the Inspector of Police, Vigilance and Anti-Corruption, Madurai registered a case in Crime No.3 of 2010 for the offence under section 7 of the Prevention of Corruption Act against the accused persons and further process was undertaken. The accused persons were arrested and after completing the formalities of the investigation, filed final report and it was taken cognizance in Special Case No.72 of 2011 by the Special Judge/Special Cases for Trial of Cases under Prevention of Corruption Act, Madurai. After completing 207 Cr.P.C proceedings, framed the charges for the offence punishable under section 7 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3.The following charges were framed against the accused persons:-

(i)The complainant namely D.Rajesh married one Shanmugapriya on 23/03/2009; Before the marriage, on 09/03/2009 an application was submitted along with required particulars to get financial assistance under Moovalur Ramamirtham Ammaiyar Memorial Marriage Assistance Scheme before A1, who is working as Extension Officer, Social Welfare of Madurai West Panchayat Union Office between 14/11/1994 and 25/01/2010; A2 is working as Social Welfare Officer in the said office between 17/09/1993 to 25/01/2010; The complainant and his wife went to the Panchayat Office of West Madurai and met A1 for getting aid; At that time, A1 demanded Rs.5,000/- as gratification other than legal remuneration to give the cheque. When the complainant expressed his difficulties to pay such huge amount, A1 directed him to bring the said amount after four days along with relevant certificates. So, both were charged under section 7 of the Prevention of Corruption Act.

(ii)In pursuance of the above demand on 25/01/2010 at 2.00 pm, the accused 1 and 2 being public servant, dishonestly by misusing their position, accepted the illegal gratification in a dishonest manner from the complainant of Rs.1,000/- and so, they have committed the offence punishable under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

4.To that charges, both accused pleaded not guilty and claimed to be tried.

5.On the side of the prosecution, 14 witnesses were examined and 17 documents were marked. Apart from that, 6 material objects were exhibited. On the side of the accused, no oral and documentary evidence was adduced.

6.**PW2** is the de-facto complainant. The marriage was arranged between himself and PW4-Shanmugapriya. It was performed on 07/03/2009. At about 21/01/2010, they approached the Madurai West Panchayat Union Office for marriage aid. At that time, they presented application before A1. Her name is Ravathi. At that time, she demanded Rs.6,000/- for granting aid. He expressed his inability to pay the huge amount. But A1 refused to reduce the amount and asked to come after four days informing to bring the documents. Not willing to bribe the accused, on 25/01/2010 he lodged a complaint with the Inspector of Police Vigilance and Anti-Corruption Unit, Madurai/PW13. On the basis of the complaint, the case was registered, pre-trap arrangement was made by PW13, who was working as the Inspector of Vigilance Department, registered a case in Crime No.3 of 2010 under the Prevention of Corruption Act. He made pre-trap arrangement by making request to the

Government Department to depute two persons for arranging trap process.

7.**PW4** is the wife of PW2. As mentioned above, PW2 and PW4 performed marriage on 07/03/2009. PW4 says the date of marriage is on 23/03/2009, which does not materially affect the case of the prosecution. Since the date of marriage between PW2 and PW4 is not a relevant factor here. Along with PW2, PW4 also went to the Union Office and presented the application under Ex.P5 to A1. At that time, A1 demanded Rs.6,000/- as bribe amount stating that for getting marriage aid of Rs.20,000/-, paying Rs.5,000/- will not be a big money for them. But they are not willing to bribe the accused. So, PW2 lodged a complaint with the Inspector of Police as mentioned above on 25/01/2010 at 09.30 am.

8.The further event is spoken by the Inspector of Police, **PW13-Tamilchelvan**, who registered a case in Crime No.3 of 2010 for the offence under section 7 of the Prevention of Corruption Act. He submitted the originals to the concerned authorities. Trap was arranged and for that purpose, he made a request to the Government Department for sending Government Officials for assisting the team. At about 11.45 am, at his request, one Balasubramanian and

Sukumaran appeared before him. He introduced Sukumaran and Balasubramanian to PW2 and informed them about the importance of the demonstration going to be undertaken. At that time, PW2 handed over Rs.5,000/- the payment demanded by the accused as bribe. It was received by the witness Balasubramanian, counted the same, prepared mahazar mentioning the note numbers. PW2 handed over the educational certificate of PW4 and other documents. Those documents were initialled by the official witnesses. Again returned back to PW2 and PW4. Sodium bicarbonate solution was prepared and the witness Balasubramanian was asked to dip his right and left hands separately. Currency note was pasted with phenolphthalein powder. Balasubramanian counted the notes again and put the same in the packet of PW2. He was requested to dip his both hands. On dipping both hands, it turned pink. Later, he instructed PW2 and the official witnesses to take the money and documents to the office of the accused. If demand is made to give the money and asked PW2 to give signal after the process is over. He advised the witness Sukumaran to accompany PW2 and PW4 and oversee the happenings. As per the instructions given by PW13, mahazar was prepared for the demonstration and counting of notes and events, etc, in which all the witnesses signed. At about 1.15 pm, they started to the office of the accused. At about 02.00 pm, PW2 and witness Sukumaran and PW4 went to the office of the accused.

9.Further event is spoken by PW2. When they went to the office of the accused, she was taking lunch. After 10 minutes, they were asked to come inside the office. They handed over the documents. It was perused by A1. A1 asked him to bring the declaratory Form and photos. At that time, A1 asked him whether he brought the money of Rs.5,000/-. He stated that he brought the money. A1 asked him to give Rs.1,000/-, the balance amount may be given after receiving the cheque. PW2 gave Rs.1,000/- of 500 notes. But A1 refused to receive the same, asked him to give the money to Palaniammal-A2. Second accused also without receiving the same with hands directed him to put the same in a polythene bag, which was hanging beneath the table. He put the money in the polythene bag. PW2 directed to sign in the register, so also PW4. They came out to the office as per the instruction given by PW13. PW2 showed the signal. On seeing the signal, PW13 and others entered the office.

10.Further event is spoken by PW13. He enquired PW2 about the happenings. PW2 in-turn narrated him about the events. PW2 identified A1 and A2. Black Development Officer was on duty at that time. He called her to be a witness. He made enquiry with the accused. They disclosed their name and the postings. A1 told her name is Revathy working as Extension Officer in Madurai West Union Office. PW13 enquired about Susila. A1 told that Susila is working as

Extension Officer in the Eastern Union Office. PW2 explained that the name of A1 was told by some one in the office. So, he mentioned in the complaint the name of the officer as Susila. On enquiry, A1 told that for flag day celebration Rs.1,000/- was requested to be paid by PW2 to A2. A2 without receiving the money asked to drop the same in the polythene bag. He prepared sodium bicarbonate solution in two separate bottles. A2 was directed to dip her hands in the solution. There was no change in the colour and that was repeated in the second solution by Palaniammal with right hands. There was no change in colour. Both were labelled and sealed through the Balasubramanian. Polythene bag was searched and found Rs.1,000/- of 500/- notes, the numbers tallied with the numbers mentioned in the mahazar at the time of pre-trap. Another solution was prepared, in which polythene cover was dipped and it turned pink. The bottle was labelled and sealed. Polythene cover was also seized. On search, he found Rs.3,700/- in the drawer of A2. That amount was also seized. On enquiry, A2 told him that money was brought for personal expenses. He seized the relevant records and other particulars found in the office touching the subject. Apart from that, a list was also seized showing the beneficiaries name and phone numbers. On enquiry through phone, the other beneficiaries revealed that they paid Rs.500/- to Rs.1,000/- to A1. But they told that no flag was supplied to them. On enquiry, A1 told that there is no account book for selling the flags. Found flag worth about Rs.400/-. It was handed over to BDO. On further enquiry, A1 told that the belated application submitted by PW2 and PW4 was forwarded to the Social Welfare Department. He recovered the declaratory form and other documents. He recovered other relevant records. He prepared mahazar for the happenings and after making side initial in the mahazar, he made arrangements to send the document and material objects to the Court and final alternation report.

11.**PW14** took up the further investigation, recorded the statement and made arrangements to send the material objects for chemical examination; requested the Director of Social Welfare Department for sanction. After getting sanction, he recorded her statement and during the course of investigation, she came to know that A1's correct name is Revathy and not Susila. After completing the formalities, he filed the final report.

12.**PW3** Sukumaran assisted the Trap Laying Officer and corroborated him in material particulars, regarding the pre-trap arrangement and other events. He corroborated PW2 and PW4 also.

13.**PW5** is the father of PW4. He is not a material witness. **PW6** is the DRO, Madurai mentioned by PW13. He is also corroborated PW13, regarding the events, recovery, etc.

14.**PW7, PW8 and PW9** are some of the beneficiaries under the scheme. PW7 has stated that at the request made by the accused, she dropped Rs.500/- in the drawer. PW8 says that he dropped Rs.1,000/- at the request made by the accused. PW9 says that her daughter paid Rs.500/- stating that it has been demanded by the officials. They have been examined by the prosecution to prove the conduct and *modus operendi* of the accused.

15.**PW10 and PW11** are not material witnesses. **PW12** is the Scientific Assistant attached to the Forensic Science Laboratory, Chennai. He examined the material objects submitted for examination and sent the report. With that, the prosecution side evidence was closed.

16.The accused were put to section 313 Cr.P.C proceedings. They denied the facts deposed by the prosecution witnesses.

17.At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced them to undergo 2 years SI and imposed a fine of Rs.1,000/- in default to undergo 3 months SI for each offences under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and directed the sentences to run concurrently.

18.Against the judgment of conviction and sentence both the accused filed separate criminal appeals in Crl.A(MD)Nos.280 and 242 of 2018. In Crl.A(MD)No.248 of 2018 the appellant namely Palaniammal was reported to be dead. But in spite of the death, no steps were taken by the legal-heirs to bring them on record to prosecute the appeal. That appeal was dismissed as abated. Remaining appeal in Crl.A(MD)No.218 of 2018 was heard.

19.The background facts are admitted by both sides. The position and posting of the second accused Palaniammal in Madurai West Panchayat Union Office is not disputed and denied. She was working as Rural Welfare Office. Similarly, A1 was working as Extension Officer in the Madurai West Panchayat Union office. PW2 the de-facto complainant was married to PW4.

20.As mentioned in the preamble portion, there is some difference with regard to the date of marriage, which we are not very much concerned. The Government has introduced a scheme called 'Moovalur Ramamirtham Ammaiyar Memorial Marriage Assistance Scheme, by which the Government sanction Rs.20,000/- to the persons, who are qualified to receive the aid. On that account, before the marriage between PW2 and PW4, the application was presented on 21/01/2010 with the Madurai West Union Office. Rank referred only an officials herein, since A1 disputed her identity. But the presentation of the application was not denied by the officials. With this background in mind, let us go to the circumstance.

21.PW2 and PW4 were not in favour of the bribing the officials for getting the aid. PW2 lodged a complaint with PW13, upon which the case registered, pre-trap arrangement was made. In the trap arrangement, PW2 to PW4 officials from the Madurai Agricultural Department Participated. Apart from that, another official by name one Balasubramanian from the Tamil Nadu Adi-Dravidar Housing Board Development Society participated. So, upto this event, we can believe the prosecution version. According to the prosecution, the initial demand occurred on 21/01/2010 at the time of making the application, A1 who was the appellant before this court received the application, but demanded Rs.6,000/- for granting the aid. On 25/01/2010 the complaint was lodged between 21/01/2010 and 25/01/2010, there was no meeting between PW2 and A1. PW4 has stated different story that took place before 21/01/2010. She would say that even before 21/01/2010, they presented the application with A1 under Ex.B5. At that time, his father was also present. In Ex.A5 the date of seal of the office shows that it was presented on 31/03/2009. We find the initials of the officials. PW5 Sukumaran the father of PW4 has stated that over the application, they visited the Union Office several times. At that time, A1 demanded Rs.5,000/- as bribe. He assured A1 after getting aid, they will give the amount. After that, PW4 and PW2 went to the office. He would say that for about three times, he went to the office.

22.When the office seal is available in the petition, it can be taken as correct. It was presented on 31/03/2009. It was pending for several months with the officials.

23.From the evidence of PW4 and his father, it is seen that even before 21/01/2010, frequent visit was made by them. The reason for such a long time in processing the petition is not known. But PW4 has not stated that before 21/01/2010, A1 demanded bribe. But her father PW4 has stated that when they approached A1, she demanded Rs.5,000/- as bribe amount. But could not recollect on which date, the above said demand was made. Whether there is any demand of bribe by A1 before 21/01/2010, there is a doubt.

24.But PW2 is very clear in his evidence that on 21/01/2010, A1 demanded Rs.5000/- as bribe amount. He asked her to reduce the amount, but A1 did not agree. This evidence was supported by PW4. On that date, she demanded Rs.5,000/- as bribe. Regarding the initial demand on 21/01/2010, PW1 and PW4 are cogent and corroborating each other.

25.Now here comes to the identity of the officials, who demanded the bribe amount.

26.In this connection, the learned counsel appearing for the appellant would submit that till the trap proceedings, it was contended on the part of the prosecution that one Susila demanded bribe amount, but she was working in the very same premises, but in another branch namely East branch. Even PW2 is not able to correctly identify the posting, which was held by the officials, who demanded the bribe amount. According to the complainant, the officials was holding the post of 'முக்கிய

சேவகி. But the first accused was holding the post of Extension Officer. So all of a sudden, during trap proceedings, A1 was identified by PW2 and PW4. So, this according to the appellant does not satisfy the foundational facts.

27.No doubt that there is some issue with regard to the name of the accused, who demanded the initial bribe amount. But according to PW2, A1's name was stated so by some persons who were available in the office. Without verifying the correct name, he has mentioned the same in the complaint. But during the course of trap proceedings, as mentioned above, only A1 was identified by PW2 and PW4. This I am of the considered view that does not affect the prosecution case. The reason being that PW2 and PW4 are not regular visitors to the office. We need not doubt the explanation offered by PW2 regarding the name of the officials, who demanded the bribe amount. But however, the identity is established during the course of the trap proceedings. I find absolutely no merit worth accepting in the argument of the appellant. So, I find that only A1 was involved in the event and not one Susila, who is working in the neighbouring office.

28.After clarifying this identity issue, we will go to the main issue of demand.

29.As mentioned above, the prosecution case was clear with regard to the demand allegedly made by A1 before 21/01/2010. The time, date and place of demand by A1 was not established by the prosecution prior to 21/01/2010. But the evidence of PW2 and PW4 with regard to the demand on 21/01/2010 is clear. The circumstance may also be taken into account. As mentioned above, the application was pending for several months without any proper reason. PW4 and her father was visiting the office frequently. As mentioned above, for what reason, it was kept pending is not known or explained. This circumstance also indicates the hidden idea of A1 behind it.

30.The next is the amount of demand.

31.PW2 would say that A1 demanded Rs.6,000/-. PW4 Shanmuga Priya says that it was only Rs.5,000/- and not Rs.6,000/-. In the complaint, PW2 has stated that Rs.5,000/- was demanded by the official, when PW4 and her father visited the office. On 21/01/2010, both went to the office. At that time, initial demand of Rs.5,000/- was made. Why difference occurred is not explained by the prosecution. Whether it affects the prosecution case is the point to be considered. The amount is not important, but what is important is demanding illegal gratification. Amount may differ, but demanding of illegal gratification itself is an offence. At the time of pre-trap proceedings, he handed over Rs.5,000/- and not Rs.6,000/-. That amount was offered to A1, when she demanded at the time of trap. Out of Rs.5,000/-, Rs.1,000/- was dropped in the polythene bag as mentioned above. During the course of the cross examination, PW2 has stated that he has no direct knowledge to the demand made by A1 to PW4 and her father. Even on 21/01/2010, A1 demanded Rs.6,000/- and refused to reduce the same. PW3-Sukumaran has stated in his evidence that during the course of pre-trap arrangement, PW2 gave only Rs.5,000/- to the Trap Laying Officer. He would further say that at the time of trap, A1 enquired whether he has brought Rs.6,000/-. PW2 stated that he brought Rs.5,000/-. Out of Rs.6,000/-, Rs.1,000/- was dropped in the polythene bag. When A1 told him that he will receive the balance amount after the cheque is issued, it appears that no enquiry was made with regard to PW2 as to why he has mentioned Rs.6,000/-in the complaint. But he brought only Rs.5,000/-. The Trap Laying Officer-PW13 also stated that he made enquiry with PW2 on that aspect and it was explained by PW2. But in the pre-trap mahazar, there is no mentioning with regard to the explanation given by PW2. As mentioned above, these are the contradictions to the quantum. But as mentioned above, it does not affect the allegation of demand and illegal gratification. The prosecution ought to have explained the difference in a proper manner. But the absence of explanation did not affect the ultimate conclusion reached by the trial court.

32.From the evidence of PW2 and PW4, it stands established that on 21/01/2010, A1 demanded illegal gratification. In this context only, the conduct of the first accused assumes importance. As mentioned in the preamble portion, at the time of trap, from the office of A1, PW13 seized the list containing the names, address and phone numbers of the beneficiaries, on the side of the prosecution as PW7 to PW9, namely the parents of the beneficiaries.

33.In this context, the learned counsel appearing for the appellant would submit that actual beneficiaries were not examined before the trial court. PW7 is the mother of the beneficiary 'Meena'. But Meena was not examined. Similarly, PW8 who is the father of one Meena another beneficiary. She was not examined. PW9 is the father of the beneficiary called 'Anusha'. He was also not examined. So, according to the learned counsel appearing for the appellant, by examining the parents of the beneficiaries, the prosecution has not established the fact that accused were in the habit of receiving the illegal gratification at the time of disbursing the aid. But absolutely, I find no reason to discard the evidence of PW7 to PW9. They are very clear in their evidence that illegal gratification was demanded by the accused and they also dropped money as indicated by A2. This evidence is corroborated by the recovery of Rs.3,700/- the unaccounted money from the polythene bag kept by A2. Absolutely, there is no explanation by the accused on this aspect. The oral evidence of PW7 to PW9 is corroborated by the seizure of money as well as the list that the accused were in the habit of collecting illegal gratification for disbursing the aid.

34.The conduct of the accused assumes importance in this regard. By way of circumstance also, the prosecution case *prima facie* indicates the guilty mind of the accused.

35.With this in mind the background, let us go to the next aspect of acceptance.

36.With regard to the pre-trap arrangement, absolutely, I find no defect or error or mistake as the case may be, since it has been clearly spoken by the official witnesses.

37.Now coming back to the acceptance, PW2 has stated that as instructed by PW13, he along with PW4 and Sukumaran went to the office of the accused. At that time, A1 was found taking lunch. After ten minutes, they were called inside. When they handed over the documents, he enquired whether he has brought the money. PW2 has stated that he brought money of Rs.5,000/-. A1 asked him to give Rs.1,000/- and she will collect the balance amount after issuing the cheque. He handed over two Rs.500/- notes totally Rs.1,000/-. But A1 did not receive it, in turn directed him to give the money to A2. A2 also did not receive the money in her hands, asking him to drop the money in the polythene bag kept beneath the table. He dropped the money. So, this was corroborated by the official witness namely PW3. A1 received the documents from PW2 and PW4 and at that time, he enquired whether they brought money. PW2 replied that out of Rs.6,000/- as demanded, he brought Rs.5,000/- he will pay the balance amount of Rs.1,000/- after receiving the cheque. At that time, A1 told them to give Rs.1,000/- the balance amount can be given after receiving the cheque. A1 directed PW2 to give the money to A2. A2 also did not receive the money, but directed to drop the money in the polythene bag kept on the table. He dropped Rs.1,000/- in the polythene bag.

38.PW4 also says that as per the direction given by A1, PW2 dropped the money in the polythene bag kept by A2 on the table. So *prima facie,* it is seen that on the date of the trap itself, A1 indirectly accepted Rs.1,000/- by asking PW2 to hand over to A2. A2 also indirectly accepted the money by asking him to drop the money in the polythene bag kept by her. There is no necessity that the money must be received by hands by the accused. Acceptance of gratification may be by any means. Here the direction itself will amount to acceptance. We will not concentrate much on that aspect. Now whatever it may be, some contradictions were brought on record between the prosecution witnesses as argued by the learned counsel appearing for the appellant. First of all, whether there is a polythene bag kept by A2 beneath the table. Others are saying that it was on the table. PW13 would say that the polythene bag was found on the table. This was projected by the learned counsel appearing for the appellant that this create great doubt about the prosecution case as to the acceptance and recovery. Apart from that, it is also submitted that there is no clear evidence by PW2 as to whether PW4 was also taken along with him or not. Similarly, who dropped the money also not properly established by the prosecution, since PW2 and PW4 differs in this regard. PW2 says that PW4 only dropped the money. No doubt there are contradictions in this regard. But the question which arises for consideration is whether because of this contradiction, it materially affect the acceptance and recovery of money. I am of the considered view that it is a simple contradiction, it does not affect the case of the prosecution. Because it is not denied by the accused that the money was seized from the polythene bag, which is tainted money.

39.Now, we will go to the cross examination of the accused to PW2. It was suggested to him that without knowledge of the accused, he only dropped the money in the polythene bag, because he was already under the impression that only because of the A1, the delay occurred. This itself is sufficient enough to indicate the money seized from the polythene bag kept by A2. Where it was kept may not materially affect the case of the prosecution; Where the bag was kept, from where it was recovered are points, which now stands established by the prosecution.

40.At the last leg of the argument, the learned counsel appearing for the appellant would submit that dipping of polythene bag in a paper cup is not believable, this may assume importance in the trap proceedings. The minor issue cannot be blown out of proportion. I find absolutely no ground has been made by the appellant to acquit him against the findings recorded by the trial court.

41.For all these reasons stated above, this court find no infirmity or irregularity in the judgment of conviction and sentence passed by the trial court.

42.In the result, this criminal appeal is **dismissed**.

27**/09/2024**

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Internet : Yes/No
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To,

1.The Special Judge,
Special Court for Trial of
Prevention of Corruption Act cases,
Madurai.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J

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Crl.A(MD)No.218 of 2018

27/09/2024