BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	19/10/2024
Date of Pronounced	08/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)Nos.329 and 344 of 2019

(1)Crl.A(MD)No.329 of 2019:-

N.Lakshmi : Appellant/A1

Vs.

The State Rep. by
Inspector of Police,
Vigilance and Anti Corruption,
Tiruchirappalli.
(Crime No.2 of 2010) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgement, dated 09/07/2019 made in Special Case No.23 of 2011 on the file of the Special Court for Trial of cases under Prevention of Corruption Act, Tiruchirapalli.

For Appellant : Mr.Ram Sundar Vijayaraj
for M/s.Veera Associates

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

(2)Crl.A(MD)No.344 of 2019:-

Nagalakshmi : Appellant/A2

Vs.

The State Rep. by
Inspector of Police,
Vigilance and Anti Corruption,
Tiruchirappalli.
(Crime No.2 of 2010) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 378(2) of the Criminal Procedure Code, to set aside the judgement, dated 09/07/2019 made in Special Case No.23 of 2011 on the file of the Special Court for Trial of cases under Prevention of Corruption Act, Tiruchirapalli.

For Appellant : Mr.T.Antony Arul Raj

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

J U D G M E N T

These criminal appeals are filed against the judgment of conviction and sentence passed in Special Case No.23 of 2011, dated 09/07/2019 by the Special Court for Trial of cases under Prevention of Corruption Act, Tiruchirapalli.

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

The first accused, N.Lakshmi was serving as a Deputy Block Development Officer (Noon Meal Program) in Panchayat Union Office, Thiruverambur. The complainant

A.Jancy Rani, who is a physically disabled person was eligible to apply for the post of the Noon Meal Organizer in St.Joseph High School, Ayyampatti. She gave a petition along with the relevant records to the Commissioner, Panchayat Union, Thiruverambur on 30/12/2009. Then on 27/01/2010, the complainant went to the Thiruverambur Panchayat Union Office enquired her petition, kept pending by the first accused. On the next day, the complainant met the first accused. At that that, the first accused demanded Rs.10,000/- as bribe amount. Based upon the complaint, trap was laid. Case in Crime No.2 of 2010 was registered for the offence under section 7 of the Prevention of Corruption Act. The accused was arrested during trap. After completing the formalities of the investigation, filed final report. It was taken on file by the Special Court for Trial of cases under Prevention of Corruption Act, Tiruchirappalli in Special Case No.23 of 2011 for the offence under sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. After completing 207 Cr.P.C proceedings, the following charges were framed against the accused persons:-

> *(i)The first accused was working as Block Development Officer in Thiruverambur Panchayat Union, Trichy District between 28/08/2008 and 28/01/2010; During that period, the de-facto complainant by name Jancy Rani applied for the*

post of Noon Meals Organiser, on 30/12/2009; To process the application, the first accused demanded Rs.10,000/- as illegal gratification for discharging her official duty, on 27/01/2010 at about 04.00 pm and thereby, she committed an office punishable under section 7 of Prevention of Corruption Act;

(ii)In the same course of transaction, on on 28/01/2010 between 04.30 pm and 04.40 pm, the first accused directed the de-facto complainant to give money to the second accused; the second accused accepted the bribe amount and thereby, the first accused obtained the money through the second accused as illegal gratification. So, the first accused is liable to be punished for an offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act; and

(iii)The second accused was working as Noon Meals Organiser in Thiruverambur Panchayat Union Primary School between 03/06/2004 and 28/01/2010; In the course of the above said transaction, the second accused accepted the money on behalf of the first accused knowing that it is a bribe amount and thereby, she has committed offences punishable under sections 7 and 12 of the Prevention of Corruption Act.

3.To that charges, the accused pleaded not guilty and claimed to be tried.

4.During the trial process, on the side of the prosecution, sixteen witnesses have been examined and 20 documents were marked. Apart from that, MO1 to MO5 were also marked. On the side of the accused, no oral or documentary evidence was adduced.

5.PW2 Jancy Rani applied for the post of Noon Meal Organizer in St.Joseph High School, Ayyampatti. She submitted the application along with the required certificates to the Commissioner, Panchayat Union Office, Thiruverambur in December 2009. On 27/01/2010 at about 04.00 pm, she went to the Thiruverambur Panchayat Union office and made enquiry regarding her application. At that time, the first accused namely Lakshmi was the Deputy Block Development officer. She demanded Rs.10,000/- for making recommendation and for appointment. She expressed her inability to pay such a huge amount. On 28/01/2010 at about 10,00 am, he went to the Trichy Vigilance Office along with a complaint under Ex.P1.

6.The further event is spoken by PW15 who was working as Inspector in the Vigilance and Anti Corruption Department, Trichy. On 28/01/20100 at about 10.00 am, he received the complaint from PW2 and registered a case in Crime No.2 of 2010 under section 7 of the Prevention of Corruption Act. He submitted the original records to the concerned court and copies to the concerned authorities, made a request to the Government Department to depute two persons to assist him in making the trap. At the request made by him at about 02.15 am, one Selvi and Kalaiarasi the Government officials were present before him. He introduced PW2 to the witnesses and explained about their part as well as the importance of the trap arrangements and trap proceedings.

7.PW2 handed over Rs.10,000/- consisting nine 1,000/- notes and two 500/- notes. Sodium bicarbonate solution was prepared and asked one of the officials to dip her hands and accordingly, she dipped her hands, there was no colour noticed. Later, she was asked to count the currency note, which was treated with Phenopthaline powder. Again, she dipped her hands in the sodium bicarbonate solution. It turned pink. He prepared the mahazar mentioning the notes and events happened. He instructed PW2 to give money to the first accused if demanded and show the signal. He asked the official witnesses to accompany PW2 and witness the occurrence. Along with a team of police, they proceeded to the office of the first accused. They alighting in a nearby area and hiding. As per the instruction, PW2 along with the official witness went inside the office of the first accused.

8.Further event is spoken by the witness PW2. At about 04.30 pm, PW2 and PW3(Selvi) went to the office of the first accused and made enquiry with the first accused. The first accused asked whether she brought Rs.10,000/- as demanded by her. She replied that she brought the money. The first accused in turn asked her to give the money to the second accused namely Nagalakshmi, who was standing nearby. The second accused asked PW2, the reason for the money. She told the second accused about the demand of money made by the first accused and the purpose. The second accused received the money, counted the same. In turn, she informed the first accused. The money was retained by the second accused. The first accused told her to keep the money. After that, PW2 and PW3 came out of the office. As instructed earlier, PW2 signalled. The police after getting the signal went to the office and the accused was identified by PW2, apart from narrating the events to the Trap Laying Officer.

9.Further event is spoken by PW15. PW2 was sent out of the place. He made enquiry with the accused, sodium bicarbonate solution was prepared and the second accused was directed to dip her both hands in separate solution. The second accused dipped her both hands in a separate solution. Both solutions turned pink. Both were collected, labeled and sealed. The second accused told him that on the instruction made by the first accused, she received the money from PW2. Later, the Blouse of the second accused was also dipped, it also turned pink in a separate solution. It was collected, labeled and sealed, wherein all the witnesses and the second accused signed.

10.The first accused admitted that the money was demanded by her. On her instruction, the second accused received the money. He compared the serial number of the notes mentioned in the mahazar with that of the currency notes seized from the second accused, found to be tallied. They prepared the mahazar, in which all the witnesses signed. He recovered the relevant records from the office of the accused. He prepared the rough sketch and observation mahazar regarding the place of occurrence. The first accused was arrested at about 05.00 pm. On search, she was found having Rs.1,235/-. It was returned to her because it is her personal money. The second accused was also arrested. On search, she was having Rs.625/-. That was returned to her. He prepared a mahazar, in which all the witnesses and the accused have signed. He submitted the material objects, records to the court. The accused were remanded to custody as per the order of the Special Court.

11.The further investigation was undertaken by PW16. He recorded the statement of the witnesses and made arrangements for submitting the material objects for chemical examination; received the sanction letter under Ex.P1 from PW1 and recorded the statement of PW1 and after completing the formalities, filed final report on 28/04/2010.

12.PW3 was present before PW15 at the time of pre-trap arrangement, trap proceedings, demand, acceptance made by the accused.

13.PW4 was working as Commissioner between 06/03/2008 and 30/04/2010 in the Thiruverambur Panchayat Union. She has spoken about the procedure undertaken by the Department for filling the post of Noon Meals Organizer. She has spoken about the application submitted by PW2 and the procedure.

14.PW5 was working as Deputy Block Development Officer, in Thiruverambur Panchayat Union in 2009. He has spoken about the event took place on 21/08/2010 at the time of trap.

15.PW6 was working as Deputy Block Development Officer in Tiruverambur Panchayat Union in 2010. He has spoken about the records submitted by PW2 for the post of Noon Meals Organizer, so also PW7 and PW8.

16.PW9 also spoken about the trap conducted by the Vigilance and Anti-Corruption Department on that date.

17.PW10 has spoken about the entries made in the register as per application submitted by PW2.

18.PW11 is one of the Police team members, conducted trap.

19.PW12 is the Scientific Officer attached to FSL, Chennai. According to him, he examined the the material objects submitted by the Investigating Officer and submitted a report under Ex.P13.

20.PW13 and PW14 are not the material witnesses. With that, the prosecution side evidence was closed.

21.The accused were questioned under section 313(1)(b) of the Code of Criminal Procedure Code about the incriminating circumstances against them. They denied the evidence of the witnesses as false and stated that a false case has been foisted against them. No witness was examined on the defence side.

22.At the conclusion of the trial, the trial court found the 1st accused guilty and convicted for the offence under section 7 of the Prevention of Corruption Act and sentenced to undergo one year RI and a fine of Rs.5,000/- in default to undergo 3 months SI and for the offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act to undergo 2 years RI and to pay a fine of Rs.5,000/- in default to undergo 3 months SI and directed the sentences to run concurrently. Similarly, the second accused was found guilty, convicted for the offence under section 7 of the Prevention of Corruption Act and sentenced to undergo 1 year RI and to pay a fine of Rs.5,000/- in default to undergo 3 months SI; for the offence under section 12 of the Prevention of Corruption Act and sentenced to undergo 2 years RI and to pay a fine of Rs. 5,000/- in default to undergo 3 months SI and directed the sentences to run currently.

23.Against which, these criminal appeals are preferred by the appellants.

24.Heard both sides.

25.A preliminary point was raised by the first accused. The first accused says that she did not accept any money and no demand was made by her. Only the second accused accepted the money, for which she cannot held criminally liable.

26.It is the contention on the part of the second accused that the demand was made by the first accused and she received the money, only at the direction of the first accused without knowing the reason and purpose. According to her, this will not amount to acceptance and if at all, it means only receiving the money at the request or direction of the higher official without knowledge or intention or guilty mind as the case may be.

27.From the above said argument on both sides, it is seen that both are blaming each other.

28.Now we will go to the first aspect of demand.

29.PW2 says that she was looking for a job as Noon Meals Organizer in St.Joseph High School, Ayyapatti. She submitted a request in this regard in December 2009. On 27/01/2010 at 04.00 pm, she went to the office and made enquiry with A1 regarding her application. At that time, Rs.10,000/- was demanded as bribe amount by A1 and thereafter, a complaint was lodged on 28/01/2010.

30.Now we will see whether actually PW2 gave an application for appointment. PW4 was working as Commissioner between 6/03/2009 and 30/04/2010 at Thiruverambur Panchayat Union. According to him, they made wide publication inviting applications for appointment. On 30/12/2009, PW2 submitted the application, wherein he made initials. That document is marked as Ex.P5 on the side of the prosecution. Thereafter further process was taken and the file was forwarded to A1 Lakshmi, who was working as Deputy Block Development Officer (Noon Meal Programmer). She made entry in the relevant register on 11/12/2009. But the first accused omitted to make entry in her personal official register.

31.PW10 was working as Assistant during the time He made entries over the receipt and processing the application submitted by PW2 in Ex.P10. He stated that in the personal official record maintained by A1, she omitted to make entry. Those records were recovered by the trap laying officer as detailed above. So, the fact that PW2 made an application, was processed and sent to A1 for the purpose of making enquiry and recommendation. Absolutely, nothing is brought on record doubting the records and the relevant entry regarding the application submitted by PW2. Since, those are the official records, which were maintained in the course of their routine official duty, automatically presumption comes into operation and absolutely, there is no evidence on record in favour of the accused to doubt it.

32.In fact, it is not in dispute and denied by A1 that she was working as Deputy Block Development Officer (Noon Meals Programer) in Thiruverambur Panchayat Union Office. It is her duty to make enquiry over the application submitted by PW2. The very fact that she omitted to make relevant entry in her official personal register prima facie indicates some hidden idea even at the time of processing the application.

33.Now coming back to the demand, except the oral evidence of PW2 regarding initial demand made on 27/01/2010, no other independent witness is available.

34.Whether her evidence can be believed in this aspect must be decided by taking into account the over all circumstances.

35.On the very next day of the alleged demand, Ex.P1 complaint was preferred by PW2.

36.Now we will go to the recitals in Ex.P2. Wherein she has stated that on 27/01/2010 at about 04.00 pm, she contacted A1 and at that time, she demanded the bribe amount and that too Rs.10,000/- as advance, after appointment she will tell her the remaining amount. These averments are repeated by PW2, during the evidence also.

The very fact that on the next day of demand, the complaint was lodged indicates that there is nothing on record to doubt the evidence of PW2 regarding the initial first demand on 27/01/2010. So, the initial demand stands established on the side of the prosecution.

37.Coming to the trap day, PW2 says that on the date of the trap on 28/01/2010 at about 04.30 pm, along with the official witnesses as instructed by the Trap Laying Officer, they went inside the office of the accused, contacted A1. At that time, she enquired whether she brought Rs.10,000/- demanded by her. She replied in affirmative, A1 called A2 advised PW2 to give the money to A2 and asked A2 to receive the same, keep it and she will get it back after sometime. A2 took PW2 to another place and made enquiry for what purposes she is giving money. She replied that for making recommendation. A1 demanded initial amount of Rs.10,000/- A2 received the money, counted the same This was intimated by A2 to A1. A1 told that her to keep the money so that she can collect the same later. A2 put the money inside her blouse.

38.PW2's evidence is corroborated by PW3 the official witness who accompanied PW2. On this aspect, absolutely, there is no contradiction between the evidence of PW2 and PW3. Cross examination was made to PW2 by A1 that A1 is not the competent person to make appointment; Immediately after the alleged occurrence, she released appointment order; To get the appointment order, in a short cut method, she lodged the present complaint; On her behalf, two persons made recommendation; That was not accepted by A1.

39.Apart from that, it is also contended that on the alleged date of the trap, she was not in the office, but attending the duty in Collector Office; She returned to the office only at 05.30 pm. To wreck vengeance, she was implicated.

40.This is the short defence taken. But, as stated above, the file was forwarded to A1 for making recommendation after enquiry. So, it is seen that A1 is the Enquiry/Recommending Officer, based upon her report only the orders are to be passed. So, the contention of her part that there is no occasion for her to demand the money as bribe amount, On these two occasions cannot be accepted. I find absolutely no reason to discard the evidence of PW2 and PW3 regarding the events took place on the trap.

41.If really, the first accused was not present in the office on the date of the trap, she would have very well filed the movement register during the course of investigation or at least during the trial process.

42.When she cross examined the trap laying officer namely PW15, a suggestion was made that during the time, she went outside of the office on permission and she returned to the office at 05.30 pm whereupon only she was falsely implicated. This runs quite contra to the cross examination made to PW2 as mentioned above. So, this contradiction itself indicates that her defence is not true. So, the demand on the date of the trap is also established on the side of the prosecution.

43.Now coming to the important aspect of acceptance, as mentioned above, it is the contention on the part of the first accused that she did not accept the money and no recovery was made from her. If at all, only A2 can be held criminally liable for accepting the bribe amount. But as mentioned above, A2 came to that office only by chance, she was not working in that place at that time. For what purpose, she came to the office at that time may not assume any importance. But PW2 and PW3 have categorically stated that A1 told A2 to receive the money and keep it, so that she can collect it later. To this specific evidence, absolutely there is no contra circumstance led by A1 except stating that she was not available in the office during trap. That defence is not acceptable for the reasons stated above.

44.Acceptance need not be direct, by hands. Directing or requesting a third person to receive the money on her behalf will clearly amounts to acceptance. In this context, we will extract section 7 of the Prevention of Corruption Act which reads as under:-

> "7.***Offence relating to public servant being bribed.***- *Any public servant who,-*
>
> *(a)obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
>
> *(b)obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*

> *(c)performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

45.So, what A1 did was obtaining the illegal gratification for herself through A2. So, the contention on the part of A1 that she did not receive the money in her hands, no instruction was given to A2 to receive the money on her behalf is absolutely without any evidence and substance. This argument is rejected outright. So, the prosecution has established the initial demand, demand on the date of trap and acceptance or obtaining of illegal gratification by A1.

46.Stopping for a moment here, we will go to the charge against A2. Section 7 and 12 of the Act are the charges framed against A2.

47.Elaborate submission was made by the learned counsel on record for A2 that absolutely no evidence is available on record to show either the initial demand or the demand on the date of the trap was made by A2. Actually, this is not the case of the prosecution also. The prosecution says that intentionally A2 aided A1 to receive the bribe amount. In short, what the prosecution alleged against A2 is that she aided A1 in accepting the bribe amount. So, the charge under section 12 of the Act.

48.As mentioned above, A2 came to the office by mere chance. She became the accused. But the question, which arises for consideration is whether A2 can be termed as innocent in all respect. Because there is clear evidence on the side of the prosecution that when PW2 give the money to A2, enquiry was made by her as to the reason for the amount. The reason was told by PW2 to A2. So, the prosecution would submit that knowledge was there at the time of receiving the amount that it is nothing, but illegal gratification. Having known that the amount was given as illegal gratification, then the offence under section 12 of the PC Act is clearly attracted.

49.Section 12 of the PC Act reads as follows:-

> "***12. Punishment for abetment of offences.***-*Whoever abets any offence punishable under this Act, whether or not that offence is committed in*

consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine."

50.So, the prosecution must establish that A2 intentionally aided A1 in committing the crime under section 7 of the Act. Here comes the argument on the side of the A2 that absolutely there is no intention on her part. She was subordinate to A1. A1 being the supervisory officer, when command was given, she has to oblige without understanding the circumstance. So, according to A2, when A1 asked A2 to receive the money on her behalf who was in superior position, she had to oblige. So, according to her this will not amount to as intention to commit offence. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court in Shri Ram Vs. The State of U.P (1975)3 Supreme Court Cases 495). He is referring to para 6 of the judgment, because there is no separate definition for the abetment of offence under section 12 of the Act. Only the definition clause available under the provision of IPC can be attracted. The relevant portion is extracted hereunder:-

"..*A person may, for example, invite another casualty or for a* *friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107."*

51.So the position is very clear. There must be intention on the part of A2 to aid A1 in the crime. But absolutely, as mentioned above, the circumstance does not indicate the intentional aid. The enquiry made by A2 the reason for giving the money if at all can be taken only as a casual enquiry. Any ordinary prudent man will make such sort of enquiry. Making this enquiry, will not show the guilt intention on the part of A2.

52.In this context, time tested principle that mere recovery of tainted money from a person is not sufficient to hold a person guilt, can he made applicable. No doubt that money was tainted money which was recovered from A2. It was established beyond all reasonable doubt by the prosecution in this regard. But for the reasons stated above, mere recovery of tainted money from A2 will not lead to inference that she intentionally committed or abetted the commission of offence under section 7 of the Act.

53.On the sole ground, I am of the considered view that the judgment of conviction against A2 is per se illegal. The trial court without approaching the matter in a proper perspective, convicted her. As innocent person should not be made to suffer for the intentional act of a third person. Penal laws does not intend this sort of prosecution. So, I am of the considered view that A2 is entitled for the order of acquittal.

54.In the result, **Crl.A(MD)No.344 of 2019 filed by the second accused namely Nagalakshmi is allowed** and conviction and sentenced passed against her are set aside. She is acquitted from the charges levelled against her. The bail bond if any, executed by her shall stand discharged. The fine amount if any paid by the her shall be refunded to her.

55.So far as A1 is concerned, **Crl.A(MD)No.329 of 2019 filed by her is dismissed.** The judgment of conviction is sustained. Regarding the sentence portion also, I find no reason to interfere considering the manner in which the above said offence said to have been committed.

Index : Yes/No
Internet : Yes/No
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08**/01/2025**

To,

1.The Special Judge,
Special Court for Trial of cases
under the Prevention of Corruption Act,
Trichirappalli.

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

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

G.ILANGOVAN,J

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Crl.A(MD)Nos.329 and 344 of 2019

08/01/2025