BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	24/10/2024
Date of Pronounced	27/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.67 of 2018

K.Karunanidhi : Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Madurai.
(Crime No.27 of 2009 . : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records pertaining to SC No.69 of 2011 on the file of the Special Judge, Vigilance and Anti-Corruption Cases, Madurai and allow this appeal preferred by the appellant and set aside he order of conviction and sentence imposed by the Special Judge for CBI cases, Madurai, vide order in SC No.69 of 2011, dated 23/01/2018.

For Appellant : Mrs.S.Devasena

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

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed in SC No.69 of 2011, dated 23/01/2018 by the Special Judge dealing with the Vigilance and Anti-Corruption Cases, Madurai.

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

The complainant to get electricity connection for himself and to his two sisters house, enquired somebody in the Electricity office, Kottampatti. That person directed him to get residential certificate from Manappacheri VAO and directed him to produce house tax receipts, ration cards and title deeds of the houses, Thereafter, the de-facto complainant met the accused in the VAO office. At that time, the accused demanded Rs.200/- for each certificate in total Rs.600/- for giving residential certificates. As he was not willing to bribe, went to the office of the Inspector of Police, Vigilance and Anti-Corruption Wing, Madurai and lodged a complaint. Based upon the complaint, trap was laid. Case in Crime No.27 of 2009 was registered for the offence under section 7 of the Prevention of Corruption Act. The accused was arrested in the trap. After completing the formalities of the investigation, final report was filed. It was taken on file by the Special Judge for Vigilance and Anti-Corruption

Wing, Madurai, in SC No.69 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, framed the following charges against the accused:-

> *(1)The accused was working as Village Administrative Officer of Manappacheri Village between 19/02/2009 and 16/10/2009. On 30/09/2009 at about 07.00 pm, when the de-facto complainant gave petition seeking for the Nativity certificates; at that time the accused demanded Rs.600/- as bribe amount and thereby, the accused has committed an offence under section 7 of the Prevention of Corruption Act, 1988; and*
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> *(2)In the course of the same transaction, the accused by using his position as a public servant obtained Rs.400/- as pecuniary advantage for himself from the complainant and thereby the accused has committed an offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.*

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, 8 witnesses have been examined and 19 documents were marked. Apart from that, MO1 to MO6 were also marked, one document was marked on the side of the accused.

5.**PW7** was working as Inspector of Police, attached to the Vigilance and Anti-Corruption Wing, in Madurai. On 06/10/2009, PW2 lodged a complaint under Ex.P2. Upon which the case in Crime No.29 of 2009 was registered for the offence under section 7 of the Prevention of Corruption Act. In the complaint, PW2 has stated that the accused demanded Rs.600/- for issuing nativity certificates. He submitted the original records to the Court and the copies to the concerned authorities. For launching trap, requested the Government Departments to depute two responsible officials. Accordingly, two officials namely Arulmozhiselvan and N.Krishnan appeared before him. He introduced PW2 to the witnesses. PW2 handed over the ration card, tax receipts an site sale documents, etc. After verification, those documents were returned to PW2. Apart from that, he has also handed over Rs.600/- demanded by the accused as bribe consisting of six 100 notes. He prepared the mahazar mentioning the currency note numbers. Sodium Carbonate solution was prepared as per the procedure. At his request, Head Constable Ramar prepared the Sodium Carbonate solution. In the solution container, the official witness Krishnan was directed to dip his hand. He dipped his hands. There was no colour change. Later Rs.600/- currency notes were applied with phenolphthalein powder. Again the official witness was directed to dip his hands. According to the official, counted the notes and dipped his hands. It turned pink. It was also collected, labeled and sealed. The entire events were recorded in the form of mahazar, in which all the witnesses signed. He instructed PW2 to go the office of the accused and give the money when demand is made, directed the official witness to accompany PW2, watching the events and asked PW2 to give signal after the money is received by the accused and the money was handed over to PW2 for that purpose. After the above said preparation, along with the witnesses, they went to the office of the accused. The police team were hiding in a nearby area and PW2 and other witness went inside of the office of the accused.

6.Further event is spoken by **PW3**, who is the official witness. The accused demanded bribe amount. PW2 gave Rs.600/- to the accused. At that time, One Moorthi was present who was known to PW2. Manoharan introduced PW2 to the Village Administrative Officer as if he was known to him. The accused out of Rs.600/-, returned 200/-. Both of them came out of the office of the accused. As instructed earlier, PW2 gave signal. On seeing the signal, police party came to the office and PW2 narrated the events to the Trap Laying Officer and identified the accused.

7.Further event is spoken by the Trap Laying Officer. They went inside the office of the accused and the accused was identified by PW2. After entering into the office, sodium carbonate solution was prepared, in which the accused was directed to dip his hands. In a separate solution for left and right hands the accused dipped his hands separately. Both turned pink. Both were collected in separate bottle, labelled and sealed. He arrested the the accused at 12.10 pm and made enquiry as to the demand and acceptance made from PW2. He handed over Rs.400/- consisting of 4 Rs.100/- notes. He compared the notes serial numbers with that of the numbers mentioned in the mahazar already prepared. It was found to he tallied. The money was recovered in a mahazar and the accused and the witnesses signed. Shirt was also dipped in another solution. It was turned pink. It was also collected, labelled and sealed. He collected the relevant records from the accused, He sent advance intimation to the Court for making house search. Search was made on the very same day. But nothing was recovered. He submitted all the relevant records and materials to the court.

8.Further investigation was undertaken by **PW8.** After taking the investigation, he recorded the statement of the witnesses, received the report from the Forensic Science Lab and after getting proper sanction order, filed final report.

9.**PW2** who is the de-facto complainant turned hostile with regard to certain particulars. He was cross examined by the prosecution.

10.**PW6** was working as Scientific Assistant in FSL, Chennai. She examined the material objects submitted by to her through the court. As per the request made by the Investigating Officer, she made analysis and sent the report under Ex.P9.

11.After closure of the prosecution evidence, when the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

12.At the conclusion of the trial process, trial court convicted the accused and sentenced him to undergo imprisonment for a period two years and to pay a fine of Rs.1,000/-, in default to undergo imprisonment for a further period of 3 months for the offence under section 7 of the Prevention of Corruption Act; and sentenced him to undergo simple imprisonment of two years and to pay a fine of Rs.1,000/-, in default to undergo 3 months simple imprisonment for the offence under section 13(1)(d) r/w 13(2) of Prevention of Corruption Act. Both the sentences were directed to run concurrently.

13.Against which, this criminal appeal is preferred by the appellant.

14.Heard both sides.

The background facts:-

15.PW2 the de-facto complainant turned hostile, even during the course of the chief examination. According to him, in the last week of August 2019, he went to the office of the TNEB, Kottampatti for getting service connection and made enquiry with a person, who was sitting outside the office. That person asked him to bring relevant records. He was taken to the VAO office. He went inside the office of the VAO, returned back and informed him that VAO demanded Rs.1,500/- as illegal gratification for issuing nativity certificates. He expressed his inability to pay such a huge amount. He was sent back after 4 or 5 hours. He again went to the office. Again that person, went to the

VAO office. At that time, he was informed by that person that VAO demanded more money, than the earlier demand. Later, he was taken to the Vigilance and Anti-Corruption Department by that person, wherein he was told that if a complaint was given, he would get the service connection very quickly and easily. Thereafter, he got the complaint and got the signature. He was staying in the office. Later, he came to know that that person, who took him to the VAO office is one Manoharan. Further, he spoken about the pre-trap arrangement. That person sent to proper office to get information, whether VAO is available in the office. Later, he informed that VAO is available and so the entire police team with other witnesses went to the office of the accused. He handed over the tainted money to issue a certificate in his favour. Later, he returned the money to him stating that huge money is not required. That money was received by the said Monoharan, retained Rs.200/- and returned the balance amount. Later, the Trap Laying Officer entered into the office along with police team and he identified the accused.

16.This is the chief examination of PW2. He was cross examined by the accused to the effect that only at the instance of the said Manoharan, he has given evidence implicating the accused. That was denied by him. The chief examination and the cross examination made to PW2 does indicate that he is not a genuine person. Absolutely, it is not the case of the prosecution that one Manoharan was the inter-connection between the de-facto complainant and the accused.

17.It is pointed out by the appellant that the said Manoharan was not examined by the prosecution; Even on the first day of the alleged demand, PW2 did not see the accused. According to the appellant, in the absence of the examination of Manoharan, the entire prosecution case fails and that was not properly appreciated by the trial court. Now we will deal about that matter in the later portion of the judgment.

18.Now let us straightaway go to the evidence of the Trap Laying Officer namely PW7. He would say that PW2 appeared before him and informed about the demand made by the accused for about Rs.600/- for the purpose of issuing Nativity certificate, which is required for getting the electricity service connection. According to him, that complaint was given, on 06/0/2009. It was the written complaint. Based upon which, he registered the case. Absolutely, nothing is available on record to discard the evidence of PW7. No cross examination was made by the accused to PW2 regarding the lodging of the complaint for the simple reason that PW2 himself has admitted that he put his signature in the complaint written by the said Manoharan. According to him, that Manoharan is a Document Writer. Based upon the complaint, immediately the case was registered. The FIR was submitted to the court immediately. There is nothing on record to doubt the lodging of the complaint by PW2.

19.As mentioned above, the reason for him to turn hostile was not properly brought on record by the prosecution. It was the cross examination to the effect that at the request made by the accused to save him from the conviction and sentence, has given false evidence.

20.With these facts, let us go the subsequent events.

21.PW3 is the shadow witness. He would say that as mentioned above, he participated in the pre-trap proceedings at the request made by the Trap Laying Officer and that demonstration went on as per the procedure. His evidence is corroborated by PW7 Trap Laying Officer. So, regarding the pre-trap arrangement also, I find absolutely nothing on record to doubt it. The participation of PW2 in the pre-trap arrangement also, he has stated in his evidence that he handed over Rs.600/- demanded by the accused. He was introduced to the official witnesses. The money given by him was counted by the official witness Krishnan. The notes were treated with phenolphthalein powder, counted by him namely Krishnan. He was directed to dip his hands and it turned pink. To that extent, PW2 supported the prosecution case. He has corroborated by himself. So, the pre-trap arrangement has been validly and properly conducted by the Trap Laying Officer.

22.Now let us go to the further event as to the trap.

23.PW3 would say that along with the police team and others, they proceeded to the office of the accused. PW2 and himself went inside the office of the accused. The office of the accused is located in Kottampatti. At that time, the Village menial was present. PW2 handed over the required documents to the accused and demanded Nativity Certificate. PW2 was sent for purchasing white papers. He obliged and purchased the white paper and handed over the same to the VAO. The certificate was written by one Moorthy. The accused signed in the certificate and handed over the same to PW2. At that time, the accused enquired about the money demanded by him. In turn, he received Rs.600/-. As noticed above, at that time, Manoharan told the accused that PW2 is known to him and a man of good character. So, the accused out of Rs.600/-, returned

Rs.200/-. After the above said acceptance, they came out of the office and PW2 made signal, as instructed by the Trap Laying Officer. As stated above, the police team entered. This is the evidence of PW3.

24.Now in that issue, we will go to the evidence of PW2. He would say that along with the required documents, they entered into the office of the accused. At that time, Manoharan was present. He handed over the documents and the money to the accused. The accused received the money and issued the certificate. But returned the money stating that huge money is not required. He received back the money. But Manoharan got the money from him, returned only Rs.200/- and retained the balance amount. This is the evidence of PW2. To some extent, he is supporting the case of PW3 as to the handing over of the required certificate and tainted money. But having accepted the money, now it is returned to PW2. But the entire amount was returned back to him stating that huge money is not required. But PW3 has not stated anything like that. As stated above, only the accused returned Rs.200/- to PW2 and retained the balance amount.

25.Stopping the discussion for a moment, now let us go to the recovery aspect, to find whether there is any link between the recovery, acceptance and demand is made out.

26.PW3 would say that soon-after the police entered into the office, they made enquiry about the tainted money with the accused. The accused admitted having accepted the bribe amount. Sodium Carbonate Solution was prepared. The accused was instructed to dip his both hands in a separate solution. Both turned pink. The accused handed over the tainted money from his pocket. The Trap Laying Officer got the money from PW2, which was returned by the accused. This is the evidence of PW3.

27.Now we will go to the evidence of the Trap Laying Officer. He would say that the accused handed over Rs.400/-. It was counted by the witness Krishnan and compared the same in respect of the serial numbers with the mahazar already prepared during pre-trap proceedings. It was found tallied. This shows that recovery of the tainted money was made only from the accused.

28.According to the prosecution, the very fact that the accused made enquiry with PW2 whether he brought the bribe amount as demanded; accepted the money will show the guilty mind of the accused. This is the argument advanced on the side of the prosecution.

29.Now we will go to the argument advanced by the appellant.

30.According to the appellant, there was a delay in lodging the complaint, which was not properly explained by the prosecution; Actually, the trap was not conducted in the office of the accused. But somewhere in Kottampatti; To show that he has produced Exs.D1 and D2; Even in Ex.D2, the place was not properly mentioned; The very fact that the accused returned Rs.200/- to PW2 shows that there was no occasion, either to demand or accept the illegal gratification; PW2 is not very clear regarding the place of trap. The Nativity Certificate can be issued only by the Thasildar and not the accused, since he is only working as Village Administrative Officer; The Investigating Officer did not draw proper sketch and mahazar showing the position of the witnesses and the accused; Since PW2 has given a categorical version stating that only Manoharan received the money shows that the accused has been wrongly and falsely implicated. So, this according to the appellant, when PW2 himself has turned hostile and did not support the case of the prosecution regarding the demand, then the entire prosecution case ought to have been disbelieved by the trial court; But it accepted the case of the prosecution, on the basis of the evidence of PW3 and the Trap Laying Officer, which is not proper. It is according to her, is *per se* illegal.

31.But contrary, the learned Additional Public Prosecutor would submit that the office of the accused actually situated in Kottampatti; There is clear evidence on the side of the prosecution; when PW2 turned hostile for unknown reasons, then the allegation made in the complaint that the accused demand was accepted, which was correctly accepted by the trial court. One Manoharan was introduced by the accused to suit his defence.

32.Now we will take up the first issue of location of the office. PW3 has stated that the office of the accused is situated in Kottampatti. In the mahazar under Ex.P5, it is clearly mentioned that the office of the accused is functioning in Door No.247 Main Road, Muttukai, Kottampatti. How the confusion or doubt is raised regarding the location of the office, we can turn to the document submitted by the accused under Ex.D1. It is the FMB Register and 'A' Register Extract copy pertaining to Manappacheri village. In survey No.97, it is seen that only Oorani is situated. Under Ex.D2, the Village Administrative Officer of Kottampatti issued a certificate stating that the office is situated in Union Office Road, Kottampatti. This document was marked during the course of cross examination of PW1, the Sanctioning Authority.

33.According to PW1, the document submitted to him was relating to the office situated in Kottampatti.

34.By pointing out this document, it is submitted by the appellant that sanction itself is not proper, *per se* it is illegal, since the Sanctioning Authority did not peruse the complaint and other documents to show the place of office. But This confusion does not arise at all. As mentioned above, the office of the accused is situated only in Kottampatti. Only in that office, the trap was conducted. By pointing out this simple mistak, the case projected by the accused as if trap itself is not properly established by the prosecution does not arise at all.

35.Recovery of the portion of the bribe amount will show the criminal intent of the accused. Even if we consider that the pre-demand was not properly established by the prosecution, since because PW2 turned hostile, but the enquiry made by the accused to PW2 and PW3 with regard to the demand made by him, can be taken as a demand on the date of trap itself. The tainted money was recovered only from the accused, which cannot be now disputed.

36.The learned counsel appearing for the appellant would rely upon the judgment of this court in Thota T.Shivakumar Vs. State by Inspector of Police, SPE/CBI/ACB, Chennai (Crl.A No.268 of 2018, dated 06/07/2023) that non-recording of the explanation offered by the accused at the time of trap is fatal. But I am unable to convince this line of argument.

37.In this regard, we will go to the evidence of the Trap Laying Officer. He would say that he did not make any enquiry with the accused about the reason for accepting the bribe amount. He was not cross examined to non-recording of the statement of the accused.

38.Now we will go to the mahazar to find out whether any statement was received from the accused. It has been recorded that the accused told that the amount was voluntarily given by PW2. This is sufficient to comply the Manual Rule '48'. More-over, this does not improve the case of the appellant. So, on this aspect, I am of the considered view that the prosecution case does not fail.

39.PW2 was gained over by the accused. He complained, participated in the pre-trap and trap proceedings, but purposely turned hostile only to save the accused from the case. This sort of attempt cannot be appreciated and should not be permitted also.

40.For answering this issue, we can straightaway go to the judgment of the Hon'ble Supreme Court in the Constitution Bench reported in ***Neeraj Dutta Vs. State (Govt. of N.C.T. Of Delhi) (2022 LiveLaw (SC) 1029)*** and the position has been now clarified that in spite of the fact that the de-facto complainant turns hostile, or not supported the case of the prosecution, circumstantial evidence may be taken into account.

41.In the above said case, the Hon'ble Supreme Court has pointed out that even on circumstantial evidence, judgment can be rendered. Here, the circumstances pointed out by the prosecution are overwhelming.

42.The trial court has properly appreciated the facts and evidence and correctly recorded the conviction. Regarding the sentence also, I find no reason to interfere.

43.In the result, this criminal appeal fails and the same is **dismissed**, confirming the judgment of the conviction and sentence passed by the trial court.

27**/01/2025**

Index : Yes/No
Internet : Yes/No
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To,

1.The Special Court for Trial of cases
under the Prevention of Corruption Act,
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.67 of 2018

27/01/2025