BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	25/10/2024
Date of Pronounced	28/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)Nos.243 of 2018

R.Lalitha : Appellant/A1

Vs.

The State of Tamil Nadu
Represented by its
The Inspector of Police,
Vigilance and Anti-Corruption,
Sivagangai District.
(Crime No.5 of 2005) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records of the judgment dated 27/04/2018 in Special CC No.24 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Sivagangai, in Crime No.5 of 2005 on the file of the respondent police and set aside the same and acquit the appellant and pass further or other orders.

For Appellant : Mr.T.Lajapathi Roy,
Senior Counsel
for M/s.T.Lajapathi Roy Associates

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 imposed by the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai in Special CC No.24 of 2014, dated 27/04/2018

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

The first accused was working as Clerk in the Municipality Office, Sivagangai. On 12/01/2005 the complainant approached her for building survey licence with an application without enclosing any certificate and process fee. Thereafter, the complainant produced the necessary documents along with payment for process, on 21/05/2005. After passing 4 months, the first accused demanded a sum of Rs.2,000/- as bribe to process the application. The complainant requested her to reduce the bribe amount from Rs.2,000/- to Rs.1,700/-. Not wiling to bribe, on 19/05/2005, he lodged a complaint with the respondent police. Based upon the complainant, trap was laid. Case in Crime No.2 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 Court for Trial of cases under the Prevention of Corruption Act, Madurai, in Special Case No. 64 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 Sec.207 Cr.P.C proceedings, framed the following charges against the accused:-

> *(1)On 29/08/2008 at about 07.00 pm, when the de-facto complainant gave a petition seeking for the plan approval licence, the first accused demanded Rs. 2000/- as bribe amount to make arrangement for such plan approval and thereby, she committed an offence punishable under section 7 of the Prevention of Corruption Act, 1988; and*
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> *(2)In pursuance of the same transaction, the accused by using her position as a public servant obtained Rs.2000/- as pecuniary advantage for herself from the complainant and thereby the accused committed an offence punishable 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, 16 witnesses have been examined and 41 documents were marked. Apart from that, MO1 to MO4 were marked, one witness was marked on the side of the accused.

5.PW2 completed the Civil Engineering and applied for licence on 12/01/2005 attached to Sivagangai Municipal Corporation. On 20/01/2005, he approached A1-Lalitha about the stage. At that time, he submitted a challan for deposit and licence fee. He submitted the relevant records and thereafter, for about 5 times, he approached A1. But there was no proper response from her. On 17/05/2005, along with his neighbour namely Kannan PW3, he again approached A1. At that time, she demanded Rs.2,000/- for doing the work. Again on 18/05/2005, A1 demanded money. They asked her to reduce the money. But she told that one Sakthivel, who is the higher official has to sign in the certificate. A1 took PW2 to Sakthivel. Sakthivel told him to give Rs. 1,700/- to A1 Lalitha.

6.On 19/05/2005 at about 02.00 pm, they approached the above Vigilance Department with a complaint under Ex.P6. Further event is spoken by the Inspector of Police namely **PW14.** He received the complaint and registered a case in Crime No.5 of 2005 under section 7 of Prevention of

Corruption Act and submitted the original records to the court and copies to the higher officials. He made request to the Government Departments to depute two responsible persons to assist in the trap. As per the request, one Pandi and Parameswari appeared before him. He introduced PW2 to the Government Officials and explained the importance of the demonstration and etc. facts. PW2 handed over Rs.1,700/- consisting of three 500/- notes and two 100/- notes. A mahazar was prepared mentioning the serial number of the notes. Selava Kumar was directed to prepare the sodium carbonate solution. He dipped his hands as instructed. There was no change in colour. Later, phenolphthalein powder was applied. Parameswari counted the notes and dipped her hands in the sodium carbonate solution. It turned pink. PW2 was instructed to take the money to visit A1 office and if demand is made, give the money to her and give signal. For all the events, mahazar was prepared in which all the witnesses signed.

7.Along with the police team, at about 04.30 pm, they went to the office of A1. Police team was hiding in a nearby place. PW2 and official witnesses, as instructed went inside the office of A1. After 10 minutes, they returned back. When he enquired them, they told that A1 asked them to come after work and collect the certificate and at that time, she will receive the money. A mahazar was prepared for the events. PW2 was directed to keep the money himself. Again on 23/05/2005, PW2 and other witnesses appeared. The very same demonstration repeated. On the same day also, trap was not successful. On enquiry, PW2 has stated that A1 asked him to give money to a particular person, who will come on the next day. Again, minutes were prepared for the second event also. Again on the next day namely 23/05/2005, PW2 and other witnesses appeared and the demonstration repeated once again, minutes was prepared. At about 10.00 am, they reached the office of A1. The police team was hiding, PW2 and other official witnesses went inside the ABT Parcel Service.

8.Further event is spoken by **PW2.** At about 12.40 pm, A2-Marichamy came inside the Parcel Office and demanded money stating that A1 asked him to get money. He made enquiry for the certificate. He was told that it was not made ready and it will be handed over in the afternoon. He gave money to A2 and he counted the money. After coming out of the Parcel Service office, he showed signal as instructed earlier. The police team immediately came there. A2 was identified by PW2 to the Trap Laying officer. A2 dropped the money, started shivering. Sodium carbonate Solution was prepared and A2 was asked to dip his hands, it turned pink. A mahazar was prepared, in which all the witnesses signed. Sodium carbonate solution was collected in a glass bottle, labeled and sealed. He compared the number of tainted currency notes with that of the numbers mentioned in the mahazar. They found to be tallied. Money was recovered by way of mahazar, in which all the witnesses signed. Later, they proceeded to the Municipal Corporation office, Sivagangai at 02.55 pm, wherein the Commissioner Natarajan was present. PW2 identified A1 to the Trap Laying Officer. He also identified one Sakthivel. Only at that time, he came to know that his correct name is Balasubramanian and not Sakthivel. He was working as oversea in the Municipal Corporation. He handed over the file.

9.The further event is spoken by the Trap Laying Officer. He enquired the accused in the office itself and recorded their statement. He arrested A1-Lalitha and the Superintendent Subramanian at about 05.00 pm, on that date. He prepared the mahazar in which all the witnesses signed.

10.Further investigation was undertaken by PW15 who was working as Inspector of Police between 31/07/2001 and 31/08/2005. He recorded the statement of the witnesses, submitted the material objects for chemical examination. He superannuated on 31/08/2005, handed over the file to PW16. On 05/01/2006, he took up further investigation and recorded the statement of the further witnesses, verified the statement recorded by the predecessor. The vehicle bearing registration No.TN-22-C-9790 was produced by the accused Subramanian, which was used by P.Marichamy, seized under proper recovery mahazar. PW2 has stated that by mistake, the name of Balasubramanian is mentioned as Sakthivel. For the entire events a mahazar was prepared. He received the sanction letter for prosecuting the accused. After completing the investigation, filed final report for the offences punishable under sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

11.PW3 is the official, who accompanied PW2 during trap. He participated in the pre-trap arrangement corroborated by PW2 and the Trap Laying Officer in material materials.

12.PW4 is another official, who participated in the pre-trap arrangement and trap. He accompanied the Trap Laying Officer. He has spoken about the events took place in the ABT Parcel Service Centre as narrated above.

13.PW5 was working in ABT Parcel Service on 24/05/2005 and he has spoken about the enquiry made in the internal Department against A2-P.Marichamy, preparation of mahazar, etc.

14.PW6 was working as staff in the Counter for collecting miscellaneous charges from the public. He has spoken about the payment made by PW2.

15.PW7 has spoken about the trap event. PW8 has spoken about the file regarding PW2 and the process undertaken by him.

16.PW9 has spoken about the attendance register maintained in the office. PW12 has also spoken about the processing the application submitted by PW2, so also PW13.

17.After closure of the prosecution evidence, when the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same.

18.After considering the evidence, both oral and documentary, the trial court found the accused guilty for the offences under sections 7 and 13(1)(d) of the Prevention of Corruption Act and sentenced the to undergo 6 years RI and to pay a fine of Rs.1,000/- in default to undergo 6 months RI for the offence under section 7 of the PC Act; and further convicted them under section 13(2) r/w 13(1)(d) of the Act, sentenced him to undergo 3 years RI and to pay a fine of Rs.1,000/- in default to undergo 6 months RI and directed to run the sentences concurrently.

19.Against which, this criminal appeal is preferred by the appellant/A1.

20.Heard both sides.

21.PW2 is the de-facto complainant. As mentioned above. he is very categorical in his evidence that on 17/05/2005 along with his cousin brother, who was examined as PW3 went to the office of the first accused. At that time, the first accused demanded Rs.2,000/- as bribe for processing her licence application. This is the first day of demand.

22.According to the prosecution, the next demand was made on 18/05/2025. Again, they requested the first accused to reduce the money. But she was taken to one Sakthivel. With Sakthivel also, they requested for reduction of the bribe amount. Sakthivel reduced the amount to Rs.1,700/- and asked them to give money to A1. Sakthivel signed in the file and handed over the same to A1. After that, on 19/05/2005 the complaint was given.

23.Now this evidence is corroborated by PW3 his cousin brother. He has also stated that some money was demanded by Sakthivel on 17/05/2005 and the next demand on 18/05/2005, reduction of the money by Sakthivel and etc, facts. He was also very clear in his evidence that the above said Sakthivel signed in the file.

24.From the evidence of PW2 and PW3, it stands established on the side of the prosecution that the initial demand was made by the first accused on 17/05/2005 and the next demand was made on 18/05/2005 jointly by the first accused and one Sakthivel, the prosecution contended. Now what happened to the above said Sakthivel, later identified as Subramanian is a matter of grave and serious concern.

25.Now we will straightaway go to the evidence of the Investigating Officer on this aspect, why Subramanian was deleted.

26.PW13 was working as Commissioner of Municipal Corporation during the relevant time and he was the sanctioning or approving authority. What happened before that, as spoken we can ignore his evidence for the time being on that aspect. The person who alleged to have demanded the bribe amount along with A1 on the next day is not actually Sakthivel. His correct name is one

Subramaninan. PW13 has spoken that during the trap proceedings. PW2 was called to identify the person who demanded bribe from her. PW2 identified the accused Lalitha correctly. She identified Subramanian. Enquiry was made by the Trap Laying Officer with regard to the naming that person as Sakthivel. The concerned Sakthivel was also called by the Trap Laying Officer. But PW2 has stated that that person did not make any demand along with the accused Lalitha. The misidentification was also explained by PW2. Now it stands established that on the date of the trap itself, Subramanian was identified by PW2. So, Sakthivel was rightly deleted even at the initial stage because of the above said misidentification. Now Subramanian has come to the place. What happened to Subramanian, as mentioned above, is a matter of grave concern.

27.The further case of the prosecution goes in this manner. On 23/05/2005, trap was arranged, but did not succeed. But the accused Lalitha asked PW2 to give money to P.Marichamy, A2 who was dead at that time of hearing the appeal. On 24/05/2005, trap was laid in the ABT Parcel Service, where A2 was arrested for having received the bribe amount from PW2. The bribe amount was recovered from the deceased second accused namely P.Marichamy. Not only the accused Lalitha and P.Marichamy were arrested, but also Subramanian on 24/05/2005, they were remanded to custody.

28.According to the Trap Laying Officer, Subramanian told him that he sent A2-Marichamy to bring the lunch for the Commissioner during the trap time. PW15 Mohammed Yasin, who took over the investigation has also stated that during investigation, it was found that Subramanian was also involved in demanding the bribe amount. But his name was deleted at the time of final report. He did not examine or enquire the said Subramanian. The charge sheet was laid by PW16 after completing the full investigation. During the chief examination, he has not given any reason for deleting Subramanian. During the course of the cross examination, he has candidly admitted that Subramanian was also involved in the crime having demanded the bribe amount. He was not able to give satisfactory explanation or reason for deleting the Subramanian. He being the final Investigating Officer ought to have given proper reason for deletion. He has also admitted that on the date of the trap namely 24/05/2005, Subramanian only sent A2 to bring the lunch for the Commissioner. No statement was recorded from Subramanian. This clearly established the fact that Subramanian was removed or deleted from the final report with some ulterior purpose, which is not disclosed by the prosecution. That is why, I have stated that why Subramanian is deleted is a matter of grave concern.

29.Time and again, it has been pointed out by this court that the duty of a public authority is nothing, but the public trust, which must be discharged to the conscious of the authorities. When an official discharges his duty with ulterior motive or with hidden idea, then the causality will be the fair judicial process. Judicial process includes the fair investigation process also. But here, the investigation itself is faulty for not disclosing reasons. It is the power of this court to know the reason.

30.Now we will go to the manipulation made by the authorities in the official records.

31.Ex.P24 is the attendance register for NMRs, wherein in page 123, the name of A2 is mentioned as P.Marichamy, S/o.Pandi. The date is mentioned as 24/05/2005. Something was written, removed with a whitener and entry is made as if he was absent. This was again candidly admitted by the staff, who maintained the attendance register. He was cross examined as PW9. He has stated that on 24/05/2005, P.Marichamy did not attend the office. Regularly he used to come to the office at 06.00 am and leave the office at 02.30 pm; Usually P.Marichamy did not attend the clearing work, but doing the work as instructed by the Commissioner. He disowned not only the responsibility, but also regarding the removal. Why the official record has been tempered. How this important aspect is omitted to be taken into account by the Investigating Officer is not explained by him. In all fairness, the Investigating Officer ought to have charge sheeted Subramanian also, but the matter to the trial court. He has chosen to adopt some dubious method in deleting Subramanian from the final report.

32.When proper explanation has not come forward from the prosecution for the reason of the deletion of the Subramanian, I asked the prosecution to produce the CD file to know the reasoning. The file is produced, wherein recommendation was made to the Disciplinary Authority to initiate action against Subramanian for assisting A1 to demand bribe amount. But in the recommendation, it has been stated that there is no evidence on record to show that Subramanian on behalf of A1-Lalitha reduced the bribe amount to Rs.1,700/- from 2,000/-; some contradictory statement was made by PW2; departmental action was recommended. But this runs quite contra to the prosecution case. PW2 and PW3, according to the prosecution, have categorically stated about the reduction of the bribe amount by the deleted accused Subramanian, when they are taken to him. So, this itself creates doubt in the prosecution case as to the very genuineness of the story. In this context only, fabrication or correction made in the attendance register under Ex.P24 assumes importance.

33.Now A2-P.Marichamy reported to be dead during the pendency of the appeal. He was working as temporary employee. So, there is no retirement benefit to him. So the charge against him is dismissed as abated.

34.When glaring falsification of record has been made, then as mentioned above, the entire prosecution story must be viewed suspicion stating that it is shrouded in mystery.

35.Demanding and accepting the bribe amount through subordinate is a heinous crime. But falsification of Government records to suit the convenience of a particular official is not less serious. It must be looked into seriously. The prosecution must come to the court with clean hands. When fabrication of Government records is seen causality is the fair judicial process.

36.On that sole ground, I am of the considered view that the judgment of conviction and sentence passed by the trial court is liable to be set aside and accordingly, it is set aside without going into other aspects.

37.In the result, this criminal appeal is **allowed**, the conviction and sentence imposed on the appellant namely A1 is set aside. She is acquitted from all the charges. Fine amount if any paid shall be refunded to her. The bail bond, if any executed shall stand discharged.

28**/01/2025**

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

1.The Special Judge,
Special Court for Trial of Cases under
Prevention of Corruption Act,
Sivagangai.

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

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

G.ILANGOVAN,J

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Crl.A(MD)No.243 of 2018

28/01/2025