BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.444 of 2018

Tmt.Vanithai : Appellant/A1

Vs.

State through the
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Theni.
(In Crime No.1 of 2009) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 378(2) of the Criminal Procedure Code, against the judgment of the Chief Judicial Magistrate/Special Judge, Theni, in Special Case No.5 of 2014, dated 30/08/2018.

For Appellant : Mr.T.Lajapathy Roy
for Mr.T.Antony Arulraj

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 the Chief Judicial Magistrate/Special Judge, Theni, in Special Case NO.5 of 2014, dated 30/08/2018.

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

(i)A1 while holding additional charge as Junior Engineer in Pannaipuram Town Panchayat, was in-charge of the construction work that was being carried out by the complainant. On the completion of the said construction work, the complainant approached her for issuance of the completion certificate required for claiming the bill amount.

(ii)It was alleged that A1 demanded Rs.25,000/- at about 02.00 pm, on 10/02/2009 from PW2 as bribe for issuing the said completion certificate. When the complainant explained his financial position, it was reduced to Rs.12,000/- saying that she and Assistant Executive Engineer would take Rs.5,000/- each, the balance amount would be given to A2. She further instructed him to pay the amount of Rs.12,000/- on 10/02/2009. Not willing to bribe, he lodged a complaint. Based upon the complaint, trap was laid. Case in Crime No.1 of 2009 was registered under section 7 of the Prevention of Corruption Act. The accused were arrested during trap. After completing the formalities of the investigation, final report was filed. It was taken on file by the Chief Judicial Magistrate/Special Judge for Prevention of Corruption Act, Theni, in Special CC No.5 of 2014 for the offences punishable 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 while she holding additional charge as Junior Engineer in Pannaipuram Town Panchayat, was in-charge of the construction work that was being carried out by the complainant; On the completion of the said construction work, complainant approached her for issuance of the completion certificate required for claiming the bill amount; at that time, A1 alleged to have demanded Rs.25,000/- at about 02.00 pm, on 10/02/2009 as bribe for issuing completion certificate and then it was reduced to Rs.12,000/- and thereby the accused committed an offence punishable under section 7 of the Prevention of Corruption Act; and

(ii)In the course of the same transaction, the accused by using their position as public servants obtained Rs.12,000/- as pecuniary advantage for themselves 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, 15 witnesses have been examined and 18 documents marked. Apart from that, MO1 to MO3 marked. On the side of the accused, one witness was examined, but no document was marked.

5.***The case of the prosecution, as narrated through the prosecution witnesses:-***

PW2 is the contractor working in Pannaipuram Town Panchayat under the scheme introduced by the Government. He offered with a contract work to construct overhead drinking water tank in the month of June 2008. The estimate amount is Rs.4,60,000/-. He completed the work in October 2008. In the same year December month, electricity connection was made and started functioning. The first accused used to visit the work site, took up the measurement in the M-Book. She also used to visit frequently. From December 2008 till February 2009, the complainant enquired the settlement of the money due to him. On 07/02/2019, again he contacted A1. At that time, she told him to come to the work site. Next day, he went to the work place between 10.00 a.m and 11.00 a.m, where A1 and A2 were present. At that time, they demanded Rs.25,000/- for completing the survey. On 10/02/2009, again he contacted A1. She asked him to come to Pannaiyapuram Road. In that place, A2 also came. He expressed his inability to give the money. Then, they demanded 3% of the work namely Rs.12,000/- stating that out of Rs.12,000/-, Rs.5,000/- to be paid to the higher authorities, Rs.5,000/- to A1 and Rs.2,000/- to A2. She asked him to come on the next day. But on 12/02/2009, he lodged a complaint with the Vigilance and Anti-Corruption Wing under Ex.P3.

6.Further event is spoken by **PW14** namely Muthuraj, who was working as Inspector of Police, Vigilance and Anti-Corruption Wing, Theni. He registered the case in Crime No.1 of 2009 under section 7 of the Prevention of Corruption Act. He submitted the original records to the court and copies to the higher authorities. He asked PW3 to come on the next day. On the next day, PW3 appeared before him. Earlier to that, he made a request to the Government Departments to depute two officials to assist him in the trap process. On his request, two Government Officials were present before him by namely Thangadurai and one Sankar. He requested the witnesses Thangadurai to count the money given by PW3. He counted the money and stated that it is Rs.12,000/-. Mahazar was prepared wherein the note numbers were recorded. Sodium carbonate solution was prepared. The official witness was directed to dip his hands. There was no change in colour. Later the phenolphthalein powder was applied to the currency notes. The concerned police official was directed to count the money, he counted the money. Again two solutions were prepared, in which the the concerned official was directed to dip his hands. It turned pink. He instructed PW3 to have the money with him and give to to the accused, if demand is made. He instructed the official witnesses to accompany PW3 and witness the events. It the money is received by the accused, PW3 was instructed to give signal. For all the events. Mahazar was prepared in which all the witnesses signed. After completing the formalities, along with the police team, they went to the office of the accused. As instructed earlier, PW3 and the official witnesses instructed to go the office of the accused.

7.Further event is spoken by **PW3**. When, he, along with the official witnesses went to the office of the accused, at that time, A1 was not available in the office. Through phone, he contacted her. A1 told that they are waiting near Kaleeswari Koil in the work area. So, along with the witness Sankar, they went to that place and contacted A1 about the bill. Near her, A3 was sitting. A1 asked whether he brought the photographs. She asked to give the photographs and money to A3. A3 received the money and put it on the dash board of the car. PW3 gave signal to the police team as instructed earlier.

8.Further event is spoken by **PW14**. He would say that PW3 narrated the event and identified the accused. He contacted the Executive Engineer of the Pannaipuram Panchayat to come to the place and to witness the occurrence. Sodium Carbonate solution was prepared, in which A3 was requested to dip his hands. It was repeated for the other hand also. Sodium Carbonate solution turned pink. Collected, labeled and sealed. On enquiry, A3 stated that as per the instruction of A1, he received the money and put the same in the dash board of the Car. He recovered the money from the dash board of the Car and photographs. He prepared mahazar for the entire events. They compared the note number in money that of the number mentioned in the mahazar prepared during pre-trap arrangements. It found to be tallied. After sending advance intimation, they searched the A1's house. But no seizure was made. He submitted the records and material objects to the court. The accused were remanded to judicial custody.

9.Further event is spoken by **PW15** who was working as Inspector of Police. He made request to the Court to send the material objects for chemical examination, recorded the statement of the witnesses. After receiving the chemical analysis report and sanction order from the competent authority, after completing the investigation, he sent a report to the Director of Vigilance and Anti-Corruption.

10.The further event is spoken by **PW17**. He recorded the statement of the official witnesses, after completing the investigation filed final report.

11.**PW4** Sankar is the official witness, who accompanied PW3 corroborated PW5 with regard to pre-trap and trap arrangements. As mentioned above, he requested to witness the trap proceedings and further events. He corroborated PW14 in material particulars. He signed in the documents prepared at the time of trap.

12.**PW6** has spoken about the maintenance of attendance register.

13.**PW7** has spoken the contract work assigned to PW3.

14.**PW13** is the Scientific Officer attached to FSL Chennai.

15.**PW16** was working as Manager in AIRCEL company. As per the request made by the Investigating Officer, he offered call details between 12/02/2009 and 13/02/2009. With that, the prosecution side evidence was closed.

16.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. One witness was examined on the side of the accused, but no document was marked.

17.At the conclusion of the trial process, the trial court found A1 guilty, convicted and sentenced her to undergo 2 years RI and imposed a fine of Rs.1,000/- in default to undergo 2 months SI for the offence under section 7 of Prevention of Corruption Act and sentenced her to undergo 2 years RI and imposed a fine of Rs.1,000/- in default to undergo 2 moths SI for the offence under section 13(1)(d) of Prevention of Corruption Act.

18.Against the judgment of conviction and sentence, this criminal appeal is preferred by the A1 as appellant.

19.Heard both sides.

The back ground facts:-

20.PW3 Govindaraj is a contractor. He was inducted in the panel in 2006. In that year, he was assigned the first work. In the course of time, he completed three works. The present subject contract was assigned to him on 20/06/2008. As per the terms of contract, it must be completed within a period of 60 days. But the work was completed in the 10th month of 2008. Measurement work was taken by PW8 on 27/11/2008. According to the de-facto complainant, the work was commenced and operated on 03/12/2008. There was a delay in processing the bill. On 06/02/2009, he met PW7 and made a complaint stating that bill is not prepared till that day. On 08/02/2009, A1 and A2 made first demand of bribe. In the meantime, the appellant Vanithai was under order of transfer. Another person about to join in her post. But Vanithai did not hand over the charge. But continued in the very same post and discharging her official function. A report was submitted by A1 to PW8 in this regard. Now as per the de-facto complainant, the second demand was made on 10/02/2009. The complaint was lodged on 12/02/2009. Thereafter, trap was laid on 13/02/2009. Later, on 16/02/2009 the entire amount due to him was paid through bills. So, this is the sequence of events.

21.A2 and A3 were acquitted by the trial court. A1 who is appellant herein was alone convicted as mentioned above.

22.With these dates and events in the background, now let us go to the defence taken by A1.

23.The main defence is that PW3 Contractor was inimical because of the delay in processing the bill.

24.It is the contention on the part of the appellant that the work was not properly carried out by PW3. So, she insisted PW3 to complete the work in a proper manner. This caused PW3 enmity.

25.The next defence is that PW11 was placed in the post of A1 on 04/12/2008. He was responsible for the continuation of the supervisory work.

26.Another ground is that the bill was not prepared for the expenditure incurred by PW3; There was a short of Rs.36,000/-, it caused loss to PW3. This is also created enmity with A1.

27.Yet another defence is that under the guise of submitting the photographs for the completed work, PW3 stealthily put the money in a cover, handed over the same to A3; A3 without knowing that the money is also kept in the cover, received it at the instructions made by A1. This is the trap laid for implicating her into the bribery charge; there was frequent threat by the officials to blacklist PW3. This was also other reason for the false trap.

28.In the light of the above said prosecution case and the defence taken, we will go to the evidence available on record.

29.The de-facto complainant, as stated above, stated that on 07/02/2009 between 10.00 a.m and 11.00 a.m, he met A1 and A2 near Fathima School working site area. At that time, A1 and A2 alleged to have demanded Rs.25,000/-.

30.In respect of the initial demand of Rs.25,000/- on that date, except the oral evidence of PW3, no other corroborative evidence is available. This allegation has to be verified in the light of the subsequent event brought on record by the prosecution.

31.Now the second demand is on 10/02/2009. At that time, A1 was sitting in the Car and A2 came to that place. When he expressed his inability to pay such huge amount, it was reduced to Rs.12,000/- as advance and balance amount later. The place of occurrence stated to be nearby Palayam Bye-pass area. In this regard also, there is no corroborative evidence.

32.The third demand alleged to have made is on the date of trap namely 13/02/2009. On 12/02/2009, the complaint was lodged.

33.Regarding the pre-trap event, no argument was advanced by the appellant. In fact, the argument may not be advanced by the appellant for the simple reason that in the absence of accused only, the pre-trap arrangements were made. Since the evidence of the de-facto complainant is corroborated by the evidence of the shadow witness and the Trap Laying Officer, I find that it was properly done as per the procedure and rules. So we need not doubt it.

Now coming to the trap event.

34.PW3 would say that A3 was sitting near A1. PW3 asked A1 as to the preparation of bills and in-turn A1 enquired whether he has brought the photographs. A1 asked him to hand over the photographs and money to A3. He handed over the photographs and money to A3. A3 received the same, put it on the dash board of the Car. This is also narrated by PW4 shadow witness, during the course of cross examination. PW4 was cross examined that when he contacted A1 over phone for handing over the photographs, he was asked by A1 to produce the photographs in the office; But PW4 stated that since because, his wife is sick, he has to go to the hospital urgently; So, she may receive the photographs in that place; When A1 was doing inspection work, PW3 gave money and photographs to A3; At the time of producing the photographs, PW3 stealthily put the money in a cover and gave to A3. He put the money and photographs in a separate cover and gave to A3.

35.The meaning of this cross examination is that PW3, under the guise of handing over the photographs to A3, stealthily covered the tainted money, gave to A3 knowing fully well that A1 may not receive the money, if it is known to her. So, according to the accused, it is nothing, but the trap, which was pre-planned with ulterior motive to wreck vengeance; She never instructed A3 to receive the money on her behalf.

36.At this juncture, the learned Senior Counsel appearing for the appellant/A1 would heavily rely upon the cover theory. According to him, the cover theory was introduced by the prosecution to cover up the handing over of the photographs. If really, the tainted money was put in the cover at that time of pre-trap arrangement, the cover would also been subject to phenolphthalein test. But this is completely absent. According to him, this is nothing, but Drama, for the purpose of trapping the innocent A1. So, he raises doubt with regard to the very trap itself.

37.For that purpose, he would draw the attention of this court to the contradiction available in the evidence of PW3 regarding the initial demand and subsequent demand allegedly made by A1 and A2. This is the main and important argument advanced by the appellant/A1.

38.Now let us go to the evidence of PW4 namely Sankar. He would say that during pre-trap arrangement, the money was not put in a cover. But PW3 put the money in his pocket. The photographs are in the hands of PW3. PW3 has not spoken about the cover issue. He has simply stated on demand made by A1 took out the money from his shirt inner pocket and photographs and tried to give it to A1. But A1 asked PW3 to hand over to A3.

39.Stopping a moment here, we will go to the recovery event.

40.PW4 would say that the Trap Laying Officer asked A3 about the money. A3 took the money from the dash board. The photographs were also handed over from the dash board. No cover was spoken by PW4.

41.Now we will go to the evidence of the Trap Laying Officer namely PW14.

42.He has simply stated that on enquiry with A3 by him, he handed over the money and photographs from the dash board. During the cross examination, it was suggested to him that the photographs and the money were put in a cover; Under the guise of handing over the photographs, PW3 stealthily put the money in the cover to trap the accused; Actually, A3 was deceived by PW3. It was denied by the Trap Laying Officer.

43.Now we will go to the evidence of A3. He would say that A1 after completing the investigation work, came to the spot. At that time, two persons came to the place. A1 told him to receive two bags brought by those persons. As per the instruction of A1, he received two covers from that two persons. At that time, the Vigilance people came. He has not spoken about the cover, but has spoken about only the bag. But during 313(b)(1) Cr.P.C proceedings, he has stated that as per the instructions given by A1, he received the covers from PW3. So, a little bit of confusion arises in his evidence as to whether the money was put in a separate cover or in the same cover, which contain the photographs.

44.Now we will go the mahazar.

45.In the mahazar also, nothing has been stated regarding the covers. So, the question which arises for consideration is whether the cover, spoken by PW3 creates any doubt regarding the recovery. This will assume importance only if the defence is able to establish that the entire events are motivated to trap A1.

46.Now we will go to the motive suggested by the accused.

47.As mentioned above, it is the defence taken by A1 that the work was not properly taken by PW3 and frequently, A1 asked him to complete the work in a proper manner. The second one is that Athiyappan namely PW11 was the Officer who was responsible for the complete report; Absolutely, there was no occasion for A1 namely the appellant herein to demand any money from PW3. But this suggestion itself is not properly established in view of the clear evidence spoken by PW7 as mentioned above.

48.PW7 has stated that on 06/02/2009, PW3 contacted him regarding the delay in the preparation of the bill. But due to some incompletion of the work, he instructed PW3 to complete the work. PW3 undertook to complete the work in a proper manner. Thereafter, he never turned up to him.

49.PW8 has stated that on 03/12/2008, electricity service connection was made. Even after lapse of two months, A1 did not submit the completion report, because of the defects pointed out by her were not rectified. He admits that the defects pointed out by him were never rectified by PW3. PW3 never contacted him regarding the completion report, thereafter PW7 and PW8 have stated that the defects pointed out by A1 were never rectified by PW3.

50.As mentioned above, PW11 has stated that A1 did not hand over the charge to him, even though he was posted in charge on that date.

51.So from the evidence of PW7 and PW8, it is seen that PW3 was making pressure upon the officials to prepare the bill for the work. But there was a delay because of the fault committed by PW3 in completing the work. So, this, according to the appellant, was taken as a motive by PW3 to lodge a complaint.

52.But may be that the completion work was not properly undertaken by PW3, but the fact remains that A1 was responsible for submitting the completion report. Before the defects are completed, there was no occasion for A1 to submit the completion report.

53.In the light of the above said development, there is reason in the argument advanced by the appellant. The failure completely lied upon PW3. He insisted the officials to prepare the bill without properly rectifying the defects. But after the trap was laid and case was registered, the completion report was filed, based upon which, amounts were settled as mentioned above.

54.So, how the completion report was submitted even without rectifying the defects is not understandable. More over, why PW3 has spoken about the cover for the first time at the time of giving evidence is also not properly explained by the prosecution.

55.As mentioned by the appellant, if money was put inside the cover, whether it is a single cover or separate cover, the cover itself ought to have been subjected to Sodium Carbonate test. But, as mentioned above, the cover was not recovered and it was not subjected to Sodium Carbonate solution test. Why that important fact was omitted to be taken note by the Trap Laying Officer is not explained by him. In fact, as mentioned above, he has not spoken about the cover issue at all. So, the possibility of false accusation cannot be, completely ruled out.

56.A2 who alleged to have made demand to PW3 was acquitted. Which means that the trial court did not believe the prosecution case against A2 regarding the demand, automatically the initial demand alleged to have been made by A1 also falls to the ground.

57.So, coming to the demand on the date of the trap, in view of the inconsistent evidence let in by the prosecution the demand and recovery also doubtful. These doubts were not clarified by the prosecution in a proper manner. So, the judgment of conviction and sentence passed by the trial court is liable to be set aside and accordingly, it is set aside.

58.In the result, this criminal appeal **is allowed** and conviction and sentence passed against the appellant are set aside. The appellant is acquitted from the charges levelled against her. Bail bond if any, executed by her shall stand discharged. Fine amount if any paid by the her shall be refunded to her.

31**/01/2025**

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

1.The Chief Judicial Magistrate/
Special Judge, Theni.

2.The Deputy Superintendent of Police,
Viginance and Anti-Corruption Wing,
Theni.

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

G.ILANGOVAN,J

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