IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

CRL.A.No. 275 of 2000 (A)

AGAINST THE JUDGMENT IN C.C.NO. 11/1998 of ENQUIRY COMMISSIONER AND SPECIAL JUDGE,KOZHIKODE DATED 29-04-2000

APPELLANT(S)/ACCUSED:

V.M.ABDUL AZEEZ, S/O.KOYAMU, VALIYAMANNATHAL HOUSE, KUNNAMANGALAM AMSOM, (SUB ENGINEER, K.S.E.B., ELECTRICAL SECTION, MUKKAM)

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
SMT.V.P.SATHI

RESPONDENT(S)/COMPLAINANT:

STATE - REPRESENTED BY DEPUTY SUPERINTENDENT OF POLICE VIGILANCE AND ANTI-CORRUPTION BUREAU, KOZHIKODE.

BY PUBLIC PROSECUTOR SMT.MADHU BEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.11.2014, THE COURT ON 06-01-2015 DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

Crl.Appeal No.275 of 2000

Dated this the 6th day of January, 2015.

JUDGMENT

Appellant is the accused in C.C.No.11 of 1998 on the file of the Court of Enquiry Commissioner and Special Judge, Kozhikode. He was found guilty under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short, the Act"). The conviction and sentence imposed by the court below is challenged in this appeal. Prosecution case, in brief, is that the accused, a Sub Engineer in the Kerala State Electricity Board (in short, "KSEB") while working in the Electrical Section, Mukkom, abused his position as a public servant, by corrupt and illegal means and obtained illegal gratification of ₹500/- from PW1 as a motive or reward for recommending the issue of power allocation certificate for an industry proposed to be started by him. Later, he obtained another sum of ₹2,000/- on 06.11.1996 for the same purpose. The case arose out of a trap laid by the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Kozhikode (in short, "Dy. SP., VACB"). The court below examined 16 witnesses and marked 21 documents on the side of the prosecution. Two witnesses were examined and seven documents were marked on the side of the defence. MOs 1 to 5 are the material objects.

2. Heard Shri V.G.Arun, the learned counsel for the appellant and Ms.Madhu Ben, the learned Public Prosecutor.

3. Shri V.G.Arun contended that the verdict of guilt by the trial court is based on conjunctures and surmises. According to him, there is no reliable material to find that the accused ever made a demand for bribe as alleged. Further, the case that the accused by corrupt or illegal means obtained for himself a pecuniary advantage is not proved by evidence adduced on the side of prosecution. The court below omitted to note serious infirmities in the conduct of the trap. That apart, the inherent improbability writ large in the prosecution case was ignored by the trial court. According to the learned counsel for the accused, the whole case of demand for bribe and the criminal misconduct of obtaining pecuniary advantage centres around the testimony of PW1, which is per se unbelievable. Per contra, the learned Public Prosecutor would contend that the court below rightly convicted the accused on the basis of the credible testimony of the prosecution witness. There is no valid reason to interfere with the conviction and sentence, contended the learned Prosecutor.

4. The case revealed through evidence of witnesses is thus: PW1 had applied to the Kerala Financial Corporation (in short, “KFC”) for a loan for ₹18,00,000/- in order to start a furniture manufacturing unit. He had

purchased 84.5 cents of land at a place called Odatheruvu for establishing the unit. Even before entertaining the loan application, the KFC directed PW1 to produce a power allocation certificate from KSEB showing that power was available for working the proposed furniture manufacturing unit. Accordingly PW1 submitted Ext.P1 application for the issue of power allocation certificate. It is the case of PW1 that Ext.P1 application was forwarded to the accused, the Sub Engineer, entrusting him with the duty to inspect the property of PW1 and to report the feasibility of granting power allocation certificate to the proposed unit. The application dated 04.10.1996 was received in the office of the Assistant Engineer on 05.10.1996. On the same day, it was handed over to the accused. It is the case of PW1 that on the very same day he took the accused in his own car to facilitate an inspection. There was a transformer close to the property of PW1. But, it was over loaded and no power could be drawn from the same to the proposed unit. Another transformer had been installed 250 meters away from the property of PW1. The accused told PW1 that he could see whether power could be given to PW1 from the said transformer. It is the case of PW1 that on their way back to office, the accused told him from the car that he was the person to say if power was available or not. It was also informed by the accused that if PW1 had met him properly, he would make everything fine. Responding to this gesture of the accused, PW1 gave ₹500/- to the accused and he accepted the same. At that time, PW5 was also present in the car.

5. PW1 thereafter went to the first floor of the KSEB office along with the accused. The accused then took a pen and a piece of paper from his office and asked PW1 to accompany him to a nearby teashop. The accused made some calculations and told PW1 that he would be required to deposit ₹1,00,000/- in OYE scheme for getting a transformer and further, it might take one year's time. Then the accused asked PW1 to pay ₹30,000/- or ₹20,000/- as bribe and then he would ensure that everything was fine. PW1 expressed his inability to pay that much money demanded by the accused and told that he could arrange ₹5,000/- as bribe. Two days thereafter, PW1 met the Assistant Engineer (AE) and he, in turn, told PW1 that after getting the sketch and plan from the accused, he would look into the matter. Again on 29.10.1996, he went to the office of the AE and enquired about the matter. Then, AE called the accused to his office and asked about the development in the matter of PW1's application. Then the accused told the AE that the transformer situated nearby to PW1's property was overloaded and so, the accused could not send up the proposal. Then AE asked the accused whether another transformer placed a short time before, which was not energised till then, could be utilised to shift some load and was it possible to give connection to PW1 thereafter? In reply to this, the accused informed that unless the consent of Power-Telecommunication Co-ordination Committee (PTCC) was obtained, it

could not be done. Further, the accused took a stand that PW1 should apply for another transformer under OYE scheme. Accused clearly mentioned to AE that those were the only alternatives available to PW1. PW1 sought time to think about these suggestions and went away. Again on 04.11.1996, he went to the AE's office. At that time, Assistant Executive Engineer (AEE) was also present. After discussion between them, PW1 was informed that unless the recently installed transformer was energised, only 30 HP power could be allocated to PW1. He had applied for 40 HP power. Therefore, AEE directed PW1 to alter his application accordingly. PW1 corrected the application. That is Ext.P1. PW1 again met the accused on 05.11.1996 from the office of the AE. It is the version of PW1 that again the accused demanded ₹20,000/- as bribe. Finally PW1 agreed to pay ₹2,000/- on the next day. PW1 testified that he was sure that the accused would not take any favourable step, unless illegal gratification was made. As he was on a point of no return, because he had invested lot of money in the proposed unit, PW1 was forced to approach the DY.SP., VACB complaining about the illegal demand of the accused. On 06.11.1996 at about 9'o clock, he went to the office of the Dy.SP., VACB (PW16). The complaint given by PW1 in the office of PW16 is Ext.P2. Thereafter, at about 11 a.m. two persons came to the office of PW16. They were introduced to PW1 as Tahsildars (Gazetted Officers). PW16 informed the witnesses about the allegations in the complaint raised by PW1. PW1 had kept ₹2,000/- in three currency notes of ₹500/- each and five currency notes of ₹100/- each. Those notes were recovered by a seizure mahazar. The currency notes of ₹500/- are MO1 series and that of ₹100/- are MO2 series. Thereafter, PW16 demonstrated the action of phenolphthalein to PW1 and the witnesses. Then phenolphthalein powder was smeared on the decoy notes. The currency notes were put in the shirt pocket of PW1 by a policeman. PW16 instructed PW1 to give bribe only when the accused demanded. Policemen also were instructed to stand at strategic position so as to watch the incident. All the witnesses were given specific instructions regarding showing the signal in case the accused accepted bribe. At about 12.15 in the noon, PW1 and the witnesses along with PW16 went to the KSEB office. At about 1.25 p.m., they reached in the office of KSEB. PW16 and other witnesses waited near a hardware shop by the side of the road. PW1 along with PW6, a Police Constable in mufti, went to the office of the accused. PW1 went inside and found the accused sitting in his chair. At that time, no one else was present in the office, as it was lunch break. On seeing PW1, the accused asked whether he had brought bribe money. PW1 told the accused that only ₹2,000/- could be arranged. Accused received money by his right hand and counted it. Thereafter, he pulled the draw and placed the notes inside. According to PW1, time was about 1.40 p.m. Immediately PW1 gave signal to PW6, who was standing as a watch out in front of the room. That signal was communicated to

PW16 through another Police Officer. After giving the signal, PW6 entered the room. Then the accused questioned him why he came? Even though PW6 was perplexed, the accused did not feel any suspicion. By that time, PW16 and the witnesses entered the room. PW16 questioned the accused whether any bribe was taken by him for which he replied in the negative. But, PW1 asserted that he paid bribe to the accused. On realising the danger, the accused started rubbing his hand on the table so as to wipe out the phenolphthalein powder struck to his hand. PW1 went out of the room. Later the accused was arrested and formalities were complied with.

6. This witness was subjected to searching cross-examination. The consistent defence case is that the accused was taking a definite stand that power allocation could not be given to PW1 from the nearby transformer because it was overloaded. There were only two alternatives for the PW1 to get power connection. First thing was that he could have applied for installation of a new transformer under OYE scheme which apparently was a costly affair. Second possibility was to energise a transformer, which was situated 250 metres away from PW1's property and shift some amount of load from the nearby transformer to the newly energised transformer so that power could be given to PW1 from the nearby transformer. For that, the approval of PTCC should be obtained. According to the learned counsel for the accused, PW1 was politically very influential as one of his close relatives was the local MLA belonging to the

then ruling CPI(M) party. At that time, the Minister for Electricity was also a CPI(M) leader. According to the learned counsel for the accused, PW1 by misusing his political clout was trying to threaten an honest officer, who stood firm on principles that it was impossible to allocate power according to PW1's wish because of the technical reasons. It is also contended that some of the senior officers of the KSEB were dancing to the tune of a political bigwig to help PW1 out of the way.

7. Cross-examination was done on PW1 on the above lines. In cross-examination, PW1 answered that he did not make any enquiry as to the availability of power in the area when he purchased the land. It has come out in evidence that for availing a loan from KFC, availability of power is an essential condition. It was also known to PW1 that the authority to grant power feasibility certificate was the AEE. PW1 deposed that after discussion with AEE, he filed Exts.P1 and P3. PW1 admitted that he was a close relative of Shri Elamaram Kareem, the then local MLA representing CPI(M) party. It has also come out in evidence through PW1 that Shri Pinarayi Vijayan was the Minister for Electricity at the material time. PW1 admitted that he came to know from the accused that he could avail power from the newly installed transformer only on sanction from PTCC. It is also contended by the learned counsel for the accused that immediately after trapping the accused in a false complaint, connection was given to PW1 at the instance of senior officers of KSEB without any regard to rules or

regulations. PW1 clearly admitted that he got connection immediately after the incident from the transformer placed nearby to his property. PW1 feigned ignorance to a question whether it was improper for the accused to report about the non-feasibility of power allocation from the transformer because it was overloaded. PW1 candidly admitted in cross-examination that AEE told him that power could be allocated, if he was prepared to take steps to instal a new transformer. From the tenor of evidence of PW1, it is evident that he was not prepared to invest that much money for getting power. Questions were put to PW1 indicating that he got power allocation immediately after the incident and it was actually handed over to him by the officials of KSEB resorting to shortcut methods. From the evidence of PW1, it is clear that the trap was laid at the lunch break when there was nobody other than the accused in the office. It is the defence case that during the absence of the accused at lunch break, PW1 put the tainted notes in his drawer and while PW1 was climbing down, he met the accused from the stairs and gave him a handshake ensuring that particles of phenolphthalein powder stuck on to his hand. Thereafter, at the behest of PW1, PW16 and other witnesses trapped him in a false case. Grouse of PW1 against the accused for taking a solid position based on the rule book was the reason for false implication, contended the learned counsel for the accused. On going through the entire evidence of PW1, it can be seen that his evidence cannot be straight away accepted without a corroboration.

PW1 has admitted that the accused had made known his position regarding power allocation not only to PW1 but also to his superiors saying that it was technically impossible to issue a certificate as required by PW1 since there were hurdles. That apart, PW1 himself admitted that the accused was not the person to take a final decision as to the grant of power connection to PW1 on his application. It is the defence case that the higher-ups in the KSEB due to pressure exerted on them by a leader of a political party and from the office of the Minister of the State, the accused was driven to a corner. The trial court itself disbelieved the case of PW1 paying ₹500/- to the accused from the car on the date of inspection. For proving that fact artificial evidence of PW5 was let in by the prosecution. It is relevant to note that PW1 deposed that the decoy notes entrusted by PW16 were handed over to the accused and he in turn received the same with right hand and counted it. Thereafter, it was put in the draw of his table. When cross-examined, PW1 demonstrated the handing over of notes and counting the same by the accused with two hands. Learned trial Judge has clearly recorded in the deposition of PW1 the action shown by him counting the notes. But when cross-examined, he would depose that the accused by using his right hand verified the notes without using his left hand. Apparently this is to explain away non-presence of phenolphthalein on his left hand and also for the light pink colour of lime water when his right hand was dipped suggesting only presence of a small quantity of phenolphthalein on his hand. Therefore, there is force in the argument of the learned counsel for the accused that PW1, the star witness, cannot be believed to accept the prosecution case and he requires corroboration on material terms.

8. Now we shall go to the evidence of PW5. He is the nephew of PW1. According to him on 05.10.1996, he along with PW1 and the accused went in a car for inspecting the property of PW1 and the transformers in the vicinity for considering the application submitted by PW1. PW5 was not then aware what was the amount paid by PW1 to the accused as bribe from the car. Later he understood from PW1 that ₹500/- was paid to the accused. Thereafter on 05.11.1996 PW5 went along with PW1 to KSEB office at 4.00 p.m. Then the accused demanded ₹20,000/- from PW1. It is also stated by PW5 that PW1 agreed to the accused that former would pay ₹2,000/- to latter on the next day. In cross-examination, this witness stated that he was a student in a parallel college at the material time. The dates on which he said to have gone with PW1 were working days. It is also came out in evidence that in connection with the establishment of factory, PW1 had gone to many places, but he never took PW5 to any office except the office of KSEB. Court below eschewed his evidence from consideration finding that he was an artificial witness planted by the prosecution to establish the demand for bribe. Considering the entire evidence of PW5, I also agree with the view taken by the court below

that the testimony of PW5 cannot be believed. There are contradictions between the evidence of PWs 1 and 5 in the matter of payment of ₹500/- as bribe to the accused. Court below on appreciating the evidence of PWs 1 and 5 found the prosecution case that the accused obtained ₹500/- from PW1 on 05.10.1996 as illegal gratification cannot be accepted. I confirm the above finding as it is based on proper appreciation of evidence.

9. PW2 was the Land Acquisition Tahsildar attached to KINFRA at the material time. As directed by the District Collector, Kozhikode, he went to the office of PW16. PW2 also deposed that when he went to the office of PW16, PW1 was present there. PW16 narrated the case in the complaint of PW1 to PW2 and the other witnesses. Thereafter, the decoy notes were taken by a mahazar and the process of using phenolphthalein was demonstrated. The decoy notes were smeared with phenolphthalein powder and handed over to PW1. By noon, they went to the office of KSEB where the accused worked. PWs 1 and 6 went up to the first floor to meet the accused in his office. After some time, they received the signal as instructed by PW16 and went to the office of the accused. PW16 questioned the accused. On seeing PW16, the accused started rubbing his hand on the table cloth. One Constable restrained him from doing so. Thereafter, phenolphthalein test was conducted. According to the testimony of all the material witnesses, the lime water in which the right hand of the accused was dipped turned only to light pink solution.

10. Testimony of PW2 shows only the events transpired in the office of PW16 and also the phenolphthalein test conducted from the office of the accused after the trap. He had no knowledge about the bone of contentions between PW1 and the accused that the latter was opposing his application for electric connection based on some valid reasons. Testimony of PW2 only partially supports the prosecution case. The defence case that the accused was falsely implicated in the case cannot be dismissed by relying on the testimony of PW2.

11. Another important witness is PW4. He is the person who issued order of sanction to prosecute the accused. He was working as Chief Engineer (General), KSEB, Thiruvananthapuram. According to his testimony, he was competent to remove the accused from service. Even though there was a contention raised by the accused that he was not a Sub Engineer as mentioned in the order of sanction, but a Junior Engineer, PW4 explained that it was only a grade promotion without affecting the nature of duties. I do not find any legal reason to find that the order of sanction given by PW4 is either invalid or incompetent.

12. PW6 is another material witness. He was a Police Constable attached to the office of PW16. He also testified in terms with PWs 1 and 2 regarding the pre-trap procedure. He was asked to stand in front of the door at the office of the accused. This witness also deposed that the trap was during lunch interval and nobody except the accused was present in

the office. PW6 deposed in chief-examination that PW1 had handed over decoy notes to the accused and after receiving the same with right hand, he spread it for scrutiny with the same hand and put it in the draw. Then he gave signal and Dy.SP., VACB came to the office. He spoke about the conduct of phenolphthalein test. When cross-examined, PW6 deposed that though he was instructed to over hear the conversation between PW1 and the accused, he did not do so. All the material witnesses say that the draw of the accused's table was not locked. It is the defence case that PW1, in the absence of the accused, gained entry into the office room and put decoy notes in the draw and he later shook hands with the accused intentionally to trap him. This possibility cannot be ruled out from the evidence of material witnesses examined on the side of the prosecution. Although testimony of PW6 is in agreement with that of PWs 1 and 2, the possibility of falsely implicating the accused cannot be ruled out by solely relying on the testimony of PW6.

13. PW7 is another Police Constable who was waiting in the ground floor and he transmitted the signal received from PW6 to PW16. PW8 was the cashier in the KSEB office, Mukkom. He received fees for the application submitted by PW1. Ext.P9 is the permanent receipt book in the office. Ext.P9(a) is the entry showing the payment of fees by PW1.

14. Testimony of PWs 9 and 12 are very important to probabilize and fortify the defence case. PW9 was the Assistant Engineer in the

Electrical Section, Mukkom. The accused was the Sub Engineer in that office. PW9 spoke about the procedure to be followed on receipt of an application for power allocation. Initially the application will be sent to the cashier for receiving fees and then it will be sent to the drawing section. Thereafter, it becomes the responsibility of the Sub Engineer in the drawing section to inspect the area where the power allocation is sought and to report the feasibility of granting power. It is revealed through the evidence of this witness that the accused was entrusted with the duty of verifying the availability of power as per the request of PW1. There is no dispute regarding the fact that the inspection work was entrusted to the accused. According to the evidence of PW9 during chief examination, PW1 met him on 29.10.1996. Then he informed PW1 that the nearby transformer was overloaded and it was impossible to grant connection as required by PW1 from the same. Two alternatives were put to PW1 by PW9, viz., he could have applied for a new transformer under the minimum guarantee scheme or waited till the transformer newly installed for one Premarajan was energised. It has come out in evidence that for installing a new transformer the said Premarajan had paid money. Then PW9 asked the accused whether it was possible to give connection to PW1 if Premarajan's connection was shifted to the new transformer. Then the accused informed that for doing so, the consent of PTCC was required. The accused also informed PW9 that if PW1 expressed his willingness to take steps to instal a new transformer, there was no difficulty. Again on 04.11.1996, PW1 met PW9 and at that time, PW12 was also present. He also came to enquire about this issue. PW12 verified the file pertaining to Premarajan and directed PW1 to make corrections in the application to reduce the power requirement from 40 HP to 30 HP. During cross-examination, this witness admitted that electric connections could be given from one transformer only upto a certain limit. When Ext.P13 report was prepared, the transformer placed at Odatheruvu was having maximum connected load. He plainly admitted that it was impossible to connect another 30 HP load to this transformer. PW9 further admitted that sanction from PTCC was required to instal a new transformer, if telephone lines were likely to be affected by the installation. The procedure for calculating the connected load of a transformer is described by PW9. According to him, reading for three days consecutively during peak hours should be taken from the transformer. PW9 stated that before Ext.P13 sanction was given to PW1, no such reading was taken and as directed by PW12, he decided to grant a conditional certificate to PW1. PW9 fairly admitted that in the normal course a connection could not have been given without obtaining a report required in this matter.

15. PW12, the AEE also admitted that some shortcut methods were used for providing power allocation to PW1. In chief-examination itself PW12 deposed that one day the Deputy Chief Engineer, KSEB called

him over phone and informed that there was pressure from top regarding PW1's application. He directed PW12 to take appropriate action in the matter. Then PW12 went to the office of PW9 and enquired into the matter. At that time, PW12 demanded PW9 as to why a conditional feasibility certificate should not be granted. PW12 instructed PW9 to shift 30 HP power from the existing transformer to the new transformer and issue a conditional certificate on the application of PW1. Further PW12 directed PW9 to send a proposal accordingly. Thereafter, PW1 limited his application to 30 HP. These aspects admitted by the above two witnesses would clearly indicate the involvement of persons in higher echelons in the KSEB. The testimony of this witness eminently probabilise the defence case that PW1 was browbeating the local officers of the KSEB on account of his political clout. This is all the more evident from the file, Ext.P13, wherein PW9 had sent a proposal as required by PW12 for hastily granting connection to PW1 flouting the normal procedure. Letter dated 08.11.1996 issued by PW9 to PW12 was forwarded by as instructed by PW12.

16. PW16 is the investigating officer. He also testified about the receipt of a complaint from PW1 and steps taken by him for laying the trap. In regard to the procedure taken by PW16 in the matter of trap, his testimony derives support from PWs 1, 2 and 6. In cross-examination, this witness admitted that the rexin cloth on which the accused allegedly rubbed his hand was not taken into custody and phenolphthalein test was

not performed on the same. PW16 also stated that on dipping the right hand of the accused in lime water, it turned only to a light pink colour solution. In cross-examination, PW16 denied the suggestion that Ext.P10 register was kept as instructed by him. Admittedly Ext.P10 was started only on 03.10.1996 for the first time. Learned counsel for the accused pointed out that in page 2 of Ext.P10, Sl.No.15 is the reference about Ext.P1 application submitted by PW1. Against that entry, name of the accused was written up, but his signature was not obtained. It is, therefore, contended by the learned counsel that the accused was victimised due to ill-will nurtured by PW1. Fact remains that the accused was entrusted with the duty of considering the feasibility of power allocation to PW1 cannot be disputed. Therefore, not much value can be attached to this document.

17. Two defence witnesses were examined. DW1 was the AE of KSEB Electrical Section, Mukkom, who was examined to show that the claim made by the accused for TA was denied. Admittedly the accused was a field staff. Learned counsel for the accused contended that time selected for the trap is also dubious because it was easy for anyone to put decoy notes in the draw of the accused and that too, during lunch break.

18. DW2 is a lineman working in the same office. He was on duty on the date of detection of the offence. According to his testimony, he completed his job at 12 noon on the day and when he returned to his office, he found the accused in the office along with two overseers. All of them

proceeded for taking noon meal at about 1.15 p.m. He saw a person climbing up and that man asked DW2 as to whether the accused was present in the office. Then DW2 told him that the accused had gone out for lunch. Later, he found the accused and one lineman by name M.T.Surendran returning to office after lunch. He also saw the said person coming down. The defence case is that the man about whom DW2 made the reference was PW1 and after putting the decoy notes in the draw, he met the accused on the stairs and shook his hand.

19. Even if we discard the testimony of DW2, the defence case, that the accused was not amenable for the pressure exerted on him to give a certificate in favour of PW1 for power allocation without any factual basis, is revealed from the cross-examination of material prosecution witnesses and also from the testimony of PWs 9 and 12. On appreciating the entire evidence, I am of the view that the defence case is more probable. The developments happened in this case after the trap also reinforces the defence case since it is an admitted fact that after arresting the accused, without following any formalities, conditional power allocation was granted to PW1 throwing all rules and regulations to wind. Therefore, I am of the view that the prosecution evidence is not above board. Prosecution case that the accused demanded bribe is not all believable. That apart, the case that the accused received ₹2,000/- from PW1 and he counted it and then put it in his draw is also not established. The consistent stand taken by the

accused is revealed through the testimony of PWs 9 and 12 and it supports the defence case that he was not amenable for pressure exerted by the persons in influence to help PW1 out of the way. Therefore, the prosecution case that the accused accepted decoy notes from PW1 as bribe is not believable. Hence I am of the view that the prosecution has miserably failed to establish the case by reliable evidence.

20. Learned counsel for the accused based on the decision of the Apex Court in **Suraj Mal v. State (Delhi Administration) [(1979) 4 SCC 725]** contended that mere recovery of bribe money divorced from the circumstances under which it was paid was not sufficient to convict when the substantive evidence was found not to be reliable. The same principle was reiterated by the Apex Court in **State of Kerala v. Rao (2011 (2) KLT 812)**. In this case also the same principle can be applied. In **Harshan v. State of Kerala (1996 1) KLT 88)** the Supreme Court held as follows:

> *"Where in a trap case, the tainted money was recovered from the drawer of the accused and the trap witness stated that accused has said to put them in drawer, in absence of evidence corroborating his deposition same cannot be relied up, more particularly when the plea of the accused that the same was planted in his absence and without his knowledge was found to be probable. Versions of prosecution witnesses also found contradictory as to, whether the accused himself*

> *put the currency notes in drawer or he asked the trap witness to do so. Further, they also deposed that during phenolphthalein test the police asked accused to touch currency notes and thereafter his fingers were dipped in the liquid which turned pink thus creating suspicion regarding version of trap witness that at instance of accused he put the currency notes in the drawer. The vigilance officer also admitted in cross-examination that any person who had access to the room of accused could put anything in the drawer of the table. In these circumstances, it is difficult to place implicit reliance on the evidence of trap witness to hold that the accused obtained illegal gratification in the manner spoken to by him and that at his instance he placed the money in the drawer of the table. By preponderance of probabilities, the accused has sufficiently shown that the plea put forward by him, namely, that in his absence somebody else might have put the tainted money in his drawer, is plausible. Therefore, it could not be said that accused tacitly accepted illegal gratification or obtained same within meaning of S. 5(1)(d) of Act thereby entitling him to benefit of doubt."*

21. Therefore the legal position is clear that in the absence of substantive evidence to prove the alleged demand for bribe and payment of illegal gratification amounting to misconduct, the conviction of the accused/appellant cannot be sustained. Prosecution evidence is not only

fragile and unconvincing, but also indicative of a probability of the defence case that an honest officer was entrapped at the behest of persons in power for resisting unlawful demands. Therefore, I find that the conviction of the appellant is liable to be set aside. Hence I do so.

In the result, the appeal is allowed. Conviction and sentence imposed on the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 in C.C.No.11 of 1998 on the file of the Court of Enquiry Commissioner and Special Judge, Kozhikode is hereby set aside. He shall be set free forthwith, if not wanted in any other case. His bail bonds are cancelled.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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A.HARIPRASAD, J.

Crl.Appeal No.275 of 2000

JUDGMENT

6th January, 2015