

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

CRL.A.No. 492 of 2000 ()

AGAINST THE JUDGMENT IN CC 31/1999 of ENQUIRY COMMISSIONER& SPECIAL
JUDGE, THRISSUR DATED 29-07-2000

APPELLANT/ACCUSED:

AUGUSTINE KUNJUNJU,
CHIREMMEL, POTTAKUZHI,
ERNAKULAM, COCHIN.

BY ADVS.SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.ANIL K.MOHAMMED
SRI.DELVIN JACOB MATHEWS
SRI.SUJESH MENON V.B.
SRI.JOSEPH P.ALEX

RESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR

BY PUBLIC PROSECUTOR SRI.K.K. RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.A.No.492 of 2000
.....

Dated this the 3rd day of February, 2015.

JUDGMENT

The accused in C.C.No.31/1999 on the file of the Enquiry Commissioner and Special Judge, Thrissur is the appellant herein. The appellant was charge sheeted by the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Ernakulam in VC4/97 of VACB, Ernakulam under sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act (hereinafter referred to as 'the P.C.Act for short).

2. The case of the prosecution in nutshell was that the appellant while working as Head Clerk at the village panchayat office, Parakadavu, demanded a sum of ₹ 500/- from PW1, a contractor authorized to collect sand from Chalakudy river coming within the jurisdiction of Parakadavu village panchayat for the year 1996-97 on 19.4.1997 at 11.30 a.m from the panchayat office as a motive or reward for the release of E.M.D of ₹ 5000/- on the termination of the period of contract and accepted ₹ 300/- as illegal gratification on 22.4.1997 at about 9.45 a.m from the panchayath office and thereby he

committed the offences punishable under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act.

3. After investigation, final report was filed before the Enquiry Commissioner and Special Judge, Thrissur and the case was taken on file as C.C.No.31/1999 under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act.

4. When the appellant appeared before the court below, after hearing both sides, charge under sections 7 and 13 (1)(d) read with section 13(2) of the P.C. Act was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 5 were examined and Exts.P1, P1(a), P2, P2(a), P2(b), P3, P3(a), P4 to P12 and MOI series and MOII series were marked on the side of the prosecution. After closure of the prosecution evidence, the appellant was questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short) and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that on 22.4.1997 at about 9.45 a.m, he came to the office and engaged in his work. He was dealing with the account of the volley ball tournament

conducted by the YMCA of Poovathussery for which, there was a decision taken to give ₹ 500/- from the panchayat and the account was not closed and for the purpose of getting clarification of the request given by the tournament chairman, he went to the Secretary's room and he was talking with him. At that time, the panchayat President came and the Secretary told that he will explain the same later and accordingly he came out of the Secretary's room. At that time, he saw PW1 standing near his table. On seeing him, he came near him immediately and held his hand. The appellant was holding the tournament file in his right hand and PW1 holding his left hand requested him to expedite his application on the same day and the appellant told that it was not carried out in the deposit register and asked PW1 to sit for half an hour and thereafter the appellant kept the file on the table and sat in his seat. While he was about to start his work, some people came and introduced themselves as persons coming from the Vigilance Department and the Deputy Superintendent of Police introduced himself as Paulose. They wanted others not to move from there and PW1 pointed at him and told the Deputy Superintendent of Police that he had given bribe to him

and the appellant told that he did not demand any bribe and did not receive anything from any one. Then the Deputy Superintendent of Police asked the person who came along with him to take the amount kept under the file in the table and asked how this amount has come and the appellant told that he did not ask money to any one and he did not receive any amount and he did not know about the same. Thereafter the Deputy Superintendent of Police had taken a glass and poured some water and dipped his pocket and there was no colour change. Appellant's right hand was also dipped in the water and there was no colour change and when his left hand was dipped, there was some colour change and at that time, he came to understand that PW1 had pressed his hand with the note smeared with phenolphthalein powder. Thereafter, after completing the formalities, he was arrested by the vigilance people and taken from there. He was an artist and there were no disciplinary proceedings initiated against him during his service. His wife has undergone uterus operation and since he was strict in following procedure, staff was having grudge against him. He used to make the staff to follow the procedure as per law. No defence evidence was adduced on his

side. After considering the evidence on record, the special judge found the appellant guilty under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for three years and also to pay a fine of ₹ 25,000/-, in default to undergo simple imprisonment for one year under section 7 of the P.C. Act and further sentenced to undergo rigorous imprisonment for four years under section 13(1)(d) read with section 13(2) of the P.C. Act and directed the substantive sentences run concurrently. Set off was allowed for the period of detention already undergone by him under section 428 of the Code. Aggrieved by the same, the above appeal has been preferred by the appellant/accused before the court below.

5. Heard the counsel for the appellant and the learned Public Prosecutor.

6. The counsel for the appellant submitted that the prosecution has failed to prove either the demand or receipt of the amount in accordance with law so as to convict the appellant for the offence under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act. The counsel for the appellant also

submitted that PW1 had given a go-by to his Ext.P1 statement regarding demand said to have been made by the appellant. In Ext.P1, his case was that a demand was made by the appellant when he insisted for return of the EMD amount of ₹ 5000/- deposited for getting contract for collecting the sand from Chalakudy river in that area. But when he was examined before court, he had a different case that a joint demand was made by the Secretary and the appellant and he had no such case in the complaint given by him. Further, the evidence will go to show that there is no possibility of any demand alleged to have been made by the appellant to PW1 for fulfilling his request for return of the EMD amount. The resolution itself was passed on 16.4.1997 and it came to the knowledge of PW1 about one week after the decision taken by the panchayat through a member of the panchayat and it is thereafter that he had approached the Secretary and also the Head Clerk for this purpose. But, according to the prosecution, the demand was made on 19.4.1997 and the amount was paid on 22.4.1997. Further, the evidence of PW1 will go to show that he got angry with the appellant and the Secretary of the panchayat as they demanded to prove his identity to get the

amount. According to him, he was known to them for the last two months and one year respectively. Further, the amount was not recovered from the possession of the appellant, but it was taken from the table. Further, the evidence of PW1 will go to show the possibility of putting the amount in the table and holding left hand of the appellant while he was coming out of the office of the Secretary cannot be ruled out as his left hand alone turned pink when it was dipped in the sodium carbonate solution and that too it was not dark pink but it was turned light pink. So possibility of forceable holding of hand as claimed by the appellant cannot be ruled out. The evidence of PW2 will go to show that he had not seen the actual handing over of the money. So under the circumstances, without independent corroboration regarding demand and payment it is not safe to rely on the evidence of PW1 alone to prove the case of the prosecution. So under the circumstances, according to the counsel for the appellant, the prosecution has failed to prove the demand and receipt of the amount beyond reasonable doubt and without proving this fact, the presumption under section 20 of the P.C. Act cannot be attracted. Mere recovery of the amount, without proving demand and receipt

of the amount, is not sufficient to convict the appellant for the offence under sections 7 and 13 (1)(d) read with section 13(2) of the P.C. Act. So according to him, the court below was not justified in convicting him for the said offences and he is entitled to get acquittal. He had relied on the decisions reported in **Syad Akbar v. State of Karnataka** (AIR 1979 SC 1848), **Suraj Mal v. Delhi (Admin)** (AIR 1979 SC 1408), **Banarasi Das v. State of Haryana** (AIR 2010 SC 1589) and **C.M. Girish Babu v. C.B.I, Cochin, High Court of Kerala** (2009 (2) SCC Crl. 1) in support of his case.

7. On the other hand, the learned Public Prosecutor submitted that though PW1 turned hostile, he had supported the case of the prosecution on material aspects namely demand made by the appellant and payment effected and he had also proved the trap conducted by the Vigilance Department. Further, the conduct of PW1 will go to show that he had changed his version later as won over by the appellant so as to help him which is clear from his conduct. Further the evidence of PW2 will go to show that the amount was taken from the table as told by the appellant as it was placed in the table and as such the prosecution has proved beyond reasonable doubt that

the appellant had made the demand and received the amount which is an illegal gratification as a reward for doing some favour to PW1 misusing his official position and thereby he had committed the offences alleged. Once demand and receipt of the amount have been proved by the prosecution, then the presumption under section 20 of the P.C. Act will be attracted and the burden is on the appellant to rebut the same by cogent evidence and mere suggestion alone is not sufficient to discharge that burden. So, according to him, the court below was perfectly justified in convicting the appellant for the offences alleged and that finding does not call for any interference.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

The appellant was working as a Head Clerk in Parakadavu grama panchayat during the relevant time. PW1 was a contractor, who had taken contract for collecting sand from Chalakudy river by filing Ext.P2 (a) tender for ₹ 65,000/- and that was granted and he executed Ext.P2(b) agreement dated 23.4.1996. He had deposited ₹ 5000/- as EMD for this purpose, which is evident from Ext.P3(a), carbon copy of receipt No.3

dated 11.4.1996 seen in Ext.P3 receipt book of the grama panchayath. As contract period was over by 31.3.1997, he gave Ext.P4 application to the panchayat for releasing the amount. The panchayat had passed a resolution for return of the amount to PW1 and, according to PW1, on 19.4.1997 he went to the panchayat office and wanted return of the amount to the Secretary and the Secretary told him that it had to be done by the Head Clerk and he asked to meet the Head Clerk, who is the appellant in the case. He met the appellant and the appellant demanded ₹ 500/- for that purpose and he wanted to come on 21st for that purpose with money. On 21st, he contacted the Secretary and the Secretary told him that the appellant was on leave and wanted to come on the next day. Since he was not interested in payment of the amount, on the 21st evening, he went to the office of PW5 and gave Ext.P1 statement regarding the demand made by the appellant and on that basis Ext.P1(a) First Information Report was registered as V.C.4/97 of VACB, Ernakulam. Thereafter on the basis of the request made by PW5, the assistance of PW2 and another was given to lay the trap and accordingly, on the morning of 22nd, PW1 went to the office of PW5 along with MOI series,

three hundred rupees notes, and demonstration was made regarding the procedure to be followed for laying the trap and Ext.P5 entrustment mahazer was prepared from the office of PW5 regarding this aspect. MOI series was obtained and it was smeared with phenolphthalein powder and kept in the pocket of PW1 with an instruction not to touch till it was handed over to the appellant when he made the demand. Thereafter PW1 along with the trap party came to the office and handed over the money to the appellant, which he received with his left hand and put it in the table and accordingly as instructed by the Deputy Superintendent of Police, PW1 gave signal and the trap party came and questioned the appellant about the receipt of the amount and according to the prosecution, it was admitted by him and he told that the amount was in the table. When his right hand was dipped in the sodium carbonate solution, it did not turn pink. But his left hand was dipped, it turned light pink and the solutions so turned pink and not pink were collected in a bottle and marked as Ext.A2 (a) to (e) and the amount as well as MOII series bottles were seized as per Ext.P6 recovery mahazer in the presence of witnesses. PW5 himself had conducted the investigation. He had seized the

documents namely Ext.P2 file containing contract given to the appellant, Ext.P3 receipt book, Ext.P9 file containing true copy of resolution of the panchayat, Ext.P10 attendance register as per Exts.P7, P11 and P12 mahazars respectively. As per his request, PW3 - the Village Officer prepared Ext.P8 sketch plan of the place of occurrence. He completed the investigation and submitted final report before the court.

9. Before going into the facts of the case, the legal principles on this aspect have to be considered. It is settled law that once demand and receipt of the amount as proved by the prosecution, then the presumption under section 20 of the P.C. Act will be attracted (old section 4 of the P.C. Act). Then, the burden is on the accused to prove that the amount received is not an illegal gratification, but the amount legally receivable by him authorized by law. It is also settled law that the burden on the accused is not as onerous as that of the prosecution proving its case beyond reasonable doubt and the accused can prove the case by preponderance of probabilities. Though earlier it was observed by the courts that, if the accused did not give any explanation for the amount at the time of trap, then whatever explanation given by him later can only be treated as

an after thought. But, later decisions on this aspect will go to show that even if the accused did not give any explanation at the time of trap, but he had given explanation at the time of his 313 examination or by giving suggestion to the witnesses, and if those reasons are plausible and acceptable, then the court cannot ignore the same and that also has to be taken into consideration and if that explanation is plausible, reasonable and acceptable, then that benefit must be given to the accused. It is also settled law that, if the complainant did not support the case of the prosecution regarding the demand and receipt of the amount and if there are contradictions in his evidence, then it is not safe to rely on his evidence without corroboration of independent witnesses to convict the accused for the offences under sections 7 or section 13(1)(d) read with section 13(2) of the P.C. Act. The conduct of the complainant in making the complaint, his antecedent also has to be considered by the courts as to whether he is a reliable witness or not as in the case of receipt of bribe, only the evidence of such witness will be available and the court must be cautious in relying on such evidence and even sometimes seek for corroboration. It is also settled law that mere recovery of the

amount from the possession of the accused alone is not sufficient to attract the offences alleged above and it must be proved by the prosecution that it was an illegal gratification and there was demand and receipt by the accused of such gratification, which he is not legally entitled to receive. This was so held in the decisions reported in **Dhanvantrai Balwantrai Desai v. State of Maharashtra** (AIR 1964 SC 575), **Sita Ram v. The State of Rajasthan** (AIR 1975 SC 1432), **Mahesh Prasad Gupta v.State of Rajasthan** (1974 Crl.L.J.509), **Balakrishnan v. The State by Special Police Establishment Madras Branch** (1994 Crl.L.J. 1258), **State of Assam v. Krishna Rao and another** (AIR 1973 SC 28), **Chaturdas Bhagwandas Patel v. The State of Gujarat** (AIR 1976 SC 1497), **Sat Paul v. Delhi Administration** (AIR 1976 SC 294), **State of Tamil Nadu v. Rajendran** (2000 SCC Crl.40), **Tarsem Lal v. State of Haryana** (AIR 1987 SC 806), **Sarupchand v. State of Punjab** (AIR 1987 SC 1441), **Ayyasami v. State of Tamil Nadu** (1992 Crl.L.J 608), **Mohd. Nazeeruddin v. State of A.P** (1994 Crl.L.J.2304), **Dr.V. Sebastian v. The State** (1998 Crl.L.J.1150), **M.O. Shamsudin v. State of Kerala** (JT 1995 (3) SC 367), **Laxmi Narain Goyal**

v. State of Rajasthan (1997 (3) Crimes 541), **Prakash Chand Jain v. State** (1968 Crl.L.J 391), **Sultan Ahmed v. State of Bihar** (1974 Crl.L.J.895), **A. Subair v. State of Kerala** (2009 (6) SCC 587), **State of Kerala v. C.P. Rao** (AIR 2012 SC Crl. 911) **Banarsi Dass v. State of Haryana** (AIR 2010 SC 1589), **B. Jayaraj v. State of A.P**(2014 (4) SCALE 81), **Narendra Champaklal Trivedi v. State of Gujarat** (2012 (7) SCC 80), **Punjabrao v. State of Maharashtra** (2002 (10) SCC 371) and **M.M.Pathan v. State of Maharashtra** (1997 (10) SCC 600).

10. In this case, the case of PW1, the complainant in Ext.P1 complaint was that he was a contractor for the year 1996-97 for collecting sand from Chalakudy river and he had deposited ₹5000/- as EMD and his contract period was over by 31.3.1997 and he made an application for return of the EMD and though it was sanctioned by the panchayath, the same was not paid by the officials and when he went there for getting that amount, the appellant demanded ₹500/- for that purpose. But when he was examined as PW1 before the court, he had a different case. His case was that it was a joint demand made by the Secretary and the appellant on 19.4.1997

and though this was informed to the Vigilance Deputy Superintendent of Police, he told that it was not possible to trap both the persons and he wanted to confine only in respect of one person and, accordingly, the name of the Head Clerk was given as the person who demanded the amount. He had reiterated this aspect again and again when he was examined before the court. Further, in Ext.P1 PW1's case was that when he went to the office of the Secretary, he wanted him to meet the appellant and the appellant took PW1 to a side and demanded ₹500/- for doing this favour. But when PW1 was examined before the court, he had given a go bye to such a statement. According to him, it was the Secretary, who had demanded the money and at that time the appellant was also there in the room. He had given inconsistent statement before the court regarding the manner in which the first demand was made. So he was declared hostile by the Prosecutor. But, in the cross examination by the legal adviser, he had stated that whatever stated in Ext.P1 was the true thing though he had given inconsistent versions before the court.

11. In Ext.P1 his case was that after complying with the formalities of pre trap from the office of the Deputy

Superintendent of Police, they came to the panchayat office and at that time, the appellant was not there in the seat and he was in the room of the Secretary. When the appellant came out, he asked for money and at that time he gave the amount. But when he was examined before the court, he had a different case. His case was that the amount was given by him and there was no demand made by the appellant at that time. This aspect of the statement given by the witnesses was not challenged or clarified in the re examination at the earlier point of time when he was examined and even after he was declared hostile by the legal adviser. Further, he had also admitted in his evidence that he had caught hold of the hands of the appellant before giving the amount and it is thereafter that the amount was given. He did not mention with which hand the amount was received by the appellant. But, according to him, he received the amount and put the same in his table. He denied the suggestion that it was he who had shown the amount to the trap witnesses and the Deputy Superintendent of Police, who accompanied him to lay the trap. According to PW1, PW2 the trap witness or the shadow witness was standing in such a way in the varanda from where

he could see the entire transaction. But PW2 had a different case. He had categorically stated that he did not see PW1 handing over the amount to the appellant or the appellant making any demand.

12. It was brought out in the evidence of PW1 that the appellant was holding a file in his right hand and that was the reason why he held the left hand of the appellant and this was stated by him in his cross examination by the defence. Further it is pertinent to note that when his left hand finger was dipped in the sodium carbonate solution, it turned only light pink not dark pink as in other cases. If really he had received the amount voluntarily and put it in the table, then the hands would have been smeared with phenolphthalein powder applied in the notes and the solution would have turned dark pink as in normal cases of trap. Further, it will be seen from Ext.P1 that when he insisted for the EMD amount to be given, the Secretary insisted for his proof of identity and he felt that he was being humiliated by them, which reads as follows:

ഞാൻ രസീത് കാണിച്ചു പണം ആവശ്യപ്പെട്ടു.പിന്നീട് ഇവിടെ അറിയിപ്പ് ലഭിച്ചു.

നിങ്ങളുടെ identity എന്താണ് എന്നും മറ്റും പഞ്ചായത്ത് സെക്രട്ടറിയും ഹെഡ് ക്ലർക്കും കൂടി ചോദിച്ചു എന്നെ ആക്ഷേപിക്കാൻ ശ്രമിക്കുകയാണ് ചെയ്തത്.

It was clear from this that he was agitated when they insisted for his proof of identity for paying the amount. Further, it will be seen from the evidence of PW1 that when the appellant came out of the office of the Secretary on 22.4.1997, when PW1 came along with the trap party, he caught hold of his hand and asked him to do the same quickly. So all these things will go to show that before the alleged payment of the amount, PW1 had the opportunity to hold the left hand of the appellant and further it will be seen from the evidence of PW2 that at the time when he went inside on getting signal from PW1, he saw PW1 standing near the table of the appellant or he would have put the amount in the table and get hold of the appellant later also. When a suggestion was given that it was PW1 who had told that the amount was put in the table and it was thereafter it was recovered, he told that he did not know and he did not hear PW1 saying so. But he had not denied as to whether PW1 had said so. Further, the evidence of trap laying officer, PW5, will go to show that the amount was

recovered from the table. He did not mention that it was the appellant who had told this and it was the appellant who had taken the amount from the table and handed over the same to him or placed it on the table which was later received by PW5.

13. Further it will be seen from the evidence of PW1 that he got frightened when he went inside to give the amount to the appellant. If really he was going there as instructed by the trap laying officer and with an intention to trap the appellant, who had demanded illegal gratification for doing a lawful act which PW1 is entitled to get as of right from the panchayat, there was no necessity for such a behaviour or feeling for PW1. So all these things will go to show that the incident had not occurred as intended to be proved by the prosecution. Further, since there is contradiction in the evidence of PW1 regarding the manner in which demand was made and amount was paid and PW2 who was sent along with PW1 by the trap laying officer to watch everything and also to overhear what PW1 and the appellant were talking before receipt of the amount, he did not support the case of the prosecution on this aspect as he had stated that he

did not see the amount being paid by PW1 to the appellant and he could not see from the place when he stood the things transpired between PW1 and the appellant before he got signal from PW1 as instructed at the time of pretrap demonstration by the trap laying officer. So under the circumstances, it cannot be said that the prosecution has proved beyond reasonable doubt that the appellant had made demand and it was pursuant to that demand that the amount was paid and it was received by him. The possibility of getting agitated when the Secretary and the Head Clerk (appellant) asking for the identity of PW1 to disburse the amount, which irritated him and on account of that, possibility of filing a complaint for demand being made by the appellant to fulfill the promise of repaying the EMD amount which had been deposited by him and on that basis a trap being laid cannot be ruled out.

14. Further, PW5 had no case that on getting Ext.P1 complaint, he had made a discreet enquiry regarding the allegation or conduct of the appellant before deciding to lay the trap as well. Further in the decision reported in **Syad Akbar v. State of Karnataka** (AIR 1979 SC 1848), the Hon'ble Supreme Court has observed that, if a witness has

been declared hostile, that is not a ground by itself to reject his testimony in toto. His testimony not shaken on material points in cross examination cannot be brushed aside and such a statement given by the hostile witness can be made use of by the accused to establish his innocence. Further, in the same decision it has been observed that prosecution is also entitled to rely on the evidence of hostile witness whose testimony has not been discredited on material aspect by the defence and it is for the court to consider whether the evidence of such witness can be relied on for the purpose of proving the case of the prosecution or the defence and if the evidence of such witness is not corroborated by the independent witness, then it is not safe to rely on the evidence of such witness and convict the accused on that basis.

15. So from the over all circumstances and evidence adduced in this case will go to show that the prosecution was not able to prove beyond reasonable doubt that it was the appellant who had made the demand and demand was reiterated and it is thereafter that the amount was received voluntarily by him as an illegal gratification for doing some favour in favour of PW1 misusing his official position so as to

attract the offences under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act as observed by the court below. The aspects discussed above were not properly considered by the court below before coming to the conclusion that the prosecution has proved beyond reasonable doubt and the presumption under section 20 of the P.C Act is available to the prosecution and that has not been rebutted by the appellant so as to convict him. But, on the other hand, the evidence will go to show that PW1 was not consistent regarding his case and his conduct also will go to show that there was possibility of false implication on the basis of wrong notion when his identification proof was demanded by the appellant and the Secretary that led to the laying of the trap and the amount was put in the table and he caught hold of the hands of the accused and requested to do the favour. It is settled law that when two views are possible on the basis of evidence in respect of the incident and one view projected by the accused is also possible, then that benefit must be given to the accused and he is entitled to get acquittal benefit of doubt in his favour. So under the circumstances, it cannot be said that the prosecution has proved beyond reasonable doubt that the

appellant had made the demand and received illegal gratification to do certain things in favour of PW1 using his official position, thereby he had committed the offence punishable under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act and the finding of the court below on this aspect and the consequential conviction of the appellant for these offences are unsustainable in law and the same is liable to be set aside and the appellant is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt. Since the appellant was not found not guilty and entitled to get acquittal, the sentence imposed is not proper and the same is liable to be set aside.

In the result, the appeal is allowed and the order of conviction and sentence passed by the Enquiry Commissioner and Special Judge, Thrissur against the appellant under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act are set aside and he is acquitted of the charge levelled against him giving the benefit of doubt. He is set at liberty. The bail bond executed by him stands cancelled. The fine amount, if any deposited by the appellant, is directed to be returned to him.

Office is directed communicate a copy of this judgment

to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

