

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

CRL.A.No. 52 of 2006 (C)

AGAINST THE JUDGMENT IN C.C NO.6/2001 OF THE ENQUIRY COMR.&
SPL.JUDGE,KOZHIKODE DATED 22-12-2005

APPELLANT/ACCUSED NO.1:

N.A.ABDUL RAHIMAN,
S/O.ABDULLA HAJI,
NAYANMARMOOLA, KASARAGOD.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU, KASARAGOD
(VC 1/98 OF VACB, KASARAGOD)
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM)

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26-05-2015, ALONG WITH CRL.A NO.63/2006, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

ab

P.UBAID, J.

Crl.A Nos.52 & 63 of 2006

Dated this the 26th day of May, 2015

J U D G M E N T

The two appellants challenge the conviction and sentence against them under Section 12 of the Prevention of Corruption Act 1988 and under Section 120B of the Indian Penal Code. They faced prosecution before the Enquiry Commissioner and Special Judge, Vigilance, Kozhikode in C.C No.6/2001 on the allegation that as part of a conspiracy hatched by them to derive some benefits illegally from the police department in connection with their unauthorised sandal wood business and sand wood oil factory, the two accused visited the office of the then District Superintendent of Police, Kasaragod on 6.4.1997 at about 11.50 am and offered an amount of ₹5,000/- as bribe. The District Superintendent of Police called the Circle Inspector of Police, Kasaragod to his office, lodged a written complaint, on which the Circle Inspector registered a case against the two accused, and later the case was re-registered by the Vigilance and Anti-Corruption Bureau (VACB). After investigation the VACB

submitted final report in court against the two accused on the allegation that they committed the offence of abetment of accepting illegal gratification, punishable under Section 12 of the Prevention of Corruption Act.

2. The two accused pleaded not guilty to the charge framed against them by the trial court under Section 12 of the Prevention of Corruption Act and under Section 120B of the Indian Penal Code. The prosecution examined five witnesses in the trial court including the District Superintendent of Police who lodged the complaint, and also marked Exts.P1 to P12 and the MO1 cover. One witness was examined by the accused in defence as DW1, and Ext.D1 series documents were also marked. On an appreciation of the evidence, the trial court found that the two accused had in fact offered illegal gratification to the Superintendent of Police, and accordingly found them guilty under Section 12 of the Prevention of Corruption Act. The trial court also found that the two accused committed the said offence in prosecution of a conspiracy hatched by them. On conviction, the two accused were sentenced to undergo rigorous imprisonment for three years each and also to pay a fine of ₹15,000/- each under Section 12 of the Prevention of Corruption

Act, and to undergo rigorous imprisonment for one year each and to pay a fine of ₹10,000/- each under Section 120B of the Indian Penal Code, by judgment dated 22.12.2005. Aggrieved by the conviction and sentence, the two accused have come up in appeal.

3. The appellant in Crl.A No.52/2006 is the first accused in the case, and the appellant in Crl.A No.63/2006 is the second accused. Both the appellants have raised a question of law regarding the application of Section 12 of the Prevention of Corruption Act in the given facts and circumstances. The legal issue raised by the appellant is that mere offer to give bribe will not constitute the offence of abetment meant under Section 12 of the Prevention of Corruption Act, if at all the case stands proved on facts.

4. Now let me come to the facts and analyse the evidence to see whether the prosecution case stands proved on facts. Thereafter, I will go to the legal aspect raised by the appellants.

5. The prosecution case is that on 6.4.1997 at about 11.50 am, the two accused came in the office of the District Superintendent of Police, (examined as PW1) and offered

an amount of ₹5,000/- as bribe for some favours. The two accused accordingly placed a cover on the office table of the District Superintendent of Police. Without even opening it to see what the cover contained, the police officer called his subordinate (Circle Inspector) and lodged Ext.P1 complaint. This means that when the police officer lodged the complaint he had no reason to believe that the cover contained currency notes, or that what the accused offered was in fact money or illegal gratification. There is nothing to show that anybody had witnessed the two accused offering bribe or putting any cover on the office table of the police officer. In such a factual background the court must require some other independent materials to prove the allegations. There is no explanation why the District Superintendent of Police did not ensure the presence of witnesses before proceeding for criminal action. In the absence of such evidence or material, the prosecution case will have to be doubted.

6. Even assuming that the case stands proved on facts, let me examine the legal issue raised by the appellants, that mere offer of illegal gratification will not constitute the offence of abetment punishable under Section 12 of the

Prevention of Corruption Act. As regards bribe offer made by persons coming as witnesses in cases under the Prevention of Corruption Act, the policy of law is contained in Section 24 of the Prevention of Corruption Act, that a statement made by a person in any proceeding against a public servant for an offence under Section 7 to 11 or under Section 13 or under Section 15, that he offered or agreed to offer any gratification other than legal remuneration, or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 12. The object of this provision is that the witnesses who give such evidence shall be protected. Of course it is true that the protection given to witnesses under Section 24 of the Prevention of Corruption Act may not be strictly and fully available to persons facing prosecution under Section 12 of the Prevention of Corruption Act.

7. Section 12 of the Prevention of Corruption Act provides that whoever abets any offence punishable under Section 7 or Section 11, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be

liable to fine. The Prevention of Corruption Act does not specifically define abetment meant under Section 12. So we will have to apply the definition of abetment under the Indian Penal Code. To constitute abetment of an offence there must be some instigation to do an act of offence, or the alleged abettor must have intentionally aided or facilitated the commission of a crime, or the alleged abettor must have engaged in some conspiracy with one or more other person or persons for the commission of an offence. Thus the definition of abetment under Section 107 IPC shows that to constitute the abetment as defined under the law, there must be some nexus between the acts of the alleged abettor and the act of offence abetted.

9. In this case the abetment of offence alleged by the prosecution is that the two accused offered bribe to the District Superintendent of Police. A mere offer of bribe will not constitute the offence of abetment meant under Section 12 of the Prevention of Corruption Act. Of course it is well settled that payment of bribe will definitely come under Section 12 of the Prevention of Corruption Act, if such payment of illegal gratification was made as a motive or reward for some favours as meant under Section 7 of the Prevention of Corruption Act. This

is not a case of attempt. Section 15 of the Prevention of Corruption Act cannot have application to persons other than public servants. Attempt made punishable under Section 15 of the Prevention of Corruption Act can be punished only when such attempt is committed by a public servant. What is made punishable under Section 15 is attempt to commit an offence referred to in Clause (c) or Clause (d) of Sub section 1 of Section 13. Persons other than public servants cannot commit such an offence. So Section 15 dealing with attempt to commit offence cannot have application to persons other than public servants.

10. The prosecution here is not under Section 15 of the Prevention of Corruption Act, but under Section 12, on a definite allegation, that the accused abetted the commission of an offence punishable under Section 7 of the Prevention of Corruption Act. The allegation in the Ext.P1 complaint, and also the evidence given by PW1 in court is that the accused offered to give illegal gratification to PW1 for some illegal favours. The very important question is whether such an offer alone, or a mere offer to give illegal gratification will constitute the offence of abetment punishable under Section 12 of the Prevention of Corruption Act. In so many decisions this Court and the Hon'ble

Supreme Court have held that demand of illegal gratification by the accused is the sine-quo-non for constituting an offence punishable under Section 7 of the Prevention of Corruption Act. In some decisions the Hon'ble Supreme Court even held that mere recovery of tainted money will not by itself prove acceptance of illegal gratification. The learned counsel for the appellants cited the decisions of the Hon'ble Supreme Court in **State of Punjab v. Madan Mohanlal Verma** (2013 (SC) 3368), **B.Jayaraj v. State of Andra Pradesh** (2014 Cri.LJ 2433) and **C.Sukumaran v. State of Kerala** (2015 Cri.LJ 1715) and submitted that when there is absolutely no material to show that PW1 had at any time made any demand for illegal gratification, even actual payment of illegal gratification by the accused will not be punishable under Section 12 of the Prevention of Corruption Act. This is not in fact a case of actual payment of illegal gratification. The prosecution allegation is that the two accused just made an offer to give illegal gratification. What is alleged in the Ext.P1 complaint is not abetment as such but only an attempt to commit abetment, which is not punishable under the law. Even if, there was an offer from the side of the accused, the question is whether such

an offer will by itself constitute abetment.

11. Of course, payment of illegal gratification on demand is punishable as abetment under Section 12 of the Prevention of Corruption Act. But this is not a case involving payment of bribe. The prosecution allegation is that even without any demand, the two accused voluntarily made an offer to give illegal gratification. When there is no such demand there is no question of a prosecution. When there is no acceptance of illegal gratification with the knowledge that it is illegal gratification there is no question of a prosecution under Section 7 of the Prevention of Corruption Act. Mere offer to give illegal gratification without any demand from the public servant cannot be punished as abetment under Section 12 of the Prevention of Corruption Act. If a person gives illegal gratification to a public servant, he will have two options. He can either accept it with the knowledge that it is illegal gratification, or he can reject it and make a complaint against the person who paid it. If it is accepted, the public servant, and also the person who made payment will be liable for punishment. The public servant will be liable under Section 7 of the Prevention of Corruption Act, and the person who made payment of bribe will be liable under

Section 12 of the Act. But in a case where the illegal gratification is rejected by a public servant, the public servant will have to make a complaint against the person who made payment, and in such a situation, the person who made payment will be liable under Section 12 of the Prevention of Corruption Act. Here there is no such factual situation. In this case the two accused voluntarily made an offer by conduct, and nothing was actually paid by them, or received by the police officer. Thus there is only a mere offer voluntarily made by the two accused, without any demand from the police officer. Without and before receiving the cover, and without opening it to know what it actually contained, the police officer called his subordinate and lodged a complaint.

12. Section 20 of the Prevention of Corruption Act contains some presumptions. Sub section 2 deals with presumption in the case of a prosecution under Section 12 of the Prevention of Corruption Act that where it is proved in any trial of an offence punishable under Section 12 that any illegal gratification was given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted

to give such illegal gratification as a motive or reward as mentioned under Section 7. Thus what is presumed under Sub section 1 to Section 20 of the Prevention of Corruption Act is not guilt of the accused facing prosecution under Section 12. What is presumed is only that illegal gratification was given by the accused or offered by the accused as a motive or reward as meant under Section 10. Presumption is only a rule of evidence, and the presumption under Section 20(2) of the Prevention of Corruption Act can be applied only where it is proved that any illegal gratification was given or offered to be given. On the basis of the presumption under Section 20(2) of the Prevention of Corruption Act it cannot be found that offer to give illegal gratification is punishable under Section 12 of the Prevention of Corruption Act. Such offer will only raise a presumption regarding motive or reward. Section 24 r/w Section 20(2) of the Prevention of Corruption Act will show that a mere offer to give illegal gratification is not punishable as abetment, under Section 12 of the Act. Here is a case of mere offer voluntarily made by the accused without any demand. Such an offer cannot be said to be abetment of an offence punishable under Section 7 of the Prevention of Corruption Act.

13. As discussed in the foregoing paragraphs I find that even if the prosecution allegation can be accepted on facts that the two appellants had offered bribe to the police officer, or had just attempted to offer bribe to him, as alleged in the complaint, the allegations will not come under Section 12 of the Prevention of Corruption Act, punishable as abetment. I find that a mere bribe offer which does not amount to payment of bribe, is not punishable as abetment under Section 12 of the Prevention of Corruption Act. Accordingly, I find that the two appellants cannot be found guilty under Section 12 of the Prevention of Corruption Act.

In the result, these two appeals are allowed. The conviction and sentence against the appellants in C.C No.6/2001 of the court below will stand set aside. Accordingly, the two appellants will stand acquitted under Section 386(b)(i) of the Code of Criminal Procedure. The bail bond, if any, executed by the petitioners will stand discharged. The amount, if any, deposited by the appellants in the trial court will be released to them.

**P.UBAID
JUDGE**

ab