

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

CRL.A.No. 376 of 2006

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AGAINST THE JUDGMENT IN C.C NO.7/2001 of ENQUIRY COMMISSIONER &  
SPL.JUDGE, KOZHIKODE DATED 25.1.2006

APPELLANT/ACCUSED:

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M.SUNDARAN, S/O.CHANDU,  
MANGATHARA HOUSE,  
P.O. BEYPORE NORTH,  
CALICUT-15.

BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.)  
SRI.GEORGE MATHEWS  
SRI.T.T.RAKESH

RESPONDENT/COMPLAINANT:

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STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**P.UBAID, J.**

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**Crl.A No.376 of 2006**  
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Dated this the 30<sup>th</sup> day of June, 2015

**J U D G M E N T**

The appellant herein faced prosecution before the learned Special Judge and Enquiry Commissioner (Vigilance), Kozhikode in C.C No.7/2001 on the allegation that on 27.1.2000 while working as Assistant Engineer in the Electrical Major Section, Baypore, Kozhikode, he received an amount of ₹250/- as illegal gratification, from one police constable of the Railway Police, Kozhikode as a reward for making necessary official endorsements for remittance of the required fee for electricity connection on the application made by the father of the said police constable. The prosecution case is that a demand for ₹500/- was made by the appellant on 24.1.2000, but on a bargain the amount was reduced to ₹250/-, agreed to be paid on 27.1.2000. The Police Constable made a complaint before the Deputy Superintendent of Police, (Vigilance and Anti-Corruption Bureau), Kozhikode on 27.1.2000, and accordingly, the VACB arranged a trap. The amount of ₹250/- brought by the

complainant was seized by the Deputy Superintendent of Police, VACB, as per mahazar, and after demonstration of Phenolphthalein test the complainant was instructed to make payment of the amount to the accused. Accordingly, the complainant and one witness proceeded to the office of the appellant, followed by the Deputy Superintendent VACB and the team. At about 3.30 pm on 27.1.2000, the complainant made payment of the amount, and as informed by him over telephone, the vigilance party reached at the office of the accused, seized the currency, and arrested the accused. This is, in short, the prosecution case.

2. On the complaint of the police constable the Deputy Superintendent of Police, VACB, registered a crime under Sections 7 and 13(2) r/w Section 13(1)(d) of the P.C Act (for short 'the P.C Act). After investigation, the vigilance submitted final report before the trial court. The accused pleaded not guilty to the charge framed against him by the learned trial judge under Sections 7 and 13(2) r/w Section 13(1) (d) of the P.C Act and he claimed to be tried. The case of the accused is that he had not at any time demanded or accepted any illegal gratification from the complainant, that the complainant

and some others in fact arranged a vicious trap to wreak vengeance for the reason that he had detected theft of electricity under his jurisdiction, and that the tainted money was in fact put in the drawer of his table without his knowledge or consent by the complainant, as part of the said vicious trap.

3. The prosecution examined six witnesses in the trial court, and marked Exts.P1 to P15 documents and also MO1 to MO8 properties, including the tainted money seized by the vigilance. Some other amount found in the possession of the accused was also seized by the Police. The said amount produced in court was also marked during trial. When examined under Section 313 Cr.P.C also the accused denied all the incriminating circumstances and maintained his definite defence that he had not at any time demanded or accepted any illegal gratification, and that he had no reason or occasion to receive any such illegal gratification. Seven witnesses were examined by the accused in defence, including the Sub Inspector of Railway Police, Kozhikode.

4. On an appreciation of the evidence adduced from both sides, the trial court found that the demand for illegal gratification as alleged by the prosecution stands not in any

manner proved, that the evidence of the independent witnesses examined by the prosecution is not acceptable due to some material contradictions in his evidence, but recovery of phenolphthalein tainted currency from the accused stands proved. Accordingly, the learned trial judge found the accused guilty under Section 7 of the P.C Act, but acquitted him of the offence under Section 13(2) of the P.C Act, by judgment dated 25.1.2006 in C.C No.7/2001. On conviction he was sentenced to undergo rigorous imprisonment for three years and also to pay a fine of ₹5,000/- under Section 7 of the P.C Act. Aggrieved by the conviction and sentence, the accused has come up in appeal.

5. In appeal before this Court, the accused pleaded for acquittal on factual and legal grounds. The case of the appellant is that the trial court erred in finding that acceptance of illegal gratification is proved in this case, and the trial court erred in convicting the accused under Section 7 of the P. C Act, when there is a definite finding that demand is not proved. One legal ground argued by the appellant is that without proof of demand which is the sine-quo-non for a prosecution under Section 7 of the P.C Act, a conviction under Section 7 is not possible. Yet another legal ground raised by the appellant is that

Ext.P13 prosecution sanction granted by the competent authority under Section 19 of the P.C Act stands not properly and legally proved, and in such a circumstance the accused will have to be acquitted.

6. Of the six witnesses examined by the prosecution in the trial court PW1 is the complainant who made Ext.P1 complaint, PW2 is the Assistant Executive Engineer examined to speak about the procedure for granting electricity service connection, PW3 is the independent trap witness examined by the prosecution, PW4 is the Village Officer, who prepared the Ext.P2 sketch of the scene of incident, PW5 is the Deputy Superintendent of Police who arranged the trap in this case and seized the tainted money, and PW6 is the police officer, who conducted investigation. Of the seven witnesses examined by the defence, the important defence witness is DW5, the then Sub Inspector of Railway Police, Kozhikode examined by defence to disprove the case of the prosecution that the accused had demanded money from the complainant on 17.1.2000 and 24.1.2000. The points for decision in this appeal are:

- i) Whether the appellant herein had accepted illegal gratification of ₹250/- from PW1 as

alleged by the prosecution on 27.1.2000 as a reward for making official endorsement for the remittance of the necessary fee by the complainant's father, who had made an application for electricity connection.

ii) Whether the prosecution sanction in this case stands properly and legally proved, or whether the appellant is entitled for an acquittal on the said legal ground that the prosecution is not properly proved.

iii) Whether the sentence imposed by the court below requires interference in appeal in case the conviction is confirmed in appeal.

7. The appellant has no dispute regarding the fact that he was on duty in the month of January 2000 as Assistant Engineer of the KSEB Electrical Major Section, Baypore. Ext.P4 attendance register containing the marking of attendance by the accused on the relevant date is not disputed by the defence, and the relevant entires are proved by PW2, the Assistant Executive Engineer. The evidence of PW2 need not be discussed because those factful aspects regarding the procedure for granting electricity connection are not in dispute. However, there is

something in favour of the defence in the evidence of PW2 that the accused was in fact on eligible leave from 17.1.2000 and that during this period the complainant could have very well come to the office and obtained his endorsements for remittance of the fee even before 17.1.2000. This aspect would be discussed later while appreciating the defence projected by the accused.

8. Point No.1: The court below has come to a definite finding that the demand for illegal gratification, as alleged by the prosecution, stands not proved. The case of the complainant examined as PW1 is that the demand for ₹500/- was made by the accused/appellant on 24.1.2000. His evidence is that he first met the engineer at his office on 17.1.2000 and he was required to come on 24.1.2000. It was on 24.1.2000 the accused demanded ₹500/-, but on bargain the amount was reduced to ₹250/- which was agreed to be paid on 27.1.2000. But the evidence of DW5, the Sub Inspector of Railway Police Station, Kozhikode, and also the GD entries in Exts.D6 to D8 will prove that PW1 was in fact on duty on 17.1.2000 and 24.1.2000. On 17.1.2000 he was posted for platform duty in the Railway Station, Parappanangadi, and on 24.1.2000 he was posted for platform duty in the Railway Station, Tirur. Thus it is quite

definite that the complainant could not have met the accused on 17.1.2000 or 24.1.2000 at his office at Baypore.

9. In short, the case of the complainant that the accused demanded bribe on 24.1.2000 from him is really unbelievable. When proceeding to discuss and analyse the evidence regarding payment of gratification or acceptance of gratification, the court will have to bear in mind that the complainant in this case is a person who brought a false case of demand for illegal gratification. Anyway, the trial court rightly found that demand for illegal gratification is not proved in this case. On an appreciation of the evidence I also find that the evidence of PW1 regarding demand is unbelievable. In so many decisions this Court and the Hon'ble Supreme Court have held that without proof of demand for illegal gratification a conviction is not possible under Section 7 of the P.C Act. The learned counsel for the appellant cited the recent decisions of the Hon'ble Supreme Court in **Banarsi Dass v. State of Haryana AIR (2010) SC 1589**, **State of Punjab v. Madan Mohan Lal Verma (2013) 14 SCC 153**, **B. Jayaraj v. State of Andhra Pradesh (2014) Crl.L.J 2433** and **C.Sukumaran v. State of Kerala (2015) Crl.L.J 1715**

10. Now let me see whether acceptance of illegal gratification in this case is proved, or whether recovery of tainted money alone will prove acceptance of illegal gratification. As regards the evidence of PW3, the trial court has already come to a finding that his evidence is not acceptable. On an appreciation of his evidence, I also find that PW3 could not have in fact witnessed payment of money by PW1 to the accused. His evidence is really artificial.

11. The learned trial judge himself found on an appreciation of the evidence that demand stands not proved in this case. The learned Public Prosecutor argued very much on the presumption under Section 20(1) of the P.C Act. What is presumed under Section 20(1) of the P.C Act is not the guilt of the accused. Such presumption can be applied only when there is evidence to prove acceptance of illegal gratification. Once the prosecution could prove acceptance of illegal gratification, the law will presume that it was received as a motive or reward, as meant under Section 7 of the P.C Act. Now let the court see whether the prosecution in this case has proved acceptance of illegal gratification. To prove this factual aspect the prosecution relies on the evidence of the complainant, and also the evidence

of Deputy Superintendent of Police, who laid the trap. When PW1 says in his evidence that the appellant made demand on 24.1.2000, the evidence of DW5 and Exts.D6 to D8 documents prove that the accused could not have made such a demand, because on 17.1.2000 and also on 24.1.2000, PW1 was on duty at some other station. He could not have come to the office of the accused, and the accused also could not have made such a demand to him in such a situation. When such a person gives evidence regarding payment or acceptance of illegal gratification, the court will definitely require independent corroboration. Payment of gratification is not proved by the evidence of Deputy Superintendent of Police. His evidence is only regarding recovery of tainted currency from the office of the appellant.

12. Acceptability and believability of the evidence of PW3 is found against by the trial court, and the case of demand is also found against by the trial court. Now the question is whether the trap in this case is a genuine trap, or only a trap for a trap arranged by PW1 with the help of the police. It is well settled that in trap cases under the P.C Act the court must be very cautious in appreciating the evidence. There is always the

possibility of such traps being arranged viciously by persons having some grudge against the public servant. Here the Deputy Superintendent of Police and the complainant have given evidence regarding a trap arranged against the appellant and also regarding recovery of some tainted notes from his office. Of course it is true that evidence is not satisfactory to prove the defence case that the tainted currency were in fact put in the drawer of the table by the complainant. However the accused has been able to create some doubts regarding those aspects. The benefit of these doubts must necessary go to the accused. In **Meena (Smt), W/o.Balwant Hemke v. State of Maharastra** (2000) SCC (Cri) 878 the Hon'ble Supreme Court held on the facts of that case that mere recovery of currency note and positive result of the phenolphthalein test is not enough to establish the guilt of the accused. In **Banarsi Dass v. State of Haryana 2010(4) SCC 450** also the Hon'ble Supreme Court held that mere recovery of money from the accused by itself is not enough to convict the accused in the absence of substantive evidence proving demand and acceptance. In **B. Jayaraj v. State of Andra Pradesh** cited supra, the Hon'ble Supreme Court held that proof of acceptance of illegal gratification is

essential as a pre-condition, for raising the presumption under Section 20(1) of the P.C Act. In this case, it appears that the learned trial judge mainly relied on the presumption under Section 20(1) of the P.C Act, despite the finding on facts that there is absolutely no evidence to prove demand, and that the evidence of the independent witness examined by the prosecution is unacceptable.

13. As discussed above, I find that the evidence of the prosecution regarding payment of amount to the accused and also recovery of the amount from his possession, is really doubtful. In such a situation mere recovery of the tainted currency from the drawer of the table will not prove acceptance as required under the law. In the absence of proper and satisfactory evidence proving acceptance, the presumption under Section 20(1) of the P.C Act as regards reward or motive cannot be drawn by the court. When the evidence of the complainant regarding demand is found unbelievable, his evidence regarding acceptance of amount by the accused cannot be accepted without independent corroboration. In this case there is no such independent corroboration. Mere recovery of the phenolphthalein tainted currency from the office of the accused

by PW5 will not prove acceptance of illegal gratification by the accused. This is the position settled by the Hon'ble Supreme Court and this Court on many occasions.

14. As discussed in the foregoing paragraphs I find that the prosecution in this case has failed to prove the case against the appellant beyond reasonable doubt that he had accepted an amount of ₹250/- from PW1 as illegal gratification on 27.1.2000. The accused is thus entitled for acquittal in appeal on the finding that the guilt alleged by the prosecution stands not proved by proper evidence and beyond reasonable doubt.

15. Section 19 of the P.C Act bars even cognizance in the absence of proper sanction issued by the competent authority. In this case, Ext.P13 prosecution sanction was marked in evidence by the investigating officer. This is a sanction issued by the Chief Engineer, Thiruvananthapuram. Ext.P13 does not bear the seal of office of the Chief Engineer. The defence argued that prosecution sanction granted under Section 19 of the P.C.Act must be properly proved by the person who granted the sanction. The learned Public Prosecutor, on the other hand, submitted that no such formal proof is required,

because prosecution sanction granted under Section 19 of the P.C.Act can be considered as a public document.

16. Section 74 of the Indian Evidence Act tells what all are public documents. Clause (iii) of Section 74(1) provides that any document forming the acts, or records of the acts of public officers are public documents. Section 75 of the Indian Evidence Act provides that all other documents, than public documents, are private documents. Sections 76 to 78 of the Indian Evidence Act deal with certified copies of public documents, and also proof of public documents and official documents. No doubt, a public document can be proved by production of certified copy issued by the competent authority. Section 67 of the Indian Evidence Act provides that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing. Thus, Section 67 provides the mode of proof of documents generally. Any way, the question is whether the prosecution sanction can be considered as a public document.

17. To call a document a public document as defined

under Section 74(1)(iii) of the Indian Evidence Act, it must be the record of the acts done by a public officer in the discharge of his normal functions as such public officer. A prosecution sanction granted by the Chief Engineer of the KSEB can be said to be a public document, only if it is the record of his acts or normal functions in the discharge of his official duty as Chief Engineer. A prosecution sanction granted under Section 19 of the P.C. Act cannot be said to be the record of the acts of a Chief Engineer in the discharge of his functions and duties as Chief Engineer. If a document cannot claim sanctity as a public document as meant and defined under Section 74 of the Indian Evidence Act, such document will have to be proved as provided under the law. It must necessarily be proved by the person who made the document or issued the document. In this case, the prosecution did not examine the Chief Engineer, who granted Ext.P13 sanction.

18. The learned counsel for the appellant cited a decision of the Andhra Pradesh High Court, **Central Bureau of Investigation SPE Hyderabad v. P. Muthuraman** reported in **Laws(APH)-1996-3-13**. Relying on an earlier Division Bench decision of the Calcutta High Court in **S&R of Legal Affairs v.**

**Moazzem Hossain** [AIR 1947 Cal 318], the learned Single Judge of the Andhra Pradesh High Court held that prosecution sanction granted under Section 19 of the P.C Act should be proved either by the sanctioning authority or by his subordinate officer or clerk, who has seen the sanctioning authority signing the sanction order or, who is acquainted with the signature of the sanctioning authority. I am fully in agreement with the view of the learned Single Judge of the Andhra Pradesh High Court as regards mode of proof of prosecution sanction granted under Section 19 of the P.C. Act. It is true that the Chief Engineer who granted sanction in this case is a public officer as meant under Section 74(1)(iii) of the Indian Evidence Act. To get sanctity as a public document, the order made by him, or the acts done by him must be something within the ordinary course of his normal functions as Chief Engineer. A prosecution sanction cannot be said to be a public document under Section 74 of the Indian Evidence Act.

19. In this case, I find that the prosecution has not properly proved Ext.P13 prosecution sanction as required under the law. When the prosecution sanction granted under Section 19 of the P.C.Act stands not properly proved, the whole

prosecution must fail. Even the very cognizance is barred under Section 19 of the P.C.Act, in the absence of a proper prosecution sanction. It is quite unfortunate that this very material legal aspect was not raised in the trial court, and consequently the appellant had to wait for years for a decision on the very material question of law. I find in the above circumstances, where the prosecution sanction stands not properly or legally proved as required under the law, that the appellant herein is entitled for an acquittal. On merits of the facts also, I find that the prosecution case is fully suspicious, and that the accused is entitled for acquittal on facts also.

In the result, this appeal is allowed. The appellant is not found guilty of the offence under Section 7 of the P.C.Act, 1988, and accordingly, he is acquitted of the said offence in appeal under Section 386(b)(i) Cr.P.C. The bail bond, if any, executed by the appellant will stand discharged.

**Sd/-  
P.UBAID  
JUDGE**

//True Copy//

ab/sd

P.A to Judge