

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

CRL.A.No. 655 of 2004 ()

CC 25/2001 of ENQUIRY COMMR.& SPL.JUDGE,THRISSUR

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APPELLANT/ACCUSED::

**A.R.RAPHEL, S/O. RAPHEL,
ATTUMMEL HOUSE, MARADU VILLAGE.**

**BY ADVS.SRI.B.RAMAN PILLAI
SRI.GEORGE PHILIP
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K.MOHAMMED
SRI.DELVIN JACOB MATHEWS**

RESPONDENT/COMPLAINANT::

**STATE OF KERALA - REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P. UBAID, J.

Crl.Appeal No.655 of 2004

Dated this the 25th day of June, 2015

JUDGMENT

The appellant herein challenges the conviction and sentence against him under Sections 7 and 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act (for short, 'the P.C.Act'). He was a Village Officer in August, 1998. The prosecution case against him is that while working as Village Officer of Mulavukadu Village in August 1998, he demanded an illegal gratification of Rs.1,000/- from one Hariharan as a motive or reward for delaying the revenue recovery proceedings against Hariharan, and he accepted an amount Rs.500/- on 01.09.1998 at about 1.20 p.m., at his office at Mulavukadu. When the accused repeated his demand, Hariharan made a complaint before the Dy.S.P., Vigilance and Anti Corruption Bureau (VACB), Ernakulam. The money brought by Hariharan for arranging trap was seized by the Dy.S.P. as per mahazar, and after demonstrating phenolphthalein test in the presence of witnesses, Hariharan was sent to the office of the accused by the Dy.S.P., with instruction to hand over the currency on demand.

Accordingly, at about 1.20 p.m. on 01.09.1998, Hariharan paid Rs.500/- to the accused, and he received it at his office. Within no time, on signal, the police party led by the Dy.S.P. reached at the office of the accused, seized the phenolphthalein tainted currency of Rs.500/- from his possession, and arrested the accused on the spot. After investigation, the police submitted final report before the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur. The learned trial Judge took cognizance as C.C.No.25/2001, and the appellant faced trial before the learned trial Judge. He pleaded not guilty to the charge framed against him by the learned trial Judge under Section 7 and 13(2) read with Section 13(1)(d) of the P.C.Act.

2. The prosecution examined ten witnesses in the trial court, and also marked Exts.P1 to P11. When examined under Section 313 Cr.P.C. also, the accused denied the incriminating circumstances, and maintained a defence that he had not in fact accepted any illegal gratification from the complainant, Hariharan. In defence the accused examined three witnesses, and also marked Exts.D1 series documents. MOI and MOII series properties (currency) were also marked on the side of the

prosecution. On an appreciation of the evidence the trial court found the accused guilty. On conviction he was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.10,000/- under Section 7 of the P.C.Act, and to undergo another period of rigorous imprisonment for one year under Section 13(2) read with 13(1)(d) of the P.C.Act, by judgment dated 30.03.2004. Aggrieved by the judgment of conviction, the accused has come up in appeal.

3. Before this Court, in appeal, the appellant pleaded for a clean acquittal on legal and factual grounds. On facts, his contention is that the prosecution case stands not properly proved by independent evidence, and that the evidence given by Hariharan is not acceptable and believable at all. As regards the question of law involved in the case, the important contention raised by the appellant is that PW1 examined by the prosecution to prove Ext.P1 prosecution sanction is not the right and competent authority to grant sanction, under Section 19 of the P.C.Act. On this very important legal point, the appellant also drew the attention of this Court to various Government orders. The learned Public Prosecutor in charge of the case submitted

that the prosecution has proved the case on facts beyond reasonable doubts, and that the conviction is only to be confirmed in appeal.

4. Before going to the legal aspect regarding prosecution sanction, let me discuss the evidence on facts. PW2 is the complainant Hariharan, PW9 is the Dy.S.P. who arranged the trap in this case, and PW3 is another witness arranged by the Dy.S.P. to witness the trap. Ext.P4 is the complaint made by PW2 before the Dy.S.P. The case of the prosecution is that the accused demanded illegal gratification of Rs.1,000/- for delaying the revenue recovery proceedings against the complainant, Hariharan. That there was a revenue recovery proceeding against Hariharan is proved by his own evidence, and also by Ext.P2 revenue recovery notice. On these aspects there is no dispute. The complainant, examined as PW2, has given definite and consistent evidence proving the alleged demand and acceptance of gratification by the accused. He, PW9, and PW3 have given satisfactory evidence regarding the trap, and also the pre-trap and the post trap procedures involved in the case. PW2 and PW3 are consistent and definite that before proceeding to

arrest the accused, the Dy.S.P. had demonstrated the phenolphthalein test and that the amount of Rs.500/- brought by PW2 was seized as per mahazar by Dy.S.P. Recovery of the very same currency tainted with phenolphthalein is well proved by the evidence of PW2, PW3 and PW9. The accused does not have any satisfactory explanation for the seizure of phenolphthalein tainted currency from his possession. Repeated demands made by the accused also stands well proved by the evidence of PW2. Of course, it is true that the evidence of PW3 and the evidence of PW9 will have only supportive value. However, when the case on facts is well proved by the evidence of the complainant himself, the evidence of the police officer and the trap witness will definitely have supportive value. I find that PW9 and PW3 have well corroborated PW2 on all material aspects including the alleged demand and acceptance of illegal gratification by the accused.

5. It was submitted by the learned counsel for the appellant that there was no question of the accused, as a Village Officer demanding or accepting illegal gratification for delaying revenue recovery process, because a Village Officer is not the

competent authority to delay it, or to take decision on recovery. It is not the prosecution case that the accused demanded money to send report in favour of the complainant, or to stop the revenue recovery proceedings. The prosecution allegation is only that for delaying the process, the Village Officer demanded money. The explanation is that if the process is delayed, the complainant could, by the time, approach the High Court and obtain a stay order. I find no improbability in the prosecution case. I find, on an appreciation of evidence, that the prosecution case on facts stands well proved by the material witnesses including the complainant. There is no reason why the evidence of PW2 should be disbelieved or, why this witness should foist a false case against the Village Officer. PW3 has also no reason to support PW2, or give evidence against the Village Officer. It is well settled that for a conviction under Section 7 of the P.C.Act the prosecution must prove demand. Here, demand stands well proved by PW2. It is also well settled that for drawing the presumption under Section 20(1) of the P.C.Act., the prosecution must prove acceptance of illegal gratification. Here, acceptance also stands proved by the evidence of PW2, and also the

evidence regarding the seizure of the phenolphthalein tainted currency, given by PW3 and PW9. The accused has no explanation for the possession of the phenolphthalein tainted currency. Once acceptance is proved, the court will have to draw the presumption that the accused accepted the illegal gratification as a reward or motive for doing some illegal act in favour of the complainant. Here, I find that the evidence of PW2 is well acceptable and believable to prove the alleged demand and acceptance. On an appreciation of evidence, I find nothing to reject or disbelieve the evidence given by the other witnesses also. Thus, I find that the prosecution has proved the case on facts beyond reasonable doubt, and subject to the finding on the important legal question raised by the accused, the conviction made by the court below is only to be confirmed in appeal.

6. Now, let me go to the important legal aspect raised by the accused. Section 19 of the P.C.Act provides that no court shall take cognizance of an offence punishable under Sections 7, 10,11, 13 and 15 of the P.C.Act except with the previous sanction granted under Section 19. Here, the law applicable is Clause (c) of Section 19, that the prosecution sanction must have been

given by the person or authority competent to remove the accused from service. PW1 is the District Collector examined to prove the Ext.P1 prosecution sanction. The defence is very much on the legal issue that District Collector is not the competent person to grant sanction under Section 19 of the P.C. Act in this case. The learned counsel for the appellant submitted that as on the relevant date the competent authority to appoint Village Officer or to remove a Village Officer from service was the Land Revenue Commissioner, and not the District Collector. Originally under the Kerala Revenue Ministerial Subordinate Service Special Rules framed under Section 2 of the Kerala Public Services Act, 1968, the authority to appoint Village Officer was the District Collector. In 1993, the Government of Kerala amended the Rules, and prescribed by way of an amendment to Rule 5, that the Secretary, Board of Revenue (LR) shall be the appointing authority in respect of the categories including Village Officers. The Government of Kerala framed special Rules for the Village Ministerial Subordinate Service in 1998, and published the Rules by G.O.(P)252/98/RD dated 14.05.1998. The Kerala Special Rules for the Village Ministerial Subordinate Service, 1998

brought by the Government of Kerala in May,1998 provided that the Secretary, Board of Revenue shall be the appointing authority in respect of the categories including Village Officers, coming under the Rules. Board of Revenue was abolished in 1996, but the Kerala Board of Revenue Abolition Act, 1996 came into force only on 01.07.1998. In such a situation, the Additional Commissioner of Land Revenue was designated as the right authority to appoint Village Officers. This amendment was brought to force by way of a Government Order (MS 358/98/RD dated 29.06.1998). In the instant case, detection was made on 01.09.1998, and final report was submitted by the Vigilance in 2001. The position of law as regards appointment and removal of Village Officers as on the relevant date was that the right and competent authority to appoint Village Officers, or to remove Village Officers from service was the Additional Commissioner of Land Revenue in Kerala. Change in the law by different amendments notified by the Government, was not probably noticed by the District Collector when he granted prosecution sanction under Section 19 of the P.C. Act as against the appellant herein, in 2001. The learned Public Prosecutor in charge of the

case cannot have any objection to the legal issue raised by the appellant, that as on the date of final report in this case the right authority to grant sanction under Section 19 of the P.C. Act against the accused was in fact the Additional Commissioner of Land Revenue, and not the District Collector. I find that sanction in this case under Section 19 of the P.C.Act was wrongly granted by the District Collector. On the ground that the prosecution sanction under Section 19 of the P.C.Act was granted by a wrong authority, the appellant is entitled for a clean acquittal, whatever be the findings on facts. Thus, I find, on the legal ground raised by the appellant in this case, that he is entitled for an acquittal, though on facts the prosecution case stands proved.

7. Being a case involving prosecution sanction granted by a wrong authority, this Court need not think of remanding the case to the court below for proper procedure. This is not a case where sanction was granted by the proper authority, but the sanction was not properly proved according to law. This is a case where sanction was granted by a wrong authority, or sanction was not granted by the right authority. Under Section 19 of the P.C. Act, the very cognizance without proper sanction is barred. On this

ground itself, the appellant will have to be acquitted.

In the result, this appeal is allowed. The appellant herein is not found guilty of the offence under Sections 7 and 13(2) read with Section 13(1)(d) of the P.C.Act, and he is acquitted of those offences in appeal under Section 386(b)(i) Cr.P.C. Accordingly, the conviction and sentence against him stands set aside, and the appellant will stand released from prosecution. The bail bond, if any, executed by the accused will stand discharged.

Sd/-

P. UBAID, JUDGE

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