

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

CRL.A.No. 41 of 2007 ()

AGAINST THE JUDGMENT IN CC 44/2001 of ENQUIRY COMMISSIONER & SPECIAL
JUDGE,KOZHIKODE DATED 23-12-2006

APPELLANT(S)/ACCUSED:

V.M.KRISHNAN, S/O.K.M.VASUDEVAN
NAMBISSAN, VADAKKE MADATHIL VEEDU, CHALAKODE
KOROM VILLAGE, KANNUR DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. V.H.JASMINE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25.6.2015,
THE COURT ON 14-07-2015 DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.41 of 2007**  
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Dated this the 14th July, 2015

J U D G M E N T

The appellant herein was Assistant Engineer in the Block Development Office, Kasaragod in April, 2000. The Vigilance and Anti-Corruption Bureau (VACB), Kasaragod registered a crime against him under the Prevention of Corruption Act, 1988 (for short "P.C Act") on the complaint of one Abbas, who was the Chairman of the Beneficiary Committee formed in the Block Panchayat for the Black Topping of Koliyadukkam-Naduvilekunnu Public Road. The said work was completed by the Beneficiary Committee by March, 2000 and the work was carried out by the said Abbas as the Chairman of the Beneficiary Committee. His case in the complaint lodged by him is that when he requested the Assistant Engineer to measure the work and sanction payment, he demanded an amount of ₹ 7,000/- as illegal gratification. As the first installment, the appellant accepted an amount of ₹ 3000/- on 23.3.2000 and the second installment of ₹ 2000/- was accepted on 25.3.2000.

The appellant demanded the balance amount, and asked the complainant on 17.4.2000 to bring the balance amount of ₹ 2000/- on 19.4.2000. On the said day, the complainant approached the Deputy Superintendent of Police, VACB, Kasaragod and preferred complaint. The Deputy Superintendent of Police, applied phenolphthalein on the currency of ₹ 2000/- brought by the complainant, and after demonstrating the required phenolphthalein test to the complainant and the witnesses, he instructed the complainant to make payment to the Engineer on demand. Accordingly, the complainant approached the appellant at his office at about 11.15 a.m on 19.4.2000 and made payment when the appellant again demanded money. Within no time, on getting signal from the complainant, the vigilance team reached there, seized the phenolphthalein tainted currency, and arrested the accused on the spot. After investigation, the vigilance submitted final report before the learned Enquiry Commissioner and Special Judge, (Vigilance),Kozhikode.

2. The appellant faced trial before the learned trial Judge in C.C No.44 of 2001 and pleaded not guilty to the charge framed against him by the trial court under Section 7 of the P.C Act. The prosecution examined six witnesses in the trial court, and also marked Exts.P1 to P14 documents.. The prosecution also marked MO1 to MO6 properties including the amount of ₹ 2000/- seized from the possession of the accused.

3. When examined under Section 313 Cr.P.C, the accused contended that on inspection during the progress in the work, he had detected the use of materials of insufficient and inferior quality, and the complainant Abbas was directed by him to carry out and complete the work properly as required under the agreement. In view of detection of such mal practice, he was not inclined to make measurement, and the complainant had even made some request illegally to make and record measurement to his benefit. But this was declined by the appellant, and so the complainant had some grudge against him. To wreak vengeance, the complainant forcefully thrust some currency

into his pocket on 19.4.2000 and within no time, the vigilance party reached there and arrested him. Thus, his contention is that the trap arranged by the police is a vicious trap made at the instance of the complainant, designed to wreak vengeance. Though opportunity was granted by the trial court, the accused did not adduce any evidence in defence. On an appreciation of the evidence, adduced by the prosecution, the trial court found that the prosecution case is true, that the appellant had received an amount of ₹ 2000/- as illegal gratification from the complainant at his office on 19.4.2000. On conviction, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹ 5000/- by judgment dated 23.12.2006. Aggrieved by the conviction and sentence, the accused has come up in appeal.

4. When this appeal came up for hearing, the learned counsel for the appellant argued for acquittal on factual as well as legal grounds. As regards the factual aspects, the argument advanced by the learned counsel is that there is only the evidence of the complainant in this

case to prove the prosecution case, but the said evidence is not believable in view of the fact that he had some grudge against the appellant. On legal aspects, the learned counsel argued that Ext.P14 prosecution sanction granted under Section 19 of the P.C Act stands not properly and legally proved, and that the very cognizance is barred under Section 19 of the P.C Act. Before going to the legal aspects, let me discuss the evidence on factual aspects. The learned Public Prosecutor submitted that the case on facts stands well proved, and that the prosecution sanction does not require formal proof, since it is a public document.

5. PW1 is the complainant, PW5 is the Deputy Superintendent of Police who detected the offence, PW2 is the trap witness arranged by the vigilance, and PW6 is the Vigilance Inspector who conducted investigation. The main evidence is that of PW1 and that of the Detecting Officer. PW2 has no case that he had seen or witnessed the complainant giving any amount to the accused, or the accused accepting any amount from the complainant. His evidence is that he was also there in the team led by the

Dy.S.P. He proved the seizure of tainted currency from the possession of the accused, and also the arrest of the accused on the spot. PW3 is the Block Development Officer, examined to prove some documents concerning the work done by the complainant as the Chairman of the Beneficiary Committee and also the other documents proving that the appellant was on duty as Assistant Engineer in the Block Panchayat in April, 2000. That the appellant was Assistant Engineer in the Block Development Office, Kasaragod in April, 2000 is not in dispute. When the complainant alleges that he requested the Engineer to make measurement and sanction the amount, the Engineer demanded illegal gratification. The case advanced by the accused is that, on detection of the use of materials of low quality, the complainant was directed by the Engineer to carry out the work properly in accordance with the terms of the agreement. There is no document to show that at any time the Engineer or any other authority including the Block Development Officer had detected anything wrong or irregular in the work done by the Committee. Ext.P4 file

proved by PW3 contains the agreement relating to the work. Exts.P7 and P8 documents including the abstract of the original and revised estimate for the work will show that the work was tendered at an estimate of ₹ 1,00,000/-. Ext.P6 M-Book shows that the work was completed within time, and the measurement was recorded by the accused in time in the M-Book. I find nothing to probabalise the defence case in any of these documents.

6. PW3 has proved Ext.P4 file, Ext.P7 bill and Ext.P8 estimate. He has also given evidence that the accused was Assistant Engineer in the Block Panchayat in April 2000, and that the complainant was the Chairman of the Beneficiary Committee formed for the Black Topping of Koliyakudam Naduvilekunnu Road within the Block Panchayat. The Block Development Officer also identified the entries made by the accused in Ext.P6 M-Book. PW4, the Assistant Executive Engineer has given evidence that he had supervised the work, and he had also verified Ext.P6 M-Book containing the details of the measurement made by the accused. Now the question is whether the prosecution has been able to prove

the alleged demand and acceptance of illegal gratification. Seizure of phenolphthalein tainted currency of ₹ 2000/- from the possession of the accused stands well proved by the evidence of the detecting officer, the trap witness and also the complainant. It is true that PW2 , the trap witness had not witnessed the demand or acceptance, and his evidence is only regarding the seizure of tainted money by the Dy.S.P. The demand alleged by the prosecution is well proved by the complainant himself, examined as PW1. He is definite in his evidence that when he requested the accused to sanction payment, the accused demanded an amount of ₹ 7000/-. With a view to get things done at the earliest, he was prepared to make some payment. Accordingly, he paid ₹ 3000/- to the accused on 23.3.2000 and paid another amount of ₹ 2000/- on 25.3.2000. He says that the demand was first made by the accused on 22.3.2000 at the Block Office. Even after the payment of ₹ 5000/-, the accused did not care to do his duty. He again demanded the balance amount of ₹ 2000/- and directed the complainant to come with the amount on 19.4.2000. The said demand for the

balance amount was made on 17.4.2000. He was not able to pay anything more. He approached the vigilance and preferred a complaint on 19.4.2000. As instructed by the Dy.S.P, he approached the accused at his office on 19.4.2000 at about 11.15 a.m and made payment when the accused repeated his demand for the balance amount of ₹ 2000/-. I find nothing to disbelieve the evidence of the complainant. He has no reason to make any false complaint against the appellant. There is nothing in evidence to indicate that the complainant had any grudge against the appellant. Of course, it is true that the complainant had not disclosed the fact of demand made by the Engineer to the Convenor and the members of the Beneficiary committee, and he thought of making a complaint on his own. That he did not discuss the matter with the others will not make the complaint suspicious. PW1 is definite and consistent in evidence regarding the demand made by the accused and also regarding the acceptance of amount by the accused as a reward for sanctioning payment.

7. The Detecting Officer examined as PW5 has also given consistent evidence proving the seizure of phenolphthalein tainted currency of ₹ 2000/- from the possession of the accused. This currency was well identified by the Detecting Officer, the complainant and also PW2. Though PW2 had not witnessed the payment of illegal gratification to the Engineer, he is definite that he had witnessed the Dy.S.P. seizing the phenolphthalein tainted currency from his possession at his office, and arresting the Engineer on the spot. This evidence given by PW2 stands not discredited in any manner. Thus, the detection inclusive of the seizure of phenolphthalein tainted currency and the arrest of the accused stand well proved by the evidence of PW2 and PW5.

8. I find that the case was properly investigated by PW6. I find nothing in his evidence to show that there was any flaw or illegality or irregularity in the investigation conducted by him. There is absolutely nothing to show that PW6 had caused any sort of prejudice to the accused.

9. On an appreciation of the evidence, I find that the essential ingredients (demand and acceptance) are well proved in this case. When acceptance is well proved, the court will have to draw the presumption under Section 20 (1) of the P.C Act that money was accepted by the accused as a motive or reward for doing something which is bound to do even in otherwise without receiving any payment illegally. On an appreciation of the entire evidence, I find that the prosecution has well proved the case on facts, that the appellant herein had accepted an amount of ₹ 2000/- from PW1 as illegal gratification and that the conviction made by the court below under Section 7 of the P.C Act is only to be confirmed in appeal, of course subject to the finding on the legal aspect raised by the appellant.

10. Now the question is whether the conviction in this case can be sustained, or whether the prosecution sanction in this case is properly proved. As regards proof of prosecution sanction under Section 19 of the P.C Act, I have already taken a view that prosecution sanction must be properly proved according to

law, as prescribed under the Indian Evidence Act. The learned counsel for the appellant cited a decision of this Court **Antony Cardoza v. State of Kerala (2011 (1) KLT 946)**, where this Court held that when prosecution sanction including independent application of mind is not proved by the sanctioning authority, it cannot be said that the prosecution sanction is properly and legally proved. In **Mansukhilal Vithaldas Chauhan v. State of Gujarat [(1997) 7 SCC 622]**, the Hon'ble Supreme Court held that the sanctioning authority is bound to prove independent application of mind to the facts of the case in the process of granting sanction, and he must also convince the court that he had perused the entire materials collected by the Investigating Agency before taking decision to grant sanction. As regards the necessity to prove the prosecution sanction granted under Section 19 of the P.C Act, a learned Single Judge of the Andhara Pradesh High Court held, in **Central Bureau of Investigation SPE Hyderabad v. P.Muthuraman** reported in **LAWS (APH) 1996-3-13**, that the prosecution sanction must be proved either by the

person who granted the sanction, or by somebody who can identify the signature of the person who granted sanction. To come to such a finding, the learned single Judge relied on a Division Bench decision of the Calcutta High Court in **S & R Legal Affairs v. Moazzem Hossain** [AIR 1947 Cal 318]. In **CBI v. Ashok Kuma Aggarwal**, [AIR 2014 SC 827], the Supreme Court held that the sanctioning authority will have to convince the court that he had scrutinised the whole record, considered all aspects, and applied his mind in the process of taking decision to grant sanction.

11. In **Antony Cardoza v. State of Kerala**, the evidence of an Under Secretary to the Government of Kerala, who came to prove the prosecution sanction granted by the Principal Secretary was not accepted by this Court. In the said case, this Court held that the prosecution sanction including independent application of mind in the process of granting sanction must be proved by the person who granted sanction, and this responsibility cannot be taken over by somebody else. This court also held that the

prosecution sanction proved by somebody else cannot be said to have been properly proved according to law. Recently, this Court has made it clear that if independent application of mind to the process of granting sanction is under challenge, the person who granted the sanction must prove the sanction as required under the Indian Evidence Act. If only a formal proof is required, and independent application of mind is not the issue, or it is not challenged by the defence, any other person who can identify the signature of the sanctioning authority can formally prove the sanction. Ext.P14 sanction cannot be said to be a public document, and such a sanction will not have any sanctity or privilege as a public document under Section 74 of the Indian Evidence Act. In a case where independent application of mind to the process of granting sanction, inclusive of perusal of the entire files or materials collected by the Investigating Officer is a disputed issue, the person who granted sanction will have to prove it, whatever be his position in the executive or other wing of the Government. On a consideration of the various

decisions including that of the Andhra Pradesh High Court and also of this Court in **Antony Cardoza v. State of Kerala**, this Court has settled the position that a prosecution sanction granted under Section 19 of the P.C requires proper proof as prescribed under the Indian Evidence Act.

12. The authority who granted sanction in this case is the Chief Engineer, but he was not examined to prove the prosecution sanction. He will have to prove that he had perused the entire materials, and he decided to give sanction on independent application of mind. In the absence of such evidence by the competent person, Ext.P14 sanction cannot be accepted by the court, and it cannot be said to have been properly and legally proved. Thus, I find that the the very cognizance in this case is barred under Section 19 of the P.C Act. In short, the appellant is entitled for acquittal on this important legal ground itself. When the very cognizance is barred, the whole trial will be illegal, and the conviction made by the court below will have to be set aside as legally unsustainable.

In the result, this appeal is allowed. The appellant is found not guilty of the offence punishable under Section 7 of the P.C Act and accordingly he is acquitted of the said offence in appeal under Section 386(b)(i) of Cr.P.C. The conviction and sentence against the appellant in C.C No.44 of 2001 of the court below will stand set aside, and he will stand released from prosecution. The bail bond, if any, executed by him will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge