

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

CRL.A.No. 509 of 2006 ()

AGAINST THE JUDGMENT IN CC 20/2001 of ENQUIRY COMMISSIONER & SPECIAL
JUDGE, KOZHIKODE DATED 03-03-2006

APPELLANT(S)/ACCUSED::

K.P. YOGESH, S/O. PUNNOOSE,
KALATHIL HOUSE, KAKKAMOOLA VILLAGE, KALLIYUR P.O.
THIRUVANANTHAPURAM.
(FORMERLY VETERINARY SURGEON (PROVISIONAL)
MOBILE FARM AID UNIT, ULIKKAL).

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT & STATE::

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1. THE DEPUTY SUPERINTENDENT,
VIGILANCE & ANTI-CORRUPTION BUREAU, KANNUR.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.Appeal No.509 OF 2006

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Dated this the 22nd day of May, 2015

JUDGMENT

This appeal is directed against the judgment of the Court of Enquiry Commissioner and Special Judge, Kozhikode in C.C.No.20 of 2001 arising from V.C.3 of 2000 of Vigilance and Anti-Corruption Bureau, Kannur. The appellant who was the accused therein was tried for offences under section 7 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short the 'PC Act'). He was convicted under section 7 of the PC Act to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5000/- and in default of payment of fine, he was ordered to undergo simple imprisonment for six months and for the conviction under section 13 (2) read with section 13(1)(d) of the PC Act, he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of

₹10000/-. In default of payment of fine, he was ordered to undergo simple imprisonment for a period of one year. The substantive term of imprisonment was ordered to be run concurrently.

2. I have heard the learned counsel for the appellant and also the learned Public Prosecutor. This is a trap case in which the appellant was alleged to have accepted an amount of ₹1000/- from PW1 at about 9.30 a.m on 19.5.2000 as a reward for issuing a Non-Fertility Certificate for a cow belonging to the father of PW1 to enable him to collect insured amount from the Insurance Company on the ground that the cow in question is incapable to conceive. It is alleged that by virtue of such action, the appellant/accused committed criminal misconduct and abused his official position and by corrupt and illegal means obtained ₹1000/- from PW1 from Veterinary Hospital, Ulikkal. Based on Ext.P1 complaint dated 18.5.2000 lodged by PW1, Ext.P11 FIR was registered by PW5. A trap was arranged on 19.5.2000 by PW5. MO1 series of notes (2 Nos. of the

denomination of ₹500/-) after applying phenolphthalein powder were handed over to PW1 and on 19.5.2000 at 9.30 a.m, PW1 came to Veterinary Hospital, Ulikkal where the appellant was working. The appellant received the currency notes with his left hand and asked PW1 to come in the evening to collect the certificate. In MO1 series of notes, PW5 have written mark 'v' on the water mark. PW1 went outside and gave signal to the officers waiting outside. They gave signal to the raiding party and thereupon, PW5 along with PW2 and CW10 and policemen entered the consulting room of the appellant. They asked for the notes which were handed over to him by PW1. The appellant denied to have received any such currency notes. Thereupon, the right hand of the appellant was washed in a solution of sodium carbonate. But the solution did not show any colour change. Thereupon, his left hand was washed in sodium carbonate solution. Solution as also his left hand turned pink. MO1 series of notes were found from the next room and they were taken and handed over to PW5 by CW10 in the presence of PW2. It was in the said

circumstances that the appellant was charged for the aforesaid offences.

3. On due process, the appellant appeared before the trial court. After complying with all legal formalities, charge was framed against him for the aforesaid offence and it was read over and explained to him. The appellant pleaded not guilty and claimed to be tried. The prosecution has examined PW1 to PW6 and got marked Exts.P1 to P17 besides identifying MO1 series to MO5. After closing the evidence of the prosecution, the appellant herein was examined under section 313 Cr.P.C and he denied all the incriminating circumstances put to him.

4. The appellant filed a written statement contending that he had not committed the offence as alleged by the prosecution. The statements made by the accused/appellant in the written statement has been elaborately dealt with in paragraph 6 of the impugned judgment.

Apart from denying the allegation, it is stated therein that cow of the father of PW1 had infertility problem. The learned counsel for the appellant handed over a copy of the written statement filed by the appellant before the trial court. As noticed hereinbefore, though the statements have been elaborately considered in paragraph 6 and it would reveal that in substance, his defence was that he is having the right to do private practice and that the cow of the father of PW1, Luko, had infertility problem. On 15.4.2000, he went to the house of the accused after the duty hours and examined the cow and on getting convinced that it could not conceive, he apprised that fact to PW1. According to him, he asked PW1 to bring all the records with regard to the policy taken in respect of the cow. But the relevant document was not produced by PW1. Therefore, he informed PW1 that he could not issue a certificate as desired by PW1 without perusing the proper documents. It is the further case of the appellant that PW1 approached him on 19.5.2000 and handed over a cover to him stating that the cover contained the documents received from the Insurance

Company. According to him, when he opened the cover, he found inside it Exts.P15 and P16. In fact, he accepted the cover with his left hand. When he opened the cover he did not find any contents therein revealing that the insurance policy which had coverage in respect of permanent disability as well. He further told PW1 that he could not issue any such certificate and thereupon, PW1 went outside. The appellant is also having a case that PW1 has been entertaining animosity towards him on account of the refusal on the part of the appellant in not yielding to his request to allow him to park the jeep belonging to PW1 in the hospital compound. It is also stated by the appellant that his insistence to produce policy for issuing a certificate also annoyed PW1. In short, according to the appellant, it is the animosity entertained in the aforesaid circumstances that made PW1 to resort to such a method to trap him.

5. In cases where the accusation against the accused is with respect to commission of offence under section 7 as also under section

13(2) read with section 13(1)(d) of the PC Act, it is the primary duty of the prosecution to prove that the person accused for, is a public servant. Prosecution has examined the District Officer, Animal Husbandry as PW3 and got marked Exts.P7 and P8. Ext.P7 is the posting order issued in respect of the appellant dated 13.3.2000 appointing him as Veterinary Surgeon provisionally for a period of 179 days in Mobile Farm Aid Unit, Ulikkal in Kannur from the date of joining duty. Ext.P8 is the report of assuming charge which would reveal that he had taken charge as Veterinary Surgeon on 15.3.2000. Ext.P9 is the report sent by the appellant to PW3 regarding his assumption of charge. Ext.D1 is the attendance register of Mobile Farm Aid Unit, Ulikkal for the period from 1.1.2000 to 19.5.2000. In such circumstances, the evidence adduced by the prosecution viz., the oral testimony of PW3 with Exts.P7 and P8 would reveal that the appellant was a public servant at the relevant point of time. It is also to be noted that though earlier the appellant had taken up a contention that the entire prosecution is vitiated owing to the failure to obtain

prior sanction in the light of the provisions under section 19 of the PC Act and section 197 Cr.P.C., the learned counsel for the appellant very fairly submitted that the appellant is not now, pressing those contentions in the light of the fact that before the filing of the final report the appointment of the appellant was terminated and he was not charged for any offence under the Indian Penal Code.

6. The learned counsel for the appellant contended that the documents allegedly handed over by PW1 to him was not actually recovered. The failure to effect recovery of the said documents is fatal to the prosecution. It is also his contention that non-examination of CW13 Luko viz., the father of PW1 who is, in fact, the owner of the cow in question is also fatal to the prosecution. It is also contended that the non-examination of CW10 Sadique who allegedly picked up MO1 series of notes from the floor of the hospital and handed over to PW3 is also fatal to the prosecution. CW10 was one of the gazetted officers deputed for the purpose of assisting the raiding

party at the request of PW3. Yet another contention taken up by the appellant is that no petition claiming insurance amount was filed either by PW1 or his father in respect of the cow in question. In such circumstances, it is contended that the conviction entered against the appellant for the aforesaid offences cannot be sustained. Per contra, the learned Public Prosecutor contended that the prosecution has succeeded in establishing the commission of the aforesaid offences by the appellant through the oral evidence of PW1 to PW6 and the documentary evidence in Exts.P1 to P17.

7. I will now consider the evidence on record. PW1 would depose that he had approached the appellant for getting the Non-Fertility certificate in respect of the cow in question pursuant to the passing of information by the appellant to him that the cow would not conceive any further. PW1 would further depose that for issuing Non-Fertility certificate, the appellant demanded illegal gratification and therefore, it was duly informed to PW5 and accordingly, the trap was

arranged. The evidence of PW5 would corroborate the version of PW1. PW5 would depose that on 18.5.2000, PW1 lodged Ext.P1 complaint pursuant to which Ext.P11 FIR was registered against the appellant and the trap was arranged. MO1 series of notes with denomination of ₹500/- was handed over to PW1 after applying phenolphthalein powder. PW1 would further depose that after handing over the money to the appellant, he went out of the room and gave signal to the policemen who were waiting for the signal. On getting the signal of handing over of MO1 notes to the appellant, PW5 along with PW2 and CW10 Sadique entered the consulting room of the appellant, he would further depose. PW2 who is the gazetted officer deputed to assist the raiding party would depose that he is an attesting witness to Exts.P2 and P6 mahazars. PW1 would depose to the effect that the appellant accepted the notes with his left hand. In this context, it is to be noted that PW2 would depose that when the right hand of the appellant was washed in a solution of sodium carbonate there occurred no colour change and at the same time when

his left hand was washed with the same solution, it turned pink. PW5 would also depose on the same lines. PW5 deposed further that sodium carbonate water solution which turned pink on getting washed the left hand of the appellant was labelled as 'B' and that was identified as MO4. The trial court found that the evidence of PWs 1, 2 and PW5 with MO4 would go to show that the appellant touched and handled MO1 series of notes. MO1 series of notes were identified by PW1 and also by PW5. MO1 series of notes were prepared for arranging trap and on those notes the sign 'v' was put by PW5 on the water mark. MO1 series notes identified by PW1 and 5 would contain such marks. True that the contention of the appellant is that there was no occasion for the appellant to issue Non-Fertility Certificate as documents required to issue such a certificate were never produced before him. I will examine the said question a little later. At the same time, the evidence of PW1 and PW2 and PW5 with MO4 would reveal that MO1 series of notes handed over to PW5 for passing on to PW1 were found on the floor of another room of the

hospital and on getting washed the left hand of the appellant, the sodium carbonate solution turned pink. In other words, the test conducted immediately after the incident in question was positive and the said result undoubtedly reveal that the appellant touched MO1 series of notes and handled the same. The contention of the appellant is that even if the sodium carbonate water solution turned pink by washing his hands in the solution, on account of the failure on the part of the prosecution to establish that the appellant demanded illegal gratification, the conclusion arrived at by the trial court that he has committed the offence under sections 7 and 13(2) cannot be sustained. To support the said contention, the learned counsel for the appellant relied on a decision of the Hon'ble Apex Court in **C.M.Sharma v. State of A.P TH.I.P [AIR 2011 SC 608]**. In the light of the said decision, the learned counsel contended that a demand for illegal gratification is sine qua non to constitute an offence under sections 7 and 13(2). In this case, the prosecution has failed to establish that the appellant demanded illegal gratification and therefore, the conviction

could not be sustained. The learned counsel drew my attention to paragraph 15 of the said judgment. It is submitted that in the light of paragraph 15, a demand for illegal gratification is sine qua non to constitute an offence under section 7 and section 13(2). It is the further contention that said decision would reveal that though a mere recovery of currency notes would not by itself constitute an offence and at the same time, if the prosecution proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe then the contentions would pale into insignificance and in such eventuality, the accused cannot escape the liability contending that the demand of illegal gratification was not proved. A perusal of paragraph 15 would reveal that in a case where the prosecution succeeds in proving beyond all reasonable doubt that an accused concerned voluntarily accepted the money knowing it to be bribe and further insistence for proof for demand of illegal gratification is not required for holding the concerned accused guilty for the offence either under section 7 or under section 13(1)(d). The learned counsel

for the appellant contended that in this case, the prosecution had also failed to show that the appellant had voluntarily accepted the money knowing it to be bribe. In the light of those contentions, it is relevant to refer to the oral testimony of PW1. A scanning of the oral testimony of PW1 would reveal that he would specifically depose that the appellant demanded illegal gratification for the purpose of issuing an infertility certificate in respect of the cow belonging to his father which was got examined by the appellant on previous occasions. Before proceeding further with the said point, I am of the view that another aspect has to be looked into which came to the notice of this Court on perusing the charge framed against the appellant as also Ext.P11 FIR and the Final Report laid in the case. Ext.P11 and the final report would reveal that the case of the prosecution is that the appellant demanded illegal gratification for issuance of Non-Fertility Certificate in respect of the cow belonging to PW1. At the same time, the court charge would reveal that the charge framed against the appellant is that he had demanded illegal gratification from one Gopi,

S/o.Looka, Kolangarath House, Ulikkal for issuing Non-Fertility certificate in respect of his cow. Ext.P11 and the final report would reveal that the case of the prosecution is that such a demand was made by the appellant for issuing Non-Fertility Certificate in respect of the cow belonging to PW1 viz., Kolangarath Joby. A perusal of the evidence on record would reveal that except in the charge framed by the court, nowhere the name 'Gopi' appears and it is also to be noted that even in the charge what is stated is that the appellant demanded illegal gratification of ₹2200/- from Sri.Kolangarath Gopi, S/o.Looka, Kolangarath House, Ulikkal (CW1) as a motive or reward for issuing Non-Fertility Certificate for his cow to enable him to collect the insured amount from the Insurance Company. The records would reveal that CW1 is Kolangarath Joby, S/o.Looka, Kolangarath house, Ulikkal. Thus it is evident that the mistake in the name was crept in owing to the error committed by the court. The salutary principle is that no one can be prejudiced by the act of the court. This will apply with equal norms in respect of prosecution as also the defence. The

case of the prosecution was that the appellant demanded illegal gratification from Kolangarath Joby, Kolangarath house, Ulikkal and he is cited as CW1. The mistake crept in, by entering the name of CW1 by the trial court i.e., as Kolangarath Gopi in respect of Kolangarath Joby cannot prejudice the prosecution for that reason alone. At the same time, when such a mistake has been brought to the notice of this Court, it is the duty of this Court to see that whether any prejudice has been caused to the appellant owing to the said mistake. The learned counsel for the appellant would submit that apart from the said mistake, Ext.P11 final report as also the charge would reveal that the case of the prosecution is that the appellant demanded illegal gratification from CW1 for issuing a non-fertility certificate for his cow to enable him to collect the insured amount. It is further contended that the prosecution has adduced evidence to establish the case that the appellant demanded illegal gratification from CW1 viz., Kolangarath Joby as motive or reward for issuing Non-Fertility Certificate for the cow belonging to his father Luka (CW13) to enable

him to collect the insured amount. In such circumstances, it is contended that prejudice has been caused to the appellant owing to the discrepancy in the charge sheet. There cannot be any doubt with respect to the position that a mere defect in a charge framed by the court by itself would not be a reason for interfering with a judgment of conviction unless it is proved that owing to such error prejudice has been caused to the appellant/accused. To consider the said aspect it is appropriate to refer to the evidence of PW1. In the chief examination PW1deposed:-

എന്റെ അച്ഛൻ ലൂക്കാ ഒരു പശുവിനെ വാങ്ങി. അതിനെ 10,000/- രൂപക്ക് insure ചെയ്തു. അതിനെ 4 പ്രാവശ്യം ബീജസങ്കലനം നടത്താൻ കൊടുത്തിരുന്നു. എന്നിട്ട് ഗർഭധാരണം ഉണ്ടായില്ല. അപ്പോൾ Dr.Yogesh നെ കൊണ്ടുവന്ന് പരിശോധിപ്പിച്ചു. Dr.Yogesh കോടതിയിലുണ്ട്. The witness has identified the accused. ഗർഭം ഉണ്ടാകാൻ സാധ്യതയില്ലെന്ന് പ്രതി പറഞ്ഞു. Doctorക്ക് ഞാൻ 300 രൂപ കൊടുത്തു. ഗർഭധാരണം ഇല്ലെന്ന് പറഞ്ഞപ്പോൾ ഞാൻ insurance ഉം ആയി ബന്ധപ്പെട്ടു. Doctor certificate തരുകയാണെങ്കിൽ claim തരാമെന്ന് insurance നിന്നും പറഞ്ഞു. ഞാൻ Doctorറോട് certificate ആവശ്യപ്പെട്ടു. insurance ന്റെ രസീത് insurance-ൽനിന്നും നൽകിയ

form എന്നിവയും ഞാൻ
doctorറെ ഏല്പിച്ചു. ശരിയാക്കിത്തരാം. പക്ഷേ
കൈക്കൂലി വേണമെന്ന് പറഞ്ഞു. 2000ൽ ചിലവാനം
രൂപയാണ് ചോദിച്ചത്.

In the cross examination, PW1 would depose thus:-

പശുവിന്റെ insuranceന്റെ കാര്യങ്ങളെല്ലാം അച്ഛൻ
എന്നെ ആണ് ഏല്പിച്ചിരുന്നത്. പശുവിനെ
വാങ്ങിയതും കറവയുമെല്ലാം അച്ഛനാണ് നോക്കുന്നത്.

8. It would not be inappropriate to look into the statement made by the appellant while being examined under 313 Cr.P.C. During 313 examination the following question was put to the appellant.

Q3. അപ്പോൾ പ്രതിയെക്കൊണ്ട് പശുവിനെ
പരിശോധിപ്പിച്ചെന്നും, അതിന് പ്രതിക്ക് താൻ 300 രൂപ
കൊടുത്തു എന്നും PW1 മൊഴിനൽകിയിരിക്കുന്നു

A. ശരിയാണ്.

9. Thus it is evident that despite such a mistake crept in the charge framed by the court with respect to the name of a person from whom the appellant demanded illegal gratification, the charge itself

would reveal that he demanded the same from CW1 and the appellant defended the case knowing that CW1 is not Kolangarath Gopi but CW1 is Kulangarath Joby. Thus it is evident that the appellant defended the case knowing fully that CW1 is not Kolangarath Gopi but Kulangarath Joby. The question is what exactly was the case of the prosecution? In the light of Ext.P11 FIR and the final report and also in the light of the charge framed against him it can only be said that the specific case of the prosecution is that the appellant demanded illegal gratification for issuing non-fertility certificate in respect of the cow belonging to CW1. Admittedly, the prosecution adduced the evidence not for the purpose of establishing the said case but for establishing the case that the appellant demanded illegal gratification for issuing non-fertility certificate in respect of a cow belonging to the father of PW1. It is not in dispute that the prosecution has adduced evidence only to establish that case which is not the case put forth by the prosecution. But for the mistake crept in the charge sheet with respect to the name of CW1 viz., Kolangarath

Gopi in respect of Kolangarath Joby the charge is also one for demanding illegal gratification and acceptance of reward or motive for issuing non-fertility certificate in respect of a cow belonging to CW1. If the prosecution establishes a case which is different from the case registered against him and ultimately culminated in the laying of final report based on which cognizance was taken, can the appellant be convicted merely because a different case was established. The evidence in this case would reveal that the precise case of the prosecution was that the appellant demanded illegal gratification for the purpose of issuing non-fertility certificate in respect of the cow belonging to the father of PW1. The evidence on record would further reveal that it could be taken that the prosecution succeeded in proving the case that the appellant demanded illegal gratification and obtained ₹1000/- from CW1 for the purpose of issuing non-fertility certificate in respect of a cow belonging to CW13 who is the father of PW1. In such circumstances, the question is whether prejudice alone would decide the fate of the person who faced the prosecution. In the

contextual situation it is relevant to refer to sections 212, 228, 462 and 464 Cr.P.C. Going by section 212, a charge should contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which, it was committed. Section 228 is also relevant in this case. It makes mandatory for the trial judge to frame charge if he is of the opinion that there is ground for framing charge that the accused committed an offence. Once he arrived at such a finding that there is ground for prosecution that the accused has committed offence after framing the charge it shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried. Before proceeding to consider the other relevant provisions it is to be noted that admittedly, in this case, charge was framed against the appellant for demanding illegal gratification from CW1 as a reward or motive for issuing non-fertility certificate in respect of his cow to enable him to claim insurance amount and that it was that charge which was read over and explained

to the appellant-accused. True that the appellant had pleaded not guilty and claimed to be tried. In the light of Ext.P11 and final report as also the charge which was referred to hereinbefore the prosecution cannot be heard to say that the charge that he has demanded illegal gratification from CW1 for issuing a non-fertility certificate in respect of a cow belonging to his father was read out and explained to the appellant. Going by section 212 Cr.P.C, a charge should contain such particulars as to the time and place of the alleged offence and the person against whom, or the thing in respect of which, it was committed. In this case, evidently, the case of the prosecution against the appellant and also the charge framed against the appellant was that he demanded illegal gratification for issuing non-fertility certificate in respect of the cow belonging to CW1 and at the same time, the entire evidence of PW1 and documentary evidence would reveal that the cow belonged to the father of PW1, Sri.Luko. At the same time, it is the evidence of PW1 that his father entrusted him the task of taking care of the cow. According to him, it was he who took the appellant

to inseminate the cow and later, approached the appellant for getting the non-fertility certificate. Learned Public Prosecutor submitted that even a defect in charge will not vitiate the proceedings. Certainly, the fact that constitutes the aforesaid question would not fall within any of the irregularities mentioned under section 460. Section 464 Cr.P.C deals with the effect of omission to frame, or absence of, or error in, charge. Going by 464 Cr.P.C, no finding, sentence or order by a court of competent jurisdiction could be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of Appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. I am of the view that for the purpose of deciding the aforesaid question the relevant provision that requires consideration is section 215 Cr.P.C. It reads thus:-

“215.Effect of errors--No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state

the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

10. From the illustration under (d) it is evident that such errors would be immaterial in the light of the provisions under section 215 Cr.P.C. In this case, as noticed hereinbefore, the error or deficiency in particulars is with respect to the fact that in the charge it was not stated that the cow in question in respect of which non-fertility certificate was required belonged to the father of PW1 and in fact, it has been stated therein that the said cow belonged to PW1. In the contextual situation, it is relevant to refer to Ext.P1 which is the complaint dated 18.5.2000 filed by PW1 before PW5. What is stated therein is as hereunder:-

എന്റെ ചാച്ചൻ എന്റെ വീട്ടിൽ വളർത്തുന്ന
സുമാർ 4 വയസ്സുള്ള ഒരു പശുവിനെ
കഴിഞ്ഞവർഷം മെയ് മാസം ന്യൂ ഇന്ത്യ
ഇൻഷുറൻസിന്റെ ഇരിട്ടി ബ്രാഞ്ചിൽ നിന്നും
'10000' രൂപയുടെ ഇൻഷുർ ചെയ്തിരുന്നു

11. It is evident that during the trial, the evidence was

adduced by the prosecution to establish that cow in question belonged to the father of PW1 and non-fertility certificate was required by PW1 in respect of the same. In fact, in view of the nature of the charges framed against him there was not much relevancy for the ownership of the cow in question. The cow which was attempted to be inseminated and ultimately found inconceivable and in respect of which non-fertility certificate was sought for, is one and the same. The chief examination as also cross examination of PW1 would undoubtedly reveal that the appellant was given to understand and identify the cow in question and properly identified the cow in question and defended the case realising the real case. In such circumstances, in the light of the provisions under section 215 with illustration (d) I am of the view that the mere error or deficiency in giving the particulars as mentioned hereinbefore could not be regarded as material as it could not be said that the appellant herein was misled by such error or omission and in such circumstances it could not be said that on account of the same failure of justice had

occasioned. In such circumstances, I will revert back to the consideration as to whether the trial court was justified in finding the appellant guilty for the offences mentioned before.

12. As noticed hereinbefore, the evidence of PW3 with Exts.P7 to P9 would reveal that at the point of time when the appellant allegedly committed the offence he was a public servant. Ext.D1 would also go to prove the same. PW1 has categorically deposed that he approached the appellant and the cow in question was examined by him and found that it could not conceive any further on account of sistic ovary. He had also deposed that when the appellant was requested to give non-fertility certificate for the purpose of enabling him to obtain the insurance money in respect of the cow he demanded illegal gratification for the same. He has also deposed that thereafter that matter was duly intimated to PW5 and it was thereafter that the trap was arranged. The evidence of PW5 would corroborate the version of PW1 in that regard. He would also depose that as

instructed by PW5 he went to the consulting room of the appellant on 19.5.2000 after 9 a.m and told the appellant that he had brought the amount demanded and that the appellant received the amount and told him that he would prepare the certificate and asked him to come in the evening. PW1 would further depose that thereafter he went outside and gave signal and it was thereafter that PW5 along with others who were assisting the raiding party entered the consulting room. PW2 would depose that he went inside the consulting room wherein the appellant was sitting along with PW5 and CW10 who was also another gazetted officer deputed to assist the raid and PW5 made the appellant to wash his right hand in sodium carbonate water solution and the solution remained colourless even thereafter. At the same time, he would depose that when the left hand of the appellant was got washed in sodium carbonate water solution the solution turned pink. PW5 would also depose on the same lines. He would further depose that the solution which turned pink on getting washed the left hand of the appellant was labelled as "B" and identified as MO4.

Thus it is evident that the prosecution has succeeded in establishing that the test conducted with sodium carbonate water solution was positive and that fact is evident from MO4. When the test was positive, it can only be said that the appellant had touched MO1 series of notes and handled the same. Though the learned counsel for the appellant attempted to canvass the position that since MO1 series of notes were not recovered from the possession of the appellant and they were recovered only from the next room it could not be said that he had voluntarily accepted it knowing it to be bribe. In that context, the evidence of PW6 would fortify the case of the prosecution. PW4 who was the Secretary of the Milk Co-operative Society, Manikadavu deposed that the father of PW1 was a member of the society and his cow was insured with the society under the Group Insurance Scheme 1999. A perusal of the names of the beneficiaries of Group Insurance Scheme and tag number assigned to the cow which was got insured by the father of the appellant under GIS and the tag number in Ext.P5 would reveal that the cow in question is one and the same. True that

the evidence would reveal that it was a milch cow earlier and since November, 1999 despite several artificial insemination it did not conceive and on examination it was found that it would not conceive further on account of cystic ovary. Deposition of PW6 would reveal that he received Ext.P5 letter addressed to him by the appellant. It was an overall appreciation of the evidence on record that the trial court arrived at the conclusion that the prosecution has succeeded in proving the guilt of the accused/appellant conclusively and convicted him for the offence under sections 7 and 13(2) of the PC Act. In view of the evidence discussed as above, I do not find any reason to come to the conclusion that the trial court found the petitioner guilty based on a perverse appreciation of evidence and in fact, I am of the view that the conclusion arrived at by the trial court is perfectly in tune with the evidence on record. When that be the circumstances, I do not find any reason to interfere with the conviction entered against the petitioner under sections 7 and 13 read with 13(1)(d) of the PC Act.

13. Now the question to be considered is whether the sentence imposed on the appellant for the conviction under sections 7 and 13 (2) read with 13(1)(d) of the PC Act calls for appellate interference. Evidently, for the conviction under section 7 of the PC Act, the appellant was sentenced to undergo rigorous imprisonment for one year and a fine of ₹5000/-. In default of payment of fine, he was ordered to undergo simple imprisonment for 6 months thereunder. For the conviction under section 13(2) read with 13(1)(d) of PC Act the appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10000/- and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one year. The substantive term of imprisonment imposed under sections 7 and 13(2) read with section 13(1)(d) were ordered to be run concurrently. The appellant had assigned certain reasons before the trial court for taking leniency in the matter of imposition of sentence. He submitted before the court that he is having wife and child and he is also having aged parents and unmarried sister. At that

point of time he was only working on provisional basis pursuant to Ext.P7 order of appointment. Subsequently, he was terminated from service. It is to be noted that the date of occurrence is 19.5.2000 and at that point of time, the minimum term of imprisonment under section 7 was six months and under section 13(2), it was one year. Taking note of the entire circumstances I am of the view that the sentence imposed against him for the offence under section 7 as also under section 13(2) read with section 13(1)(d) is slightly excessive and it requires modification. In such circumstances, while confirming the conviction entered against the appellant under section 7 as also under section 13(2) read with section 13(1)(d) of the PC Act the sentence imposed under section 7 and 13 is modified as hereunder:-

The substantive sentence of imprisonment imposed on the appellant under section 7 is modified and it is reduced to simple imprisonment for 6 months. The sentence of payment of fine and the default sentence therefor, are maintained. The substantive sentence imposed on the appellant under section 13(2) read with section 13(d)

is also modified and it is reduced to simple imprisonment for a period of one year. The sentence of payment of fine and the default sentence are maintained. The substantive sentence of imprisonment shall be run concurrently. It is made clear that the appellant will be entitled to set off under section 428 Cr.P.C.

This appeal is allowed in part, as above.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

