

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

CRL.A.No. 245 of 2009 ()

CC 5/2001 of ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOZHIKODE

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APPELLANT/COMPLAINANT::

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

BY PUBLIC PROSECUTOR SMT. V.H. JASMINE

RESPONDENT/ACCUSED::

**T.KUNHIRAMAN, S/O.ARAYIL VEETIL KANNAN
MEETHALE PURAYIL PEROL, NILESWAR
(VILLAGE OFFICER, PALAVAYAL VILLAGE).**

BY ADV. SRI.KALEESWARAM RAJ

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

SD

P. UBAID, J.

Crl.Appeal No.245 of 2009

Dated this the 25th day of May, 2015

JUDGMENT

In a prosecution brought against the respondent herein under Section 7 read with Sections 13(2) and 13(1)(a) of the Prevention of Corruption Act (for short, 'the Act') at the instance of the Vigilance and Anti Corruption Bureau (VACB), Kasaragod, on the allegation, that while working as Village Officer of the Palavayal Village in Wayanad District, the respondent received Rs.500/- as bribe for issuing a certificate regarding the stage of construction of a house for which the beneficiary, Thomas, was sanctioned some loan under the Mythri Housing Scheme of the Government of Kerala, the Enquiry Commissioner and Special Judge, Kozhikode acquitted the respondent by judgment dated 24.02.2007 in C.C.No.5/2001. The said judgment of acquittal is under challenge before this Court by the Government of Kerala. Crime in this case was registered on a complaint made by Thomas. The Dy.S.P. in charge accepted the complaint, registered a crime, received a currency of Rs.500/- handed over

by the complainant Thomas, he applied phenolphthalein on the currency, prepared a mahazar at the office of the Dy.S.P., and instructed the complainant (Thomas) to hand over the currency to the respondent. Thomas, as instructed by the Dy.S.P., VACB, handed over the amount to the respondent. Thomas paid the amount while the respondent was sitting in a jeep, on a trip to an inspection site. Within no time, the Dy.S.P. who came to the spot seized the said currency of Rs.500/- paid by Thomas, as per mahazar, after conducting phenolphthalein test, arrested the respondent, and then proceeded further according to law. After completion of the investigation, the Dy.S.P. submitted final report before the Special Court.

2. Respondent (accused) pleaded not guilty to the charge framed against him by the Special Court, and he claimed to be tried. The prosecution examined ten witnesses including the complainant Thomas, and the Dy.S.P. Padmanabhan, who arranged the trap on complaint, and also two other beneficiaries under the Mythri Housing Scheme. When examined under Section 313 Cr.P.C. also, the accused denied all incriminating

circumstances and maintained a definite defence that he had not in fact demanded any amount from Thomas or anybody else, that a cover containing some currency was in fact thrust into his pocket by Thomas, that Thomas made complaint at the instance of one Peter, and before he could do anything with the cover thrust into his pocket by Thomas, he was taken into custody by the police. Thus, the accused maintained a definite stand that he had not demanded any amount for any favour, from Thomas, and that he had not in fact received or accepted any amount from the complainant Thomas. All throughout the trial, the accused maintained the defence that this is a false prosecution brought at the instance of one Peter. Ext.D1 document was marked on the side of the accused in defence. The prosecution proved Exts.P1 to P35 documents and also MO1 to MO5 properties. These properties include the currency of Rs.500/- involved in this case, and also the shirt of the accused seized on the spot, tainted with phenolphthalein colour.

3. On an appreciation of the evidence, the learned trial Judge found that the whole prosecution case is tainted with

genuine suspicion regarding the involvement of one Peter, who was behind the complaint filed by the complainant, and that payment of bribe or acceptance of bribe stands not properly and satisfactorily proved beyond reasonable doubt. Though, seizure of MO4 currency is proved by the Dy.S.P., the prosecution failed to prove that it was paid as demanded by the accused, or that the amount was in fact accepted by the accused. The vicious role of Peter behind the complaint well came out during trial. Accordingly, the learned trial Judge acquitted the accused (respondent) on the benefit of doubt.

4. The learned Public Prosecutor in charge of the case submitted before this Court, when this appeal came up for hearing, that recovery of phenolphthalein smeared currency stands well proved, but the learned trial Judge wrongly acquitted the accused on an erroneous appreciation of the evidence given by the witnesses, including the detecting officer. In fact, recovery of MO4 currency is proved by the Dy.S.P., examined as PW9. The defacto complainant Thomas is PW1, and the other two witnesses examined as material witnesses by the prosecution are

PW6 and PW7. The evidence of the other witnesses, than PW1, PW6, PW7 and PW9, does not contain any material to prove the prosecution case. PW6 and PW7, two other beneficiaries under the Housing Scheme, brought by the prosecution to speak that the accused had made some demand from them also, did not in any manner support the prosecution. To the surprise of the prosecution, these two witnesses gave definite evidence that they have received all the required certificates from the accused, the accused had not demanded any amount from them at any time, and that they had not given any amount to the Village Officer at any time. Thus, these two material witnesses brought by the prosecution did not, in any manner, support the prosecution. Then what remains is the evidence of the complainant, examined as PW1, and that of the Dy.S.P. who detected the offence, examined as PW9. It was submitted by the learned counsel for the respondent that even assuming that the story of seizure told by the Dy.S.P. is acceptable a conviction is not possible in this case in the absence of any evidence to prove payment of bribe or acceptance of bribe. The defence pleaded by the accused

throughout the trial is that the complaint was in fact made at the instance of one Peter, and that a cover containing currency was in fact thrust into his pocket by the complainant as instructed by Peter. Such a case pleaded by the defence stands probalised by the evidence of the complainant himself.

5. Ext.P1 is the complaint made by PW1 to the VACB. Of course, during trial PW1 identified the signature in the complaint, but he stated that he is not aware of the contents of the complaint, and he happened to prefer the complaint as instructed and advised by Peter. On this important aspect I do not find much cross examination at the hands of the learned Public Prosecutor. Thus the evidence of PW1 regarding the vicious role and involvement of Peter in the transaction or in the making of the complaint, stands not effectively challenged in the cross examination made by the learned Public Prosecutor. Strangely enough, the learned Public Prosecutor did not elicit anything in the evidence of the Dy.S.P. regarding the alleged vicious role of Peter. There is no reason why the prosecution did not venture to explain the role of Peter, admitted by the complainant himself,

when he disowned the complaint and maintained a definite stand that he preferred complaint as advised and instructed by Peter. I find on an appreciation of the evidence given by PW4, the former Secretary of the East Eleri Grama Panchayath, that Peter is a politician and that Peter had some political ends to achieve in the process. In such a situation the prosecution is expected to explain away the vicious role of Peter, alleged by the defence. No such attempt was made by the prosecution during trial.

6. Of course, PW1 has to an extent supported the prosecution, that a cover containing a currency of Rs.500/- was inserted by him in the pocket of the accused. He has no case in evidence that the accused had demanded anything from him for any purpose, or that he had paid any amount to the accused as demanded by him. The definite case of the prosecution is that the accused demanded Rs.500/- for issuing a stage certificate regarding completion of construction of the basement of the house for which loan was sanctioned to the complainant. It has come out in evidence that construction of the basement was not even started when Ext.P1 complaint was made by PW1. In such

a situation it is impossible to believe that the Village Officer demanded money for issuing such a certificate. Issuing such a certificate or demanding money for such a certificate comes only when construction of the basement is in progress, or when it is completed. Even before starting the construction of the basement a complaint happened to be filed against the Village Officer, that he demanded money for issuing certificate regarding completion of construction. This prosecution case is really unbelievable. It is here the vicious role of Peter, admitted by the complainant, assumes importance.

7. True it is that seizure of MO4 stands proved by the evidence of PW9, the Dy.S.P. On an appreciation of evidence it can be found that the cover containing MO4 currency was in fact inserted by the complainant in the pocket of the accused, and within no time it was seized by the Dy.S.P. Thus, the prosecution does not have any material to prove acceptance of MO4 by the accused. The complainant has no case that any amount was demanded by the accused, or that he paid the amount as demanded by the accused. The prosecution does not explain the

circumstance in which the accused demanded money when even the construction of the basement of the house was not started. Within seconds, the currency inserted by PW1 in the pocket of the accused was seized by the Dy.S.P. Thus, acceptance of the said amount by the accused stands not in any manner proved by any material. PW6 and PW7 are definite that they had received all the required certificates from the accused, and the accused had not demanded anything from them.

8. As discussed above, I find some very strong suspicious circumstances surrounding the whole prosecution. The complainant (PW1) disowned his Ext.P1 complaint during trial, and maintained a definite stand that he does not know what he had written in the complaint, and he happened to prefer the complaint as advised and instructed by Peter. There is no explanation why the said Peter was not examined by the prosecution. The prosecution did not even care to explain away the vicious role of Peter admitted by PW1 during trial. The prosecution story that the accused demanded amount for issuing certificate of completion is really unbelievable, because

construction of the basement was not even started at that time.

9. As discussed in the forgoing paragraphs, I find that the whole prosecution is tainted with genuine doubts regarding the circumstance in which demand for money was made by the accused, and also regarding the vicious role of Peter behind the complaint. These suspicious circumstances stand not explained by the prosecution. I find that the accused is entitled for the benefit of these doubts, and that such benefit was rightly given to the accused by the trial court. I find no reason to interfere in the impugned judgment of acquittal.

In the result, this Crl.Appeal brought by the State is dismissed.

Sd/-

P. UBAID, JUDGE

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