

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

CRL.A.No. 527 of 2005 ()

AGAINST THE JUDGMENT IN CC 29/2002 of ENQ.COMMR. &
SPL.JUDGE, THIRUVANANTHAPURAM DATED 01-03-2005

APPELLANT(S)/ACCUSED:

N.R.SEKHARAN, S/O. RAMOOTTY,
NECHOLI VEEDU, PANNIYANKARA, KOZHIKODE DISTRICT.

BY ADVS.SRI.THOMAS ANTONY
SRI.M.P.PRAKASH
SRI.K.M.JAMALUDHEEN

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.527 of 2005**  
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Dated this the 3rd June, 2015

ORDER

The appellant herein faced prosecution before the Enquiry Commissioner and Special Judge (Vigilance) Thiruvananthapuram in C.C No.29/2002 at the age of 64 on the allegation that, on behalf of a relative of him, who has a building rented out for a pre-metric hostel under the Scheduled Castes and Scheduled Tribes Development Department of the Government of Kerala , approached one Subbiah, the Secretary to the Government, Scheduled Castes and Scheduled Tribes Development Department, and offered illegal gratification for expediting the proceedings for disbursement of the rent arrear due to his relative. Such an offer was allegedly made on 24.3.2000 at the office chamber of the Government Secretary Subbaiah. The Government Secretary immediately called the Police through the Chief Secretary and made a complaint. A cover containing currency was seized by the Cantonment Police, and a crime was registered against the appellant in the

Cantonment Police Station. Later, the crime was transferred to the Vigilance Department, and the crime was re-registered there as Crime No.VC 18/2000/TVM on 21.11.2000. After investigation, the Vigilance and Anti Corruption Bureau (VACB) submitted final report in court against the appellant under Section 12 of the Prevention of Corruption Act (for short 'P.C Act'.) alleging that the appellant abetted the commission of an offence punishable under Section 7 of the P.C Act. The appellant pleaded not guilty to the charge framed against him under Section 12 of the P.C Act, and claimed to be tried. The prosecution examined 11 witnesses and marked Exts.P1 to P11 documents in the trial court. MO1 series currencies seized by the Cantonment Police on the complaint of the Government Secretary were also marked during trial. The accused denied the incriminating circumstances when examined under Section 313 Cr.P.C. However, no evidence in defence was adduced by him.

2. On an appreciation of the evidence given by the prosecution, the learned Trial Judge found the accused

guilty under Section 12 of the P.C Act. On conviction thereunder, he was sentenced to undergo rigorous imprisonment for six months and also to pay a fine of 3000/- by judgment dated 1.3.2005 in C.C No.29/02. Aggrieved by the conviction and sentence, the accused has come up in appeal.

3. The very short point for decision in this appeal is whether a mere offer to pay bribe or illegal gratification is punishable as abetment under Section 12 of the P.C Act. What is alleged in this case by the prosecution is that the appellant herein abetted the commission of an offence punishable under Section 7 of the P.C Act. The prosecution has no case that illegal gratification was in fact paid by the appellant herein. The evidence of PW1, and also his Ext.P1 complaint is that on 24.3.2000, the appellant came in his office at about 11.25 a.m and made a request to expedite steps for disbursement of the rent arrear due to his relative Jayakumar. The building belonging to Jayakumar is being occupied by the Scheduled Castes/Scheduled Tribes Department for running a pre-metric hostel. It is really

strange and unbelievable that this old man came to the chamber of the Government Secretary with request to expedite steps for disbursement of the rent arrear belonging to his relative Jayakumar. It is not known why the the building owner Jayakumar himself did not come there to make such a request. Anyway, the allegation is that while making such a request, the appellant offered illegal gratification. Finding a cover in his hands, the Government Secretary immediately called the Police through the Chief Secretary, and lodged a complaint. Ext.P1 complaint, and the evidence of PW1, shows that even without opening the cover, to see what it actually contained, the Government Secretary lodged complaint through the Chief Secretary. Thus, it is definite that there was no actual payment of illegal gratification by the accused.

4. The offence punishable under Section 7 of the P.C Act is acceptance of illegal gratification, and it is settled by judicial pronouncements including so many decisions of the Hon'ble Supreme Court, that for a conviction under Section 7 of the P.C Act, there must be evidence that illegal

gratification was demanded by the public servant. Without proof of demand of illegal gratification, there cannot be a conviction under Section 7 of the P.C Act, on the allegation that the Public Servant accepted illegal gratification. So there is no doubt that for a conviction under Section 12 of the P.C Act, on the allegation that the accused abetted the commission of offence under Section 7 of the P.C Act, the prosecution must have a case that illegal gratification was paid or tendered on demand. Here is a case where the appellant allegedly offered some amount voluntarily, without any demand. This means that even if the Public Servant had accepted the amount, he could not have been convicted under Section 7 of the P.C Act.

5. The policy of law as regards mere offer to give bribe is contained in Section 24 of the P.C Act. It is very clear that a statement made by a person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Section 13 or Section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant,

shall not subject such person to a prosecution under Section 12. For a prosecution under Section 12 of the P.C Act as a case of abetment, there must be something more than of a mere offer. When illegal gratification is paid, the Public Servant will have two options. He can either accept it knowing that it is illegal gratification, in which case he will be liable to prosecution under the P.C Act. The person who paid the amount also will be liable as abettor under Section 12 of the P.C Act. The other option available to him is to reject the amount, and proceed against the person who paid the amount, under Section 12 of the Act. Anyway, a mere offer to give illegal gratification will not invite a prosecution under Section 12 of the Act as a case of abetment of an offence punishable under Section 7 of the P.C Act. When there is no demand, and when there is no acceptance of the amount also, a prosecution under Section 12, as a case of abetment, is not possible. Thus, I find that even without going to the factual aspects, this appeal can be closed by a judgment of acquittal on the legal question that a mere offer to pay illegal gratification is not punishable as a case

of abetment under Section 12 of the P.C Act.

6. However, the very strange aspect involved in this case is that simply on seeing a cover in the hands of the accused, the Government Secretary thought that it was brought as illegal gratification, and he immediately called the police and lodged a complaint. His complaint or evidence shows that even at the time of giving evidence, he was not certain, what was the amount contained in the cover seen in the hands of the accused. The alleged incident happened in March 2000, when the accused was aged 64 years. Now we are in June, 2015. The accused must be aged around 80 years. He has been facing the trauma of an unsustainable prosecution for years. I find that the conviction against the appellant is liable to be set aside on the finding that a mere offer to bribe is not punishable as abetment under Section 12 of the P.C Act.

In the result, this appeal is allowed. The conviction and sentence against the appellant herein in C.C No.29 of 2002 of the Enquiry Commissioner and Special Judge, Thiruvananthapuram under Section 12 of the P.C Act will

stand set aside. Accordingly, the appellant will stand acquitted of the said offence in appeal under Section 386 (1) (b) of Cr.P.C. 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