

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

CRL.A.No. 261 of 2007 ()

AGAINST THE JUDGMENT IN CC 23/2001 of ENQUIRY COMMISSIONER AND
SPECIAL JUDGE (VACB) KOZHIKODE. DATED 31-01-2007

APPELLANT/ACCUSED:

T.T.MANOJLAL
'HAMIMA', AKATHETHARA P.O., PALAKKAD.
(FORMERLY SUB ENGINEER, KSEB, ELECTRICAL
MAJOR SECTION, KANJIKODE).

BY ADVS.SRI.B.RAMAN PILLAI (SR.)
SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENT(S)/COMPLAINANT::

STATE OF KERALA
DY.S.P.VIGILANCE AND ANTI-CORRUPTION, BUREAU, PALAKKAD
REPRESENTED BY THE, PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SMT.REMA.R

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
1-09-2015, THE COURT ON 17.9.2015 DELIVERED THE FOLLOWING:

P.UBAID, J.

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**Crl.A No.261 of 2007**

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Dated this the 17th September, 2015

J U D G M E N T

The appellant herein was Sub Engineer in the Electrical Major Section, Kanjikode in January-February 2000. On the allegation that he received an amount of ₹ 500/- from one Thankavelu as a reward for giving electricity connection for agricultural purposes to the property of his mother Sethu Ammal, on 8.2.2000, the appellant faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance), Kozhikode in C.C 23 of 2001. On the complaint of the said Thankavelu on 8.2.2000, the Deputy Superintendent of Police, Vigilance and Anti Corruption Burea (VACB), Palakkad registered crime against the appellant and arranged a trap. The amount of ₹ 500/- brought by the complainant as reward, as demanded by the accused, was received by the Dy.S.P as per mahazar, and after demonstrating the required phenolphthalein test, the complainant and the trap witness were instructed to approach the accused and make payment, if he demanded

money further. Accordingly, the complainant proceeded to the office of the accused along with one Kandamuthan, and made payment of the tainted money on demand, it is alleged. On getting signal from the complainant, the vigilance team led by the Dy.S.P reached there, recovered the tainted money and arrested the accused on the spot. After investigation, the vigilance submitted final report before the trial court.

2. The accused appeared before the trial court and pleaded not guilty to the charge framed against him under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act (for short 'the P.C Act'). The prosecution examined twelve witnesses in the trial court and marked Exts.P1 to P31 including the prosecution sanction granted under Section 19 of the P.C Act.

3. When examined under Section 313 Cr.P.C, the accused submitted that he had not received anything as illegal gratification, and that the amount of ₹ 500/- was in fact received by him as the cost required for the additional post for giving electricity connection on the request of the

complainant. It is submitted that such an additional post was not included in the estimate already prepared, and when such a demand was made, the necessity of such an additional post was told to the complainant. The contractor demanded an amount of ₹ 1000/- for installing such an additional post, but on request, he reduced the claim to ₹ 500/- and the said amount was received by the Sub Engineer for payment to the Contractor. In defence, the accused examined two witnesses. The learned trial Judge did not accept the evidence given by the defence witnesses. Believing the evidence given by the prosecution witnesses, the learned trial Judge found the accused guilty. On conviction, he was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 1000/- each under Sections 7 and 13 (2) read with 13 (1) (d) of the P.C Act, by judgment dated 31.1.2007. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

4. When this appeal came up for hearing, the learned counsel for the appellant submitted that the case of

the complainant is really doubtful, that there is no consistency between the complainant and the material witness regarding payment of money, and that the amount of ₹ 500/- received as the cost for installing an additional electric post was misused by the complainant for arranging a trap, only because the request for domestic connection was first declined by the Sub Engineer. The learned counsel also submitted that the prosecution sanction stands not proved in this case, and so the accused is entitled for acquittal on the said legal ground also. On the other hand, the learned Public Prosecutor submitted that the Investigating Officer has proved the prosecution sanction to the satisfaction of the court, and that the evidence given by the complainant and the other witnesses is really blemishless.

5. The appellant seeks acquittal more on legal ground, than on factual ground. On facts, some material inconsistencies in the evidence of the complainant and the independent witness were pointed out by the learned counsel for the appellant before this Court. Before going to the factual aspects, let me see whether the prosecution

sanction is proved according to law in this case. The offence was detected by PW11, and the case was also investigated by him. Ext.P27 sanction was granted by the Chief Engineer of the K.S.E.B under Section 19 of the P.C Act. The prosecution has cited the Chief Engineer as a witness. There is no explanation why the Chief Engineer was not examined to prove the prosecution sanction. PW11 only marked the Ext.P27 sanction, and did not prove it in any manner or identify the signature of the Chief Engineer therein. Of course, it is true that mere identification of the signature in the prosecution sanction will not amount to proof of the sanction as required under the law. On a consideration of the various precedents, this Court has recently settled the position as regards prosecution sanction under Section 19 of the P.C Act, that such sanction will have to be proved by the person who granted the sanction and he will have to prove to the satisfaction of the court, that he granted such sanction on a consideration of all the relevant aspects and materials collected by the Investigating Agency, and also on an independent application of his mind. The

only exception possible is when the prosecution sanction can claim any immunity under the law. In this case Ext.P27 sanction cannot claim any such sanctity or immunity. It is a sanction granted by the Chief Engineer under Section 19 of the P.C Act, and not as part of his normal official functions. The burden of proving a prosecution sanction properly according to law as prescribed under the Indian Evidence Act, cannot be taken over by somebody else. In a case where the prosecution sanction cannot claim any sanctity or immunity, the person who granted the sanction will have to come and prove it, including the essential aspects, that he had applied his mind independently to the facts and materials collected by the Investigating Agency, and he had properly and legally considered all these aspects in the decision making process. In the absence of such evidence by the person who granted sanction, the prosecution sanction simply marked by somebody else during trial will not have any value. This is the legal position settled by this Court recently in another case. Here, I find that the prosecution sanction stands not proved by the person who

granted it, and so Ext.P27 sanction simply marked during trial cannot be accepted, and it will not have any legal value. In the absence of a properly proved sanction, the finding possible is that, the whole prosecution is barred under Section 19 of the P.C Act. On this ground itself, the appellant is entitled for acquittal.

6. Let me now come to the facts of the case. The prosecution case is that as a reward for granting electricity connection for agricultural purposes to the property of the complainant's mother Sethu Ammal, the accused demanded an amount of ₹ 1000/- in January, 2000, he repeated the demand on 5.2.2000 when the complainant contacted him, on 7.2.2000, he reduced the claim to ₹ 500/- when the complainant expressed his financial difficulties, and instructed him to come on 8.2.2000 with the said amount. The complainant has stated in evidence that nobody had heard the accused demanding bribe from him. It is not known from what source the prosecution got information that demand for bribe was first made by the accused in January, 2000. Neither in Ext.P2 complaint, nor in evidence

the complainant has stated the date on which the demand was first made. His case in the complaint is that, when he contacted the accused on 5.2.2000 and expressed his difficulties, the accused reduced the claim to ₹ 500/- and asked him to come with the amount on 8.2.2000. But in evidence, he has a different case that the amount was reduced to ₹ 500/- on 7.2.2000 and he was directed to come on 8.2.2000 with the amount. There is no mention of the date 7.2.2000 in the Ext.P2 complaint. Only in evidence, he brought such a case that the demand was last made prior to the trap, on 7.2.2000. The only date mentioned as date of demand is 5.2.2000 in the complaint. But during trial, the other dates also came as an embellishment. In such a situation, the evidence given by the complainant regarding demand cannot be accepted without independent corroboration.

7. Now let me come to the evidence given by PW2, who is the independent witness. PW3 is the trap witness. He has no case that he had seen or witnessed the payment of money to the accused by the complainant. His evidence

is only regarding the recovery of the tainted money from the possession of the accused by the Dy.S.P. As regards recovery of the tainted money, there is not much dispute because recovery is practically admitted by the accused subject to the contention that it was in fact received by him as the cost of the additional post required for granting electricity connection. So the evidence regarding recovery need not be discussed in detail.

8. As regards the exact place where payment was made, there is material inconsistency between PW1 and PW2. The definite evidence of the complainant is that he paid the amount of ₹ 500/- on 8.2.2000 at the car porch of the office of the accused. But the evidence of PW2 is that, he remained at the varandha of the office and the complaint entered the office of the accused to make payment. PW2 does not say on what date such payment was made. Anyway, the witness says that the complainant must have made payment at the office of accused, but the complainant says that it was paid at the car porch. This is a very material inconsistency ignored by the trial court while appreciating

the acceptability of the evidence given by the material witnesses. This will have to be read along with the other material aspect, that the complaint does not disclose the exact date on which demand was made by the accused. In the above circumstances, I find that the case of the complainant is some what suspicious.

9. Now let me come to the defence pleaded by the accused. It is the definite case of the accused that necessity of an additional electric post was found when the complainant demanded a diversion for granting service connection to his mother's property. The estimate for the work was prepared by the K.S.E.B on the application of the complainant's mother for electricity connection for agricultural purposes. It has come out in evidence that the necessity of additional post was not covered by the said estimate. But the complainant admitted during trial that he had made such a demand, and that in such a circumstance, an additional post was also required. But he denied the suggestion that the amount was paid by him as cost of the additional post. A scrutiny of his evidence shows that the

actual grievance of the complainant is that before granting electricity service connection to his house or to the property of his mother, the accused granted connection to the house of his subordinate in office. There is reason to believe that what really provoked him to file a complaint against the accused is that while declining service connection to the house of the complainant on some ground including necessity of an additional post, the Sub Engineer, without any delay, granted connection to the house of his subordinate. There is reason to believe that his ego as a senior officer worked in such a circumstance and he decided to trap the Engineer who did not consider his application first.

10. PW9, examined by the prosecution is an Engineer of the K.S.E.B. PW7, the Assistant Executive Engineer has explained the procedure for granting electricity connection. Such details are there in the evidence of PW9 also. In fact, his evidence is in favour of the accused to an extent, probalising the case of the defence, that necessity of an additional post was found during the process, and that it was

not in fact covered by the initial estimate. His evidence shows that some additional amount was required for installing an additional electric post, and by installing such an additional post, service connection was later granted to the complainant. It is here, the case of the accused assumes importance that some money was demanded by the contractor for installing such an additional post. Of course, it is true that without sanction from the K.S.E.B, the contractor cannot, on his own, install such a post. It appears that in view of the delay that might be caused in the official procedure, the contractor volunteered to install a post for which he demanded money. However, the post was in fact installed by the K.S.E.B. The defence case is that the amount of ₹ 500/- was in fact received by the accused on behalf of the contractor as the cost of the additional post required. Though such a case is not fully proved, there is something to probabalise such a case. DW1 was a Meter Reader in the K.S.E.B at that time. His evidence also, to an extent, probabalises the defence case, that when necessity of an additional post is found during the process, electricity

service connection cannot be granted by the Engineer without getting sanction from the K.S.E.B for installing such an additional post. The grievance of the complainant is that the accused declined to grant connection saying that an additional post was required. The said act of the accused finds justification in the evidence of DW1. DW2 is the contractor Sahadevan who supports the defence. Though his evidence cannot be fully accepted, the other evidence given by PW9 and DW1, to some extent, substantiates the defence projected by the accused. Here also I find that the case of the complainant is some what suspicious. Evidence does not unerringly prove that ₹ 500/- was in fact received by the accused as a reward for giving electricity connection. On the other hand, there is something to suspect that it was received by him in a circumstance where an additional post was found necessary, and some additional expense was also found necessary. Payment of such amount was required when the initial estimate prepared by the K.S.E.B did not cover such an additional post. When the court reads and appreciates the whole evidence, there is reason to believe

that the defence projected by the accused cannot be totally ignored. I find that in view of the material inconsistency between the complainant and the independent witness as regards the exact place where payment of gratification was made, and also in view of the embellishment made in evidence, during trial, as regards the date of demand, the evidence of the complainant cannot be accepted as blemish less. I find that the case of the complainant is suspicious, and the benefit of this suspicion must necessarily go to the the accused.

In the result, this appeal is allowed. The appellant herein is found not guilty of the offences under Sections 7 and 13 (2) read with 13 (1) (d) of the P.C Act, and he is acquitted in appeal, under Section 386 (b) (i) of Cr.P.C. Accordingly, the conviction and sentence against the appellant in C.C No.23 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