

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 376 of 2009 ()

AGAINST THE JUDGMENT IN CC 17/2005 of ENQ.COMMR. &
SPL.JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED.:

ASOKAN, AGED 45, S/O.APPU,
FORMERLY L.D.CLERK, TALUK OFFICE, KOTTARAKKARA.

BY ADVS.SRI.C.PRATHAPACHANDRAN PILLAI
SRI.R.SURAJ KUMAR

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.376 of 2009**  
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Dated this the 4th December, 2015

J U D G M E N T

The appellant herein was a Lower Division Clerk in the Revenue Taluk Office, Kottarakara in July, 2003. On the allegation that he accepted an illegal gratification of ₹ 1000/- on 20.7.2003 at his office, from one Rahmathulla as a reward for favourable action on the application of Rahmathulla's mother-in-law for changing the nature of her land in the revenue records, the appellant faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance) Thrissur in C.C 17/2005. The said prosecution was initiated by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau (VACB), Kollam on a complaint made by the said Rahmathulla. After investigation, the vigilance submitted final report in court under the provisions of the Prevention of Corruption Act, 1988 (for short "the P.C Act").

2. The appellant 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 P.C Act. The prosecution examined ten witnesses and also proved Exts.P1 to P17 documents. MO1 to MO6 material objects were also identified during trial, including the phenolphthalein tainted currency of ₹1,000/-. The defence examined five witnesses.

3. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances, and projected a defence that the trap in this case is vicious one, arranged at the instance of PW4, the then Junior Superintendent of the office of the Tahsildar.

4. On an appreciation of the evidence adduced on both sides, the learned trial Judge found the accused guilty. On conviction, he was sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹ 5000/- each under Sections 7 and 13 (2) read with 13 (1)(d) of the P.C Act by judgment dated 31.1.2009. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

5. When this appeal came up for hearing, the learned counsel for the appellant submitted that the

prosecution does not have any satisfactory evidence to prove demand, without which a prosecution cannot be sustained under Sections 7 and 13 (2) of the Act, and that the trap in this case is in fact a vicious one, arranged by PW4 by using the complainant Rahmathulla. The learned counsel also argued about some inconsistencies in the evidence and also about some delay in the F.I.R. On the other hand, the learned Public Prosecutor submitted that there is absolutely no delay in F.I.R that the trap is a genuine one made on a genuine complaint, and that the essentials also stand well proved by positive evidence.

6. Of the ten witnesses examined by the prosecution, PW1 is the complainant Rahmathulla, PW2 is the trap witness arranged by the Detecting Officer, PW3 and PW4 are the Tahsildar and the Junior Superintendent who produced some documents before the vigilance during investigation, PW6 is the sanctioning authority who proved Ext.P12 prosecution sanction granted under Section 19 of the P.C Act, PW7 is the Village Officer who prepared the scene plan, PW10 is the Dy.S.P who made detection and conducted initial part of investigation, PW8 is the Vigilance

Officer who further investigated the case, and PW9 is the Vigilance Officer who submitted final report. The main evidence is that of PW1, PW2, PW6 and PW10. PW5 turned hostile during trial. Of the five witnesses examined by the defence, DW1 is the Tahsildar, DW2 and DW3 are Village Officers, DW4 is the direct brother of the accused, and DW5 is the then President of the local Panchayat.

7. Before going to the factual aspects regarding 'demand' and 'acceptance', let me see whether the prosecution sanction is proved in this case according to law. Ext.P12 is the prosecution sanction granted by PW6, and this sanction stands well proved by him in evidence. His evidence satisfies the court that he granted the sanction on an independent application of mind to the facts of the case and also on a consideration of all the relevant materials and aspects. Much cross-examination was not made on these aspects by the defence. I find that the prosecution sanction stands well proved according to law. PW1, PW2 and PW10 have given convincing and satisfactory evidence proving the pre-trap and the post-trap procedures. Ext.P1 file contains the application made by the complainant's mother-

in-law for changing the nature of her land in the revenue records. As regards this file or the application, the defence does not have much dispute. The learned counsel's arguments are mainly on “demand” which is an essential element to prove the offences alleged. Ext.P3 is the complaint made by PW1 on 20.7.2003. Of course, at the top of the F.I Statement, the date is shown as 20.6.2003. As regards this, a report was subsequently made by the police before the learned trial Judge indicating a mistake and seeking correction in the date of F.I.R.

8. On a close examination of Ext.P3 complaint, I find that the said complaint was in fact made by PW1 on 20.7.2003 and the F.I.R was also registered on 20.7.2003. I find that the date written as 20.6.2003 on the top of the F.I.R is only a mistake. In the body of the statement also, the complainant has referred to the previous day as 19.7.2003. This unerringly proves that the F.I. Statement was in fact given by PW1 on 20.7.2003, and there is no reason at all to doubt that it was made on 20.6.2003. Thus, I find that there is absolutely no delay in F.I.R in this case.

9. PW1 has given convincing evidence proving all

the essentials of the offences alleged. His case is that when he approached the accused at his office on 19.7.2003, the accused demand ₹ 1000/- as a reward for doing things favourably, and accordingly he was directed to come on next day with the amount. Though it was a Sunday, he told the complainant that he would be in the office till noon. As he was not inclined to make payment of bribe, he approached the vigilance on the next day and made complaint. The amount of ₹ 1000/- brought by him was seized by the Dy.S.P as per a mahazar, it was treated with phenolphthalein, and the required test was demonstrated to him and the other witnesses including PW2. After that he was directed by the Dy.S.P to approach the accused at his office and make payment of money. As instructed, he approached the accused at his office at about 11.15 a.m on 20.7.2003 where he was found sitting on his chair without wearing shirt. When the accused saw him he made demand again, and accordingly, he paid the phenolphthalein tainted currency of ₹ 1000/- which the accused accepted in his hands. Immediately he came out and passed the pre-arranged signal. Within no time, the vigilance party led by

PW10 reached there, seized the phenolphthalein tainted currency from the possession of the accused, and arrested him on the spot.

10. PW2 is the trap witness. He was Agricultural Officer at the relevant time at Karunagappally. He has also given definite evidence proving acceptance of money by the accused from the complainant and also proving the fact of recovery of the said amount by the vigilance. There is absolutely no reason why this witness should be disbelieved. Of course to prove demand, there is only the evidence of the complainant. It was submitted that in such cases, it would be unsafe to act upon the uncorroborated evidence of the complainant. But here, acceptance stands well proved. When there is untainted evidence proving acceptance of bribe, it will definitely support and corroborate the evidence given by the complainant proving demand. This Court and the Hon'ble Supreme Court have settled the position in many decisions that without proof of demand and acceptance, a conviction is not possible under the provisions of the P.C Act. Recently, the Hon'ble Supreme Court held in **B.Jayaraj v. State of Andhra Pradesh** [2014 Crl.L.J

2433] that in the absence of proof of demand of illegal gratification, a conviction is not possible under Section 7 or 13 (1) (d) of the P.C Act, and it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 (1) of the P.C Act. Once it is proved that the accused had accepted illegal gratification as a reward for doing something as meant under Section 7 of the P.C Act, the court will have to apply the statutory presumption that such money was accepted by the accused as reward as meant under the law. In this case, the aspect of acceptance of illegal gratification stands well proved by the evidence of PW1 and PW2.

11. Very recently in **Sathyanarayana Murthy v. District Inspector of Police [2015 (4) KLT SN 47 (Case No.53) SC]**, the Hon'ble Supreme Court held that mere possession and recovery of currency notes from the accused without proof of demand would not establish an offence under Section 7 as well as Section 13 (1) (d) read with 13 (2) of the P.C Act. Thus, it stands well settled that for a conviction under Section 13 (2) of the P.C Act, the prosecution must prove the essentials like 'demand' and

'acceptance'. Without proof of demand, there cannot be a prosecution or a conviction under Section 7 or Section 13 (2) of the P.C Act. So also, without proof of acceptance, application of the presumption under Section 20 (1) of the P.C Act is not possible.

12. In this case, I find, on an appreciation of the entire evidence, that the prosecution has well proved the essentials to the satisfaction of the court. Demand for ₹ 1000/- made by the accused is convincingly proved by the evidence of PW1, and this evidence is well corroborated by the other evidence proving recovery of the tainted money paid by PW1 as illegal gratification. Acceptance of this amount is well proved by the trap witness examined as PW2. The learned counsel argued on some slight inconsistencies. One is that in cross-examination PW1 stated that demand was made by the accused on 19.7.2003 at the varandha of the office. But such a statement is not seen made in the complaint or in the statement given under Section 161 Cr.P.C. The complainant has nowhere stated in the F.I.Statement that the demand was made by the accused inside the office. His evidence is that demand was

made by the accused at his office. Varandha is a part of the office. Another suspicious circumstance argued by the learned counsel regarding the evidence of PW2 is that this witness could not in fact have seen the acceptance of money by the accused from distance of 20 mtrs. The evidence of PW2 is that as instructed by the vigilance, he and the complainant proceeded to the Taluk Office, the complainant entered inside and he remained outside within a short distance, and from the said distance he could very well see the payment of money by the complainant to the accused. During trial, PW2 identified the accused as the person who received the money, and he well explained how he could see or witness the payment of money by the complainant. I find nothing to disbelieve PW2 on these aspects.

13. Recovery of the tainted money stands well proved by the Detecting Officer examined as PW10. He has also proved post-trap and pre-trap procedures. I find nothing to show that the trap in this case is a vicious one.

14. The witnesses examined by the defence do not prove or probabalise the defence case. Of course, the five

witnesses have stated something in evidence, but this evidence is in no way sufficient to disprove what is well proved by positive evidence. The essentials stand proved by the evidence of PW1, PW2 and PW10.

15. Once acceptance of bribe is proved, the court will have to apply the presumption under Section 20 (1) of the P.C Act that the accused received the amount as reward for doing some favours illegally, as meant under Section 7 of the P.C Act. I find no reason to disbelieve the evidence of the complainant in this case. The defence case is that PW1 was in fact used by PW4 to make a false complaint. On this aspect also, the defence could not bring out anything in the evidence of PW4. The evidence given by the complainant and PW2 is fully consistent. I find no material inconsistency in the evidence of these two witnesses; I find that the prosecution has well proved the case beyond any reasonable doubt, and accordingly the conviction against the appellant is only to be confirmed in appeal.

16. Let me see whether the sentence in this case requires interference. The incident happened in 2003. Now we are in 2015. Considering the long lapse of years, and

the trauma undergone by the accused, and also on a consideration of the amount involved in the case, I find that that some interference can be made in the matter of sentence. The minimum sentence under Section 7 of the P.C Act now after 2014 is imprisonment for three years and the minimum sentence under Section 13 (2) of the P.C Act is imprisonment for four years. As on the date of commission of the offence in this case, the minimum sentence for the offence under Section 7 of the P.C Act was imprisonment for six months, and the minimum sentence for the offence under Section 13 (2) of the P.C Act was imprisonment for one year. In the particular facts and circumstances, I find that the minimum sentence possible on that date will be the adequate sentence.

In the result, this appeal is allowed in part to the very limited extent of modifying and reducing the sentence imposed by the trial court. The conviction made by the trial court against the appellant under Section 7 and 13(2) of the P.C Act will stand confirmed. But, the sentence imposed by the court below under Section 7 of the P.C Act will stand reduced to rigorous imprisonment for six months and the

sentence imposed under Section 13 (2) read with 13 (1) (d) of the P.C Act will stand reduced to rigorous imprisonment for one year. The fine sentence, with the default sentence thereon, imposed by the court below is maintained.

Sd/-
P.UBAID
JUDGE

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/True copy/

P.S to Judge