IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

CRL.A.No. 470 of 2009 ( )

AGAINST THE JUDGMENT IN CC 39/2002 of ENQUIRY COMMISSIONER & SPECIAL JUDGE,KOZHIKODE

APPELLANT(S)/ACCUSED:

JOHN, S/O. MANI,
PUTHANPURAYIL HOUSE, NELLIYAMBLAM, NADAVAYAL
WYNAD DISTRICT, (S.I OF POLICE, AMBALAVAYAL)

BY ADVS.SRI.M. ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16.10.2015, THE COURT ON 13-11-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.
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Crl.A No.470 of 2009
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Dated this the 13th November, 2015

J U D G M E N T

The appellant herein is a Sub Inspector of Police having a good service entry to his credit. He faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance) Kozhikode in C.C No.39 of 2002 on the allegation that on 15.3.2001, he accepted an amount of ₹ 250/- from one Abdul Gafoor as a reward for releasing the registration certificate and other documents relating to the vehicle No.KL-3A/7765 seized by the Sub Inspector on 13.3.2001. The Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau (VACB) Wayanad registered a crime against the appellant on the complaint of the said Abdul Gafoor on 15.3.2001. The case of the complainant is that his vehicle KL-3A/7765 was seized by the Sub Inspector on 13.3.2001 on the ground that tax was not paid up todate, and that he had no badge to drive transport vehicle, and on 14.3.2001 the vehicle was released to him when he produced the documents including the document showing remittance of tax. However,for releasing the registration certificate and other documents relating to the vehicle, the Sub Inspector demanded an amount of ₹ 250/- on 14.3.2001. He was required to come on 15.3.2001 with the amount. As Abdul Gafoor and the registered owner of the vehicle were not inclined to make payment of bribe, Abdul Gafoor approached the VACB and made a complaint. On the said complaint, the Dy.S.P arranged a trap. The amount of ₹ 250/- brought by the complainant was treated with phenolphthalein, and the complainant was instructed to approach the Sub Inspector, and make payment, if demanded further. It is alleged that accordingly the complainant approached the Sub Inspector and made payment of the phenolphthalein tainted currency of ₹ 250/-when he repeated the demand. Within no time, on getting signal, the vigilance team led by the Dy.S.P reached there, seized the phenolphthalein tainted currency, and arrested him on the spot. After investigation, the VACB submitted final report before the court below.

2. The appellant entered appearance 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 also proved Exts.P1 to P21 documents including the complaint and the prosecution sanction granted under Section 19 of the P.C Act. MO1 to MO6 properties including the tainted currency were also identified and marked during trial. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances and submitted that he was viciously trapped by the owner of the vehicle for the reason that he was not inclined to release the vehicle on the spot as demanded by the registered owner, who is a political leader,and that he had not demanded or accepted any illegal gratification from the complainant, or the registered owner. The accused examined one witness in defence as DW1. During trial, the complainant turned fully hostile to the prosecution. However, on an appreciation of the evidence, the learned trial Judge found the accused guilty. On conviction, the accused was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 2000/- each under Sections 7 and 13 (2) read with

Section 13 (1) (d) of the P.C Act. Aggrieved by the said judgment of conviction dated 25.2.2009, the accused has come up in appeal.

3. When this appeal came up for hearing, the learned counsel for the appellant submitted that the prosecution does not have any material to prove the essentials of the offence alleged, that the complainant disowned his complaint and turned hostile to the prosecution, and that the appellant is entitled for acquittal. On the other hand, the learned Public Prosecutor submitted that though the complainant turned hostile, there are other materials and circumstances to prove the alleged offence.

4. Of the twelve witnesses examined by the prosecution, PW1 is the complainant Abdul Gafoor, PW2 is the trap witness arranged by the VACB, PW4 is the Police Constable who had accompanied the complainant to the police station on 14.3.2001 to verify the truth of the allegation regarding demand for illegal gratification, PW11 is the Deputy Inspector General of Police examined to prove the prosecution sanction, PW10 is the Dy.S.P who detected

the offence, and PW12 is the Vigilance Officer who submitted final report. DW1 is an Assistant Sub Inspector examined by the accused to prove the relevant entries in Ext.P15, General Diary for disproving the prosecution case that the accused had demanded ₹ 250/- on 14.03.2001.

5. Ext.P1 is the complaint made by PW1 against the accused. In the complaint, it is alleged that his vehicle was seized by the Sub Inspector on 13.3.2001 and on 14.3.2001, the Sub Inspector demanded an amount of ₹ 250/- for releasing the registration certificate and other documents relating to the vehicle. Thus, the complainant is definite that the demand was made by the accused on 14.3.2001, but as he was not inclined to make payment of bribe, he approached the VACB and made complaint on 14.3.2001, the day on which he was required to bring the amount by the Sub Inspector. But during trial, the complainant turned fully hostile to the prosecution. The prosecution does not have any other evidence to prove the alleged demand and acceptance. PW2, the trap witness is not a witness to the payment of bribe. His case is that he remained outside when the complainant approached the

Sub Inspector at his room, and on getting signal, the vigilance party reached there immediately. PW2 identified the signature in the Ext.P6 recovery mahazar. The process of recovery of tainted money stands proved by the evidence of PW2, and also the evidence of the Detecting Officer, examined as PW10. The complainant is the only witness examined by the prosecution to prove the alleged demand and acceptance. Of course, he admitted his signature in the Ext.P1 complaint, but stood firm to his versions, that the Sub Inspector had not demanded any bribe from him, and that he had not paid anything to the Sub Inspector as bribe. He was cross-examined by the learned Public Prosecutor with the permission of the court. In cross-examination, he stated that as designed by him, and the registered owner of the vehicle, he and the registered owner approached the Sub Inspector at his quarters on 15.3.2001 and they put the tainted money given by the Dy.S.P in the pant's pocket of the appellant without his knowledge. He also stated that that they did so to see that the Sub Inspector, who declined to release the vehicle, is trapped.

6. In **<u>Vinod Kumar</u> v. <u>State of Punjab</u> [AIR 2015 SC 1206]**, the Hon'ble Supreme Court held that the mere fact that the complainant turned hostile during trial would not result in collapse of the whole prosecution case. It was held that in such cases, the prosecution can prove the essentials by other evidence possible. Here the question is whether the prosecution has any other evidence or circumstance to prove the essentials like demand and acceptance. In **<u>B.Jayaraj</u> v. <u>State of Andhra Pradesh</u> [2014 Crl.L.J 2433],** a three Judge Bench of the Hon'ble Supreme Court held that in the absence of proof of demand and acceptance, mere recovery of tainted money from the accused will not be sufficient for a conviction under Section 7 or 13 (2) of the P.C Act. The Hon'ble Supreme Court also held that the presumption under Section 20 (1) of the Act can be applied only when acceptance of illegal gratification is proved. In **<u>Purushotham M.R</u> v. <u>State of Karnataka</u> [2015 Crl.L.J 72],** the Hon'ble Supreme Court held that in a case where the complainant in the case turned hostile during trial, mere recovery of currency notes from the accused without proof of demand will not bring home the

offence under Section 13 (2) read with 13 (1) (d) of the P.C Act. Very recently, the Hon'ble Supreme court held in **<u>Sathyanarayana Murthy</u> v. <u>District Inspector of Police</u>** [**2015 (4) KLT SN 47 (Case No.53) SC]**, that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, *de hors* the proof of demand, *ipso faco*, would not be sufficient to prove a charge under Sections 7 or 13 (1) (d) of the P.C Act.

7. In this case, recovery of tainted money stands proved by the evidence of PW2 and PW10. But the prosecution does not have any evidence to prove the essentials like 'demand' and 'acceptance'. It is well settled by various pronouncements of the Hon'ble Supreme Court that mere recovery of tainted money will not be sufficient for a conviction under Sections 7 or 13 (2) of the P.C Act, when the prosecution does not have any material or evidence to prove the essentials. The essentials to be proved in such a prosecution are 'demand' and 'acceptance.'. Here the complainant turned hostile to the prosecution. Strangely enough, the prosecution did not examine anybody to prove the essentials in this case. The trap witness is not a witness

to the acceptance of money.

8. It is pertinent to note that the case of demand alleged by the prosecution stands disproved by the entries in the Ext.P15 General Diary produced by the prosecution. The case of the complainant in Ext.P1 is that illegal gratification of ₹ 250/- was demanded by the Sub Inspector on 14.3.2001. PW4, the Police Constable also would support this allegation. But there is the evidence of DW1, the Assistant Sub Inspector of Police regarding the relevant entries in the Ext.P15 General Diary that on 14.3.2001, the Sub Inspector was away from the Police Station from 9 a.m to 8.45 p.m. Relevant entries in the Ext.P15 General Diary proved by DW1 well proves that on 14.3.2001, the accused left the police station at 9 a.m giving the General Diary charge to DW1, and he returned at the police station only at 8.45 in the night. This means that the story of demand told by the complainant and alleged by the prosecution, that the Sub Inspector demanded ₹ 250/- at the police station on 14.3.2001 is false.

9. Ext.P1 is the Service Book relating to the accused. This Court fails to understand why the prosecution

produced Ext.P15 General Diary and Ext.P11 service book containing very important entries in favour of the accused. As found above, the General Diary entries are in favour of the accused and this will disprove the prosecution case of demand. Ext.P1 service book contains a good service entry in favour of the accused in page No.28. The said entry was made on account of the earnest efforts by the Sub Inspector in bringing down the pendency of crimes from 633 to 69, while working as Sub Inspector of Police, Vadakara. Even while prosecuting the Sub Inspector on the allegation that he accepted bribe, the prosecution proved the good service entry in favour of the accused. While alleging the demand made on 14.3.2001, the prosecution proved otherwise that the Sub Inspector was away from the Police Station on 14.3.2001. There is reason to believe that the trap in this case was viciously arranged at the instance of the complainant and the registered owner of the vehicle, to see that the Sub Inspector is somehow dealt with.

10. As found above, the prosecution in this case does not have any material to prove the essentials of the offence alleged. The complainant stated that the Sub Inspector had

not demanded any illegal gratification from him. He also stated that he had not made payment of any illegal gratification to the Sub Inspector. As regards the tainted money, his evidence is that it was not in fact paid by him to the Sub Inspector, but it was put in the pant's pocket without his knowledge. The prosecution did not examine any other witness to prove “demand” or “acceptance”. PW2 has no case that he had witnessed payment of money to the Sub Inspector by the complainant.

11. Ext.P21 prosecution sanction stands properly proved by the Deputy Inspector General of Police examined as PW11. But on facts, I find that the appellant is entitled for acquittal in the absence of any material or circumstance to prove the essentials of the offences alleged. PW4, the Police Constable made an attempt to prove that the Sub Inspector had made a demand on 14.3.2001. He has no case that he had entered the room of the Sub Inspector when the complainant met the Sub Inspector. He claims to have overheard the conversation from outside. But I am not inclined to believe the evidence of PW4 in view of the clear evidence given by DW1 on the basis of the entries in the

Ext.P15 General Diary that the Sub Inspector was in fact away from the police station on 14.3.2001 from 9 a.m to 8.45 p.m. The prosecution has proved, by producing documents, that the accused is a Sub Inspector having a good service entry to his credit, and that on the day on which demand was allegedly made by the Sub Inspector, he was in fact away from the Police Station. It is not known why or for what purpose, the prosecution produced Ext.P15 General Diary or Ext.P11 service book. In the absence any evidence or material proving the prosecution case, or proving the essentials like demand and acceptance, the accused cannot be found guilty by the court simply because some tainted money was seized from his possession by the Deputy Superintendent of Police, VACB. The decision of the Hon'ble Supreme Court in **Vinod Kumar's** case will not in any manner help the prosecution here, when the prosecution does not have any other material or circumstance to prove the essentials, I find that, in the absence of any evidence to prove the prosecution case, or the essentials like 'demand' and 'acceptance', the appellant is entitled for acquittal. The finding of guilty and also the conviction against the appellant are liable to be set aside.

In the result, this appeal is allowed. The appellant is found not guilty of the offences under Sections 7 and 13(2) of the P.C Act, and accordingly, he is acquitted of the said offence in appeal under Section 386 (b) (i) of Cr.P.C. The conviction and sentence against the appellant in C.C No. 39 of 2002 of the court below will stand set aside, and the appellant will sand released from prosecution. The bail bond, if any, executed by the appellant will stand discharged.

Sd/-
P.UBAID
JUDGE

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/True copy/

P.S to Judge