IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No. 480 of 2007

AGAINST THE JUDGMENT IN CC 5/2004 OF THE ENQUIRY COMMR.& SPL.JUDGE,THRISSUR DATED 20-02-2007

APPELLANT/ACCUSED:

P.D.NARAYANAN, FORMER SECRETARY,
THURAVOOR GRAMA PANCHAYATH, THURAVOOR,
ANGAMALY
ERNAKULAM DISTRICT, (PALAPARAMBIL HOUSE,
POYYA DESOM, PALLIPPURAM P.O.,
KODUNGALLOOR TALUK
THRISSUR DISTRICT)

BY ADV. SRI.P.L.DEVADAS

RESPONDENTS/COMPLAINANT:

1. THE DEPUTY SUPERINTENDENT OF POLICE,
   VIGILANCE AND ANTI-CORRUPTION BUREAU,
   ERNAKULAM.

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

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.UBAID, J.

Crl.A No.480 of 2007

Dated this the 26th day of October, 2015

J U D G M E N T

The appellant herein was the Secretary of the Thuravoor Grama Panchayath in 2000-2001. On the allegation that he demanded an amount of ₹2,000/- as bribe from one Vicar, on an application for permission to construct a concrete cemetery, and that when the Vicar declined his request, the Secretary made some false entries in the building tax assessment register to defeat the interest of the Vicar, the accused faced prosecution in C.C No.5/2004 before the Enquiry Commissioner and Special Judge (Vigilance), Thrissur. The Vicar, Fr.Varghese Mannarambil made a complaint before the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau (VACB), Thrissur. After investigation, the VACB submitted final report in court under Sections 7 and 15 r/w Section 13(1)(d) of the Prevention of Corruption Act (P.C Act) and also under Sections 465, 468 and 477A of the Indian Penal Code.

2. The appellant appeared before the learned trial judge and pleaded not guilty to the charge framed against him

under Sections 7 and 15 r/w Section 13(1)(d) of the Prevention of Corruption Act (P.C Act) and also under Sections 465, 468 and 477A of the Indian Penal Code.

3. The prosecution examined nine witnesses in the trial court and also marked Exts.P1 to P31 documents. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances and submitted that he had not made any demand as alleged by the prosecution, and that he had not made any false entry, as alleged. The accused did not adduce any evidence in defence.

4. On an appreciation of the evidence, the trial court found that the accused had made a demand as alleged by the prosecution and that he had made false entries in the building tax assessment register, after the complainant declined the demand for bribe. On conviction, he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹10,000/- under Section 7 of the P.C Act, to undergo rigorous imprisonment for one year under Section 15 of the P.C Act, to undergo rigorous imprisonment for a further period of three months under Section 477A of IPC, and to undergo rigorous imprisonment for one year under Section 465 IPC, by judgment

dated 20.2.2007. Aggrieved by the judgment of conviction, the accused has come up in appeal.

5. On hearing the learned counsel, and on a perusal of the entire materials I find that the conviction in this case is really baseless. The prosecution case is that on 1.11.2001, the accused demanded an amount of ₹2,000/- from the complainant (PW1) for giving necessary permission for construction of a concrete cemetery. It is alleged that on the said date the accused inspected the premises on the application of the Vicar, and the necessary measurements were also made by him to verify whether the proposed cemetery is within the prohibited distance from the nearby houses. The prosecution alleges that to PW1, PW2, PW3 and PW4, the Panchayath Secretary made a demand for ₹2,000/- to permit the proposed construction. It is also alleged by the prosecution that the complainant Fr.Varghese Mannarambil declined the request on the spot, and declared openly that he would not pay any amount as bribe. It is not known how this will constitute an offence of attempt to accept illegal gratification. A mere demand for illegal gratification cannot be punished as attempt, under Section 7 of the P.C Act or under Section 15 of the P.C Act. What is

punishable under Section 15 of the P.C Act as attempt, is infact attempt to commit an offence referred to in clause (c) or clause (d) of sub section (1) of section 13. Here what is alleged is an attempt under Section 7 of the P.C Act. A mere attempt to receive bribe otherwise than as meant under Section 15 of the P.C Act is punishable under Section 7 of the P.C Act itself. Acceptance of bribe or even attempt to obtain any illegal gratification is punishable under Section 7 of the P.C Act. Then it is not known how this accused was convicted by the trial court under Section 15 of the P.C Act which deals with only an attempt for the commission of an offence defined under Clause (c) or Clause (d) of sub Section (1) of Section 13 of the P.C Act. It is well settled that to constitute the offence of attempt to accept illegal gratification, something more than a mere demand is required. It is true that attempt is not defined under the Indian Penal Code or under the P.C Act. Attempt to commit an offence must involve some positive act towards the commission of an offence, which was prevented by some act or force. But for the said intervention or prevention the accused would have completed the act of offence. Only such an attempt will constitute attempt as meant under the law. Here the demand was declined by the complainant on the spot, and he openly declared that he would not make payment of any amount of bribe. Then it is not known how the said demand is punishable under Section 7 or under Section 15 of the P.C Act.

6. Now let me come to the facts of the case. The prosecution case is that when the complainant declined the demand for payment of bribe, the accused, by misusing his position as Panchayath Secretary, made some false entries in the Panchayath Building Tax Assessment Register, with the intention of defeating the interest of the Vicar, who had made an application for permission for the construction of a cemetery.

7. It is alleged that to create evidence that there are some house buildings within a distance of 25 meters from the proposed cemetery, the accused made some false entries in the register. It is alleged that the said entries were made regarding the house of one Saramma and the house of one Sajeevan. To prove this, the prosecution relies on Ext.P4(a), P5, P12 and P12 (a) documents. Ext.P12 is the original assessment register for the year 2000-01 and Ext.P12(a) is the true extract of the relevant entries regarding the house of Saramma. Ext.P5 is said to be a true extract issued by the accused on an application

made by PW2. This extract is not seen singed anybody. This is just a photostat copy which is not authenticated by anybody as a true extract of the original entries. It is true that it bears the seal of the Panchayat. But it is not seen signed anybody as a true extract or a true copy. If so, Ext.P5 cannot be accepted as a valid or legal document, and it cannot be considered as a true extract of the entries in the register. Ext.P12 document contains entries regarding the houses of Sajeevan and Saramma. These are said to be falsely made by the accused to create evidence that these two houses are within the distance of 25 meters from the proposed cemetery. The prosecution case is that the accused made these false entries after 1.11.2001. Demand for bribe was allegedly made by the accused on 1.11.2001. Then the question is whether these entries were in fact falsely made by the accused, and also whether these were made by him after 1.11.2001.

8. PW6 is the Upper Division Clerk examined by the prosecution to prove this aspect. His evidence is that Ext.P12(a) entry in the Ext.P12 register regarding the house belonging to Saramma was made by him as instructed by the Panchayath Secretary. He does not say when, or on what date

the said entry was made by him. There is nothing in his evidence to show that the said entry was made by him as instructed by the accused, after 1.11.2001. The particular entry shows that it was made on 22.8.2001. It is pertinent to note that in re-examination the learned Public Prosecutor brought out from PW6 that the said entry was made on an application made by Saramma. PW6 proved Ext.P19 as the application dated 20.8.2001 made by Saramma. He even stated that on the said application enquiry was made by him, and on the basis of the report of enquiry, the disputed entry was made. Thus the learned Public Prosecutor himself well cleared in re-examination that the disputed entry regarding Saramma in Ext.P12 was infact made on her application dated 20.8.2001. The entry was made on 22.8.2001. Then it is not known how the prosecution would allege that the said entry was falsely made by the accused by misusing his position as Secretary of the Panchayath. Ext.P4(a) is the true extract of the Ext.P12(a) entries. Ext.P12 contains entries regarding house No.374A belonging to Saramma in Ward No.9. The prosecution relies on Ext.P5 extract to prove that the entries relating to Saramma were later made falsely. This case of prosecution cannot be accepted on two grounds. One is that

Ext.P5 document has no validity in law, because it is not certified as true extract of the entries. The other ground is that the learned Public Prosecutor himself brought out in the re-examination of PW6 that the disputed entry which is said to be false, was in fact made by PW6 on an application made by Saramma. PW6 has no case in his evidence that the said entry was made by him as instructed by the Secretary, after 1.11.2001. If so, much discussion is not required to find that it is not in fact a false entry.

9. As regards the entry relating to Sajeevan PW5 has no case in evidence that the said entry was made by him as instructed by the Panchayath Secretary, after 1.11.2001. It can be considered as a false entry created by the Secretary to defeat the interest of the complainant only it was made after 1.11.2001 because, demand for bribe was declined by the complainant on 1.11.2001. An entry made before 1.11.2001 by the Secretary or by the Ministerial staff, cannot be said to be false entry against the interest of the complainant who declined the demand for bribe on 1.11.2001. Thus I find that PW5 or PW6 does not say anything regarding the date on which the disputed entry was made, and there is absolutely nothing in their evidence to prove

that the disputed entries were made after 1.11.2001. I find that the accused cannot be found guilty on the allegation of forgery in this case.

10. Even otherwise, a conviction is not possible in this case under Section 465 of the Indian Penal Code or under Section 477A of the Indian Penal Code. Merely making false entries in a public document or register is an offence defined under Section 192 of the Indian Penal Code. Such an offence is punishable under the second part of Section 193 of IPC. Making false entries in a document or register will become punishable under Section 465 IPC, only if the entries were made with some object as meant under Section 463 IPC. For a conviction under Section 477 A IPC the prosecution must have a case that the forgery was made with intent to defraud. Thus I find that the conviction in this case under Section 465 IPC or 477A IPC is also liable to be set aside. Now let me come to the other aspect, whether the accused can be punished under the second part of Section 193 of IPC. For such a conviction, there must be clear evidence to prove that the disputed entries were falsely made by the accused with intend to create evidence in a proceeding. I have already found that the disputed entries cannot be said to be

falsely made. When there is nothing to show that the disputes entries were in fact made by the accused falsely with an intend to create evidence, he cannot be found guilty or convicted under the second part of Section 193 of the Indian Penal Code also.

11. As discussed in the forgoing paragraphs I find that the conviction against the appellant is liable to be set aside. A mere demand for illegal gratification cannot be punished as an attempt to accept illegal gratification under the P.C Act. In the absence of anything to prove that those entries were infact falsely made by the accused, or at his instance, the accused cannot be punished under Section 465 IPC or under Section 477A IPC, or even under the second part of Section 193 IPC.

In the result, this appeal is allowed. The conviction and sentence against the appellant in C.C No.5/2004 of the court below will stand set aside on the finding that he is not guilty of the offences under Sections 7 and 15 of the P.C Act and under Sections 468 and 477 A of the IPC. Accordingly, the appellant is acquitted in appeal under Section 386(b)(i) of Cr.P.C. The bail bond executed by him will stand discharged.

P.UBAID
JUDGE

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