IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

CRL.A.No. 1043 of 2006 ( )

AGAINST THE JUDGMENT IN CC 23/2004 of ENQUIRY COMMR.& SPL.JUDGE,THRISSUR

APPELLANT(S)/ACCUSED::

K.K. SUMANGALA, FORMER U.D.C.,
VADAKKUMKARA SUB REGISTRY OFFICE, VELLANGALLUR
RESIDING AT KALLAYIL HOUSE, MANDUR VILLAGE
P.O. KANJANI, THRISSUR DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENT(S):

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

BY ADV. PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT ON 24-07-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.

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Crl.A No.1043 of 2006

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Dated this the 24th July, 2015

J U D G M E N T

The appellant herein was an Upper Division Clerk in the Sub Registrar's Office, Vellangalloor (Thrissur District) in September 2001. The Vigilance and Anti Corruption Bureau (VACB), Thrissur registered a crime against her on 17.9.2001 on the complaint of one Ram Mohan, that the appellant demanded and accepted an illegal gratification of ₹ 200/- for issuing the certified copy of a document, on his application. The demand was allegedly made on 15.9.2001, and the amount was accepted, according to the prosecution, on 17.9.2001. The complaint itself shows that the complainant himself had offered whatever is required for the copy immediately. Accepting such an offer, the appellant asked to him to come on 17.9.2001 with ₹ 200/-, and also said that copy will be given only on payment of the amount. On 17.9.2001, Ram Mohan approached the VACB and made a complaint. The VACB accordingly arranged a trap, and instructed the complainant to approach appellant and make payment on demand. Accordingly, the complainant approached the appellant at her office between 12 noon and 1 p.m on 17.9.2001 and made payment of the amount on demand. Within no time, on getting signal from the complainant, the vigilance party reached there, seized the phenolphthalein tainted currency from the possession of the accused, and arrested the accused on the spot. After investigation, the vigilance submitted final report before the learned Enquiry Commissioner and Special Judge (VACB), Thrissur.

2. The accused pleaded not guilty to the charge framed against her by the trial court under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'P.C Act'). The prosecution examined nine witnesses in the trial court and also marked Exts.P1 to P13 documents. MO1 to MO7 properties including the tainted money seized from the possession of the accused, were identified and marked on the side of prosecution. When examined under the Section 313 Cr.P.C, the accused denied all the incriminating circumstances, and submitted

that she had not demanded or accepted anything illegally from the complainant, and that the trap in this case is a vicious trap arranged by the complainant, with the help of the police, only because he could not get the certified copy of the document immediately or within the shortest possible time, as demanded by him. In defence, the accused did not examine anybody, but Exts.D1 to D9 documents were marked during trial.

3. On an appreciation of the evidence, the learned trial Judge found the prosecution true, that the appellant had accepted, an amount of ₹ 200/- from the complainant as illegal gratification, as a reward for issuing the certified copy of a document immediately. On conviction she was sentenced to undergo rigorous imprisonment for three years under Section 13 (1) (d) read with 13 (2) of the P.C Act and to undergo another term of rigorous imprisonment for three years and to pay a fine of 10,000/- under Section 7 of the P.C Act by judgment dated 9.5.2006 in C.C No.23 of 2004. Aggrieved by the said conviction and sentence, the accused has come up in appeal.

4. The learned counsel for the appellant submitted before this Court that the whole prosecution case is really suspicious and that the trap in this case was viciously arranged by the police on a false complaint of PW1. The learned counsel also submitted that apart from the suspicious evidence of the complainant, there is nothing in this case to prove the alleged demand and acceptance. But the learned Public Prosecutor submitted that the trap was arranged on a genuine complaint, and that there is nothing suspicious.

5. The short point for decision is whether the appellant herein had demanded and accepted an amount of ₹ 200/- from the complainant (PW1) as a motive or reward for issuing certified copy of a document.

6. Of the nine witnesses examined in the trial court, PW1 is the complainant Ram Mohan, PW2 is the Special Tahsildar arranged by the the Deputy Superintendent of Police (Vigilance) to witness the trap and PW7 is the Deputy Superintendent of Police (Vigilance) who detected the offence. PW9 was examined to prove Ext.P13 prosecution

sanction granted under Section 19 of the P.C Act, PW3 is the Assistant Engineer, who prepared the plan of the Sub Registrar's office, PW4 is the Village Officer who prepared the sketch of the scene of incident, PW5 is the Sub Registrar, Vellangallur, PW6 is the document writer, who made application on behalf of the complainant and PW8 is the Police Officer who partly investigated the case. To prove the alleged demand and acceptance, the prosecution relies mainly on the evidence of the complainant. The trap witness examined by the prosecution as PW2 had not in fact witnessed the payment of money by the complainant to the accused, or acceptance of money by the accused from the complainant. His evidence is only regarding the seizure of the tainted money from the drawer of the table of the accused. The evidence of the detecting officer is also that on the complaint of PW1, he registered a crime and arranged a trap. He arranged public servants to witness the trap, received the amount of ₹ 200/- brought by the complainant for the purpose of trap, and after demonstrating the required phenolphthalein test to the complainant and the others, he instructed the complainant to approach the accused and make payment, if demanded. The complainant acted in terms of his instructions, and on getting signal from the complainant, he along with his team, entered the Sub Registrar's office, seized the phenolphthalein tainted currency from the drawer of the table of the accused, conducted phenolphthalein test there also, which turned positive, and arrested the accused on the spot.

7. The defence case is that the complainant made application on a Saturday and he was asked to come on Monday with the hope that it could be given on Monday. When he came on Monday, the copy was not ready and this infuriated him. He immediately went outside, and after a few hours, he came back, put something in the drawer of the table without the knowledge of the accused, and within no time, the vigilance party came there and seized some tainted currency.

8. Of course, PW1 has given evidence substantiating the allegations in the complaint. On an

appreciation of the evidence, I find that his case is really suspicious. Ext.P1 is the application made by him for certified copy of the document, and Ext.P9 is the incomplete copy which was being prepared by the accused when the vigilance party reached there. PW1 has also stated in evidence that he voluntarily offered whatever is required for the copy immediately, and on such an offer on 15.9.2001, the accused asked him to come on 17.9.2001 with ₹ 200/-. He says that the accused had told him that copy will be given to him only on payment of ₹ 200/-. The complainant has stated that he had already some grudge against the Registrar and other staff of the Registrar's Office, in connection with the registration of a document concerning his family properties. The complainant stated like this in cross-examination:

"ആധാരത്തിൻെറ പകർപ്പ് തയ്യാറാക്കാൻ സമയമെടുക്കും എന്ന് പ്രതി പറഞ്ഞപ്പോൾ എന്നെ മനപൂർവ്വം ബുദ്ധിമുട്ടിക്കാനാണെന്ന് തോന്നിയിരുന്നു. പ്രതി കർക്കശമായി സംസാരിക്കുന്നതായാണ് തോന്നിയത്".

(when the accused told him that issuance of copy as applied for by him will take some time, he felt that he was being harassed). The statement that he felt something wrong, or he felt that he was being unnecessarily harassed by the Clerk will indicate that he proceeded to file a complaint only because he did not get copy on 17.9.2001 itself. It is pertinent to note that Ext.P9 certified copy is an incomplete copy. Ext.P9 incomplete copy was seized by the police after 1 p.m on 17.9.2001. It was being prepared by the accused when the vigilance party reached there. This means that Ext.P9 copy was not ready in the forenoon of 17.9.2001, when the complainant came in the office to receive the copy. It is really suspicious that the complainant made payment of ₹ 200/- as bribe when copy was not in fact ready till 1 p.m on 17.9.2001. This is a very important circumstance making the complainant's case really suspicious, that the accused accepted an amount of ₹ 200/- from him for issuing certified copy. He is definite that the accused had told him that copy will be given only on payment of ₹ 200/-. He has no explanation why he made payment when the copy was not ready, or without getting the copy. Thus, I find that payment of illegal gratification as alleged in the complaint and as stated by the complainant in evidence is really suspicious. It is here, the defence case assumes importance, that the trap in this case was a vicious trap.

9. The evidence of the complainant shows that on 15.9.2001, the document writer, examined as PW6, had also accompanied him to the Registrar's office. He and PW6 approached the accused and made a request to issue copy immediately. It was at that time, the accused demanded ₹ 200/- and that too, when the complainant voluntarily offered whatever is required for issuing copy immediately. This evidence will indicate that PW6 also must have heard what the accused demanded. But PW6 has no such case in evidence. He denies the prosecution case that money was demanded by the accused.

10. In many cases, the Hon'ble Supreme Court has held that when evidence regarding demand or acceptance is not acceptable or believable or in a case where the complainant turned hostile, the accused cannot be

convicted solely on the basis of the recovery of the tainted money from his possession. In this case, I find that the evidence of the complainant is really suspicious. His statements in evidence will indicate that he was very particular to get the copy on 17.9.2001 itself, but when he approached the accused on 17.9.2001 in the morning, he found that the copy was not ready, and it was only being prepared by the accused. Finding that he will not get the copy on 17.9.2001 also, he left the office with a threat that he will do whatever is required to get the copy immediately. PW6 is definite in his evidence that the complainant had made such a threat to the accused when he left the office. The statement of the complainant is that when he did not get copy on 17.9.2001 also, he felt that he was being unnecessarily harassed by the accused. Without insisting for copy anymore, and without waiting there till the copy is ready, he left the office and made complaint. It is definite that PW1 would not have made payment of gratification before getting certified copy, because his case is that the accused was very particular that she will give copy only after payment is made. It is really suspicious why he did not wait there, when the copy was being prepared by the clerk. The incomplete certified copy proved by the Registrar as Ext.P9 will make the prosecution case suspicious, and it will probabilise the defence case that the complainant arranged a vicious trap only because he could not get the copy on 17.9.2001.

11. Ext.P13 sanction stands proved by PW9. His evidence shows that he had applied his mind to the facts of the case, and he decided to grant sanction on satisfaction that there are materials to prosecute the appellant. Of course, it is true that he granted sanction on the basis of the materials before him, but what the evidence proves is otherwise, that the whole prosecution case is really suspicious, and there is reason to believe that the trap in this case was really a vicious trap, which the complainant arranged with the help of the police, when he felt that he will not get certified copy of the document on 17.9.2001. Thinking that he will not get copy on 17.9.2001, he left the Sub Registrar's Office and made a complaint. It has come

out in evidence that before leaving the office, the complainant had threatened that he will do something for getting the copy immediately. It is definite that the accused would not have demanded or accepted illegal gratification on 17.9.2001 because the required copy was not ready on that day, when the complainant approached her. Even when the vigilance team reached there at about 1 p.m., the copy was being prepared by her, and it was not ready. There is reason to believe, that in such a circumstance, the complainant believed that he will not get copy even on 17.9.2001. His evidence shows that the copy was required to be produced in a civil case on the next day. I find that the case of the complainant is really very 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 she 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 2004 of the court below will stand set aside, and she will stand released from prosecution. The bail bond, if any, executed by her will stand discharged.

Sd/-
P.UBAID
JUDGE

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/True copy/

P.S to Judge