IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

CRL.A.No. 972 of 2005 ( )

CC 9/2001 of ENQUIRY COMMISSIONER & SPECIAL JUDGE,THRISSUR
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APPELLANT/ACCUSED NO.1:

C.S.PEETHAMBARAN, FORMER SUB ENGINEER
ELECTRICAL MAJOR SECTION, K.S.E.B, MANNUTHY.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENT/COMPLAINANT:

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

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT ON 10-06-2015 DELIVERED THE FOLLOWING:

SD

P. UBAID, J.

Crl.Appeal No.972 of 2005

Dated this the 10th day of June, 2015

JUDGMENT

The appellant herein was a Sub Engineer in the Electrical Major Section, Mannuthy, in November, 1998. He, along with one Giji Thomas, Line Man Grade-II of the said Electrical Major Section, faced prosecution before the Enquiry Commissioner & Special Judge (Vigilance), Thrissur in C.C.No.9/2001, on the allegation that they accepted an illegal gratification of Rs.1,500/- from one Santhosh for giving agricultural electricity connection to the property of Sreedharan, father of Santhosh, on an application made by him in August, 1995. Money was received by the two accused, according to the prosecution, on 13.11.1998 from Santhosh, but crime was registered by the Inspector of Police, VACB, Thrissur on 18.08.1999, on the basis of some report of enquiry conducted by the Vigilance on some complaint filed by the said Santhosh or his father Sreedharan, in December, 1998. The illegal gratification accepted on 13.11.1998 was returned, according to the prosecution, to Santhosh, by the 1st accused, on

17.11.1998, when some friends of Santhosh including some politicians intervened in the matter. However, investigation proceeded despite the fact that the money received was returned by the accused, and the Vigilance and Anti-corruption Bureau (VACB) submitted final report on 15.03.2001 under Section 173 (2) Cr.P.C.

2. The two accused pleaded not guilty to the charge framed against them by the trial court, under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C.Act, and also under Sections 409, 468, 420, 477A and 120B IPC. The prosecution examined fifteen witnesses and marked Exts.P1 to P7 documents in the trial court. When examined under Section 313 Cr.P.C., the accused denied the allegation of acceptance of illegal gratification, and maintained a definite defence that the amount was in fact received as the cost roughly estimated for an additional post required for electricity connection. Thus the accused maintained a definite defence that no illegal gratification was accepted by them. The accused did not adduce any oral evidence in defence, but Exts.D1 and D2 were marked on their side during trial. On

an appreciation of the evidence, the trial court found the 2nd accused (Lineman) not guilty, but found the 1st accused (Sub Engineer) guilty under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act and under Section 417 IPC. He was, however, found not guilty under Sections 120B, 409, 468 and 477A IPC. On conviction the 1st accused was sentenced to undergo rigorous imprisonment for a period of six months, and also to pay fine of Rs.5,000/- under Section 7 of the PC Act, and to undergo rigorous imprisonment for one year under Section 13(2) read with 13(1)(d) of the PC Act, and another term of rigorous imprisonment for three months under Section 417 IPC. Aggrieved by the said judgment of conviction dated 31.05.2005, the 1st accused has come up in appeal.

3. The points for decision in this appeal are;

1) Whether the appellant herein had accepted an amount of Rs.1,500/- as illegal gratification, on demand, from PW3 on 13.11.1998, as alleged by the prosecution.

2) Whether the conviction in this case is sustainable, or whether the sentence imposed by the court requires

interference, in case the conviction is confirmed.

4. Of the fifteen witnesses examined by the prosecution, PW3 is the main witness, on whose evidence the prosecution relies to prove the guilt of the accused. PW1 is the Chief Engineer of the Kerala State Electricity Board (for short, 'the KSEB'), examined to prove Ext.P1 prosecution sanction granted under Section 19 of the PC Act. On this aspect there is no dispute. PW2 is Sreedharan, who had made application in 1995 for agricultural electricity connection to his property, PW3 is his son, who, according to the prosecution, gave Rs.1500/- to the appellant on demand as illegal gratification, PW4 to PW8 are the witnesses examined by the prosecution to prove the alleged acceptance of illegal gratification, and the subsequent incident of interference by the people of the locality due to which the amount was returned by the appellant, PW9 is the KSEB Overseer examined to prove the hearsay fact that PW3 had told him that the Sub Engineer had demanded some amount for deposit work in connection with the electricity connection to the property of his father, PW10 is the Assistant Executive Engineer examined to

prove that electricity connection was unauthorisedly granted by the 1st accused, without sanction from the higher authorities, thereby causing a loss of Rs.3,665/- to the KSEB, PW11 is the Assistant Engineer Attached to the Mannuthy Electrical Major Section, examined to speak about the electricity connection granted by the 1st accused unauthorisedly, PW12 is examined to prove that PW3 had pledged some gold ornaments on 13.11.1998 for raising money for payment as demanded by the appellant, PW13 is the Village Assistant, who prepared the Ext.P14 sketch of the scene of incident, PW15 is the Dy.S.P. (Vigilance) who registered the Ext.P47 First Information Report in this case, and PW14 is the Inspector of VACB, who investigated the case.

5. This is in fact a strange case where crime was registered without any definite basis or complaint or information. Ext.P47 First Information Report registered by PW15 shows that crime was registered by him on the basis of something disclosed during a Vigilance enquiry that the appellant herein had accepted Rs.1,500/- from PW3 for granting agricultural service connection

to the agricultural property of his father. This First Information Report does not show, on what definite material or complaint crime was registered by PW15. This aspect will be discussed in detail, later. Without any definite material or complaint the Dy.S.P. registered a crime, and it proceeded for investigation. The main witness, according to the prosecution, is PW3 Santhosh. PW2 is his father Sreedharan, who had made application for agricultural service connection in 1995. He proved the Ext.P2 application for electricity connection and stated that on many occasions the officers of the KSEB had come to his property for site inspection. He waited for years for connection, but no action was taken by the officers. In such a circumstance, he made complaint to the Vigilance Wing of the KSEB, and also to the Port Folio Minister alleging that the Engineer had received Rs.1,500/- from him for electricity connection, and no action was taken on his application. In the complaint he made a further request to take necessary steps immediately for granting agricultural service connection to him as requested in August, 1995. In evidence, this witness did not state anything about payment of illegal gratification. On examination in chief, he stated that the Sub Engineer had accepted Rs.1,500/- for service connection as cost of an additional post required for connection, but he later said that the amount was in fact paid by his son. PW2 has no case in evidence that any amount was paid by him directly either as illegal gratification or as the expenses required for service connection, by way of the cost of an additional electric post required. Thus there is nothing in the evidence of PW2 to implicate the appellant. He has proved his application submitted in August, 1995, and the complaint made by him in December, 1998. Though he said about payment of some amount, he stated in the next breath that everything was done by his son, and even payment was in fact made by his son. He has no case that he had made any payment, or that he had witnessed the payment of any amount by his son (PW3), to the appellant herein or anybody else. Thus, I find that the evidence of PW2 is of no help to the prosecution.

6. PW4 to PW8 examined by the prosecution to prove the acceptance of illegal gratification by the appellant, and also to

prove that the amount was later returned by him on the intervention of the friends and associates of PW3 including politicians, did not in any manner support the prosecution. They all turned hostile during trial. They were cross examined by the learned Public Prosecutor with the permission of the trial court, but nothing could be brought out in their cross examination to incriminate the appellant.

7. PW9 and PW10 have given evidence that agricultural service connection was given to the property of PW2 by the appellant herein at a cost of Rs.3,665/- without specific sanction or order by the higher authority, and that the appellant thereby caused some loss to that extent to the KSEB. This appears to be the material on which the appellant was practically found guilty by the trial court. On a perusal of the impugned judgment, I find that the VACB brought a prosecution against the appellant herein on the basis of this material, that without authority the appellant herein granted service connection to the agricultural property of PW2 unauthorisedly, causing loss to the KSEB, and giving some pecuniary advantage to PW2. The attempt of the prosecution is

to bring the case under Clause(i) of Section 13(1)(d) of the PC Act.

8. Now, let me come to the evidence of PW3, who is the main witness on whom the prosecution relies to prove the case. As already stated, crime in this case was not registered on any definite complaint or material. Though PW2 had made some complaints to the Vigilance Wing of the KSEB or the Port Folio Minister, such complaint was not taken as the basis or material for registering crime in this case. PW3 had not made any complaint against the appellant herein. Ext.P22 is a statement given by him to the Executive Engineer of he KSEB during some enquiry. This statement is also not the basis of the First Information Report in this case. Of course, during trial PW3 gave some statements, some what consistent with the statements in Ext.P22, but on material aspects he maintained a definite stand that he had not given any bribe or illegal gratification to the Sub Engineer (appellant). In examination in chief itself, PW3 maintained a definite stand that the amount of Rs.1,500/- was given by him to the Sub Engineer as the cost of an additional

electric post required for electricity service connection to his father's property. Some very imported statements in his evidence are extracted below:

> "…….അന്ന് A2-ൻെറ കൈയിൽ KSEB-ൽ അടയ്ക്കുവാൻ 1500 ക. കൊടുത്തു…… ആ പണം KSEB Office-ൽ അടയ്ക്കുവാനാണ് A2-ൻെറ കൈയിൽ കൊടുത്തത്. രശീതി തരാം എന്ന് A2 പറഞ്ഞെങ്കിലും രശീതി തന്നില്ല. രാഷ്ട്രീയക്കാരോട് ഞാൻ വിവരം പറഞ്ഞു. അവർ എല്ലാവരും കൂടി എൻെറ കൂടെ KSEB Office-ൽ വന്നു……..അവിടെ വച്ച് മദ്ധ്യസ്ഥത പറഞ്ഞ് പണം എനിക്ക് തിരികെ തന്നു. …എൻെറ സുഹൃത്ത് പമ്പാവാസനാണ് എനിക്ക് തന്നത്. ….. ഞാൻ 1500 രൂപ A2-നെ ഏൽപിച്ചത് post-ൻെറ വില ആയിട്ടാണ്. അത് KSEB Office-ൽ അടക്കുവാൻ കൊടുത്തതാണ്. ……. Extra post-ൻെറ cost ആയിട്ടാണ് 1500 ക. ഞാൻ A2-ൻെറ കൈയിൽ കൊടുത്തത്. അന്ന് തന്നെ അത് മനസ്സിലാക്കിയിരുന്നു. ……. 17ന് ഞാൻ കൊടുത്ത അപേക്ഷ പ്രകാരം ഉള്ള estimate sanction ആകുന്ന മുറയ്ക്ക് കൂടുതലായി ഇടേണ്ടി വന്ന post-ൻെറയും സാമഗ്രികളുടെയും വിലയും കൂലി ചിലവും office-ൽ അടയ്ക്കേണ്ടതുണ്ടെന്ന് എനിക്ക് പിന്നീട് ബോദ്ധ്യപ്പെട്ടിട്ടുണ്ട്. ഈതുക ഏതാണ്ട് 1500 രൂപയോളം വരുമെന്നും മനസ്സിലായിട്ടുണ്ട്……."

The English translation of the statements extracted is as follows:

> "…….on that day I paid Rs.1,500/- to the 2nd accused, for being remitted in the KSEB office …….. the said amount was paid to the 2nd accused for remittance in the KSEB

office. Though demanded, receipt was not given by the 2nd accused at that time. When I told about this payment to the politicians, they came to the KSEB office along with me and there, on the intervention of others, the amount was returned to me by one Pambavasan on behalf of the 1st accused........ The amount of Rs.1,500/- given by me to the 2nd accused was the cost of electric post, and it was meant to be remitted in the KSEB office........ Rs.1,500/- was given by me to the 2nd accused as the cost of the extra post required for service connection, and I had realised the said fact on that day itself...... I had realised that as the cost of exra post required for connection inclusive of labour charges and cost of other materials I will have to remit roughly Rs.1,500/- as and when sanction is granted for connection on the request made by me on 17th. ......"

9. There is another very important statement in his examination in chief itself, extracted as follows:

> "അഛനോട് പ്രതികൾ ആരും ആ work ചെയ്യുന്നതിന് കൈക്കൂലി ആവശ്യപ്പെട്ടിട്ടില്ല. ....തർക്കം തീരുന്നതിനു വേണ്ടി deposit work-ന് വേണ്ടി സംഖ്യ കെട്ടുവാൻ ഞാൻ തയ്യറായി." (Nobody had demanded any illegal gratification from my father for granting service connection. However, in view of the dispute raised by others regarding connection, I was prepared to remit the amount in the KSEB as the cost required for deposit work for installation of additional post).

10. On an appreciation of the evidence given by PW3, I find that there is absolutely nothing in his evidence to show that the appellant herein had at any time demanded any illegal gratification from him or from his father, or that the amount of Rs.1,500/- received by him from PW3 was illegal gratification. It is pertinent to note that the whole evidence given by PW3 in his examination in chief is totally against the prosecution. He is definite that the amount was paid by him as the cost of the extra electric post required for service connection, that nothing was paid by him as illegal gratification, and nobody had at any time made any such demand for illegal gratification. It is not known why the learned Public Prosecutor did not proceed to cross examine the witnesses with the permission of the court, when the whole evidence given by him is against the prosecution and in favour of the appellant. I find that the defence case is quite acceptable that the amount was received by the appellant wrongly as the cost of an additional post required for service connection to the property of PW2, but later he returned the amount when he realised that such cost cannot be collected from

the consumer when the request is for agricultural connection. I find that the evidence of PW3 is no way helpful to the prosecution. He has no case that this appellant or the 2nd accused who stands acquitted had at any time accepted any amount from him otherwise than as the amount required for an extra post for the service connection, or the amount required for the deposit works in connection with installation of an additional electric post. There is reason to believe that such amount was wrongly received by the appellant, but later, he returned the amount. When the appellant granted connection to the property of PW2, the police and also his higher authorities found out a case of unauthorised service connection causing wrongful loss to the KSEB, and giving some wrong advantage to the consumer. With such a case the Vigilance brought a prosecution under Section 13(1)(d) of the P.C.Act.

11. Now, let me see whether the crime registered in this case is genuine or legal, or on the basis of any legal material warranting action under Section 154 Cr.P.C. The First Information Report in this case is not based on any definite material or

complaint. Under Section 154 Cr.P.C., a First Information Report can be registered on the basis of any definite complaint or report or material. Such material can even be something in the personal knowledge of the police officer who registers the First Information Report. However, there must be some material disclosing a cognizable offence. Here is a cognizable offence alleged against the appellant. But the police officer (Dy.S.P.) registered the First Information Report, on the basis of some report of enquiry. It is not known what sort of enquiry it was, or who conducted the said enquiry, or what exactly is the findings of the enquiry, or what is the report of enquiry. Such report of enquiry is not before the court as First Information Statement or otherwise.

12. The First Information Report in this case shows that crime was registered on the basis of a material or information received during an enquiry, that the accused had received illegal gratification from Santhosh. Thus the First Information Report is definite that illegal gratification was received by the accused from Santhosh. But, the said Santhosh examined as PW3 in the trial

court did not state anything to incriminate the accused. His evidence is fully against the prosecution. The other independent witnesses examined by the prosecution also turned hostile. It has come out in evidence that there arose some dispute regarding the service connection requested by PW2 when an additional electric post was found necessary, and the process was in fact objected by the brother of PW2. It was in such a circumstance the accused assessed some amount as cost including labour charges for the additional electric post, and received Rs.1,500/- from PW3. This is the defence case, and this is the case of PW3 in evidence. The other witnesses were declared hostile and cross examined by the learned Public Prosecutor. But in the case of PW3, it appears, that the learned Public Prosecutor simply accepted whatever said by PW3 in evidence. His evidence does not contain anything against the accused. In the absence of any evidence proving the essentials of the offence under Section 7 or under Section 13(2) of the P.C.Act, the accused cannot be convicted, and so, the conviction against him is liable to be set aside.

13. Of course, it is true that the Assistant Engineer and the Assistant Executive Engineer found on enquiry, that the official acts of the appellant herein had caused a loss of Rs.3,665/-, as it was carried out unauthorisedly, without the sanction of the higher authorities. If at all, it is true that something was done by the public servant unauthorisedly, without sanction from his higher authorities, and if somebody was benefited by that, or if the Government or the KSEB sustained some loss due to that, the proper course is to proceed against the public servant with disciplinary action, and not to proceed against him under the P.C.Act. Lapses on the part of a public servant in the discharge of his official duties will not invite a prosecution under the P.C.Act. Such lapses or illicit actions causing loss to the Government or giving benefit to somebody else, can be punished under the P.C.Act, only if the essential elements and requirements of the offence under Section 7 or under Section 13 (2) of the P.C.Act are involved. Just because the appellant herein did something unauthorisedly in the process of giving electricity service connection to the property of PW2, thereby causing a

wrongful loss of Rs.3,665/- to the KSEB, he cannot be prosecuted under the P.C.Act. He will have to be proceeded against otherwise, by way of disciplinary action appropriately. If omissions or lapses are brought to court under the P.C.Act, very many public servants will have to face prosecution under the P.C.Act.

14. As discussed in the forgoing paragraphs, I find that the prosecution in this case has miserably failed to prove acceptance of illegal gratification on demand or otherwise, by the appellant herein, from PW2 or PW3. As found earlier, this prosecution does not have any basis at all. The crime was registered without any definite basis or material or complaint. Even the report of some enquiry referred to in the First Information Report is not before the court as First Information Statement or otherwise. A prosecution built without basis should collapse. I find that the appellant is entitled to be acquitted.

In the result, this appeal is allowed. The appellant herein is found not guilty of the offences under Sections 7 and 13(2) of the P.C.Act, and under Section 417 IPC, and he is accordingly acquitted of those offenses, in appeal, under Section 386(b)(i) Cr.P.C. The conviction and sentence against the appellant in C.C.9/2001 of the court below will stand accordingly set aside. The bail bond, if any, executed by the appellant will stand discharged.

Sd/-

P. UBAID, JUDGE

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