

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

CRL.A.No. 1166 of 2006 ()

AGAINST THE JUDGMENT IN CC 32/2002 of ENQUIRY COMMR.&
SPL.JUDGE,THRISSUR

APPELLANT(S)/ACCUSED:

N.T.KUMARAN, AGED 56, S/O.THEVAN,
FORMER SPECIAL TAHSILDAR (LR), LAND TRIBUNAL
ERNAKULAM.

BY ADVS.SRI.B.RAMAN PILLAI
SRI.GEORGE PHILIP
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K.MOHAMMED
SRI.DELVIN JACOB MATHEWS

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.6.2015,
THE COURT 07-08-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.1166 of 2006**  
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Dated this the 7th August, 2015

J U D G M E N T

The appellant herein was Special Tahsildar (Land Reforms) in the Land Tribunal, Ernakulam in the year 2000. On 17.8.2000, a suo motu proceeding initiated at the instance of one Treasa and Emily on the claim of tenancy (SMP No.62/91) was decided by the appellant as against one Gangadharan, and others. On 14.9.2000, at about 2 p.m the said Gangadharan approached the appellant for the certified copy of the order in SMP No.62/91 for the purpose of preferring appeal against the order. It is alleged that at that time, the appellant told Gangadharan that he would manipulate the order, the copy of which was not given to the other side, and would make some additions and of loop holes, so that Gangadharan and others could win the case in appeal. For making such a favour, or for manipulating the order in SMP 62/91 for the ultimate success of Gangadharan and others, the Special Tahsildar demanded an amount of ₹ 10,000/-. Gandharan did not say

anything on 14.9.2000, when the Special Tahsildar made such a demand, but he told about this to his brother Ramachandran. It is alleged that thereafter on two occasions, the Special Tahsildar contacted Sri.Ramachandran over telephone and repeated his demand. When Ramachandran told the Tahsildar that he could not pay ₹ 10,000/- as demanded by him, the Tahsildar reduced the claim to ₹ 5000/- on 23.10.2000 over telephone. When Ramachandran repeated that he was not in a position to pay ₹ 5000/-, the Tahsildar again contacted him over telephone on 23.10.2000 and asked Ramachandran to come on 24.10.2000 with ₹ 2000/- as he was badly in need of some money. As Ramachandran was not inclined to make payment of bribe, he approached the Deputy Superintendent of Police, Vigilance, and Anti Corruption Bureau (VACB), Ernakulam, and preferred a complaint. On the said complaint of Ramachandran, the Deputy Superintendent of Police, Vigilance, and Anti Corruption Bureau (VACB) registered a crime and arranged a trap. The amount of ₹ 2000/- brought by Ramachandran was utilised for the trap

and, after treating the currency (20 x ₹ 100) with phenolphthalein, Ramachandran and the trap witnesses were instructed to approach the Tahsildar at his office and make payment. Accordingly, Ramachandran met the Special Tahsildar at his office at about 3 p.m on 24.10.2000 and made payment, when the Special Tahsildar repeated his demand. Within no time, on getting signal from the complainant and the trap witness, the vigilance team reached there, seized the phenolphthalein tainted currency from the possession of the Special Tahsildar and arrested him on the spot. After due investigation, the VACB submitted final report before the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur .

2. The appellant entered appearance before the learned Trial Judge in C.C No.32/2002 and claimed to be tried on a plea of not guilty to the charge framed against him under Sections 7 and 13 (1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short “P.C Act”).

3. The prosecution examined nine witnesses in the trial court and marked Exts.P1 to P15 documents, and also

MO1 to MO12 properties including the MO1 series tainted currency seized from the possession of the accused. When examined under Section 313 Cr.P.C, the accused submitted that the amount of ₹ 2000/- seized from him by the vigilance was in fact the amount borrowed by him from the complainant Ramachandran, who has a finance business, and Ramachandran utilised it for a trap for the reason that he had decided a case against him in August, 2000. In defence, the accused did not adduce any oral evidence, though opportunity was granted by the trial court. However, Exts.D1 and D1(a) contradictions in the statements given by PW5 to the police during investigation were marked during trial.

4. On an appreciation of the evidence, the learned trial Judge found the accused guilty under Sections 7 and 13 (1) (d) read with 13 (2) of the P.C Act. On conviction, he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹ 25,000/- under Section 7 of the P.C Act, and to undergo another term of rigorous imprisonment for four years and to pay a fine of ₹ 25,000/- under Section 13

(1) (d) read with 13 (2) of the P.C Act by judgment dated 19.6.2006. 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 a vicious trap was arranged by the police at the instance of PW5 Ramachandran, due to previous enmity, and that the evidence of the complainant and the other witnesses is full of inconsistencies in contradictions. The learned counsel submitted that the whole prosecution case is tainted with genuine doubts, the benefit of which must be go to the accused. On the other land, the learned Public Prosecutor in charge of the case submitted that the defence projected by the accused is quite unbelievable, and that the complainant and his brother were contacted on many occasions by the appellant for some money as bribe, on the promise that he would manipulate the order passed by him against them by making some additions and loop holes, so that they could win the litigation later in appeal. The learned Public Prosecutor submitted that the prosecution case stands well

proved, and there is absolutely nothing to doubt or suspect the evidence given by the material witnesses.

6. Of the nine witnesses examined by the prosecution in the trial court, PW5 is the complainant who made Ext.P6 complaint, on the basis of which Ext.P6 (a) F.I.R was registered, PW6 is his brother Gangadharan examined to prove the first demand made by the accused on 14.9.2000, PW7 is the trap witness arranged by the vigilance, PW9 is the Dy.S.P who arranged the trap and detected the offence, and PW8 is the Police Inspector who conducted investigation and submitted final report. The case was initially investigated by PW9 himself. PW1 is the Commissioner of Land Revenue examined to prove the Ext.P1 prosecution sanction granted under Section 19 of the P.C Act, and PW2 to PW4 are the Revenue Officials examined to prove some documents seized by the vigilance during investigation. PW2 was the U.D Clerk in the office of the accused at the relevant time. She proved the files of SMP 62/91 inclusive of the manuscript order and the typed order, and also the Ext.P3 attendance register showing the marking

of attendance by the accused on the relevant dates. PW3 is the Village Officer who prepared the scene plan, and PW4 is the another U.D Clerk who proved the seizure of some documents as per Ext.P5 seizure mahazar. As regards the documents seized by the vigilance during investigation, the defence has no dispute, and so the evidence on these aspects need not be discussed. The accused has not disputed the fact that he was the Special Tahsildar, Land Reforms in the Land Tribunal, Ernakulam, and he has no case that he was on leave on 14.9.2000, or on 24.10.2000. The competence of PW1, who granted prosecution sanction is also not disputed by the defence. The main evidence relied on by the prosecution to prove the case on facts is that of PW5 to PW7 and PW9. Now let me analyse the evidence and see whether the prosecution case on facts stands proved, that the appellant herein had accepted an illegal gratification of ₹ 2000/- from PW5 on 24.10.2000 as a reward for making manipulations in the order passed by him against the complainant and the others, as alleged by the prosecution.

7. Before going into the factual aspects, let me consider whether there is proper and legal prosecution sanction in this case. Ext.P1 sanction granted under Section 19 of the P.C Act was proved in evidence by PW1, the Commissioner of Land Revenue, who granted the sanction. He is the person competent to remove a Tahsildar from service. On this aspect, there is no dispute, and so, much need not be said on the said issue covered by Government Rules. PW1 has given definite evidence proving the fact that he granted Ext.P1 sanction on a consideration of all the relevant aspects including the materials furnished to him by the vigilance, and also on an application of his independent mind. PW1 was cross-examined at length by the defence, but he stood firm in evidence, and stated that he had well applied his mind in the process of granting sanction, and he decided to grant sanction on a finding that there are materials to prosecute the Tahsildar. It is well settled that the prosecution is bound to prove not only the signature in the prosecution sanction, but also that it was granted by the proper authority on an independent application of his mind

in the process. All the essentials as regards the prosecution sanction are well proved by PW1 in evidence. Thus, I find that Ext.P1 sanction is well acceptable, and it stands well proved as prescribed under the law.

8. The prosecution case is that demand for illegal gratification was first made by the accused to PW6 when he approached him on 14.9.2000 for a certified copy of the order in SMP 62/91. The details of the said suo motu proceeding, inclusive of the typewritten and the manuscript order prepared by the Tahsildar, are contained in Ext.P2 file. SMP 62/91 was decided by the appellant against PW5 and others on 17.8.2000. It was submitted by the learned counsel for the appellant that it is really improbable and unbelievable that after pronouncement of the order on 17.8.2000, the Tahsildar demanded money for making manipulations in the order by creating some loop holes, so that the complainant and the others could win the case in appeal. Ext.P2 file will tell the court how casually the matter was dealt with in the office of the Tahsildar. It has come out in evidence that certified copy of the order was not

given to the other party till 14.9.2000. In such a circumstance, it is not unbelievable or improbable that the Tahsildar demanded money for making loop holes in the order, or for manipulating the order when he was badly in need of some money. That he was badly in need of some money, is proved by the evidence of PW5 and PW6. It has come out in evidence that the man who initially demanded ₹ 10,000/- came down to ₹ 2000/- when PW5 evaded the request and expressed his mind that he was not inclined to make payment. On 23.10.2000, the Tahsildar expressed his financial difficulties and demanded at least an amount of ₹ 2000/-. If such a person put in such a circumstance, demanded money saying that he would make some manipulations in the order, It need not be disbelieved.

9. PW5 and PW6 are consistent that after 14.9.2000, the Tahsildar made telephone calls to PW5 on two or three occasions demanding the money, and the demand was lastly made on 23.10.2000. The first demand made on 14.9.2000 was intimated to PW5 by PW6. After that demands were made to PW5 over telephone. The witnesses

have given the telephone number to which calls were made by the Tahsildar. PW6 has given definite evidence proving the demand made by the Tahsildar on 14.9.2000. His evidence is that when he came in the office of the Land Tribunal on 14.9.2000, he met the Tahsildar. At that time, the Tahsildar told him that he could win the case in appeal, if some manipulations are made in the order, the fair copy of which was not prepared at that time. PW6 did not believe it because a case already decided, or the order already passed cannot be manipulated. He did not take it seriously. However, he intimated this to his brother PW5. The defence could not bring out anything to discredit the evidence of PW6 regarding the first demand made on 14.9.2000.

10. PW5 made Ext.P6 complaint, when the Tahsildar repeated his demand over telephone. He says that the Tahsildar called him over telephone on 3.10.2000, and when he told the Tahsildar that he could not pay ₹ 10,000/- he reduced the demand to ₹ 5000/-. The response of PW5 at that time was not positive. Again, the Tahsildar called him over telephone on 23.10.2000 and demanded money. When

he said that he was not in a position to pay ₹ 5000/-, the Tahsildar told him that he was badly in need of some money, and he reduced the claim to ₹ 2000/-. Accordingly, the Tahsildar asked him to come on 24.10.2000 with ₹ 2000/- and promised that he would manipulate the order passed by him, so that PW5 and the others could win the case in appeal. The Tahsildar made him believe that if such manipulation is made, the case will come up before him on remand by the appellate authority, and in such circumstance, the case could be decided in their favour at the second round. As he was not inclined to pay bribe, PW5 thought of making a complaint. It was accordingly he made Ext.P6 complaint before the Dy.S.P.(VACB).

11. PW5, the complainant has given satisfactory evidence proving the repeated demands made by the accused over telephone on 3.10.2000 and on 23.10.2000. His evidence is that the amount of ₹ 2000/- (20 x ₹ 100) brought by him for the trap was received by PW9, phenolphthalein was applied on the currency, and after demonstrating the required phenolphthalein test to him and

the trap witnesses, he was instructed to approach the accused and make payment, if the Tahsildar again demanded money. Accordingly, he approached the Tahsildar at his office, and the other witness (PW7) waited outside. When PW5 entered the room of the accused, the Tahsildar asked PW5 to wait and went to the urine shed, and came back within a few minutes. Then the Tahsildar received the tainted money and put it in his shirt pocket, promising that he would do the things as already agreed. Within no time, on getting signal, the vigilance team led by PW9, reached there, seized the phenolphthalein tainted currency of ₹ 2000/- from the possession of the accused, and arrested him on the spot. Thus, acceptance of ₹ 2000/- by the accused from PW5 as illegal gratification stands well proved by the evidence of PW5.

12. Seizure of the phenolphthalein tainted currency from the possession of the accused as per mahazar, and also arrest of the accused on the spot are well proved by the evidence of PW5, PW7 and PW9. PW5 has proved the demand and also the acceptance on 24.10.2000. The fact

of acceptance of illegal gratification is further proved by the evidence of PW9 and PW7. Of course, it is true that PW7 had not witnessed the acceptance of money by the accused, or payment of money by PW5 to the accused. He has given evidence regarding the seizure of tainted money as per mahazar, and arrest of the accused on the spot. Seizure of tainted money stands well proved by the evidence of PW7 and PW9. This evidence proving seizure will corroborate the evidence of PW5 regarding acceptance of illegal gratification. I find no reason to disbelieve PW7. Normally, a public servant will not give any false evidence against another public servant. The defence has no explanation why PW7 should give false evidence against the accused. The accused has no explanation why PW5 should make a false complaint against the Tahsildar. It is quite unbelievable that he would arrange a vicious trap against an officer who decided the case against him. Such suggestions were stoutly denied by PW5 and PW6. I find no reason to disbelieve PW5 or PW6. There is absolutely no reason why these two witnesses should foist a false case against the

Tahsildar. It is quite improbable and unbelievable that they arranged a vicious trap against the Tahsildar just because a case was decided against them two months back.

13. PW7 is the trap witness in this case. He was the Additional Sales Tax Officer, Ernakulam. His evidence is not regarding demand or acceptance. He has proved the process of detection involving recovery of the tainted money from the possession of the accused, and also arrest of the accused on the spot. His evidence on the material aspects stands not discredited in any manner. The defence has no explanation why this public servant should give any false evidence against the accused.

14. PW9 is the Dy.S.P who detected the offence. He is also definite and consistent in his evidence, that on 24.10.2000, he registered the Ext.P6 (a) F.I.R on the basis of the Ext.P6 complaint given by PW5, and he arranged a trap. Some public servants were also arranged by him to witness the trap. The amount of ₹ 2000/- brought by the complainant was utilised for the trap. After applying phenolphthalein on the currency of ₹ 2000/- brought by the complainant, he

instructed the complainant and PW7 to meet the accused and make payment of the amount on demand. Accordingly, the complainant, PW7 and a Police Constable, proceeded to the Tahsildar's office, and he, along with his party followed. On getting signal from the complainant, he, with his party entered the office of the accused and seized the phenolphthalein tainted currency from his possession. Ext.P8 is the mahazar as per which currency was seized, and this also contains the details of the arrest of the accused on the spot. The evidence of PW9 stands not in any manner discredited. There is no reason why this Dy.S.P. Should foist a false case against the accused. He had no enmity or ill-will, and he had also no reason to arrange a vicious trap against the Tahsildar. The case was initially investigated by PW9, and it was later taken over by PW8. There is nothing to show that there was any flaw or illegality or irregularity in the investigation conducted by PW8 or PW9. After investigation, PW8 submitted final report in this case.

15. This Court has already discussed the probabilities

and improbabilities involved in the case. The defence case projected during trial is quite unacceptable that a vicious trap was arranged by the police at the instance of the complainant. In fact, the defence in this case is really strange that the amount of ₹ 2000/- seized from the possession of the accused by PW9 is in fact the amount borrowed by him from the complainant. PW5 and PW6 had a finance business at that time. It is really strange that the complainant came in the Tahsildar's office to lend ₹ 2000/-. If at all it is acceptable that the amount was lent by Pw5 to the accused and he made payment at his office, there is no reason or explanation why the complainant should utilise the said amount for a vicious trap. Acceptance of ₹ 2000/- from PW5 is admitted by the accused. If acceptance is admitted practically, and if the defence pleaded by the accused is found improbable and unacceptable, the only finding possible is that he accepted it as illegal gratification as the complainant would allege.

16. Demand and acceptance, which are the essentials for a prosecution under Sections 7 and 13 (1) (d) read with

13 (2) of the P.C Act, stand well proved in this case by the evidence PW5, PW6, PW7 and PW9. This is not a case where the prosecution relies solely on the recovery of tainted money. This is not a case where any of the material witnesses examined by the prosecution turned hostile. The settled position as regards proof of acceptance and demand need not be again discussed.

17. A trap for a trap, arranged by the police at the instigation, or at the instance, of somebody who is interested in such a trap, or who, for his own reasons, is interested to see that a particular public servant is trapped, cannot be said to be a genuine or legitimate trap. Such a trap will be a vicious one and an illegitimate one, as held by this Court in **Cheriyam Lukose v. State of Kerala [AIR1968 Kerala 60]**, following a decision of the Honourable Supreme Court on the point in **Ramjanam Sing v. State of Bihar [AIR 1956 SC (643)]**. But, here there is no situation of illegitimate trap when acceptance of the amount is admitted by the accused, thus attracting legal presumption under Section 20 (1) of the P.C Act. The burden would shift to the

accused to explain why or in what circumstance he accepted the amount, if not as a reward for something illegal. As regards the application of presumption also, the position of law is well settled. On many occasions, the Hon'ble Supreme Court has held that when acceptance of amount otherwise than for legal purpose is proved, the court is bound to apply the presumption under Section 20 (1) of the P.C Act and then the burden would shift to or to rebut the presumption, that it was not received or accepted as a reward for something illegal. Here, the defence made an attempt to rebut the presumption, contending that the amount was in fact borrowed by him from the complainant, and the complainant utilised the said amount for a trap. The story of borrowal is quite unacceptable and unbelievable in the present circumstances. I find that the accused has miserably failed in his attempt to rebut the presumption available to the prosecution under Section 20 (1) of the P.C Act.

18. On an appreciation of the evidence as discussed above, I find that the prosecution has well proved the case

beyond reasonable doubt. The case on facts as regards the demand and acceptance is well proved, the prosecution sanction also stands proved in this case, and the accused has failed to rebut the presumption under Section 20 (1) of the P.C Act. In such a situation, this appeal is liable to be dismissed, confirming the conviction against the appellant.

19. The sentence imposed by the court below in this case is rigorous imprisonment for three years under Section 7 of the P.C Act and another term of rigorous imprisonment for four years under Section 13 (1) (d) read with 13 (2) of the the P.C Act. This is a case where a public servant , who is expected to discharge some judicial functions under the Kerala Land Reforms Act attempted to misuse his powers to manipulate an order passed by him. Though he is an officer of the revenue, his function is judicial in nature, adjudicating the claim of tenancy under the Kerala Land Reforms Act. It is not known what disciplinary action was taken against the accused by the Government, or what is the final result of such action. Anyway, on a consideration of the facts and circumstances including the long lapse of years, since the

date of commission of offence, this Court feels the necessity of some interference in the sentence in this case. The offence was detected in 2000 and now we are in 2015. Some leniency can be shown by the court in the matter of sentence on the ground that the accused has been facing the trauma of prosecution for 15 years. But at the same time, undue benefit of leniency cannot be given to the accused because, as a public servant, his function was judicial in nature under the Kerala Land Reforms Act. When such a person is found guilty under the P.C Act, adequate sentence will have to be imposed. In this case I find that a sentence of simple imprisonment for one year under Section 7 of the P.C Act and a sentence of simple imprisonment for two years under Section 13 (1) (d) read with 13 (2) of the P.C Act will be the adequate sentence. To this limited extent, this appeal can be allowed in part, confirming the conviction made by the court below.

In the result, this appeal is allowed in part, to the limited extent of modifying and reducing the sentence imposed by the trial court. The conviction made by the trial

court against the appellant in C.C 32/02 under Sections 7 and 13 (1) (d) read with 13 (2) of the P.C Act will stand confirmed. However, the sentence imposed by the trial court under Section 7 of the P.C Act will stand modified and reduced to simple imprisonment for one year, and the sentence imposed under Section 13 (1) (d) read with 13(2) will stand modified and reduced to simple imprisonment for two years. The fine sentence imposed by the trial court, with the default sentence thereon is maintained.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge