

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

CRL.A.No. 776 of 2007 ()

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CC 11/2002 of COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
KOZHIKODE
=====**

APPELLANT/ACCUSED:

**K.VASUDEV ACHARYA, S/O.NARAYANAN
ACHARYA (LATE), BEKOOR, KOBSNOOR P.O.
VIA UPPALA, KASARAGOD DIST.
(RETIRED SPL.GRADE SECRETARY, MANGALPADY
GRAMA PANCHAYAT).**

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS/COMPLAINANT:

**STATE OF KERALA, REPRESENTED BY THE
DY.S.P, VIGILANCE AND ANTI-CORRUPTION BUREAU
KASARAGOD, THROUGH THE GOVERNMENT PLEADER
HIGH COURT OF KERALA, ERNAKULAM.**

BY THE PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

SD

P. UBAID, J.

Crl.Appeal No.776 of 2007

Dated this the 14th day of July, 2015

JUDGMENT

The appellant herein was Special Grade Secretary of Mangalpady Grama Panchayath in Kasaragod District, in March, 2000. The VACB, Kasaragod registered a crime against him on the complaint of one Ismail, that the appellant demanded and accepted an amount of Rs.500/- as illegal gratification for making entries in the Building Tax Assessment Register of the Panchayath regarding his sister's newly constructed house. The house was constructed in 1999, and the standing committee had also decided to assign a number to the newly constructed house. Thereafter, an ownership certificate was also issued by the appellant herein on payment of the required building tax. It is alleged that when the complainant approached the appellant in April, 2001 for remitting the house tax, the appellant realised that the house number was not entered in the assessment register. The appellant told the complainant that building tax can be acceptable only after the house number is entered in the register, and for the said purpose, he demanded an amount of

Rs.500/-. The demand was first made on 02.04.2001, when the complainant came to remit the house tax. When the appellant repeated the demand, the complainant approached the Dy.S.P., Vigilance and Anti-Corruption Bureau, Kasaragod, and lodged a complaint. The Vigilance arranged a trap, received the amount of Rs.500/- brought by the complainant for trap, applied phenolphthalein on the currency, demonstrated phenolphthalein test to the complainant and other witnesses, handed over the currency to the complainant, and instructed him to make payment to the appellant, if demanded. Accordingly, the complainant went to the office of the appellant, and when the appellant made demand for money again, for entering the building number in the Assessment Register, the complainant made payment at about 3.45 p.m. on 25.04.2001. On getting signal, the Vigilance team led by the Dy.S.P. reached there, seized the phenolphthalein tainted currency from the possession of the appellant, confirmed the acceptance by conducting phenolphthalein test, and arrested the appellant on the spot.

2. After investigation, the VACB submitted final report before the learned Enquiry Commissioner, Special Judge,

Vigilance, Kozhikode under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the P.C.Act'). After complying with the procedure prescribed under the law, the learned Trial Judge framed charge against the accused under Sections 7 and 13(2) read with Section 13(1)(d) of the P.C.Act, to which the accused pleaded not guilty. The prosecution examined seven witnesses including the complainant and the detecting officer, and also marked Exts.P1 to P18 documents. MO1 to MO5 properties were also identified and marked on the side of the prosecution. When examined under Section 313 Cr.P.C., the accused maintained a defence that he had accepted an amount of Rs.670/- from the complainant as building tax in respect of the house building of his sister and also his brother, Shahul Hameed. An ownership certificate issued earlier was cancelled on detection of some irregularities in the procedure. The complainant was aggrieved by this, and so, he arranged a vicious trap against him with the assistance of the police, and used the building tax amount for the trap. The accused examined three witnesses in defence, and also marked Exts.D1 to D3 documents. On an appreciation of the evidence,

the learned trial Judge found that the accused had accepted an amount of Rs.500/- from the complainant, Ismail, as illegal gratification for entering the house number of his sister's newly constructed house in the Building Tax Assessment Register. Accordingly, he was convicted under Sections 7 and 13(2) read with Section 13(1)(d) of the P.C.Act, and sentenced to undergo rigorous imprisonment for two years each, and to pay a fine of Rs.2,000/- each under the two penal sections, by judgment dated 28.03.2007 in C.C.No.11/2002. Aggrieved by the conviction and sentence, the accused has come up in appeal.

3. The learned counsel for the appellant argued before this Court that the appellant had not in fact accepted any illegal gratification, and that what he in fact accepted was the amount of building tax paid by the complainant. The learned counsel also submitted that the evidence given by the complainant and the other witnesses is not at all sufficient and satisfactory for a conviction, and that the whole prosecution case is tainted with genuine doubts. The learned Public Prosecutor, on the other hand, submitted that the defence projected by the accused is unbelievable and improbable, and that the evidence given by the

material witnesses is really convincing for a conviction.

4. Of the seven witnesses examined by the prosecution, PW1 is the complainant Ismail, PW2 is the witness arranged by the Vigilance for the trap, PW6 is the Dy.S.P., who detected the offence, and PW7 is the Inspector of Vigilance, who conducted investigation. PW3 is the Junior Superintendent of the Mangalpady Grama Panchayath, who produced some documents before PW7. PW4 is the Assistant Executive Engineer of KSEB, examined to prove that the complainant's sister had applied for electricity service connection, and she was instructed to produce ownership certificate. PW5 is the LD Clerk of the Mangalpady Grama Panchayath, examined to prove that he had inspected the newly constructed house of the complainant's sister, he had given report to the standing committee, and the standing committee had decided to assign a number to the newly constructed building, but the house number was omitted to be entered in the building tax assessment register.

5. By the time the Vigilance submitted final report in court the appellant retired from service on superannuation. The main documents for discussion are Ext.P1 complaint, Ext.P7 minutes of

the standing committee meeting, Ext.P13 Building Tax Assessment Register, and Ext.P14 Attendance Register.

6. That the appellant herein was the Special Grade Secretary of the Mangalpady Grama Panchayath in March,2000, is not a fact in dispute. However, Ext.P16 order of the Director of Panchayath, Ext.P14 Attendance Register, and Ext.P15 Office Order Book read along with the evidence of PW3, who produced all these documents, will prove that the appellant herein was the Secretary of the Mangalpady Grama Panchayath in March, 2000. The Attendance Register contains his signature marking attendance on 25.04.2001, and also on 02.04.2001.

7. To prove the detection including acceptance of illegal gratification, the prosecution relies on the evidence of PWs 1, 2 and 6. The complainant examined as PW1 has given definite and consistent evidence regarding the demand made by the appellant on 02.04.2001, and also regarding the acceptance of Rs.500/- by the appellant at his office on 25.04.2001. He also proved the Ext.P2 mahazar as per which the amount of Rs.500/- produced by him for trap was seized by the Vigilance, and Ext.P3 recovery mahazar as per which the phenolphthalein tainted currency was

seized by the Dy.S.P. from the possession of the appellant. PW6 has given clear evidence regarding the process of detection made by him. His evidence is that the Ext.P1 complaint was filed before him by PW1 in the morning of 25.04.2001 on the allegation that the Secretary of Mangalpady Grama Panchayath demanded illegal gratification for making entries in the Building Tax Assessment Register, relating to his sister's newly constructed house building, and on the said complaint, he registered Ext.P1(a) FIR. The amount of Rs.500/- brought by the complainant was seized as per Ext.P2 mahazar, and after demonstrating the required phenolphthalein test to the complainant and other witness, the complainant was instructed to go to the office of the accused and make payment of the amount, if demanded. Accordingly, he made payment, and on getting signal from the complainant, he and his team rushed to the office, seized phenolphthalein tainted currency as per Ext.P3 mahazar, and arrested the accused on the spot. He also stated that phenolphthalein test conducted, on recovery, turned positive. It is pertinent to note that the cross examination of PW6, the detecting officer, is confined in two sentences. This

witness was not effectively cross examined on the material aspects stated on examination in chief. Thus, the evidence of the detecting officer stands practically unchallenged. In short, recovery of the phenolphthalein tainted currency of Rs.500/-from the possession of the accused stands well proved by the unchallenged evidence of PW6.

8. The complainant examined as PW1 has given definite and consistent evidence proving that the appellant herein had demanded an amount of Rs.500/- from him on 02.04.2001, when he approached him to remit the building tax relating to his sister's newly constructed house, saying that the house number was not yet entered in the Building Tax Assessment Register. He also stated that some amount was required for making necessary entries in the register. When the accused demanded Rs.500/- and did not receive building tax, he returned, and again approached the accused on 25.04.2001 at 10 a.m. When the appellant again declined to receive building tax and repeated his demand for Rs.500/-, he approached the Dy.S.P., Vigilance, Kasaragod, and preferred Ext.P1 complaint. His complaint was registered, and the amount produced by him for the trap was received by the

police as per mahazar. After conducting phenolphthalein test, he was instructed to approach the accused and make payment, if demanded. Accordingly, he came to the office of the appellant at about 3.45 p.m. on 25.04.2001, and when the appellant again repeated his demand for money for making necessary entries in the Building Tax Assessment Register, he paid the phenolphthalein tainted currency to the accused. He accepted it and put the amount in his shirt pocket. When he offered the amount on demand, he was brought to a hall by the accused, and the accused received the amount at the said hall and returned to his office room. He then gave signal to the police party, and within no time the police team reached there, seized the phenolphthalein tainted currency, and arrested the accused.

9. The definite evidence given by the complainant to prove demand and acceptance of bribe stands not discredited, in any manner, in cross examination. He stoutly denied the suggestions made by the defence that what he paid was building tax, and that a vicious trap was arranged by him with the help of the police due to some personal reasons. In spite of cross examination, the complainant stood firm to his versions, and maintained a definite

stand throughout the trial that the trap was in fact a genuine one on a genuine complaint. The fact that the number of the building was not entered in the register is proved by the Ext.P13 Building Tax Assessment Register. This is further proved by the evidence of the Clerk of the Panchayath examined as PW5. PW2 is the trap witness arranged by the police in this case. He was the Additional Thahsildar, Hosdurg, on the date of detection. His evidence is that he came to the office of the Vigilance as required by the Vigilance to witness the trap. He had also accompanied the Dy.S.P. as required by him to witness the trap, and he had fully witnessed the whole detection process. He is definite that the phenolphthalein tainted currency was seized from the accused by the Dy.S.P., and that the Panchayath Secretary was arrested on the spot by the Dy.S.P. He also proved by Ext.P3 seizure mahazar. I find nothing to disbelieve the evidence of PW2 regarding the process of detection made by PW6. He also identified MO1 series phenolphthalein tainted currency produced by the complainant for the purpose of detection, and seized by the Dy.S.P. from the possession of the accused.

10. As already stated, the evidence of PW6 stands not

challenged effectively in cross examination. It is not known why this important witness was not effectively cross examined by the defence. I find that the process of detection spoken to by PW6 is admitted by the defence. The case was investigated by PW7. There is nothing to show that there was any flaw or irregularity or illegality in the investigation conducted by him, or that any step at his hands during investigation had caused any sort of prejudice to the accused. I find that the case was properly investigated by PW7.

11. On an appreciation of evidence given by DW1 to DW3 examined by the defence, I find nothing material in favour of the accused, or against the prosecution. That the building number was not entered in the register is well proved by PW5, and also, Ext.P13 register. PW5 has also given evidence that on his report of site inspection, the standing committee of the Panchayath had taken a decision to assign number to the newly constructed building of the complainant's sister Ayisha, and the amount of tax was also fixed. It was accordingly, building tax was received once, but later, an ownership certificate given to the owner was cancelled by the Secretary, when he found that necessary entries

are not there in the register. Ext.P5 is the cancelled ownership certificate.

12. I find no reason or ground to reject or disbelieve the evidence of the complainant regarding demand and acceptance. There is absolutely no material to probabalise the defene case that, what the appellant received from the complainant was the amount of building tax offered by him. The complainant is definite that it was the bribe demanded by the accused. Ext.P7 minutes of the Panchayath contains the necessary entries regarding the building of the complainant's sister. Ext.P7(a) entry in page No.285 contains the decision of the standing committee fixing the amount of building tax. This is proved by PW5. In spite of such decision, the Panchayath Secretary failed or omitted to make necessary entries in the Ext.P13 register, and when the complainant came to remit tax, the accused demanded Rs.500/- saying that some amount is required for making necessary entries in terms of the decision of the standing committee. The evidence of PW2 is not regarding demand or acceptance. It is only regarding the recovery of phenolphthalein tainted currency from the possession of the accused. Though he

was cross examined by the defence, the detecting officer was left free without effective cross examination. In such a circumstance, the evidence of PW2 regarding recovery can well be accepted. Thus, acceptance of illegal gratification also stands well proved by the evidence of PW1 and PW2.

13. On an appreciation of the material evidence as discussed above, I find that the prosecution has well proved the case of demand and acceptance of illegal gratification by the appellant. I find no reason to disbelieve the evidence of any of the material witnesses. There is absolutely no reason why PW1 should file a false complaint against the appellant, or why the Dy.S.P. should arrange a vicious trap against the appellant. There is absolutely no material or circumstance to probabalise the defence case that the amount received by the appellant from the complainant was the amount of building tax.

14. I find, on an appreciation of the entire evidence, that the trial court came to the right finding, and the appellant was rightly convicted under Sections 7 and 13(2) of the P.C. Act. Thus, I find that the conviction is only to be confirmed in appeal. I find no reason or ground or scope for interference in appeal.

15. The sentence imposed by the court below is rigorous imprisonment for two years each and a fine of Rs.2,000/- each, under the two penal sections. The incident in this case happened in April, 2001, and now we are in 2015. I find that some interference in the sentence is required in this case. As on the date of commission of the offence, the minimum sentence prescribed for the offence under Section 13(2) was imprisonment for one year, and the minimum sentence for the offence under Section 7 of the P.C. Act was imprisonment for six months. By the time final report came, the accused retired from service on superannuation. In the above circumstances, I feel it necessary to modify and reduce the sentence. I find that the minimum sentence will be the adequate sentence in this case. To this limited extent, the appeal can be allowed in part, confirming the conviction.

In the result, this appeal is allowed in part to the limited extent of modifying and reducing the sentence. The conviction made by the court below under Sections 7 and 13(2) of the P.C. Act will stand confirmed. However, the sentence imposed by the court below under Section 7 of the P.C. Act will stand modified

and reduced to simple imprisonment for six months, and the sentence under Section 13(2) of the P.C.Act will stand modified and reduced to simple imprisonment for one year. The two substantive sentences will run concurrently. The fine sentence with default sentence thereon, imposed by the court below, is maintained.

Sd/-

P. UBAID, JUDGE

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