IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

CRL.A.No. 1206 of 2005 ( )

C.C.No. 20/2000 OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE.

APPELLANT/1 ST ACCUSED:

K.VENKITAGIRI,
S/O. LAKSHMANA RAO,
LAXMAN NIVAS, BEACH ROAD, KASARGOD
(U.D.CLERK, SALES TAX CHECK POST, MANJESWAR
KASARGOD).

BY ADVS.SRI.V.V.ASOKAN (SR.)
SRI.P.P.RAMACHANDRAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
THROUGH THE DY.S.P. ,
VIGILANCE AND ANTI CORRUPTION BUREAU,
KASARGOD,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR : SRI. P.P. ROY THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-09-2015, ALONG WITH CRA. 1220/2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K. RAMAKRISHNAN, J.

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Crl.A.Nos. 1206 & 1220 of 2005

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Dated this the 16th day of September, 2015

JUDGMENT

Crl.A.No. 1206/05 was filed by the 1st accused while Crl.A.No. 1220/05 was filed by the 2nd accused both in C.C.No.20/00 on the file of the Enquiry Commissioner and Special Judge, Kozhikode. Both the appellants were charge sheeted by the Dy.Sp. of Vigilance and Anti Corruption Bureau, Kasargode in V.C.No.3/98 under Section 7 and section 13(1)(a) and (d) r/w section 13(2) of Prevention of corruption Act, 1988 (hereinafter called P.C. Act) and section 120(B) of Indian Penal Code (hereinafter called IPC for short).

2. The case of the prosecution in nutshell was that on 03.02.1998 on account of conspiracy hatched between the accused persons who were working as upper division clerk and Sales Tax Inspector respectively at the Sales Tax Check Post, Manjeswaram, being the public servants abused their official position and entered into a criminal conspiracy to collect illegal gratification from the drivers of goods vehicle passing through

the check post and pursuant to that conspiracy, they collected an amount of Rs. 1,100/- being illegal gratification from the drivers of the vehicles for making entries in the relevant registers and allowing the vehicle to pass through the check post. Further they have demanded the amount and obtained an amount of Rs. 25/- from one Sri.J. Bhaskaran, the driver of the lorry No.KL 13/ 1410 and allowed the vehicle to pass through the check post without collecting any tax and they were doing it regularly and also demanded and obtained Rs. 20/- each from Sri. Rony D'Souza and Sri. Ganeshan, the drivers of lorry nos. KA-20/6087 and KL-C/1248 to allow the vehicle to pass through the check post without the tax being realised on the taxable goods carried in the said vehicles and thereby both of them have committed the offence punishable under Section 7 and section 13(1)(a) and (d) r/w section 13(2) of Prevention of corruption Act and section 120(B) of IPC.

3. After investigation, final report was filed before the Special judge and Enquiry Commissioner, Kozhikode and it was taken on file as C.C.No.20/2000 against the appellants. When the appellants appeared before the court below, after

hearing both sides, charge under section 7 and section 13(1) (a) and (d) r/w section 13(2) of Prevention of corruption Act and section 120(B) of IPC wAS framed against both the accused and the same was read over and explained to them and they pleaded not guilty.

4. In order to prove the case of the prosecution, pws 1 to 6 were examined and Ext.P1 to 17 and MO 1 were marked on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under Section 313 of Code of Criminal Procedure (hereinafter called 'code') and they denied all the incriminating circumstances brought against them, in the prosecution evidence. The 1st accused had filed a statement stating that he had not committed any offence. He worked as Upper Division Clerk at Manjeswaram Sales Tax Check post on 03.02.1998. He did not collect any illegal gratification from the drivers as stated by PWs 1, 3 and 5 while working as Upper Division Clerk on 03.02.1998. He collected the declaration from the lorry drivers and he did not accept any illegal gratification. His office faced towards west and he was sitting facing towards south at that time. He never put

MO 1 bag inside the table nor did he kept any amount in MO 1 bag. He was not having any drawer for his table facing him. He was on off duty on 01.02.1998 and 02.02.1998 and since Ext.p3 attendance register was kept in the room of the Sales Tax Officer, he could not put the signature in Ext. P3 on 03.02.1998. However he had signed in Ext.P9 duty register on that day and joined his duty. There was no inspection conducted on 03.02.1998 as stated by PWs 1 and 5 and no bag was seized from his possession as stated by them. According to him, he has been falsely implicated in the case. The 2nd accused also stated that while he was doing duty in the check post, he did not commit any offence. Dw1 examined the side of the 1st accused. After hearing both sides, the court below found the appellants guilty under section 7 and section 13(1)(a) and (d) r/w section 13(2) of Prevention of corruption Act and section 120(B) of IPC and sentenced them to undergo rigorous imprisonment for 3 years and 6 months each and also to pay the fine of Rs.10,000/- each under section 13(1)(a) r/w 13(2) of PC Act and further sentenced to undergo rigorous imprisonment for 3 years and 6 months each and also to pay the fine of Rs. 10,000/- under section 13(1)(d) r/w 13(2) of PC Act and further sentenced to undergo rigorous imprisonment for one year each and also to pay fine of Rs. 5,000/- each under Section 7 of P.C. Act. No separate sentence was awarded under Section 120(B) of IPC. The substantive sentence were directed to run concurrently. Aggrieved by the same, the above appeals were filed by the respective accused in the court below. Since both these appeals arose out of the same judgment, the above appeals are disposed of by this court by a common judgment.

5. Heard counsel for the appellant, Sri.P.P.Ramachandran representing Senior counsel Sri.V.V.Asokan appearing for the appellant in Crl.A.No.1206 of 2005 and Sri. Aneesh Joseph representing the Senior Counsel Sri.Ramesh chandar counsel appearing for the appellant in Crl.A.No.1220 of 2005 respectively and Sri. Roy Thomas, Public Prosecutor appearing for the state.

6. The counsel for the appellants in both these cases submitted that the evidence adduced on the side of the prosecution is not sufficient to attract any of the offences

alleged. The person from whom demand was made and pursuant the demand amount paid was not examined in this case. Further there is no evidence to show that they were regularly receiving illegal ratification abusing their official position, so as to attract the offences under section 7 and section 13(1)(a) and (d) r/w section 13(2) of Prevention of corruption Act. Further there was inordinate delay in registering the crime. It has not been properly explained. Further though MO1 bag was alleged have been seized on 03.02.1998, there is no evidence to show as to who was in possession of the bag till it was produced in court. Further there is discrepancy in the evidence of prosecution witnesses regarding the alleged demand and receipt of the amount and recovery of the amount. The seized article were not produced in court immediately as required under Section 102 of Code of Criminal Procedure. Counsel for the 2nd accused who is appellant in Crl.A.No.1220 of 2005 also argued that there was no evidence to prove the conspiracy alleged between the accused nos. 1 and 2 for committing any crime and there was no demand or acceptance of money proved against him. So under the circumstances, the court below was not justified in convicting him also for the offences alleged. Both the counsels submitted that they are entitled to get acquittal.

7. On the other hand the learned Public Prosecutor submitted that the evidence adduced on the side of prosecution proved the conduct of the accused of demanding and receiving illegal gratification and the amount was recovered from their possession. There is no explanation forthcoming from the side of both the accused for the amount in their possession. Further since it was done as part of surprise check, they cannot register a crime immediately as they will have to file a report and only after getting sanction from the authorities, they can register a crime and that was the reason for the delay. So according to the learned Public Prosecutor, the prosecution has proved the case against the accused beyond reasonable doubt and the conviction entered by the court below do not call for any interference

8. The case of the prosecution as emerged from the prosecution witnesses was as follows. PW1 was working as

Special Tahsildar, Land Acquisition, Kasargode at the relevant time. As per the directions of the District Collector regarding the information received that the vehicles were being allowed to pass through the Manjeswaram check post by the officials by receiving illegal gratification and without collecting proper taxes and for the purpose of ascertaining the same, on 03.02.1998 she went to the office of Deputy Superintendent of Police, Vigilance, pw5 and he along with pw5 and others went to Uppala and when they examined the vehicles passing through that place, they found that some of the taxable items were carried in the vehicle for which tax has not been collected though it crossed through the check post. So along with the vehicle they came to the Manjeswaram Sales Tax check post. At that time, number of drivers were standing in the queue and Pw1 along with Pw5 also stood in the queue. At that time, they saw the 1st accused demanding amount from the drivers and when one of the driver gave Rs.10/-, he did not receive the same and when he gave Rs.25/-, he received and put it in MO 1 bag taken from the drawer of the table and put same in it. Thereafter, they entered the room and Pw5 took the bag and examined the same and it contained Rs.1,100/-. They verified the receipt book kept on the table and the amounts collected as per the entries in the receipt book were found in the chest box, but there was no entry regarding the amount of Rs.1,100/- seen in MO 1 bag. The 2nd accused was the Inspector found in the office but he was found to be drunk. So he was taken to Pw2 for examination and Ext.P4 drunkenness certificate was obtained as directed by the PW5 . PW1 prepared Ext.P1 inventory which was signed by PW1and PW5 and other witnesses. The vehicle which was brought by them was examined and thereafter an amount of Rs.950/- was collected from the driver as tax payable on the goods. The amount of Rs.1,100/- recovered from the possession of the 1st accused seen in MO 1 bag was remitted in District Treasury as per Ext. P2 receipt on the same day. On verification of the attendance register, it was revealed that the 1st accused had not signed the register though he was present in the office. The certified copy of the relevant page of the attendance register was marked as Ext.P3 . They completed the inspection by 6 p.m and the inventory as well as the bag were entrusted to pw5. Thereafter, after getting sanction, Pw5 registered ext.p5 First Information Report as V.C.No.3/98 of Kasargode Vigilance under Section 7 and section 13(1)(a) and (d) r/w section 13(2) of Prevention of corruption Act and section 120(B) of IPC against both the accused.

9. The earlier part investigation in this case was conducted by K. Narayanan Nair, Cw22 who is no more. He had seized MO 1 bag as per Ext. p6 mahasar as produced by PW5. Cw 22 questioned the witnesses and recorded their statements. Further investigation in this case was conducted by pw6. He had seized ext.P7 circular no. 30/1992 of the revenue board. Cw22 had seized the handing over mahazar and Ext. P8 cash book as per mahazar. He had seized Ext.P9 duty register, Ext.P10 vehicle checking register and P11 series true copies of the general diaries regarding the dates of inspection as per Ext. P12,14 and 15 mahazars. He had also seized Ext. P13 posting order of 2nd accused and ext.p16 posting order of 1st accused in the Clerk post. He completed the investigation after obtaining Ext.P17 sanction to prosecute

the accused persons from Joint commissioner of Taxes. Thereafter the final report was filed by pw4 after verifying the documents. Pw3 was examined to prove demand and payment and also recovery of MO 1.

10. Dw1 was examined on the side of the 1st accused to prove that though the 1st accused had not signed the attendance register, he had signed duty register on that day and he was on duty. Further he has also stated that the amount should be collected and entered in the register and receipt will be issued and subsequently it will be entered in the registers and respective registers will be kept in the office. But he had admitted in his cross examination that there was a checking on 03.02.1998 and the inspection party had brought the vehicle which carried certain taxable items for which tax was not paid and thereafter they collected tax as per Ext.P8(a) receipt. So even as per the evidence of the defense witness, it is clear that there was an inspection conducted and a lorry which passed through the check post without paying tax for the goods carried in the vehicle was brought to the check post and the tax was collected. He had also stated that it is the

duty of the clerk to enter the amount in the bill and invoices etc., in the register and will have to be verified by the inspector and the inspector will sign the same and only thereafter vehicle will be allowed to pass. He had also stated that as per the circular, the personal cash will have to be entered in the personal cash register available and if it is not available, it must be entered in the general diary. So it is clear from his evidence that surprise inspection was done on that day in the check post. There was nothing brought out in his evidence that no recovery was effected from the 1st accused though he was examined by the defence for that purpose. On the other hand his evidence will give to show that the lorry which was checked by the inspection party was brought back to the check post and tax was collected from the driver as per original of Ext.P8(a) receipt. So the submission made by the counsel for the appellants that there was no surprise inspection conducted by Pw1 or Pw5 as claimed and their defence on this aspect has to be rejected.

11. It will be seen from the evidence that pw2 doctor, who examined the 2nd accused that he consumed alcohol

though he was not under the influence of alcohol and he had stated that he examined the 2nd accused on 03.02.1998 at 5 p.m. He had further stated since the accused did not co-operate for collecting blood, the blood could not be collected. He had further stated in the cross examination that he can categorically state that the 2nd accused had consumed alcohol at the time when he was examined and Ext.P4 certificate issued. He denied the suggestion that without conducting the examination of blood, it is not possible to find out as to whether a person had consumed alcohol or not. So his evidence will go to show that the 2nd accused was found after consuming the alcohol in the office at the duty hours when PW1 and 5 went there and he was the inspector who was verifying the activities of the 1st accused. But he had not objected the 1st accused demanding the amount and accepting the amount. He did not report about the same to higher authorities as well. It is also seen from the evidence that the amount of Rs. 1,100/- seen in MO 1 bag was not entered in any of the registers kept in the office at that time. There is no explanation forthcoming from the side of the accused regarding that amount as well as they were only denying the recovery of any such amount from their possession.

12. PW3 is an independent witness to the incident. According to him, he was also present at the place of occurance and he was traveling in the vehicle KL 11/6633 tanker lorry, from Mangalapuram to Kozhikode. He was working for SRN company and palmoil was being transported in the vehicle at that time. According to him, he along with the driver of the vehicle with the documents went to the check post. At that time, both the accused were present in the check post. When the driver of the vehicle handed over the documents to the 1st accused, he demanded the 'mamool' that had to be paid for clearing the documents. He gave Rs. 10/-, but that was not received by the 1st accused but he demanded Rs.25/- and driver had paid Rs.25/-, which was taken by the 1st accused and put in the box and thereafter handed over the documents to the 2nd accused who signed and stamped the same and handed over the same to the driver. Lot of drivers were standing there and he had seen the drivers giving amount and getting the documents cleared. He had also

stated that he had seen the Vigilance Department Officials conducting inspection in the place. Though he was cross examined at length, nothing was brought out to discredit his evidence on this aspect. He had stated that there was no necessity for him to accompany the driver, but he had accompanied the driver to help him in case of any clarification required in respect of the documents to be verified. He had no enmity for giving false evidence against these accused persons. It is true that he had not mentioned to the investigating officer that the 2nd accused had signed the documents. But that alone is not sufficient to disbelieve his evidence as such as contended by the counsel for the appellant. So his evidence also will give to show that the accused nos. 1 and 2 were working in the office in the check post at the relevant time and the 1st accused was demanding and collecting the amount from the drivers for the purpose of clearing the documents as illegal gratification and after collecting money, he was handing over the documents to 2nd accused who was signing the same. So his evidence will go to show that the demand and collection of amount was being done by the 1st accused with the convenience of the 2nd accused.

13.Not taking any steps to prevent the 1st accused collecting illegal gratification as a responsible officer will go to show that he was also a party to the conspiracy of collecting the amount and sharing the same at the end of the day. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the accused nos. 1 and 2 conspired together and on the basis of conspiracy, illegal demand has been made abusing their official position for doing their official duty from the drivers coming there and accepted illegal gratification and thereby they have committed offences punishable under section 120(B) of IPC.

14. It is true that Section 22 of the Prevention of Corruption Act says the Code of Criminal Procedure will be applicable to the proceedings under the P.C.Act as well, but it will be subject to certain modifications. So it is not necessary that all the procedures contemplated under the Code of Criminal Procedure has to be ipso facto followed in such cases.

15. The dictum laid down in the decision reported in

Sunilkumar V.S and another v. State of Kerala and others (2014 (4) KHC 966) is not applicable to the facts of this case. It is true that in the decision, it has been mentioned that the provisions of Vigilance manual and circulars are not to be interpreted in a manner so as to act contrary to the statutory provisions as already laid down by the Apex court in Lalithakumari's case (2013 (4) KHC 552). In the same decision, it has been observed that the Directorate of Vigilance and Anti Corruption bureau is a police station and a letter given to the Director alleging corruption is to be treated as an information given to such station of alleged commission of a cognizable offence. In this case no letter alleging corruption was made to any authorities in writing. They got information from the reliable source, since allegation of some irregularities being done in the check post and to verify the same, they wanted to conduct surprise check and accordingly as directed by the District Collector PW 1 with the help of PW 5 conducted the surprise check and found out the irregularities and also demand and acceptance of illegal gratification by accused no. 1 and 2.

16. In the case of surprise check, they will have to follow the guidelines provided in G.O.P. No. 65/92/Vigilance, dated 12.05.1992. So it is clear from the circular that if any request has been received from the department, they will have to assist the department for this purpose and after getting necessary instruction from the concerned department and obtaining sanction from the Vigilance Director, then only they can register the crime. So in this case Pw5 had categorically stated that after conducting surprise inspection, he had submitted the report to the department and after getting the sanction, he registered the crime. He obtained the sanction on 29.06.1998. It is true that the date of obtaining sanction was not mentioned in the First Information Report. First Information Report has been registered on 10.07.1998. So the delay in registering First Information Report has been properly explained by PW5, who registered the crime after conducting surprise check with PW1. So under the circumstances court below was perfectly justified in coming to the conclusion that the delay has been explained by the prosecution in registering the case and no prejudice has been caused to the accused on

account of the delay which has to be established by the accused. It is not fatal to the case of the prosecution to disbelieve the prosecution case especially when there are other materials available on record to prove the demand and receipt of the amount made by the 1st accused with the convenience of the 2nd accused from the persons present on that date namely 03.02.1998.

17. Since some of the witnesses were not examined namely CWs 5,6, and 12, court below had come to the conclusion that since they were not examined, the demand and payment made by them cannot be said to have been proved for receiving bribe from them and the accused could not be convicted as the prosecution has failed to prove that fact. But at the same time, the court below had come to the conclusion on the basis of evidence of PWs1, 4 and 5 that the accused nos. 1and 2 were working as upper division clerk and Inspector of Sales Tax respectively in Manjeswaram check post on 03.02.1998 and they conspired together to make illegal demand and collect the illegal gratification for discharging their duty as a public servants, to get unlawful gain for

themselves abusing their respective position and they were in the habit of collecting the amount from the drivers who were coming there for clearing the papers and allowing vehicle to pass through the check post and thereby they have committed the offences punishable under Section 7 and section 13(1)(a) and (d) r/w section 13(2) of Prevention of corruption Act and section 120(B) of IPC and rightly convicted them for the said offences. I do not find any reason to interfere with the above findings and consequential conviction, so it is confined.

18. As regards the recovery of MO 1 bag is concerned, Pw1W5 who has taken the bag MO1 had entrusted the same to PW1 and thereafter along with the inventory it was entrusted back to him. Pw5 corroborated the same and he has stated that the description of the bag was mentioned in the inventory. It is he who produced the same before CW22, the Investigating Officer who seized the same later. So it can only be presumed that he was in possession of the same till it was produced before the Investigating Officer who in turn produced the same before the court.

19. The learned counsel for the appellants submitted that

considering the amount involved, the sentence imposed is harsh. The court below sentenced the accused to undergo rigorous imprisonment for 3 years and 6 months each and also pay fine of Rs. 10,000/- each under Sections 13(1)(a) r/w section 13(2) of P.C.Act and further sentenced to undergo rigorous imprisonment for 3 years and 6 months each and also pay fine of Rs. 10,000/- each under Sections 13(1)(d) r/w section 13(2) of P.C.Act and further sentenced to undergo rigorous imprisonment for 1 year each and also pay fine of Rs. 5,000/- each under Section 7 of P.C.Act and directed the substantive sentence run concurrently. No separate sentence was awarded for the offence under Section 120(B) of IPC as they have been sentenced for the consequences of the offences committed as a result of the conspiracy.

20. It is settled the law that showing undue leniency in the case of corruption cases will give a wrong signal, and wrong message to the society. Corruption will affect not only the administration but it will affect the discipline in the administration as well. So if it is found that the person had committed the offence involving corruption, then he must be

dealt with seriously and when a minimum sentence is provided for the offences showing much leniency will be against the purport of the legislative intention in this regard.

21. At the time when the offence was committed, the minimum punishment provided for the offences under Section 7 is 6 months and may extend to 7 years with fine and for the offences under Section 13(1)(a) and (d), the minimum punishment provided is one year which may extent to 7 years and also with fine. Considering the amount involved this court feels that minimum punishment provided for the offence retaining the fine and providing default sentence for non payment of fine of 3 months each will be sufficient and that will meet the ends of justice apart from substantive sentence, considerable amount is imposed as fine as well. So the sentence is modified as follows. The appellants are sentenced to undergo rigorous imprisonment for one year each and also to pay fine of Rs. 10,000/- each and in default to undergo rigorous imprisonment for 3 months under Section 13(1) (a) r/w section 13 (2) of P.C.Act and further sentenced to undergo rigorous imprisonment for one year each and also to pay fine

of Rs. 10,000/-each in default to undergo rigorous imprisonment for 3 months each under Section 13(1)(d) r/w Section 13(2) of the P.C. Act and further sentenced to undergo rigorous imprisonment for 6 months each and also to pay a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for 3 months each under Section 7 of P.C.Act. Substantive sentences are directed to run concurrently.

So the appeal is allowed in part. The order of conviction passed by the court below against the appellants and also the fine imposed for the offences under Sections 7and 13(1)(a) and (d) r/w section 13(2) of P.C.Act are hereby confirmed. But the substantive sentence imposed are set aside and the same is modified as follows. The appellants are sentenced to undergo rigorous imprisonment for one year each and also to pay fine of Rs. 10,000/- each and in default to undergo rigorous imprisonment for 3 months each under Section 13(1)(a) r/w section 13 (d) of P.C.Act and further sentenced to undergo rigorous imprisonment for one year each and also to pay fine of Rs. 10,000/- each in default to undergo rigorous imprisonment for 3 months each under Section 13(1)(d) r/w

Section 13(2) of the P.C. Act and further sentenced to undergo rigorous imprisonment for 6 months each and also to pay a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for 3 months each under Section 7 of P.C.Act. The substantive sentences are directed to run concurrently. The period of detention already undergone is given set off against the substantive sentence under Section 428 of Code of Criminal Procedure. Office is directed to communicate the judgment to the concerned court immediately.

Sd/-
K. RAMAKRISHNAN,
JUDGE.

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PA to Judge