

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

CRL.A.No. 1491 of 2006(F)

**AGAINST THE JUDGMENT IN C.C.NO.4/2004 of ENQUIRY COMMISSIONER & SPECIAL
JUDGE, THRISSUR DATED 31-07-2006**

APPELLANT/ACCUSED :-

**DR. M.R.GOPALAKRISHNAN, AGED 59,
RETD. CIVIL SURGEON, PSYCHATRI DEPARTMENT,
GOVT.HOSPITAL, ERNAKULAM.**

**BY ADVS.SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN**

RESPONDENT/COMPLAINANT :-

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

R BY SMT.V.H.JASMINE, PUBLIC PROSECUTOR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.UBAID, J.

=====

Crl.Appeal No.1491 of 2006

=====

Dated this the 20th day of July, 2015

ORDER

The appellant herein was a Psychiatrist in the Government General Hospital, Ernakulam in January-February 2001. During the said period, four couples were forwarded for counselling by a Psychiatrist, from the Family Court, Ernakulam. Accordingly, those eight parties to different proceedings appeared before the appellant herein as Psychiatrist for undergoing counselling. Some appeared in January 2001 and the others appeared in February 2001. All the eight persons underwent counselling, and certificate was also promptly forwarded to the Court by the appellant. Thereafter, in August 2001 for complaints were received by the learned Judge, Family Court, Ernakulam, alleging that the appellant demanded and accepted illegal gratification from them for conducting counselling. The learned Judge forwarded those complaints to the learned Special Judge and Enquiry Commissioner (Vigilance), Thrissur. As directed by the leaned Special Judge, the Vigilance and Anti Corruption Bureau (V.A.C.B.), Thrissur conducted a preliminary enquiry

regarding the allegations made in those complaints and prepared a report. On the basis of the said report of enquiry, the V.A.C.B. registered a crime against the appellant herein under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (P.C.Act). After investigation, the V.A.C.B. submitted the final report before the learned Special Judge.

2. The accused appeared before the learned Trial Judge and pleaded not guilty to the charge framed against him. He accordingly, claimed to be tried. The prosecution examined twelve witnesses in the trial court including the four complainants and their spouses. The prosecution also proved Exts.P1 to P15 documents. When examined under Section 313 of Cr.P.C., the accused denied the incriminating circumstances, and submitted that he had not received anything from the complainants, and that the complaints received in the Family Court or all false complaints. The accused examined one witness in defense. Exts. D1 to D7 were also marked during trial. On an appreciation of the evidence, the learned Trial Judge found the accused guilty, that he had accepted fee unauthorizedly from the complainants, for undergoing counselling as directed by the Family Court. On conviction, he was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹25,000/- under

Section 7 of the P.C. Act, to undergo another term of rigorous imprisonment for four years and to pay a fine of ₹25,000/- under Section 13(2) read with Section 13(1)(d) of the P.C. Act, and to undergo yet another term of rigorous imprisonment for four years and to pay a fine of ₹25,000/- under Section 13(2) read with Section 13(1)(a) of the P.C. Act, by judgment dated 31.07.2006 in C.C.No.4 of 2004. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

3. When this appeal came up for hearing, the learned counsel for the appellant submitted that the whole prosecution case is tainted with genuine doubts, and that the inordinate delay of six months in making complaint stands not in any manner explained. On the other hand, the learned Public Prosecutor submitted that there is absolutely nothing to suspect the witnesses or to doubt their evidence in Court, and that when there is such satisfactory evidence, delay is immaterial. On hearing both sides, and on a perusal of the entire case records including the deposition given by the material witnesses, and also the files produced from the hospital. I find that the long delay of six months in this case in making complaint before the learned Family Court Judge stands not explained by the prosecution by any material, and that the whole prosecution case is

doubtful. The learned Public Prosecutor cited a decision of the Honourable Supreme Court in **Tara Singh v. State of Punjab [AIR 1991 Supreme Court 63]** and submitted that delay by itself is not a ground to doubt or reject the prosecution case. It was a murder case, where the FIR was delayed by a few hours. In view of clear positive evidence proving the alleged incident, the Honourable Supreme Court held that simply on the basis of delay of hours, the prosecution case cannot be suspected. That is not the position here. I find that the evidence given by the material witnesses in this case is really doubtful, in view of the clear evidence given by PW8, who was Deputy Superintendent of Police at the relevant time. He has stated in evidence that PW2 had approached him in May 2001 as instructed from the Family Court. He made some enquiry and instructed the witness and his wife to approach him again, if the doctor demanded money again. But they did not turn up to make any such complaint. This was in May 2001. In August 2001, PW2 and his wife made complaint before the Family Court. There is no reason why PW2 or any other aggrieved person did not pursue the matter further before PW8. This is a very strong suspicious circumstance. The main witnesses examined as PWs 1 to 5, PW9 and PW11 have also nothing to say in evidence as to why their complaints were delayed till

August 2001, if the doctor had in fact received any illegal gratification in January or February 2001. In such a factual situation, where the whole case is doubtful the decision cited by the learned Public Prosecutor cannot be applied.

4. Exts.P1 to P4 and P10 are the complaints in this case. Ext.P1 complaint was filed by PW1, Ext.P2 complaint was filed by PW2 and PW3, Ext.P3 complaint was filed by PW4, Ext.P4 complaint was filed by PW5 and Ext.P10 complaint was filed by PW11. All these complaints, alleging acceptance of illegal gratification in January or February 2001, came before the Family Court only in August 2001. The case of the complainants in all these complaints is that they were referred for counselling by a Psychiatrist in the General Hospital. The Exts.P5 to P8 files relating to the examination of the complainants and their spouses do not contain any communication from the Family Court, referring them for counselling. Every file contains the letter of the Sheristadar requesting medical examination by a Psychiatrist. The definite case of all the complainants is that they were directed to undergo counselling. If, what the Family Court ordered is counselling which must be done by a clinical Psychologist, there is no reason or explanation why the Sheristadar sent communication to the hospital, that the parties be subjected to

medical examination by a Psychiatrist. The proceedings of the learned Family Court Judge referring the parties for counselling is not seen seized by the V.A.C.B. or produced in Court. The Exts.P5 to P8 files do not contain any order or communication from the Family Court, referring the complainants and their spouses for counselling by a clinical Psychologist.

5. In the Exts.P1 to P4 and P10 complaints, the complainants have stated the date on which amount was demanded or accepted by the doctor. But in evidence, nobody except PW1 stated the exact date on which such demand or acceptance was made. The learned Public Prosecutor did not elicit from the others, as to when, or on what date demand was made by the doctor, or when money was accepted by the doctor. The prosecution does not have any explanation for this failure.

6. Delay, as already observed, is very material in this case. Delay of six months in a case like this cannot be easily explained away, saying that the evidence is otherwise satisfactory. I find that the evidence in this case, given by the material witnesses, is not satisfactory at all. When that is the factual position, or when the evidence given by the material witnesses is not fully satisfactory, or when that evidence is tainted some doubt which stands not cleared

delay in making complaint will make the whole prosecution case suspicious.

7. The complaints in this case do not contain any explanation for the delay of six months. The witnesses also have not stated anything in their evidence explaining that much delay of six months. There is no explanation why PW2 or his wife, or any other complainant did not approach PW8 with complaint, if their grievance is genuine. Thus I find that everything in this case is suspicious. It is not simply the delay alone. The whole conduct of the complainants from January to August 2001 is really doubtful. There is no explanation why any of the complainants did not make complaint promptly in January itself. The prosecution has also no explanation why the specific order of the Family Court referring the parties for counselling was not seized during investigation. When the Family Court Judge referred the parties for counselling, the Sheristadar, by letter, referred them for examination by a Psychiatrist.

8. The Ext.P11 FIR will show that the crime was registered on the basis of definite complaints received from the Family Court and also on the basis of the report of enquiry conducted as ordered by the Special Court. Such a report is not seen produced in Court. It is not known, what happened to that report, or what are the things

revealed by the said report.

9. As discussed above, I find that the whole prosecution case is really suspicious. I find that the inordinate delay of six months in this case stands not explained in any manner. The complaints were received by the V.A.C.B. in August 2001, from the Special Court. But the FIR was registered only on 15.10.2002. If the Vigilance has a case that registration of FIR was delayed due to the fact finding enquiry, that delay also must be explained by producing such report of fact finding enquiry. But such a report is not before the Court. Thus the delay in registering FIR is also suspicious in this case. That delay also stands not explained.

10. When the whole prosecution case is doubtful, and when the prosecution case suffers from very material infirmities this Court, as the appellate court, cannot confirm the conviction. The benefit of very genuine doubt will have to be given to the accused. I accordingly find that the appellant is entitled for an acquittal. There is yet another interesting aspect that the trial court has convicted the accused under Section 13(1)(a) of the P.C. Act also. The offence specifically dealt with and made punishable under Section 13(1)(a) is acceptance of illegal gratification habitually. Here is no such factual situation. Legally, such a conviction cannot be sustained.

In the result, this appeal is allowed. The appellant herein is not found guilty of the offences under Section 7 and 13(2), read with Section 13(1)(a) and 13(1)(d) of the P.C. Act, and accordingly, he is acquitted of the said offences in appeal under Section 386(b)(1) Cr.P.C. The bail bond if any, executed by the appellant will stand discharged.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE