IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

CRL.A.No. 712 of 2008

AGAINST THE JUDGMENT IN C.C 11/2003 of ENQUIRY COMMISSIONER & SPL.JUDGE, THRISSUR DATED 09-04-2008

APPELLANT/ACCUSED:

FATHEELA BEEGOM, AGED 56 YEARS,
UD CLERK, SUB REGIONAL TRANSPORT OFFICE,
MATTANCHERRY

BY ADVS.SRI.O.V.MANIPRASAD
SRI.M.K.DAMODARAN (SR.)

RESPONDENT:

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

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ab

P.UBAID, J.

Crl.A No.712 of 2008

Dated this the 15th day of December, 2015

J U D G M E N T

The appellant herein was an Upper Division Clerk in the Sub Regional Transport Office, Mattancherry during 1998. She faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur in C.C No.11/2003 on the final report submitted by the Vigilance and Anti-Corruption Bureau (VACB), Ernakulam, alleging the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act (for short 'P.C Act'). The VACB made investigation on a complaint made by one Joseph, who is an auto consultant. The case of Joseph in his complaint is that when he made an application for duplicate registration certificates relating to the vehicle Nos.KL-7/P 2757 and KL-7/P 2960 belonging to M/s. Vellappally Natesan and Company, the accused demanded an illegal gratification of ₹300/- for issuing duplicate registration certificates. His case is that such demand was made by the accused within a few days from the date of application, and she repeated the demand on 28.1.1998. As he was not inclined to make payment of bribe, he made a complaint before the VACB on 31.1.1998. On the said complaint, the VACB arranged a trap. The amount of ₹300/- brought by the complainant was seized as per mahazar, it was tainted with phenolphthalein, and after demonstrating the required the phenolphthalein test the complainant was instructed by the VACB to approach the accused and make payment. Accordingly, the complainant approached the accused at her office at about 2.45 pm on 31.1.1998 and tendered the amount. As instructed by the accused he placed the currency on the table top, which the accused removed to the table drawer with a pen. On getting signal from the complainant the vigilance team reached there, seized the phenolphthalein tainted currency, and arrested the accused on the spot.

2. The accused pleaded not guilty to the charge framed against her by the trial court under Sections 7 and 13(2) r/w 13(1)(d) of the P.C Act. The prosecution examined nine witnesses and marked Exts.P1 to P21 documents. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances, and submitted that she had not received anything from the complainant as illegal gratification,

and that she had also no reason or occasion to receive any money from the complainant. In defence the accused did not examine anybody, but Exts.D1 and D2 documents were marked. The material objects including the tainted money were identified during trial as MO1 to MO7.

3. On an appreciation of the evidence, the learned trial judge found the accused guilty. On conviction she was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹10,000/- under Section 13(2) r/w 13(1)(d) of the P.C Act, and to undergo rigorous imprisonment for three years and to pay a fine of ₹10,000/- under Section 7 of the P.C Act by judgment dated 9.4.2008. Aggrieved by the said judgment of conviction and sentence, the accused has come up in appeal.

4. On hearing both sides, and on a perusal of the whole materials including the documents proved on the side of the defence, I find that the whole prosecution case is tainted with suspicious materials and circumstances, the benefit of which must necessarily go to the accused. The accused is also entitled for acquittal on the legal ground that the prosecution sanction in this case stands not properly proved according to law. Now let me see what is the evidence given by the

complainant and the other witnesses, and what are the suspicious circumstances.

5. PW2 is the complainant in this case. Of course he has given evidence, substantiating the allegations in the complaint. It has come out in evidence that the application for duplicate copy of the registration certificate in the name of M/s.Vellappaly Natesan and Company was made by the PW2 before the Joint Regional Transport Office on 1.12.1997. The trap in this case was on 31.1.1998. The case of the complainant is that the demand for illegal gratification was repeated by the accused on 28.1.1998. He does not say in the complaint or in evidence, when exactly demand was first made by the accused. Anyway, his evidence is that as instructed by the Dy.S.P (Vigilance) he met the accused at her office at about at 2.45 pm on 31.1.1998 and made payment of the tainted money. His evidence is that he approached the vigilance with a complaint at 11 am on 31.1.1998. But the FIR in this case shows that the complaint was given by the complainant at 9 am. The definite evidence given by the witnesses is that the tainted money was seized and the accused was arrested at her office at about 2.45 pm. on 31.1.1998. But the recovery mahazar in this case shows

that the whole process of recovery was made at 2.15 pm. This difference is not seen explained by anybody.

6. PW3 is the trap witness. He has no case that he had seen or witnessed acceptance of money by the accused. The definite evidence given by the detecting officer is that he had instructed PW3 to accompany the complainant and witness payment of money. But he, for his own reasons, chose to remain outside. Thus he did not witness the alleged payment of money. The evidence given by the complainant is that as asked by the accused he placed the tainted currency on the table, which the accused removed to the table drawer with a pen. On all these aspects the complaint is definite and clear. But the evidence given by PW3, the trap witness, brought to prove the recovery is otherwise, that the tainted money was seen between two files kept on the office table of the accused. Thus, it is seen that the evidence given by the trap witness is quite contrary to what the complainant said regarding the exact place from where the tainted money was recovered. The evidence given by the complainant indicates that the vigilance must have recovered it, or taken it, from the table drawer. But the trap witness is definite that the tainted money was seen between two files kept

on the table. This is the evidence of the detecting officer also. This aspect stands not cleared in any manner by the prosecution.

7. Of course, phenolphthalein test will not help the prosecution because the accused, admittedly, had not touched the phenolphthalein tainted currency or received it in her hands. So quite naturally the phenolphthalein test turned negative. In such a situation, where there is no such scientific evidence to prove detection, the contradictory evidence given by the complainant and PW3 assumes much importance. Here there is clear doubt regarding the whole prosecution case, which stands not in any manner clarified.

8. The complaint of PW2 is that when he met the accused on 28.1.1998 she demanded an amount of ₹300/- and the demanded money was paid on 31.1.1998. The Exts.D1 and D2 documents stand proved by the prosecution witness. PW6 proved these two documents including Exts.D1(a) and D2(a) entries. In Exts.D1(a) entry in the vehicle register shows that the duplicate RC relating to the vehicle No. KL-7/P 2960 was issued from the JRT office on 4.2.1997. So also Ext.D2(a) entry in the vehicle register shows that the duplicate registration certificate relating to vehicle No.KL-7/P 2757 was issued from

the office on 8.12.1997. This means that even before the alleged demand, duplicate registration certificate was issued in the name of M/s.Vellappally Natesan and Company. If so, the prosecution case is really unbelievable that on 28.1.1998 or on 31.1.1998, the accused accepted illegal gratification for issuing duplicate copy of registration certificate.

9. The learned trial judge relied on two other entries in Ext.D1 and D2. These two are the later entries showing issuance of duplicate registration certificate on 10.3.1998. Exts.D1(a) and D2(a) entries will show that the duplicate registration certificate was issued in December 1997 itself on surrender of the original registration certificate which was damaged. When such an entry is there, it is not known how another entry happened to be made on 10.3.1998, showing issuance of duplicate certificate. The learned trial judge rejected the first entries made in December 1997 and relied on the subsequent entries made in March 1998, to find the accused guilty. The judgment shows that the learned trial judge accepted the subsequent entries without any justification or reasoning. When there are two documents at the hands of the prosecution; one in favour of the accused and one against the accused, the

court will have to rely on the material in favour of the accused, unless the other is explained well by the prosecution as to how such an entry happened to be made. One entry shows that duplicate registration certificate was issued in December 1997 itself, on the application made on 1.12.1997, but the other entry shows that it was issued on 10.3.1998. The prosecution does not explain in any manner, how a second entry happened to be made in the vehicle register showing that the duplicate was issued after the trap in this case. When the first entry contains all the necessary details including surrender of the original certificate on the ground that it was damaged, the second entry is quite cryptic, and it appears that it was subsequently made by somebody to create evidence that the duplicate was issued after the trap.

10. When two entries are there, in the vehicle register, one in favour of the accused and the other against the accused, the Vigilance Dy.S.P should have seized the duplicate registration certificate itself, or a true extract, showing the exact date on which it was issued from the office. The prosecution has no explanation for this failure. As already observed, when materials are there for and against the accused, the prosecution

is bound to explain the material or entry in favour of the accused, if the prosecution wants to rely on the other entry. Here nobody made any sort of attempt to explain this inconsistency. Thus here also I find that the whole prosecution case is doubtful. There is reason to believe that the subsequent entries in the Ext.D1(a) and D2(a) documents were made by somebody after the trap.

11. There is yet another circumstance against the prosecution. It has come out in evidence that the duplicate registration certificate was issued from the 'R' Section of the office. Admittedly, the accused herein was not the clerk in the R Section. The person-in-charge of 'R' Section was one Xavier. Nobody explained how the accused happened to demand money for issuing duplicate registration certificate when she was not in fact the clerk in charge of the Section. Here also the prosecution case is doubtful.

12. Ext.P1 prosecution sanction in this case was marked by the prosecution through PW1, who is a Deputy Secretary to the Government. Ext.P1 is the sanction granted by the Principal Secretary. An identical situation came up before this Court in 2011 in **Antony Cardoza v. State of Kerala**

(2011(1) KLT 946), wherein the prosecution examined an Under Secretary to prove the prosecution sanction granted by the Principal Secretary. In the said case this Court held that the prosecution sanction will have to be proved by the person who granted it. The person who granted sanction will have to prove that he had applied his mind independently to the facts of the case, and he had perused or considered all the relevant aspects and materials before granting sanction. This Court held that the said function cannot be taken over by somebody else. Following Antony Cardoza (cited supra) and other decisions on the point, this Court has recently settled the position that the prosecution sanction must be proved by the person, who granted it, as provided under the law, except in circumstances where the sanction can claim some sanctity or privilege under the law. Ext.P1 is not such a prosecution sanction which can claim any sanctity or immunity under the law. The prosecution should have examined the Secretary, who granted the sanction, to prove it. Just marking a document will not amount to proof of the document. The Hon'ble Supreme Court has held in so many decisions that the person who granted sanction under Section 19 of the P.C Act must prove that it was granted by him on an independent application of mind and after considering the whole materials and documents independently. Here the Secretary who issued the sanction did not turn up to prove it. I find that Ext.P1 sanction stands not properly proved according to law and so the present prosecution is barred under Section 19 of the P.C Act. On this limited ground itself, the accused is entitled for acquittal.

13. As already observed the Exts.D1(a) and D2(a) documents will show that the accused in this case had no reason or occasion to demand bribe from the complainant in January 1998, when the complainant had already obtained duplicate certificate in December 1997 itself. On an examination of the entire evidence given by the material witnesses including the detecting officer, I find that the whole prosecution case is tainted with serious doubts, and no doubt stands in any manner cleared by the prosecution. The benefit of these doubts must necessarily go to the accused. I find that the prosecution case stands not proved beyond reasonable doubt, and the prosecution is in fact barred under Section 19 of the P.C Act. The appellant is thus entitled for acquittal under the law.

In the result, this appeal is allowed. The appellant is found not guilty of offence under Sections 7 and 13(2) r/w 13(1)(d) of the P.C Act. Accordingly, she is acquitted of those offences in appeal under Section 386(b)(i) of the Code of Criminal Procedure. The bail bond, if any executed by the accused will stand discharged.

Sd/-
P.UBAID
JUDGE

//True Copy//

P.A to Judge

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