IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

CRL.A.No. 1559 of 2006 ( )

AGAINST THE JUDGMENT IN CC 26/2004 of ENQUIRY COMMR.& SPECIAL JUDGE,THRISSUR DATED 08-08-2006

APPELLANT(S)/ACCUSED::

JOHNY P. VARGHESE,
FORMER VILLAGE ASSISTANT, ONAKKOOR VILLAGE.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

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 4-8-2015, THE COURT ON 20-10-2015 DELIVERED THE FOLLOWING:

P.UBAID, J.

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Crl.A No.1559 of 2006

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Dated this the 20th October, 2015

J U D G M E N T

The appellant herein was the Village Assistant of the Onakkoor village in February-March, 2003. He was trapped by the Vigilance and Anti-Corruption Bureau (VACB) Ernakulam at his office at about 3.50 p.m on 26.3.2003 while accepting an amount of ₹ 350/- as illegal gratification from one Narayanan, as a reward for effecting mutation in the registers regarding a property purchased by the son of the said Narayanan. Application for mutation was submitted by Narayanan's son Babu in February, 2003, and for the said purpose, Narayanan met the Village Officer in February itself. As instructed by the Village Officer, Narayanan met the Village Assistant. It is alleged that when Narayanan met the Village Assistant in February, 2003, he demanded an amount of ₹ 1000/- for effecting mutation. Later, Narayanan went to the Village Office on 25.3.2003 and met the Village Officer. At that time, the Village Officer again instructed him to meet the Village Assistant, because he had by the time handed over charge to the Village Assistant, on transfer. Accordingly, it is alleged, Narayanan again met the Village Assistant and expressed his difficulties when the Village Assistant repeated his demand for ₹ 1000/-. However, on bargain, the Village Assistant reduced the claim to ₹ 350/- and asked Narayanan to come with the amount on 26.3.2003. As Narayanan was not inclined to pay bribe, he approached the Deputy Superintendent of Police, VACB, Ernakulam on 26.3.2003 and made a complaint. On the said complaint, the Deputy Superintendent of Police registered a crime and arranged a trap. The bribe money of ₹ 350/- brought by Narayanan was smeared with phenolphthalein in the presence of the complainant and the trap witnesses, and as instructed by the Dy.S.P, Narayanan met the accused at his office at about 3.50 p.m on the said day, and made payment of the amount when the Village Assistant again made demand. Within no time, the vigilance team led by the Dy.S.P reached there on getting signal from the complainant, seized the phenolphthalein tainted currency from the possession of the Village Assistant as per mahazar and arrested him on the spot. After investigation, the VACB submitted final report before the learned Enquiry Commissioner and Special Judge, Vigilance, Thrissur.

2. The appellant appeared before the trial court in C.C 26 of 2004 and faced trial by pleading not guilty to the charge framed against him under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act (for short “the P.C Act”).

3. The prosecution examined nine witnesses including the complainant and the trap witness, and proved Exts.P1 to P17 documents. The material objects including the tainted money were identified and marked as MO1 to MO11 series. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances, and contended that he was viciously trapped by the vigilance at the instance of the complainant due to some personal enmity. In defence, the accused examined one witness as DW1. On an appreciation of the evidence, the learned trial Judge found the accused guilty under Sections 7 and 13 (2) read with Section 13 (1) (d) of the P.C Act.

4. On conviction, he was sentenced to undergo 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 another period of rigorous imprisonment for three years, and to pay a fine of ₹ 25000/- under Section 7 of the P.C Act, by judgment dated 8.8.2006. 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 the evidence given by the complainant as regards the application for mutation and also as regards demand is really suspicious, and that the whole trap is suspicious. The learned Public Prosecutor submitted that there is absolutely no reason to doubt or disbelieve the complainant or his evidence, and that the accused was trapped on a genuine complaint.

6. Of the nine witnesses examined by the prosecution in the trial court, PW2 is the complainant Narayanan, PW3 is the trap witness and PW9 is the Dy.S.P who detected the offence and investigated it. PW1 is the

officer who granted prosecution sanction in this case under Section 19 of the P.C Act, PW5 and PW6 are the persons who sold property to the complainant's son Babu, PW4 is the Village Officer who proved the complainant's application for mutation, PW7 is the Village Officer who prepared the Ext.P13 scene plan, and PW8 is the Upper Division Clerk who proved the seizure of some documents as per mahazar.

7. PW1 has proved the Ext.P1 prosecution sanction. He granted the sanction in his capacity as the Deputy Commissioner of Land Revenue. He was the person competent to remove the accused from service on the relevant date. His evidence convinces the court that he granted Ext.P1 sanction on a consideration of all the relevant materials and aspects including the material documents submitted by the vigilance, and that he had applied his mind independently in the process of granting sanction. Thus, I find that the Ext.P1 sanction is acceptable and it stands well proved by PW1.

8. The complainant examined as PW2 has given definite evidence which is fully consistent with the statements in the Ext.P2 complaint. PW2 is definite in his

evidence that his son made application for effecting mutation in February, 2003 and in the same month, he had approached the Village Officer for the said purpose. As instructed by the Village Officer, he met the Village Assistant (accused). At that time, the Village Assistant demanded ₹ 1000/- as illegal gratification. He returned from the Village Office and he did not go there for some time. However, on 25.3.2003, he again met the Village Officer with the request, and at that time also, he was instructed by the Village Officer to meet the Village Assistant, for the reason that he had by the time, handed over charge to the Village Assistant on transfer. When he met the accused accordingly on 25.3.2003, he repeated his demand. When he expressed his difficulties, and made a bargain, the Village Assistant reduced the claim to ₹ 350/-and asked him to come with the amount on 26.3.2003. On that date, he approached the vigilance and made the Ext.P2 complaint. On his complaint, the Dy.S.P. took necessary steps, seized the currency brought by him as per mahazar, and applied phenolphthalein on the currency. After reading out the complaint to the trap witnesses, and after demonstrating the phenolphthalein test, he was instructed by the Dy.S.P to meet the accused at his office and make payment on demand. Accordingly, he met the accused at his office at about 3.50 p.m and paid the tainted currency of ₹ 350/-, when the accused again made demand. Within seconds, he came out and gave signal to the vigilance. Immediately, the vigilance team reached there, seized the phenolphthalein tainted currency and arrested the accused on the spot. The complainant is definite in his evidence and also in his complaint, that the tainted money paid by him was received by the accused in his right hand, and after counting it, he put it in the left drawer of his office table. The defence could not bring out anything in the cross-examination of PW2 to discredit his evidence. In spite of extensive cross-examination, he stood firm to his versions regarding the alleged demand and acceptance.

9. Of course, PW5 and PW6 who sold property to the complainant's son did not in fact support the prosecution. Their evidence is that they had not gone to the village office along with the complainant. The complainant's evidence is that one of them had accompanied him when he made

application for effecting mutation. This is not a very material inconsistency when the whole evidence is appreciated. Whether PW5 or PW6 had accompanied the complainant in February, 2003, when his son made application for mutation is not the concern of the court in this case. The court's concern is only whether the accused had demanded bribe from the complainant as alleged by him, and whether it was accepted by him from the complainant. The application given by the complainant's son for effecting mutation is proved by PW4, the then Village Officer. Admittedly, no action was taken on this request. This is what necessitated a complaint against the Village Assistant when he demanded money for the discharge of his official functions. When those aspects are proved well, it is quite immaterial that PW5 and PW6 did not support the complainant.

10. PW3, the trap witness and PW9, the Detecting Officer have given convincing evidence proving the recovery of MO1 series tainted currency from the possession of the accused as per Ext.P6 mahazar. It is true that PW3 had not seen the complainant paying money to the accused,

because he remained outside when the complainant entered the room of the Village Assistant. But he has well proved the process of seizure of the tainted money, and the Dy.S.P has also well proved the seizure including the result of the phenolphthalein test conducted on the spot. The accused has no explanation for the positive result of the phenolphthalein test. He has also no explanation for the seizure of phenolphthalein tainted currency from his possession. The complainant is definite that the accused received money in his right hand, and after counting it, he put it in the left drawer of his office table. This fact is well corroborated by the evidence of PW3 and PW9. I find no reason at all to disbelieve the evidence of PW3 and PW9 regarding the process of detection or the seizure of phenolphthalein tainted currency from his possession as per Ext.P6 seizure mahazar.

11. On an appreciation of the evidence given by the complainant, I find no reason to disbelieve him. He is definite regarding the demand made by the accused. Of course, it is true that he is not in a position to give the exact date on which demand was first made by the accused in

February, 2003. But he is definite that the demand was repeated by him on 25.3.2003, and the accused reduced his claim to ₹ 350/- on a bargain. These aspects are well clear in the complaint and also in the evidence of the complainant. As instructed by the Village Assistant, the complainant brought the bribe money on 26.3.2003, and paid to the accused as instructed by the Vigilance, after the currency was treated with phenolphthalein. Thus, the essential elements of the offence stand well proved in this case. Demand, which is the essential element of the offence under Section 7 of the P.C Act, is proved by the evidence of the complainant beyond any reasonable doubt that such demand was made by the accused sometime in February, 2003. He repeated it on 25.3.2003 and finally on 26.3.2003 also, he repeated his demand, on which payment was made by the complainant.

12. Acceptance of bribe, which is essential for a prosecution under Sections 7 and 13 (2) of the P.C Act also, stands well proved by the evidence of the complainant, and also that of the trap witness and the Detecting Officer. It is true that the trap witness had not witnessed payment of

bribe. PW2 is definite that the MO1 series currency was paid by him to the accused as instructed by the vigilance. The evidence of PW3 and PW9 proves that the very same tainted money was seized as per mahazar from the possession of the accused. Nothing more is required to prove the fact of acceptance. Once acceptance of illegal gratification is proved, the presumption under section 20 (1) of the P.C Act will come to application, that such gratification was accepted by the public servant, as a reward as meant under Section 7 of the P.C Act.

13. The defence projected by the accused during trial is that he was viciously trapped by the vigilance at the instance of the complainant due to some personal enmity. But such a personal enmity stands not proved or probabilised by any material. This Court finds that the complainant had no reason at all to make a false complaint against the accused. Even while contending that the trap was in fact a vicious trap, the accused has no explanation as to how the tainted money of ₹ 350/- happened to be seized from his possession, found kept by him at the left drawer of his office table. Thus, I find that the accused does not have

any acceptable defence in this case, and he does not have any evidence to substantiate such defence. The essential elements like demand and acceptance stand well proved in this case, and the prosecution is also supported by the legal presumption under Section 20 (1) of the P.C Act. Thus, I find that the prosecution case stands well proved in this case.

14. The evidence of PW7 and 8 is only formal. PW7 proved the Ext.P13 scene plan and PW8 proved the seizure of the village records including the Ext.P9 application for effecting mutation, and the Ext.P8 attendance register. The accused has no dispute regarding the fact that he was Village Assistant on the date of detection. There is nothing in the evidence of PW9 to show that there was any flaw or illegality or irregularity in the investigation conducted by him. The process of detection stands well proved by his evidence, supported by PW2 and PW3. I find that the case was properly and legally investigated by PW9.

15. As discussed and found in the foregoing paragraphs, the prosecution case against the accused stands well proved under Sections 7 and 13 (2) read with Section 13 (1) (d) of the P.C Act. I find no reason to suspect

the prosecution case. I find no reason to suspect the trap in this case, or the process of recovery of tainted money from the possession of the accused. Thus, I find that the prosecution has proved the case against the accused beyond any reasonable doubt. Thus, this appeal is liable to be dismissed, confirming the conviction made by the court below.

16. As regards the sentence, I feel the necessity of some interference in appeal. The detection was made in March, 2003 and now we are in 2015. It is true that the amount of bribe cannot always be a criterion in deciding the quantum of sentence. Still, it can be considered by the court, though not as a compelling circumstance in choosing the appropriate or adequate sentence. Considering the trauma of prosecution undergone by the appellant for years, I feel that the minimum sentence will be the adequate sentence in this case. The minimum sentence under Section 13 (2) of the P.C Act was imprisonment for one year in 2003. The fine sentence imposed by the trial court can be maintained. Thus, to the very limited extent of modifying and reducing the substantive sentence, this appeal can be

allowed in part.

In the result, this appeal is allowed in part to the very 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 26 of 2004 under Sections 7 and 13 (2) read with Section 13 (1) (d) of the P.C Act is confirmed in appeal. However, the substantive sentence under the two sections will stand modified and reduced to rigorous imprisonment for one year each. The fine sentence imposed by the trial court is maintained.

P.UBAID
JUDGE

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