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. 1132 of 2007

AGAINST THE JUDGMENT IN CC 60/2003 of ENQUIRY COMMR.& SPL.JUDGE, THRISSUR DATED 25-06-2007

APPELLANT/ACCUSED:

V.K.ABRAHAM, VILLAGE OFFICER,
AKALAKKUNNAM.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.N.SURESH

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

ab

P.UBAID, J.

Crl.A No.1132 of 2007

Dated this the day 20th of July, 2015

J U D G M E N T

The appellant herein was the Village Officer of the Akalakkunnam Village in Kottayam District in May-July 2002. On the allegation that he accepted an amount of ₹500/- as illegal gratification from one Mathew K.George on 16.7.2002, for effecting mutation, regarding some property of the said Mathew K.George, the appellant faced prosecution before the learned Enquiry Commissioner & Special Judge, Thrissur in C.C. No.60/2003. Crime against the appellant was registered by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau (VACB), Kottayam on the complaint of the said Mathew K.George, on 16.7.2002. The complainant alleged that when the complainant approached the appellant on 26.6.2002 with a request to effect mutation in the village records regarding his properties, the appellant received an amount of ₹300/- illegally, and made a further demand for ₹500/- as a reward for effecting mutation. When the complainant approached the accused on 12.7.2002, the appellant repeated the demand for ₹500/- and asked him to come with the amount on 16.7.2002. On that day he thought of making a complaint, and accordingly made complaint before the Deputy Superintendent of Police, VACB, Kottayam. The amount of ₹500/- (5 currency of ₹100 denomination) was received by the Deputy Superintendent of Police as per mahazar, and after demonstrating the required phenolphthalein test, the complainant and a trap witness arranged by the vigilance were instructed to approach the accused to make payment. Accordingly, he went to the office of the accused, and the trap witness waited outside. At his office, the complainant made payment of ₹500/- (phenolphthalein tainted currency) when the accused demanded the amount, and within no time, on signal, the vigilance team lead by the Deputy Superintendent of Police reached there, seized the phenolphthalein tainted currency, and arrested the accused on the spot. After investigation, the VACB submitted final report in court under Sections 7 and 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'the P.C Act').

2. The accused (appellant herein) pleaded not guilty to the charge framed against him by the trial court under Sections 7 and 13(2) r/w 13(1)(c) and 13(1)(d) of the P.C Act and

claimed to be tried. The prosecution examined five witnesses in the trial court including the complainant and the detecting officer, and also marked Exts.P1 to P19 documents. MO1 to MO6 properties, inclusive of the phenolphthalein tainted currency identified as MO1 series, were also marked during trial. When examined under Section 313 Cr.P.C, the accused submitted that he had not received anything illegally from the complainant, and that he was viciously trapped due to enmity. Though opportunity was granted by the trial court, the accused did not adduce any evidence in defence. On an appreciation of the evidence adduced by the prosecution, the learned trial judge found the accused guilty under Sections 7 and 13(2) r/w 13(1)(c) and 13(1)(d) of the P.C Act. On conviction he was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹10,000/- under Section 13(2) r/w Section 13(1)(c) of the P.C Act, to undergo another period of 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 25.6.2007. Aggrieved by the conviction and sentence the accused has come up in appeal.

3. Of the five witnesses examined in the trial court PW3 is the complainant Mathew K. George, PW2 is the trap witness arranged by the detecting officer to witness the trap, PW5 is the Deputy Superintendent of Police who detected the offence and investigated the crime, and PW1 is the authority who granted sanction for prosecution under Section 19 of the P.C Act. Ext.P3 sanction was properly proved by PW1 in evidence.

4. It appears that the accused had a contention during trial that Ext.P3 sanction was granted by PW1 without applying his mind independently to the facts of the case. But in evidence PW1 affirmed that he had perused the entire files including the materials collected by the police during investigation, and he granted sanction to prosecute the accused by independently applying his mind to the facts of the case. PW1 granted prosecution sanction in his capacity as the Deputy Commissioner (Land Revenue), Government of Kerala. There cannot be any dispute regarding the legal position, that as on the relevant date the competent authority to appoint and remove a village officer from service was the Deputy Commissioner of Land Revenue. Much before the incident, the Government of Kerala had abolished the Board of Revenue system under which

Secretary of the Board of Revenue was the authority to appoint the village officers, and to remove such officers from service. Prior to that the proper authority was the District Collector. I am fully satisfied that Ext.P3 sanction was granted by the proper authority, and that PW1 granted the sanction by applying his mind independently and honestly to the facts of the case.

5. Before going to the factual aspects, let me see whether the conviction in this case under Section 13(2) r/w 13(1)(c) of the P.C Act can be sustained. The prosecution case is that on 16.7.2002, the accused accepted ₹5,00/- from the complainant as illegal gratification, pursuant to the demand which he had already made on different occasions, as a reward for effecting mutation in the revenue records, and on that day itself, the accused issued one receipt for ₹27/- and another receipt for ₹38/-. Thus the prosecution alleges that from out of the amount of ₹500/- received as illegal gratification, the accused illegally appropriated an amount of ₹435/-, when he issued receipt for ₹65/- in the name of the complainant. It is pertinent to note that the amount of ₹500/- was allegedly accepted as illegal gratification, and this will amount to misconduct as defined under the law. Just because, the accused

issued two receipts for ₹65/- as demanded by the complainant, from out of the amount received as illegal gratification, the act of the accused will not definitely come under Section 13(1) (c) of the P.C Act. Dishonest misappropriation meant under Section 13 (1)(c) of the P.C Act is something different. Here the definite allegation and the definite evidence adduced by the prosecution is that the accused accepted ₹500/- as illegal gratification. This will not constitute the offence under Section 13(1)(c) of the P.C Act. Just to make the complainant believe that he will do the necessary things, the accused issued two receipts for ₹65/-. The act of the accused alleged by the prosecution is prominently an act of misconduct punishable under Section 13(1)(d) of the P.C Act. To invite a prosecution under Section 13(1)(c) of the P.C Act something more is required, and the elements of such an offence are different from the elements of the offence described under Section 13(1) (d) of the P.C Act. In the above circumstances, I find that the conviction in this case under Section 13(2) r/w 13(1)(c) of the P.C Act cannot be legally sustained. Accordingly, the appellant is entitled to be acquitted of the offence under Section 13(2) r/w 13(1)(c) of the P.C Act.

6. Now let me analyse the entire evidence and see

whether the prosecution case stands proved, that the accused had accepted an amount of ₹500/- from the complainant on 16.7.2002.

7. To prove the case on facts the prosecution relies on the evidence of PW3 the complainant, PW2, the trap witness and PW5, the detecting officer. The fact of seizure of phenolphthalein tainted currency of ₹500/- from the possession of the accused is well proved by the evidence of PW5, PW2 and PW3. To prove the essential elements of demand for illegal gratification the prosecution relies only on the evidence of the complainant. It is true that there is no other evidence or circumstance in this case to prove demand.

8. It is true that PW2 had not in fact witnessed the act of acceptance of illegal gratification. He and the complainant, as instructed by the detecting officer, went to the village office, and the complainant alone approached the village officer to make payment. Accordingly, PW2 remained outside, and when the police party reached there, on signal, he also entered the room of the accused along with the police party. He is definite that he had seen PW5 seizing the phenolphthalein tainted currency of ₹500/- from the possession of the accused. His

evidence is that he came in the office of the VACB as directed earlier, and in the presence of witnesses including the complainant, the Deputy Superintendent of Police had demonstrated the required phenolphthalein test. He identified the currency given to the complainant by the Deputy Superintendent of Police, and he is definite that the very same currency was seized by the police from the possession of the accused.

9. PW5 has also given definite and consistent evidence proving seizure of MO1 series phenolphthalein tainted currency from the possession of the accused as per mahazar. His evidence is that the Ext.P4 complaint was filed by PW3, and on the said complaint he registered the crime and arranged a trap. The amount of ₹500/- brought by the complainant was received as per mahazar, and after demonstrating the required phenolphthalein test he instructed the complainant and the trap witness to go to the office of the village officer and make payment on demand. On signal given by the complainant he rushed to the village office with his party, seized the phenolphthalein tainted currency from the accused and arrested him on the spot. This evidence given by PW5 stands not

discredited in any manner.

10. Now the question is whether the demand and acceptance stands proved in this case. To prove these two essential elements the prosecution relies mainly on the evidence of the complainant, the trap witness, and the detecting officer. In the complaint, and also in evidence, PW3 has given definite statements proving the demand made by the accused, and also the acceptance of ₹500/- on 16.7.2002. The complainant is consistent in his versions on the material aspects, and he is definite that when he met the accused on 12.7.2002, with a request to effect mutation without any delay, he demanded ₹ 500/- and asked him to come with the amount on 16.7.2002. He is definite that the amount of ₹500/- brought by him for the trap was received by the Deputy Superintendent of Police as per mahazar, the required phenolphthalein test was demonstrated to him and others, and as instructed by the police, he approached the accused at his office on 16.7.2002 and made payment of the tainted money on demand. It is true that the date of the first demand is not mentioned in evidence. In the complaint, there is mention of such demand with specific date, and in evidence he stated that after May he met the accused on 26.6.2002 and also

on 12.7.2002. The complainant is definite that demand was made by the accused on 26.6.2002 and also on 12.7.2002. It was in view of such persistent demand he thought of making a complaint against the accused. I find nothing to disbelieve PW3, or to suspect his evidence. The defence could not bring out anything in his cross examination to discredit his evidence. Thus the essential elements of demand and acceptance stands well proved by his evidence.

11. It is pertinent to note that a very damaging suggestion was made in defence to the complainant during trial. At the end of the cross examination the learned defence counsel made a suggestion that the tainted money was in fact placed by the complainant on the office table of the accused without any demand, and when the accused noticed the vigilance party approaching, he, out of perplexion and fear, took the currency and put it in his pocket. This suggestion was stoutly denied by the complainant. The normal human conduct is that, when a public servant notices somebody placing some amount on his table voluntarily and without demand, he will not take it and put in his pocket in any circumstance. It must be especially so, when he notices some vigilance or police officials coming to the room.

The normal human conduct is that in such a situation the public servant will not even touch the said amount. Here the suggestion was quite strange, and practically, by such suggestion the defence admitted that the accused had received the money in his hands, and put in his pocket at his office room.

12. The trap witness examined as PW4 has also well supported the complainant on all material aspects. It is true that this witness had not in fact witnessed the accused accepting amount from the complainant, or the complainant making payment to the accused. He has given consistent and definite evidence regarding the process of seizure made by the detecting officer, and on all aspects regarding seizure he has well corroborated the detecting officer. As instructed by the vigilance, the complainant went to the office of the accused, and he, as instructed by the vigilance, stood outside. When the complainant made signal, the vigilance party reached there, seized the tainted money and arrested the accused on the spot. There is nothing to disbelieve the evidence of PW4 or to suspect his evidence regarding the seizure of tainted money from the possession of the accused. The evidence of the trap witness is well acceptable and believable when the essential elements are

otherwise proved by the evidence of the complainant.

13. When the fact of acceptance is well proved, the court is bound to apply the presumption under Section 20(1) of the P.C Act, that the amount was received by the accused as a reward or motive for doing something to the complainant.

14. On an appreciation of the evidence as discussed above, I find that the prosecution has well proved the case beyond reasonable doubt. The presumption available to the prosecution in this case under Section 20(1) of the P.C Act stands not in any manner rebutted by the defence. An attempt made to rebut the presumption thoroughly failed, and the suggestion even damaged the defence, practically indicating that the tainted money was in fact received by the accused, and he put it in his pocket when he saw the vigilance party coming into his office. I find no reason or ground to interfere in the findings made by the trial court. Accordingly, this appeal is liable to be dismissed, confirming the conviction.

15. As regards the sentence, I find the necessity of some interference. The detection was made in July 2002, and the judgment was pronounced on 25.6.2007. Now we are in July 2015. The appellant has been facing the trauma of prosecution

for 13 years. In the above circumstances, I feel that the minimum sentence as on the date of detection will be the adequate sentence in this case. As on the relevant date the minimum sentence for the offence under Section 7 of the P.C Act was imprisonment for six months, and the minimum sentence under Section 13(2) was imprisonment for one year. The conviction under Section 13(2) r/w 13(1)(c) already stands set aside. In the particular nature of the case, and in the circumstances discussed above, the nature of the sentence also can be altered. To the very limited extend of modifying and reducing the sentence this appeal can be allowed in part.

In the result this appeal is allowed in part. The conviction and sentence against the appellant, made by the court below under Section 13(2) r/w 13(1)(c) of the P.C Act will stand set aside. The conviction under Section 7 and under Section 13 (2) r/w 13(1)(d) 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 imposed under Section 13(2) r/w 13(1)(d) of the P.C Act will stand modified and reduced to simple imprisonment for one year. The two sentences will run concurrently. The fine sentence imposed by the court below, with the default sentence thereon, is maintained.

Sd/-
P.UBAID
JUDGE

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P.A to Judge

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