

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

CRL.A.No. 1684 of 2006 ()

CC 44/2000 of ENQUIRY COMMISSIONER & SPECIAL JUDGE,KOZHIKODE
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PETITIONER/APPELLANT:

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

BY PUBLIC PROSECUTOR SRI. N. SURESH

RESPONDENT/ACCUSED:

K.K. JAYACHANDRAN, S/O. KITTAN
HIMALAYA, KUZHINILAM, MANANTHAVADY
HEALTH SUPERVISOR, COMMUNITY HEALTH CENTRE, THARIYODE

BY ADV. DR.K.P.SATHEESAN
BY ADV. SRI.K.K.GOPINATHAN NAIR
BY ADV. SRI.M.R.JAYAPRASAD

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

SD

P. UBAID, J.

Crl.Appeal No.1684 of 2006

Dated this the 2nd day of June, 2015

JUDGMENT

A judgment of acquittal in a prosecution brought under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act (for short, 'the PC Act') is under challenge in this appeal. Crime in this case was registered on the complaint of a Junior Health Inspector Gr.II, attached to the Primary Health Centre, Kottathara. The accused (1st respondent herein) was the Health Supervisor attached to the Community Health Centre, Thariyode at that time. When the accused made inspection of the diaries and registers prepared by the Junior Health Inspectors under him, he found some serious lapses in the discharge of duty by the Junior Health Inspector, Manjith. The said Manjith committed some lapses in spite of instructions given by the Health Supervisor, and when the Junior Health Inspector could not give any satisfactory explanation a report regarding the facts was sent by the Health Supervisor to the District Medical Officer on 16.08.1999. The Junior Health Inspector, Manjith, later

approached the accused, and made a request to drop further action against him. The prosecution case is that for helping the Junior Health Inspector thus, by dropping further proceedings, the accused demanded huge amount of Rs.25,000/-. However, in a bargain, the accused came down, and the amount was fixed at Rs.5,000/-. Accordingly, Manjith agreed to pay Rs.5,000/- as bribe, and he approached the Deputy Superintendent of Vigilance with a complaint. On 20.08.1999 Manjith made a written complaint on which the Vigilance registered FIR and arranged a trap. The amount of Rs.5,000/- handed over by the complainant Manjith was seized by the Dy. Superintendent of Vigilance, he applied phenolphthalein powder on the currency and handed it over to the Junior Health Inspector with instruction to pay it to the accused. He, accordingly, paid the amount, and on signal the Vigilance party reached within no time, and arrested the accused.

2. The accused pleaded not guilty to the charge framed against him by the learned trial Judge under Section 7 and 13(1) (d) of the Prevention of Corruption Act (for short, 'the P.C.Act'), and he claimed to be tried. The prosecution examined eleven

witnesses and marked Exts.P1 to P18 documents. The accused examined three witnesses in defence, and also marked Ext.D1 document. Exts.C1 and X1 documents were marked as court exhibits. The material objects including the phenolphthalein tainted currency were marked as MO1 to MO6. During trial the accused maintained a definite defence that he had no reason at all to receive bribe from the complainant Manjith for dropping further action because he had already sent a report to the District Medical Officer regarding the lapses on the part of Manjith, and that the currency which the Vigilance seized from his office is in fact the currency entrusted by PW1 with request to hand it over to one Sudhakaran. Thus the definite defence of the accused is that the trap in this case is in fact a vicious or illicit trap arranged by PW1 (Manjith) to wreak vengeance.

3. On an appreciation of the evidence adduced on both sides, the learned trial Judge found that the prosecution case is really suspicious. The learned trial Judge also found that the defence set up by the accused is probable in view of the evidence given by DW2 from whom PW1 had borrowed some amount. The

learned trial Judge also found that the complaint of PW1 is not believable at all, that the accused received Rs.5,000/- from him for dropping further action, because the accused had in fact already reported the facts to the Medical Officer, and in such a circumstance, a Health Supervisor could not have done anything to help Manjith or to exonerate him from the liability for official lapses. In paragraph 25 of the judgment under challenge, the learned trial Judge has explained the six grounds on which the accused is entitled for an acquittal. Accordingly, the learned trial Judge found the accused not guilty, and acquitted him by judgment dated 17.03.2004. Aggrieved by the judgment of acquittal, the State has come up in appeal

4. On hearing both sides, and on a perusal of the entire prosecution records including the judgment under challenge, I find that the complaint made by PW1 in this case is really suspicious. It has come out in evidence that even before PW1 made complaint against the accused that he had made a demand for Rs.5,000/- as illegal gratification for dropping further action against him, the accused had submitted a report to the District

Medical Officer against PW1. Once report is submitted by the Health Supervisor to the District Medical Officer, the necessary consequences including disciplinary proceedings against the Junior Health Inspector will follow. In such a situation, the Health Supervisor cannot do anything to save the Junior Health Inspector because everything will have to be decided by the District Medical Officer. It is really unbelievable that in such a situation where the Health Supervisor could not have done anything in favour of the complainant, the Junior Health Inspector agreed to pay Rs.5,000/- to the Health Supervisor.

5. The definite defence maintained by the accused during trial is that PW1 had in fact approached him on many occasions with request to drop further action, but he could not act on that request, because he had already sent report to the District Medical Officer against PW1. The accused has well succeeded in proving that on his inspection as Health Supervisor, he had found out some serious lapses on the part of the complainant (Manjith), and that he had on many occasions warned him also. When such a person has come with a complaint against the Health

Supervisor, it will have to be definitely doubted. It is also really strange that the Health Supervisor who initially made a demand for Rs.25,000/- for dropping disciplinary action came down in his demand and fixed the deal for Rs.5,000/-. It is definite that PW1 had every reason to file complaint against his official superior, because lapses on his part were found out by him, and he had also sent a report to the District Medical Officer. The complaint of such a person will have doubted by the court, when he says that the superior demanded and accepted some amount from him to drop further action against him.

6. DW2 was examined to prove the defence case. The evidence of DW2 is that PW1 had borrowed some amount from him in connection with his sister's marriage. The case of the accused is that PW1 came to his office, entrusted Rs.5,000/- with request to hand it over to Sudhakaran (DW2), but within no time the Vigilance party came there and seized the amount. That PW1 had borrowed amount from Sudhakaran stands proved by the evidence of DW2. In the above circumstances, where the very complaint of PW1 is doubtful, the court will have to consider the

defence pleaded by the accused that the trap in this case was in fact a vicious trap arranged by PW1 to wreak vengeance, and it was not in fact a genuine trap arranged by the police. On an appreciation of the entire evidence including the circumstances in which a complaint came from PW1, and also the serious lapses on his part reported to the District Medical Officer, I find that the defence case is really probable. In cases like this, where the complainant will definitely have other reasons to bring a complaint against his superior officer, the court must insist on some independent evidence. There is no doubt at all that the complainant (PW1) is an interested witness. I find that he had his own reason to file complaint against the superior officer, or to trap the superior in a Vigilance case. It is definite that PW1 had no hope to escape from disciplinary action at the hands of the District Medical Officer in view of the complaint made against him by the accused. It is quite probable that in such a situation where he has to face disciplinary action on the report of his superior officer, the complainant thought of making complaint against the superior officer to see that he is somehow trapped in

criminal action. I find that the complaint of PW1 in this case is really doubtful. The learned trial Judge rightly found the accused not guilty, and gave the entire benefit of doubt to the accused. I find no scope for interference in the judgment of acquittal passed by the court below.

In the result, this appeal is dismissed.

Sd/-

P. UBAID, JUDGE

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