

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

CRL.A.No. 1547 of 2005

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AGAINST THE JUDGMENT IN CC 19/2002 of ENQUIRY COMM.R.&
SPL.JUDGE, THRISSUR**

APPELLANT/ACCUSED:

**VINAYAKUMAR, AGED 50 YEARS,
FORMER VILLAGE ASSISTANT, VAZHAKULAM VILLAGE,
PERUMBAVOOR. (DIED)**

**Addl.2.SUJATHA VINAYAN,
W/O.LATE VINAYAN, RESIDING AT CHITTEDATH VEEDU,
THRIKKAPPADY, MUDAKKUZHA.P.O., PIN -683 456.**

**Addl.3.NITHINKUMAR.C.V, AGED 21 YEARS,
S/O.LATE VINAYAKUMAR, RESIDING AT
CHITTEDATH VEEDU, THRIKKAPPADY,
MUDAKKUZHA.P.O., PIN -683 456.**

**Addl.4.NEENA, AGED 17 YEARS (MINOR), D/O.LATE VINAYAKUMAR
REPRESENTED BY HER MOTHER AND NATURAL GUARDIAN
SUJATHA VINAYAN
W/O.LATE VIJAYAN, RESIDING AT CHITTEDATH VEEDU
THRIKKAPPADY, MUDAKKUZHA.P.O., PIN -683 456.**

**Addl.5.SARASWATHY, AGED 80 YEARS, MOTHER OF LATE VINAYAKUMAR,
RESIDING AT CHITTEDATH VEEDU, THRIKKAPPADY,
MUDAKKUZHA.P.O., PIN -683 456.**

**ADDL. APPELLANTS 2 TO 5 ARE IMPEADED AS PER ORDER DATED
01/09/2006 IN CRL.M.A.8594/2006.**

**NEME OF ADDL. APPELLANT 3 IS CORRECTED AS PER ORDER DATED
22.8.2022 IN CRL.M.A.NO.1/2022**

BY ADV. SRI.K.RAMAKUMAR (SR.)

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM., (SUPERINTENDENT OF POLICE, V.A.C.B
ERNAKULAM).**

BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.UBAID, J.

Crl.A No.1547 of 2005

Dated this the 6th day of November, 2015

J U D G M E N T

The appellant herein died pending this appeal. He was the Village Assistant of the Village Office, Vazhakkulam in October, 2000. On the complaint of one Jayaprakash the deceased appellant faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur in C.C. No.19/2002, on the allegation that on 16.10.2000 the deceased appellant demanded an illegal gratification of ₹500/- from the complainant Jayaprakash as a reward for effecting mutation in the registers regarding the property partitioned among the co-owners, including Jayaprakash. He allegedly received ₹200/- on 16.10.2000 and asked the complainant to bring the balance amount the next day. As Jayaprakash was not inclined to make further payment, he made a complaint before the

Vigilance and Anti Corruption Bureau, Ernakulam on which the VACB registered a crime and arranged a trap. On the next day the amount of ₹300/- brought by the complainant was treated with phenolphthalein, and when the accused made further demand, the complainant made payment of the said amount on 17.10.2000. On getting signal from the complainant, the vigilance team lead by the Deputy Superintendent of Police reached at the village office, seized the phenolphthalein tainted currency from the possession of the accused and arrested him on the spot.

2. After completing investigation the VACB submitted final report in the court below along with the prosecution sanction granted by the District Collector under Section 19 of the Prevention of Corruption Act.

3. The deceased appellant entered appearance before the trial court and pleaded not guilty to the charge framed against him under Sections 7 and 13(2) r/w 13(1)(d) of the P.C Act. The prosecution examined ten witnesses in the trial court, including the complainant and also marked Exts.P1 to P21 documents

including Ext.P3 complaint and Ext.P1 prosecution sanction. MO1 to MO8 documents were also identified and marked during trial. The accused did not adduce any evidence in defence.

4. On an appreciation of the evidence, the learned trial judge found the accused guilty under Section 7 and 13(2) r/w 13(1)(d) of the P.C Act. On conviction he was sentenced to undergo rigorous imprisonment for six months and to pay a fine of ₹5,000/- under Section 7 of the P.C Act, and to undergo rigorous imprisonment for one year under Section 13(2) r/w 13 (1)(d) of the P.C Act by judgment dated 22.8.2005. Aggrieved by the said judgment of conviction the accused brought this appeal long back in 2005 itself. Pending this appeal, he was reported dead. The fact of death stands proved. Thus the substantive sentence has become unenforceable under the law, and the appeal will have to be closed as abated. However, some finding is required on merits on the factual and legal aspects in view of the fact that the sentence involves a short fine sentence of 5,000/-.

5. When this appeal came up for hearing, the learned counsel for the appellant submitted that the

prosecution sanction in this case was not granted by the proper authority under Section 19 of the P.C Act, and so the amount of fine involved in this case cannot be realised in view of the fact that the prosecution was barred under the law. Even on facts, I find that there is something suspicious. The defacto complainant examined as PW2 made complaint on 17.10.2000. His case is that the demand for ₹500/- was made by the deceased appellant on 16.10.2000 and he paid ₹200/- on the spot. The balance amount of ₹300/- was paid on the next day, a trap arranged by the vigilance, and the accused was arrested on the spot. In evidence, the complainant does not say when, or on what date the demand was made by the accused, or on what date the payment was made by him. He also does not say at what time he made payment of ₹300/-. The learned Public Prosecutor in charge of the case did not elicit or bring out these very essential aspects in the examination-in-chief of the complainant. Thus the complainant has no case in his evidence as to when or on what date exactly demand was made by the accused or acceptance was made by the accused. The prosecution does not have any other

evidence on the essentials like demand or acceptance. When the evidence given by the complainant does not contain the necessary details regarding the date and time of payment, that evidence cannot be accepted and acted upon very much, in the absence of independent corroboration.

6. Anyway, let me come to the legal aspects. The prosecution sanction was granted by the District Collector. He was examined as PW1 and the prosecution sanction was proved as Ext.P1. The learned counsel for the appellant submitted that the right authority under the law, competent to remove the deceased appellant from service as on the date of sanction was the Commissioner of Land Revenue, and not the District Collector.

7. Section 19 of the P.C Act mandates that prosecution sanction meant under this section shall be granted by the officer competent to remove the public servant from service. Originally under the Kerala Revenue Ministerial Subordinate Service Special Rules framed under Section 2 of the Kerala Public Services Act, 1968, the authority to appoint Village Assistant and Village Officer was the District Collector. In 1993, the

Government of Kerala amended the Rules, and prescribed by way of an amendment to Rule 5, that the Secretary, Board of Revenue (LR) shall be the appointing authority in respect of those categories. The Government of Kerala framed special rules for the Village Ministerial Subordinate Service in 1998, and published the Rules by G.O(P) 252/98/RD dated 14.5.1998. The Kerala Special Rules for the Village Ministerial Subordinate Service, 1998 brought by the Government of Kerala in May, 1998 provided that the Secretary, Board of Revenue shall be the appointing authority in respect of the categories including Village Officers and Village Assistant, coming under the Rules. Board of Revenue was abolished in 1996, but the Kerala Board of Revenue Abolition Act, 1996 came into force only on 1.7.1998. In such a situation, the Additional Commissioner of Land Revenue was designated as the authority to appoint Village Officers and Village Assistants. In the instant case, detection was made on 17.10.2000. Change in the law made by different amendments notified by the Government, was not probably noticed by the District

Collector when he granted Ext.P1 prosecution sanction in this case. I find in this case that the proper authority to grant prosecution sanction in respect of the accused was the Additional Commissioner of Land Revenue, and not the District Collector. I find that the amount of fine involved in this case cannot be realised under the law. The substantive jail sentence has become unenforceable due to the death of the accused. When there is no scope to proceed for realisation of the fine amount in the situation discussed above, this appeal can be closed as abated under Section 394(2) of the Code of Criminal Procedure.

In the result, this appeal is disposed of as abated under Section 394(2) of the Code of Criminal Procedure.

**Sd/-
P.UBD
JUDGE**

//True Copy//

P.A to Judge

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