

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

CRL.A.No. 2012 of 2006 ()

AGAINST THE JUDGMENT IN CC 17/2002 of ENQ.COMMR. &
SPL.JUDGE, THIRUVANANTHAPURAM

APPELLANT(S)/ACCUSED:

K.T.SAMUEL, AGED 59 YEARS,
S/O.M.THOMAS, FORMER SECRETARY OF GRAMA PANCHAYATH
ARANMULA.

BY ADVS.SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.ANIL K.MOHAMMED
SRI.SUJESH MENON V.B.
SRI.SHYAM ARAVIND

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA,
REP. BY DIRECTOR OF PUBLIC PROSECUTION
HIGH COURT OF KERALA, ERNAKULAM
(DEPUTY SUPERINTENDENT OF POLICE, VACB
PATHANAMTHITTA).

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10-7-2015,
THE COURT ON 19-08-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.

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**Crl.A. No. 2012 of 2006**

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Dated this the 19th August, 2015

J U D G M E N T

The appellant herein was the Secretary of the Aranmula Grama Panchayat during October 2000-February,2001. During the said period, the work of tarring of Kotta-Mayyavu Circular Road in Ward No.X of Aranmula Grama Panchayat was entrusted to a beneficiary committee on a total estimated cost of ₹ 1.17 lakhs. As convenor of the committee, the work was carried out by one K.N. Retnarajan, and he was also granted an advance payment of ₹57,614/-. He completed the work on 21.1.2001, and the work was check measured by the concerned Assistant Engineer, and also the Assistant Executive Engineer of the Aranmula Minor Irrigation Sub Division. Thereafter, the said Ratnarajan submitted the final bill before the appellant on 29.1.2001. It is alleged that, at that time, the appellant asked Ratnarajan to meet him at his office on 30.1.2001. Accordingly, Ratnarajan met the Secretary at his office on 30.1.2001 and made request to sanction the claim for the

balance amount. The prosecution case is that, at that time, the Panchayat Secretary received an amount of ₹ 400/- as bribe, and the Secretary made a further demand for ₹ 600/- as a reward for sanctioning the claim and issuing the cheque for the balance amount. Ratnarajan made repeated requests to sanction the final bill, but the Secretary did not heed to the request, and he repeated his demand for ₹ 600/-. It is alleged that as Ratnarajan was not inclined to make further payment to sanction the final bill, he approached the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau (VACB), Pathanamthitta, and made a complaint on 14.2.2001. On the said complaint, the Dy.S.P., registered a crime and arranged a trap. The Dy.S.P. received the amount of ₹ 600/- brought by the complainant as per mahazar, applied phenolphthalein on the currency, and instructed the complainant and the trap witnesses to approach the accused at his office on that day itself and make payment, if the Secretary made further demand. Accordingly, the complainant Ratnarajan went to the Panchayat office on 14.2.2001 itself in the afternoon, but the

Secretary could not be found there. He returned to the vigilance office and reported what transpired. The phenolphthalein tainted currency was received back by the Deputy Superintendent of Police as per mahazar, and the complainant and the others were instructed to come on the next day. After demonstrating phenolphthalein test again on 15.2.2001, the Dy.S.P. Instructed the complainant to approach the accused at his office and make payment on demand. The complainant Ratnarajan and the trap witness proceeded to the Panchayat office, and the vigilance team led by the Dy.S.P followed them. It is alleged that when the complainant met the Secretary at his office on that day, the Secretary demanded the amount, and on demand Ratnarajan paid the phenolphthalein tainted currency of ₹ 600/-. The Secretary received the currency in his right hand, and after counting the currency, he placed it under some files on the table. On signal given by the complainant, the vigilance team led by the Dy.S.P rushed to the office of the Secretary, the Dy.S.P seized the phenolphthalein tainted currency from the possession of the accused, and after

conducting phenolphthalein test, arrested the Secretary on the spot. After investigation, the VACB submitted final report before the learned Enquiry Commissioner and Special Judge, (Vigilance), Thiruvananthapuram.

2. The accused entered appearance before the learned Trial Judge and claimed to be tried by pleading not guilty to the charge framed against him under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act (for short "P.C Act").

3. The prosecution examined 14 witnesses and marked Exts.P1 to P21 documents, and also MO1 to MO7 properties identified during trial. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances and submitted that he had not received illegal gratification from the complainant, and that he was in fact trapped for the reason that he was not inclined to sanction payment under the final bill due to some irregularities. In defence, the accused examined two witnesses and also marked Exts.D1 to D19. Thereafter, the learned Public Prosecutor in charge of the case filed an

application to re-open the evidence and examine some more witnesses. Accordingly, five more witnesses were examined as PW15 to PW19 on the side of the prosecution. The accused was again examined under Section 313 Cr.P.C on the evidence given by the additional witnesses. No further evidence was adduced in defence by the accused. On an appreciation of the evidence adduced on both sides, the learned trial Judge found the accused guilty under Sections 7 and 13 (2) read with 13 (1) (d) of the P.C Act. On conviction thereunder, he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹5000/- under Section 13 (2) read with 13 (1) (d) of the P.C Act, and to undergo another term of rigorous imprisonment for three years and to pay a fine of ₹ 10,000/- under Section 7 of the P.C Act, by judgment dated 26.9.2006 in C.C. No.17 of 2002. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

4. When this appeal came up for hearing, the learned counsel for the appellant submitted that the whole evidence given by the complainant in this case is really suspicious,

that the complainant was determined to trap him somehow for the reason that he was not inclined to heed to his unlawful requests, and with the help of the vigilance, he arranged a vicious trap. The learned counsel submitted that the accused had not demanded anything from the complainant, and he had not received anything from him as illegal gratification. The learned counsel also submitted that the accused would have been present in office on 14.2.2001 to receive payment, if he had in fact made such demand. On the other hand, the learned Public Prosecutor submitted that there is nothing suspicious in the evidence of the complainant, and that the complainant decided to make a complaint against the Secretary when he declined to sanction the amount legitimately due to the complainant. Besides pleading for an acquittal on merits, the learned counsel for the appellant also submitted that the prosecution sanction in this case stands not proved according to law, and so, the whole prosecution is barred under Section 19 of the P.C Act.

5. Before going to the legal aspect as regards proof

of prosecution sanction, and bar under Section 19 of the P.C Act, let me examine the evidence in this case on facts, and see whether there is anything suspicious in the evidence given by the complainant, or whether there is anything suspicious regarding the trap in this case, which once failed.

6. Of the 19 witnesses examined on the side of the prosecution, PW1 is the complainant Ratnarajan, and Ext.P1 is the complaint made by him before the Dy.S.P of VACB, Pathanamthitta. On the said complaint, PW11 registered Ext.P12 crime and arranged a trap. Initial investigation was also conducted by PW11, and later it was taken over by PW13. I find that there was no flaw or irregularity in the investigation conducted by the vigilance officer. The prosecution mainly relies on the evidence of the complainant, the trap witnesses, the Detecting Officer, and the Panchayat officials to prove the prosecution case.

7. PW1 is the complainant who made the Ext.P1 complaint, PW2 and PW3 are the trap witnesses examined to prove the recovery of tainted money, PW4 is the Assistant Engineer, who prepared and countersigned the final bill

submitted by the complainant before the accused, PW5 is the Village Officer who prepared the sketch of the scene, PW6 is a Member of the Panchayat examined to speak about the road works, PW7 is the Panchayat President examined to prove that he had approved the final bill submitted by the complainant, PW8 is the Chairman of the Beneficiary Committee, PW9 is the Head Clerk who produced some files before the Investigating Officer, PW10 is the Site Supervisor, PW11 is the Detecting Officer, PW12 is the Under Secretary to the Government examined to prove Ext.P14 prosecution sanction, PW13 is the Vigilance Inspector who investigated the case, PW14 is the Dy.S.P. who submitted final report, PW15 is the Block Development Officer and PW16 is the Assistant Executive Engineer who check measured the construction work. PW17 was given up during trial. PW19 is the Upper Division Clerk who had handled the Ext.P2 file containing the agreement between the complainant and the Panchayat. If the court finds on an examination of the evidence of the complainant that there is no scope to discuss the other evidence, a discussion on the

evidence given by the other witnesses can be avoided. Let me straight away go to the evidence of the complainant and the trap witnesses.

8. PW2 and PW3 have given evidence regarding the recovery of the tainted money from the office of the accused. They, or the Detecting Officer, have no case that the tainted money was seized from the hands of the accused, or from his pocket or from his person. The tainted money was found on the table of the accused under some files. Anyway, recovery of the money is proved by PW2 and PW3, and also the Detecting Officer, examined as PW11. PW2 and PW3 have no case that they had seen or witnessed acceptance of bribe by the accused, or payment of bribe by the complainant. The evidence of the Detecting Officer is also regarding seizure of the tainted money, and nothing else.

9. The complainant has given evidence substantiating the allegations in the complaint. The learned counsel for the appellant submitted that the evidence of the complainant is really suspicious, and that the trap in this

case arranged by the VACB is also very suspicious. He also submitted that on the ground that the prosecution sanction in this case is not proved, the appellant is entitled for an acquittal, if at all the evidence on facts is acceptable. On the other hand, the learned Public Prosecutor submitted that there is no reason to disbelieve the evidence of the complainant and the other witnesses, and that the prosecution sanction stands properly proved by the Under Secretary to the Government.

10. The case of the complainant in his complaint and in his evidence is that he submitted the final bill before the accused on 29.1.2001 and he again met the Secretary on 30.1.2001. On that day, the Secretary demanded some amount, and accordingly, he paid ₹ 400/-. But when he met him later, on the next day itself, the Secretary demanded an amount of ₹ 600/- more, and said that he would not sanction the bill and issue cheque before payment of ₹ 600/- is made in addition to the amount of ₹ 400/- already received. The complainant again met the Secretary on 13.2.2001 and made a request. On that day, the Secretary asked him to

come with the required amount on 14.2.2001. As he was not inclined to make payment, he approached the VACB and made Ext.P1 complaint. The amount brought by him was received by the Deputy Superintendent of Police, VACB, as per a mahazar, and after demonstrating the phenolphthalein test, he and his friend Santhosh were instructed to approach the accused and make payment on demand. But they could not meet the accused on 14.2.2001, because he was not in the office on that day. They returned to the office of the VACB and surrendered the phenolphthalein tainted currency. On the next day, they approached the vigilance again as instructed by the Dy.S.P and on that day also, phenolphthalein test was demonstrated by the VACB. After that, he, Santhosh and others proceeded to the office of the accused as instructed by the Dy.S.P, he and Santhosh entered the room of the accused, and made payment of ₹ 600/- when he again made demand. On his signal, PW11 and others reached there, seized the phenolphthalein tainted currency and arrested the accused on the spot.

11. Let me examine whether the evidence of the complainant is fully acceptable without independent corroboration. The three main points argued by the defence are (a) Delay in making complaint (b) non-examination of the material witness who had witnessed the payment of bribe; and (c) absence of the accused in the office on 14.2.2001.

12. The defence case is that the accused was not inclined to sanction payment immediately for the reason that the work was executed by the complainant in violation of the terms of the agreement executed by him before the Panchayat. Violation of the terms of the agreement is practically admitted by the complainant himself in evidence. Ext.P2 (c) agreement contained in the Ext.P2 file, proved by the witnesses will show that the road work was entrusted to the Beneficiary Committee, of which the complainant was the Convenor. As the Convenor of the Committee, the complainant had undertaken in the agreement that the construction work would not be entrusted to any contractor, and that the works will be carried out with the active and

honest participation of the beneficiaries of the public road. In evidence, PW1 admitted that the work was carried out without the participation of the beneficiaries, and that he himself carried out the work as a contractor. Much discussion is not necessary to find that the works were carried out in violation of the terms of the agreement executed by the complainant. Here, the defence case assumes importance that the accused declined to sanction payment on the ground of violation of the terms of the agreement. In such a situation, the genuineness of the trap also becomes suspicious.

13. On an appreciation of the evidence given by the complainant, I find that the complainant has no consistent version regarding the first demand made by the accused. At one place he stated that it was on 29.9.2001, and at another place he stated that it was on 30.1.2001. He stated during cross-examination that on 30.1.2001 itself he had decided to make a complaint. But he waited till 14.2.2001. He has no explanation why he waited till 14.2.2001 to make a complaint. His evidence is that he had told the Chairman

of the Beneficiary Committee about the demand made by the accused. But the evidence of PW8 does not support the complainant on this aspect. His evidence is that he had no such information, and he does not know whether any amount was paid by the Convenor to the Secretary. Thus the evidence of PW8 does not in any manner help the prosecution.

14. PW1 does not have any explanation in his evidence as to why he waited till 14.2.2001 to make complaint. This will have to be read along with the other circumstances practically admitted by him in evidence that the work was carried out in violation of the terms of Ext.P2 (c) contract executed by him. He has no explanation why he himself completed the work as a contractor, when that is prohibited under the agreement, and he has also no explanation why he did not ensure the participation of the beneficiaries in the work. Yet another aspect is that the tar required for the work was purchased from outside, whereas it is not permissible. He has no explanation why he did not seek permission from the Panchayat to make such purchase

from outside.

15. A very important aspect argued by the defence is that the prosecution has not examined CW4 Santhosh who had accompanied the complainant on 14.2.2001 and 15.2.2001, when he met the accused to make payment. The trap witnesses are also consistent that CW4 Santhosh had accompanied the complainant. The evidence of the complainant is that he and Santhosh met the accused on 14.2.2001 and also on 15.2.2001, and that Santhosh had witnessed payment of ₹ 600/- to the accused on 15.2.2001. If so, there is no explanation why the prosecution did not examine the said Santhosh as a very material witness, or as an independent witness.

16. If the evidence of the complainant is not fully acceptable without independent corroboration then what is available is only the seizure of tainted money from the office of the accused. In **Meena W/o.Balwant Kemke v. State of Maharashtra** [2000 SC (Cri) 878], the Hon'ble Supreme Court held that mere recovery of phenolphthalein tainted currency and positive result of the phenolphthalein

test will not be enough to establish the guilt of the accused, and that, if the other evidence is not satisfactory in a particular case, the accused cannot be found guilty on the basis of the recovery of tainted money alone. In **State of Punjab v. Madan Mohan Lal Verma** [(2013) 14 SCC 153] also, the Hon'ble Supreme Court held that mere recovery of tainted money is not enough to prove the prosecution case under Sections 7 or 13 (2) of the P.C Act. In this case, I find that the evidence of the complainant is suspicious for the reasons stated above. He does not explain why he waited for two weeks to make a complaint. He is not consistent on the exact date on which demand was first made by the accused, he has practically admitted that he carried out the required works in violation of the terms of the agreement executed by him, and the prosecution has no explanation for non-examination of a very material witness, who had admittedly accompanied the complainant to the office of the accused, when he made payment of bribe. When the evidence of the complainant is suspicious, it cannot be acted upon in the absence of independent

corroboration. It is here, the defence case assumes importance, that the accused declined to issue cheque on the ground of violation of the terms of the agreement by the complainant. I find that the evidence given by the complainant on facts is suspicious. This fact makes the trap also suspicious.

17. When there is reason to believe the complainant had his own reasons to arrange a trap, and when evidence is suspicious, and not corroborated by independent evidence, the trap arranged by the vigilance in this case will have to be suspected. A trap for a trap arranged by the vigilance at the instigation of somebody, or at the instance some aggrieved person, who is interested in such a trap, or who for his own reasons is interested to see that a particular public servant is trapped, cannot be said to be a genuine or legitimate trap. In **Cheriyann Lukose v. State of Kerala** [AIR 1968 Kerala 60], this Court held that such a trap, which is suspicious, will have to be called an illegitimate trap. This Court held so following an earlier decision of the Hon'ble Supreme Court in **Ramjanam Sing v. State of Bihar** [AIR

1956 SC 643]. In this case, I am definite that the trap is really suspicious. There is reason to believe that such a trap happened to be arranged by the vigilance on the complaint of the complainant, who had his own reasons to trap the Panchayat Secretary. The complainant himself has admitted in evidence that the work was done by him in violation of the terms of the contract. The defence case is that the Secretary declined to sanction the bill and make payment on the ground of such violations. The fact that the complainant waited two weeks to make complaint is also very suspicious. When the evidence given by the complainant is suspicious, and the trap is also suspicious, there cannot be a conviction solely on the basis of the recovery of the tainted money.

18. On an appreciation of the evidence as discussed above, I find that the evidence given by the complainant is suspicious, and that his evidence stands not corroborated by independent evidence. In view of such suspicious factors, the trap arranged in this case by PW11 is also found not legitimate. I find that the accused is entitled for an acquittal on the benefit of doubt. Even otherwise I find that the

accused is entitled for an acquittal in this case because the Ext.P14 prosecution sanction granted under Section 19 of the P.C Act stands not properly and legally proved. The sanction was granted by the Principal Secretary to the Government, whereas it was marked through an Under Secretary. In a case of identical situation, this Court held in **Antony Cardoza v. State of Kerala [2011 (1) KLT 946]**, that a prosecution sanction granted by the Principal Secretary cannot be proved by the Under Secretary, and such a sanction cannot be said to be properly and legally proved. In **Mansukhilal Vithaldas Chauhan v. State of Gujarat [(1997) 7 SCC 622]**, the Hon'ble Supreme Court held that the sanctioning authority is bound to peruse and consider the materials before him and he will have to apply his mind independently. In **Antony Cardoza** also this Court held that the sanctioning authority will have to prove independent application of mind in the process of granting sanction, and this responsibility cannot be taken over by somebody else. Following Antony Cardoza, and other decisions, this Court has recently settled the position as

regards proof of sanction, that the prosecution sanction granted under Section 19 of the P.C Act, will have to be proved by the person, who granted the sanction, as provided under the Indian Evidence Act, except in cases where such sanction will have sanctity or immunity under the law. In this case, sanction was granted by the Principal Secretary, and the evidence of the Under Secretary examined as PW12 is that he does not know what are the materials considered by the Principal Secretary and he is not in a position to say anything about independent application of mind in the process of granting sanction. Thus the evidence of PW12 is really worthless in the matter of sanction. I find that Ext.P14 sanction in this case stands not properly and legally proved. In so many decisions, the Hon'ble Supreme Court has explained the necessity of proof of independent application of mind in the process of granting sanction. When such an aspect is in dispute during trial, the prosecution is bound to examine the person who granted the sanction, to prove it. The responsibility of proving the essential elements as regards sanction cannot be taken over by somebody else,

and in such a circumstance, mere marking of the document will not suffice. In this case, I find that the accused is entitled for acquittal on the legal ground that the prosecution against him is barred under Section 19 of the P.C Act in the absence of a properly proved prosecution sanction. I have already found that on facts also, the appellant is entitled for acquittal because, the whole prosecution case including the trap is suspicious.

In the result, this appeal is allowed. The conviction and sentence against the appellant under Sections 7 and 13 (2) read with 13 (1) (d) of the P.C Act in C.C No.17 of 2002 of the court below will stand set aside, and the appellant will stand acquitted in appeal under Section 386 (b) (i) of Cr.P.C. Accordingly, the appellant will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge