

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

CRL.A.No. 1926 of 2005 ()

**AGAINST THE ORDER/JUDGMENT OF ENQUIRY COMR.& SPL.JUDGE,KZD IN CC
31/2001 (VC 4/2000 OF VACB, KOZHIKODE). DATED 25-10-2005**

APPELLANT(S)/ACCUSED.:

**BALAKRISHNAN,S/O.KRISHNAN, CHANDRAMBATH HOUSE,
P.O.PALAYAD, ANDALURKADAVU,
PALAYAD DESOM, DHARMADOM VILLAGE,
KANNUR DISTRICT (BLOCK EXTENSION
SCHEDULED CASTE DEVELOPMENT DEPARTMENT, PERAMBRA
BLOCK PANCHAYATH OFFICE).**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.JOSEPH GEORGE(MULLAKKARIYIL)
SRI.ARUN KRISHNA DHAN**

RESPONDENT(S)/COMPLAINANT.:

**STATE OF KERALA, REP.BY DY.S.P .VIGILANCE AND ANTI-CORRUPTION
BUREAU, KOZHIKODE.
REPRESENTED BY THE PUBLIC, PROSECUTOR
HIGH COURT OF KERALA.**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

P. UBAID, J.

Crl.Appeal No.1926 of 2005

Dated this the 24th day of July, 2015

JUDGMENT

The appellant herein was Block Extension Officer in the Scheduled Castes and Scheduled Tribes Development Department, Perambra Block Panchayath, in February, 2000. One Korumbi, a member of Scheduled Tribe, had applied for financial assistance for house construction under the Peoples Programme 1999-2000 introduced by the Government. The initial payment of Rs.5,000/- was made on 15.2.2000. Later, she applied for the balance amount, and her step-son, Babu, approached the appellant herein with request to issue cheque for the balance amount. It is alleged that when he made such a request to the appellant at the work site on 14.02.2000, the appellant demanded an amount of Rs.3,000/- as illegal gratification and he repeated the demand on 21.02.2000. On 23.02.2000, the said Babu approached the Dy.S.P., Vigilance and Anti Corruption Bureau (VACB), Kozhikode, and made a complaint. On the said complaint, the Dy.S.P. arranged a trap. As instructed by the Dy.S.P., the complainant approached the appellant on

23.02.2000 at about 12.45 p.m., and made payment of the amount, outside the office, as insisted by the accused. Within no time, the phenolphthalein tainted currency was seized from his possession by the Vigilance team, and the accused was arrested on the spot. After investigation, the VACB submitted final report before the learned Enquiry Commissioner and Special Judge (Vigilance), Kozhikode.

2. The appellant faced trial before the learned trial Judge in C.C.No.31/2001, and pleaded not guilty to the charge framed against him by the trial court, under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the P.C.Act'). The prosecution examined eight witnesses in the trial court including the complainant, the trap witness, and the Dy.S.P., who laid the trap. The prosecution also marked Exts.P1 to P25 documents and MO1 to MO8 properties including the tainted currency identified during trial. When examined under Section 313 Cr.P.C., the accused denied the incriminating circumstances, and submitted that the trap in this case was a vicious one arranged by the police and the complainant, at the instance of the active workers of the CPI(M).

The accused examined two witnesses on his side as DW1 and DW2, and also marked Exts.D1 to D18 documents including some publications containing his articles criticising the Communist Party. On an appreciation of the evidence adduced on both sides, the trial court found the accused guilty. On conviction, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.15,000/- under Section 7 of the P.C.Act, and to undergo rigorous imprisonment for three years and to pay a fine of Rs.15,000/- under Section 13(2) read with 13(1)(d) of the P.C.Act, by judgment dated 25.10.2005 in C.C.No.31/2001. Aggrieved by the conviction and sentence, the accused has come up in appeal.

3. When this appeal came up for hearing, the learned counsel for the appellant submitted that without going to the facts of the case, this Court will have to set aside the conviction and release the appellant on the very important legal ground that the very cognizance in this case is barred under Section 19 of the P.C.Act for the reason that the prosecution sanction granted by the competent authority stands not properly and legally proved. On the other hand, the learned Public Prosecutor in charge of the

case submitted that the case on facts stands well proved by the evidence of the complainant and the other material witnesses. As regards the prosecution sanction, the learned Public Prosecutor submitted that Ext.P24 sanction marked in the trial court will have sanctity as a public document, and so, it does not require formal proof.

4. Before going to the legal aspects raised by the defence, let me decide whether the case stands proved on facts, that the appellant herein had accepted illegal gratification from PW1 on 23.02.2000.

5. PW4 (the Secretary of Nochad Grama Panchayath) proved Ext.P7 application for financial assistance made by the complainant's step-mother, Korumbi, and he also proved the Ext.P8 certificate that Korumbi deserves assistance under the scheme. PW5, the Head Clerk of the Perambra Block Office proved the Ext.P10 attendance register and the entries showing the attendance of the accused in the office on the relevant date. PW6, the Secretary of the Perambra Block Panchayath proved Ext.P11 file containing the details of the beneficiaries under the scheme for financial assistance for house construction, and he

also proved Ext.P13(a) decision of the Panchayath, nominating the Block Extension Officer as the authority to implement the scheme. PW7 proved Ext.P14 Minutes Book of the Grama Panchayath, and also Ext.P14(a) entry regarding the request made by PW3 on behalf of his mother Korumbi.

6. The main evidence is that of the complainant, examined as PW1, and that of PW2, the trap witness. Of course, it is true that PW2 had not witnessed acceptance of bribe by the accused. However, he proved seizure of phenolphthalein tainted currency from the possession of the accused by the Dy.S.P., and he also proved arrest of the accused on the spot. His evidence on this aspect stands not, in any manner, discredited. PW2 was Special Tahsildar in the Kerala State Housing Board, and he came to witness the trap, as requested by the police. He is definite that MO1 tainted currency proved in this case was in fact handed over to the complainant by the Dy.S.P. with instruction to pay it to the accused, and that the very same currency was seized by the police as per mahazar, from the possession of the accused. Thus, the evidence of PW2 is well convincing regarding seizure of tainted money from the possession of the accused.

7. PW3 is the son of Korumbi, who had made application for financial assistance under the Government scheme. His evidence is not regarding demand or acceptance. PW1, the complainant, has given definite and consistent evidence proving the essential ingredients, that illegal gratification was demanded by the accused, and that the accused accepted an amount of Rs.3,000/- from him on 23.02.2000 at about 12.45 p.m. as a reward for issuing cheque in the name of his step-mother. He says that on behalf of his step-mother, he approached the accused on 14.02.2000 and made request to sanction the amount at the earliest. But on that day the accused demanded an amount of Rs.3,000/-, and he repeated the demand on 21.02.2000 also. On 21.02.2000 he was asked by the accused to come with the amount on 23.02.2000, and he was also instructed to make payment outside the Perambra Block Panchayath Office. He thought of making a complaint before the Vigilance, and accordingly, he approached PW8 and made Ext.P1 complaint. Demand was initially made by the accused for Rs.5,000/-, but later, it was reduced to Rs.3,000/- on a bargain. As instructed by the Vigilance, he brought an amount of Rs.3,000/-, on which the

Dy.S.P. applied phenolphthalein and demonstrated necessary phenolphthalein test before proceeding for the trap. As instructed by the Dy.S.P. he approached the accused at his office, and at the passage between the Panchayath Office and the school, the accused accepted the amount of Rs.3,000/- from him. Immediately, he gave signal to the police, and within no time the Vigilance team led by Dy.S.P. reached there, seized phenolphthalein tainted currency from the possession of the accused at the passage, and arrested him on the spot.

8. In cross examination by the defence, PW1 stood firm to his versions and affirmed that the accused herein had demanded an amount of Rs.3,000/-. On 23.02.2000, he made complaint before the Vigilance, and as instructed by the Vigilance he approached the accused with phenolphthalein tainted currency, and he made payment to the accused, on demand. Thus, the essential elements of demand and acceptance are well proved by the evidence of the complainant. This Court finds no reason to disbelieve him or to reject his evidence. There is absolutely no reason why this witness should make a false complaint against the accused, or why the police should register a false case

against him, or arrange a vicious trap. It is true that the accused examined two witnesses and also marked some literary works containing his writings, criticising the Marxist Party. But, this will not by itself prove his defence that the trap was arranged on political grounds, by his political enemies. It is impossible to believe that for something written years back, he was trapped by politicians in the year 2000. There is nothing to show that PW1 has any political allegiance, or that he made a false complaint against the accused at the instance of any politician.

9. The process of detection in this case stands well proved by the evidence of PW8. His evidence is definite that on 23.02.2000 PW1 approached him with a complaint against the Block Development Officer, and the amount brought by him was used for the trap. He demonstrated phenolphthalein test in the presence of the complainant and others, and instructed the complainant to hand over the currency to the accused, if demanded. Accordingly, the accused made payment on demand, and on getting signal, he and his team approached the accused, seized the phenolphthalein tainted currency from his possession, and arrested him on the spot. The Dy.S.P. has given definite and

consistent evidence regarding all the pre-trap and post-trap measures including Ext.P3 mahazar as per which the phenolphthalein tainted currency was seized from the possession of the accused. I find nothing to disbelieve the evidence of PW8 regarding the process of detection. His evidence is well supported by that of PW2.

10. Now, let me see whether the prosecution sanction stands proved. Ext.P24 is the sanction marked in evidence by the investigating officer. Section 19 of the P.C.Act bars even cognizance in the absence of a proper sanction granted by the competent authority. Ext.P24 sanction was granted by the Director of Scheduled Casts and Scheduled Tribes Development Department. But the said Director was not examined to prove the sanction. In **Mansukhlal Vithaldas Chauhan v. State of Gujarath [1997(7)SCC 622]**, the Honourable Supreme Court held that in the absence of evidence proving independent application of mind by the sanctioning authority in the process of granting sanction, the prosecution sanction cannot be accepted by the court. In **CBI v. Ashok Kumar Aggarwal [AIR 2014 SC 827]**, the Honourable Supreme Court held that in the process

of granting sanction under Section 19 of the P.C.Act, the sanctioning authority will have to do complete and conscious scrutiny of the whole records produced by the prosecution before him, and the order of sanction should show that he granted sanction on a consideration of all the relevant aspects, by applying his independent mind. In **Antony Cardoza v. State of Kerala [2011(1)KLT 946]**, a learned Single Judge of this Court held that when a prosecution sanction granted under Section 19 of the P.C.Act is not proved by the person who granted sanction, the sanction cannot be said to have been properly proved under the law. This Court held that independent application of mind to the facts and materials, in the process of granting sanction will have to be proved by the person who granted sanction, and this function cannot be taken over by somebody else. In the said case an Under Secretary to the Government was examined by the prosecution to prove the sanction granted by the Principal Secretary. This Court held that such evidence cannot be accepted, and such a prosecution sanction, not proved by the person who granted the sanction, cannot be said to be legally proved.

11. On a consideration of all the decision on the points, I have settled the legal position in another case that the prosecution sanction requires proof as provided under the Indian Evidence Act. Ext.P24 sanction in this case cannot claim sanctity and privilege as a public document under Section 74 of the Indian Evidence Act. In such a situation, the sanction will have to be proved by the person who granted sanction. This Court has settled the position that when independent application of mind to the facts is a matter in dispute during trial, the person who granted sanction will have to prove the sanction, even if it is a sanction granted by the Government Secretary. In this case, the sanction was granted by the Director of the Scheduled Castes and Scheduled Tribes Department. Such a sanction cannot claim any sanctity as a public document, and such a sanction will have to be proved by the person, who granted sanction. When the prosecution sanction cannot claim sanctity and privilege as a public document, it will have to be proved in the manner prescribed, under the Indian Evidence Act, for proof of documents. In the absence of such evidence by the person who granted sanction, the Ext.P24 sanction cannot be accepted as a

properly and legally proved sanction. I find that the prosecution has failed to prove Ext.P24 sanction as prescribed under the law, and so, the whole prosecution is barred. Accordingly, the appellant is entitled for acquittal on this important legal ground itself. This Court has come across many such cases where the prosecution could prove the case on facts, but failed to prove the prosecution sanction. I find that the appellant is entitled for acquittal in this case on the ground that the prosecution is barred under Section 19 of the P.C. Act.

In the result, this appeal is allowed. The conviction and sentence against the appellant under Sections 7 and 13(2) read with Section 13(1)(d) of the P.C. Act in C.C.No.31/2001 of the court below, will stand set aside, and the appellant will stand acquitted under Section 386(b)(i) Cr.P.C. The bail bond, if any, executed by him will stand discharged.

Sd/-

P. UBAID, JUDGE

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