

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

CRL.A.No. 2245 of 2006

**AGAINST THE JUDGMENT IN CC 30/2002 OF ENQUIRY COMMISSIONER
AND SPECIAL JUDGE, THRISSUR DATED 31-10-2006**

APPELLANT/ACCUSED :-

**K.K.THAVARAJ, S/O.APPUNNI,
KARIYANNUR HOUSE, PORKULANGAD DESOM,
KANIPAYYUR VILLAGE, THRISSUR DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT/COMPLAINANT :-

**THE STATE OF KERALA,
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU, THRISSUR,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

R BY SMT.REMA R., PUBLIC PROSECUTOR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P.UBAID, J.

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Crl.Appeal No.2245 of 2006

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Dated this the 31st day of August, 2015

ORDER

The appellant herein was Special Grade Secretary of the Eriyad Grama Pamchayath in Thrissur District in October, 2001. On the allegation that he received an amount of Rs.500/- from one Kunhumammed as a reward for assigning a number to his newly constructed house in the Panchayath area, the appellant faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur. Complaint was made by Kunhumammed on 16.10.2001 before the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau (VCAB), Cochin. His complaint is that when he approached the accused on 15.10.2001 with request to assign a number to his house, the accused demanded Rs.500/-, and asked the complainant to come with the amount on the next day. As Kunhumammed was not inclined to give bribe, he approached the Vigilance on 16.10.2001, and made a complaint. On the said complaint, the VACB registered a crime, and arranged a trap. The

amount of Rs.500/- brought by the complainant (5xRs.100/- currency) was received by the Deputy Superintendent of Police as per a mahazar, phenolphthalein was applied on all the currency notes, and after demonstraing the required phenolphthalein test, Kunhumammed was instructed to meet the accused at his office, and make payment of the amount. At about 12 noon, the complainant proceeded to the Panchayath Office, followed by the Deputy Superintendent of Police and his team, including the two trap witnesses arranged by him. The complainant took the accused in an autorickshaw to the site, and reached there at about 2.30 p.m. As instructed by the Deputy Superintendent of Police, the complainant made payment inside the newly constructed house, when the Secretary again made demand. On getting signal, the Vigilance team rushed to the said house, seized the phenolphthalein tainted currency, and arrested the Panchayath Secretary on the spot. After investigation, the Vigilance submitted final report before the trial court.

2. The accused entered appearance before the trial court, and pleaded not guilty to charge framed against him under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act

(PC Act). Thus he claimed to be tried. The prosecution examined eight witnesses in the trial court, and marked Exts. P1 to P15 documents. The MO1 to MO8 properties including the tainted currency were also identified, and marked during trial. When examined under Section 313 Cr.P.C., the accused denied the incriminating the circumstances, and contended that he had not demanded, or received anything illegal from the complainant. Though opportunity was granted by the trial court, the accused did not adduce any evidence in defence. However, Exts.D1 to D6 documents were marked on his side. The person who made complaint was not examined as a witness during trial. However, the learned trial judge accepted the evidence regarding the recovery of tainted money, and on the basis of the said evidence, the learned trial judge found the accused guilty. On conviction, the accused was sentenced to undergo rigorous imprisonment for three years, and to pay a fine of Rs.25,000/- under Section 7 of the PC Act. Under Section 13(2) read with Section 13(1)(d) of the PC Act also, he was sentenced to undergo rigorous imprisonment for three years, and to pay a fine of Rs.25,000/-. Aggrieved by the said judgment of conviction dated 31.10.2006 in C.C.No.30 of 2002, the accused has come up in appeal.

3. When this appeal came up for hearing, the learned counsel for the appellant submitted that there is absolutely no evidence in this case to prove the essentials of the offences alleged, and that merely on the basis of recovery, a conviction is not legal. On the other hand, the learned Public Prosecutor submitted that the recovery of tainted money stands properly and legally proved, and on the basis of the said evidence, the Court can apply the presumption under Section 20 (1) of the PC Act .

4. As already stated, this is a case where the complainant was not examined by the prosecution. Crime in this case was registered by the VACB against the accused on a definite complaint made by one Kunhumammed. The prosecution has no satisfactory explanation, why the complainant was not examined, and the prosecution has also not adduced any other evidence to prove the alleged demand and acceptance. Of the eight witnesses examined by the prosecution, PW1 is the trap witness, and PW8 is the Deputy Superintendent of Police (Vigilance), who registered the crime, investigated it, and submitted final report. PW2 is only the person who took the complainant, and the accused to the site in his autorickshaw. He is not a witness to the alleged demand or acceptance. PW3 to PW6 are

the Panchayath Officials, and the Panchayath President, examined to prove that the accused was on duty at the relevant time as Special Grade Secretary of the Eriyad Grama Panchayath. These aspects are not in dispute.

5. PW1 has given evidence regarding recovery of the tainted money in this case. PW8 has also proved the said recovery made as per the Ext.P3 mahazar. Though the essentials like demand and acceptance are not properly and legally proved by prosecution materials, the process of recovery stands proved in this case. The learned trial judge relied very much on this recovery to find the accused guilty. PW1 has no case that he had witnessed payment of bribe, or acceptance of bribe. It is not known whether anybody had seen, or witnessed the Secretary demanding or accepting bribe from the complainant. The Ext.P15 complaint does not reveal that anybody had heard, or witnessed the accused making such a demand. Thus this is a case where the prosecution does not have any material to prove the alleged demand and acceptance. When the complainant is not examined, and the facts alleged therein are not proved, no value can be attached to the Ext.P15 complaint. A complaint by itself will not have any substantive value. In short, there is absolutely nothing

to prove the alleged demand and acceptance.

6. In **State of Kerala and another v. C.P.Rao [2011(2) KLT 812]**, the Honourable Supreme Court held that when there is no substantive evidence proving demand and acceptance, a conviction is not possible under Section 7 or 13(2) of the PC Act merely on the basis of recovery of the tainted money. In **B.Jayaraj v. State of Andhra Pradesh [(2014)13 Supreme Court Cases 55]**, the Honourable Supreme Court held that for a conviction under Section 7, or 13(2) of the PC Act, the prosecution must prove the essentials beyond reasonable doubt. Those essentials are demand and acceptance. The Honourable Supreme Court also held that for drawing the presumption under Section 20(1) of the PC Act, the prosecution must prove acceptance of bribe beyond the reasonable doubt. In **Sukumaran C. v. State of Kerala [2015(1)KLD 311 (SC)]**, the Honourable Supreme Court held that demand and acceptance of bribe must be proved beyond reasonable doubt by the prosecution, because these are the elements constituting the *sine qua non* for such prosecution. In **Dr.N.Gurudas v. State of Kerala [2015(3) KLJ 377]**, a case where the complainant disowned his complaint and turned hostile, this Court held that when the prosecution does not have any other

material, a conviction is not possible under Section 7 of the PC Act.

7. It stands well settled by various judicial pronouncements, that a conviction under Section 7 or Section 13(2) of the PC Act is not possible, when there is no evidence of any sort proving demand and acceptance. So, also it is well settled that in the absence of anything proving acceptance of illegal gratification, the Court cannot apply the presumption under Section 20(1) of the PC Act. In this case, the learned trial judge found the accused guilty on the basis of the recovery of tainted money. I find that this is not a case where there is any evidence to prove acceptance, and so this is not a case where the presumption under Section 20(1) of the PC Act can be applied. In short, the conviction made by the Court below is liable to be set aside. It appears that the trial court is under a misapprehension that what is presumed under Section 20(1) of the PC Act is the guilt of the accused. Even when acceptance of bribe is proved, what is presumed under Section 20(1) of the PC Act is not in fact the guilt of the accused, but only that acceptance was made by the accused as a reward for doing something illegal, or as meant under Section 7. The PC Act nowhere presumes the guilt of the accused. Anyway, on an appreciation of the evidence, I find that the prosecution does not have

anything in its hands to prove the very essential elements like demand and acceptance, constituting the offences under Sections 7 and 13(2) of the PC Act. In the absence of any such evidence, a conviction is not possible on the basis of recovery of the tainted money alone, and in the absence of anything to prove acceptance the presumption under Section 20(1) of the PC Act also cannot be applied. I find that the accused in this case is entitled for a clean acquittal.

In the result, this appeal is allowed. The conviction and the sentence against the appellant under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act, made by the Court below in C.C.No.30 of 2002 will stand set aside. The accused is found not guilty of the said offences, and he is acquitted of those offences in appeal under Section 386(b)(i) Cr.P.C. The bail bond executed by the appellant will stand discharged.

Sd/-

**P.UBAID
JUDGE**

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P.A. TO JUDGE