IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

CRL.A.No. 1835 of 2007

AGAINST THE JUDGMENT IN CC 42/2001 OF THE ENQUIRY COMMISSIONER & SPL.JUDGE, KOZHIKODE DATED 17-09-2007

APPELLANT/ACCUSED:

R.V.PADMANABHAN NAIR @ PADMANABHAN R.V,
S/O.ULLATTIL GOPALAN NAIR, ULLATTIL HOUSE,
P.O PAYIMBRAM, RESIDING AT RAMACHAN VEEDU,
KURUVATTOOR, KOZHIKODE, (VILLAGEMAN
KAKKODI VILLAGE OFFICE, KOZHIKODE DIST)

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.UBAID, J.

Crl.A No.1835 of 2007

Dated this the 30th day of October, 2015

J U D G M E N T

Acceptance of just ₹100/- by a Village Assistant as a reward for releasing a document produced by one Balaraman in the village office, is the subject matter of the prosecution herein. The appellant herein is the said village man. On the complaint of Balaraman the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau (VACB), Kozhikode registered a crime against the accused, and after investigation, final report was filed before the Enquiry Commissioner and Special Judge, (Vigilance), Kozhikode. The complaint of Balaraman is that on 7.7.2000 at 2 pm. the Village Assistant (accused) demanded an amount of ₹100/- as a reward for releasing his documents, and he repeated the demand on 11.7.2000. As he was not inclined to pay bribe, he approached the vigilance and made a complaint on which the Deputy Superintendent of Police, registered a crime and arranged a trap. In the afternoon, the vigilance party, lead by the Deputy Superintendent of Police reached the Village office, Konni and arrested the accused at the premises, not at the village office. The tainted money of ₹100/- was seized by the police from another person, and not from the accused. Anyway, after completing the investigation, final report was filed against the accused.

2. The accused appeared before the trial court and pleaded not guilty to the charge framed against him under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act (for short 'the P.C Act).

3. The prosecution examined eight witnesses during trial and marked Exts.P1 to P24 documents. MO1 to MO9 properties, including the tainted currency of ₹100/- identified as MO1 were also identified and marked during trial. When examined under Section 313 Cr.P.C the accused denied the incriminating circumstances and submitted that he had not received anything as reward or otherwise from the complainant Balaraman, and that a vicious trap was arranged against him by the police. Though opportunity was granted by the trial court, the accused did not adduce any evidence in defence. On an appreciation of the evidence the learned trial judge found the accused guilty of having accepted an amount of ₹100/- as illegal

gratification. On conviction, he was sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹ 1,000/- each under Sections 7 and 13(2) r/w Section 13(1)(d) of the P.C Act by judgment dated 17.9.2007 in C.C. No.42/2001. 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 appellant is entitled for an acquittal on legal and factual grounds. As regards legal grounds he submitted that the prosecution sanction in this case stands not properly proved by the right person who granted it, and as regards the factual aspects, the learned counsel submitted that there is absolutely no material to prove the essential elements, and that the tainted money was not infact seized from the possession of the accused. On the other hand the learned Public Prosecutor submitted that though the complainant turned hostile to the prosecution, the case of the prosecution stands otherwise proved by the evidence of PW2 and PW3, supported by the documents like seizure mahazar, proving the fact of recovery of the tainted money.

5. On an examination of the materials including the

material documents and the deposition given by the material witnesses, I find that the plea for acquittal made by the appellant is acceptable. Let me first discuss the legal aspect. Ext.P24 is the prosecution sanction marked during trial by the investigating officer examined as PW8. Ext.P24 sanction was granted by the Commissioner of Land Revenue, Thiruvananthapuram. This officer was cited as witness by the prosecution. There is no explanation why the right person was not examined by the prosecution to prove the sanction. It is also not known how the investigating officer could prove the sanction. As regards the sanction, the evidence of the investigating officer is just one sentence that Ext.P4 is the sanction relating to the accused. He does not say who granted it, he does not explain how he is competent to prove it, he does not say that he can identify the signature of the Commissioner of Land Revenue, and he does not also say that the sanction was granted by the competent authority on proper application of mind. Thus legally and practically the investigating officer has nothing to say about the essentials of the Ext.P24 sanction. This Court has settled the legal position on this aspect, that except in cases where the prosecution sanction granted under Section 19 of the P.C Act can claim any immunity or sanctity under the law so as to dispense with the examination of the authority who granted it, the prosecution will have to prove the sanction according to law. This is not a case where the prosecution sanction can claim any such immunity or sanctity. The prosecution should have examined the Land Revenue Commissioner, who granted the sanction. In the absence of any such evidence by the right person proving sanction, the court cannot accept Ext.P24 as the legally or properly proved prosecution sanction. On this ground itself, the accused is entitled for an acquittal, because in the absence of a proper sanction the whole prosecution sanction is barred under Section 19 of the P.C Act.

6. Now let me come to the factual aspect. PW1 is the complainant Balaraman and Ext.P1 is his complaint. Of course in the complaint he alleges that the accused had demanded ₹100/- from him on 7.7.2000, the said demand was repeated on 11.7.2000, and on 11.7.2000 the money as demanded by the accused was paid. He first approached the vigilance and made the complaint. On the said complaint, PW6 registered a crime and arranged a trap. But in evidence PW1 turned fully hostile to the prosecution. He was cross examined

by the learned Public Prosecutor, but nothing could be brought out in his cross examination to incriminate the accused. His evidence is that the accused had not made any demand and he had not paid anything to the accused. His evidence is that he was instructed by the Deputy Superintendent of Police to pay the tainted money of ₹100/- to the Village Officer, and accordingly he met the village officer at his office. When he tendered the amount, the village officer rejected it and said that he would not receive any amount. Then he went down stars, met the trader Ali, and paid the said amount to the said Ali, asking him to pay it to the Village Officer. Thus, according to PW1, the tainted money was paid by him not to the accused but to one Ali. The said Ali is PW3. PW1 is definite in his evidence that the accused had not demanded anything from him as reward or otherwise, and he had not paid any amount to the accused as instructed or directed by the Deputy Superintendent of Police. Of course, as instructed he met the Village Man but the Village Man declined to receive it saying that he would not receive any amount. It is not known why he met PW3 and paid the amount to PW3. This stands not explained. Anyway, PW1 does not have a case anywhere in his evidence that any demand was made by the accused or any amount was illegally received or accepted by the accused from him. Thus there is absolutely nothing in the evidence of PW1 in favour of the prosecution. PW2 is a trap witness arranged by the vigilance. He does not say that he had witnessed payment of money in this case. His evidence is only regarding the recovery of the tainted money from the possession of PW3. Even according to the prosecution nothing was recovered from the possession of the accused. Of course it is true that in a case where the accused accepted the tainted money and handed it over to somebody else, the fact that the money was not recovered or seized from the possession of the accused will not assume any importance. If seizure of the tainted money is proved and it was seized from somebody else, the prosecution can very well prove the connection between the accused who initially accepted it and the person who was found possessing the tainted money. Let us see what is the explanation on this aspect.

7. PW3 is the independent witness examined by the prosecution. His evidence is that on 7.7.2000 the accused approached him in the morning and paid him ₹100/-. To quote his own words "നൂറു രൂപ നോട്ട് പ്രതി എന്റെമേശപ്പുറത്ത് വച്ചു. അത് അവിടെ

ഇരിക്കട്ടെ എന്നു പറഞ്ഞു. നൂറുരൂപ ഞാൻ പോക്കറ്റിൽ ഇട്ടു. വേറെ ഒന്നും പറഞ്ഞില്ല."(The accused placed the currency of ₹100/- on my table and asked me to receive it. Accordingly, I took it and put in my pocket. The accused did not say anything else). PW3 does not explain why the accused paid him ₹100/- or why he just took it and put it in his pocket. PW3 is a stationary trader. The village office is on the up stairs. PW3 says that the accused approached him in the morning at his shop and paid the money. PW3 has no case that the accused had at any time borrowed any amount from him, or that the amount was paid by him as the price of the commodity purchased by him from his shop. Thus it is not known why the amount of ₹100/- was paid by the accused to PW3. This is really suspicious. The prosecution does not explain why the amount was paid by the accused to PW3, if at all it is acceptable that amount was in fact received by the accused as bribe from the complainant. For the accused to pay to PW3 it must be either as the money borrowed, or as the price of the commodity purchased by him. It is really unbelievable that without any reason, or for no purpose, the accused paid ₹100/- to PW3.

8. In fact the evidence of PW1 is that the tainted

money of ₹100/- which the vigilance seized from the possession of PW3 was in fact tendered by him to the Village Man who declined, it and who even rejected it. He then went down stars, met PW3 Ali and paid the amount to him with a request to hand it over to the Village Officer and not the Village Man. Thus PW1 is definite, though hostile, that the amount was in fact paid by him to PW3 whereas PW3 says that the amount was paid by the accused. If at all PW3's version can be accepted in view of the fact that PW1 turned hostile, it requires explanation why or for what purpose the accused paid to ₹100/- to PW3. Here there is no explanation, and everything is suspicious.

9. It is well settled that even in cases where the complainant turned hostile to the prosecution, the case of the prosecution can be proved otherwise by other evidence and circumstances. Recently the Hon'ble Supreme Court has settled that just because the complainant turned hostile, the prosecution case would not collapse. But here there is no satisfactory or convincing evidence to prove the guilt of the accused. PW6, the detecting officer has stated in his evidence that the tainted money was not in fact seized from the possession of the accused, but from the possession of PW3. His evidence shows that on

getting signal regarding acceptance of bribe by the village man, he straight away went and recovered the amount from PW3. It is not explained by him as to why he did not make search at the Village Office to see whether the village man had in fact received any amount. He straight away approached PW3 and recovered the amount from PW3. This creates some suspicion regarding the trap laid by him. Anyway, I find no satisfactory evidence in this case to find the accused guilty. PW1, the complainant turned hostile and stated in clear terms in evidence that the accused had not demanded anything from him, that he had not paid anything to the accused, and that the tainted money of ₹ 100/- was in fact paid by him to PW3 when the accused declined his offer. On the other hand the evidence of PW3 is that the amount was not paid by the complainant, but it was paid to him by the accused. He does not explain why the accused made such a payment. The money was not paid by the accused either as the borrowed amount, or as the price of goods. It is here the evidence of PW3 become suspicious. Thus I find that the prosecution does not have any satisfactory and convincing evidence in this case to prove the guilt of the accused. It is well settled by this Court and the Hon'ble Supreme Court in many decisions that in the absence of anything to prove the essentials like demand and acceptance, an accused cannot be convicted under Section 7 and 13(2) of the P.C Act. Here the prosecution does not have any material or any circumstance to prove demand. To prove acceptance, the prosecution relies on the evidence of PW3. Admittedly, the amount was not directly accepted by the accused. There is no explanation how PW3 happened to receive the money. It is true that on phenolphthalein test on the hands of the accused, the result turned positive. But this is explainable by the evidence of the complainant that when he tendered the amount, the Village Man declined and rejected it, and in such a circumstance he paid the amount to PW3. It is well settled that on the basis of mere recovery of tainted money the accused cannot be found guilty under the provisions of the P.C Act. If at all the prosecution has a case that the amount seized from the possession of PW3 is in fact the amount received by the accused and handed over to him, the prosecution must prove the connection. PW3 does not say why he accepted ₹100/- from the accused, if not as money borrowed or as price of any commodity sold by him. Thus, I find the prosecution does not have a clean and acceptable case, or that the prosecution case stands not proved beyond reasonable doubts.

10. On legal aspect itself, I have found that the appellant is entitled for an acquittal. On factual aspects also I find that the prosecution case stands not properly proved beyond reasonable doubt. Thus the appellant is entitled for an acquittal on factual ground also.

In the result, this appeal is allowed. The appellant is found not guilty of the offences under Sections 7 and 13(2) of the P.C Act. Accordingly, he is acquitted of the said offences in appeal under Section 386(b)(i) of the Code of Criminal Procedure, and the conviction and sentence against him made by the court below in C.C No.42/2001 will stand set aside. The bail bond, if any, executed by the accused will stand discharged. The amount of fine, if remitted by the accused, can be returned to him.

P.UBAID
JUDGE

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