

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

CRL.A.No. 2267 of 2005 ()

AGAINST THE JUDGMENT IN CC 7/2005 of SPECIAL JUDGE (SPE/CBI)-I,
ERNAKULAM DATED 16-12-2005

APPELLANT(S)/ACCUSED:

C.YOHANNAKUTTY, AGED 55 YEARS,
S/O.SRI.YOHANNAN CHACKO, TAX ASSISTANT
O/O.THE ADDL.COMMISSIONER OF INCOME TAX, KOLLAM, RANGE
KOLLAM, RESIDING AT PALOOKONATHU KOCHUVILA, HOUSE
POOYYAPPALLY.P.O, KOTTARAKKARA TALUK, KOLLAM DISTRICT,
KERALA

BY ADVS.SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENT(S)/COMPLAINANT:

SUPERINTENDENT OF POLICE,
SPE-CBI, COCHIN.

BY ADV. SRI.S.SREEKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT 04-08-2015 DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.2267 of 2005**  
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Dated this the 4th August, 2015

J U D G M E N T

The appellant herein was Tax Assistant in the office of the Additional Commissioner of Income Tax Office, Kollam in December, 2004. He faced prosecution before the learned Special Judge (SPE/CBI-I), Ernakulam in C.C. 7 of 2005, on the complaint of one Balachandran Pillai, that on 13.12.2004, the appellant accepted an illegal gratification of ₹ 2000/- from him as a reward for issuing a cheque for the refund of an amount of ₹ 17,326/-. The said Balachandran Pillai had sustained some injuries in a motor accident on 21.6.1995. On the claim brought by him as O.P. (MV) No.520/1997, the Motor Accidents Claims Tribunal, Kollam awarded a compensation of ₹ 2,90,000/- with interest. The Insurance Company assessed the total amount inclusive of interest as ₹ 4,63 261/-, and deposited an amount of ₹ 4,45,935/- in court, after deducting an amount of ₹ 17 326/-, as income tax. When the said Balachandran Pillai got legal advice that such deduction is

not legal, he approached the Insurance Company for refund of the said amount. The Insurance Company instructed him to approach the Income Tax Office with necessary request. On 8.12.2014, Balachandran Pillai approached the appellant herein in the Income Tax Office at Kollam along with an Advocate Clerk, by name Sarjan. The case of Balachandran Pillai is that when he made request on 8.12.2004 for refund of the amount, the appellant demanded an amount of ₹ 5000/- as bribe.

2. On 12.12.2004, Balachandran Pillai contacted the appellant over telephone, and at that time, the appellant asked him to come on 13.12.2004 with an amount of ₹ 2000/-. As he was not inclined to pay bribe, he approached the vigilance officer from whom he obtained the telephone number of the CBI, and made a complaint. The CBI Inspector at Thiruvananthapuram instructed the complainant to approach the CBI officer at the PWD Rest House at Kollam with complaint. Accordingly, Balchandran Pillai approached the Deputy Superintendent of Police (CBI) at the PWD Rest House on 13.12.2004 and made a written complaint. The complaint was immediately faxed to the main office at

Thiruvananthapuram, and the CBI Officer registered a crime. The amount of ₹ 2000/- brought by the complainant for trap was received as per mahazar by the CBI Officer, and a trap was arranged. The Deputy Superintendent of Police (CBI) arranged some trap witnesses, applied phenolphthalein on the currency of ₹ 2000/- brought by the complainant, demonstrated phenolphthalein test to them, and instructed the complainant to approach the appellant, and make payment on demand. As instructed by the CBI, the complainant approached the appellant at his office. He was taken outside by the appellant under some pretext, and on the side of the public road near the Taluk Office, the complainant made payment of ₹ 2000/- when the appellant again demanded the amount. Within no time, the CBI team led by the Detecting Officer reached there on getting signal, seized the phenolphthalein tainted currency from the possession of the appellant, and arrested him on the spot. After investigation, the CBI submitted final report before the learned Special Judge.

3. The appellant (accused) pleaded not guilty to the charge framed against him by the trial court under Section 7 and 13 (2) read with 13 (1) (d) of the P.C Act, 1988 and

claimed to be tried. The prosecution examined 10 witnesses and marked Exts.P1 to P23 documents during trial. MO1 to MO7 properties including the phenolphthalein tainted currency identified during trial, were also marked on the side of the prosecution. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances and projected a defence that he had arranged a tax consultant on the request of the complainant Balachandran Pillai for getting refund of the tax amount and the complainant was also required to meet the necessary expenses. Accordingly, he was directed to come with ₹ 2000/- as the consultant's fee. But using the said amount, the complainant arranged a trap against him. The amount of ₹ 2000/- was not in fact accepted by him from the complainant. It was thrust into his pocket by the complainant under the pretext that it was the fee to be paid to the tax consultant. In defence, the accused examined three witnesses, and also marked Exts.D1 to D4 documents. 4.

4. On an appreciation of the evidence adduced by the prosecution and the defence, the learned trial Judge found that the prosecution case is true. On conviction he was sentenced to undergo rigorous imprisonment for two years and to pay a

fine of ₹ 5000/- under Section 7 of the P.C Act, and to undergo another term of rigorous imprisonment for three years and to pay a fine of ₹ 5000/- under Section 13 (2) r/w 13 (1) (d) of the P.C Act. Aggrieved by the said judgment of conviction dated 16.12.2005 in C.C No.7 of 2005, the accused has come up in appeal

5. When this appeal came up for hearing, the learned counsel for the appellant submitted that the whole evidence adduced by the prosecution is really artificial. He submitted that nothing was accepted by the appellant as bribe, and that the amount was in fact thrust into his pocket saying that it was the amount to be paid to the tax consultant. On the other hand, the learned Standing Counsel for the CBI submitted that this is a clear case of a genuine trap arranged by the CBI on a true complaint, and that the evidence adduced by the complainant and the other witnesses is really believable. The learned standing counsel also submitted that on factual or legal aspects that the appellant is not entitled for any benefit, and the conviction is only to be confirmed in appeal.

6. As regards the prosecution sanction, nothing was argued in appeal by the learned counsel for the appellant. The

whole argument was on factual aspects, that the evidence given by the complainant and the other witnesses is not acceptable and believable. PW8 has well proved Ext.P15 prosecution sanction granted under Section 19 of the P.C Act. He was the Additional Commissioner of Income Tax, and he was the competent authority to remove the appellant from service. His evidence convinces the court, that he granted prosecution sanction after a perusal of the whole materials, and on a proper application of mind to the facts of the case. Nothing could be brought out in his cross-examination to discredit his evidence on the material aspects touching the prosecution sanction. I find that PW8 has properly and legally proved the Ext.P15 prosecution sanction granted under Section 19 of the P.C Act, and that the appellant is not entitled for any benefit on such legal aspect.

7. Now the question is whether the appellant herein had in fact accepted an amount of ₹ 2000/- from PW1 as illegal gratification on 13.12.2004 as alleged by the prosecution.

8. To prove the case on facts, the prosecution mainly relies on the evidence of PW1 to PW3 and also the evidence of PW9, who detected the offence. Demand in this case stands

well proved by the evidence of PW1 and PW2. PW3 is the trap witness arranged by the CBI to witness the trap. PW4 is another Tax Assistant in the Income Tax Office, Kollam and she proved Ext.P10 register and the Ext.P10 (a) entries made by the accused therein. PW6, the Income Tax Officer, Kollam gave evidence that the accused was Tax Assistant in his office, and this fact is proved by PW8 also. The accused has no dispute regarding the factual aspects proved by PW6 and PW7. The case was properly investigated by PW10. There is nothing to show that there was any flaw or illegality or irregularity in the investigation conducted by him. The defence has no case that anything at the hands of PW10 during the process of investigation had caused any sort of prejudice to him. I find that the case was properly and legally investigated by PW10.

9. PW1, the complainant has given definite and consistent evidence proving the prosecution case. He had sustained some injuries in a motor accident on 21.6.1995, and on his claim brought as O.P. (MV) No.529/1997, an amount of ₹ 290,000/- was awarded as compensation. In the execution proceeding, the Insurance Company assessed the total amount payable as ₹ 4,63,261/-, but deposited only an amount of ₹

4,45,935/- after making deduction of ₹ 17,326/- by way of income tax at source. The necessary documents on these aspects are proved by PW1. These things are not disputed by the accused. The case of PW1 in his complaint and also in his evidence is that when he got legal advice that income tax was illegally deducted from his compensation, he approached the Insurance Company along with an Advocate Clerk, and as instructed by the Insurance Company, he approached the appellant herein at the Income Tax Office, Kollam along with the said Advocate Clerk on 8.12.2004. The appellant offered that he will do the necessary things but he demanded an amount of ₹ 5000/-. When the complainant expressed his helplessness, the appellant asked him to pay ₹ 2000/- immediately, and to pay the balance amount after the amount is received. When he contacted the accused over telephone on 12.12.2004 also, he repeated his demand, and asked the complainant to bring the amount on 13.12.2004. Thus, PW1 is definite and consistent regarding the demand made by the accused on 8.12.2004 and also on 12.12.2004. Of course, the repeated demand made on 12.12.2004 was over telephone. The demand made on 8.12.2004 is proved by PW2 also. PW2 is

definite that he and the complainant had approached the appellant at his office on 8.12.2004. The accused offered that he will do the necessary things, and the complainant will get the amount of ₹ 17,326/- refunded. But he demanded an amount of ₹ 5000/- as reward for the said work. I find no reason to disbelieve the evidence of PW2. He has no reason to give any false evidence against the accused. PW1 also had no reason to make a false complaint against the accused. Thus, I find, that the essential aspect of demand stands well proved by the evidence of PW1 and PW2.

10. Now the question is whether acceptance of the amount as alleged by the prosecution stands proved. On this material aspect also, PW1 is definite and consistent. Acceptance of illegal gratification is further proved by PW3, the trap witness arranged by the CBI. His evidence is that as instructed by the CBI Officer, he and the complainant went to the Income Tax Office to meet the accused. The complainant entered the office room of the accused, but he remained outside. Finding him near the door, the appellant brought the complainant outside under some pretext, and as instructed by the accused, the complainant followed him. He went to the UTI

office nearby and on the way back, the accused demanded and received money from the complainant at the side of the road near the Taluk Office. Everything was seen by him from a short distance, and within no time, on getting signal, the CBI team approached the accused, seized the phenolphthalein tainted currency given by the complainant and arrested him on the spot. Thus, PW3 is well consistent on all the material aspects proving acceptance of illegal gratification by the accused. This witness has also no reason to give any false evidence against the accused. When PW1 stands corroborated by PW2 on the aspect of demand, PW1 stands well corroborated by PW3 on the aspect of acceptance of illegal gratification. I find no reason to disbelieve the evidence of PW3. He is well consistent and definite regarding the acceptance of ₹ 2000/- by the accused from the complainant.

11. Now let me discuss, what is the evidence of PW9, who detected the offence. PW9 has given definite and consistent evidence proving pre-trap and post trap procedures. His evidence is that on 13.12.2004, PW1 approached him in the morning, and preferred Ext.P5 complaint. Accordingly, he received the amount brought by the complainant and arranged

a trap. He demonstrated phenolphthalein test to the complainant and the other witness, and instructed the complainant to approach the accused and make payment of the amount on demand. Accordingly, the complainant and PW3 proceeded to the office of the accused, and he along with his team followed. He saw the accused coming out with the complainant, going to the UTI office, and then coming back with him. On the public road, near the taluk office, he saw the complainant making payment of the amount to the accused. The complainant also gave signal as already instructed, and accordingly, he with his team, approached the accused and took him into custody. He brought the accused in the Tax Office, seized the phenolphthalein tainted currency in the presence of PW6, and arrested the accused on the spot. The witness also identified the phenolphthalein tainted currency seized from the possession of the accused. The complainant and the trap witness also identified this currency. The defence could not bring out anything in the cross examination of PW9 to discredit his evidence regarding detection. The seizure of the phenolphthalein tainted currency from the possession of the accused at the income tax office stands well proved by the

evidence of PW9. He is well corroborated on all material aspects by the trap witness (PW3) and also the complainant (PW1). Thus, I find that seizure of phenolphthalein tainted currency stands well proved without any doubt, by the evidence of PW1, PW3 and PW9.

12. PW6, the Income Tax Officer has also given evidence regarding the arrest of the accused by PW9 at the Income Tax Office, and also regarding seizure of the phenolphthalein tainted currency of ₹2,000/- from his possession. PW8 was the Additional Commissioner of Income Tax, but he came to know of the detection only on information. He has nothing material to say in his evidence.

13. One point argued by the defence in the trial court is that the prosecution has not proved the fact that room No.5 in PWD rest house, Kollam was occupied by the CBI officer on 10.12.2004 or 13.12.2004. This is in fact quite immaterial. This is not a case where the incident allegedly happened at the said room. When acceptance of bribe by the accused at his office or outside the office is well proved otherwise by convincing evidence, and demand is also proved by satisfactory evidence, the other aspect is quite immaterial,

whether the CBI had in fact occupied any room in the PWD rest house. Anyway, the evidence of CBI officer satisfies the court that the complainant's complaint was received by the CBI officer at the PWD Rest House, Kollam. Ext.D4 register kept in the PWD Rest House, Kollam, and the evidence of DW1 examined by the defence will convincingly prove that the Room No.5 was in fact reserved for the CBI officers on 12.12.2004.

14. In **State of Uttar Pradesh v. Zakaullah (1998) Crl.LJ 863** the Hon'ble Supreme Court held that the evidence of a trap officer can be relied on even without corroboration. In this case the evidence of PW3 is well corroborated by the evidence of PW1 and PW9 and also that of PW6. In **Gangakumar Sreevastava v. State of Bihar (2005) 6 SCC 211** the Hon'ble Supreme Court held that every endeavour must be made by the trap laying officer to secure really independent and respectable witnesses, so that the evidence adduced by the prosecution will inspire confidence in the mind of the court. Such a step ensuring the presence of independent trap witnesses will protect the interest of the public servant also. I find in this case that PW3, the trap witness arranged by PW9 is really an independent and

respectable witness. There is absolutely nothing to show that he has any reason to give any false evidence against the accused or to help the CBI

15. It is settled that once acceptance of illegal gratification is proved by the prosecution, the court is bound to apply the presumption under Section 20(1) of the P.C Act. In **T.Sankar Prasad V. State of Andra Pradesh (2004 SC (Crl) 870)** the Hon'ble Supreme Court held that the presumption under Section 20(1) of the P.C Act is a compulsory presumption which the court is bound to apply when acceptance of illegal gratification is satisfactorily proved. The Supreme Court even held that in cases where there is no direct evidence to prove acceptance of illegal gratification, the court can even apply factual presumptions in the appreciation process, for coming to a finding regarding acceptance of illegal gratification. The earlier decision in **M. Narasinga Rao v. State of Andra Pradesh (2001(1) SCC 691)** (three judge bench) was relied on by the Supreme Court in **T. Sankara Prasad V. State of Andra Pradesh** (cited supra).

16. In this case the presumption under Section 20(1) of

the P.C Act will have to be applied in view of the clear and satisfactory evidence proving acceptance of illegal gratification. Once such presumption is available, the burden would shift to the accused to rebut the presumption. It was submitted that the accused was only on despatch duty in the office on the relevant date, and that he had no authority to order or grant refund of income tax. Explanation (d) to Section 7 of the P.C Act will show that acceptance of anything by the public servant on an offer to do something which he cannot do under the law, will constitute acceptance as a motive or reward, as meant and explained under Section 7 of the P.C Act. Thus it is quite immaterial whether the accused was in fact competent to grant refund of income tax. Evidence proves that he accepted bribe by making the complainant believe, that he can do something to get refund of the amount. Such acceptance will bind him in view of the Explanation (d) to Section 7 of the P.C Act, and such acceptance will make him liable under Section 7 of the P.C Act.

17. Yet another attempt was made by the accused to rebut the presumption by examining DW3 who is a tax consultant. The case of the defence is that on the request of

the complainant the accused had arranged DW3 to make application for refund of income tax amount, and it was as his fee an amount of ₹2,000/- was received by him from the complainant. But the defence case stands not proved by DW3. His evidence is that the accused had once called him over telephone, two weeks prior to the alleged incident but he does not remember whether the accused had requested him to make application for the complainant in this case. He does not say that he had asked the accused to receive payment of fee from the complainant. There is nothing to show that he was at any time engaged by the complainant, or by the accused on behalf of the complainant, to make application for refund of income tax. Thus the accused thoroughly failed in the said attempt, and there is nothing to show that the amount was received by the complainant by way of fee for the income tax consultant.

18. As discussed above, all the material witnesses are consistent regarding acceptance of illegal gratification by the accused from the complainant. PW2 is well consistent and definite regarding the demand made by the accused on 8.12.2004. He had accompanied the complainant on

8.12.2004 and the demand for ₹5,000/- was made in his presence, by the accused. He stated that when the complainant expressed his difficulties and made a bargain, the accused reduced the claim to ₹2,000/-.

19. On an appreciation of the evidence, I find that the accused in this case has miserably failed to rebut the presumption under Section 20(1) of the P.C Act. When the case stands well proved on facts, and the presumption under Section 20(1) of the P.C Act, stands unrebutted, the only finding possible is that the accused accepted ₹2,000/- from the complainant as illegal gratification, or as a reward for doing necessary things for refund of the income tax amount unauthorisedly deducted from the amount of compensation awarded to him by the Motor Accidents Claims Tribunal. Thus I find that the appellant herein was rightly found guilty by the trial court under Sections 7 and 13(2) of the P.C Act. I find no reason or scope for interference in the findings made by the trial court or in the conviction made by the trial court.

20. In the particular facts and circumstances, I feel the necessity of some modification in the sentence imposed by the court below, and to that very limited extent the appeal can be

allowed in part. The minimum sentence for the offence under Section 7 of the P.C Act as on the date of detection was imprisonment for six months, and the minimum sentence under Section 13(2) of the P.C Act was imprisonment for one year. The sentence imposed by the trial court under Section 7 of the P.C Act in this case is rigorous imprisonment for two years, and the sentence imposed under Section 13(2) r/w 13(1)(d) of the P.C Act is rigorous imprisonment for three years. The offence was detected in December 2004. The trial court convicted the accused on 16.12.2005, without any delay. This appeal was filed in 2005, and now we are in 2015. In view of the long lapse of years since the date of detection I feel that the minimum sentence will be the adequate sentence in this case.

In the result, this appeal is allowed in part to the limited extent of modifying and reducing the sentence imposed by the trial court. The conviction made by the trial court against the appellant under Section 7 and 13(2) r/w 13(1)(d) of the P.C Act will stand confirmed. However, the sentence imposed by the court below under Section 7 of the P.C Act will stand modified and reduced to simple imprisonment for six months, and the sentence imposed under Section 13(2) r/w 13

(1) (d) of the P.C Act will stand modified and reduced to simple imprisonment for one year. The fine sentence imposed by the trial court, with the default sentence thereon, is maintained.

**SD/-
P.UBAID
JUDGE**

ma/ab

/True copy/

P.S to Judge