

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

CRL.A.No. 2440 of 2006

**JUDGMENT DTD. 18-11-2006 IN CC 26/2001 OF ENQUIRY COMMISSIONER AND
SPECIAL JUDGE, KOZHIKODE**
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APPELLANT(S)/ACCUSED:

**C. MANIKANDAN, S/O.RASINA,
REVATHI, TC 3/2521, T.K. DIVAKARAN ROAD,
THIRUVANANTHAPURAM.**

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENT(S)/COMPLAINANT/STATE:

**STATE OF KERALA, REPRESENTED BY
DY. S.P. VIGILANCE AND ANTI-CORRUPTION BUREAU,
MALAPPURAM THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.N.SURESH

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-06-2015
THE COURT ON 08-07-2015, DELIVERED THE FOLLOWING:**

msv/

P.UBAID, J.

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**Crl.A No.2440 of 2006**

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Dated this the 8th July, 2015

J U D G M E N T

The appellant herein challenges the conviction and sentence against him under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act (for short “P.C Act”) in C.C No.26 of 2001 of the Enquiry Commissioner and Special Judge (Vigilance), Kozhikode. Crime in this case was registered by the Vigilance and Anti Corruption Bureau, Malappuram on a complaint made by one Pramod. The said Pramod had a ration shop at Pathiyarakkara with ARD No.22. Though the licensee was his uncle Sreedharan, the ration shop was in fact run and managed by Pramod. The appellant herein was the District Supply Officer, Malappuram in January,2000. On 11.1.2000, the appellant herein made an inspection in the ration shop and found some serious irregularities. The licence was accordingly suspended on 11.1.2000 itself by the appellant, and with the object of avoiding inconvenience and hardship to the public, the ration shop No.ARD 22 was attached to another

ration shop No.ARD 140. Pramod and his uncle Sreedharan approached the appellant herein at his room No.126 in the Prasanth Tourist Home, Up-Hill, Malappuram on 18.1.2000 with request to revoke the suspension of licence. The prosecution case is that when Pramod and his uncle made such a request on 18.1.2000, the appellant made a demand for ₹ 2000/- as illegal gratification for revoking the suspension of licence, and asked them to come with the amount on 20.1.2000. The licensee Sreedharan was not inclined to pay illegal gratification. He and Pramod thought of making a complaint against the appellant before the vigilance. Accordingly, they approached the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Malappuram with a complaint. On the said complaint, the VACB registered a crime. The amount of ₹ 2000/- brought by them was treated with phenolphthalein, and after demonstrating phenolphthalein test to them and the other witnesses, Pramod was instructed to hand over the amount to the appellant on demand. Accordingly, Pramod and Sreedharan approached the appellant at about 7.00 p.m

on 20.1.2000 and paid the said amount on demand. Within no time, on getting signal from the complainant, the vigilance team rushed to the appellant's room, seized the phenolphthalein tainted currency and arrested the accused on the spot. After investigation, the vigilance submitted final report before the court below.

2. After complying with the formalities prescribed under the law, the learned trial Judge framed a charge against the accused under Sections 7 and 13 (2), read with 13 (1) (d) of the P.C Act to which he pleaded not guilty. The prosecution examined 13 witnesses including the complainant Pramod, his uncle Sreedharan, the Detecting Officer and the trap witness, and also marked Exts.P1 to P37 documents including Ext.P37 prosecution sanction granted under Section 19 of the P.C Act by the Government by order of the Governor of Kerala, and published as G.O (Ms) No.119/00/Vig. Dated 22.12.2000. The prosecution also marked MO1 to MO9 properties including the amount of ₹ 2000/- seized from the possession of the accused.

3. When examined under Section 313 Cr.P.C, the

accused denied the incriminating circumstances and maintained a defence that he was in fact trapped by the vigilance on a false complaint made by Pramod and his uncle Sreedharan for the reason that he had suspended some ration shops including another shop of Sreedharan on finding serious irregularities on different occasions, and that on 20.1.2000, Pramod and Sreedharan approached him with a written request contained in a cover, to revoke the suspension of the licence relating to ARD No.22. He received the cover containing the said request and said that he would look into it. Within no time, the Vigilance party came there and seized some currency notes found along with the written request given by Pramod and Sreedharan. The further defence pleaded by the accused is that the Vigilance Officer, who detected the offence and arrested him, had some previous enmity due to the suspension of a ration shop licence in the name of a retired Sub Inspector, and the request of the Dy.S.P. to revoke the suspension was declined by him. Though opportunity was granted by the trial court, no evidence was adduced by the accused in defence to

prove or probabalise the defence case. On an appreciation of the evidence adduced by the prosecution, the learned trial Judge found that the prosecution case is true, that the accused had accepted ₹ 2000/- as illegal gratification from Pramod and his uncle Sreedharan as alleged by the prosecution. On conviction under Sections 7 and 13 (2) read with 13 (1) (d) of the P.C Act, the accused was sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹ 5000/- each by judgment dated 18.11.2006 in C.C 26 of 2001. Aggrieved by the conviction and sentence, the accused has come up in appeal.

4. When this appeal came up for hearing, the learned counsel for the appellant submitted on facts that the prosecution case stands not properly proved beyond reasonable doubt, that the evidence of PW11 Sreedharan is not acceptable and believable when the complainant Pramod turned fully hostile to the prosecution, and that the appellant had not in fact received anything to revoke the suspension of licence, because he was not in fact the authority to revoke such suspension of licence. On the other

hand, the learned Public Prosecutor-in-charge of the case submitted that the evidence of PW11 is fully believable as independent witness, though the complainant turned hostile for his own reasons to help the accused, that the recovery of tainted money stands well proved, and that the conviction is only to be confirmed in appeal.

5. Nothing was argued in appeal about the genuineness of Ext.P37 sanction or its acceptability. Ext.P37 prosecution sanction was granted by order of the Governor of Kerala, and published as G.O (MS) No.119/2000/Vig. Dated 22.12.2000. Such a sanction granted by the Government by order of the Governor, and published in the gazette as Government Order officially does not require proof if there is no challenge regarding independent application of mind in the process of granting sanction. When there is such challenge, the person who granted sanction will have to prove it, as held by this Court in **Antony Cardoz v. State of Kerala (2011 (1) KLT 946).** But sanction granted by other authorities or officers under Section 19 of the P.C Act will have to be proved as proved

under the Evidence Act. Genuineness or acceptability of the prosecution sanction was not challenged before the trial court or before this Court. Nothing was also argued about the proper application of mind in the process of granting sanction. When a prosecution sanction granted under Section 19 of the P.C Act is challenged on the ground of lack of proper application of mind in the process, such challenge must be made in the trial court itself, because it is a question of fact. **Dinesh Kumar v. Chairman, Airport Authority of India [AIR 2012 SC 858]** and **C.B.I v. Ashok Kumar Aggarwal [AIR 2014 SC 827]** will show that the right stage to challenge the validity of sanction on the ground of non-application of mind in the process, is the trial stage.

The points for decision on facts are:

(i) Whether the appellant herein had accepted ₹ 2000/- as illegal gratification from PW10 and PW11 on 20.1.2000 at Room No.126 of Prasanth Tourist Home, Malappuram, occupied by the appellant, and whether the amount was paid on demand by them?

(ii) Whether illegal gratification was

accepted by the appellant as a motive or reward for revoking the suspension of licence in respect of ARD No.22?

(iii) Whether the sentence imposed by the court below requires any interference in case the conviction is confirmed in appeal ?

6. Of the thirteen witnesses examined by the prosecution in the trial court, PW10 is the complainant Pramod, PW11 is his uncle Sreedharan, who had accompanied the complainant on 18.1.2000 and on 20.1.2000, PW12 is the trap witness arranged by the vigilance, and PW13 is the Deputy Superintendent of Police, who detected the offence and investigated it. The other witnesses except PW4 and PW5 are the officers of the Civil Supplies Department including the Taluk Supply Officer, the Rationing Inspector, and the District Supply Officer examined to prove the documents seized by the vigilance during investigation. PW4 is the son of the owner of the Prasanth Tourist Home, Malappuram and PW5 is the Manager of the said Tourist Home. They were examined to prove that Room No.126 in the said Tourist Home was occupied by the appellant herein in January, 2000 and that

there was a search by the vigilance in the said room on 20.1.2000. Nothing was argued by the defence in the trial court or before this Court, that the investigation conducted by the Detecting Officer had caused any sort of prejudice to the accused, and there is also nothing in evidence to show that the Detecting Officer had any sort of bias against the accused, or that any sort of prejudice was in any manner caused to the accused by the investigation conducted by him. Now let me proceed for the analysis of the evidence given by the material witnesses.

7. That the appellant herein was the District Supply Officer, Malappuram in January, 2000 is not in dispute. That the Ration shop No.ARD 22 at Pathiyarakkara in Perinthalmanna Taluk was run or managed by the complainant Pramod is also not in dispute. Ext.P1 document will show that inspection in the said ration shop was made by the District Supply Officer on 11.1.2000. Ext.P3 visitors book kept at the ration shop contains the writings made by the appellant at the time of his inspection on 11.1.2000. Those specific entries are Exts.P3 (a) and P3 (b). Ext.P9 file

seized by the vigilance during investigation contains the matters regarding suspension of the licence relating to ARD No.22. This will also prove that on suspension the said ration shop was attached to the ration shop ARD No.140, the licensee of which is one Gopinathan. Ext.P32 file of the District Supply Office, Malappuram contains the proceedings of the District Supply Officer dated 11.1.2000, suspending the ration shop No.ARD 22. Ext.P5 is the order of suspension dated 11.1.2000. The files relating to inspection in the ration shop will show that, on inspection the appellant herein had detected serious irregularities. I find that the defence has no dispute at all regarding the above facts that an inspection was made by the appellant herein as the District Supply Officer, in the Ration Shop No.22 on 11.1.2000, that some serious irregularities were detected by him on inspection, and that the licence was suspended by the appellant on 11.1.2000 itself.

8. The prosecution relies mainly on the evidence of PW10 to PW13. Of them, PW10 is the complainant, but he turned hostile during trial. Though he turned hostile, he

admitted his signature in Ext.P29 complaint and Ext.P33 mahazar. Ext.P33 is the mahazar as per which the amount produced by the complainant and his uncle was seized by the police. The complainant has no explanation for his signature in these documents, and in cross-examination by the learned Public Prosecutor, he practically admitted the contents of these documents. Thus, I am satisfied that PW10 turned hostile during trial only to help the accused.

9. However, the important aspect of demand for illegal gratification stands well proved by the evidence of PW11. It is true that he was the Secretary of the Ration Shop Dealers Association, and that the appellant herein had once suspended one of his ration shops, but that is not a ground to reject his evidence in this case. It was at the instance of Pramod, complaint was filed before the police. The evidence of PW11 shows that one of his ration shops was suspended by the appellant long back, but the suspension was later revoked. He is definite that he along with his nephew Pramod had met the appellant at his Room No.126 in the Prasanth Tourist Home, Malappuram with a

request to revoke the suspension of the licence relating to the ration shop No.ARD 22 on 18.1.2000 and at that time, the appellant demanded an amount of ₹ 2000/-. Though the licence was in his name, the ration shop was in fact run or managed by his nephew Pramod. As Pramod was not inclined to pay illegal gratification, he thought of making a complaint before the vigilance. PW11 is definite that the demand was made to Pramod, because the request for suspension of licence was prominently made by Pramod as the Manager and beneficiary of the ration shop, though the licence in fact stood in his name and he only supported Pramod when he wanted to file a complaint against the appellant before the Vigilance. The currency produced by them was received by the Deputy Superintendent of Police, as per mahazar, phenolphthalein was applied on the currency (four currency of ₹ 500/-) and phenolphthalein test was conducted by the Dy.S.P in the presence of witnesses. As instructed by the police, he and Premod went to the room of the appellant in the Prasanth Tourist Home, and when he repeated the demand for money for revoking the

suspension of licence, Pramod paid the phenolphthalein tainted currency of ₹ 2000/- to the appellant. After that, they left the room and gave signal to the police. Within no time, the vigilance team led by the Dy.S.P. came there, seized the phenolphthalein tainted currency, and arrested the appellant on the spot. The defence could not bring out anything in the cross-examination of PW11 to discredit his evidence. Thus, the important aspect of demand and acceptance are well proved by the evidence of PW11, though his nephew, who made the complaint, turned hostile to help the accused.

10. Pw12 is the witness arranged by the vigilance for the trap. He has also given consistent evidence regarding recovery of the phenolphthalein tainted currency from the possession of the appellant. He was Senior Superintendent in the Collectorate, Malappuram in Janury, 2000. He says that phenolphthalein test was demonstrated by the Deputy Superintendent of Police in the presence of witnesses including him, Pramod and Sreedharan, and after that the Dy.S.P asked Pramod and Sreedharan to go the appellant's

room and make payment on demand. As instructed by the Dy.S.P, he also accompanied them to witness the payment. He says that PW10 and PW11 entered the room of the appellant in the lodge and he waited outside. He is definite that he could have very well seen what transpired in the room, from outside. He saw Pw10 making payment of the phenolphthalein tainted currency to the accused at his room, and after payment PW10 gave signal to the police team. Within no time, the police party led by PW13 came there, he also entered the room along with the police party, the Dy.S.P. seized the phenolphthalein tainted currency, conducted phenolphthalein test, which turned positive, and arrested the appellant on the spot. PW12 has given clear and convincing evidence regarding the acceptance of money by the accused from PW10, and also regarding seizure of the phenolphthalein tainted money from the possession of the accused as per mahazar. He also identified his signature in the seizure mahazar. The defence could not bring out anything in the cross-examination of PW12 to discredit his evidence.

11. PW13 is the Dy.S.P, who detected the offence in this case. He has also given clear evidence regarding the trap arranged by him and the success of the trap. He registered the complaint of PW10, and after demonstrating the required phenolphthalein test, he instructed PW10 and PW11 to approach the accused and make payment on demand. On signal given by the complainant, he and his team including PW12 entered the room No.126 in the Prasanth Tourist Home at Malappuram and seized the phenolphthalein tainted currency. The phenolphthalein test conducted there turned positive, and the District Supply Officer was arrested on the spot. He denied the suggestion that the trap in this case is a vicious one arranged at the instance of PW10 and PW11. His evidence shows that the trap made by him was not a trap for a trap. There is absolutely no reason why the evidence of the detecting officer should be disbelieved. PW4 and PW5 have given evidence that the appellant herein was the occupant of room No.126 in the Prasanth Tourist Home, Malappuram. Though they had not witnessed the acceptance of illegal gratification

by the accused, they are consistent regarding the arrest of the accused at the Room No.126 of their lodge.

12. On an appreciation of the evidence as discussed above, I find that the prosecution has well proved the case beyond reasonable doubt. I find no reason to reject the evidence of PW11 to PW13. In **T.Shankar Prasad v. State of Andra Pradesh [2004 SCC (Cri) 870]**, the Supreme Court held that the court is bound to apply the presumption under Section 20 (1) of the P.C Act in a case where acceptance of illegal gratification is proved, and the accused will have to rebut the presumption. It is true that the complainant turned hostile, but on an appreciation of his evidence in the cross-examination made by the learned Public Prosecutor, I find that he made a genuine complaint when the appellant herein made a demand for illegal gratification from him for revocation of the suspension of ration shop licence, but he turned hostile during trial to help the accused.

13. I find no material to probabilise the defence case projected by the appellant. When examined under Section

313 Cr.P.C, the appellant practically admitted that PW10 and PW11 had met him at his room on 20.1.2000 and that they had handed over something to him. Though he says that it was a paper, he does not explain how some currency along with the paper happened to be seized by the police. It was submitted by the learned counsel that the appellant herein was not in fact the authority to revoke the suspension of licence, and so it is impossible to believe that he accepted money on a promise that he would revoke the licence. The explanation (d) to Section 7 of the P.C Act shows that even in a case where a public servant accepted something as a reward or motive for doing something which could not have done, it will constitute "motive or reward". If at all, the appellant herein was not the right authority to revoke the suspension of licence, the fact that he received the amount under such a promise that he would do something to revoke the suspension, will make him liable under Section 7 of the P.C Act. It is quite immaterial whether the appellant was in fact the authority to revoke the suspension of licence. The material question is whether he had received something

illegal from the complainant on a promise that he would do something to revoke the suspension of licence. On this material aspect, the evidence of PW11 and PW12 is quite convincing and satisfactory. Thus, I find nothing to doubt the evidence given by PW11 on facts or that of PW12 and PW13 regarding detection. There is absolutely nothing to show that anything in the process of investigation had caused any sort of prejudice to the accused. I do not find any flaw of illegality or irregularity in the investigation conducted in this case. I find that the prosecution has well succeeded in proving the guilt of the accused. The Hon'ble Supreme Court has laid down the position in various decisions, that just because the complainant turned hostile in a prosecution under the P.C Act, the accused cannot claim acquittal, if the other evidence is convincing and satisfactory. This position was re-iterated by the Hon'ble Supreme Court in the latest decision in **Vinod Kumar v. State of Punjab [AIR 2015 SC 1206]**. In the absence of any material or reason for interference in the findings of the trial court, or the conviction made by the trial court, this

appeal is liable to be dismissed.

In the result, this appeal is dismissed, confirming 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 26 of 2001 of the court below.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge