IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

CRL.A.No. 2020 of 2007 ( )

AGAINST THE JUDGMENT IN CC 42/2003 of ENQ.COMMR. & SPL.JUDGE,THIRUVANANTHAPURAM

APPELLANT(S)/ACCUSED:
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1. ABDUL RASHEED(DIED)
FORMERLY L.D.CLERK, DIVISIONAL EMPLOYMENT, EXCHANGE
THIRUVANANTHAPURAM, NOW RESIDING AT
PUNAVANKONATHU HOUSE, ANDOORKONAM P.O.
THIRUVANANTHAPURAM DISTRICT.

*2. SUHARA BEEVI,
PUNAVANKONATHU HOUSE,
ANDOORKONAM P.O,
THIRUVANANTHAPURAM.

*3. JINCY RASHEED,
PUNAVANKONATHU HOUSE,
ANDOORKONAM P.O,
THIRUVANANTHAPURAM.

*4. JITHIN,
PUNAVANKONATHU HOUSE,
ANDOORKONAM P.O,
THIRUVANANTHAPURAM.

APPLICANTS 2 TO 4 IMPLEADED AS ADDITIONAL
APPELLANTS IN CRL.A 2020/07 AS PER ORDER
DATED 21/10/2011 IN CRL.M.A. 9026/2011.
BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENT(S)/COMPLAINANT:

STATE, REPRESENTED BY THE
PUBLIC PROSECUTOR, OFFICE OF THE ADVOCATE GENERAL
HIGH COURT OF KERALA, ERNAKULAM, (DY. S.P.
VIGILANCE AND ANTI CORRUPTION BUREAU
THIRUVANANTHAPURAM UNIT).

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.11.2015, THE COURT ON 23.12.2015 DELIVERED THE FOLLOWING:

P.UBAID, J.
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Crl.A No.2020 of 2007
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Dated this the 23rd December, 2015

J U D G M E N T

This appeal originally brought by the deceased appellant, challenges the conviction and sentence in C.C.No.42/2003 of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, under Sections 7 and 13(2) read with Sections 13(1)(a) and 13(1)(d) of the P.C. Act, and under Sections 468 and 471 IPC. The deceased appellant was a Clerk in the Divisional Employment Exchange, Thiruvananthapuram in 2001. When so many complaints came against him, the Deputy Director of the Special Cell in the Employment Directorate, Thiruvananthapuram conducted an enquiry on the complaints and he submitted report to the Government recommending Vigilance enquiry. Accordingly, a Vigilance enquiry was ordered against the deceased appellant, and on the basis of the materials collected during the enquiry, the Vigilance and Anti Corruption Bureau, VACB, Thiruvananthapuram registered a crime against the deceased appellant under Sections 7 and

13(2) read with Section 13(1)(d) of the P.C.Act, and under Sections 468 IPC. The VACB conducted investigation and submitted final report against the deceased appellant before the court below. The prosecution case is that the deceased appellant accepted an amount of Rs.30,000/- from one Sasi and his wife Nirmala, and also another amount of Rs.1,100/- from one Beeyumma, as a reward for securing job through the Employment Exchange. It is alleged that the accused had also offered that he would create necessary documents including Experience Certificate from the 'Abala Mandiram'. Accordingly, the deceased appellant created such certificates, and caused necessary entries in the employment particulars in the name of Nirmala and Beeyumma. The forgery made by the deceased appellant was later detected during enquiry, and the fact that he had received huge amount from different persons, was also revealed during the enquiry.

2. The deceased appellant entered appearance in the trial court and pleaded not guilty to the charge framed against him under Sections 7 and 13(2) read with Section 13

(1)(d) of the P.C.Act, and Sections 468 and 471 IPC. The prosecution examined 15 witnesses and proved Exts.P1 to P25 documents during trial. When examined under Section 313 Cr.P.C., the accused denied the incriminating circumstances and maintained a defence of total denial. One witness was also examined in defence by the accused as DW1. On an appreciation of the evidence, the learned trial Judge found the accused guilty. On conviction he was sentenced to undergo rigorous imprisonment for three years, and to pay fine of Rs.5,000/- under Section 13(2) read with Section 13(1)(d) of the P.C.Act, to undergo rigorous imprisonment for two years under Section 7 of the P.C.Act, to undergo another term of rigorous imprisonment for three years under Section 468 IPC, and to undergo rigorous imprisonment for two years under Section 471 IPC, by judgment dated 28.09.2007. Aggrieved by the said judgment of conviction the accused brought this appeal. Pending this appeal, the original appellant died on 17.09.2011. Within time, the legal heirs of the appellant made an application for permission to prosecute the appeal.

Their request was to get impleaded also. Crl.M.A.No.9020/2011 to implead the legal heirs was allowed by this Court. The legal heirs were impleaded as additional appellants 2 to 4, and they were allowed by this Court to prosecute the appeal. Section 394(2) Cr.P.C. provides that a regular criminal appeal against conviction and sentence will abate on the death of the appellant except when there is a sentence of fine. The proviso to Sub Section 2 provides that if the legal heirs of the deceased appellant are granted leave by the court to continue the appeal, such appeal shall not abate. Thus, in this case there is no question of abatement of appeal under Section 394(2) Cr.P.C. for the reason that the legal heirs of the deceased appellant have obtained permission to prosecute the appeal. So, the appeal will have to be decided on merits.

3. The offence alleged by the prosecution against the deceased appellant is not merely accepting illegal gratification for doing some favours like providing employment. The prosecution has also alleged the offence of forgery, and use of forged document, punishable under

Sections 468 and 471 IPC.

4. The main witnesses relied on by the prosecution to prove the facts are PW1 to PW4, PW7 and PW12. PW12 was the Deputy Director of the Special Cell in the Directorate of Employment, Thiruvananthapuram at the relevant time. His evidence is that the Director of Employment had received so many complaints alleging acceptance of bribe by the accused from various persons for arranging employment through the Employment Exchange, and on those complains, he had conducted an enquiry as directed by the Director. The report of enquiry was submitted to the Government, on which a vigilance enquiry was ordered against the accused. Accordingly, the Vigilance and Anti-Corruption Bureau (VACB) conducted an enquiry and registered F.I.R against the accused. All these aspects are proved by PW12 in evidence. His evidence convinces the court that there were so many complaints against the accused, and the complaint of PW1 to PW3 was only one of the so many complaints. PW12 has thus explained the source of information for the registration of F.I.R in this case.

This is well substantiated by the evidence of PW1 to PW3, and also the evidence of PW7 proving the alleged forgery of documents. The prosecution case is that, the accused received an amount of ₹ 30,000/- from PW1 and PW2 and another amount of ₹ 1100/- from PW3 as a reward for securing job to them through the Employment Exchange, and for the said purpose he even forged two certificates to be incorporated in the files relating to their employment particulars in the Employment Exchange. Exts.P2 and P2(a) are the certificates forged by the accused. Ext.P2 is in the name of PW2 and Ext.P2 (a) is in the name of PW3.

5. Before going to the aspect of demand and acceptance, let me see whether the alleged forgery is proved in this case. It has come out in evidence from PW1 to PW3 that while accepting amount from them as bribe for arranging job, the accused had offered that he would create the necessary certificates in their name showing their previous stay in the “Abala Mandiram”. Ext.P2 certifies that PW2 Nirmala was inmate of the “Abala Mandiram” from 25.3.1986 to 10.2.1988. So also, Ext.P2 (a) certifies that

PW3 Beeyumma was inmate of the “Abala Mandiram” from 12.12.1979 to 20.1.1981. PW2 and PW3 are definite and consistent in evidence that they had never been the inmates of “Abala Mandiram”, and that the two certificates in their name were in fact forged by the accused. PW1 to PW3 have given definite evidence proving the alleged forgery of documents by the accused. There is the definite and consistent evidence of PW1 and PW2 that these two certificates were made by the accused when they met him in February 1994. Ext.P1 is the manuscript copy of the certificate. The evidence given by PW1 is that when he met the accused at his office, Ext.P1 manuscript was given to him by the accused and he was asked to bring the certificate forms typed. When he brought the certificate forms (Ext.P2 and P2 (a), the accused took a seal from his bag, affixed the seal on the two certificates and put the signature also therein. This evidence given by PW1 and PW2 stands not in any manner discredited in cross-examination.

6. PW7 was the Superintendent of the “Abala Mandiram” from 1992 to 1995. She well identified during

trial that Exts.P2 and P2 (a) certificates purported to have been issued from the “Abala Mandiram” are in fact false or forged. Her definite evidence is that PW2 and PW3 had never been the inmates of the “Abala Mandiram”, and that Ext.P2 and P2 (a) are not the certificates issued from the “Abala Mandiram”. Thus, it stands well proved that Exts.P2 and P2 (a) are the two certificates falsely created by the accused for the purpose of securing employment to PW2 and PW3.

7. Now let me come to the other aspects as regards demand and acceptance. Of course, it is true that this is not a case of trap. PW1 to PW3 have given evidence proving the demand made by the accused, and also acceptance of amount from them. The evidence of PW1 is that for the purpose of securing employment through the Employment Exchange, he and his wife (PW2) went to the Employment Office on 18.1.1994 and met one Joseph (CW10). When Joseph expressed his helplessness, they met the accused herein who was a Clerk in the said office, as instructed by Joseph. When they made their demand, the accused told

them that they would have to pay money for securing employment. Accordingly, as instructed by the accused, PW1 met the accused at his residence at 4.30 p.m on 18.1.1994. The accused asked him to bring a bottle of brandy, which he and his friends consumed by about 5 p.m, and the accused asked PW1 to meet him later. PW1 was also assured that job would be arranged soon. Thereafter, he met the accused on many occasions, and liquor was also provided by him every time as demanded by the accused. In February, 1994, he and his wife met the accused again. As instructed by the accused, he met him at his residence in the evening. The accused took him to a bar where the accused consumed some liquor, for which PW1 paid. The accused told him in the morning that he would create necessary documents for securing employment, but he demanded an amount of ₹ 40,000/- for the said purpose. When PW1 expressed his difficulties, the accused reduced the demand to ₹ 30,000/-. When he agreed to pay ₹ 30,000/-, the accused took a particular form and asked PW1 to bring it typed. Accordingly, he brought Exts.P2 and P2

(a) certificates. When he handed it over to the accused, he took a seal from his bag and affixed the seal on the certificates. On that day also, a bottle of liquor was given by him to the accused. Believing the words of the accused that he would arrange employment by using the certificates, PW1 returned with hope and he started efforts to make money. He sold 10 cents of property and got an amount of ₹ 25000/-. Another amount of ₹5000/- was also made somehow. He later met the accused on a day in June 1995. The accused repeated his demand, and said that without money he would not do anything. Accordingly, on 30.10.1995, he and his relative Madhu went to the office of the accused in the evening and paid ₹ 30,000/- to the accused at his office. On that day also, a bottle of liquor was given to him as demanded by the accused. He says that he and his wife waited for months, but nothing happened. When they realised that they were being cheated, they made complaint before the authorities.

8. The defence could not bring out anything in the cross-examination to discredit his evidence. PW2, his wife

has also given evidence that she and her husband had met the accused and they were asked to give some amount for securing employment. She has also stated that for making money for payment to the accused, they sold 10 cents of property to one Ananthakrishnan for ₹ 25000/-, and adding ₹ 5000/- to it, they paid ₹ 30,000/- to the accused as bribe. Of course, the evidence of PW2 is not elaborate on the various aspects. Regarding demand, there is only the evidence of PW1, but he is supported by PW2 on many aspects.

9. PW3 is another beneficiary to whom job was offered by the accused. Her evidence is that from PW1 and PW2 she came to know that the accused would arrange job through Employment Exchange. The accused was introduced to her by PW9, and accordingly, she met the accused. Of course, it is true that the evidence of PW3 is not fully consistent, and she does not know when exactly the amount was paid by her to the accused. Her evidence does not satisfy the court as to how or when amount was demanded from her by the accused, or when or on what

date the amount was paid by her to the accused. It is a fact that there is Ext.P2 (a) certificate in her name, created by the accused. However, acceptance of ₹ 30,000/- by the accused from PW1 stands well proved.

10. PW4 is the person who had accompanied PW1 when he went to make payment of ₹ 30,000/-. This witness is definite that on 30.10.1995 he and PW1 met the accused at his office, and the accused received an amount of ₹ 30,000/- from PW1 for securing job to his wife through the Employment Exchange. I find no reason to disbelieve the evidence of PW4. PW1 and PW4 are definite regarding payment. Their evidence is definite that ₹ 30,000/-was received by the accused on 30.10.1995 as bribe for providing job to the wife of PW1.

11. PW10 is a relative of PW1 and PW2. His evidence is that he had purchased 10 cents of property from PW1 in the year 1995 for a consideration of ₹ 25,000/-. Of course, he does not know for what purpose the property was sold by PW1. However, to an extent he corroborates the evidence of PW2 as to how PW1 made money for making payment to

the accused.

12. On an appreciation of the evidence as discussed, above, I find that forgery of Ext.P2 and P2 (a) certificates by the accused stands well proved in this case by the evidence of PW1 and PW2. Both the witnesses are consistent that when they met the accused in February, 1994, the accused demanded money from them for securing job, and they were also told that the accused would create some documents for that purpose. Ext.P1 manuscript was given by the accused to PW1, and accordingly he got Exts.P2 and P2 (a) certificates typed. When he handed over the certificates to the accused, he took a seal from his bag and affixed the seal on the two certificates. It stands proved that Exts.P2 and P2 (a) are forged certificates. These two certificates were seized by the Police during investigation from the employment files. This means that these two certificates were used by the accused for securing job. Thus, the forgery alleged by the prosecution stands well proved.

13. It is true that the evidence of PW3 is not very satisfactory to prove payment of bribe by her. In the

foregoing paragraphs, I have discussed the reason why her evidence is not fully convincing, but as regards payment of 30,000/- by PW1, there is definite and consistent evidence, and this payment stands very well proved by the evidence of PW1 and PW4. Being not a case of trap, the burden is heavy on the prosecution to adduce satisfactory and convincing evidence proving demand and acceptance. Here, the case of prosecution regarding acceptance of ₹ 30,000/- by the accused stands well proved by the evidence of PW1 and PW4. To some extent, corroborated by the evidence of PW2, the evidence of PW1 proves that money was in fact demanded by the accused in February, 1994. It has come out in evidence that when PW1 and his wife met the accused in June 1995 also, demand for the money was repeated by the accused. I find no reason to disbelieve the evidence of PW1, PW2 and PW4. There is absolutely nothing to show that PW1 and PW2 had any reason to complain against the accused, or to give any false evidence against him, that he had received ₹ 30,000/- from them under a promise to secure job. Evidence regarding payment is well corroborated by PW4 who had accompanied PW1 to make payment. There is absolutely no reason why PW4 should give false evidence against the accused. That he is a relative of PW1 cannot be the sole reason to suspect his evidence when other circumstances support the case of PW1 regarding payment of ₹ 30,000/- to the accused. Thus, I find that the prosecution has well succeeded in proving the essentials in this case. Demand stands proved by the evidence of PW1 and PW2, and payment of ₹ 30,000/- as illegal gratification stands proved by the evidence of PW1 and PW4. Acceptance of ₹ 30,000/- by the accused as illegal gratification for securing job to PW2 through Employment Exchange stands thus well proved by the prosecution. I find that the deceased accused was rightly found guilty by the learned Trial Judge .

14. In view of the permission obtained by the legal heirs of the deceased accused to prosecute the appeal, there would not be abatement of appeal under the law. However, the jail sentence imposed by the trial court is unenforceable. The fine sentence imposed by the trial court

is only ₹ 5000/-. Thus what is enforceable under the law now is only realisation of the fine amount of ₹ 5000/-. The conviction made by the court below will stand confirmed when there is no abatement of appeal. I find that the deceased accused was rightly found guilty by the trial court on the basis of satisfactory and convincing evidence proving demand and acceptance of illegal gratification for securing job through the Employment Exchange.

In the result, this appeal is dismissed confirming the findings made by the trial court under Sections 13 (2) read with 13 (1) (d) of the P.C Act and also under Sections 468 and 471 I.P.C. However, the jail sentence is now unenforceable under the law due to the death of the accused. But the fine amount imposed by the trial court can be realised from the estate of the deceased accused, as provided under the law.

Sd/-
P.UBAID
JUDGE

sd/ma

/True copy/ P.S to Judge