

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

CRL.A.No. 822 of 2012 ()

AGAINST THE JUDGMENT IN CC 20/2006 of ENQUIRY COMMR.&
SPL.JUDGE,THRISSUR DATED 19-06-2012

APPELLANT/ACCUSED:

P.AHARIDASAN
(CRICLE INSPECTOR OF EXCISE, IRINJALAKKUDA)
S/O AYYAPPAN, PULIYATH, SREESASTHA
PUTHOOR DESOM, THRISSUR

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2015,
THE COURT 03-09-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.

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**Crl.A No.822 of 2012**

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Dated this the 3rd September, 2015

J U D G M E N T

The appellant herein was the Excise Circle Inspector of the Irinjalakuda Excise Circle in March, 2005. One Jacob, claiming to be the President of an association for the ban of liquors had filed a writ petition before this Court as W.P (C) 4281/2005 against the Excise Officials of the Thrissur District, for appropriate action against the manufacturers of ayurvedic preparations containing excess quantity of alcohol. On the allegation that the appellant received an amount of ₹ 5000/- on 15.3.2005 as illegal gratification from the said Jacob as a reward for filing counter affidavit in favour of the said Jacob in the said writ petition, the appellant faced prosecution before the learned Enquiry Commissioner and Special Judge, (Vigilance) Thrissur in C.C 20 of 2006. On the complaint of the said Jacob dated 15.3.2005, that the Excise Circle Inspector had demanded an amount of ₹ 5000/-, and that Jacob was instructed to make payment at the PWD Rest House at Chalakudy at

about 4 p.m on 15.3.2005, the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau (VACB), Thrissur registered a crime under the Prevention of Corruption Act. The amount of ₹ 5000/- brought by Jacob for the trap was received by the Dy.S.P as per mahazar, he arranged a trap on the complaint, and after applying phenolphthalein on the currency in the presence of the complainant and the trap witnesses, the complainant was instructed to approach the Circle Inspector and make payment, if demanded further. Accordingly, the complainant Jacob met the Circle Inspector at the P.W.D Rest House at about 4 p.m and made payment of the amount. On getting signal from the complainant, the Dy.S.P and his team rushed to the Rest House, entered the room wherein the Excise Inspector, was found, seized the phenolphthalein tainted currency after conducting the necessary phenolphthalein test, and arrested the Excise Circle Inspector on the spot. After investigation, the VACB submitted final report before the learned trial Judge.

2. The accused pleaded not guilty to the charge framed against him by the trial court under Sections 7 and

13(1) (d) read with 13 (2) of the Prevention of Corruption Act (for short “P.C Act”) and he claimed to be tried. The prosecution examined 12 witnesses in the trial court and also marked Exts.P1 to P20 documents. MO1 to MO8 series including the phenolphthalein tainted currency seized from the possession of the accused were also identified and marked during trial.

3. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances and submitted that he was in fact viciously trapped as part of a design for the reason that he had declined to file counter affidavit in favour of the complainant as requested by him, and that as part of this design, the complainant approached him at the P.W.D Rest House where he was having a short stay due to some stomach problem and he thrust the tainted money into his pocket. Within no time, the complainant left the room, and immediately the vigilance team came there and recovered the amount. Though opportunity was granted by the trial court, the accused did not adduce any evidence in defence. However, Exts.D1 and D2 documents were

marked on his side during trial.

4. On an appreciation of the evidence adduced by the prosecution, the trial court found the accused guilty under Sections 7 and 13 (1) (d) read with 13(2) of the P.C Act. On conviction, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹ 25,000/- under Section 7 of the P.C Act, and to undergo another term of rigorous imprisonment for two years under Section 13 (2) read with 13 (1) (d) of the P.C Act by judgment dated 19.6.2012. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

5. When this appeal came up for hearing, the learned counsel for the appellant submitted that the appellant had not in fact demanded or accepted anything from the complainant as illegal gratification, because he could not have filed counter affidavit in the writ petition otherwise than as directed by the Assistant Commissioner of Excise, and that he was viciously trapped by the complainant with the help of the vigilance for the reason that he had declined to heed to the request of the

complainant to file counter affidavit in his favour as desired by him. To substantiate that contention, the learned counsel also submitted some points including suppression of an earlier complaint made by the complainant. On the other hand, the learned Public Prosecutor submitted that the trap in this case was arranged on a genuine complaint, and that the amount recovered from the possession of the accused is in fact the amount accepted by him as illegal gratification from the complainant.

6. The learned Public Prosecutor also submitted that the prosecution has not suppressed anything, and that the whole case stands proved beyond reasonable doubt.

7. Nothing was argued before this Court regarding Ext.P16 prosecution sanction granted under Section 19 of the P.C Act. PW11 was examined to prove the said sanction. He has given evidence that Ext.P16 sanction was granted by him after considering all the necessary materials connected with the case, and he decided to grant sanction on an independent application of mind to the facts of the case. There is no dispute regarding the fact that PW11 was the

person competent to remove the appellant from service.

8. Of the 12 witnesses examined by the prosecution, PW1 is the complainant, PW2 is the trap witness, PW10 is the Vigilance Inspector who had been in the vigilance party led by the Detecting Officer, and PW12 is the Vigilance Inspector who closed the investigation and submitted final report.

9. PW3 and PW4 were examined to prove the fact that the accused was on duty as Excise Circle Inspector on 15.5.2005, and that he had left the office at about 1.30 p.m by making an entry in the G.D that he was proceeding for some investigation. PW6 is the Assistant Engineer who prepared the plan of the P.W.D Rest House, Chalakudy where the detection was made, and PW7 is the Village Officer who prepared the scene plan. One of the trap witnesses could not be examined because he died pending the proceedings. So also, the Deputy Superintendent of Police who detected the offence in this case could not be examined because pending the proceeding he died in a major motor accident.

10. The material question for consideration in this appeal is whether the prosecution has succeeded in proving the essential elements of “demand” and “acceptance” in this case, for a conviction under Section 7 and 13 (1) (d) read with 13(2) of the P.C Act. The learned counsel for the appellant submitted that the evidence adduced by the prosecution on this aspect is doubtful, and the complainant does not have a consistent and believable case regarding the demand alleged by the prosecution.

11. The learned counsel mainly argued on the credibility of the complainant in view of so many circumstances against him, and also on the acceptability of the evidence given by the complainant. The learned counsel also argued that the recovery of tainted money in this case stands not properly and effectively proved, and that the prosecution should have adduced satisfactory evidence, when the Detecting Officer could not be examined during trial.

12. The learned counsel submitted that the trap in this case is really doubtful in view of the antecedents of the

complainant, and also the circumstances making his complaint doubtful. If the evidence given by the complainant regarding demand and acceptance is doubtful, the trap arranged by the Vigilance Officer also must be doubted. A trap for a trap arranged by the police at the instance of somebody who is interested in such a trap, or who had his own reasons for arranging such a trap to see that a particular public servant is trapped, cannot be said to be a genuine or legitimate trap. Such a trap will have to be considered as a vicious one, or as an illegitimate one, as held by this Court in **Cheriyon Lukose v. State of Kerala** [AIR1968 Kerala 60]. In the said case, this Court followed a decision of the Honourable Supreme Court in **Ramjanam Sing v. State of Bihar** [AIR 1956 SC (643)].

13. Now let me examine whether the trap in this case can be said to be a legitimate trap or a genuine trap. Finding on these aspects will depend upon the credibility of the complainant and the acceptability of the evidence given by him.

14. On an appreciation of the evidence given by the

complainant as Pw1, I find that he has no consistent case regarding the date on which demand was first made by the accused. The Ext.P1 complaint was made by PW1 on 15.3.2005. The prosecution case is that the first demand was made by the accused some time back, and it was lastly made before the trap, on 14.3.2005. But the complaint, or the evidence of the complainant does not contain such a definite statement that a demand for bribe was made by the accused on 14.3.2005. The grievance of the complainant is that when he brought a writ petition against some Ayurvedic Manufacturers alleging illicit manufacture and sale of ayurvedic preparations containing excess quantity of alcohol, the Excise Officials including the accused took an indifferent attitude in such a way as to help those manufacturers. When he felt some discomfort on consuming some ayurvedic preparation in January, 2005, he approached the accused and told about it. As advised by the Excise Circle Inspector, the complainant purchased another bottle of that preparation, obtained a bill, and got it analysed in a laboratory. In the Ext.P1 complaint, he does

not state that the accused had also accompanied him to the laboratory for making the required chemical test. But in evidence, he made an embellishment and stated that the accused had also accompanied him to the laboratory. It appears that he made such an embellishment to show that the accused had some role in the said transaction. That part of the evidence cannot be accepted in the absence of such statement in the complaint.

15. The prosecution case is that the accused demanded illegal gratification as a reward for preparing and submitting a counter affidavit as desired and requested by the complainant, in a writ petition brought by him against the Excise Officials and some ayurvedic pharmaceuticals. It appears that he wanted the accused to prepare such a counter affidavit as desired by him, or as he would dictate. This means that the complainant wanted some illicit favours from the accused, and his attempt was not to ensure that a proper and legal counter affidavit stating the true facts was filed in the writ proceeding. He wanted a counter affidavit as desired by him, and his complaint is that to prepare and

file such a counter affidavit, the accused demanded bribe. Here itself, there is something suspicious regarding the credibility of the complainant. He has no case that the accused demanded bribe for doing something which he is otherwise bound to do under the law. His case is that he demanded bribe for doing something in favour of the complainant illicitly or for doing some illicit favours. When such a person comes with a complaint of acceptance of bribe, and when a trap is arranged on his complaint, the trap, and also the complaint, will have to be suspected by the court.

16. The learned counsel argued very much on the Ext.D1 copy of judgment of this court in a writ petition brought by the complainant herein. It was a writ proceeding brought against so many reputed Ayurvedic Pharmaceuticals and Manufacturers like the Kottakkal Arya vaidyasala, the Coimbatore Ayurveda Pharmacy, the S.D.Pharmacy, the Nagarjuna Ayurveda Pharmacy etc. His complaint in that writ petition was that such renowned and reputed pharmaceuticals are involved in the illicit

manufacture of preparations containing excess quantity of alcohol. He brought the said writ petition under the pretext of some public interest. But regarding his credibility and the genuineness of the complaint, against such renowned and reputed pharmaceuticals and manufacturers running even reputed Ayurveda Medical Colleges, this Court observed thus:

“ In the writ petition, there is absolutely no mention whatsoever about the status of the petitioner-organisation as to under what law the petitioner Association is registered and on what basis Sri.P.L. Jacob claims to be its President. In a public interest litigation, it is mandatory that the petitioner should disclose all the above details to prove that his intentions are bona fide in public interest and not to pursue any private interest. From Ext.R7(a) memorandum of writ petition No.4281/2005, Sri.P.L. Jacob came in his personal capacity before this Court and in this case, he came in as representing an association, the details of which are not disclosed in the writ petition at all. We also have reason to doubt the bona fides of the petitioner since, as disclosed by the 7th respondent, by producing documents, the petitioner had, after filing a writ petition against a particular person complaining of very serious violations under the Drugs and Cosmetics Act, sought

to delete that respondent from the party array simply alleging that the respondent has now stopped the manufacturing and selling of illegal medicines. If the petitioner had bona fides in the writ petition, he would certainly have perused the matter against that respondent also to its logical end at least to see that after the writ petition is disposed of, that respondent does not restore the very same illegal action and he does not even mention in the affidavit accompanying the petition as to how he came to understand that that party has stopped the illegal sale of medicines. In the above circumstances, we are not inclined to entertain this writ petition filed by such an organisation whose status has not been disclosed in the writ petition and the bona fides of its President is very much in doubt.”

17. The above observations made by this court in Ext.D1 writ petition will tell us something about the credibility of the complainant. It has come out in evidence that there is a complaint, that the complainant is a person who would bring proceedings under the pretext of public interest litigations against individuals and institutions, and would later withdraw such proceedings by accepting money. It is true that he has denied such a suggestion. It is not known why or on what materials or on what basis, the

complainant brought Ext.D1 writ petition against reputed manufacturers and pharmaceuticals. Finding that it is a mischievous writ petition, which does not contain any public interest element, this Court dismissed the writ petition. Such a person is before this Court as complainant in a bribery case.

18. Of course, it is true that the complainant has given evidence substantiating the allegations in the complaint. However, on an appreciation of the evidence, I find that he does not have a consistent version regarding the date on which demand was first made by the accused. The complainant stated in examination in chief, thus:

Excise Commissioner പറയുന്നതുപോലെ മത്രമേ എനിക്ക് ചെയ്യാൻ പറ്റുകയുള്ളൂ എന്നും നിങ്ങൾ പറയുന്നതുപോലെ ചെയ്യാൻ പറ്റില്ല എന്ന് പ്രതി പറഞ്ഞു. (The accused told him that he can do only as instructed by the Excise Commissioner, and that he cannot do anything as requested or desired by the complainant)

19. This statement shows that the complainant's request before the accused was for some illicit favours in the

writ petition 4281 of 2005 brought by him. Ext.D1 is the judgment in another writ proceeding brought by him. In W.P(c) 4281 of 2005, the accused herein was the 11th respondent in his capacity as the Excise Circle Inspector of Irinjalakuda Circle. The case of the complainant is that the accused offered to file counter affidavit in the writ petition in favour of the complainant and against the party respondents including the pharmaceuticals, and for this, he demanded an amount of ₹ 5000/-. But the above statements extracted from his evidence shows that request was in fact made by the complainant to the accused to file counter affidavit as desired by him. This means that it was not in fact an offer from the accused, but a request from the complainant to the accused to file counter affidavit as desired and demanded by him. When such a person comes with a bribery story, it cannot be accepted by the court without independent corroboration. The complainant further stated like this in evidence:

അപ്പോൾ	G.P.യോട്	പറഞ്ഞു	Statement	കൊടുക്കാൻ
സാവകാശം ചോദിച്ചിട്ടുണ്ട് എന്നും ഞാൻ പറഞ്ഞതുപോലെ				
			Statement	

കൊടുക്കാൻ തയ്യാറല്ല എന്ന നിലക്കുമാണ് പ്രതി എനോട് സംസാരിച്ചത്”.

[The accused told me that he was not prepared to file a statement as desired or requested by me, and that he had requested the Government Pleader to seek some time to file statement in the writ petition”]

20. Here also, the evidence shows that the complainant had been persistently making requests to the accused to file a counter affidavit as desired or demanded by him, but the accused had at no time heeded to his request. The statement extracted above will unerringly show that the complainant thought of making a complaint against the accused and arranging a trap against him when he realised that the accused would not file counter affidavit in his writ petition as desired and demanded by him, or in his favour, as dictated by him. The complainant's evidence shows that the approach of the accused all throughout was that he could not do as requested by the complainant, and that he could do only as instructed by the Excise Commissioner. This will tell us about the circumstance in which the complainant made a complaint against the

accused. On an appreciation of the entire evidence given by the complainant, I find that the complainant's evidence is really suspicious, and that he thought of making a complaint against the Circle Inspector, when he realised that the Circle Inspector would not file counter affidavit in the writ petition as requested by him. The complainant in fact made a request for some illicit favours from the accused, or for filing a counter affidavit as instructed by him in his writ petition, but the accused was not prepared for that, and he took a definite stand that he could act only as instructed by the Excise Commissioner.

21. This must be the reason why the complainant brought a complaint against the Excise Inspector and arranged a trap against him. It is pertinent to note that the W.P(C)4281 of 2005 was later withdrawn by the complainant. There is no reason why the complainant later withdrew the writ petition, wherein, the accused was the 11th respondent. This circumstance also raises some suspicion regarding the credibility of the complainant.

22. Now let me see whether the recovery of tainted

money in this case stands properly and effectively proved beyond reasonable doubt. As regard the evidence of the complainant, I find, as discussed above, that his evidence is really suspicious, his credibility is also suspicious, and that his evidence on facts cannot be acted upon without independent corroboration proving the alleged demand and acceptance.

23. The trap witness examined as PW2 is not a witness to the payment of bribe or acceptance of bribe. His evidence is only regarding recovery of the tainted money from the possession of the accused. Thus to prove demand and acceptance, there is only the evidence of the complainant in this case. As regards the recovery also, I find that the process of recovery stands not effectively and properly proved, by the proper person, who could have proved it. In **Meena W/o.Balwant Kemke v. State of Maharashtra [2000 SC (Cri) 878]**, the Hon'ble Supreme Court held that mere recovery of phenolphthalein tainted currency and positive result of the phenolphthalein test will not be enough to establish the guilt of the accused, and

that, besides those aspects, the prosecution also will have to prove demand and acceptance. In **B.Jayaraj v. State of Andhra Pradesh**[2014 Crl.L.J 2433], a three Judge Bench of the Hon'ble Supreme Court held that in the absence of proof of demand and acceptance, mere recovery of tainted money from the accused will not suffice for a conviction under Sections 7 or 13 of the P.C Act. In **C.Sukumaran v. State of Kerala** [2015 Crl.L.J.1715], the decision in B.Jayaraj v . State of Andhra Pradesh was followed and the Hon'ble Supreme Court held that demand of illegal gratification by the accused is the *sine qua non* for constituting the offence under Section 7 of the P.C Act. In this case, the question is whether recovery of the tainted money stands properly and legally proved to the full satisfaction of the court, and if there is evidence to prove such recovery, the next question is whether the evidence of the complainant which is not corroborated by any other materials as regards demand and acceptance, is acceptable in view of the suspicious circumstances discussed above.

24. The prosecution relies on the Ext.P3 recovery

mahazar which contains all the details of the process of recovery. This mahazar was prepared by the Detecting Officer. Pending the proceeding, the Detecting Officer died. PW10 is the Inspector of the Vigilance who had accompanied the Detecting Officer and who had witnessed the whole process of recovery. Ext.P3 recovery mahazar shows that the whole process of recovery was videographed. It is not known what happened to the said video C.D. Such a C.D is not seen produced in court or marked in evidence. In this case where the Detecting Officer died pending the proceeding, the prosecution should have taken special care to produce the said C.D to prove the process of recovery. Even the Vigilance Inspector (PW10) who had been with the Detecting Officer throughout did not identify the signature of the Detecting Officer. He did not properly and legally prove the recovery mahazar. It is true that the other witnesses including the trap witness have given evidence regarding the recovery. But to constitute proper and legal evidence proving recovery, there must be evidence by the proper and the competent person. When the Detecting

Officer is no more, the prosecution should have taken special care to have the recovery mahazar properly and legally proved by the other Inspector who had been with the Detecting Officer all throughout. But the learned Public Prosecutor did not take care to have those things proved through PW10. As already observed, mere recovery alone will not suffice for a conviction, if at all such a recovery stands proved. Failure on the part of the prosecution in proving the process of recovery properly and legally will have to be read along with the other important aspects discussed by the court regarding the credibility of the complainant and the acceptability of his evidence.

25. As already discussed, this is a case where the complainant thought of making a complaint against the public servant when he realised that the public servant would not act as requested by him, or would not make contest in his writ proceeding as he desired and dictated. This is what is discernible from an appreciation of the entire evidence given by the complainant. In short, the genuineness of his complaint, and the genuineness of the

trap laid on such complaint will have to be seriously doubted. Admittedly, the attempt of the complainant had been to obtain some illegal favours from the public servant and he has no case that the public servant had demanded any money for doing any legal favour, or for doing something which he was otherwise liable to do as public servant. The complainant wanted some illegal favours for which he approached the accused, but the accused was not inclined to heed to such request. This is what is practically admitted by the complainant in evidence. When such a person brought complaint against the public servant, and arranged a trap, the court cannot accept his evidence regarding demand, acceptance and trap without independent corroboration. Of course, it is true that it is well settled that that even in the absence of any corroboration, the court can act on the evidence given by the complainant, and can even enter a conviction if the complainant's evidence is really acceptable and believable even without corroboration and if there is absolutely nothing to doubt the credibility of the complainant. But here, I find

that his credibility is doubtful in view of his own evidence suggesting the reason why he made a complaint and also in view of the observations made by this Court in Ext.D1 judgment. In view of his own evidence, explaining why he thought of making a complaint, the trap in this case cannot be said to be a legitimate trap.

26. The learned counsel for the appellant submitted that the complainant has well admitted in cross-examination that he had made another complaint before making the Ext.P1 complaint. On a perusal of the deposition, I find that during cross-examination, the complainant affirmed that there was such complaint or information prior to the Ext.P1 complaint. If so, no value or sanctity can be attached to Ext.P1 complaint as the first information statement. In re-examination, the learned Public Prosecutor made an attempt to clarify that the complainant had not made any complaint other than the Ext.P1 complaint. The statement elicited by the learned Public Prosecutor in re-examination in just one sentence will not explain away the firm statement made by him on cross-examination that he had made another

complaint before the Ext.P1 complaint. It is not known what the said complaint was, or where it is. It will have to be doubted that such a complaint was suppressed by the prosecution.

27. On an appreciation of the entire evidence, especially that of the complainant in this case, I find that the prosecution case is really doubtful. When there is some reason or circumstance, to doubt the credibility of the complainant and his complaint, or to doubt the evidence given by him, or to doubt that the trap is not legitimate, it would be really unsafe and illegal to convict the accused. Just because some tainted money happened to be seized from his possession, the accused cannot be convicted by the court when evidence otherwise on the essential aspects of demand and acceptance is really doubtful, and when the complaint itself is doubtful. I find that the complainant had his own reasons to make a complaint against the accused. I find that the evidence of such a person cannot at all be accepted without independent corroboration. The other circumstances discussed above also compel this Court not to

accept the evidence of the complainant without independent corroboration. Evidence tainted cannot be accepted as evidence legal. Even a slight trace of doubt will taint the whole prosecution case and the benefit of such doubts will have to be given to the accused. Here, I find that the prosecution case stands not proved beyond reasonable doubt. Accordingly, I find that the appellant is entitled for acquittal.

In the result, this appeal is allowed. The conviction and sentence against the appellant herein in C.C.20 of 2006 of the court below will stand set aside and he will stand acquitted of the offences in the court charge, in appeal, under Section 386 (b) (i) of Cr.P.C. The bail bond, if any, executed by the appellant will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge