



2023:KER:34670

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 16TH DAY OF JUNE 2023 / 26TH JYAISHTA, 1945

CRL.A NO. 1692 OF 2013

AGAINST THE ORDER/JUDGMENT DATED 06.12.2013 IN CC NO.14/2009
OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM/
III ADDITIONAL DISTRICT COURT, KOTTAYAM

APPELLANT/ACCUSED:

K.R. MUHAMMED NAZER
FORMERLYT VILAGE OFFICE,
VAGAMN, KAITHAPPALA PUTHENVEEDU,
POWER HOUSE, ARYAD SOUTH VILLAGE,
ALAPPUZHA - 688 007.

BY ADVS.
SRI.SHABU SREEDHARAN
SMT.RESHMA ABDUL RASHEED

RESPONDENT/ COMPLAINANT:

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

BY
SMT S REKHA SR PP,
SRI A RAJESH SPL PP VACB

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
16.06.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Dated this the 16th day of June, 2023

This appeal has been preferred by the appellant/accused in C.C.No.14/2009 on the files of the Enquiry Commissioner and Special Judge, Kottayam (for short 'the court below'), challenging the judgment dated 6.12.2013, convicting and sentencing him under Sections 7 and 13(1)(d) read with 13 (2) of the Prevention of Corruption Act, 1988 (fort short 'the PC Act).

2. The appellant was working as Village Officer at Wagamon Village in the year 2006. The prosecution case in short is that, on 28.3.2006, the appellant obtained ₹650/- as bribe from the defacto complainant/decoy at his office towards the consideration for giving location map.

3. After trial, the appellant was found guilty and was convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of ₹10,000/- under Section 7 of the PC Act, in default to suffer simple imprisonment for one month, and rigorous imprisonment for one year and to pay a fine of ₹15,000/-



for the offence punishable under Section 13(1)(d) read with 13(2) of the PC Act, in default to undergo simple imprisonment for six months. The substantive sentence was ordered to be run concurrently. Challenging the said conviction and sentence, the appellant preferred this appeal.

4. I have heard Sri. Shabu Sreedharan, the learned counsel for the appellant and Sri. A. Rajesh, the learned Special Public Prosecutor for VACB.

5. The learned counsel for the appellant impeached the finding of court below on appreciation of evidence and the resultant finding as to the guilt. The learned counsel submitted that the prosecution has miserably failed to prove that there was demand for illegal gratification from the side of the appellant and in the absence of the same, the conviction is not sustainable. The learned counsel further submitted that the evidence regarding acceptance also is not at all convincing and reliable. The counsel added that the appellant was illegally trapped and the money in question (MO1 series currency notes) were put in his pocket by the decoy witness/PW1 to wreck vengeance against him. On the other hand, the learned Special Public Prosecutor for VACB supported the



findings and verdict of the court below and submitted that the prosecution has succeeded in proving the case beyond reasonable doubt.

6. It is not in dispute that the appellant was working as Village Officer at Wagamon Village at the alleged time of the incident. It has come out in evidence or rather it has been admitted by the appellant that, PW1 submitted an application to the appellant for issuance of possession certificate of his property which was proposed to be mortgaged with the Malanadu Service Co-operative Bank to avail a loan. It is also not in dispute that on the basis of the said application, after conducting site inspection, possession certificate was issued by the appellant to PW1. According to PW1, when he approached the appellant thereafter to issue location map of his property, the appellant demanded bribe of ₹500/- which he informed to PW9 and the trap was arranged. It is his version that, as demanded by the appellant he gave ₹650/- to him and later on, as pre-planned, PW9 and party came to the spot and recovered the said amount from him. The currency notes were marked as MO1 series. In fact, the recovery of MO1 series currency notes from the appellant by PW9 has not been disputed at



all by the appellant. On the other hand, his defence version is that, PW1, against his wish put those MO1 series into his shirt pocket under the pretext of giving jeep fare which he hired for the purpose of visiting his property to draw the location map.

7. The prosecution mainly relied on the evidence of PW1, PW2 and PW9 to prove the incident and to fix the culpability on the appellant. PW1 is the decoy witness and the defacto complainant. PW2 is the independent witness who accompanied the vigilance party at the Village Office and witnessed the recovery. PW9 is the officer who laid trap and conducted the investigation. The crime was registered on the basis of Ext.P1 complaint/FIS given by PW1. His evidence would show that, in order to process the loan application submitted by him before the Malanadu Service Co-operative Bank, he was in need of the possession certificate and location map of his property. For the said purpose, he initially approached the appellant on 1.3.2006 to get the possession certificate and he was issued the possession certificate on the next day itself. Later on, he again approached the appellant on 22.3.2006 to get the location map of the property and submitted Ext.P5 application. Thereafter, the appellant visited the property



on 24.3.2006 in a jeep driven by PW3. PW3 demanded ₹350/- as jeep fare. Then, as directed by the appellant, he gave ₹200/- out of the jeep fare to PW3. The appellant told him to give the balance amount of ₹150/- and another sum of ₹500/- as bribe to issue the location map. PW1 specifically deposed that the appellant told him that if the said amount is not paid, the location map will not be issued. It was in these circumstances he approached the Dy.S.P. attached to VACB who was examined as PW9. PW9 then arranged the trap. Ext.P7 is the trap mahazar. PW2 also accompanied the trap team consisting of PW10 and CW2.

8. The evidence of PW1, PW2 and PW9 would prove that PW1 as instructed by PW9 produced six currency notes of denomination of 100 and one currency note of the denomination of 50, which were marked as MO1 series, PW9 then applied phenolphthalein powder on MO1 series and the mahazar was prepared. Thereafter, he kept MO1 series in the pocket of PW1 and specific instruction was given to him that tainted notes should be paid to the appellant on demand. Thereafter, PW2, PW9 and another witness CW2 along with PW1 went to the Village Office to meet the appellant. They reached the Village Office. At that time



the appellant was not there. He came later on at 2 PM. Thereafter, PW1 went to his room, met him and asked for the location map. According to PW1, at that time also, the appellant repeated the demand of bribe, which he made on the previous date. Thereafter, the appellant handed over the location map which was marked as Ext.P4(a) to him and the appellant extended his hand and he entrusted MO1 series to his right hand. The evidence of PW's 2 and 9 would further show that PW1 gave signal to PW9 who immediately rushed to the Village Office. The appellant was sitting at the veranda in a bench. PW9 took him inside the room and asked him whether he accepted bribe from PW1. Then, the appellant answered that he only collected taxi fare from PW1. Thereafter PW9 asked for money and the appellant took it out of his pocket and placed on the table. Then, PW9 seized it and phenolphthalein test was conducted.

9. Even though, PW's 1, 2 and 9 were cross-examined at length, nothing tangible could be extracted from their evidence to discredit their testimony. It is true that there were some minor contradictions in the evidence of PW1. But those contradictions are insignificant in nature and do not affect the fabric of the



prosecution case. The learned counsel for the appellant vehemently argued that there is no concrete evidence to prove the demand and acceptance. It is not necessary that there should be direct evidence in all cases to prove demand and acceptance. It can be proved by acceptable circumstantial evidence as well [**Neeraj Dutta v. State (Govt.N.C.T. of Delhi)** (2022 (7) KHC 647)]. The concrete evidence of PW1 clearly proves that the appellant demanded bribe from him to issue location map of his property. The evidence of PW's 1, 2 and 9 would show that after the demand of bribe was informed by PW1, a trap was arranged, they went to the Village Office and PW1 give MO1 series currency notes to the appellant who accepted it. Thus, the demand and acceptance of illegal gratification has been amply proved by the prosecution through the evidence of PW1, PW2 and PW9. The evidence, such as the positive result of phenolphthalein test on the hands of the appellant, on MO1 series currency notes and on the pocket of the shirt worn by the appellant are circumstances to suggest that the appellant had accepted and handled the tainted notes.

10. On the side of the defence, a witness was examined as DW1 to substantiate the defence version that in fact MO1 series



was put into his pocket by PW1 against his wish to trap him. The court below, which saw the demeanour of the witness, after evaluating the entire evidence on record, found that DW1 is nothing but a hired witness to speak utter falsehood before the court. It is not in dispute that PW's 4 and 5 were present in the Village Office at the time of the alleged incident. However, PW's 4 and 5 did not speak anything about the presence of DW1 at that relevant time. Apart from the interested testimony of DW1, there is nothing on record to prove his presence. Hence, the evidence of DW1 cannot be relied on as rightly held by the court below.

11. Admittedly, the appellant was a public servant as defined under Section 2(c) of the P.C. Act working in his capacity as Village Officer on the date of the alleged incident. The sequence of events and circumstances narrated above clearly proves that the appellant has accepted Rs.500/- as illegal gratification from the decoy witness by abusing his official position as public servant and availed pecuniary advantage by adopting corrupt and illegal means. Thus, the court below was absolutely justified in convicting the appellant for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the P.C. Act.



12. What remains is the sentence. The court below sentenced the appellant to undergo simple imprisonment for six months and to pay a fine of ₹10,000/- in default to suffer simple imprisonment for one month under Section 7 of the P.C. Act, rigorous imprisonment for one year and to pay a fine of Rs.15,000/- in default to suffer simple imprisonment for a period of six months for the offence under Section 13(1)(d) r/w 13(2) of the P.C. Act. Considering the entire facts and circumstances of the case, I am of the view that the sentence imposed by the court below is absolutely reasonable. The appeal fails and it is only to be dismissed.

In the result, the appeal stands dismissed.

Sd/-
DR.KAUSER EDAPPAGATH,
JUDGE