

N.Mathai Vs. State of Kerala

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Court : Kerala

Decided On : Jul-29-2015

Judge : Honourable Mr. Justice P.Ubaid

Appellant : N.Mathai

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE 29TH DAY OF JULY 2015 7TH SRAVANA, 1937 CRL.A.No. 1756 of 2005 () ----- AGAINST THE

JUDGMENT

IN CC272001 of ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE APPELLANT(S)/ACCUSED: ----- N.MATHAI NELLIKKAPARAMBIL HOUSE, POOMALA, SULTHAN BATHERY (VILLAGE OFFICER, THRIKKAIPATTA, WAYANAD DISTRICT). BY ADVS.SRI.M.K.DAMODARAN (SR.) SRI.SOJAN MICHEAL SRI.NISHIL.P.S. RESPONDENT(S)/COMPLIANANT: ----- STATE OF KERALA PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.S.HYMA THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-07-2015, THE COURT ON 29-7-2015, DELIVERED THE FOLLOWING: P.UBAID, J.

JUDGMENT

The appellant herein was the Village Officer of Thrikkaipetta Village in December 1999. On the allegation that he received an amount of 500/- as illegal gratification from one Ramakrishnan for issuing a possession certificate, the appellant faced prosecution under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short "P.C Act") before the learned Enquiry Commissioner and Special Judge (Vigilance) Kozhikode in C.C No.27 of 2001. It is alleged that when the complainant Ramakrishnan approached the appellant on 3.12.1999 at his office with an application for possession certificate, the Village Officer demanded an amount of 2000/- for issuing certificate, in view of some difference in Survey Number, and on some bargain, the Village Officer reduced his demand to 500/-. When Ramakrishnan approached the Village Officer on 9.12.1999 at his office, he repeated his demand and instructed Ramakrishnan to come on CrI.A No.1756 of 2005 2 10.12.1999 with the amount. As Ramakrishnan was not inclined to pay bribe, he approached the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, (VACB), Wayanad with a complaint. The VACB registered a crime on the said complaint and arranged a trap. As instructed by the Dy.S.P., Ramakrishnan approached the Village Officer at his office at about 11 a.m on 10.12.1999 and made payment of the phenolphthalein tainted currency of 500/- when the Village Officer again demanded amount for issuing possession certificate. As instructed by the Village Officer, the amount was put in the drawer of the table by the complainant. Within no time, the vigilance team reached there, on getting signal from the complainant, seized the phenolphthalein tainted currency, and arrested the Village Officer on the spot. After investigation, the VACB submitted final report in court.

2. The accused pleaded not guilty to the charge framed against him under Sections 7 and 13 (1) (d) read with Section 13 (2) of the P.C Act. The prosecution examined eight witnesses in the trial court and also marked CrI.A No.1756 of 2005 3 Exts.P1 to P18 documents. MO1 to MO7 properties including the 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 all the incriminating circumstances and submitted that he had not accepted any illegal gratification from the complainant, and that the amount was put in his table without his knowledge and consent with the object of trapping him viciously for the reason that he had told the complainant that possession certificate, as requested by him, could not be issued in view of some difference in Survey Number. In defence, the accused examined DW1 and also marked Exts.D1 to D4 documents.

3. On an appreciation of the evidence, the learned trial Judge 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 one year and to pay a fine of 10,000/- under Section 7 of the P.C Act and to undergo another term of rigorous imprisonment for two years and to pay a fine of 10,000/- CrI.A No.1756 of 2005 4 under Section 13 (1) (d) read with Section 13 (2) of the P.C Act, by judgment dated 28.9.2005 in C.C No.27 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 that the merits of the prosecution case on facts need not be gone into in this appeal, because the appellant is even otherwise entitled for acquittal on the legal ground that the prosecution sanction produced by the vigilance in this case stands not legally and properly proved. The learned Public Prosecutor submitted that the case on facts stands well proved by convincing evidence, and that formal proof of the prosecution sanction is not required when it will have sanctity as a public document.

5. On an appreciation of the evidence adduced by the prosecution, I find that the prosecution allegations stand proved in this case, that the appellant had accepted an amount of 500/- from PW1 as a reward for issuing a possession certificate on his application. Ext.P1 is the said CrI.A No.1756 of 2005 5 application dated 1.12.1999, proved by the complainant. Of the eight witnesses examined by the prosecution, PW1 is the complainant, PW2 is the trap witness, and PW7 is the Deputy Superintendent of Police (Vigilance) who detected the offence. PW5 and PW6 are the revenue officials examined to prove some documents seized during

investigation. Those documents include the attendance register kept in the village office, and other registers proving that the accused was Village Officer of Thrikkaipetta Village in December, 1999. PW8 is the Vigilance Inspector, who investigated the case. There is nothing to show that there was any flaw or illegality or irregularity in the investigation conducted by PW8. Thus, I find that the investigation was properly conducted by PW8. PW3 is the Bank Manager examined to prove that the complainant had made an application for loan, and that he was required to produce possession certificate for sanctioning the loan. PW4 is the Head Constable of the Vigilance wing examined to prove the demand on the date of detection. His evidence is that he had accompanied the complainant to the village office, Crl.A No.1756 of 2005 6 as instructed by the Dy.S.P and from a short distance outside the office he overheard the demand made by the accused. This evidence is not in fact, satisfactory.

6. The complainant examined as PW1 has given consistent evidence proving the alleged demand and acceptance. He is definite in evidence that the accused made a demand for 2000/- for issuing a possession certificate when he approached him with Ext.P1 application on 3.12.1991, but on some bargain, he reduced the claim to 500/-. On 9.12.1999 also, the Village Officer repeated his demand and asked the complainant to come on the next day with the amount. On 10.12.1999, he approached the vigilance in the morning and made Ext.P3 complaint. The amount of 500/- brought by him for the trap was seized by the Dy.S.P as per mahazar, and after demonstrating the required phenolphthalein test, he and the trap witness were instructed to approach the accused and make payment of tainted money, if demanded again. Accordingly, he met the village officer at his office at about 11 a.m on the same day, and when the village officer repeated his demand, he put Crl.A No.1756 of 2005 7 the amount in the drawer of his table, as instructed by the village officer.

7. PW2 and PW7 have given evidence regarding the detection of the offence. They are definite that the vigilance team reached there, on getting signal from the complainant, and the tainted money was seized from the drawer of the office table of the accused. When Pw7 conducted phenolphthalein test it turned positive, indicating that the accused had handled the tainted money. Accordingly, the

tainted money was seized as per mahazar and the accused was arrested on the spot. The evidence of PW3 does not have much importance in this case. PW5 and PW6 have only proved some documents including the attendance register. The accused has no case that he was on leave on 10.12.1999 or that he was not present in office on that day.

8. The complainant and the trap witness were subjected to thorough examination during trial. Except some unimportant inconsistencies, the defence could not bring out anything to discredit their evidence. As regards the process of recovery of tainted money, the defence has CrI.A No.1756 of 2005 8 no dispute practically. The process of seizure of the tainted money and arrest of the accused stands well proved by the evidence of PW2 and PW7. There is nothing to show that PW1 had any reason to make a false complaint against the Village Officer, or to foist a false case against him. PW2 had also no reason to support the prosecution or to give evidence against the accused.

9. On an appreciation of the evidence on facts as discussed above, I find that the prosecution has proved the case on facts. Demand stands proved by the evidence of PW1 and acceptance is proved by the evidence of PW1 and PW2. Thus, I find that the prosecution has succeeded in proving the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the P.C Act in this case. However, the conviction in this case can be confirmed only subject to the finding on the question of law raised by the defence. If the prosecution in this case is barred under Section 19 of the P.C Act, it is of no avail that the case stands proved on facts.

10. Ext.P18 is the prosecution sanction granted by the Commissioner of Land Revenue. This sanction was CrI.A No.1756 of 2005 9 marked by the Investigating Officer during trial. The Land Revenue Commissioner, cited by the vigilance, was not examined to prove the sanction. As regards proof of sanction granted under Section 19 of the P.C Act, this Court has settled the position in a recent decision, that except when the sanction will have sanctity as a public document under Section 74 of the Evidence Act, proper and legal evidence will be required proving the prosecution sanction as prescribed under the Indian Evidence Act. Section 19 of the P.C Act bars even cognizance in the absence of a proper sanction granted

by the competent authority. In *Mansukhlal Vithaldas Chauhan v. State of Gujarat* [(1997) 7 SCC622], the Hon'ble Supreme Court held that in the absence of evidence proving independent application of mind by the sanctioning authority in the process of granting sanction, the court cannot accept the sanction produced by the prosecution. In *CBI v. Ashok Kuma Aggarwal*, [AIR 2014 SC827], the Hon'ble Supreme Court held that in the process of granting sanction under Section 19 of the P.C Act, the sanctioning authority will have CrI.A No.1756 of 2005 10 to do complete and conscious scrutiny of the whole records produced by the prosecution before him, and the order of sanction should show that it was granted on a consideration of all the relevant aspects, and on an application of independent mind.

11. In *Antony Cardoza v. State of Kerala* (2011 (1) KLT946), a learned Single Judge of this Court held that when a prosecution sanction granted under Section 19 of the P.C Act is not proved by the person who granted the sanction, it will have no value, and the sanction cannot be said to have been properly proved under the law. This Court held that independent application of mind in the process of granting sanction must be proved by the person who granted the sanction, and this responsibility cannot be taken over by somebody else. Following a Division Bench decision of the Calcutta High Court in *S & R Legal Affairs v. Moazzem Hossain* [AIR1947 Cal 318], a learned Single Judge of the Andhra Pradesh High Court held in *Central Bureau of Investigation SPE Hyderabad v. P.Muthuraman* reported in LAWS (APH) 1996-3-13, that CrI.A No.1756 of 2005 11 the signature in the prosecution sanction granted under Section 19 of the P.C Act should be proved either by the sanctioning authority, or by his subordinate officer, or the clerk who had seen the sanctioning authority signing the sanction order, or who is acquainted with the signature of the sanctioning authority. On a consideration of the various decisions on the point, this Court has settled the position that in a case where the prosecution sanction does not have sanctity as a public document, the sanction will have to be proved as prescribed under the Indian Evidence Act, by the person who granted sanction. The Investigating Officer can never be the competent person to prove the prosecution sanction granted by the some other authority. In *Antony Cardoza v. State of Kerala*, the prosecution brought an Under Secretary to the Government to prove the prosecution sanction granted by the

Principal Secretary. This Court held that the sanction cannot be said to be properly proved according to law. It is well settled that any document other than public document, will have to be proved as prescribed under the Indian Evidence Act. Only CrI.A No.1756 of 2005 12 those documents having sanctity under the Constitution of India, or any special law enacted thereunder, can be formally proved, without examining the person who granted sanction. In all other circumstances, where the sanction does not have any such immunity, or sanctity or privilege, the person who granted sanction will have to prove the sanction. Ext.P18 sanction in this case cannot claim sanctity and privilege as a public document under Section 74 of the Indian Evidence Act. In the absence of evidence proving the sanction by the person who granted it, Ext.P18 sanction cannot be accepted by the court. In the absence of a properly proved sanction, the finding possible is that the prosecution is barred under Section 19 of the P.C Act. 12, Thus, I find that though the prosecution has succeeded in proving the case on facts, the appellant is entitled for acquittal in this case on the legal ground that the prosecution is barred for the reason that the prosecution sanction granted under Section 19 of the P.C Act stands not properly and legally proved as prescribed under the law. CrI.A No.1756 of 2005 13 In the result, this appeal is allowed. The conviction and sentence against the appellant under Sections 7 and 13 (1) (d) read with 13 (2) of the P.C Act in C.C No.27 of 2001 of the court below will stand set aside, and the appellant will stand acquitted in appeal under Section 386 (b) (i) of Cr.P.C. The bail bond, if any, executed by him will stand discharged. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge

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