P.Babu Vs. State of Kerala

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Court : Kerala

Decided On : Sep-07-2015

Judge : Honourable Mr. Justice P.Ubaid

Appellant : P.Babu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID MONDAY, THE7H DAY OF SEPTEMBER201516TH BHADRA, 1937 CRL.A.No. 1036 of 2013 ------------------------ AGAINST THE

JUDGMENT
IN C.C NO. 15/2007 of ENQUIRY COMMR.& SPL.JUDGE,THRISSUR DATED2006-2013 APPELLANT/ACCUSED: ------------------- P.BABU (FORMERLY VILLAGEMAN, KOLAZHI, THRISSUR) S/O.LATE PADMANABHAN ACHARY, CHUNDATHUVILAKATHU HOUSE, HOUSE NO.T.C.49/99, MANAKKAD P.O., THIRUVANANTHAPURAM. BY ADVS.SRI.RAM MOHAN.G. SRI.G.P.SHINOD SRI.MANU V. SRI.GOVIND PADMANAABHAN RESPONDENT/COMPLAINANT: ----------------------- STATE OF KERALA REPRESENTED BY ITS PUBLIC PROSECUTOR AT HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.S.HYMA THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON0709-2015, THE COURT ON THE SAME DAY DELIVERED

THE FOLLOWING: ab P.UBAID, J.

-------------------------------------- Crl.A No.1036 of 2013 --------------------------------------
Dated this the 7th day of September, 2015

JUDGMENT

On the allegation of acceptance of illegal gratification from a Police Constable, on 29.12.2005 and on 31.12.2005, while working as Village Man in the Kolazhi Village office in Thrissur District, as a reward for recommending his application for earth filling to the Revenue Divisional Officer, the appellant herein faced trial in C.C No.15/2007 before the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur. The Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau (VACB), Thrissur registered a crime against the appellant on the complaint of the said Police Constable Sudhakaran, dated 30.12.2005. As the Village Man was not present in office on 30th, the VACB arranged a trap on the next day. The complainant Sudhakaran has purchased 10 cents of property from one Mohandas. He wanted to fill 5 cents out of the 10 cents for constructing a house. On 19.12.2005 he submitted an application before the Revenue Divisional Officer, and it was forwarded to the Village Officer. When he Crl.A No.1036 of 2013 2 approached the Village Officer on 23.12.2005 he was asked to submit no objection certificate from the adjacent owners. Accordingly, on 29.12.2005 he procured such certificates and approached the Village Officer. As instructed by the Village Officer he met the village man on 29.12.2005 itself. At that time, it is alleged, the Village Man demanded an amount of 1,000/- saying that some amount is required for preparing the village sketch, for taking copies of the BTR, village plan etc. and that without getting the amount nothing could be done. Immediately, the complainant paid 500/- to the village man. But he was not satisfied. He demanded the balance amount of 500/- and affirmed his stand that he will not recommend his application to the Revenue Divisional Officer without getting the balance amount. The aggrieved Police Constable approached the VACB with complaint on 30.12.2005. On the said complaint the Deputy Superintendent of Police arranged a trap. The amount of 500/- brought by the complainant was received by the Deputy Superintendent of Police on 31.12.2005 as per a mahazar, and after demonstrating the required phenolphthalein test to the complainant and the other witnesses, the complainant was instructed to approach the village man, and to make payment if he made further demand. Accordingly the complainant Crl.A No.1036 of 2013 3 approached the village man on 31.12.2005, and when the village man again demanded the balance amount, the complainant paid the tainted money. On getting signal from the complainant the vigilance team led by the Deputy Superintendent of Police, rushed to the village office, sized the phenolphthalein tainted currency, and after conducting phenolphthalein test, which turned positive, the Deputy Superintendent of Police arrested the village man 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(2) r/w 13(1)(d) of the Prevention of Corruption Act (for short 'the P.C Act). The prosecution examined 11 witnesses and marked Exts.P1 to P19 documents. MO1 to MO5 properties including the MO1 series tainted money seized from the possession of the accused were also identified and marked during trial. When examined under Section 313 Cr.P.C the accused denied all the incriminating circumstances, and submitted that the trap was in fact a vicious one arranged by the police constable at the instigation of the former village officer Jayachandran, and that the amount meant as donation for the revenue adalath organized by the revenue department was misutilized by the complainant Crl.A No.1036 of 2013 4 for the said trap. He believed that the amount was paid by the complainant as donation for the Lok Adalath, and it was not received by him as illegal gratification for any purpose. The accused examined his own wife as defence witness and marked Exts.D1 to D3 in defence. On an appreciation of the evidence adduced on both sides the trial court found the accused guilty. On conviction he was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of 1,000/- each under Sections 7 and 13(2) r/w 13(i)(d) of the P.C Act by judgment dated 20.6.2013. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

3. When the appeal came up for hearing, the learned counsel for the appellant submitted that the prosecution case is doubtful, and that a vicious trap was in fact

laid against the appellant by the police constable as instructed by the appellant's enemy Jayachandran, who was a former Village Officer, and that money was in fact paid by the police constable under the pretext that it was donation for the revenue adalath. The learned Public Prosecutor on the other hand submitted that there is absolutely nothing doubtful in the prosecution case, and the Village Man was trapped on a genuine complaint.

4. The short point for decision is whether the Crl.A No.1036 of 2013 5 prosecution case is proved beyond reasonable doubt, that the appellant had demanded and accepted 1,000/- as bribe from PW1 as a reward for recommending his Ext.P3(a) application for earth filling.

5. Of the 11 witnesses examined by the prosecution, PW1 is the complainant Sudhakaran, and PW2 is the trap witness. PW2 was the Block Development Officer at that time. PW3 and PW4 are the Deputy Tahsildar and the Revenue Tahsildar examined to prove the arrest of the accused and to prove some documents seized during investigation. PW5 is one of the persons who had paid an amount of 50/- as donation for the Revenue Lok Adalath. It is not known why this witness is examined. PW6 is the witness examined to prove Ext.P8 prosecution sanction, PW7 is the police constable who conducted the pre trap enquiry, PW8 is the person, who sold property to the complainant, PW9 is the Assistant Engineer who prepared the plan of the village office, PW10 is the Deputy Superintendent of Police who detected the offence, and PW11 is the Vigilance Inspector, who conducted investigation. On an appreciation of the evidence given by PW11, I find that the case was properly investigated by him, and that there was no flaw or irregularity in the investigation conducted by him. Crl.A No.1036 of 2013 6 6. PW6 has given satisfactory evidence regarding the process of granting Ext.P8 sanction. The evidence given by PW6 was not challenged in cross examination. I find that Ext.P8 sanction granted under Section 19 of the P.C Act stands properly proved by PW6. PW2 is not a witness to prove demand or acceptance. The essential elements of demand and acceptance are proved by the complainant himself, and acceptance is further proved by the process of recovery of tainted money from the possession of the accused. PW2 is only a witness to the process of recovery. The recovery as per Ext.P5 mahazar stands well proved by the

evidence of the detecting officer and the evidence of the trap witness. I find no reason to disbelieve the evidence of these witnesses as regards recovery. All the witnesses identified the MO1 series tainted currency during trial.

7. Once recovery is proved, the accused will have to explain how the tainted money came in his hands. As regards the presumption under Section 20(1) of the P.C Act, it is settled that once acceptance is proved by proper evidence including recovery of tainted money, the burden would shift to the accused to prove that it was not accepted by him as a reward as mentioned in Section 7 of the P.C Act. PW1 has given definite and consistent evidence proving the essentials of the offence alleged. He Crl.A No.1036 of 2013 7 proved Ext.P3(a) application made by him before the Revenue Divisional Officer for earth filling, and he also proved Ext.P1 complaint made by him on 31.12.2005. He is definite that when he met the accused at the Village Office on 29.12.2005 with the required consent letters from the adjacent owners, the village man demanded an amount of 1,000/- saying that so much money was required for taking copies of sketch, BTR etc. As the complainant was in a state of urgency to get sanction for earth filling he paid 500/- on the spot, but the village man was not satisfied. He demanded 500/- more, and expressed his stand that without getting the said amount, he will not take any action or make report recommending the complainant's application for earth filling. On 30.12.2005, itself he told about to this to his Sub Inspector. As advised by the Sub Inspector, he approached the Deputy Superintendent of Police, VACB on 30.12.2005. For the said purpose he was also granted leave by the Sub Inspector. Accordingly, he made Ext.P1 complaint but the trap could not be arranged on that date as the village man was on leave on 30.12.2005. The Deputy Superintendent of Police asked him and others to come on the next day. Accordingly, he and the trap witness reported in the office of the VACB on 31.12.2005 and he produced the money required for the trap. It was received by the Crl.A No.1036 of 2013 8 Deputy Superintendent of Police as per Ext.P2 mahazar. Thereafter the amount was treated with phenolphthalein, and after demonstrating the required test he was instructed to make payment if the village man made further demand. Accordingly, he proceeded to the village office, followed by the vigilance team, including trap witness (PW2). He approached the village man and made request regarding his application for earth filling. At that time the village man demanded

the balance amount of 500/-. Accordingly, he handed over the tainted currency of 500/-, which the accused received in his right hand, and put in the drawer of the table. Immediately he gave signal to the vigilance team, and accordingly PW10 and others reached there, seized the tainted currency and arrested the accused on the spot. Thus the evidence given PW1 is not in any manner discredited in cross examination. PW1 stoutly denied the suggestions made in defence that he has some connection with the former village officer, Jayachandran, and that he viciously arranged a trap at the instigation of Jayachandran. The complainant stated that he does not know who Jayachandran is. The evidence of DW1, the wife of the accused, will not in any manner probablise the defence case.

8. As regards donation for the revenue adalath, the Crl.A No.1036 of 2013 9 complainant has admitted that he had paid an amount of 50/- as donation as requested by the village officer. But the tainted money of 500/- was not in fact paid by him for the said purpose. He affirmed that it was money demanded by the accused as bribe for recommending his application for earth filling. The investigating officer has also stated in his evidence that he could collect some materials showing that some persons had paid some donation for the revenue adalath, and nobody had paid more than 100/-. Much was argued, that the complainant has not stated anything about payment of 50/- as donation for the revenue adalath. I fail to understand why that fact should not be stated in the complaint. It is something extraneous, having nothing to do with the bribe demanded by the accused. That the complainant did not reveal the said fact in his complaint will not in any manner cause any sort of suspicion regarding the complaint. In fact payment of donation for the revenue adalath is not at all a matter to be stated in the complaint in this case. In find no reason to disbelieve the evidence of the complainant.

9. Ext.P3 file contains the copy of the assignment deed as per which the complainant purchased property from PW8. This documents shows very well that the complainant (purchaser) is a police constable. This means that the village Crl.A No.1036 of 2013 10 man had knowledge of the fact that the applicant is a police constable. It is really shocking and surprising that even from a police man the village man demanded bribe. There is absolutely no reason why the police

constable should make a false complaint. I find that the police constable made a complaint only because he had a genuine grievance that bribe was demanded from him by the village man. I find that the allegations in the complaint including demand and acceptance stand well proved by him. His evidence proves that an amount of 500/- was received by the accused as bribe on 29.12.2005 and another amount of 500/- was accepted by him on 31.12.2005, the date of trap.

10. The process of detection stands well proved by the evidence of detecting officer and the trap witness. PW2 was the Block Development Officer. It is quite unbelievable that such a responsible officer having high position in the revenue department would join the police to arrange a vicious trap against a subordinate officer. Recovery of the amount of 500/- tainted with phenolphthalein stands well proved in this case. The defence case that it was the amount paid under the pretext of donation for the revenue adalath is unbelievable. The accused has practically admitted recovery of 500/- from his possession. Crl.A No.1036 of 2013 11 When there is such recovery, he has to explain how the tainted money came in his hands. The complainant is definite that illegal gratification was accepted by the accused as a reward for recommending his Ext.P3(a) application for earth filling to the Revenue Divisional Officer.

11. On an appreciation of the evidence, I find that the prosecution case stands well proved beyond any reasonable doubt. This case does not involve any question of law. Everything is decided on facts. The evidence given by the complainant on facts is really convincing and satisfactory. Ext.P8 prosecution sanction also stands well proved by the sanctioning authority. Of course, it is true that PW8 turned hostile. The prosecution case is that the accused had demanded some amount from PW8 also as illegal gratification. He is the adjacent property owner. His evidence is not important at all in this case. The evidence of PW5 is also not important. The main evidence is that of the complainant, the trap witness, the sanctioning authority, and the detecting officer. Their evidence is fully convincing and satisfactory, proving the essential elements of demand, acceptance and also recovery of the tainted money. The accused could not bring out any element of suspicion during trial. When the whole prosecution case is found true this appeal Crl.A No.1036 of 2013 12 is liable to be dismissed.

12. As regards the sentence, I find that the sentence imposed by the trail court is quite reasonable and adequate. Practically, the jail sentence is for one year, which is the minimum under Section 13(2) of the P.C Act. The sentence imposed by the trial court is quite reasonable and it does not require any interference in appeal. In the result this court is reasoned to dismiss this appeal, confirming the conviction and sentence against the appellant in C.C. No.15/2007 of the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur. Sd/- P.UBAID JUDGE //True Copy// P.A to Judge ab