(2015) 09 KL CK 0103

High Court Of Kerala

Case No: Criminal Appeal No. 2092 of 2006

G. Alex	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision: Sept. 17, 2015

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 19, 20 (1), 7

Hon'ble Judges: P. Ubaid, J

Bench: Single Bench

Advocate: P. Vijaya Bhanu and Prasun S., for the Appellant; Sheeba M.T., Public Prosecutor, Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

P. Ubaid, J

The appellant herein was the Estate Manager of the Kerala SIDCO Ltd. (Small Industries Development Corporation Ltd.) in its branch at the Industrial Estate at Ettumannoor in May 2003. The shed No. 5 belonging to the SIDCO was allotted to one V.K. Soman some time back under an agreement. Later, Soman sublet the room to one Rodento unauthorisedly. The said Rodento along with his partner Senny Johnson, started an Electroplating unit in the said building. It is alleged that on coming to know of the unauthorised entrustment, the Estate Manager started threatening Rodento and his partner that they would be evicted, and that he would submit report to the higher authorities regarding this unauthorised occupation. It is alleged that when Rodento made a request to the Estate Manager to allot the said room No. 5 to him and to make necessary transfer in the registers, the Estate Manager demanded an amount of Rs. 2000/- as illegal gratification and he even received an amount of Rs. 500/- from Rodento on 15.5.2003. The Estate Manager was not satisfied with Rs. 500/-. He made a demand for the balance amount of Rs. 1500/- and directed Rodento to bring the said amount on 29.5.2003. The Estate

Manager threatened Rodento, that if the amount is not paid fully, steps would be taken to evict him from the building. As Rodento was not inclined to make payment further, he approached the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau (VACB), Kottayam and made a complaint. The Deputy Superintendent of Police registered a crime on the said complaint and arranged a trap. On 29.5.2003 itself, the VACB arranged a trap witness with the permission of the District Collector, received the amount of Rs. 1500/- brought by Rodento, as per a mahazar, and after demonstrating the required phenolphthalein test to the complainant and the trap witness, Rodento was instructed to meet the Estate Manager at his office and make payment, on demand. Accordingly, Rodento, along with the trap witness Balanchandran (Child Development Officer, Vadavattoor at that time) proceeded to the office of the accused and met him at his office. The trap witness Balachandran remained outside, and the complainant Rodento alone entered the room and made payment of the tainted money on demand, at about 1.30 p.m., it is alleged. On getting signal from the complainant, the Dy. S.P. and his team approached the Estate Manager at his office, seized the phenolphthalein tainted currency from his possession, and arrested the accused (Estate Manager) on the spot. A detection mahazar was also prepared on the spot. After conducting investigation, the VACB submitted final report before the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur, who took cognizance on the final report as C.C 41 of 2004.

2. The accused (appellant) entered appearance before the trial court and pleaded not guilty to the charge framed against him under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act (for short "the P.C. Act") to which he pleaded not guilty. The prosecution examined eight witnesses in the trial court and marked Exts. P1 to P15 documents. The prosecution also marked MO1 to MO8 properties including the tainted currency of Rs. 1500/- seized from the possession of the accused.

3. When examined under Section 313 Cr.P.C., the accused denied the incriminating circumstances and projected a defence that the amount of Rs. 1500/- was in fact received by him as the first instalment of the fee required for transfer of the building No. 5 in the name of the complainant Rodento, that he had not received anything as gratification, and that, with the object of trapping him due to enmity, the complainant made use of the licence fee amount and arranged a trap. In defence, the accused examined three witnesses as DW1 to DW3, and also marked Exts. D1 to D7 documents.

4. On an appreciation of the evidence, 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 three years and to pay a fine of Rs. 25,000/- under Section 7 of the P.C. Act, and to undergo rigorous imprisonment for another period of four years, and to pay a fine of Rs. 25,000/- under Section 13(1)(d)

read with 13(2) of the P.C. Act, by judgment dated 31.10.2006. Aggrieved by the 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 receipt of the tainted money is not disputed by the accused subject to his contention in defence that it was received as the first instalment of the fee required for transfer of the room in favour of the complainant. But it was not explained why the complainant arranged a trap against the Estate Manager, if the amount was in fact made by him as the first instalment of the fee required for transfer of the building. The defence has no explanation why the complainant arranged such a trap, or why a false complaint was made by the complainant against the Estate Manager. The learned counsel also submitted that the evidence of the complainant is really suspicious. On the other hand, the learned Public Prosecutor submitted that the evidence given by the material witnesses is really blemishless, that the prosecution sanction also stands well proved in this case, and that the defence set up by the accused is quite unacceptable and unbelievable.

6. Of course, it is true that as regards acceptance of the amount of Rs. 1500/- on 29.5.2003, the defence does not have much dispute. Recovery of MO1 series tainted currency from the possession of the accused as per Ext. P7 mahazar is practically admitted by the accused. As regards the process of recovery made by the Detecting Officer PW7 was not very much cross-examined. Thus, the defence would practically admit that the accused had in fact received an amount of Rs. 1500/- from the complainant, subject to the contention otherwise in defence, that it was not received as illegal gratification, but only as the first instalment of the fee required for transfer of the room.

7. It is well settled that demand and acceptance are the essentials to be proved by the prosecution in a prosecution under Sections 7 and 13(1)(d) read with 13(2) of the P.C. Act. In this case, the prosecution relies very much on the presumption under Section 20 (1) of the P.C. Act, in view of the clear evidence proving acceptance of money by the accused from the complainant. In B. Jayaraj Vs. State of A.P., (2014) AIRSCW 2080 : (2014) CriLJ 2433 : (2014) 7 JT 381 : (2014) 4 SCALE 81 , a three Judge Bench of the Hon''ble Supreme Court held that without evidence of demand and acceptance, a conviction is not possible under Sections 7 and 13(1)(d) read with 13(2) of the P.C. Act. The Hon''ble Supreme Court further held that acceptance of illegal gratification is a pre-condition for applying the presumption under Section 20 (1) of the P.C. Act.

8. The complainant examined as PW1 has given definite and consistent evidence proving the allegations contained in Ext. P1 complaint made by him and also in the final report submitted by the VACB. PW4 is his partner in business. But his evidence does not give any support to the prosecution or the defence. Of course, it is true that there is no other evidence than that of the complainant to prove the alleged demand. As regards acceptance, there is no dispute. The defence has practically

admitted acceptance of money on 29.5.2003. It has come out in evidence that the complainant and his partner took possession of the room No. 5 unauthorisedly from one V.K. Soman. When they continued their unauthorised occupation, running an Electroplating Industry therein, and when the Estate Manager came to know of it, they were threatened by the Estate Manager that they would be evicted, and that the matter would be reported to the higher authorities. On this aspect, the complainant has given definite evidence. He also affirmed in evidence that as a reward for not taking steps to evict him, the Estate Manager demanded an amount of Rs. 2000/-. In the peculiar circumstances, he paid an amount of Rs. 500/- on 15.5.2003, but the Estate Manager was not satisfied with the amount, and he made demand for the balance amount of Rs. 1500/-. He stated in evidence that he was directed by the Estate Manager to come on 29.5.2003 with the balance amount. It was in such situation, he made a complaint before the VACB The complainant and the trap witness examined as PW1 and PW6, and also the Detecting Officer examined as PW7, have given definite and consistent evidence regarding the pre-trap and the post-trap procedures. The amount of Rs. 1500/- (3x500 currency) brought by the complainant was received as per Ext. P6 entrustment mahazar, and phenolphthalein was applied on all the currency notes. Phenolphthalein test was also demonstrated to the complainant and the trap witness, by the Detecting Officer. All these aspects are spoken to by them in detail. PW1 stated that as instructed by the vigilance, he approached the accused at about 1.20 p.m. on 29.5.2003 and made payment of the tainted money when he made demand again. Within no time, he came out and gave signal, on which the Dy. S.P. and his team reached there, seized the phenolphthalein tainted currency from the possession of the accused, and arrested him. All the post-trap procedures are contained in Ext. P7 mahazar prepared on the spot. The Detecting Officer and also the trap witness have given definite evidence proving the trap procedures, which is explained in Ext. P7 detection mahazar.

9. The evidence of PW6 is that after demonstrating the required phenolphthalein test to the complainant and to him, the complainant was instructed by PW7 to approach the accused and make payment on demand. He and the complainant proceeded to the office, followed by the vigilance team. He remained outside, and the complainant went inside and made payment. On getting signal, the police rushed to the office of the accused, seized the phenolphthalein tainted currency, and arrested the accused on the spot. This evidence of PW6 stands not in any manner discredited. In fact, this evidence need not be discussed in detail because seizure of the MO1 series from the possession of the accused is practically admitted by the defence. The evidence of PW6 is only regarding the process of recovery, and nothing else. The essential aspect of demand is proved only by the evidence of the complainant. He has also proved payment of Rs. 500/- on 15.5.2003. To disprove the case on this aspect, the defence examined DW2. The defence case is that on 15.5.2003, the accused was away from the office for some other purpose. But the

evidence of DW2 will show that the accused left the office on 15.5.2003 only at about 3 p.m.

10. The complainant affirmed in evidence that an amount of Rs. 500/- was paid by him on 15.5.2003, as demanded by the accused for making transfer of the room No. 5 in his favour, and that the balance amount was paid on 29.5.2003.

11. As already observed and found, seizure of the tainted money from the possession of the accused by PW7 as per Ext. P7 recovery mahazar is well proved by the evidence of PW6, PW7 and the complainant. Thus, I find that the prosecution has well proved the essential elements in this case for a prosecution under Sections 7 and 13(1)(d) read with 13(2) of the P.C. Act. Demand, which is the sine qua non for a prosecution under Section 7 of the P.C. Act, is well proved by the complainant himself, whose evidence stands not in any manner discredited, and the other essential element of acceptance is proved by him, the trap witness, and the Detecting Officer.

12. It is well settled that once acceptance of anything illegal is proved, the court will have to apply the presumption under Section 20 (1) of the P.C. Act. Of course, it is true that what is presumed under law is not the guilt of the accused. What is presumed is only that the amount was received by the accused as a reward as mentioned in Section 7 of the P.C. Act. Now let me see whether the accused has to any extent, succeeded in rebutting the presumption under the law. He examined DW1 and DW3 to prove his case that the Estate Manager is competent to receive fee for transfer of building. DW1 says in evidence that transfer of room can be made if necessary fee is paid by the applicant, but the fee can be received only after the allotment is made. DW1 or DW3 has no case that the required fee can be received in instalments. It has come out in evidence that the fee required for transfer of room is Rs. 5000/-. But what the accused received from PW1 is only Rs. 1500/-. It was submitted by the learned counsel that the fee could be paid in instalments. But this is not brought out from the evidence of DW1 or DW3. DW3 has in fact given evidence that the whole amount will have to be paid in lump and he does not say that the fee can be paid or received in instalments. There is nothing to show that there was any order transferring the room No. 5 to the complainant. It has come out in evidence that the required fee for transfer can be received only after the allotment of the room is made by the Manager. There is nothing to show that any such order was passed by the Manager in favour of the complainant. This means that the complainant had no reason or occasion to make payment of the fee fully or in instalment, on 29.5.2003. When instalment payment is not possible, the accused has no explanation why or how he happened to receive Rs. 1500/- from the complainant, when the required fee is Rs. 5000/-. I find that the accused has miserably failed in rebutting the presumption under Section 20 (1) of the P.C. Act. There is yet another aspect. Even while contending that the amount received was in fact the fee, the accused has no explanation why a false complaint was made

against him by the complainant, or why the complainant made use of the fee to arrange a trap against him. Once acceptance of illegal gratification is well proved, the prosecution can avail the benefit of Section 20 (1) of the P.C. Act, and once the accused failed to rebut the presumption, the said legal presumption will lead to a finding of guilty, when evidence is definite and consistent in proving the essentials. Here, I find that the whole prosecution case is well proved by the evidence of the complainant, the trap witness and the Detecting Officer.

13. Ext. P4 is the prosecution sanction granted in this case under Section 19 of the P.C. Act. This sanction stands well proved by the evidence of PW2. He was the Managing Director of SIDCO at the relevant time, and he was the person competent to remove the accused from service. In the said capacity he granted Ext. P4 sanction, and his evidence is that he granted the sanction on a consideration of all the relevant materials and aspects, and also on an independent application of his mind. He denied the suggestion made from the defence that it was mechanically granted and he simply put his signature on the sanction produced by the vigilance. His evidence satisfies the court that Ext. P4 sanction was properly and legally granted by him, and the sanction stands well proved in evidence.

14. In view of the findings above, I find that this appeal is liable to be dismissed. Demand alleged by the complainant stands well proved by his own evidence and acceptance also stands well proved. Acceptance of Rs. 2000/- as a reward for making transfer of room No. 5 in the name of the complainant is well proved in this case. This will constitute acceptance of illegal gratification as mentioned under Section 7 of the P.C. Act. I find that the prosecution has well proved the case beyond reasonable doubt and the conviction is only to be confirmed in appeal. Now as regards sentence, I find the necessity of some interference. The sentence imposed by the court below is rigorous imprisonment for three years under Section 7 of the P.C. Act and rigorous imprisonment for four years under Section 13(1)(d) read with Section 13(2) of the P.C. Act. The offence was detected in May, 2003 and now we are in 2015. Considering the long lapse of 13 years taken for the prosecution process, and also considering the other facts and circumstances, I feel that the minimum sentence of rigorous imprisonment for one year will meet the ends of justice. However, the fine sentence can be maintained. Subject to this modification in sentence, the conviction can be confirmed in appeal.

In the result, this appeal is allowed in part to the very limited extent of modifying and reducing the sentence imposed by the trial court. The conviction made by the trial court against the appellant under Section 7 and 13(1)(d) r/w 13(2) of the P.C. Act will stand confirmed. However, the sentence imposed by the court below will stand modified and reduced to rigorous imprisonment for one year each under Sections 7 and 13(1)(d) read with 13(2) of the P.C. Act. The fine sentence, with the default sentence thereon, imposed by the court below is maintained.