IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 24TH DAY OF MAY 2024 / 3RD JYAISHTA, 1946

CRL.A NO. 584 OF 2016

AGAINST THE JUDGMENT DATED 31/5/2016 IN CC NO.2 OF 2015 OF SPECIAL JUDGE(SPE/CBI CASES)-III, ERNAKULAM

APPELLANT/ACCUSED:

BHARAT RAJ MEENA
S/O SRI RAMDEV MEENA, AGED:43 YEARS, RESIDING AT WARD NO. 12, KHANPOLE GATE, NAINWA, DISTRICT-BUNDI (RAJASTHAN)-323801

BY ADVS.
ABRAHAM P.MEACHINKARA
P.MURALEEDHARAN(K/209/1984)
ALEXANDER K.C.(K/1057/2021)
MARGERET K. JAMES(K/1764/1995)
JAYAKRISHNAN P.R.(K/1659/2020)
THOMAS GEORGE(K/1723/2021)

RESPONDENT/COMPLAINANT:

CENTRAL BUREAU OF INVESTIGATION,
ACB, KOCHI, ERNAKULAM BY STANDING COUNSEL, HIGH COURT OF KERALA - 682031

BY ADVS.
SRI.SREELAL WARRIAR, SC, C.B.I.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20.05.2024, THE COURT ON 24.05.2024 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

This appeal has been preferred by the accused in CC No.2/2015 on the file of Special Judge, (SPE/CBI) III Ernakulam (for short, 'the trial court') challenging the judgment dated 31/5/2016 convicting and sentencing him under Sections 7 and 13(2) r/w 13(1)(a) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act').

2. The appellant Bharat Raj Meena was working as Divisional Security Commissioner, Railway Protection Force, Palakkad. The case of the prosecution in short is that, while the appellant was working as public servant in the above capacity, from April 2005 to July 2005, he demanded and accepted an amount of ₹10,000/- each from PW8 C.P.Johnny, PW9 I.K.Girish Kumar and PW11 C.Mohana Krishnan through PW6 Anantha Narayanan as illegal gratification for effecting their transfers.

3. The genesis of the case is as follows:

One Sri.P.P.Nandakumar, Clerk in DSC Office, Palakkad preferred a complaint alleging demand of bribe of ₹10,000/- by

the appellant through PW6 Anantha Narayanan, Constable/RPF Coimbatore, for getting complainant's posting in Palakkad area following his medical decategorization from RPF and subsequent absorption in alternative post as clerk in Personnel Branch under DRM Office, Palakkad. Based on the said complaint, the Superintendent of Police, CBI/ACB, Kochi registered FIR vide No.RC19(A)/2005/KER/CBI under Sections 7 and 12 of the PC Act against the appellant and PW6 on 4/8/2005 and entrusted the investigation of the case to PW12. Thereafter, one Dy.S.P., CBI/ACB, Kochi, Sri. Nandakumar Nair and his team laid a trap on the same day itself and at the instance of Dy.S.P./Trap Laying Officer aforesaid, tainted money of bribe was handed over by complainant Sri.P.P.Nandakumar to PW6 which together with some alleged bribe money in an envelope and personal cash and diaries were recovered from PW6 who was then arrested by CBI team. Thereafter, PW12, the investigation officer, after the investigation of CBI case RC19(A)/2005/CBI/KER dated 4/8/2005 registered based on the original complaint dated 4/8/2005 of Sri.P.P.Nandakumar filed three separate final reports on 31/7/2006 bearing Nos.04/SK/19/A/05/KER, 05/SK/19/A/05/KER and 06/SK/19/A/05/KER, before the Court of Special Judge-II, CBI,

Kochi for prosecution of the accused under Sections 7 and 13(1)(d), Section 7 and 13(1)(d) and Sections 7 and 13(1)(a) of the PC Act respectively following tender of pardon of the principal accused PW6 and PW7 Abdul Gafoor from the Court of Chief Judicial Magistrate, Ernakulam. The final report Nos.04/SK/19/A/05/KER and 05/SK/19/A/05/KER against the appellant were then taken up as CC No.2/2014 and CC No.3/2014 respectively by the trial court. The third final report No.06/SK/19/A/05/KER was quadrifurcated into four cases by the trial court under Section 219 of Cr.P.C. while framing the charges. The said cases after splitting up were then taken up as CC No.4/2014, CC No.2/2015, CC No.3/2015 and CC 4/2015 for trial. Thereafter, the trial court framed charges against the appellant in all the above six cases on 26/10/2015. The trial in all cases commenced simultaneously.

4. In CC No.2/2015 which is the subject matter of this appeal, PWs 1 to 12 were examined and Exts.P1 to P39 series were marked on the side of the prosecution. DWs1 to 4 were examined and Exts.D1 to D25 were examined on the side of the defence. After trial, the appellant was found guilty and he was convicted for the offence under Sections 7 and 13(1)(a) r/w 13(2)

of the PC Act. He was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹25,000/- each, in default to suffer simple imprisonment for three months each for the offence under Section 7 of PC Act, 1988 committed against each of PWs8, 9 and 11 and further sentenced him to undergo rigorous imprisonment for two years and to pay a fine of ₹1 lakh in default to suffer simple imprisonment for six months each for the offence under Section 13(2) r/w 13(1)(a) of the PC Act. The substantive sentence was ordered to be run concurrently. Challenging the said conviction and sentence, the appellant preferred this appeal.

5. I have heard Dr.Abraham P.Meachinkara, the learned counsel for the appellant and Sri.Sreelal N.Warrier, the learned standing counsel for the CBI.

6. The learned counsel for the appellant impeached the finding of the trial court on appreciation of evidence and resultant finding as to the guilt. The learned counsel submitted that there is absolutely no legal evidence to prove the demand and acceptance of bribe by the appellant from PWs8, 9 and 11 to constitute the offence under Sections 7 and 13(1)(a) of the PC Act. The learned counsel further submitted that the evidence of

PWs6, 8, 9 and 11 is not at all reliable and insufficient to connect the appellant with the crime. The counsel also submitted that without any proof of receipt of bribe by the appellant, the trial court wrongly drew presumption under Section 20 against the appellant. There is no valid sanction to prosecute the appellant, added the counsel. On the other hand, the learned standing counsel appearing for CBI supported the findings and verdict handed down by the trial court and submitted that the prosecution has succeeded in proving the case beyond reasonable doubt.

7. First, I shall deal with the contention regarding lack of sanction. The learned counsel for the appellant submitted that Ext.P7 sanction to prosecute the appellant was not proved in accordance with law. According to the learned counsel, the sanction for prosecution was accorded by the sanctioning authority without considering the relevant documents and applying its mind. The counsel further submitted that the sanctioning authority was not examined to prove Ext.P7 sanction order.

8. Section 19(1) of the PC Act says that no court shall take cognizance of an offence punishable under Sections 7, 10,

11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority referred to in sub-sections (a), (b) and (c). The question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duties. The purpose of obtaining sanction is to see that the public servant is not entangled in false and frivolous cases. The grant of sanction is not a mere formality but a solemn act which affords protection to the government servant against frivolous prosecution. All the relevant records and materials for the grant of sanction must be made available to the sanctioning authority, which must undertake complete and conscious scrutiny of those records and materials independently applying its mind before deciding whether to grant sanction or not. The order of granting or declining sanction should reflect that the sanctioning authority was furnished with all relevant facts and materials and applied its mind to all those materials. The validity of the sanction would therefore depend upon the materials placed before the sanctioning authority and on the application of mind by the sanctioning authority to those materials and facts of the case. On going through the materials and facts, the sanctioning authority

has to apply its own independent mind to generate genuine satisfaction whether the prosecution has to be sanctioned or not When the order granting or declining sanction is challenged before a court, the court must determine whether there has been an application of mind on the part of the sanctioning authority concerned with the materials placed before it. The order of sanction must ex facie disclose that the sanctioning authority had considered the facts and all relevant materials placed before it (See *Central Bureau of Investigation v. Ashok Kumar Aggarwal* (2014) 14 SCC 295, *Mansukhlal Vithaldas Chauhan v. State of Gujarat* 1997 KHC 1065 and *CBI v. Ashok Kumar Aggarwal* 2013 KHC 4983).

9. The appellant is a Class I officer under the Central Government. So, the sanction order has to be issued under Article 77(2) of the Constitution of India. The Minister of Railways is the competent authority for granting sanction for prosecution of the accused on behalf of the President of India. The formal order of the prosecution has to be signed and issued by the designated authority of the concerned Ministry. Here, PW5, the Director of the Ministry of Railway, New Delhi has signed the sanction order, Ext.P7. Ext.P7 would show that the sanction was

accorded by the Minister of Railways. Ext.D16 series is the copy of the file maintained at the Railway Board relating to the sanction granted to prosecute the appellant. DW4 was the Joint Director of Vigilance, Recruitment and Security (R&SC). He was examined to prove Ext.D16 series. Relying on the evidence of DW4 and the recital in paragraph 8 of page 9 of Ext.D16 series, the learned counsel for the appellant argued that important documents including the FIR were not forwarded to the Ministry of Railways at the time when the sanction for prosecution was sought. Since the material documents pertaining to the case were not forwarded to the sanctioning authority, Ext.P7 sanction order is vitiated, submitted the counsel. DW4 indeed deposed that 52 documents including FIR were not there when the file was transmitted to the Chief Vigilance Commissioner (CVC) for sanction. However, the recital in page 8 of Ext.D16 series would show that the Minister of Railways has made an endorsement that he has accorded sanction after going through the investigation report of the case No.RC19(A)2005/CBI/KER as well as all other relevant records. At any rate, the original case file contains copies of all the relevant records in respect of the case. On going through the entire evidence of DW4 and perusing

Ext.D16 series, the trial court found that there is every reason to believe that even if the documents were not there at the time when DW4 forwarded the file to the CVC, the documents were there at the time when the Ministry of Railways perused the same. On analysis of the evidence, the trial court found that the Minister of Railways has accorded sanction after considering the facts of the case and perusing the entire documents in respect of the case. I see no reason to take a different view.

10. So far as the contention raised by the appellant regarding the non examination of the Minister of Railways who granted the prosecution sanction is concerned, PW5 who was examined to prove the sanction was the Director of the Ministry of Railway and he signed the sanction as per the Rules of Business. The Supreme Court of India in *State of Madhya Pradesh v. Jiyalal* (AIR 2010 SC 1451) has held that there is no requirement to examine the authority who gave the sanction to prove the sanction order. In *State through Inspector of Police A.P. v. K.Narasimhachary* (AIR 2006 SC 628), it was held that an order of valid sanction can be proved either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or by adducing evidence aliunde

to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. It is evident from Ext.P7, Ext.D16 series and also the evidence of PW5 and DW4 that the sanctioning authority has applied its mind to the facts of the case and the materials placed before it. That apart, Section 19(3)(a) of the PC Act says that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity the sanction required under sub-section (1) unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. There is no proof, much less a case for the appellant that a failure of justice has been caused to him Hence, the submission of the learned counsel for the appellant that there is no valid sanction for prosecution must fail.

11. The prosecution mainly relied on, and the trial court accepted the oral testimony of PWs6, 8, 9 and 11 to prove its case and to fix the culpability on the accused. As stated already, the prosecution allegation against the appellant in this case is that the appellant demanded and accepted the bribe of ₹10,000/- each from PWs8, 9 and 11 through PW6 for making the transfer

of their choice and for issuing the transfer order. Going by the prosecution version, it was PW6 who accepted bribes from PWs8, 9 and 11. He was initially arrayed as the 2nd accused. Thereafter, he was granted pardon by the Chief Judicial Magistrate Court under Section 306 of Cr.P.C and made as an approver. PW6 gave evidence that the appellant directed him to meet PWs8, 9, 11 and one Abdul Rehman, Sankara Narayanan and Rajendran and to inform them that they should pay ₹10,000/- each for getting the transfer. According to him, when they met the aforesaid persons, they said that they would give something if they were given transfer. He further deposed that after passing the transfer order, the appellant again directed him to collect the money from the above persons and when he contacted them, Abdul Rehman alone gave ₹5,000/- and others including PW8, 9 and 11 told that they would give the money later. He further deposed that the appellant before proceeding on leave directed him to collect the balance amount from Abdul Rehman and the entire amount from others. He asserted that thereafter he approached PWs8, 9 and 11 and they gave ₹10,000/- each as a reward to the appellant for effecting the transfer. PWs8, 9 and 11 gave evidence corroborating the evidence given by PW6. All of them deposed

that PW6 demanded, and they paid an amount of ₹10,000/- each as a reward to the appellant for effecting their transfer. This is the evidence available to prove the alleged demand and acceptance of illegal gratification.

12. It is trite that proof of demand and acceptance of illegal gratification by a public servant is a pre-requisite to establish the guilt of the accused/ public servant under Section 7 of the PC Act. Indeed, proof of demand and acceptance of illegal gratification by a public servant can also be proved by circumstantial evidence in the absence of direct, oral and documentary evidence [See *Neeraj Dutta v. State (Govt. of NCT of Delhi* (2023) 4 SCC 731]. Recently, the Supreme Court in *Jagtar Singh v. State of Punjab* (AIR 2023 SC 1567) reiterated the principle that the demand of illegal gratification, at least by circumstantial evidence, is *sine qua non* to attract the offence under Section 7 or 13(1)(d)(i) and (ii) of the PC Act. Section 13(1)(a) of the PC Act provides that the prosecution is obliged to prove that the accused accepted or obtained or agreed to accept or agreed to obtain any gratification as a motive or reward as contemplated under Section 7 of the PC Act. Thus, the demand and acceptance by the public servant for illegal gratification must

be independently proved by the prosecution as a fact in issue to establish the guilt under Section 7 or 13(1)(a) of the PC Act.

13. PWs8, 9 and 11 categorically stated in their depositions that no demand was ever made by the appellant to them. Nor did they have a case that they paid the alleged bribe money to the appellant. On the other hand, it is their version that PW6 told them that the appellant asked him to collect money from them and believing the said words, they paid the money to PW6 to hand over to the appellant for effecting their transfers. There is no independent evidence or circumstance to suggest that PW6 demanded and accepted ₹10,000/- each from PW8, PW9 and PW11 as alleged by the prosecution at the instance of the appellant. Such a piece of crucial evidence to connect the appellant with the demand and acceptance of bribe is lacking. At this juncture, it is relevant to note that the definite case of the defence is that PW6 and Abdul Gafoor who were posted under the DSC, Palakkad office for a long period might have falsely used his name from the gullible subordinate staff. PW6 has indeed given evidence that the appellant instructed him to meet PWs8, 9 and 11 and inform them that they have to pay ₹10,000/- for getting the transfer and accordingly collected the amount from them and

dealt with in the manner as per the instruction of the appellant. But the evidence of PW6 cannot be relied on without corroboration since he is an accomplice turned approver. The combined effect of Section 133 and Illustration (b) to Section 114 of the Indian Evidence Act is that though conviction of an accused on the testimony of an accomplice is not illegal, the court, as a matter of practice, will not ordinarily accept his evidence without corroboration in material particulars. The nature and extent of corroboration required of course must necessarily vary with the circumstances of each case and particular circumstances of the offence alleged in each case. There need not be independent confirmation of every material circumstance in the sense that the independent evidence in the case apart from the evidence of the accomplice should, in itself, be sufficient to sustain conviction. What is required is there must be some additional evidence rendering probable that the evidence of the accomplice is true, and it is reasonably safe to act upon it to hold that the accused has committed the crime. Here is a case where the trial court relied on the evidence of the bribe givers, PWs8, 9 and 11, to corroborate the evidence of the accomplice who is a bribe obtainer. A person who offers bribe in order to get his work done

and complains to the police is an accomplice in respect of the crime committed [See *M.O.Shamsudhin v. State of Kerala* (1995) 3 SCC 351]. Thus, to act upon the evidence of the approver, the trial court relied upon the evidence of other accomplices. One accomplice cannot corroborate another. The corroboration of the evidence of accomplices, if any, must come from independent source. There is no other independent material evidence on record to prove the demand and acceptance of bribe by the appellant through PW6. There are also no other circumstances to suggest that the demand and acceptance of bribe done by PW6 was for and on behalf of the appellant or at the instance of the appellant. As stated already, in the absence of demand and acceptance of illegal gratification at least by circumstantial evidence, conviction under Section 7 or 13(1)(a) of the PC Act will not lie. In the absence of any proof or demand or acceptance of bribe, the presumption under Section 20 of the PC Act cannot be drawn.

14. The evidence of PW6 is that he obtained ₹10,000/- each from PWs8, 9 and 11 in this case, ₹5,000/- each from PWs5 and 6 in CC No.4/2014, and this total amount of ₹40,000/- was spent allegedly in depositing ₹26,975/- towards LIC premium of

the appellant and ₹5,000/- was given to PW4 Nishil, Constable RPF, Palakkad for purchasing material for making a cot for the appellant as instructed by him. The evidence of PW2, the Branch Manager, LIC, Palakkad and Ext.P4 copy of the extract of the cash book dated 27/4/2005 in respect of the policy of the appellant would show that the premium amount of ₹26,975/- was paid on 27/4/2005. The evidence of PW8 would show that he paid ₹5,000/- each to PW6 in June 2005 and July 2005. The evidence of PW11 would show that he paid the money to PW6 either in May or June or in July, 2005. Thus, it was quite unlikely that the amount allegedly collected by PW6 from PWs8, 9 and 11 was utilized for payment of LIC premium. That apart, even though the evidence on record would establish that the LIC premium was paid on 27/4/2005, PW6 consistently took the stand in his statements recorded under Sections 161, 164 and 306 of Cr.P.C. that the LIC premium was paid on 8/5/2005.

15. To conclude, though there is evidence to prove the demand and acceptance of bribe by PW6 from PWs8, 9 and 11, however, evidence is lacking to prove that the said demand and acceptance was done by PW6 for and on behalf of or at the instance of the appellant. In short, there is no sufficient legal

evidence to prove the demand and acceptance of illegal gratification by the appellant to attract the offence under Section 7 or 13(1)(a) of the PC Act. Hence, the conviction and sentence of the appellant cannot be legally sustained.

16. In the light of the above findings, the conviction and sentence of the appellant vide the impugned judgment are hereby set aside. The appellant is acquitted of all the charges levelled against him. His bail bond is cancelled.

The appeal stands allowed as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp