NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 192 of 2015
(S.L.P (Crl.) No.9835 of 2014)

C. SUKUMARAN **….APPELLANT**

VS.

STATE OF KERALA **…..RESPONDENT**

J U D G M E N T

V.GOPALA GOWDA, J.

Leave granted.

2. This appeal is filed by the appellant against the impugned judgment and order dated 22.05.2014 passed by the High Court of Kerala, at Ernakulam in Criminal Appeal No.108 of 2001, whereby the High Court has partly allowed the appeal of the appellant and upheld the order of conviction recorded by the Court of Ld.

Enquiry Commissioner and Special Judge, Thiruvananthapuram, vide its judgment and order dated 30.01.2001 in C.C No. 63 of 1999 and convicted the appellant for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') with rigorous imprisonment for a period of one year and a fine of Rs.10,000/- and in default of payment of fine, to further undergo six months simple imprisonment.

3. For the purpose of considering the rival legal contentions urged on behalf of the parties in this appeal and with a view to find out whether this Court is required to interfere with the impugned judgment of the High Court, the necessary facts are briefly stated hereunder:

It is the case of the prosecution that the appellant, who was the "station writer" at the Fort Police Station, Thiruvananthapuram, demanded a sum of Rs.1500/- from the complainant PW2, for releasing certain articles belonging to him, which were taken into custody by the police. PW2 was the surety to an

accused in a criminal case pending before the Judicial First Class Magistrate-II, Thiruvanathapuram and since the accused in that particular case had absconded, PW2 was ordered to pay Rs.3000/- as penalty and a warrant was issued against him in this regard. Therefore, he was apprehended by the police and his personal belongings, including the bicycle, wallet, fountain pen, etc. were retained by the police. PW2 was subsequently released by the Magistrate, wherein he was given further time to remit the money. It is the case of the prosecution that when PW2 approached the police station on 09.12.1998, to get back his belongings, the station writer demanded an amount of Rs.1500/- as bribe for returning the articles which were seized by the police.

4. PW2 approached PW6, the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Special Investigation Unit, Thiruvanathapuram and gave a First Information Statement, upon which an F.I.R. was registered against the appellant. Thereafter, a trap was arranged by PW6 and the appellant was arrested for the offences punishable under Sections 7 and 13(1) (d)

of the Act. The Investigation Officer after completing all the formalities filed the final report before the Special Judge after framing the charges against the appellant. Several witnesses were examined and various documents were produced as evidence by the prosecution in support of the charges against the appellant.

5. The learned Special Judge on appreciation of the evidence on record found that the appellant was guilty of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act and thereby he had convicted and sentenced him with 3½ years of imprisonment each under Sections 7 and 13(1)(d) of the Act and further ordered that the sentence must run concurrently. Aggrieved by the judgment and order of the Trial Court, the appellant had preferred an appeal before the High Court, questioning the correctness of the same and urging various legal grounds. The High Court on re-appreciation of the evidence has partly allowed the appeal of the appellant. The High Court held that the conviction of the appellant under Section 7 of the Act is not warranted as the essential element

of demand of illegal gratification by the appellant, from the complainant, is not proved. However, the High Court has held that there is a strong evidence against the appellant under Section 13(1)(d) of the Act to show his culpability. The High Court further held that there is sufficient evidence to prove that PW2 had paid two decoy notes of Rs.100/- denomination to the appellant and he had voluntarily accepted the money as bribe from PW2. Hence, the appeal of the appellant was partly allowed and the conviction of the appellant under Section 7 of the Act was set aside. However, his conviction under Section 13(1)(d)read with Section 13(2)of the Act was confirmed and the order of sentence was modified. Aggrieved by the judgment of conviction and sentence, this appeal has been filed by the appellant, urging certain legal grounds for setting aside the judgment and order of conviction and sentence imposed upon him.

6. It is the contention of the learned counsel on behalf of the appellant that both in the First Information Statement and in the F.I.R, the name of the appellant is not mentioned, specifically, in regard to

the demand of the bribe made by him from the complainant PW2. However, it is specifically mentioned in the complaint that the person who had demanded the bribe was the "station writer" of the Fort Police Station. It has been further contended by the learned counsel for the appellant that the appellant has never been assigned the work of the "station writer" at the police station and further urged that the prosecution has failed to produce any documentary evidence to prove the same against the appellant to substantiate the charge against him.

7. It is further contended by the learned counsel that the *de-facto* complainant had deposed before the Special Judge in this case that one Ajith, was the "station writer" of the Fort Police Station, who had demanded the bribe from him for the return of the seized articles to him. It is further stated that PW4, who is the Sub-Inspector of the Fort Police Station had deposed that there was an "additional station writer" named Ajith in the police station, which was not considered by the courts below while recording the findings of the guilt of the appellant on the charges

framed against him.

8. It has been further contended by the learned counsel on behalf of the appellant that as per the complaint, Rs.1500/- was allegedly demanded by the appellant as bribe money from the complainant. However, the money allegedly paid and recovered from the appellant was only Rs.200/-. Hence, there is a huge disparity between the money allegedly demanded and paid to the appellant by the complainant.

9. Further, it is contended that there existed several contradictions in the deposition of the other prosecution witnesses, particularly, PW1 and PW2, who are the star witnesses of the prosecution case, as they did not subscribe to the prosecution version of the story at all. It has been further contended that the prosecution had only examined nine out of the 16 witnesses mentioned in the charge sheet. Further, the conviction and sentence was imposed for the alleged offence under Section 13(1)(d) read with Section 13 (2) of the Act by the High Court without considering the relevant aspect of the case that in the absence of

demand of gratification, the charge under Section 13(1)(d) of the Act is wholly unsustainable in law.

10. On the other hand, it has been contended by the learned counsel on behalf of the respondent that the appellant is the station writer of the Fort Police Station, a fact which has been stated by the prosecution witnesses in the case, which has been upheld by both the Trial Court as well as by the High Court on proper appreciation of the evidence on record.

11. It has been further contended by the learned counsel that the trap laid down by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Special Investigation Unit, Thiruvanathapuram, had resulted in the capturing of the appellant and the phenolphthalein test was conducted then and there itself. The result of the test was positive for each one of the Rs.100/- notes. It has been further contended by him that a sample of the appellant's shirt was also taken as evidence as he had kept the notes in his pocket. The test result for the same was also found to be positive. Further, when the trap was being laid

to catch the appellant, PW2 was specifically told by the officer of the Vigilance and Anti-Corruption Bureau, Special Investigation Unit to handover the bribe-money to the appellant only when he would ask for the same. Hence, the appellant would have received the money only when he would have asked for the same and therefore, there was demand and acceptance on the part of the appellant.

12. On the basis of the aforesaid rival legal contentions urged on behalf of the parties, we have to find out whether the concurrent findings on the charge under Section 13(1)(d) of the Act, recorded by the High Court against the appellant is legal and valid and whether the judgment and order of conviction and sentence under Section 13(2) of the Act, imposed upon the appellant by the High Court, warrants interference by this Court.

13. With reference to the abovementioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of fact on the charge made against the

appellant. It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sections 7 and 13(1)(d) of the Act that the demand of illegal gratification by the accused is the *sine qua non* for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution.

14. In the present case, as has been rightly held by the High Court, there is no demand for the illegal gratification on the part of the appellant under Section 7 of the Act. Therefore, in our view, the question of acceptance of illegal gratification from the complainant under the provision of Section 13(1)(d) of the Act also does not arise. The learned Special Judge has come to the erroneous conclusion that the appellant had received the money and therefore he had recorded the finding that there was demand and acceptance of the bribe money on the part of the appellant and convicted and sentenced the appellant.

However, the High Court on re-appreciation of evidence on record has held that the demand alleged to have been made by the appellant from the complainant PW2, was not proved and that part of the conviction and sentence was rightly set aside in the impugned judgment. However, the High Court has erroneously affirmed the conviction for the alleged offence under Section 13(1)(d) read with Section 13(2) of the Act, although as per law, demand by the appellant under Section 7 of the Act, should have been proved to sustain the charge under Section 13(1)(d) of the Act.

15. Further, the fact that out of Rs.1500/- that was allegedly demanded as bribe money from the complainant, an amount of only Rs.250/- was paid by him, out of which the appellant allegedly managed to return Rs.50/- to the complainant, since he had no money left, makes us pause and ponder over the facts and circumstances of the case and casts a serious shadow of doubt on the sequence of events as narrated by the prosecution.

16. Further, none of the prosecution witnesses have actually deposed in the case that the appellant was the

person who had demanded and accepted the bribe from the complainant and since PW2 has materially turned hostile, therefore, neither the demand aspect nor the acceptance of the bribe money can be verified from any other witnesses of the prosecution. Further, PW1 in his deposition before the Special Judge has also not supported the case of the prosecution, as he had refused to acknowledge the ownership of the tea shop, on the premises of which the bribe money was allegedly accepted by the appellant from the complainant. Hence, it is safe to say that the prosecution has failed to prove beyond any reasonable doubt that the appellant had accepted the illegal gratification from the complainant under Section 13(1)(d) of the Act. In support of the same, the learned counsel on behalf of the appellant has rightly placed reliance upon the decision of this Court in ***B. Jayaraj*** *v.* ***State of A.P.***[1]**,** which reads thus:-

> "8. ……there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold

[1] (2014) 13 SCC 55

> that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(*d*)(*i*) and (*ii*) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established"
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> (emphasis laid by this Court)

17. Now, coming to the legality of the conviction of the appellant under Section 13(2) of the Act by the High Court in its judgment, the same cannot be allowed to sustain in law, as the prosecution has failed to prove the demand of illegal gratification made by the appellant from the complainant and acceptance of the bribe money by the appellant. Further, the phenolphthalein test cannot be said to be a conclusive proof against the appellant, as the colour of the solution with regard to the other samples were pink and had remained so throughout. However, the lime solution

in which the appellant's hands were dipped in, did not show the same pink colour. The reason assigned by the Trial Court is that the colour could have faded by the lapse of time. The said explanation of the Trial Court cannot be accepted by us in view of the fact that the colour of the other samples taken by the Investigation Officer after the completion of the trap laid against the appellant had continued to retain the pink colour. Moreover, the sample of the shirt worn by the appellant which was produced before the Trial Court did not show any colour change on the shirt's pocket section, where the bribe money was allegedly kept by him after the complainant had allegedly given him the bribe money.

18. Thus, on a careful perusal of the entire evidence on record along with the statement of the prosecution witnesses, we have to hold that the prosecution has failed to satisfy us beyond all reasonable doubt that the charge levelled against the appellant is proved.

19. The decision of this Court referred to supra upon

which the learned counsel for the appellant has rightly placed reliance upon and the ratio laid down in the above case, aptly applies to the fact situation on hand and therefore, we have to grant the relief to the appellant by allowing this appeal.

20. For the aforesaid reasons, the appeal is allowed. Since, the charge against the appellant is not proved, the conviction and sentence imposed upon the accused-appellant by the High Court under Section 13(1)(d) read with Section 13(2) of the Act is set aside. The jail authorities are directed to release the appellant forthwith, if he is not required to be detained in any other case.

.....J.
[V. GOPALA GOWDA]

.....J.
[R. BANUMATHI]

New Delhi,
January 29, 2015