



2025:KER:58500

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 5TH DAY OF AUGUST 2025 / 14TH SRAVANA, 1947

CRL.MC NO. 6594 OF 2025

CRIME NO.2/2013 OF VACB, THIRUVANANTHAPURAM, Thiruvananthapuram

CC NO.17 OF 2018 OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE

(VIGILANCE), THIRUVANANTHAPURAM

PETITIONER/2ND ACCUSED:

SIVAKUMAR, AGED 42 YEARS,
SON OF LATE S.ARUMUGHAM, RESIDING AT DRS HOUSE,
KONNAVILAKATH, PAZHAKUTTY (P.O), NEDUMANGAD,
THIRUVANANTHAPURAM DISTRICT, FORMERLY WORKING AS L.D
CLERK, VENGANOOR GRAMA PANCHAYATH, NEYYATTINKARA,
PIN - 695561.

BY ADVS.
SRI.R.BINDU (SASTHAMANGALAM)
SRI.G.RAJAGOPAL (KUMMANAM)
SRI.R.JAYAKRISHNAN
SHRI.AJAY T.S.

RESPONDENTS/COMPLAINANT AND STATE:

- 1 THE SUPERINTENDENT OF POLICE
VIGILANCE & ANTI CORRUPTION BUREAU, SOUTHERN RANGE,
THIRUVANANTHAPURAM, PIN - 695010.
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.

SPECIAL PUBLIC PROSECUTOR, VACB SRI RAJESH.A,
SENIOR PUBLIC PROSECUTOR, VACB SMT.REKHA.S

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
25.07.2025, THE COURT ON 05.08.2025 PASSED THE FOLLOWING:



"C.R"

A.BADHARUDEEN, J.

Cr1.M.(C) No.6594 of 2025

Dated this the 5th day of August, 2025

ORDER

This Criminal Miscellaneous Case has been filed by the 2nd accused in C.C.No.17 of 2018 on the files of the Enquiry Commissioner and Special Judge (Vigilance), Thiruvananthapuram arising out of Crime No.2 of 2013 of VACB, Thiruvananthapuram. The prayer in this petition is to quash Annexure 2 final report, Annexure 3 court charge and all consequential proceedings in the above case.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the records.

3. In a nut shell the case of the prosecution is that Smt. Sasikumari, Mother of complainant M. Nishant Rajan filed five applications Viz., 3376/12, 3377/12, 3378/12, 3379/12, 3380/12 before Venganoor Grama Panchayat authorities on 01-06-2012 for regularizing and assigning building number to the sheds in her property in



Sy.No.305/15-2, 305/15-3, 304/10-1 of Venganoor Village. The 1st accused Sri. Sreekumaran Nair (Late), Former Panchayat Secretary, Venganoor Grama Panchayat and the 2nd accused Sri.Sivakumar, Former L.D.Clerk of Venganoor Grama Panchayat, both being public servants, while discharging duties in their official capacity was to process and take appropriate action on the above said applications. Instead, the 2nd accused in connivance with the 1st accused, demanded Rs.2000/- for himself and Rs.10,000/- for the 1st accused from the complainant as illegal gratification, for the discharge of their official duty of assigning building number on 11-01-2013. Subsequently on 17-01-2013 at around 19.30 Hrs. The 1st accused voluntarily accepted Rs.10,000/- and the 2nd accused voluntarily accepted Rs.2,000/- from the complainant as illegal gratification at house No.IX/438 owned by the complainant's mother, at Kovalam and thereby both accused committed offences U/s 7, 13(1)(d) r/w 13(2) of under the Prevention of Corruption Act, 1988 ('PC Act' for short) and Section 34 of the Indian Penal Code.

4. While challenging the final report as well as the charge framed by the Special Court for the above said offences, the point argued



by the learned counsel for the petitioner is that as per the prosecution records nothing available to see any demand of bribe by the 2nd accused, though there is an allegation that the 2nd accused accepted Rs.10,000/- as bribe for and on behalf of the 1st accused. Therefore, the entire prosecution would not yield and in such circumstances, the petition is liable to succeed.

5. Per contra, it is submitted by the learned Public Prosecutor that, in the instant case, going by the statement of the defacto complainant it is emphatically clear that there was demand for bribe by the 1st accused and the 2nd accused, and accordingly the same was accepted and in such a case whether the essential ingredients such as demand and acceptance are proved or not, is a matter of evidence. It is also submitted that in this case, in fact, the trial court on perusal of the prosecution records framed charge for the said offences finding that the matter would require trial and in such a case seeking quashment of the final report and court charge could not be considered and thus the petition would require dismissal.

6. Having considered the rival submissions, the point raised by the learned counsel for the petitioner to seek quashment of the final



report, court charge and consequential further proceedings is that there was no demand of bribe by the 2nd accused, a most essential ingredient to find him guilty under Section 7 r/w 13(1)(d) of the PC Act. In this connection it is relevant to refer to the FIS given by Nishant Rajan, who lodged a complaint on 15.01.2013 to the 1st respondent, a copy of the same is produced as Annexure 1. According to the defacto complainant, he had constructed a hotel-cum-resort in his 69 cent of property and he approached Venganoor Grama Panchayat for giving building number on 01.06.2012. Thereafter he visited the Panchayat office 2 to 3 times and demanded numbering of the building. But no number was assigned and no steps were taken in this regard. Accordingly his father informed that Panchayat had been denying numbering for getting money. Soon the complainant approached Venganoor Grama Panchayat, where he was familiar with Sivan Sir (who is the accused herein). Later, Sivan Sir informed him that, in order to assign number to the building, the Panchayat Secretary would inspect the building and the amount would be conveyed thereafter. The further statement of the defacto complaint is that thereafter the Panchayat Secretary along with Sivan Sir inspected the building at 2



p.m on 10.01.2013 and later Sivan Sir informed the complainant that Rs.15,000/- was to be given to Panchayat Secretary (A1) for numbering the building. On 11.01.2013, when the complainant telephoned Sivan Sir at 5 p.m, when he was at the railway station to go to Kollam, then the 2nd accused demanded Rs.10,000/- to be paid to the Secretary and he would inform the place and time for payment. Thereafter, Sivan Sir agreed to accept the amount on 11.01.2013 and it was thereafter he demanded a party, including hot items. Subsequently he accepted the bribe. *Prima facie*, bribe amount of Rs.10,000/- was demanded and accepted by the petitioner/2nd accused on the premise of giving the same to the 1st accused. Thus the ingredients to attract offences are well made out, *prima facie*. It is relevant to note that in the decision reported in ***Neeraj Dutta Vs State, (AIR 2023 SC 330)***, a 5 Bench of the Apex Court considered the essentials to be considered when the demand contemplated under Section 7 of the P.C Act is in question and held in paragraph 68 as under:

"68. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine



qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

*(i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*

*(ii) On the other hand, **if the public servant makes a demand** and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a **case of obtainment**. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.*



iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other



witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1) (d) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.”

7. Thus the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the P.C Act is extracted above. Regarding the mode of proof of demand of bribe, if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant. The



presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands. The mode of proof of demand and acceptance is either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant. In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law.

8. On reading the prosecution allegation with reference to



the judgment of the Apex Court, the plea of the petitioner to quash the final report, court charge and further proceedings could not succeed as the prosecution materials would show demand and acceptance of bribe by the accused in this case, *prima facie*, and in consequence thereof this petition would necessarily fail. Accordingly this petition is dismissed.

9. The interim order granted stands vacated.

10. It is specifically made clear that the observations in this order are for the purpose of deciding prayers in this petition and have no binding effect when considering the matter on merits by the trial court, on adducing evidence.

The Registry is directed to forward a copy of this order to the jurisdictional court for compliance and further steps.

Sd/-

A.BADHARUDEEN, JUDGE

rtr/



APPENDIX OF CRL.MC 6594/2025

PETITIONER' S ANNEXURES

- Annexure 1** TRUE COPY OF THE FIRST INFORMATION REPORT
DATED 15.01.2013.
- Annexure 2** CERTIFIED COPY OF THE FINAL REPORT DATED
15.12.2018 ALONG WITH THE SEIZURE MAHAZAR AND
DEPOSITION OF THE WITNESSES.
- Annexure 3** CERTIFIED COPY OF THE COURT CHARGE IN C.C
NO.17/2018 ON THE FILES OF THE COURT OF THE
ENQUIRY COMMISSIONER & SPECIAL JUDGE,
THIRUVANANTHAPURAM DATED 08.10.2024.