CASE NO.:
Appeal (crl.) 1122 of 2006

PETITIONER:
B. Noha

RESPONDENT:
State of Kerala and Anr

DATE OF JUDGMENT: 06/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 952 of 2006)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Kerala High Court upholding the conviction of the appellant for offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act')

The Enquiry Commissioner and the Special Judge, Thiruvananthapuram found the appellant guilty of the offences punishable as aforesaid, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.20,000/- with default stipulation in respect of the offence punishable under Section 7 of the Act. Further, the appellant was sentenced to undergo rigorous imprisonment for a period of 3 years for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act. The substantive sentences were directed to run concurrently.

Background facts in a nutshell are as follows:

The prosecution case against the appellant was that while the appellant was working as Health Inspector Grade-II, at Thirnmala Circle, Thiruvananthapuram City Corporation, he demanded and accepted an amount of Rs.l00/- from PW-1 on 27.11.1997 and a further amount of Rs.100/- on 6.1.1998 as illegal gratification and thereby committed the above offences. Earlier the officials of the Municipal Corporation including the accused removed the push cart belonging to PW-1 along with the articles to the office of the Corporation and for release of the articles and for sending the report to the Corporation, the accused demanded and accepted a sum of Rs.200/- from PW-1. For the release of the push cart, the accused demanded a further sum of Rs.200/- from PW-1 on 29.1.1998 besides the fine imposed by the Health Officer and PW-1 then went to the office of Deputy Superintendent of Police, VACB Unit PW-9, and gave Ext.P1 first information statement on the basis of which Crime No.VC.2/98 was registered and a trap was arranged. Before the Trial Court, the

prosecution examined PWs.1 to 9 and produced Exts.P1 to P13 and MOS.1 to 6. DW1 was examined on the side of the defence, to prove innocence of accused, as pleaded by him. On closure of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') and he denied the charge levelled against him. He also filed a detailed statement in which he stated that he never received any amount from PW-1 and that PW-1 came to his office and forcibly put the money into his pocket. On the basis of the evidence adduced by the prosecution, the Trial Court found the appellant guilty of the offences punishable under Sections 7 and 13(1)(d) read with section 13(2) of the Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.20,000/- for the offence under Section 7 of the Act. In default of payment of fine, he was sentenced to undergo rigorous imprisonment for a further period of one year. He was further sentenced to undergo rigorous imprisonment for a period of three years for the offence under section 13(1)(d) read with section 13(2) of the Act. The substantive sentences were ordered to run concurrently.

Trial Court mainly placed reliance on the evidence of PWs.1 and 2 to hold the accused guilty. It is to be noted that PW-3 did not support the prosecution version. The trial Court found that the evidence of PWs 1 and 2 is credible and cogent and, therefore, the prosecution has brought out the accusations made against the appellant. Before the High Court the trial Court's judgment was primarily attacked on the ground that the evidence of PWs 1 and 2 should not have been accepted as they were interested witnesses, more particularly when PW-3 did not support the prosecution version. The High Court did not find any substance in the submissions and as noted above confirmed the conviction and sentence.

In support of the appeal, learned counsel for the appellant submitted that the accused had clearly established the improbabilities in the evidence of PWs 1 and 2 and, therefore, it was submitted that the trial Court and the High Court ought not to have convicted the appellant. Additionally, it was submitted that considering the nature of the accusations the sentences imposed are harsh.

Learned counsel for the respondents on the other hand supported the judgment of the trial Court as confirmed by the High Court. Both the trial Court and the High Court have elaborately dealt with the evidence of PWs 1 and 2 to hold that the accused was guilty.

Though the evidence of PW-1 was levelled as the evidence of interested witness, there is no substance in it. There was no basis for PW-1 to falsely implicate the accused. On the other hand, the evidence on record clearly shows as to why the illegal gratification was demanded and accepted by the appellant. The evidence of PW-1, therefore, does not suffer from any infirmity to warrant interference.

Added to that is the evidence of PW-2 which is also clear, credible and cogent.

The evidence shows that when PW-1 told the accused that he had brought the money as directed by the accused, the accused asked PW-1 to take cut and give the same to him. When it is proved that there was voluntary and conscious

acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. It was held by this Court in Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000 (8) SCC 571) as follows:

"The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premises that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

This decision was followed by this Court in M. Narsinga Rao v. State of A.P. (2001 (1) SCC 691). There is no case of the accused that the said amount was received by him as the amount which he was legally entitled to receive or collect from PW-1. It was held in the decision in State of A.P. v. Kommaraju Gopala Krishna Murthy (2000 (9) SCC 752), that when amount is found to have been passed to the public servant the burden is on public servant to establish that it was not by way of illegal gratification. That burden was not discharged by the accused.

Coming to the question of sentence, it is to be noted that the minimum sentence for offence relatable to Section 7 is six months while that relatable to Section 13(1)(d) is one year. Considering the nature of the accusations, it would be appropriate to reduce the sentence to the minimum prescribed under the statute. In other words it shall be six months and one year respectively to run concurrently. The amount of fine is also reduced to Rs.10,000/- with default stipulation of six months rigorous imprisonment.

The appeal is dismissed except to the extent of modification of sentence as noted above.