

(2025) 11 KL CK 1888
In the High Court Of Kerala
Case No : Criminal Appeal No.906 Of 2011

B.J.Sreedhar

APPELLANT

Vs

CBI/SPE, Kerala & Anr

RESPONDENT

Date of Decision : 12-11-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 173(2), 173(8), 219, 220, 220(4), 221(1), 221(2), 222, 223, 223(a), 300(1)
Indian Penal Code, 1860 — Section 71, 411 , 414
Prevention of Corruption Act, 1988 — Section 7, 13(1)(a), 13(1)(d), 13(2)

Citation : (2025) 11 KL CK 1888

Hon'ble Judges : A.Badharudeen, J

Bench : Single Bench

Advocate : B.Raman Pillai, Anil K.Muhamed, T.Anil Kumar, Manu Tom, Sujesh Menon V.B., Shyam Aravind, Sreelal N. Warriar

Final Decision : Allowed

Judgement

A. Badharudeen, J

1. In this appeal, the sole accused in C.C.No.5/2005 on the files of the Special Judge (SPE/CBI)-I, Ernakulam challenges the conviction and sentence imposed against him as per judgment dated 13.05.2011 in the above case. CBI is the 1st respondent and the State of Kerala represented by the Public Prosecutor is the 2nd respondent.

2. Heard the learned counsel for the appellant/accused and the learned Special Public Prosecutor appearing for the CBI. Also heard the learned Public Prosecutor for State of Kerala. Perused the verdict impugned and the evidence available.

3. This case, emanated from the FIR registered as R.C.No.17(4)/2004/CBI/KER dated 16.07.2004, by the CBI alleging commission of offence punishable under Section 7 of the Prevention of Corruption Act, 1988 ('P.C Act, 1988' for short), by the accused. Thereafter final report was filed and based on the final report,

C.C.No.5/2005 was registered against the accused alleging commission of offences punishable under Sections 7, 13(1)(a) and 13(1)(d) r/w 13(2) of the P.C Act, 1988 by him. Precisely the prosecution case is that the accused, while functioning in the capacity of Deputy Director, Mine Safety Department, Regional Office in Chennai, functioning as a public servant, habitually demanded and accepted gratification in the form of cash and other forms of gratification other than legal remuneration for himself as a motive or reward for not invoking provisions of the Mines Act and thereby committed the above offences.

4. The Special Court framed charge for the said offences and proceeded with trial. PW1 to PW24 and Exts.P1 to P35 were marked on the side of the prosecution. Exts.D1 to D8 were marked on the side of the defence.

5. On conclusion of trial, the learned Special Judge found that the accused committed the offences punishable under Sections 13(1)(a) and 13(1)(d) r/w 13(2) of the P.C Act, 1988. Thereafter the learned Special Judge sentenced the accused as seen in paragraph 10 of the judgment as under:

"This is a case where a graver offence compared to Sec.7 of the PC Act, is considered. But very same time, keeping in mind the fact that, he is not getting the benefit of Sec.71 in this case and also considering the nature of the evidence adduced u/s. 13(2) r/w Sec.13(1)

(a) he is sentenced to undergo rigorous imprisonment for 1 year and 6 months and to pay a fine of Rs.10,000/- with default simple imprisonment for 2 months. Sec.13(2) r/w Sec.13(1)(d) can be considered only as an offence proved with the same ingredients which constituted the offence u/s. 13(2) r/w Sec.13(1)(a). No separate sentence is awarded on this court. The accused is entitled for set off for the period if any he had in custody either in Judicial or police."

6. The learned counsel for the appellant/accused mainly argued that, in fact, this case also ought to have been tried along with C.C.No.2/2005 and the prosecution herein as a separate trial is unwarranted. It is pointed out by the learned counsel for the appellant/accused further that even though PW2 to PW15 and PW20 supported the case of the prosecution, the evidence available in no way would suggest that any amount was recovered from the accused, as alleged by the prosecution. According to the learned counsel for the appellant/accused, in this case, the Special Court found commission of offences punishable Section 13(1) (a) and 13(1)(d) r/w 13(2) of the P.C Act, 1988 by the accused/appellant. According to him, Section 13(1)(a) deals with habitually accepting and obtaining illegal gratification. It is submitted by the learned counsel for the appellant/accused further that in the instant case, rather than the oral evidence of PW2 to PW15 and PW20, nothing extracted to find either the offence under Section 13(1) (a) or 13(1)(d) of the P.C Act, 1988. It is pointed out that in this case there is legal bar in trying the accused for these offences in segregation from the allegation in C.C.No.2/2005. Therefore, the conviction and sentence are liable to be set aside.

7. While opposing the contention raised by the learned counsel for the appellant/accused, the learned Special Public Prosecutor submitted that in paragraph 7 of the impugned judgment, the learned Special Judge addressed the question whether trial of the accused in the instant case was barred under Section 300(1) of the Code of Criminal Procedure (`Cr.P.C' for short) and the learned Special Judge after observing the provisions under Sections 300(1), 221(1), 221(2) as well as 220(4) Cr.P.C with the aid of Section 71 of the Indian Penal Code (`I.P.C' for short), found that there is no bar for second trial. According to the learned Special Public Prosecutor the reason given in this regard by the learned Special Judge is only to be justified. It is submitted by the learned Special Public Prosecutor further that habitual demand and acceptance of bribe by the accused have been proved beyond reasonable doubt by the prosecution. Therefore, the learned Special Judge is right in convicting and sentencing the accused and as such the conviction and sentence do not require any interference.

8. Addressing the arguments advanced, the following questions arise for consideration:

(i) Whether the finding of the Special Court that there is no legal bar for trying the accused for the offence alleged herein is sustainable?

(ii) Whether the finding of the Special Court that the accused committed offence punishable under Section 13(1)(a) r/w 13(2) of the P.C Act, 1988 is justifiable?

(iii) Whether the Special Court is justified in holding that the accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the P.C Act, 1988?

(iv) Whether the verdict under challenge would require interference?

(v) The order to be passed?

Point No.(i)

9. While addressing point No.(i), the observations of the learned Special Judge in para.7 is relevant and the same reads as under:

"7. That is, whether any number of final reports can be filed in an FIR and if not entitled to do so, during the investigation if an investigating officer realize that another independent offence is also seen committed, which cannot be included in the same charge, whether he has to file a suo moto FIR in that aspect and proceed. If he is not opted for such a course and filed a second Report and on which also cognizance taken by the court, whether the second trial will come under the bar under Sec.300 of Cr.PC ?. As I have already stated in this case, two reports are filed. Thus the question at this juncture is that whether there is any legal bar under Sec.300 of Cr.P.C to try the accused? It is an admitted case that the accused was once convicted and sentenced, but both the prosecution and defence not produced any material on this aspect. No original FIR produced but only an IO attested copy of an (alleged) FIR. Even the fact on which the accused convicted is not adduced as evidence in this matter. That is, no evidence

adduced regarding the trap case. The bribe giver or detecting officer not examined in this case. It is to avoid facts (issues) coming before the court which are already been settled. It is to avoid Issue estoppel in the criminal trial. For each and distinct offence separate trial is the normal course. The second part of Sec.300(1) says that ".....nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub section (1) of section 221, or for which he might have been convicted under sub section (2) thereof". Then it can be seen that the second part of Sec.300(1) is only dealing with the case which will come under 221(1) of Cr.P.C .It can be further seen that 221 is only an enabling provision as such even though 221 and 220(4) could have been used at the initial stage, that is framing charge in the original case and if that is not used, there is no bar to try the accused for a separate and distinct offence. Surely, this court and the prosecutor and the defence counsel should have thought about the prejudice that will be caused to the accused. When there is two trials, the question of application of Sec.71 of Indian Penal Code will not come. But there is no legal bar for second trial. Chapter 12 of the code of criminal procedure, 1973 deals with the information to the police and the powers to investigate. As per Sec.154 of the Cr.P.C, when an information of cognizance offence received, police have to register a case. Under Sec.156 of the Cr.P.C, they can investigate such cases without the permission of the court. Thereafter provisions deals with the mode of investigation and powers of the police and Sec.173 of Cr.P.C deals with the final report of the police after the completion of the police investigation and Sec. 173(8) says that "Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)". Thus, it can be seen that there is no bar in filing the further report. But such further report shall be in the original FIR it self. If it is not done,as in this trial, only the final report will be there. And if the court took cognizance upon that report, there will not be any legal bar but, prosecution will be handicapped to face the allegation of suppression of materials and result of investigation on the facts of original FIR. On the above discussion, it can be seen that the trial of this case or this courts power to impose sentence after trial in such a case is not barred."

10. It is true that as per Section 71 of the I.P.C, there is limitation for punishment of offences made up of several offences. It has been provided that where anything which is an offence is made up of parts, any of which parts is itself an offence for the offender shall not be punished with the punishment of more than one of his offences unless it so expressly provided. It has been provided further that where anything is an offence falling within two or more

separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

11. On reading Section 300(1) of Cr.P.C, it has application only in cases where a person, who has been convicted or acquitted once by a court of competent jurisdiction for an offence. This Section provides that such an accused shall not be liable to be tried again for the same offence. In the instant case, even though Section 13(1)(d) also is alleged as one of the offences alleged in the connected case C.C.No.2/2005, apart from the same offence, offence under Section 13(1)(a) also is alleged in this case and the said offence was not either alleged or tried in C.C.No.2/2005, therefore, the Special Court is right in holding that Section 300(1) would not apply in the facts of this case since the accused was not tried for the offence punishable under Section 13(1)(a) of PC Act, 1988. Coming to Section 220 of Cr.P.C, the same deals with trial for more than one offence, which is provided as under:

“Section 220 — Trial for more than one offence

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

(2) When a person charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force, the person accused may be charged with and tried at one trial for each such offence.

(4) If several acts, of which one or more would by itself or themselves constitute an offence, when combined constitute a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one or more of such acts.

(5) Nothing contained in this section shall affect Section 71 of the Indian Penal Code (45 of 1860).

12. Section 222 of Cr.P.C deals with when offence proved included in offence charge and the same provides as under:

“Section 222 — When offence proved included in offence charged

(1) When a person is charged with an offence consisting of several particulars, a

combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence, although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied."

13. Section 223 of Cr.P.C deals with what kind of persons are charged jointly, which reads as under:

"Section 223 — What persons may be charged jointly

The following persons may be charged and tried together, namely:

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of Section 219, committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property the possession of which is alleged to have been transferred by any such offence;

(f) persons accused of offences under Sections 411 and 414 of the Indian Penal Code (dishonestly receiving stolen property and assisting in concealment of stolen property) in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (offences relating to coins and government stamps) relating to counterfeit coin or counterfeit government stamp, or of any other offence relating to the same coin or stamp;

(h) persons accused of any offence established by evidence to have been

committed jointly.”

14. On reading Sections 220, 222 and 223 of Cr.P.C, as per Section 223(a), the person accused of the same offence committed in the course of the same transaction may be charged jointly, i.e, to be tried jointly. In C.C.No.2/2005 and in the present case, the allegations are that no offences were committed in the course of the same transaction and they were committed in different dates, viz., July, 2004 and September, 2003. If so, the trial of this appellant/accused for the offence punishable under Section 13(1)(a) and 13(1)(d) r/w 13(2) of P.C Act, 1988 is legally permissible. Therefore, the finding of the Special Court in this regard is only to be justified.

Point Nos.(ii) to (v)

15. Here the learned Special Judge relied on the evidence of PW2 to PW15, PW20, PW21 and PW23 while holding that the accused habitually accepted illegal gratification while holding the post of a public servant, as alleged. In this connection, it is necessary to address the evidence given by PW1 to PW15, PW20, PW21 and PW23. PW2 deposed that he worked as a manager of stone Crushing Unit and also deposed that he know the accused and the accused received a bribe of Rs.2,000/- from him in the month of July 2004 and accused received the bribe from Hotel Elite at Thrissur and he further deposed that one Kuttappan was also along with him. PW3 deposed that he gave Rs.1500/-to the accused that was in July 2004. PW4 deposed that he owns quarry and crusher unit namely Sand and Gravel Pvt. Ltd at Thrissur and his evidence is that he gave Rs.2,000/- to the accused, accused not satisfied with the amount and when he demanded for more, again gave Rs.3,000/-. PW5 deposed before the court that he owns a crusher unit viz, V.M. Mineral Products. He met the accused with one Jose K. Francis in the month of July and accused requested Jose K.Francis to arrange a vehicle for him to go to Chalakudy for inspection. PW6 deposed that he is the employer of PW2 and his evidence is that he know that PW2 paid Rs.2,000/- to the accused.

16. PW7's evidence is that he is an employee of Eastern Granites and his evidence is that his owner's name is Kuttappan. According to him, the accused telephoned him to bring the documents of Crusher, then he went to Jayalakshmi Crusher and offered Rs.1,500/-. But the accused did not receive the same. But asked him to tell the owner to come at Hotel Elite. PW8 is the owner of crusher unit viz, Canon Granite Pvt. Ltd as well as St. Joseph Granite and a finance company namely Maria Finance and his case is that accused telephoned him in January 2004 to arrange accommodation and he directed the clerk in his firm to book a room in Elite Hotel and accused came and inspected the quarry and collected details and accused stayed in that hotel and this witness made payments in the hotel which was about Rs.7000/. His further evidence is that in July 2004 he again called him and asked him to arrange a room at Elite Hotel and he arranged and he resided in the hotel and he paid the bills of the hotel as well as the vehicle rent which will come around Rs.8,000/-.

17. PW9 testified that he went at Hotel Elite along with one M.D. Varghese and by the time they reached therein, CBI arrested him. PW10 deposed that his mother Annamma is a partner of Concrete Aggregate Industries and according to him, he would remember the fact that he had paid money to the accused. PW11 deposed that he know the accused and identified Ext. P11(c) as the letter head of his firm. PW12 deposed that he paid Rs.10,000/- altogether to the accused and identified Ext 11(d) letterhead. He deposed that he again paid Rs.5,000/- in July 2004. PW13 deposed that he went to Hotel Elite and paid Rs.4,000/- in the month of September 2003 and in June 2004, he again paid Rs.7,500/-.

18. PW14 deposed that the accused came to his quarry, sample blasting done and according to him, he had paid Rs.5,000/- to the accused. PW15 deposed that he paid Rs.5,000/- in September 2003 to the accused. PW21 deposed before the court that he arranged room at Eliza International at Kolencherry and total expenses was more than Rs.3000/-which he met. The witness further deposed that in June 2004 he arranged room at K.K. International as requested by the accused by telephone and from therein the accused changed to Cochin Towers and the bill amount was more than Rs.4000 and his telephone number is 2680062 and the number of his firm is 2680462. PW23 deposed that by the time he reached at Elite Hotel accused was arrested by CBI. PW18 is the Executive Manager of Hotel Cochin Towers. He was examined to show that as per Ext.P24, guest register card, B.J. Sreedharan resided in its hotel.

19. PW20 is the manager of the Elite International Hotel, Thrissur. It was through him the certified copy of the guest registration card Ext. P29 was marked. Further the print out details of phone calls made from the room No.558 during the period 15/7/2004 to 16/7/2004 got marked as Ext. P30 through him. In addition to that, PW18 and PW20 also corroborated the version of PW20 to the fact that B.J. Sreedharan resided in these hotels. But as rightly observed by the Special Court, the original bills showing payment of the Hotel bills are not tendered in evidence, even though the bill amount of Elite International for the period July 2004 could be paid only after the arrest of the accused.

20. In this case Ext.P27 sanction to prosecute the accused was issued by PW19, the Deputy Secretary to Government of India and it was through him Ext.P27 was tendered in evidence. In fact, no challenge raised as regards to the legality of sanction and, therefore, the finding of the Special Court holding that Ext.P27 sanction is proved through PW19, is only to be justified.

21. Going by the evidence, PW2, PW3, PW4, PW5, PW6 and PW8 deposed about the payment of bribe during July, 2004, while the accused was staying at the Elite International Hotel, Thrissur. But the evidence of PW13 is that he had met the accused at Eliza International Hotel, Kolencherry, and paid Rs.4,000/- during September, 2003 and Rs.7,500/- during June, 2004. PW15 deposed that he had paid Rs.5,000/-in September, 2003. Thus it appears that the receipt of bribe by the accused as spoken by the witnesses is not during the same period but on different periods. Evidence of PW20 and PW21 is very relevant in this context.

PW21's evidence is that he had arranged a room at Elite International Hotel, Thrissur, and total expense was more than Rs.3,000/- which was paid by him. PW21 deposed further that again in June, 2024 he had arranged room at K.K.International Hotel and the Manager of this Hotel informed that the accused had shifted from K.K.International to Cochin Towers Hotel and the bill amount to the tune of Rs.4,000/- was paid by him and he deposed further that 2680062 and 2680462 are the two telephone numbers of his firm. PW18, who is the Executive Manager of Cochin Towers, was examined to prove Ext.P24 to show that the accused had resided in that hotel. PW20, the Manager of the Elite International Hotel, Thrissur deposed in support of Exts.P29 to show that the accused had resided at the Hotel as shown in Ext.P29. Ext.P30, the print out details of the entry of the calls registered in their computer from room 558 during the period 15.07.2004 and 16.07.2004 got marked as Ext.P30 through him and his evidence would suggest that he had resided in Elite International Hotel, Thrissur. As pointed out by the learned counsel for accused, PW1 examined in C.C.NO.2/2005 is not cited as a witness or examined in this case.

22. On scrutiny of the evidence what could be culled out is that witnesses had spoken about payment of bribe to the accused as discussed herein above. But in their evidence even the exact dates of such payments not at all mentioned Apart from the same, no convincing piece of evidence forthcoming to hold that any amount was recovered from the accused specifically as paid by PW2 to PW15. The oral versions are also not even specific regarding the exact dates on which they had paid the bribe. It is not in dispute that as regards to demand of bribe by an accused oral evidence alone is necessary, if the same is convincing. But in cases where the recovery of the bribe amount from the accused has been effected, the same would throw light on the fact that the bribe money was accepted by the accused in continuation of the demand and the same would fortify the demand of bribe with the aid of oral evidence. Here the prosecution has no case that any amount allegedly paid was recovered from the accused. Thus it appears that the evidence adduced by the prosecution to hold that the accused habitually accepted bribe is not cogent and convincing and free from doubts. Thus the evidence available to find commission of offences punishable under Sections 13(1)(a) and 13(1)(d) of the P.C Act, 1988 in the instant case is not free from reasonable doubts and therefore the accused is entitled to benefit of doubt. However, it is worthwhile to mention that in C.C.No.2/2005, this Court upheld the conviction and sentence imposed against the appellant/accused when Criminal Appeal No.1742/2006 was heard and disposed of along with this appeal, since the allegations therein are proved specifically against the accused with the required ingredients, viz., demand and acceptance of bribe by the accused as part of trap proceedings, including recovery of the bribe money from his hand, without any iota of doubts.

23. For the above reasons, the conviction and sentence imposed against the appellant in this case are liable to be interfered.

24. In the result, this appeal succeeds and the verdict under challenge is set aside. Accordingly the Appeal is allowed. The appellant is acquitted for the offences punishable under Sections 7 and 13(1)(a) and 13(1)(d) r/w 13(2) of the PC Act, 1988 and he is set at liberty. His bail bond stands cancelled.

Registry is directed to forward a copy of this judgment forthwith for information and compliance.