

**(2019) 02 KAR CK 0029**

**In the Karnataka High Court**

**Case No : Criminal Writ Petition No. 353 Of 2016**

State Of Karnataka By Lokayuktha Police

APPELLANT

Vs

H.K. Ashwath

RESPONDENT

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**Date of Decision : 22-02-2019**

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)  
Evidence Act, 1872 — Section 65B

**Citation : (2019) 02 KAR CK 0029**

**Hon'ble Judges : B.A. Patil, J**

**Bench : Single Bench**

**Advocate : B.S. Prasad, M.T. Nanaiah**

**Final Decision : Disposed Off**

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**Judgement**

1. The present criminal revision petition has been filed by the State of Karnataka by Lokayuktha Police, challenging the order dated 4.8.2015 passed by Principal Sessions Judge and Special Judge, Bengaluru Rural District, Bengaluru, in Special Case No.93/2015.

2. I have heard the learned counsel for the petitioner Sri Prasad B.S. and Senior Counsel Sri.M.T.Nanaiah on behalf of the respondent.

3. The gist of the complaint is that, the complainant has a water plant in Iggalur Village, Attibele Hobli, Anekal Taluk and he used the same for filtering water for his own use. On 19.01.2014 at about 11.00 a.m. accused No.1 who was working as a District Malaria Officer in Bengaluru Urban District along with accused No.2 who is the driver of his jeep went there and told CW.7-Chandan, the nephew of the complainant that without licence the water plant has been installed and threatened him and locked the plant and took away the key. While going, accused No.1 gave his visiting card to the nephew of the complainant and told him that the complainant should meet him on the next day. On 20.01.2014 the complainant called accused No.1 over phone, for which accused No.1 told him

that he would not come to the office on that day and the complainant should meet him on the next day. Accordingly, on 21.1.2014 the complainant went to the office of the accused, but accused No.1 had not come to the office. Therefore, he contacted over phone, for which accused No.1 responded by saying that he had told everything to his driver accused No.2 and the complainant should speak to him. Accused No.1 was then found in a Tata Sumo and he got down from it and left the place. Thereafter, the complainant, spoke to accused No.2 and the latter told him that the water plant has been installed without licence and if the matter is reached to the Court, a sum of Rs.50,000/- had to be paid as penalty, instead if he was to pay a sum of Rs.30,000/- as bribe, he would see that there would not be any trouble to him. Then the complainant pleaded his inability to pay a sum of Rs.30,000/-, for which accused No.2 told him that at least a sum of Rs.25,000/- has to be paid and again the complainant pleaded his inability and then accused No.1 also came there. Accused No.2 told accused No.1 that the complainant was not heeding to his advice. Then accused No.1 spoke to the complainant and demanded a sum of Rs.25,000/- and after bargaining he reduced it to Rs.15,000/-. On the same day, the complainant drew a sum of Rs.5,000/- from the ATM and handed over the same to accused No.1 through accused No.2 and he suggested that the balance amount has to be paid on the next day. Unwilling to pay the balance amount, the complainant lodged a complaint with the Lokayuktha Police on 22.1.2014. On the basis of which FIR was registered for the offences punishable under Sections 7, 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act (herein after referred to as 'Act' for short)

4. On 22.1.2014 a trap was laid, but it was failed and another trap was laid on 29.1.2014, on that day also it was failed. After having found that there was demand for bribe and a sum of Rs.5,000/- had been received by accused No.1 through accused No.2, the investigating agency after obtaining the sanction, filed the charge sheet under Sections 7 and 13(2) of the Act. Thereafter, the present order has been passed after hearing the learned Public Prosecutor and the learned counsel appearing for the parties.

5. The trial Court after considering the material placed on record has come to the conclusion that there are no grounds to frame the charge against accused No.2 and accordingly he was discharged and there are grounds to frame the charge as against accused No.1 for the offence punishable under Section 7 and it was posted for framing the charge. Being aggrieved by the said order, the Lokayuktha Police is before this Court.

6. The main grounds urged by the learned counsel appearing for the petitioner are that the impugned order of the Special Judge is contrary to law and evidence and material placed on record. The Special Judge has not properly appreciated Section 7 of the Act. He further by referring to Section 7 of the Act submitted that if anybody being a public servant accepts or obtains or agrees to accept or attempts to obtain from any person, that itself amounts to an offence under

Section 7 of the Act. He further submitted that there is material including the statement of the complainant to show that there was conversation between accused No.2 and the complainant and through him an amount of Rs.5,000/- has been received and the same has been paid to accused No.1. He further submitted that accused No.2 has also negotiated for demand of bribe and there is conversation of the said material. He further submitted that prima facie there is a material to frame the charge. He further by relying upon the decision of this Court in Anand Gurappa Chitrakar Vs. The Karnataka Lokayukta in Criminal Petition No.11085/2013 dated 7.8.2014 submitted that this Court after considering the material held that if there is a demand on behalf of the accused and on behalf of the others including the petitioner, then under such circumstances it attracts provisions of Section 7 of the Act. Under the said facts and circumstances the trial Court ought to have framed the charge instead of discharging accused No.2. He further submitted that the FSL report also clearly indicates that it is the voice of accused No.2 which has been recorded in the voice recorder and if the statement of the complainant and other materials are perused, there is prima facie material to frame the charge. The trial Court without considering the said aspect has come to a wrong conclusion and has wrongly discharged accused No.2. On these grounds he prays to allow the petition and to set aside the order of the trial Court.

7. Per contra, the learned Senior Counsel Sri.M.T.Nanaiah, vehemently argued and submitted that there must be demand and acceptance of the bribe and he further by relying upon the decision of the Hon'ble Apex court in Dashrath Singh Chauhan Vs. Central Bureau of Investigation reported in LAWS(SC)-2018-10-13 submitted that there must be demand and acceptance of a illegal bribe amount from the complainant and without the said ingredients the said provision is not attracted. He further submitted that the prosecution has to prove the twin requirement of "demand and acceptance of the bribe amount by the appellant". If it is not proved, then under such circumstances, the accused is entitled to be discharged. He further by relying upon the decision in the case of Anvar P.V. Vs. P.K.Basheer and Others reported in 2015(1) Kar.L.J. 547(SC) submitted that the electronic form of recording of any material, if it is not in compliance of Section 65B of the Evidence Act, then under such circumstances, the said evidence cannot be relied upon. He further submitted that no certificate as contemplated under Section 65B of the Evidence Act has been produced in the charge sheet material, then under such circumstances the said material which has been intended to be relied upon by the prosecution cannot be relied upon. He further submitted that the trial Court after considering all the material placed on record has come to a right conclusion and rightly discharged accused No.2. On these grounds he prayed to dismiss the petition.

8. I have carefully and cautiously gone through the submissions made by the learned counsels appearing for the parties and also perused the records including the charge sheet material which has been made available during the course of the argument.

9. On going through the charge sheet material including the complaint which is filed by the complainant, it discloses the fact that when accused No.1 along with accused No.2 went to the place of the complainant, they met CW.7- nephew of the complainant and there they told him that they are using the said plant unauthorizedly and threatened him and locked the plant and asked the complainant to come and meet him and on 20.1.2014 complainant called accused No.1 over phone for which accused No.1 told him that he would not come to the office on that day and the complainant should meet him on the next day. On 21.1.2014 the complainant went to the office of the accused, but accused No.1 had not come, when he contacted accused No.1 over phone, accused No.1 responded saying that he had told everything to his driver i.e. accused No.2 and it is further stated that thereafter he talked with accused No.2 and he told that he has installed the said plant without licence and if the matter reaches to the Court, a sum of Rs.50,000/- has to be paid as penalty and instead of that he asked him to pay Rs.30,000/- and when he expressed his inability, then accused No.2 told him to pay at-least a sum of Rs.25,000/- and again when the complainant pleaded his inability, then he told accused No.1 who in turn spoke to the complainant and demanded a sum of Rs.25,000/- and it was again reduced to Rs.15,000/- and thereafter an amount of Rs.5,000/- has been received by accused No.1 through accused No.2. All these materials would clearly go to show that there is demand by accused No.2 also. In order to attract the provisions of Section 7 of the Act, if a public servant accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, then under such circumstances, the provisions of Section 7 of the Act are going to be attracted. For the purpose of brevity, I quote Section 7 of the Act which reads as under: Section 7. Public servant taking gratification other than legal remuneration in respect of an official act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine."

On close reading of the said Section it clearly goes to show that if there is a demand to obtain from any person that is also an offence under Section 7 of the Act.

10. It is the submission of the learned counsel for the respondent that, the said conversation which has been recorded in the electronic device has not been certified as per Section 65B of the Evidence Act and the same cannot be relied

upon. He further submitted that the said certificate has also not been produced along with charge sheet, the question of admissibility of the said recording comes into picture only when if the prosecution is going to rely upon the said recording and at the time of recording the evidence the accused can object that the said recording is not certified in accordance with Section 65B of the Evidence Act. At this pre-matured stage it cannot be held that merely because the certificate is not there, the said recording is not having any impact on the case of the prosecution. If the said devices and recording are intended to be relied upon, then only the provisions of Section 65B of the Evidence Act come into play. This proposition of law has also been laid down by the Hon'ble Apex Court in the case of Shafhi Mohammad Vs. State of Himachal Pradesh reported in AIR 2018 SC 714, wherein at paragraphs 14 and 15 it has been observed as under:.

14. The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) (sic 65B(4)) is not always mandatory.

15. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.

In that light, the contention taken up by the learned counsel for the respondent is not acceptable. The learned counsel for the respondent has relied upon the decision quoted by the Hon'ble Supreme Court, I am not having any difference of opinion with regard to the ratio laid down by the Hon'ble Apex Court, that has to be appreciated with reference to the discussion which has been made by me above with reference to facts on hand.

11. For framing of a charge, the Judge has to consider judicially whether on consideration of the materials on record it can be said that the accused has been reasonably connected with the offence and that there is a reasonable probabilities or chance, accused have been found guilty. If the answer is in the affirmative, the Judge will be at liberty to frame the charge. It is also well established principle of law that even if all the materials which have been

produced by the prosecution, if it is accepted in its face value and even then if no offence has been made out, then the Court is at liberty to discharge. If a strong suspicion created from the material which has been produced, then this itself is sufficient to frame the charge.

12. In the light of the discussions held by me above, on close perusal of the charge sheet material, which is made available, the contents of the complaint and other material clearly goes to show that there were some conversation between the complainant and the accused No.2 and nephew of the complainant, their conversation has also been stated in the complaint and the statement of these two witnesses.

13. Looking from this angle, prima facie there is material to show that it is a fit case for framing the charge. This aspect has not been properly considered and appreciated by the trial Court and has passed the impugned order erroneously. The impugned order suffers from all these infirmities and it requires to be interfered with and as such the impugned order dated 4.8.2015 passed by the Principal Sessions Judge and Special Judge, Bengaluru Rural District, Bengaluru, in Special Case No.93/2015 is set aside, the trial Court is directed to frame the charge as against accused No.2 and proceed in accordance with law.

Accordingly, this petition is allowed and the impugned order dated 4.8.2015 passed by the Principal Sessions Judge and Special Judge, Bengaluru is set aside.

The observation which has been made while disposing of this case, will not come in the way of the Court below in hearing and deciding the case on merits and in accordance with law.

In view of disposal of the petition, IA No.2/2016 does not survive for consideration and accordingly, the same is disposed of.