

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No.(s) 924-925 /2022
(@SLP (CrI) No.(s) 6241-6242/2022 @ D. No. 6034 OF 2020)**

The State of Kerala

..Appellant(S)

Versus

M. Karunakaran Etc.

..Respondent(S)

J U D G M E N T

M. R. Shah, J.

In the facts and circumstances of the case and the offence alleged against the accused is punishable under the Prevention of Corruption Act, 1988 and the issue involved in the present appeal is a pure question of law and facts, therefore, the delay caused in preferring the present appeal is hereby condoned. Leave granted.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 22.02.2018 passed by the High Court of Kerala at Ernakulam in Criminal Appeal

Nos. 915/2008 and 1021/2008, by which, the High Court has allowed the said appeals, preferred by the original accused Nos. 1 and 2 and consequently has acquitted both the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, the State has preferred the present appeal(s).

- 2.** As per the prosecution case, accused Nos. 1 and 2 while working as Excise Prevention Officers, Excise Range, Hosdurg visited Toddy Shop No.36, Ambalathara, Hosdurg, Taluk at about 7:30 pm on 21.03.2001 and threatened Shri P.J. Joseph, who was looking after the affairs of the shop and demanded Rs. 2,000/- from him. They asked him to bring the said amount at the Excise Range Office on 24.03.2001. As PW1 - original complainant lodged a complaint against the accused persons with the Vigilance Department on 24.03.2001, a FIR was registered on the said complaint by the Vigilance Dy.SP. After completing the necessary formalities at 3:15 pm the raid party and PW8 reached the Excise Range Office and the PW1 was informed to give signal to the Policemen who were standing on the

road side after giving the money to the accused persons. As per the case of the prosecution, in pursuance of the demand, accused Nos. 1 and 2 accepted an amount of Rs. 1,000/- and Rs. 500/-, respectively from the complainant at 3:35 pm on 24.03.2001 at the Excise Range Office and thereby, committed offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The investigating officer filed the chargesheet against the accused for the aforesaid offences. Both came to be tried by the learned Special Court and they denied the charges levelled against them.

2.1 To prove the charges the prosecution examined in all nine witnesses including PW1 – complainant and PW2 – an independent witness. The accused examined DW1, the owner of the shop in their defence. That on appreciation of the evidence on record, learned Special Court held both the accused guilty for the aforesaid offences and convicted them and imposed a sentence. The learned Special Court sentenced accused No. 1 to undergo two years rigorous imprisonment (RI) each and to pay a fine of Rs. 2,000/- each and in default to six months RI and sentenced accused

No. 2 to undergo one year RI each and to pay a fine of Rs. 1,000/- each and in default to undergo three months RI.

2.2 Feeling aggrieved and dissatisfied with the judgment and order of sentence and conviction passed by the learned Special Court, the original accused preferred appeals before the High Court. By the impugned common judgment and order the High Court has allowed the said appeals and has acquitted the accused for the offences for which they were convicted.

2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court acquitting the accused, the State has preferred the present appeals with a delay of 632 days in preferring the appeal(s).

3. Having gone through the impugned common judgment and order passed by the High Court acquitting the accused for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, it is apparent that the High Court has acquitted the accused mainly on the ground that the twin conditions of demand and acceptance has not been established and proved. The High Court has heavily relied upon the decision of this Court in the case of

Mukhtiar Singh (since deceased) through his LR Vs. State of Punjab; (2017) 8 SCC 136. On the other hand, learned counsel appearing on behalf of the State has relied upon a three-judge bench decision of this Court in the case of **M. Narsinga Rao Vs. State of A.P.; (2001) 1 SCC 691.**

- 3.1 It is brought to our notice that having found conflict with the decisions of two and three judge benches of this Court in the cases of **B. Jayaraj Vs. State of Andhra Pradesh; (2014) 13 SCC 55** and **P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Another; (2015) 10 SCC 152** with that of an earlier three judge bench decision of this Court in the case of **M. Narsinga Rao** (supra) regarding nature and quality of proof necessary to sustain conviction for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 when the primary evidence is unavailable, subsequently the three judge bench of this Court in the case of **Neeraj Dutta Vs. State (Govt. of NCT of Delhi); Criminal Appeal No. 1669/2009**, has referred the following question of law for determination by a

larger bench: -

“whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?”

It is reported that the said reference is pending and the aforesaid question of law is yet to be determined and/or considered by a larger bench.

3.2 The issue arising in the present appeal is somewhat similar and the decision of a larger bench may have a direct effect on the decision of the present appeal(s). Therefore, we are of the opinion that the decision in the present appeal(s) be deferred till the question of law, which is referred to a larger bench, referred to hereinabove, in Criminal Appeal No. 1669/2009, is decided by the larger bench.

4. Hence these appeal(s) is/are adjourned *sine die* till the aforesaid question of law framed in Criminal Appeal No. 1669/2009 is decided by the larger bench. The Registry is to notify the present criminal appeal(s) for final hearing after

the decision on the question of law by the larger bench of
the reference is made hereinabove.

.....J.
(M. R. SHAH)

.....J.
(B. V. NAGARATHNA)

New Delhi,
July, 11th 2022