

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

CRL.A.No. 226 of 2000 (B)

AGAINST THE JUDGMENT IN CC 5/1999 of ENQUIRY COMMR.&
SPL.JUDGE,THRISSUR DATED 29-03-2000

APPELLANT/ACCUSED(S):

K.A SIVARAMAN, FORMER PRESIDENT
OF KODIKULAM GRAMA PANCHAYAT.

BY ADVS.SRI.C.K.VIDYASAGAR
SRI.P.CHANDY JOSEPH

RESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY DEPUTY
SUPERINTENDENT OF POLICE,
V.A.C.B IDUKKI THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10.7.2015,
THE COURT ON 21-08-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.

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**Crl.A No.226 of 2000**

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Dated this the 21st August, 2015

J U D G M E N T

The appellant herein was the President of the Kodikulam Grama Panchayat in Idukki District during 1989-1990. The said Panchayat had undertaken so many works under the Jawahar Rosgar Yojana (JRY) Scheme during that financial year. Most of the works were carried out under the "Food for Wages Scheme" by the Panchayat. Under the said scheme, a quantity of 26 Metric Tonne of rice worth ₹64,233/- was allotted to the Kodikulam Panchayat. The said quantity of rice was taken delivery of by the appellant from the godown of the Food Corporation of India. On the allegation that the appellant sold away the quantity of rice in open market and appropriated the sale price without supplying the rice to the beneficiaries under the scheme, and thus converted the huge quantity of rice for his own purposes, the appellant faced prosecution in two cases before the Enquiry Commissioner and Special Judge (Vigilance), Thrissur. The Vigilance and Anti Corruption

Bureau (VACB) registered a crime against the appellant on 16.1.1995, and after investigation the VACB submitted two final reports splitting the different instances of misappropriation into two heads. On the final report as regards conversion of the huge quantity of rice for his own purposes amounting to misappropriation, the learned trial Judge took cognizance as C.C 5/99, and on the second final report regarding misappropriation of some amount, the learned trial Judge took cognizance as C.C No.6/99.

2. The appellant entered appearance before the trial court in the two cases and claimed to be tried by pleading not guilty to the charge framed against him under Sections 409, 468, 471 and 477A I.P.C and also under Sections 13 (1)(c) & (d) read with 13 (2) of the Prevention of Corruption Act, (for short "P.C Act").

3. C.C 5/99 and 6/99 were tried jointly by the trial court, and common evidence was recorded in C.C 5/99. The prosecution examined 25 witnesses and marked Exts.P1 to P76 documents. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances, and

submitted that he sold away the huge quantity of rice only as decided by all on the ground that the rice supplied from the Food Corporation of India was of low quality, and all the beneficiaries under the Scheme demanded wages by way of price of the rice. Everybody wanted money for the works, and accordingly on consensus, decision was taken to sell away the rice in open market and pay the entire amount of sale proceeds to the beneficiaries, in proportion to the quantity of rice allotted to each beneficiary. Though food for wages was the policy of the Government under the Scheme, nobody was prepared to receive the rice of inferior quality supplied from the Food Corporation of India, and as decided by everybody, the President of the Panchayat took a decision to sell the rice and distribute the price to the beneficiaries. The Panchayat took such a decision to carry out the works without any delay, and with the object of avoiding shortage in allotment in the next financial year. Thus, according to the appellant, everything was done in good faith in the interest of all the beneficiaries who in fact wanted money, and not rice, for the works, and the

appellant had not appropriated any amount from the sale proceeds. Though opportunity was granted by the trial court, no evidence was adduced by the accused in defence. On an appreciation of the evidence adduced by the prosecution, the learned trial Judge found the accused guilty in both the cases. On conviction in the two cases, the accused was sentenced to undergo rigorous imprisonment for four years each and to pay a fine of ₹ 75,000/- each under Sections 13 (1) (c) of the P.C Act, to undergo rigorous imprisonment for three years each under Section 13 (1) (d) of the P.C Act, to undergo rigorous imprisonment for three years each under Section 409 I.P.C, to undergo rigorous imprisonment for one year each under Section 471 I.P.C, and to undergo rigorous imprisonment for three years each under Section 477A I.P.C, by common judgment dated 29.3.2000 in C.C No.5/99 and 6/99.

4. Aggrieved by the judgment of conviction in the two cases, the accused brought two Criminal Appeals before this Court. This appeal is brought against the judgment of conviction in 5/99. Crl.A No.225 of 2000, brought by him

against the judgment of conviction in C.C 6/1999 was allowed by this Court on 16.8.2012 and the conviction and sentence therein were set aside by this Court. Now this appeal against the judgment of conviction in C.C 5/99 remains to be decided.

5. When this appeal came up for hearing, the learned counsel fairly conceded and submitted that the appellant has no dispute regarding the sale of rice alleged by the prosecution, and that the accused in fact made such a sale in good faith, and in the best interest of all the beneficiaries, as desired and decided by all. He submitted that it is common knowledge that the rice supplied from the Food Corporation of India under the "Food for Wages Scheme" will always be of very low quality, and so, no beneficiary was prepared to accept rice towards wages. When everybody desired to get the price of the rice, a decision was taken by the President and others in the best interest of all the beneficiaries to sell away the quantity of rice in open market and distribute the sale price to the beneficiaries in proportion to the quantity allotted to each

beneficiary. The learned counsel submitted that in such a situation, where the prosecution does not have any case that the accused was in any manner benefited by the said unauthorised act, and the prosecution does not have any material to prove misappropriation of rice or amount by the accused, or to prove conversion of the property for his own benefit, a conviction is not possible under the P.C Act, or under the other provisions of the Indian Penal Code.

6. The learned counsel stressed on the very material question of law that in the absence of any evidence to prove actual misappropriation, or to prove that the accused was in any manner benefited by the unauthorised act alleged against him, the whole conviction is liable to be set aside. As regards factual aspects, the learned counsel conceded that the quantity of rice allotted under the JRY Scheme was sold away in open market by the appellant as desired and decided by all, and that he does not dispute these aspects. He did the alleged act with the consent of all, but when somebody made complaint to wreak vengeance on political grounds, he became scapegoat.

7. On hearing both sides, and on a perusal of all the materials, I find that the appellant's grievance is really genuine, and I find that he decided to sell the quantity of rice in open market as desired and decided by all, and when the beneficiaries wanted money towards wages under the scheme. Of course, it is true that such an act of the accused was really unauthorised, and it was against the terms of the directions and guidelines issued by the Government under the JRY Scheme. Just because, the accused, as President of the Panchayat, violated the guidelines made by the Government, he cannot be convicted or punished under the P.C Act or under Section 409 I.P.C. In the absence of anything to prove misappropriation, a conviction is not possible under Section 477 or 471A I.P.C also. Merely creating some false documents, without in any manner being benefited by such documents, or merely doing something against the guidelines or directions made by the Government will not make one punishable under the P.C Act or under the other Sections of the I.P.C as alleged. For a conviction under Section 409 or under other Sections of the

I.P.C or under Section 13 (1) (c) & (d) read with 13(2) of the P.C Act, the prosecution must have a definite case that the accused was in any manner benefited by the alleged act, or that the accused converted any property for his benefit, or that the accused misappropriated any amount from the sale proceeds of the rice. If there is no such definite allegation, or if there is no definite material to prove such allegations, or to prove misappropriation of money or conversion of property for his own use or for his benefit, a conviction is not possible against him.

8. Now let me see whether the prosecution has such an allegation, or whether the prosecution has definite material or evidence to prove misappropriation of money, or to prove conversion of property by the accused for his own benefit. The essential ingredient of the offence made punishable under Section 13 (1) (c) of the P.C Act is dishonest misappropriation of money or property from public funds. So also, in a prosecution alleging the offence made punishable under Section 13 (1) (d) of the P.C Act, the prosecution must prove that the accused was in any manner

benefited or that he derived some advantage or benefit by some unlawful means, misusing his position as public servant. Thus, whether it is under Section 13 (1) (c) or 13(1) (d) of the P.C Act, the prosecution will have to prove that the accused was somehow benefited by the alleged misconduct. If there is nothing to prove that the accused was in any manner benefited, or that he had derived some advantage by the alleged act of misconduct, the accused cannot be found guilty by the court, for having committed any act of misconduct as a public servant.

9. The definite allegation of the prosecution in this case is that, the huge quantity of 26 Metric Tonne of rice delivered to the accused from the Food Corporation of India for payment as “Food for wages” under the JRY Scheme was sold away by him in open market, and he appropriated the sale proceeds for his benefit without making payment to the beneficiaries either by way of cash or by way of rice.

10. Many of the beneficiaries under the JRY Scheme were examined by the prosecution as material witnesses. Some of them supported the prosecution and stated that

they had not received any quantity of rice from the accused. But some other beneficiaries stated in evidence that they were paid the money equivalent of the rice meant for supply to them. Those witnesses, who practically supported the accused further stated in evidence that the rice was sold by the accused as decided by all, and such a decision was taken for the reason that the rice received from the Food Corporation of India was of very low quality, and so, nobody was inclined to accept that low quality rice towards wages.

11. PW1 is one of the main witnesses. He was the Member of Ward No.VI on the opposite political faction when the accused was the President of the Panchayat. In view of this case, the accused resigned, and at that time, PW1 became the President. He stated in evidence that he was a beneficiary under the JRY Scheme in relation to some works in his ward, and that he had not received the quantity of 495 kgs of rice meant for him. PW1 to PW5, PW7 to PW9, PW11 to PW16, and PW21 are some of the beneficiaries under the JRY Scheme. Some of them disputed the signature contained in the vouchers produced by the accused before

the authority. PW1 also denied the signature in the voucher, but he did not state that he had not received any money from the accused. PW2 was the Member of Ward No.1 and he was also a beneficiary under the Scheme in relation to some works in his ward. Ext.P24 relates to the works undertaken by PW1 and Ext.P13 relates to the works undertaken by PW2. A quantity of 1740 kgs of rice was meant for the works undertaken by PW2. She stated in evidence that she had not received any quantity of rice. But she did not state definitely that she had not received any amount from the accused. PW3, another beneficiary disputed the signature in Ext.P2, P4, P13 and P34 vouchers and he stated that he had not received the 200+735kgs of rice meant for him under the scheme. But he also did not state definitely that he had not received any amount from the accused. PW4 was the Member of Ward No.8 and she was also a beneficiary under the scheme in relation to some works undertaken in her ward. She denied the signature in the vouchers and stated that she had not received any quantity of rice. PW5 was the Member of Ward No.7 and he denied the signature

in Exts.P28 and P11 documents. He also stated that he had not received the quantity of 3525 kgs of rice meant for him as beneficiary. Thus, all the beneficiaries examined by the prosecution stated in evidence that they had not received the allotted quantity of rice under the JRY Scheme. But curiously enough, many of the witnesses practically supported the accused and stated that they were given the money equivalent of the quantity of rice meant for them under the Scheme, and money was paid by the accused in terms of an understanding, or decision taken by all to sell away the low quality rice and utilise the sale proceeds for payment to the labourers as wages.

12. According to the prosecution, the total quantity of 26 metric tonne of rice supplied to the accused was worth ₹ 64233/-. The accused admitted through out the trial that the rice was sold by him in open market, but the whole sale proceeds was utilised by him to make payment of wages to the labourers under the JRY Scheme, and he had not appropriated any amount from the sale proceeds. The prosecution does not say at what price the rice was sold

away by the accused, or whether the total sale proceeds was above ₹ 64233/-. If the prosecution has a case that the total quantity of rice was sold in open market at a higher rate, or the accused had received more than ₹ 64,233/-, but the accused made payment to the beneficiary and labourers at the rate equivalent to the value of rice meant for each beneficiary at the rate fixed by the Government, and if such a case is proved, the court can very well find that the accused had dishonestly misappropriated some amount from the sale proceeds. But here, the prosecution does not have such a case. Nobody has a case that the quantity of rice was sold in market by the accused at a rate higher than the rate fixed by the Food Corporation of India, and he thus appropriated the excess amount for his benefit. It is the definite case of the accused that the whole money equivalent of the rice was utilised for payment to the beneficiaries and he had not appropriated any amount from that.

13. PW2 is one of the beneficiaries under the Scheme, who stated that she had not received any quantity

or rice from the accused. But when cross-examined on the defence projected by the accused, she answered in favour of the defence to a question put from defence as follows:

“Workനുള്ള food grains വിതരണത്തിന് പറ്റിയതല്ല എന്ന ധാരണ കമ്മിറ്റിക്ക് ഉണ്ടായിരുന്നു എന്ന് President പറഞ്ഞു ഞങ്ങൾ സമ്മതിച്ചു. മോശപ്പെട്ട അരിയാണെങ്കിൽ വേണ്ട എന്ന് ഞങ്ങൾ തീരുമാനിച്ചു പഞ്ചായത്തിൽ അരി വിതരണം ചെയ്തിട്ടില്ല.”

Thus even while supporting the prosecution to an extent by stating that he had not received any quantity of rice, she admitted that she had received the money equivalent of the rice for the reason that the rice was of bad quality.

14. PW4, another beneficiary who supported the prosecution stated during cross examination as follows:

“അരി കിട്ടിയില്ല. അരി നല്ലതല്ല എന്ന് President പറഞ്ഞു. കുലിക്കാർക്ക് അരിയുടെ വില കൊടുക്കാം എന്ന് President പറഞ്ഞു. അരി നല്ലതാണെങ്കിൽ കൊണ്ടു വന്നാൽ മതി എന്ന് ഞാൻ പറഞ്ഞു.” (I did not receive any quantity of rice. The President told us that the rice was of low quality and he also stated that the money equivalent to the rice can be paid as

wages to the labourers. I told the President that if the rice is of not good quality, it cannot be supplied, and I supported the President.)

15. PW12, another beneficiary admitted in cross-examination that he was paid ₹ 450/- by the accused as the money equivalent of the rice meant for distribution. PW14 stated at one place that he does not know whether the money equivalent of the rice meant for distribution was paid to the beneficiaries, but at another place in cross-examination stated like this.

“അരിയുടെ വില വിഹിതം Work-ന് വേണ്ടി വിനിയോഗിച്ചു. പണം കിട്ടുന്നതിന് കുറെ കടലാസ്സുകൾ പുഷ്കരൻ പറഞ്ഞ പ്രകാരം ഒപ്പിട്ട് നൽകി.” (The money equivalent of the rice was utilised for making payment of wages. I had put my signature in some papers as required by Pushkaran).

Thus, this witness also practically admits that the money equivalent of the rice meant for distribution was paid to the employees as their wages.

16. PW16, another beneficiary even while supporting the prosecution stated like this in cross-examination.

“ചെക്കും cash-ഉം പ്രതി തന്നു. അരിയ്ക്ക് പകരം അതിനുള്ള വിലയായിട്ടാണ് തുക തന്നത്” (The money equivalent of the quantity of rice was obtained by the accused by way of cheque and cash)

17. PW17 was the Executive Officer of the Kodikulam Grama Panchayat at the relevant time. His evidence is that as there was no godown facility at the Panchayat, and that everybody was of opinion that nobody would receive the low quality rice towards wages. But he does not know whether the quantity of rice was sold by the accused, and the sale proceeds was utilised for payment of wages. But PW21 another nominee of the works carried out by the Panchayat, admitted in evidence that some amount was given to him as the money equivalent of the rice. This witness practically admitted that ₹ 7,458/-assessed as the money equivalent of the rice meant for him under the scheme was paid by the accused.

18. As discussed in the foregoing paragraphs, I find that many of the beneficiaries under the JRY Scheme admitted during trial that there was an understanding

among all to sell away the low quality rice in open market and to utilise the sale proceeds for payment of wages to the labourers. Many of the witnesses practically admitted that the President sold away the quantity of rice on the basis of a general understanding to sell it away. As already observed, the accused in this case can be found guilty only if there is evidence to prove that the total quantity of rice was sold away by him at a higher price than the price fixed by the Food Corporation of India or the Government, but he paid the money equivalent at the rate fixed by the Food Corporation of India, and thus appropriated the excess amount. The prosecution does not have such a case. It is not known at what rate, or for what price the total quantity of rice was sold by the accused in open market. Many of the beneficiaries under the Scheme have stated that they had received the money equivalent of the proportionate quantity of rice meant for them under the Scheme. In the absence of anything to prove that the accused was in any manner benefited by the said transaction, or by the sale of the rice in open market, it cannot be found definitely that the

accused was in any manner benefited, or that he had misappropriated any amount from the sale proceeds of the rice. In the absence of such clear evidence, or when the materials furnished by the prosecution are not satisfactory, or doubtful, it will be unsafe to convict the accused on some presumptions or some inferences.

19. The falsification of documents alleged by the prosecution is that the accused created some false vouchers in the name of different beneficiaries. Many of these beneficiaries disputed the signature, but practically admitted that they had received the money equivalent of the proportionate quantity of rice meant for them. This means that such falsification was not dishonestly made by the accused, or that the accused had not derived any benefit by such falsification of vouchers. Mere falsification of document is not punishable under the law. Falsification of documents or forgery of documents can be punished only when it is proved that such forged document was misused by the accused for some benefit or for dishonest benefit or for misappropriation. In the absence of any material to

prove that the accused had derived any benefit or any sort of advantage from the sale of the total quantity of rice in open market, the accused cannot be found guilty on the charge of falsification of accounts also.

20. In the absence of any evidence to prove the essentials of the offence made punishable under Sections 13 (1)(c) & (d) read with 13 (2) of the P.C Act, the accused is entitled for an acquittal. It is true that the prosecution has placed some materials, but the whole prosecution case is really doubtful. When the definite defence pleaded by the accused is that he sold away the total quantity of rice as agreed and consented by all and he utilised the whole sale proceeds for making payment of wages to the labourers, many of the prosecution witnesses practically supported him, though stated that they had not received the quantity of rice under the JRY Scheme. Many of the witnesses have practically admitted that money equivalent of the proportionate quantity of rice was paid by the accused. This fact was not honestly revealed by the prosecution. In short, such aspect was viciously suppressed by the prosecution. In

cross-examination, some of the witnesses divulged these facts in favour of the accused. This means that the prosecutions allegations are doubtful. In such a situation, when the prosecution case is tainted with some genuine doubts, and when the defence pleaded by the accused, though not justifiable under the Scheme, is practically admitted by the material witnesses, it would be unjust, improper and unsafe to find the accused guilty. I find that the accused is entitled for acquittal on the benefit of doubt. In the other case, he stands already acquitted by this court in appeal. The defence pleaded by the accused appears to be acceptable and the prosecution case appears to be doubtful. In such a situation, the benefit of this doubt can be given to the accused, and he can be acquitted.

In the result, this appeal is allowed. The conviction and sentence against the appellant made by the trial court in C.C No.5/1999 will stand set aside and he is acquitted of the offences against him in the charge, on the benefit of doubt under Section 386 (b) (i) of the Code of Criminal Procedure. Accordingly, the appellant will stand released

from prosecution and the bail bond, if any, executed by him will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge