

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

CRL.A.No. 280 of 2001 (A)

AGAINST THE JUDDGMENT IN CC 14/1999 of ENQUIRY COMMISSIONER AND
SPECIAL JUDGE, KOZHIKODE

APPELLANT(S):

T.P.GOPALAKRISHNAN, SOUPARNIKA,
VALLIKUNNU NORTH, KADALUNDI NAGARAM,
MALAPPURAM DISTRICT.

BY ADVS.SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K. MUHAMMED
SRI.DELVIN JACOB MATHEWS

RESPONDENT(S):

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.7.2015,
THE COURT ON 13-08-2015 ALONG WITH CRL.A.282 OF 2001, DELIVERED THE
FOLLOWING:

P.UBAID, J.
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**Crl.A Nos.280 & 282 of 2001**  
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Dated this the 13th August, 2015

J U D G M E N T

The appellant is the same in these two appeals. Crl.A 280/2001 is brought against the judgment of conviction in C.C No.14 of 1999 of the learned Enquiry Commissioner and Special Judge (Vigilance) Kozhikode and Crl.A No.282 of 2001 is brought against the judgment of conviction in C.C No.12 of 1999 of the same court. The appellant herein was Agricultural Officer in the State Seed Farm, Perambra during the period from 31.5.1991 to 31.5.1994. He had also additional charge of the Agricultural Officer of the Krishi Bhavan, Perambra from 20.10.1993 to 27.10.1994. On the allegation that he misappropriated some amount from the funds of the Seed Farm and the Krishi Bhavan on different occasions, without making payment of amounts due to different creditors, who supplied pesticides and other articles to the Seed Farm, the appellant faced prosecution before the learned Enquiry Commissioner and Special Judge, (Vigilance), Kozhikode in three cases. The

different instances of misappropriation detected on inspection were split up into different periods; two of them relating to misappropriation from the funds of the State Seed Farm and the third relating to misappropriation of funds from the Krishi Bhavan.

2. On the basis of a complaint from the Kozhikode Agricultural Marketing Federation, the then Joint Director of Agriculture and the Accounts Officer in the Principal Agriculture Office, Kozhikode conducted a surprise inspection in the State Seed Farm, Perambra and also in the Krishi Bhavan, Perambra in May, 1994. On inspection, the inspection team detected so many irregularities including different instances of misappropriation of amount, without making payment promptly to the persons to whom amounts were due under different transactions with the Kerala State Seed Farm and the Krishi Bhavan. The inspection team also found that the Cash Book was not properly maintained by the Agricultural Officer. The inspection revealed that the Agricultural Officer had received amount promptly from the Treasury for payment to the different creditors, but some of

those transactions were not entered in the cash Book, and the amount was not promptly paid to the different creditors. The inspection team submitted report regarding the facts detected on inspection, to the Director of Agriculture. On the basis of this report, the appellant was suspended from service and a vigilance enquiry was ordered. Accordingly, the Deputy Superintendent of Police (Vigilance) conducted an enquiry into the different instances of misappropriation alleged in the report of inspection made by the officers of the Agricultural Department, and found that the appellant had misappropriated huge amount from the funds of the State Seed Farm and Krishi Bhavan. On the basis of the said report of enquiry conducted by the vigilance, a crime was registered against the appellant by the Vigilance and Anti Corruption Bureau (VACB), Kozhikode. Splitting up the different instances of misappropriation in different periods, from the two institutions, the VACB submitted three final reports in court. Accordingly, the learned trial Judge took cognizance as C.C No.12 of 1999, C.C No.13 of 1999 and C.C 14 of 1999.

3. The appellant entered appearance before the learned Trial Judge and pleaded not guilty to the charge framed against him in the three different cases. In C.C No.12/1999, the learned trial Judge framed charged against the accused under Sections 13 (1) (c) read with 13 (2) of the P.C. Act and also under Sections 409 and 477A I.P.C. In C.C No.13 of 1999 also, such charge was framed by the trial court relating to another period of misappropriation. In C.C 14 of 1999 also, the learned trial Judge framed a charge against the accused under Section 13 (1) (c) read with 13 (2) of the P.C Act and also under Sections 477 and 409 I.P.C. The three cases were tried jointly by the learned trial Judge, and common evidence was recorded. The prosecution examined 25 witnesses during trial, and also marked Exts.P1 to P92 (a) documents. Exts.X1 to X14 documents were also marked as court exhibits during trial.

4. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances, and submitted that there was only some lapse on his part in maintaining the accounts properly, that he had not

appropriated any amount due to any creditor, that he had made payment of amounts to different creditors within a short period from the date of inspection, and that he was not in any manner benefited by such lapse or default on his part. Though opportunity was granted by the trial court, the accused did not adduce any oral evidence in defence. However, Ext.D1 document was marked during trial.

5. On an appreciation of the evidence, the learned trial Judge found the accused not guilty in C.C No.13/1999, and accordingly acquitted him of the offences alleged in the said case. However, in C.C No.12/99 and C.C No.14/99, the learned trial Judge found the appellant guilty under Section 13 (1) (c) read with 13 (2) of the P.C Act and also under Sections 477A and 409 I.P.C. On conviction, in C.C No.12/99, he was sentenced to undergo rigorous imprisonment for two years under Section 13 (1) (c) read with 13(2) of the P.C Act, to undergo another term of rigorous imprisonment for two years under Section 409 I.P.C, and to undergo rigorous imprisonment for one year under Section 477A I.P.C.

6. On conviction in C.C No.14 of 1999, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹ 23,125/- under Section 13 (1) (c) read with 13 (2) of the P.C Act, to undergo rigorous imprisonment for two years under Section 409 I.P.C, and to undergo another term of rigorous imprisonment for one year under Section 477 I.P.C by judgment dated 27.2.2001. Aggrieved by the judgment of conviction, the accused has come up in appeal.

7. When the two appeals came up for hearing, the learned counsel for the appellant submitted that the appellant had not in fact appropriated any amount from public funds, and that the appellant has already lost his service for the defaults and mistakes on his part in maintaining the accounts and the cash book properly. It was submitted that on the basis of the report of inspection and further report of enquiry, a disciplinary proceeding was initiated against him, and after due procedure under the law, he was terminated from service. The learned counsel also submitted that there were some flaws or lapses on the

side of the accused, which were not at all intentional, and he happened to make such mistakes due to the pressure of work and shortage of staff. The accused had additional charge of so many offices during this period, and it was not possible for him to maintain the cash book properly and promptly every day. However, he had made payments to all the creditors within a short period from the date of inspection, and he had not appropriated any amount from public funds. The learned counsel pleaded for some leniency in such a situation, where the accused has already lost his job. It was also submitted that the prosecution sanction in this case is not properly proved according to law, and so there is bar of cognizance under Section 19 of the P.C Act.

8. The learned Public Prosecutor on the other hand submitted that the prosecution sanction does not require formal proof in this case, and that the different instances of misappropriation by falsification of accounts are proved by the prosecution.

9. Before going to the legal aspects raised by the

defence, as regards prosecution sanction, let me examine whether the prosecution case stands proved on facts. In C.C No.12/1999, accusation against the accused relates to misappropriation of a total amount of ₹14207/- on different occasions. PW1 and PW2, who conducted a surprise inspection in the State Seed Farm, Perambra and in the Krishi Bhavan, have given definite evidence regarding such instances of misappropriation proved by the documents like the Cash Book maintained in the two institutions, and also the Treasury Payment Bill Book. Ext.P7 Cash Book maintained in the State Seed Farm, Perambra and Ext.P8 Cash Book maintained in the Krishi Bhavan will tell such details. Of course, the accused has no dispute regarding the fact that he was Agricultural Officer in these two offices during the period in question. Ext.P26 to 29 attendance registers maintained in the State Seed Farm, Perambra, and Exts.P62 attendance register maintained in the Krishi Bhavan, Perambra during the period in question will prove that the accused herein had attended the office on the relevant dates as Agricultural Officer. This aspect is further

proved by the evidence of PW1 and PW2, who conducted surprise inspection, and also the evidence of the officers examined by the prosecution. An examination of Ext.P1 cash book will show that the accused had not made any entry in the cash book after 12.5.1994. Inspection in the offices was conducted by PW1 and PW2 on 28.5.1994. The accused has no explanation why he did not enter the cash transactions from 13.5.1994 to 28.5.1994. It is in evidence that so many cash transactions were there during this period, but none is seen recorded in the cash book. It is here the prosecution allegation regarding falsification of accounts assumes importance and stands proved.

10. Of the so many witnesses examined by the prosecution, the important witnesses are PW 1 to PW3, PW8, PW10, PW15, PW18, PW22 and PW23, PW4 to 7, PW9, PW11, PW12, PW14, PW16, PW17, PW24 and PW25 are the officers and employees who produced some files and registers during investigation before the Investigating Officer. As regards the documents and entries therein, like the cash book, the Treasury payment bill book etc, the

accused has no dispute at all. The prosecution case is that under so many contingent bills the accused received payment from the Treasury and he also entered such receipt of money in the cash book up to 12.5.1994, but the amounts were not, in fact, disbursed to the concerned persons. An enquiry or inspection happened to be made only when a complaint regarding non-receipt of money was received from the Agricultural Marketing Federation, Kozhikode. During vigilance enquiry, the Deputy Superintendent of Police, found out so many irregularities in the cash transactions in the office of the accused. On the basis of the said report of enquiry, PW19 registered crime in this case and proceeded for initial investigation. Investigation was later taken over by PW21. There is nothing to show that there was any flaw or illegality or irregularity in the investigation conducted by PW21. The whole investigation was later verified and final report was submitted by PW20 in court. The defence has no case that during investigation PW19 or PW21 had caused any sort of prejudice to the accused. I find that the case was properly and legally

investigated by the vigilance officers in this case.

11. In C.C 12/1999, the allegations against the accused relate to the cash transactions made on five occasions. It stands well proved by the evidence of PW1 and PW2, and also the documents including the Ext.P1 cash book and Ext.P8 Treasury Payment Bill Book that the accused had withdrawn from the Treasury an amount of ₹ 9655/- on 30.3.1994 under the contingent bill 103/93-94, an amount of ₹ 1691/- on 30.3.1994 itself under the contingent bill 104/93-94, an amount of ₹ 1601/- under the contingent bill No.74/93-94 on 28.3.1994, an amount of ₹ 500/- under the contingent bill No.96/93-94 on 30.3.1994, and an amount of ₹ 760/- under the contingent bill No.77/93-94 on 30.3.1994. All these transactions are seen entered in the cash book, and disbursement of these amounts are also seen recorded. But it has come out in evidence that these amounts were not in fact disbursed by the accused promptly to the concerned persons and he had also not obtained any voucher proving such disbursement. These defaults proving misappropriation are proved by the

evidence of PW1 and PW2 who made inspection on 28.5.1994. The total amount covered by the five contingent bills is ₹ 14,207/-. Evidence proves well that the accused had withdrawn such amount from the Treasury, and such withdrawal is seen recorded in the cash book also. But the corresponding entries regarding disbursement of the amount were found false on inspection by PW1 and PW2. Of course, it is true that within a few days after 28.5.1994, the accused made all these payments either directly or through his successor in office. But the said fact will not absolve him from liability under the criminal law. Misappropriation once made is made and it cannot be condoned in any circumstance. There were so many instances of default and failure on the part of the accused in making prompt payment of amounts. But only one complaint came from the Agricultural Marketing Federation, Kozhikode. All the instances were revealed when enquiry was conducted and inspection was made by the competent officers on the basis of the said complaint. As regards failure to obtain vouchers proving disbursement, or as

regards failure in making disbursement of various amounts promptly to different persons, the accused has no explanation at all. That he later disbursed such amounts to the concerned persons, will not explain away the failure on his part, or the misappropriation proved by documents. Thus, I find that the misappropriation alleged by the prosecution in C.C No.12/1999 stands well proved.

12. Evidence need not be discussed as regards C.C No.13/99 because the accused stands acquitted in the said case. The accusation in C.C No.14/99 is in relation to misappropriation of an amount of ₹ 23,125/- from the funds of the Krishi Bhavan, Perambra. The accusation in C.C No.12/99 relates to misappropriation of amounts from the funds of the Kerala State Seed Farm, Perambra. The accusations made in C.C 14/99 are proved by the contents of the Ext.P8 cash book maintained in the Krishi Bhavan, Perambra and also the evidence of PW1 and PW2 who detected the instances of misappropriation on surprise inspection. In C.C.14/99 it stands proved that the accused had withdrawn an amount of ₹ 20,000/- on two occasions by

making falsification of accounts and he also appropriated another amount of ₹ 3125/- encashed under the contingent bill 74/93-94 on 7.3.1994, without disbursing the said amount to the concerned persons. The evidence of PW1 read along with Ext.P9 (a) entries in Ext.P9 document will show that on 8.3.1994, the accused had received an amount of ₹ 8037/- from the Assistant Director of Agriculture, Perambra for disbursement to the persons concerned and this receipt was recorded in the cash book also. But in the entries regarding disbursement, in page 69 of Ext.P8 cash book, the accused recorded disbursement of ₹18037/-. Thus, in the place of ₹ 8037/- he recorded a disbursement of ₹ 18037/- and thus appropriated ₹ 10,000/-. Yet another instance of misappropriation of ₹ 10,000/- is proved by Ext.P18 entries in Ext.P8 cash book. As per Ext.P9 bill, the Assistant Director of Agriculture had encashed an amount of ₹ 3125/- and it was handed over to the accused on 7.3.1994 for payment to the concerned person. But in page 69 of the cash book relating to disbursement, the accused made an entry regarding ₹18,879/-. The total amount

received by him inclusive of the amount of ₹ 3125/- entrusted by the Assistant Director was ₹ 8879/-. But in its place, the accused made an entry showing disbursement of ₹ 18,879/-. Thus, misappropriation of ₹ 10,000/- was made by the accused. All these entries are proved by the evidence of PW1 and PW2. These two witnesses also gave definite evidence regarding various irregularities committed by the accused in the maintenance of the cash book and other registers showing cash transactions in the Kerala State Seed Farm and also in the Krishi Bhavan, Perambra. It stands proved by the evidence of PW1 and PW2 that from the funds meant for agricultural subsidy to farmers and financial assistance to the farmers for purchasing pump sets etc, the accused had misappropriated some amounts. The allegations made in Ext.P43 (a) complaint are well proved by the witness examined from the side of the Agricultural Marketing Federation, and this non-payment is proved by the evidence of PW1 and PW2 also. Many other instances of non-payment are proved by the evidence of PW1 and PW2. I feel it not necessary to go to the details because the

accused has practically no dispute regarding the irregularities found on inspection by PW1 and PW2. The accused has practically admitted that he had not in fact made prompt payment of amounts to various persons, but he had made entries in the cash book and registers showing such disbursement. During trial, he came out with explanation that due to pressure of work and shortage of staff, he could not do things promptly and regularly, but all disbursements were later made by him either directly or through his successor in office. Within a few days from the date of inspection, he was suspended from service. Of course, it is true that the prosecution would admit that after the inspection made by PW1 and PW2 on 28.5.1994, all payments were made by the accused to the concerned persons. The registers do not contain any voucher proving payment to the concerned persons. But there are entries made by the accused showing such disbursement. This means that without making payment to the concerned persons, the accused made entries showing payments to those persons, and thus, he appropriated the amounts.

13. It was submitted by the learned counsel that the accused had not in fact misappropriated any amount, and what really happened was that due to pressure of work and other circumstances including shortage of staff he could not make payments promptly, and he made entries in the documents showing disbursement on the bona fide belief that he could make payment without any delay. It was submitted that he did so because, if the amount is not disbursed by 31.3.1994, he will have to remit the amount back in the Treasury. Of course it is a common practice seen in various offices that at the end of March, so many withdrawals would be made and so many official adjustments will also be made. But the acts of the accused cannot find any legal justification. The accused cannot have any justifiable explanation for recording the disbursement in the registers when he had not in fact made disbursement of the amounts to the persons concerned. The learned counsel submitted that on factual aspects regarding withdrawal of amount and recording the disbursement in the registers, proved by the witnesses, PW1 and PW2, and the

various entries in the cash book and registers, the accused has no dispute. The learned counsel pleaded for mercy on the contention that there was no intentional or deliberate failure on the part of the accused, and he had not in fact appropriated anything from public funds. Of course, it is true that he was compelled to make such entries in the registers for fear that if disbursement is not recorded in the registers like cash book, the whole amount would go back to the Treasury. It was to avoid such a situation, he recorded payments in the registers even without vouchers, under the bona fide belief that all such payments could be made within a few days. This explanation cannot be accepted by the court. What is done is done, and an act of misappropriation done, cannot be explained away. Withholding amounts or keeping amounts unauthorisedly in hands even for a few days will amount to misappropriation meant under the law. That the accused later made all payments to the concerned persons will not explain away the offence committed by him, and such payments will not absolve him from liability. Misappropriation of amounts

from the funds of the Kerala State Seed Farm, Perambra and the Krishi Bhavan, Perambra is proved in this case by the prosecution by the evidence of PW1 and PW2 mainly, and also the important documents like cash book, treasury payment bill book etc. I do not venture to make further discussion on this aspect because these things are not in dispute.

14. On an appreciation of the evidence as discussed above, I find that the prosecution case stands proved on facts. Of course, it is true that within a few days after 28.5.1994, all payments were made by the accused either directly or through his successor in office. This was submitted by the learned counsel as a mitigating circumstance to be considered in the matter of sentence.

15. Now the question is whether the prosecution in this case is barred. A prosecution under the Prevention of Corruption Act without sanction from the authority competent to remove the public servant from service is barred under Section 19 of the P.C Act. Ext.P79 is the prosecution sanction in this case. This is the sanction

granted by the Director of Agriculture, Thiruvananthapuram, but he was not examined by the prosecution. Ext.P79 sanction was marked in evidence through PW20. But as regards sanction, his evidence is that he has no knowledge regarding the contents of the sanction. This witness has also not identified the signature of the Director of Agriculture. As regards proof of sanction under Section 19 of the P.C Act, this Court has settled the legal position in a recent decision, that when such a sanction does not have sanctity or privilege as a public document, it will have to be proved by the person who granted sanction. The Hon'ble Supreme Court has settled the position that the prosecution is bound to prove that the sanction under Section 19 of the P.C Act was granted by the competent authority after an anxious consideration of all the materials placed before him, and also on an independent application of his mind in the process. In **Antony Cardoza v. State of Kerala [2011 (1) KLT 946]** this Court held that application of mind and consequent satisfaction arrived at for granting sanction under Section 19 of the P.C Act are matters which could be

proved only by the sanctioning authority, and nobody else. In the said case, the prosecution examined an Under Secretary to the Government to prove the sanction granted by the Principal Secretary. Such evidence was not acceptable by this Court, and the learned Single Judge held in such a situation that the sanction cannot be said to be properly and legally proved. Ext.P79 sanction in this case is not a public document. It does not have any sanctity or immunity under the law as a public document. When the document does not have such privilege, it will have to be proved by the concerned person as provided under the Indian Evidence Act. The Investigating Officer, who marked the document did not even identify the signature of the Director of Agriculture. In a case where evidence by the concerned person is required to prove the sanction, it is of no use that the signature is identified by somebody else like the Investigating Officer. In this case, the prosecution has no explanation why the Director of Agriculture who granted sanction was not examined to prove the sanction. Some instances of misappropriation happened years back in 1994

are alleged in the two cases. The learned trial Judge pronounced the judgment in February, 2001 and these two appeals were filed long back in 2001. Now we are in 2015. In the given factual situation, it would be cruel, harsh and unjust to remand the two cases for proof of prosecution sanction. The prosecution knows very well that Ext.P79 document cannot claim any sanctity under the law as a public document. The prosecution has no explanation why the Director of Agriculture was not examined to prove the sanction during trial. In the absence of proof of sanction, Ext.P79 document cannot be accepted as a proper and legal sanction under Section 19 of the P.C Act. The resultant finding is that in the absence of a proper and legal sanction, the whole prosecution case in this case is barred under Section 19 of the P.C Act. On this very limited ground itself, the accused is entitled for acquittal, despite the fact that there is evidence to prove the case on facts. I find that on the very important question of law that the whole prosecution is barred under Section 19 of the P.C Act, the accused is entitled for acquittal in the two cases.

In the result, these two appeals are allowed. Accordingly, the conviction and sentence against the appellant in C.C No.12/99 and in C.C 14/99 of the court below will stand set aside, and the appellant will stand acquitted in appeal under Section 386 (b) (i) of Cr.P.C. 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