

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CRL.A.No. 324 of 2001 (C)

AGAINST THE JUDGMENT IN CC 7/1998 of ENQ.COMMISSIONER AND SPECIAL
JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.1:

K.T.HARIHARAN,
FORMERLY FOREST RANGE OFFICER,
GOODRIKAL RANGE.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.VIJAYABHANU.

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08-10-2015, ALONG WITH CRA. 354/2001, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A Nos.324 & 354 of 2001**  
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Dated this the 8th October, 2015

J U D G M E N T

These two appeals arose from the judgment of conviction in C.C No.7/98 of the Court of Enquiry Commissioner and Special Judge (Vigilance), Thiruvananthapuram. The two accused in the case are the appellants. The first accused was the Forest Range Officer of the Gudrickal Range in the Ranni Forest Division during 1985-88, and the second accused was the Section Forester in the said Forest Range during 1987. A vast area of forest land within the said Ranni Forest Division was recovered by the department from the possession of encroachers, and as part of a scheme for afforestation the forest department decided to plant trees like bamboo, teak, akasia etc in the said recovered area. The estimate prepared for the said purpose by the then Divisional Forest Officer, Idukki, and the necessary funds were sanctioned by the Conservator of forest in February 1987. Being the Forest Range Officer, and the Forester the two accused were entrusted with the

task and, they were given the whole responsibility to carry out the said project of afforestation. The total area for afforestation was identified as 72.22 hectares by the accused, and estimate was accordingly presented by the Divisional Forest Officer, on the recommendation made by the two accused. Two estimates were submitted for such afforestation at two parts. For one part ₹6,86,855/- was sanctioned, and for the other part covering another area within the forest division ₹ 7,31,750/- was sanctioned. On the allegation that the two accused dishonestly misappropriated an amount of ₹3,27,335/-, from the amount sanctioned from public funds for the afforestation project, by planting the specified plants in a lesser area, and also by creating false and forged vouchers in the name of fictitious persons, the two accused faced prosecution at the instance of the Vigilance and Anti-Corruption Bureau (VACB), Thiruvananthapuram. The VACB registered a crime against these two accused on the basis of materials collected during an enquiry regarding the alleged misappropriation from public funds. Such an enquiry was conducted on the basis of

the report of enquiry conducted by the Divisional Forest Officer, who succeeded the Divisional Forest Officer then in office. After investigation, and after collecting the necessary sanction required under Section 19 of the P.C Act, the V.A.C.B submitted final report in court.

2. The two accused appeared before the trial court and pleaded not guilty to the charge framed against them under Sections 5(2) r/w (1)(c) of the P.C Act 1947 and also under Sections 409, 468, 471 and 477A of the Indian Penal Code. The prosecution examined 42 witnesses and also marked Exts.P1 to P40 documents. When examined under Section 313 Cr.P.C the two accused denied the incriminating circumstances and submitted that they had not in fact misappropriated anything from public funds, and that they had not created any false bill or voucher for drawing amount from public funds. They further submitted that the estimate was prepared on the basis of some rough sketch regarding the extend available for afforestation, and that nobody had committed any fraud in identifying the total area available for afforestation. They contended that the required plants

were procured, and the whole plants were in fact planted in the forest area available. In defence the accused examined two witnesses and also marked Exts.D1 to D6.

3. On an appreciation of the evidence, the trial court found the two accused guilty of having dishonestly misappropriated huge amount from public funds by making use of false and forged vouchers in the name of fictitious persons. The trial court found that plants were planted in a lesser area whereas the two accused submitted sketch identifying a vast area of forest land dishonestly. On conviction the first accused was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹ 40,000/- under Section 5(2) r/w 5(1)(c) of the P.C Act, 1947, to undergo rigorous imprisonment for four years and to pay a fine of ₹ 20,000/- under Section 409 of IPC and to undergo another period of rigorous imprisonment for one year under Section 477A of IPC. The second accused was sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹20,000/- under Section 5(2) r/w 5(1)(c) of the P.C Act 1947, to undergo rigorous imprisonment for one year and to

pay a fine of ₹5,000/- under Section 409 IPC, and to undergo rigorous imprisonment for one year under Section 477A of the IPC. The two accused were convicted with the aid of Section 34 I.P.C. Aggrieved by the said judgment of conviction, dated 30.3.3001 in C.C. No.7/1998 the two accused have come up in appeal. Crl.A No.324/2001 is the appeal brought by the first accused against the conviction and sentence, and Crl.A No.354/2001 is the appeal brought by the second accused.

4. When the two appeals came up for hearing the learned counsel for the appellants submitted that the prosecution does not have any material to prove the alleged dishonest misappropriation of amount from public funds or the alleged falsification or forgery of bills and vouchers. The learned counsel also submitted that the prosecution does not have any evidence or material to show that the amount sanctioned by the department under the estimates was not in fact fully utilized for afforestation purposes, or that the entire area covered by the estimate was not planted. As regards the legal question involved the learned counsel

submitted that the prosecution sanction in this case stands not properly and legally proved as provided under the law, and so the accused are entitled for acquittal on the ground that the whole prosecution is barred under Section 19 of the P.C Act. On the other hand the learned Public Prosecutor submitted that the prosecution sanction stands proved by the competent person though not the person who actually granted the sanction, and that definite and satisfactory materials are there to prove dishonest misappropriation of funds by the accused by submitting a false sketch of the proposed area for afforestation and also by submitting bogus vouchers in the name of fictitious persons.

5. Of the 40 witnesses examined by the prosecution, the important witnesses are PW1, PW4, PW6 to PW26, PW32 and the investigating officers. PW32 is the Divisional Forest Officer who accepted the plans and estimates submitted by the accused, and passed the bills submitted by the accused along with the required vouchers in the name of so many persons. It is pertinent to note that the plan of the proposed

area was not in fact prepared and submitted along with the estimate, before the Conservator of Forest, and he in fact accepted the estimate and sanctioned the required amount without seeing the required plan of the proposed forest area. This aspect has been discussed by the learned trial judge in the impugned judgment. However, re-survey of the forest area was made by PW1 as directed by PW4, who found out some irregularities and mal practices in the process of afforestation. The prosecution does not have any explanation why the required sketch or plan was not prepared at the right stage and why such plan was not submitted along with the estimate. There is no explanation why the estimate was accepted or how the required amount happened to be sanctioned without seeing or perusing the required plan of the proposed forest area for afforestation. This means that the estimate proved in evidence as Ext.P3(i) and P3(j) were not in fact made on the basis of any plan or sketch regarding the area meant for afforestation. In short, the actual area proposed or meant for afforestation does not assume any importance in this case because the whole

estimate was prepared and accepted without the aid of any such plan or sketch.

6. During trial the learned trial judge found out some vicious role on the part of PW32 in the process of afforestation carried out by the accused. On the basis of materials revealed during trial, the learned trial judge found that PW32 was in fact the person behind all the irregularities and mal practices, but he somehow escaped with the aid of some higher- ups. The defence of the second accused, that he was not qualified in forest survey, and he happened to submit the survey sketch under pressure, was considered by the learned trial judge, and the learned trial judge found some force in the contentions raised by the second accused as regards making of the rough plan. Anyway, the plan was submitted by the accused after the estimates were accepted and sanctioned by the Conservator of Forest. The role of PW32, the then Divisional Forest Officer came out during trial, and the learned trial judge found that the estimates happened to be accepted and sanctioned without plan, on the intervention of PW32 and that he passed the bills and

claims made by the accused without any sort of enquiry or verification. In short, the learned trial judge found the dishonest and vicious role on the part of PW32 in the process, and also made some observations regarding PW32. The learned trial judge observed thus, in paragraph 16 of the judgment as regards sanctioning of the estimates:

“The Conservator of Forest has accorded sanction to do the works, the estimate for which was several lakhs of rupees, without even seeing the plan.”

7. The learned trial judge further observed as regards PW32 thus:

“Equally unfortunate is the position, as revealed in this case that PW32 who was the then Divisional Forest Officer and who should have been mulcted with the liability was absolved of all the liabilities, in spite of the fact that the Enquiry Officer had found him guilty in the matter. That shows that those who were in the helm of affairs had actually shielded that delinquent officer”.

8. As regards the process of sanctioning the estimate by the Conservator of Forest, the learned trial judge further observed in paragraph 18 thus:

“As I said earlier, no sketches were prepared in respect of the areas to be planted prior to the preparation of the estimate or prior to sanctioning of the same by the Conservator of

Forest.”

9. As regards the role of PW32 and his office in the process of recommending sanction, on the basis of Exts.P3(i) and P3(j) estimates without plans, the learned trial judge observed in paragraph 20 of the judgment thus:

“In Ext.P3(c) to P3(g) the date of actual survey or the date when those sketches were prepared are not seen mentioned. A1 also did not take care to get it noted by A2 nor did A1 himself do it. Similarly, the office of the DFO also did not think it necessary to get the dates mentioned in those documents. It seems A1 and also PW32 wanted to see that the dates were not put thereon with ulterior motives.”

10. Thus on the basis of materials that came out during trial the learned trial judge found the vicious and dishonest role and involvement of PW32, and also found that PW32 was in fact behind everything. The effect of this finding, or the purport of this finding is that these two accused alone cannot be made liable for the alleged irregularities or mal practices. We will have to appreciate and analyse the evidence and come to a finding regarding the alleged acts of these two appellants, in this background regarding the findings made as regards the dishonest role of PW32 in the process of afforestation. On a reading of the

entire judgment, I find that the real purport of the findings made by the learned trial judge regarding the dishonest role of PW32 is that everything was in fact managed and processed by him, and ultimately these two appellants became the scapegoats. It has come out during trial that a departmental enquiry was made as regards the alleged transaction, and in the said enquiry the accused and also PW32 were found guilty by the enquiry officer. It is not known why PW32 was not arraigned as accused in this case. The learned counsel submitted that adequate punishment was already imposed on the two appellants on the basis of the report of enquiry, and that the amount of loss sustained by the department was in fact recovered from the accused. The learned counsel also submitted that what is at the most proved is some irregularities on the part of the two accused in the process of afforestation, which can be only the subject matter of departmental enquiry, and that on the basis of those irregularities alone a conviction is not possible under the provisions of the P.C Act or under Sections 409, 468, 471 and 477A of the IPC. The learned counsel

strenuously argued that in the absence of any material to prove dishonest misappropriation or forgery of false vouchers in the name of fictitious persons a conviction is never possible under the P.C Act or the other sections of the IPC. The learned counsel submitted that what is at the most possible is only disciplinary action for the alleged irregularities and mal practices without amounting to dishonest misappropriation, and that the two accused have already received adequate punishment on the basis of the report of departmental enquiry.

11. PW1 has given evidence regarding the resurvey process made by him as directed by PW4. As regards his evidence much discussion is not required because as already observed the estimates in this case were sanctioned by the Conservator of Forest fully on the basis of figures furnished by the accused through the Divisional Forest Officer regarding the total number of plants required and the amount required for the proposed afforestation, and not on the basis of any sketch or plan showing the actual area proposed for such afforestation. The survey plan, or

the resurvey made by PW1 will assume importance only in a case where the estimate was sanctioned by the authority on the basis of survey plan, showing the actual area meant for afforestation. In this case where the Conservator of Forest sanctioned the estimates and the required amounts solely on the basis of figures furnished in the estimates regarding the required plants and the required amount of expenses, the concern of the Court is only whether that much quantity of plants were in fact procured and planted by the accused, and also whether the amount received by them from public funds was in fact utilized for the afforestation purposes.

12. PW4 is the Divisional Forest Officer who succeeded PW32. It was he who found out some irregularities and mal practices, and accordingly he ordered a resurvey and enquiry. On the basis of the report submitted by him a detailed enquiry was conducted, and this lead to this prosecution. Ext.P3(w) is his report regarding the irregularities and mal practices detected on enquiry. On the basis of this Ext.P3(w) report a detailed enquiry was conducted, and on the basis of the said report this crime was

registered against the two accused. Some claims and vouchers submitted by the accused were also sanctioned by PW4. Those vouchers are Nos.42 to 82 in the Ext.P4(a) series.

13. It is pertinent to note that PW4 who detected some irregularities in the process of afforestation, has no case in his evidence that he had made physical verification or that he had made a visit to the forest area to see the planted area of forest and to verify whether that much quantity of plants covered by the estimates were procured and planted, and whether the amount received by the two accused was in fact utilized for the purpose. It is not known how PW4 detected irregularities and mal practices without making visit to the planted area of forest and without verifying or ascertaining the facts required for the said finding. The investigating officer has also no case that he had made a visit to the planted area of forest to verify the facts alleged. If the required number of plants as per the estimate submitted by the accused is 'x', and if the prosecution has a case that the actual number of plants

planted by the accused is something minus-x, the prosecution can prove the case only if the concerned authorities made a visit to the forest area and found out that the actual 'x' number of plants were not planted. In the absence of any such evidence either by PW4 who claims to have detected the irregularities or by the investigating officer who claims to have verified the allegations during investigation, regarding those very important and necessary aspects, a finding is not at all possible against the two accused. Admittedly, the estimates were accepted by the Conservator of Forest not on the basis of any definite plan showing the proposed area of forest. When that is the situation, the only concern of the court must be whether the actual number of plants covered by the estimate were in fact procured and planted by the accused, and also whether the amount received by them was in fact utilised to plant that much plants in the area covered by the estimate.

14. The prosecution relies mainly on the evidence of PW1 and PW4. In view of the observations made by the learned trial Judge regarding PW32 and also in view of the

findings regarding his complicity or vicious role in the alleged malpractices or misappropriation, much value cannot be attached to the evidence of PW32. As regards the evidence of PW1, I have already observed that the survey plan of the forest area proposed for a afforestation does not assume much importance in this case. The two estimates cover a certain amount, and this amount was sanctioned for afforestation purposes. This estimate was submitted by the accused through PW32 on the basis of the requirements including plants and labour charges for the afforestation project. So the prime concern must be whether these plants and materials were procured and utilised, whether that much quantity of plants were planted in the forest area recovered from encroachers, and also whether the amount sanctioned and disbursed by the authority was in fact fully and properly utilised for the project. If these two important aspects are found in favour of the accused, or against the prosecution, there is no question of the two accused being found guilty or convicted. Here, the prosecution does not have any direct materials to prove misappropriation. The

prosecution case is that the two accused submitted an estimate for a vast area of 72 hectars, whereas on re-survey, the total area for the afforestation was found to be lesser. To prove the alleged misappropriation, the prosecution also relies on some bills and vouchers, on the contention that these bills and vouchers were forged or created by the accused in the name of some fictitious persons. Now let me come to the important aspects one by one.

15. As regards the first aspect as to whether the entire amount sanctioned was utilised for the proposed project, or whether the whole quantity of plants and other materials covered by the estimates were utilised for the proposed project, I find that the prosecution does not have any satisfactory material or evidence to prove it. PW4 is the person who found out some irregularities on verification after he succeeded PW32. His evidence does not contain these necessary materials. He has no case that the quantity of plants or materials covered by the two estimates were not in fact utilised or planted in the proposed area. He has

no case in evidence that he had made physical verification of the facts by making a visit to the forest area to find out whether the total quantity of plants were planted in the forest area. If at all it is true that the whole quantity of plants were not seen on verification, the court will have to consider and accept the defence projected by the accused that some plants were destroyed by animals and some plants were destroyed by natural process. Being plants planted in the forest area, it would be only common knowledge that very many plants will be destroyed by natural process and very many plants will be destroyed by wild animals. This fact cannot be lost sight of by court in appreciating the evidence. In fact, the prosecution does not have a case as to what percentage of plants were seen surviving, or what percentage of plants is not seen planted. Then it is not known how the prosecution would allege malpractice or misappropriation. Anyway, it has come out in evidence that on these aspects, an enquiry was conducted by the department and in the said enquiry, all the concerned officers including the accused and PW32 were found guilty.

16. As regards the other element regarding expenses also, PW4 does not have any definite case. He says that the whole amount covered by the estimate was disbursed to the accused except some amount withheld due to specific reasons. Of course, nobody has got a case that physical verification of the plants was made by anybody. There is nothing in the evidence of PW4 or the others on the above material aspect regarding the actual expenses or the money actually spent for the project. Then it is not known how the prosecution would allege that these two accused had misappropriated money from public funds. In the absence of such evidence or materials, the appellants cannot be found guilty of having misappropriated money from public funds.

17. PW6 to PW26 are the persons in whose name, the accused submitted bills and vouchers for withdrawal of the amount. But none of these witnesses supported the prosecution in any manner. PW6 admitted the Ext.P4 (a) 70 voucher, and also receipt of money under the voucher. So also, PW7 admitted Ext.P4 (a) 60 voucher, PW8 admitted

Ext.P4 (a) 52 voucher, PW9 admitted Ext.P4(a)-82 voucher, PW10 admitted P4(a)-74 voucher, PW12 admitted P4 (a)-79 and 80 vouchers, PW15 admitted P4 (a)- 79 and 81 vouchers, PW16 admitted the receipt of money under the voucher in his name, PW17 admitted Ext.P4 (a)- 52, 71 and 72 vouchers and receipt of money, PW18 admitted Ext.P4 (a)-62 voucher, and receipt of money, PW19 admitted P4 (a)- 55 voucher, PW21 admitted P4 (a)-25 voucher, PW22 admitted Ext.P4 (a) 59 voucher, PW23 admitted P4 (a) 38 and 40, vouchers, PW24 admitted Ext.P4 (a) 4, 6, 31 and 48 vouchers, PW25 admitted P4 (a) 58 voucher and PW26 admitted P4 (a)-26 and 42 vouchers. PW20 was given up during trial after he was put in the witness box, for reasons known to the prosecution. Thus, I find that all the witnesses in whose name the two accused submitted vouchers stated in court that these vouchers contain their signature and they also admitted receipt of money under these vouchers. In spite of this evidence given by the witnesses, the learned trial Judge found that many of the witnesses are not believable.

18. The learned trial Judge found on evaluation of their evidence that some of the witnesses have given false evidence to support the defence. I fail to understand how the learned trial Judge came to such a finding against the witnesses, or against the accused, when the witnesses are consistent in evidence regarding their signature in the vouchers and also regarding receipt of money under the vouchers. I find that the finding of the learned trial Judge is liable to be reversed.

19. PW27 to PW31 are the postmen examined by the prosecution to prove that some of the persons in whose name the appellants produced vouchers were found to be fictitious persons. The prosecution case is that on detection of some irregularities, notices were sent from the Department to these persons by registered post, and the notices were returned with endorsement that the persons could not be found. Curiously enough, these persons named in the vouchers are not seen cited as witnesses. The proper way to prove the said aspect is to cite these persons as witnesses and cause summons from court. If any summons

is returned with report that such person is not available, or that there is no such person in the given address, the court can draw adverse inference. The fact that some postmen returned the notice with some endorsement will not amount to proof of the fact that those persons are not available, or that such persons are not there in the given address. The postmen would say that they known all the persons at the locality. This is really unbelievable. I do not think that a postman will be familiar with all the residents in the postal area. Just because a postman could not find out a person, it cannot be found such a person is not alive, or that he is a fictitious person. Some of the witnesses have stated that the house name shown in some of the notices is correct, and that such houses are there in the given address, but the persons named in the said address could not be traced out. If the address is correct, except the name of the person, and the postman could not find out the person named, it cannot be found by the court that such person is a fictitious person. In short, the prosecution has not chosen the proper way to prove that these persons are really

fictitious persons.

20. There is yet another factor regarding the said aspect. The postmen examined by the prosecution have consistently stated in evidence that though the persons mentioned in some of the vouchers could not be located, the house name shown in the address is correct. In short, they would admit in evidence that the house name mentioned in the vouchers could be located by them, but the persons mentioned in some of the vouchers could not be located. In view of such evidence, the best way to prove that those persons are fictitious persons, or that such persons are unavailable in the given address, is to examine somebody from the house. If the house named 'A' is there, and the house could be located by the postman, but the person named 'B' as resident of the said house could not be found or located, or that such a person is not there, actually, the proper way to prove that aspect is to examine somebody from the house 'A'. The best and the competent person to say whether the person 'B' is dead or alive, or whether he is an inmate of the said house, or whether he is a fictitious

person, would be none other than the inmates of the said house. The prosecution did not adopt this mode to prove that the vouchers are in the name of fictitious persons. This must be considered as a very material defect in the prosecution, or a culpable failure on the part of the prosecution in proving the essentials.

21. The mode of misappropriation alleged by the prosecution in this case is that, the appellants created false vouchers in the name of fictitious persons, and by making use of these false vouchers, they presented the claim and withdrew the amount, whereas actually such amount was not in fact utilised by them, and the whole area was not planted. In view of the finding that the prosecution has failed to prove that the alleged vouchers are false, or that the persons are fictitious, and also in the absence of any sort of evidence positive to prove that anybody had made any physical verification to find whether the entire area was in fact planted, or whether the entire quantity of plants procured and required as per the estimates were in fact planted, the court cannot find the accused guilty of having

misappropriated any amount from public funds. The benefit of the observations and findings made by the trial court regarding the suspected dishonest and vicious role of PW32 in the alleged misappropriation, must necessarily go to these appellants. It is really suspicious how these two accused alone happened to be prosecuted when the Forest Department had enough materials to implicate the Divisional Forest Officer also, and when the said Officer was found guilty in the departmental enquiry concerning the alleged misappropriation. In the absence of definite evidence to prove the alleged forgery and falsification, or the creation of the bills and vouchers in the name of fictitious persons to commit dishonest misappropriation, the court cannot find that public money was misappropriated by the accused in the mode alleged by the prosecution. It is pertinent to note that the prosecution does not allege any other other mode of dishonest misappropriation. In the absence of any direct and positive evidence to prove that the sanctioned quantity of materials and plants covered by the estimates were not in fact planted, or that the entire amount covered by the

estimates were not in fact utilised, it is impossible to come to a finding against the accused that they had misappropriated some amount from out of the funds sanctioned and disbursed.

22. On an appreciation of the entire evidence as discussed in the foregoing paragraphs, I find that the prosecution has not been able to prove the case satisfactorily and beyond reasonable doubts. I find that the two appellants are entitled to be acquitted on the finding that the guilt alleged against them stands not properly and satisfactorily proved beyond reasonable doubt.

23. The appellants have raised a question of law that the prosecution in this case is barred because the prosecution sanction granted under Section 19 of the P.C Act stands not properly and legally proved by the person who granted the sanction. Ext.P35 is the sanction marked through PW39. This is the sanction granted by the Secretary to the Government (Vigilance) But PW39 is only an Under Secretary in the Vigilance Department. On identical facts, this Court held in **Antony Cardoza v. State of Kerala**

(2011 (1) KLT 946), that an Under Secretary is not the competent person to prove a prosecution sanction issued by the Principal Secretary. In the said case, the prosecution sanction granted by the Principal Secretary to the Government was marked through an Under Secretary. This court held in the said case that the essentials regarding prosecution sanction including independent application of mind in the process of granting sanction will have to be proved by the person who granted it, and this responsibility cannot be taken over by somebody else. In **Mansukhilal Vithaldas Chauhan v. State of Gujarat [(1997) 7 SCC 622]**, the Hon'ble Supreme Court held that the prosecution will have to prove independent application of mind to the facts of the case, and also to the materials and evidence collected during investigation, by the person who granted the sanction, to make it a properly proved sanction under Section 19 of the P.C Act. In **CBI v. Ashok Kumar Aggarwal, [AIR 2014 SC 827]**, the Hon'ble Supreme Court held that in the process of granting sanction under Section 19 of the P.C Act, the sanctioning authority will have

to do complete and conscious scrutiny of the whole materials placed before him by the investigating agency, and the sanction order should show that it was granted on a consideration of all the relevant aspects, and on an independent application of mind. The Hon'ble Supreme Court stressed that in proving prosecution sanction under Section 19 of the P.C Act, the prosecution is bound to prove these essentials including independent application of mind in the process. Much thought is not required to find on the basis of the position consistently settled by the Hon'ble Supreme Court that the proper and competent person to prove independent application of mind, and consideration of all the relevant materials in the process of granting sanction will be none other than the person who granted it. On a consideration of the various decisions on the point including **Antony Cardoza**, this Court has recently settled the position that when the prosecution sanction cannot claim any immunity or sanctity under the law, dispensing with the examination of the person who actually granted it, the prosecution will have to prove the sanction properly

according to law, as provided under the Indian Evidence Act, by examining the person who granted the sanction. This is not a case where such sanctity or immunity can be claimed as regards the prosecution sanction. It is true that under the Rules relating to transfer of business in the Government, a Government Secretary is authorised to authenticate sanction on behalf of the Government. This only means that genuineness of the sanction and signature therein cannot be disputed. But when it comes to the question of proving the essentials regarding the independent application of mind in the process of granting sanction, the proper and legal way is to examine the person who granted it, and not to examine somebody else. Instead of examining the Government Secretary, who granted the sanction, the prosecution examined an Under Secretary to prove Ext.P35. PW39 is not the competent person to say that all the relevant aspects and materials were considered by the authority who granted sanction, or that the authority granted it on an independent application of mind in the process. Thus, I find that the prosecution

sanction in this case marked as Ext.P35 cannot be said to be a properly proved sanction. Consequently, it will have to be found that the prosecution is barred under Section 19 of the P.C Act. Even otherwise the appellants are entitled for acquittal on the basis of the definite findings in their favour in the absence of satisfactory evidence and materials. It is quite unfortunate that the prosecution did not resort to the proper mode to prove the alleged misappropriation. The prosecution mainly relied on some bills and vouchers to prove the alleged misappropriation, on the contention that those are bogus vouchers in the name of fictitious person, but the prosecution failed in proving the said material aspect that those persons are fictitious persons. On an overall appreciation of the entire evidence including the legal aspects argued by the defence as regards the prosecution sanction, I find that the conviction against the appellants is liable to be set aside, and they are entitled to be acquitted.

In the result, the two appeals are allowed. The appellants herein are accordingly found not guilty of the

offences alleged against them under Sections 7 and 13 (2) read with 13 (1) (d) of the P.C Act and they are acquitted in appeal, under Section 386 (b) (i) of Cr.P.C. Consequently, the conviction and sentence against the appellants in C.C 7 of 1998 of the court below will stand set aside and they will stand released from prosecution. The bail bond, if any, executed by them will stand discharged.

Sd/-
P.UBAID, JUDGE

ab/ma

/True copy/

P.S to Judge