IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

CRL.A.No. 1058 of 2002 (A)

AGAINST THE JUDGMENT IN CC 8/1999 OF THE SPECIAL JUDGE (SPE/CBI)-I, ERNAKULAM DATED 22-10-2002

APPELLANT/ACCUSED:

P.RAMANKUTTY,
FORMERLY HIGHER GRADE ASSISTANT,
L.I.C.OF INDIA, OTTAPALAM BRANCH, OTTAPALAM,
RESIDING AT JANAKY NILAYAM,
PUTHENMADAM, KAVALAPARA, SHORNUR.

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENT/COMPLAINANT:

STATE, REPRESENTED BY THE SUPERINTENDENT
OF POLICE, CBI, SPE,
COCHIN-17, REPRESENTED, BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
BY ADV. SRI.M.V.S.NAMBOOTHIRY,SC, C.B.I.
SC,CBI BY ADV. SRI.P.CHANDRASEKHARAN PILLAI (VENNELA)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 3-11-2015, THE COURT ON 25-11-2015 DELIVERED THE FOLLOWING:

ab

P.UBAID, J.

Crl.A No.1058 of 2002

Dated this the 25th day of November, 2015

J U D G M E N T

The appellant herein was a Higher Grade Assistant in the Life Insurance Corporation of India. He was working in the said capacity in the Branch Office, Ottappalam in 1997. On the allegation that he, by abusing his official position as public servant, dishonestly issued three cheques for a total amount of ₹55,000/- in his favour, drawn on the Ottappalam Branch of the State Bank of India through the account of the Life Insurance Corporation, purporting it to be paid to the premium holders Hamsa, Damayanthi and Ramesh Unni Nair, he withdrew the said amount and appropriated it for his own purposes, and thus derived illegal benefits and also cheated the Life Insurance Corporation, the appellant faced prosecution before the CBI, Special Judge I (SPE/CBI), Ernakulam in C.C. No.8/1999. The CBI registered the crime on the basis of a definite complaint from the responsible officer of the Life Insurance Corporation, and after investigation the CBI submitted final report in the trial court. The appellant appeared before the learned trial judge and

pleaded not guilty to the charge framed against him under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act (for short 'the P.C Act) and under Section 420 of the Indian Penal Code.

2. The prosecution examined 18 witnesses and proved Exts.P1 to P61 documents in the trial court. When examined under Section 313 of the Code of Criminal Procedure the accused denied the incriminating circumstances, and projected the defence of insanity. Two witnesses were examined on the side of the accused and Exts.D1 and D2 documents were also marked.

3. On an appreciation of the evidence adduced by the prosecution and the defence, the learned trial judge found that the plea of insanity raised by the accused in defence is not acceptable at all, and that the prosecution allegations are fully true. Accordingly, the accused was found guilty.

4. On conviction he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹10,000/- under Section 420 of the Indian Penal Code, and to undergo another term of rigorous imprisonment for two years under Section 13(1)(2) r/w 13(1)(d) of the P.C Act by judgment dated 22.10.2002. Aggrieved by the said judgment of conviction,

the accused has come up in appeal.

5. When this appeal came up for hearing, the learned counsel for the appellant did not argue much on facts, and submitted that the appellant has no case to be argued on facts. However, the learned counsel submitted, and made serious arguments, on the plea of insanity raised by the accused during trial. Thus the defence is mainly on the plea of insanity raised under Section 84 of the Indian Penal Code. However, this Court, as a court of appeal, will have to go to the merits of the allegations, and come to a finding before proceeding and deciding on the plea of insanity.

6. The prosecution case is that the accused dishonestly issued three cheques in his name for a total amount of ₹55,000/- purporting it to be paid to the premium holders Hamsa, Damayanthi and Ramesh Unni Nair, and he withdrew the said amount from the account of the Life Insurance Corporation, Ottappalam and used the amount for his own purposes dishonestly. The allegation is that he issued cheque No.180930 dated 3.6.1997 for ₹25,000/-, another cheque No.458033 dated 14.6.1997 for ₹20,000/- and the third cheque No.458222 dated 3.7.1997 for ₹10,000/-. All these cheques were proved in evidence by PW1, the main witness relied on by the

prosecution. Those disputed cheques are Exts.P8, P9 and P10. Besides PW1, the other important witness relied on by the prosecution are PW2 and PW12. These two witnesses and the accused were the authorised signatories of the Ottappalam Branch of the Life Insurance Corporation during the relevant period. The appellant and PW2 were Higher Grade Assistants and PW12 was the Administrative Officer. All of them were working in the Accounts Section of the Life Insurance Corporation, Ottappalam. PW1, the material witness, was the then Administrative Officer of the Ottappalam Branch, and she was also the head of the claim section during 1997. PW1, PW2 and PW12 had worked for several years with the accused and they all claimed to be very familiar with the handwritting and signature of the accused. They affirmed in evidence that Exts.P8, P9 and P10 cheques were written by the accused himself, and PW1 is definite that no such amount was in fact paid to the policy holders Hamsa, Damayanthi and Ramesh Unni Nair, Ext.P1 is the file relating to the policy No.770844647 in the name of policy holder Hamsa, Ext.P3 is the file relating to the money back policy No.770943770 for ₹1 lakh in the name of one K.Narayanan, the predecessor interest of Damayanthi, and Ext.P5 is the policy file relating to the money back policy

No.790670702 for ₹50,000/- in the name of Ramesh Unni Nair. These policy files will show that the amount covered by Exts.P8, P9 and P10 cheques was not in fact received by any of these policy holders or the beneficiaries of the policy.

7. PW4 is the then Deputy Manager of the State Bank of India, Ottappalam. He proved the Bank registers and also affirmed in evidence that the amount covered by Exts.P8, P9 and P10 cheques was withdrawn by the accused through the account in the name of Life Insurance Corporation. He also identified the signature and the writings of the accused on the cheques, and claimed that the accused being one of the drawing officer of the Life Insurance Corporation, he was well familiar with the writings and signature of the accused. The Bank Manager also proved Ext.P24 to P32 withdrawal form for receipt of the amount covered by Exts.P8, P9 and P10 cheques. There is absolutely nothing to show that anybody other than the accused was benefited by the disputed cheques and the amount covered by the cheques, or that any of the beneficiaries under the three policies was given any amount from the total amount of ₹55,000/- covered by the three disputed cheques. It stands well proved by the evidence of PW1, PW2 and PW12 that the three disputed cheques were issued by the accused in his own name, and it

stands well proved by the evidence of PW4 that the amount covered by these cheques was in fact withdrawn by the accused himself through the Bank account of LIC in the State Bank of India, Ottappalam. In the absence of anything to prove that any amount was paid to anybody by the accused, it will have to be found that the entire amount withdrawn by the accused was utilised by the accused himself, and he did so dishonestly with the object of cheating the bank, and thereby causing loss to the Life Insurance Corporation. This will constitute the offence of cheating under Section 420 IPC. The fact that the accused was illegally benefitted by the dishonest act done by misusing his position as public servant, will come under Section 13(1)(d) of the P.C Act, which is punishable under Section 13(2) of the P.C Act.

8. The prosecution case as regards handwriting and signature of the accused stands corroborated well by the evidence of the handwriting expert examined as PW17. The writings and signature in the disputed cheques were compared by the handwriting expert with the admitted writings and signature of the accused in Exts.P16(a), P16(b), P16(c), P11, P12 and P13. In the Ext.P55 report the handwriting expert has stated that he came to a conclusion on scientific examination,

that the disputed writings and signatures were made by the very same person who made the admitted writings and signatures. Thus I find that the prosecution case as regards dishonest misappropriation by way of issuance of cheques by the accused in his own name stands well proved by the evidence of PW17 also. I find that the accused was rightly found guilty and convicted by the trial court under Section 13(2) of the P.C Act and under Section 420 IPC.

9. Now let me come to the important plea raised by the accused, that he was not of sound mind at the time of the alleged incident. The accused examined two witnesses and also marked Exts.D1 and D2 documents to prove his case. It is not known why the accused did not examine any doctor or medical expert to prove his case. The evidence of PW1 and PW2 will not scientifically or medically prove the plea of insanity raised by the accused. On an appreciation of the evidence given by these witnesses, and on examination of Exts.D1 and D2 documents I find that what is at the most proved by the accused in defence is only some behavioral disorder. The law presumes, unless the contrary is proved, every person of the age of discretion to be sane. It is well settled that to claim immunity from criminal liability, as a defence under Section 84 of the Indian Penal Code,

the alleged insanity or disorder or mental infirmity must be of such a degree that it would totally affect the perceptual capacity of the person, or his capacity to think and reason. It is well settled that mere behavioral disorder or eccentricity or some physic disorder without affecting the thinking and reasoning capacity of the individual, will not amount to insanity as meant under Section 84 of the IPC. In this case there is no medical evidence to prove that the appellant had any such mental disorder or insanity, which would make him immune from criminal liability as a defence under Section 84 of the IPC. To claim the benefit of immunity as a defence under Section 84 of the IPC it must be proved that the accused had some mental illusion or illness or intellectual aberration totally affecting his perceptual or reasoning capacity, before the commission of the alleged offence, or at the time of commission of the alleged offence. To prove such important aspects there must be medical evidence. In this case the accused did not adduce any medical evidence except marking some prescriptions or certificates. The accused did not examine any doctor, who treated him, to prove the case of insanity projected by him, or even to prove the documents produced by him. On a scrutiny of the evidence given by the defence witnesses I find that at the most the accused had

some behavioral disorder, without amounting to mental disorder or mental incapacity to claim immunity under the law, as defined under Section 84 of the IPC. I find that the accused has miserably failed to prove the defence projected during trial, that the accused had some mental disorder or insanity giving him protection or immunity under Section 84 Indian Penal Code.

10. In view of the findings above, the conviction against the appellant is only to be confirmed in appeal. However, I find that some interference is required in the matter of sentence. Admittedly , the amount of ₹55,000/- appropriated by the accused dishonestly, was later remitted by him. It was submitted that the accused stands removed from service. Thus the accused has received the highest punishment by way of dismissal from service. The fact that the amount appropriated was later remitted by the accused, also can be considered while deciding the quantum of sentence. The incident happened years back in 1997, and the trial court pronounced the judgment of conviction in October 2002. Now we are in 2015. The long lapse of years till this date and the trauma of prosecution undergone by the accused also can be considered by this court in deciding the proper and adequate sentence. The minimum sentence prescribed under Section 13

(2) of the P.C Act at the relevant time was imprisonment for one year. I find that this minimum sentence will be the adequate sentence in this case. Subject to this modification in sentence the conviction against the appellant can be confirmed in appeal.

In the result, this appeal is allowed in part to the very limited extent of modifying and reducing the sentence imposed by the trial court. The conviction against the appellant under Section 13(2) of the P.C Act and under Section 420 of the Indian Penal Code, made by the trial court in C.C No.8/1999 will stand confirmed. However, the jail sentence under both the sections will stand modified and reduced to simple imprisonment for one year. In the particular facts and circumstances the fine sentence imposed under Section 420 of the Indian Penal Code will stand set aside. The two substantive sentences will run concurrently, as ordered by the trial court.

Sd/-
P.UBAID
JUDGE

//True Copy//

P.A to Judge

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