IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

CRL.A.No. 721 of 2001 ( )

AGAINST THE JUDGMENT IN CC 8/1999 of ENQ.COMMR. & SPL.JUDGE, THRISSUR

APPELLANT(S):

P.V.RAMAN, FORMER AGRICULTURAL FIELD OFFICER, MUVATTUPUZHA.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS/COMPLAINANT/STATE:

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1. DEPUTY SUPERINTENDENT OF POLICE, VACB, ERNAKULAM.

2. 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 28.7.2015, THE COURT ON 11-09-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.

Crl.A No.721 of 2001

Dated this the 11th day of September, 2015

J U D G M E N T

The appellant herein was the Agricultural Field Officer, Muvattupuzha during 1991-92. He has brought this appeal against the judgment of conviction of the learned Enquiry Commissioner and Special Judge (Vigilance), Thrissur in C.C No.8/1999 under Sections 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act (for short 'the P.C Act') and also under Sections 409, 465, 471 and 477A of the Indian Penal Code. The prosecution case is that during 1991-92 the appellant dishonestly misappropriated an amount of ₹53,720/- from the funds allotted to the different beneficiaries under an agricultural scheme providing financial assistance for different agricultural operations, and for the said purpose he also created some bogus bills and vouchers in the name of different beneficiaries. It is alleged that a total amount of ₹91,696/- was withdrawn from public funds by the appellant, as sanctioned by the government, and from out of this amount he appropriated ₹53,720/- by creating false and forged documents and without making payment of money to the beneficiaries. The alleged misappropriation was detected on an audit conducted by the department, and on the basis of the audit report, a crime was registered against the appellant by the Vigilance and Anti-corruption Bureau (VACB), Kochi. After thorough investigation the VACB submitted final report in the trial court.

2. The accused appeared before the learned trial judge and pleaded not guilty to the charge framed against him under Sections 13(2), 13(1)(c) and 13(1)(d) of the P.C Act and under Sections 409, 464, 471 and 477A of the Indian Penal Code. He maintained a stand of total denial and claimed to be tried. During trial he developed a defence that the alleged misappropriation was in fact done by the Agricultural Assistant in office, who was in-charge when he was on leave. The said Agricultural Assistant was examined as PW52.

3. The prosecution examined 57 witnesses during trial, and also marked Exts.P1 to P48 documents. When examined under Section 313 Cr.P.C the accused denied the incriminating circumstances and projected a defence that he had not appropriated any amount from public funds, and that the alleged misappropriation was in fact made by PW52, the

Agricultural Assistant. In defence the accused examined three witnesses and also marked Exts.D1 to D6 documents. On an appreciation of the evidence, the trial court found the accused guilty. On conviction he was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹1,00,000/- under Sections 13(2) r/w 13(1)(c) of the P.C Act, to undergo rigorous imprisonment for four years under Sections 13(2) r/w 13(1)(d) of the P.C Act, to undergo rigorous imprisonment for two years each under Sections 409, 465, 477A of the Indian Penal Code, and to undergo rigorous imprisonment for one year under Section 471 of the Indian Penal Code by judgment dated 30.7.2001. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

4. When this appeal came up for hearing the learned counsel for the appellant submitted that the prosecution does not have any satisfactory and convincing material to prove the dishonest misappropriation alleged against the appellant, and that there are materials creating some doubt regarding the transaction made by PW52 when he was in charge of the Agricultural Field Officer, and that in view of the suspicion regarding the role and involvement of PW52, the appellant will

have to be acquitted. On the other hand the learned Public Prosecutor submitted that PW52 has clearly and convincingly answered the questions put from the defence side as regards the transactions made by him while he was in-charge of the accused, and that there are definite materials including bogus receipts and vouchers in the name of many beneficiaries and also the audit report proved by the competent person, to prove the prosecution case to the satisfaction of the court.

5. Decision in this case regarding the alleged misappropriation by making use of forged receipts, depends upon the genuineness of the vouchers and bills produced by the prosecution, and also the genuineness and acceptability of Ext.P2 audit report proved by PW2. PW1 is the Director of Agriculture examined to prove Ext.P1 prosecution sanction granted under Section 19 of the P.C Act. The competence of PW1 to grant sanction, or the procedure adopted by PW1 in the process of granting sanction is not seen disputed or challenged in defence. The cross examination of PW1 is confined to two sentences. She stated in evidence that she granted sanction after perusing the entire materials furnished by the vigilance. No suggestion was made to the witness that the sanction was

granted without independent application of mind. Thus Ext.P1 prosecution sanction stands not effectively challenged.

6. The main evidence in this case as regards dishonest misappropriation alleged by the prosecution is that of PW2, who was the Accounts Officer in the Principal Agricultural Office. The audit of accounts in the office of the accused was conducted by PW2, and he proved Ext.P2 audit report. Ext.P2(a) proved by him contains all the details of the irregularities and misappropriation detected during the audit. PW2 has given definite and consistent evidence regarding all these relevant aspects, and the relevant entries in the different registers like cash book, ledger etc. The evidence given by PW2 and PW3 on these relevant aspects stands not effectively challenged, and their evidence stands not discredited in cross examination. It has come out in evidence that at the time when audit of accounts was conducted in the office of the accused, he was away somewhere. PW3 and PW4 have given evidence that the accused had been absent for months, and evidence satisfies the court that he conveniently absconded when he apprehended that the irregularities and misappropriation made by him would be detected on audit. He absented himself and, vanished from the

locality for months in view of the audit of accounts, and for some time he was on long leave also. It was during the said period of leave PW52 took charge and made some transactions. These transactions made by the PW52 are made use of by the accused to contend that the alleged misappropriation was in fact made by PW52. Anyway, all these suggestions were stoutly denied by PW52, and he convincingly answered all the questions put by the defence regarding the transactions made by him. PW3 has also proved by Ext.P3 series attendance registers. These registers will show that the accused was in-charge as Agricultural Field Officer during the relevant period when the misappropriations were made, and that after making such misappropriation he vanished from the locality. That the appellant was the Agricultural Field Officer, Muvattupuzha, during the relevant period is not disputed by the accused. As regards the alleged misappropriation of public funds also the accused does not have any definite defence, except a total denial. So, once entrustment of amount, or withdrawal of amount by the accused from public funds is proved and disbursement of amount to different beneficiaries under the agricultural scheme is not proved, the court will have to find against the accused, that the amount received by him or withdrawn by him was misappropriated by him dishonestly, and the burden would shift the accused to prove that the amount he withdrew from public funds was properly and legally utilized or was disbursed to different beneficiaries under the agricultural scheme. So the material question is whether the accused had in fact received or withdrawn amount from public funds as alleged by the prosecution, or whether he had made disbursement of the amount to different beneficiaries. The prosecution case is that the accused created bogus receipts and vouchers in the name of different beneficiaries, and by making use of these bogus vouchers he withdrew and appropriated the amount due to those beneficiaries.

7. Most of the witnesses examined by the prosecution are the beneficiaries under different agricultural schemes like subsidy for fertilizer purchase, subsidy for purchase of pump sets, finance assistance, subsidy for digging wells, subsidy for purchase of water sprayer etc. It stands well proved by documentary evidence that the accused had received a total amount of ₹91,696/- from the treasury under different payment bills. An amount of ₹37,723/- was allotted to the agricultural office vide Ext.P6(a) bill and Ext.P6(b) proceedings.

The said allotment was made under Ext.P6(c) proceeding. This amount was meant to be disbursed to different beneficiaries under the scheme. Ext.P7(a) bill and Ext.P8(a) documents will show that the said amount was received by the accused by way of demand draft. The receipt of demand draft was acknowledged by him as per Ext.P9(a) receipt. Another amount of ₹2,127/- allotted as per Ext.P12(a) proceeding was received by the accused from the treasury as per Ext.P8(b), and the amount was duly encashed by him. Another amount of ₹17,835/- allotted by way of subsidy for purchase of pump sets for irrigation purpose, sanctioned as per Ext.P14(a) and P14(b) proceedings was received by the accused vide Ext.P8(c) and Ext.P9(b) encashment vouchers and Ext.P15 demand draft. An amount of ₹16,800/- meant as financial assistance to the members of scheduled caste and scheduled tribes for digging well, allotted as per Ext.P16(a) and Exts.P16(b) proceedings was received by the accused by way of Ext.P19 cheque. This amount was encashed by him duly. This amount was meant to be disbursed to the three beneficiaries at the rate of ₹5,600/- each. Another amount of ₹990/- allotted under the scheme for purchase of sprayer was also received by the accused in the office as per Exts.P8(e) and Ext.P9(d) vouchers and Ext.P22 cheque. This amount was also duly encashed by him. ₹16,221/- allotted as per Ext.P23(a) proceeding by way of pump set subsidy was also received by the accused as per Ext.P33 cheque, and it was also encashed by him without any delay. Thus it stands well proved by documents that the accused received a total amount of ₹91,696/- under different schemes, and the cheques and demand drafts received by him were duly encashed by him. Of course it is true that receipt of all these amounts were entered in the relevant registers and disbursement was also recorded by the accused in the relevant registers, but during audit and inspection, the auditor found that many such entries regarding disbursement were in fact false, and that a huge amount of ₹53,720/- was misappropriated by the accused by creating false vouchers and receipts in the name of so many beneficiaries. Many of these beneficiaries supported the prosecution and stated in evidence that they had not received any amount as entered in the registers, and they also denied the signature in the different vouchers created by the accused. Only a few among the beneficiaries examined by the prosecution supported the accused, for reasons known to them alone.

8. During trial, the accused made an attempt to make out a defence that many of the disbursements were in fact made by the PW52 and that the relevant entries were also made by him falsely, without making actual disbursement. But the defence could not bring out anything in the cross examination of PW52 to suggest that he had any vicious role in such disbursement, or that he had appropriated any amount while he was in charge of the accused during his absence. PW52 denied such suggestions stoutly and maintained his versions throughout, that he had discharged his functions properly and promptly, that he had actually disbursed the amount entrusted by the accused, while proceeding on leave, and that he had not appropriated any amount from public funds. On an appreciation of the evidence of PW52, I find that his evidence is fully believable, and there is nothing in his evidence to substantiate the defence pleaded by the accused. The disputed disbursements were recorded when the accused was the Agricultural Field Officer, and all the entries are seen made in the registers by the accused. When such entries made by him are there, and when such payments are not supported by genuine vouchers, the accused must be held responsible for those entries and the

bogus vouchers, if evidence proves that such disbursements were not in fact made to the beneficiaries, and that the signatures in those vouchers and receipts are not that of those beneficiaries. The accused does not have any evidence or material to prove his defence, or to disprove the prosecution case that the alleged receipts and vouchers were forged by him. The documents marked on the side of the accused will not in any manner prove the defence case, that the objectionable entries and disputed disbursements were made by PW52 in his absence. DW3 was examined by the accused to prove receipt of so many amounts by the Agricultural Assistant. An appreciation of his evidence shows that all these amounts were in fact received by the accused, and that the relevant entries regarding disbursement were also made by the accused.

9. PW6 to PW51 include many of the beneficiaries who supported the prosecution. PW2 to PW5 have given evidence regarding different documents and registers produced by the prosecution, and their evidence is well consistent regarding the encashment and receipt of amount by the accused for different agricultural purposes, in his capacity as Agricultural Field Officer. That he had absconded for some time in

anticipation of audit and other actions, is also proved by these witnesses. The accused has no explanation as to why or in what circumstances he vanished for a few weeks before and after the audit.

10. PW6 is one of the beneficiaries who made Ext.P32(a) application claiming some relief under the natural calamity relief fund. This witness turned hostile during trial. PW7 is another beneficiary, who made Ext.P32(b) application under the natural calamity relief fund. He admitted receipt of ₹309/- under Ext.P11(a) receipt and stated that he had not received any amount further. Thus the second disbursement made in his name is found to be false. PW8 is the beneficiary who submitted Ext.32(c) application under the same fund. Disbursement of amount in his name was made in the register and Ext.P11(m) receipt was used by the accused to show such disbursement. This witness stated in evidence that he had not received any amount, and that the signature in Ext.P11(m) is not his signature. This means that Ext.P11(m) was falsely created by the accused to record disbursement in the name of PW8. PW9 proved his application for benefit, and stated that the signature contained in Ext.P11(d) receipt is not that of his. PW10 another

beneficiary stated that the application contained in page 52 of Ext.P32 is not the application submitted by him, and that the signature in Ext.P32(d) and Ext.P11(n) vouchers are not that of his. PW11, another beneficiary proved Ext.P32(e) application made by him under the natural calamity fund and stated that he had not received any amount, and that the signature in Ext.P11 (o) is not that of his. PW12 proved Ext.P32(f) application for benefit and stated that the signature in Ext.P11(b) receipt is not that of his. He also denied the handwritting therein. PW13, another person in whose name the accused received some amount, stated in evidence that the application in page No.31 of Ext.P32 was not made by him for benefit, and that the signature in Ext.P11(h) receipt is not that of his. PW14 to PW18 are some other beneficiaries who proved the applications for benefit, but denied the signature in the respective receipts created by the accused. All are consistent that they had not received any amount under the relief fund. This means that all these amounts were received and appropriated by the accused under false receipts in their name.

11. PW19 another beneficiary admitted his signature in the Ext.P11(z) receipt but stated in evidence that he had not in

fact received the entire amount shown therein. His case is that he had received only an amount of ₹1,060/- though the receipt is for an amount of ₹2,060/-. This evidence stands not discredited. He affirmed in evidence that the amount of ₹1,000/- must have been appropriated by the accused. PW20 admitted receipt of ₹ 507/- though the receipt is for ₹567/-. This means that the balance amount of ₹60/- was appropriated by the accused. PW21 is the beneficiary who had applied for pump set subsidy. He proved Ext.P14(k) application made by him but denied the signature in the receipt. She is definite that she had not received the amount of ₹1,772/- alloted as subsidy to her. PW22 another beneficiary admitted receipt of ₹1,100/- whereas the receipt in his name is for ₹1,300/-. This means that ₹200/- was appropriated by the accused. PW23 proved his application and also admitted receipt of the amount shown in the Ext.P11(i) receipt. PW24 and PW25 also admitted receipt of the amount covered by the receipts in their name. PW26 proved his application but stated that he had received only ₹477/- whereas the receipt in his name is ₹540/-. PW27 in whose name the accused withdrew some amount, stated in his evidence that he had not made any application, and he had not received any amount under the scheme. PW28 also stated that he had not made any application, or received any amount. PW29 stated that he had received the amount sanctioned to him. PW30 and PW31 are the applicants for fertilizer subsidy. These witnesses stated that they are not able to remember whether they had received the subsidy or not. PW32 turned hostile to the prosecution. PW33 was the Secretary of the Vazhappilly Nellulpadaka Samithi. He had made application for pump sets subsidy, and subsidy was allotted to him as per Ext.P14(i). He purchased pump set believing that he would get subsidy of ₹2,700/-. But no amount was received by him by way of subsidy. Ext.P23(e) will show that he purchased the pump set by making full payment, and the amount of subsidy alloted to him was ₹2,700/-. He affirmed in his evidence that he had not received any amount by way of subsidy, and he denied the vouchers in his name.

12. PW34 is another person in whose name the accused made some application and received amount. His evidence is that he had not purchased any motor or had not applied for any benefit. He denied the Ext.P23(c) bill showing purchase of motor, and he stated that he had not received any amount from the agricultural fund. His evidence stands not

discredited, and his evidence shows that the accused had received and appropriated some amount in his name by creating a false application in his name. PW35 was the UD Clerk in the Sub Division Agriculture Office, Muvattupuzha. Her evidence is that she was never a nominee of Kizhakkekkara Padasekhara Committee, in whose name the accused made application and received some amount. She affirmed that she had not purchased anything individually or in her official capacity, and she had not submitted any application for subsidy. She denied the application contained in Page No.119 in Ext.P23 and she affirmed that her signature was in fact forged in the application, and also in Ext.P23(g) receipt. This means that even in the name of a clerk in the agricultural office, the accused created false and bogus receipts and received money. Much more evidence is not required to prove the act of dishonest misappropriation by the accused, by creating false documents. PW36 is another beneficiary. His evidence is that believing the words of the accused that he will get subsidy, he purchased agricultural equipments, but he had not received any amount of subsidy. He proved his applications but affirmed in his evidence that no amount of subsidy was paid to him, though sanctioned. This means that, that amount was also misappropriated by the accused. PW37 to PW40 did not effectively support the prosecution. They did not state anything about misappropriation. PW41 stated that he had received the amount sanctioned to him. PW42 does not remember whether he had received any amount. PW43 is another beneficiary who purchased a motor under the subsidy scheme. She made purchase with the belief that the subsidy amount will be given to the trader. Her evidence is that no such amount was paid to the trader, and consequently she had to make payment of the whole amount, inclusive of the amount of subsidy sanctioned. This means that the amount of subsidy was in fact misappropriated by the accused. PW44 stated that he had received the full amount. PW45 and PW46 also admitted the receipt of full amount sanctioned to them. PW47 is another beneficiary for the pump set subsidy. He proved Ext.P14(c) application and Ext.P14(d) purchase bill. He affirmed in his evidence that he had not received the amount of ₹ 2,600/- sanctioned to him as subsidy. This means that, this amount was also misappropriated by the accused. PW47 had purchased a motor for ₹4,635/- as per Ext.P14(h) bill, and he stated that the amount of ₹2,317/- sanctioned to him as subsidy was not paid to him. This means that, the amount was misappropriated by the accused. PW47 had purchased an electric motor for ₹7,007/- as per Ext.P14(j) purchase bill. His evidence is that the amount of ₹3,250/- sanctioned to him as subsidy was not paid to him. He had also purchased a sprayer for which an amount of ₹490/- was sanctioned by way of subsidy, but that amount was also not paid by the accused. PW48 to PW50 have nothing to say against the accused. PW51 another beneficiary under the scheme, who was entitled to get ₹5,600/-, was paid only ₹3,300/-. He is definite that he had not in fact received ₹5,600/- . This means that the balance amount was appropriated by the accused.

13. As discussed in the foregoing paragraphs, I find that many of the beneficiaries under the scheme formulated by the government for financial assistance to agriculturists and farmers supported the prosecution and affirmed in evidence that the amount allotted to them by the government under the scheme was not paid by the accused. Of course it is true that some witnesses supported the accused and stated that they had received the amount. However, most of the witnesses examined as beneficiaries denied the signature in the bills and vouchers

produced by the accused for receiving amount from the public funds. They affirmed in evidence that they had not received any amount by way of subsidy or otherwise, and they also denied the signatures in the receipts and vouchers. It stands well proved by documentary evidence and also the materials detected on audit by PW2 that the accused had in fact received huge amount from public funds by way of financial assistance and subsidy to different farmers and agriculturists under the scheme formulated by the government, and the accused had also made relevant entries in the cash registers and other registers showing disbursement of the amount. But what is proved convincingly is that disbursement was not actually made by the accused, and he in fact appropriated huge amount by creating false and bogus receipts and vouchers in the name of so many beneficiaries. To some of the beneficiaries amount was partly paid by the accused, and to some nothing was paid. On an examination of the evidence given by the defence witness, I find that their evidence will not in any manner disprove the prosecution case, or justify the misappropriation done by the accused. Receipt of amount by the accused from the public funds stands well proved, but disbursement of money of the beneficiaries stands not proved. The accused recorded disbursement by creating false vouchers and receipts, but the beneficiaries in whose name he made such vouchers and receipts denied the signature in the vouchers and receipts. There is no reason why these beneficiaries should give false evidence against the accused. There is absolutely nothing to doubt the truth and genuineness of the evidence given by PW2 or the findings and detection made by him on audit regarding misappropriation of amount by the accused. Thus I find that the prosecution case stands well proved beyond any reasonable doubt. It has come out in evidence that during the said period the accused had absconded when he anticipated audit, and detection of the irregularities made by him. The acts of the accused will constitute the offences punishable under Section 13 (2) r/w 13(1)(c) and 13(1)(d) of the P.C Act and will also come under Sections 409, 465, 471 and 477A of the Indian Penal Code. Huge amount was entrusted to the accused by the government in trust as a public servant but he appropriated the amounts dishonestly. For making such dishonest misappropriation he forged receipts and vouchers in the name of so many beneficiaries, and he used all these bogus receipts for receiving money from government and for causing wrongful loss to the beneficiaries by act of cheating. Thus, I find that the offences under Sections 409, 465, 471 and 477A of the Indian Penal Code are also well proved by the prosecution, besides the offence punishable under Section 13(2) r/w 13(1)(d) and 13(1)(c) of the P.C Act. The dishonest misappropriation specifically comes under Section 13(1)(c) of the P.C Act and such conduct on the part of the accused, misusing his position as public servant and causing wrongful loss to the government will come under Section 13(1)(d) of the P.C Act. I find that the accused was rightly convicted by the trial court, and I find no ground or reason for interference in the judgment of conviction made by the trial court. Accordingly, I find that this appeal is liable to be dismissed.

14. On the question of sentence also I find no reason or necessity for interference. This is not a case where the accused made misappropriation once or twice. He appropriated huge amount in a series of acts of dishonesty as a public servant, and he thus appropriated huge amount meant for the benefit of so many farmers and agriculturists by way of financial assistance and subsidy. Such a public servant does not deserve any lenient

consideration in the matter of sentence. The alleged misappropriation was made in the year 1992. The total amount comes to more than half a lakh. We will have to consider the money value of this amount in the year 1992. When the court considers the value of the money misappropriated by the accused, and also the nature of different instances of misappropriation made by him in a series of dishonest acts, interference is not possible in sentence. Accordingly, I find that the sentence imposed by the trial court is only to be confirmed in appeal.

In the result, this appeal is dismissed, confirming the conviction and sentence against the appellant made by the trial court in C.C. No.8/1999.

Sd/-
P.UBAID
JUDGE

//True Copy//

P.A to Judge

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