IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

CRL.A.No. 355 of 2009

AGAINST THE JUDGMENT IN C.C 1/2008 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOTTAYAM

APPELLANT/ACCUSED:

K.THANKAMMA, AGED 56 YEARS,
W/O.PURUSHAN,
PULOOSSERIL HOUSE, PALLICHAL P.O,
KOTTACHIRA BHARANICAVU, (FORMERLY JUNIOR SUPERINTENDENT, THAZHAKKARA GRAMA PANCHAYATH).

BY ADVS.SRI.R.PADMAKUMAR
SRI.P.ARAVIND

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24.11.2015, THE COURT ON 17.12.2015 DELIVERED THE FOLLOWING:

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P.UBAID, J.

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Crl.A No.355 of 2009

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Dated this the 17th day of December, 2015

J U D G M E N T

The appellant herein was the Junior Superintendent of Thazhakkara Grama Panchayat from 10.12.1996 to 15.11.1998. She had additional charge of the Secretary of the Panchayat from 10.8.1996 to 15.11.1998. During the said period some amount was allotted to the Panchayat, by the District Labour Officer, Alappuzha as pension for the agricultural workers. On the allegation that from out of the said amount, the accused appropriated an amount of ₹2,100/- under false vouchers in the name of seven agricultural workers, she faced prosecution before the learned Enquiry Commissioner and Special Judge (Vigilance), Kottayam in C.C No.1/2008, under Sections 409, 468 and 471 of the IPC and also under Sections 13 (2) r/w 13(1)(c) of the Prevention of Corruption Act (for short 'the P.C Act).

2. The accused appeared before the trial court and pleaded not guilty to the charge framed against her under Sections 409, 468 and 471 of the Indian Penal Code and under

Section 13(2) r/w 13(1)(c) of the P.C Act.

3. The prosecution examined 19 witnesses during trial and marked Exts.P1 to P64 documents. Exts.X1 and X2 were also marked during trial. When examined under Section 313 Cr.P.C the accused denied the incriminating circumstances, and submitted that she had not appropriated any amount from the agricultural workers' pension, and that the whole amount was disbursed to the concerned persons or the legal heirs, under proper vouchers. In defence the accused examined three witnesses, including the then President of the Grama Panchayat. On an appreciation of the evidence, the learned trial judge found the accused guilty. On conviction, she was sentenced to under go simple imprisonment for a period of one year each under Sections 409, 468 and 471 of the IPC and under Section 13(2) r/w 13(1)(c) of the P.C Act by judgment dated 31.1.2009. 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 material to prove the alleged

misappropriation, breach of trust, or the alleged falsification of the documents, and that the whole prosecution case is really baseless. The learned Public Prosecutor on the other hand submitted that one false voucher, and misappropriation by using the said voucher stands proved in this case by scientific evidence, though as regards the other six vouchers the evidence is not definite and consistent, and that on this ground of misappropriation the accused is liable to be convicted.

5. Before going to the factual aspects of the alleged misappropriation and forgery of vouchers, let me see whether the other legal aspects are satisfied in this case. Ext.P14 is the prosecution sanction proved by PW19. On an examination of the evidence given by PW19 I find that his evidence on material aspects is not effectively challenged in cross examination. PW19 was the Joint Director of Panchayat (Administration) in charge of the Director of Panchayats. As the Director of Panchayat (in charge) he granted Ext.P14 sanction to prosecute the accused in this case under Section 19 of the P.C Act. His evidence shows that he granted sanction on an independent application of his mind and also on a consideration of all the relevant aspects and materials. I find

nothing to suspect his evidence, and I find that Ext.P14 sanction was properly granted by PW19 as required under the law. The sanction stands properly proved in this case by PW19.

6. Now let me come to the other very important legal aspect as to whether the FIR in this case is proved. What is alleged by the prosecution is misappropriation of public funds under forged documents. Of course as regards the alleged forgery, the prosecution has only one document to prove the case, and that is Ext.P50 report of expert. As regards the other six vouchers, it stands proved that the amount covered by these vouchers were disbursed to the legal heirs of the concerned. The Vigilance and Anti-corruption Bureau, Alappuzha registered the crime against the accused on the basis of a definite complaint alleging such misappropriation. The final report in this case shows that the vigilance conducted an enquiry on the complaint of one Koshi. Thus it is well clear from the final report that what lead to the prosecution is the complaint of one Koshi. It is not known what happened to the said complaint. Such a complaint is not seen produced in court, and such a complaint is not seen

proved during trial. Even the complainant Koshi is not seen cited as a witness by the prosecution. The FIR in this case was registered on the basis of a report of enquiry conducted by the VACB. The FIR does not show that such an enquiry was conducted on the basis of a definite complaint. Though that is not there, the final report clearly shows that what lead to the said enquiry is a definite complaint by a named person. The said Koshi, who made the complaint is not examined as witness by the prosecution, and the said complaint was not produced in court by the vigilance either along with the FIR, or during investigation, or along with the final report. When the final report shows that a definite complaint lead to an enquiry by the vigilance, and the FIR is based on the report of such enquiry, the prosecution is bound to prove the said complaint which lead to the crime, and the prosecution is also bound to examine the complainant who made the complaint. The report of enquiry also must be produced in court.

7. It is well settled, and it is also the law under Section 154 of the Code of Criminal Procedure, that a First Information Report can be made only on the basis of a definite complaint or material or information, revealing the

commission of a cognizable offence. Such material can even be the things in the knowledge of the person who registered the FIR. In such a case we will call it a suo motu FIR. Here it is not known who exactly conducted the enquiry and submitted report, on the basis of which the FIR was registered. The vigilance Dy.S.P who registered the FIR does not say that the enquiry was conducted by him. Even if, the FIR is based on a report of enquiry, such report must be produced in court by the vigilance. It is known what happened to the said report of enquiry, or why the report is not produced in court along with the FIR. In short it stands not explained how the FIR in this case was “born”. The final report shows that everything was initiated on the basis of a complaint. Such a complaint is not seen produced in court, and the complainant is also not examined.

8. This Court has settled the position that when a crime is registered on a definite complaint, the said complaint must be produced in court, and as part of trial, the said complaint must be proved by the person who made the complaint. In a case where the FIR was registered suo motu by a police officer on the basis of the informations received by

him, those materials received by him, revealing the commission of cognizable offence, must be proved by the officer, who received the information. Here the information is in the form of a report of enquiry. Such a report was not produced in court along with the FIR or thereafter. I find that the FIR in this case (Ext.P13) is really baseless, the things in the complaint that lead to the FIR are not proved in evidence, and the case based on such a "mushroom FIR", must collapse on the said limited ground itself.

9. Anyway, let me see what is the prosecution case on facts, and how, or to what extent such an allegation stands proved. Though so many allegations are there, practically the allegation that emerged during trial is that the accused misappropriated an amount of ₹2,100/- from out of the pension amount meant for agricultural workers, under forged or false vouchers. Exts.P19 to P25 are said to be those false vouchers. As regards six out of the seven vouchers alleged to be forged it came out during trial that the amount covered by these six vouchers was disbursed by the accused to the legal heirs of the concerned agricultural labourers. In view of such evidence, the prosecution alleged that such disbursement is

against the rules, and so the accused must be liable under the law for such wrong or illegal disbursement. What is alleged under P.C Act is the offence punishable under Section 13(1)(c) of the P.C Act. The prosecution must necessary prove dishonest misappropriation of public money to prove such a charge. As regards six out of the seven disputed vouchers, the prosecution evidence itself proves that the amount covered by these six vouchers was received by the legal heirs of the concerned agricultural labourers. On this aspect, the evidence given by DW3 is that the Secretary disbursed the pension amount to the legal heirs of the deceased workers as decided by the Panchayat council. Whether it was decided by the Panchayat council or not, it is a fact that the amount was in fact disbursed to the legal heirs. As regards these six vouchers there is absolutely nothing to show that the amounts covered by the vouchers was appropriated by the accused. If the allegation is that the amount was wrongly and illegally disbursed to the legal heirs, or that the Secretary should have returned the amount to the Government, the proper course is to proceed against the Secretary with departmental action, and not to proceed under the P.C Act. A prosecution under

Section 13(2) r/w 13(1)(c) of the P.C Act or under Section 409 IPC on the allegation of misappropriation is possible only in cases where there is actual misappropriation. Here it is not a case of misappropriation as regards the six vouchers. Admittedly no amount was appropriated by the accused, and the wrong she did is to disburse the amount to the legal heirs of the deceased labourers. I fail to understand how this will come under Section 13(1)(c) of the P.C Act or under Section 409 IPC. Any way on this aspects, or as regards these six vouchers the prosecution also did not make much arguments before this Court. The learned Public Prosecutor stressed on Exts.P16 and P53 vouchers in the name of one Keshavan Kochu Kunju.

10. In view of the discussions and findings above, I find that the whole prosecution case now stands limited to the allegation about the Ext.P53 and P16 vouchers in the name of one Keshavan Kochu Kunju. The amount sent to Keshavan Kochu Kunju by money order was returned with report that he could not located at the locality. However, later he approached the Panchayat Secretary, submitted the Ext.P64 application to disburse the amount, and he also produced a

voucher. Ext.P16 is the said voucher signed by Keshavan Kochu Kunju. When the prosecution alleges that Ext.P53 voucher containing the thumb impression of Keshavan Kochu Kunju was found to be a false or forged document by the handwriting expert, the defence case is that the amount in the name of Keshavan Kochu Kunju was in fact disbursed under Ext.P16 voucher, which is not a forged document, and it contains the signature and thumb impression of Keshavan Kochu Kunju. Ext.P50 is the expert report regarding comparison of the thumb impression in the Ext.P53 voucher and the specimen thumb impression given by Keshavan Kochu Kunju. On comparison, the expert found that the specimen thumb impression is not identical with the questioned thumb impression in the Ext.P53 voucher. It is pertinent to note that Ext.P16 voucher in the name of Keshavan Kochu Kunju, and which contains both the signature and the thumb impression of Keshavan Kochu Kunju was not subjected to scientific examination by the prosecution. The Ext.P64 application was made by Kesavan Kochu Kunju along with the Ext.P16 voucher. When the prosecution alleges dishonest misappropriation of amount by using seven forged vouchers, the case as regards six out of the seven vouchers stands not proved. The persons who issued those vouchers gave evidence proving those vouchers, and there is nothing to show that any of these six vouchers was forged or created by the accused, or that the amount covered by six vouchers was misappropriated by the accused. So the scope of enquiry is only regarding the particular voucher as per which the amount was disbursed to Keshavan Kochu Kunju. The Ext.P16 voucher will show that the amount of ₹300/- covered by this was received by the Keshavan Kochu Kunju directly. But during trial, the voucher could not be proved because Keshavan Kochu Kunju died pending trial. To prove the forgery and misappropriation as regards the amount due to Keshavan Kochu Kunju, the prosecution relies on Ext.P50 expert report regarding comparison of the thumb impression of Keshavan Kochu Kunju in the Ext.P53 voucher. Of course it is true that there is a report that the thumb impression therein is not that of the person who provided the sample thumb impressions for comparison. But the accused can be convicted on the ground of dishonest misappropriation by using Ext.P53 voucher only if there is evidence to show that the said voucher was in fact used by the accused for appropriation of money, and that by using the said voucher the amount was dishonestly misappropriated by the accused. Here there is no positive evidence to show that money was in fact disbursed in the name of Keshavan Kochu Kunju as per Ext.P53 voucher. Just because there is a report of expert, the accused cannot be found guilty when other necessary elements are not there. Here assumes the importance of Ext.P16 voucher.

11. The prosecution does not have any evidence to prove that Ext.P16 voucher is a forged voucher. The defence case is that Ext.P16 voucher contains the signature as well as the thumb impression of Keshavan Kochu Kunju, and that the amount of ₹300/- covered by the voucher was disbursed to him as per the Ext.P16 voucher. The evidence given by PW12 shows that the amount due to Keshavan Kochu Kunju was disbursed as per the Ext.P16 voucher. When that is the evidence regarding disbursement, and when the prosecution does not have anything to show that Ext.P16 voucher is a forged voucher, the accused cannot be found guilty of having made such a forgery, or having dishonestly misappropriated any amount by using such a voucher. Even if, the Ext.P53

voucher is a forged one, the accused can be found guilty and convicted only if evidence proves further that the amount was disbursed to Keshavan Kochu Kunju, as per the Ext.P53 voucher which is found to be a false or forged voucher. The evidence given by PW12 proves that the amount due to Keshavan Kochu Kunju was disbursed as per Ext.P16 voucher. It is true that some writings in this voucher are that of the accused. But at the same time there are some other writings made by Kesavan Kochu Kunju. The prosecution did not take any step to prove scientifically that the signature and the thumb impression contained in the Ext.P16 are false, or are not that of Keshavan Kochu Kunju. On comparison I could find that the signature of Kesavan Kochu Kunju in Ext.P16 and in Ext.P64 are identical. Thus I find that, as regards the voucher in the name of Keshavan Kochu Kunju, the prosecution case stands not proved. Nobody has got a case that the amount was disbursed as per the Ext.P53 voucher which was found to be forged on scientific examination. Just because a voucher was forged by the accused or created by the accused, she cannot be found guilty or convicted under Section 13(1)(c) of the P.C Act or under Section 409 of the Indian Penal Code or under Section 468 or 471 of the Indian Penal Code when there is no evidence to prove that such a forged voucher was in any manner used by the accused, or that the amount was misappropriated by the accused by using that voucher. In this case what is proved is that the amount was disbursed as per the Ext.P16 voucher, which is not proved to be a forged or bogus voucher. Thus is it definite that the amount of ₹300/- covered by Ext.P16 voucher was also not appropriated by the accused, and the finding possible is that the said amount was in fact disbursed to Keshavan Kochu Kunju directly.

12. On an appreciation of the available evidence as discussed above, I find that the prosecution has miserably failed to prove the case against the accused. There is no evidence to prove the alleged misappropriation against the accused in any manner. On facts the accused is entitled for an acquittal. Even otherwise I have found that the whole prosecution is bound to collapse on the ground that the FIR itself is baseless.

In the result, this appeal is allowed. The appellant herein is not found guilty of the offences under Sections 409, 468 and 471 of IPC and under Section 13(2) r/w 13(1)(c) of the

P.C Act. Accordingly, the conviction and sentence against the appellant in C.C No.1/2008 of the court below are set aside and the appellant is acquitted in appeal under Section 386(b)(i) of the Code of Criminal Procedure. The bail bond, if any, executed by the appellant will stand discharged.

Sd/-
P.UBAID
JUDGE

//True Copy//

P.A to Judge

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