

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

CRL.A.No. 1252 of 2004

AGAINST THE JUDGMENT IN C.C 20/2000 OF ENQUIRY COMM.R. & SPL.JUDGE,
THRISSUR DATED 30-08-2003

APPELLANT/COMPLAINANT:

STATE OF KERALA, REP. BY THE DY.S.P,
V.A.C.B. KOTTAYAM THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.N.SURESH

RESPONDENTS/ACCUSED:

1. P.K.SOMAN,
FORMER SECRETARY,
KURICHY GRAMA PANCHAYATH.
2. P.P.PHILIP, S/O.PHILIPOSE,
VARACHERIL HOUSE, KURICHY, KOTTAYAM.

R1 BY ADV. SRI.M.V.BOSE
R2 BY ADV. SRI.GOKUL DAS V.V.H.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.UBAID, J.

Crl.A No.1252 of 2004

Dated this the 26th day of May, 2015

J U D G M E N T

A judgment of acquittal of the Enquiry Commissioner and Special Judge, Vigilance, Thrissur in C.C No.20/2000 is under challenge. The 1st respondent herein was the Secretary of the Kurichy Grama Panchayat in 1991-92. The Vigilance and Anti Corruption Bureau registered a crime against the respondents on the allegation that, the 1st respondent, with the active assistance of the second respondent as part of a conspiracy, appropriated amounts from the Panchayat funds by making false and bogus vouchers. It is alleged that the 2nd respondent herein was a contractor under the Panchayat. Thus the definite allegation of the prosecution is that the Panchayat Secretary and the Panchayat contractor, as part of conspiracy hatched by them, appropriated some amounts from Panchayat funds by creating false or bogus vouchers. Yet another allegation is that some amount was appropriated by the 1st accused by issuing a cheque in the name of a dead person. Crime was registered by the VACB on 20.12.1993 but final

report was filed after seven years, on 17.5.2000. It is not known why final report was delayed for seven years. Anyway, the two respondents herein pleaded not guilty to the charge framed against them by the trial court under Sections 13(1)(c) and (d) r/w 13(2) of the Prevention of Corruption Act, and also under Sections 409, 468, 471, 477A, 204 and 120B IPC. Thus they claimed to be tried. The definite case of the 1st respondent is that he had not appropriated any amount from the Panchayat funds under any bogus bill or voucher, and that he had no reason or occasion to be hand in glove with the second accused as part of any conspiracy, because the second accused was not infact a contractor under the Panchayat. This is the defence of the second respondent also, that he was not in fact a contractor as alleged by the prosecution, and he had no vicious dealings with the 1st respondent.

2. The prosecution examined 15 witnesses in the trial court and marked Exts.P1 to P31 documents. The respondents examined three witnesses in defence. On an appreciation of the evidence adduced by the prosecution the learned trial judge found that there is absolutely no evidence to prove any connection between the two accused, or that the 2nd

respondent was in fact a contractor under the Panchayat, or to prove any instance of misappropriation by the Panchayat Secretary. Accordingly, the learned trial judge acquitted the two accused (two respondents herein) by judgment dated 30.8.2003. Aggrieved by the said judgment of acquittal the State has come up in appeal.

3. On hearing both sides, and on a perusal of the prosecution records including the impugned judgment, I find no reason or ground to interfere in the judgment of acquittal under challenge. The definite allegation of the prosecution is that the 1st accused appropriated some amounts from the Panchayat funds under bogus vouchers, and with the object of destroying evidence he even destroyed the M Book (Measurement Book), showing the details of miscellaneous works. During trial the prosecution could not adduce any evidence to show that any such book or, even any page of the book, was destroyed by the 1st accused. The prosecution could not adduce any evidence to prove that the second accused was a contractor under the Panchayat, or that he had undertaken any work under the Panchayat. A document (Ext.P2(c)quotation) produced by the prosecution in the trial court will only show that the second

accused had submitted a quotation for the supply of some materials, and that apart, the second accused had no connection with the Panchayat or any dealing with the Panchayat. Simply on the ground that he had submitted a quotation for supply of some materials, the Court cannot find that he was a contractor under the Panchayat, or that he had undertaken any work under the Panchayat. In short the only finding possible is that there was no occasion or reason for the 1st accused and the second accused to hatch any conspiracy in relation to any work under the Panchayat. I find that the finding made on facts by the trial court is fully correct.

4. The trial court has come to a definite and clear finding that misappropriation of any amount by the 1st accused under bogus or genuine ground stands not proved. Another allegation of the prosecution is that a cheque for ₹22,275/- was issued by the 1st accused in favour of a dead person. It has come out in evidence that such a cheque was issued by the 1st accused on 22.4.1992 in the name of one V.M Francis, who died on 7.12.1991. There is absolutely nothing to show that the said amount covered by the cheque was in any manner appropriated by the 1st accused, or that the 1st accused was in any manner

benefited by such a cheque. On the other hand there is reason to believe, on the basis of evidence, that the said cheque was in fact encashed by the legal heirs of V.M.Francis, or that the money covered by the cheque was received by the legal heirs of V.M Francis. The prosecution has no material to show that the amount covered by the cheque was received by the 1st accused, or that the amount was misappropriated by him in any manner. The prosecution has also no material to show that the 1st accused issued the said cheque on 22.4.1992 with the knowledge of death of V.M Francis on 7.12.1991. It is pertinent to note that no complaint had ever come regarding such a cheque. Evidence will show that the amount covered by the cheque in question was in fact collected by the legal heirs of deceased V.M Francis. Thus there also the prosecution miserably failed. The prosecution could not adduce evidence to prove any instance of misappropriation by the Panchayat Secretary, with the assistance of the 2nd accused or otherwise. In the absence of any evidence, the learned trial judge found the two accused not guilty.

5. On an appreciation of the evidence, as the First Court of Appeal, I find that a different findings is not possible.

When misappropriation is alleged against a public servant, the prosecution is expected to prove the specific instances of misappropriation, the amount covered by such misappropriation, the way of such misappropriation, and also the result of such misappropriation, that the public servant or some body related to him was in any manner benefited by such misappropriation. It is not known, what is the misappropriation meant and alleged by the prosecution. The prosecution does not have any material whatever to substantiate the case or to prove the case to the satisfaction of the Court. I find that the trial court came to the right finding on the basis of the evidence that the prosecution does not have any material oral or documentary to prove the alleged instances of misappropriation or misconduct. I find that the two accused were rightly acquitted by the trial court.

In the result, this Criminal Appeal is dismissed.

**P.UBAID
JUDGE**

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