IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

CRL.A.No. 916 of 2007

AGAINST THE ORDER IN C.C NO.49/2000 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE DATED 4.5.2007

APPELLANT/IST ACCUSED:

R.RAMACHANDRAN NAIR, IAS,
S/O.RAMAKRISHNA PILLAI, `MAIDAN VILLA',
HINDU MISSION ROAD, THIRUVANANTHAPURAM
(FORMER CHIEF SECRETARY, GOVT. OF KERALA).

BY ADV. SRI.S.SREEKUMAR

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.UBAID, J.

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Crl.A No.916 of 2007

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Dated this the 6th day of October, 2015

J U D G M E N T

The appellant herein was the Vice Chancellor of the Sree Sankaracharya Sanskrit University, Kalady, during 1995-96. For the purpose of establishing a Regional Centre for the University at Palakkad, the appellant, in his capacity as Vice Chancellor of the University, agreed to purchase 13.05 acres of land at Elappully from some persons for a total consideration of ₹35,88,750/- in 1996. An advance payment of ₹27,00,000/- was made by the appellant towards the sale consideration. The sale consideration was thus fixed at ₹2,750/- per cent. Though an agreement for sale was executed, the agreement was later cancelled by the Syndicate of the University on 22.12.1998. Somebody suspected something vicious and dishonest in the deal made by the Vice Chancellor. Accordingly, came an enquiry against him, and this culminated in a prosecution under the provisions of the Prevention of Corruption Act (P.C Act), and also under Sections 120B, 409 and 420 of the Indian Penal Code, before the Enquiry Commissioner and Special Judge (Vigilance), Kozhikode. The Vigilance and Anti-Corruption Bureau, Kozhikode made a thorough investigation into the allegations against the Vice Chancellor, and submitted final report against him and six others on the allegation that the said agreement for sale was executed between the Vice Chancellor and the sellers as part of a conspiracy and criminal design to make unlawful benefit out of it, and that by the said deal the purchasers derived undue benefits. Thus came a prosecution against the Vice Chancellor as the first accused, and the sellers as accused Nos.2 to 7.

2. All the seven accused, including the Vice Chancellor entered appearance before the learned trial judge and pleaded not guilty of the charge framed against them under Sections 13(2) r/w 13(1)(d) of the P.C Act and also under Sections 409, 420 and 120B of the Indian Penal Code. The prosecution examined 21 witnesses in the trial court, and also marked Exts.P1 to P78 documents. When examined under Section 313 Cr.P.C all the accused denied the incriminating circumstances and projected a defence that nobody was in fact benefitted by the alleged sale agreement or deal, and that the Government or the University had not sustained any sort of loss

in the said deal. No evidence in defence was adduced by the accused, however. On an appreciation of the evidence, the trial court found the accused Nos.3 to 7 not guilty, but found the first accused (Vice Chancellor) guilty. The 2nd accused died pending the proceeding, and thus the charge against him abated. The accused Nos.3 to 7 were acquitted on the finding that they had no role or involvement in the dishonest acts of the first accused. On conviction the learned trial judge sentenced the first accused to undergo rigorous imprisonment for two years and to pay a fine of ₹2,00,000/- under Section 13(2) r/w 13(1)(d) of the P.C Act by judgment dated 4.5.2007 in C.C No.49/2000. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

3. When this appeal came up for hearing, the learned counsel for the appellant submitted on facts that the appellant is entitled for an acquittal, because the prosecution does not have any satisfactory and acceptable evidence to prove the allegation against the appellant, that he or somebody else was not in fact in any manner benefitted by the alleged deal, and the learned counsel also submitted that the whole prosecution is in fact barred under Section 19 of the P.C Act, for the reason that there is no sanction from the Syndicate of the University to

prosecute the Vice Chancellor. The learned counsel submitted that in another prosecution on identical facts, the accused was exonerated from the whole liability by the Hon'ble Supreme Court on the finding that a prosecution is not possible against the Vice Chancellor without sanction from the Syndicate of the University, in view of the protection granted under Section 50 of the University Statute. The learned counsel also showed a copy of the judgment of the Hon'ble Supreme Court dated 28.3.2011 in Crl.A No.792/2011, which arose out of S.L.P No.9818/2010. On the other hand the learned Public Prosecutor submitted that the prosecution has a good case on facts. As regards the question of sanction and the legal position settled by the Hon'ble Supreme Court the prosecution has no answer.

4. I fail to understand, what exactly is the case of prosecution here. Admittedly, the sale as agreed between the accused and the sellers did not take place. Only an agreement for sale was executed, and it was later cancelled by the Syndicate of the University on 22.12.1998. The appellant agreed to purchase the property at the rate of ₹2,750/- per cent. An amount of ₹27,00,000/- was also paid as advance consideration. The accused Nos.2 to 7 are the persons who

agreed to sell the property to the University. Admittedly, a suit was later filed by the University for realisation of the advance amount of ₹27,00,000/-, and the said suit was decreed. This means that no loss was in fact sustained by the University or the Government. The next question is whether the appellant herein was in any manner benefitted by the said deal. The prosecution case is that the appellant agreed to purchase the property at a very high rate of consideration when the actual market value was in fact very less. To prove this aspect the prosecution relies on the evidence of PW6 and PW8.

5. PW6 is the Revenue Tahsildar who claims to have valued the property in dispute. His evidence is that he submitted a report regarding the value on the basis of the report submitted by the Village Officer. This means that the land value was not directly and properly assessed by the Tahsildar. He simply relied on the report of the Village Officer. PW8 is the Village Officer. He proved the report submitted by him regarding land value. The Village Officer or the Tahsildar does not explain in evidence how exactly the value was assessed.

6. The prosecution examined some other witnesses to prove the value prevalent at the locality at the relevant time.

Curiously enough there is absolutely no evidence regrading the nature, importance and prospects of the land in question, and the other lands, on comparison. The land value of the other lands will assume importance only when there is evidence regarding the prospects and importance of the properties on comparison. Nobody says in evidence that the properties covered by the documents proved by the witnesses are similar and similarly situated or that all the properties are of equal importance. It is well settled that consideration is a matter of contract. Nobody can settle or decide the land value payable for a particular land at a particular area as consideration. It is the sellers right to fix the value for his property. The purchaser will purchase it only if he is prepared to pay that much consideration. Thus land value is always a matter of contract. The prosecution does not have any satisfactory material to prove that ₹2,750/- per cent agreed by the Vice Chancellor is excessive, or how exactly it is excessive. PW6 and PW8 examined by the prosecution to prove the land value have nothing to say about the actual land value at the locality, and they do not also say how exactly they fixed the value of the property. In the absence of any sort of evidence that the property in dispute, and the other properties covered by the documents relied on by the prosecution are exactly similar and similarly situated, no value can be attached to those documents or land value shown therein. It is not known how the prosecution would allege that ₹2,750/- per cent agreed by the Vice Chancellor is excessive.

7. Even assuming that the value agreed by the Vice Chancellor is excessive, the main question is how exactly he was benefitted by the deal or what loss was sustained by the Government or the University in the said deal. As already observed, the University has already obtained a decree for the amount of advance paid to the sellers. There is absolutely nothing so show that the appellant herein had derived anything from out of the advance amount paid to the sellers. Thus, I find on facts that the prosecution does not have any satisfactory material or evidence to prove the allegation that excessive land value was agreed to be paid by the Vice Chancellor to the sellers, or that the Vice Chancellor was in any manner benefitted by the said deal, or that the University or the Government had sustained any sort of loss in the said deal.

8. Even otherwise, on legal aspects the accused is entitled for acquittal, in view of the legal position settled by the

Hon'ble Supreme Court regarding the necessity of sanction under Section 50 of the University Statute. The learned trial judge found against the accused, that prosecution sanction is not required because the alleged deal was not made in good faith. But on identical facts, in another case the Hon'ble Supreme Court held that the agreement was executed by the Vice Chancellor in good faith, and that no malafide can be imputed. Section 50 of the University Statute gives protection to the officers of the University, that no civil or criminal proceeding shall be initiated against the officers without previous sanction of the Syndicate. Interpreting the provision the Hon'ble Supreme Court held in Crl.A No.792/2011 that such a sanction is absolutely necessary, and that without such sanction a prosecution against the officers of the University is not possible. The said precedent settled by the Hon'ble Supreme Court applies herein also. This is not a case where the sale took place and the amount was transferred to the seller. Here is a case where the seller was paid only a part of the consideration in advance, and the purchaser has already obtained a decree for the advance consideration. Then there is no question of anybody being benefitted by the deal, or any loss being caused to anybody in the said deal. On this ground itself the prosecution must collapse on facts. Thus even without the aid of Section 50 of the University Statute the appellant is entitled for an acquittal in this case.

In the result, this appeal is allowed. The appellant herein is not found guilty of the offence under Section 13(2) r/w 13(1)(d) of the P.C Act, and accordingly he is acquitted in appeal under Section 386(b)(i) of the Code of Criminal Procedure. The conviction and sentence against him in C.C No.49/2000 of the court below will stand set aside, and the bail bond, if any, executed by him will stand discharged. It is submitted that the appellant has deposited an amount of ₹25,000/- as a condition for bail. It will have to be returned to him.

P.UBAID
JUDGE

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