IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

CRL.A.No. 1893 of 2004 (A)

CC 11/2002 of ENQUIRY COMMISSIONER & SPECIAL JUDGE,THRISSUR
==================

APPELLANT/ACCUSED::

K.S. KURIAKOSE, FORMER CASHIER/ SENIOR ASSISTANT, ELECTRICAL MAJOR SECTION, K.S.E.B. KATTAPPANA, RESIDING AT KANATTU VEEDU IDUKKI COLONY P.O., KOCHU PAINAVU.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.JOHNSON P.JOHN
SRI.RAJU SEBASTIAN VADAKKEKKARA

RESPONDENT/COMPLAINANT::

STATE OF KERALA, REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE, V.A.C.B. IDUKKI. (V. CRIME NO.6/2000 OF V.A.C.B., IDUKKI) THROUGH THE PUBLIC, PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM.

BY PUBLIC PROSECUTOR SMT. V.H.JASMINE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26.05.2015, THE COURT ON 19-06-2015 DELIVERED THE FOLLOWING:

SD

P. UBAID, J.

Crl.Appeal No.1893 of 2004

Dated this the 19th day of June, 2015

JUDGMENT

The appellant herein was a Cashier in the Electrical Major Section, Kattappana, and from 04.08.1999 to 03.11.1999 he was Senior Assistant in the Electrical Section holding additional charge of Cashier. On the allegation that he dishonestly misappropriated electricity charges remitted in the electricity office by the Consumer Number 2262 in four months, from June,1999 to September,1999, without remitting the said amount in the bank account of the KSEB, the appellant faced prosecution under Section 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act (for short, 'the P.C.Act') and also under Sections 409 and 477A IPC before the Enquiry Commissioner & Special Judge, Thirssur in C.C.No.11/2002. It is alleged that electricity charges remitted on behalf of the Consumer Number 2262 was received by the cashier in office, but he did not make necessary entries in the registers kept in the office, and did not remit the amount in the bank account of the KSEB, and thus appropriated huge amount from the funds of the KSEB. Crime in this case was registered on the complaint of the Assistant Executive Engineer of the Electrical Major Section, Kattappana dated 18.12.1999. On coming to know of the said complaint, the entire amount appropriated by the appellant was remitted in the office of the KSEB on 18.12.1999 itself. On the said complaint Ext.P43 FIR was registered in the Kattappana Police Station, and later the crime was re-registered by the Vigilance and Anti Corruption Bureau, Idukki (Ext.P44 FIR). After investigation, the VACB submitted final report in court on 27.03.2002. Copies of the prosecution records were furnished to the accused as provided under Section 207 Cr.P.C. The accused pleaded not guilty to the charge framed against him by the trial court under Section 13(2) read with Section 13(1)(c) and (d) of the P.C.Act, and under Sections 409 and 477A IPC. The prosecution examined fifteen witnesses in the trial court, and also marked Exts.P1 to P15 documents. On examination under Section 313 Cr.P.C., the accused denied the incriminating circumstances. No evidence was adduced by the accused in defence, though opportunity was granted by the trial court. On an appreciation of the evidence adduced by the prosecution, the learned trial Judge found the accused guilty under Section 13(2) read with Section 13(1)(c) and (d) of the P.C. Act, and also under Sections 409 and 477A IPC. On conviction he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- under Section 13(2) read with 13(1)(c) of the P.C.Act, and to undergo another term of rigorous imprisonment for one year each under Section 409 and 477A IPC. No separate sentence was imposed under Section 13(1)(d) of the P.C.Act. Aggrieved by the conviction and sentence the accused has come up in appeal. The points for decision in this appeal are;

1) Whether the appellant was Cashier having charge of money transactions in the Electrical Major Section, Kattappana from 15.12.1994 to 03.11.1999.

2) Whether the accused, as Cashier, had received electricity charges from the Consumer Number 2262 in the months of June to September, 1999.

3) Whether the accused had dishonestly misappropriated these amounts by falsification of amount and without making remittance in the account of the KSEB in Union Bank of India, as

alleged by the prosecution.

4) Whether the sentence imposed by the court below requires interference, in case the conviction is confirmed.

2. To prove the remittance of electricity charges and appropriation of the amount by the Cashier without making remittance in the bank account, the prosecution mainly relies on the evidence of PW7, the then Senior Assistant of the KSEB Major Section during 1998-1999, the evidence of PW4 and PW6, the Cashier and Supervisor of Grand Park Tea Industries (Consumer Number 2262 under the Major Section), and also the evidence of PW10, the Manager of Union Bank of India, Kattappana.

3. That the appellant herein was Cashier in the Electrical Major Section, Kattappana from 15.12.1994 to 03.11.1999, having charge of money transactions is proved by the evidence of PW5, PW7 and PW9. The Assistant Executive Engineer, who made the Ext.P17 complaint in this case was having charge of the Electrical Major Section, Kattappana. He has proved that the appellant herein was the Cashier in the Major Section, during the relevant period. PW5, the Assistant Executive Engineer proved Ext.P24 to Ext.P30 attendance registers for the months of June to

December, 1999. he also proved Ext.P31 work allocation register kept in the Major Section. Ext.P31(a) to Ext.P31(c) entries in the register proved by PW5 will show that the appellant herein was Cashier in charge of money transactions in the Electrical Section during the relevant period. Ext. P31(a) will show that the Vandanmedu Section was allotted to the accused in August, 1998, and Ext.P31(a) will show that no change in his allotment was made when the duties were re-allotted on 23.02.1999. On 30.06.1999 he was given additional charge of another division. The office order proved by the Assistant Executive Engineer would further prove that the accused handed over the charge as Cashier to his successor on 03.11.1999. PW9 is the Cashier, who took charge on 03.11.1999. She has given definite evidence on the relevant aspects including the fact that she took charge as Cashier from the appellant herein. During trial, the accused raised a contention that he was Cashier only up to the month of July, 1999, and thereafter he had no responsibility as Cashier. But the evidence of PW5 and the documents proved by him, and also the definite evidence given by PW9 will show that the appellant continued as Cashier till 03.11.1999. Ext.P31(c) specific entry will prove this fact. Thus, its stands well proved that the appellant herein was in fact the Cashier of the KSEB Electrical Major Section, Kattappana during the relevant period.

4. PW1 is the Chief Engineer examined to prove the sanction granted under Section 19 of the P.C.Act. There is nothing to show that Ext.P1 sanction was granted by him without application of mind, or without considering necessary and relevant aspects. His evidence will convince the court that sanction was granted by him on a consideration of the merits of the prosecution case. In fact there is no serious challenge regarding Ext.P1 prosecution sanction.

5. PW4 and PW6, the Cashier and the Supervisor of Grand Park Tea Industries, Kattappana have given definite evidence regarding remittance of electricity charges in the Kattappana Electricity Office for the months from June to September, 1999. They also proved Exts.P5, P10, P13 and P15 receipts issued from the KSEB office. The amount covered by Ext.P5 receipt was remitted as per Ext.P3 demand issued from the KSEB office, the amount covered by Ext.P10 receipt was remitted as per Ext.P8 demand, and the amount covered by Ext.P13 receipt was

remitted as per Ext.P11 demand. PW7 has proved Exts.P5, P10, P13 and P15 receipts issued from the KSEB office. It stands well proved that Consumer Number 2262 relates to Grand Park Tea Industries.

6. The Officers of the KSEB are definite in evidence that when an amount is received in the office by way of electricity charges from consumers, it must be promptly recorded in the SOP 6 register, and on the same day, or on the next day, the amount must be remitted in the bank account under proper challans. PW7 has given evidence that in this case remittance of electricity charges made by the Consumer Number 2262 for the months of June to September, 1999 were not entered in the SOP 6 register by the Cashier-in-charge. PW7 proved Exts.P5, P10, P13 and P15 receipts and affirmed in evidence that the amount covered by these receipts were in fact received by the Cashier in the office. I find no reason to disbelieve the evidence given by PW7 regarding the remittance of electricity charges, and also regarding the issuance of Exts.P5, P10, P13 and P15 receipts from the office of the KSEB. PW5 and PW7 are definite that electricity charges remitted in the office will be received by the

Cashier in office, and it is his duty to record remittance in the registers including the SOP 6 register. Once the amount is received, the Cashier will have to prepare pay-in-slip, and it must be authorised by the Senior Superintendent, for remittance in the bank. One copy of the pay-in-slip will have to be pasted at the relevant page of the SOP register. Here, no such pay-in-slips were prepared by the Cashier, and no entries are seen in the SOP 6 or SOP 10 register.

7. PW7 was Senior Assistant dealing with billing at the Vandanmedu Centre of the Major Section, Kattappana, and the Consumer Number 2262 was under the Vandanmedu Centre. He affirmed in evidence that the appellant herein was Cashier at the Kattappana office at the relevant time, and that the office records will show that electricity charges from the Consumer Number 2262 were received by him in office for the months of June to September, 1999. I find no reason to doubt the genuineness and correctness of Exts.P5, P10, P13 and P15 cash receipts issued from the KSEB office, on receipt of electricity charges from the Consumer Number 2262. PW5 and PW7 are definite in evidence that the amount of electricity charges received by the accused

herein for the months of June to September, 1999 was not remitted by the accused in bank, he also did not make necessary entries in the registers proving receipt in the office, and he thus appropriated the whole amount.

8. PW10 was Manager of the Union Bank of India, Kattappana at the relevant time, and PW11 was Cashier of that bank. The Manager proved Ext.P41 series vouchers showing remittance of amount in the account of the KSEB Electrical Major Section, Kattappana along with pay-in-slips. The evidence of the Bank Manager shows that the amount covered by Exts.P5, P10, P13 and P15 receipts was not remitted in the bank promptly. The defence has no explanation for the failure of the appellant to remit the amount covered by the aforesaid cash receipts issued from the KSEB office. Non-remittance of the amount is well proved by the evidence of the Bank Manager (PW10), and also the evidence of PW5 and PW7.

9. Of course, it is true that the amount alleged to have been misappropriated by the accused, was remitted later in the KSEB office on 18.11.1999, on which day the complaint was filed by the Assistant Executive Engineer. The amount remitted is

Rs.91,741/-. The prosecution case is that the accused dishonestly misappropriated Rs.91,741/- from the account of the KSEB without making remittance promptly in the bank. It is alleged that, on coming to know about the prosecution initiated by the department, or on coming to know of the move on the part of the Assistant Executive Engineer to file a complaint, the accused made remittance of the amount on 18.12.1999 itself through one KSEB contractor. PW3 is the said contractor. He turned hostile to the prosecution during trial. However, the fact of remittance of the amount on 18.12.1999 stands well proved by PW5, PW7 and PW9. PW9 took charge on 03.11.1999 as Cashier. She has given evidence that an amount of Rs.91,741/- was remitted by somebody in the KSEB office. When she entertained some doubt and hesitated to receive it, she was directed by the Assistant Executive Engineer to receive the amount. She does not remember who exactly remitted the amount in the office. The explanation given by PW5 is that with the object of avoiding loss to the KSEB, he instructed the cashier (PW9) to receive the amount. PW5 also does not know who exactly made remittance in the office. During trial, the defence made an attempt to develop a new case that the amount was in fact appropriated by PW7 and it was he, who made remittance of the amount on 18.12.1999. Such a defence is really unacceptable and unbelievable. PW5 has given acceptable explanation that when somebody came to remit the amount, he instructed the cashier to receive it, thinking that some loss to the KSEB could be avoided. With such a genuine object, he instructed the cashier to receive the amount. Anyway, it is a fact that the amount alleged to have been misappropriated by the accused, was later remitted in the KSEB office on 18.12.1999. That the amount was remitted on the date of complaint, will not exonerate the accused from liability, if it is proved otherwise that such amount was in fact misappropriated by him dishonestly, without remitting the amount promptly in the bank.

10. There is absolutely no reason why the definite and consistent evidence given by PW7, the then Senior Assistant in the K.S.E.B., having charge of the Kattapana Major Section, should be disbelieved. His evidence, and also that of the Assistant Executive Engineer prove that the Consumer Number 2262 was allotted in the name of Valsamma Devassia of Grand

Park Tea Industries. Remittance of electricity charges on behalf of the said Grand Park Tea Industries towards the Consumer Number 2262 in the months of June to September,1999 in the K.S.E.B. office, and receipt of the amount by the appellant herein as Cashier, stand proved by the evidence of PW4 and PW6. PW7 is definite that receipt of the amount in the four months is not seen recorded in the relevant register maintained in the K.S.E.B Office. His evidence shows that any amount received in the office by way of electricity charges, will be entered in the SOP-6 Register. Failure to make necessary entries in the relevant registers and documents kept as part of cash dealings in the office will also amount to falsification of accounts punishable under the law. It stands well proved by the evidence adduced by the prosecution that the appellant herein had made falsification of accounts in the registers kept in the K.S.E.B office, without making necessary entries therein, with the object of illicit appropriation of the amount received by him, and he appropriated the amount, without remitting the amount properly and promptly in the Bank, on the next day. The fact that the amount was later remitted by him on 18.12.1999 when the

Assistant Executive Engineer made a complaint, will not explain away the failure on his part, and it will not exonerate him from criminal liability.

11. As discussed in the foregoing paragraphs, and on an analysis of the evidence adduced by the prosecution, I find that the prosecution case against the appellant herein stands well proved. The act of misappropriation of Rs.91,741/-by the appellant will definitely amount to an act of misconduct meant and made punishable under Section 13 (2) of the P.C. Act. Such misappropriation, without making necessary entries in the registers and documents amounting to falsification of accounts, is also punishable under the Indian Penal Code, as found by the court below. Such criminal misappropriation amounting to breach of trust by a public servant is punishable under Section 409 IPC, and falsification of accounts by a public servant willfully, and with intent to defraud and with the object of making misappropriation of amounts from the public funds, is punishable under Section 477A IPC also. I find that the appellant herein was rightly found guilty and convicted by the trial court.

12. On re-appreciation of evidence, I find no reason or

ground for interference in the findings made by the trial court. Accordingly, I find that the conviction in this case made by the court below is only to be confirmed in appeal.

13. As regards the jail sentence, I feel the necessity of some interference in the present circumstances where the appellant has been facing the trauma of prosecution for more than 15 years. At the time of the alleged incident, he was aged about 44 years, and now he must have retired from service. Before 2014, the offence under Section 13 (2) of the P.C. Act was punishable with imprisonment which shall not be less than one year. By way of amendment in 2014, the minimum sentence stands enhanced to imprisonment for four years. Anyway, on a consideration of the long lapse of years, and also the fact that the entire amount was later remitted on behalf of the accused, I find that the sentence in this case can be reduced to the minimum possible under the law in 1999. There is reason to believe that the amount was in fact remitted by, or on behalf of the accused on 18.12.1999. Anyway, the K.S.E.B has received the amount. This also can be considered in the matter of sentence. Thus, I find that the sentence imposed by the court

below under Section 13 (2) of the P.C. Act can be reduced to simple imprisonment for a period of one year, which was the minimum possible as on the date of commission of the offence. The sentence imposed by the court below under Sections 409 and 477A IPC is rigorous imprisonment for one year each. The nature of this sentence can be altered in the above circumstances. As already directed by the trial court, all the three sentences can run concurrently.

In the result, this appeal is allowed in part to the limited extent of modifying and reducing the substantive sentence under Section 13 (2) of the P.C. Act. The conviction made by the court below against the appellant herein under Section 13 (2) of the P.C Act and under Sections 409 and 477A IPC will stand confirmed. However, the sentence imposed by the trial court under Section 13 (2) of the P.C. Act will stand modified and reduced to simple imprisonment for one year. The sentence imposed by the court below under Sections 409 and 477A IPC is maintained subject to the modification that it shall also be simple imprisonment. The fine sentence imposed by the court below is maintained. All the substantive sentences will run concurrently.

The court below will take immediate steps to enforce the sentence modified in appeal.

Sd/-

P. UBAID, JUDGE

sd