

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

CRL.A.No. 1280 of 2007 (D)

AGAINST THE JUDGMENT IN CC 12/2000 OF THE ENQUIRY COMM. &
SPL.JUDGE, THRISSUR DATED 30-09-2005

APPELLANT/COMPLAINANT:

STATE OF KERALA,
DEPUTY SUPERINTENDENT OF POLICE, VACB,
IDUKKI REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

RESPONDENT/ACCUSED:

- * 1. T.G.NADESAN, S/O.GOPALAKRISHNAN,
FORMER FOREST RANGE OFFICER, THODUPUZHA
RESIDING AT KULATHUMNIRAVIL VEEDU, KOONAMKARA,
RANNI, PERUNADU. (DIED)
 - * 2. P.K.KRISHNAN CHETTIYAR IFS,
S/O.PARAMESWARAN CHETTIYAR, RTD.DIVISIONAL FOREST
OFFICER, KOTHAMANGALAM RESIDING AT "THILAK"
LIONS NAGAR, MUNDAKKAL, KOLLAM. (DIED)
 - 3. P.K.MOHANAN, CONVENOR, S/O.KUNJUKUNJU,
PAZHAPLACKAL HOUSE, MANIYARAMKUDY, IDUKKI.
- * APPEAL AGAINST R1 IS ABATED AS PER ORDER DATED 12.9.2013 IN
CRL.A NO.1280/2007.
- * APPEAL AGAINST R2 IS ABATED AS PER ORDER DATED 9.12.2013 IN
CRL.A NO.1280/2007.

R2 BY ADV. SRI.T.S.JOHN
R2 BY ADV. SRI.M.S.RADHAKRISHNAN NAIR
R1 BY ADV. SRI.SAJU.S.A
R3 BY ADV. SRI.RAJESH VIJAYAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.UBAID, J.

Crl.A No.1280 of 2007

Dated this the 22nd day of September, 2015

J U D G M E N T

This is an appeal brought against the judgment of acquittal of the Enquiry Commissioner and Special Judge, Thirssur in C.C No.12/2000. Pending this appeal, the respondents 1 and 2 died, and thus the appeal against the original accused Nos.1 and 2 abated. The three accused faced prosecution before the trial court on the allegation that they misappropriated an amount of ₹87,350/- from public funds, as part of a criminal conspiracy hatched by them in connection with the construction of a check dam in the forest area within Kothamangalam Forest Range, for the benefit of tribals. The department made an estimate of ₹2 lakhs, and the full amount was also released to the persons concerned. The work was supervised and carried out by the Forest Range Officer in charge and the section Forester. The work was monitored and supervised by the then Divisional Forest Officer. It is alleged that on the basis of an order passed by this Court in O.P

No.4796/1997, the Vigilance and Anti-Corruption Bureau (VACB), Idukki conducted a preliminary enquiry into the allegations made by one K.M George. On the basis of the report of enquiry, made by the Deputy Superintendent of Police, VACB, a crime was registered against three persons. It is alleged that the said enquiry revealed misappropriation of huge amount by the three accused from public funds. After investigation, the VACB submitted final report before the trial court under the provisions of the Prevention of Corruption Act (P.C Act) and the Indian Penal Code.

2. The three accused appeared before the trial court and pleaded not guilty to the charge framed against them under Sections 13(2) r/w 13(i) (c) and 13(i)(d)) of the P.C Act and also under Sections 120B, 409, 468, 471 and 477A of the Indian Penal Code. The prosecution examined 14 witnesses during trial, and also proved Exts.P1 to P27 documents. When examined under Section 313 Cr.P.C all the three accused denied the incriminating circumstances, and maintained a definite defence that they have not appropriated any amount from public funds. The accused did not adduce any evidence in defence. However Ext.P1 copy of O.P No.4796/1997 was marked.

3. On an appreciation of the entire evidence, the trial court found that the prosecution does not have any material to prove the alleged dishonest misappropriation or falsification of accounts. Accordingly, the learned trial judge found all the three accused not guilty, and acquitted them by judgment dated 30.9.2005. Aggrieved by the said judgment of acquittal the State has come up in appeal.

4. Of the 14 witnesses examined on the side of the prosecution, PW1 and PW2 are the officers who granted the prosecution sanction in this case, proved as Exts.P1 and P2. The main witnesses relied on by the prosecution are PW3 and PW4. The prosecution also relied on Ext.P3 report made by PW3 and the ExtP6 interim report made by PW4. The learned Public Prosecutor submitted before me that the trial court erred in properly appreciating the evidence, and thus all the three accused happened to be acquitted. On the other side it was submitted by the learned counsel for the 3rd respondent that the prosecution does not have any material or evidence in this case to prove the alleged dishonest misappropriation.

5. On an appreciation of the evidence given by the material witnesses examined as PW3 and PW4, I find that this

appeal is in fact meritless, and the prosecution does not have any ground for an appeal against the judgment of acquittal. The charge against the accused is mainly under Section 13(2) of the P.C Act. PW3 and PW4 have given evidence regarding the loss sustained by the government due to the alleged irregularities committed by the three accused. As per Ext.P3 report PW3 assessed the total loss sustained by the government, and before that the loss was assessed by the PW4 as per Ext.P6 report. PW6 was the Divisional Forest Officer at that time, and PW3 was the Assistant Executive Engineer. PW4 does not have any such expertise or qualification. Still without the assistance of any expert, PW4 inspected the check dam, assessed the various works done, and assessed the loss sustained by the government. Admittedly, Ext.P6 is only an interim report. This means that the final report, assessing the loss is yet to come. It is not known how the prosecution would rely on the Ext.P6 interim report prepared by a person who is not qualified in the field. He frankly admitted during trial that he does not have the required expertise or qualification, that he had not awaited the service of any expert in the field when he made assessment of the work and assessment of the loss sustained by the government, and that

Ext.P6 is only an interim report submitted by him. He frankly conceded that final assessment is yet to be made. So also PW3 stated in evidence that when he made assessment of the loss sustained by the Government on a valuation of the work done for the check dam, he had not sought the assistance of any expert or technical staff. He also stated in evidence that he had not taken so many things into account, like the additional works done by the accused, construction of boundary wall and retaining wall, etc. when he assessed the total loss sustained by the government.

6. The main prosecution allegation is that as part of a criminal conspiracy the three accused jointly misappropriated a huge amount from the funds allotted for the construction of check dam for the benefit of tribals. PW3 and PW4 assessed a loss of ₹87,350/-. It is not known who appropriated this amount from public funds. It is quite strange that the prosecution does have any material or evidence to prove that any of the accused had misappropriated any amount from the public funds. What is prominently proved is only that the government had sustained a total loss of ₹87,350/-. That the government sustained loss will not by itself make the accused liable for prosecution. For a

prosecution under Section 13(1)(c) of the P.C Act, the prosecution must have a definite case that the accused had dishonestly misappropriated some amount from public funds. So also for a prosecution under Section 13(1)(d) of the P.C Act the prosecution must have a definite case that the accused was somehow benefited by his illegal or dishonest act. It is not known how the accused or any one of them was benefited by the alleged construction, or whether anybody else was benefited by their act. The prosecution must have a case that by some illegal or dishonest act, the accused derived some benefit, or that somebody else was benefitted by such act. Here, in this case, the prosecution does not have such a case. The evidence of PW3 and PW4 is only regarding the loss sustained by the government.

7. It is true that some loss sustained by the government is attempted to be proved. But here also the evidence given by PW3 and PW4 is not satisfactory. An appreciation of the evidence will show that the loss was not properly and legally assessed by them with the help of technical experts and qualified persons. Anyway, they assessed a total loss of ₹87,350/-. On this aspect, PW3 and PW4 have nothing to say in evidence. None of these witnesses has got a case in evidence

that the amount was misappropriated dishonestly by any of the accused, or that any of the accused was in any manner benefited by such work. It is well settled that misconduct or malfeasance on the part of a public servant will not by itself make him liable for a prosecution under the P.C Act, or even under the Indian Penal Code. If any public servant has done anything illegally or improperly against the rules or prescribed procedure, thereby causing loss to the government and public exchequer, he will have to be appropriately dealt with by way of disciplinary action, and the government can impose adequate and appropriate punishment including realisation of the amount of loss caused to the government. For a prosecution on the allegation of breach of trust or cheating or forgery under the Indian Penal Code, or for a prosecution under the P.C Act, alleging violation of Sections 13(1)(c) and 13(1)(d) of the P.C Act something more is required. Mere breach of duty or mere dereliction of duty will not make a public servant liable under Section 13(1)(c) or 13(1)(d) of the PC Act or under Sections 409, 468, 471 and 477A of the Indian Penal Code.

8. In this case, it is not known what document was in fact forged by the accused. What is alleged is falsification of

accounts. But on this aspect there is nothing in the evidence of PW3 or PW4. It is not known how the accused falsified the accounts, or what document was in fact forged by them. Nobody has got a case in evidence that any of the accused had misappropriated anything. Nobody says whether any of the accused was in any manner benefited. In short, the prosecution does not have any material to prove the alleged forgery or falsification of accounts, or the alleged dishonest misappropriation. In the absence of any material to prove dishonest misappropriation, a conviction is not possible under Section 13(2) r/w 13(1)(c) of the P.C Act. So also in the absence of anything to prove that the accused was in any manner benefited, or that somebody else was benefited by the act of the accused, a conviction is not possible under Section 13(2) r/w 13(1)(d) of the P.C Act. In the absence of anything to prove misappropriation of public funds or forgery or falsification of accounts, a conviction is not possible under Sections 409, 468, 471, 477A of the Indian Penal Code. Thus I find that this is a case where the prosecution miserably failed to prove the case in the trial court. I fail to understand why the State has come up in appeal against the said judgment of acquittal.

9. There is yet another very important aspect in this case. Ext.P19 FIR shows that the crime was registered by the Deputy Superintendent of Police on the basis of a report of enquiry, and that such an enquiry was conducted as ordered by this Court in O.P No.4796/1997. Such an order of this Court is not seen produced by the prosecution. It is not known what was the order passed by this court, or what was the purport of the order. So also the report of enquiry on which the vigilance registered the FIR is not seen produced in this case. This is not a case where the Deputy Superintendent of Police registered the FIR suo motu on the basis of what he gathered, or on the basis of his own personal knowledge or information. It is not known who conducted preliminary enquiry in this case. Such a report is not before the court, and such an officer is also not seen examined as witness. In short the FIR in this case does not have any basis. It is seen marked by the investigating officer. He cannot give any evidence regarding the materials on which the FIR was registered. The FIR can be proved properly only by proving the report of enquiry on which it is based. It is not known who conducted the said enquiry or where the said report is. The Deputy Superintendent of Police who registered the FIR was not

examined by the prosecution during trial. It is for him to explain on what materials he registered the FIR in this case. On the basis of the report of enquiry, he must tell the court what are the contents of that report, or what are the materials revealed by the report. In the absence of any such evidence, the FIR in this case cannot have any value. Anyway, even otherwise I find that the prosecution miserably failed in the trial court to prove the case on facts, and the prosecution has come up in appeal before this Court without any definite material or ground to challenge the judgment of acquittal. I find that this appeal is liable to be dismissed as meritless.

In the result, this Criminal Appeal is dismissed as meritless.

**P.UBAID,
JUDGE**

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