

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.UBAID

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No. 1398 of 2007 ()

AGAINST THE JUDGMENT IN CC 3/2001 of ENQ.COMMR. &
SPL.JUDGE, THIRUVANANTHAPURAM

APPELLANT(S)/ACCUSED:

A.RAMACHANDRAN NAIR,
FORMERLY SENIOR ASSISTANT GRADE-I
KERALA STATE CIVIL SUPPLIES CORPORATION
DISTRICT DEPOT., VALIYATHURA, THIRUVANANTHAPURAM.

BY ADVS.SRI.SAIBY JOSE KIDANGOOR
SRI.BENNY ANTONY PAREL

RESPONDENT(S)/COMPLAINANT:

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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
 2. THE DEPUTY SUPERINTENDENT OF POLICE,
VACB, THIRUVANANTHAPURAM UNIT.

R1 & R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.1398 of 2007**  
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Dated this the 26th October, 2015

J U D G M E N T

The appellant herein is the 2nd accused in C.C No.3 of 2001 of the Special Court (Enquiry Commissioner and Special Judge, Vigilance), Thiruvananthapuram. Three accused including the appellant herein faced prosecution in the said case under the provisions of the Prevention of Corruption Act, and also under Sections 120B, 468, 409 and 511 of I.P.C at the instance of the Vigilance and Anti-Corruption Bureau (VACB) Thiruvananthapuram. Pending trial, the 1st accused died, and thus the charge against him abated. The accused Nos.2 and 3 pleaded not guilty to the charge framed against them and claimed to be tried. The principal offender, as per the final report submitted by the VACB, is the 1st accused, and the accused Nos.2 and 3 were prosecuted as conspirators. The 1st accused was the Assistant Manager of the Kerala State Civil Supplies Corporation, District Depot, Valiyathura, the 2nd accused was the Senior Assistant at the Depot, and the 3rd accused

was the Godown Helper. The prosecution case is that as part of a conspiracy made by the three accused in connection with unloading of 360 bags of red chilly procured from M/s. Swasthik Commercial Corporation Kochi, the 2nd accused created a false certificate showing that the whole 360 bags of red chilly were unloaded at Valiyathura whereas only 240 bags were in fact unloaded, and the remaining 120 bags were removed to the State Warehousing Corporation Godown, Chalai. By making use of this certificate, the unloading workers at Valiyathura could claim unloading charges for the entire quantity of 360 bags and thus the Civil Supplies Department lost some amount by way of labour charges. According to the prosecution, the whole mischief was done by the 1st accused, as the person having charge or control over the whole affairs, and the accused Nos.2 and 3 in fact helped him as conspirators. The accused pleaded not guilty to the charge framed against them under Sections 13 (2) read with 13 (1)(c) and 13 (1) (d) of the P.C Act, and also under Sections 468, 409 read with 511, I.P.C.

2. The prosecution examined 13 witnesses and also

marked Exts.P1 to P25 documents. When examined under Section 313 Cr.P.C, the accused Nos.2 and 3 denied the incriminating circumstances and submitted that they were not in fact party to any conspiracy, and that they had not in fact helped or assisted the 1st accused in the alleged acts of offence. As regards Ext.P5 certificate, on which the prosecution mainly relies, the second accused submitted before the trial court that he happened to issue such a certificate as directed by the 1st accused, and it was not issued by him as part of any conspiracy. The accused did not adduce any evidence in defence. On an appreciation of the entire evidence, the trial court found the 3rd accused not guilty, but found the second accused guilty under sections 120B and 409 read with 511 I.P.C read with Section 13 (2) of the P.C Act (for short “ the P.C Act”). On conviction he was sentenced to undergo rigorous imprisonment for one year each under Sections 120B I.P.C, Section 409 read with 511 I.P.C and Section 13 (2) read with 13 (1) (d) of the P.C Act. He was also sentenced to pay a fine of ₹ 5000/- under Section 409 read with 511 I.P.C. He was acquitted of the

offence under Section 468 I.P.C. Aggrieved by the said judgment of conviction dated 30.5.2007 in C.C No.3 of 2001, the second accused has come up in appeal.

3. On an examination of the entire evidence in this case, I find that the conviction against the appellant herein is baseless. It is not known how any of the accused was in fact benefited by the alleged transaction, or who was actually benefited. The whole prosecution is concerning 360 bags of red chilly procured by the Kerala State Civil Supplies Corporation from one M/s.Swasthik Commercial Corporation. The whole 360 bags of chilly were intended to be unloaded at the Valiyathura Depot, Kerala State Civil Supplies Corporation. The prosecution alleges that only 240 bags were in fact unloaded and the remaining 120 bags of red chilly were removed to the State Warehousing Corporation Godown at Chalai. The prosecution does not have a case that this quantity of 120 bags of chilly was in any manner appropriated or converted to his own use by any of the accused. All the 120 bags were found at the Warehousing Corporation Godown on physical verification. Thus, the

prosecution cannot have a case that any of these accused had removed or converted to his own use any of the 120 bags of red chilly removed to the Warehousing Corporation Godown, or unloaded there. It appears that the prosecution case is this, that when only 240 bags were in fact unloaded at Valiyathura Depot, the accused Nos.1 and 2 made a false certificate showing the unloading of the whole 360 bags and so the unloading workers at Valiyathura could claim the unloading charges for the entire quantity of 360 bags, whereas only 240 bags were unloaded.

4. Even while alleging that the unloading workers derived benefit by way of unloading charges for 360 bags of red chilly through their Labour Contract Co-operative Society, the prosecution did not examine any office bearer of the Labour Contract Society. It is not known how the prosecution would prove this aspect without examining the labourers who unloaded the quantity of red chilly at Valiyathura Depot.

5. The prosecution mainly relies on the Ext.P5 certificate alleged to have been issued by the 2nd accused as

part of a conspiracy. This is said to be a false certificate certifying the fact of unloading of 360 bags of red chilly at Valiyathura whereas only 240 bags were unloaded. Ext.P5 is only a carbon copy. There is no explanation why the original was not seized. When forgery is alleged, the original document must be seized and examined. As regards the forgery committed by the 2nd accused, the trial court found thus in paragraph 21 of the impugned judgment:

“simply because Ext.P5 contains a false entry, it cannot be treated as a forged document. He is found not guilty for the offences under Sections 408 or 120-B read with 468 of IPC and he is acquitted of that offence”.

6. As regards the charge of forgery as part of a conspiracy, the 2nd accused/appellant stands acquitted by the trial court. As regards the alleged role of the 3rd accused, who stands acquitted by the trial court, the learned trial Judge found thus in paragraph 15 of the judgment:

“Even though third accused was the Godown Helper at that time, there is no acceptable evidence to prove that he had participated in any criminal conspiracy for committing the offences charged against him. The only evidence available against him in this case is the oral version of PW12 who stated that when he came to conduct a surprise inspection of the Valiyathura Godown on

4.2.1995 at about 4.30 p.m he found accused 1 to 3 standing in front of the Godown and that he has further stated that both accused 2 and 3 had confirmed that 360 bags of red chilly were unloaded in the Godown and also the version of PW7 that at the time of unloading the red chilly on 4.2.1995, third accused also was available at the Godown along with the second accused. Apart from the above versions of PW12 and PW7 there is no evidence to connect second accused with the alleged offences”.

7. As regards the alleged role of the 3rd accused, the trial court came to a clear finding that he had no role at all in the alleged act of conspiracy or corruption, and he was rightly found not guilty of any of the offences by the trial court. As regards the 2nd accused also, the trial court came to a clear finding that the act of forgery alleged against him stands not proved in any manner and he was also granted a clean acquittal by the trial court. Then it is not known how he was convicted by the trial court when the whole prosecution case is based on Ext.P5 certificate, which is said to be a forged certificate created by the 2nd accused.

8. For a conspirator to be convicted and punished with the aid Section 13 (2) read with 13 (1) (c) or 13 (1) (d) of the P.C Act, the prosecution must necessarily prove that

the accused was somehow benefited as part of the alleged conspiracy, or that, by the said act of the accused, somebody else was benefited, or somebody else derived some pecuniary advantage. Here, as regards the removal of 120 bags of red chilly, the prosecution could not allege any misappropriation because the said quantity was in fact unloaded at the State Warehousing Corporation Godown, and on verification also, the said quantity was found there. The prosecution does not have a case that any bag out of the 120 bags of red chilly was removed or converted to his own use, or misappropriated by the accused. Thus, what is alleged is not misappropriation as such, but helping the headload workers to claim excess unloading charges with the help of a false certificate. It is alleged that through the Labour Contract Co-operative Society, the unloading workers claimed unloading charges for 360 bags. Exts.P7 and P7(a) are said to be the claims. In fact, these claims are not properly proved by examining the person who drew this amount. The original document which is said to be a forged one, is not seized or produced. Even as regards the

carbon copy the finding is in favour of the appellant. The amount drawn in excess is just ₹ 120/- (rupee one per bag). As regards ₹ 240/- the prosecution cannot have any dispute because 240 bags were admittedly unloaded at Valiyathura Depot. The prosecution case is that the Labour Contract Co-operative Society could withdraw unloading charges for 360 bags of red chilly by using the Ext.P5 certificate which is said to be a false certificate. But the clear finding made by the trial court is that Ext.P5 is not a forged certificate at all. That is why I said that the conviction against the appellant herein is in fact baseless.

9. As discussed in the foregoing paragraphs, I find that the prosecution does not have any definite material or basis to prove the offences alleged against the appellant herein. Even according to the prosecution, the principal offender is the 1st accused, and he derived benefit with the help of the other accused. As regards the 3rd accused, the trial court came to a definite finding that he had no role at all in the alleged conspiracy. To prove the offence of conspiracy against the appellant herein, the prosecution

does not have any definite material. If at all the 1st accused had derived any benefit by his own acts, the 2nd accused cannot be convicted by the court when there is no definite evidence proving his complicity as a conspirator. It is well settled that any malpractice or misconduct on the part of a public servant will not by itself make him liable under the provisions of the P.C Act. Such misconduct or malpractice will have other consequences by way of departmental action. For a conviction under Section 13 (2) read with 13 (1) (c) or 13 (1) (d) of the P.C Act and Section 120B I.P.C, there must be definite material to prove that the accused was in fact benefited or that somebody else was benefited by the act of the accused. Here, the prosecution does not have a case that this appellant was in any manner benefited by the alleged transaction. If at all, there was any excess claim for labour charges, it was only ₹120/-, and nothing more. The deceased 1st accused was in fact the person having in charge of the whole Depot, and he was in fact responsible for the procurement of the red chilly and also for the unloading of the whole quantity at the Depot. This

appellant happened to be convicted only because he was a subordinate to the 1st accused who did the alleged act to the prejudice of the Civil Supplies Corporation. I find that the prosecution in this case does not have any definite material against the appellant herein for a conviction under Section 409 IPC read with 511 I.P.C with the aid of Section 120-B or with the aid of Section 13 (2) of the P.C Act, I find that he is only to be acquitted.

In the result, this appeal is allowed. The conviction and sentence against the appellant herein in C.C No.3 of 2001 of the court below will stand set aside on the finding that he is not guilty of the offences. Accordingly, the appellant will stand acquitted of the offence in appeal under Section 386 (b) (i) of Cr.P.C. The bail bond, if any, executed by him will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge