

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

CRL.A.No. 2044 of 2004 (A)

AGAINST THE ORDER/JUDGMENT IN CC 51/1998 of SPL.C SPE/CBI-II&4
ADDL.D.C.,EKM DATED 19-11-2004

APPELLANT(S):

UNNIKRISHNAN
PUTHURKARA, AYYANTHOL, THRISSUR.

BY ADVS.SRI.M.NARENDRA KUMAR
SRI.SALISH ARAVINDAKSHAN

RESPONDENT(S):

1. CBI, REP. BY ITS PUBLIC PROSECUTOR
PUBLIC PROSECUTOR.
2. STATE OF KERALA, REP. BY ITS
PUBLIC PROSECUTOR.

R1 BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
R2 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.11.2015,
ALONG WITH CRA. 2045/2004, CRA. 2048/2004, CRA. 2049/2004, CRA.
2051/2004, CRA. 2053/2004, CRA. 2057/2004, THE COURT ON 10.12.2015
DELIVERED THE FOLLOWING:

P.UBAID, J.

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**Crl.A Nos.2044, 2045, 2048, 2049, 2051, 2053  
and 2057 of 2004**

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Dated this the 10th December, 2015

J U D G M E N T

The appellant is the same in all these appeals. He was Special Assistant in the Guruvayoor Branch of the State Bank of Travancore during 1990-1995. On the allegation that he dishonestly misappropriated money from the bank funds on different occasions during 1993-1995, the appellant faced prosecution before the Special Court (SPE/CBI)-II, Ernakulam in eight cases which arose out of two crimes registered by the C.B.I. In Crime No.R.C 2/A/95 the C.B.I submitted six final reports splitting up the different instances of misappropriation in terms of different periods. In R.C3/A/95, the C.B.I submitted two final reports splitting up the instances of misappropriation period-wise. Thus, cognizance was taken on eight final reports which arose out of the two crimes. Of the eight cases registered on eight final reports in the two crimes, one happened to be tried first. In the said case, tried as C.C 5/95, the accused was

convicted by the trial court. On conviction under the provisions of the Prevention of Corruption Act (for short “the P.C Act”) and the IPC, he was sentenced to undergo rigorous imprisonment for one year each under Section 13(2) of the P.C Act, and under Sections 420 and 477A of I.P.C. Besides the jail sentence, fine sentence was also imposed by the trial court. The said conviction and sentence was confirmed in appeal by this Court. The Hon'ble Supreme Court also confirmed the said conviction and sentence. The appellant has been undergoing the said sentence since 12.9.2015. The other seven cases were tried in the trial court as C.C 49 to C.C 55 of 1998. C.C 49/1998 and C.C 55/1998 relate to the Crime No.R.C 3/(A)/95, and the cases C.C 50/1998 to 54/1998 relate to the Crime No.R.C 2/(A)/95. After the disposal of C.C 3/95, the other seven cases were tried jointly by the trial court.

2. The appellant pleaded not guilty to the charge framed against him by the trial court in the seven cases. The prosecution examined 22 witnesses and also proved Exts.P1 to P143 documents. When examined under

Section 313 Cr.P.C, the accused denied the incriminating circumstances. Though opportunity was granted by the trial court, the accused did not adduce any evidence in defence.

3. On an appreciation of the evidence, the trial court found the accused guilty in all the seven cases. The amount of misappropriation involved in C.C 49/1998 is ₹ 20,000/-, it is ₹25,000/- in C.C 50/1998, ₹ 15,000/- in C.C 51/1998, ₹ 15,000/- in C.C 52/1998, ₹ 25,000/- in C.C 53/1998, ₹ 15,000/- in C.C 54/1998, and ₹20,000/- in C.C 55/1998.

4. On conviction, in C.C 49/98, the accused was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 5000/- each under Section 120B read with 420 & 477A I.P.C, under Section 13 (2) read with 13 (1) (d) of the P.C Act, and also under Sections 420 and 477A I.P.C read with 13 (2) and 13 (1) (d) of the P.C Act. In C.C 50/1998, the accused was sentenced to undergo rigorous imprisonment for one ear each, and to pay a fine of ₹ 5000/- each under Sections 420, 468, 471 & 477A I.P.C and also under Section 13 (2) read with 13 (1) (d) of the P.C

Act. In C.C 51/1998, the accused was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 5000/- each under Sections 420 and 477A IPC, and also under Section 13 (2) read with 13 (1) (d) of the P.C Act. In C.C 52/1998, the accused was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 5000/- each under Sections 420 and 477A I.P.C and also under Section 13 (2) read with 13 (1) (d) of the P.C Act, in C.C 53/1998, he was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 5000/- each under Sections 420, 468, 471 and 477A I.P.C and also under Section 13 (2) read with 13 (1) (d) of the P.C Act, in C.C 54/1998, he was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 5000/- each under Sections 420 and 477A I.P.C and also under Section 13 (2) read with 13 (1) (d) of the P.C Act, and in C.C 55/1998, the accused was sentenced to undergo rigorous imprisonment for one year each, and to pay a fine of ₹ 5000/- each under Sections 420, 468 and 477A I.P.C, and also under Section 13 (2) read with 13 (1) (d) of the P.C Act.

In each case, the substantive sentences were directed to run concurrently. So also, the substantive sentences in all the seven cases were directed to run concurrently under Section 427, Cr.P.C. Thus, practically, the term of jail sentence in the seven cases will come to only rigorous imprisonment for one year. Aggrieved by the conviction and sentence in the seven cases, the accused has come up in appeal. Thus, in these seven appeals the accused challenges the conviction and sentence in the seven cases tried by the trial court as C.C 49/1998 to C.C 55/1998.

5. When these seven appeals came up for hearing, the learned counsel for the appellant submitted that the appellant is in fact seriously ill, that he has so many physical problems and ailments, and that he has been undergoing effective treatment. The learned counsel also submitted that in such a situation, the appellant does not want to prosecute the appeals, that he has no case to be argued on merits in the seven appeals, and that the request of the appellant is only for the benefit of concurrent sentence, so that the concurrent sentence imposed by the

court in the seven cases can be undergone along with the sentence now being undergone by the appellant since 12.9.2015 in C.C 5/95.

6. The appellant filed an affidavit before this Court to the effect that he has no case to be argued in the seven cases on merits, and that he would not like to prosecute the appeals on merits. Thus, he practically accepted the conviction and sentence, and he made a prayer in the said affidavit to dismiss the appeals on merit. However, he also made a request in the affidavit for the benefit of concurrent sentence, besides the benefit already granted by the trial court under Section 427 Cr.P.C. Though there is conviction and sentence in seven cases, practically the total term of substantive sentences in the seven cases will be only rigorous imprisonment for one year. However, the appellant will have to undergo default sentence in the seven cases separately. The conviction and sentence in C.C 3/1995, which was earlier tried by the trial court, stands confirmed by the Hon'ble Supreme Court. Copy of the judgment of the Hon'ble Supreme Court is part of the files in

these appeals. It was submitted that the appellant has been serving out the said sentence, with effect from 12.9.2015. The said sentence has become final by the judgment of the Hon'ble Supreme Court dated 2.9.2015. The request of the appellant is that, if further benefit of concurrent sentence under Section 427 Cr.P.C is granted by this Court, the sentence in these seven cases also can be undergone along with the sentence in C.C 5/95.

7. The appellant has produced some medical certificates and medical documents showing his present physical condition. It is seen certified that the appellant is a case of Type-II Diabetic Mellitus, Essential Hyper Tension, Benign Prostatic Hypertrophy and recurrent UTI since 2012. He had necrotizing fasciitis on left leg and foot in 2012 and had undergone skin grafting. It is seen certified that he needs continuous treatment for indefinite period. The appellant has also produced scan photographs showing the present condition of his left leg due to the severe injuries and skin grafting. These photographs will show that it would be really inhuman, though not illegal, to direct the appellant

to continue in jail for years. On humane consideration he will have to be released from jail after a reasonable period, so that he can continue the effective treatment for the present serious ailments. The appellant seeks the benefit of concurrent sentence in the above circumstances.

8. Of course, it is true that the sentence imposed by the court in C.C 5/1995 has already started to run. Now it is being served out by the appellant since 12.9.2015. It is pertinent to note that regarding the very same transaction involving different instances of misappropriation during a particular period, two crimes were registered by the C.B.I. But after investigation, different final reports were submitted, splitting up the different instances of misappropriation, and accordingly eight cases happened to be registered against the appellant. Though one of the eight cases happened to be tried earlier, the incident alleged in the said case is also part of the very same transaction involving different instances of misappropriation. In the seven cases, tried by the trial court later, the benefit of concurrent sentence under Section 427 Cr.P.C was granted

on the ground that the different instances of misappropriation alleged in the seven cases were in fact part of the same transaction of dishonest conduct of the accused during a particular period. As the present seven cases could not proceed immediately due to some procedural problems, one case happened to be tried earlier, and the sentence imposed in the said case stands confirmed by the Supreme Court. Had that case also been tried along with these seven cases, the accused would definitely have obtained the benefit of concurrent sentence in the eight cases, as granted by the trial court. This very important aspect cannot be ignored by this court in deciding whether a further benefit of concurrent sentence under Section 427 Cr.P.C can be granted to the appellant. In the circumstances where the trial court has already granted such benefit in the seven cases, I feel it appropriate to direct the sentence in these cases to run concurrently with the sentence already imposed, and being undergone, in C.C 5/1995.

9. The learned counsel cited a decision of the

Hon'ble Supreme Court in **Mohammed Akhtar v. Asst.Collector** [AIR 1988 SC 2143]. The Hon'ble Supreme Court held in the said case that if a given transaction constitutes two offences distinct and different, it would be wrong to grant the benefit of concurrent sentences. Section 427 Cr.P.C provides that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with the previous sentence. Thus, the first part of Sub-section (1) of Section 427 Cr.P.C contains the general rule of sentence with an exception at the second part, that in appropriate cases, the court can direct the latter sentence to run with the previous sentence. It has been settled that in cases where different offences are alleged in different cases, alleged to have been committed as part of the same transaction, the benefit of concurrent

sentence under Section 427 Cr.P.C can be granted by the court. In this case, I find that eight cases happened to be registered against the appellant only because the C.B.I split up the transactions into eight final reports period-wise, though all the instances of misappropriation were done as part of the same transaction. The medical documents produced by the appellant will show his present pathetic physical condition, that he has been suffering from serious ailments, and that he needs effect continuous treatment. His right to get effective treatment as part of right to live will have to be considered by the court while taking decision as to whether a further benefit of concurrent sentence under Section 427 Cr.P.C can be granted in the present situation, evidenced by the medical documents produced by him, and also in view of the fact that the accused would definitely have obtained the benefit of such concurrent sentence, had the earlier case been tried along with the seven cases I find that a further benefit of concurrent sentence under Section 427 Cr.P.C can be granted to him, so that the substantive sentence imposed in these seven cases can be undergone

by the appellant along with the sentence in C.C 5/1995, which he has been serving out since 12/9/2015.

10. In view of the affidavit filed by the appellant, that he does not want to prosecute the appeals, the seven appeals could be dismissed on merits. I find it not necessary to go to the merits of the appeals. Here, there is no case to be argued in these appeals, and he has accepted the conviction and sentence. In the affidavit, he has made a request to dismiss the appeals on merit, however, subject to the other request made by him for the benefit of concurrent sentence. In the above circumstances, I find that the conviction and sentence imposed by the court below in the seven cases can well be confirmed in appeal subject to the modification as regards sentence. The substantive sentences in these cases can be undergone along with the sentence in C.C 5/1995.

In the result, the seven appeals are dismissed on merits, confirming the conviction and sentence imposed by the court below. However, it is directed that the substantive sentence of imprisonment for one year each in the seven

cases, will run concurrently with the sentence in C.C 5/95, which the appellant has been undergoing since 12.9.2015. The appellant's request that he may be transferred from the Central Jail, Viyyur to the Central Jail at Poojappura, will have to be considered by the proper authority. In the present physical condition ad circumstance of the appellant, that he wants facility for effective treatment, his request will definitely be considered appropriately by the proper authority.

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**Sd
P.UBAID
JUDGE**

/True copy/

P.S to Judge