IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

CRL.A.No. 2167 of 2004 ( )

CC 36/2000 OF THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE
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APPELLANT/ACCUSED::

M.N. ANANTHAN, S/O. NARAYANAN
MALANKARA HOUSE, NENMENI, MADAKKARA P.O.
CHULLIYIODE ROAD, SULTHAN BATHERI.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.SONIYA.M

RESPONDENT/COMPLAINANT::
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STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P. UBAID, J.

Crl.Appeal No.2167 of 2004

Dated this the 15th day of July, 2015

JUDGMENT

The appellant herein was the Development Officer for Scheduled Castes, Sulthan Batheri, and from May, 1994 to June, 1996, he was in charge of a scheme brought by the Government for providing assistance to the landless persons belonging to Scheduled Castes and Scheduled Tribes. On the allegation that by misusing his position as a public servant, the petitioner dishonestly misappropriated an amount of Rs.68,448/- from the said funds by falsifying accounts and creating documents, and also by cheating some beneficiaries under the scheme, the appellant faced prosecution before the Enquiry Commissioner and Special Judge (Vigilance), Kozhikode, in C.C.No.36/2000. Crime in this case was registered by the Vigilance and Anti Corruption Bureau (VACB), Wayanad, on the basis of a letter from the District Development Officer of the Scheduled Castes and Scheduled Tribes Development Board. After investigation, the Vigilance submitted final report in court under Section 13(2) read with Section 13(1)(c) and Section 13(1)(d) of the P.C.Act, 1998 (for short, 'the P.C.Act'), and also under Sections 409, 420, 465, 471 and 477A IPC.

2. The accused pleaded not guilty to the charge framed against him by the trial court under the above sections, and claimed to be tried. The prosecution examined sixteen witnesses in the trial court, and also marked Exts.P1 to P21 documents. When examined under Section 313 Cr.P.C., the accused maintained a defence that he had not falsified any account or document, that he had not appropriated any amount from public funds, and that he had not cheated anybody. Though opportunities were granted by the trial court, no evidence was adduced by the accused in the defence. However, Exts.D1 to D3 were marked during trial. On an appreciation of the evidence, the trial court found that the prosecution has failed to prove the allegations of dishonest misappropriation of amount, cheating, and criminal breach of trust. Accordingly, the learned trial Judge found the accused not guilty under Sections 409, 420, 465 and 471 IPC, and also under Section 13(2) read with Sections 13(1) (c) and 13(1) (d) of the P.C. Act. However, on the finding regarding falsification of some accounts the learned trial Judge

found the accused guilty under Section 477A IPC. On conviction thereunder, he was sentenced to undergo rigorous imprisonment for one year by judgment dated 27.11.2004. 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 that the appellant is entitled for an acquittal on the legal ground that, in the absence of any evidence proving fraud or fraudulent misappropriation or fraudulent falsification of accounts, a conviction is not possible under Section 477A IPC.

4. A perusal of the judgment of the trial court shows that the beneficiaries of the Government scheme for providing financial assistance to the landless Scheduled Castes and Scheduled Tribes members did not, in any manner, support the prosecution case. However, the officials examined by the prosecution gave evidence regarding the accounts maintained by the accused, and also regarding some incorrect entries made in the accounts including cash book. PW5 is a social activist, who was actively behind the complaint, but during trial he turned hostile to the prosecution. PW2, who was Junior Superintendent

in the Scheduled Castes Scheduled Tribes Development Office proved Ext.P3 containing the signature of the accused. PW3, who was the Secretary of the Sulthan Batheri Block Panchayath gave evidence regarding the Government scheme for the landless members of the Scheduled Castes and scheduled Tribes, and also regarding distribution of necessary funds to the Scheduled Castes and Scheduled Tribes Development Board. PW4 who was the Taluk Development Officer proved some documents regarding the said scheme. PW5 and PW6, the beneficiaries under the said scheme, and who were allegedly cheated by the accused by falsification of accounts, did not support the prosecution during trial. PW8 also proved some documents relating to the said scheme, and also proved some entries and corrections in the documents like cash book. His evidence is that entries regarding some cash dealings were not seen entered in Ext.P12 cash book, on his inspection. His remarks regarding this aspect is contained in page No. 57 of the Ext.P12 of the cash book. He says that when he made inspection on 04.07.1996, he found a cash balance of Rs.853/-, whereas there should have been a cash balance of Rs.8,150/-. His remarks on this is contained in

Ext.P12(a-1). He also stated that the relevant entry was later seen corrected in the cash book. However, PW8 has no case in evidence that misappropriation of any amount was found or detected by him on inspection. He also stated that an entry regarding the cash balance of Rs.31,250/- on 28.02.1996 was seen cancelled on 04.03.1996. The entries made on 04.03.1996 were also seen cancelled. Thus, the evidence of PW8 is only regarding the cancellation of certain entries in the cash book, and also regarding correction of certain entries. There is nothing in his evidence to show that any amount was in fact misappropriated dishonestly by the accused. Lapses in maintaining cash book cannot be said to be a case of dishonest misappropriation. Such lapse or omission on the part of a public servant will have to be appropriately dealt with by the disciplinary authority. Such cancellation or correction of accounts becomes culpable and punishable only when it involves the essential elements of misappropriation or cheating, or breach of trust.

5. The court below has extracted from the evidence of PW8 regarding the cancellation and correction of entries in the cash book, in paragraph 32 of the judgment. That part of the

evidence extracted in the judgment is only regarding cancellation of certain entries, and also regarding correction of some other entries, relating to the receipt of cash in the office. This evidence does not contain anything to suggest that such corrections or cancellations were made by the accused with any dishonest intention or as part of a fraudulent transaction. The evidence of PW8 on these aspects will not prove anything other than serious omissions and lapse on the part of the accused in dealing with the cash register and in making cash transactions in the office.

6. On an appreciation of the entire evidence on facts, the learned trial Judge found thus in paragraph 30 of the judgment, "*In this case the prosecution was not able to prove the guilt of the accused in full measure regarding the misappropriation of money, mainly on account of the fact that the beneficiaries were illiterate Scheduled Casts and Scheduled Tribes persons.*" The learned trial Judge further found thus in paragraph 33 of the judgment, "*It is seen from the above discussions that on 27.02.1996 when PW8 inspected the office he found gross irregularities were committed by the accused, and he wrote his remarks in page No.57 of Ext.P12. Obviously the accused, with*

the intention of covering of his culpability in not maintaining a correct account, on 04.03.1996, cancelled the accounts written on 27.02.1996. So also, the account written on 28.02.1996, and on 04.03.1996 were also seen cancelled." This finding of the trial court shows that the evidence adduced by the prosecution through PW8 is only regarding some serious omissions and lapses on the part of the accused in maintaining the cash account properly and legally.

7. In the absence of proper and satisfactory evidence the trial court found the accused guilty only under Section 477A IPC, on the finding on facts that he had made some false entries or incorrect entries in the cash book. Accordingly, he was convicted only under Section 477 A IPC.

8. As discussed and found above, an appreciation of evidence shows that the prosecution in this case has not been able to prove that the accused had dishonestly misappropriated any amount from the funds of the Scheduled Castes and Scheduled Tribes Board or any amount due to the members of Scheduled Castes and Scheduled Tribes under the scheme brought by the Government. However, evidence proved some

incorrect or false entries made by the accused in the documents like cash book, and also subsequent correction or cancellation of some entries. On the basis of this finding the learned Trial Judge convicted the accused under Section 477 A IPC.

9. The learned counsel for the appellant cited some decisions of the Honourable Supreme Court, and submitted that in the absence of anything to prove intend to fraud, or some fraudulent dealings or transactions, a conviction is not possible under Section 477 A IPC. In **S.Harnam Singh v. The State (Delhi Admn.) [(1976) 2 Supreme Court Cases 819]**, the Honourable Supreme Court held that in the absence of any evidence to prove that the alleged false entries were made by the accused with intend to defraud, the mere act of falsification of account is not punishable under Section 477 A IPC. In **Kandipalli Madhavarao v. State of Andhra Pradesh [2007 CriLJ 4555]**, the Honourable Supreme Court held that in a case where there is no evidence to show that the alleged acts of falsification of accounts were made by the accused with the intension to defraud, the accused cannot be convicted under Section 477A IPC.

10. In this case, there is evidence to prove that the accused had made some wrong or incorrect or false entries in the cash book and other documents, and that such entries were later corrected or cancelled by him. At the same time, there is absolutely no material to show that anybody was cheated by the accused, or that he had dishonestly misappropriated any amount from the funds of the Scheduled Caste Scheduled Tribe Board, or that he had done anything in breach of the trust reposed on him as a public servant. In the absence of any material to prove misappropriation of amount, or misappropriation with intend to defraud, or in the absence of anything to show that the accused was, in any manner, benefited, or that he had dishonestly earned any benefits from those irregular transactions, I find that conviction is not possible under Section 477 A IPC. Mere omissions or lapses on the part of a public servant in the discharge of his functions, cannot be a subject matter of prosecution under the P.C. Act. So also, in the absence of evidence proving the necessary ingredients like fraud or fraudulent intend, or dishonest misappropriation, the accused cannot be convicted under Section 477A IPC simply on the basis

of some false or incorrect entries made by him in the documents. I find that the appellant is entitled for acquittal in this case, and the conviction against him is liable to be set aside.

In the result, this appeal is allowed. The appellant is found not guilty of the offence under Section 477A IPC, and accordingly he is acquitted of the said offences in appeal under Section 386 (b)(i) Cr.P.C. The conviction and sentence against him under Section 477A IPC in C.C.No.36/2000 of the court below will stand set aside. Accordingly, the appellant will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

Sd/-
P. UBAID, JUDGE

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