IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

CRL.A.No. 4 of 2011 ( )

AGAINST THE JUDGMENT IN CC 64/2003 of ENQUIRY COMMR.& SPL.JUDGE,THRISSUR DATED

APPELLANT(S)/ACCUSED:

K.K.SASI
U.D.CLERK, O/O THE DEPOT RANGE OFFICER
TIMBER SALES DEPOT, VETTOOR, (NOW HEAD ACCOUNTANT
O/O THE CONSERVATOR OF FORESTS, KOTTAYAM).

BY ADVS.SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.SURAJ.S
SRI.K.RAJAGOPAL
SRI.M.R.SUDHEENDRAN

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE SUPERINTENDENT OF POLICE, THROUGH THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 3-07-2015, THE COURT ON 14-10-2015, DELIVERED THE FOLLOWING:

P.UBAID, J.

~~~~~~~~~~~~

Crl.A No.4 of 2011

~~~~~~~~~~~~~

Dated this the 14th October, 2015

J U D G M E N T

The appellant herein was the Upper Division Clerk at the Forest Timber Sales Depot, Veettoor Range, during June 1998 to September, 1998. On the allegation that he dishonestly misappropriated an amount of ₹ 82,179/- in June 1998 and in September 1998 by short remittance of the amount collected at the Forest Timber Sales Depot by way of Ground Rent, Tax, EMD etc, the appellant faced prosecution before the Enquiry Commissioner and Special Judge (Vigilance), Thrissur in C.C No.64 of 2003. On detection of the said dishonest misappropriation by fraudulent means, a crime was registered against the appellant by the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau (VACB), Ernakulam, and after investigation, the vigilance submitted final report in the trial court. Investigation was conducted by an Inspector of the VACB. Final report was submitted by the vigilance after obtaining necessary sanction to prosecute the accused, under Section 19 of the Prevention of Corruption Act (for short “ the P.C Act”).

2. The accused entered appearance in the trial court and pleaded not guilty to the charge framed against him under Section 13 (2) read with 13 (1) (c) and 13 (1) (d) of the P.C Act, and under Sections 409, 468, 471 and 477A of Indian Penal Code. The prosecution examined 15 witnesses and proved Exts.P1 to P37 documents during trial. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances and projected a defence that the Forest Range Officer, who was the head of office, was in fact responsible for the alleged short remittance, being the person responsible to receive money at the Forest Depot, and that money was in fact taken to the Sub Treasury by the Forest Range Officer. Thus the accused contended during trial, by way of defence, that the alleged misappropriation must have been committed by the Forest Range Officer. Though opportunity was granted, the accused did not adduce any evidence in defence.

3. On an appreciation of the evidence given by the prosecution, the learned trial Judge found the accused guilty under Sections 13 (2) read with 13 (1) (c) and 13 (1) (d) of

the P.C Act and also under Section 409 I.P.C. He was found not guilty under Sections 468, 471 and 477A I.P.C. On conviction, the accused was sentenced to undergo rigorous imprisonment for one year each and to pay a fine of ₹ 5000/- each under Section 13 (2) read with 13 (1) (c) of the P.C Act, under Section 13 (2) read with 13 (1) (d) of the P.C Act, and under Section 409 I.P.C, by judgment dated 22.12.2010 in C.C 64 of 2003. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

4. When this appeal came up for hearing, the learned counsel for the appellant submitted that money received at the Forest Timber Sales Depot was not in fact taken to the Sub Treasury by the accused for remittance, and that if at all any amount was lost, it must have been misappropriated by the Forest Range officer, who was in charge of the Forest Timber Sales Depot. As regards the evidence on facts proving misappropriation by short remittance, not much was argued by the learned counsel, because the fact of dishonest misappropriation from public funds by short remittance is practically admitted by the accused, subject to the contention that it must have been committed by the Forest Range Officer in charge of the

Forest Timber Sales Depot. Thus, the very short point for decision is whether the alleged short remittance was in fact committed by the accused, or whether money was in fact taken by the accused to the Sub Treasury for remittance in the Treasury, though the Range Officer was in fact responsible for the receipt of money and for prompt remittance as the head of office. It is common practice that no head of office will go to the Sub Treasury and remit amount when the office has ministerial staff to discharge the ministerial functions. If such contention otherwise is accepted, very many heads of office will have to be prosecuted for the malpractices and misappropriation committed by the ministerial staff. Anyway, let me analyse the evidence and see whether the appellant was in fact entrusted with the money to be remitted in the treasury and whether full remittance was made by him as directed and expected. If evidence proves that the accused was in fact entrusted with the money as ministerial staff for making remittance, and if he did not remit the full amount in Treasury, or misappropriated something from the said amount, he will have to be found guilty and convicted, despite the fact that the head of office responsible to receive the money at the office was the Forest Range Officer. In short, conviction cannot be made by the court on certain assumptions and presumptions regarding responsibility of the head of office.

5. Ext.P1 is the prosecution sanction granted by the Chief Conservator of Forests, and the prosecution sanction was duly and properly proved by the Chief Conservator of Forests examined as PW1. The evidence given by PW1 shows that the Chief Conservator of Forests granted sanction on an independent application of his mind to the facts and the materials including the relevant documents submitted by the VACB. I find that Ext.P1 is a proper prosecution sanction granted by the competent authority under Section 19 of the P.C Act, and the sanction stands properly and legally proved.

6. PW2 is the Range Officer who made complaint regarding the alleged misappropriation by way of short remittance. He has given convincing evidence proving the alleged misappropriation made by the accused. The total amount misappropriated by him by way of short remittance is ₹82,179/-. The evidence of PW2 is that the accused, as ministerial staff, was entrusted with a total amount of ₹

3,54,000/- as the EMD collected from successful bidders and ₹516/- as the ground rent collected at the depot in September 1998, but the accused remitted only an amount of ₹ 2,84,382/- on 29.9.1998 as per the chalan No.1179. So also, in June 1998, an amount of ₹ 2,25,000/- collected as EMD from bidders, and another amount of ₹ 1049/- collected as ground rent, was entrusted with the accused for remittance, but on 24.6.1998, he remitted only an amount of ₹ 2,14,004/-, and thus appropriated ₹ 12,045/-. The amount misappropriated by short remittance in September, 1998 is ₹70,134/-. Thus the total amount misappropriated by the accused is ₹ 82,179/- by way of short remittance. This fact stands well proved by the evidence of PW2. The Forest Range Officer and also the Divisional Forest Officer, examined as PW2 and PW6, have given definite evidence that though the Forest Range Officer is responsible to receive payments at the office as head of office, normally one of the ministerial staff would be entrusted with the amount, with necessary direction, to make remittance in the treasury, and that is the usual practice. As part of the said practice and office procedure, the accused herein was entrusted with the amount, for remittance in the treasury promptly in June 1998, and also in September, 1998. From the total amount for remittance in September, 1998, the accused misappropriated ₹ 70,134/- and in June, he misappropriated ₹ 12,045/-. Thus, the Divisional Forest Officer is also consistent and definite regarding misappropriation of ₹ 82,179/- by the accused by short remittance. The details of the amount received at the Forest Depot in June 1998 and in September 1998 are available from the Ext.P11 revenue receipt book, Ext.P2 revenue cash book, Ext.P13 EMD register, Exts.P7 and P8 revenue receipt books, Ext.P4 cash book etc. Ext.P11 revenue receipt book will show that a total amount of ₹ 1049/- was received by way of ground rent in June 1998, and Ext.P13 document will show that a total amount of ₹ 2,25,000/- was received by way of EMD from successful bidders in June, 1998. The documents including the chalan proved in evidence will show that only an amount of ₹ 2,14,004/- was remitted at the treasury. The EMD register (Ext.P13) will show that in September, 1998 an amount of ₹ 516/- was received by way of ground rent, and Ext.P7 receipt book will show that a total amount of ₹ 3,54,000/- was received in September, 1998 by way of EMD from successful bidders. Thus the total amount received is ₹ 3,54,000/- + ₹ 516/-. But the Ext.P5 chalan proved in evidence will show that only an amount of ₹ 2,84, 382/- was remitted in the treasury. Thus the total amount of misappropriation proved is ₹ 82,179/-.

7. In fact, as regards short remittance, the defence does not have any dispute because everything is proved by documents. The amount actually received in the Forest Depot by way of EMD amount, ground rent, etc, is well proved by the documents, and the amount of remittance is proved by the chalan. It stands well proved that the entire amount received in the office was not remitted in the treasury. The chalan issued from the treasury will show without any doubt that there was short remittance of ₹ 82,179/-. When the documents including the chalan issued from the treasury, the cash book, the EMD register etc., prove the total amount received and the total amount remitted, the defence does not have any dispute on these aspects, and the defence pleaded by the accused is only that the alleged misappropriation must have been committed by the Forest Range Officer. In such a factual situation, much discussion or thought is not required as regards the fact of misappropriation by short remittance,

which is in fact well proved by documents. So the main question for consideration is whether the said short remittance constituting dishonest misappropriation was in fact made by the accused herein, or whether it was done by the Forest Range Officer, as the accused would contend. Now let me go the discussion of evidence on these aspects.

8. On the alleged forgery and fabrication of documents, the trial court has already come to a finding in favour of the accused, and he was accordingly found not guilty under Sections 468, 471 and 477A, I.P.C. The finding against the appellant is mainly under Section 13 (2) read with 13 (1) (c) of the P.C Act. Practically, as the proved facts constitute the offence under Section 409 I.P.C, he was convicted under Section 409 I.P.C also. As regards short remittance, I have already come to a finding that the said aspects stand well proved by evidence. Now the question is, who was in fact entrusted with the money for remittance in the treasury. If it is found that it was the accused who was so entrusted, the fact of short remittance will prove that the said amount was in fact misappropriated by him.

9. PW2 and PW4 have given definite and consistent evidence regarding the usual procedure in the office as

regards remittance of money received. PW4 was a colleague of the accused at the relevant time. She is definite in her evidence that the accused was in fact entrusted with the whole amount for remittance by the Forest Range Officer, and she had seen the accused taking the money in a bag to the treasury. She had even seen the accused boarding the bus for going to the treasury, with the amount in hands. Of course she says that the Forest Range Officer is responsible for the receipt of money, and also for remittance of money. This is the legal aspect as regards receipt of money and remittance. But at the same time, PW2, PW4 and PW6 are consistent regarding the office procedure, that money received under various heads would be remitted in the treasury on the next day itself, and such remittance would always be made by the accused as the ministerial staff. In June, 1998 and in September 1998, such remittance was in fact made by the accused in this case, and he was in fact entrusted with the entire amount for remittance. Of course, it is true that PW2 had stated that he had accompanied the accused to the treasury. His evidence is that as there was some mistake and correction in the filled up chalan, the accused brought another chalan, wherein, he signed as the head of office and the accused was directed to make necessary entries. Ext.P3 is the chalan cancelled due to mistakes. This stands well proved by PW2. Exts.P5 and P6 are the chalans under which money was remitted by the accused. PW2 affirmed in evidence that he had also accompanied the accused. Exts.P5 and P6 chalans were filled up by the accused, and remittance was also made by him. These two chalans will not show remittance of the full amount received on the previous day. Just because PW2 had accompanied the accused to the treasury, it cannot be found that remittance was made by the Range Officer. It has come out in evidence that occasionally the Range Officer also would accompany the Clerk to the treasury, but actual remittance would always be made by the ministerial staff. On the relevant dates also, PW2 had accompanied the accused, but remittance as per the Exts.P5 and P6 chalans was actually made by the accused as the ministerial staff entrusted with the responsibility of remitting the amount. This material aspect stands well proved by the evidence of PW2 and PW4. There is the definite evidence of PW4 that she had even seen the accused going to the treasury with the amount in his hands, packed and carried in a bag, on the relevant dates. The court does not require anything more than the uninterested and independent evidence of PW4 on the material aspect.

10. It has come out in evidence that just when short remittance was detected by the Range Officer, the accused vanished from the locality and he remained absent in office for a long period. This fact is proved by the other Forest Officers also. The accused has no case that he had in fact attended the office during these days. Thus the fact that the accused vanished from the place and remained absent in office for sometime is not disputed by the accused, and on this aspect, the evidence given by the material witness stands unchallenged. This conduct is very important in this case. So also, it has come out in evidence that during this period, when enquiry or investigation was proceeding, the accused sent the whole amount appropriated by him, in the name of PW2, by way of four demand drafts. A letter containing apology was also sent by him along with the demand drafts. The postal covers contained in Ext.P10 file will show that the four demand drafts were in fact sent by the accused, and this fact is contained in Ext.P10 (c) letter from PW2 to the Divisional Forest Officer. On this aspect,

there was not much cross-examination, or this aspect was not effectively challenged in cross-examination. Thus, it stands practically proved that during the enquiry on detection of the dishonest misappropriation made by the accused, he kept himself away from the office without any explanation, and he even sent four demand drafts to the Forest Office for the amount alleged to have been misappropriated by him. Anyway, it is a fact that the entire amount alleged to have been misappropriated was in fact returned by him by way of four demand drafts. This aspect was considered by the learned trial Judge in imposing sentence.

11. It was submitted that the evidence of PW2, the Forest Range Officer, as regards the actual remittance cannot be totally believed because he was in fact responsible for receipt of amount and also remittance in the treasury. But as regards the evidence of PW4, the defence cannot have any challenge or dispute. She was a colleague of the accused. She has no reason to give any false evidence against the accused. When her definite evidence is acceptable proving the complicity of the accused, the evidence given on this aspect by the Range

Officer cannot at all be doubted.

12. As discussed in the foregoing paragraphs, I find that the prosecution has well proved the case that the accused was in fact entrusted with the amount for remittance in the treasury, and that he made remittance of only a lesser amount, as per Exts.P5 and P6 chalans. It stands well proved that there was failure on the part of the accused to remit an amount of ₹ 82,179/-, and that this amount was in fact dishonestly misappropriated by him. Thus, short remittance of the said amount by the accused stands well proved in evidence. The evidence given by PW2 and PW4 is well acceptable on this material issue. I find no reason to disbelieve these two witnesses. It is true that this amount was later remitted by him by way of four demand drafts. But this will not absolve him from the criminal liability already incurred by dishonest misappropriation. I find that the prosecution has well succeeded in proving the case against the accused, that he had dishonestly misappropriated an amount of ₹ 82,179/- from public funds, and thus he derived such benefit illegally. In view of the findings above, this appeal is liable to be dismissed.

13. As regards the sentence also, this Court does not find the necessity of any sort of interference. Practically, the sentence imposed by the trial court is only rigorous imprisonment for one year under Section 13 (2) of the P.C Act, which is only the minimum prescribed under the law. Under Section 409 I.P.C also, the sentence imposed is only rigorous imprisonment for one year. The three substantive sentences are directed to run concurrently. When the sentence imposed by the trial court is the minimum possible under the law, no interference can be made by the appellate court in the matter of sentence.

In the result, this Court is reasoned to dismiss this appeal, confirming the conviction and sentence against the appellant in C.C No.64 of 2003 of the court below.

Sd/-
P.UBAID
JUDGE

ma

/True copy/
P.S to Judge