IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 14TH DAY OF DECEMBERR 2020 / 23RD AGRAHAYANA, 1942

CRL.A.No.299 OF 2005

AGAINST THE ORDER/JUDGMENT IN CC 21/2000 DATED 26-07-2002 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,TRIVANDRUM

APPELLANT/COMPLAINANT:

STATE OF KERALA,
REP. BY THE PROSECUTOR, HIGH COURT OF KERALA.

BY GOVERNMENT PLEADER

RESPONDENTS/ACCUSED:

1 **ABDUL AZEEZ,**
FORMERLY EXECUTIVE OFFICER, MUTTAR, PANCHAYAT.

2 **P.A.THOMAS, FORMERLY PRESIDENT OF**
MUTTAR PANCHAYATH.

R1 BY ADV. SRI.V.A.ABDUL JALEEL
R1 BY ADV. SRI.CHERIYAN KURUVILLA
R1 BY ADV. SRI.K.K.MANGALANANDAN
R1 BY ADV. SRI.P.M.MANOJ KANNUR
R1 BY ADV. SRI.P.V.SURENDRANATH
R1 BY ADV. SRI.V.SATHEESH

PUBLIC PROSECUTOR SMT.K.B.SONY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-11-2020, THE COURT ON 14-12-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 14th day of December 2020

The State, aggrieved by the acquittal of the first and the second accused in C.C.No.21/2000 of the Enquiry and Special Judge, Thiruvananthapuram for offences punishable under sections 13(2) read with section 13 (1) (d) of P.C.Act and Sections 409,477-A,465,471 and Section 120B IPC, has preferred this criminal appeal.

2. The first accused was the former executive officer of Muttar Panchayath. The second accused was the former President of the Muttar Panchayath. Muttar Panchayath had decided to effect improvement of Tharayasserrypady – Vadapparambu bridge. An estimate of Rs.30,158/- was approved and money was sanctioned by the Panchayath, by resolution, dated 30/12/10994, for the improvement of the above road. The prosecution alleged that, the accused entered into a criminal conspiracy to misappropriate the funds so allotted. In pursuance of that conspiracy, without effecting improvements, they made false entries in the measurement book, and records were prepared to make it appear that the works were done and accused misappropriated a sum of Rs.29,280/-.

3. Raising the above allegations, PW2, a person claimed to be the office bearer of the Poura Samithi submitted a complaint to VACB. A

surprise check was conducted by the Inspector of VACB with the assistance of PW5, the Assistant Executive Engineer. Believing that the allegations were genuine, FIR was registered and investigation was conducted. After completion of the investigation, final report was laid. The accused faced trial before the court below. On the side of the prosecution, PW1 to PW15 were examined and Exts.P1 to P13 were marked. There was no defence evidence. But Ext.D1 the relevant portion of deposition of PW2 was marked. The court below, on appreciation of the entire evidence, held that the prosecution failed to establish the allegations raised against the accused and both the accused were acquitted. Aggrieved by the acquittal, State has preferred this appeal.

4. Heard the learned Government Pleader for the State and the learned counsel for the accused.

5.There is no dispute that the Panchayath had resolved to improve Tharayasserrypady- Vadapparambu road for an estimated amount of Rs.30,158/-. The specific allegation raised by PW2 in his complaint was that no road work was done but the money was withdrawn by the accused, claiming that the work was done. It was alleged that the accused had entered into a criminal conspiracy to make false entries in the Measurement Book and misappropriated Rs.29,280/-.

6. Ext.P1 is the sanction granted by PW1. To establish that the sanction was granted in accordance with law, PW1 was examined. Though his evidence was challenged in cross examination, nothing has been brought out either to conclude that PW1 has not properly exercised his mind or that he is not the competent person to grant Ext.P1 sanction. Hence, that part of the prosecution remains established.

7. Before appreciating the merits of the case, it is worthwhile to refer to the defence set up by the accused. According to the first accused, in his reply statement to section 313 Cr.P.C.questioning, during the period 1993 – 94, untied fund was proposed to be utilised for the improvement of Vadaparambu bridge – Tharayasserrypady Road. Estimate was approved and quotations were invited for laying gravel. In the action plan for that period, the stretch of the above road from Vadapparambu to Tharayasserrypady was included. PW6 had given quotation which was accepted and he had supplied gravel as per the quotation. It was measured and satisfied that the gravel was unloaded and the value of Rs.29,280/- was paid. Cheque was issued to PW6, including the amounts due to him for another work. According to PW2, the defacto complainant, funds were allotted for repairing the stretch of road from Vadapparambu to Srambickalpady. However, according to accused, Panchayath had not resolved to

renovate the Srambickalpaddy – Vadaparambu bridge road. Estimate was not prepared for such work and money was not spent for such work. According to the accused, as per the Panchayath records, stretch of the road from Vadapparambu bridge to Tharayasserripady and Vadapaparambu bridge to Srambickalpady were two entirely different Panchayat roads and one road was not the part of the other. According to him, in between Vadapparambu and Tharayasserripadi, there was no point by name Srambickalpaddy. Tharaysserrypadi road started from the eastern side of bridge, proceeded towards east and thereafter it turned to south. It was a Panchayath road. On the otherhand, Vadapparambu to Srambickalpady was a narrow footpath, which started from the eastern side of bridge and proceeded towards south. That footpath was not included in the Panchayath Register. Panchayath could not take up work in relation to the roads or ways which were not referred to in the Panchayath register. Hence, there was no allotment of funds for any work in relation to the way from Vadapparambu bridge to Sramabickalpaddy way. According to the accused, PW5 mistakenly inspected the Vadapparambu-Srambickalpady road on 14/9/1994 . In fact, no work was done in that footpath. The second accused also took up almost the same defence.

8. Essentially the grievance of the defacto complainant was that

the work in relation to Srambickalpady – Vadapparambu bridge road was not done. The contention of the accused was that this was correct, since there was no proposal for improvement of that road. Estimate or plan were not prepared or quotations were not invited for that work. In fact, the work for which estimate was prepared and contract was awarded was for Vadapparambu bridge to – Tharayasserrypady road. Essentially, the contention of the accused was that prosecution proceeded on a wrong premise that both were same road and assumed that work was not conducted in that stretch of road.

9. Findings have to be appreciated in the background of above defence. Ext.P11 is the minutes book of the Panchayath from 20/4/1993 to 28/7/1995. Ext.P11(a) is the minutes dated 31/12/1993. Resolution No. 5 relates to the Panchayath way from Vadapparambu to Tharayasserrypady in ward No. 4. Ext.P2 is the estimate prepared by PW4, the assistant Engineer. Work proposed to be awarded was supplying of gravel and straightening and spreading lines and levels. Quantity to be supplied was also fixed. Evidently all the records relates to the work for the stretch of Panchayath road from Vadapparambu bridge to Tharayasserrypady . That road is also referred to, in Ext.P9 register of Unitied Fund of Panchayath. PW2, admitted that, he had complained that the road work was not done in

relation to Vadapparambu - Srambickalpady road. According to him, the President of the Panchayath had assured to complete the work. According to PW2, later he understood that the work was not done. But the funds were released on a premise that, gravel were unloaded and laying of it was done. He asserted that the name of the road was Srambickalpaddy – Vadapprambu bridge. He admitted that there was another way by name Vadaparambu bridge - Tharayasserypadi via Karuvaramparambupady. He further deposed that on enquiry, it was found that the work was not done. In the cross examination, he admitted that the name of the disputed road was Vadaparambu bridge to Tharayasserrypady road. His case was that work of that stretch of way from Vadapparambu to Srambikal paddi was not done. He admitted that Vadapparambu bridge was across a thodu having width of 20 to 24 meters. Bridge was lying east - west. From the eastern side of the bridge, the road proceeded to south along the bank of another thodu. Another road proceeded towards east from the Vadapparambu bridge. He admitted that Srambickal was a house name and the two houses with the same house name existed and each stood in each of the above road. A perusal of the evidence of PW2 indicates that he was referring to the road towards south, which admittedly was not tarred.

10. As indicated above, the resolution was with reference to

from Vadapparambu to Tharayasserrypady road . According to PW2, the estimate for Vadapparambu to Srambickalpaddy via Karuvamparambupady was the stretch of road for which quotation was called for. Ext.P7 is the sketch prepared by PW5. It shows that after Vadaparambu bridge, there was a panchayath road proceeding towards east which lay parallel to Kidangara – Athisserry thodu . But thereafter it took turn to the south and proceeded further south. Another way started immediately after from the southern side of the bridge turned towards south, proceeded towards south and known as Srambicalpady way. In the report given by PW5, it was indicated that work in relation to the road lying towards east was not done. PW5 was thoroughly cross examined in relation to the identity of the road. PW5 deposed that he had visited the road and prepared Ext.P7 sketch. According to him, the work quoted was for laying gravel at a length of 310 meters and width of 1.50 meters and at a height of 10 cm. When he went to the spot, he found that the road was full of thick grass. He did not find any indication that gravel was laid. In the chief examination, his grievance was that he did not see any work done in the disputed road at the time of surprise check. However, in the course of cross examination, he admitted that there were two roads. Both starting from the eastern side of Vadapparambu bridge. The Panchayath road proceeded towards east and after

reaching same distance, it turned to south. There was a narrow way lying towards south, starting from eastern side of Vadapparambu bridge. It appears that PW2 to PW5 referred to the way which was referred to as Vadapparambil road in Ext.P5 as the road which was proposed to be renovated. In fact, the work alloted was not in relation to that road, but for the road proceeding towards east shown as Vadapparambu - Tharayasserrypady Panchayath road in Ext.P5 sketch. The above is clear from evidence of PW5 and the remaining witnesses.

11. PW5, after the initial examination, inspected the road again and Ext.P7 sketch was prepared. In the course of cross examination of PW5, though specific suggestion that the road, which he inspected earlier was different from the way referred to in Ext.P7 was made, the witness could not deny. Instead, his reply was that he could not comment on it. To a specific suggestion put to him that he had not inspected the road in which work was done, his reply was that he had only inspected the way which was shown to him. In the re-examination,he admitted that the road which he had inspected was Srambickal - Vadapparambu road.

12. PW 10, was the village officer who had accompanied PW5. He had signed Ext.P7 sketch. He asserted that the way starting from the bridge and lying towards south did not go to Tharayasserypady.

He also said that the Panchayath road was Tharayasserypady road.

13. PW6, was the person who had supplied the gravel for the above work on contract basis. He deposed that he had supplied the materials and it was measured in the presence of the Executive Officer, ward member and the Panchayath President. He also stated that he had unloaded the gravel at Vadapparambu – Tharayasserripady road. He stated that he knew Vadapparambil-Srambickal way. It was not a panchayat road,but only pathway. He clarified that it proceeded towards south whereas Tharayasseripadi road which proceeded towards east, from the bridge

14. The above materials on record clearly show that there were two ways, one was the Panchayath Road, which was the road referred to in the resolution of the panchayath and for its renovation funds were allotted. According to the accused, the work was done in that road. However, the case of the defacto complainant was that the work was not in relation to the Vadaparambu – Srambical pathway. In fact, the investigating agency also seems to have proceeded as if the work was allotted in relation to the way suggested by the defacto complainant. Available materials clearly show that the prosecution was not able to convincingly establish that the work was not done in relation to the road mentioned in the resolution of the Panchayath estimate and also the quotation. On the other hand, the specific case

of the accused was that, they have done the work as per the quotation. The prosecution could not clarify this doubt even regarding the identity of the road.

15. The learned Government Pleader vehemently contended that the court below went wrong not only in appreciating the evidence , but also in exercising jurisdiction . If at all there was any confusion regarding the identity of the road, the court could have exercised its jurisdiction under section 310Cr.P.C to meet the interest of justice. It was also contended that the court below committed patent illegality in acquitting the accused.

16. As indicated above, evidence of the defacto complainant clearly shows that he was referring to the Srambickalpady road which was not a road, but only a pathway and is not even described in the Panchayath register. On the other hand, Panchayath road for which the estimate was prepared was the one regarding which accused contended that they have done the work. This even could not be clarified by the prosecution. There is no specific materials to hold that the accused have not done the work in relation to Tharayasserypady road. Further it was not a case in which court ought to have got a clarification under section 310 Cr.P.C. In the case at hand even the prosecution was not sure about the identity of road and proceeded on wrong premise. Hence, the trial court could not have invoked the

jurisdiction under section 310 Cr.P.C.

Having evaluated the entire facts, I find no reason to interfere in the findings of the court below. Criminal appeal fails and is accordingly dismissed.

Sd/-

SUNIL THOMAS

JUDGE

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