

CASE NO.:
Appeal (crl.) 1542 of 2007

PETITIONER:
Radha Pisharassiar Amma

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 14/11/2007

BENCH:
H.K. SEMA & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1542 OF 2007
(Arising out of Special Leave Petition (Crl.) No. 5705 of 2005)
WITH
Crl. Appeal Nos. 1543, 1544, 1545, 1546 and 1547 of 2007
(Arising out of SLP(Crl.) Nos. 5744/2005, 5858/2005,
4683/2006, 4687/2006 and 4684/2006)

H.K. SEMA, J.

1. Leave granted.

2. These Appeals are directed against the judgment and order dated 10th August, 2005 by the High Court of Kerala in Criminal Appeals. The Appeals arising out of SLP(Crl.) Nos. 5705/2005, 5744/2005 and 5858/2005 are preferred by accused Nos. 4 to 7. The Appeals arising out of SLP(Crl.) Nos. 4683/2006, 4687/2006 and 4684/2006 are preferred by the State.

3. Accused Nos. 1 to 10 were charged with the offence under Sections 409, 468, 471, 477-A and 120-B, Indian Penal Code. The accused were also charged under Section 13(1)(c) read with Section 13(2) of Prevention of Corruption Act, 1988 (in short 'the Act'). They were convicted by the Trial Court and Appeals were confirmed by the High Court. The allegation against them are that they have encashed the T.A. Bills for an amount of Rs.51,24,500/-, the amount funded for the Indian Population Project (I.P.P.), Idukki on the basis of fake allotment letters, preparing false acquittal rolls and made false entries in the books and receipts and misappropriated a sum of Rs.50,07,405/- and in furtherance to the criminal conspiracy with the dishonest intentions, fraudulently misappropriated the said sum and thereby committed criminal breach of trust, falsification of acts of forgery for the purpose of cheating and knowingly used forged documents as genuine and thereby committed the offence punishable under the aforesaid sections.

4. At the relevant time, A-1 was working as Medical Officer at the Primary Health Centre, Chithirapuram. A-2 was Head Clerk. A-3 (deceased) was working as Health Inspector. A-4 and A-5 were working as Sub Treasury Officer, Devikulam. A-6 was working as Junior Superintendent. A-7 was working as Junior Accountant. A-8 was working as L.D. Clerk at the Primary Health Centre, Chithirapuram. A-9 was working as U.D. Clerk in I.P.P., Idukki and A-10 (since deceased) was working as Project Officer, I.P.P., Idukki.

5. At this stage, it will be relevant to mention that A-1 \026 Medical Officer and A-10 Project Officer committed suicide during the trial. A-3 expired prior to the trial. This Court dismissed the appeal of A-2, who was working as Head Clerk. A-8 was working as L.D. Clerk at the Primary Health Centre, Chithirapuram. This Court also dismissed the Appeal of A-9 who was working as U.D. Clerk in I.P.P., Idukki.

6. By the impugned order, the High Court convicted A-4 to A-7 under Section 13(1)(c) read with Section 13(2) of the Act and sentenced them to undergo R.I. for two years each and pay a fine of Rs. 50,000/- each, if default in payment of fine, they were directed to undergo Simple Imprisonment for a period of six months each. The High Court found A-4 to A-7 not guilty under Section 409, 468, 471, 477-A and 120-B, I.P.C. and accordingly their convictions under aforesaid Sections of law were set aside.

7. While issuing a notice on 28.11.2005, this Court also issued notice as to why A-4 to A-7 should not be convicted under Section 409, 468, 471, 477-A and 120-B, I.P.C., apart from conviction under Section 13(1)(c) read with Section 13(2) of the Act. The accused were also admitted to bail on their executing a bond of Rs.10,000/- each in the like amount with two solvent sureties to the satisfaction of the Trial Court. All the accused are on bail.

8. We have heard the learned counsels appearing on behalf of the parties at great length.

9. Section 409 deals with criminal breach of trust by public servants. Section 468 deals with forgery for the purpose of cheating. Section 471 deals with using forged documents as genuine. Section 477-A deals with falsification of accounts and Section 120-B deals with punishment for criminal conspiracy.

10. The principal contention of the learned counsel for the appellants is that there is no iota of evidence against the accused for the offences under the aforesaid sections of law. In other words, it is urged that none of ingredients of the aforesaid sections of law are established against the accused by the prosecution and, therefore, the accused are entitled to be acquitted and there is no infirmity in the order passed by the High Court acquitting A-4 to A-7 under Sections 409, 468, 471, 477-A and 120-B, I.P.C. and no interference is warranted by this Court.

11. The conviction of accused Nos. 4 to 7 recorded by the High Court under Section 13(1)(c) read with Section 13(2) of the Act, it is urged, is not at all warranted inasmuch as there is no evidence that the accused dishonestly or fraudulently misappropriated or otherwise converted any property entrusted to them or under their control as public servants or allowed any other person to do so. It is further contended that the property was not at all entrusted to A-4 to A-7 under their control and there is no question of the accused being dishonestly or fraudulently misappropriated it or otherwise allowed any other person to do so.

12. Per contra, learned counsel for the State contended that for an offence under Section 120-B, direct evidence is seldom available and, therefore, having regard to the surrounding circumstances, A-4 to A-7 committed criminal conspiracy and they are guilty under Section 120-B and also under Sections 409, 468, 471, 477-A, I.P.C. and Section 13(1)(c) read with Section 13(2) of Act.

13. To answer this question, it may be necessary to refer to the various documents examined by the Trial Court, High Court and also placed before us. First, we shall deal with the offence of conspiracy. As contended by the State Counsel that the original sanction order at 590 (Exhibit P26a), the

expenditure under head 'TA' is only Rs.50,000/- for the fiscal year 1990-91. However, the alleged forged allotment order dated 22.8.1990 for the year 1990-91 shown under head 'TA' is Rs. 1,70,000/-. It is accordingly urged that the aforesaid sanction allotment letter has been forged by A-4 to A-7 in conspiracy with the other accused and they are liable for punishment under Section 120-B.

14. After going through the entire documents and evidence and arguments advanced by both sides, we are unable to countenance with the contention of the State. The original allotment letter dated 8.5.1990 (Exhibit P26a) reveals that a copy thereof has been endorsed to Sub Treasury Officer, Idukki. There is no endorsement of the copy of the said allotment order to the Sub Treasury Officer, Devikulam in which A-4 to A-7 were working in their respective posts. In this connection, the prosecution has examined its star witness Mr. Selvaraj as PW-5. This witness has stated that from 1984 to 1993 he was posted as U.D.C. at Health Centre Directorate at Trivandrum. He has further stated that he has worked at I.P.P. He identified the allotment register at I.P.P. Office (marked Exhibit P-25). He has stated that Idukki I.P.P. received Rs.50,000/- under head 'T.A.' for 1991. He further stated that the original allotment letter (Exhibit P26a) is sent to Sub Treasury by Painavu Idukki and duplicate to the Project Officer, I.P.P., Idukki. He did not state that the original allotment letter (Exhibit P26a) under head 'TA' has also been sent to Sub Treasury Officer, Devikulam. He has not stated that a copy of the original allotment letter (marked Exhibit P26a) was sent to any other Treasury Officer.

15. From the evidence of PW-5, it can be revealed that a conspiracy was hatched between A-1, A-10, A-2, A-8 and A-9. As already noticed, A-4 to A-7 were working as Sub Treasury Officers at Devikulam. The prosecution has failed to prove that a copy of the original sanction letter (Exhibit P26a) was also sent to S.T.O., Devikulam. On the other hand, the alleged forged allotment letter dated 22.8.1990 (Exhibit P-5) showing that the amount of Rs.1,70,000/- under the head 'TA' was sent to S.T.O., Devikulam where the accused A-4 to A-7 were working. It is the specific case of the accused that they did not receive any allotment order other than the allotment letter dated 22.8.1990 (Exhibit P-5) showing the allotment of Rs.1,70,000/- under T.A. to Devikulam Sub Treasury. The prosecution has miserably failed to establish the essential ingredients of the conspiracy under Section 120-B of I.P.C. by leading cogent and convincing evidence against A-4 to A-7.

16. It is by now well-established principle of law that for the offence under Section 409, 467 and 471, the existence of mens rea (guilty mind) must be proved. It is on record that the Respondent Nos. 4 to 7 were working as S.T.Os., Devikulam. From the prosecution evidence, it appears that the conspiracy was hatched at Chithirapuram, Primary Health Centre. So far with regard to the offence under Section 467, I.P.C. is concerned, there is no evidence to show that the appellants before us, forged a document which purported to be a valuable security. There is also no evidence that the appellants had knowledge of fact that the allotment letter was a forged letter. Again for an offence under Section 409 it must be proved that the person entrusted with the property, or any dominion over property in his capacity as a public servant committed criminal breach of trust in respect of such property as defined in Section 405, I.P.C. The evidence must show that he dishonestly misappropriated or converted to his own use that property or dishonestly used or dispossessed that property in violation of any direction of law prescribing the mode in which such trust is to be discharged. In the present case, there is no

evidence that A-4 to A-7 dishonestly misappropriated or converted to their own use the amount of T.A. On record it is established that A-4 to A-7 are not the beneficiaries of the misappropriated amount.

17. In the absence of any evidence to show that A-4 to A-7 were acting in conspiracy with A-1, A-2, A-8, A-9 and A-10 and that A-4 to A-7 have fraudulently and dishonestly prepared forged bill on the basis of forged allotment letter, the offences under Sections 467, 471, 477-A or Section 409 are not proved against the appellants. Consequently, the offence under the provision of the Prevention of Corruption Act is also not made out. The trial court was, therefore, not justified to convict A-4 to A-7 under the aforesaid sections of law.

18. In the result, Appeals filed by Accused Nos. 4 to 7 are hereby allowed. Conviction recorded and sentence imposed upon A-4 to A-7 by the Trial Court and confirmed by the High Court under Section 13(1)(c) read with Section 13(2) are hereby set aside. The Appellants stand acquitted. They are on bail and their bonds and sureties are discharged.

19. Appeals filed by the State are dismissed. Notice issued by this Court on 28.11.2005 against A-4 to A-7 shall stand discharged.