

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 725 of 2006

N.K. ILLIYAS

.....

APPELLANT

VERSUS

STATE OF KERALA

.....

RESPONDENT

O R D E R

1. The appellant stands convicted for offences punishable under Sections 13(1)(c) and (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and under Sections 409, 471 and 477A of the Indian Penal Code. The allegation is that while he was working as a Lower Division Clerk in the Office of the Deputy Superintendent of Police in the Vigilance Department, on the 6th of June, 1989, he had temporarily misappropriated an amount of ₹1,839/- being the telephone dues from 10th February, 1992 to 4th March, 1992 and that he had interpolated the records to show that the aforesaid amount had been remitted to the post office on the 10th of February, 1992, whereas the payment had actually been made in the post office on the 4th of March, 1992, that is after a delay of 21 days. The trial court and the High

Court have, accordingly, convicted the appellant under Sections 13(1)(c) and 13(1)(d) and have directed him to undergo two years imprisonment and to pay a fine of ₹1,000/- and in default to undergo simple imprisonment for three months under Section 13(2) of the Act for the offences punishable under Section 3(1)(c) and (d) of the Act, six months rigorous imprisonment under Section 471 IPC and one year's rigorous imprisonment under Section 409 IPC; all the sentences to run concurrently.

2. We have heard the learned counsel for the parties and also gone through the records. We are of the opinion that the evidence against the appellant points to an offence of temporary embezzlement only for a few days and no case whatsoever under the Prevention of Corruption Act, 1985 can even be remotely made out. The conviction of the appellants under the provisions of the Corruption Act is thus wholly unwarranted.

3. We are further of the opinion that the offences under the IPC alleged against the appellant are so trivial and have caused no harm and are in fact no offences in the eye of the law and the benefit of Section 95 of the Indian Penal Code is thus available to the appellant. Admittedly, a sum of ₹1839/- had been

deposited in the post office before the due date i.e. 4th March, 1992 and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record to show the payment on the 10th February, 1992.

4. We, therefore, allow the appeal, set aside the orders of the courts below and order the appellant's acquittal.

NEW DELHI
JULY 12, 2011.

.....J
[HARJIT SINGH BEDI]

.....J
[GYAN SUDHA MISRA]

JUDGMENT