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**(2016) 07 KL CK 0047**  
**In the High Court Of Kerala**  
**Case No : Crl.A.No. 1098 of 2009**

P.P. Mohanan

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision :** 18-07-2016

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 409  
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2)

**Citation :** (2016) 3 KerLJ 539 : (2016) 3 KLT 108

**Hon'ble Judges :** Mr. B. Kemal Pasha, J.

**Bench :** Single Bench

**Advocate :** Sri. P. Vijaya Bhanu and Sri. P.M. Rafiq, Advocates, for the Appellant;  
Smt. Hyma Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

Mr. B. Kemal Pasha, J.—The appellant is the accused in C.C.No.18 of 2003 of the court of the Enquiry Commissioner and Special Judge, Kozhikode, who stands convicted under Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 and Section 409 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/-, in default to undergo rigorous imprisonment for six more months under Section 13(2) read with Section 13(1)(c) of the PC Act, further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default to undergo rigorous imprisonment for three more months under Section 409 IPC.

2. The petitioner was working as the Village Officer, Menhannium Village, during the period from 18.01.2000 to 15.03.2000. The petitioner, who was a public servant allegedly abused his official position and committed criminal misconduct by dishonestly and fraudulently misappropriating a total amount of Rs. 55,371/-. He had allegedly collected an amount of Rs. 3,621/- from PW2 by way of revenue recovery towards contribution of KAWWF, Rs. 45,000/- from PW1, being instalment of building tax of commercial building and an amount of Rs. 6,750/-

from PW3, being the instalment of building tax of commercial building, by issuing post dated receipts without making corresponding entries in the cash book of the Village Office. It is alleged that without remitting the said amount of Rs. 55,371/- collected by him as aforesaid in the Treasury/Bank, he committed criminal breach of trust by misappropriating the said amount, which amounted to criminal misconduct within the meaning of Section 13(1) (c) of the PC Act.

3. From 01.03.2000 onwards, the accused was on medical leave and consequently, PW4, who was the then Village Assistant was put in charge of the Village Officer. Then, PW4 had to handle the receipt book of the Village Office. He could see the counter foil of the receipts, by which, the accused had collected the aforesaid amount of Rs. 55,371/-. On verification of the cash book, he could trace out that the said amount collected through receipts issued to PWs.1 to 3, were not entered in the cash book. Over and above the said amount, an amount of Rs. 40,000/- had also to be remitted. Immediately, he reported the matter to the Tahsildar, Koyilandy, through Ext.P9 report. On 28.02.2000 as well as 29.02.2000, the accused was on medical leave. On the previous day to the date on which the accused was on medical leave, one of the relatives of the accused had informed PW4 that the accused had sustained injuries on a fall and he was hospitalized. PW4 sent PW21 Village Man and one Pradeepan, who was the sweeper, to the hospital to meet the accused. The accused handed over an amount of Rs. 40,000/- to PW21 and thereafter, on getting that amount, PW4 entered it in the cash book.

4. PW18 Dy.S.P., VACB, Kozhikode registered Ext.P56 FIR. Investigation was conducted by PW19 Dy.S.P., VACB, Kozhikode. The unit Dy.S.P., after verifying the investigation, filed the final report.

5. On the side of the prosecution, PWs.1 to 21 were examined and Exts.P1 to P59 were marked. On the side of the accused, DW1 was examined and Exts.D1 series to D6 were marked. The court below found the accused guilty of the offence punishable under Sections 13(2) read with Section 13(1)(c) of the PC Act and Section 409 IPC, convicted him thereunder and sentenced him as aforesaid.

6. The learned senior counsel for the appellant has argued that the court below ought not to have found the accused guilty of the aforesaid offences, because of the fact that there was absolutely nothing to prove any dishonest intention or fraudulent intention on the part of the appellant to misappropriate the amount. It is argued that, at the most, the retention of the amount by the accused could only be styled as a temporary embezzlement and could not be styled as misappropriation or criminal breach of trust in the absence of any fraudulent or dishonest intention. The learned senior counsel for the appellant has relied on the decision in Thankappan v. State of Kerala [1965 KLT 501] and the decision of the Apex Court in Illiyas v. State of Kerala [2012 (2) KLT Suppl. 70 (SC)].

7. Per contra, the learned Public Prosecutor has pointed out that in the decisions in Thankappan (Supra) and Illiyas (Supra), the period, in which, the amounts

were retained by the accused in those cases were 22 days and 21 days respectively and the said proposition in those decisions cannot be applied to the facts relating to this case.

8. According to the learned Public Prosecutor, when there is a proved retention of that much amount of public money by the appellant for about 1? years, it cannot be said that the same was only a temporary embezzlement, and that, had it been a temporary embezzlement, he would have remitted that amount at least within a month.

9. Here in this case, the appellant had suffered an accidental fall on 27.02.2000, and consequently he was hospitalised. He sustained a fracture to his leg. On 28.02.2000, he had handed over an amount of Rs. 40,000/- to PW21. After leave, he had joined duty on 13.03.2000. He was placed under suspension on 15.03.2000. He has remitted back the entire amount of Rs. 55,371/- on 10.08.2001.

10. In this case, the FIR was registered on 25.01.2001. The final report was filed on 27.03.2002. It is true that the amount was remitted prior to the filing of the final report in the case. At the same time, it has to be noted that the appellant remitted the amount only after six months from the date of the registration of the FIR. In such a context, it has to be considered whether the accused had attempted to remit the amount at least within a month or whether there was any obstacle in making such remittance.

11. The learned Senior Counsel for the appellant has produced the copy of O.P.No.32214 of 2000 filed by the appellant before this Court seeking a direction to reinstate him in service, and for a direction to dispose of and to pass final orders on Ext.P4 appeal preferred by the appellant as per the directions of this Court before the Secretary to the Government, etc. Along with the said OP, the petitioner had produced Exts.P2(a) to P2(c) Challans dated 15.03.2000. It seems that the petitioner was all along ready and willing to remit the amounts which he had to remit. It has come out that it was on account of some supervening circumstances, he could not remit the amounts in the treasury and it so happened that he had to retain the amount with him. Then, he had met with an accident whereby he was hospitalised on 27.02.2000. He was discharged from the hospital on 08.03.2000 only.

12. According to the appellant, on 13.03.2000, he was taken to the office by his friends and relatives, since his right leg was in plaster cast and he joined duty in such a state on 13.03.2000. On 14.03.2000, he prepared Exts.P2(a) to P2(c) Challans and sent the same to the Tahsildar for counter signatures, for effecting remittance at the treasury. The Tahsildar was not prepared to counter sign it on the ground that he had reported the matter to the District Collector whereby disciplinary actions were initiated against the appellant. Therefore, it has come out that there was a genuine and reasonable ground on the part of the appellant in retaining the amount with him.

13. Even prior to the month end, he met with an accident and had to be hospitalised. He was being treated as inpatient till 08.03.2000. He was virtually carried to his office by his friends and relatives on 13.03.2000 for resuming duty. It seems that on the very next day, he prepared Exts.P2(a) to P2(c) Challans appended with O.P.No.32214/2000. He could not remit the amount solely because of the fact that the Tahsildar was not prepared to counter sign those Challans. For want of counter signatures, the amount could not be remitted. Therefore, it was on account of such an obstacle and impediment, he could not make the remittance.

14. Mere retention of the amount for a short period, without the element of dishonesty cannot make it an offence of criminal breach of trust. There cannot be a presumption of dishonest or fraudulent intention. A temporary retention of money, in these contexts, cannot invite a criminal offence, because of the absence of mens rea. There was no intention on the part of the appellant to commit any criminal misappropriation or criminal breach of trust, as held in Thankappan(supra). Matters being so, this is a fit case wherein the conviction and sentence passed by the court below are liable to be set aside.

15. In the result, this Criminal Appeal is allowed, and the conviction and sentence passed by the court below are set aside. The appellant stands acquitted.