(2023) 06 KL CK 0383

In the High Court Of Kerala

Case No : Criminal Appeal No. 795 Of 2010

T.Augustine APPELLANT

Vs

Vigilance And Anti Corruption Bureau And Northern Village, Kozhikode RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:
Indian Penal Code, 1860 — Section 409, 467, 471, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2)

Citation : (2023) 06 KL CK 0383

Hon'ble Judges : Dr. Kauser Edappagath, J

Bench : Single Bench

Advocate : T.G.Rajendran, S Rekha, A Rajesh

Final Decision : Dismissed

Judgement

Dr. Kauser Edappagath, J

1. This appeal has been filed by the accused in CC No.40/2003 on the files of the Enquiry Commissioner and Special Judge, Kozhikode (for short, 'the court below') challenging the judgment dated 31st March, 2010 convicting and sentencing him under section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (for short, the PC Act) and Sections 409, 467 r/w 471 and 477A of the Indian Penal Code (IPC).

2. The accused was working as Senior Assistant holding charge of Disbursement Clerk in Kerala State Road Transport Corporation (KSRTC), Kozhikode Unit during 1998-1999. The prosecution case in short is that the accused while working so during the period from 10/8/1998 to 11/8/1999 fraudulently and dishonestly misappropriated an amount of `1,61,229/- by forging the signatures of various staffs and pensioners and by fabricating the bills and office records.

3. After trial, the court below found the accused guilty and convicted and sentenced him to undergo rigorous imprisonment for two years each and to pay

a total fine of `1,62,000/-, in default to suffer rigorous imprisonment for six months for the offences under Section 13(2) r/w Section 13(1)(c) and (d) of the PC Act, to undergo rigorous imprisonment for 1 year, to pay a fine of `1,000/-, in default to suffer rigorous imprisonment for three months for the offences under Section 409, to undergo rigorous imprisonment for 1 year each, to pay a fine of `1,000/- each, in default to suffer rigorous imprisonment for three months each for the offences under Section 471 r/w 467 and to undergo rigorous imprisonment for 1 year for the offence under Section 477A of the IPC. Challenging the said conviction and sentence, the accused preferred this appeal. During the pendency of the appeal, the accused died. His wife has been impleaded as the supplemental appellant.

4. I have heard Sri.T.G.Rajendran, the learned counsel for the appellant and Sri.Rajesh, the learned Special Public Prosecutor for VACB.

5. The learned counsel for the appellant impeached the finding of the court below on appreciation of evidence and the resultant finding as to the guilt. The learned counsel submitted that the prosecution miserably failed to prove the entrustment of money with the accused alleged to have been misappropriated. The learned counsel further submitted that the prosecution failed to prove the disputed signatures and handwritings by scientific evidence. The counsel also submitted that the evidence of the prosecution witnesses are highly contradictory. On the other hand, the learned Special Public Prosecutor for VACB supported the findings and verdict of the court below and submitted that the prosecution has succeeded in proving the case beyond reasonable doubt.

6. The oral evidence of PWs 13, 14, 16, 17, 18 and 20 coupled with Ext.P53, the service book, and Ext.P55, the transfer and posting order of the accused, would prove that he was posted as Senior Assistant holding the charge of Cash Disbursement Clerk of KSRTC, Kozhikode depot during the period from 10/8/1998 to 11/8/1999. The accused has also not disputed this aspect. According to the prosecution, the accused while working in the above capacity misappropriated a sum of □ 1,61,229/- during the above period by forging the signature of various staffs and pensioners and by fabricating the bills and office records. On the other hand, the defence version is that the accused was a member of K.S.R.T.E.A under C.I.T.U and subsequently due to some discord, he resigned from that union and joined in K.S.R.T.E.U under A.I.T.U.C and due to the political vengeance, PW14 as well as others being the members of C.I.T.U falsely foisted the case against him.

7. The prosecution mainly relied on the evidence of Pws 1 to 6, 8 to 14, 16, 17, 19, 20, 22 and 23 to prove its case and to fix the culpability on the accused. PWs 1 to 6 and 8 to 12 are either employees, pensioners, or legal heirs of the employees at KSRTC. Their evidence would show that when they went to KSRTC Office at Kozhikode depot, to draw their salary or pension, to their surprise, they came to know that it was already drawn and received by somebody by forging their signatures in the bills. The documents such as Exts. P2, P4, P6, P8, P10,

P13, P14, P24, P25, P26 and P28 would substantiate their version that their salary or pension were drawn. But their evidence would prove that it was not received by them.

8. PW2 is one Prabhakaran who retired from KSRTC, Kozhikode depot as a conductor on 31/5/2001. He deposed that when he went to the office to collect his salary arrears due to him for the period from 1988-1997, he realised that his salary arrears of `41,926/- was drawn by somebody by forging his signature in the bill. Immediately he lodged Ext.P3 complaint. He denied his signature in Ext.P4 series arrear pay bill. PW13 was the Senior Assistant who worked at KSRTC, Kozhikode depot since 21/6/1999. He was holding the charge of Accountant since 4/7/1999. He deposed that during the said period, the accused was the Cash Disbursement Clerk. He further deposed that he used to entrust the money with the accused to disburse salary and pension. He specifically deposed that on 13/7/1999, he entrusted salary arrears of `41,926/- of PW2 with the accused. Ext.P25(a) would prove this fact. Ext.P29 daily disbursement register from 3/2/1999 to 13/7/1999 was marked through him. In page no.49 of Ext.P29, the accused has entered that `41,926/-was paid to PW2. The said page was separately marked as Ext.P29(a). The handwriting in the said page has been identified by PW13 as that of the accused.

9. PW14 was the Audit Superintendent of the KSRTC depot, Kozhikode during the above said period. He deposed that he conducted inspection on 11/8/1999 in the Kozhikode depot of KSRTC in connection with the irregularity in the said office. He further deposed that on perusal of Ext.P29 daily disbursement register from 3/2/1999 to 13/7/1999, `41,926/- was shown to be disbursed. He also identified the handwriting of the accused in Ext.P29 which has been separately marked as Ext.P29(a). PW17 was the Cash Section Superintendent at KSRTC Depot, Kozhikode during the period from 1/7/1998 to 3/8/1999. He also deposed that as per Ext.P29(a), `41,926/- was disbursed. He identified the handwriting of the accused in Ext.P29(a).

10. PW1 was the LD Clerk at KSRTC Office. She took voluntary retirement on 30/11/1994. She deposed that on 11/8/1999, she went to Kozhikode Office of KSRTC to collect her pension. She was told that somebody drew and received her pension amount. Immediately, she lodged Ext.P1 complaint. She denied the signature in the voucher acknowledging the receipt of the money. PW14 deposed that, on 11/8/1999, he went to the KSRTC depot at Kozhikode to enquire about the irregularities therein and at that time PW1 came to the office to draw pension and on verification of the records, it was found that pension amount was already paid. On further verification of the records especially Ext.P29 disbursement register, he could find that pension amount of `5,767/- was recorded as paid. He identified the said handwriting as that of the accused. It is separately marked as Ext.P29(b).

11. The husband of PW8 viz. T.Valsan was an employee at KSRTC. He retired in 1985 and died in 1991. He was working in Military Service prior to his service at

KSRTC. She deposed that family pension was due from KSRTC from August 1991 to March 1999 and she went to the Kozhikode Office of KSRTC to enquire about the same. Her husband was entitled for pension from military as well. Since the pension in the military service was more than the pension at the KSRTC, she decided to opt pension from military service. However, later she found that her total pension amount of `39,592/- due from KSRTC was drawn by somebody else. The evidence of PWs 14, 15, 16, 17 and 20 would clearly show that the said pension amount of `39,592/- was encashed by somebody else. Their evidence would further show that in the records pertaining to the disbursement of the said amount such as Exts. P8, P13, P25(c), P25(d), P29(a), P29(b), P29(c), P29(d) and P30, the handwriting is that of the accused.

12. The evidence discussed above would clearly show that during the relevant period, the accused was the Cash Disbursement Clerk in KSRTC, Kozhikode depot. The evidence of PW13 would show that he entrusted the cash with the accused for disbursement. The evidence discussed above would further show that the pension amount of PWs1, 2 and 8 were not received by them, but drawn by somebody else. PWs 13, 14, 15, 16, 17 and 20 are familiar with the handwriting of the accused. They deposed that in all the documents pertaining to the disbursement of those amounts, the handwriting is that of the accused. To attract the offence of criminal breach of trust, the prosecution must prove that there was entrustment of property with the accused, and he had dishonestly misappropriated the same for his personal use. Once the entrustment is established by the prosecution, the burden shifts to the accused to account for the property entrusted. It is settled that if the entrustment is proved and the explanation given by the accused is not satisfactory, then it can be presumed that the accused has committed the offence of criminal breach of trust and misappropriation. The modus operandi of the accused, how he committed the misappropriation etc. need not be proved by the prosecution. The fraudulent intention of the accused can be inferred from the attending circumstances. The same ingredients of criminal breach of trust and misappropriation have to be proved by the prosecution for establishing the offence under section 13(1)(c) of the PC Act as well. [See Jaikrishnadas Manohardas Desai and Another v. State of Bombay; AIR 1960 SC 880, Raghavan K v. State of Kerala; 2012 KHC 420 and Vijayakumar v. State of Kerala; 2016 KHC 635]. In T.Retnadas v. State of Kerala (1999 KHC 2074), this court held that once the entrustment of amount with the accused is proved, unless the accused establishes by preponderance of probability that he has discharged his duty to disburse the said amount to beneficiary, he will be liable for misappropriation of that amount and he can be convicted for the offence under section 409 of IPC and section 5(1)(c) of the PC Act, 1947.

13. As stated already, the entrustment of the amount with the accused has been proved. The beneficiaries deposed that they have not received it. The accused has failed to prove at least by preponderance of probability that he disbursed the amount to the beneficiaries, i.e., PWs 1, 2 and 8. Then, the only conclusion

possible is that the accused has misappropriated the money. It is not in dispute that the accused was a public servant during the relevant period. He misusing his official position as public servant misappropriated the amount entrusted with him. Thus, offence under section 13(2) r/w 13(1)(c) and (d) of the PC Act as well as under section 409 of IPC stands clearly proved.

14. The evidence on record would prove that the salary arrear bill prepared in favour of PW2 for `41,926/- was altered to make it tally with the amount in the bill originally prepared. The handwriting in the last bill was found different with that of other sheets. The signature of the Bill Superintendent, Audit Superintendent, District Transport Officer and the Bill Drawing Clerk and the payee's receipt in the bill are also found to be forged. The arrear bill of PW2 was corrected after deleting some pages from the original bill and added some amount in the last portion as well as the last page and corrected the total amount as ☐ 39,592/- tallying with the family pension arrears amount of PW8. PWs 13, 14, 15, 16, 17 and 20 identified the handwriting of the accused. From their evidence, who were familiar with the handwriting and signature of the accused, it is proved that the correction in the amount as well as the documents were made by the accused himself. Thus, the offence under sections 467, 471 and 477A of IPC also stands proved. The learned counsel for the petitioner vehemently argued that the disputed handwriting and signatures were not sent for scientific examination and hence it cannot be said that offence of forgery stands proved. It is settled that if there is sufficient evidence to show that disputed handwriting and signature were forged by the accused, then failure to send the disputed signature and writing to handwriting expert for expert opinion is not fatal. [see T.Retnadas (supra)].

15. The court below has appreciated the evidence on record in the correct perspective and rightly found that the prosecution has succeeded in proving beyond reasonable doubt that the accused has committed the offence under Section 13(2) r/w 13(1)(c) and (d) of the PC Act and Sections 409, 467 r/w 471 and 477A of the IPC. On reappreciation of evidence, I find no reason to interfere with the said findings of the court below.

16. What remains is the sentence. The court below convicted the accused to undergo rigorous imprisonment for two years each, to pay a total fine of `1,62,000/-, in default to suffer rigorous imprisonment for six months for the offences under Section 13(2) r/w Section 13(1)(c) and (d) of the Prevention of Corruption Act, to undergo rigorous imprisonment for 1 year, to pay a fine of `1,000/-, in default to suffer rigorous imprisonment for three months for the offences under Section 409, to undergo rigorous imprisonment for 1 year each, to pay a fine of `1,000/-each, in default to suffer rigorous imprisonment for three months each for the offences under Section 471 r/w 467 and to undergo rigorous imprisonment for 1 year for the offence under Section 477A of the IPC. Considering the entire facts and circumstances of the case, I am of the view that the sentence imposed is reasonable. The supplemental appellant shall deposit

the fine amount at the court below within two months failing which appropriate legal action will be initiated to realise the fine amount.

The appeal fails and it is accordingly dismissed.

