

Thomas Vs. Karumbi

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Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Thomas

Respondent : Karumbi

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD FRIDAY,THE14H DAY OF FEBRUARY201425TH MAGHA, 1935 CRL.A.No. 283 of 2001 () ----- CC101999 of THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM APPELLANT(S)/ACCUSED NO.3: ----- G.RAVEENDRAN NAIR, FORMERLY PEON, VELLARADA SPECIAL GRADE PANCHAYATH, VEDAKUNNIL, ELAPPURAM, KEEZHATTINGAL. BY ADV. SRI.B.RAMAN PILLAI RESPONDENT(S)/COMPLAINANT: ----- STATE, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SHRI K.K.RAJEEV THIS CRIMINALAPPEAL HAVING BEEN FINALLYHEARD ON1402-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

----- Crl.Appeal No.283 of 2001
----- Dated this the 14th day of February, 2014.

JUDGMENT

Appeal filed under Section 374(2) of the Code of Criminal Procedure (for short, "Cr.P.C.").

2. 3rd accused in C.C.No.10 of 1999, who stood trial before the Enquiry Commissioner and Special Judge, Thiruvananthapuram for offences punishable under Section 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947 (for short, "the Act") and Sections 409, 477A and 120B of the Indian Penal Code (for short, "IPC") was convicted by the learned trial Judge. After trial, the learned trial Judge convicted the appellant (3rd accused) under Section 5(2) read with Section 5(1)(c) of the Act and also under Section 409 IPC. Appellant was acquitted for charges under Sections 120B and 477A IPC. He was sentenced to undergo one year imprisonment and pay fine of `1,000/- under Section 5(2) read with Section 5(1)(c) of the Act and also to undergo one year rigorous imprisonment and pay fine of `1,000/- under Section 409 IPC.

3. When the matter was taken up for hearing, learned Public Prosecutor submitted that the sole accused in this case died on 02.03.2008. A copy of death certificate is also available with the Public Crl.Appeal No.283/2001 2 Prosecutor. Further, it is submitted that the legal heirs of deceased appellant (wife and son) obtained a legal heirship certificate from Taluk Office, Chirayinkeezhu on 06.03.2010. Considering the fact that this is a case wherein composite sentence of imprisonment and fine have been clamped on the appellant, I heard the learned counsel for the appellant and the learned Public Prosecutor. I have carefully perused the records. Prosecution case, in short, is that the 1st accused was the Executive Officer, 2nd accused was the Panchayat Assistant Grade I and the appellant (3rd accused) was a peon in a Grama Panchayat during 1985-1986. The three accused persons allegedly entered into a criminal conspiracy to dishonestly misappropriate public money, collected for the Panchayat, in order to obtain undue pecuniary advantage for themselves and hence they committed an offence under Section 120B IPC. Further allegation is that pursuant to the criminal conspiracy, the appellant collected a sum of `3,808/- on receipt as kist amount due to the Panchayat. But this amount was not brought to the account, nor was it remitted in

the bank. Yet another allegation is that in pursuance of the criminal conspiracy, an amount of `9,633.50, being the money obtained as taxes collected by the appellant, was retained by him for about 1 = months and misappropriated the same. There are other allegations against accused 1 and 2 in the same lines regarding misappropriation of money. Learned counsel for the Crl.Appeal No.283/2001 3 appellant submitted that accused 1 and 2 were tried and acquitted. We are only concerned with the case of the 3rd accused in this appeal.

4. Learned trial Judge examined 11 witnesses on the prosecution side and Exts.P1 to P13 were marked. Ext.D1 is the defence exhibit. Following points were raised by the learned trial Judge for consideration: "(1) Was there a valid sanction to prosecute the accused? (2) Whether there was a criminal conspiracy among the accused persons to dishonestly or fraudulently misappropriate or otherwise to convert for their own use the money entrusted to them or under their control as public servants or allowed any other person so to do and whether they did commit the said offence? (3) Whether the accused dishonestly or fraudulently misappropriated or otherwise converted for their own use any amount entrusted to them or under their control as public servants or allowed any other person so to do? (4) Whether the accused being in any manner entrusted with or having dominion over the amount in their capacity as public servants committed criminal breach of trust in respect of that amount? (5) Whether the accused all or any of them in the capacity of a Clerk or a servant wilfully and with intent to defraud, destroyed, altered or falsified any book or account? Crl.Appeal No.283/2001 4 (6) Whether the accused have committed any offence? (7) If the accused is/are found guilty, what should be the proper sentence?" Learned trial Judge considering Ext.P8 found that sanction has been validly accorded to prosecute the accused.

5. Learned trial Judge after marshalling the evidence, found that the prosecution case of criminal conspiracy is unsustainable. However, it was found that the appellant is liable for dishonestly or fraudulently misappropriating or otherwise converting to his own use the amount entrusted to him as a public servant. On this count, accused 1 and 2 were acquitted. In point No.4 it was found by the learned trial Judge that the appellant has committed the alleged offence. Point No.5 was decided against the prosecution.

6. Learned trial Judge relied on the oral and documentary evidence to find the guilt of the accused for the aforementioned offences. Reliance is placed on the testimony of PW1 and other relevant documents proved through PW1. Learned counsel for the appellant contended that the finding of the learned trial Judge that the deceased appellant unduly retained the public money and made the payment to the bank account only after undue delay are matters not proved by any acceptable evidence. Learned trial Judge mainly relied on the answers given by the 2nd accused CrI.Appeal No.283/2001 5 at the time of Section 313 Cr.P.C. examination. Learned trial Judge, as mentioned earlier, relied on testimony of PW1 and that of PW11 (investigating officer) to find the guilt of the appellant for the said offences. Considering the facts and circumstances of the case and after going through the evidence, I am of the view that the conviction of the appellant on the above score is legally justifiable. I do not find any reason to interfere with the conviction of the appellant.

7. Learned counsel for the appellant submitted that in spite of sending registered letter, the appellant did not turn up. The obvious reason for absence of the appellant is that he died almost six years ago. Having gone through the records carefully, I am satisfied that no interference is required in this matter. In the result, the appeal is dismissed. All pending interlocutory applications will stand dismissed.
A. HARIPRASAD, JUDGE. cks CrI.Appeal No.283/2001 6 A.Hariprasad, J.

CrI.Appeal No.283 of 2001

JUDGMENT

14h February, 2014.

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