

K. Vijayakumar Vs. State rep. by Dy. S.P Vigilance and Anti Corruption Bureau

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Court : Kerala

Decided On : Jan-08-2016

Judge : K. Ramakrishnan

Appeal No. : CRL. A. No. 528 of 2000

Appellant : K. Vijayakumar

Respondent : State rep. by Dy. S.P Vigilance and Anti Corruption Bureau

Judgement :

1. The accused in C.C.No.7/1997 on the file of the Enquiry Commissioner and Special Judge, Kozhikode is the appellant herein. The appellant was charge sheeted by the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Palakkad in Crime No.2/1994 of VACB, Palakkad alleging offences under sections 13(1)(c) and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act (hereinafter referred to as the 'P.C.Act'), 1988 and sections 409, 465 and 477 A of the Indian Penal code.

2. The case of the prosecution in nutshell was that the accused while working as Employment Officer of the Town Employment Exchange, Shornur in Palakkad district during the period 27.6.1991 to 10.2.1992 was entrusted with government money for disbursement of unemployment wages to eligible unemployed youths,

misusing his official position for his personal gain while discharging his duty as public servant, with fraudulent intention, misappropriated an amount of Rs.30,600/- by making false entries and also making alteration in the account book of the employment exchange for that purpose and thereby he had committed the offences punishable under sections 13(1)(c) and 13(1)(d) read with section 13(2) of the P.C. Act, 1988 and sections 409, 465 and 477 A of the Indian Penal Code. After investigation, final report was filed before the Enquiry Commissioner and Special Judge, Kozhikode, where it was taken on file as C.C.No.7/1997 for the aforesaid offences. 3. When the accused appeared before the court below, after hearing both sides, charge under sections 13(1)(c) and 13 (1)(d) read with section 13(2) of the P.C. Act, 1988 and sections 409, 465 and 477A of the Indian Penal Code was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 18 were examined and Exts.P1 to P33 were marked on their side. After closure of the prosecution evidence, accused was questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had also submitted a statement stating that he had not committed any offence and he has been falsely implicated in the case at the instance of PW1, who succeeded him as Employment Officer in that station, on account of some enmity between them as he had filed a complaint against him exposing his misconduct. Further, he was only supervising the activities of the staff and he had not handled the cash. The amounts were being disbursed by PW1 and others and he had no role in disbursing the amount. In fact, there were three counters through which the process is being done. In the first counter, the documents will be verified and in the second counter, sanction for payment will be recommended and he will be signing the same and thereafter, the payment will be made in the third counter and he had no occasion to see any of the beneficiaries. After taking charge, certain vouchers were removed by PW1 and the appellant has been falsely implicated in the case. In order to prove his case, DW1 was examined and Exts.D1 to D4(a) to (c) were marked on his side. After considering the evidence on record, the court below found that the accused had committed the offence of misappropriation of an amount of Rs.1,200/- by making false entries misusing his official position as

public servant, with fraudulent intention of causing unlawful gain to him and thereby he had committed the offence punishable under section 13(1)(c) read with section 13 (2) of the P.C. Act, 1988 and Sections 409, 465 and 477A of the Indian Penal Code and convicted him thereunder. But he was found not guilty for the offences under section 13(1)(d) read with section 13(2) of the P.C. Act and he was acquitted of that charge giving him the benefit of doubt. The court below sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months under section 13(1)(c) read with section 13(2) of the P.C. Act, 1988 and further sentenced to undergo simple imprisonment for one year and also to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months under section 409 of the Indian Penal Code and further sentenced to undergo simple imprisonment for 6 months each for the offence under sections 465 and 477 A of the Indian Penal Code and directed the sentences to run concurrently. Aggrieved by the same, the preset appeal has been preferred by the appellant, accused before the court below.

4. Heard Sri. K. Ramakumar, senior counsel appearing for the appellant and Sri. Rajesh Vijayan, learned Public Prosecutor appearing for the State.

5. Learned counsel for the appellant submitted that there is no evidence to show that he was entrusted with any amount and he was having domain over the amount which is the main ingredient to be proved for the purpose of convicting the accused for the offence of misappropriation. Further, the evidence will go to show that there was no possibility for the accused to handle the cash and he was only supervising the disbursement and the disbursement was made by PW1 and others. He was only counter signing the documents prepared by the official staff subordinate to him which were placed before him after verification of the documents of the beneficiaries and recommending payment of the amount. So if at all there is any fault on the part of the appellant, it is only dereliction of duty in making the supervisory work and nothing more. Further, there is no expert evidence obtained to show that disputed entries relied on by the court below were in the handwriting of the accused. In the absence of such evidence, it cannot be said that he had committed the offence of making false entries. Further, it is not

possible for the appellant alone to misappropriate the amount as the process of payment will be done only after complying with the formalities done through more than one person. So the defect in the calculation or alleged misappropriation cannot be fastened on the accused alone. He can only be found guilty for not doing his supervisory work in a proper manner and he cannot be convicted for that offence under sections 13(1)(c) read with section 13(2) of the P.C Act and sections 405, 477 A and 465 of the Indian Penal Code. The clerks, who were handling verification of documents, were not examined to prove their role in the transaction. Further, the evidence of PW1 will go to show that he had verified all the documents when he took charge from the accused and he was responsible for missing of vouchers, if any, and even according to the prosecution, the accused was not in possession of those vouchers or other documents as well. He had relied on the decision reported in *Raghavan K. v. State of Kerala* (2012 KHC 420), *S. Harnam Singh v. The State (Delhi Admn)* (AIR 1976 SC 2140), *Kajal Dey v. State of Tripura* (2014 KHC 3518), *Manilal v. State of Kerala* (1998 (2) KLT 101) and *Roshan Lal Rainav. State of Jammu and Kashmir* (1983 (2) SCC 429) in support of his case.

6. On the other hand, learned Public Prosecutor submitted that the fact that the accused was the Employment Officer during the relevant time and additional entries in the subsidiary cash book and main cash book were entered by the accused and there were duplicate entries made and with this modes operandi, he had misappropriated the amount entrusted to him for the purpose of payment of the amount to unemployed youths under the scheme. The court below had considered all the details, appreciated the evidence both oral and documentary in the right perspective and rightly convicted the accused for the offences alleged and no interference is called for.

7. The points that arise for consideration are:-

(i) whether the court below was justified in holding that the accused had with fraudulent dishonest intention, made false entries in the account books and created false documents?

(ii) whether the court below was justified in holding that the accused had misappropriated the amount of Rs.1,200/-?

(iii) whether the court below was justified in holding that the accused had dishonestly and fraudulently misappropriated the amount entrusted to him as a public servant for his own purpose?

(iv) whether the court below was justified in holding that the accused had committed the offence punishable under sections 13(1)(c) read with section 13(2) of the P.C. Act, 1988 and sections 465, 409 and 477A of the Indian Penal Code?

(v) If so, the sentence imposed is proper and legal?

8. Point Nos.i to iv:

Before going into the facts of the case, let me consider the precedents and the penal provisions dealing with the same.

9. Section 409 of the Indian Penal Code reads as follows:

8. 409. Criminal breach of trust by public servant, or by banker, merchant or agent:- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

10. Section 465 of the Indian Penal Code reads as follows:

465. Punishment for forgery:- Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

11. section 477 A of the Indian Penal Code reads as follows:

Section 477A. Falsification of accounts:- Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, willfully, and with intent to defraud, destroys, alters, mutilates or falsifies any [book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such [book, electronic record, paper writing], valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

12. Section 13(1)(c) of the P.C. Act reads as follows:

Section 13. Criminal misconduct by a public servant:(1) A public servant is said to commit the offence of criminal misconduct,-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

13. In order to attract offence under section 409 of the Indian Penal Code, it must be proved by the prosecution that the accused was working as an officer or clerk and he has been entrusted with some property, which he had in the capacity of a public servant, misappropriated the same for his purpose as defined under section 405 of the Indian Penal Code with fraudulent dishonest intention. In order to attract section 477 A of the Indian Penal Code, it must be proved by the prosecution that (a) while he was employed as a clerk, officer or servant, willfully, and with intent to defraud, destroys, alters, mutilates or falsifies any [book, electronic record, paper writing valuable] security or account which belongs to or is in the possession of the employer, or has been received by him for or on behalf of his employer (b) makes or abets the making of any false entry in, or omits or alters or abets the omission

or alteration of any material particular from or in, any such [book, electronic record, paper, writing] valuable security or account, and it must be proved by the prosecution that at the relevant time the accused was the clerk, officer or servant acting in that capacity, he destroyed, altered, mutilated or falsified by any book electronic record, paper, writing] valuable security or account which belongs to or his in the possession of his employer, or has been received by him for or on behalf of his employer and that he did so with an intend to defraud. It is also settled law that, mere making of false entry in the accounts alone is not sufficient to attract an offence under section 477 A of the Indian Penal Code. It must be further proved by the prosecution that, such an entry was made with an intent to defraud and it must be done willfully, intentionally or deliberately. This was so held in the decisions reported in Doraiswami Reddiar and Another v. State of Tamil Nadu (AIR 1951 Mad.894), Madhavan v. State (1973 KHC 157), S. Harnam Singh v. The State (Delhi Admn) (AIR1976 SC 2140), Kandipalli Madhavarao v. State of A.P (2007 KHC 6768), Sharad Birdhichand Sarda v. State of Maharashtra (1984 KHC 145).

14. Further in the decision reported in Ram Narayan Poply v. Central Bureau of Investigation (2003 KHC 939), the Supreme Court has held that the expression intent to defraud implies conduct coupled with intention to deceive or thereby cause injury.

15. In the decision reported in Raghavan K. v. State of Kerala (2012 KHC 420), it has been held that in order to attract an offence under section 13 (1)(c) of the P.C.Act, 1988, it must be proved by the prosecution that he was entrusted with certain property or that such property is in his control and that he dishonestly or fraudulently misappropriated or otherwise converted such property for his own use. He may be liable for punishment, if he allows any other person to do so as well. But in the decision reported in Kajal Dey v. State of Tripura (2014 KHC 3518), the Tripura High Court has held that in order to attract an offence under sections 468 or 471 of the Indian Penal Code, it must be proved by the prosecution that the documents under challenge were prepared by the accused for his own interest in the property. If the accused had no opportunity to deal with the money, but it was done through somebody else and documents were also prepared by such persons for the purpose of disbursement of the amount, then it

cannot be said that he had committed criminal breach of trust punishable under section 409 of the Indian Penal Code. It is also held in the same decision that mere writing chalan and preparation of cash book on the basis of said chalan will not amount to falsification of account warranting conviction under section 477 A of the Indian Penal Code. The same view has been reiterated in the decision reported in Manilal v. State of Kerala (1998 (2) KLT 101) relying on the decision of the Supreme Court in LT. Commr., Bombay v. Gwalior Rayon Silk Mfg.Co.Ltd (1992 SCC CrI.1786). Further, in the decision reported in Roshan Lal Raina v. State of Jammu and Kashmir (1983 (2) SCC 429), the Supreme Court has held that merely because the first accused had signed the draft and entrusted the same to the second accused and the second accused was dealing with the amount and he was only supervising the same and putting his signature, then it cannot be said that the first accused had committed the offence punishable under section 409 of the Indian Penal Code.

16. Further in the decision reported in Seeraveetil Muhammed Kunhi v. State of Kerala (2015 KHC 195), this Court has held that once the prosecution has proved the circumstances that the accused had done with an intention to defraud, especially when it was admitted that certain wrong entries were made in the bill by the accused and the amount was encashed, then the burden shifts to the accused to prove that it was a bonafide mistake and not willful or dishonest act of his part.

17. In the decision reported in M.K.Chandrasekharan Nair v. State of Kerala (2015 (4) KLJ 603), this Court has held that:

Once the entrustment of articles is proved and there is a direction to disburse the articles in a particular manner and if the accused failed to explain the loss or account for the same in the manner required for or gives an explanation which is false or improbable, then dishonest intention and misappropriation can be inferred and the accused can be convicted for the offence of criminal breach of trust and misappropriation. If this was done by a public servant, then it will amount to misconduct and he can be convicted for the offence of his misconduct under the Prevention of Corruption Act .

18. It is further observed in the same decision that merely because the prosecution failed to prove the modus operandi of the accused in causing loss or misappropriating the amount or articles entrusted with him or if the prosecution failed to prove the exact loss that has been caused, it cannot be said that the prosecution had not succeeded in establishing the guilt of misappropriation against the accused beyond reasonable doubt, relying on the decisions reported in Jaikrishnadas Manohardas Desai and another v. State of Bombay (AIR 1960 SC 889), Krishan Kumar v. Union of India (AIR 1959 SC 1390), State of Kerala v. Vasudevan Namboodiri (1987 (2) KLT 541) and Bagga Singh v. State of Punjab [1996 CrI.L.J.2883 (SC)]. With the above principles in mind, the case in hand has to be considered on the basis of materials available.

19. The case of the prosecution in nutshell was that the accused was working as the Employment Officer of Town Employment Exchange, Shornur in Palakkad district during the period from 27.6.1991 to 10.2.1992 and he was entrusted with government money for disbursement of unemployment wages to eligible unemployed youths and he with dishonest intention, fraudulently misappropriated an amount of Rs.30,600/- by way of making false entries and also alteration in the entries in the account book of the employment exchange. Ext.P2 is the copy of the Kerala Unemployment Assistance and Self Employment Scheme, 1982 dealing with the procedure for selection of persons and procedure for disbursing the amount etc. As per Rule 7 of the said Scheme, Director of Employment would place at the disposal of select banks sufficient funds for disbursement of unemployment wages and the bank would disburse the amount. As per Government Order, the Employment Officer of the employment exchange were entrusted with the work of disbursement of the amount. For that purpose, the amounts will be placed at the disposal of the Employment Officer. The monthly allowance payable for a month was fixed as Rs.50/- and subsequently, it was enhanced to Rs.60/-. As per the Rules, the amount will be withdrawn by the Employment Officer and it will be deposited in the Government Treasury, Ottapalam in a personal deposit account in the name of the Employment Officer of Town Employment Exchange, Shornur and days will be fixed for payment of the amount to the beneficiaries after selection of the beneficiaries and on that date the amount will be disbursed to the beneficiaries. The accused as the Employment

Officer of Town Employment Exchange, Shornur as per the self drawn cheque dated 30.12.1991 had withdrawn Rs.50,000/- from the Sub Treasury, Ottapalam on the same day evidenced by Ext.P20 inner foil of the said cheque and also withdrawn another amount of Rs.50,000/- as per another self cheque dated 7.1.1992 encashed on 8.1.1992 from the Sub Treasury, Ottapalam evidenced by Ext.P21 of the inner foil of the said cheque and these cheques were drawn by the accused in the capacity as Employment Officer of Town Employment Exchange, Shornur and entrusted the same to PW1, the Assistant Employment Officer, who later became the Employment Officer in the place of the accused for the purpose of withdrawal of the amount and he had withdrawn the amount and entrusted the same to the accused and they were entered in Ext.P4 cash book at pages 136, 137, 140 and 141 respectively.

20. Thereafter when PW1 took charge as Employment Officer on 10.2.1992, he found some correction in entry regarding payment from 29.12.1991 to 13.1.1992 and he had also found some irregularity in Ext.P4 cash book and he also found some irregularities in payment in Ext.P3 subsidiary cash book maintained and he had intimated the same to the Employment Director and the Employment Director had sent Ext.P1(a) letter dated 11.5.1992 to verify the accounts through PW2, the Divisional Employment Officer as per Ext.P1(b) letter and he had conducted inspection of the documents and gave Ext.P1(c) report showing the irregularities. He had also conducted a detailed enquiry and found that on 31.12.1991 names of ten persons were added by the accused and misappropriated an amount of Rs.1,200/- and again on 9.1.1992 and 10.1.1992 he had made false entries adding more persons than the persons to whom the amounts were paid and misappropriated the amount to the tune of Rs.30,600/-.

21. According to the prosecution, on 31.12.1991, the persons shown as serial Nos. 1 to 139 in Ext.P3 subsidiary cash book entered by PW12 alone were really paid the amount at the rate of Rs.120/- per person being the amount due to them for two months and after completing the entries by PW12 in Ext.P3, the accused had made entries with Serial Nos.140 to 149 and misappropriated an amount of Rs.1,200/-. As per the records, only 139 persons were paid wages totalling an amount of Rs.16,680/-, whereas the accused had shown 149 persons as persons

received the amount and shown the amount of Rs.17,880/- and misappropriated the balance amount. Further, on 9.1.1992, PW12 had entered serial number up to 120 and that was entered in pages 167, 168, 169 and 170 of Ext.P3 and entry regarding the payment made on 10.1.1992 was entered in page 161 of the same book. But in pages 49 to 55 serial Nos. 121 to 275 were made as persons to whom amounts were paid on 9.1.1992 and according to the prosecution, serial Nos. 138 to 275 were fake entries. Similarly, for the amount paid on 10.1.1992 which were seen recorded in pages 171 to 179 of Ext.P3 subsidiary cash book, serial Nos. 1 to 137 alone were the real persons to whom the amounts were paid and remaining entries with serial Nos.138 to 265 were made subsequently by the accused and those payments were not supported by any voucher and PW5 had given Ext.P28 report showing these aspects to the Vigilance Department, on the basis of which Ext.P29 First Information Report was registered as Crime No.2/1994 under sections 13(1)(c) and (d) read with section 13 (2) of the P.C. Act and sections 403, 409, 465, 468 and 477 A of the Indian Penal Code by PW15.

22. The investigation in this case was conducted by PW17. He questioned the witnesses and recorded their statements. He seized Ext.P1 file containing Ext.P1(a),(b) and (c), Ext.P2 Government Order in respect of the scheme, Ext.P3 subsidiary cash book, Ext.P4 main cash book, Ext.P5 statement given by PW1 regarding the misappropriation committed, Exts.P6, P8, P10, P13 and P16 registers relating to the beneficiaries under the Scheme, Exts. P7, P9, P12, P14, P17 and P18 vouchers said to have been given by Pws 6, 7, 8, 9, 10, 11, 13, 14 and Exts.P20, P21 counter foil of the cheques, Ext.P23 attendance register, Exts.P25 and P26 as per Exts.P30 to P32 seizure mahazars. The records were entrusted to PW1 as per Ext.P27 kaichit. He obtained Ext.P33 sanction for prosecuting the accused under the P.C.Act and also under the Indian Penal Code under section 19 of the P.C.Act and Section 197 of the Code proved by PW18. It was signed by The Additional Chief Secretary and the documents were verified and final report was filed by PW16.

23. The court below, after appreciation of evidence, found the appellant not guilty for the offence under section 13(1)(d) of the P.C.Act and acquitted him of that charge. The court below also found that the prosecution has failed to prove that

the accused had committed misappropriation of amounts as claimed by the prosecution in respect of payments made on 9.1.1992 and 10.1.1992 but found that the prosecution could not establish that the accused had committed misappropriation of amount of Rs.1,200/- in respect of 10 persons by making false entries in Exts.P3 and P4 and misappropriated an amount of Rs.1,200/- and convicted him for that offence alone. The question to be considered is as to whether the finding of the court below to that extent is proper and whether that requires interference at the hands of this court.

24. It is an admitted fact that the appellant was working as Employment Officer of Town Exchange, Shornur in Palakkad district during the period 27.6.1991 to 10.2.1992. It is also an admitted fact that he was in charge of disbursement of the amount entrusted for the purpose of disbursement of unemployment wages to eligible unemployed youths and accordingly on 30.12.1991 and 7.1.1992 he had encashed Rs.50,000/- each from the Sub Treasury, Ottapalam from the account maintained in the name of the Employment Officer evidenced by Exts.P20 and P21 counter foil of the cheque leaves through PW1 and those amounts were entered in Ext.P4 cash book at page Nos.136, 137, 140 and 141 respectively. So it is clear from this that the amount was entrusted to PW1 for the purpose of disbursement of unemployment wages to the eligible persons and he had come in the domain over the amount as well. It is also in a way admitted that it is the responsibility of the accused to account for the amount so entrusted and disbursement of the amount to eligible unemployed youths under the Kerala Unemployment Assistance and Self Employment Scheme, 1982. So it is clear from the above that the accused was entrusted with government money and being an Employment Officer, he was acting in the capacity as public servant defined under the Act.

25. The case of the prosecution was that on 31.12.1991 in fact only 139 beneficiaries were paid the amount at the rate of Rs.120/- per person and only an amount of Rs.16,680/- was paid to the beneficiaries on that date. According to the prosecution, Sl.Nos. 140 to 149 entered in Ext.P3 subsidiary cash book at pages 43 to 47 were fake entries made by the accused and an amount of Rs.1,200/- was dishonestly with fraudulent intention as a public servant withdrawn by the accused

and misappropriated by him by entering an amount of Rs.17,880/- in Ext.P4 cash book so as to make it appear that an amount of Rs.17,880/- was paid to a total number of 149 persons at the rate of Rs.120/- per person, whereas in fact only 139 persons were paid and an amount of Rs.16,680/- was really paid to the beneficiaries. According to PW1, entries up to Sl.Nos. 1 to 139 in Ext.P3 subsidiary cash book were written in the handwriting of PW12, the typist who was entrusted to write the same and after finishing the payment to the beneficiaries on 30.12.1991, the subsidiary cash book was entrusted to the accused with the balance amount and the accused had made the subsequent entries namely Sl.Nos. 140 to 149 and shown the amount paid as Rs.17,880/- in Ext.P4 cash book instead of Rs.16,680/- actually paid and remitted the balance amount in the treasury.

26. It is true that the accused had denied the entries and according to him, he was not responsible for those entries and he had not handled the amount. It is true that the disputed entries were not subjected to expert opinion to find out as to whether the handwriting of the disputed entries were that of the accused. In order to prove false entries, it must be proved by the prosecution that the entries were made by the accused with dishonest intention to misappropriate the amount and he had with that intention made false entries and misappropriated the amount. It is not always necessary that expert opinion must be obtained for that purpose. The handwriting of the persons can be proved through the persons who were acquainted with the handwriting of the accused as well.

27. PW1 was working as Junior Employment Officer at the relevant time under the accused and PW12 was working as Typist during the relevant time in the same office. PW12 had categorically stated that she had written the entries up to Sl.No.139 in Ext.P3 on 30.12.1991 and the book was entrusted to the accused thereafter and the balance entries were written in the handwriting of the accused. She had identified the handwriting of the disputed entries as that of the accused. There is no enmity brought out for PW12 to give any false evidence against the accused. PW1 also identified the hand writing of disputed entries as that of the accused. The accused had no case that PW1 and PW12 cannot identify his handwriting and they are not competent to identify the same as well.

28. Further, PW3 had deposed that in Ext.P1 the statement submitted by the accused to the Joint Director of Employment regarding the complaint of misappropriation alleged against him is incorporated at pages 323 to 325 and this aspect was not challenged in the cross examination as well. The court below had verified the handwriting at pages 323 to 325 in Ext.P1 file and compared the same with the handwriting in respect of entries in Ext.P3 at page 47 with Sl.Nos. 140 to 149 and came to the conclusion that it was in the handwriting of the accused and they are similar and identical. Further, under this writing, the total amount was entered by the accused in his handwriting in red ink and put his signature and this was carried out in Ext.P4 cash book as well. This Court also compared the handwriting at pages 323 to 325 in Ext.P1 namely the statement given by the accused in respect of the allegations made against him in Ext.P1 file with that of the disputed entries and this Court also satisfied that the handwriting in both are identical and similar.

29. Further, the accused cannot escape from the liability merely on the ground that he had not handled the amount and he has got only supervisory jurisdiction over the same. It is true that as per the evidence of the beneficiaries examined as Pws 6 to 11 and 13, there were three counters and in one counter the documents will be verified and entries in Ext.P3 subsidiary cash book will be done and vouchers will be prepared at the second counter and payment will be made at the third counter and according to counsel for the appellant, he is not responsible for making the entries etc. But it will be seen from the evidence of PW12 that after making entries in Ext.P3 on 31.12.1991, the book was entrusted to the accused and it was thereafter that he had made the subsequent entries namely Sl.Nos.140 to 149 and it was thereafter that the final amount was entered by the accused in the subsidiary cash book - Ext.P3 and main cash book - Ext.P4. So those entries were admitted by the accused as well. So it is clear from this that it was the accused, who was handling the amount and after disbursement from the counter, the balance amount came to his hand and he was the person who was entering the amount in the cash book as well after verification. So it is the duty of the accused to account for the amount entrusted to him and it is for him to see that the amount is disbursed in the manner in which it was intended to be disbursed and any irregularity found in that will fasten on him the liability of misappropriation, if it

is not properly explained. He had no explanation as to how the false entries have come in the books. He had no specific case as to who had done those entries as well. So in the absence of such evidence, it can only be presumed that it was he, who had done the same with a dishonest intention of misappropriating the amount entrusted to him in the capacity as an officer of a public office as contemplated under sections 409 and 465 of the Indian Penal Code and Section 13(1)(c) of the P.C. Act.

30. Serial No.140 is in respect of one Smt. Indira K with Reg. No.3346/89 as seen in Ext.P10 register showing the registration of beneficiaries. She was paid Rs.120/- as per voucher No.293. Her Roll Number is shown as 1194. In Ext.P10 she had received Rs.120/- on 7.1.1992 as per voucher No.2239 and this was entered in Ext.P3 subsidiary cash book at page No.159 as Sl.No.202. So there is no possibility for her to receive any amount on 31.12.1991 but this was seen entered as Sl.No.140 at page 47 of Ext.P3 and this shows that it was paid as per voucher No.2239 but that voucher is not seen as well. So it can only be concluded, in the absence of any explanation given by the accused, that it was a false entry made by the accused and this amount was misappropriated by him.

31. Sl.No.141 relates to one Sri.V.T. Chandran with Roll No.2108 seen entered in Ext.P6 register. It is seen from Ext.P3 that he was paid an amount of Rs.120/- on 31.12.1991 as Sl.No.29 with voucher No.203 but his name was again entered as Sl.No.141. The accused had no case that it was made by mistake. So it is also clear from this that Sl.No.141 entry was a bogus entry deliberately made by the accused to get the amount and he retained the amount and that amount was also misappropriated by the accused.

32. Sl.No.142 relates to one Smt. Ambika V, who was examined as PW6 and entry relating to her is made in Ext.P8 with Roll No.809. It will be seen from Ext.P8 that an amount of Rs.120/- as per voucher No.2203 was paid on 7.1.1992 and this was entered in Ext.P3 at page 154 and this was recorded as Sl.No.42 in Ext.P3 on 7.1.1992. For the very same payment, it was again entered as Sl.No.142 at page 47 of Ext.P3 with voucher No.256 on 31.12.1991. PW6 had categorically stated that she had received the amount only once. So it is clear from this that Sl.No.142

in page 47 of Ext.P3 is a false entry made by the accused for the purpose of misappropriating an amount of Rs.120/- and misappropriated the amount and thereby he had committed the offence.

33. Similarly Sl.No.143 relates to one Smt. P.K. Mallika, who was examined as PW9 and details regarding her is seen in Ext.P8 at page 148 with Roll No.818. In fact she had received Rs.120/- on 1.1.1992 as per voucher No.356 and it was entered in page 122 as Sl.No.49 in Ext.P3. The same amount was said to have been paid on 31.12.1991 as Sl.No.143 and that was also a false entry as PW9 also stated that she had received the amount only once. This aspect was not challenged in cross examination as well. So, it was also made by the accused with a dishonest intention to misappropriate the amount and accordingly he had misappropriated the amount as well and he has no case that this amount was not paid and it is only a bonafide mistake.

34. Sl.No.144 relates to one Smt. Soumini M.K, details of whom was entered in Ext.P6 with Reg.No.2102 and she received Rs.120/- on 31.12.1991 as per voucher No.84 and this was recorded in Ext.P3 at page 44 as Sl.No.36 but subsequently Sl.No.144 was entered with her name with a different voucher number. So it would only be a false entry made by the accused for the purpose of making misappropriation.

35. Sl.No.145 relates to Smt.Sathi K, who was examined as PW8 and details of her payment were made in Ext.P13 register with Roll No.2255. She was paid Rs.120/- on 31.12.1991 as per voucher No.250 and Ext.P14 is the said voucher. This payment was recorded in Ext.P3 at page 44 as Sl.No.4. Again an entry was made in respect of her on the same day as Sl.No.145. She had deposed that she had received the amount only once. So it would only be a false entry made by the accused with an intention to misuse the amount for himself.

36. Sl.No.146 is in respect of Sri.Ramakrishnan K, who was examined as PW11 and entries relating to him is entered in page 18 of Ext.P8. He was paid Rs.120/- on 31.12.1991 as per voucher No.38 and he had deposed that he had not received the amount on that day and this amount was not entered in Ext.P8 register as well against him. He was not paid any amount after 21.3.1986 as per

Ext.P8 register. So it is a false entry made by the accused for the purpose of making misappropriation of the amount.

37. Sl.No.147 relates to one Smt. Padmini T, with Roll No.2254 entered in Ext.P13 register. She was paid an amount of Rs.120/- on 31.12.1991 as per voucher No.251 and she was shown as Sl.No.7 in page 43 of Ext.P3. But her name was again shown as Sl.No.147 as well. The accused had no case that it was a duplicate entry made by mistake. So it would only be a false entry made by the accused for the purpose of misappropriating the amount.

38. Sl.No.148 is in respect of one Smt. Thankam K.D with Reg.No.5533/84. But there was no such person eligible for payment shown in any of the registers maintained in the exchange. So it would only be a false entry made by the accused for the purpose of misappropriating the amount.

39. Sl.No.149 relates to one Smt.Baby Vilasini K.P, who was examined as PW10 with Reg.No.1125 entered in Ext.P16. As per entries in Ext.P16, she was paid Rs.120/- on 31.12.1991 as per voucher No.92 which was marked as Ext.P17 and this was shown as Sl.No.57 in page 44 in Ext.P3. But again her name was entered with Sl.No.149 with another voucher number and she denied having received the amount twice. This aspect was not challenged in cross examination as well. So this could only be a false entry made by the accused to misappropriate the amount.

40. So from the evidence, it is clear that the accused had made false entries with Sl.Nos.140 to 149 in respect of payment made on 31.12.1991 with a dishonest intention of misappropriating the amount of Rs.1200/- and misappropriated the same for his purpose as a public servant with whom the amounts were entrusted for disbursement in a particular manner as per in Ext.P2 circular under the scheme mentioned therein and thereby he had committed the offences punishable under sections 465, 477A and 409 of the Indian Penal Code and Section 13(1)(c) read with section 13(2) of the P.C.Act, 1988 and the court below was perfectly justified in convicting him for the said offence and this Court did not find any reason to interfere with the finding of the court below on this aspect.

41. Point No.v:

Learned counsel for the appellant submitted that the sentenced imposed is harsh and prayed for leniency. The court below had sentenced the appellant to undergo simple imprisonment for one year and also to pay a fine of Rs.10,000/- in default, to undergo simple imprisonment for six months under section 13 (1)(c) read with section 13(2) of the P.C. Act, 1988 and further sentenced to undergo simple imprisonment for one year and also to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months under section 409 of the Indian Penal Code and further sentenced to undergo simple imprisonment for six months each under sections 465 and 477A of the Indian Penal Code and directed the substantive sentences to run concurrently.

42. The court below had considered the fact that he is a heart patient and undergoing treatment for chest pain and he was having wife and two small children at the time when the judgment was pronounced. While imposing the sentence, only minimum sentence of imprisonment was awarded for the offence under section 13(1)(c) read with 13(2) of the P.C. Act. Further, persons who have been convicted for offence under the provisions of the P.C.Act does not deserve any undue sympathy as showing undue sympathy will only lead to loss of faith of public in criminal justice delivery system. The court is not expected to further reduce the minimum sentence provided under the Statute as court has no power to do the same as well. So under the circumstances, it cannot be said that the sentence imposed is harsh and the court below also directed the substantive sentences to run concurrently. So under the circumstances, this Court finds no reason to interfere with the sentence imposed by the court below as maximum leniency has been shown by the court below in awarding the sentence and it cannot be said to be excessive or harsh.

In the result, this appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the court below against the appellant under sections 13(1)(c) read with section 13(2) of the P.C. Act and Sections 409, 465 and 477 A are hereby confirmed. Set off is allowed for the period of detention undergone by him as under trial prisoner under section 428 of the Code.

Office is directed to communicate a copy of this judgment to the concerned court at the earliest.

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