

D.Ramachandran vs State of Kerala

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Court : Kerala

Decided On : May-09-2022

Judge : Honourable Mr. Justice Sunil Thomas

Appeal No. : CRL.A/433/2001

Appellant : D.Ramachandran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944
CRL.A NO. 427 OF 2001 AGAINST THE ORDER/JUDGMENT IN CC
15/1999 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,
TRIVANDRUM APPELLANT/1ST ACCUSED: SRI.D.RAMACHANDRAN,
FORMERLY UD CLERK, PRIMARY HEALTH CENTRE,
KANNYAKULANGARA, THIRUVANANTHAPURAM BY ADVS.
SRI.ABRAHAM MATHEW (VETTOOR) SRI.ANIL ABEY JOSE
SMT.MERLY THOMAS SMT.ARYA B. SMT.ELIZABETH OLIVER
RESPONDENT/S: STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

OTHER PRESENT: SPL.GP SRI.A RAJESH THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 15.11.2019, ALONG WITH CRL.A.429/2001, 430/2001 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 429 OF 2001 AGAINST THE ORDER/JUDGMENT IN CC 12/1999 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, TRIVANDRUM APPELLANT/1ST ACCUSED: SRI.D.RAMACHANDRAN, FORMERLY UD CLERK, PRIMARY HEALTH CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM BY ADVS. SRI.ABRAHAM MATHEW (VETTOOR) SRI.J.JOHNSON RESPONDENT/S: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM PP ADV.A.RAJESH THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 15.11.2019, ALONG WITH CRL.A.427/2001 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944 CRL.A NO. 430 OF 2001 AGAINST THE ORDER/JUDGMENT IN CC 13/1999 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, TRIVANDRUM APPELLANT/1ST ACCUSED: SRI.D.RAMACHANDRAN, FORMERLY UD CLERK, PRIMARY HEALTH CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM BY ADVS. SRI.ABRAHAM MATHEW (VETTOOR) SRI.C.B.SREEKUMAR RESPONDENT/S: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM PP

ADV.A.RAJESH THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 15.11.2019, ALONG WITH CRL.A.427/2001 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944
CRL.A NO. 433 OF 2001 AGAINST THE ORDER/JUDGMENT IN CC
14/1999 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,
TRIVANDRUM APPELLANT/1ST ACCUSED: SRI.D.RAMACHANDRAN,
FORMERLY UD CLERK, PRIMARY HEALTH SRI.D.RAMACHANDRAN,
FORMERLY UD CLERK, PRIMARY HEALTH CENTRE,
KANNYAKULANGARA, THIRUVANANTHAPURAM

CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM BY
ADVS. SRI.ABRAHAM MATHEW (VETTOOR) SRI.ANIL ABEY JOSE
SMT.ELIZABETH OLIVER SMT.MERLY THOMAS SMT.ARYA B.
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM PP ADV.A.RAJESH THIS CRIMINAL APPEAL HAVING
COME UP FOR ADMISSION ON 15.11.2019, ALONG WITH
CRL.A.427/2001 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944
CRL.A NO. 435 OF 2001 C.C.No.16 of 1999 OF THE COURT OF
ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
THIRUVANANTHAPURAM APPELLANT/FIRST ACCUSED:
SRI.D.RAMACHANDRAN, FORMERLY UD CLERK, PRIMARY HEALTH

CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM BY
ADVS. SRI.ABRAHAM MATHEW (VETTOOR) SRI.ANIL ABEY JOSE
SMT.ELIZABETH OLIVER SMT.MERLY THOMAS SMT.ARYA B.
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM PP ADV.A.RAJESH THIS CRIMINAL APPEAL HAVING
COME UP FOR ADMISSION ON 15.11.2019, ALONG WITH
CRL.A.427/2001 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944
CRL.A NO. 437 OF 2001 AGAINST THE ORDER/JUDGMENT IN CC
17/1999 OF ENQUIRY COMMISSIONER & SPECIAL
JUDGE,TRIVANDRUM APPELLANT/1ST ACCUSED:
SRI.D.RAMACHANDRAN, FORMERLY UD CLERK, PRIMARY HEALTH
SRI.D.RAMACHANDRAN, FORMERLY UD CLERK, PRIMARY HEALTH
CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM

CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM BY
ADVS. SRI.ABRAHAM MATHEW (VETTOOR) SRI.ANIL ABEY JOSE
SMT.ELIZABETH OLIVER SMT.MERLY THOMAS SMT.ARYA B.
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM PP ADV.A.RAJESH THIS CRIMINAL APPEAL HAVING
COME UP FOR ADMISSION ON 15.11.2019, ALONG WITH
CRL.A.427/2001 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 438 OF 2001 AGAINST THE ORDER/JUDGMENT IN CC 18/1999 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,TRIVANDRUM APPELLANT/1ST ACCUSED: SRI.D.RAMACHANDRAN, FORMERLY UD CLERK, PRIMARY HEALTH SRI.D.RAMACHANDRAN, FORMERLY UD CLERK, PRIMARY HEALTH CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM CENTRE, KANNYAKULANGARA, THIRUVANANTHAPURAM BY ADVS. SRI.ABRAHAM MATHEW (VETTOOR) SRI.ANIL ABHEY JOSE SMT.ELIZABETH OLIVER SMT.MERLY THOMAS SMT.ARYA B. RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM HIGH COURT OF KERALA, ERNAKULAM PP ADV.A.RAJESH THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 15.11.2019, ALONG WITH CRL.A.427/2001 AND CONNECTED CASES, THE COURT ON 09.05.2022 DELIVERED THE FOLLOWING:

COMMON JUDGMENT

The first accused in C.C.Nos.15 of 1999, 12 of 1999, 13 of 1999,

14 of 1999, 16 of 1999, 17 of 1999 and 18 of 1999 respectively of the court of Enquiry Commissioner and Special Judge, Thiruvananthapuram for offences punishable under sections 5(1)(c) and 5(1)(d) r/w 5(2) of the PC Act 1947 and section 477A and section 409 r/w 34 IPC, who is aggrieved by the conviction and sentence, has preferred these appeals.

2. The appellant was working in the Primary Health Centre,

Kanniyakulangara during the period 1980 to 17.07.1988 and the second accused was working in the PHC, Kanniyakulangara from 16.04.1986 to 31.05.1988. The appellant was engaged as a UD Clerk and the second accused was the Medical Officer of the above PHC. The crux of the prosecution allegation in all the above cases was that, during the period from 12.05.1986 to 26.03.1988, the accused,

being public servants, with the common intention of obtaining undue pecuniary advantage to themselves, encashed various amounts on 21 occasions for conducting 21 family welfare camps conducted on various dates, and by presenting 21 contingent bills at the sub Treasury, Nedumangad and without accounting the encashment details in the cash book thus, jointly misappropriated amounts by falsifying the records of the

Primary Health Centre. In all the above criminal cases, specified amounts were allegedly misappropriated by both the accused together. On the basis of the crime registered, separate investigations were conducted and final reports were laid in all the seven cases. C.C.No.16 of 1999 was tried independently and by judgment dated 05.05.2001, both the accused were found guilty, convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine. Thereafter, on request of the parties, all the remaining cases were tried jointly treating C.C.No.12 of 1999 as the lead case. By a common judgment, both the accused were found guilty, convicted and sentenced to undergo imprisonment for definite periods and also to pay fine for each of the offences found against them.

3. On the side of the prosecution, they examined PWs.1 to 11

and marked Exts.P1 to P32. On the side of the accused, DW1 to DW2 were examined and Exts.D1 to D20 were marked in C.C.No.12 of 1999. In C.C.No.16 of 1999, prosecution had examined PWs.1 to 11 and marked Exts.P1 to P21(a). On the side of the accused, DWs.1 and DW2 were examined Exts.D1 to D16 were marked.

4. Aggrieved by the conviction and sentence, the first accused has preferred these appeals. It was reported that the second accused had also filed separate appeals, but he died during the pendency of those appeals. Since common questions of fact and law arise in all these criminal appeals, all were heard together and is disposed of, by a common judgment.

5. The facts disclose that, during the relevant period, the first

accused was the UD clerk and the second accused was the Medical Officer cum DDO of the PHC. It is evident from the records that, family planning camps were conducted regularly on dates which were fixed in advance. Amounts were paid to the beneficiaries who underwent laproscopy, vasectomy etc and payments were also made as promoters commission to the promoters. Publicity charges were also included in the expenses. As per the normal practice, amounts required for each camp would be fixed in advance and drawn from the exchequer. Amounts were allotted as per the letter of allotment to each PHC. Approximate amount required for the camp will be calculated in advance and drawn on the previous day. First accused would prepare the contingent bill. Amounts were disbursed to the beneficiaries at the

prescribed date at the camp. Signature of the beneficiaries were obtained in the acquittance register on the relevant day. The balance amount was entrusted to the first accused, who in turn was expected to account for it.

6. Admittedly, specified amounts were drawn in advance for the purpose of the family planning camp during the periods 12.05.1986

to 26.03.1988. The crux of the allegation was that, the amounts so received by the first accused under the directions of the second accused were disbursed, but the balance amount was not accounted for by the first and second accused and thereby they misappropriated it.

7. To establish the allegation that the amounts specified in the

final report were withdrawn as advance for conducting the camp, the prosecution relied on the oral evidence of PW1, who was the Junior Superintendent of the Internal Audit Section of the Directorate of Health service. According to him, he had conducted audit during the period from 01.08.1988 to 05.08.1988 and from 08.08.1988 to 17.08.1988 regarding the drawals of the amount and accounting of those amounts during the disputed period. Ext.P1 is the certified copy of the audit note prepared by PW1. PW1 in his evidence deposed that the contingent bills and treasury bill books were not available during the time of inspection and hence, he collected the details from the Sub Treasury Office, Nedumangad. He had also

collected the details from

the cash book kept in the Primary Health Centre. PW3 who is the Assistant Surgeon of the PHC had deposed in terms of the employment of the first accused and that, he used to maintain the register in the PHC.

8. Essentially, to prove the prosecution allegation, they relied

on 3 records, which are the subsidiary registers marked as Exts.P2, P4, P5 to P12 and P14, Ext.P15 acquittance register and Exts.P3 and P13 cash books. To support the above evidence regarding the receipt of the money and also the non accounting, the prosecution essentially relied on the oral testimony of PW1, PW2, PW4 the DTO of Thiruvananthapuram and PW12 the STO of Nedumangad.

9. In the absence of the evidence regarding the contingent bills and treasury bill books, the prosecution heavily relied on other materials to establish it. Oral evidence of the witness indicate that the

subsidiary register was incorporated, which was prepared in quadruplicate. One copy used to be forwarded to the DTO, another and the original voucher were forwarded to the AG Office and the remaining kept in the office.

10. PW2 in his evidence has identified the handwriting, the initials and signatures of A1 and also the initials of the signatures of A2 found in Ext.P3 and P13 cash books. It was admitted by accused Nos.1

and 2. PW2 in his evidence, had stated that the participants in the family welfare camp who have to be paid the amounts as incentives etc, never used to come to the PHC, whereas the amounts were disbursed at the camp site itself. It was also brought on record that the amounts

required for payment of such beneficiaries used to be entrusted by A1 to the Block Extension Educator, under the directions of A2 and BEE used to disburse the amount to the beneficiaries at the welfare camp. The evidence also show that, after disbursement of the amount to the beneficiaries for which, entries were made in the acquittance register, the signature and thumb impressions of the

beneficiaries were obtained. The balance amount and the acquittance register would be given back to the first accused. Therefore, it was the duty of the first accused to check the amount disbursed to the beneficiaries as per the acquittance register, to ensure that it was correct and to ensure that, he had received the balance amount. The evidence of PW2 and PW3 cumulatively showed that, if there was any undisbursed amount, it would be redeposited in the treasury.

11. Before the trial court, one contention which was set up and

was pursued before this Court also was that two other registers were maintained in addition to the cash book and the subsidiary registers. It was considered by the trial court in paragraphs 20 and 22 of the

judgment of the trial court. The court also relied on the evidence of

PW4. The court noted that, all the subsidiary registers were certified by her as true and correct. On the facing sheet of these registers, it was certified by her that the bundle contains the relevant number of sheets

noted. The evidence given by PW4 regarding the fact that all the subsidiary registers were duly maintained after compiling or being bundled up properly was accepted by the court below as an unimpeachable evidence. Ext.P2 sub register was verified by the court below. After referring to the various entires made therein, the Court noted that, it was true that the person who made the entries therein was not been examined. However, relying on the evidence tendered by PW14, the then DTO, it was concluded that it was received in the office in the usual course and within the time prescribed and it was maintained correctly and properly. There is no reason to disbelieve this

explanation of the court below. Regarding Exts.P2, P3 and P4, the court below concluded that, all those documents were kept in the regular course of business. The contention set up by the accused that the above document cannot be accepted since it was not signed by anybody, cannot also be accepted. PW1 has also tendered evidence that these were the only registers maintained in the office

and the contention of the accused that two registers were simultaneously kept during the relevant time was rightly rejected by the court below.

12. The accused referred to Exts.D7 and D8 to contend that the above document show that the prosecution case was reliable. Ext.D7 was a circular dated 02.09.1986. As per this, primary health centres were directed to maintain a subsidiary cash book for recording the

transactions pertaining to family welfare fund. The trial court, after referring to the entire records, concluded that the contention that there was a separate cash book relating to amounts received and expended under the family welfare account was not believable. It was held that even the separate subsidiary cash book was maintained, still, total amount shown in the subsidiary cash book should be entered in the General Cash Book and that has to be verified everyday.

13. Regarding the defence set up, on the face of Ext.D8, the

Court held that, main contention was that, it was a photocopy of the report of inspection stated to have been conducted by the audit party of the accountant. Being a photocopy, it was rightly rejected by the court

below. The court below also rightly rejected the contention that, allegations contained in Ext.P4 does not get support from Ext.D8 report and hence Ext.P1 cannot be relied on. The Court rightly rejected it by holding that, merely because one audit party has not found out certain irregularities, does not itself make the other report unbelievable.

14. Another contention set up by the accused was that, all the

records were handed over by the first accused at the time of demitting the office. He contended that, the person who succeeded the second accused was in enimical terms towards both the accused and that, in fact he had assaulted the first accused and the crime was registered thereupon. Relying on the FIR as well as the insurance certificate, he contended that the successor had reasons to maintain enmity towards him. Merely because the successor was maintaining enmity towards the petitioner by itself was not a reason to for not holding that, he

did not produce the sufficient records entrusted with him.

15. The learned counsel for the appellant pointed out that

Dr.Saseendran was the charge medical officer at the time of audit and he was the person who had received the registers from the first accused when the charge was handed over to him. It was stated that, Saseendran was not questioned nor was he examined in court of law. Prosecution has no case that all the records, registers etc which were been maintained in the PHC had not been handed over to Saseendran when charge was handed over to him. It was also pointed out by the appellant that the materials on record show that, Saseendran was in enimical terms with the appellant and had attacked the appellant. Consequently a crime was registered as C.C.No.5615 of 1998. It was further pointed out that the prosecution has no case as to why Saseendran had not produced the relevant records including the treasury bills. Hence, it was vehemently contended by the learned counsel for the appellant that the court below ought to have looked into

the evidence adduced by the prosecution to see whether there was suppression of evidence causing prejudice to the accused and to weigh the evidence adduced by the prosecution, considering the preponderance of probabilities. It was also argued that the court below ought to have found that since the entire records were not produced, it should have gone in favour of the appellant.

16. It is true that there are materials to show that the relationship between the appellant and Dr.Saseendran was strained. There is also no dispute that some documents including the treasury

bills were not available. How it went missing could not also been ascertained by the investigating agency. Though the learned counsel vehemently contended that, Saseendran had willfully suppressed it and that the suppression of the important documents should have gone in favour of the appellant and the court should have ordered an acquittal of the accused, I am not attracted by the above argument. There is no convincing evidence to show that the treasury bills and other

documents which are not available, were in the custody of Dr.Saseendran and that, he has fully suppressed it. In the absence of anything to show that, had the above documents been produced, it would have gone in favour of the accused, no such presumption as contended can be advanced. It was also to be noted that, while

appreciating the evidence, the court is not expected to go into the question as to the impact of the documents which were not produced, but how far the prosecution has succeeded in establishing the case by production of the available records. Essentially, the object of the court is to find out whether from the records made available, the allegation

against the accused stands established. Another point which was vehemently argued by the learned counsel for the petitioner was that, PW3 in his evidence had stated that the details of the expenses incurred for the camp could not be disclosed by the witness and that, though she admitted that the officer attached to both plan schemes and non plan schemes were working there, she purposefully evaded to

answer whether they were getting their pay etc from plan scheme head of account and non plant head separately. It was also pointed out that the above version of the above witness was not sufficient to inspire confidence.

17. Learned counsel for the appellant argued at length on the

deficiencies in the version of PW3, as well as other witnesses, I am inclined to hold that these are beside the point. Essentially the attempt of the court is to find out whether from the materials on records, the allegation against the accused stands established.

18. Another argument advanced at length was that, PW3 in his

evidence had stated that the records would contain only the major head and would not contain the minor heads of account and bill would contain the minor heads also. The appropriate control registers were maintained in the registry that the budget allotment would be under minor heads of the major head account, the

family funds come under plan and non plan scheme. This issue has been answered in detail by the trial court at paragraph 68 of the judgment. In the light of the detailed explanation offered by the court below, which I appreciate, I find no reason to concur with the contentions of the appellant,.

19. Assailing the various appropriations and the allegation

regarding misappropriation, learned counsel for the appellant invited the attention of this Court to the various provisions of the Treasury Code, the Kerala Financial Code and the provisions relating to it. In this regard, I am not inclined to subscribe to the contention of the learned counsel for the petitioner, since available materials amply

prove the receipt of amounts by the first accused, incurring expenditure of a portion of it and non revision of the balance amount.

20. Assailing the findings, the learned counsel contended that,

essential documents were not produced before the court below. The learned counsel further contended that, there was long delay in investigation and prosecution of the case, which affected the principles

of natural justice. Considering the nature of long drawn litigations and the trauma that it has caused from the parties, appellant was entitled for an acquittal, it was contended. To substantiate it, learned counsel relied on the decisions reported in *Peethambaran v. State of Kerala* [1998 KHC 114], *Pankaj Kumar v. State of Maharashtra* [2008

(4) KHC 799], *Ratnadas v. State of Kerala* [1999 KHC 2074] and *Lokesh Kumar Jain v. State of Rajasthan* [2013 KHC 4529]. It is true that the present incident happened during the period 1986 to

1988. Crime was registered much thereafter. There is also some

substance in the contention in the learned counsel for the above appellant that he was permitted to retire with full emoluments. It was also contended that the trial had taken place for a long period. However, considering the fact that the allegation

relates to misappropriation of funds by public officer, I feel that, merely on the ground of long drawn litigations, one is not entitled to an acquittal, though this can be considered at the appropriate stage while considering the sentence imposed on the appellant,

21. Per contra, learned counsel for the State relied on the

decision reported in Jayakrishnadas Manohardas Desai and Another v. State of Bombay [1960 KHC 694] State of Kerala v. Muhammedkutty [1962 KHC 113], State of Kerala v. Sebastian

[1991 KHC 288] and contended that, once entrustment was proved, onus shifts to the accused to prove that the amount was properly accounted for or that the expenses had been incurred. Answering the contention regarding the long delay, learned Special Government Pleader for the Vigilance relied on the decision in Abdul Rehman Antulay and Others v. R.S.Nayak and Another [1992 (1) SCC 225] and the decision in Ramachandra Rao v. State of Karnataka [2002(4) SCC 578], where the court had reiterated the necessity of a speedy trial and held that, though speedy trial was a part of substantial justice and right to fair trial, outer limit cannot be prescribed by the court nor can it order acquittal on a mere ground that there was a delay.

22. An appreciation of the entire records show that the drawing of the advance money for the purpose of conducting the family welfare

camp is substantially established. Ext.P3 details the expense of the family expense camp conducted during the relevant period. PW3 in his evidence had stated that the amount drawn by virtue of Ext.P3 or P13 were not redeposited. The accused have no case that any balance amount was available or that, he had retained it for being utilized in the

next camp. Entries in Exts.P2, P4 and P6 which are the subsidiary registers stand confirmed by the oral testimony of PW4 the DTO. The above materials coupled with the oral evidence of PW1 confirmed the withdrawal of the amount, the expenditure of a part of it and non accounting of the balance amount. The court

below had rightly rejected of the evidence of the defence witnesses for cogent reasons, which I agree. Each and every entry in the various registers was dealt with in detail by the court below and answered. Ext.P1 audit report of PW1 also confirms the misappropriation.

23. An evaluation of the entire materials clearly show that the amount drawn for the purpose of family welfare camp was not completely utilized and that, they were not returned nor accounted for.

24. Having considered this, the finding arrived at by the court below that the accused have misappropriated the amount is only to be sustained. Hence the conviction imposed by the court below is liable to be confirmed.

25. The court below has imposed substantive sentence of

imprisonment. It is true that the allegation against the a

considered the entire facts and also the very fact that the incident happened very long back and that the accused was permitted to retire with full benefits, I do not propose to award sentence of imprisonment on the accused, though I am inclined to confirm the conviction. Accordingly, I am inclined to allow the appeal in part.

26. While confirming the conviction arrived at by the court

below, on various counts, I am inclined to hold the view that, sentence of imprisonment can be avoided being one under the Prevention of Corruption Act 1947 and considering that the long delay in completion of the trial. The accused have been facing the ordeal since 1999. Having considered this, substantive sentence of imprisonment imposed by the court below stands modified and substituted by fine as follows. While confirming the conviction imposed by the court below

in C.C.Nos.15 of 1999, 12 of 1999, 13 of 1999, 14 of 1999, 16 of 1999, 17 of 1999 and 18 of 1999, the sentence imposed in each of the above cases for offence punishable under Section 5(1)(c) of the Prevention of Corruption Act stands modified as fine of Rs.5,000/- only., for the offence punishable under Section

5(1)(d) with a fine of Rs.3,000/-, for offence punishable under section 477A r/w 34 of the PC Act, a sum of Rs.3,000/- and for offence punishable under Section 409, fine of Rs.3,000/- in each of the above case. In case of default in payment of fine under each count, accused shall undergo simple imprisonment for

15 days for each count. The substantive sentence of imprisonment stands set aside and substituted by fine as mentioned above. Petitioner shall remit the fine within a period of two months from the date of receipt of a copy of this judgment.
Sd/- SUNIL THOMAS JUDGE Sbna/

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