R. Madhavan Vs. State

R. Madhavan Vs. State

SooperKanoon Citation : sooperkanoon.com/724914

Court : Kerala

Decided On : Mar-09-1973

Reported in : 1973CriLJ1534

Judge : E.K. Moidu, J.

Appellant : R. Madhavan

Respondent : State

Judgement :

E.K. Moidu, J.

1. The appellant, a Pan-chayat Inspector, is the accused in C. C No. 3 of 1972 of the Court of the Special Judge, Trichur. He has been convicted and sentenced to 15 days' rigorous imprisonment under Section 477-A, Indian Penal Code and further convicted and sentenced to one month's rigorous imprisonment under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947) with the direction to run the sentences concurrently.

2. The first charge against the appellant related to his preparation and presentation of a false travelling allowance bill, Ext. P-5, on 25-4-1962 to the Sub-Treasury, Kasaragod, purporting it to be a genuine bill for P. W. 5, a peon of the Karadka Pan-chayat, for his having performed a journey from Karadka to Kasaragod on 30-3-1962 and halt at Kasaragod on 31-3-1962. On account of the

onward journey Rs. 2.70 was claimed as Travelling Allowance and on account of the halt Rs. 3/- was claimed as Daily Allowance, under Ext. P-5 for the month of March, 1962. The appellant was the Inspector of Panchayats, Kasaragod, when he was also in additional charge of Karadka Panchayat where P. W. 5 was employed as a peon. There was no dispute about the quantum of the amount claimed. The entry as on 30-3-1962 and 31-3-1962 for Rupees 2.70 and Rupees 3/- respectively was marked as Ext. P 5 (a) in Ext. P 5.

3. The prosecution case is that P. W. 5 was on casual leave from 26-3-1962 to 31-3-1962 inclusive. Ext. P 8 was the casual leave application of P. W. 5. The leave was granted by the appellant himself on 20-3-1962 on the strength of Ext. P 8 leave application. Ext. P 8 (a) in Ext. P 8 was the relevant order passed by the appellant granting leave to P. W. 5. If P. W. 5 was on leave upto 31-3-1962 inclusive there was no occasion for him to undertake a journey to Kasaragod on 30-3-1962. The appellant's case is that P. W. 5 cancelled his leave and that he joined duty on 30-3-1962 as the appellant wanted his special services at Kasaragod on those days. In this regard the appellant pressed into service Ext. P-6 travelling allowance bill of P. W. 5 for the month of April 1962, where it was shown that P. W. 5 performed, his return journey from Kasar-god to Karadka on 1-4-1962 which was a Sunday and claimed thereunder Rs. 3/- travelling allowance. It may be noted in this regard that both Exts. P-5 and P-6 were in the handwriting of the appellant. He drew up the travelling allowance bills Exts. P-S and P-6, he sanctioned the payment thereunder and finally withdrew the amount himself from the Treasury. It is argued that he was placed in such an enviable position because of the absence of Executive Officer at Karadka during the relevant period. P. W. 5 denied that he returned from leave on 30-3-1962, much less that he travelled to Kasaragod on 30-3-1962. He denied even having travelled from Kasaragod to Karadka on 1-4-1962 for which the travelling allowance had been drawn under Ext. P-6 bill.

4. The case of the appellant that P. W. 5 returned from leave was not borne out by any records maintained in the Pan-chayat. The appellant in his own handwriting (vide Ext. P-8 (a) in Ext. P-8, the casual leave letter of P. W. 5) granted leave as prayed for from 26-3-1962 to 31-3-1962. Whether the Karadka Panchayat

maintained a casual leave register during the relevant period was in dispute. None of the officers or the auditor who are witnesses in the case had seen any such register maintained there. P. W. 1, the Director of Panchayats had no occasion to see any such register kept and maintained in that Panchayat. P. W. 2 was the auditor who had occasion to examine all the registers kept in the office of Karadka Panchayat. During his inspection, he had no occasion to come across any such register at the office of that Panchayat. P. W. 3 was the Executive Officer who held the office in Karadka Panchayat after the suspension of the appellant from service. P. W. 3 stated that it was obligatory to maintain a casual leave register; but he never knew that such a register had been maintained in the office. In the light of the evidence of these officers it would be difficult to hold that such a register had been maintained at the office of the Panchayat during the relevant period. If there was no such register the contention of the appellant that he made entries therein regarding the return of P. W. 5 to duty after cancelling his casual leave for 30th and 31st March, 1962, could not be accepted.

5. Much reliance could not also be based by the appellant on Ext. P-7 attendance register maintained at the Karadka Panchayat. There were regular initials of P. W. 5 in Ext. P-7 to show that he attended office upto 26-3-1962. But since 26-3-1962 and upto 31-3-1962 there were no such initials in the form in which initials were affixed on earlier days. It is apparent from Ext. P-7 that it had been tampered with as regards the vacant columns intended for the period from 26-3-1962 to 31-3-1962. Even after the alleged tampering it could not be made out from Ext. P-7 that there was any entry in it favourable to the appellant. Ext. P-7 did not establish that P. W. 5 attended the office after 26-3-1962, much less on 30-3-1962 and 31-3-1962. Under those circumstances, it can safely be concluded that P. W. 5 was on casual leave from 26-3-1962 to 31-3-1962 inclusive.

6. The case of the appellant is that he required the service of P. W. 5 on 30-3-1962 and therefore P. W. 5 cancelled his leave and joined duty on 30-3-1962. Accordingly P. W. 5 was alleged to have travelled from Karadka to Kasaragod on 30-3-1962, halted at Kasaragod on 31-3-1962, and to have gone back to Karadka from Kasaragod on 1-4-1962. The appellant attempted to explain Ext. P-5 (a) entry in Ext. P-5 read with Ext. P-6 (a) entry in Ext. P-6 travelling allowance bill. It is

relevant in this connection to point out that the appellant is the author of both Exts. P-5 and P-6 and that if he had any intention to commit fraud Ext. P-6 (a) entry could have been manipulated by him to sustain his fraud to bring it in line with Ext. P-5 (a) entry. The appellant cannot therefore rely upon Ext. P-6 (a) entry to explain away the entry Ext. P-5 (a).

7. There was no record either with the appellant in the office of the Kasaragod Panchayat or in the office of the Karadka Panchayat to show that P. W. 5 cancelled his leave and returned to duty on 30-3-1962, except the mouth word of the appellant. If P. W. 5 was on leave and the appellant Wanted him to join duty before the expiry of the leave granted to him, there would have been some record in his office to show how and when the leave was cancelled and P. W. 5 joined duty before the expiry of the leave. It was within the special knowledge of the appellant as to how P. W. 5 canceled leave and joined duty and the purpose for which he was recalled from leave. The records maintained in the office showed that P. W. 5 was on leave from 26-3-1962 to 31-3-1962. If so there was no occasion for P. W. 5 to have undertaken a journey to Kasaragod on 30-3-1962 and halt at Kasaragod on 31-3-1962. The fact that the lower court found P. W. 5 to have travelled on 1-4-1962 and received the travelling allowance as per Ext. P-6 (a) entry in Ext. P-6 is not a reasonable explanation to accept his case that P. W. 5 would have travelled on 30-3-1962. The lower court accepted the appellant's case because of doubt due to the fact that P. W. 5 returned to duty on 1-4-1962 and that he was found to have acknowledged the total amount covered by Ext. P-6 bill. In the nature of the evidence in the case, it is incumbent upon the appellant to explain how he withdrew the travelling allowance in favour of P. W. 5 on making the entry Ext. P-5 (a) in Ext. P-5 bill. It was within his knowledge that P. W. 5 joined duty before the expiry of the leave granted to him. The appellant had not brought out any valid circumstance to hold that he drew up Ext. P-5 bill relating to Ext. P-5 (a) entry on account of a bona fide claim to which P. W. 5 was entitled. On the other hand, the evidence was conclusive that he acted fraudulently in drawing up the bill claiming travelling allowance for 30-3-1962 and daily allowance for 31-3-1962 as if P. W. 5 undertook the journey.

8. The learned Counsel of the appellant raises another contention that even if the appellant had made a bogus claim in the name of P. W. 5 in Ext. P-5 travelling allowance bill, there was no evidence of fraud against the appellant and as such he cannot be held liable to an offence under Section 477-A, IPC This contention is based upon a wrong understanding of facts as well as law involved on the question at issue. It is pointed out that there is no fraud because there had been no deprivation of prooerty. Section 477-A, IPC requires the falsification of accounts with intent, to defraud. It does not require any deprivation of property. Fraud means, making a person believe what is not true with intent to cause some injury of some kind in property or reputation to him or to suppress some previous fraudulent transaction. Calcutta High Court held in Queen Empress v. Abbas Ah', ILR (1898) 25 Cal 512 (FB) as follows:

The word 'fraudulently' should not ba confined to transactions of which deprivation of property (actual or intended) form a part.

9. So the deprivation of property, actual or intended, is not a necessary ingredient to defraud. The Calcutta High Court quoted with approval a decision reported in Reg. v. Toshak, ((1849) 4 Cox CC 38). In a later decision of the same High Court in Emperor v. Rash Behari Das, ILR (1908) 35 Cal 450 : (7 Cri LJ 378) it was held that the making of false entries in a book of account or register by any person in order to conceal a fraudulent or bogus act falls within the purview of Section 471-A, Indian Penal Code as it revealed an intention to defraud. In this regard the observations made in In re Doraiswami Reddiar : AIR1951 Mad894 may be seen:

If the president and the clerk of he society go round making such false entries, regarding false bills and transactions in the stores accounts, that will certainly be 'fraudulent' even though no one may lose one pie eventually by such false and fraudulent conduct or entry on the part of the petitioners. The law is not concerned with the 'eventual result'. Thus, a pick-pocket, hoping to get a good scoop, puts his hands into the pocket of a millionaire, but unfortunately, finds it empty, still, he will commit an offence despite his eventually gaining not a pie.

10. The learned Counsel of the appellant has placed reliance upon Dr. Vimla's case reported in 1963 Supp 2 SCR 585 : ((1963) 2 Cri LJ 434), (Dr. Vimla v. Delhi

Administration) for the position that When there was no evidence of any benefit to the deceiver or loss to the deceived the requisite necessary for deceit or fraud required by Section 477-A cannot come into operation and as such the appellant is not guilty of any offence. That was a case where one Dr. Vimla purchased a car in the name of her 6 months old minor child, Nalini. Though the registration certificate, Insurance Policy and all other records stood in Nalini's name, the car was purchased with Dr. Vimla's own funds. While so the car met with an accident for which large sum of money was found due from the Insurance Company. But Dr. Vimla received the compensation money on execution of a receipt acknowledging payment signing as Nalini. She was prosecuted for offences under Sections 467 and 468, Indian Penal Code, alleging that she produced a false document forging the name of Nalini. The question as to the interpretation of the word 'fraudulently' which occurs in Sections 467 and 468, Indian Penal Code came up for consideration before the Supreme Court. It is clear that the word 'defraud' involves two conceptions, namely, deceit and injury to the person deceived, that is, infringement of some legal right possessed by him, but not necessarily deprivation of property. But before the Supreme Court made its pronouncement in the above ruling, the earlier decisions threw no light on the question whether an advantage secured to the deceiver without a corresponding loss to the deceived would satisfy the second condition. But the Supreme Court laid down that the second condition is satisfied even if there was no corresponding loss to the deceived even though there had been a benefit or advantage to the deceiver. The Supreme Court on a clear analysis of the case-law on the point held as follows at page 598 in the above decision:

The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

11. In Dr. Vimla's case (1963) Supp 2 SCR 585 : ((1963) 2 Cri LJ 434) the Supreme Court found that the evidence disclosed that neither was she benefited nor the insurance company incurred loss in any sense of the term and so she was not guilty of any offence.

12. The case in hand has created a different situation. The appellant made a false claim in Ext. P-5 travelling allowance bill of P. W. 5. The total amount covered by Ext. P-5 (a) in Ext. P-5 is (Rs. 2.70 + Rs. 3.00) Rs. 5.70 which the appellant withdrew . from the Sub-Treasury, Kasaragod, without any manner of right. So this is not a case where the deceived had no pecuniary loss, The benefit or advantage which the appellant secured in this case had produced a corresponding pecuniary loss to the deceived, who is the State. The fact that the appellant paid over the entire amount of Rs. 20.40 covered by Ext. P-5 bill for the month of March, 1962, to P. W. 5 is not a circumstance to be weighed in favour of the appellant as by his deceitful conduct he deprived the State of certain sum of money over which he had no claim and he appropriated that money to his advantage in the first instance. What he had eventually done with the cash he withdrew is not a matter to be considered if he had already defrauded the State. Taking into consideration all the circumstances of the case, it is established and proved beyond doubt that the appellant is guilty of the offence under Section 477-A, Indian Penal Code. His conviction and sentence under that section are correct.

13. The next charge against the appellant was under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947. The allegation was in respect of a sum of Rs. 20/- which P. W. 4, Panchayat Assistant, returned to the appellant on 6-4-1962 under Ext. P-ll voucher. The sum of Rs. 20/- being Government money, the appellant should have deposited it into the Treasury. The appellant admitted the receipt of the amount of Rs. 20/-. But his case is that he deposited back that amount into the Sub-Treasury, Kasaragod, on 10-4-1962. He has produced two receipts purporting to have been issued by the Sub-Treasury, Kasaragod, to prove the payment of the identical amount and the undisputed amount mentioned in Ext. P-ll to Treasury on 10-4-1962. The challan numbers referred to in those two receipts and the amounts covered by those receipts are identical to the report of the auditor contained in Ext. P-l. At page 22 (293) of Ext.

P-l there ii a report that a sum of Rs. 173/- was seen remitted to the Treasury as per Challan Nns. 1139 and 1140 dated 10-4-1962. Rs. 173/-was made up of Rs. 153/- and Rs. 20/- which are the identical items mentioned in Ext. P.I 1. There appears to have some force in the appellant's explanation. Any way these facts were not brought to the notice of P. W. 1 or P. W. 2 when they were examined. The learned Public Prosecutor states that in the light of the development of the case on facts it is necessary to reconsider the question Whether the appellant is guilty of the second charge referred to above. The special Judge will therefore permit both sides to adduce additional evidence on the question involved in the case and come to his own conclusion as to whether the appellant is guilty of the offence under Section 5 (1) (c) read with Section 5 (2) of the Prevention of Corruption Act, 1947.

14. In the result, in dismissing the appeal confirming the conviction and sentence under Section 477-A, Criminal P. C, the conviction and sentence under Section 5 (1) (c) read with Section 5 (2) of the Prevention of Corruption Act, 1947, are set aside; the case is remitted to the special Judge for disposal in accordance with law permitting the parties to adduce fresh evidence in respect of the charge under Section 5 (1) (c) read with Section 5 (2) of the aforesaid Act