

Mohandass Vs. the State

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Court : Chennai

Decided On : Nov-19-1997

Reported in : 1998CriLJ3409

Judge : P.D. Dinakaran, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 409, 467 and 477-A

Appeal No. : Criminal Revn. Case No. 153 of 1995 and Cri Revn. Petn. No. 153 of 1995

Appellant : Mohandass

Respondent : The State

Advocate for Def. : N.R. Elango, Govt. Adv.

Advocate for Pet/Ap. : K. Manivasakam, Adv.

Judgement :

1. Heard both the parties.

2. The above revision is directed against the order of conviction and sentence dated 9-2-95 in C.A. No. 87 of 1994 on the file of the learned District and Sessions Judge, Nagai Quaid-e-Milleth District Nagapattinam, confirming the order and sentence of the learned Judicial Magistrate, Thiruvarur dated 5-3-94 in C.C. No. 2451 of 1990 for the offences punishable under Sections 409, 467 & 477-A, I.P.C.

3. The petitioner was facing a trial in C.C. No. 2451 of 1990 before the learned Judicial Magistrate, Thiruvarur for the offences punishable under Sections 409, 467 & 477-A, I.P.C. with regard to alleged offences, namely, forgery, breach of trust, falsification of accounts and misappropriation of funds of the account holders PW 5 and PW 7, when the petitioner was working as Branch Post Master at Tiruvarur Village during the period 25-11-85 and 6-11-86.

4. Twelve witnesses were examined as PW 1 to PW 12 and fifty five documents were marked as Ex. P1 to Ex. P55 on behalf of the prosecution.

5. It is sufficient to mention that PW 2 was a co-employee of PW 3; PW 6 was the brother-in-law of the account holder and PW 7 is the wife of the account holder and PW 6 was also another account holder.

6. According to the prosecution, the petitioner, who was functioning as a Branch Post Master, forged the signature of the account holders and withdrew the amounts by falsifying the official records and misappropriated the funds.

7. The learned Judicial Magistrate, by order dated 5-8-94 in C.C. No. 2431 of 1990, in the light of the evidence of PW 1 to PW 2 and Ex. P1 to Ex. P55 acquitted the petitioner for the offence punishable under Section 471 I.P.C., but however convicted the petitioner under Sections 409, 467 and 477-A, I.P.C. and sentenced him with two years rigorous imprisonment with a fine of Rs. 1,000/-, in default of which, three months rigorous imprisonment in addition, for each of the said offences, all to run concurrently; and the same, on appeal in C.A. No. 87 of 1994, by order dated 9-2-95, was confirmed by the learned District Sessions Judge, Nagapattinam.

8. The learned counsel for the petitioner challenges the order of conviction and sentence of the Courts below on the following grounds :

(i) The Courts below failed to take into consideration the delay in lodging the complaint and

(ii) There was no proper sanction from the Government before prosecuting the petitioner as required under Section 197, Cr.P.C.

9. The learned counsel for the petitioner further stated that the petitioner was about 50 years old and since he has lost his employment due to the above conviction and sentence, he, being the only bread-winner in the family, is engaged in some part-time private employment, and therefore, deserves sympathetic consideration in terms of the sentence assuming the order of conviction is confirmed.

10. Per contra, the learned Government Advocate contends that in the matter of continuous cause of action as the case in hand, the contention of the petitioner that there was a delay in lodging the complaint is not applicable in law and in any event, even if there is any delay, the same is negligible and the delay was properly explained and appreciated by the Courts below.

11. That apart, the learned Government Advocate relying on the decision of *Shambhoonath Misra v. State of U.P.*, reported in 1997 SCC (Cri) 576 : 1997 CLJ 2491 contends that no sanction is required for the offence punishable under Section 409 I.P.C. as held by the Apex Court.

12. I have given a careful consideration to the submissions of both sides.

13. As rightly pointed out by the learned Government Advocate, with regard to any delay in making the complaint for the offence said to have been committed by the petitioner is done during the service of the petitioner and the delay in making the complaint is also properly explained and appreciated by the Courts below for collecting the necessary documentary evidences, for which, sufficient time was consumed by the investigating officer.

14. That apart, as rightly pointed out by the learned Government Advocate, in *Shambhoonath Misra v. State of U.P.*, reported in 1997 SCC (Cri) 576 : 1997 CLJ 2491 the Apex Court has held as follows (Paras 4 and 5) :

'The essential requirement postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of the

performance of his official duties. If the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under Section 197(1) of Cr.P.C. Without the previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected.'

'When the public servant is alleged to have committed the offence of fabrication of record of misappropriation of public fund etc., it cannot be said that he acted in discharge of his official duties because it is not the official duty of the public servant to fabricate the false records and misappropriate the public funds, etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction.'

15. In view of the above decision of the Apex Court, I do not think that the contention of the learned counsel for the petitioner that the prosecution vitiates for want of sanction of the Government. Hence I do not find any good and sufficient reasons to interfere with the orders of conviction of the Courts below.

16. However, taking into consideration the contention of the petitioner that the petitioner is aged about 50 years and has lost his employment and therefore he has engaged himself privately for a part-time job to win the bread for his family, I am obliged to reduce the sentence as six months simple imprisonment for each of

the offences punishable under Sections 409, 467 and 477-A, I.P.C., all to run concurrently.

In the result, the order of conviction and sentence imposed by the Courts below is modified as stated above. However, there will be no orders as to costs.

17. Order accordingly.

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