A. Sreedharan Vs. State of Kerala, Represented by Public Prosecutor

A. Sreedharan Vs. State of Kerala, Represented by Public Prosecutor

SooperKanoon Citation : sooperkanoon.com/946935

Court : Kerala

Decided On : Apr-06-2011

Reported in : 2011(2)ILR(Ker)918; 2011(3)KLT6(SN)(C.No.4); 2011(3)KLJ42

Judge : P.S. Gopinathan

Appeal No. : CRL.A. Nos. 743, 744, 745, 746, & 747 of 2003

Appellant : A. Sreedharan

Respondent : State of Kerala, Represented by Public Prosecutor

Judgement :

Common Judgment

1. The appellant is the fifth accused in C.C.Nos.82, 83, 84, 85 and 86/2007 on the file of the Enquiry Commissioner and Special Judge, Thiruvananthapuram. He was the Inspector attached to District Co-operative Bank, Pathanamthitta. He was prosecuted along with 6 others, by the Deputy Superintendent of Police Vigilance and Anti Corruption Bureau, Pathanamthitta, alleging offence under Section 13(2) r/w 13(1) (c) and (d) of Prevention of Corruption Act (hereinafter referred to as PC Act) and Section 409, 468, 471 and 120B IPC. The prosecution case is that the appellant was working as the Inspector attached to District Co- operative Bank, Pathanamthitta. The District Co-operative Bank, Pathanamthitta has a Branch at Adoor, wherein PW5 was the Manager. Under the Adoor Branch, there is a Service Co-operative Bank (Primary Bank) by name Erath Service Co-operative

Bank of which the first accused was the Cashier and Accountant, the second accused was the Secretary, the third accused was the President and accused 4 and 5 were the Sub Committee members and accused No.7 was the Agricultural Officer. The 1st accused is the brother-in-law of PW2 Rajan Nair. Late Krishnan Nair and Pankajakshi Amma are the father-in-law and mother-in-law of the 1st accused. Neither PW2 nor his parents had any rubber plantation. But in their name with wrong address, applications were filed for Long Term Rubber Plantation Loan (LTRP Loan). In the loan applications, some bogus properties were scheduled. Neither PW2 nor his parents applied. Signatures in the loan applications were also forged. Loan applications were forwarded to the Sub Committee by the 2nd accused as if genuine applications. Accused 3 to 5 endorsed false certificate certifying that they had verified the correctness of the particulars in the loan applications and satisfied its correctness including valuation of the property. Loan applications were placed before the Board of Directors with the recommendation of the Sub Committee and got passed. The 1st accused managed to get a mortgage deed executed by PW2 and his parents. The appellant, who was bound to verify the records, in pursuance to the conspiracy, didn't point out the irregularities and illegalities. He also recommended the loan. The 7th accused without even inspecting the property falsely certified the feasibility and utility of the loan. Thus got released Rs.1,90,185/- by various occasions by abusing the office, forging documents and using those forged documents as genuine and committed breach of trust and criminal misconduct and that they did so in pursuance to a criminal conspiracy.

2. The offences were disclosed in an enquiry conducted by the Asst. Registrar of Co-operative Societies (vide Ext.P1 report). The matter was reported to the vigilance and Anti Corruption Bureau, Pathananthitta. After a preliminary enquiry a case was registered. After due investigation, five final reports alleging offences u/s 13(2) r/w 13(1)(c) and (d) of PC Act and Sections 409, 468, 471 and 120B IPC were submitted before the trial court. The appellant was the sixth accused. The learned Judge took cognizance and issued process. Despite the coercive steps issued to the second accused he could not be apprehended. Hence, the case against him was split up and proceeded separately. The other accused were re-arrayed as accused one to six. Thus the appellant, who was the 6th accused in the

charge sheet, was re-arrayed as the fifth accused. On appearance of the other accused including the appellant, they were furnished with the copies of the final reports and connected documents and then heard either side. Finding that there are materials to send the accused for trial, separate charges were framed for the said offences. When read over and explained they pleaded not guilty. Hence, they were sent for trial. Crl.M.P No.939/2009 was filed by the accused seeking order for joint trial. It was allowed and the cases were tried jointly. The evidence was recorded in C.C No.82/2000. During the course of the trial, the 1st accused, committed suicide. The 3rd accused, expired. On the side of the prosecution, PWs. 1 to 15 were examined and Ext.P1 to P46 were marked. After closing the evidence for the prosecution the appellant and other surviving accused were questioned under Section 313 (1) (b) of the Code of Criminal Procedure. The appellant admitted his official status, but he contended that he recommended the loan basing upon the recommendation of the Secretary, Sub Committee members including President and Agricultural Officer and that he was no way involved with criminal conspiracy, misappropriation, falsification of the documents or breach of trust or abuse of the office. No defence evidence was let in. The learned Judge on appraisal of the evidence, arrived at a finding of guilty as against the appellant for offence under Section 13(2) r/w 13(1)(d) of the PC Act and Section 120B IPC. Consequently, he was convicted and sentenced to undergo rigorous imprisonment for one year and a fine of Rs.2,000/- under Section 13(2) r/w 13 (1)(d) of the PC Act. For offence under Section 120B IPC, he was sentenced to rigorous imprisonment for one year. For the other offences, the appellant was found not guilty and acquitted thereunder. The other accused were also acquitted. Assailing the above conviction and sentence these appeals were filed.

3. I heard, Sri.V.Anil, the learned Counsel appearing for the appellant and Sri.B.Vinod, the learned Public Prosecutor and perused the documents.

4. Going by the judgment impugned, especially paragraph 31, 32, 85, 86, 88, 89 and 90, it is revealed that the appellant was found guilty on arriving at a finding that he was bound to scrutinize the loan applications regarding the feasibility of the loan, the particulars of the loanees, the security offered and the title of the property, but he failed. The argument of the prosecution is that had he carefully

scrutinized the loan application and the mortgage deed including the description of the properties, the fraud should have been revealed. But he didn't. As and when loan applications are submitted, the same is to be scrutinized by the Secretary and then by a Sub Committee consisting the President and two members. Then the application would be placed before the Board of Directors with the recommendation of the Secretary and Sub Committee. If the loan is from the funds of the society, the board would pass the loan and disburse it. In the event, the loan amount is to be obtained from the District Co-operative Bank, the loan application would be forward to the District Co-operative Bank along with the recommendation of the Board of the Service Co-operative Bank and then District Co-operative Bank would have sanctioned the loan and release the amount. PW1, the Assistant Registrar (Audit), PW3, the General Manager, District Co-operative Bank and PW5, the Manager of the Adoor Branch had given evidence to that effect. In cross examination, PWs. 1 and 3 would depose that detailing the duties of the Bank Inspector (the appellant) there were circulars issued from time to time. PW5 had deposed that regarding the duties of the Inspector of the Bank there is a booklet. Curiously, neither any circular nor the booklet was produced by the prosecution along with the final report. During the course of the trial, Exts.P44, P45 and P46 were produced as if circulars issued by the District Co-operative Bank regarding the duties of the appellant as the Inspector of the Bank. I have gone through Exts.P45 to 46. Exts.P45 and P46 do not mention any of the duties of the appellant as the Inspector of the Bank. In Ext.P44, in Clause 11, it is mentioned that NABARD has pointed out that there was no system of periodical verification of the assets purchased/created with the aid of the Bank loan and no register for recording the verification of the loan utilization was maintained. Therefore, the Inspectors were requested to conduct verification of utilization of all the medium term loan and long term agricultural loan and agricultural loan issued with effect from 1.1.1987. It is seen that the copy of the circulars were forwarded to the directors of the Bank for favour of the information. It is also seen that the circulars were issued as confidential documents. Whether it was communicated to the appellant who was the then Inspector of the Bank is not at all revealed out. Unless it was communicated to the appellant, the duties of the appellant cannot be determined with reference to those documents. He cannot also be found guilty for abuse of office or criminal misconduct for violating the circulars or doing anything repugnant to those circulars. No criminal liability can be attributed against a person for violation of a circular which was not communicated. Though PWs.1, 3 and 5 had deposed of the duties of the Inspector of the Bank regarding the loan granted, there is no supporting documentary evidence. In the normal course, there would have been documents in the Bank regarding the duties of the Inspector. Prosecution has no good explanation for the non production. Since the appellant was prosecuted on allegation of criminal conspiracy and misconduct by abusing the office, it is for the prosecution to bring in evidence regarding the duties and responsibilities of the appellant as Inspector of the Bank. It is not in dispute that the loan applications were scrutinized by the Secretary as well as by the Sub Committee consisting of the President and two members and then by the sixth accused who was the Agricultural Officer. Thereafter, it was passed by the Board of Directors of the Service Co-operative Bank and recommended to the Adoor Branch of the District Co-operative Bank which was further scrutinized by PW5, the then Manager and forwarded to the District Co-operative Bank whereupon the loan was sanctioned.

5. The specific case of the prosecution is that three loan applications namely Exts.P2, P3 and P10 were filed by PW2 Rajan Nair his parents Krishnan Nair and Pankajakshi Amma but the name, address and other particulars shown in the loan applications are not correct and that though those persons had executed mortgage deeds in favour of the Bank, the property was not situated within the limits of the Service Co-operative Bank and that the property offered as security as per the loan applications are entirely different. So also, it was alleged that the accused in furtherance of their criminal conspiracy falsified documents and the loanees availed loans, by various occasions, totally amounting of Rs.1,90,185/- using the forged documents as genuine documents. It is not in dispute that the loans were recommended by the Board of Directors of the Earth Service Co-operative Bank. The District Co-operative Bank was only the sanctioning authority. The appellant has no role other than the so called scrutiny and certificate thereon. Rather than the recommendation of the appellant, what is more relevant is the report of the Secretary, Sub Committee and Board of Directors of the Primary Bank. In the absence of evidence to come to a conclusion that, it was the official duty of the

appellant to scrutinize the documents, loan applications and the connected documents to report whether the particulars mentioned in the loan applications especially regarding the identity, ownership, title etc. as the Inspector of the District Co-operative Bank, the appellant cannot be held liable for criminal misconduct though it may amount to civil misconduct. The prosecution can succeed only on establishment of the duties of the appellant as Inspector and on proof of the criminal breach or abuse while discharging the duties. In the absence of any reliable document regarding the duties of the appellant as Bank Inspector relating to the sanctioning and disbursement of the loan, I find that it is not safe to rely upon the oral evidence. The suppression of the documentary evidence regarding the duties of the appellant can be viewed only with suspicion. The trial court ought to have given benefit of doubt to the appellant, especially when the Sub Committee members and Agricultural Officer who had inspected the properties and certified the correctness of the particulars in the loan application, feasibility of the loan etc. were acquitted. The appellant cannot be placed at a different level. If the evidence of Pws.1, 3 and 5 are read with Ext.P44, the duty of the appellant was only after the sanctioning and disbursing of the loan. His duty was only to verify the utilization of the loan. It appears that the fraud was committed at the primary Bank level viz., among Secretary, President, Sub Committee members, Agricultural Officer and finally he Board of Directors of the Erath Service Co-operative Bank. There is nothing to suggest that the appellant who was an employee of the District Co-operative Bank had knowledge or share of brain. Probably, had the appellant been shrewd he could have detected the fraud. There may be lack of shrewdness. Such lack of shrewdness may, sometimes, lead to civil liabilities, but not criminal liability. I find that it is not safe to rely upon the oral testimonies of PWs. 1, 3 and 5 to arrive at a conclusion of guilt. The appellant is entitled to the benefit of reasonable doubt and is entitled to an order of acquittal.

In the result, all the appeals are allowed. While setting aside the conviction and sentence under challenge, the appellant is acquitted and set at liberty. The bail bond executed by him shall stand set aside. The fine amount if any, deposited shall be refunded.