

Thiru V. Thanigachalam

Vs

State of Tamil Nadu

Criminal Appeal No. 350 of 1975

(R.S. Sarkaria, Syed M. Fazal Ali JJ)

19.01.1976

JUDGMENT

SARKARIA, J. -

1. The appellant is a councillor representing Perambur Division of the Madras Corporation. He was also a member of the Taxing Committee of the Municipal Council. He along with other accused is standing trial in the court of the Fifth Additional Special Judge, Madras City on four charges namely :

1. 328thly, that you accused 78 between November 1971 and November 1973 at Madras, in furtherance of the said agreement and conspiracy and in the course of the same transaction accepted or obtained from approver Kannappan gratification to the tune of Rs. 26,000 as a motive or reward for inducing by corrupt or illegal means the public servants, to wit, the officials of the Electrical Department, Central Accounts Department Cash Section, Revenue Department of the Corporation of Madras to do or forbear from doing official acts, to wit, prepare, process, negotiate and encash for disbursement bogus muster rolls relating to the employment of temporary labourers in the Electrical Department of the Corporation of Madras and that you thereby committed an offence punishable under Section 162 of the Indian Penal Code.

2. 329thly, that you accused 78 between August 1972 and November 1973, at Madras in furtherance of the said agreement and conspiracy and in the course of the same transaction abetted accused 1 to 74 by corrupt or illegal means or otherwise abusing their official position as public servants to obtain pecuniary advantage for yourselves and other to the tune of Rs. 6,35,855.25 as set out in the annexure to charge 326 supra and that you thereby committed an offence under Section 5(2) read with Section 5(1) of the Prevention of Corruption Act (Central Act II) 1947, read with 109, Indian Penal Code, and within my cognizance.

3. 330thly, that you accused 78 between November 1971 and November 1973, at the said place, in furtherance of the said agreement and conspiracy and in the course of the same transaction abetted accused 1 to 74 corrupt or illegal means or otherwise abusing their official position as public servants to obtain pecuniary advantage for yourselves and others to the tune of Rs. 6,35,855.25 as set out in the annexure to charge 326 supra and that you thereby committed an offence under Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act (Central Act II) 1947 read with 109 Indian Penal Code and within my cognizance.

4. 331stly, that you accused 78 between August 1972 August 1973 Madras in furtherance of the said agreement and conspiracy and in the course of the same transaction habitually accepted or obtained

from approver Kannappan for yourself gratification (other than the legal remuneration as a motive or reward as mentioned in Section 161 of the Indian Penal Code) at the rate of Rs. 2000 per month from August, 1972 to August, 1973 and in all making Rs. 26,000 and that you thereby committed an offence punishable under Section 5(2) read with 5(1)(e) of the Prevention of Corruption Act (Central Act II) 1947 and within my cognizance.

2. He approached the High Court under Section 482, Code of Criminal Procedure praying that the last two charges framed against him be quashed on the ground that he is not a public servant within the meaning of Section 21 of the Penal Code. No evidence in respect of any of these charges has so far been recorded. The High Court has dismissed the petition holding that the appellant is a public servant within the contemplation of Clause 12(b) of Section 21 of the Penal Code.

3. Hence this appeal.

4. We have party heard the arguments of the learned counsel for the parties. The learned Advocate-General has contended that clause 10th of Section 21 of the Penal Code will also cover the case. The argument is that as a member of the Taxing Committee, the appellant was concerned with expenditure and preparation of budget and sponsoring proposals of financial character. It is submitted that evidence will be led to establish facts showing that the appellant is a public servant within the meaning of Section 21 of the Code and decision of this question at this stage when no evidence has at all been recorded, would be purely hypothetical and divorced from facts. We also feel that the question involved is a mixed question of law and fact. It requires evidence for its determination. We therefore think that the High Court was in error in deciding this question purely in the abstract without there being any evidence before it.

5. On this preliminary ground we would allow this appeal, set aside the decision of the High Court and sent the case back to the trial Court for further proceedings in accordance with law on all the charges framed by the trial Court against the appellant. We make it clear that the question as to whether the appellant is or is not a public servant, is left open to be decided at the appropriate stage. The case being old, the trial Court is directed to dispose it off with utmost expedition by undertaking proceedings preferably from day to day.

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