Balaram Swain

Vs

State of Orissa

Criminal Appeal No. 707 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

13.11.1990

JUDGMENT

S. RATNAVEL PANDIAN J

1. This criminal appeal is directed against the judgment of the High Court of Orissa made in Criminal Appeal No. 136/76 dismissing the appeal but modifying the sentence. The appellant took his trial under Sections 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and under Sections 467 and 477-A of the Indian Penal Code on the allegations that he had dishonestly and fraudulently misappropriated a sum of Rs. 3851.60, which amount was in his control in the capacity of a public servant, i.e. Cashier-cum-Accountant in the office of the District Veterinary Officer at Bolangir and that he had wilfully and with the intent to defraud altered and even mutilated the cash book (Ext. 4) and also had forged the said cash book with the intent to defraud the Government to the extent of the aforesaid amount.

2. The Trial Court accepting the case of the prosecution convicted the appellant under all the charges and sentenced him to rigorous imprisonment for a period of one year and to pay a fine of Rs. 3,900 / - in default to suffer rigorous imprisonment for one year under S. 5(2) of the Prevention of Corruption Act and also to undergo rigorous imprisonment for one year on each of the convictions under Sections 467 and 477-A of the Indian Penal Code respectively in addition to pay a fine of Rs. 200/-, in default to suffer imprisonment for a period of two months under Section 467, I. P. C.

3. On appeal, the High Court while confirming the judgment of the Trial Court in its entirety, reduced the fine amount from Rs.3,900/- to Rs.2,000/-, in default to undergo six months rigorous imprisonment for the conviction under Section 5(2) read with S. 5(1)(c). In other respects, the sentences awarded for the convictions under the other two charges were confirmed. Hence this appeal.

4. The learned counsel appearing on behalf of the appellant took us through the judgment of both the Trial Court as well as the High Court and contended that the impugned judgment cannot be sustained as it suffers from manifest illegality, in that the High Court has failed to appreciate the evidence in the proper perspective. According to him, the prosecution has not established the charges by examining any one of the employees to prove that the amount had not been disbursed to them. This argument is not tenable because the case of the prosecution is that the amount has never been disbursed to any of the staffs and that the entire amount has been misappropriated. Secondly, it

has been contended that the appellant did not receive any cash but he only under the instructions made by PW-5 made the entries in the cash book as well in the bill book and showed the expenditure of the said amount and debited the grand total. PW-5 has denied the statement of the appellant. As rightly pointed out by the High Court, apart from the statement of the appellant there is no other material on record to support the stand of the appellant. The High Court having regard to the facts and circumstances of the case on this aspect has made the following observation:

> "In the circumstances, particularly when PW-5 has denied his involvement in the matter, it is difficult, to accept the appellant's contention that although no payment had been received by him he had made the entry as directed by PW-5."

5. We see no reason to depart from the ,above observation.

6. One other contention raised by the learned counsel on the basis of an admission of PW-7 in the cross-examination is that PW-4 while granting sanction (Ext. 6) had not applied his mind to the entire records and, therefore, the sanction is not a valid one. In support of this contention, reliance was placed by the learned counsel on a decision of this Court in Mohd. Iqbal Ahmed v. State of Andhra Pradesh, (1979) 2 SCR 1007 : (AIR 1979 SC 677), wherein it has been held that "the grant of sanction is not an idle formality but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions and must, therefore, be strictly complied with before any prosecution could be launched against public servants."

7. We are in full agreement with the above view. But the learned counsel for the appellant cites this decision only for showing that if facts are not mentioned in the sanction order, nor does the sanction order contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied, the entire proceedings are void ab initio. In that case, as a matter of fact, the Court came to the conclusion that there was no evidence either primary or secondary to prove the contents of the note placed before the sanctioning authority nor were the witnesses examined in a position to state the contents of the note. But in the case on hand, the High Court not only on the strength of the evidence of PW-4 but also with reference to Ext. 6 found that the sanctioning authority has applied his mind to the materials and as such the sanction is a valid one. Therefore, the plea of the appellant on the basis of the above cited decision cannot be countenanced.

8. A similar contention has also been raised before the High Court and the High Court rejected that plea holding thus:

> "Reference to Exh. 6 goes to show that the matter was duly considered before sanction was given and on being satisfied the sanctioning authority sanctioned the prosecution. In the circumstances, there is no force in the contention that there is no valid sanction as envisaged in Exh. 6 for the prosecution."

9. The sanctioning authority, namely, PW-4 has stated on oath that he perused the consolidated report of the vigilance and fully applied his mind and thereafter issued the sanction order. Nothing has been brought in the cross-examination of PW-4 that all the necessary materials were not placed before him. Therefore, the sporadic admission made by PW-7 does not in any way affect the veracity of PW-4 or invalidate the sanction. In fact, the High Court has examined this, contention and was satisfied on perusal Exh. 6 that the sanctioning authority had fully applied his mind. Therefore, in our views there is no force in this contention.

10. Regarding the charges under Ss. 467 and 477-A, I.P.C. both the Courts have found that these offences have been satisfactorily proved.

11. For all the discussions made above we hold that the conviction recorded by both the Courts are not liable to be interfered with. Now coming to the question of sentence, it may be noted that this offence is said to have been committed in May, 1967 and the trial came to an end only in the year 1976 i.e. after a period of 9 years. The judgment before the High Court was rendered in May 1979 and the appeal before this Court has been pending since 1979. Thus the appellant has undergone the ordeal of this criminal proceedings for well over a period of 23 years during which period he must have suffered mental worry in addition to incurring heavy expenditure in conducting this proceeding besides losing his job. Hence we feel that the ends of justice would be met by reducing the sentence of imprisonment awarded to the appellant by the High Court under all the convictions to the period already undergone.

12. In the result, the impugned judgment is confirmed and the sentences are reduced to the period already undergone. Subject to the modification of the sentence as indicated above, the appeal is dismissed. Order accordingly.

</html