

# **SUPREME COURT OF INDIA**

Antony Cardoza

Vs.

State of Kerala

(Dipak Misra and Uday Umesh Lalit JJ.)

14.11.2014

## **JUDGMENT**

### **UDAY U. LALIT, J.**

1. This appeal by special leave to appeal arises out of judgment and order dated 18.03.2011 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.249/2000(A) by which it was pleased to affirm the order of conviction and sentence recorded by the learned Special Judge Thiruvananthapuram in CC No.3 of 1999.

2. On 15.10.1997 FIR No.9 of 1997 was registered pursuant to Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Thiruvananthapuram reporting that in the vigilance inquiry it was revealed to the following effect:

A jack tree of about 40 years of age was cut and kept in the compound of 10 Cents of land owned by the Kerala State Handicapped persons welfare corporation Thiruvananthapuram at Pojoppura. Shri Antony Cardoza, Managing Director of the Corporation got it removed and cut into convenient pieces on 24.06.1996 and took it to his residence at Alapuzha on 25.06.1996 through A Vasudevan Nair. Shri Prabhakaran Nair, L.D. Accountant met the expenses of Rs.690/- by way of labour charge for this purpose which was never claimed reimbursement from the corporation. Thus Shri Antony Cardoza being the servant of the Corporation as M.D. with wrongful intention committed theft of jack tree wood worth about Rs.10,000/- which was cut down and kept in the

land of the corporation at Poojappura and Sh. Prakahakaran Nair, L.D. Accountant intentionally facilitated Sh. Antony Cardoza in the commission of the offence punishable under Section 381 and 109 IPC and Section 13(2) read with Section 13(1)(c) of PC Act, 1988.

3. In the investigation that followed the timber was found in the house of Shri Antony Cardoza, Managing Director of the Corporation, i.e. the appellant, situated at Alappuzha. Search list Ext.P9 bears the signature of the wife of the appellant. After due investigation charge-sheet was filed against the appellant and Shri Prabhakaran Nair, L.D. Accountant for having committed the offences punishable under Sections 409 read with Section 120B IPC and under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short the "PCA<sup>TM</sup>"). Pending the trial, Shri Prabhakaran Nair, the second accused expired and the matter abated against him.

4. It was alleged by the Prosecution that an extent of 10 cents of land was allotted to the Kerala State Handicapped Persons Welfare Corporation (~the Corporation<sup>TM</sup> for short) for construction of a building for its head- office from and out of land wherein the quarters of Juvenile Home Superintendent are located. There was a jack tree, a mango tree and few coconut trees in this piece of 10 cents of land. Said jack tree was cut and timber thereof was lying on the plot. It was alleged that the accused in conspiracy got the timber removed in a mini lorry from Thiruvananthapuram and the timber was transported to the house of the present appellant at Alappuzah. It was the case of the prosecution that the timber was sawn and transported to the house of the appellant under the instructions of Shri Vasudevan Nair. Reliance was placed on Ext.P1 being photocopy of the letter written by the appellant in his own hand on his letterhead, bearing his signature and Ext.P6 being a letter written in the hand of said Shri Vasudevan Nair on the letterhead of the Corporation. ). We have been informed that the distance between these two places is about 140 KMs. In defence no explanation was offered for the presence of sawn timber in the house of the appellant nor did he offer any explanation as regards Ext.P1 and P6.

5. After considering the evidence on record, the trial court found that the offences under Section 409 IPC read with Section 120B IPC so also under Section 13(1)(c) read with 13(2) of the PCA were proved against the appellant. The appellant was thus convicted under the said sections vide judgment and order dated 24.03.2000 and sentenced to undergo rigorous imprisonment for three years and to pay fine of

Rs.5,000/- under Section 120B IPC read with Section 109 and 409 IPC. He was further sentenced to rigorous imprisonment for a term of three years and to pay a fine of Rs.7,000/- under Section 409 IPC and to rigorous imprisonment for two years and to pay fine of Rs.8,000/- under Section 13(1)(c) read with Section 13(2) of the PCA. The substantive sentences were directed to run concurrently.

6. The matter was carried by the appellant in appeal before the High Court of Kerala at Ernakulam. It was submitted that for a charge to be proved under Section 409 IPC entrustment of the property has to be proved. After considering the entire evidence on record the High Court observed that letters Ext. P1 and P6 revealed that the wooden logs were under the control of the appellant and that the entrustment and misappropriation were established and there was no doubt that the property was taken away by the present appellant. The High Court thus affirmed the view taken by the trial court as regards conviction and sentence.

7. The appellant, being aggrieved, filed Special Leave Petition challenging the decision of the High Court. Alongwith the application for release on bail, certificates as regards medical ailments that the appellant suffers from, were also appended. This Court while issuing notice on 30.06.2011 was pleased to order the release of the appellant on bail. The special leave to appeal granted vide order dated 02.01.2013.

8. Mr. P.H. Parekh, learned Senior Counsel appearing for the appellant submitted that the ingredients of Section 409 IPC were not attracted in the present case. It was further submitted that the timber was simply lying in the house of the appellant and that the property was not converted to his use. Mr. V. Shyamohan, learned Additional Standing counsel appearing for the State of Kerala “respondent, emphasized that the timber was found at a distance of 140 Kms. and such timber was never accounted for in the accounts of the Corporation.

9. Having considered the submissions of the learned counsel and gone through the record, we are of the view that the ingredients of the offence under Section 409 IPC are clearly attracted in the present case. As Managing Director of the Corporation, the appellant was having dominion over the property in question in his capacity of public servant. The removal of timber from the plot in question to the house of the appellant at a considerable distance and non-accounting thereof in the books of the Corporation are very clinching and relevant circumstances. We therefore uphold the order of

conviction as recorded by the Courts below.

10. However, regard being had to the age and medical condition of the appellant, we deem it appropriate to reduce the substantive sentence on each count to simple imprisonment for one year maintaining the order as regards fine and sentence in default. The appellant is directed to surrender within three weeks to undergo the remaining sentence. The appeal thus stands partly allowed in the aforesaid terms.