

K.G .Radhakrishnan Vs State Of Kerala And Ors

Court: High Court Of Kerala

Date of Decision: Jan. 13, 2021

Acts Referred: Prevention Of Corruption Act, 1988 â€” Section 13(1)(c), 13 (1) (d), 13(2)
Indian Penal Code, 1860 â€” Section 120(B), 409

Hon'ble Judges: Sunil Thomas, j

Bench: Single Bench

Advocate: K.S. Madhusoodanan, T.V. Jayakumar Namboodiri, P.K. Rakesh Kumar, M.A. Ruxana, Thushar Nirmal Sarathy, M.M. Vinod Kumar, K.B. Sony

Final Decision: Allowed

Judgement

1. These appeals are preferred by the first and the second accused in C.C.No.09/2004(V.C.8/2000/EKM) of the Enquiry Commissioner & Special

Judge, Thrissur for offences punishable under Sections 13 (1) (c) and 13 (1) (d) read with section 13 (2) of Prevention of Corruption Act, 1988 and

also under sections 409 and 120B of IPC.

2. The first accused was the shop manager in-charge of the Kumbalam Maveli Store and the second accused was the helper employed there. The

prosecution allegation was that, the above accused entered into criminal conspiracy with each other to misappropriate a sum of Rs.1,54,370.65 during

the year 1998 by abusing their position as public servants by way of short remittance of sales amount and value of shortage of maveli and non maveli

items. They, by abusing their position as public servant in a fraudulent manner, obtained pecuniary advantage of that amount. They also falsified the

accounts and forged the documents with an intention to use it as genuine documents and committed the offences alleged by the prosecution.

3. Pursuant to the crime registered, investigation was conducted and final report was laid. Before the court below accused appeared and pleaded not

guilty. On the side of the prosecution, PW1 to PW15 were examined and Exts.P1 to P64 were marked. There was no defence evidence. On the basis

of the evidence let in by the prosecution, the court below found both the accused guilty of offences punishable under the PC Act as well as under the

Indian Penal Code. They were imposed with sentences ranging upto two years and with fine. Aggrieved by the above conviction and sentence, the

accused have preferred these appeals.

4. Records show that PW1, registered the crime as VC No.8/2000/EKM. PW12 and PW13, the inspectors, conducted the investigation. PW14 laid

the charge.

5. To substantiate the claim of the prosecution that, final report was laid after obtaining due sanction from the competent authority, PW5 and PW15

were examined. PW5 was the manager, (Administration) of Civil Supplies Corporation, Ernakulam . PW15, was the Managing Director of the Kerala

Civil Supplies Corporation. Evidences were tendered by the witnesses claiming that sanction was ordered after due consideration of the available

records. Even though witnesses were cross examined, nothing was brought out to establish that sanction was bad or that sanction was granted without

due application of mind.

6. On merits, the prosecution essentially relied on the oral testimony of PW1 and PW2. PW1, who was the junior manager (Inspector) of Civil Supplies

Corporation, Ernakulam, had inspected the Maveli store on 9/10/1998. According to PW1, she inspected the stock of Maveli Store for the period from

19/6/1998 to 9/10/1998. The first accused was the shop in charge and the second accused was the helper of the Maveli Store. She prepared the

trading particulars for that period, which was marked as Ext.P1. Ext.P1(a) was the report submitted by her to the Regional Manager. According to

her, she had found shortage of Rs.1,14,937.20 in relation to Maveli items. There was a shortage to the tune of 4,106.10 of non maveli store items.

Hence, the total shortage was Rs.1,19,043.30. An excess stock of Rs.1,010.30 was found. Shortage of remittance was found to be Rs.5,708.70. The

total amount of misappropriation was to the tune of Rs.1,25,762/-.

7. PW1 deposed that, Ext.P1 was prepared on the basis of stock verification. According to PW1, on verifying the stock register, sales register, daily

sales register, bank remittance register and Bill Books of Maveli and Non Maveli items, she arrived at a conclusion that there was a total shortage of

Rs.1,25,762/-. It was alleged by the prosecution that, this much deficit could not have occurred without laches on the part of the first and the second

accused.

8. Regarding the process of obtaining stocks and its sale, PW1 deposed that articles would reach the Maveli store with consignment notes from the

District Depot. On receipt of the stock, it will be entered in the stock register and sold against bills through the Maveli store. Daily collections will be

entered in the daily collection and remittance register. Next day, the amount so collected has to be remitted in the bank. This will be evidenced by the

challan receipts. If the above documents are not forthcoming, it can be presumed that there was short remittances, it was deposited. Ext.P2 was the

stock register during the period 1-4-1998 to 29-9-1998. Consignment notes of maveli and non maveli items issued to the depot were Ext.P3 series.

Consignment notes of maveli stores were Ext.P4 series. Report of the Inspection submitted in the proforma was Ext.P6. Ext.P7 was the physical

verification statement of stock prepared in the presence of the second accused. However, he had refused to sign it. This was marked as Ext.P7.

9. The collection and remittance register was marked as Ext.P8. The above was maintained by the first accused. Ext.P9 was the sales day sheet

register covering the period from 1/6/1998 to 29/7/1998. Volume II of the sales day sheet register was marked as Ext.P10. Volume III of the sales

day sheet register was marked as Ext.P11. Exts.P9 to P11 included both Maveli items as well as non maveli items. Daily collections were recorded in

Ext.P9 to P11. Bill book was marked as Ext.P12.

10. It is pertinent to note that, the first inspection was conducted on 9/10/1998 at forenoon. Thereafter the store was closed and the staff left for

taking lunch. The first and the second accused, who were traveling on a scooter, met with an accident on the way. The first accused sustained serious

injuries. The second accused also sustained some injuries. Both were rushed to the hospital and the first accused was shifted to ICU. He remained in

the ICU of hospital for several days. It seems that, Maveli store remained closed during those days. It was re-opened only on 9/10/1998. Since the

first accused was undergoing treatment in the hospital, it seems that after the commencement of inspection in the morning of 9/10/1998, till it was

completed, the accused could not participate. It was contended by the learned counsel for the appellants that, the possibility of somebody manipulating

the records or manipulating the stock, to show deficiency cannot be ruled out. Having considered the nature of allegations and also the nature of the

evidence produced, I feel that there is some substance in the contention set up by the accused that the possibility of some other inter-medling with the

stock or records could not be ruled out.

11. Admittedly, PW1 conducted inspection in the forenoon of 9/10/1998. Thereafter, store was closed for lunch break. The first and the second

accused proceeded for lunch in a scooter. It is on record that, on the way they met with an accident and both of them were admitted in the hospital.

The first accused sustained serious injuries and was in the ICU for the next several days. It was contended that, in the light of the above, store

remained closed till 19/10/1998. Evidence revealed that one C.K.Nazeer was appointed as shop manager succeeding the first accused. As per

Ext.P1(a), Nazeer took charge on 17/10/1998. The second accused was succeeded by one K.A. Augustine. It is also seen from Ext.P1(a) that Nazeer

assessed the stock on 17/10/1998. Thereafter, store began functioning on 20th. However, according to PW1, the inspection was completed only on

20/10/1998.

12. Though PW1 asserted that , Nazeer took charge only on 20/10/1998, Ext.P1 (a) indicates that he took charge on 17th and assessed the stock on

that day. Some records also indicate his presence in the store on 17th. It seems that, evidence on record is contradictory as to the actual date when

Nazeer took charge. However, the presence of Nazeer on 17th is confirmed by the records.

13. The main allegation against the accused was that, there was shortage of remittances. PW1 deposed that, she found shortage of remittance while

verifying the daily collection register on the basis of the bills and chalans of bank remittances. She also found difference between the remittance

register and the challan receipts. She deposed that, she had verified the challan receipts and verified the bank reconciliation statements. Collection and

remittance register maintained by the first accused was admitted in evidence as Ext.P8.

14 .However, PW1 admitted that she had not verified the challans in which variations were found. She had also admitted that she had not noted the

particulars of challan numbers which showed the variation. She had also not noted the date of receipts where the short remittances were found. To a

specific question as to whether along with the monthly statement, copies of challans were sent to the regional office, PW1 feigned ignorance. Though

she claimed that she had verified Ext.P8, to ascertain short remittances , there is absolutely nothing on record to show that she had verified Ext.P8.

However, PW1 admitted that in Ext.P8, entries of each month were verified by the Assistant Manager on the next month.

15. PW12, the investigating officer, stated that PW1 had not given evidence regarding the dates on which shortages were found. PW13, who had also

conducted investigation, admitted that none of the witnesses have given evidence that there were forgery of documents. Evidently, even though short

remittance was alleged by PW1 in the report, which was relied on by the prosecution, the actual details of the shortages found are not mentioned. In

otherwords, except the ipsi dixit of PW1 that there was shortage of remittance, there is absolutely no record to confirm with reference to the

documents that there was short remittances.

16. Apart from the above, there are some other circumstances to doubt the version spoken by PW1. As mentioned earlier, there are absolutely

divergent materials on record regarding the date on which Nazeer took charge. Even though PW1 asserted that Nazeer took charge only on 20th,

Ext.P1(a) indicates that on 17th, at the time of opening of store after a long close down, Nazeer was present. His presence in the store is confirmed

by other materials also. Ext.P1(a) further indicates that stock was verified by Nazeer under the direction of PW1. It appears that, he had signed the

attendance register also. However, in Ext.P1 it is stated that Nazeer and Augustine took charge only on 20/10/1998. It is not clear as to why PW1

gave inconsistent version regarding the presence of Nazeer on that day. However, these facts indicate that Nazeer had access to the stock and

godown before the stock verification was completed.

17. Ext.P1(a) further indicates that, at the time of inspection, the second accused was present PW1 in her evidence had indicated that, though the

second accused was present, he refused to sign the inspection report. However, PW2, who had accompanied PW1, did not depose specifically about

the presence of the second accused at the time of inspection. To a specific question put to him regarding the presence of the second accused, he only

reiterated that, it was so recorded in Ext.P1(a). To a pointed question as to why the second accused was not present at the time of inspection, the

reply of PW2 was that he does not know the reason for the absence of the second accused. It shows that the 2nd accused was not present there.

This clearly confirms that the stand taken by PW1, that the second accused was present at the time of inspection is contrary to facts. PW13, the

investigating officer, also stated that PW1 had not specifically stated that the second accused was present at the time of inspection. This was

reiterated by another investigating officer, who had also asserted that, in the course of questioning, PW1 had not stated that the second accused was

present at the time of inspection.

18. Another specific contention set up by the prosecution was that there was shortage of stocks. Admittedly, after 9/10/1998, the inspection was

resumed only on 17/10/1998. PW1 indicated that when she went to the store on that day it was found closed. It was opened with a key given to her by

the Assistant Manager. On the other hand, when the assistant manager was examined as PW3, he asserted that he did not have a key of the store

with him and also asserted that he had not given the key to PW1 or to Nazeer. PW13 admitted that, investigation had revealed that the store was

opened by PW1 on 17/10/1998. PW13 in his evidence further stated that PW1 did not say that store was opened on 17th or 18th .

19. The above facts clearly show that, though PW1 asserted that on 17th store was opened by her with a key given by PW3, this was denied by PW3

asserting that he had not given the key. Evidently, Ext.P1 was suppressing certain facts. The above materials clearly show that there was another

person who had key of the store with him. Even though the store was closed and the first and the second accused were not available, the key of the

store was available with another person. In other words, a third person other than the accused had a key with him and hence access to the godown.

Such person inter meddling with the stock, in the absence of the first and the second accused could not be ruled out. This cast serious doubt on the

prosecution case that accused had exclusive possession of store and hence responsible for the shortage of stock. In other words, the prosecution was

not successful in establishing that the first and the second accused alone were in exclusive and absolute physical possession of the store during the

period when the shortage occurred. Hence, the allegation of the prosecution, that the accused alone are liable for shortage of stock is unsustainable.

20. In the light of the evaluation of the above facts, evidence tendered by PW1 in relation to the short remittances is doubtful. No other material

evidence has been let in, except the report submitted by PW1 and the oral assertion of her that there was short remittance. Allegation regarding

shortage of funds and its liability cannot be cast on accused 1 and 2 in the absence of cogent evidence confirming that the accused were in absolute

and exclusive possession of store during the period in which shortage occurred.

21. Having appreciated the above facts, I feel that the court below did not go into the above facts, while evaluating the evidence on record. From the

nature of the materials produced by the investigating agency, criminal liability cannot be fastened on the accused and they are entitled for the benefit

of doubt. Necessarily, conviction is liable to be set aside.

In the result, the appeals are allowed. Conviction and sentence imposed by the court below are set aside and the accused are acquitted.