



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.5380 OF 2024

K. H. Kamaladini

... Appellant

versus

State

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant has challenged the order dated 27th March 2023 passed by the High Court of Bombay at Goa dismissing the Criminal Revision Application No.195 of 2023. The appellant was aggrieved by the order dated 15th February 2023 passed by the Sessions Judge, North Goa, Panaji, framing charges against the appellant for the offences punishable under Sections 409 and 468 of the Indian Penal Code, 1860 (for short, 'the IPC') and Section 13(1) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act') and dismissing the appellant's plea for discharge.

2. A complaint dated 30th January 2013 was received by the Chief Minister of Goa and Chief Vigilance Officer of Goa, containing allegations pertaining to 19 short tender notices comprising 847 numbers of water supply works in the Works Division XVII (PHE-N), Public Works Department, Porvorim, Goa. It was alleged that the tender notices were not published in newspapers as required by the Central Public Works Department Manual. It was also alleged that some works were unnecessarily split without any valid justification, and the works were allotted to the same party or their cronies. The Department of Vigilance conducted an enquiry into the complaint and furnished a report dated 26th March 2013, which revealed that 19 Short Tender Notices enclosed in the complaint were never published in any newspaper. The works were quoted 4.8% to 14.95% above their estimated cost, and for most works, only two bidders had quoted bids, which clearly indicated that the Government did not get the benefit of competitive bidding and caused a loss to the Government. The report further revealed that the appellant was working as an Executive Engineer at the relevant division of the Public Works Department, Porvorim, from 21st October 2009 till the date of the enquiry report, i.e. 26th March 2013. The report noted that the appellant was given an opportunity to explain the allegations during enquiry, wherein he had submitted that the decision of not advertising the tenders costing up to Rs.10 Lakhs was approved by the then Public Works Department Minister for the purpose of saving time, and this decision was

approved by other stakeholders. During the enquiry, photocopies of each document were collected from the relevant Division, and it was observed that the signature of the Minister of the Public Works Department was obtained in every case, after obtaining approvals from the Superintending Engineer and the Chief Engineer of the Public Works Department.

3. The enquiry report finally concluded that the appellant, after approvals from the aforesaid authorities, inserted in his own handwriting “*approved to take short tender without publishing in newspaper and issue W/O*” just above the signature of the then Public Works Department Minister on each document, so as to project as if it was an instruction from the Minister himself. The enquiry report also addressed the order dated 16th April 2007, which granted financial powers to Executive Engineers, Chief Engineers, and Superintendent Engineers for emergent maintenance and repair work costing up to Rupees Ten Lakhs. However, it was alleged that the appellant undertook works such as painting and fixing floor tiles, which could not be categorised as emergent works.

4. Relying on the said enquiry report, the Chief Technical Examiner of the Directorate of Vigilance, Government of Goa, lodged a complaint dated 05th June 2023, which led to the registration of Crime No.6 of 2013. After obtaining the requisite sanction dated 5th February 2020 from the Principal

Chief Engineer, Public Works Department, Panaji under Section 19(1)(b) of the PC Act read with Section 197 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'), the Respondent filed the chargesheet No. 02 of 2020 dated 22nd May 2020 for the offences punishable under Sections 409, 468 and 471 of the IPC and Section 13(1)(d) read with Section 13(2) of the PC Act. During the course of the investigation, a report from the Central Forensic Science Laboratory, Hyderabad (for short, 'the CFSL') was called for, which opined that the alleged handwritten remarks on the documents matched the handwriting of the appellant. The chargesheet also contained the statement of Mr. Churchill Alemao, who was the Public Works Department Minister at the relevant time, recorded on 26th March 2015, wherein he alleged that he never directed the appellant to write any remark on the tender documents. He also stated that he signed the documents placed before him without making any additions or edits. If any additions were required, he would generally write them himself. The charge sheet also alleged recovery of jewelry and cash of Rs.18,00,500/- from the appellant's bank locker. However, the offence of criminal conspiracy under Section 120-B of the IPC, which was initially included in the First Information Report, was dropped while filing the chargesheet, as there was no evidence.

5. The appellant's application for discharge under Sections 226 and 227 of the CrPC came to be dismissed by the Sessions Judge, North Goa, Panaji. Relying on the test laid

down by this Court in the cases of **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijaya & Ors.**¹ and **Madjavrao Jiwarelao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors**², the Sessions Judge held that if the statements of the forensic expert and the PWD Minister are not controverted in the cross-examination, such evidence would be sufficient to convict the appellant. Thus, the evidence was sufficient to frame a charge for the offence punishable under Sections 409 and 468 of the IPC for dishonestly inserting words in the documents which were entrusted to him in order to avoid publication of tenders. The Sessions Judge also proceeded to frame a charge for the offence under Section 13(1)(d) read with Section 13(2) of the PC Act, after holding that the use of forged reports in the execution of Government work without publication of tenders shall amount to criminal misconduct for personal gains.

6. The appellant filed Criminal Revision Application No.195 of 2023 before the High Court of Bombay at Goa, contending that none of the ingredients of the offences charged against him were made out by the material produced in the chargesheet, if they were taken to be true at their face value. In the judgment impugned before us, the High Court held that the allegation of not following the procedure laid down for awarding tenders for benefitting a cartel of contractors by inflating the cost of tenders may satisfy the ingredients of

1 (1990) 4 SCC 76

2 (1998) 1 SCC 692

criminal misconduct, laid down in Section 13(1)(d) of the PC Act. The High Court relied on the material produced in the chargesheet to hold that the act of overwriting above the signature of the Minister for the purpose of showing that it is the Minister who approved the action of non-publication, discloses the existence of ingredients constituting the offence of criminal breach of trust and forgery.

SUBMISSIONS

7. The learned counsel appearing for the appellant argued that the nineteen tenders in question, wherein the procedure of publication in newspapers was not followed, pertained to the work urgently required to be carried out to meet a grave water crisis in Porvorim and other regions of North Goa. The High Court of Bombay at Goa was seized of the matter in **PIL No.1 of 2010** titled “**Soter D’Souza and Anr. v. The Principal Chief Engineer PWD Altinho, Panji Goa**” of water supply to the citizens. The High Court had already taken the PWD and all responsible engineers, including the appellant, to task. In accordance with the directions of the High Court in the order dated 3rd June 2010, the appellant filed an affidavit dated 14th October, 2010 stating that the Public Works Department shall make all efforts and endeavours to supply water for at least one hour a day. The counsel for the appellant contended that in order to resolve the crisis and expedite the regular supply of water, one of the measures was to do away with the publication of tenders. In furtherance of this decision, 741 reports and 847 works, executed between

21st October 2009 and 24th November 2011, contained written instructions of the Public Works Department Minister of not publishing the tenders in newspapers. It was further contended that on the basis of a lack of evidence to prove forgery, the appellant was exonerated in the departmental inquiry proceedings by the Inquiring Officer. The learned counsel for the appellant, relying on the judgements of this Court in the cases of **Radhe Shyam Kejriwal v. State of West Bengal**³ and **Ashoo Tiwari v. CBI**⁴ submitted that the standard of proof required in a criminal proceeding where the case has to be proved beyond a reasonable doubt, is much higher than the standard of proof in departmental proceedings, which is based on preponderance of probabilities. Therefore, since the appellant has been exonerated in the departmental proceedings, on the same facts and allegations, criminal proceedings cannot be pursued.

8. The learned counsel appearing for the respondent-State, supported the impugned order and submitted that the action of the appellant of not publishing tenders was in violation of the CPWD Manual and he was never directed to take any decisions in contravention to the established practices of the Public Works Department. It was further submitted that the findings of the CFSL indicate that the handwriting of the appellant matches the handwriting on the notings/reports. As

3 (2011) 3 SCC 581

4 (2020) 9 SCC 636

far as the findings of the Inquiry Officer are concerned, the learned counsel for the respondent submitted that no reliance can be placed on the report of the Inquiry Officer exonerating the appellant, as disciplinary proceedings contemplate a varied scope of enquiry and can run parallel to the criminal proceedings, and that the outcome of the disciplinary proceedings can have no bearing on the criminal proceedings pending against the appellant.

CONSIDERATION OF SUBMISSIONS

9. In this case, the appellant sought discharge. The prayer for discharge was rejected by the Special Court. Therefore, a revision application under Section 401 read with Section 397 of the CrPC was preferred by the appellant. As far as the scope of hearing at the time of framing of the charge is concerned, the law is well settled. Firstly, at this stage, the Court can examine only the documents forming part of the charge sheet, and no other material can be considered. Secondly, after considering the material on record, the Court has to decide whether or not there exists a sufficient ground for proceeding with the trial against the appellant. Thirdly, at this stage, the Court cannot sift the evidence forming a part of the chargesheet with a view to separating the grain from the chaff. Fourthly, if the Court is of the view that the evidence without cross-examination or rebuttal shows that the accused has not committed any offence, then an order of

discharge must be passed. Lastly, if the evidence adduced before the Court creates a grave suspicion against the accused, the Court will not discharge the accused.

10. Therefore, at this stage, the outcome of the disciplinary proceedings cannot be examined, and what needs to be examined is the material forming part of the chargesheet. The allegation against the appellant pertains to a tender process. The appellant was, at the relevant time, Executive Engineer of Works Division at Porvorim, Goa. The allegation concerns 19 short-term tender notices. The allegation against the appellant is that after the Hon'ble Minister for the Public Works Department signed the note/report granting approval for issuing of tenders, above the signature of the Hon'ble Minister, the appellant inserted the following words: "approved to take short tender without publishing in newspaper and issue w/o". Further allegation against the appellant is that he committed forgery by inserting the aforesaid words with the object of showing that the addition was made by the Hon'ble Minister. There is an opinion of the Scientist of the CFSL that the inserted words were in the handwriting of the appellant. The allegation is that by not publishing tender notices, loss was caused to the Exchequer for two reasons: firstly, the revenue could have earned by the sale of the tender documents, and secondly, the revenue could have been benefited from getting competitive bids.

11. The appellant has been charged with the offences punishable under Section 468 of the IPC, which reads thus:

“468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

‘Forgery’ is defined under Section 463. Whoever makes any false document or part of a document with the intent to cause damage or injury to the public commits forgery. Considering the allegations made in the charge sheet and the report of the CFSL, a case is made out to proceed against the appellant for the offence punishable under Section 468 of the IPC. If the case of the prosecution is considered without controverting it, obviously, there is *prima facie* material against the appellant to proceed for the offence under Section 468 of the IPC.

12. Another offence alleged against the appellant is under Section 409 of the IPC. In this case, the reports/documents signed by the Hon’ble Minister were entrusted to the appellant. The allegation is that he dishonestly inserted the portion quoted above the signature of the Minister. Therefore, taking the case of the prosecution as it is, even the offence under Section 409 is also attracted. If we take the statements of the witnesses and, in particular, the Hon’ble Minister as it

is, a case was made out to proceed against the appellant for the offences punishable under Sections 409 and 468 of the IPC.

13. Apart from these IPC offences, the allegation against the appellant is of commission of the offence punishable under Section 13(1)(d) read with Section 13(2) of the PC Act. We are concerned with Section 13 as it stood prior to its amendment, which came into force with effect from 26th July 2018. Section 13(1) as it stood prior to 26th July 2018, reads thus:

“13. Criminal misconduct by a public servant.”–(1) A public servant is said to commit the offence of criminal misconduct, –

- (a)** if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
- (b)** if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is

subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he –

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.”

14. There is no allegation made in the chargesheet that the appellant obtained for himself or for any other person any valuable thing or pecuniary advantage. Therefore, on a plain reading, clause (d) of sub-section (1) of Section 13 of the PC Act will not be attracted. In this case, there is no allegation that the appellant agreed to accept or accepted any gratification. There is no allegation that he had agreed or accepted any valuable thing or had dishonestly misappropriated or converted for his own use any property entrusted to him. Therefore, the 'criminal misconduct' as provided in Section 13(1) is not attracted in this case. That is how even the offence punishable under Section 13(2) of the PC Act is not attracted. In short, there was no case made out to proceed against the appellant for the offences punishable under Section 13(1)(d) read with Section 13(2) of the PC Act. To this extent, the impugned orders will have to be modified.

15. Accordingly, the order dated 15th February 2023 passed by the learned Sessions Judge and the order dated 27th March 2023 passed by the learned Single Judge of the High Court are, hereby, modified and the direction to frame charge for the offences under Section 13(1)(d) read with Section 13(2) of the PC Act is, hereby, set aside. The order of framing of charge for the offences under Section 409 and 468 of the IPC is maintained.

16. We clarify that the observations made in this judgment are only for the purposes of considering the plea of discharge. The same will not bind the Trial Court at the time of the final hearing of the case.

17. The appeal is, accordingly, partly allowed on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Augustine George Masih)

**New Delhi;
May 20, 2025.**