

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1362 OF 2006

MURALEEDHARAN NAIR . . . APPELLANT (S)

VERSUS

K.V. HARIVALSAN . . . RESPONDENT (S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Kerala at Ernakulam in Cr1.A. No.359 of 1998, dated 09.02.2005 whereby the High Court has upheld the order of conviction and modified the order of sentence passed by the Trial Court in C.C. No.10 of 1997 dated 11.05.1998.

2. The case of the prosecution is that on 01.10.1997, PW-1 met the appellant regarding his uncle's (PW-2) application for a telephone connection. The appellant demanded a sum of Rs.400/- as bribe in return for grant of the said telephone connection. PW-1 and PW-2 lodged a complaint before

the Deputy Superintendent of Police, Trivandrum, CBI Unit (PW-5). In response to the said complaint, PW-5 conducted a secret inquiry and forwarded the same to Superintendent of Police, Kochi who registered RC 19A/97 against the appellant. Immediately thereafter, pre-trap proceedings, including smearing the trap money with phenolphthalein powder, were completed.

3. On 03.10.1997, PW-1, together with an independent witness (PW-3), went to meet the appellant as per PW-5's instructions. On the appellant inquiring about the bribe amount, PW-1 handed over the trap money to him. PW-1 then gave the pre-arranged signal and the trap party, led by PW-5, entered the premises. The appellant was questioned in the presence of the Junior Telecom Officer, Sanghumugha (PW-4) and the trap money was seized from him. The sodium carbonate test was conducted which gave a positive result. The appellant was then arrested. Subsequently, sanction

for prosecution was received, the investigation was completed and a charge sheet was filed before the Trial Court.

4. Thereafter, on summons being issued, the appellant appeared before the learned Special Judge. After both sides were heard, charges were framed against the appellant for offences under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "the Act"). The charges were read over and explained to the appellant who pleaded not guilty. Consequently, the case was committed to trial.

5. The prosecution examined 10 witnesses and produced 17 documents and 11 material objects. The appellant's statement was recorded under Section 313(1)(b) of the Code of Criminal Procedure (for short, "the Code"). The defense further examined 4 witnesses and 4 material objects.

6. The Trial Court considered the evidence on record as also the arguments of the parties and noticed that it had been conclusively proven that the trap money had been recovered from the appellant's possession. It further noticed that the defense was attempting to fabricate evidence in order to prove that the said trap money had been received by the appellant *bona fide* towards the payment of a debt owed by PW-1 to his father. Taking into consideration the testimonies of the prosecution witnesses and the conduct of the appellant, the Trial Court concluded that the appellant was guilty of the offences charged against him. Therefore, by order dated 11.05.1998, the Trial Court convicted the appellant and sentenced him to rigorous imprisonment for one year and a fine of Rs.2000/- for the offence under Section 7 of the Act and rigorous imprisonment for one year and a fine of Rs.2000/- for the offence under Section 13(2) read with Section 13(1)(d) of the Act, with directions that both sentences would run concurrently.

7. Aggrieved by the said conviction and sentence, the appellant/accused approached the High Court in Criminal Appeal No.359 of 1998 on the ground, *inter alia*, that the said amount had been received by the appellant towards the discharge of a debt owed by PW-1 to his father and the same was not illegal gratification as had been alleged by the prosecution.

8. By the impugned judgment and order dated 09.02.2005, the High Court re-appreciated the entire evidence on record and noticed that the testimonies of the defense witnesses were unreliable and could not be acted upon. The High Court concluded that the prosecution had been able to prove its case beyond reasonable doubt and, therefore, there was no reason to interfere with the order of conviction passed by the Trial Court. However, taking into consideration the facts of this case, the High Court reduced the sentence imposed on the appellant under Section 7 to rigorous imprisonment for six months while

sustaining the sentence imposed on the appellant under Section 13(2) read with Section 13(1)(d) of the Act.

9. Aggrieved by the judgment and order passed by the High Court, the appellant is before us in this appeal.

10. We have heard learned counsel for the parties to the *lis*.

11. Learned counsel for the appellant would submit that the prosecution's case is false and is motivated by prior animosity between the appellant and PW-1. *Per contra*, the respondent-State would support the judgment and order passed by the High Court.

12. After going through the judgments and orders passed by the High Court as well as the Courts below and the material available on record, the appellant's case fails to convince us. The Courts

below have appreciated the entire evidence on record and have recorded concurrent findings of guilt.

13. In light of the aforesaid, we do not find any infirmity in the impugned judgment and order passed by the High Court. The appeal, being devoid of any merit, is liable to be dismissed and, is dismissed accordingly.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI
SEPTEMBER 01, 2015.

ITEM NO.12

COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1362/2006

MURALEEDHARAN NAIR

Appellant(s)

VERSUS

K.V. HARIVALSAN

Respondent(s)

(With office report)

Date : 01/09/2015 This appeal was called
on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Jishnu M.L., Adv.
Mr. G. Prakash, Adv.

For Respondent(s) Mr. P. Parmeswaran, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of
the signed order.

As a sequel to the above, pending
interlocutory application(s), if any, are
disposed of.

(Neetu Khajuria)
Sr.P.A.

(Vinod Kulvi)
Assistant Registrar

(Signed order is placed on the file.)