

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 07TH DAY OF JANUARY 2021 / 17TH POUSHA, 1942

Cr1.MC.No.2161 OF 2020 (A)

CRIME NO.3/2009 OF VACB, THIRUVANANTHAPURAM , Thiruvananthapuram

PETITIONER/ACCUSED NO.7:

A.DHARMAKEERTHI
AGED 53 YEARS
S/O. K.P.ARJUNAN,
BHAVANA, NO.79,
M.P.APPAN ROAD,
VAZHUTHACAUD,
TRIVANDRUM-695 014

BY ADV. SHRI.SASTHAMANGALAM S. AJITHKUMAR

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031

OTHER PRESENT:

SPL.GP SRI.A RAJESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17-11-2020, THE COURT ON 07-01-2021 PASSED THE FOLLOWING:

ORDER

Petitioner herein is the 7th accused in C.C.No.3 of 2020 arising from Crime No.3/2009/SIU-1 of VACB, SIU-I, Thiruvananthapuram for offences punishable under section 13(1)(d) r/w 13(2) and section 120B of the PC Act, 1988.

2. The crux of the prosecution allegation is that, 6th accused is the owner of an old building, T.C.No.28/1830 in survey No.709 of Vanchiyoor Village in Thiruvananthapuram district. He proposed to renovate the above building. 7th accused, who is a registered architect, was entrusted with the duty of preparing the plan and for obtaining license from the authorities. Accordingly, the architect prepared a plan for internal renovation of the existing building. The plan was submitted for approval by 6th accused. By order in No.TP7/BA/662/06, plan was approved and license was granted for carrying out internal renovation. Prosecution alleged that, on the pretext of renovation, 6th accused demolished the entire structure and constructed a new four storied building in its place. On getting information about the illegal construction, stop memo was issued by corporation. This resulted in other legal proceedings. Thereafter, 6th accused submitted a revised plan and applied for regularization of the alleged deviation on the basis of the renovation application prepared by 7th accused. Prosecution alleged that

the real intention of the 6th accused in obtaining a plan for internal renovation and getting permission for that, was for demolishing the entire building and to construct a new building in its place under that plan, fully knowing that, new construction was not permitted in that area. It was alleged that, it was done consequent to the conspiracy hatched by 6th and 7th accused along with the first accused who was the Assistant Planning Officer of the Corporation, 2nd accused Town Planning Officer, 3rd accused Building Inspector, 4th accused UD Clerk and 5th accused Building Inspector of the Town Planning Section who were public servants. It was alleged that, the accused, during the period 15.03.2006 to 27.11.2006 committed various irregularities pursuant to the conspiracy. Further allegation was that, accused Nos.1 to 5 had misused their official position as public servants to help the 6th accused. It was further alleged that, on the application submitted for license, 7th accused had undertaken that, he will construct the building as per the approved plan and if there was any violation, it would be brought to the notice of the authorities. The specific allegation against the 7th accused was that the building was newly constructed under his supervision. Further, even though he knew that the new building was constructed in complete violation of the plan and license and that he was duty bound by the undertaking to inform the Corporation, he did not inform the Corporation about the above violation. Thereafter, he even submitted an application for regularization of the alleged deviation, fully knowing that it was not a renovation or a mere

deviation from the plan and license. On the basis of the complaint received, crime was registered and investigation was carried out. Annexure-A final report was submitted before the court below.

3. Contending that, 7th accused was innocent and that, he was only entrusted with the work of preparing a plan for internal renovation and that apart from obtaining the plan and license, he was not involved in the construction work, he has approached this Court. He was neither involved in the supervision of nor in the actual work of the construction of the building. Only after the completion of the construction, he got involved with the building. He being the architect, was duty bound to submit an application for regularization as instructed by the client, which he did for the 6th accused. He did it only as a part of professional engagement. It was further contended that, even if he was aware of the violation and that, he was duty bound to inform the Corporation about the violation in the light of the undertaking given by him, the breach of it can at the most result in a civil liability or a violation of the Code of Conduct for the Architects but, not a criminal liability. It was contended that, he had neither conspired with the 6th accused nor committed any act independently or in combination with the remaining accused.

4. Learned Special Government Pleader for Vigilance opposing the application contended that, plan submitted was prepared by the petitioner herein for internal renovation only. The area where the building was situated was a heritage zone, where new constructions were not

permitted. Fully knowing it, an application for internal renovation was submitted and under the guise of it, the building was demolished lock, stock and barrel and it was newly constructed. Thereafter, claiming that it was only a deviation from the plan, application for regularization was also submitted. Petitioner was aware of the nature of construction and he was duty bound to bring it to the notice of the Corporation. It was alleged that, he along with the 6th accused clandestinely obtained the plan approved under the guise of renovation and made the new construction. The undertaking given by him in Annexure-B to reconstruct as per the plan under his supervision was violated and he had conspired with the remaining accused.

5. In the final report, 7 persons including the petitioner were arrayed as the accused. There is no dispute that the plan was prepared by the petitioner herein. He had also undertaken on the plan that the renovation work would be carried on under his supervision and in case of breach, it will be informed to the authorities. Records available disclose that the application for renewal was submitted by 6th accused, the owner through his employees. Approved plan also shows that, it was specifically for internal renovation only, keeping the main structure intact. Investigation revealed that a bar hotel was functioning in that building and license was granted for that old building, T.C.No.37/208 and 37/208/1 under the name Vrindavan Tourist Home. Thereafter, a new building number 28/1830 was constructed and bar continued under the name

and style Samrat Hotel. Excise records also show that the 6th accused had submitted applications for changing the name and address of the hotel to Hotel Samrat.

6. The limited question that now arises is whether any criminal liability can be fastened on the petitioner herein who was a professional architect and whether prosecution against him is legally sustainable. The twin contentions advanced by the Special government Pleader against the petitioner herein was that, firstly, he was involved in the conspiracy and secondly that even though he was duty bound to inform the authorities about the violation, he failed to do so and had played active role in the construction of the building. It was vehemently contended by the learned counsel for the petitioner that the records do not indicate that, either he had entered into a conspiracy with the second accused or that he was involved in the construction. It was also contended that, even if the petitioner had undertaken to reconstruct under his supervision and to ensure that the renovation would be done in accordance with the approved plan and license, breach of it by the owner or employees of the owner, will not cast any criminal liability on him and he cannot be held answerable for that. According to the learned counsel, at the most, breach of an undertaking by itself can only result in a civil liability and a proceeding, if any, for breach of the Rules of Conduct applicable to architects.

7. The memorandum of witnesses submitted along with the final report shows that, CWs.1 and 2 are arrayed as witnesses to establish that, they had submitted complaints against the new construction, alleging violation of the rules. CWs. 3 to 10 were arrayed as witnesses to prove the submission of application to the Corporation seeking license and sanction and that, pursuant to complaints regarding violation, stop memo was issued by the Corporation. CWs3 to 10, 12, 13, 33 to 37, 39 to 43 and 45 and 54 are the official witnesses of the Corporation and that of the Excise department, who were proposed to be examined to establish the alleged illegal construction and thereafter the application for regularization.

8. Prosecution casts liability on the 7th accused on the allegation that, he had undertaken to ensure renovation in accordance with plan. The specific allegation of the prosecution was that, even the plan for renovation was sanctioned by the 7th accused pursuant to a conspiracy with the 6th accused, to use the permit as a cover for construction of a new building in the guise of renovation.

9. The crucial question that arises is whether, materials are available to show that 7th accused was privy to the construction, apart from his admitted duty of preparing the plan. CW11 was the employee of 6th accused. CWs.31 and 32 were the employees of 7th accused. CW10 was the Operations Manager of 6th accused. Essentially, the prosecution allegation that the petitioner herein was directly involved in the

construction of the building, has to be evaluated on the basis of the statement of above witnesses.

10. CW10, the Operations Manager of 6th accused had stated that, roof tiles were removed for renovation of the building in accordance with the plan and license. In the meanwhile, due to heavy rain, the building collapsed. Since it could not be renovated, it was newly constructed.

11. CW32 was the Supervisor of 7th accused. It was stated by him that, roof tiles of the building were removed and due to the heavy rain, the structure collapsed. The versions of CW10 and CW32 show that, initial work for renovation of the building were done and after the tiles were removed, due to heavy rain, the building collapsed. In the light of the above version of witnesses that old building collapsed due to rain, the allegation that the very purpose of obtaining permit for renovation was to newly construct the building under the guise of renovation pursuant to the conspiracy hatched between 6th and 7th accused along with the other officials cannot survive. The version of above witnesses indicate that roof tiles were removed for renovation and to the unexpected fall of building, the reconstruction had to be done only in such circumstances. These Rules point out the possibility of a conspiracy to get permission for renovation and under the guise of it, to construct a new building.

12. It has to be considered that, even though the prosecution alleged that the petitioner herein conspired with other accused to obtain the plan and license under the guise of renovation and that, under his

supervision, a new building was constructed, there is absolutely no evidence to prima facie show that the 7th accused had conspired with the remaining accused. The prosecution has no specific allegation as to when, where and how 7th accused conspired with the remaining accused and how they hatched the plan. As mentioned above, in the light of the materials indicating that the building collapsed due to natural consequences, the allegation of conspiracy, atleast involving 7th accused, for obtaining the plan and the license under the guise of renovation for achieving the real object of new construction and thereafter, under its cover, it was renovated, cannot survive.

13. The next allegation of the prosecution was that, even assuming that the accused was not directly involved in any conspiracy, he was aware that the building was not renovated but was newly constructed. He had an obligation to ensure that the building was renovated in accordance with the plan and license. By virtue of his undertaking given at the time of submission of plan and license, not only that he undertook to do that, but also to inform the Corporation authorities in case of breach, to enable them to stop the violation. It is pertinent to note that, in the course of reconstruction, Corporation authorities issued stop memo, which was duly accepted on behalf of 6th accused. This is clear from the evidence of CW10.

14. CW10 in his statement admitted that, he was not only the Operations Manager of 6th accused, but his close relative also. According

to him, plan was prepared by the 7th accused. After it was prepared, the plan was submitted to the Corporation and was got approved by CW11 who was the Bar Manager of 6th accused. He also admitted that the building was newly constructed. Construction work was done by one Sreedharan Nair and his employees. According to CW10, he had not seen 7th accused or his employees supervising the work.

15. CW44 who was the Senior Engineer of 7th accused. According to him, the plan was prepared by 7th accused. He asserted that, 7th accused had not supervised the work in the disputed building. To his knowledge, the work was done under the supervision of CW11. It was also completed under the direct supervision of CW11. CW32 who was the Supervisor of 7th accused admitted that, 7th accused had initially asked him to supervise the work in the disputed building. He went to the spot and supervised the work of demolishing of the building for a period of 2½ months. In the meanwhile, building collapsed. Instead of renovating it, new construction started under the supervision of CW11. This was promptly conveyed to 7th accused who directed him not to get associated with construction work thereafter and to keep away from supervising the construction.

16. CW11 who is the Bar Manager of 6th accused admitted that, on receipt of plan from 7th accused, he had taken it to the Corporation office, submitted it there and got the plan approved. Thereafter, the work started. However, he proceeded to add that the work was done under the

supervision of 7th accused.

17. In the light of statement given by CW10, CW44 and CW32 who have unanimously stated that neither the petitioner herein nor his employees supervised the new construction of work, a stray sentence of CW11 when analyzed in the background of his own admission that he was directly involved in the entire work, has no significance at all.

18. However, the available materials atleast indicate that, immediately after the building collapsed and the new construction started, petitioner herein was aware that, 6th accused had deviated from the plan and was proceeding with renovation. In the absence of any materials to show that, petitioner was actively involved in the construction of new building or that, he had conspired with the other accused, the above knowledge is insufficient to cast criminal liability on him. The contention of the learned counsel for the petitioner was that, this by itself would not cast any criminal liability on the accused. There is no case that the petitioner misused his authority to make any wrongful gain. At the most, he can be found guilty of having violated the undertaking which may amount to professional misconduct. These are materials outside the scope of a criminal prosecution, it was submitted.

19. To buttress the above contention, learned counsel for the petitioner relied on the decision of this Court in ***Thomas A.V. v. State of Kerala and Others (2013 KHC 672)***. That was a case wherein prosecution was initiated against the office bearers of Kerala Cricket

Association regarding the purchase of land for construction of a stadium. It was alleged that, suppressing the actual price and showing higher price, office bearers caused loss to the Association and thereby misused their official position. Petitioner herein, who was a lawyer was also the Legal Advisor of the Kerala Cricket Association. He was also arrayed as an accused on the ground that, he had given legal opinion on the genuineness of the title deed and that, he had participated in the stadium committee meeting as a special invitee.

20. Challenging his prosecution, it was contended by the advocate that the legal opinion given by him was only professional advice and that by itself cannot cast criminal liability on him. This was accepted by the learned Single Judge of this Court holding that the entire prosecution case against that accused was based on the allegation that the petitioner was an office bearer of the Association. In fact, he was not the office bearer of the Cricket Association and hence, not a public servant. There was no case that the petitioner misused his capacity as a Legal Advisor with a motive to commit the offence alleged against him. It was also held by the learned Judge that, there was no specific pleading in the complaint or factual imputation in the FIR regarding the ingredients of offence. Hence, for giving legal advice alone, criminal liability cannot cast on the above Legal Advisor.

21. Case of the petitioner herein is slightly different from the above case. In this case, petitioner had given an additional undertaking

that, he will ensure that the building will be renovated in accordance with the plan and license. Definitely, he is under an obligation to comply with his undertaking. However, that by itself is not sufficient to cast any criminal liability on the accused except that, he has violated the undertaking. Breach of it may invite civil consequence and action, if any, under the Architects Act. That is a different issue. However, I am convinced that the undertaking by itself and the failure in not promptly informing the Corporation inspite of knowledge that the 7th accused had deviated from the plan and license cannot be a ground for a criminal action.

22. Having considered these facts, I am satisfied that a successful prosecution of the petitioner on the basis of the above materials is not possible. Necessarily, proceedings against the petitioner alone is liable to be quashed.

In the result, Crl.M.C is allowed. All further proceedings in C.C.No.3 of 2020 arising from Crime No.3/2009/SIU-1 of VACB, SIU-I, Thiruvananthapuram against the petitioner will stand quashed.

Sd/-

SUNIL THOMAS

JUDGE

Sbna

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-A	CERTIFIED COPY OF FINAL REPORT IN CC 3/20 PENDING BEFORE THE SPL JUDGE VIGILANCE TRIVANDRUM
ANNEXURE-B	TRUE COPY OF THE APPROVED RENEWAL PLAN FOR INTERNAL CHANGE OF EXISTING BUILDING WITH THE STRUCTURAL STABILITY CERTIFICATE IN EXT. B2 FILE OF THE FINAL REPORT
ANNEXURE-C	TRUE COPY OF LETTER DT 5.3.20 TCPCTP/631/2020-E3 OF THE CHIEF TOWN PLANNER, GOVT. OF KERALA STATING THAT FOR REMOVING INTERMEDIATE WOODEN FLOOR AND REPLACEMENT WITH FLOOR SLAB BUILDING PERMIT IS REQUIRED
ANNEXURE-D	TRUE COPY OF THE LICENSE CONDITION OF ARCHITECTS ACT, 1972 ISSUED BY THE COUNCIL OF ARCHITECTURE, NEW DELHI SPECIFYING ARCHITECTS PROFESSIONAL LIABILITY ND EXCEPTS
ANNEXURE E	TRUE COPY OF THE ORDER OF THIS HONOURABLE COURT DATED 18.01.2017 IN WPC NO.1832/17
ANNEXURE-F	TRUE COPY OF THE WPC NO.31115/18 PENDING BEFORE THIS HONOURABLE COURT
ANNEXURE-G	THE TRUE COPY OF THE STATEMENT FILED BY THE STATE GOVERNMENT IN WPC NO.31115/18 PENDING BEFORE THIS HONOURABLE COURT