

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Crl.A.No.164 of 2017

The Union Territory of Puducherry
Represented by
The Inspector of Police,
Vigilance & Anti-Corruption
Police Unit,
Puducherry,
Through the Additional
Public Prosecutor,
High Court,
Madras. Appellant

- Vs -

1. A.Rathinavathyammal
2. A.Haridass
3. Ashokan
4. Kondamuri Sathyaprasad Rao ... Respondent

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Prayer : Criminal Appeal is filed under Section 378 Cr.P.C. against the impugned judgment dated 30.09.2015 and made in Spl.C.C.No.1 of 2004 on the file of the learned Special Judge (under Prevention of Corruption Act), Puducherry.

For Appellant : Mr.M.R.Thangavel,
(Addl. Public Prosecutor (V&A.C.)
Puducherry

JUDGMENT

After granting leave on 16.03.2017, and made in CrI.O.P.No.5274 of 2017, this criminal appeal came up for admission today (i.e.,) 06.04.2017.

2. Heard Mr.M.R.Thangavel, learned Additional Public Prosecutor (V&A.C.) Puducherry, for the appellant. Perused the grounds of appeal along with the impugned judgment dated 30.09.2015 and made in Spl.C.C.No.1 of 2004 on the file of the learned Special Judge (under Prevention of Corruption Act), Puducherry.

3. Having given due regard to the relevant facts and circumstances and on considering the submission made by Mr.M.R.Thangavel, learned Additional Public Prosecutor (V&A.C.), the following order has been passed.

4. On perusal of the grounds of appeal along with the impugned judgment of acquittal, this Court finds that this

criminal appeal itself can be disposed of, at the threshold (i.e.,) at the stage of admission itself, as there is lack of merit.

5. It is manifested from the records that the respondents 1 to 4 were put on trial to face the charges under Sections 468, 419, 471 of I.P.C., and under Section 13(1)(d)(ii) of Prevention of Corruption Act, 1988.

6. The Gravamen of the prosecution case is this: Between 29.01.1997 and 21.02.1997 at Oulgaret, Commune, Puducherry, R1/A1 Rathinavathy Ammal, Secondary Grade Teacher, R2/A2P.Haridass, the Sub-Registrar, Oulgaret Commune, Puducherry, R3/A3 A.Ashokan, Revenue Inspector, Oulgaret Municipality, Puducherry and R4/A4Kondamuri Sathiyaprasad Rao, Lower Division Clerk in Oulgaret Sub-Registry, along with another accused deceased Mathiazhagan (since deceased) worked as Upper Division Clerk at Oulgaret Sub-Registry, connived together and created a forged power of attorney document dated 29.01.1997 and a sale deed dated 21.02.1997 in respect of Plot No.16, comprised in R.S.No.62/2, 62/35 and Cadastre No.1553, situate at Mariamman Koil Street, Ellapillaichavady intending to use the forged documents for the purpose of cheating one

Ravichandran (PW2) who was the true owner of the said plot and got the power deed as well as sale deed registered as document Nos.80/97 and 673/97 respectively with the knowledge that the executant of the power deed was not the real owner of the property and also prepared a false encumbrance certificate No.223/97 dated 10.7.1997 for the purpose of registering the false documents.

7. In furtherance to their common intention, A1 to A4 along with another accused deceased Mathiazhagan, had pretended to be one Gnananandham, son of Lakshmanan of Salem, by knowingly substituted some person for Gnananandham and thereby, committed cheating by personation. In furtherance to their common intention, A1 to A4 and the deceased Mathiazhagan knowingly or having reason to believe that the power of attorney dated 29.01.1997, registered as Doc.No.80/97 is a forged one, had fraudulently and dishonestly used the same as a genuine document for fabricating the sale deed dated 21.02.1997.

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8. It is also the case of the prosecution that in pursuance of their common intention, A1 being a public servant working as Teacher in the Education Department had

influenced A2 working as Sub-Registrar and A4 working as Lower Division Clerk in Oulgaret Sub-Registry to misuse their official position for preparing the false encumbrance certificate No.223/97, dated 10.07.1996, relating to Plot No.16, Mariamman Koil Street, Ellapillaichavady and by abusing their official position A2 and A4 after obtaining for themselves some valuable thing of pecuniary advantage, have committed criminal misconduct by issuing false encumbrance certificate.

9. The prosecution has also alleged that in furtherance of their common intention, A1 being a public servant working as Teacher in Education Department, has influenced A2 working as Sub-Registrar and A4 working as Lower Division Clerk in Oulgaret Sub-Registry, to misuse their official position for registering the forged power of attorney deed and sale deed and by abusing their official position A2 and A4 after obtaining themselves some valuable thing of pecuniary advantage, have committed criminal misconduct by registering the power deed as well as sale deed with the knowledge that the same were forged and fabricated and thereby, A1/R1 to A4/R4 had committed the offence punishable under Sections 468 r/w. 34, 419 r/w.34,

471 r/w.34 of I.P.C. Besides this, they have also committed an offence under Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988.

10. The appellant/Inspector of Police (V&A.C.) Puducherry, in order to substantiate their case had totally examined 31 witnesses. During the course of their examination, Exs.P1 to P60 were marked. On the other hand, no oral evidence was adduced on behalf of the respondents/accused. However, they had chosen to mark two documents on the defence side as Exs.D1 and D2 respectively.

11. On meticulous analysis of the evidence both oral and documentary, the learned trial Judge had proceeded to conclude that the prosecution had not brought home the guilt of the respondents/accused persons beyond all shadows of doubt.

12. Ex.D2 is the photocopy of the report of the Inspector of Police, Vigilance & Anti Corruption Unit, Puducherry. The learned Trial Judge in Paragraph No.35 of his judgment has observed that the act of the Investigating Officer itself seems to be prejudicial in nature. In Ex.D2, the Director of Prosecution had given an opinion saying

that the prosecution would be a futile exercise and inspite of such opinion, the Investigating Officer had continued the investigation and filed the charge sheet which itself would go to show that the interest of the respondents/accused persons had been seriously prejudiced.

13. From paragraph No.34, this Court is able to understand that all the vital and important documents were not placed before the sanctioning authority viz., P.Ws.20, 21 and 22. P.W.20 was the Additional Secretary, Revenue, Government of Puducherry. He had issued order of sanction for launching prosecution as against A2-A.Haridass, Sub-Registrar, Oulgaret Sub-Registry, and A4-Kondamuri Sathiyaprasad Rao, Lower Division Clerk under Exs.P30 and 31 respectively. P.W.21, who was the Assistant Director, Education Department, Puducherry, had issued order for launching prosecution as against respondent No.1 who was working as Secondary Grade Teacher at the relevant point of time under Ex.P32. P.W.22 was functioning as Special Officer under Director of Local Administration Department. He had issued order of prosecution in respect of A3-Ashokan under Ex.P33.

14. The evidence given by P.W.10 assumes much importance. P.W.10 - Thiru.Bascaradasse, was the then Sub-Inspector of Police, Raddiarpalayam Police Station, Puducherry. That on 10.09.1996, one Rajagopal had lodged a complaint regarding construction of compound wall by one Arputharaj in his Plot No.16. In this connection, one Arputharaj as well as R1/A1 were called to police station. R1/A1-A.Rathinavathy Ammal is the daughter of Arputharaj. R1/A1 had also lodged a complaint.

15. According to P.W.10, both parties had not produced any supportive documents and therefore, they were directed to produce their supportive documents so as to substantiate their respective complaints. According to P.W.10, that on 18.10.1997, one Nagaraj had also made a complaint in respect of the very same Plot No.16 alleging that one Rajagopal had prevented him from raising compound wall and accordingly, Rajagopal and R1/A1 were called upon to police station and they were also directed to produce documentary proof to show their rights over their properties. P.W.10 had deposed that since the matter was civil in nature he had advised the parties to seek remedy before the civil court. He had also stated that since three persons were claiming right over a single property, he had referred the

matter to the District Collector for further proceedings under Section 145 of Cr.P.C. But, the prosecution has not made it clear about the fate of the proceedings under Section 145 Cr.P.C.

16. The learned Trial Judge in paragraph No.25 of the judgment had observed that the prosecution case had been put on shaky foundation and since the very document which was said to have been forged itself had been wrongly mentioned. The Investigating Officer-P.W.29 had miserably failed to clarify this aspect. Besides this, the alleged forged documents viz., the power of attorney deed dated 29.01.1997 and the alleged forged sale deed dated 29.02.1997 were not marked before the trial court. P.W.25 Thiru. M.S.Ramalingam, the then Director of Finger Print Bureau had stated that the finger prints of Gnananandam found place in Ex.P40 did not tally with Ex.P41 document. It is noted that the above said Gnananandam was said to have been impersonated by the accused persons. However, the learned Trial Judge had found that actually the said Gnananandam was not a true person.

17. In paragraph No.32, the trial judge had stated that R1/A1 had attempted to put up a compound wall and the

defacto complainant Ravichandran, who was also trying to put up compound wall was prevented and the said wall was demolished with the help of outside elements and this had led to lodging of several complaints before Reddiyarpalayam Police Station even to proceed under Section 145 Cr.P.C., as against the persons concerned. In this connection, the learned trial judge had found that as per First Information Report, the disputed documents which was focused through out the trial was shown as Doc.No.80/97 and according to the learned trial judge, it was marked under Ex.P40 dated 29.01.1997.

18. On a cursory perusal of the list of documents, it is seen that Ex.P40 is dated as 18.09.2014. According to learned trial judge, the disputed document was shown as Doc.No.1457/84. But it was not explained as to what was the nature of the document No.1457/84. Even Investigating Officer, P.W.29 had also not clarified this position.

19. It is pertinent to note here that as per the case of prosecution, one Gnananandam was impersonated by the accused persons, but the said Gnananandam was not examined as one of the witnesses on behalf of the prosecution. The prosecution had also not clarified as to whether the said

Gnananandam is alive or is a fictitious person.

20. As per the evidence of P.W.2, Ravichandran, the dispute was only civil in nature and therefore, it was amicably settled between the parties and therefore, he had withdrawn his complaint. However, the prosecution had absolutely failed to show the reason as to what made them to launch the prosecution as against the accused persons. As it is seen from the records, originally accused No.1 had moved this Court to quash the criminal proceedings which was initiated as against her.

21. While disposing the quash petition as it is found in paragraph No.34 of the judgment, the learned trial judge had stated that this Court (High Court) had come down heavily with reference to the roll played by the Investigating Officer, P.W.29 who happened to register the First Information Report. The learned Trial Judge had also extracted the observations made by this Court in the order of quash in respect of the original accused No.1. In this connection, this Court finds that it is very much relevant to extract paragraph No.18 of the order of this Court in the quash petition filed by the original accused No.1 in this case.

'18. It is ridiculous to understand that an officer of the stature of the Inspector of Police could go up to the extent of registering the case without prima facie proof for such assistance or connivance or influence exercised. The respondent/Inspector of Police cannot simply register a case against officers of such category nor in the name of investigation prolong the same for years together nor based on one or two unreliable statements of witnesses recorded under Section 161 of the Cr.P.C., could file the charge-sheet particularly without any iota of material evidence being placed on record for such drastic conclusion to be arrived at to charge-sheet the petitioner particularly when the opinion offered by the Director of Prosecution is quite against filing of the charge-sheet against the petitioner also. To quote from the opinion of the Director of Prosecutions:

'FIR has been laid ...

1) So far as A2....

2) Secondly,

3)

4) There is no

5)

6)

7) The identity of the person who had actually impersonated as one Gnananandham s/o. Latchumanan had not been fixed in the investigation except for the evidence that the

thumb impression found under the power deed dated 29.1.1997 does not belong to A1 and A4 and there is no evidence available as to who had actually impersonated as one Gnananandham on the date of the registration of the said document. Therefore, Section 419 of IPC is not attracted. With the evidence available, A1 and A4 can be prosecuted only u/s.109 IPC r/w.419 of IPC r/w. 34 of IPC.

8) Therefore, the material as it available would make out a case u/s.468,471,109 IPC r/w. 419 r/w. 34 of IPC only as against A1 and A4 and accordingly a draft charge-sheet is pried with as against them under the above referred sections."

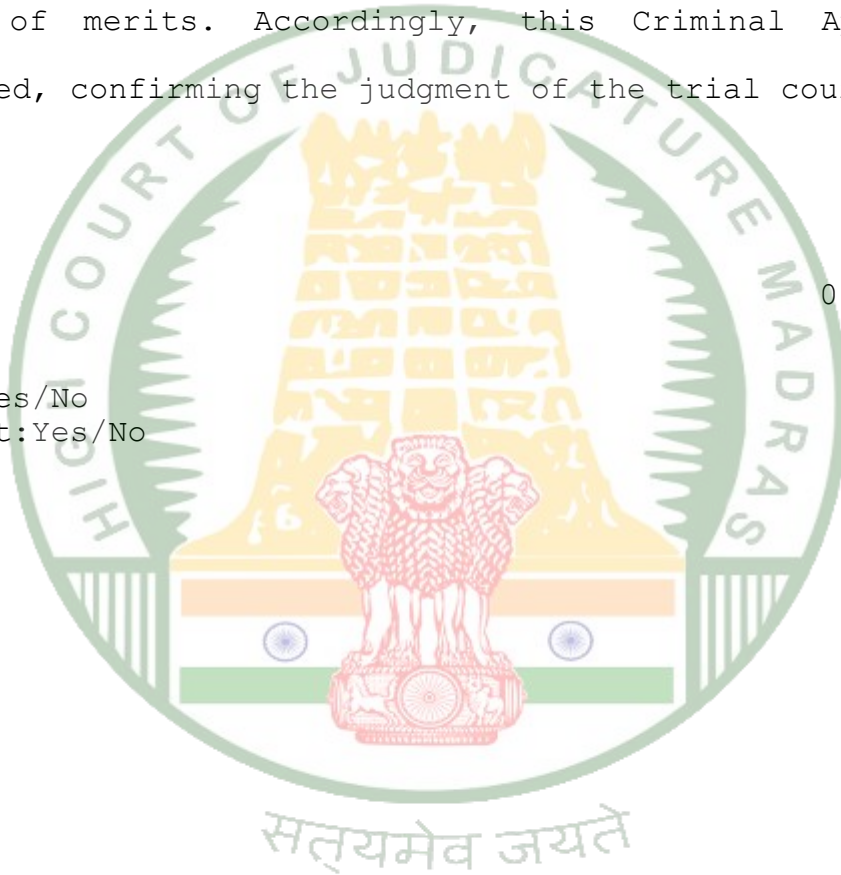
19. The Superintendent of Police (Vigilance and Anti Corruption) Unit has gone into the subject further and it is noted as remarks in the following manner:

" S.P.(VAC) Unit Remarks: 1) There is no complaint from the originally aggrieved party by name Ravichandran and as per records his ownership and possession of Plot No.16 of Ellaipillaichavady is with him and the Registration Department which claims to be aggrieved by the act of A1 and A4 for registering a fabricated document had proceeded to accept the cancellation of the registration of the very same document which would mean that the grievance no longer exists. This fact may vitiate the prosecution of the accused."

22. Having regard to all the relevant facts and circumstances and in the light of the observations made above, this Court finds that the appeal itself is liable to be dismissed, at the initial stage of admission, as it is devoid of merits. Accordingly, this Criminal Appeal is dismissed, confirming the judgment of the trial court.

06.04.2017

Index:Yes/No
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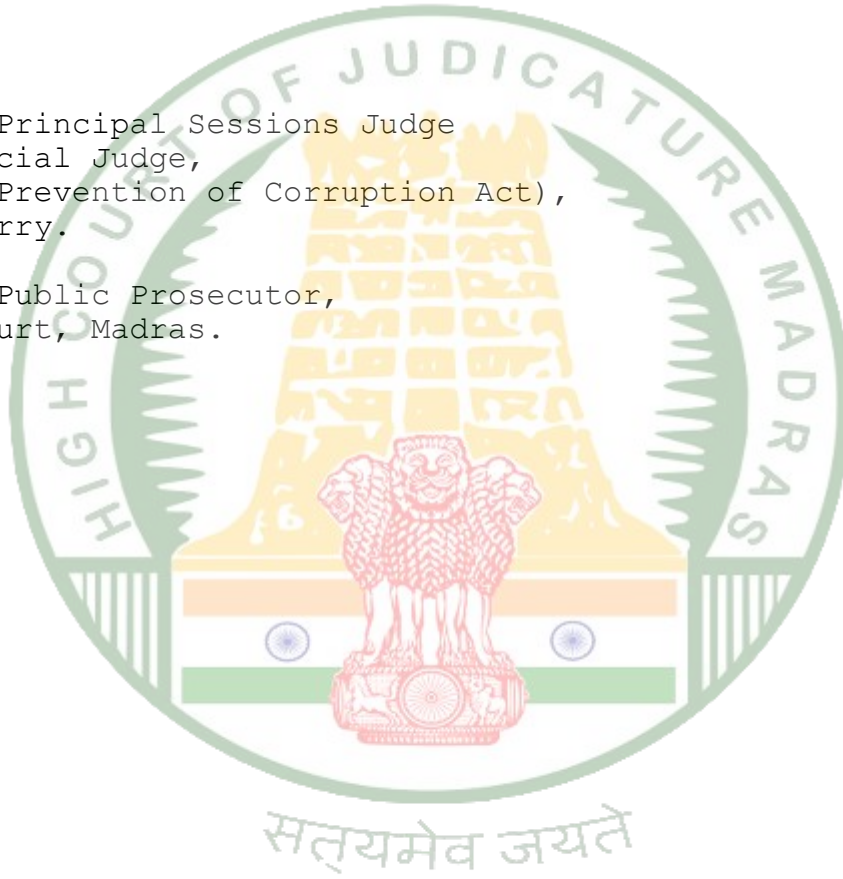


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To

1. The Principal Sessions Judge
and Special Judge,
(under Prevention of Corruption Act),
Puducherry.

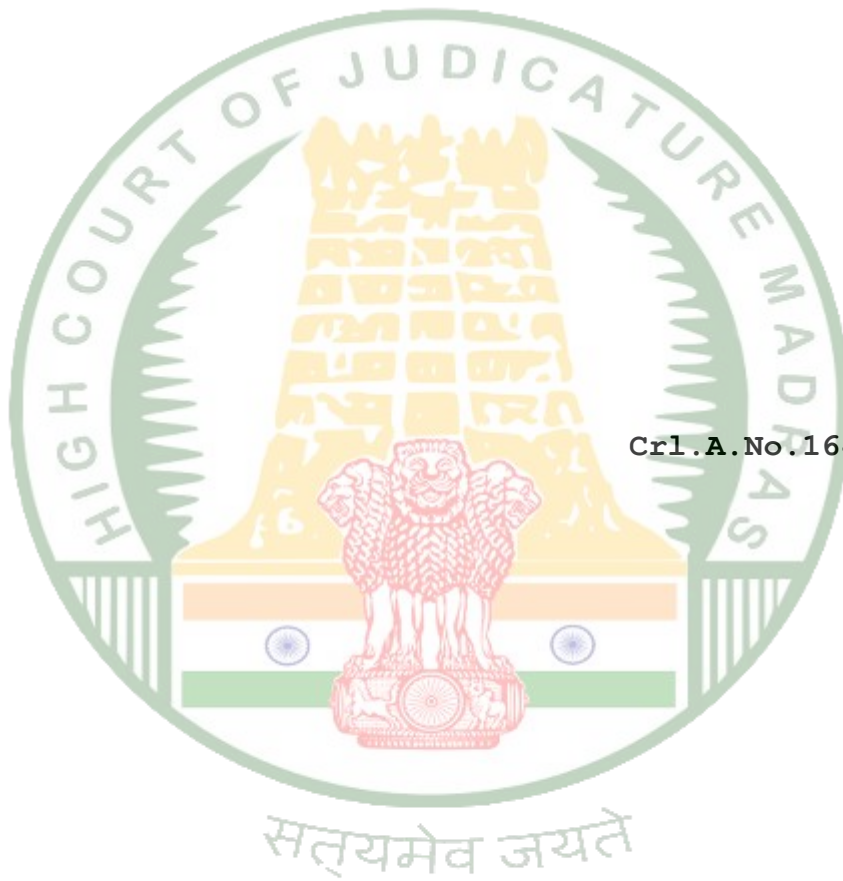
2. The Public Prosecutor,
High Court, Madras.



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