

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2017

DELIVERED ON : 20.12.2017

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.533 of 2008

and M.P.No.1 of 2008

E.Kirubakaran,
10, Flowers Road,
4th Street,
Purasawakkam,
Chennai-84.

...Appellant/Accused

Vs.

State rep. by
Sub Inspector of Police,
SPE/CBI/ACB/Chennai

... Respondent/Complainant

Prayer:-

Criminal Appeal filed u/s.374 of Cr.P.C., praying to set aside the Judgment and order passed by the Principals Special Judge for CBI cases, Chennai, dated 23-05-2008 in Calendar Case No.11 of 2005.

For Appellant : Ms.N.Premalatha

for Mr.P.Ezhilnilvan

For Respondent : Mr.K.Srinivasan

Special Public Prosecutor

JUDGMENT

The above Criminal Appeal is directed against the conviction and sentence passed by the Principals Special Judge for CBI cases, Chennai, dated 23-05-2008 in Calendar Case No.11 of 2005.

2. The Appellant in the above said Criminal Appeal No.533 of 2008 is the accused in Calendar Case No.11 of 2005. The crux of the case of the prosecution is that the brother of the accused namely E. Pandian applied for the post of Casual Labour in the Southern Railway during 1975. Subsequently, the said E. Pandian got appointment in Madras Veterinary College, Chennai, on 05-06-

1975. In response to the application made by the said E. Pandian, a call letter for the post of "Casual Labour" was sent by the Southern Railway in the name of E. Pandian in the year 1978. The said E. Pandian's brother namely E. Kirubakaran, the Accused made use of the said call letter sent by the Southern Railway in the name of his brother E. Pandian and attended interview before the Personnel Branch of Madras Division, Southern Railway by impersonating as E. Pandian. The Accused used the said E. Pandian's School Transfer Certificate with forged date of birth and Community Certificate as genuine one and also appeared for the physical fitness test before the Assistant Divisional Medical Officer. After qualifying in the test of physical fitness, the Accused reported to the Personnel Branch of Madras Division, Southern Railway and got the appointment order in the name of his brother E. Pandian and joined as "Casual Labour". The accused continued to impersonate himself as E. Pandian and put his thumb impression on 03-06-1978 in the register maintained for it as Mr. E. Pandian. The Accused thus got entry in the Railway service by impersonation by submitting forged documents knowing fully well that he is not E. Pandian. The Accused started cheating the Railways by obtaining salary and other allowances for which he is not entitled. The Accused withdrew a sum of Rs.6,17,115/- from the date of joining to September 2004 as gross amount in the form of salary and other allowances. Thus, the accused knowingly committed the offence as alleged by the Prosecution.

3. The Appellant/Accused is charged for the offences punishable under Sections 419, 420, 468, 478 r/w 471 IPC and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. Copies of documents were furnished to the Accused under Section 207 Cr.P.C. and after hearing both sides and perusal of connected records and statements filed along with final report, charges were framed against the Accused by the trial court. Since the Accused pleaded not guilty, trial was conducted. On the side of the Prosecution, PW1 to 21 were examined, Ex.P1 to P.92 were marked. On the side of the Accused, none was examined and no documents were marked.

4. The Trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record found that the Accused guilty and convicted and sentenced him to undergo RI for six months each for the offences under Section 419, 420, 468, 468 r/w 471 IPC and also sentenced to pay a fine of Rs.1,000/- each under Section 420, 468, 468 r/w 471 IPC (Total Rs.3,000/-) and in default to undergo RI for one month each. The Accused is further convicted and sentenced to undergo RI for one year for the offence under Section 13 (2), 13 (1) (d) of Prevention of Corruption Act, 1988 and also sentenced to pay a fine of Rs.1,000/- in default to undergo RI for three months

and ordered. The sentences of imprisonment imposed on the Accused shall run concurrently. The said conviction and sentence are assailed in this appeal.

5. The learned Counsel appearing for the Appellant/Accused submitted that the Appellant's brother namely E. Pandian left the house of his parents long back and there was no connection between the said E.Pandian and his entire family. Since the said E. Pandian left the house, his father and the family members used to call the Appellant as "Pandian" instead of Kirubakaran. The said E. Pandian did not apply for the post of Casual Labour to the Southern Railway, since he got appointment in Veterinary College, Chennai, even on 05-06-1975 itself. Hence, there was no need for the said person to apply for Casual Labour post in Southern Railway. It is further submitted that the Appellant's father alone took steps and applied for Casual Labour exclusively for the Appellant only. The Appellant's brother E.Pandian was examined as PW15, and he stated that he never applied for the post of Casual Labour in Southern Railway. PW1, who is the sanctioning authority, stated that the father of the Appellant applied for the post of Casual Labour. Therefore, the learned counsel for the appellant contends that the averments in the F.I.R. and Final Report are false and this aspect was ignored and not considered by the Trial Court while pronouncing the judgment.

6. The Counsel for the Appellant further argued that the Appellant studied upto Third Standard in Corporation Middle School, Periamet, Chennai, which is evidenced by Ex.P35. Thereafter, he joined some other school and studied upto Fifth Standard. As such his brother studied upto Fifth Standard in Corporation Middle School, Periamet, Chennai, and thereafter he joined some other school and studied upto Eighth Standard. PW14 who is the Professor and Head of Madras Veterinary College stated that the Service Book of E. Pandian is Ex.P65 and his educational qualification is mentioned as Eighth Standard passed. As per Ex.P15-Service Register, the Appellant has studied upto Fifth Standard only. Therefore, it is argued that there is no possibility to use the Certificate of his brother E.Pandian by the Appellant herein. This aspect was also ignored by the Trial Court while delivering judgment.

7. The Counsel for the Appellant further argued that Date of Birth of P.W.15 is 12-06-1954 as per Ex.P35 and that of appellant is 10.09.1955 whereas as per Ex.P65 and Ex.P.15, his Date of Birth of P.W.15 is shown as 20-06-1953 and that of appellant is 12.06.1954. This would prove that when rejoining in some other school, the father of PW15 and the Appellant had changed the date of birth. The Prosecution further failed to produce the Original School Certificate

submitted by the Appellant at the time of his joining in Southern Railway. This aspect has also not been considered by the Trial Court. The learned Counsel further argued that the Prosecution has not taken any step to ascertain as to who has applied for the Community Certificate Ex.P72. Further, it is pointed out that on the date of issue of Ex.P.72, Community Certificate, PW15 was residing elsewhere. The Appellant got appointment on 03-06-1978 itself and got community certificate on 13-05-1978 and submit the same before the Railway authorities. The Appellant further submit that there is a delay of 10 years in registering the F.I.R. and after PW2, Wife of the Appellant lodged the complaint before the Railway authorities on 28-11-1994.

8.The Appellant further submitted that the PW1 has stated that he has seen the original application form submitted by the father of the Appellant while according sanction. Whereas PW21 Investigating Officer says that no such application is there. It is to be noted here that deliberately the application seeking employment by E.Pandian is suppressed by the Prosecution. If that application is produced, the same will reveal applicant's name is Pandian alias Kirubakaran. Further it also reveal as to who has applied for the post either PW15 or his father. This prime aspect has not been considered by the Trial Court.

9.It is further argued by the Appellant Counsel that according to PW3 Assistant Personnel Officer, Southern Railway that there was no education qualification for the post of Casual Labour during 1978. Therefore, there was no necessity to obtain School Certificate to join as Casual Labour at that point of time. If really the Appellant did not possess Fifth Std. School Certificate, even then also he was eligible to get Casual Labour post. This aspect was also not considered by the Trial Court. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment passed by the Trial Court.

10. On the other hand, it is the contention of the Prosecution that the Appellant/Accused name is Kirubakaran and there is no clinching evidence to prove that he was called Kirubakaran alias Pandian. Even if he was called as Kirubakaran alias Pandian, it is within the limit of his family members and the same cannot be used before his employer. The documents submitted by the Prosecution especially Ex.P2 & P3, Marriage Invitation Card, P18 file relating to Pension settlement of father of the Appellant and R.Ethirajulu, Ex.P35 Register of Admission and Withdrawals of Corporation School, Ex.P.50 & P.51 Voter list for the year 2003 & 2004, Ex.P.65 Service Book of Appellant's brother E. Pandian would reveal the name of the Appellant is Kirubakaran only. However, Ex.P.11, the service

register of the Appellant would reveal his name as E. Pandian. Thus, the learned Public Prosecutor contends the above said documents would clearly prove the case of the prosecution. Therefore, the learned Special Public Prosecutor contended that the Trial Court has rightly held the Accused has committed offence alleged against him, found him guilty and convicted. Hence, the Judgment of trial court need not be interfered with.

11. Heard both side counsel and also carefully perused the records.

12. The case of the Prosecution as per Ex.P.87 FIR is that the petitioner whose name is Kirubakaran impersonated his brother E.Pandian who deposed as P.W.15. and got himself employment as Casual Labour in Southern Railway, Chennai, by making use of documents of his brother P.W.15, E.Pandian. On the other hand, it is the contention of the defence that the Appellant/Accused and his brother E.Pandian are the sons of one Ethirajalu and the same E.Pandian has left the house and living separately for several years and after he left the family, their father Ethirajalu, out of his affection and fondness for the name of Pandian used to call this appellant/accused as Pandian and he was known as Kirubakaran @ Pandian and only on that basis, he has applied for the job in the Railways and got appointment. Thus, the defence contends that there was no impersonation committed by the accused/appellant. It is therefore clear that the crux of the issue to be ascertained is whether the accused whose original name is Kirubakaran was subsequently called and known as Kirubakaran @ Pandian and whether he has applied in that capacity only seeking employment in Southern Railway. Admittedly, there is no material available on record to show that at any point of time, this accused changed his name into Pandian. There is no material available to show that he was used to be called as Kirubakaran @ Pandian. Even assuming his father used to call him by name Pandian, unless and until, it is established that the accused changed his name as stated above and the same was made public, the claim of the defence that he was known as Kirubakaran @ Pandian cannot be accepted. It is true that the Prosecution has not produced material to show that the brother of the accused viz., P.W.15 Pandian submitted any application for the post of Casual Labour in Southern Railway. However, the Prosecution has proved that the appointment order was given only to Mr.E.Pandian and not for Kirubakaran or Kirubakaran @ Pandian. The father of the Accused one Ethirajalu was a Railway Employee. Ex.P18 File relate to Pension settlement for the said Ethirajulu. It is evident from Ex.P.18, that the Accused father has submitted his nomination for ordinary gratuity/death cum gratuity along with statement of family details dated 01-02-1979, mentioning the name of his three sons as Venkatesan, Pandian and Kirubakaran. The name of

Accused was not mentioned as Kirubakaran alias Pandinan in the above statement of family details. It is an admitted fact that the Accused joined duty in the year 1978. But the Accused claims that he was called as Pandian alias Kirubakaran by his father and other family members. Contrary to that, on 01-02-1979, as evidenced by Ex.P.18, the father of the Accused submitted his family details before the Southern Railway authorities stating clearly that the Accused name only as Kirubakaran. There is nothing in Ex.P.18 to show that the accused was called as Pandian also. Further, the prosecution produced the marriage invitation letter of the Appellant and P.W.2 as Ex.P2 & P3. In the said marriage invitation, the Accused name was shown as E. Kirubakaran (S.Rly.) only. Further, in Ex.P2, Accused brothers names are shown as E. Pandian and E. Venkatesan. The Prosecution also produced Ex.P50 & P.51 Voter list and Ex.P35 Register of Admission and Withdrawal maintained in Corporation Middle School, Periamet, Chennai to show that the Accused name was shown only as Kirubakaran. Apart from that, the Accused himself admitted while being questioned u/s.313 of Cr.P.C. that his name is Kirubakaran only. It is therefore clear that the Accused name is Kirupakaran only and not Pandian as claimed by him.

13. In the case on hand the FIR registered as Ex.P.87 was taken up for investigation by PW21 and he took the assistance of PW17 who is the Chief Finger Printing Examiner in Southern Railway for taking thumb impression of two different persons for the purpose of verification and comparison. Accordingly, the subsequent thumb impression of one E.Pandian (PW15) working in Veterinary College, Chennai was taken and the same is Ex.P.73. Likewise PW.17 took the subsequent thumb impression of one E.Pandian (Accused) who was working as Kalasi in Tondiarpet Marshalling Yard and the same is Ex.P76. The said thumb impression of the above said two persons was compared by PW17 and report given by him is produced as Ex.P78. According to his assessment the thumb impression found in Ex.P73 and Ex.P76 are not identical. He also pointed out that the thumb impression found in Ex.P76 which is of the accused herein was identical with the thumb impression available in Ex.P16 certificate of physical fitness issued by the Southern Railway Medical Department in favour of E.Pandian. Likewise he compared the subsequent thumb impression of E.Pandian working in Southern Railway marked as Ex.P40 with Ex.P16 and gave the opinion that the same was identical. Similarly, he compared the finger print available in Ex.P16 with Ex.P81 and found the same as identical. The Finger Print Expert PW17 compared the finger print in Ex.P74 which is the Finger Print of E.Pandian working in Veterinary College, Chennai, with the finger print available in Ex.P.16 and Ex.P81 thumb impression of E.Pandian working in Southern Railway and found the same was not identical. The report submitted by

the Chief Finger Print Examiner PW17 is produced as Ex.P85. It is therefore clear from the above said Expert opinion that the two persons who were working in the Veterinary College and the Southern Railway are different persons and they are not one and the same

14. As stated earlier the fact that E.Pandian working in Veterinary College who deposed as P.W15 before the Court is the brother of the accused is admitted. It is evidence from the above said discussion that the father of the accused has disclosed his son's name as stated above and there is nothing on record to show that the accused was called as Kirubakaran @ Pandian. The wife of the accused who deposed as PW2 stated that she is unaware as to by which name her husband was called by her father-in-law. The brother of the accused who deposed as PW15 denied any knowledge about his father calling the accused as Chinna Pandi @ Pandian @ Kirubakaran after he (PW15) left the home. The father-in-law of the accused who deposed as PW20 stated that his son-in-law the accused herein was called as Kirubakaran at home and as Pandian in the office. Only because of that in the complaint given against him, his name was stated as Kirubakaran @ Pandian. Thus it is clear that there is no evidence available to show that the accused was used to be called as Kirubakaran @ Pandian by his family members.

15. The learned counsel for the defence contended that the wife of the accused herself has stated in the complaint and in other statements viz., the documents available before the Court as Ex.P8, P9, P11, P12, P52 & P57, the name of the accused is shown as Kirubakaran @ Pandian. The above documents relates to the Family Court proceedings lodged by PW2 Visalatchi and the complaint given by her. It also includes the receipts issued by the Family Court relating to deposit of monthly maintenance amount paid by the accused to his wife PW2 Visalatchi. The said PW2 Visalatchi in her evidence clearly stated that the accused was working in the Southern Railway in the name of E.Pandian and hence in order to get maintenance amount from him through the Southern Railway without any difficulty, she has mentioned her husband name as Kirubakaran @ Pandian. As stated earlier PW2 as well as PW15 and PW20, have clearly stated that they are unaware as to by which name the accused was called in his house. In such circumstances, it is clear that the above said documents Ex.P8, P9, P11, P12, P52 & P57 is of no use to the accused in establishing his claim that he was used to be called as Kirubakaran @ Pandian. From the above said discussion, it is clear that the accused was not called either as Pandian or as Kirubakaran @ Pandian at any point of time.

16. Further, there is nothing on record to show that the accused changed his name as Pandian before he entered service in

the Southern Railway. Further, it is evident that the community certificate issued in the name of Pandian is produced by the appellant/accused herein and the same is affixed in his Service Register Ex.P.15. The brother of the accused who deposed as PW15 has stated that he never applied for any community certificate. It is, therefore, clear that the accused herein has used the certificate in the name of Pandian to get the job in Southern Railway, even though his name was Kirubakaran. The Trial Court also pointed that the date of birth of the accused Kirubakaran is 10.09.1955 as per Ex.P35, whereas the date of birth of his brother PW.15 is 12.06.1954. Further in Ex.P75 Service Register the date of birth of PW15 Pandian Viz., 12.06.1954 is mentioned as that of the accused herein. It is apparent that the accused herein has used the school certificate of his brother and that is the reason the date of birth of the accused is mentioned as 12.06.1954 in the Service Register. It is, therefore, evident from the above said discussion that the name of the accused is only Kirubakaran and there is nothing on record to show that he was ever called as Pandian or Kirubakaran @ Pandian. Thus the accused has pretended to be E.Pandian knowing very well that he is not so and thereby got an appointment of Casual Labour in the Southern Railway and received benefits from the employer. This is a clear case of cheating and he being a public servant has committed criminal misconduct as alleged by the prosecution.

17. It is contended by the appellant/accused that there was inordinate delay in registering the case after PW2 lodged her complaint. However the learned Public Prosecutor pointed out that PW2 never lodged complaint with the respondent herein, but only gave a representation to the Railway authorities and the FIR in this case Ex.P87 was registered on source information on 30.03.2004 and as such the contention of the appellant/accused that there was inordinate delay in registering the case cannot be accepted. It is also pointed out by the learned Public Prosecutor that on the basis of Ex.P.8 complaint given to the Southern Railway Vigilance Officer by PW2 enquiry was conducted and therefore there was no inordinate delay in registering the case as alleged by the accused. Considering the above said factors it is apparent that the claim of the accused that he is prejudiced by the inordinate delay in registering the case has to fail. Thus it is clear that the accused Kirubakaran and E.Pandian are two different persons and the available material before the court has clearly established the fact that the accused joined as Casual Labour in Southern Railway in the name of E.Pandian. Admittedly, the accused brother name is E.Pandian. As stated earlier, there is no acceptable evidence or authenticated document to show that the accused changed his name as E.Pandian was ever called as Pandian during the relevant period of time of his appointment in Southern Railway. Hence, I found that the Prosecution has proved that the Accused got

appointment as Casual Labour and received salary in Southern Railway by impersonation. Thus, in the case on hand the Trial Court after proper appreciation of the evidence has rightly found the accused guilty and convicted him. The evidence let in by the prosecution has inspired the confidence of the Trial Court and this Court does not find anything wrong in the reasoning and conclusion arrived at by the Trial Court. As such no ground is made out to interfere with the finding of the trial Court and the appeal has to fail.

18. In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed upon the Appellant vide Judgment dated 23rd May 2008 in C.C.No.11/2005 on the file of the Principal Special Judge for CBI cases, Chennai, are hereby confirmed. The Trial Court is directed to secure the accused herein to undergo the remaining period of Sentence if not already undergone. Connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri/vs

To

1. The Sub Inspector of Police,
SPE/CBI/ACB/Chennai.
2. The Principals Special Judge for CBI cases,
Chennai.
3. The Section Officer,
Criminal Section,
High Court, Madras.
4. The Special Public Prosecutor,
for CBI Cases, High Court,
Madras.

Criminal Appeal No.533 of 2008

KJ(CO)
CS/07/01/2019