

Bail Slip

The Appellant/Accused namely Mr.A.Veerappan, S/o.Arimuthu be and hereby are directed to be released on bail vide Court order dt.28/4/2015 in MP.1/2015 in Crl.RC.No.381/15 and in MP.1/15 in Crl.A.262/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.262 of 2015
and
Criminal Revision Case No.381 of 2015

Crl.A.No.262 of 2015

A.Veerappan
S/o.Arimuthu

... Appellant

Vs.

State represented by

The Inspector of Police, The station House Officer
Vigilance & Anti-Corruption Police Unit,
through Special Public Prosecutor,
Puducherry.

Crime No.2 of 2002

... Respondent

Criminal Appeal preferred under Section 374 (2) of Code of Criminal Procedure against judgment of learned Special Judge and Principal Sessions Judge under Prevention of Corruption Act, Puducherry, passed in Spl.C.C.No.2 of 2011 on 18.04.2015 confirming the order of the Chief Judicial Magistrate, Puducherry in CC 112/04.

Crl.R.C.No.381 of 2015

A.Veerappan
S/o.Arimuthu

.. Petitioner

Vs.

State represented by

The Inspector of Police,
Vigilance & Anti-Corruption Police Unit,
Puducherry.

Crime No.4 of 2000

.. Respondent

Criminal Revision Case filed u/s.397 r/w 401 of Code of Criminal Procedure against judgment of learned Principal Sessions Judge, Puducherry, passed in CrI.A.No.21 of 2011 on 18.04.2015.

Appearance:

Appellant in CrI.A.No.262/2015

and

Petitioner in CrI.R.C.No.381/2015 :Mr.S.Ashokkumar,
senior counsel
for Mr.A.Amarnath

Respondent in both appeal
and revision

:Mr.M.R.Thangavel,
Additional Public Prosecutor
(Puducherry)

COMMON JUDGMENT / ORDER

Criminal Appeal has been preferred against judgment of learned Special Judge and Principal Sessions Judge, Puducherry, passed in Spl.C.C.No.2 of 2011 on 18.04.2015.

2. Of the two accused in the case, second accused died pending trial. Case of prosecution is that prior to 19.02.2002, appellant/A1, who was working as Copyist at the office of District Registrar, Registration Department, Puducherry, fabricated and made unauthenticated corrections in the revenue records for the benefit of second accused. A case was registered in Crime No.2 of 2002 on the file of respondent for offences u/s.466, 468, 109 IPC r/w 34 IPC and 13(d)(ii) of Prevention of Corruption Act. Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.192, 218, 466 r/w 34 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and the case was tried in Spl.C.C.No.2 of 2011 on the file of learned Special Judge, Puducherry.

3. Before trial Court, prosecution examined 14 witnesses and marked 24 exhibits. None were examined on behalf of defence nor were any exhibits marked.

4. On appreciation of materials before it, trial Court, under judgment dated 18.04.2015, while acquitting appellant/accused of offence u/s.13(2) of Prevention of Corruption Act, convicted him for offences u/s.192, 218 and 466 IPC and sentenced him to 2 years R.I. and fine of Rs.5,000/- i/d 3 months R.I. for each of the offences. Trial Court directed that sentences run concurrently. Against such finding, the present appeal has been filed.

5. Heard learned senior counsel for appellant and learned Additional Public Prosecutor (Puducherry) for respondent.

6. Learned senior counsel for appellant submitted that prosecution case is that appellant, who was a Copyist had issued certified copies of documents containing wrong entries regards the extent of land covered by release deeds registered as Document Nos.4075/91, 696/92 at the Sub-Registrar Office, Puducherry. It was the prosecution case that having removed the original filing sheets from Book-1 of the registration office, appellant/A1 pasted fabricated filing sheets afresh which wrongly informed the extent covered by Document No.4075/91 as 80 kuzhies instead of 30 kuzhies and that by Document No.692/92 as 9 kuzhies instead of 4 kuzhies. In furtherance of such wrong doing, appellant/A1 prepared certified copies in Exs.P3 and P5.

7. Learned senior counsel submitted that the usual practice was that a party producing a document for registration would produce the same along with copies thereof, typed on filing sheets. While the original registered document would be handed over to the party, the filing sheets would form part of the records maintained in Book-1 by the registering authority. The same would also reflect the document number and other particulars regards registration. Exs.P7 and P8 were the filing sheets relating to document Nos.4075/91 and 696/92. Handling of records at the Sub-Registrar Office were recorded in a register called the Movement Register. The then District Registrar of Registration, Puducherry, had been examined as PW-1. He had deposed that Movement Register was maintained by PW-8, Sub-Registrar. Prosecution has failed to establish that appellant/A1 had access to Exs.P7 and P8 in Book-1. Exs.P7 and P8 were in type written form. PW-14, Investigation Officer, admitted to the typist not having been examined. It was the admission of PW-1, District Registrar and PW-8, Sub-Registrar, that appellant/A1 did not know typing. PW-14, Investigation Officer, had admitted that it was the duty of the Copyist/appellant to make copies of documents in keeping with the contents in the filing sheets (Exs.P7 and P8) maintained in Book-1. It was not the prosecution case that Exs.P3 and P5, certified copies reflected any variance. Learned senior counsel further informed that trial Court erroneously found against appellant/A1 as Exs.P7 and P8 had been pasted on Book-1. A perusal of Book-1 revealed that all filing sheets similarly were pasted on Book-1. Learned senior counsel submitted that without the authorities preferring any complaint alleging any wrong doing and without any enquiry there regards, a finding of conviction has been rendered on the presumption that this appellant/A1 must have tampered with Book-1 and caused wrongful entries therein. Learned senior counsel submitted that the finding of conviction by trial Court totally is erroneous and appellant is entitled to acquittal.

8. Heard learned Additional Public Prosecutor (Puducherry) on the above submissions.

9. This Court fails to see how a finding of conviction stands arrived at by trial Court. A perusal of Book-1 reveals that filing sheets relating to all documents therein have been pasted thereon. Prosecution has not produced the Movement Register, which admittedly was maintained at the registration office. Towards preparing Exs.P3 and P5, appellant/A1 would have had to have access to Exs.P7 and P8 and the same would be reflected in the Movement Register. Section 114 of the Indian Evidence Act reads as follows:

'114. Court may presume existence of certain facts.-
The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.'

Illustration 'g' to Section 114 of the Indian Evidence Act informs: 'that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.' From the non-marking of the Movement Register, this Court would draw an adverse presumption against prosecution.

10. PW-8, Sub-Registrar, has deposed that before taking out documents from the record room, requisite entries have to be made in the Movement Register. He has spoken to appellant/A1 being given to taking records without following such procedure and of him cautioning appellant/A1 against whom complaint there regards have been received from one Arumugam working at the record session and of also having brought such fact to the knowledge of the Registrar. In cross-examination, he has admitted that he had neither taken any departmental action nor preferred any complaint against appellant/A1. PW-1 deposed that documents are kept in the record room, under control of the Sub-Registrar. PW-8's allegation of wrong doing by appellant/A1 had not been supported by examination of one Arumugam, record clerk, who allegedly informed him there regards.

11. At times, silence speaks more eloquently than words. This Court, towards informing the fallacious approach of the trial Court, merely would reproduce its reasoning in arriving at a finding of conviction:

'27. ... Further in the event of taking copies of documents namely Ex.P3 and Ex.P5 by A1, he would have certainly come across the tearing away of the running sheet in Ex.P7 and Ex.P8 volumes, but having found out such tampering of records, as a prudent public servant, he is expected to take it to the notice of his immediate superior, but A1 has failed to do so,

has quietly prepared Ex.P3 and Ex.P5 copies of documents and issued would make the court to infer it is A1 who has forged the public registers namely Ex.P7 and Ex.P8 for his vested interest in the capacity of public servant. Even otherwise if the accused found that Ex.P7 and Ex.P8 had been tampered, as it is apparent if one could see Ex.P7 and Ex.P8 with naked eye that it is tampered, he would have immediately reported the matter to his immediately superiors. So, when Ex.P2 to Ex.P6 have not been denied by the accused this court can draw adverse inference as against the accused that it is only A1 has committed forgery on Ex.P7 and Ex.P8.'

12. Criminal Revision Case has been filed against concurrent judgments of Courts below convicting petitioner/A1 for offences u/s.466 and 468 IPC and sentencing him to 1 year R.I. and fine of Rs.5,000/- i/d 3 months S.I. for each of the offences.

13. Case of prosecution is that petitioner/A1, between 1990 and 1997, while working at the office of District Registrar, Registration Department, Pondicherry, as per the instructions of A2 (deceased) forged the original document No.1448/85 i/e. Book 1, Vol.648, page No.283 to 285 and Index-II of Thavalakuppam Village pertaining to the year 1985, in that he has corrected 30 cents as 3 cents so as to appear that second accused sold only 3 cents of land. A case was registered in Crime No.4 of 2000 on the file of respondent. Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.466 r/w 109 IPC and 468 r/w 109 IPC and the case was tried in C.C.No.112 of 2004 on the file of learned Chief Judicial Magistrate, Puducherry.

14. Before trial Court, prosecution examined 24 witnesses and marked 43 exhibits. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 15.02.2011, convicted petitioner/A1 for offences u/s.466 and 468 IPC and sentenced him to 1 year R.I. and fine of Rs.5,000/- i/d 3 months S.I. for each of the offences. There against, petitioner/A1 preferred an appeal in C.A.No.21 of 2011 on the file of learned Principal Sessions Judge, Puducherry, which came to be dismissed under judgment dated 18.04.2015. Hence, this revision.

15. Heard learned senior counsel for petitioner and learned Additional Public Prosecutor for respondent.

16. Petitioner submitted that petitioner stands convicted merely on the evidence of PW-4, purchaser at the hands of

deceased, second accused, that this petitioner/A1 informed that he would correct the encumbrance certificate to reflect 30 kuzhies instead of 3 kuzhies, if he was paid Rs.2,000/-. PW-1, District Registrar, deposed that the receipt of a document by the Copyist would be reflected in the Movement Register. The copyist would prepare the encumbrance certificate. After comparison, the same would be signed by the Senior Writer (Grade-I) and thereafter by the Joint Sub-Registrar or Sub-Registrar. PW-5, Writer-Grade I, who had functioned as a Joint Sub-Registrar between 1998 and 1999, had spoken to their having been five copyists when he held office. He specifically had deposed that it was PW-6, Arumugam, who was entrusted with the task of examining applications for and preparing encumbrance certificates. According to PW-5, PW-6 was in charge of the record room. PW-6 had deposed that the encumbrance certificates found offending had been prepared by him and appellant. He specifically had informed that it could not be said that it was the appellant who had fabricated the same. In the above circumstances, petitioner would be entitled to the benefit of doubt.

In the result,

- (i) CrI.A.No.262 of 2015 shall stand allowed and the judgment of learned Special Judge and Principal Sessions Judge, Puducherry, passed in Spl.C.C.No.2 of 2011 on 18.04.2015, shall stand set aside. Appellant is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.
- (ii) CrI.R.C.No.381 of 2015 shall stand allowed and the judgment of learned Principal Sessions Judge, Puducherry, passed in CrI.A.No.21 of 2011 on 18.04.2015, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gm

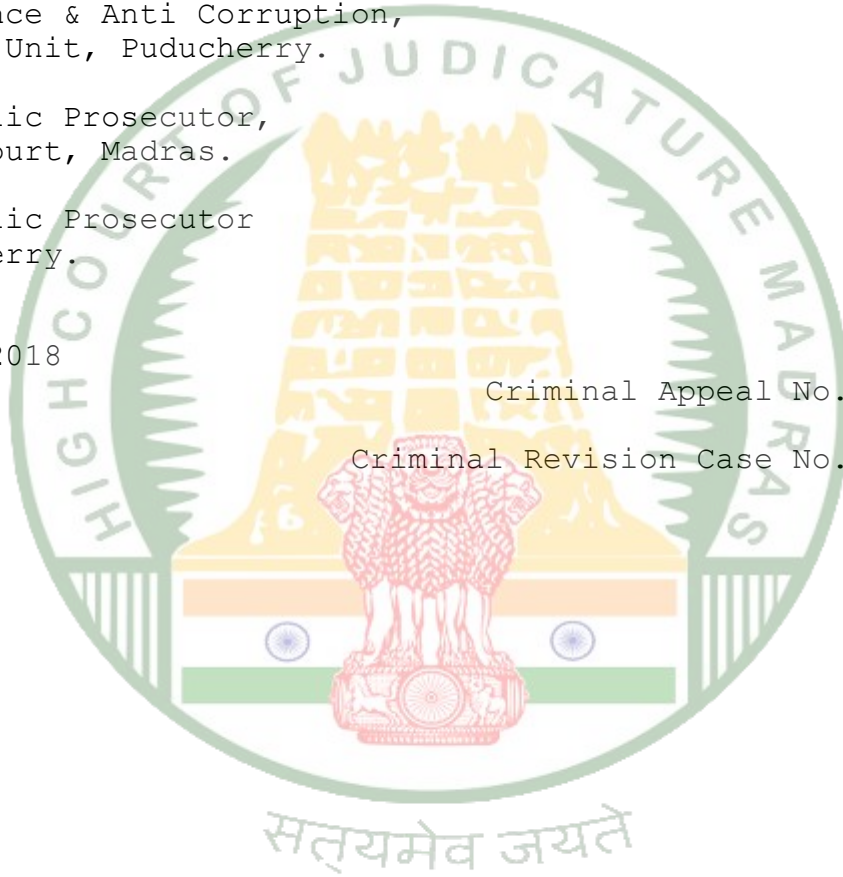
To

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

- 2.The Principal Sessions Judge,
Puducherry.
- 3.The Chief Judicial Magistrate,
Puducherry
- 4.The Inspector of Police,
Vigilance & Anti-Corruption Police Unit,
Puducherry.
- 5.The Station Home Officer
Vigilance & Anti Corruption,
Police Unit, Puducherry.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Public Prosecutor
Puducherry.

KJI (CO)
sm:16.10.2018

Criminal Appeal No.262 of 2015
and
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