Reserved on : 13-06-2017
Pronounced on : 28-06-2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.No.1085 of 2006

State: Represented by
Inspector of Police
Central Bureau of Investigation,
ACB, Chennai. ... Appellant/Complainant

vs

R.Ulagaraj ... Respondent/Accused No.3

PRAYER: Criminal Appeal filed by the Investigating Agency, under Section 378(2) of the Code of Criminal Procedure, against the acquittal of Respondent/Accused No.3 in Judgment dated 4.8.2006 made in C.C.No.54 of 2000 on the file of the Principal Sessions Judge for CBI Cases, Chennai.

For Appellant : Mr.K. Srinivasan
Special Public Prosecutor
for CBI Cases

For Respondent : Mr.V. Krishnamoorthy

JUDGMENT

The Criminal Appeal is preferred by the Inspector of Police, Central Bureau of Investigation, ACB, Chennai against the acquittal of Respondent/ Accused No.3 from the charges under Section 419, 420, 471, 120-B r/w 420, 419, 467, 468, 471,477-A I.P.C. and Sec.13(2) r/w 13(1)(c) & (d) of P.C. Act 1988 by the learned Principal Special Judge for CBI Cases, Channai, in S.C.No.54 of 2000 dated 04.08.2006.

1. Following is the factual backdrop of prosecution case in brief:

2. (a) A1 was working in Natrampalli Post Office as Postal Assistant for the period from 24.10.1992 to June 1996. A2 was functioning as Post Master in the same Post Office during the period from February 1996 to 11.6.1996. A3 is a private person residing at No.1, Kothur Post, Gundukollai Village, Vellore District. A1 to A3 in pursuance of criminal conspiracy to cheat the Government of India, A1 forged the Kisan Vikas Patras (KVPs) indented by him and A2. They shown the KVPs as issued to one Rajendran. A1 and A2 knowing fully well, used the KVPs as genuine and encashed the same by abusing their official position fradulently and dishonestly through A3 and retained the pecuniary advantage of Rs.1 lakh to themselves and corresponding loss to the Government.

2. (b) P.W.2 was the Chief Post Master General of Tamil Nadu Circle from April 1998 to September 1998. During April 1998 he lodged a complaint with regard to the 24 bogus Money Orders for the total value of Rs.48,000/- and loss of 7 IVPs and 13 KVPs and the maturity value of 7 KVPs comes to Rs.1,00,000/- were found to have been encashed at Gudiyatham Head Post Office on 21.5.1996 and 22.5.1996. These certificates were found to have been anti dated and encashed. Therefore, he lodged a complaint Ex.P.2 to the CBI on 24.4.1998. P.W.3 also spoken about the procedures involved in the encashment of KVPs and Money Orders. He deposed that while encashing KVPs it should be verified properly by the person who is in charge of the official position. P.W.4 deposed that while she was working as Postal Assistant at Gudiyatham during 1994 to 1997, A1 was working as Postal Assistant at Natrampalli sub-post office. According to her, when KVPs are presented for encashment issued by other than the post office, they will be sent to the issuing office for verification and the payment will be effected only after the orders of the Post Master. During May 1996, A3 posing as Rajendran, presented 7 KVPs Exs.P3 to P9 along with letter Ex.P.10 to the Post Master. Originally these KVPs along with letter were not submitted to P.W.4. Only after verification when the KVPs came for payment she has seen the letter and made payments on 21.5.1996 and 22.5.1996. On 21.5.1996 payments were made for Exs.P.3, P.5 and P.7 and on 22.5.1996 payments were made for Exs.P.4,6,8,9 for a total amount of Rs.50,000/- to A3 posed as Rajendran.

2.(c) P.W.5 also spoken about Exs.P3 to P9 and the letter for encahsing 7 KVPs, Ex.P.10, given by Rajendran and payments were made on Exs.P.3 to P.9. P.W.6 spoken about the stock register Ex.P.17 maintained at Natrampalli Sub-Post Office from 17.2.1989 to 6.6.1996. According to the Stock Register, Natrampalli Sub-Post Office issued KVP denomination of Rs.5000/- bearing Nos.00BB410545, 00BB410546 on 23.3.1990. Subsequently, only on 21.1.1993 entries containing that KVP Rs.5000/-

denomination bearing No.14BB000200 and 14BB000201 were issued in between 23.3.1990 and 21.9.1993 as per Stock Register and no KVPs were issued to anybody. Stock Register Ex.P.17 also not containing the entries pertaining to Exs.P.3 to P.5. Ex.P.17 also do not contain the entries relating to Exs.P.3 to P.5. While he was working as Sub-Post Master at Natrampalli Exs.P.3 to P.9 were duly filled by Murugesan A.1. The specimen signatures given by P.W.6 is Ex.P.18 series. Post Office Account Book is Ex.P.19. P.W.19 deposed that if Exs.P.3 to 9 were issued from Natrampalli Post Office, this transaction would have been brought into account in Ex.P.19 for the date 17.9.1990.

2.(d) P.W.7 was working as Postal Assistant and also officiating as Sub-Post Master, Natrampalli Post Office during 1996-1998, received six money order forms along with list for payment to the villages address Kotthur and Mallagunda. Out of six money orders, three money order numbers found contrary to the list received from Tirupathur. He informed Thirupathur Post Master about the discrepancy and he informed P.W.7 over phone that a revised list will be sent after perusal of Deputy Post Master and the Money Order Clerk. Subsequently it was informed by the Divisional Superintendent of Post Office, Tirupathur that the said Money Orders were bogus. The statement of R. Ulaganathan, Kothur, Ex.P.20 was recorded at Natrampalli BDOs Office on 17.6.1997. It was written by Ulaganathan voluntarily.

2.(e) P.W.8 was working as Sub-Divisional Engineer, Vaniampadi in the year 1995-96. He inspected Natrampalli Post Office and found that A2 was keeping excess cash above permitted limits from 30.5.1996. He found that A2 obtained cash for discharging IVPs issued at Chittur Post Office during the verification. Exs.P.3 to P.9 KVPs were not found on 6.6.1996 during his verification. All the columns in Exs.P.3 to P.9 were filled by A1 according to the records maintained by Natrampalli Post Office. Exs.P.3 to P.9 were not issued to anybody. During his inspection he found that no proper entries were made in Ex.P.7. The indent and invoices for effecting payment to KVPs were not incorporated in Ex.P.17 Stock Register. P.W.9 was serving as Deputy Post Master and in-charge of Savings Bank, counters and sale of certificates in Tirupathur Head Post Office during the relevant period. As per Ex.P.22 he received indent from Natrampalli Post Office on 6.2.96 for issuance of 2 numbers of Rs.10,000/- denomiantion of KVPs and issued 2 numbers of Rs.10,000/- KVPs as per Ex.P.23 invoice. The stock register maintained in the Tirupathur Head Post Office is Ex.P.26. Entries were also made in the Stock Register. As per the invoice P.W.9 issued KVPs. Ex.P.30 is stock register entries dated 9.4.96 in Page No.18, in which the entries for Rs.5,000/- denomination were made by him. The KVPs in Exs.P.3 and P.4 issued by him as per Ex.P.25 invoice. Exs.P.23 and P.25

invoices were written by him.

2.(f) P.W.10 was working as E.D.D.A. at Modikuppam Branch Post Office. His job is to deliver the Registered Posts, letters and M.Os. Registered Post cover Ex.P.31 addressed to one Rajendran, R.Kollapalli Village was entrusted to him for delivery. When P.W.10 went the said village, he found no such person. According to P.W.11 Exs.P.3 to P.9 were filled up by A1. Ex.P.24 indent slip is that of A2 A.Thukkan's handwriting and signature. Ex.P.4 is the Attendance Register in which A1 put his initial for having attended office on 6.2.1996. P.W.12 was working as Sub-Post Master in Natrampalli Post Office during 1997-2000. According to him Exs.P.3 to P.9 were not issued from Natrampalli Post Office on 17.9.1990.

2.(g) P.W.14 was Superintendent of Circle Stamp Department during the relevant period. According to him, as per the stock register and invoices at the Circle Stamp Department, KVPs bearing Nos.25CC 978015, 978315 and 978316 for Rs.10,000/- denomination each and KVPs bearing No.DD/3 412691 to 412694 for Rs.5,000/- denomination each, were issued to Tirupathur Head Post Office on 23.5.1995 and 16.10.1995 respectively and not issued in the year 1990. P.W.15 Handwriting expert examined the disputed documents, specimen signatures and admitted writings and he has also examined the specimen writings of A1 found in Exs.P.33 to P.35, Exs.P.18, P.20, P.22 P.24 and Exs.P.6 to P.10 with scientific aids. Finally he gave his opinion Ex.P.36.

2.(h) P.W.16 Inspector of Police, CBI/ACB/Chennai, registered a case in R.C.No.MAI 1998(a)/0025 based on the complaint of the Chief Post Master General, Tamil Nadu Circle, Chennai u/s 120-B r/w 420, 467, 468, 470, 471, 472 I.P.C. and Sec.409, 420, 467, 468, 470, 471, 472 and 511 I.P.C. against N. Murugesan (A1) Postal Assistant, Vaniyambadi Post Office and certain other unknown persons. F.I.R.is Ex.P.37. After the registration of case he investigated the case by collecting documents, by examining the witnesses and recorded their statements and laid the Charge Sheet as against A1 to A3 under Section 120-B r/w 420, 419, 467, 468, 471 I.P.C and 13(2) r/w 13(1)(c) & (d) of P.C. Act, 1988. He obtained sanction order against A1 and A2 from the competent authority.

3. The accused were put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 16; marked Exs.P.1 to P.37. After the examination of prosecution witnesses the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which they denied the complicity. Three witnesses (D.Ws.1 to 3) were examined and three documents (Exs.D.1 to D.3) were marked on the side of accused. The Trial Court, after analyzing the evidence on record, convicted A1 as stated above and acquitted the other accused A2 and A3 from the charges. Aggrieved over the acquittal of the respondent/Accused-3 the prosecution has

preferred this appeal.

4. The point for consideration in this appeal is, "whether the prosecution has established the charges framed against the accused beyond all reasonable doubt?"

5. The learned Special Public Prosecutor for CBI cases would contend that A1 was convicted and subsequently he died. He would further contend that no appeal has been preferred against A2, since his participation in the crime is very limited. The learned Special Public Prosecutor for CBI Cases submitted that the specific allegation against A3 is that he impersonated as Rajendran and swindled the money. The evidences of P.Ws.4 and 5 clearly established guilt of the accused-3 that he was posed as Rajendran and encashed the money. The learned Special Public Prosecutor further submitted that though the evidence of P.W.15 handwriting expert has not offer any opinion against A3, the charges as against A3 were proved through the evidences of A4 and A5. However, the learned Special Public Prosecutor for CBI Cases, left to the discretion of the court for the appreciation of evidence.

6. The learned counsel for the respondent/Accused-3 submitted that the prosecution relied upon only 3 evidences i.e., P.Ws.4, 5 and 15. With regard to A3, he submitted that absolutely there is no material to connect this accused with the complicity of the charges. The learned trial Court has analysed the entire evidence and rightly come to the conclusion that the charges against this accused-3 have not proved beyond reasonable doubt. Hence, the learned counsel for the respondent prayed for dismissal of the appeal.

7. The main charge of the prosecution is that A1 to A3 entered into a criminal conspiracy and A3 impersonated himself as one Rajendran, with the help of A1 and A2 he used to forge Kishan Vikas Patras as genuine and encashed the money fraudulently and dishonestly and retained to the pecuniary advantage of Rs.1 lakh to themselves. A3 impersonated as one Rajendran and signed in the KVPs. Therefore, he is also liable for the commission of offence alongwith A1 and A2. The learned trial Court after analysing the entire evidence, found guilty of A1 alone under Section 467, 468, 477-A, 109 r/w 420 I.P.C. And Sec.13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment one year each and to pay a fine of Rs.500/- each in default to undergo rigorous imprisonment for two months and acquitted A2 and A3 from the charges under Section 120-B r/w 420, 419, 467, 468, 471,477-A I.P.C. And Sec.13(2) r/w 13(1)(c) & (d) of P.C. Act 1988 and Sections 419,471 and 420 I.P.C. As against the acquittal of A2 the prosecution has not preferred any appeal.

8. The only evidence relied upon by the prosecution to connect A3 to the charges are the evidences of P.W.4, P.W.5 and P.W.15. Except this, there is no material available on record which is fairly considered by the learned Principal Special Judge for CBI cases. On a careful perusal of P.W.4, he spoken about the procedures followed in the Post Office. According to him, Exs.P.3 to P.9 were submitted for encashment in the name of Rajendran to the Post Master on 30-04-1996. P.W.4 passed payments on 2 days and the payment were made to Rajendran. It is to be noted that in the chief examination itself P.W.4 could not identify A3. He identified A1 as Rajendran and thereafter he pointed out A3 as Rajendran. The identification of P.W.4 is highly doubtful in this regard. Except that, his evidence does not prove the involvement of A3. P.W.4 evidence only to show that he has passed KVPs only in the name of Rajendran. But his evidence does not show that A3 was posed as Rajendran, when he identified. Therefore, the evidence of P.W.4 failed to prove the charges as against A3. Similarly, the evidence of P.W.4 does not speak about the direct involvement of A3 in the conspiracy.

9. P.W.16 investigating officer, who collected the materials except to state that he has investigated the case and filed charge sheet. He never stated anything about the collection of specimen signatures from A3 at any point of time. P.W.15 handwriting expert in his evidence simply stated that he examined some admitted signatures sent by the prosecution and gave his opinion Ex.P.36. In his substantive evidence he never stated about whose signature is tallied with the disputed signature etc., His evidence is totally absent about the nature of the examination done by him. He simply narrated that he examined the questioned documents, specimen and admitted writings and stated about giving his opinion Ex.P.36. From the evidence of P.W.15, this court is unable to come to a satisfactory conclusion, because the opinion of the expert is not found in the evidence. An handwriting expert who has acquired special knowledge and skill is bound to give evidence how he arrived such a conclusion and whose signature was compared. Whereas his evidence is totally silent about the manner in which he conducted the examination of disputed and admitted signatures and what is his final opinion. Therefore, without any substantive piece of evidence with regard to his report, his evidence is no way helpful to the prosecution to prove that the signature of A3 is tallied with the admitted and disputed signatures sent to P.W.15. Ex.P.36 the opinion report submitted by P.W.15 when carefully perused, this Court is unable to appreciate the conduct of the handwriting expert. Ex.P.36 reads as follows:

"2. The person who wrote the blud enclosed writings stamped and marked S1 to S10, S10A, S11 to S16 and A1 to A3 also wrote the red enclosed writings similarly stamped and marked Q1, Q3, Q5, Q7, Q9, Q11, Q13, Q15, Q17, Q19, Q21, Q23, Q25, Q27, Q30, Q31, Q34 and Q35.

3. The person who wrote the blue enclosed writings stamped and marked s17 to s30 and A4 to A6 also wrote the red enclosed writings similary stamped and marked Q4, Q8, Q12, Q16, Q20, Q24, Q28 and Q29."

10. In para 4, P.W.15 opined that "Admittedly genuine writings and signature of Shri Thukkan, Sub Post-Master written by him in routine course on some official documents are also needed for examination." Except stating so, he has not given any finding. His report is incomplete one. The evidence of investigating officer is also totally silent about the specimen signatures collected from A3 and when they were collected and sent to the forensic lab for comparison. The collection of specimen signatures of A3 in the absence of any evidence would show that merely A3's signature is with the expert. As he was not able to give any evidence with regard to A3 in signing any of the document, the report of the expert is also incomplete. Evidence of P.W.15 will not serve any purpose to the prosecution to prove the alleged charge. When these discrepancies were pointed out, the learned Special Public Prosecutor for CBI cases conceded that there is no explanation for that from the prosecution side. Therefore taking into consideration of the evidence, which was adduced by the prosecution, it is very shaky in nature. Now, the prosecution cannot canvas the case against A3 for conviction.

11. Hence this Court is of the view that absolutely there is no material, whatsoever, to connect the accused with the alleged charges brought out by the prosecution in the final report. Hence this Court does not find any infirmity in the order of the learned trial Court and the same is confirmed. The appeal fails. The point is answered accordingly.

11. In view of the above, the Crimial Appeal is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge for CBI Cases,
   Chennai-104.

2. The Public Prosecutor,
   High Court, Madras.

3. Inspector of Police,
   Central Bureau of Investigation,
   ACB, Chennai.

+1cc to Mr.K. Srinivasan, Advocate, S.R.No.45071

Crl. A.No.1085 of 2006

SR(CO)
CS/20/07/17