

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2017

PRONOUNCED ON : 22.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.293 of 2013

1.D.Karunakaran
2.T.Francis

... Appellants

.. Vs ..

State rep. By Inspector of Police,
Vigilance and Anti Corruption Unit,
Puducherry
(Crime No.3 of 2007)

.. Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) Cr.P.C.,
against the conviction and sentence passed by the Additional
Sessions Judge, Puducherry at Karaikal in Special C.C.No.1 of 2012
dated 02.04.2013.

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For Appellants : Mr.G.K.Ilanthirauyan, for
M/s.Sai Bharath and Ilan

For Respondent : Mr.V.Balamurugan, Public Prosecutor,
Puducherry.

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JUDGMENT

The appellants herein while discharging their duty as Agricultural Officer and Demonstration Assistant respectively in the Agricultural Department of Puducherry Union Territory Government were entrusted to identify farmers near Karaikal affected in the heavy rain and flood during October – November 2004 and to pay compensation. The appellants with common intention to cause wrongful loss to the Government and to dishonestly misappropriate the Government fund, fabricated documents such as claim applications in the name of fictitious persons or forged the applications in the name of existing persons without their knowledge and misappropriated a sum of Rs.97,750/-. When the local public raised objections and complaint about the misappropriation committed by appellants, an enquiry was conducted by Mr.Jayasankar (P.W.6) - the Additional Director, Agricultural Department and he submitted his report to the department on 13.07.2005. Based on the preliminary report of P.W.6, the Additional Director of Agricultural Department, lodged a detailed complaint dated 10.03.2007 and the same was forwarded to the Central Bureau of Investigation which is marked as Ex.P.1, during the trial.

2.As per the complaint dated 10.03.2007 given by Mr.Thyagarajan - P.W.1, the Joint Director of Agricultural Department. The Government, vide its G.O.Rt No.138/Agri dated 10.03.2005 sanctioned 1.68 crores of rupees for payment of compensation to the farmers whose agricultural crops were damaged by heavy rain in October - November 2004. Mr.D.Karunakaran (first Appellant) Agricultural Officer and Mr.T.Francis (second appellant) Demonstration Assistant, in charge, Keezhamanai Revenue District, jointly colluded and manipulated the original applications submitted by the affected farmers and made excessive claim over and above the entitlement and also made fake claims in the name of fictitious names or in the name of person who never applied thereby they jointly misappropriated a tune of Rs.97,750/-. The complaint - Ex.P.1 also enlisted 13 claimants, out of which, 5 were fictitious persons, four of them never applied and four applications were manipulated by the appellants so as to withdraw more money than the entitlement.

3.The respondent Police has registered the case and after completion of investigation, has filed final report. The Lieutenant Governor who is the person competent to grant sanction to

prosecute the appellants has given sanction and the same is marked as Ex.P.2 through P.W.2 Mr.Manickasamy.

4.The prosecution, to establish its case had examined P.Ws.1 to P.W.14 and marked Exhibits P.1 to P.45. The trial Court, after considering the evidence has convicted the accused for offences under Sections 465 r/w 34 I.P.C., 468 r/w 34 I.P.C., and Section 13(1)(c)r/w 13(2) of Prevention of Corruption Act and sentenced both the accused to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for 15 days each for offence under Section 465 r/w 34 I.P.C; to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- each in default to undergo simple imprisonment for 30 days each for the offence under Section 468 r/w 34 I.P.C., and to undergo simple imprisonment for a period of one year each and to pay a fine of Rs.3,000/- each in default to undergo simple imprisonment for 30 days each for the offence under Section 13(1)(c)r/w 13(2) of the Prevention of Corruption Act.

5.The learned counsel for the appellants submitted that as per the prosecution case, out of 13 beneficiaries, 5 are fictitious

persons and no such persons available in the given address. In four applications, it is alleged that excessive claim was made by the appellants than the entitlement and rest of the claim applications which were not made by the real applicants but forged by the appellants themselves with excessive claim. The fraud came to light on the petition complaint from public and through preliminary enquiry held by Mr.Jaishankar, Assistant Director (P.W.6). Both the so called complaint of the public and the enquiry report of Mr.Jaisankar (P.W.6) have not seen the light of the day. Without marking these two documents, the charge sheet filed by the respondent and the trial Court failed to note the grave omission on the part of the prosecution.

6.Further, the learned counsel for the appellants contended that the allegation made by the respondent against the appellants that, in the name of fictitious persons, the claim applications were made, is not proved by the prosecution. The addresses of the applicants were admitted by not checked with either the Tahsildar, or the Village Assistant, or the local body representatives. The cheques issued by the Government to the applicants were neither seized nor marked and the bank officers concerned were also not examined. Without marking these vital documents, the forgery or

fraud as alleged by the prosecution against the appellants cannot be presumed. However, the trial Court has convicted the appellants for the offences under Sections 465 r/w 34 I.P.C., 468 r/w 34 I.P.C., and Section 13(1)(c)r/w 13(2) of Prevention of Corruption Act, inspite of lack of evidence.

7. According to the learned counsel for the appellants, for the incidences occurred during early in the year 2005, the First Information Report was filed based on the complaint dated 10.03.2007. Sanction to prosecute the appellants was granted after lapse of 4 years and the statements of witnesses were recorded only in the year 2010. The inordinate delay in filing the Final report itself has caused serious prejudice to the appellants. The evidences of Ms.Gowri – P.W.3; V.Jaishankar – P.W.6; and Mr.R.Muthuramalingam – P.W.10 carries bundle of contradictions and false hood. They are not reliable witnesses and the conviction cannot be based on these contradictory, unworthy un- corroborated witnesses.

8. Per contra, the learned Public Prosecutor (Puducherry) submitted that the appellants have misappropriated the flood relief fund meant for poor agriculturists who were affected by flood during the year 2004. When the villagers noticed gross violation

and fraud in disbursement of relief fund, they went on protest and agitation which, prompted the Government to make preliminary enquiry about the issue. Accordingly, Mr.Jaishankar - P.W.6, the Assistant Director of Agricultural Department made enquiry and found the relief fund applications were forged and manipulated by the appellants thereby cheated the Government making false and excessive claim. Thereafter, Mr.S.Thiyagarajan - P.W.1, gave the complaint - Ex.P.1 to the Vigilance and Anti Corruption Cell, Puducherry. The investigation disclosed that the accused/appellants have made excessive compensation to (1)Mr.K.Natarajan (P.W.5); (2)Ms.A.Gowri (P.W.3); (3)Mr.K.Thandapani (P.W.8); (4)Mr.A.Balaguru (P.W.12); (5)Mr.K.Karthikesan (P.W.7); (6)Mr.R.Muthuramalingam (P.W.10) and (7)Mr.M.Packirisamy (P.W.11). In which, some of them, were paid a portion of the flood relief fund and the balance amount were retained by the appellants. In respect of 5 other claim applications, there were no such persons by name (1) Mr.S.Sinnadurai (2)Mr.R.Muthukumarasamy (3)Mr.R.Mathiazhagan, (4)Mr.R.Samikannu and (5)Mr.A.Mahalingam.

9.The hand writing experts who have compared the disputed signatures of Mr.K.Natarajan (P.W.5) ; Ms.A.Gowri (P.W.3);

Mr.K.Thandapani (P.W.8); Mr.M.Pakirisamy (P.W.11) and Mr.R.Muthuramalingam (P.W.10) found in the claim applications with the sample signatures found not tallying. The hand writing expert opinion further reveals that the signatures and writings found in the claim applications made in the name of the above persons were actually tallies with the writings of either the first accused or the second accused. Hence, forgery, fabrication of document and cheating by using forged document are all well established through oral and scientific evidence.

10.The learned Public Prosecutor (Puducherry) emphasised that the contradiction or hostility of the prosecution witnesses shall have no bearing in the prosecution case, the excessive measurement of land been mentioned in the claim applications and excessive compensation paid by the Government based on fabricated documents is proved through documents. The ocular evidence of the individuals who were worn over by the accused shall be ignored. The decision of the trial Court based on proved evidence so it needs no interference.

11.Heard the learned counsel for the appellants and the learned Public Prosecutor (Puducherry) and perused the exhibits

and the depositions of the witnesses.

12.The specific charge against the appellants is in three fold.
(i) Compensation paid more than the actual entitlement to some of the applicants; (ii) to persons who have not claimed and (iii) persons who are non existence/fictitious. The beneficiaries examined as P.W.3; P.W.5; P.W.7; P.W.8; P.Ws.10 to 12, invariably reveal that the claim applications were not furnished by them. Out of the said witnesses, P.W.5; P.W.7; P.W.8 and P.Ws.11 and 12 have turned hostile. They have identified the signatures found in the applications as their signatures and received compensation by them as found in the claim applications. Their evidences are contradictory to their previous statements. Hence, the prosecution has treated them as hostile witnesses. However, P.W.3 in her deposition has stated that the signatures found under the declaration of the claim application - Ex.P.3 is not her signature. She further admits that several particulars in her claim application were not filled by her. The manipulations and corrections found in her application form were done without her consent and knowledge. She was given a cheque for Rs.8,000/- towards compensation later, the appellants/accused came to her house and collected Rs.6,000/- under the pretext that she was paid excessive compensation. The opinion of the hand writing expert

marked as Ex.P.39 states that both the signatures found in the application - Ex.P.3 is that of Ms.Gowri whereas, in respect of the questionable writings which contains corrections and manipulation, no opinion could be formed.

13.Mr.Muthumanickam - P.W.10, has clearly stated that the signatures and writings found in the application - Ex.P.19, in his name, are not his signatures or writings. He was paid only Rs.2,500/- as compensation. As per the record, P.W.10 was paid Rs.5,375/- as compensation. Thus, forging the signatures of P.W.10 in Ex.P.19 is proved both through the oral evidence of the person concerned and by the scientific opinion - Ex.P.39 which opines that the signatures found in Ex.P.19 is similar to that of the first accused.

14.In Ex.P.19, the second accused has also signed above the words "Demonstration Assistant". Though, the signatures of other witnesses who were treated as hostile, the scientific opinion indicates their claim applications were also forged. Since, they have turned hostile, contrary to their previous statements, no further discussion is made in this regard. Except to say, "human may lie but, not documents". The evidence of P.W.10 and the

scientific expert report - Ex.P.39 is singularly enough to prove that the appellants are guilty of forging the claim applications to make wrongful gain.

15. When the case of the prosecution is that five persons are non existing persons, the appellants/accused who have prepared the claim applications and disbursed the money should have proved the contrary. It is their burden to disprove the prosecution case of non existence. The existence of those persons are only to the knowledge of the appellants since, they have processed the claim applications. Under Section 103 of the Indian Evidence Act, the existence of facts is to be proved by the person who pleads such existence. Section 103 of the Indian Evidence Act is extracted below for easy reference:-

"103. Burden of proof as to particular fact.—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration 1[(a)] A prosecutes B for theft, and wishes the Court to believe that

B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it. COMMENTS
Plea of alibi Plea of alibi taken by accused, it is he who has to prove it; "

16. In the case on hand, the prosecution has specifically alleged that 5 persons namely, (1) Mr.S.Sinnadurai (2) Mr.R.Muthukumarasamy (3) Mr.R.Mathiazhagan, (4) Mr.R.Samikannu and (5) Mr.A.Mahalingam are fictitious persons. The further allegation against the appellants is that they have processed applications in these names and paid compensation. Therefore, the burden to prove the existence of those 5 persons squarely falls on the appellants/accused since, the said fact is now within their knowledge. Having failed to prove the existence, they claim, adverse inference ought to be drawn against the appellant.

17. Thus, from the evidence let in by the prosecution, it is well proved that in furtherance of common intention to commit a crime of forgery and cheating, the appellants/accused have forged the claim applications and had cheated both the Government of Puducherry and the individuals. Hence, the judgment of the trial

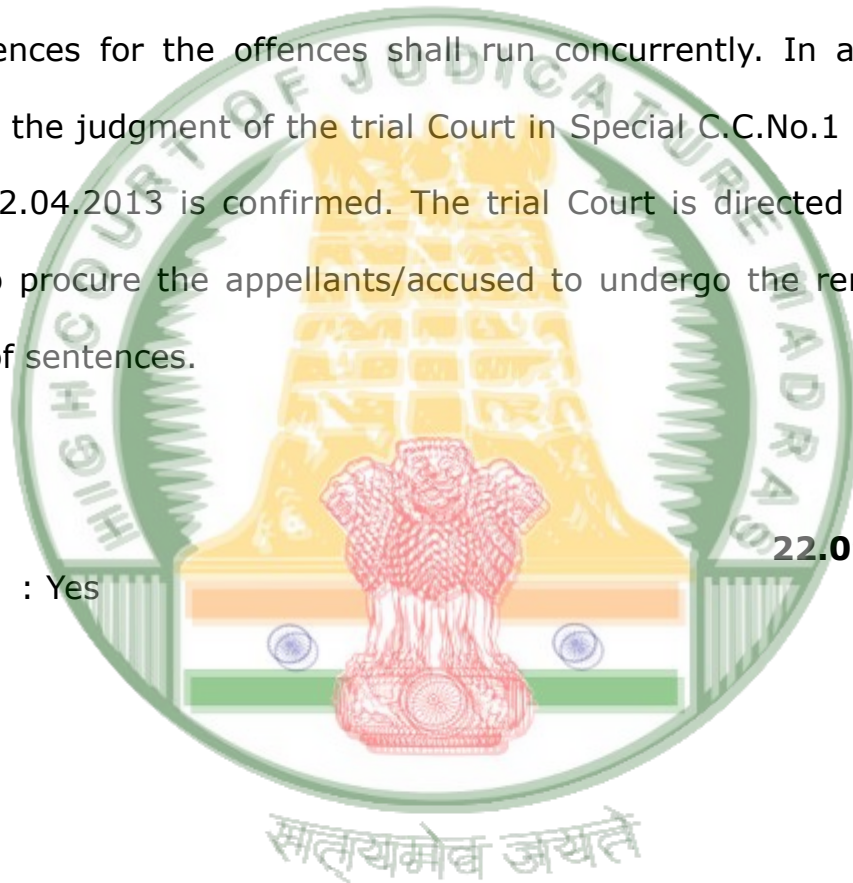
Court is liable to be confirmed except to add that the period of sentences for the offences shall run concurrently.

18. In the result, the Criminal appeal is dismissed. The period of sentences for the offences shall run concurrently. In all other respect, the judgment of the trial Court in Special C.C.No.1 of 2012 dated 02.04.2013 is confirmed. The trial Court is directed to take steps to procure the appellants/accused to undergo the remaining period of sentences.

Index : Yes

jbm

22.09.2017



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To

1.The Additional Sessions Judge,
Puducherry at Karaikal.

2.The Inspector of Police,
Vigilance and Anti Corruption Unit,
Puducherry

3.The Public Prosecutor (Puducherry),
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

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