



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.1819 of 2003

- 1.The Management Professionals Association,
represented by its Chairman, Kumuda, Chennai-17
- 2.S.Vasanthi, Executive Trustee of the
Management Professionals Association
Chennai-17
- 3.Kumuda
Appellants/Accused

Vs

State represented by Deputy Superintendent of Police
CBI-SPE, Chennai

Respondent/Complaint

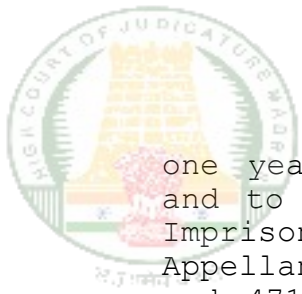
Prayer:- This Criminal Appeal is filed, under Section 374 of Cr.PC, against the judgement, dated 16.10.2003 made in CC.No.18 of 1996 by the Principal Sessions Court, Chennai.

For Appellants : Mr.G.Saravanan-Appellant 1 and 3
Mr.Kumar-2nd Appellant

For Respondent : Mr.K.Srinivasan, SPP-CBI

JUDGEMENT

This Criminal Appeal is filed by A1, A3 and A4 in CC.No.18 of 1996, on the file of the Court of Principal Sessions, Chennai, against the judgement of conviction and sentence, dated 16.10.2003, in and by which, the Trial Court had convicted and sentenced (a) the 1st Appellant/A1 for the offences punishable under Sections 420 and 471 read with 468 of IPC to pay a fine of Rs.40,000/- and Rs.25,000/- respectively, (b) the 2nd Appellant/A3 for offences punishable under Sections 120B, 420 and 471 read with 468 of IPC to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5000/-, in default to undergo Rigorous Imprisonment for three months and to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.35,000/- in default to undergo Rigorous Imprisonment for



one year and to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5000/- in default to undergo Rigorous Imprisonment for three months respectively and (c) the 3rd Appellant/A4 for offences punishable under Sections 120B, 420 and 471 read with 468 of IPC to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5000/-, in default to undergo Rigorous Imprisonment for three months and to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.35,000/- in default to undergo Rigorous Imprisonment for one year and to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5000/- in default to undergo Rigorous Imprisonment for three months respectively and ordered the sentences to run concurrently and set off the sentence, if any already undergone, by the accused.

2. The case of the Prosecution is as follows:-

a. There are totally four accused persons. . The Appellants herein were arrayed as A1, A3 and A4. A2, J.Sudershan, is the husband of the 3rd Appellant herein, Kumuda, who was arrayed as A4. A1 is 'The Management Professionals Association', which is a registered Association under the Tamil Nadu Societies Registration Act, 1975. Originally, A2 represented the A1 Association in his capacity as a Chairman. A3 and A4 are the Executive Trustees of the A1 Association. During the pendency of the Trial, A2 died and hence, the charges against him were abated. After the demise of A2, A4 being one of the Executive Trustees, represented the A1 Association.

b. A2 to A4 hatched a conspiracy with an intention to cheat the public and pursuant to such conspiracy, , they formed an Association under the name and style of "The Management Professionals Association", which was arrayed as A1. An advertisement was issued in the Newspapers throughout the Country in the name of A1 Association that Degrees like MBA, M.Tech, Ph.D and M.B.B.S, etc., from foreign Universities could be procured by them. Attracted by such an advertisement, gullible persons had parted away their money and later, they found to be cheated. Few such persons are V.K.Radhakrishnan, Vilas Lokhand Wala, K.P.Ramakrishnan, Ranjit Singh and P.R.Ramesh. The total amount of money cheated by them from these gullible persons is around Rs.1,10,000/-. In the course of such conspiracy, they had printed forged degrees of non-existent Foreign Universities and had issued forged degrees to them. The Prosecution, after registration of the case against these accused persons and after completing investigation in all respects, had filed a final report against these accused for the alleged offence under Sections 120B, 420 and 471 read with 468 of IPC.

3. The case was taken on file in CC.No.18 of 1996, by



the Principal Sessions Court, Chennai and necessary charges were framed. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.29 and also marked Exs.P1 to P67. On completion of the evidence on the side of the Prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial, by pleading not guilty.

4. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellants guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

5. This Court, by a detailed and reasoned, judgement, dated 17.11.2017, had dismissed this Criminal Appeal on the ground that the parties failed to avail the opportunity of being heard and also on merits, as discussed in the said judgement. As against such dismissal of this Criminal Appeal, the 3rd Appellant/A4, Kumuda had alone filed SLP(Crl)No.4148 of 2018 before the Honourable Supreme Court and the Honourable Supreme Court, by its judgement, dated 20.08.2018, while setting aside the judgement of this Court, dated 17.11.2017, had remanded this Criminal Appeal to this Court, in order to give one more opportunity to the Appellants, for fresh consideration and also directed the parties to appear before this Court.

6. After such remand, the matter was listed before this Court on 08.10.2018 and thereafter, on 11.10.2018. The 3rd Appellant/A4, Kumuda has alone appeared before this Court. The 2nd Appellant/A3, S.Vasanthi, pursuant to the dismissal of the appeal on 17.11.2017, had been arrested by the Respondent and is confined in prison from 05.09.2018.

7. At the outset, though both the learned counsel for the Appellants/A3 and A4 would submit that there are several other arguable points in this case, they have confined their arguments only to the question of sentence and they are not pressing the impugned judgement, in respect of the conviction and payment of fine amount, imposed by the Trial Court and thereby, this Court had directed both the learned counsel for the Appellants to furnish details with regard to the period of imprisonment undergone by the Appellants 2 and 3.

8. As per the directions of this Court, in so far as the the 2nd Appellant/A3, S.Vasanthi is concerned, a memo, dated 23.10.2018 was filed by the learned counsel for the 2nd Appellant/A3, stating that she was initially remanded to judicial custody on 23.06.1996 and was enlarged on bail on 19.04.1999 and thus, she had undergone custody for 2 years and



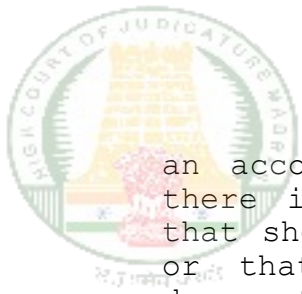
10 months as a trial prisoner, prior to the impugned judgement of conviction and sentence. Thereafter, from 16.10.2003 to 12.11.2003, she had undergone imprisonment as a convicted prisoner. Thereafter, pursuant to the dismissal of this Criminal Appeal by this Court, she was arrested on 5.9.2018 and she is now confined in the Special Prison for Women at Puzhal from 5.9.2018. Thus, she has to undergo imprisonment only for about a month. The fine amount of Rs.45,000/- was also remitted on 03.10.2018.

9. In so far as the 3rd Appellant/A4, Kumuda is concerned, an affidavit signed by her, dated 23.10.2018 was filed, stating that after the dismissal of this Criminal Appeal, by this Court, on 17.11.2017, she was arrested on 19.3.2018 and she was granted bail on 8.5.2018 by the Honourable Supreme Court and she was released from the Prison on 16.05.2018. Thus, she had undergone imprisonment as a convicted prisoner for nearly about two months. However, she has stated that she had suffered a part of the imprisonment both during the period of remand and after conviction and also after earlier dismissal of this Criminal Appeal by this Court.

10. On the directions of this Court, Confinement Certificates, dated 20.10.2018, in respect of A3 and A4 obtained from the concerned Prison Authorities, have also been filed before this Court. As per the said certificates, A4 is now aged about 68 years and she was confined in the Prison on 19.03.2018 and released on bail on 16.05.2018. A3 is now aged about 69 years and she was confined in the Prison on 05.09.2018 and is undergoing imprisonment till date.

11. This court heard the submissions of the learned counsel on either side.

12. The learned counsel for the 3rd Appellant/A4, Kumuda would submit that the 3rd Appellant is a senior citizen, aged about 68 years and that she is suffering from serious ailments due to her old age. The learned counsel would further submit that the offences were said to have been committed during the period 1981-1987, i.e. much before more than 30 years and that A1 Association was in fact promoted by the main accused, A2, who was the Managing Trustee and that she was one of the Executive Trustees of the A1 Association and that she being the wife of A2, J.Sudershan, who was the main accused and also being a formal Director in the A1 Association, she has nothing to do with the alleged offences and she had not involved in any of the day to day affairs of the A1 Association, but however, she was convicted for having conspired with the main accused/A2 and they had cheated the gullible persons, who approached them for obtaining Degrees from the Universities at abroad. The learned counsel would further submit that excepting implicating her as



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an accomplice as an Executive Trustee of the A1 Association, there is no other allegation or material against her to show that she induced the victims and received the amounts from them or that she was involved in forgery and falsification of documents. The learned counsel would also submit that the 3rd appellant had also paid the fine amount of Rs.65,000/- on 25.10.2018 imposed on the 1st appellant Company and has also produced the fine receipt. However, the learned counsel, contending that no minimum sentence of imprisonment is prescribed in IPC in respect of the offences, for which the 3rd Appellant/A4 had been convicted, prayed that the sentence may be modified to the period already undergone by them and thus, confined his arguments only to the question of sentence, praying leniency on the ground of above said mitigating circumstances.

13. Similarly, the learned counsel for the 2nd Appellant/A3, S.Vasanthi also would submit that the 2nd Appellant is a senior citizen, aged about 69 years and that the offences were said to have been committed during the period 1981-1987, i.e. much before more than 30 years and that the A1 Association was in fact promoted by the main accused, A2, who was the Managing Trustee and that excepting that she was one of the Executive Trustees in the A1 Association, she has not played any major role in the offences alleged against her. The learned counsel would further submit that excepting the allegation of having conspired with the main accused A2, no other role has been attributed to her. The learned counsel would further submit that she had already undergone major period of imprisonment for about two years and 10 months and that even at the time of sentencing her by the impugned judgement of conviction and sentence, she had stated that she was in prison for about two years and 10 months and the Trial Court had also noted the same in the impugned judgement. The learned counsel would further submit that there had been no allegations against her that she induced the victims and received money from them. However, the learned counsel, contending that no minimum sentence of imprisonment is prescribed in IPC in respect of the offences, for which the 2nd Appellant/A3 had been convicted, prayed that the sentence may be modified to the period already undergone by them and thus, confined his arguments only to the question of sentence, praying leniency on the ground of above said mitigating circumstances.

14. Both the learned counsel for the Appellants, relying on the decisions of the Honourable Supreme Court reported in 2012 12 SCC 546 (Munilal Mochi Vs. State of Bihar) and 2016 15 SCC 572 (Edmund S.Lyngdoh Vs. State of Meghalaya) and also the unreported judgements of the Honourable Supreme Court made in Crl.A.Nos.1022 and 1023 of 2009, dated 09.06.2014 (Ashi Devi and others Vs. State (NCT of Delhi) and Crl.A.No.1963



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of 2017, dated 16.11.2017 (Naresh Chaubey Vs. CBI), would submit that taking into consideration the long lapse of duration after the offence, the age of the Appellants 2 and 3 and also the fact that they have not involved in any other offence, the sentence may be reduced to the period already undergone by them.

15. On the other hand, the learned Special Public Prosecutor for the Respondent would submit that the Appellants 2 and 3/A3 and A4 had been tried with the 1st Appellant/A1 Association along with the main accused/A2, who died during the pendency of the trial. The allegation against the Appellants 2 and 3/A3 and A4 is that they hatched a conspiracy among themselves and pursuant to such conspiracy, they formed the A1 Association and induced the victims, by advertisements to conduct classes and to issue Foreign Degrees in the non-existing Universities at abroad to gullible persons and cheated them to the tune of Rs.1,10,000/-. The learned Special Public Prosecutor would further submit that pursuant to such conspiracy, the accused printed forged degrees of Foreign Universities and issued the same to the victims and thereby they committed the offences punishable under Sections 120B, 420 and 471 read with 468 of IPC.

16. This Court has given its careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and also taken into consideration the judgements of the Honourable Supreme Court regarding the mitigating circumstances.

17. The Appellants herein were arrayed as A1, A3 and A4. A2, J.Sudershan, is the husband of the 3rd Appellant herein, Kumuda, who was arrayed as A4. A1 is 'The Management Professionals Association', which is a registered Association under the Tamil Nadu Societies Registration Act, 1975. Originally, A2 represented the A1 Association in his capacity as a Chairman. A3 and A4 are the Executive Trustees of the A1 Association. During the pendency of the Trial, A2 died and hence, charges against him were abated. After the demise of A2, A4 being one of the Executive Trustees, represented the A1 Association.

18. The occurrence was said to have taken place during the period from 1981 to 1987 i.e. much before more than 30 years. The A1 Association was in fact promoted by the main accused, A2, who was the Managing Trustee. The 3rd Appellant/A4, Kumuda is the wife of A2 and the 2nd Appellant/A3, S.Vasanthi, who was employed under A2, were formally inducted as the Executive Trustees in the A1 Association. The Appellants 2 and 3/A3 and A4 had been roped in the case by way of conspiracy.



19. The Appellants 2 and 3/A3 and A4 are women and senior citizens, now aged about 69 years and 68 years respectively and they are suffering from serious ailments due to their old age. The allegation against them is that they conspired with the main accused/A2 to cheat gullible persons. They are only the Executive Trustees of the A1 Association. They had also undergone major part of imprisonment as stated above.

20. In 2012 12 SCC 546 (Munilal Mochi Vs. State of Bihar), it was held as under:-

"14. As rightly pointed out by Mr Rai, the appellant had reeled under the threat of being convicted and sentenced for all these 21 years. Even the High Court had taken more than 6 years to dispose of the appeal. As on date, the appellant is 71 years of age and has already undergone 6 months' imprisonment. If we consider the date of occurrence, 29 years have been passed now. There is no record to show that the appellant was involved in other criminal case. Considering the case of the prosecution, namely, several illegalities and irregularities in execution of NREP which is a scheme formulated by the Government of India, the fact that the occurrence relates to the year 1982-1983, the trial went for 21 years and ended in conviction in 2004, the appellant retired from service even before conviction and his appeal was kept pending in the High Court for nearly 6 years, taking note of his present age, namely, 71 years and has undergone 6 months' imprisonment, we feel that ends of justice would be met by modifying the sentence to the period already undergone.

15. In the light of the above discussion, while confirming the conviction imposed on the appellant and having adverted to special circumstances in the case on hand, the sentence alone is modified to the extent i.e. the period of imprisonment, namely, 6 months undergone in prison as substantive sentence. To this extent, the impugned order of the High Court is modified. The appeal is allowed in part to the extent mentioned above."

21. In 2016 15 SCC 572 (Edmund S.Lyngdoh Vs. State of Meghalaya), it was held as under:-

"39. Having regard to the duration of the pendency of the matter and age of the fourth accused and that he has already paid fine amount and also deposited the amount as per the order of this Court, in our view,



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the period of sentence of imprisonment imposed on the appellant-fourth accused for the conviction under Section 420 IPC and Section 120-B IPC shall be modified to the period already undergone and by imposing further fine amount of Rs 2,50,000 in addition to the fine imposed by the trial court and the amount deposited pursuant to the orders of this Court. In default of payment of the said fine amount of Rs 2,50,000, the fourth accused shall undergo imprisonment of one year.

40. The appeal preferred by the first accused now pursued by his legal representative is dismissed. The appeal preferred by the fourth accused (Edmund S. Lyngdoh) is partly allowed to the extent indicated above."

22. Since the learned counsel for the Appellants/accused has only argued on the question of sentence and considering the said mitigating circumstances, particularly, the age of the accused and the role played by them and also long lapse of duration after the offence and in order to balance the aggravating and mitigating circumstances and also considering the submissions of the learned counsel on either side and in the light of the decisions of the Honourable Supreme Court cited supra, this Court is inclined to show lenience in respect of sentence alone.

23. In the result, this Criminal Appeal is partly allowed, modifying the impugned judgement, dated 16.10.2003, made in CC.No.18 of 1996 on the file of the Principal Sessions Court, Chennai, in respect of sentence alone and in all other respects, the impugned judgement, dated 16.10.2003 is confirmed.

24. Accordingly, in so far as the conviction and payment of fine amount are concerned, the impugned judgement is confirmed. In respect of the period of sentence alone, the impugned judgement is modified to the period of imprisonment already undergone by the Appellants 2 and 3/A3 and A4. Since the 2nd Appellant/A3 is undergoing imprisonment, she is directed to be released forthwith unless her presence is required in connection with any other case. Since the sentence is modified to the period already undergone, the bail bonds, if any executed by the Appellants 2 and 3/A3 and A4, shall stand cancelled.

-s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar



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To:

- 1.The Principal Sessions Court, Chennai.
 - 2.The Chief Metropolitan Magistrate, Egmore, Chennai.
 - 3.The XIV Metropolitan Magistrate, Chennai.
 - 4.The Deputy Superintendent of Police, CBI-SPE, Chennai
 - 5.The Special Public Prosecutor, High Court, Madras
 - 6.The Superintendent Special Prison for Women, Puzhal, Chennai
- 66.

Cr1.A.No.1819 of 2003

SP(26/10/2018)