

Bail Slip

The Appellant/accused viz., 1.R.Joseph Alias Stanley Joseph s/o/P.S.RAJAIAH(A2) 2.R.Yovas S/O.P.S.RAJAIAH(A3) and 3. Mary Rose W/O.R.JOSEPH(A4) was directed to be released on bail as per the order of this Court dated 19.02.2007 in CRL MP.NO.1 of 2007 in CRL A.173 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Delivered On: 19.12.2018
Reserved On: 10.12.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.Nos.135 and 173 of 2007

I.N.Dubey ... Appellant in Crl.A.No.135 of 2007

1.R.Joseph Alias Stanley Joseph
2.R.Yovas
3.Mary Rose ... Appellants in Crl.A.No.173 of 2007

Vs.

The State by:-
Inspector of Police,
SPE/CBI/ACB/Chennai.
R.C.No.55(A)/2000).ct... Respondent in Crl.A.No.135 of 2007

Inspector of Police,
SPE/CBI/ACB/Chennai.... Respondent in Crl.A.No.173 of 2007

Prayer in Crl.A.No.135 of 2007:

Appeal filed under Section 374 (2) of Cr.P.C. seeking to set aside the order of conviction dated 25.1.2007 made in C.C.1 of 2003 passed by the II Additional District Judge, (CBI) Cases, Coimbatore and acquit the appellant/1st accused from all charges.

Prayer in Crl.A.No.173 of 2007:

Appeal filed under Section 374 of Cr.P.C. seeking to set aside the conviction and sentence imposed in the judgment dated 25.01.2007 in C.C.No.1/2003 on the file of the II Additional District Judge, (CBI Cases), Coimbatore and acquit A2, A3 and A4.

For Appellants : Mr.R.John Sathyan
in Crl.A.No.135 of 2007
Mr.P.Selvaraj
in Crl.A.No.173 of 2007

For Respondent : Mr.K.Srinivasan
in both appeals Special Public Prosecutor for CBI Cases

C O M M O N J U D G M E N T

The appellants have filed these appeals seeking to set aside the judgment dated 25.01.2007 made in C.C.No.1 of 2003 passed by the learned II Additional District Judge (CBI Cases), Coimbatore.

2.The appellant in Crl.A.No.135 of 2007 is the first accused and the appellants in Crl.A.No.173 of 2007 are the accused 2 to 4 in the case in C.C.No.1 of 2003 on the file of the learned II Additional District Judge (CBI Cases), Coimbatore.

3.The case of the prosecution is as follows: A1 while he was working as Officer in-charge and Assistant Grade - I of Salem Sub-Circle Office of Archaeology Survey of India (hereinafter referred to as 'ASI') at Salem, during the period between 15.06.1998 and 28.12.1999, in connivance with A2 to A4 entered into a criminal conspiracy to cheat ASI and gullible unemployed youths by collecting money from them promising job in ASI.

4.In pursuant to the said conspiracy, A2 to A4 collected money ranging from Rs.40,000/- to Rs.1,25,000/- from 15 persons and A1 fabricated documents and issued false interview call letters, conducted fake interview at Hotel Chaitram, Trivandrum, issued appointment orders, telegrams and joining orders using Government stationeries and service stamps to show as if it emanates from the Government of India. Some of the youths were asked to go to Gawuhati for training. When they found that no training was conducted by ASI at Gawuhati, they came back to Chennai. Some of the youths who boarded train were asked through public address system in the railway station to alight the train citing cancellation of training program.

5.After some days, they were asked to report at Salem Circle

Office of ASI, where A1 received joining report from them and asked his subordinates (Monument Attenders) to take them to monument sites in and around Salem Circle. A1 paid them some money in the name of stipend and assured them that they will be paid regular salary after the training period. The fraud of A1 came to light when the matter was brought to the knowledge of the higher Officials and in the course of inspection conducted by the Officers.

6.Thereafter, the matter was entrusted to the respondent CBI after following due formalities namely,

sanction of prosecution against A1 required under Section 19 (1) of the Prevention of Corruption Act. After due investigation the respondent filed final report and disclosed prima facie offence committed by the accused. Hence, they were charged for the offence punishable under Sections 120 B r/w 420, 420, 467, 467 r/w 471, 468, 468 r/w 471 IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

7. When the accused were served with copies of the documents relied by the prosecution and questioned about the charge, they pleaded innocence and claimed to be tried.

8. The prosecution in order to substantiate their case examined 43 witnesses and marked 153 documents as exhibits. On the side of the accused, no witness was examined and no document was marked as exhibit.

9. Upon consideration of the oral and documentary evidence, the Trial Court held that the first accused in his capacity as a public servant had gained fraudulently. A1 in connivance with A2 to A4 entered into a criminal conspiracy to cheat ASI and gullible unemployed youths by collecting money from them promising job in ASI. In pursuant to the said conspiracy, A1 fabricated documents and issued false interview call letters in the name of Section Officer or Deputy Director, conducted fake interview at Hotel Chaitram, Trivandrum and informed the victims as if they were selected to the post to which they have applied in ASI. The Trial Court held that the charges against the accused are well proved beyond reasonable doubt.

10. The Trial Court sentenced the first accused/appellant in CrI.A.No.135 of 2007 to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- in default to undergo three months rigorous imprisonment for the offence under Sections 120 B

r/w 420, 467 r/w 471 and 13 (2) r/w 13 (1) (d) of PC Act, 1988; to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for each count in default to undergo three months rigorous imprisonment for the offence under Section 467 IPC (2 counts); to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for each count in default to undergo three months rigorous imprisonment for the offence under Section 467 r/w 471 IPC (2 counts); to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for each count in default to undergo three months rigorous imprisonment for the offence under Section

468 IPC (10 counts); to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for each count in default to undergo three months rigorous imprisonment for the offence under Section 468 r/w 471 IPC (10 counts); to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for each count in default to undergo three months rigorous imprisonment for the offence under Section 420 IPC (14 counts); and to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment for the offence under Section 13 (2) r/w 13 (1) (d) of PC Act, 1988.

11.The Trial Court sentenced the accused 2 to 4/ appellants in CrI.A.No.173 of 2007 to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- in default to undergo three months rigorous imprisonment for the offence under Sections 120 B r/w 420, 467 r/w 471 and 13 (2) r/w 13 (1) (d) of PC Act, 1988; and to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for each count in default to undergo three months rigorous imprisonment for the offence under Section 420 IPC (14 counts).

12.The sentences were ordered to run concurrently. The total fine amount imposed on A1 is Rs.41,000/-. The total fine amount imposed on A2 is Rs.16,000/-. The total fine amount imposed on A3 is Rs.16,000/-. The total fine amount imposed on A4 is Rs.16,000/-.

13.Being aggrieved by the said conviction and sentence, the accused/ appellants have filed these criminal appeals before this Court.

14.The learned counsel appearing for the appellant in CrI.A.No.135 of 2007/ A1 would submit that the appellant/ A1 did not receive any amount from anyone and he was implicated in a false

case. The entire amount was received by A2 to A4. The sanction of prosecution is defective and not in accordance with Section 19 of the Prevention of Corruption Act. The sanction order issued by P.W.1 is non application of mind. He would further submit that demand or collection of money by A2 to A4 from the alleged victims were not known to A1 and the appointment orders and other incriminating materials recovered from the other accused were not signed by him. He would further submit that A1 deny his presence at Hotel Chaitram, Trivandrum, during the alleged fake interview and without any document and evidence, the Trial Court has convicted A1 which is un-sustainable one. Accordingly, he prayed for allowing the appeal.

15.The learned counsel appearing for the appellants in CrI.A.No.173 of 2007/ A2 to A4 would submit that the victims are close relatives and friends of A2 to A4. He would further submit that A2 to A4 are innocent persons. Infact in the year 1994, A1 visited their house along with their relative Mrs.Achala Moses, IAS. Thereafter, again he came to their house in the year 1996 and informed that ASI Sub Circle Office at Trivandrum is going to be upgraded as Circle Office, so appointment for vacancies is at anvil. If money is paid to Officers, job can be secured. Believing his words they paid money for

securing job to their relatives. They all received interview call letters. Knowing this, the other relatives approached A1 and paid money for job. They all received interview card.

16.The learned counsel appearing for the appellants in CrI.A.No.173 of 2007/ A2 to A4 would further submit that when the candidates went to Trivandrum, A2 and A4 accompanied them as relatives. He would further submit that A1 only conducted the interview and the other accused never participated in the interview. On the assurance given by A1 that they all will get job, the candidates paid the balance amount. However, some of the candidates expressed their disinterest in the job and sought back their money. Hence, A1 sent cheque for Rs.90,000/-, demand drafts for Rs.30,000/-, Rs.10,000/-, Rs.15,000/- and Rs.25,000/-, totally a sum of Rs.1,70,000/-.

17.The learned counsel appearing for the appellants in CrI.A.No.173 of 2007/ A2 to A4 would further submit that when the job seekers who paid money to A1 and lost caused nuisance before the house of A2 to A4, they raised loan upto Rs.10 Lakhs and repaid to them. He would further submit that the witnesses who have lost money to A1 have deposed falsely against them to get back their money and there is no truth in it.

18.The learned counsel appearing for the appellants in CrI.A.No.173 of 2007/ A2 to A4 would further submit that A4 did not collect any money from the victims. Even the charge itself clearly indicate that A4 did not receive any money from the victims. The only allegation as against A4 is that she participated in the interview conducted in Hotel Chaitram, Trivandrum. However, no material was placed before this Court to implicate A4 in the aforesaid offence. Accordingly, he prayed for allowing the appeal.

19.Per contra, the learned Special Public Prosecutor for CBI Cases would submit that sanction for prosecution as

against A1 was obtained from the competent Authority and the same was marked as Ex.P2. He would further submit that in order to prove the prosecution case, several incredible documents were marked as exhibits. He would further submit that some of the money was paid by way of cash and some of the money was paid through Bank transaction and the amount was collected by A1 to A3. All those evidence clearly disclose the offence committed by the accused.

20.The learned Special Public Prosecutor for CBI cases would further submit that some of the witnesses have contradicted their previous statement by implicating A1 alone and excluded A2 for the reason that they were close relatives of the accused. However, P.W.16/ Manager, Kerala Tourism Development Corporation, clearly deposed that the accused stayed at Hotel Chaitram, Trivandrum for the purpose of interview. He would further submit that the preparation of interview call letters, appointment orders and correspondence by A1 has been established by examining P.W.19/ xerox operator. Further the signature in the above said orders were compared by obtaining specimen signature of A1 and the Expert was also examined as P.W.40.

21.The learned Special Public Prosecutor for CBI cases would further submit that apart from the above, the railway incidents clearly proved the guilt as against A1. All those documents clearly established the prosecution case and the prosecution has proved its case beyond reasonable doubt. Accordingly, he prayed for dismissal of the appeal.

22.Heard the arguments advanced on either side and perused the materials placed on record.

23.In the light of the above submissions, now it has to be analyzed whether the prosecution has proved the guilt on the accused or not and whether conviction order was passed based on the material or not.

24.P.W.1 is the sanctioning Authority. This Court perused the sanctioning order. In the present case, P.W.1 is the competent person for granting sanction against A1. On perusal of the sanction order, the sanctioning Authority namely, P.W.1 applied his mind in sanctioning prosecution as against A1 and I do not find any error in the sanctioning order.

25.P.W.2 one Isravel Keslim has deposed that A3 met him during the year 1997 and told him that he can arrange job at ASI through a person close to the Director General of ASI. P.W.2 along with his father P.W.3 went to the house of A3. They were informed by A3 that they should pay

a sum of Rs.1 Lakh for Selection Committee to get job. A3 also assured that if he could not get job for him, the money would be refunded. The evidence of P.W.3 corroborated with the evidence of other prosecution witnesses.

26.From the evidence of prosecution witnesses namely, P.W.2, P.W.5, P.W.6, P.W.7, P.W.8, P.W.22, P.W.23, P.W.24, P.W.25, P.W.28, P.W.30, P.W.32, P.W.36, P.W.39, P.W.42 it is known that a sum of Rs.1,00,000/-, Rs.1,25,000/-, Rs.1,25,000/-, Rs.1,25,000/-, Rs.70,000/-, Rs.50,000/-, Rs.40,000/-, Rs.1,25,000/-, Rs.75,000/-, Rs.1,25,000/-, Rs.1,25,000/-, Rs.2,35,000/-, Rs.70,000/-, Rs.1,20,000/-, Rs.1,80,000/-, respectively, totally a sum of Rs.16,90,000/- were cheated from them. The above said amounts were paid by the said victim either by way cash or by deposit in favour of A1 to A4.

27.After collection of money from the interested candidates, letters were sent in the name of Government of India, Department of Culture, to those persons intimating that their application is under process and to get ready with original certificates to attend interview. Thereafter, the accused conducted fake interview at Hotel Chaitram, Trivandrum, so as to make those persons believe that they were really considered for the job in ASI. The said interview conducted by the accused on 11.08.1998 and 12.08.1998 is proved through the evidence of prosecution witnesses who have deposed that at Trivandrum A1 conducted interview and A2 and A4 were also present. The true copies of the reservation register maintained at Hotel Chaitram, Trivandrum, was marked as Ex.P56 through P.W.16.

28.P.W.2 has narrated in his evidence about the journey to Gawuathi on 17.01.1999 along with P.W.8, P.W.9 and P.W.32. P.W.2 stayed in 'Eden Lodge', Gawuathi. Thereafter, A2 has informed that the training at Gawuathi got cancelled and to return back to Chennai. Thereafter, the persons who have interestingly gone for training programme have returned back to Chennai. Ex.P114 series are the receipts of Hotel Eden issued in the name of one R.Sekar for the period covering from 23.01.1999 to 03.02.1999.

29.In Ex.P128, the Handwriting Expert has opined that the signature in Ex.P21 is similar to that of the signature found in the admitted signature of A1.

30.P.W.6 has deposed that he received a telegram asking him to report for training at Calcutta on 13.01.1999 and the said telegram has been marked as Ex.P34. P.W.7 has

deposed that he received a letter and telegram informing the postponement of training. The said letter and telegram have been marked as Ex.P40 and Ex.P41. He has further deposed that A2 has asked him to go to Calcutta. However, he returned back knowing that there was no training conducted by ASI at Calcutta. Hence, through these witnesses, the fact that through letters

and telegram the witnesses were asked to go to Calcutta and Gawuathi for training and they acted according to the instruction of A1 and A2 is well established by prosecution.

31.After the return of the candidates from their abortive trip to Gawuathi, they were directed to report before A1 for training at Salem Circle. They were asked to work at the monumental sites under the guise of training and they were also paid money in the name of stipend. A1 has directed some of the original staffs of ASI to take these persons to archeological/ monumental sites for survey. The unassailed evidence of prosecution witnesses well prove the fact that A1 has allowed P.W.2, P.W.5, P.W.6, P.W.7, P.W.8, P.W.9, P.W.11, P.W.22, P.W.23, P.W.24, P.W.25, P.W.30, P.W.32, P.W.34 and P.W.42 to work at archeological/ monumental sites at Athiyamankottai, Sankagiri, Royakottai, Krishnagiri, Asthampatti etc., and paid money in the name of stipend and made them to believe that they are employees of ASI.

32.The inspection report of P.W.13, the evidence of other employees of ASI undoubtedly indicates the role of A1 misusing and abusing his position as Officer of ASI allowing third parties to visit

areas of historical importance for pecuniary advantage. During the inspection, A1 was not found in the office. For the said criminal misconduct A2 to A4 had actively aided by alluring persons in and around their locality. The search of Salem Circle Office by P.W.13 has revealed that A1 has not maintained proper attendance register.

33.Perusal of Ex.P72 to Ex.P74/ letters written by A1 and A2; the statement of joint account of A2 and A4 marked as Ex.P62; Ex.P115, Ex.119 and Ex.P128/ statement of account in the name of A1 reveals the spurt of transaction after 12.09.1997 for several thousand of rupees in these accounts which the defence has not explained.

34.Further, prosecution has marked letters, postal covers and telegrams purported to have been sent by the Government of India, Department of Culture and signed either by Section Officer (Admn.) or Deputy Director (Admn.). P.W.2 has deposed regarding the receipt of

letters and its postal covers, telegram and appointment order as 'Tracer' issued in the name of Government of India, Department of Culture and they are marked as Ex.P3 to Ex.P17. P.W.5 has deposed about the receipt of letters and covers marked as Ex.P18 to Ex.P21 and Ex.P26 (series). P.W.6 has deposed about the receipt of letters

Ex.P28, Ex.P29 and Ex.P30 through A3 intimating him to be ready with original certificates for interview and about the selection order Ex.P31 and letter dated 04.06.1998/ Ex.P32 requesting him to forward the medical fitness certificate.

35. Similarly, the other witnesses have identified the letters and telegrams received by them and they were duly marked as exhibits. The prosecution has compared these documents with the specimen writing of A1 and has obtained the expert opinion. The Handwriting Expert/ P.W.40 has deposed before the Court and marked his report as Ex.P127. According to P.W.40, the signatures found in Ex.P7, Ex.P9, Ex.P11, Ex.P13, Ex.P21, Ex.P28, Ex.P29, Ex.P31, Ex.P33, Ex.P48, Ex.P73, Ex.P74, Ex.P75, Ex.P82 and Ex.P110 are similar to the specimen handwriting obtained from A1.

36. In view of all the above, I have no hesitation to arrive at the conclusion that the prosecution has proved the guilt on the accused A1 to A3 beyond reasonable doubt.

37. However, insofar as A4 is concerned, though the Trial Court arrived at the conclusion that A4 also actively participated in the crime,

except the evidence that she accompanied A1 and A2 at Hotel Chaitram, Trivandrum, during the fake interview, there is no other evidence available to implicate A4 in the crime. Though, there is joint account in the name of A2 and A4, that does not mean that A4 actively participated in the crime. Hence, this Court after considering the matter elaborately, concludes that the prosecution has not proved the case as against A4. Hence, this Court is inclined to acquit A4 from the case.

38. At this juncture, the learned counsel appearing for the appellant in Crl.A.No.135 of 2007 as well as the learned counsel appearing for the appellants in Crl.A.No.173 of 2007 submits that the accused are now aged more than 60 years and they are suffering from age old ailments and the date of occurrence is during the year 1998-1999. They also submit that the victims are close relatives of A2 to A4 and several amounts were settled in their favour. Hence, this Court may consider for reducing the sentence imposed on them.

39.Considering the request made by the learned counsel appearing for the appellant in Crl.A.No.135 of 2007 as well as the learned counsel appearing for the appellants in Crl.A.No.173 of 2007

and considering the passage of time and the facts and circumstances of the case and also the fact that several amounts were settled in favour of the victim, this Court is inclined to reduce the sentence of imprisonment imposed on the appellant in Crl.A.No.135 of 2007/A1 as well as the appellants 1 and 2/ A2 and A3 in Crl.A.No.173 of 2007.

40.In the result, the criminal appeal in Crl.A.No.135 of 2007 is partly allowed. The conviction imposed by the learned II Additional District Judge (CBI Cases), Coimbatore in C.C.No.1 of 2003 under judgment dated 25.01.2007 as against the appellant/ A1 is confirmed, however, the sentence imposed on the appellant is modified. The sentence of imprisonment imposed against the appellant/ A1 is reduced from 4 years rigorous imprisonment to 2 years simple imprisonment. The fine amount is confirmed. The appellant/ A1 shall pay the fine amount of Rs.41,000/-, in default, he shall undergo 3 months simple imprisonment. The Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellant/ A1 to undergo the remaining part of sentence.

41.The criminal appeal in Crl.A.No.173 of 2007 is partly allowed

in respect of the appellants 1 and 2/ A2 and A3. The conviction imposed by the learned II Additional District Judge (CBI Cases), Coimbatore in C.C.No.1 of 2003 under judgment dated 25.01.2007 as against the appellants 1 and 2/ A2 and A3 is confirmed, however, the sentence imposed on the appellants 1 and 2/ A2 and A3 is modified. The sentence of imprisonment imposed against the appellants 1 and 2/ A2 and A3 is reduced from 2 years rigorous imprisonment to 1 year simple imprisonment. The fine amount is confirmed. The appellants 1 and 2/ A2 and A3 shall pay the fine amount of Rs.16,000/- each, in default, they shall undergo 3 months simple imprisonment. The Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellants 1 and 2/ A2 and A3 to undergo the remaining part of sentence.

42.The criminal appeal in Crl.A.No.173 of 2007 is allowed in respect of the third appellant/ A4. The conviction and sentence passed by the learned II Additional

District Judge (CBI Cases), Coimbatore in C.C.No.1 of 2003 under judgment dated 25.01.2007 as against the third appellant/ A4, are set aside. The third appellant/ A4 is acquitted from the charge under Sections 120 B r/w 420, 467 r/w 471 and 13(2) r/w 13 (1) (d) of PC Act, 1988 and from the charge under Section 420 IPC (14 counts). The fine amount, if any, paid by her is ordered to be refunded to her. The bail bonds, if any, executed by her, shall stand terminated/ discharged.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional District Judge (CBI Cases), Coimbatore.
- 2.The Inspector of Police, SPE/CBI/ACB/Chennai.
- 3.The Principal Sessions Judge, Coimbatore.
4. The Public Prosecutor, High Court ,Madras.

Copy to

The section officer,
Criminal Section,
High court,Madras

- +1cc to Mr.K.Srinivasan , Advocate SR.No. 88571
- +1cc to Mr.R.John Sathyan , Advocate SR.No. 88862
- +1cc to Mr.P.Selvaraj , Advocate SR.No. 88462

CrI.A.Nos.135 and 173 of 2007

A.SK(11/01/2019)

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