IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.11.2018
CORAM
THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.No.382 of 2006

C.N.Hariraman (deceased)
C.H.Santha ... Appellant/Accused
(Petitioner Legal representation is impleaded as per order dt.18/07/2018 made in Crl.MP.9484 of 2018.)

Vs.

State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption
Madras City-II Detachment,
Chennai. ... Respondents/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, against the conviction and sentence passed by the learned III Additional Special Judge, Chennai in C.C.No.36/86 by judgment dated 13.04.2006, convicting the appellant for the offences under Sections 409, 467 and 471 r/w 467 IPC and sentencing him to undergo rigorous imprisonment for two years each and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months in each section and convicting and sentencing the appellant for the offences under Sections 468, 420, 477-A IPC and 5(1) (c) r/w 5(2) and 5 (1) (d) r/w 5(2) of the Prevention of Corruption Act, 1947 to undergo rigorous imprisonment for one year each and also to pay a fine of Rs.500/- in default to undergo simple imprisonment for three months in each section.

For Appellant : Mr.M.Kumar
for G.Saravanan

For Respondent: Mr.R.Ravichandran,
Government Advocate (Crl.side)

J U D G M E N T

The appellant, original accused, has preferred this appeal under Section 374(2) of Cr.P.C., against the judgment of conviction and sentence dated 13.04.2006 made in C.C.No.36/86, whereby the learned III Additional Special Judge, Chennai, has convicted the appellant for the offences punishable under Section 409, 467 and 471 r/w 467 IPC and sentenced him to undergo R.I. for two years under each count and also pay a fine of Rs.1,000/- in default to undergo S.I. of six months in each section and convicted the appellant for the offence under Sections 468, 420, 477-A IPC and 5(1) (c) r/w 5(2) and 5(1) (d) r/w 5(2) of the Prevention of Corruption Act and sentenced to undergo one year each and pay a fine of Rs.500/-, in default to undergo three months under each Section. The learned Special Judge further ordered the sentences to run concurrently and set off the period already undergo by the accused under Section 428 of Cr.P.C.

2.During the pendency of the appeal, the appellant/accused passed away and his wife was impleaded as the appellant.

3.The brief facts of the case are as follows:-

3-1.The appellant/accused was working as Assistant Divisional Engineer, Exhibition Sub Division, Tamil Nadu Electricity Board, during the period from 21.01.1974 to 06.05.1981. The deceased/accused is a public servant and the duties of the accused included organising exhibitions at various places in Tamil Nadu for the purpose of displaying models etc., of various projects and electrification and also maintaining all the vehicles belonging to the Tamil Nadu Electricity Board (hereinafter referred to as 'Board'). In the capacity of Assistant Engineer, he was entrusted with an imprest cash of Rs.1,000/- for purchasing various articles and incur expenditure in connection with holding of exhibitions and also to meet the expenses of repairs of the vehicles of the Board. He could purchase articles or incur an expenditure not exceeding Rs.200/- in a single bill or voucher for the above purposes and the amounts are recouped on production of necessary vouchers with his certificates. The recoupment of bills are approved by the Assistant Account Officer (Expenditure), after due verification of the connected vouchers and records. During the period from May-1979 to July-1979, the accused being a Public servant, was entrusted with the imprest amount drawn by him during the said period from the Board; but, he committed criminal breach of trust, by resorting to forgery and falsification of vouchers and bills purporting to be spent in connection with holding the exhibition and for repairing the vehicles of the Board. He forged vouchers as genuine for recouping the imprest amount of Rs.1,000/-, for which he was eligible, and misappropriated the amount to the tune of Rs.20,977.30, by dishonestly inducing the Assistant Accounts Officer to pass the recoupment bills on 37 occasions by presenting such forged and bogus bills and vouchers. He committed falsification of the petty cash book maintained by him for recouping the expenditure incurred by him from the imprest amount. Thus, the accused committed the offences under Sections 409, 467 (126 counts), 471 r/w 467, 468, 420 (37 counts) and 477-A IPC and under Sections 5(1)(c) and 5

(1)(d) and 5(2) of the Prevention of Corruption Act, 1947.

3-2. After investigation, the charge-sheet was filed and the case was initially taken on file as C.C.No.56/86 on the file of the Principal Sessions Judge and thereafter, the case was transferred to the file of the learned III Additional Special Judge at Chennai and renumbered as C.C.No.36 of 1986.

3-3.Thereafter the accused was served with copies of the documents relied by the prosecution and when questioned by explaining the crux of the allegations set out against them, he denied the allegations and he pleaded not guilty. Thereafter, charges were framed against the accused.

3-4.In order to prove the charges levelled against the accused, the prosecution has examined 16 prosecution witnesses and marked 225 documents and thereafter, the accused was questioned under Section 313 of Cr.P.C. On the side of the accused, neither oral nor documentary evidence was adduced.

3-5.After perusing the evidence and records adduced by the prosecution and after hearing the counsel on either side, the learned III Additional Special Judge by impugned judgment dated 13.04.2006, found the accused guilty of the charges and convicted and awarded the sentence as stated supra. Aggrieved over the conviction and sentence, the present appeal has been filed by the accused. During the pendency of the appeal, the accused died; hence, his wife has been impleaded as appellant.

4.The learned counsel appearing for the appellant would submit that though the accused had not examined any witness and marked any document on his side, the prosecution witness and the deposition of the witnesses of the prosecution are sufficient to acquit the accused. If the appellant/accused is acquitted from the charges, though he died during the pendency of the appeal, the wife of the accused as his legal heir, would get the monetory benefits, which her husband is entitled to.

5.The learned counsel appearing the appellant further submitted that while the accused was working as the Assistant Divisional Engineer at the relevant point of time, more than 25 persons were working under the accused including Car Driver and other OAs and those subordinates of the appellant, who carried out and executed the works by using the materials purchased under Ex.P.2 to Ex.P.191, Ex.P.193 to 207, have not been examined at all by the prosecution, which created serious doubt on the prosecution case. He further submitted that normally the subordinates of the appellant would purchase the materials and carry out the repair works and thereafter, the bills/vouchers would be produced before the appellant/accused and the appellant would make necessary endorsement. Thereafter, the said bills/vouchers would be produced before the Accounts Officer and bills would be recouped. It is for the Accounts Officer to sanction the amount to recoup the vouchers. The learned counsel would further submit that all the vouchers and the bills were produced and have been properly explained. But, after examination, they found that the bills were not original. The learned counsel submitted that the prosecution has not proved the case beyond reasonable doubt; however, the learned Trial Court has come to the conclusion as if the appellant/accused had forged more than 100 bills, based on the prosecution witnesses, which is unsustainable. Though the accused died during the pendency of the appeal, the benefit may accrue to the legal heirs. Therefore, to get the monetary benefits, the wife of the appellant/accused impleaded herself and proceeds with the appeal. Thus, the learned counsel for the appellant sought for setting aside the impugned conviction and sentence passed by the trial Court.

6.Per contra, the learned Government Advocate appearing for the State would submit that the appellant/accused had been entrusted with an imprest cash of Rs.1,000/- and it is the duty cast upon the accused to verify the genuineness of the vouchers and bills and thereafter, the appellant/accused has to sign the voucher. Only on the basis of the signed vouchers, Account Officer would disburse the amount in favour of the appellant. The Investigating Officer had produced the relevant documents by investigating the matter and examining many witnesses. In order to prove the charges levelled against the accused, the prosecution has examined sixteen witnesses and marked 225 documents. In order to prove the bogus bills, on the side of the prosecution the relevant bills and vouchers were marked and the concerned employees were examined as witnesses, who have clearly deposed about the bogus bills submitted by the accused. Considering the materials available on record, the learned Special Judge has rightly convicted the accused person and passed the sentence, which needs no interference from this Court. The learned Government Advocate would further submit that since the accused person died during the appeal, the appeal is abated and that once the appeal is abated, the legal heirs are not entitled to any benefits. Thus, the learned Government Advocate sought for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant as well as the respondent-State. I have also carefully gone through the impugned judgment as well as the documentary evidence available on record.

8.The case of the prosecution is that the accused, while he was working as Assistant Division Engineer, Exhibition Sub-Division in the Tamil Nadu Electricity Board during the period from 21.01.1974 to 06.05.1981 and he was a public servant. He was entrusted with an imprest cash of Rs.1,000/- for purchasing various articles and incurring expenditure in connection with the holding of exhibitions and also to meet the expenses of repairs of vehicles of the Board. He could make a purchase or incur an expenditure not exceeding Rs.200/- in a single bill or voucher for the above said purposes and the amounts are recouped on production of necessary vouchers with his endorsement or certificates. It is alleged that the accused during the period from May 1979 to July 1979 has forged 126 bills and vouchers and misappropriated Rs.20,977.30 and he received the cash in 37 bills. A complaint against the accused was received by the Electricity Board Vigilance Cell, which enquired the accused. Thereafter, the Vigilance Cell gave a report to P.W.1, then Superintendent Engineer, who in-turn gave a complaint-Ex.P.1 to the Police. Thereafter, investigation was conducted and a final report was filed before the Court and the final report revealed that the accused had misappropriated the funds of the Board to the tune of Rs.20,977.30. P.W.1 in his chief-examination has narrated the complaint. However, on perusal of P.W.2 who is none other than the Junior Assistant working under the accused from the year 1971 to 1980, deposed that the accused was empowered to incur the expenditure not exceeding Rs.1,000/- towards meeting the maintenance of exhibition works and recoup the voucher bills then and there. P.W.2 further deposed that as per the direction of the appellant, he had prepared the bills, which were bogus and those bills were prepared without actual payment. Further, P.W.2 in his cross-examination had deposed that on the apprehension that if he does not cooperate with the accused in forging the bills, he might be transferred to some other place; hence, he obeyed the direction of the accused as he is subordinate to the accused.

9.The Investigating Officer had referred the admitted signatures of the accused and the disputed signatures of the accused along with the admitted signatures of the other witnesses to the hand-writing expert, who was examined as P.W.15. It is further seen that P.W.4, who was the then Chairman of Electricity Board, accorded the sanction for prosecuting the accused, after perusing the entire available materials and elaborate scrutiny. Hence, as held by the Trial Court, the contention of the learned counsel for the appellant that the sanction was granted by P.W.4, without application of mind, cannot be sustainable.

10.P.W.6 and P.W.7 are the drivers, who worked under the accused appellant, who also spoke about the expenditure relating to the vehicle of the board. P.W.8 to 14 are shop-owners, who have spoken about the bills stating that they have not issued some of the bills. P.W.8 had deposed that Ex.P.20,

P24, P25, P60, P67, P84, P113, P122, P144, P171 & P185 for a sum of Rs.1,740/- were not issued by him and the signatures found therein are not his signatures. Similarly, P.W.11 denied that the bills marked as Ex.P.30, P54, P81, P93, P112, P130 & P174 were not issued by him. Similarly, P.W.12 & P.W.14 have also denied the issuance of bills in favour of the accused. On perusal of exhibits and depositions of the above said witnesses, though some of the witnesses had turned hostile, it is clear that the bills were forged by the accused. Further, no contrary evidence were adduced on the side of the accused to prove his innocence.

11.Considering the exhibits and the deposition of the witnesses adduced on the side prosecution, the Trial Court has rightly convicted the accused and imposed the sentence as stated supra, which cannot be interfered with by this Court. There is no merits in this appeal and the appeal is liable to be dismissed.

12.In the result, the Criminal Appeal is dismissed confirming the judgment passed by the Trial Court.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional Special Judge,
Chennai.

2.The Government Advocate (Crl.side)
High Court of Madras.

3.The Inspector of Police,
Vigilance and Anti Corruption,
Madras City-II Detachment,
Chennai.

+1cc to Mr.G.Saravanan, Advocate, S.R.No.80092

Crl.A.No.382 of 2006

MP(CO)

rrs 25/02/2019