IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.02.2018

PRONOUNCED ON :22.03.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.61 of 2004

1.K.S.Shanmugam
2.P.Subramaniam .. Appellants

/versus/

State by Inspector of Police,
Vigilance and Anti-Corruption,
Erode Wing(Crime No.2/AC/93)
Erode District. .. Respondent

Criminal Appeal is filed under Section 374(2) Cr.P.C., against the conviction and sentence imposed in judgment dated 31.12.2003 made in Special C.C.No.3 of 1999 on the file of the Chief Judicial Magistrate cum Special Judge, Erode.

For Appellants :Mr.N.Manokaran
For Respondent :Mr.P.Govindarajan, APP

J U D G M E N T

Criminal Appeal is filed against the conviction and sentence imposed in judgment dated 31.12.2003 made in Special C.C.No.3 of 1999 on the file of the Chief Judicial Magistrate cum Special Judge, Erode.

2. Background facts leading to this appeal:

Engur Weavers Co-operative Production and Sales Society, Engur, then Periyar (Erode) District registered on 11.02.1981 and commenced functioning from 24.02.1981. Thiru.K.S.Shanmugam was its Manager between 1984 to 1991. Thiru.S.P.Subramaniam was working in that Society as Accountant from 1986 to 29.02.1992.Thiru.C.S.Duraisamy was Dyer from 1988 to August 1991. Thiru.S.Periyasamy was President of that Society from 08/12/1990 to 28/07/1991. Thiru.Ganesan was Special Officer of that Society between 18.12.1989 and 29.02.1992.

3.Based on reliable information, on 27/09/1993 Thiru.M.Subramanaiam, Inspector of Police, V&AC, Periyar Detachment, Erode, registered First Information Report under Sections 120-B r/w 167,477-A, 467,471 r/w 467, 409,420 IPC and Section 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988 against K.S.Shanmugam, Manager Engur Weavers Co-op Production and Sales Society and 7 others who were connected with the affairs of the Society and suspected to have involved in the crime, namely conspiracy to falsify the accounts of the Society, as if yarn, dyes, chemicals, firewoods, jacquard, cloth, Kittan blades were purchased and Hand loom Blankets were weaved and printed and as if the Hand loom products of the society were sold in the 37$^{th}$ Handloom Exhibition held at Dindugul between 10/05/1991 and 24/05/1991 and records were created as if in the said exhibition goods worth of Rs.7,13,213/- were sold so as to claim 20% of the sale amount as rebate.

4. Thiru.Gnanavelu, Manager, Periyar District Central Co-operative Bank visited the exhibition on 21.05.1991 and found that the stall alloted to Engur Co-operative weavers Society vacant and no trading activity going on. No stock was handed over to the salesman, but bogus bills were prepared as if the goods ranging from Rs.250/- to Rs.450/- sold in the exhibition. In order to claim rebate of 20%, goods sold prior to rebate period were kept in suspense account and shown as if sold during the rebate period.

5. To show fund for purchase of raw materials like yarn, chemicals, firewoods etc, the Trade Deposit Register was manipulated and fabricated as if trade deposits were made by Amuthavalli and Loganathan. Tmt.Amudavalli is none other than the wife of K.S.Shanmugam, who was the Manager of the Society. Loganathan is a fictitious person. To cheat the Society, forged vouchers for payments, fake invoices for purchases and fabricated receipts were produced. Entries in Day books and Trade Deposit Register were falsified to cover up the fraudulent act.

6. On completion of investigation, it was found that 4 distinct offences were committed. So separated charge sheets were filed against the persons involved in the crime. The trial Court has taken cognizance of the four distinct offences and had assigned Spl.C.C.Nos.1/1999, 2/1999, 3/1999 and 4/1999.

7. The trial Court, after considering the evidence, had passed separate judgments in each of the cases as below:-

1) Special C.C.No.1/1999: All the accused were acquitted.

2) Special.CC.No.2/1999: The Manager K.S.Shanmugam, and Accountant P.Subramaniam were held guilty and convicted. The Special Officer Ganesan (A-2) acquitted.

3) Special C.C.No.3/1999: The Manager K.S.Shanmugam, the Accountant P.Subramaniam and C.S.Duraismy, Dyer were held guilty and convicted. The Special Officer Ganesan ( A-2) acquitted.

4) Special C.C.No.4/1999: The Manager K.S.Shanmugam and the Accountant P.Subramaniam were held guilty and convicted. The President of the Society S.Periyasamy acquitted.

8. Criminal Appeal No.61/2004 arising out of Special C.C.No.3/1999 is preferred by the convicted accused K.S.Shanmugam (A-1) and P.Subramaniam (A- 3). Other convicted accused C.S.Duraisamy (A-4 ) died pending his appeal Crl.A.No.85/2004. Hence, Crl.A.No.85 of 2004 was dismissed as abated on 20/02/2018.

9. Gist of the charges in Spl.C.C.No.3/1999, which is under consideration in the Criminal Appeal 61/2004:

During the month of August,1990, K.S.Shanmugam(A1) (first appellant herein); K.Ganesan(A2); S.P.Subramaniam(A3) (second appellant herein) and C.S.Duraisamy(A4), while they were serving as Manager, Special Officer, Accountant and Dyer respectively of Engur Weavers Co-operative Production and Sale Society, conspired to cheat the Society, falsified the Society account as if 10 tonnes of firewood for Rs.6,000/- was purchased from out of the Trade Deposit of Rs.16,000/- made by Smt. Amudavalli, the firewood was weighed at Shridar Weigh Bridge Centre and transported in the vechile bearing Registration Number TME 1706.

10. In pursuance to the said conspiracy, they falsified the Day Book of Engur Weavers Co-operative Production and Sale Society as if on 09/08/1990, the Society recieved Rs.16,000/- as Trade Deposit from Smt.Amudavalli and paid Rs.6,000/- for purchase of 10 tonnes of firewood. Forged stamped voucher for payment of Rs.6,000/- , two fake weigh bills of Sridhar Weigh Machine Centre dated 09.08.1990 and forged receipt of Trade Deposit from Smt.Amudavalli, W/o K.S.Shanmugam (A-1) for Rs.16,000/- were used to misappropriate Society money Rs.6,000/-. The second Accused K.Ganesan, being a Public Servant was also charged for misconduct under Prevention of Corruption Act, apart from provisions under Penal Code. Other accused were charged for abetting Public Servant to misconduct and other substantive offences under Penal Code.

11. The prosecution to prove the charges, examined PW-1 to PW-6 as prosecution witnesses, marked Ex P-1 to P-25 as prosecution side exhibits. Two exhibits Ex.C-1 and Ex.C-2 were marked as Court documents. For the defence, no witness was examined. No document was marked.

12. Finding of the trial Court:

The trial Court found A-1 K.S.Shanmugam (Manager) guilty of offences under Sections 467,471,477-A, 408 r/w 120 B IPC and sentenced him to undergo 3 years RI and to pay a fine of Rs.1,250/- for each offence, in default to undergo 3 months RI each.

A-2 Ganesan, (Special officer ) not guilty.

A-3 S.P.Subramaniam(Accountant) guilty of offences under Sections 467,471,477-A, 408 r/w 120-B IPC and sentenced him to undergo one year RI and to pay a fine of Rs.250/- for each offence, in default to undergo one month RI each of the offences.

A-4 C.S.Duraisamy(Dyer)guilty of offences under Sections 467,471,477-A, 408 r/w 120-B IPC and sentenced him to undergo 3 months RI each and to pay a fine of Rs.250/- for each offence, in default to undergo one month RI each. The period of imprisonment was ordered to run concurrently along with the sentence imposed in Spl.C.C.No.2/1999.

13. The first and third accused are appellants in Crl.A.No.61 of 2004. The fouth accused, who preferred Crl.A.No.85 of 2004 died pending appeal hence, abated.

14. The contention of the appellants:

The trial Court judgment of conviction is against law and evidence. The prosecution has failed to prove misappropriation of Society money. There was no entrustment of money to the appellants or they had any dominion over the money. None of the prosecution witnesses have deposed agiantst the appellants that they had wilful intention to defraud, destroy, alter, mutilate or falsify any book, or account which belongs to or is in the possession of his employer. None of the ingredient required to hold the appellants guilty of offence under Section 477-A IPC could be seen from the prosecution witnesses.

15. The original records, which contain the alleged fabricated and fake entries, are not produced before the Court below. The non production of the original records relating to the transactions, which are alleged to be fake transaction is fatal to the prosecution. The application to produce nearly 100 documents was allowed by the trial Court, but the prosecution has failed to produce those documents. The trail Court failed to draw adverse inference against it. The genuineness of the purchase of firewood for Rs.6,000/- on 09.08.1990 can be established, if the original documents are produced. Even after the order of the Court to produce those documents, the prosecution has withheld the documents. The reasons assigned by the prosecution and accepted by the trial Court is contrary to the evidence of PW-2 and PW-3.

16. The entries relevant to purchase of firewood and receipt of Trade Deposit from Amudavalli are proper and genuine. The

entries and documents are duly signed and countersigned. The activities of the Society is governed by the special officer, who is responsible for the administration of the Society. Having acquitted the special officer, the trial Court ought to have extended the same benefit to the appellants herein also.

17. The learned counsel for the appellant would submit that, PW-3 Jayaprakash, has deposed that he was asked to enquiry about the irregularities of Egur Weavers Co-operative Society by the Handloom and Textiles Director, vide proceedings No.79/91, dated 05.08.1991. He has recorded the statements of the accused, which are marked as Ex.P-18 to Ex.P-21. On completion of the enquiry, he filed his report on 08.06.1992.

18. Based on his enquiry report, no criminal complaint was given by the Director, Handlooms and Textiles. The annual audit conducted by the department does not report any illegality in the affairs of the Society. The arbitration proceedings for recovery initiated against the appellants under Section 81 of the Cooperative Society Act ended in dismissal. Despite that, the investigation was taken up suomotto by V& AC on 27/09/1993 in respect of incident allegedly happened on 9/8/1990.

19. The trial Court, without any documentary proof, solely based on the oral evidence, had held the appellants guilty of forgery, cheating and falsification of accounts. These offences are documents based. Without original documents, offence of forgery or falsification cannot be proved. The exhibits relied by the prosecution is not sufficient to prove the guilt of the appellant beyond doubt.

20. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that, the prosecution has filed the documents relevant to prove the guilt of the accused. Ex.P-2 is the voucher for Rs.6,000/- It is a stamped acquittance receipt. It is signed by A-4 on the stamp. A-1 and A-2 has permitted to pay Rs.6,000/- to K.S.Duraisamy (A-4) for purchase of firewood. Ex.P-6 series are the weigh bills of Shridar Weigh Bridge Center, Perundurai. It is dated 09.08.1990. These two bills indicate that 5 tonnes of firewood each were weighed on 09.08.1990 loaded in the vehicle bearing Registration No.TME 1706. Whereas the letter of Chennai South, RTO reveals this Registration Number is for a TVS Motor cycle. The day book extract marked as Ex.P-10, the entries in respect of trade deposit from Amudavalli is altered from Rs.10,000/- to Rs.16,000/-. by altering the '0' next to '1' as '6'. Likewise, in the receipt marked as Ex.P-14, the number Rs.10,000/- is corrected as Rs.16,000/-. Therefore, the trial Court has considered the documents and the oral evidence and found that

the accused have knowingly with intention had fabricated documents to cheat the Society. Hence, the appeal has no merit.

21. Point for consideration:

Whether the trial court judgment is sustainable in view of the grounds raised by the appeal?

22. The learned counsel appearing for the appellants pointing out the fact that one of the accused namely, Ganesan [A2], Special Officer who is administratively responsible for affairs of the Society, was not found guilty by the trial Court. Therefore, parity should be drawn in favour of the appellants herein. Relying upon the admission of the investigating officer that the registers sought by the accused in C.M.P.Nos.83 of 2003 and 367 of 2000 were perused by him but failed to produce before the Court. By suppressing those registers, the prosecution has prevented the accused from establishing their innocence. Further, the learned counsel appearing for the appellants submitted that the materials produced by the prosecution to show that there was falsification in the accounts by altering the day book entries and receipts, has no force.

23. It is also contended by the learned counsel appearing for the appellants that without permission of the Special Officer (A2), money cannot be withdrawn and even as per Ex.P2-voucher, A2 has permitted for disbursement. While the trial Court has found that A2-Special Officer is not guilty of offence, then the appellants, who were his subordinates cannot be held guilty.

24. These submission are negatived by the Trial Court. The trial Court has also given reasoning why A2 has been exonerated. The appellants herein are the persons, who were exclusively managing the affairs of the Society. Whereas the Special Officer is to supervise and oversee many Societies including the Engur Weavers Co-operative Production and Sales Society Limited. Therefore, he, in good faith had believed the appellants herein and has signed the receipts and other documents. Contrarily, the appellants herein have prepared the forged documents as well as created fake receipts. The beneficiaries of the forged entry is non else other than Smt.Amuthavalli, who is the wife of the first appellant herein. The intention to deceive the society could be well seen from the alteration of the voucher enhancing the trade deposit which directly cause wrongful loss to the Society and corresponding wrongful gain to Amudavalli.

25. The perusal of the prosecution evidence and documents relied on indicates that Ex.P2-voucher dated 09.08.1990 is signed by A1-K.S.Shanmugam, Manager, A2-Ganesan, Special Officer and A4-C.S.Duraisamy, Dyer. This is in respect of purchase of 10 tonnes of firewood. To show that the firewood was transported in

the vehicle bearing Reg.No.TME 1706 and weighed at Sridhar Weighment Centre, Perundurai. Two receipts have been submitted on by the accused persons. On perusal of these two receipts marked as Exs.P6 and P7, we find that certain important information are not entered in the receipts. Particularly, the time of weighing the load and weight of the empty vehicle, when this is testified with the evidence of PW-4 Proprietor of Sridhar Weight Bridge Centre, one could easily arrived at a irresistible conclusion that the bill is not a genuine bill.

26. Furthermore, the letter from RTO, which is marked as Ex.P24 show that the vehicle bearing No.TME 1706 is not a goods carrier, but a two wheeler Motor Cycle-Moped (TVS 50XL) owned by one P.Balasubramanian. The receipt for Rs.16,000/- issued in favour of Smt.Amuthavalli is marked as Ex.P14. The signature of Smt.Amudavalli in the remittance column is found. The first appellant herein K.S.Shanmugam has signed as Manager in the receipt and the second appellant Subramanian has signed as Accountant. The alteration of '0' as '6' immediately after the number '1' in the receipt is seen from the naked eye. On scrutiny of Ex.P14 receipts, this correction cannot be taken as error as an accidental one, since same alteration is also found in the corresponding entries in the day book Ex.P17.

27. The scrutiny of Ex.P17 also reveals under the Head of 'Trade Deposit', The Day book entry of 09.08.1990 a sum of Rs.10,000/- alleged to have been received from Smt.Amuthavalli, Erode this has been corrected as Rs.16,000/. The balance of Rs.16,605/- is also found to be altered and corrected. The corresponding entry for expenditure under purchase of firewood is added and total amount is altered. Therefore, this alteration cannot be an accidental error, since the receipt Ex.P14-day book entry for inward remittance and in the expenditure column, figures have been altered to accommodate the remittance of Rs.6,000/- and the corresponding expenditure. The said alteration prove falsification of the account in the light of the evidence given by PW-4 and PW-5.

28. The dismissal of arbitration proceedings initiated under Section 81 of the Co-operative Societies Act can have no bearing in the criminal proceedings where there is a specific allegation of falsification of account, forgery and cheating. In this case, production or non-production of stock register can have no bearing because the falsification of account and forged receipt are very much proved through the evidence of PW-4, PW-5 and Ex.P.2, Ex.P.6 and Ex.P.14. Hence, this Court has no hesitation in confirming the judmgent of the trial Court.

29. The prosecution had proved that the appellants as Manager and Accountant of the Society have conspired to forge the documents and used those documents as genuine to cheat the Society and in pursuance to the said conspiracy, falsified the account. When they are the persons, who are in possession and

custody of the registers and documents, petition seeking documents from the Investigating Officer though allowed by the trial Court, could not produced by the Investigating Officer since it were not in his possession. This has been properly explained by the prosecution and accepted by the trial Court and there is no reason to reverse the finding of the trial Court on this score.

30. The judgment referred by the learned counsel appearing for the appellants reported in 1995 Supp(3)Supreme Court Cases 289 [Inderjit Singh and others v. State of Punjab and others] and AIR 1963 Supreme Court 1572 [Dr.Vimla v. The Delhi Administration] on the facts does not have any relevance to this case since from the evidence placed by the prosecution, the intention to deceive as well as injury to the Society is proved. Further, the fraudulent acts of the Manager and Accountant are also borne by records that the the Engur Weavers Co-operative Production and Sales Society Limited had later become a defunct society soon after this incident. Therefore, this Court holds that the trial Court judgment is sustainable and this appeal is liable to be dismissed.

31. In the result, This Criminal Appeal is dismissed. The judgment of conviction dated 31.12.2003 made in Special C.C.No.3 of 1999 on the file of the Chief Judicial Magistrate cum Special Judge, Erode is hereby confirmed.

32. The learned counsel appearing for the appellants, apart from contesting the appeal on merit, had also pointed out that the trial Court has not adopted parity in awarding sentence. While the accused were found guilty of conspiracy, the trial Court has awarded different sentence to each of the accused. The learned Judge has also given his reasoning why higher punishment is awarded to the first accused and lesser punishment awarded to the other accused.

33. Taking note of the fact that the offence took place in the year 1990 and quantum of amount cheated being Rs.6,000/- and also present age of the accused, this Court is of the opinion that the period of sentence and description of sentence shall be modified as follows:

A-1 K.S.Shanmugam (Manager) guilty of offences under Sections 467,471,477-A, 408 r/w 120 B IPC and sentenced him to undergo 1 years SI for each of the offences. The period of sentence is ordered to run concurrently. The sentence period shall also run concurrently with the sentence imposed in C.C.No.2 of 1999 as modified in C.A.No.65 of 2004.

A-3 S.P.Subramaniam(Accountant) guilty of offences under Sections 467,471,477-A, 408 r/w 120-B IPC and sentenced him to undergo one year SI for each of the offences. The period of sentence is ordered to run concurrently. The sentence imposed shall also run concurrently with the sentence imposed in C.C.No.2 of 1999 as modified in C.A.No.65 of 2004.

34. No alteration in the fine amount imposed by the trial Court. From the records this court finds the appellants had already paid the find amount. Hence, question of default sentence does not arise.

35. The period of sentence already undergone by the appellants shall be set off. The trial Court is directed to secure the accused to undergo for the remaining period of sentence.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate cum Special Judge, Erode.
2. The Inspector of Police, Vigilance and Anti-Corruption, Erode Wing,Erode District.
3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.No.22020

sm:6.4.2018

judgment made in
Crl.A.No.61 of 2004
1/3