IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.03.2018
PRONOUNCED ON : 22.03.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.65 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.2 of 1999 on the file of the Chief Judicial Magistrate cum Special Judge, Erode.

For Appellants :Mr. R.John Sathyan for A1
Mr. Swami Subramanian for A2
For Respondent :Mr.K.Prabakaran, APP(V&AC)

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.2 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 said 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 Hand loom products of the society were sold in the 37th Hand loom 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 allotted 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 Smt.Amuthavalli and Tr.A.Loganathan. Smt.Amuthavalli is none other than the wife of K.S.Shanmugam, who was the Manager of the Society. Tr.A.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 separate charge sheets were filed against the persons involved in the crime. The trial Court has taken cognizance of the 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 K.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 K.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 was acquitted.

8. Criminal Appeal No.65/2004 arising out of Special C.C.No.2/1999 is preferred by the convicted accused K.S.Shanmugam (A-1) and P.Subramaniam (A-3). The 2nd accused K.Ganesan, Special officer was acquitted by the trial Court and the State has not preferred any appeal against the accused.

9. Gist of the charges in Spl.C.C.No.2/1999, which is under consideration in the Criminal Appeal No.65/2004:

During the period from 05.05.1990 to 13.12.1990 the 1st accused K.S.Shanmugam as Manager, the 2nd accused K.Ganesan as Special Officer and the 3rd accused S.P.Subramaniam as Accountant of Engur Weavers Co-op Production and Sales Society conspired to cheat the Society by fabricating false documents and used it as genuine in order to commit breach of trust and in purusance to the said conspiracy, falsified the Day Book of the Society by making false entry on 05.05.1990, 02.06.1990, 04.06.1990, 07.12.1990 and 13.12.1990 as if chemicals and raw materials for the tune of Rs.2,79,450.70 purchased from different persons and used for production of handloom goods. To fabricate the accounts, documents like invoice from Sree Thana Lakshmi Traders, Chennimalai for Rs.10,200/- for purchase of dyes and chemicals on 05.05.1990 and for purchase of Sulphur black and caustic for Rs.18,600/- on 02.06.1990 were fabricated. Invoice in the name of Sangeetha Chemicals for purchase of chemicals worth Rs.15,620.50 on 04.06.1990 was forged and false entries were made in the corresponding registers.

10. Proforma invoice from All India Handloom Fabrics Marketing Co-operative Society Limited for purchase of 1000 bundles of cotton yarn was obtained and the same was used as sale bill as if yarn worth of Rs.2,05,000/- was purchased. Forged bills for Rs.9,020/- for purchase of Kithan blades from Easwari Old Gunny Shop of Erode and purchase bill for Rs.21,010.20 paise for purchase of Jacquard from S.Loganathan Designer were fabricated and corresponding false entires were made in the chemicals stock register, yarn stock register and general register of the Engur Society. To defraud the Society and to balance the account, false entries were made in the Day Book of the Society as if Trade Deposits were received from one Amuthavalli, wife of K.S.Shanmugam(A1) on various dates and the money was repaid to her as if genuine deposit was made by her. In order to facilitate the commission of criminal breach of

trust entries in the relevant records were falsely made based on the forged documents as genuine.

11. A2 being Public Servant, apart from charges for the offence of conspiracy, falsification of account, forgery and criminal breach of trust under Sections 120(B), 477A, 467, 471, 409 IPC, offence under Section 13(1)(e)(d) r/w 13(2) of Prevention of Corruption Act, 1988 were framed. The other accused were charges for the offence under Sections 120-B,477A, 467, 471 and 408 IPC and Section 13(1)(e) (d) r/w 13(2) of Prevention of Corruption Act, 1988 r/w 109 IPC.

12. The prosecution to prove the charges have examined 15 witnesses and 107 exhibits were marked. One document was marked as Court document. On behalf of the accused, one document was marked as Ex.D1. After appreciating the evidence, the trial Court has convicted the accused A1 K.S.Shanmugam, Manager and A3 S.P.Subramaniam, Accountant and acquitted A2 K.Ganesan, Special Officer.

13. Finding of the trial Court:

The trial Court, after appreciating the evidence, 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 month RI each. Total fine amount is Rs.5,000/-.

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. Total fine amount is Rs.1,000/-.

A-3 K.Ganesan Special Officer was acquitted from all the charges. A1 and A2 were acquitted for the offence under Section 13(1)(c)(d) r/w 13(2) of Prevention of Corruption Act, 1988 r/w 109 IPC. The period of sentence already undergone ordered to be set off. The period of sentence was ordered to run concurrently.

14. Aggrieved by the judgment of sentence and conviction in Special C.C.No.2 of 99 , the first and third accused, who are appellants herein have filed this appeal in Crl.A.No.65 of 2004.

15. The contention of the appellants:

The learned counsel for the appellants contended that the prosecution has not made out any ingredients to attract Section 477 A IPC against these appellants. To prove they have falsified the accounts in the capacity as Servant or Clerk, the original documents and registers though ordered to be produced by the trial Court, were not produced by the prosecution, which should have been taken note by the trial Court and adverse inference should have been drawn against the prosecution.

16. Contrarily, without production of original document the prosecution has laid charge sheet of falsification of account and the same has been accepted by the trial Court erroneously. When the Co-operative Society has a wing for investigation, there was no investigation conducted by the said wing and in the absence of complaint from the Society, the belated registration of the complaint suomoto by V & AC allegedly based on the reliable information has not been properly appreciated by the trial Court. While the prosecution has alleged that bogus bills were produced as if the chemicals and other raw materials were purchased under those fake invoices, no ledger or register maintained by the Society has been produced by the prosecution to prove the fake entries. By withholding material documents which are adverse the prosecution, the appellants are deprived of fair trial. The arbitration proceedings initiated against the appellants under Section 81 of the Co-operative Society Act culminated in dismissal which would prima faciely established the fact that the prosecution has launched the investigation and criminal prosecution without iota of evidence. The entries regarding remittance and payment have been countersigned by the Special Officer. While the Special Officer has been acquitted, the same benefit should have been extended to the appellants also.

17. The trial Court has framed charges for criminal conspiracy and found that one of the accused had no role in the offence who being the person in charge of administrative control of the Society. The trial Court ought not to have convicted the Manager and Accountant who are the subordinates to the acquitted Special Officer(A2). If there is any falsification of the account, it could be verified and proved only from the entries in the original stock register. The original documents were not produced by the prosecution in spite of admission of the investigating officer that he inspected the documents and verified the registers. The signatures found in the alleged documents are denied by the appellants. The prosecution has not proved that the signatures found in those bills are that of the appellants. While so, the appellants cannot be held guilty for producing forged documents and had cheated the Society.

18. The trial Court failed to note that enquiry under Section 81 of the Tamil Nadu Co-operatives Act was conducted on 15.07.1991. The enquiry officer submitted his report on 28.08.2001. The society has not filed any complaint based on

the said report. The investigation officer has registered the complaint suo moto in the year 1993. While the department after investigation has found that no criminality is made out and only recovery proceedings is initiated and that was also ended in dismissal. Without iota of evidence to indicate any mens rea to do criminal act, the respondent has launched prosecution and the trial Court without appropriate appreciation of the evidence had held them guilty.

19. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the specific case against the appellants is that they as Manager and Accountant had created documents falsely as if the Society had involved in production activity purchasing raw materials from various suppliers. Trade capital was received from Smt.Amuthaavalli and the Handloom goods were sold in the exhibition held at Dindugul to claim rebate. Pursuant to the said act of crime, the accused had fabricated invoice in the name of all India Handloom Fabrics Marketing Co-operative Society Limited for purchase of yarn at the rate of Rs.205/- per bundle. In this bill, A1 had affixed seal and signature. The bill was attested by the Special Officer at the instance of A1 and A2. The bill and the signatures are marked as Exs.P2 and P3. Later, invoices were raised for purchase of 15 bales of yarn for Rs.1,20,000/-and all those bills were cancelled.

20. However, in the Day Book on 7th December 1990 entry has been made as if the yarn was purchased for Rs.2,05,000/-. On the same day, in the Day Book, Trade Deposit of Rs.2,40,000/- from Smt.Amuthavalli has been shown. The entries in the Day Book were altered in respect of Trade Deposit from Smt.Amuthavalli and the correspondingly before closing the balance, entry for yarn purchase has been interpolated and this fact is proved through the Day Book Extract marked as Exs.P11,P15 & 84.

21. The receipt issued for Smt.Amudavalli which is marked as Ex.P17 would clearly show that the receipt initially issued for lesser amount which has been corrected and with alteration of the numbers in figures and word found in the Ex.P17 proves the fabrication of the receipt. The signatures found in the receipt are of the 1st and 2nd appellants. The wife of the first accused K.S.Shanmugam was also affixed her signature in Ex.P.17. The invoice of Sree Thana Lakshmi Traders marked as Exs.P26 and P27 are bogus invoices. The prosecution has proved through PW.8 that this is not issued by the person concern with Sree Thana Lakshmi Traders.

22. PW-8 Jambu who is the Proprietor of Sree Thana Lakshmi Traders has produced the carbon copy of invoice for the goods supplied by him to the Engur Society. The carbon copy is marked as Ex.P26 and 38. The original bill issued to the customer namely, the Engur Society is manipulated and altered by including few other good thereby a sum of Rs.13,600/- is altered into Rs.18,600/-.

23. The prosecution has also proved that S.Loganathan, Jacquard Designer, Chennimalai is a fictitious name which has been proved through PW10, VAO and PW-11, Assistant Commercial Tax Officer. By fabricating invoice is marked as Ex.P75 the vouchers has been signed by A1-Manager as if he has paid Rs.10,000/- to S.Loganathan under Ex.P75 and Rs.11,010.30 to S.Loganathan under Ex.P78. The corresponding entries made in the ledger to show these entries are genuine, the invoice Ex.P69 for Rs.21,010.20 was fabricated by the appellants. Similarly fake invoice of Sangeetha chemicals, Easwari Old Gunny Shop were fabricated by the appellants and the fabrication are spoken by the persons concern with these firms. The documents such as day book, ledger, voucher and receipts seized during the investigation and marked by the prosecution sufficiently proves the case of the prosecution and therefore, there is no reason to interfere with the finding of the trial Court.

24. Point for consideration:

Whether the contention raised by the appellants questioning the trial Court judgment is sustainable?

25. The prime contention of the learned counsel appearing for the appellants is that the entire transaction of purchase and disbursement of money has been endorsed by the Special Officer and the transactions are supported by valid bills and entires in the stock register. Without production of stock register, the transactions cannot be doubted. Further more, when the trial Court has found that the Special Officer, who has endorsed the transactions is not guilty, there is no rhyme or reason to hold the Manager and Accountant guilty of the charges. The prosecution witness admits that the account of the Society has been periodically subjected to statutory audit and there is no complaint from the Society.

26. The arbitration proceedings initiated against the appellants was also dismissed. While so, the documents which are relevant to prove the transactions are genuine, were not produced by the prosecution inspite of petition to produce those documents. When PW-2 has admitted in the cross examination that there is no stock register and the material inward register was perused by him, the finding of the trial Court that these documents were in possession of the appellant is unsustainable.

27. In this Court opinion, the registers referred by the appellants if had been placed before the Court the case of the prosecution could have only enhanced, but the prosecution were not able to produce the documents because the documents sought were within the custody of the appellants. The appellants who were managing the affairs of the Society, are bound to have the possession of the registers, unless there is evidence to show same was seized or recovered by the investigating officer and kept in his possession.

28. When the prosecution is able to prove through PW-13 [Anbumani], Assistant Manager of All India Handloom Fabrics Marketing Co-operative Society Limited that they issued two proforma invoices dated 07.12.1990 which are marked as Exs.P101 and 102 later they were cancelled at the instance of the accused persons. However, two invoices are relied by the appellants to show as if 1000 bundles of yarn at the cost of Rs.2,05,000/- has been purchased from All India Handloom Fabrics Marketing Co-operative Society Limited. The invoice relied for the said purchase does not carry any serial number and PW-13 has deposed that the bill is not issued by their Society and the signature found in the bill is not signed by him. Whereas, in the said bill which is deposed to be forged bill by the Manager of All India Handloom Fabrics Marketing Co-operative Society Limited, the first appellant K.S.Shanmugam has signed and affixed his seal as if it is a genuine invoice and the purchase is a genuine purchase. The corresponding entry is also found place in the Day Book. To substantiate the said purchase, record has been created as if Rs.2,05,000/- has been received as Trade Deposit from Smt.Amudavalli.

29. On perusal of Ex.P10 Day Book, it could be seen from naked eye that the purchase of yarn on 07.12.1990 for Rs.2,05,000/- has been interpolated and to accommodate that interpolation, corrections are made in grant total. The corresponding entry for Rs.2,45,000/- received as Trade Deposit is also found on the receipt column of the Day Book. PW-2 Handloom Inspector had deposed about the interpolation found in these documents. The signatures of accused found in this document. Records are fabricated to show as if 1000 bundles of yarn been purchased for Rs.2,05,000/- and trade advance of Rs.2,45,000/- has been received from Smt.Amuthavalli.

30. These transactions have invariably been inserted as interpolation or alteration in all the registers and record. By some sort of manipulation in one way or another, all these entries are related to the same transaction. It is beyond any ones comprehension that such corrections, interpolation and alteration could have occurred accidentally. As far as the purchase bill related to Sree Thana Lakshmi Traders for Rs.10,200/- dated 05.05.1990 and Rs.18,600/- dated 02.06.1990 regarding purchase of dyeing materials, we find that in Ex.P22.

the signatures of A1 and A2 are affixed. In the carbon copy of original bill Ex.P22, the date has been altered as 17.05.1990. The carbon copy is marked as Ex.P26. The entries found in Ex.P27 Day Book purchase of caustic is interpolated which is marked as Ex.P28. Purchase of sodium bits is interpolated which is marked as Ex.P29.

31. The purchase of chemicals worth of Rs.10,200/- is interpolated in chitta Register marked as Ex.P30. All the accused A1, A2 and A3 have affixed their signatures in Ex.P31. These register and documents are recovered from the accused persons kept in their custody and related to the affairs of the Society where the appellants are the Manager and the Accountant respectively. When the persons concern have deposed before the Court that the bills have not emanated from their firm and not issued by them, the forgery of the documents by the person who possess the forged document could be inferred and in the absence of proper explanation by the appellants regarding the genuineness of the invoice as well as genuineness of the entry made by them in the ledgers and Day Book, mere non production of stock register by the I.O which is supposed to be in their the appellant possession cannot be taken disadvantage to the prosecution.

32. This Court finds that Ex.P44 bill of Sangeetha Chemicals dated 04.06.1990 for Rs.15,620.50 is different from the carbon copy of the said bill retained by Sangeetha Chemicals. The carbon copy which is marked as Ex.P47 indicates that their invoices is for Rs.6,620.50 only. While the seller from the record maintained by him had deposed that goods worth of Rs.6,620.50 alone was sold. The corrections found in the original invoice Ex.P44 that goods worth of Rs.15,620.50 have been purchased needs explanation from the person with whom the custody of the bill is expected to be and the person who made entries in the corresponding records. While the appellants are the persons who have to explain this, they have not come out with any plausible explanation.

33. Further to accommodate the said fake purchase, they have shown trade deposit of Rs.15,600/- from one T.Raja. A perusal of Ex.P55 shows that several manipulation like scoring off and corrections including the name from whom they have received the deposit and the purpose for which the money was received. The multiple corrections, expose the doubtful nature of the transaction. On perusal of Ex.P57 which is the Day Book entry for receipt of Rs.15,600/- from T.Raja, we find to accommodate the said receipt the grant total of receipt on the day has been scored off and altered. In the said Day Book entry, all the accused have signed.

34. As far as the purchase of Kithan blade from Easwari Old Gunny Shop, the purchase of these materials does not find place

in the stock register for 13.12.90 marked as Ex.P60. In the Day Book, the said purchase is interpolated. To accommodate this purchase in the Day Book, Rs.30,030.20 is shown as receipt from Smt.Amudavalli. Ex.P6 is the receipt issued to Smt.Amudavalli. It is dated 13.12.1990. The actual amount Rs.25,000/- has been scored off in figure and Rs.30,030.20 is written. Whereas in words both Rs.25,000/- and Rs.30,030.20 find place in the said receipt. A1 has signed in the said receipt. This receipt has been scored off. Similar correction is found in the Day Book entry and the said entry is marked as Ex.P68. The entries are found in two different ink. All the suspicious, transactions whether it the purchase from All India Handloom Fabrics Marketing Co-operative Society Limited or from Sangeetha Chemicals or from Easwari Old Gunny Shop all the corresponding entries are interpolated, altered and manipulated. This establish the fact that a specific modus operandi is adopted. Stereotype of entires are found with corrections with regard to the suspicious transaction.

35. The appellants who were administrating the affairs of the society, cannot escape from the criminal liability merely for non-production of certain registers. When the documents relied and produced by the prosecution established the forgery and falsification of accounts, it is suffice to prove the guilt. In case of purchase of jacquard from S.Loganathan, the payment voucher does not carry the signature of S.Loganathan. Witness for prosecution has proved that there is no business concern in the name of S.Loganathan, Jacquard Designer in the given address. Like the other suspicious entry, the purchase payment and fund from trade advance received from Smt.Amuthavalli are all interpolated in the relevant records. The receipt issued in favour of Smt.Amuthavalli for Rs.24,046/- dated 30.12.1990 which is marked as Ex.P81. The overwriting of the name and figure coupled with the interpolation of the amount in the Day Book and corrections proves the fact that the receipt is not issued for a genuine transaction but to accommodate a fake purchase.

36. In view of these overwhelming evidence against the appellants, this Court has no hesitation to hold them guilty of the offence charged and the trial Court after due consideration of proven facts had come to the conclusion that the accused/appellants are guilty of the charges and sentenced them. In the light of the above fact, this Court finds no reason to interfere with the judgment of the trial Court.

37. In the result, this Criminal Appeal is dismissed. The judgment of conviction dated 31.12.2003 made in Special C.C.No.2 of 1999 on the file of the Chief Judicial Magistrate cum Special Judge, Erode is hereby confirmed.

38. 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 given his reasoning why higher punishment was awarded to the first accused and lesser punishment was awarded to the other accused.

39. Taking note of the fact that the offence took place in the year 1990 and present age of the accused, this Court is of the opinion that the period of sentence and description of sentence shall be modified to the extent 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.

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. 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. The period of sentence already undergone by the appellants is ordered to 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.Swami Subramanian, Advocate Sr.No.22706

sm:6.4.2018