Bail Slip

The Appellants herein/accused viz., B.Madappan, S/o.Belle Madha Gowder and R.Kittan, S/o.Rangan, were direced to be released on bail as per the order of this Court dated 5/6/2003 made in Crl.MP.No.4763/2003 in Crl.A.No.774/2003 and as per the order of this Court dated 11.6.2003 made in Crl.MP.No.5033/2003 in Crl.A.No.843/2003 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.02.2018	Pronounced on: 26.02.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos.774 & 843 of 2003

1. B. Madappan ... Appellant/1st Accused in Crl.A.No.774 of 2003

2. R. Kittan ... Appellant/2nd Accused in Crl.A.No.843 of 2003

/versus/

1. The State by
   The Deputy Superintendent of Police,
   C.B.C.I.D, Nilgiris Coimbatore ... Respondent/Complainant in Crl.A.No.774 of 2003

2. The State of Tamil Nadu
   Rep. By Deputy Superintendent of Police,
   CB CID Nilgiri at Coimbatore,
   (Crime No.1/97) ... Respondent/Complainant in Crl.A.No.843 of 2003

PRAYER in Crl.A.No.774 of 2003: Criminal Appeal is filed under Section 374 of Cr.P.C r/w 27 of Prevention of Corruption Act, against the conviction and sentence in Special C.C.No.4 of 2001 on the file of the learned Special Judge of Nilgiris at Udhagamandalam dated 30.04.2003 convicting the appellant herein under Sections 467, 471, 477-A, 409 IPC and 13(2) read with 13 (1)(c) & (d) of Prevention of Corruption Act and sentencing him to undergo Rigorous Imprisonment for 5 years with a fine of Rs.2,000/- each in default 6 months S.I under Sections 467, 477-A, 409 IPC and 13(2) r/w 13(1) (c) & (d) of Prevention of Corruption and to undergo R.I for 2 years with a fine of Rs.1,000/- in default 3 months Simple Imprisonment under Section 471 IPC and the sentences to run concurrently.

PRAYER in Crl.A.No.843 of 2003: Criminal Appeal is filed under Section 374 of Cr.P.C r/w 27 of Prevention of Corruption Act, against the conviction and sentence in Special C.C.No.4 of 2001 on the file of the learned Special Judge of Nilgiris at Udhagamandalam dated 30.04.2003.

For Appellant : Mr. R.Rajasekaran
in Crl.A.No.774 of 2003

For Appellant : Mr. S.Ashok Kumar, Senior Counsel
in Crl.A.No.843 of 2003 for Mr.C.D.Johnson

For Respondent : Mr. P.Govindarajan,
in both the appeals Additional Public Prosecutor

COMMON JUDGMENT

These two Criminal Appeals are filed by the Mr.B. Madappan [A1] and Mr.R.Kittan [A2] in Special C.C.No.4 of 2001 on the file of learned Special Judge of Nilgiris at Uthagamandalam who are the appellants in Crl.A.No.774 of 2003 and Crl.A.No.843 of 2003 respectively.

2. The Trial Court in Special C.C.No. 4 of 2001 has held A1 guilty of offences under Section 467, 477-A, 409 IPC and 13(2) r/w 13(1)(c) &(d) of Prevention of Corruption Act and sentenced to undergo 5 years R.I and a fine of Rs.2,000/- each in default 6 months S.I for each of the offence and 2 years R.I and a fine of Rs.1,000/- in default 3 months S.I for the offence u/s 471 IPC. The period of sentence was ordered to run concurrently along with sentenced imposed against A1 in C.C.Nos.4 of 2001, 10 of 2001, 11 of 2001, 12 of 2001 is ordered to run concurrently.

3. As against A2 sentenced to undergo 5 years R.I and a fine of Rs.2,000/- each in default 6 months S.I for Offence under Sections 467, 477-A, 409 r/w 109 IPC and 13(2) r/w 13(1)(c)&(d)(1) of Prevention of Corruption Act and 2 years R.I and a fine of Rs.1,000/- in default 3 months S.I for offence under Section 471 of IPC. The sentence imposed against A2 in C.C.Nos.4 of 2001, 8 of 2001, 9 of 2001, 10 of 2001, 11 of 2001 and 12 of 2001.

4. The case of the prosecution is that when wide spread complaint was received from teaching staff of Kothagiri alleging non dispersement of Provident Fund and allowance bill, enquiry was ordered by the District Educational Officer.

5. Pursuant to the said order, Tmt.Uma Rani, District Elementary Educational Officer, Coonoor inspected the Office ofAssistant Elementary Educational Office at Kothagiri and submitted her report to District Educational Officer, since

there was material evidence of misappropriation, falsification of account, forgery. A complaint was lodged by Narayanasamy [PW.1], District Educational Officer against Madappan [A1] and one Thathan both AEEO attached to Assistant Educational Office.

6. The said complaint was taken on file by the investigating agency. In the course of the investigation, it was found that apart from B.Madappan and Thathan other officials and staff of Assistant Elementary Officer, Kothagiri were also involved in the crime. Therefore, the prosecution has laid 9 separate final reports for each of the specific offences committed by the respective accused persons.

7. The Trial Court has taken the report on file and assigned Special C.C.No.4 of 2001 to Special C.C.No.12 of 2001 . The present appeal which is directed against Special C.C.No.4 of 2003 is preferred by B.Madappan [A1] and R.Kittan [A2] aggrieved by the conviction and sentence imposed against them as mentioned above.

Case of the Prosecution

8. Between 01.11.1994 and 05.10.1995, the first accused B.Madappan [A1] while serving as Assistant Educational Officer and the Kittan [A2] as Junior Assistant have forged the signature of a teacher by name Jayanthi [PW.2] in the Provident Fund acquittance register to show as if she has received a sum of Rs.750/-. thereby falsified the account. Similarly, they forged the signature of One Bheeman [PW.3] in the Register as if he has received a sum of Rs.10,660/- towards Provident Fund advance. Though, he has applied loan for Rs.10,000/-only the figures in the application was altered as Rs.10,660/- in order to misappropriated a sum of Rs.660/-. Similarly, from the Provident fund of accounts of Saroja [PW.3], Raju [PW.4], V.J.Thomas [PW.5] a sum of Rs.4760/-, Rs.13,372/- and Rs.14,880/- respectively had been misappropriated by forging their signatures making false entries in the acquittance register. Thereby misappropriated a total sum of Rs.34,422/- by using forged document as genuine, making false entry in the account and misappropriating a sum of Rs.34,422/- thereby have committed for offence under Section 467, 471 477-A, 409 IPC, 409 r/w 109 IPC and 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act.

9. To prove the charges, the prosecution has examined 14 witnesses and marked 85 Exhibits. Convinced by the evidence let in by the prosecution, the Trial Court has held A1 and A2 guilty.

The case of the appellant

10. The learned Counsel appearing for the appellant in Criminal Appeal No.774 of 2002 [B.Madappan] would submitted that the prosecution has failed to prove the case beyond reasonable

doubts. The trial Court has failed to appreciate the fact that there was no mens rea or actus rea on the part of the first accused in respect of the charge alleged against him. When there is no evidence connecting the accused directly with alleged forgery and misappropriation, the Trial Court ought to have acquitted this appellant. Even according to the prosecution it was only A2 [Kittan] who prepared the bills. A1 who was mere custodian of the record cannot be held liable for the offences alleged. The admitted hand writing of the accused persons were not collected by the prosecution to compare it with the disputed hand writing. While the criminal law was set in motion based on the enquiry report of Tmt.Uma Rani, she was not examined by the prosecution. The failure on the part of the prosecution has prejudiced the case of the defence. To substantiate the ingredients of the charges against the appellant, the prosecution has not placed any evidence. Hence he is entitle for acquittal.

11. As far as, the learned counsel for the 2nd accused R.Kittan appellant in Crl.A.No.843 of 2003 is concerned, it is submitted that this appellant was not named as an accused in the FIR which carries a detailed account of alleged irregularity. A1 as Assistant Educational Officer had dominion over the funds received from the Treasury, on behalf of the teachers who have applied for loan. The 2nd accused is only in-charge of maintaining MTC 70 Register, Cash Book, disbursement Register, UDP and pay Register. Any amount undisbursed to the individual concerned, should be kept in the Office of Assistant Educational Officer by making corresponding entries in the undisbursed Register. A2 had no responsibility or opportunity to hold the undisbursed cash meant for distribution to the individual staff. Therefore, misappropriation by this appellant cannot be attributed. The bills are prepared only under the supervision of Assistant Educational Office and he only has dominion over the property. In the absence of dominion over the property which is the essential ingredient for misappropriation, A2 cannot be held criminally liable for the offence of misappropriation. The failure of the prosecution to obtain the hand writing of accused to compare with the disputed hand writing and signature should lead to presumption that they are innocent. He has no role to play in the alleged falsification of the account. Therefore, in the absence of evidence incriminating the appellant, the trial court ought to have acquitted him. Hence, the Trial Court Judgment is liable to be set-aside.

12. Per contra, the learned Additional Public Prosecutor would submit that PW.2 [Jayanthi], PW.3 [Bheeman], PW.4 [Tmt.Saroja], PW.5[Raju] and PW.6 [Thomas] have deposed before this Court that though acquittance Register indicates that they have received the Provident Fund Advance as mentioned in the Register. They have not received the money and the signatures found in the Register are not their signature. In so far as the payment of Rs.750/- to PW.2 [Jayanthi] the acquittance Register

does not even contain the signature of Jayanthi [PW.2]. In such circumstances, the amount should have been entered in the non disbursement Register and should have been deposit in the Sub Treasury. The failure to do so is a proof of misappropriation. In so far as other payments are concerned, the signatures have been forged. The forged signature found in Ex.P.5, Ex.P.6, Ex.P.18, Ex.P.21, Ex.P.22 were sent for hand writing expert opinion and the hand writing expert has categorically opined that the signatures found in the acquittance register does not tally with the admitted signature of the persons concerned. Thus, the custodian of the acquittance Register namely A1 and A2 are answerable for the forgery, falsification of the account and misappropriation of the funds which runs to a tune of Rs.34,422/-.

13. A1 and A2 being public servant, apart from specific offence under Penal Code they are also liable for misconduct (i.e) abuse of Official position to make pecuniary advantage. Therefore, the finding of the Trial Court needs no interference and is to be confirmed.

Points for Consideration

> Whether the prosecution has proved beyond reasonable doubts that a sum of Rs.34,422/- had been misappropriated by the accused persons by means of forgery, falsification of the account and using the false document as genuine?

14. PW.1 [Narayanasamy] who is the District Educational Officer at the relevant point of time had deposed about his action to conduct enquiry regarding the irregularity alleged in the affairs of Kothagiri Assistant Elementary Educational Office. Smt.Umarani who had been asked to enquiry the affairs of the Assistant Educational Office, Kothagiri and she had submitted the detailed report wherein, various irregularities committed by Madappan [A1] and R.Kittan [A2] Junior Assistant, Mani [Additional Assistant Elementary Educational Officer] and Benny Kalan [Record Clerk] serving in the Assistant Educational Office had come to light. During the relevant point of time, they had involved in various offences leading to misappropriation by falsification of account and forgery.

15. Tmt.PW.2 [S.Jayanthi] who was working as a teacher in Orasolai Panchayat Union School had deposed that in her Provident Fund account it is shown as if on 11.11.1994 she has withdrawn the advance of Rs.750/- which she did not receive and she has not signed in the acquittance Register. During that time, A1 was the Assistant Education Officer and A2 was the Junior Assistant. In the cross examination, she admits that she

did not lodged any complaint. She has categorically denied the signatures found in Ex.A.4 which is Acquittance Register. When the initial found on the revenue stamp indicating a sum of Rs.750/- being disbursed to Jayanthi [PW.2], she has also deposed she did not received it. In the cross examination, she had deposed that the request for advance has to be forwarded through the Head Master to the Elementary Educational Officer [A1] and He is the authority to decide whether to sanction advance or not to sanction the advance.

16. From the evidence [PW.3], it is established by the prosecution that a sum of Rs.750/- had been withdrawn in the name of Jayanthi [PW.2] from her Provident Fund Account without any request from PW.2 and without the knowledge of PW.2, A1 as Assistant Educational Officer and A2 Junior Assistant were in-charge of affairs in the account during that period. Illegal withdrawal of Rs.750/- from the account of PW.2 is undoubtedly due to the falsification and forgery of A1 [B.Madappan] and A2 [R.Kittan].

17. PW.3 [Bheeman] who is a Middle School teacher in Kotakombai, had deposed that he applied and got advance from his Provident Fund account a sum of Rs.10,000/- on 13.12.1994. However, in the Acquittance register it is show as if he has taken advance of Rs.10,660/- on 13.12.1994. The entry in the register is marked as Ex.P.5, his request to sanction provident fund advance is marked as Ex.P.6. In that said document, a sum of Rs.10,000/- is corrected as Rs.10,660/-. His Medical leave applications, permission letter, Casual leave Letters were he has signed are marked as Ex.P.8 to Ex.P.11 and sent for comparison. The correction of the amount in his request letter and acquittance Register, cause doubt, since the comparison of signature in the acquittance Register marked as Ex.P.5 and the admitted signatures found in Ex.P.8 to Ex.P.11 were found not tally. The hand writing expert in his opinion marked as Ex.P.77, has spoken in detail about this. Similar, to the deposition of PW.3 [Bheeman], PW.4 [Saroja], PW.5 [Raju] PW.6 [V.Thomas] has spoken about the withdrawal of Rs.10,760/-, Rs.13,372/-, and Rs.14,880 from their respective accounts without their knowledge and signature.

18. With the above said facts and circumstances, the witnesses have denied the entry found in the acquittance Register and the receipt of the money shown against the entries. The non receipt of the money being corroborated with the expert opinion, that the signatures found in the acquittance register marked as Ex.P.5, Ex.P.12, Ex.P.18, Ex.P.21 and Ex.P.22 are forged signatures. There can be no doubt about forgery, falsification of account and misappropriation while A1 being the custodian of the acquittance Register, MTC book, UDR and cash

Books. A2 as Junior Assistant is responsible for maintaining the above records.

19. From the Exhibits marshalled by the prosecution and through the deposition of PW.2 to PW.6, this court finds that without disbursement, the acquittance Register has been manipulated by making false entries and forged signatures as if Provident Fund advance were disbursed to PW.2 [Jayanthi], PW.3 [Bheeman], PW.4 [Saroja], PW.5 [Raju] and PW.6 [Thomas]. The corresponding entries made in MTC 70 registry and TPF Register are proved to be false.

20. In the said circumstances, this Court finds that no error in the finding of the Trial Court holding A1 and A2 guilty of the charges since they are the persons who are in-charge of the records and custodian of the documents having domain over the property.

21. In the result, this court finds no ground to interfere with the Trial Court judgment. Accordingly, the judgment of the Trial Court in C.C.No.4 of 2001 dated 13.04.2003 is hereby confirmed. The learned counsel for the appellants would submitted that these two appellants who are facing hardship ever since the registration of the case and had suffered sufficiently for the past 17 years. Considering their age and suffering, the period of sentence may be modified.

22. Taking into consideration of the said plea and considering the age and the period consumed for the trial, this court is of the opinion that to met the ends of justice, it is sufficient to restrict the period of Rigorous imprisonment to 1 year.

23. In the result, the Criminal Appeal Nos.774 of 2003 and 843 of 2003 are dismissed. According, the judgment of the Trial Court is hereby confirmed. While dismissing the appeals, this court modifies the period of sentence to 1 year R.I for each of the prover charges. The fine imposed shall remain unaltered.

Rank of the accused	Conviction under Section	Sentence imposed by the Trial Court	Sentence modified by this Court.
A1	Under Section 467, 477-A, 409 IPC and 13 (2) r/w 13 (1) (c) & (d) of PC.Act Under Section 471 IPC	To undergo 5 years R.I and a fine of Rs. 2,000/- each in default 6 months S.I To undergo 2 years R.I and a fine of Rs. 1,000/- in default 3 months S.I	To undergo 1 year R.I and a fine of Rs. 2,000/- each in default 6 months S.I To undergo 1 year R.I and a fine of Rs.1,000/-in default 3 months S.I
A2	Under Section 467, 477-A, 409 r/w 109 IPC and 13 (2) r/w 13 (1) (c) & (d) of PC.Act Under Section 471 IPC	To undergo 5 years R.I and a fine of Rs. 2,000/- each in default 6 months S.I To undergo 2 years R.I and a fine of Rs.1,000/- in default 3 months S.I	To undergo 1 year R.I and a fine of Rs.2,000/- each in default 6 months S.I. To undergo 1 year R.I and a fine of Rs.1,000/- in default 3 months S.I

24. The period of sentence are ordered to run concurrently. The sentence imposed against A1 in C.C.Nos. 10/2001, 11/2001, 12/2001 as modified in Crl.A.Nos.780 of 2003, 781 of 2003, 782 of 2003 is ordered to run concurrently. Similarly, the period of sentence imposed against A2 in C.C.Nos.8/2001, 9/2001, 10/2001, 11/2001, 12/2001 as modified in Crl.A.Nos.843 of 2003, 844 of 2003, 845 of 2003, 846 of 2003, 848 of 2003, 849 of 2003 is ordered to run concurrently.

The period of sentence already undergone shall be set off under section 428 of Cr.P.C.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bsm
To

1. The learned Special Judge,
    Nilgiris, at Udhagamandalam

2. The Deputy Superintendent of Police,
    C.B.C.I.D, Nilgiris, Coimbatore

3. The Additional Public Prosecutor,
    High Court, Madras.

4. The Superintendent of Central Prison,
   Coimbatore

Copy to:The Section Officer,
        Criminal Section,
        High Court, Madras

+1cc to Mr.R.Rajasekaran, Advocate Sr.No.15004/18

SSV(CO)
sm:26.3.2018

judgment made in
Criminal Appeal Nos. 774 & 843 of 2003