

BAIL SLIP

The appellant herein/accused No.2, viz., K.Bellikalan, S/o.Kala Gowder, was directed to be released on bail as per order of this Court dated 18.06.2003, made in Crl.MP.Nos.4808 to 4810 of 2003 in Crl.A.Nos.793 to 795 of 2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.775 and 793 of 2003

Mani ... Appellant/1st accused in
Crl.A.No.775 of 2003

K.Bellikalan ... Appellant/2nd accused in
Crl.A.No.793 of 2003

/versus/

State by Deputy Superintendent
of Police, CBCID, Nilgiris. ... Complainant/Respondent in
Crl.A.No.775 of 2003

The State of Tamil Nadu,
rep.by the Deputy Superintendent
of Police, CBCID, Coimbatore.
(Crime No.1 of 1997) ... Complainant/ Respondent in
Crl.A.No.793 of 2003

Prayer in Crl.A.No.775 of 2003: Criminal Appeal is filed under Sections 374Cr.P.C. read with Section 27PC Act against the judgment of the learned Special Judge of Nilgiris at Uthagamandalam made in Special Calender Case No.5 of 2001 on his file dated 30th Day of April 2003 convicting the appellant herein under Section 409 r/w 109 IPC and 13(2) r/w 13(1)(C) &(d) (1) of Prevention of Corruption Act and sentencing him to undergo RI for 5 years with a fine of Rs.2000/- each in default 6 months Simple Imprisonment under each Sections and the sentence to run concurrently.

Prayer in Crl.A.No.793 of 2003: Criminal Appeal is filed

under Sections 374 (2) of the Code of Criminal Procedure 1973 against the conviction and sentence passed in Judgment dated 30.04.2003 made in Special C.C.No.5 of 2001 on the file of the Court of the Special Judge of the Nilgiris, Udagamandalam.

For Appellant :Mr.R.Rajasekaran for
Mr.T.R.Ravi for A1 in
Crl.A.No.775 of 2003

Mr.N.S.Sivakumar for A2 in
Crl.A.No.793 of 2003

For Respondent :Mr.P.Govindarajan, APP
in both cases

COMMON JUDGMENT

Batch of appeals arising from the judgments of the trial Court in Spl.CC Nos.4 to 12 of 2001 on the file of District and Sessions/Special Court, Udhagamandalam, Nilgiris District bears a common root tracing to the complaint of Thiru.Narayanasamy, District Education Officer(DEO). The accused persons Thiru.Mani (A-1) and Thiru.K.BelliKalan (A-2), who are now appellants before this Court are public servants employed in Education Department as Additional Assistant Elementary Education Officer (in short "AAEEO") and Record Clerk respectively at Kothagiri Assistant Education Office. The charges against them are criminal breach of trust, misappropriation, forgery, falsification of accounts, creation of false documents and abuse of official position for illegal pecuniary advantage. As far as Spl.C.C.Nos.5 to 7 of 2001 are concerned, Thiru.Mani (AAEEO) and Thiru. K.BelliKalan, (Record clerk) are accused.

2. The criminal law has been set into motion based on the complaint lodged by Thiru.R.Narayanasamy, then Director of Elementary Education on 17.09.1997 detailing out several instances of falsification of accounts, financial irregularities including misappropriation and forgery. Though the complaint named only Thiru.Mathappan (AEEO) and Thiru.Thathan (AEEO) as suspects of crime, in the course of the investigation, apart from these two named accused, others, who were working in the Kothagiri Assistant Elementary Education Office, also found involved in the crime. The investigation has led to file 9 separate final reports against the persons involved in respective act of forgery, misappropriation, creation of false documents and falsification of accounts.

3. The present appeals Crl.A.Nos.775 and 793 of 2003 arises

from the judgement in Spl.C.C.No.5 of 2001 wherein Thiru Mani (A-1) appellant in Crl.A.No.775 of 2003 found guilty of offences under Sections 409 r/w 109 of Indian Penal Code and 13(2) r/w 13(1)(c) and (d)(i) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I for a period of 5 years and to pay a fine of Rs.2,000/-, in default to undergo S.I. for 6 months each and period of sentence to run concurrently along with the sentence imposed in Spl.C.C.Nos. 6 and 7 of 2001.

4. The Appellant in Crl.A.No.793 of 2003, Thiru. K.Bellikalan [A-2], found guilty of offences under Section 409 Indian Penal Code and Section 13(2) r/w 13(1)(c) & (d)(i) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I for a period of 5 years and to pay a fine of Rs.2,000/-, in default to undergo S.I. for 6 months each and period of sentence to run concurrently along with the sentence imposed in Spl.C.C.Nos.6 and 7 of 2001.

5. Case of the Prosecution in brief:

Between 03.07.1995 and 24.07.1997, [A-1] Thiru.Mani was the Additional Elementary Education Officer at Kothagiri and [A-2]Thiru.BelliKalan was the Record Clerk in that office. While A-2[Thiru.Bellikalan] was entrusted with the responsibility of preparing the pay bills of the teaching staff and deducting the recoverable like, LIC premium and RD, remit the same in to the LIC office and Post Office. Whereas, A-2 [Thiru.Bellikalan] collected Rs.1,63,156/- from the salaries of the staff but he remitted only Rs.1,17,142/-. Thus, misappropriated a sum of Rs.46.014/-. A-1[Thiru.Mani] being the AEEO is the Superior Officer had abetted A-2[Thiru.Bellikalan] to commit misappropriation. Both A-1[Thiru.Mani] and A-2 [Thiru.Bellikalan] being public servants, had misconducted themselves by abusing their official position to get pecuniary advantage causing wrongful loss to the State.

6. To substantiate the charges, the prosecution has examined 15 witnesses and marked 73 exhibits. Most of the witnesses and exhibits are common to other Spl.C.C.Nos.6 and 7 of 2001. The trial Court has found the prosecution proved and held the accused guilty of charges and sentenced them as stated supra. Aggrieved by judgement of sentence, these two appeals are preferred.

7. The learned counsel appearing for the first accused/appellant in Crl.A.No.775/2003 would submit that, the prosecution has not made out any offence against this appellant. The First Information Report does not mention his name, none of the prosecution witnesses directly implicates the appellant. Even according to the prosecution witnesses, it was the second accused, who as record clerk, in custody of records and

maintenance of account. Failure on his part to remit the money collected from the staff for the purpose of paying LIC premium and RD instalments in the post office, this appellant cannot be vicariously liable. The evidence of PW-1[Mr.Narayanasamy] cannot be relied upon since it is purely based on the report of Tmt.Umarani, who was not examined as prosecution witness. In the absence of mens rea, for omission and commission of the subordinate, this appellant, who was the head of the office as Assistant Elementary Education Officer, cannot be criminally held liable. In support of his submission, the judgment of the Supreme Court in Robert John D'Souza and others -vs- Stephen V.Gomes and another reported in 2015 (9) SCC 96 and the judgment rendered in Radha Pisharassiar Amma -vs- State of Kerala reported in 2007 (13) SCC 410 are relied.

8. On behalf of the second accused/ appellant in CrI.A.No.793/2003, the learned counsel would submit that, the trial Court has miserably failed to note that to allege the criminal breach of trust by public servant, the twin requirement namely, entrustment and dishonest misappropriation or conversion for his own use. In this case, the prosecution has not proved entrustment. The evidence of PW-3 [Mr.K.Sivalingam], PW-4 [Mr.D.Santharaj] and PW-5 [Mr.Madhan] does not prove entrustment. In the absence of documentary proof for entrustment, oral evidence of interested witnesses are unreliable.

9. Further, both the appellants would state that , the alleged money misappropriated had been admittedly paid back to the concerned staff and there is no loss to them. The repayment is admitted by PW-6 [Mr.Lingan]. In the light of the above fact and in the light of the Hon'ble Supreme Court judgment in Bankupalli Chinna Babu -vs- State by its P P., AP reported in 2002 (9) SCC 352, the sentenced imposed on the accused/appellants requires reconsideration.

10. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that, PW-3 [Mr.R.Sivalingam], PW-4 [Mr.D.Santharaj] and PW-5[Mr.Madhan] are the prosecution witnesses who have spoken about the deduction of LIC premium from the salary of the teaching staff working under them and handing over the same to A-2. The non-remittance of the money in the LIC and Post Office is spoken by PW-6 [Mr.Lingan], PW-7[Mr.Rangabhojan] and PW-8[Mr.K.M.Ballie]. Further, PW-6[Mr.Lingan] has also spoken about the subsequent conduct of A-2 who has repaid part of the money swindled. A-1 as AEE0 has to periodically verify the register regarding remittance and acquittance. He is the officer responsible for the supervising the proper maintenance of registers and records. He had connived with A-2 and abetted him to misappropriate the money. Therefore, the appellants being public servants had misconducted themselves by abusing their official positions had

obtained pecuniary advantage. Since the entrustment and dishonest misappropriation is well established through prosecution witnesses and exhibits, the trial Court judgment has to be confirmed.

11. The point for consideration is whether the prosecution witnesses has proved beyond doubt that they entrusted LIC premium and RD installment to A-2 and he dishonestly misappropriated and whether A-1 abetted A-2 in his act of misappropriation ?

12. Ex.P-1 is the report of Tmt.Umarani, DEEO, Nilgiris District, dated 29.09.1997. In her report, she has given extensive details about the irregularities found during the inspection of records maintained in Kothagiri Assistant Elementary Education Office. The report reveals several financial irregularities inviting departmental action and criminal prosecution against the appellants herein and others, who are subsequently prosecuted. PW-1 [Mr. Narayanasamy] to who the report was forwarded by Tmt. Umarani has deposed that on receipt of the report he perused it and being satisfied that the irregularities found in the report requires investigation by police, he forwarded the complaint Ex.P-2 to the Director, Crime Branch, Chennai. Pursuant to the said complaint, First Information Report Ex.P-72 has been registered on 22.10.1997.

13. On completion of investigation, three cases against these appellants were filed and taken cognizance by the Court. As far as Spl.C.C.5 of 2003 is concerned, it is in respect of entrust of LIC premium and RD installments to A-2 , which is not remitted by him in the LIC and Post office. A-1 who has to verify the records omitted to do so in order to assist A-2 to commit misappropriation.

14. Though the learned counsels would plead that there is no entrustment to A-2 and no dishonest intention or mens rea on the part of A-1, the deposition of PW-3[Mr.K.Sivalingam], PW-4 [Mr.D.Santharaj] and PW-5[Mr.Madhan] would prove the factum of entrustment of money to A-2.

15. According to PW-3[Thiru.K.Sivalingam], he as the Head Master of Panchayat Union Middle School, Horasholai, was the Pay Master for 9 Middle Schools. He used to disburse the salary to the staff after deducting LIC premium, RD amount , DCP amount etc., to the Head Masters of the school concerned. The LIC premium and RD amount he deducted for the month of June, July and August 1996 and was entrusted the money to A-2. Ex.P-5 is the pay book maintained by him during the relevant period. For the month of June, he had deducted Rs.39,041/- towards LIC

premium and RD, for the month of July he had deducted Rs.36,299/- and for the month of August, he has deducted Rs.46,280/-. These amounts were handed over to A-2. Later, when it was brought to the knowledge the premium and RD were not properly remitted by A-2 and others to whom the money was entrusted, action was taken and Mr.Lingan[PW-6] was entrusted with the responsibility of receiving the contribution and remit.

16. PW-4, D.Santharaj Assistant Teacher of Kallikodu Panchayat Union Middle School had deposed that he as pay master for 11 schools for the month of June 1996 collected a sum of Rs 18,941/- towards the DCP, LIC and RD contributions from the staff and handed over to A-2. The register for remittance for the year 1996 is marked as Ex P-10 and the note prepared by him for the month of June, 1996 is identified as Ex P-11. In the cross examination he has deposed that the money collected for remittance into LIC and Post office for RD will be entrusted to the person nominated by the Senior officers. For the month of June 1996, A-2 was nominated to receive the contributions.

17. PW-5, the Head Master of Kerkempai Panchayat Union Elementary School has deposed that he was the pay master for 9 schools. For the month of June and July 1996, he deducted Rs.9,271/- towards LIC premium for the staff, Rs.5,080/- towards RD and Rs.16,420/- towards TCP and handed over to A-2 for remittance. For the month of July, 1996 he deducted Rs.14,302/- from the salary of the staff for remittance and gave it to A-2. He admits that he did not get the signature of A-2 while entrusting the money to him.

18. Thiru.Lingan, who was examined as PW-6, had corroborated the evidence of PW-3 to PW-5. He, in his deposition, has stated that after he took responsibility of remitting the LIC premium and RD at Post office, he approached A-2 to recover the money held by him. A-2 promised to pay it in installment. Accordingly, on 8.11.1996 A-2 paid Rs.38,530/-, and on 04.12.1996 he paid Rs.28,779/-. As against Rs.96,168/- A-2 repaid only Rs.67,389/- and a sum of Rs.28,779/- remained unpaid in the total sum collected for LIC premium, Ex.P-22 and Ex.P-23 corroborates his evidence. Likewise, PW-7 [Mr.Rangabhojan] has deposed that, A-1 and A-2 had repaid a sum of Rs.16,830/- towards RD amount collected from PW-3, PW-4 and PW-5.

19. The prosecution witnesses had deposed about the procedure in disbursement of salary and how the deductions used to be remitted in the respective accounts. The admitted fact that the Assistant Elementary Education Office is in charge of remittance of monthly deductions. It is not denied by accused person that the person who is the rank of Junior Assistant or

Record clerk was given this responsibility. The analysis of the evidence given by PW-3 to PW-7, discloses the procedure followed by the AEE office at Kothagiri, the persons, who were incharge of collecting the amount and to do the onward remittance during the relevant period and the omission by A-2 to remit the money he collected and subsequent repayment after his deeds came to light. Certain lacuna in the prosecution evidence pointed out does not nullify the clinching evidence of the prosecution, overwhelming to hold A-2 guilty.

20. As far as A-1 is concerned, Ex P-73 which is the order issued by the Education Department vide G.O Ms.No 1228, Education Science Technology Department, dated 30.12.1994 holds the key to his grounds of appeal. The said government order had classified the officers, their duties and responsibilities. As far as Assistant Educational Officers are concerned, their duties and responsibilities are:-

Works of the Assitant Educational Officer/Additional Assitant Educational Officer for their respective jurisdiction:

a. In Respect of Panchayat and Municipal Schools:-

1. Service matters of the teachers and maintenance of service Registeres.
2. Regularisation and declaration of probation of all teachers and Headmasters of Primary Schools.
3. Opening of Service Registeres, Sanction of increments. Award of Selection/Special Grade to teachers and headmasters.
4. Sanction of all kinds of leave and reposting order for leave beyond 30 days, limited to the existing regulations.
5. Re-employment orders on super annuation.
6. Sanction of short term advances like Festival, Handloom Education etc.
7. Sanction of GPF Advances both temporary and part-final upto 75%.
8. Submission of pension proposals and sanction of retirement benefits.
9. Countersignature of Record Sheets of schools upto 8th standard.
10. Permission for admission of private students upto std.V.
11. Power to grant exemption from the operation of

age rule upto one month for Std.I only.

12. Disciplinary proceedings under Rule 17(a) (except suspension) and award of minor punishments to all Secondary grade teachers and allied categories of primary and Middle Schools.

b.IN RESPECT OF AIDED SCHOOLS:-

1. Proposals for fixation of teachers in Primary and Middle Schools on the basis of average attendance.
2. Fixation of pay of teachers, approval of sanction of increment and grant of leave to teachers and headmasters.
3. Approval of Re-employment on superannuation.
4. Assessment of teaching grant to aided school teachers.
5. Pensionary benefits and pension proposals.
6. Sanction of short term loan and advances including GPF upto 75%
7. Counter signature of students record sheet upto Std.VIII
8. Approval of award of Special/Selection Grade to teachers and Headmasters.

GENERAL:-

1. Conducting annual inspection and periodical surprise visits to schools atleast once in every quarter.
2. Follow up action on the findings of the surprise visits to schools and inspection.
3. Conducting 4 tire meetings every quarter.
4. Assisting the Director of Government Examinations in the conduct of Government Examinations. Any other work assigned by Superior Officers.

21. Therefore, the first accused/ appellant in

Crl.A.No.775/2003 cannot plead absence of mens rea and put the blame on A-2 who is his subordinate when duty is cast upon A-1 to maintain service register and supervise the service matters of the teachers including sanctioning of short term advances, sanction of GPF advances both temporary and part final upto 75%. He under statute being vested with domine over the property, he cannot take umbrage under absence of mens rea.

22. Regarding the judgments cited, since the prosecution has proved entrustment and dishonest misappropriation they are not factually appropriated to this case. Similarly, though the appellants have pleaded that the money alleged to have been misappropriated already recovered from them, there is no evidence to vouchsafe the plea. According to PW-6 and PW-7, only part of the amount had been recovered. Even if that plea is true, it may only mitigate the sentence but, will not exonerate them. Taking into consideration the attended circumstances like the present age of the appellants and years passed due to pending litigation as well the repayment made by them, this Court is of the view that the period of sentence requires the following modification.

Name of the Accused	Conviction under Section	Sentence imposed by the trial Court	Modified sentence
A1	Under Sections 409 r/w 109 IPC and 13(2) r/w 13(1)(c) & (d)(i) of PC Act	To undergo RI for 5 years each with a fine of Rs.2000/- each, in default to undergo SI for 6 months each	To undergo RI for 1 year each. Fine amount imposed by the trial Court remains unaltered.
A2	Under Sections 409 IPC and 13(2) r/w 13(1)(c) & (d)(i) of PC Act	To undergo RI for 5 years each with a fine of Rs.2000/- each, in default to undergo SI for 6 months each	To undergo RI for 1 year each. Fine amount imposed by the trial Court remains unaltered.

The period of sentences shall run concurrently along with the sentence imposed in Spl.C.C.Nos.6 and 7 of 2001 as modified in Crl.A.Nos.776, 777, 794 and 795 of 2003 by this Court. The period of sentence already undergone shall be set off under section 428 of Cr.P.C. The trial Court is directed to secure the

appellant to undergo the remaining period of sentence.

23. With the above modification, these Criminal Appeals are disposed of.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

1.Special Judge of the Nilgiris, Udagamandalam.

2.The Deputy Superintendent of Police,
CBCID, Nilgiris.

3.The Deputy Superintendent of Police,
CBCID, Coimbatore.

4.The Public Prosecutor, High Court, Madras.

5.The Superintendent, Central Prison,
Coimbatore.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.T.R.Ravi, Advocate SR.No.11288
+1cc to Mr.N.S.Sivakumar, Advocate SR.No.10744

SSV(CO)
GN(14/03/2018)

Cr1.A.Nos.775 and 793 of 2003

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