

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.776 and 794 of 2003

Mani ..Appellant/1st accused
in Crl.A.No.776 of 2003

K.Bellikalan ..Appellant/2nd accused
in Crl.A.No.794 of 2003

/versus/
State by Deputy Superintendent
of Police, CBCID, Nilgiris. ..Respondent/complainant in
Crl.A.No.776 of 2003

The State of Tamil Nadu,
rep.by the Deputy Superintendent,
of Police, CBCID, Coimbatore.
(Crime No.1 of 1997) ..Respondent/complainant in
Crl.A.No.794 of 2003

Prayer in Crl.A.No.776 of 2003: Criminal Appeal is filed under Section 374 of Criminal Procedure Code against the judgment of the learned Special Judge of Nilgiris at Uthagamandalam made in Special Calender Case No.6 of 2001 on his file dated 30th day of April 2003 convicting the appellant herein under Sections 477(A), 409 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.2,000/- each in default 6 months Simple Imprisonment under each Sections and the sentences to run concurrently.

Prayer in Crl.A.No.794 of 2003: Criminal Appeal is filed under Section 374 of Criminal Procedure Code against the conviction and sentence passed in judgment dated 30.04.2003 made in Spl.C.C.No.6 of 2001 on the file of the Court of the Special Judge of the Nilgiris, Udhagamandalam.

For Appellants :Mr.R.Rajasekaran for
Mr.T.R.Ravi in
(Crl.A.No.776 of 2003)
Mr.N.S.Sivakumar in
(Crl.A.No.794 of 2003)

For Respondent :Mr.P.Govindarajan, APP
(both cases)

COMMON JUDGMENT

Batch of appeals arising from the judgements of the trial court in Spl.C.C.Nos.4 to 12 of 2001 on the file of District and Sessions/Special Court, Udthagamandalam, Nilgiris District traces its root to a common genesis. 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 Additional Elementary 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.5,6 and 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 17.10.1997 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, were 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.776 and 794/2003 arise from the judgement in Spl.C.C.No.6/2001 wherein Thiru Mani (A-1) appellant in Crl.A.No.776/2003 found guilty of offences under Sections 477A, 409 of Indian Penal Code and 13(2) r/w 13(1)(c) & (d)(i) of Prevention of Corruption Act and sentenced to undergo R.I for a period of 5 years and to pay a fine of Rs. 2000/-each, in default to undergo 6 months SI each and period of sentence to run concurrently along with C.C.Nos.5/2001, 6/2001 and 7/2001. The Appellant in Crl.A.No.794/2003, Thiru. K.Bellikhan (A-2), found guilty of offences under Section 477A, 409 r/w 109 IPC and Section 13(2) r/w 13(1)(c) & (d)(i) of PC Act,1988 and sentenced to undergo R.I for a period of 5 years and to pay a fine of Rs.2,000/- each, in default to undergo 6 months SI each and period of sentence to run concurrently along with the sentence imposed in Spl.C.C.Nos.5, 6 and 7 of 2001.

4. Case of the Prosecution in brief:

Between 03.07.1995 and 24.07.1997, A-1 [Thiru.Mani] was the Additional Assistant Elementary Education Officer and A-2 [Thiru.Bellikalan] was the Record Clerk in the Kothagiri Assistant Education Office. A-1[Thiru.Mani] as pay drawing officer was responsible for drawing money from the Sub-treasury, presentation of bills towards the salary of the teachers. He was authorised to draw Teachers Provident Fund at the request of the respective teachers working under his jurisdiction and distributed it to them immediately. A-2[Mr.Bellikalan] who was working under A-1[Thiru.Mani] as Record clerk entrusted with the responsibility of preparing the pay bills of teaching staff, to maintain MTC 70 register, cash book, disbursement register, undisbursement register, pay register etc.

5. A-1[Thiru.Mani] and A-2[Thiru.Bellikalan] having access to the records and domineer over the property viz, salary and other bills like Provident Fund, had forged the signatures, created false documents and also dishonestly misappropriated cash entrusted to them, besides pecuniary advantage by illegal means. Precisely, in this case, on 27.05.1997 to cheat and misappropriate a sum of Rs.92,450/- from the Provident Fund account of Mr.N.M.Nanjan, had forged the signature of Thiru.N.M.Nanjan in the disbursement register with date 21.07..1997 and had falsified the PF Account, thereby A-1 [Thiru.Mani] committed offences punishable under Sections 477A, 409 IPC and 13(2) r/w 13(1)(c) and (d)(i) of PC Act and A-2 [Thiru.Bellikalan] had committed offences punishable under Sections 477 A, 409 r/w 109 IPC and 13(2) r/w 13 (1)(c) and (d) (i) of PC Act, 1988.

6. To substantiate the charges the prosecution has examined 9 witnesses and marked 51 exhibits. The trial Court has found the prosecution proved and held the accused guilty of charges and sentenced them as stated supra.

7. Aggrieved by the judgement of sentence, these two appeals are preferred.

8. The Learned counsel appearing for Thiru.Mani the first accused/ appellant in CrI.A.No.776/2003, 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 implicate the appellant. Even according to the prosecution witnesses, it was the second accused, who as Record Clerk, was maintaining the records and the bills were prepared by A-2. The handwriting of the accused

were not obtained for comparison with the disputed signature to prove forgery. The evidence of PW-1[Thiru.Narayanasamy] cannot be relied upon since its 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 Additional Assistant Elementary Education Officer cannot be criminally held liable.

9. On behalf of the second accused/appellant in Crl.A.No.794/2003, the learned counsel would submit that, the trial Court has miserably failed to note that to allege criminal breach of trust by the public servant, it should satisfy the twin requirments namely entrustment or dominion with property and dishonest misappropriation or conversion for his own use. In this case the prosecution has not proved neither entrustment nor dominion over the property. The case as projected by the prosecution against this appellant would not attract the ingredients of Section 477A, 409 IPC or the Section 13(1)(c) and (d) of PC Act. In the absence of documentary proof to show this appellant was acting as Junior Assistant and was entrusted with the duties of Junior assistant like preparation of bills, maintenance of MTC 70, disbursement registers, cash book, based on the oral evidence of intrested witnesses, the trial Court has erroneously convicted.

10. Further, both the appellants would state that, the allegation of misappropriation of Rs.92,450/- is unfound, in the light of the entry in the register Ex.P-6. On 27.05.1997 PW-6 [Thiru.Ramasamy] has signed in the disbursement register acknowleging the receipt of the money. In any event, he admits that he received his money on 20.07.1997 and 21.07.1997 in two installments. In the light of the above fact and in the light of the Supreme Court judgment Bankupalli Chinna Babu -vs- State by its PP., AP reported in 2002 (9) SCC 352, the sentenced imposed on the accused/appellants requires re-consideration.

11. Per contra, the learned Additional Public Prosecutor would submit that, A-1[Thiru.Mani] as AAEEO has to periodically verify the registers regarding remittance and acquittance. He is the officer responsible for supervising the proper maintenance of records. He had connived with A-2[Thiru.Bellikalan] and abetted him to misappropriate the money. PW-2[N.M.Nanjan] retired Head Master has deposed against A-1[Thiru.Mani] and A-2 [Thiru.Bellikalan] that he applied for 90% of part payment of his Provident Fund (PF) during the month of April,1997. He enquired about it with A-2[Thiru.Bellikalan] two or three times.

When he enquired with Sub-treasury at Kothagiri, they informed him that the money was encashed on 27th May. Again he enquired with A-1 and A-2, they promised to pay within 2 or 3 weeks time. Since the payment was delayed, he gave complaint Ex.P-4 to the District Educational Officer. Based on his complaint, enquiry was held and thereafter, he received Rs.55,000/- from A-1[Thiru.Mani] and the next day Rs.37,450/- from A-2[Thiru.Bellikalan].

12. Therefore, the appellants being public servants had misconducted themselves by abusing their official position 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.

13. The point for consideration is whether the prosecution has proved falsification of accounts and misappropriation beyond doubt ?

14. 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[Thiru. Narayanasamy to whom 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, FIR Ex.P-50 has been registered on 22.10.1997.

15. On completion of investigation, three cases against these appellants were filed and taken cognizance by the Court. As far as Spl.C.C.No.6/2001 is concerned, it is in respect of falsification of accounts namely, making false entry in the acquittance register as if Rs.92,450/- paid to PW-2 [Mr.N.M.Nanjan] on 27.05.1997 thereby misappropriated that money.

16. From the evidence adduced by the prosecution, it is clearly established through the evidence of PW-2[Mr.N.M.Nanjan] whose PF money been misappropriated through falsification of accounts that he applied for PF part final payment in the month of April and though on record, Ex.P-6 is falsely recorded that the money was disbursed during the month of May, 1997, in fact PW-2[Thiru.N.M.Nanjan] was paid his PF money only in the month of July, that too after he made several visits to the AEO office and enquiry with A-1[Thiru.Mani] and A-2[Thiru.Bellikalan] and

went in vain, leading to lodging complaint Ex.P-4 with CEO.

17. Though it is contented that disputed signatures in the register were not compared, when the witness PW-2 [Thiru.N.M.Nanjan] in his chief examination has deposed that he was not paid his PF money till July 1997 and it was paid in two installments by A-1[Thiru.Mani] and A-2 [Thiru.Bellikalan] after his complaint to CEO, his testimony has not been impeached in the cross examination. The fact of belated disbursement of the contribution money is unassailed and the entry as if disbursement was made on 27.05.1997 is proved to be a false entry. A-1 and A-2 who as the persons responsible for disbursement and maintenance of the record are liable for making false entry in the register and temporary misappropriation is well proved by the prosecution.

18. The first accused/appellant in Crl.A.No.776 of 2003 cannot plead in the absence of mens rea and put blame of A-2 [Thiru.Bellikalan] who is his subordinate when duty is cast upon A-1[Thiru.Mani] to maintain service register and supervise the service matters the teachers including sanctioning of short term advances, sanction of GPF advances both temporary and part final. Ex.P-5 which is the order issued by the Education Department vide G.O Ms.No 1228, dated 30.12.1994 is the answer to his plea. 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:

1.Service matters of the teachers and maintenance of
service Registers.

2.Regularisation and declaration of probation of all
teachers and Headmasters of Primary Schools.

3.Opening of Service Registers, Sanction of
increments. Award of Selection/Special Grade to
teachers ad 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 G.P.F. Advances both temporary and parti-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 Re-employment on superannuation.

5.Pensionary benefits and pension proposals.

6. Sanction of short term load 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. "

19. The prosecution has proved falsification of account and dishonest misappropriation beyond reasonable doubt through the occur evidence of PW-2 [Thiru.N.M.Nanjan] and documentary evidences like Acquittance registers, MTC 70 registers, complaint of PW-2 [Thiru.N.M.Nanjan] and undisbursed registers, which are marked as Ex.P-4, Ex.P-6, Ex.P-8 and EX.P-20. The appellants have pleaded that the money alleged to have been misappropriated, admittedly paid to PW-2 [Thiru.N.M.Nanjan] within 2 months, hence, there is no loss to the person concerned. This plea of subsequent conduct may only mitigate the sentence but will not exonerate them.

20. Taking into consideration the attented circumstances like the present age of the appellants and years passed due to pending litigation as well as the repayment made by them, this Court is of the view that the period of sentence requires the following modification:

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Name of the Accused	Conviction under Section	Sentence imposed by the trial Court	Modified Sentence
A1	Under Sections 477-A, 409 IPC and Section 13(2) r/w 13(1)(c) & (d)(i) of PC Act, 1988	To undergo Rigorous Imprisonment for 5 years each with a fine of Rs.2,000/- each in default to undergo another 6 months SI each	To under Rigorous Imprisonment for 1 years each. Fine amount imposed by the trial Court remains unaltered.
A2	Under Sections 477-A, 409 r/w 109 IPC and Section 13(2) r/w 13(1)(c) & (d)(i) of PC Act, 1988	To undergo Rigorous Imprisonment for 5 years each with a fine of Rs.2,000/- each in default to undergo 6 months SI each	To under Rigorous Imprisonment for 1 years each. Fine amount imposed by the trial Court remains unaltered.

The period of sentence shall run concurrently along with sentence imposed in Spl.C.C.Nos.5 and 7 of 2001 as modified in Crl.A.Nos.775,777,793 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.

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

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

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To

1.The Special Judge of Nilgiris,
Udhagamandalam.

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

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

4.Public Prosecutor,
High Court, Madras.

5.the Superintendent,
Central Prison, Coimbatore.

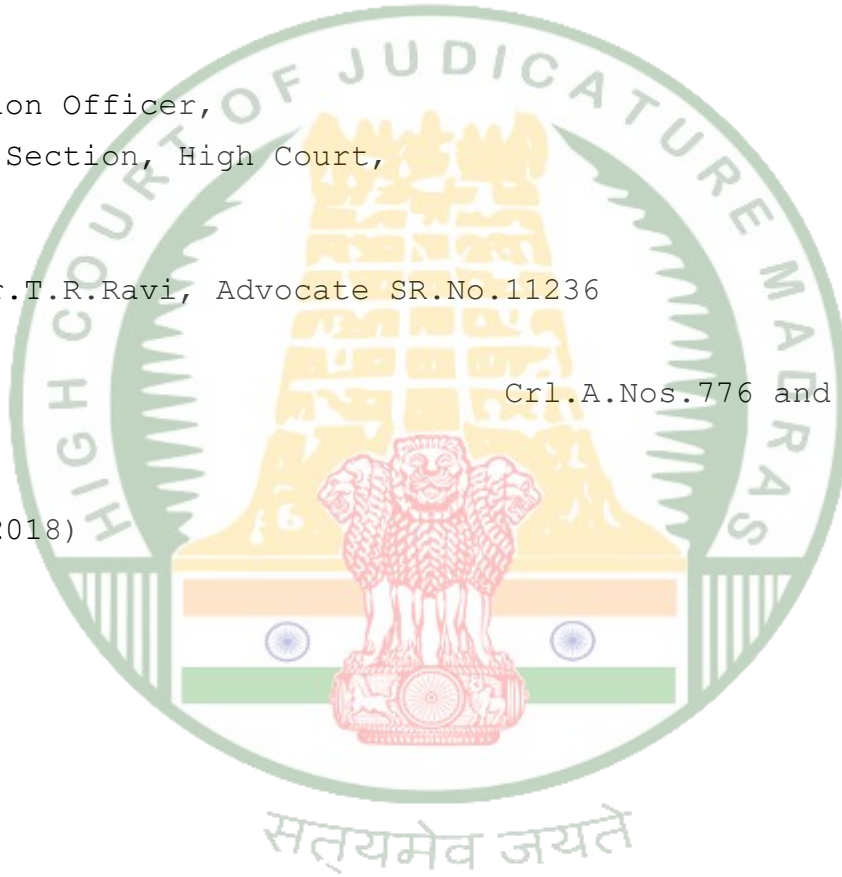
Copy To

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

+1cc to Mr.T.R.Ravi, Advocate SR.No.11236

Crl.A.Nos.776 and 794 of 2003

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



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