IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.777 and 795 of 2003

Mani .. Appellant/1st accused in Crl.A.No.777 of 2003

K.Bellikalan .. Appellant/2nd accused in Crl.A.No.795 of 2003

/versus/

State by Deputy Superintendent of Police, CBCID, Nilgiris. .. Complainant/ Respondent in Crl.A.No.777 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.795 of 2003

Prayer in Crl.A.No.777 of 2003: Criminal Appeal is filed under Sections 374 Cr.P.C. read with Section 27 PC Act against the judgment of the learned Special Judge of Nilgiris at Uthagamandalam made in Special Calender Case No.7 of 2001 on his file dated 30th Day of April 2003 convicting the appellant herein under Sections 467, 471, 477(A), 409 IPC and 13(2) r/w 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 Act, and to undergo RI for 2 years with a fine of Rs.1000/- in default 3 months Simple Imprisonment under Section 471 IPC and the sentence to run concurrently.

Prayer in Crl.A.No.795 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.7 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.777 of 2003

Mr.N.S.Sivakumar for A2 in Crl.A.No.795 of 2003

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

COMMON JUDGMENT

Batch of appeals arising from the judgement 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 traces its root to a common complaint. 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, use of forged document as genuine, falsification of accounts, creation of false documents and abuse of official position for illegal pecuniary advantage. As far as Spl.C.C.Nos.5/2001,6/2001 and 7/2001, Thiru.Mani (AEEO) 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 were also working under Kothagiri Assistant Elementary Education Office. 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.777 and 795 of 2003 arise from the judgement in Spl.C.C.No.7 of 2001 wherein Thiru.Mani (A-1) appellant in Crl.A.No.777 of 2003 found guilty of offences under Sections 467, 477-A, 409 IPC and 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 S.I. For 6 months each and to undergo Rigorous Imprisonment for 2 years with a fine of Rs.1,000/- in default to undergo Simple Imprisonment for 3 months under Section 471 IPC and period of sentence ordered to run concurrently along with the sentence imposed in Spl.C.C.Nos.5 and 6 of 2001.

4. The Appellant in Crl.A.No.795/2003, Thiru.K.Bellikhan (A-2) found guilty of offences under Section 467, 477-A, 409 r/w 109 IPC 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 rigorous imprisonment for 2 years with a fine of Rs.1,000/- in default to undergo S.I. for 3 months under Section 471 IPC and period of sentence ordered to run concurrently along with the sentence imposed in Spl.C.C.Nos.5 and 6 of 2001.

5. 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 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 distribute it to them immediately. A-2(Thiru.BelliKalan) who was working under A-1(Thiru.Mani) as Record clerk entrusted with the responsibility of preparing the pay bills of the teaching staff, to maintain MTC 70 register, Cash book, disbursement register, pay register etc.

6. A-1(Thiru.Mani) and A-2(Thiru.Bellikalan) having access to the records and dominion over the property viz, salary and other bills like Provident Fund, had forged the signatures, created false documents, used the forged document as genuine and also dishonestly misappropriated cash entrusted to them, besides pecuniary advantage by illegal means. Precisely, in this case, on 11.07.1997 to cheat and misappropriate a sum of Rs.10,556/- from the Provident Fund account of Mr.K.R.Krishnan, had forged the signature of Mr.K.R.Krishnan in the disbursement register and had falsified the Account. The PF amount payable to Mr.K.R.Krishnan had been misappropriated by A-1(Thiru.Mani) with the aid and assistance of A-2(Thiru.BelliKalan), thereby A-1 (Thiru.Mani) had committed offences punishable under sections 467,471,477A, 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 467,471,477-A, 409 r/w 109 IPC and 13(2) r/w 13 (1)(c) and (d)(i) of PC Act, 1988.

7. To substantiate the charges the prosecution has examined 10 witnesses and marked 58 exhibits. The trial Court has found the prosecution case proved and held the accused guilty of charges and sentenced them as stated supra.

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

9. The Learned counsel appearing for Thiru.Mani the first accused / appellant in Crl.A.No.777/2003, 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(Thiru.BelliKalan). The handwriting of the accused was not obtained for comparision with the disputed signature to prove forgery. The evidence of PW-1 (Thiru.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 the 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.

10. On behalf of the second accused/appellant in Crl.A.No.795/2003, the learned counsel would submit that, the trial Court has miserably failed to note that to allege criminal breach of trust by public servant, it should satisfy the twin requirement 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(2) r/w 13 (1)(c) and (d)(i) 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, Ex.P-10, marked through PW-9 is a document created for the purpose of the case. Documents not maintained in the course of the business are relied by the trial Court to convict the

appellant. Based on the oral evidence of interested witnesses, the trial Court has come to the erroneous finding, which warrants interference.

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 the records. He and A-2 (Thiru.BelliKalan) had connived and had misappropriate the PF money of K.R.Krishnan. The evidence of PW-2 (Thiru. K.R.Krishnan) was denying the signature found in Ex P-5. His admitted signatures found in Ex.P-7 to Ex.P-9 varies from the signature found in Ex.P-5 which proves beyond doubt the case of forgery and use of forged document as genuine by the accused persons to misappropriate Rs.10,556/-. While PW-2 (Thiru.K.R.Krishnan) was paid 90% of his PF on his retirement, Rs.10,556/- which is the balance 10% , was not paid but the accused A-1 and A-2 by forging the signature of PW-2 (Thiru.K.R.Krishnan) had created false account as if the amount was paid to him on 11.07.1996. The signature found in Ex.P-5 is proved to be forgery through expert evidence. Thus, the prosecution has proved beyond doubt the charges against the appellants. Hence, the trial Court judgement has to be confirmed.

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

13. 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 whom the report was forwarded by Tmt.Umarani has deposed that on receipt of the report he perused it and being satisfied that 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-50 has been registered on 22.10.1997.

14. On completion of investigation, three cases against these appellants were filed and taken cognizance by the Court. As far as Spl.C.C.No.7/2001 is concerned, it is in respect of forging the signature of K.R.Krishan, falsification of accounts

namely, making false entry in the acquittance register as if Rs.10,556/- paid to PW-2(Thiru.BelliKalan) on 11.07.1996 thereby misappropriated that money.

15. From the evidence adduced by the prosecution, it is proved through the evidence of PW-2[Thiru.K.R.Krishnan] that he retired as Primary School Head Master and received 90% of the PF amount. For the balance 10%, he applied on 08.09.1996 through letter marked as Ex.P-4. Though in Ex.P-5 there is an entry that he had received a sum of Rs.10,556/- on 11.07.1996, the signature found in that register is not his. The signatures found in page No.71 of the same register, which is marked as Ex.P-6 is his signature. He signed it, when he was paid Rs.4,63,876/- towards his part final settlement. The other admitted signatures are in Ex.P-7 found in the letter seeking extension of service, Ex.P-8 specimen signatures given to the Police during investigation and Ex.P-9 specimen signatures given to the Additional Educational Officer, Kothagiri. In the cross examination, he has denied the suggestion that he received the money and signed in Ex.P-5.

16. On scrutiny of the evidence of PW-2 and his complaint marked as Ex P-4 dated 8.9.1996, this Court finds that when 10% of his PF amount was not paid inspite of repeated visit to AE Office, the persons in-charge were giving evasive reply and on his insistence, he was allowed to find the acquittance register, where he found that some one has forged his signature and has appropriated the money.

17. The admitted signatures of K.R.Krishnan is sent to hand writing expert for comparison with the disputed signature found in Ex.P-5. The hand writing expert opinion is marked as Ex.P-55. The expert Parthasarathy Kotti has been examined as PW-9, who has deposed that the signature found in Ex.P-5 is not that of PW-2[Mr.K.R.Krishnan] and it is forged by some one. The acquittance register is with the custody of A-1 and A-2. While so, they are to be held responsible for any falsification and forgery. Though it is not proved by the prosecution that either A-1 or A-2 has forged the signature of PW-2[Thiru.K.R.Krishnan], undoubtedly the signature found in Ex.P-5 is not that of PW-2 [Thiru.K.R.Krishnan]. A-1 and A-2 who are responsible to get the acquittance from the right person and disburse the money have failed to do so and they cannot claim ignorance of the forgery, falsification of account and misappropriation of the money upon which they had dominion.

18. The prosecution evidence has proved the role of A-2(Thiru.BelliKalan) as record clerk responsible for maintaining the account and registers both the acquittance

register and undisbursed register. A-1 being the head of the office vested with the responsibility of payment of PF and other allowances as per G.O.Ms.No.1228, Education Science Technology Department, dated 30.12.1994 marked as Ex.P-58. Therefore, this Court finds no force in the submissions of the learned counsels appearing for the appellant which requires interference of the trial Court judgment.

19. A-1 and A-2 who as persons responsible for disbursement and maintenance of the record are liable for making false entry in the acquittance register by forgery and misappropriation. The first accused/ appellant in Crl.A.No.777 of 2003 cannot plead absence of mens rea and put the blame of A-2, who is his subordinate. Duty is cast upon A-1 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-58 which is the order issued by the Education Department vide G.O Ms.No 1228, Education Science Technology Department, dated 30.12.1994 forecloses the unsustainable plea of A-1. The said Government order had classified the officers, their duties and responsibilities. As far as the 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 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 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 superannuation.
>
> 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 heardmasters.

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."

20. Taking into consideration the circumstances like the present age of the appellants and years passed due to pending litigation this court is of the view that except reducing the period of sentence, no interference requires in this appeals.

21.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	(i)Under Sections 467, 477-A, 409 IPC and 13(2) r/w 13(1)(c) & d (i) of PC Act, 1988. (ii)Under Section 471 IPC	(i)To undergo RI for 5 years with a fine of Rs.2,000/- each, in default Simple Imprisonment for 6 months each. (ii)To undergo RI for 2 years with a fine of Rs.1,000/- in default SI for 3 months	(i)To undergo RI for 1 year each. Fine amount imposed by the trial Court remains unaltered. (ii)To undergo RI for 1 year. Fine amount imposed by the trial Court remains unaltered.
A2	(i)Under Sections 467, 477-A, 409 r/w 109 IPC and 13 (2) r/w 13(1) (c) & d(i) of PC Act, 1988. (ii)Under Section 471 IPC	(i)To undergo RI for 5 years with a fine of Rs.2,000/- each, in default SI for 6 months each. (ii)To undergo Rigorous Imprisonment for 2 years with a fine of Rs.1,000/- in default SI for 3 months	(i)To undergo RI for 1 year each. Fine amount imposed by the trial Court remains unaltered. (ii)To undergo RI for 1 year. 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.5 and 6 of 2001 as modified in the appeals Crl.A.Nos.775,776,793 and 794 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.

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

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

ari

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 Priosn, Coimbatore.

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

+1cc to Mr.T.R.Ravi, Advocate SR.No.11287

Crl.A.Nos.777 and 795 of 2003

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