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.4470/2003 in Crl.A.No.781/2003 and as per the order of this Court dated 11.6.2003 made in Crl.MP.No.5036/2003 in Crl.A.No.846/2003 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.781 & 846 of 2003

1. B.Madappan ... Appellant/1st Accused in Crl.A.No.781 of 2003

2. R.Kittan ... Appellant/2nd Accused in Crl.A.No.846 of 2003

/versus/

1. The State by
The Deputy Superintendent of Police,
C.B.C.I.D, Nilgiris. ... Respondent/Complainant in Crl.A.No.781 of 2003

2. The State of Tamil Nadu
Rep. By Deputy Superintendent of Police,
CB CID Nilgiri at Coimbatore,
(Crime No.1 of 97) ... Respondent/Complainant in Crl.A.No.846 of 2003

PRAYER in Crl.A.No.781 of 2003: Criminal Appeal is filed under Section 374 of Criminal Procedure Code read with 27 of Prevention of Corruption Act, against the conviction and sentence in Special C.C.No.11 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 Act 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

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sentences to run concurrently.
PRAYER in Crl.A.No.846 of 2003: Criminal Appeal is filed under Section 374 of Criminal Procedure Code read with 27 of Prevention of Corruption Act, against the conviction and sentence in Special C.C.No.11 of 2001 on the file of the learned Special Judge of Nilgiris at Udhagamandalam dated 30.04.2003.

For Appellant : Mr. S.Ashok Kumar, Senior Counsel
in Crl.A.No.846 of 2003 for Mr.C.D.Johnson

For Appellant : Mr.R.Rajasekaran
in Crl.A.No.781 of 2003

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

COMMON JUDGMENT

In the present appeal No.781 of 2003 and 846 of 2003 are filed by the A1 [Madappan] and A2 [Kittan] in Special C.C.No.11 of 2001 on the file of learned Special Judge Niligiris, Udhagamandalam.

2. The appeal is directed against the sentenced imposed by the Trial Court holding A1 guilty for offences under Section 467, 477-A and 409 IPC and 13(1)(c)&(d) of Prevention of Corruption sentenced him to undergo 5 years R.I and fine of Rs.2,000/- in default 6 months S.I each. Also found him guilty for offence under Section 471 of IPC sentenced him to undergo 2 years R.I and a fine of Rs.1,000/- in default 3 months S.I.

3. As against A2 the appellant in Crl.A.No.846 of 2003 was found guilty for offences under Section 467, 477-A and 409 r/w 109 IPC 13(2) 13(1)(c)(d) of Prevention of Corruption Act 1988 to undergo 5 years R.I with a fine of Rs.20,000/- in default 6 months S.I and also found in guilty for offences under Section 471 IPC and imposed 2 years R.I and a fine of Rs.1,000/- in default 3 months S.I. The period of sentenced ordered to run concurrently along with the sentenced imposed against A1 in Special C.C.Nos.4 of 2001, 10 of 2001 and 12 of 2001 similarly as far as A2 is concerned, the period of sentenced ordered to run concurrently along with sentence imposed in C.C.Nos.4 of 2001, 8 of 2001, 9 of 2001, 10 of 2001 and 12 of 2001.

The Case of the Prosecution

4. Between 09.11.1995 and 14.03.1996 A1 [Madappan] while serving as Assistant Elementary Educational Officer and A2 [Kittan] Junior Assistant in the Office of Assistant Educational

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Office, Kothagiri had forged the acquittance register for disbursement of teacher Provident Fund in respect of PW.8 [Annammal], PW.2 [Saraswathi] and PW.3[Suguna] misappropriated a sum of Rs.11,333/-, Rs.12,767/-, Rs.16,089/- respectively to a sum of Rs.40,190/- by forging the records and falsifying the statement of account a sum of Rs.40,190/- had been misappropriated thereby committed offences under Section 467, 471, 477-A, 409 IPC and 13(2) r/w 13(1)(c)(d) of PC Act.

5. To substantiate the charge, the prosecution has examined 12 witnesses and marked 70 Exhibits. After appreciating the said evidence the trial Court has found A1 and A2 guilty of the charges framed and had sentenced him as stated above. Aggrieved by the judgment the above appeal has been filed.

The case of the appellants

6. The learned counsel appearing for the appellants in Crl.A.No.781 of 2001 filed by A1 [Madappan] would submit that the prosecution has not proved the guilty of the accused beyond reasonable doubt. There is no mensrea on the part of the first accused has alleged by the prosecution. There is no evidence connected the accused directly with the alleged forgery and misappropriation. Even according to the prosecution it was A2 was maintaining the records and he who had prepared the bills. The first accused has the custodian of the records cannot be held liable for the alleged offence the court below had fail to obtain the sample hand writing of the accused to compare with the disputed hand writing. While the law was set into motion based on the enquiry report of Tmt.Umarani she was not examined by the prosecution which is very fetal to the prosecution.

7. As far as A2 [R.Kittan] the appellant in Crl.A.No.846 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 has 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

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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.

8. Per contra, the learned Additional Public Prosecutor that the case against appellant is well established and proved through the evidence of PW.2 [Saraswathi], PW.3 [Suguna], PW.8 [Annammal] who had deposed before the Court that the signatures found in the acquittance Register is not their signature but has been forged by somebody else and the PF fund money was not paid to them immediately after their application but disbursed to them by A1 and A2 after persistent visit to the office and demand made to them and after lodging complaint to the higher Officials. The specimen signatures of the witnesses were also collected and compared with the disputed signatures and the hand writing expert has given its opinion that the signatures found in the Ex.P.5, Ex.P.8 and Ex.P.44 is not that of the PW.2 [Saraswathi], PW.3 [Suguna] and PW.8[Annammal] respectively.

9. A1 [B.Madappan] and A2 [R.Kittan] who are in-charge of records are liable to explain the forged signature found in the said acquittance register they being AEO and JA having accessed to the records and dominion over the property namely the acquittance register and MTC 70 register are responsible for the said forged entry and the money appropriated by them is proved through its witnesses has categorically deposed that the Provident Fund amount was not paid to them as found in the entries of acquittance register. Further PW.8[Annammal] had categorically stated in her evidence that the signature found in the Ex.P.44 is not her signature and she was not paid Rs.11,333/- has found in the acquittance register. While A1 and A2 having domain over the record had no explanation for non-payment of Provident Fund to PW.8 [Annammal] and delayed payment of Provident Fund to PW.2 [Saraswathi] and PW.3 [Suguna]. The Trial Court has rightly held them guilty and there is no ground to interfere the judgment of the Trial Court.

Point for consideration

> Whether the prosecution has proved beyond reasonable doubt that a sum of Rs.40,190/- had been misappropriated by A1 and A2 by falsifying the account and forging the signature of PW.2 [Saraswathi], PW.3 [Suguna], PW.8[Annammal]?

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10. The perusal of the deposition of PW.2 [Saraswathi], PW.3 [Suguna], PW.8 [Ananammal] and the opinion of the hand writing expert which is marked Ex.P.65 and the deposition of the scientific expert marked as Ex.P.11. This court finds that a sum of Rs.12,768/- payable to PW.2 [Saraswathi] was not paid to her on 09.11.1995 has found in Ex.P.5. She and her husband had been repeatedly visiting the AEO and enquiry about the balance Provident Fund amount with A1 and A2, thereafter, on 25.09.1987 PW.2 [Saraswathi] has received her balance Provident Fund of Rs.12,768/-. In her deposition has clearly said that the signatures found in Ex.P.5 is not her signature and she did not receive the amount of Rs.12,768/- on 09.11.1995 has found in Ex.P.5. If she had really received the money, there is no necessity for a forged signature in the acquittance register marked as Ex.P.5 and there is no necessity for her to give a complaint to the AEO regarding the non-payment of her final Provident Fund payment. In spite of attaining superannuation during the month of December 1994. The expert has also deposed after comparing the admitted signature of PW.2 is that of the disputed signature found in Ex.P.5 and had opined that the signature does not tally. Hence, A1 and A2 who had domain over the register are responsible for the forged and needless that prosecution should prove that either of the accused as forged the signature. The factum of signature found in the Register which is under the custody of A1 and A2 is suffices to hold them guilty for the forgery and consequently the money encashed from the treasury from the PF account of PW.2 as early as 09.11.1997 had been given to PW.2 [Saraswathi] only on 25.07.1997 after delay of 2 ½ years hence they both are liable for misappropriation.

11. As far as PW.3 [Suguna] is concerned she has also spoken about the non-payment of her Provident Fund amount Rs.16,089/- her signature has been forged like that of the PW.2 [Saraswathi] and money has been appropriated by A1 and A2. However, this Court while considering the Criminal Appeal No.844 of 2003 preferred by A2 [Kittan] against the judgment in rendered Special C.C.No.9 of 2003. The present offence of misappropriating Rs.16,089/- from PF account of PW.3 [Suguna] has been dealt with. The appellant has been found guilty since he cannot be tried and convicted for the same offence twice, this amount found in the charge has to be deleted accordingly it is deleted. The Trial Court due to inadvertent has overlooked this fact since 9 cases of different incidents with different set of Officers been tried and common evidence has been let in by the prosecution. In any event no prejudice is caused to appellants since there are other incidents in this case as well as in the C.C.No.9 of 2001 were the offence against the appellant is made out and no individual punishment imposed for this incident for misappropriating Rs.16,089/- from the PF of

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PW.3 [Suguna].

12. In so far as evidence of PW.8 [Annammal] she has deposed that in Ex.P.44 acquittance register a sum of Rs.11,333/- has been shown as paid to her towards her PF loan. She did not received that money and the signature found in the register is not her signature. The hand writing expert who has compared the disputed signature which is found in Ex.P.44 and the admitted signature of PW.8 found in her leave letters which is marked as Ex.P.47 to Ex.P.51 and the specimen signature is marked as Ex.P.46 did not tally with each other proving the factum of forgery. Therefore for misappropriating a sum of Rs.11,333/- from the Provident Fund account of PW.8 by forging her signature and temporary misappropriation of Rs.12,768/- from the PF account of PW.2 [Saraswathi] A1 and A2 are liable for offence of forgery, falsification of account, misappropriation and misconduct by public servant by obtaining illegal pecuniary advantage by abusing their official position and for using the forged document as genuine.

13. In the light of the above discussion, this Court finds no sustainable ground to interfere with the judgment of the Trial Court rendered in C.C.No.11 of 2001 is confirmed. Considering the submissions made by the learned counsels for regarding leniency in sentence, taking note of their age and the period already consumed for disposing the appeal. The period of sentence already undergo is modified.

14. In the result, the Crl.A.No.781 of 2003 and Crl.A.No.846 of 2003 are dismissed. The trial court judgment is confirmed, the except modifying the period of sentence as under:-

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

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

15. For A1, the period of sentence shall run concurrently. The sentence shall also run concurrently along with the sentence imposed on him in C.C.Nos.4/2001, 10/2001, 12/2001 as modified in Crl.A.Nos.774 of 2003, 780 of 2003 and 782 of 2003 preferred by A1 similarly for A2 it shall run concurrently along with the sentence imposed in C.C.Nos.4/2001, 8/2001, 9/2001, 10/2001, 12/2001 as modified in Crl.A.Nos.843 of 2003, 844 of 2003, 845 of 2003, 848 of 2003 and 849 of 2003 by this Court.

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

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To

1. The Special Judge,
   Niligiri, Udhagamandalam.

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

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

4. The Superintendent, Central Prison, Coimbatore

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

+1cc to Mr.R.Rajasekaran, Advocate Sr.No.15002/18

SSV(co)
sm:26.3.2018

judgment made in
Criminal Appeal Nos.781 & 846 of 2003

HIGH COURT OF JUDICATURE MADRAS
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