Bail Slip

The Appellant herein/accused viz., R.Kittan, S/o.Rangan, was direced to be released on bail as per the order of this Court dated 11.6.2003 made in Crl.MP.No.5034/2003 in Crl.A.No.844/2003.

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 No.844 of 2003

R. Kittan ... Appellant/2nd Accused in Crl.A.No.844 of 2003

/versus/

The State of Tamil Nadu
The Deputy Superintendent of Police,
C.B.C.I.D, Nilgiris at Coimbatore
(Crime No.1/97) ... Respondent/Complainant

PRAYER: 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.9 of 2001 on the file of the learned Special Judge of Nilgiris at Uthagamandalam dated 30.04.2003.

For Appellant : Mr. S.Ashok Kumar, Senior Counsel in Crl.A.No.844 of 2003 for Mr.C.D.Johnson

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

J U D G M E N T

Batch of appeals arising from the judgements of the trial court in Special C.C 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.

2. The accused persons Thiru.S.K.Thathan (A-1 died pending appeal) and Thiru. R.Kittan (A-2) were employed in Education Department as Assistant Elementary Education Officer (AEEO)

and Junior Assistant 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.

3. The criminal law was set into motion based on the complaint lodged by hiru.R.Narayanasamy, Director of Elementary Education on 17.09.1997 detailing out several instances financial irregularities like falsification of accounts, forgery and misappropriation. Though in the complaint only Mathappan [A1] (AEEO) and Thathan (AEEO) were named as suspects of crime, in the course of the investigation apart from these two persons few others working in the Kothagiri Assistant Elementary Education Office were also found involved in the crime. The investigation has led to filing of 9 separate final reports against the persons involved in commission of crime such as forgery, misappropriation, creation of false documents and falsification of accounts.

4. The present appeal Crl.A.No.844 of 2003 arises from the judgement in Special C.C.No.9 of 2003 wherein first accused S.K.Thathan (died pending appeal Crl.A.No.779 of 2003) and the second accused Thiru.R.Kittan appellant in Crl.A.No.844 of 2003 were found guilty. The appellant herein, for offences under section 467, 477-A, 409 r/w 109 IPC and section 13(2) r/w 13(1) (c) and (d) of PC Act is sentenced to under go 5 years R.I with fine of Rs.2,000/- each in default 6 months S.I. For offence under section 471 IPC two years R.I with a fine of Rs.1,000/- in default, simple imprisonment for 3 months. The period of sentence to run concurrently along with the sentence imposed in Special C.C.No.4 of 2001, Special C.C.No. 8 of 2001, Special C.C.Nos.10 of 2001, 11 of 2001 and 12 of 2001.

Case of the Prosecution in brief:

5. Between 24.01.1997 and 22.7.1997, while A-1 Thathan was the Assistant Elementary Education Officer (AEEO) A-2 Kittan was the Junior Assistant in the Assistant Educational Office at Kothagiri, Nilgiris District. A-1 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 who was working under A-1 as Junior Assistant was entrusted with the responsibility of preparing the pay bills of the teaching staff, to maintain MTC 70 register, Cash book, disbursement register, undisbursement register, pay register etc.

6. A-1 and A-2 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 and also dishonestly misappropriated cash entrusted to them and had obtained pecuniary advantage by illegal means. Precisely, in this case under appeal, the charges against them are during the above said period the A-1 and A-2 had drawn Rs.30,000/- from the Teacher's Provident Fund(TPF) Account of Mr.Subramaniam and a sum of Rs.7,920/- from the Teachers Provident Fund Account of Mr.Sundaram but did not disburse it to them and misappropriated the same. They drew a sum of Rs.9,000/- and Rs.10,000/- from the TPF Accounts of PW.2 [Tmt.Reena] and PW.3[Tmt.Jameena] respectively. Obtained their signatures in the acquittance Register, but did not disburse the money and misappropriated the money. Drew a sum of Rs.16,089/- from the TPF account of Tmt.Suguna [PW.8], forged her signature and misappropriated the said money. Thereby committed offence of forgery, fabrication of documents, falsification of accounts, misappropriation and misconduct of obtaining pecuniary advantage by illegal means thereby committed offences punishable under section 477-A, 409 r/w 109 IPC and 13(2) r/w 13 (1)(c) and (d) of PC Act, 1988.

7. To substantiate the charges the prosecution has examined 12 witnesses and marked 64 exhibits. The trial court has found the prosecution proved charges relating to misappropriation of TPF of and held both the accused are guilty of offences charged and sentenced as stated supra.

8. Aggrieved by the judgement, Crl.A.No.844 of 2003 is preferred by the second accused on the ground that, the trial court has miserable failed to note that the FIR filed after detail enquiry by Tmt.Umarani, does not mentioned his name as suspected accused. The responsibility of maintaining records like MTC 70 register, disbursement registers, cash book, UDP and pay register alone entrusted to him and the actual payment, correspondence regarding TPF advances and requisition are carried out under the supervision and direction of A-1 and he along have dominion over the affairs. To the alleged criminal breach of trust by public servant, it should satisfy the twin requirement namely entrustment or dominion with property and dishonest misappropriation or convention for his own use. In this case the prosecution has proved the appellant as Junior Assistant was entrust with the dominion over the property and taking advantage of the said dominion over the property, he has abetted A-1 to misappropriate the money. 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 proof to show this appellant forged the acquittance registers or withheld the TPF

money without disbursement after getting signatures from the teachers concern or without getting their acquittance, the trial court judgment of conviction is liable to be set aside.

9. Per contra, the learned Additional Public Prosecutor,would submit that, A-1 as AEO has to periodically verify the registers regarding remittance and acquittance. He is the officer responsible for the supervising the proper maintenance of and records. He with aid and assistance of A-2 had appropriated the TPF money of 5 teachers. PW-2 [Tmt.Reena], PW-3 [Tmt.Jameena] had deposed that they applied for PF during the month of February 1997, without disbursing the TPF money, A-2 Kittan obtained their signature in the acquittance register without filling up the details. They got the PF money in the month of August only after representation regarding delay in payment.

10. PW-8 Tmt.Suguna had deposed that after her retirement she applied for final payment of TPF. She was paid Rs.40,000/- and the balance Rs.16,089/- was not paid in spite of repeated demand. She got that money only on 28.07.1997. Therefore, the appellant being public servant along with his superior A-1 had abused the 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.

Point for consideration

> Whether the trial court finding against this appellant is based on evidence beyond reasonable doubt ?

11. 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 department action and criminal prosecution.

12. On completion of investigation six cases against this appellant had been filed and taken cognizance by the court. As far as Special C.C.No.9 of 2003 is concern, it is in respect of forgery, falsification of accounts and misappropriation of total sum of Rs 72,000/- from the TPF accounts of 5 teachers. The prosecution has examined only 3 teachers in this regard and they have deposed against this appellant to the extend of delayed payment though the acquittance register show the money was disbursed much earlier.

13. From the evidence adduced by the prosecution, what is established through the evidence of PW-2 Tmt.Reena is that she applied for PF loan Rs 9000/- in the month of February 1997. Based on her application Kittan, the appellant herein gave the money to her during the month of August 1997. He got her signature in the disbursement register, but her name was not written while she signed. Perusal of Ex.P-4 application and the connect documents indicates that based on her application of PF advance for Rs.9,000/-, A-1 has issued proceedings on 13.02.1997. Though in the disbursement register PW-2 has affixed her signature on the revenue stamp, there is no other detail such as name of the member, date of transaction and amount are filled. PW-2 has deposed that she got the money only during the month of August from Kittan (the appellant herein). The noting of PA to (DEEO) found in Ex P-5 show that the money was paid to PW-2 only on 13.8.1997. Thus, belated payment is proved by the prosecution which in turn proves temporary misappropriation of Rs.9,000/- by the appellant. Similarly in the case of PW-3 Tmt.Jameena also, in the acquittance register only her signature has been obtained without filing the required details and the money has been disbursed belatedly during the month of August, though PF advance of Rs.10,000/- withdrawn from the treasury as early in the month of February, 1997. In case of PW.8, Tmt.Suguna, the signature found in Ex.P.39, acquittance register is not her signature. It is proved to be forged through subjecting the same by comparing it with the admitted signatures of PW.8 under forensic examination. The expert report Ex.P.55 and the evidence of PW-11 proves the forgery.

14.Thus from the prosecution evidence, temporary misappropriation of TPF amount of PW.2, PW.3 and PW.8 to a tune of Rs.35,089/- is proved as against the charge of misappropriation of Rs.72,000/-. To that extend the trial court finding appears to be erroneous. Whereas the prosecution has proved beyond doubt that the signature found in Ex.P.39 is not the signature of PW-8. Admittedly, the appellant as Junior Assistant is the custody of the acquittance register and he is responsible for the entries made or not made where ever required. Thus by omission to make relevant entries in the acquittance register in respect of PW.2 [Reena] and PW.3 [Jameena] and by making forged signature as far as disbursement to PW-8, he is squarely liable for the falsification of account.

15. Therefore for the reasons stated above, the judgment of the trial court convicting the appellant is upheld subject to pointing out the error in appreciating the facts regarding the quantum of misappropriation. Further, the money misappropriated has been disbursed subsequently which leads to mitigating

circumstances regarding sentence. Taking into consideration the said facts and circumstances this court is of the view that the period of sentence requires some modification.

16. In the result, the Criminal Appeal No.844 of 2003 is dismissed. The judgment of the trial court is hereby confirmed with modification. The period of sentence is reduced to one year R.I. instead of five years R.I. for each of the offence.

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 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

17. The period of sentence shall run concurrently along with sentence imposed in Special C.C.Nos.4 of 2001, 8 of 2001, 10 of 2001, 11 of 2001 and 12 of 2001 as modified in the respective appeals Crl.A.Nos.843 of 2003, 845 of 2003, 846 of 2003, 848 of 2003 and 849 of 2003. 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 Special Judge,
   Nilgiri District 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 Central Prison, Coimbatore

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

SSV(CO)
sm:26.3.2018

judgment made in
Criminal Appeal No. 844 of 2003