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.5056/2003 in Crl.A.No.849/2003.

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. 849 of 2003

R. Kittan ... Appellant/2nd Accused in Crl.A.No.849 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.8 of 2001 on the file of the learned Special Judge of Nilgiris at Uthagamandalam dated 30.04.2003.

For Appellant in Crl.A.No.849 of 2003 : Mr. S.Ashok Kumar, Senior Counsel for Mr.C.D.Johnson

For Respondent in both the appeals : Mr. P.Govindarajan, 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 present appeal Crl.A.No.849 of 2003 arises from the judgement in Special C.C.No.8 of 2003 wherein first accused S.K.Thathan (died pending appeal Crl.A.No.778 of 2003) and the second accused Thiru.R.Kittan appellant in Crl.A.No.849 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 C.C.No.4 of 2001, 8 of 2001, C.C.No.9 of 2001, 10 of 2001, 11 of 2001 and 12 of 2001.

4. Before the trial Court the prosecution has examined 10 witnesses and marked 60 Exhibits. After appreciating from the evidence the trial Court has found them guilty for offences under Section 467, 471, 477-A, 409 IPC 13(2) r/w 13(1) (c) &(d) of PC Act.

Case of the Prosecution

5. The appellant in Crl.A.No.778 of 2003 Mr.S.K.Thathan [died A1 pending appeal] and Kittan A2 appellant in Crl.A.No. 849 of 2003. While serving as Assistant Elementary Educational Officer and Junior Assistant respectively during 13.01.1997 to 07.04.1997 had forged the acquittance register in order to misappropriate a sum of Rs.8,478/- from the Provident Fund Account of Stella Maragretta [PW.2] and also forged the application of Leelabai [PW.3] for Provident Fund advance by altering the amount of Rs.50,000/- into Rs.56,000/- and forged the signature of Leelabai [PW.3] in the acquittance register to show as if she has received advance of Rs.56,000/- thereby committed offence of forging the document using the forged document as genuine making false entry in the account and misappropriation a sum of Rs.14,478/- thereby made a pecuniary advantage of Rs.14,478/- by abusing the official position.

6. The learned counsel appearing for the appellant would submit that A1 Mr.S.K.Thathan [died pending appeal] and hence

his appeal Crl.A.No.778 of 2003 is abated.

7. The learned counsel appearing for A2 [Kittan] Appellant in Crl.A.No.849 of 2003 would submit that as Additional Educational Office it is the responsibility and duty of A1 to have custody and maintain the MTC 70 register, Cash Book, disbursement Register, Undisbursed payment and pay register etc., A2 had no opportunity at any point of time to have the cash with him he was neither entrusted nor had domain over the cash. Hence the ingredient of misappropriation is not made out by the prosecution. It was under the supervision of A1 the correspondence regarding loan sanction of loan and withdrawal of amount from the treasury used to be done. A2 as a Junior Assistant, had no opportunity to receive or retain the amount withdrawn from the treasury. He as subordinate to A1 was supposed to carry out the works directed by A1. There was no evidence to show the disputed signature found in the acquittance register or MTC 70 was that of the appellant herein. In the absence of evidence incriminating the appellant either for misappropriation or for forgery or for fabrication of document to be used as genuine he should not be held liable. The Trial Court judgment passed without considering the lacuna in the prosecution case is liable to be set-aside.

8. Per contra, the learned Additional Public Prosecutor would submit that PW.2 [Stella Margarette], PW.3[Leelabai] whose Provident Fund account being forged by the appellant had spoken about their application and the correction made in the application and corresponding false entires found in the acquittance register. The ocular evidence of PW.2 and PW.3, supported by Ex.P.8 to Ex.P.11 proves the prosecution beyond reasonable doubt. Therefore, there is no necessity to interfere with the well considered judgment of the trial Court.

Points for consideration

Whether the forgery, falsification of the account and misappropriation would be attributed to the appellant who was working as Junior Assistant in the Office of Assistant Educational Office Kothagiri?

9. The specific case of the prosecution is that the appellant herein being Junior Assistant in the Assistant Elementary Educational Office at Kothagiri. In connivance with A1, Assistant Educational Officer had forged the signatures of PW.2 [Stella Margaretta], PW.3[Leelabai] in the acquittance register, made corresponding entry in MTC 70 register as if a sum of Rs.8,478/- being paid as advance to [PW.2] Stella Margaretta a sum of Rs.56,000/- being paid as advance from

Provident Fund account to PW.3 [Leelabai]. In fact PW.2 [Stella Margaretta] was not paid Rs.8,478/- and PW.3 [Leelabai] was paid only Rs.50,000/- whereas her application and the entry in the disbursement register had been corrected from Rs.50,000/- to Rs.56,000/-. This act of forgery and misappropriation came to light when Tmt.Umarani inspected the records of AEEO, Kothagiri and filed her report marked as Ex.P.7 to District Educational Officer who in turn lodged the complainant to the police on 22.10.1997 which was taken up for investigation.

10. Relying upon the evidence of PW.2, PW.3 and Ex.P.8 to Ex.P.11. The learned Additional Public Prosecutor would submit that the trial Court has arrived at right conclusion holding the appellants guilty of the offence charge against him and it requires no interference and same has to be confirmed.

11. Perusal of deposition, PW.2 [Stella Margaretta] this court finds that she retired as Middle school teacher on 31.05.1995. After her retirement, she went to Kothagiri AEE Office for three or four times and enquired about her Provident Fund payment. She received the money only after one year delay. Due to long delay in disbursement of her Provident Fund, she has given letter to AEO on 01.08.1987, only after that she was paid the balance 10% of her Provident Fund. From Ex.P.5 the application for the final closure of GPF account made by PW.2 [Stella Margaretta] and the covering letter of the school management marked as Ex.P.6, this Court finds that though PW.2 [Stella Margaretta] had made a request for payment of 10% of GPF as early as 25.08.1995, she was not paid that money even after two years, which forced her to give a representation on 01.08.1997 seeking interference of the AEO, Kothagiri to get her 10% Provident Fund. As per CPF Form-7 annexed along with Ex.P.6 indicates that on the date of retirement, PW.2 was entitled to get a sum of Rs.17,015/- towards her final settlement of teachers Provident Fund. After inclusion of the subsequent subscription, repayment and interest for the month of March to May 1995, her total entailment was Rs.16,977/-. From Ex.P.7 acquittance register it appears as if on 11.10.1995 a sum of Rs.55,309/- had been encashed and on 03.01.1997 she was paid a sum of Rs.26,928/-. PW.2 [Stella Margaretta] identified the entry found in Ex.P.8 for disbursement on Rs.26,928/- and had denied the receipt of the money and the signature found on the receipt on the given date. During the cross examination she has denied the receipt of Rs.55,309/- on 11.10.1995. According to her evidence, a sum of Rs.55,309/- was paid to her only during the month of March 1996, and out of Rs.26,928/- she was paid in part by instalment and still a sum of Rs.8,478/- is due to her.

12. Thus it is established by the prosecution that, A2 as Junior Assistant was in-charge of maintaining the register and

A1 as Assistant Educational Officer as to supervise the proper disbursement of the allowances as per G.O.M.s.No.1228 dated 30.12.1994 which is marked as Ex.P.16. However, in order to misappropriate the money, false entry has been made in the acquittance register and only after the complainant Ex.P.4 given by PW.2[Stella Margaretta], the accused had paid the money in instalment but to not in full.

13. PW.3[Leelabai] had deposed before this Court that on he applied for PF advance of Rs.50,000/- and received the same by her. She has deposed that her application has been altered and Rs.56,000/- has been withdrawn. She has identified her application as Ex.P.10 and had pointed the alternation made in her application.

14. Ex.P.9 is that the acquittance register for disbursement a sum of Rs.56,000/- for Leelabai. Even on seeing by naked eye one, could find the figure of Rs.50,000/- has been altered in to Rs.56,000/-. This amount is towards the part final payment made to PW.3 [Leelabai] on 07.04.1997. Ex.P.10 which is the application for the part final withdrawal made by Leelabai on 25.03.1997. Even in this application one could find that the figure Rs.50,000/- has been altered to Rs.56,000/- correction in the figure both in the Ex.P.9 and Ex.P.10 which were prepared at two different point of the time, coupled with the evidence of PW.3 that she applied for Provident Fund advance of Rs.50,000/- only and she received only Rs.50,000/- proves that the person who had in possession of these records and registers have altered the account by making false entry as Rs.56,000/- by fabricating the figure. If Ex.P.11 the proceedings of A1 dated 03.04.1997 sanctioning the advance of Rs.56,000/- to PW.3 [Leelabai] is correct, then there is no necessity for writing Rs.50,000/- in figure in Ex.P.9 and altering it to Rs.56,000/- on 07.04.1997. Therefore, the prosecution has proved the guilty of the appellant by documentary as well as oral evidence of the Officers who had spoken about the responsibility of the appellant.

15. In the said circumstances, this Court is of the view that none else is responsible for custody of the records and the money withdrawn from the Treasury disbursement of if to the staff. Except A2 the appellant and A1 (deceased). The failure of the appellant herein and the deceased first accused for not disbursing the money withdrawn from the treasury immediately after the withdrawal and making alteration in the application and the acquittance register, to the detrimental to subscribers holds them guilty for the charges framed and tried. This Court finds no error in the judgment of the Trial Court convicting the appellant guilty except the length of period sentenced.

16. In the result, the Criminal Appeal No.849 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	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

17. The period of sentence shall run concurrently along with sentence imposed in Special C.C.Nos.4 of 2001, 9 of 2001, 10 of 2001, 11 of 2001 and 12 of 2001 as modified in the respective appeals Crl.A.Nos.843 of 2003, 844 of 2003, 845 of 2003, 846 of 2003 and 848 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, 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,
        High Court, Madras

Sm:26.3.2018

judgment made in
Criminal Appeal No. 849 of 2003