



BAIL SLIP

C.Sethumani Madhavan (46 years) S/o.Chinnathambi, Appellant/
Accused No.1 was released on Bail vide Court order dated 03.08.2017
made in Crl MP (MD) No.2706 of 2017 in Crl A (MD) No.101 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on: **14.11.2019**

Pronounced on: **27.11.2019**

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl. A. (MD) No.101 of 2017

C.Sethumani Madhavan ... Appellant/First Accused
Vs.

Deputy Superintendent of Police,
C.B.C.I.D.,
Thanjavur District. ...Respondent/Complainant

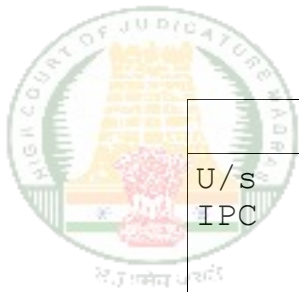
PRAYER: Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code to call for the records in S.C.No.373 of 2011 on the file of the Sessions Judge, Mahila Court (Fast Track Mahila Court) Thanjavur and set-aside the conviction, fine and sentence imposed on the appellant by the judgment dated 20.03.2017 and acquit the appellant.

For Appellant : Mr.R.Singaravelan
Senior Counsel for Mr.S.Venkatesan

For Respondent : Mr.V.Neelakandan, APP

J U D G M E N T

The appellant herein is the first accused in S.C. No. 373 of 2011 on the file of the Sessions Judge, Mahila Court (Fast Track Mahila Court) Thanjavur and he was tried for various offences and vide the impugned judgment dated 20.03.2017, the Sessions Court convicted and sentenced the appellant/the first accused as under :-



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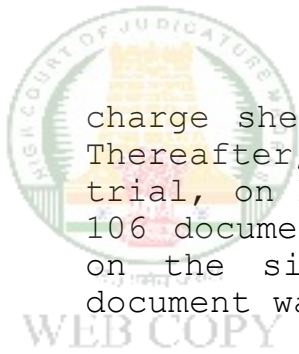
Section	Sentence
U/s 120(b) r/w 409 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and a fine of Rs.1000/- and in default the accused shall suffer simple imprisonment of 1 year
U/s 409 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and a fine of Rs.1000/- and in default the accused shall suffer simple imprisonment of 1 year
U/s 343 IPC	Convicted and sentenced to undergo 2 years s.i with a fine of Rs.500/- and in default to undergo 3 months simple imprisonment

The sentences were ordered to run concurrently and set off was also granted under Section 428 Cr.P.C. Challenging the said conviction, the present appeal is filed before this Court.

2. The case of the prosecution was that the deceased Akila @ Akilandeswari received a sum of Rs.3 lakhs for securing job for Chandran and Janakiraman, her relatives. Similarly Rajkannu Manjojkumar and Niyas also paid money to her for securing jobs. But as promised, she did not secure any job to them. However, the abovesaid persons got their money back through the second accused namely, Balu @ Balasubramanian. Likewise, there were several persons who gave their money amounting to different sums to the said Akila @ Akilandeswari for securing them jobs. Since, ultimately the job has not been secured to the persons from whom moneys were received by her, a complaint was lodged.

3. On the basis of the complaint, a case was registered in Crime No.495 of 2007 against the three accused for the offences under Sections 343, 306, 354, 409 r/w 120(b) IPC and Section 4(B) of Tamilnadu Prohibition of Women Harassment Act. The appellant is arrayed as the first accused, who was the Inspector of Police and A3 was the Head Constable. Both the first and third accused were working in the Thanjavur Medical College Police Station. A2 is a close associate of A1 and he was known to the deceased Akila @ Akilandeswari.

4. After completion of investigation, a final report was filed by the jurisdictional police. All the three accused were framed with identical charges as mentioned above. The trial court observed the usual formalities of questioning the accused and providing them the



charge sheet, under the provisions of the Criminal Procedure Code. Thereafter, criminal trial was set in motion. During the criminal trial, on behalf of the prosecution, 93 witnesses were examined and 106 documents were marked and 4 Material Objects were produced and on the side of the defence, 2 witnesses were examined and no document was marked.

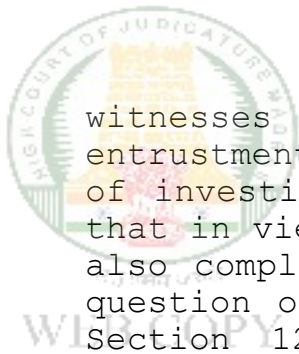
5. On completion of the trial, the learned Sessions Judge acquitted the third accused from all charges. The second accused died during the trial. The first accused alone was convicted for offences under Sections 120(b) r/w 409 IPC together with under Sections 409 and 343 IPC. The conviction as recorded by the trial court is the subject matter in the present appeal.

6. On behalf of the appellant, Mr. Singaravelan, learned Senior Counsel has appeared. According to the learned Senior Counsel, though 3 charges were framed against the appellant herein, the charge sheet did not specifically indicate the commission of any offence which would led to charging him for the offence under Section 120(b) r/w 409 IPC. He has taken this Court through the contents of the charge sheet. Out of three charges, the first charge is for the offence under Section 120(b) IPC. The second one is offence under Section 343 IPC. The third one is offence under Section 409 IPC. No where in the charge sheet, it is mentioned that the first accused committed an offence under Section 120(b) r/w 409 IPC for which the appellant/first accused was sentenced to undergo 10 years rigorous imprisonment. After completion of trial, the appellant alone is convicted for the offence under Section 120 (b) r/w 409 IPC and therefore, the same is liable to be set aside.

7. As far as the offence under Sections 409 and 343 IPC are concerned, the learned Senior Counsel would submit that there is absolutely no evidence to show that Rs.2 lakhs was recovered by the appellant, who was the Inspector of Police-in-charge of the investigation in respect of job rocketing involved by the deceased Ahila @ Ahilandeswari and others.

8. According to the prosecution, under the guise of recovery of amount from the deceased person, the appellant had confined her in a hotel at Thanjavur and recovered Rs.2 lakhs and accounted only Rs.40,000/- as if only Rs.40,000/- was recovered and the remaining Rs.1,60,000/- was misappropriated by the appellant/first accused. Therefore, trust vested in the public servant has been violated, which would attract the offence under Section 409 IPC.

9. The learned Senior counsel would draw attention of this Court to the crucial pieces of evidence in regard to Sections 409 and 343 IPC. Not even a whisper was made anywhere in the evidence deposed by several witnesses that there was an entrustment of Rs.2



witnesses have turned hostile and they deposed that there was no entrustment of money to the first accused at all during the process of investigation. Further, the learned Senior Counsel would submit that in view of the death of the second accused during the trial and also complete acquittal of the third accused from all charges, the question of the first accused being found guilty for offence under Section 120(b) IPC did not arise at all. In the absence of involvement of other accused, there cannot be a charge of conspiracy attributable to the first accused/the appellant at all and on that short ground alone, the finding of the trial court about guilt of the appellant under Section 120(b) IPC is liable to be set aside.

10. The learned Senior Counsel during the course of his argument would also draw attention of this Court to the finding of the trial in paragraph No.12 of the judgment in which it is observed that the collection of money by the appellant is evident from the suicide notes of the deceased.

11. The learned Senior Counsel appearing for the appellant would further draw reference to the suicide note which is marked as Ex.P.4 wherein the deceased Akila @ Akilandeswari has stated as follows:

'They are aiming for more money it seems today we have to give 7 lakh. I am let with one option. I could no more bear this sexual torture-ma, Ma''

According to the learned Senior counsel, in view of the abovesaid suicide note the trial court has presumed that the first accused has committed an offence under Section 120(B) r/w 409 IPC. Except this statement which was found in the suicide note by the deceased Ahila @ Ahilandeswari, there was no other independent witnesses to corroborate that there was entrustment of money to the first accused namely, the appellant herein.

12. The learned Senior counsel would draw attention of this Court to the evidence of P.W.1 to P.W.3 wherein they did not say anything about the amount which was paid to the first accused. In fact, they deposed that all the money was paid to the second accused and some of the witnesses were turned hostile. On cross-examination, the prosecution did not elicit any information directly connecting the appellant herein for misappropriating the money entrusted to him, which according to the prosecution, the appellant had recovered the money from the deceased in order to make payment to the persons from whom the amounts were received by the deceased.

13. As regards the wrongful confinement for offence under Section 343 IPC is concerned, the learned Senior Counsel would submit that admittedly the deceased was staying in a private lodging house at Thanjavur at the relevant time. There was no evidence that she was confined in a room at the instance of the appellant herein. In fact, it is stated that she was really moving around which would demonstrate the fact that there was no incident of wrongful confinement by the appellant herein.

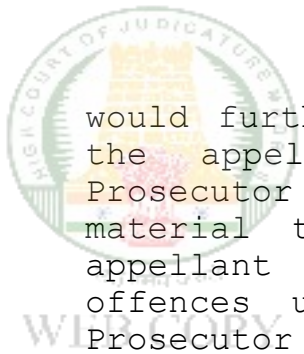


14. As far as the offence under Section 343 IPC is concerned, the evidence of P.W.1 and P.W.3, who are the parents of the deceased would point out that the deceased was never wrongfully confined at any place. P.W.1 has stated to the Revenue Divisional Officer that he and her daughter during first week of November 2007, stayed at a hotel, namely Temple Tower and after that, they did not meet any person and he returned to Coimbatore and the deceased went to Chennai. Therefore, the charge that the deceased was wrongfully confined from 1.11.2007 to 13.11.2007 was contrary to the evidence and records. Unfortunately, the trial court on the presumption that the deceased was wrongfully confined in a hotel has convicted the appellant herein.

15. The learned Senior counsel would also reiterate that the offence under Section 409 IPC was discussed in paragraph No.20 of the judgment of the trial court. However, in the discussion, in paragraph No.10-12 about the offence under Section 120(b) r/w 409 IPC, it was not on the basis of any evidence either directly or indirectly but it was only on the basis of presumption and without any legal or factual basis. In fact, the trial court does not give any specific finding as to when the appellant had received the money from the deceased.

16. The learned Senior counsel would submit that the trial court had recorded that the appellant is an efficient and excellent police officer and he was placed in the IG Team to assist the investigation officers involved in 8 Districts. Though the compliment was paid to the appellant, nevertheless, the trial court has convicted the appellant and sentenced him to undergo 10 years rigorous imprisonment without any factual or legal basis. As far as the present appellant is concerned, except P.W1 to P.W3, the other witnesses did not speak about any act relating to the appellant. Therefore drawing reference to the evidence of other witnesses is not material for the purpose of deciding the present appeal. This court records that this fact has been accepted by the learned Additional Public Prosecutor during the time of argument. Therefore the learned senior counsel would submit that this is not the case where some evidence was available for which there could be presumptions and influence the court. But on the other hand, there appears to be no evidence at all for implicating the appellant to the charges framed against him and therefore it is a fit case that the conviction recorded by the trial court to be set aside.

17. The learned Additional Public Prosecutor appearing for the respondent would submit that as many as 93 witnesses were examined and 106 documents were marked. However the learned Additional Public Prosecutor acknowledges that as far as the appellant is concerned, the evidence of few witnesses were relevant and other witnesses deposed about giving money to the deceased Akila @ Akiladeswari and



would further submit that there is sufficient evidence to convict the appellant. Unfortunately, the learned Additional Public Prosecutor is unable to point out as to what is the clinching material to show that there was entrustment of money to the appellant for discharging duties in order to implicate him for offences under section 409 IPC. The learned Additional Public Prosecutor is unable to show any material or any clinching piece of evidence to show that appellant was involved in commission of offence under Section 409 IPC, more so, in respect of offence under section 120(b) IPC.

18. As far as the offence under Section 343 IPC is concerned, the learned Additional Public Prosecutor would submit that only at the instance of the appellant, the deceased was lodged in a private hotel for few days. Therefore it would amount to wrongful confinement. However, he was unable to point out whether staying of the deceased in a hotel would amount to wrongful confinement since her father himself has deposed that it was on their own volition they came and stayed at the hotel. In fact after staying in the hotel she went to Chennai and her father went to Coimbatore. All these factors would in fact reveal that there is no element of evidence for the learned Additional Public Prosecutor to convince this court for commission of offence under section 343 IPC. In any event, the learned Additional Public Prosecutor has concluded that the trial court on the basis of materials available has convicted the appellant, which does not call for any interference by this court.

19. In reply to the argument advanced by the learned Additional Public Prosecutor, the learned Senior Counsel would rely on the judgment of the Hon'ble Supreme Court reported in **2018 (4) MLJ 732 (SC) (Anand Kumar Mohatta and Another Vs. State (Govt of NCT of Delhi and Another)** . He would particularly draw reference to paragraph No. 18 and also paragraph Nos.21 to 23 which are extracted hereunder:

18. The second submission of learned counsel for the Respondent No.2 is that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the agreement dated 03.06.1993 to his wife and has thereby committed criminal breach of trust. This charge is wholly untenable and rather extraordinary since the alleged fraudulent transfer of property by the Appellant No.1 to his wife, assuming it to be illegal, by no stretch of imagination can constitute the offence of a criminal breach of trust, since the property was not entrusted by the Respondent No.2 to the Appellants. The property belonged to Appellant No.1 and there was therefore no question of Appellants having been entrusted with their own property, and that too by the complainant, who had merely entered into a development agreement in respect of the property.



21. The essence of the offence lies in the use of the property entrusted to a person by that person, in violation of any direction of law or any legal contract which he has made during the discharge of such trust. In the present case, the amount of Rs. One crore was paid by the complainant-Respondent to the Appellants as an interest free deposit on the signing of the agreement. It was liable to be refunded to the complainant simultaneously on handing over of possession of the area of the owner's share to the owner in the group housing complex vide Clause 30 (b) of the agreement dated 03.06.1993.

22. Two things are significant in the transaction between the parties. Firstly, that the occasion for returning the amount i.e. the developer handing over the possession of the area of the owner's share to the owner in the group housing complex, has not occurred. According to the Appellants, the contract stands frustrated because no group housing can be legally built on 20 Feroz Shah Road, New Delhi since it falls in the Lutyens Bungalow Zone. Appellant No.1 has therefore, terminated the contract. Further, the amount has been retained by him as a security because not only is there any handing over of constructed portion, the complainant has also got into part possession of the property and has not handed it back. Also, the complainant has failed to get the property vacated from the tenant's possession.

23. We, thus find that it is not possible to hold that the amount of Rs. One crore which was paid along with the development agreement as a deposit can be said to have been entrustment of property which has been dishonestly converted to his own use or disposed of in violation of any direction of law or contract by the Appellant. The Appellants have not used the amount nor misappropriated it contrary to any direction of law or contract which prescribes how the amount has to be dealt with. Going by the agreement dated 03.06.1993, the amount has to be returned upon the handing over of the constructed area of the owner which admittedly has not been done. Most significantly the Respondent No.2 has not demanded the return of the amount at any point of time. In fact, it is the specific contention of the Respondent No.2 that he has not demanded the amount because the agreement is still in subsistence. We do not see how it can be contended by any stretch of imagination that the Appellants have misappropriated the amount or



dishonestly used the amount contrary to any law or contract. In any case, we find that the dispute has the contours of a dispute of civil nature and does not constitute a criminal offence.

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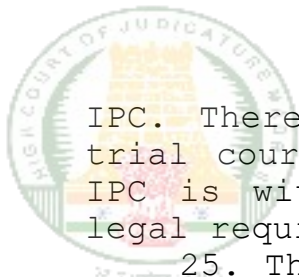
20. He would submit that when there is no evidence to show entrustment of money to the appellant, the offence of criminal breach of trust did not arise at all. In this case, there is absolutely no evidence to demonstrate that there was entrustment of money at any point of time with the appellant for which even the offence under Section 409 IPC will have to go. As regards 120 (b) IPC, since the second accused died during the trial and the third accused was acquitted from all charges, the allegation of criminal conspiracy would not arise at all.

21. As far as Section 343 IPC is concerned, such Section cannot be invoked in the present case since it emerges from the evidence that the deceased was moving freely and there is no wrongful confinement and there is absolutely no evidence to implicate the appellant even for the offence under Section 343 IPC. On the whole, he would submit that this is a case of no evidence and the appellant is liable to be acquitted from all the charges.

22. This Court has given its anxious consideration to the submissions made by the learned Senior Counsel appearing for the appellant and the submissions made by the learned Additional Public Prosecutor appearing on behalf of the prosecution.

23. As rightly contended by the learned Senior Counsel appearing for the appellant, the charge sheet, which contains 3 charges which were framed against the appellant, did not anywhere indicate that there was offence committed by the appellant under Section 120(b) r/w Section 409 IPC. In the absence of charge, the ultimate conviction recorded by the trial court for the commission of offence under Section 120(b) r/w 409 IPC has necessarily to be interfered with. In the absence of charge, this Court is unable to appreciate as to how the trial court can convict the appellant under Section 120(b) r/w 409 IPC. Any record of conviction must relate to specific contents of the charge. In the said circumstances, the record of conviction by the trial court on this aspect is unsustainable in law.

24. Further, as rightly contended by the learned Senior Counsel when the second respondent died during the trial and the third accused was acquitted from all the charges by the trial court, in such situation, the record of conviction for criminal conspiracy under Section 120(b) IPC did not arise at all. The question of appellant who was the first accused entering into criminal conspiracy in the absence of conviction of others cannot be countenanced both on facts and in law. Once one of the accused died and other accused was acquitted from all the charges, the appellant herein cannot be convicted alone for offence under Section 120(b)



IPC. Therefore, this Court finds that conviction rendered by the trial court for offence under Section 120 (b) IPC r/w Section 409 IPC is without application of mind and without reference to the legal requirements.

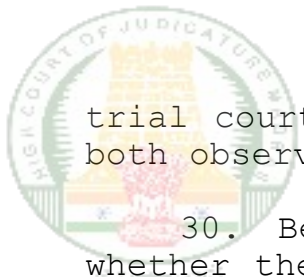
25. The conviction recorded under Section 343 IPC is concerned, overwhelming evidence unequivocally show that the deceased AKila @ Akilandeswari was not wrongfully confined at the instance of the appellant herein. As per the evidence placed on record, she was moving freely and she was also travelling. No witness has spoken about the wrongful confinement of the deceased at the hands of the appellant herein. This is again the case of no evidence at all. Unfortunately, the trial court has drawn inference on presumptions and without any basis had convicted the appellant under Section 343 IPC. This court once again notes that the record of conviction under Section 343 IPC cannot be countenanced both on facts and aw.

26. Further, the conviction recorded under Section 409 IPC is concerned, the trial court placed reliance on suicide notes, which were marked as Ex.P.3 and Ex.P.4. However, the appellant's name has not been mentioned as the person who was entrusted with money. She had stated generally that 'they were demanding more money'. In the absence of naming the person, it is unsafe to draw the conclusion on the basis of presumption that the deceased meant the appellant herein demanding more money. Such a course adopted by the trial court did not advance the case of impartial trial and conclusion.

27. As rightly held in the decision reported in **2018 4 MLJ 732 (SC)**, in the absence of entrustment, the question of criminal breach of trust did not arise at all. Although the trial court has concluded that a sum of Rs.2 lakhs has been paid and major portion of the amount was misappropriated by the appellant, this Court is unable to see relying on whose evidence the trial court had come to such conclusion. In the absence of any evidence implicating the appellant for offence under Section 490 IPC, the trial court has unfortunately determined to hold that the appellant is guilty of the charges on sympathetic basis due to the death of the deceased AKila @ Akilandeswari.

28. Moreover, the trial court ought to have seen that there are other accused who have received money for securing job on behalf of the deceased and it was very much possible that the deceased could have suffered at the hands of others also. In the said circumstances, it was too unsafe to pinpoint the guilt only as against the first accused/the appellant herein for which he was ultimately convicted by the trial court.

29. In fact the trial court has paid compliment to the appellant that he was an efficient and excellent police officer and he was placed in the IG Team to assist the investigation officers involved in 8 Districts on the one side. But on the other side, the



trial court had convicted him for the criminal breach of trust and both observations suffer from contradictions in terms.

30. Be that as it may, ultimately, this Court has to see whether there is acceptable piece of evidence in order to implicate the appellant for the charges framed against him. From the entirety of the evidence and other materials placed on record, this court is unable to see even an iota of evidence connecting the appellant with the charges framed against him. Therefore, this Court is of the considered view that the conviction recorded by the trial court is only on the basis of presumption and assumption, which cannot be countenanced by this Court while dealing with the question of conviction.

31. For the aforesaid reasons, this Court is convinced that the conviction recorded by the trial court against the appellant herein has to be interfered with. The appellant has made out a clear case for the grant of relief of acquittal from all charges. Therefore, the judgment dated 20.03.2017 made in S.C.No.373 of 2011 on the file of the Sessions Judge, Mahila Court (Fast Track Mahila Court) Thanjavur, is set aside. The appellant is acquitted from all the charges. Any amount paid towards fine shall be refunded by the trial court forthwith.

32. In fine, the Criminal Appeal is allowed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

1.The Sessions Judge, Mahila Court (Fast Track Mahila Court)
Thanjavur

2.The Deputy Superintendent of Policce,
CBCID, Thanjavur

3.The Superintendent,
Central Prison, Trichy

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl. A. (MD) No.101 of 2017

27.11.2019

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