

Crl.M.P.No.2127 of 2020
in Crl.A.SR.No.6663 of 2020

M. NIRMAL KUMAR.J.

This Criminal Appeal has been filed by the State, Inspector of Police, District Crime Branch, Tiruvarur with a delay of 1030 days against the judgment passed in C.A.No.42 of 2015 by the District and Sessions Court, Tiruvarur dated 18.01.2017.

2. The petitioner herein /State had registered a case against the respondent in Crime No.6 of 2007 for offences under Section 420, 464, 465 and 471 of IPC on 02.08.2007. Thereafter on completion of investigation had filed a charge sheet before the learned Judicial Magistrate, Thiruvarur in C.C.No.914 of 2008. During trial PW1 to PW10 were examined, Ex.P.1 to Ex.P.25 were marked. On the side of defence no witnesses were examined and no documents marked. On completion of trial, the trial Court convicted the respondent for offences under Section 420 of IPC and sentenced to undergo S.I for a period of one year and shall pay fine of Rs.500/- i/d S.I. for

a period of two months and for offence under Section 465 r/w 468 sentenced to undergo S.I. for a period of one year and shall pay fine of Rs.500 i/d S.I. for a period of two months. Aggrieved against the same the respondent filed an appeal before the District and Sessions Court, Tiruvarur in C.A.No.42 of 2015. The trial Court by judgement dated 18.01.2017 allowed the appeal and acquitted the respondent. Against which the State filed this appeal with a delay of 1030 days.

3. The brief facts of the case is that the respondent/Kasinathan has completed his 8th standard education and if he completes 10th standard he is entitled to get promoted as Junior Assistant in District Rural Development Office, Thiruvarur. Hence, he wrote 10th exam for four times as private candidate between the year 1993 to 1995 for getting promoted. In all the four attempts he failed in Maths subject. For the October 1995 exam conducted by the Tamil Nadu State Board of School Exams he was issued hall ticket in Reg.No.495256 and he wrote exam at National Higher Secondary School, Nagapattinam. Thereafter the respondent produced an original mark sheet in Sl.No.AA3595646 in his office informing that he had received the same from

the Tamil Nadu State Board of School Exams Department. In the said marksheet it is mentioned that the respondent has obtained 49 marks in Maths subject and the same was sent to the District Collector, Tiruvarur District, who forwarded the same to the Board of Exams for verification. The Secretary, Board of School Exams on perusal of the documents and register intimated through her report dated 14.08.2006 that the said marksheet is a forged document, the mark obtained by the respondent is only 09 marks which has been corrected as 49 marks. Hence a case has been registered against the respondent by the petitioner/State in Crime No.6 of 2007. The respondent having knowledge that the marksheet is a forged one has produced the same to cheat the Government and obtain promotion and hence he has committed offence under Sections 420, 465r/w 468 of IPC.

4. After completion of investigation, charge sheet was filed and the same was taken by the Judicial Magistrate Court, Thiruvarur in C.C.No.914 of 2008. The trial Court examined the witnesses as stated above and on the evidence and materials convicted the respondent. Thereafter the respondent had preferred an appeal in C.A.No.42 of 2015 before the District and

Sessions Court, Thiruvarur and by judgment dated 18.01.2017 allowed the appeal by acquitting the respondent. Hence the present appeal.

5. The contention of the petitioner/State is that C.A.No.42 of 2015 judgment was delivered by the District and Sessions Court, Tiruvarur on 18.01.2017 and the certified copy of the above said judgment was applied on 07.03.2017 and the same was obtained on 08.03.2017. After obtaining certified copy, legal opinion was sought from the Government Pleader, Thiruvarur who gave his opinion on 13.03.2017. After getting legal opinion the case papers were forwarded to Superintendent of Police, Thiruvarur District on 05.04.2017, the Superintendent of Police, Thiruvarur forwarded the same to the Director General of Police who sent the proposal to Home (CTS VII) Department Secretariat, Chennai vide letter in R.C.No.318/76209/Crime1(2)/2017 dated 23.05.2017. The Secretary to Government Home Department by letter No:42338/CTS/VII/2017-1 dated 06.06.2017 had sent the proposal to the office of the Public Prosecutor, High Court, Madras for filing revision which was received by the Public Prosecutor, High Court, Madras on 11.06.2017. The Public Prosecutor after

perusing the entire records gave opinion that it is a fit case for filing revision against the judgement passed by the District and Sessions Court, Thiruvarur by his opinion on 20.12.2017. The Government issued orders in G.O(2D) No.25 dated 02.02.2018, thereafter appeal was filed on 13.02.2020.

6. He further submitted that in the month of November 2018 the predecessor to the petitioner/State sworn affidavit had filed the revision on 17.11.2018 the same was returned by the Registry of this Court on 05.12.2018 for the reason that only appeal has to be filed and not a revision. Thereafter the predecessor was transferred and hence there was a delay from 27.02.2019 to 15.07.2019. On 12.09.2019 one R.Rani had sworn to an affidavit stating that she is presently posted as Inspector of Police, District Crime Branch, Thiruvarur and thereafter she took steps to file an appeal in the month of February 2020. Hence a delay of 1030 days had occurred. On the merits of the case it is submitted that the trial Court finding that the offence committed by the respondent is an serious offence, considering all the materials submitted by the Investigating Officer found the respondent guilty. The trial Court had given a finding that the accused had not submitted any

documentary or oral evidence to prove his innocence. PW1 & PW2 verified the documents of the accused, found to be forged. PW4 in this case had deposed that forged 10th marksheet was produced by the accused and thereafter it was sent for verification to the Tamil Nadu Board of School Examination. The beneficiary of the forgery is the accused. PW5 is the Enquiry Officer appointed to enquire the charges framed against the respondent under Tamil Nadu Civil Service and Discipline Rules. The lower Appellate Court failed to consider the trial Court finding that under Section 464 of IPC whoever dishonestly or fraudulently makes the document can be said to have made a false document. The lower Appellate Court failed to look into the fact that the beneficiary of the forgery is the respondent who would have got promoted based on the forged certificate. The trial Court on considering all the materials had given a well reasoned judgment, the lower appellate Court had not considered the finding of the trial Court and without giving proper reasons had acquitted the respondent.

7. The respondent filed a counter and submitted that the respondent was appointed as Office Assistant in District Rural Development Office,

Thiruvarur on 27.07.1992, the next promotion for him is Junior Assistant which requires 10th qualification. The respondent had completed 8th standard therefore he appeared for SSLC examination as a private candidate through Nathan Tutorial Centre, Tiruvarur and the respondent had passed in all the subjects except in Maths, hence the respondent again appeared for examination in the year 1995. Registration No.495256 was assigned to the respondent, the result was declared and the respondent was informed that he had passed and obtained 49 marks and the marks statement AA3595646 was received through post from the Department of Government Examination, Chennai 600 006. When the marksheet was sent for verification the Department of Government Examination had replied that “No such number” hence the District Collector, Thiruvarur lodged a complaint to the police department and directed to initiate penal action against the respondent.

8. Further he submitted that the trial Court on a wrong premises had convicted the respondent but the lower Appellate Court independently perused the evidence and materials and given an acquittal. There is no infirmity in the judgment to be aggrieved against. The petitioner/State has

filed this appeal with a delay of 1030 days. The Limitation Act, 1963 is not excluded from the Criminal Procedure Code, 1973. Each day delay ought to be explained.

<i>Sl.No.</i>	<i>Date</i>	<i>Description</i>
1	18.01.2017	Order in C.A.No.40/2015
2	07.03.2017	Copy application filed
3	08.03.2017	Obtained
4	30.03.2017	Opinion taken from PP, Tiruvarur
5	05.04.2015	Forward of SP
6	23.05.2017	SP to DGP
7	06.06.2017	DGP to Home Department
8	11.06.2017	Opinion of High Court PP
9	20.12.2017	Given opinion
10	12.02.2018	Issued G.O.
11	11.02.2020	Appeal filed with delay of 1030 days

9. The delay of 1030 days have not been properly explained. Genuine Bureaucratic and the office procedure takes some time but in this case there have been an extraordinary delay of 1030 days. In this case G.O. has been issued on 12.02.2018 and the appeal came to be filed only on 11.02.2019 which is 2.8 years after the issuance of G.O. The respondent had already been suspended from service and attained the age of superannuation and he is

without any retirement benefit, he is now aged about 64 years with diabetic.

10. Heard the submission and perused the materials available on record.

11. It is seen that in this case PW1 is the District Revenue Officer, Thiruvarur incharge District Collector, Tiruvarur, who had submitted the documents to the police along with Ex.P1. P.W.2 is from District Rural Development Department, Tiruvarur who states that the 10th marksheet produced by the respondent turned to be forged and steps were initiated to take Disciplinary Proceedings as well as Criminal Proceedings against the respondent and the respondent was suspended from service. P.W.3 is the P.A. to the Collector and through her Ex.P2 to Ex.P10 have been marked. PW4 & PW6 the aspirant promotee who had submitted their 10th marksheet along with Pichaimuthu, Kalavathi and the respondent herein and the same was sent for verification to Board of School Exams and the marksheet of the respondent found to be forged. PW5 is the BDO who had conducted Disciplinary Proceedings against the respondent, on completion of enquiry it

was found that there was no sufficient evidence to prove that the respondent had forged the marksheet hence the charges were not proved. P.W.7 is the P.A. to the Collector finding that Ex.P.1 marksheet found to be forged, the District Collector through Ex.P.6 had addressed a letter to initiate Disciplinary and Criminal Proceedings against the respondent through Office Memorandum Ex.P.12. The complaint to the respondent police Ex.P.13 was forwarded through him. P.W.9 the Joint Director of Tamil Nadu Government Examination and Director of School Exam received a letter Ex.P.4 from the District Collector, Thiruvarur along with marksheet of the respondent and three others for verification. The original marksheet of the respondent was compared with the permanent records of the marksheet and it was found that the respondent had obtained only 09 marks, while so in Ex.P.11 marksheet, the marks obtained was mentioned as 49 marks and hence the respondent has not cleared 10th examination, which was communicated through Ex.P.6 letter. P.W.10 is the Investigating Officer who on completion of investigation had filed a charge sheet in this case.

12. The contention of the respondent is that a case has been foisted against him. The respondent has no knowledge about the genuineness or otherwise of the document, the respondent produced the document as such he received from the Board of Secretary Education. The mistake in mark has wrongly crept in, which is a typographical mistake taken place at the Board of Examination and for the mistake committed by the officials of the Board the respondent. The respondent had been falsely implicated in this case.

13. Further he submitted that Ex.P.16 is the extract of tabular column mark register dated 18.12.2019 and it is not denied that the marksheet is not that of the Government Examination Department. Further submitted that lower Appellate Court considering all these aspects had thoroughly examined the evidence of PW9 the Joint Director of Tamil Nadu Government Examination and Director of School Exam, who had given a positive evidence that the mark shown in Ex.P.11 seems to be wrong compared with Ex.P.16 otherwise Ex.P.11 is proper in all aspects with Government Seal, Signature of the Secretary and in all characteristics.

14. Considering the submission and on perusal of the materials it is seen that the respondent had not denied about the submissions of the marksheet Ex.P.11. In this case PW9 is the Joint Director of Tamil Nadu Government Examination and Joint Director of School Exam who on verification of Ex.P.11 had categorically stated that the Ex.P.11 is genuine in all aspects and its characteristic, even the signature and seal are genuine, the only difference compared with Ex.P.16 the mark shown is “09” and in Ex.P.11 the mark is “49” for the maths subject. It is admitted by the Investigating Officer in this case that the marksheet was not subjected to Forensic study and there is no evidence to show there have been, erations or any corrections made in the marksheet, who has made the corrections is also not found. In view of positive evidence of PW9 that the marksheet except for the mark in all aspect is genuine. The explanation of the respondent that he had received the marksheet from the Department of Government Examination, Chennai 600 006 through post and the same was submitted seems to be acceptable. PW5 the Enquiry Officer had given a categorical finding that the respondent has not committed any forgery but Ex.P.11 is forged. In the absence of any Forensic study and the admission of P.W.9 that

the marksheet is genuine in all aspects except the recording of marks that alone would not lead to inference that the respondent had carried out the corrections and the respondent committed forgery and presented the forged document.

15. Thus on the available materials and merits of the case, the finding of the lower Appellate Court cannot be held improper, perverse and wrong. Further there had been a delay of 1030 days which had not been properly explained more particularly after the issuance of G.O. there can be no valid reason for keeping it pending for 2.8 years in filing an appeal. Though a feeble explanation was attempted by the prosecution to show that initially they had filed a revision and later it was returned and directed to be filed as an appeal, the returned revision petition has not been produced to justify the delay.

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M. NIRMAL KUMAR, J.

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16. The Hon'ble Apex Court in the case of ***Government of India Ministry of Home Affairs Narcotic Control Bureau Vs MD.Wasim Akram*** and also in the case of ***The State of West Bengal & Ors Vs Soroj Kumar Mondal & Ors*** had held that for condonation of delay each day of delay has to be properly explained, in this case there is no such explanation. In view of the same this Court is not inclined to condone the delay, hence the petition is dismissed.

24.11.2020

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Pre-Delivery Order in
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