IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2020

CORAM:

THE HON'BLE Mr. JUSTICE **M.NIRMAL KUMAR**

CRL.MP.Nos.4540, 4597 & 4552 of 2020
in
CRL.A.Nos.289, 293 & 290 of 2020

1. Ragupathi
   S/o.Kumaran,
   Formerly Asst. Educational Officer,
   Ulundurpet Division,
   Villupuram District.

... Petitioner in Crl.MP.4540/2020/A1

2. Amanulla
   S/o.Enayadulla
   Formerly Junior Assistant,
   A.E.O.Office,
   Ulundurpet Division.

... Petitioner in Crl.MP.4597/2020/A2

3. Pon Kannan
   S/o.Ponnusamy,
   Head Master,
   Panchayat Union Elementary School,
   Pali, Ulundurpet.

.. Petitioner in Crl.MP.4552/2020/A3

Versus

The State Rep. by its
The Deputy Superintendent of Police,
Crime Branch, C.I.D.,
Cuddalore District.
(Crime No.2/1997)

.. Respondent in all cases.

Prayer: Criminal Miscellaneous Petitions filed under Section 397(1) of Criminal Procedure Code, to suspend the sentence passed by the learned Special Judge, Special Court for Prevention of Corruption Act, Villupuram in Special Case No.4 of 2016 dated 16.07.2020 pending disposal of the above appeals.

For Petitioners : Mr.S.Saravanakumar

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

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COMMON ORDER

The petitioners, who are the accused filed these Criminal Miscellaneous Petition to suspend the sentence passed by the learned Special Judge, Special Court for Prevention of Corruption Act, Villupuram in Special Case No.4 of 2016 dated 16.07.2020. The conviction and sentence imposed by the trial Court are as follows:-

Petitioner/ Accused	*Conviction*	*Sentence*
A1	Under Section 409 IPC (12 Counts)	To undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.12,000/-, in default to undergo simple imprisonment for a period of 36 months
	U/s 465 IPC (1 count)	To undergo one year R.I, Fine amount of Rs.1,000/-, in default to undergo Simple Imprisonment for 3

Petitioner/ Accused	*Conviction*	*Sentence*
		months
	U/s 467 IPC (1 count)	To undergo 3 years R.I fine amount of Rs.1,000/-, in default to undergo 3 months simple imprisonment
	U/s 471 IPC (1 count)	To undergo 3 years R.I fine amount of Rs.1,000/-, in default to undergo 3 months simple imprisonment
	U/s 477(A) IPC (12 counts)	To undergo 6 years R.I fine amount of Rs.12,000/-, in default to undergo 36 months simple imprisonment
	U/s 120B of IPC (2 counts)	To undergo 12 months R.I fine amount of Rs.2,000/-, in default to undergo 2 months simple imprisonment
	U/s 13(2) r/w 13(1) (c) (d) (i) of Prevention of Corruption Act, 1988	To undergo 4 years R.I fine amount of Rs.3,50,000/-, in default to undergo 6 months simple imprisonment
A2	Under Section 409 IPC (12 Counts)	To undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.12,000/-, in default to undergo simple imprisonment for a period of 36 months
	U/s 465 IPC (2 counts)	To undergo 2 years R.I, Fine amount of Rs.2,000/-, in default to undergo Simple Imprisonment for 6 months
	U/s 467 IPC (2 counts)	To undergo 3 years R.I fine amount of Rs.2,000/-, in default to undergo 6 months simple imprisonment
	U/s 471 IPC (2 counts)	To undergo 6 years R.I fine amount

Petitioner/ Accused	*Conviction*	*Sentence*
		of Rs.2,000/-, in default to undergo 6 months simple imprisonment
	U/s 477(A) IPC (12 counts)	To undergo 6 years R.I fine amount of Rs.12,000/-, in default to undergo 36 months simple imprisonment
	U/s 120B of IPC (2 counts)	To undergo 12 months R.I fine amount of Rs.2,000/-, in default to undergo 2 months simple imprisonment
	U/s 13(2) r/w 13(1) (c) (d) (i) of Prevention of Corruption Act, 1988	To undergo 4 years R.I fine amount of Rs.1,50,000/-, in default to undergo 6 months simple imprisonment
A3	Under Section 409 IPC (8 Counts)	To undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.8,000/-, in default to undergo simple imprisonment for a period of 24 months
	U/s 465 IPC (1 count)	To undergo one year R.I, Fine amount of Rs.1,000/-, in default to undergo Simple Imprisonment for 3 months
	U/s 467 IPC (1 count)	To undergo 3 years R.I fine amount of Rs.1,000/-, in default to undergo 3 months simple imprisonment
	U/s 471 IPC (1 count)	To undergo 3 years R.I fine amount of Rs.1,000/-, in default to undergo 3 months simple imprisonment
	U/s 477(A) IPC (8 counts)	To undergo 2 years R.I fine amount of Rs.8,000/-, in default to undergo 24 months simple imprisonment

Petitioner/ Accused	*Conviction*	*Sentence*
	U/s 120B of IPC (1 count)	To undergo 6 months R.I fine amount of Rs.1,000/-, in default to undergo 1 month simple imprisonment
	U/s 13(2) r/w 13(1) (c) (d) (i) of Prevention of Corruption Act, 1988	To undergo 4 years R.I fine amount of Rs.2,50,000/-, in default to undergo 6 months simple imprisonment

2.For the sake of convenience, the parties are referred to as per their ranks before the trial Court.

3.The case of the prosecution is that on 09.12.97 the Director of Elementary Education Thiru.R.Narayanasamy lodged a complaint stating that the former Asst. Educational Officer Tr.Ragupathy (A1) with the help of the Junior Assistant Amanullah (A2), manipulated the records, prepared forgery bills and drawn the Government money from the treasury and misappropriated the Government money to the tune of Rs.15,02,571/-. In the above act of cheating and manipulation of records one Pon.Kannan (A3), also involve and hence requested criminal action against the accused. Based on the said complaint the Inspector of Police, C.B.C.I.D., Cuddalore registered a case in

Cuddalore CBCID Cr.No.2/1997 u/s 409, 420, 465, 467, 468, 471, 477(A) IPC and Sec.13(2) r/w 13(1)(c) and (d) (i) of Prevention of Corruption act and submitted the F.I.R to the Dy. Supdt. of Police, CBCID, Chengalpet Range. After bifurcation of CBCID Range, The DSP, Cuddalore CBCID took up further investigation in this case from 27.12.2000. During the course of investigation, 10 original bills pertaining to this case were collected from the Accountant General's Office, Chennai and other connected records from Assistant Educational Officer, Ulundurpettai which are found to be fabricated by the above said accused in order to misappropriate the amount. On completion of investigation, final report was filed before the Hon'ble Chief Judicial Magistrate court, Villupuram on 31.08.2002. Later, this case was transferred to special court for V & AC cases on 06.09.2016 and the same was taken on file in Special S.C.No.04/16. The special court framed charges against the petitioners/accused for the offence punishable u/s 409, 420, 465, 468, 471, 477(a) IPC r/w 13(2), 3(1) (e) (d) (i) Prevention of Corruption Act, 1956.

4.During trial, among 114 witnesses cited by prosecution 86 witnesses were examined and 175 exhibits were marked to prove the prosecution case.

5.The contention of the petitioners is that in the Ulundurpet Division there were 84 schools, for the teachers' salary to be withdrawn and paid by Assistant Educational Officer through the pay masters. Each pay master was assigned 5 to 10 schools and the payments were made through the paymasters. He further submitted that the period of offence is from 1993 to 1995. During that period, A1 was Assistant Educational Officer from 14.01.1994 to 13.06.1995. The audit has taken place after the transfer of A1. During the audit, relevant documents were not produced and could not be inspected. At that time, A1 was working in the nearby school and he was never called for any enquiry or asked to produce any documents. PW-1 received an audit report from the Assistant Director of his department on the accounts of the Assistant Educational Office at Ulundurpet, the report reveals that there was misappropriation of funds. PW-2 had conducted Special Audit and in his audit, he found that Rs.3,00,805/- was falsely cleared in the name of Headmaster, who was not in service.

6.PW-2 is a member of the audit team, who audit the PD accounts. PW-4 is another member of the team, who found the funds and other amounts, which was misappropriated. PW-5 had assisted the audit team. PW-6 had conducted audit along with PWs-4 and 5. PW-7 is the Personal Assistant to CEO, who accompanied the Special audit team. In this case, initially, audit, which gave raise to suspicion and ordering Special Audit, neither the auditor nor the first audit report was produced before the trial Court. PW-6 and one Ganesan, who submitted a report based on the audit, within 3 days of the deputation, they had submitted the report in a haste. The report was done in perfectionary manner for audit conducted for a period of more than three months.

7.PW-1 admits that he had instructed for Special audit on studying the report of one Nithyanandam, who had given a report for the year 1993-1994 and 1994-1995. The said Nithyanandam is not examined as witness in this case and the report of Nithyanandam No.657/24/96 dated 07.12.1996 is also not produced. Further, PW-1 in his evidence, has stated that during the audit, it was found that the Headmaster was paid when he was not in service and thus Rs.3,00,805/- has been misappropriated as could be found in the audit report. Likewise Rs.2,04,854/- were received by one Pon Kannan, Headmaster of Poly Panchayat Primary School and Rs.1,07,206/- was paid to the Headmaster of Yemam Primary School. He further admits that in the report, there is no mention about the verification of the service register of the said persons whether they worked in the school or not. But the lower Court had given a finding as though the service register disclosed that the said Narayanasamy was on leave and on loss of pay likewise for other persons. The audit report, is contra to the evidence. He further admits that the above mentioned three teachers had joined the school after receiving the letter from the Director of Primary school education. PW-2 admits that he had not examined any of the teachers and their appointment letters was not shown to him. Further, based on the letters, the entries would be made in the service register and thereafter, pay bills would be made ready and submitted to the treasury for encashment. In this case, none of the teachers' service registers were verified by the audit team and produced in this case.

8.PW-4 submits that on 19.04.1994 Rs.5,000/- had been misappropriated as though paid to A3. For the period 02.06.1989 to 31.03.1999 an amount of Rs.35,199/- had been received and only an amount of Rs.25,137/- had been paid, the balance amount was misappropriated. When the case itself is that A1 to A3 conspired together and misappropriated the payment made to the teachers. The auditor's findings is that the amount, which was to be paid to A3 has been misappropriated by A1 to A3, which cannot be the case. The allegation in this case is that the paymasters received payments and thereafter, they have not distributed the entire amount to the teachers and they returned back the undistributed amount to A1 and A2, who misappropriated and some amount was misappropriated by A3. None of the paymasters have stated that they handed over the money to A1 and A2, which would demolish the entire case of the prosecution. The lower Court failed to consider the same and had not adverted to this part of evidence.

9.The petitioners further submitted that PW-6 Joint Director of Primary School Education stated that he had given a report and in his report, he had mentioned that A3-Headmaster of the Primary School had misappropriated the amount and handed over the amount to A2 and A1. At that time, the Assistant Educational Officer was one Pakiri and he is the person responsible for the misappropriation. The said Pakiri has not been made an accused, but examined as PW-17. PW-9-Educational Officer in his evidence, stated that during his tenure at Villupuram, no file had come to his notice with regard to the suspension of any teacher. Likewise, when the documents was shown to him he clearly stated that the signature found in the file is not that of him and he is certain about it, which has been marked as S10 and S11 series as Ex.P75. In this case, though a petition for recalling PW-81-Handwriting expert was filed, the same was dismissed for the reason it is belated and it would cause delay. On the other hand, PW-84/IO, who was examined initially on 16.04.2015 was recalled and further, chief examination was recorded on 19.07.2019, after a period of four years. The lower Court when allowing PW84 to be recalled after four years by prosecution, it does not reason well in denying recall of PW-81. In such circumstances, no reliance to be placed on the evidence of PW81 and giving adverse finding based on the evidence of PW-81 is not proper. In this case, three Assistant Educational Officers and two teachers, who are similarly placed, are not made as accused. On the other hand Pws-17 and 18, during whose period, the misappropriation took place are examined as witnesses. Paymasters, in this case, PW-9, 10, 14 and 16, and other paymasters nothing stated against the petitioners that the amount paid to them to be disbursed was returned back to the petitioners and thereby, the petitioners misappropriated the same.

10.In this case PW-84, Investigating Officer was examined initially in the year 2015 and thereafter, further chief examination was recorded, four years later during 2019, at that time, Exs.P151 to 175 have been marked. PW-84 admits that he had not collected these documents and he is not aware of the contents of the documents and also he is not the competent person to mark those documents. The lower Court placed reliance on these documents, convicted the petitioners. PW84 admitted that he is not aware about the procedures followed in the office of the Assistant Educational Officer. The lower court ought not to have relied upon these exhibits in convicting the petitioners. Hence, he submitted that there are lot of infirmities and contradictions between the evidence of witnesses and the documents produced in this case. The admission of the witnesses is that the first audit report was not produced, which is the genesis of the case. Further, the petitioners are all senior citizens, the first petitioner is admitted in the hospital for heart ailments and seriously sick and the petitioners retired from service long back and they are suffering from age related health ailments and hence, he prays for grant of suspension of sentence.

11.The learned Additional Public Prosecutor appearing for the respondent submitted that It is denied that the entire prosecution case rests upon Exp1 Special audit report. Corroborating materials in the form of 175 documents, marked as Exhibit P1 to P175 formed basis for the conviction of the

Accused/Appellant. Therefore the dictum in ***okilaluha Vs. State of Orisa, Volume 58 (1984)*** relied by the appellant A1 does not apply to the case in hand. The Appellant/A1 during trial failed to raise any defence stating that the auditor failed to peruse the service register of teachers to arrive at the conclusion mentioned in his report. Hence the Appellant/ A1 barred from raising said grounds in his appeal. In any event the Lower court not committed any error by not considering the fact that the service registers of teachers were not produced at the time of auditing as the Auditor was able to collect evidence for forgery and misappropriation from other documents.

12.It is denied that fair trial was not undergone and hence the conviction of the Appellant/Accused need not to be set aside. In page No.26 of Judgement "During 1993 to 1995, the amount as payable to various schools under subsidy scheme to the sum of Rs.1,21,301/- was drawn by converting the cheque amount into Rs.1,57,201/-thereby the excess amount of Rs.35,900/- was misappropriated by A1. To prove the said allegation the prosecution relied upon the evidence of Tr.S.Mohan and P.W.6. Tr.R.Palanisamy who were audited the said accounts and also relied upon the PD register book of A.E.O. From which it is found that under this head, the amount of Rs.1,57,201/- found to be given by D.E.O to A.E.O Ulundurpet and the said amount was encashed on 07.04.1994, but in the said amount, the A1 recorded the sum of Rs.1,21,301/- as credit in P.D account, with regard to the rest of Rs.35,900/- concerned, there is no entry found in the P.D register". The judgment given clear explanation to the effect that the Appellant /Accused was unable to account the amount drawn by him during 1994 by way of cheque the cash meant for the year 1993 to 1995,at the time of enquiry by the Audit team. It is submitted that the Special Audit was conducted to verify and confirm the earlier audit report and hence Special audit was completed within three days period. The records inspected during audit sufficiently established the offence committed by the Appellant /Accused.

13.It is submitted that it is not correct to state that the appellant /Accused was charged and convicted only on the basics of audit report. There are voluminous corroborative piece of evidence to prove the commission of offence and hence non examination of one Nithiyanandhan who made earlier audit, no way affects the case of prosecution. Accused A1 to A3 dishonestly created false documents namely bills and challans, drawn cheques and encashed the Government money through the staff working under Accused A1 and misappropriated the same and thereby caused the loss to the exchequer. The Teachers and Staff who were entitled for the amount didn't receive the money, and it was clearly deposed by them during the trial. The following bills were dishonestly prepared, signed and encashed by the accused A1 to A3. The signature, side initial and writing in the above said documents were compared with the admitted signature and writing of the accused through documents experts of forensic department. PW 81 Tr.Ramakrishnan– Document Expert,categorically deposed that the above said writing belongs to A1 to A3. During trial also the appellant A1, A2 &A3 not disputed their signatures found in the false document. It is not correct to state that the Appellant/A2 was not empowered to sign the cheque and the allegation against him are vague. The findings of the Lower court in para 30 and 50 of the judgement clearly brings out the evidence to prove that the accused used only forged cheques to facilitate the withdrawal of money which was later misappropriated.

14.It is submitted that it is untenable to content that the paymasters alone responsible for the disbursement of money and that the Appellant/A1 is not liable. In fact the Appellant/A1 did not raise said plea before the trial court and in para 156 of Judgement it was concluded by the trial court that the Paymasters are no way responsible for the misappropriation committed by the Appellant/A1 herein."With regard to the paymasters who said to be withdrawn the money at the instruction of the A1 concerned, while perusing the case of the A1 and A2 during the cross-examination of concerned paymaster, there is no case put-forth by the A1 and A2 that the said amounts are being misappropriated by the said witnesses. Nothing has been alleged as against the said paymasters who examined as witnesses".

15.This Court considers the rival submissions and perused the materials available on record.

16.Considering the rival submissions, it is seen that the entire Case based on a audit report submitted by Nithyanandhan. It is seen that neither the said Nithyanandhan was examined nor his report is marked in this Case. Thereafter special audit team was formed. It is also seen that A1 was Assistant Educational Officer during the period 01.11.1994 to 30.06.1995 prior to him. PW17 was Assistant Educational Officer from 01.04.1993 to 31.10.1993, thereafter, PW-18 was Assistant Educational Officer from 01.11.1993 to 31.01.1994 and the offence period from the year 1993 to1995. It is stated that during the audit, the requisite documents were not produced. A1 was very much available and he was working in a school nearby and he was not called for any explanation. Further, none of the accused were called to give explanation and further they were not allowed to produce any documents. It is admitted that the pay bills would be submitted to the treasury, based on the entries made in the service register and other records. In this case, no service register was verified and produced, which is the basis. Further, none of the paymasters have been examined as witness in this case have stated that they have paid to the concerned teachers and thereafter a portion was returned to the petitioners and thereby, misappropriation committed by the petitioners. Further, PW-81-Handwriting expert has not been subjected to cross-examination. On the other hand, PW-84 Investigating Officer has been examined initially in the year 2015 and thereafter, 4years later, in the year 2019 furthe chief examination conducted and at that time, Exs.P-151 to 175 were marked. PW84 admitted that he has not collected Exs.P151 to P175 and does not know its contents and he is not competent to speak about these exhibits.

17.In view of the submissions made on either side, this Court finds that there are arguable points in the appeal, it would take some time for the appeal to be taken up for final disposal and hence, this Court is inclined to suspend the sentence and grant bail to the petitioners till the disposal of the appeal.

18.(i) Accordingly, the substantive sentence of imprisonment imposed on the petitioners alone is suspended till the disposal of the appeal and the petitioners/accused are ordered to be enlarged on bail.

(ii) The petitioners are directed to execute personal bond for Rs.10,000/- before the Superintendent of Prison, in which, they are confined now. After the release from prison, the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) each along with two sureties for like sum before the learned Special Judge, Special Court for Prevention of Corruption Act cases, Villupuram, within 15 days from the date of lifting down of lock down and commencement of regular functioning of Court below.

(iii) the petitioners are directed to appear before the trial Court on the first working day of every English month at 10.30 a.m., after lifting of the lock down.

19.With the above directions, the Criminal Miscellaneous Petitions are ordered.

20.08.2020

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To

1.The Special Judge, Special Court for Prevention of Corruption Act Cases,
Villupuram.

2.The The Deputy Superintendent of Police,
Crime Branch, C.I.D.,
Cuddalore District.

3.The Superintendent,
Central Prison,

4.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.,

kmi

Crl.M.P.No.4002 of 2020
in
Crl.RC.No.497 of 2020

20.08.2020