



BAIL SLIP

The Appellant/Accused namely A.K.Sudharsan was directed to be released on Bail Vide order dated 22.01.2016 in CRL MP (MD) No.598 of 2016 in CRL A (MD) No.20 of 2016 on the file of the Madurai Bench of Madras High Court.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 16.10.2020

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD) .No.20 of 2016

A.K.Sudharsan

... Appellant

Vs.

State through
The Inspector of Police,
Vigilance and Anti Corruption,
Thanjavur District,
Crime No.7/2007

... Respondent

Prayer : Criminal Appeal filed under Section 378 (4) of Criminal Procedure Code, to call for the records relating to the judgment in Spl.C.C.No.31 of 2014 dated 28.12.2015 on the file of the Special Court cum Chief Judicial Magistrate, Thanjavur at Kumbakonam and set aside the same and allow this Criminal Appeal.

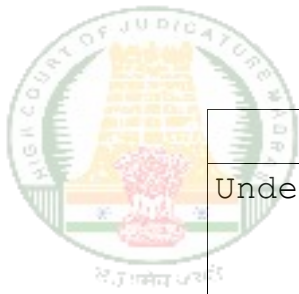
For Appellant : Mr.M.Subash Babu

For Respondent : Mr.S.Chandra Sekar
Additional Public Prosecutor.

JUDGMENT

This appeal is directed against the Judgment dated 28.12.2015 made in Spl C.C. No. 31 of 2014 on the file of the Special Court-cum-Chief Judicial Magistrate, Thanjavur. The appellant by the said Judgment was found guilty and sentenced as follows :

Charge	Sentence
Under Section 420 of IPC	2 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment



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Charge	Sentence
Under Section 471 of IPC	2 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment
Under Section 7 of Prevention of Corruption Act 1988	2 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment
Under Section 13(1) (d) r/w 13(2) of Prevention of Corruption Act 1988	2 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment

2.The charge against the appellant is as follows :

He was working as Assistant in the office of the Civil Supplies Department, Thiruvaiyar from 16.12.2004 till 01.03.2007. He was earlier working as Revenue Inspector in the office of the Special Tahsildar, Adi Dravidar Welfare. He had received illegal gratification from a number of poor women ranging from Rs.1,500/- to Rs.2,200/- and issued bogus pattas. The petitioner was therefore charged with having committed the offences under Sections 420 IPC, 471 IPC, Section 7 and 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988. In support of the charges, the prosecution examined as many as 37 witnesses and marked Exs.P1 to P44. On the side of the accused no evidence was adduced.

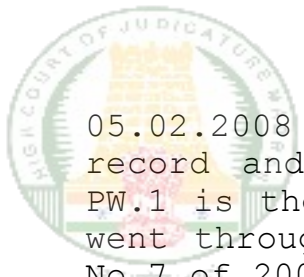
3.The learned Trial Judge after a detailed consideration of evidence on record found the accused guilty and sentenced him as mentioned above. Questioning the same, this appeal came to be filed.

4.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned judgment and allow this appeal and acquit the appellant of all the charges.

5.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the impugned judgment does not call for any interference.

6.I carefully considered the rival contentions and went through the entire evidence on record. PW.1 was working as the District Revenue Officer. He received a report from the respondent on

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05.02.2008 and he was requested to go through the materials on record and accord sanction for prosecuting the appellant herein. PW.1 is the authority to remove the appellant from his post. PW.1 went through all the relevant materials including the FIR in Crime No.7 of 2007, the statements of the witnesses recorded under Section 161 of Cr.P.C, the bogus pattas said to have been issued by the appellant and the forensic report and was satisfied that there was material to prosecute the appellant herein. He therefore issued the sanction order dated 09.04.2008 (Ex.P1). Except putting the usual suggestion that PW.1 had mechanically accorded sanction, no other question was put to him.

7.PW.2- Janaki Rani deposed that she used to go to the office of the Collectorate, every Monday and write out petitions and applications for the illiterate. She knew that the accused was employed as Revenue Inspector in Adi Dravidar Welfare Department. Some few years prior to her deposition before the Court, during the first week of April, PW.2 and PW.3-Amirtham had gone to the Adi Dravidar Welfare Department for submitting an application for issuance of free house site patta. The accused was coming out of the office then. He informed PWs.2 and 3 that the Tahsildar was not available in the office and called upon them to wait outside. He also mentioned that pattas have been issued for Adi Dravidar Women in Pollankarai Village and that it is possible to issue some more pattas for such persons and requested PW.2 to introduce poor women who belong to Adi Dravidar Community. Carried away by the aforesaid suggestion of the accused, PWs.2 and 3 took the appellant/accused some 15 days thereafter to Thenvettikara Street in Thanjavur. PW.2 introduced Non-Adi Dravidar Women to the accused. Thereafter, PWs.2 and 3 took the accused to RMS Colony and introduced him to illiterate Non-Adi Dravidar Women. The accused assured them that he would obtain patta for house site and they should not miss this opportunity. In the same year, on 5th May, PW.2 once again took the accused to Thenvettikara Street. The accused told them they should give their passport size photo and that they have to spend Rs.1,500/- to 2,100/- per applicant. If they could pay the said amount, he would be able to obtain the patta immediately. Thereupon, some 44 persons came forward and gave their passport size photos and also the amount demanded by the accused. PW.2 deposed that she also wanted patta for herself. The appellant is said to have told her that as she was a spinster, if she had any elder sister she may be introduced to him. Thereupon, PW.2 introduced her elder sister Mallika. PW.2 handed over a sum of Rs.1,500/- along with her sister's photo in the office of the District Collector, Thanjavur. Seven days later, the accused handed over the house site patta in the name of her sister. He also handed over a bunch of pattas for all the applicants. In order to get the allotted sites surveyed and measured, PW.2 and other applicants went to the office of the Adi Dravidar Welfare Department and then they came to know that the accused was no longer employed in the said department. PW.2

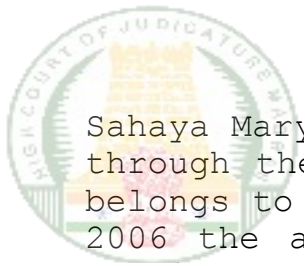


and others showed the pattas given to them by the accused. They were told that all the pattas are bogus ones and that there is no site available for being assigned. There upon, the petitioner lodged a complaint before the respondent. The patta issued in favour of PW.2's elder sister was marked as Ex.P2. Her testimony could not be shaken in the cross-examination. PW.2 admitted that she did not complain before the local police and that she went only before the respondent to lodge a complaint. She also admitted that she had not gone to the Vigilance and Anti Corruption police earlier. Though such answers were elicited from PW.2, her core testimony remains unshaken.

8.PW.3-Amirtham also deposed on the same lines as that of PW.2. Few years prior to her testimony in the Court she went to the office of the District Collector for submitting an application for free house site patta. The accused informed her that in Pollankarai Village there are some free house site plots and he is ready to get them assigned if the village women are ready to offer Rs.2,100 per patta. Believing the words of the accused PW3 Amirtham introduced a few women to the accused. PW.3 Amirtham and 20 others gave a sum of Rs.2,100/- each and also their photos. The patta received by P.W.3 is marked as Ex.P.3. The assigned site was not year marked only later PW.3 was informed that it was a bogus patta. In the cross-examination PW.3 admitted that she did not remember the exact date of submission of application and she stated that it could be three or four years ago. Her testimony could not be shaken at all in the cross-examination.

9.PW.4 is a resident of Thenvettukara Street. The assurance which the accused gave to PWs.2 and 3 was made to PW.4. On 05.06.2006, the accused had come to the house of PW.2. PWs.4 and 8 are neighbors. PW.3 Amirtham took PW.4 to the house of PW.2. PW.4 categorically stated that the accused assured her if sum of Rs.1,500/- was paid, he would obtain for her house site patta in Pollankarai Village. PW.4 stated that she gave a sum of Rs.1,500/- and that thereafter PW.2 Janagi Rani gave her house site patta bearing No.236. PW.2 wanted to see the site. Only thereafter she came to know that it was a bogus patta. It was marked as Ex.P4. The photo of PW.4 is found in Ex.P4. PW.4 was cross-examined by the accused. After PW.4 came to know that it was a bogus patta, she did not complain to the local police immediately. She did not remember when she handed over the bogus patta to the police. She also did not remember his to when required by the police. Except eliciting the aforesaid answers, the core allegation against the accused remains unshaken.

10.PW.5 Rajalaskhmi also deposed on the same lines and Ex.P5 was marked through her. PW.6 Kavitha also deposed on the same lines and Ex.P6 was marked through her. PW.7 - Kokilam, PW.8 - Rani Pappa, PW.9 - Mohana, PW.10- Rosyln Irudaya Mary and PW.11 -



Sahaya Mary deposed on the same lines and Exs.P7 to P12 were marked through them. PW.12- Kalaiselvi is a resident of RMS Colony. She belongs to washerman community. She deposed that some time in April 2006 the accused, met her and assured that he would be able to obtain assignment of pattas. PW.12 stated that she collected money from about 25 persons who are her relatives and handed over the same to the accused. PW.12 came to know later that the pattas handed over by the accused are bogus ones. Ex.P13 is the patta issued in respect of PW.12. PW.12 admitted that she did not belong to SC community. She also admitted that free house site pattas will be issued only for members of the SC community. She further admitted that she never submitted any application for issuance of patta. She had not obtained any certificate from Village Administrative Officer that she belongs to the landless poor category. She also admitted that she told the police during the examination under Section 161 Cr.P.C that she gave the amount in question on 05.05.2006 to the accused. It was suggested to PW.12 that on 05.05.2006, the accused was very much working in Civil Supplies office and the accused never came to the locality of PW.12. Though, it was suggested that PW.12 had transaction only with one Janagi PW.12 asserted that Janagi and the accused along with Amirtham had collected the money and that Ex.P13 was handed over by Janagi and accused together.

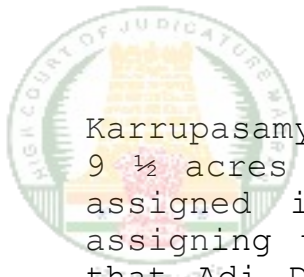
11.PW.13 - Durairaj is also a resident of RMS Colony. He deposed that the accused had demanded a sum of Rs.1,500/- and after PW.13 made the said payment, he was issued the patta which he realised later was a bogus one. He deposed on the same lines as PW.12. PW.14 is the daughter of PW.12 and Ex.P14 was marked through her. PW.15- Anandavalli deposed that she paid a sum of Rs.1,700/- to the accused and in return she was given Ex.P5 patta which turned out to be a bogus one. PWs.16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 all are relatives of Durairaj and their depositions are also on the same lines.

12.PW.29-Mani Balan joined as Special Tahsildar, Adi Dravidar Welfare Department, Thanjavur on 27.09.2007. Prior to his joining Mrs.Sasikala was the incharge officer. When he was enquired by the respondent he handed over Exs.P29 to 33 to the investigation officer. PW.30- Pakkirisamy is not a material witness.

13.PW.31- Ramamoorthy was working as Tahsildar in Thanjavur in the year 2007 and based on the request of the respondent, he went to the office of the respondent. Kesavalu was then working as Special Tahsildar in Adi Dravidar Welfare Department. Kesavalu was shown the pattas in question and he stated that the signatures attributed to him in those pattas are not his signature. Kesavalu also gave his sample signature vide Ex.P34 series.

14.PW.32-Kesavalu was Special Tashildar, Adi Dravidar Welfare Department, Thanjavur between 01.07.2001 and 31.10.2001.

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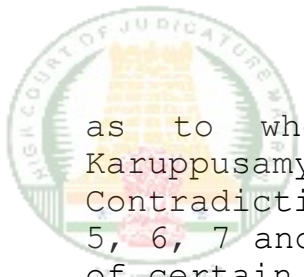


Karrupasamy was his predecessor. During the tenure of Karuppasamy 9 ½ acres of land in Pollankarai Village were acquired for being assigned in favour of Adi Dravidars and steps were taken for assigning the same to as many as 246 beneficiaries. He clarified that Adi Dravidar Welfare Department assignment cannot be made in favour of Non-SCs. He admitted the signatures attributed to him in Exs. P30, P33, P35, P36. However, he denied the signatures attributed him in Exs.P3, P5, P6, P7, P15, P4, P9, P8, P10,P17, P14, P13, P25, P24, P28, P22, P23, P18, P16, P27, P26, P19, P20, P2, P11, P12 and P21. He also stated that the official seals affixed on the documents are fabricated ones. He also stated that he was working in the District Collectorate for 14 years, while the accused was working in Revenue Department. He stood his ground in the cross-examination and his testimony could not at all be shaken.

15.PW.33 - Dharmaraj and PW.34 - Nagarajan are not material witnesses. PW.35 was the Forensic expert. He stated that he received a requisition from the Court vide Ex.P1 to compare the admitted signature of Kesavalu with the disputed signatures. After undertaking the comparison, PW.35 submitted the report Ex.P42 certifying that the admitted signature of Kesavalu are different from the disputed signatures. The only question put to the expert witness was whether the sample signatures were put in front of the Judicial Magistrate or Superintendent of Police. The expert witness admitted that the sample signatures were not put either in front of the Judicial Magistrate or Superintend of Police.

16.PW.36 - Balu was working as Inspector in the office of the respondent during the relevant time. He received information that the accused had taken illegal gratification from a number of persons and gave them bogus house site pattas. After obtaining oral information from the affected persons, on 16.08.2007, Cr.No.7 of 2007 was registered (Ex.P43). He admitted in the cross-examination that he had not obtained any written complaint from the affected persons. The Special Tashildar, Adi Dravidar Welfare had not lodged any complaint. Information received by him was not entered in the general diary. The 17 women mentioned in the complaint do not belong to the SC community. After eliciting these answers, a formal suggestion was put to the investigation officer that he failed to seize the relevant files from the Adi Dravidar Welfare Department. The formal suggestion was that the accused have no connection what so ever with the bogus pattas.

17.PW.37- Ulaganathan was Deputy Superintendent of Police, Vigilance and Anti Corruption during the relevant time and he took over the investigation from PW.36 on 17.08.2007. He examined all the witnesses and filed the final report against the accused. He admitted that he did not prepare any mahazar when the pattas were seized from the prosecution witnesses. Exs.P2 to P28 on the face of it pertain to the period 2001. He did not conduct any investigation



as to who prepared the bogus seal found on the pattas. Karuppusamy, the predecessor of Kesavalu was not examined. Contradictions by way of omission in the testimonies of PWs.2, 3, 4, 5, 6, 7 and 9 were eliciting during the cross-examination in respect of certain aspects.

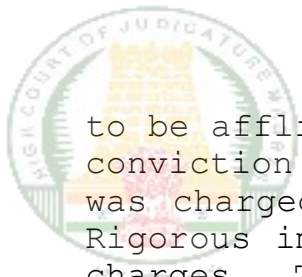
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18.The learned counsel appearing for the appellant would point out that the testimony of the prosecution witnesses from PWs. 2 to 28 appeared to be stereo typed and that therefore this Court ought to disbelieve them.

19.I am unable to agree. It is true that some minor discrepancies in respect of their testimonies have been elicited during the cross-examination of the investigation officer. But there are too minor and they do not go to the root of the matter. As rightly pointed out by the learned Trial Judge, the stand of PWs.2 to 28 is absolutely similar in nature. Therefore, their deposition is also bound to be stereo typed. Almost all of them are women folk who are illiterate. There were given the assurance that if they pay a certain sum of money they would be issued house site pattas. Those witnesses believed the words of PW.2 and handed over the amounts in question. It is inconceivable that Exs.P2 to P28 could have been fabricated either by the respective witnesses or the prosecution. It is not the case of the accused that he has been framed in this case. There is no motive for the prosecution witnesses to come out with the false testimony against the accused.

20.A reading of their deposition inspires the confidence of this Court. The Court below rightly found the accused guilty of the offences with which he was charged. There is not much of substance in the contention that Karuppusamy was not examined as a witness. The signature attributed to Kesavalu are found in Exs.P2 to P28. Kesavalu was examined. He had denied genuineness of the signatures attributed to him and he has clearly stated that they are forged. The testimony of the forensic expert also confirms the stand taken by Kesavalu. Therefore, nothing more is required. The non-examination of Karuppusamy is absolutely immaterial. It is true that the respondent could have undertaken some more investigation and found out the forgery of the official seal. But the failure on the part of the respondent to conduct deeper investigation will not come to the rescue of the appellant. A very large number of witnesses hailing from the ordinary strata of society entered the witness box and deposed against the accused and their testimony could not be shaken. The Court below rightly found the accused guilty and no case has been made out for interfering with the same.

21.At this stage, the learned counsel for the appellant submitted that he will not challenge the conviction imposed on the appellant. He will be satisfied if any leniency is shown in the matter of sentence. The accused is aged about 70 years and is said



to be afflicted with ailments. Therefore, even while confirming the conviction imposed on the appellant for the offences with which he was charged, the sentence imposed on him is reduced from two years Rigorous imprisonment to one year Rigorous Imprisonment for all the charges. The sentences shall run concurrently.

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22. With this modification in the matter of sentence, the judgment of the court below is confirmed in all other aspects. This Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Judge cum Chief Judicial Magistrate,
Thanjavur at Kumbakonam.
2. The Inspector of Police, Vigilance and Anti Corruption,
Thanjavur District, Crime No.7/2007.
3. The Additional Public Prosecutor,
Madurai Bench of the Madras High Court, Madurai.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1cc to Mr.M.Subash Babu, Advocate Sr.No.20619

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