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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Criminal Appeal No.158 of 2014

The State Rep.by
The Public Prosecutor,
High Court, Madras
(V & AC Salem
Crime No.3/AC/91)

..Appellant/Complainant

/versus/

1.Tr.C.Sukumaran
Male, aged 61/2014 (A1),
Forest Ranger,
Shevoroy's South Range,
No.23, Gandhi Nagar,
East Subramaniyapuram,
Salem.

2.Tr.D.R.Venkataraman,
Male, aged 65/2014 (A2)
S/o Tr.Rangasamy,
Forester,
Thoppur Section,
Bamboo Estate Division,
Gobichettipalayam, Periyar District.

..Respondents/Accused
(A-1 & A-2)

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C. praying to set aside the judgment of acquittal of the respondents/accused [A-1 & A-2] passed in Special Calendar Case No.33/95 dated 22.10.2013 by the Court of the Special Judge/Chief Judicial Magistrate, Salem and convict the respondents/accused [A-1 & A-2] for the offences framed against them in the interest of justice.



For Appellant

... Mr. C.E.Pratap,
Government Advocate (Crl.side)

For respondents

... Mr.V.R.Annagandhi for R1

... Mr. K.Gandhikumar
for R2

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J U D G M E N T

Challenging the order of acquittal passed by the learned Special Judge/Chief Judicial Magistrate, Salem, in Spl.C.C.No.33 of 1995, dated 22.10.2013, this Criminal Appeal has been filed by the State.

2.Respondents 1 and 2 are the accused in the above said Spl.C.C.No.33 of 1995 and they stood charged for the following offences:

Rank of the Accused	Charges framed
First Accused	Under Sections 120-B r/w 167, 477-A, 420, 409 IPC and r/w 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 and 167, 477-A, 420 (2 counts) 409 IPC and r/w Section 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988
Second Accused	Under Sections 120-B r/w 167, 477-A, 420, 409 IPC and r/w 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 and 167, 477-A, 420 409 IPC and r/w Section 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988

After ful-fledged trial, by a judgment dated 22.10.2013, the trial Court acquitted both the accused. Against the order of acquittal, the present criminal appeal has been filed before this Court.

3.Pending the appeal, the first respondent/A1 died and to that effect, a memo along with death certificate of the first accused has been filed by the learned counsel appearing for the first respondent/A1. Learned Government Advocate(crl.side) also confirmed the same. In view of the above, this Criminal Appeal is dismissed as abated as against the first respondent/A1.



4. The case of the prosecution, in brief, is as follows:-

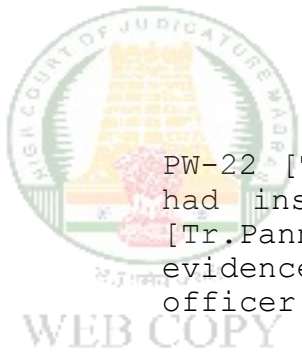
A1[Tr.C.Sukumaran], in this case, was working as a Forest Ranger in Shevaroy's, South Range, Salem District. A2 was working as a Forester, Thoppur Section in Shevaroy's South Range. A work of raising of "40 Hectares Managoundamalai Re-afforestation of Degraded Forests Plantation" and planting 300 more tamarind seedlings to the estimated value of Rs.64,500/- for the year 1989-90, was entrusted with a Contractor [PW-9] Govindarajan by the first accused for clear felling and uprootal in 40 hectares besides planting 300 plants etc. PW-2 [Tr.G.Kumaravelu], who was working as a District Forest Officer, on the recommendation of the A1, sanctioned a sum of Rs.64,500/- on 07.06.1989 for 40 hectares of Managoundamalai Re-afforestation of degraded Forest Plantation and planting 300 tamarind seedlings etc. Thereafter, an agreement was entered with PW-9 [Tr.N.Govindaraj] by A1, for execution of the work and the said work was completed. On completion of the work, the Contractor had received payments of Rs.20,000/- to Rs.25,000/- for two times. Thereafter, an inspection was conducted by PW-6 [Tr.Sampath Kumar, Assistant Conservator of Forest, Forest Protection Squad Salem] on 24.01.1990, 25.01.1990 and 27.01.1990 and found that there is some discrepancy in execution of the work that, out of 38,000 sanctioned seedlings, 15497 seedlings; 5934 trenches, instead of 30,000 trenches; and 259 tree guards were constructed, instead of 300 and in 89 tree guards, tamarind were not planted as entered in the M-Book. Then a preliminary enquiry was conducted by the Department, based on that, a First Information Report was registered against A1 and A2 for the above said offences. After obtaining prior sanction to prosecute the accused, the investigation of the case was entrusted to PW-23[Tr.L.Panneerselvam, Deputy Superintendent of Police, Salem Vigilance and Anti Corruption. He recorded the statements of the witnesses and laid final report before the trial Court stating both the accused 1 and 2 have entered into a criminal conspiracy for the commission of offence by framing incorrect officials records in the capacity of the public servants, falsification of records, cheating, criminal breach of trust to the tune of Rs.23,420-10, also committed the offence of criminal misconduct by the public servants by corrupt or illegal means and obtained pecuniary advantage for themselves by abusing their official position.

5. Based on the materials, the Trial Court framed charges for the offences under Sections 120-B r/w 167, 477-A, 420, 409 IPC r/w 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act against both the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 23 witnesses were examined and 38 documents were exhibited. On the side of the accused, one exhibit was marked as Ex.D1.



6. Out of 23 witnesses examined, PW-1 [Tr.Harikrishnan, Principal Chief Conservator of Forest] issued sanctioning order to prosecute the accused. P.W.2 [Tr.G.Kumaravelu], District Forest Officer, Salem, accepted the running account bills and issuance of cheque to the contractor. PW-3 [Tr.M.Madhesan] Junior Drafting Officer, had verified and submitted the running account bills to the sanctioning authority for perusal. PW-4 [Tr.S.Kamalakannan] Assistant Drafting Officer of District Forest Office, Salem, had issued verified and issued a certificate for the survey sketch prepared by the A2 and the same was verified by A1. PW-5[Tr.Vikraman] Accountant at District Forest Office, Salem, maintained the fund application register and he had issued cheques, based on the order passed by PW-2 and handed over to the contractor through A2. PW-6 [Tr.Sampath Kumar]Assistant Conservator of Forest, Forest Protection Squad Salem had inspected the work, as per the order of the Conservator of Forest Salem Circle, dated 22.12.1989 and submitted his report regarding deficiency of work to the District Forest Officer. PW-7 [Tr.Soundarajan] Forester of Shevaroy's South Circle, accompanied with PW-6 [Assistant Conservator of Forest] at the time of inspection, had prepared re-survey report and signed by him. PW-8,[Tr.Balaji] District Forest Officer, had issued a cheque for a sum of Rs.18,677/-, after deducting a sum of Rs.382/- towards income tax to the Contractor for the execution of the alleged work. Further, he issued an account payee cheque to PW-9 [Tr.Govindaraju] Contractor, who executed the work, he turned hostile. PW-10 [Tr.Palanisamy] Assistant, in the Office of the Forest Ranger, South Range, Salem, had given an application for registration of the contractor and the same was filled up by him. PW-11 [Tr.Chinnasamy], an account holder at Indian Overseas Bank, Oddampatty branch had introduced him for opening the account.

7. PW-12 [Tr.Jayavel] Manager of Indian Overseas Bank, Oddampatty Bank, Dharmapuri, had opened the current account in the name of the contractor and the said cheque was deposited for collection and the same was closed after encashing the amount. PW-13 [Tr.Ponnaiyah] Assistant Conservator of Forest had inspected the M-Book entries made by A1. PW-14 [Tr.Shanmugam] Forest Ranger Shevaroy's, South Range, Salem, checked the measurement entries made by A1. PW-15 [Tr.Babyrani] Junior Assistant of Forest Office, Salem had checked and scrutiny of the weekly diary of Forest Ranger and Foresters and he handed over the copies of the weekly diaries of A2 to Vigilance and Anti-Corruption Office. PW-16 to PW-19 are the workers worked under the Contractor on daily wages at the relevant point of time. PW-20 [Tr.Selvaraj] Junior Drafts Man, District Forest Office, Salem, had compared the estimate along with sketch submitted by A1. PW-21[Tr.Balanathan] Conservator of Forest, Salem Circle, had ordered inspection to be conducted by PW-6.



PW-22 [Tr.Elumalai] Forest Watcher Shevaroy's South Range, Salem, had inspected the work along with the Forest Guard. PW-23 [Tr.Panneerselvam] Inspector of Police, V & AC, Salem has given evidence, based on the records, since the original investigating officer of this case Tr.Krishnasamy, expired during trial.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they have denied the same as false. However, they did not choose to examine any witness, but one document was marked on their side.

9. Having considered all the above materials, the trial Court acquitted all the accused, in respect of the charges, as detailed in the first paragraph of this judgment. Aggrieved against the acquittal of the accused, the present Criminal Appeal has been filed by the State. Pending the appeal, the first accused/1st respondent died and the appeal survives only against the second accused alone.

10. The learned Government Advocate (crl.side) appearing for the appellant submitted that from the evidences of PW-6, PW-8 and PW-13, it could be seen that A1 made false entries in the M-Book and Running Account Bill as if PW-13 measured his work for claiming excess amount. The trial Court has not properly scrutinized the evidence of PW-16 to PW-19. The evidence of PW-10 clearly proved that the contractor opened an account in his name at the instance of the A1 and after encashing the cheque amount, his account has been closed. The above evidence is very clearly proves the fact that PW-9 Contractor was not a real contractor. The accused 1 and 2 miserably mislead the sanctioning authority by submitting M Book and Running Account Bill with false and fabricated measurements without actually executing any excess work as claimed by A1 and A2 and thereby A1 and A2 forged the records and misappropriated the amount under their control. The trial Court without considering the same acquitted the accused.

11. The learned counsel appearing for the second respondent/A2 submitted that the trial Court, considering all the evidence, has rightly come to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and acquitted the respondents/accused and there is no reason to interfere with the order of acquittal.

12. This Court considered the rival submissions made on either side and perused the materials available on records carefully.

13. The first accused died, pending appeal and to that effect, death certificate of the first accused along with the



memo filed. In view of the above, this Criminal Appeal is dismissed as abated as against the first accused.

14. So far as the A2 is concerned, he was working as a Forester. All the allegations are made only against the first accused alone. The work was entrusted for execution with PW-9 [Contractor], who turned hostile and A1 alone maintained M-book and submitted the Running Account Bill to PW-2 for sanctioning the amount. So far as A2 is concerned, the allegation is that he conspired along with A1, thereby he committed the above said offence. However, in the cross examination of PW-2, he clearly stated that A2 has no role for introducing PW-9 to PW-2. That apart, PW-2 has not received any complaint against A2 and A2 has no role in disbursement of amount. That apart, absolutely there is no evidence available on record to show that A2 has conspired with A1 and committed the above said offences.

15. It is settled principal of law that, in an order of acquittal, there is double presumption in favour of the accused. Firstly, the fundamental principle of criminal justice delivery system is that, every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is re-affirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

16. In the above circumstances, this Court finds no illegality or perversity in the judgment of the trial Court and there is no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

17. In the result, the Criminal Appeal is dismissed. The judgment of the trial Court in Spl.C.C.No.33 of 1995 dated 22.10.2013 is hereby confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Court cum Chief Judicial Magistrate Court,
Salem.

2.The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.V.R.Annagandhi, Advocate SR. No.67802

+1cc to Mr.K.Gandhi Kumar, Advocate SR. No.67835

Cr1.A.No.158 of 2014

GSM (CO)

PR (28/01/2022)