



Bail Slip

The Appellant/Accused No.1 Namely V.Prabhakaran, S/o.T.Velayutham accused in Special Calender Case No.10 of 2010, Pondicherry, was directed to be released on bail as per order of this Court dated 24.04.2015 and made in M.P.1 and 2 of 2015 in CrI.A.No.239 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2022

PRONOUNCED ON : 29.04.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.A.No.239 of 2015
and M.P.Nos.1 & 2 of 2015

V.Prabhakaran

...Appellant/Accused-1

Vs.

State Represented by
Inspector of Police,
CBI / ACB / Chennai
Crime No.R.C.MA1 2008 (A) 0065....Respondent/Compalainant

Prayer:- Criminal Appeal is filed under Section 374 of Code of Criminal Procedure, to set aside the judgment and conviction and direct the acquittal of the appellant in Special Calendar Case No.10 of 2010 dated 31.03.2015 passed by the learned Special Judge at Puducherry - (under Prevention of Corruption Act) Principal Sessions Judge.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor
for CBI cases.

JUDGMENT

This appeal is filed against the judgment in Special Calender Case No.10 of 2010 on the file of learned Special



Judge, Puducherry, wherein appellant was convicted for the offences under Section 420 and 468 I.P.C and sentenced.

2. There are two accused before the trial Court in this case. The appellant is the first accused and one N.Perumal is the second accused. The charges against the appellant and the co-accused N.Perumal are that, appellant was the Assistant Professor in Pondicherry Engineering College and co-accused N.Perumal was student of Pondicherry Engineering College. During 2007, certain malpractices were noticed in the conduct of examination of Engineering and Medical stream conducted by Pondicherry University and marks were deliberately inflated to unduly favour students leading to declaration of those candidates, who have not secured sufficient marks to be declared secured pass mark. Thus, on the source information, a case was registered in R.C.No.MA1 2008A0065 on 21.12.2008, for the offences punishable under Sections 120 B r/w. 420, 468 r/w. 471 I.P.C and Section 13 (1) (d) r/w. 13 (2) of the Prevention of Corruption Act, 1988. Accused N.Perumal was assigned dummy number 157 and that was evaluated by appellant between 09.01.2008 and 19.01.2008. After the examination is over, N.Perumal met appellant and hatched a criminal conspiracy to cheat Pondicherry University in the matter of inflating marks to N.Perumal for the subject Mechanics of Solid - II. Appellant awarded 2 marks for question No.2, 8 marks for question No.4, 8 marks for question No.5 and 4 marks for question No.7 and mentioned these marks on the wall mark list. Subsequently, by abusing his official position as an examiner, appellant by dishonestly and fraudulently struck off the original marks in the front page of the answer script and altered the marks for question No.2 as 8, for question No.4 as 12, for question No.5 as 10, for question No.7 as 12, committed forgery for the purpose of declaring N.Perumal has secured pass mark in the subject. Thus, the final report was filed against the appellant and N.Perumal for the offences under Section 120 B r/w. 420, 468 r/w. 471 I.P.C and Section 13 (1) (d) r/w. 13 (2) of the Prevention of Corruption Act, 1988.

3. On the basis of this final report, following charges were framed against the appellant and N.Perumal for the offences under Section 120 B r/w. 420 and under Sections 420 r/w 120-B I.P.C, 468 r/w. 120-B I.P.C, 471 r/w 120-B I.P.C and Section 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988.



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4. Prosecution examined P.W.1 to P.W.7 witnesses and produced Ex.P1 to Ex.P12 documents in support of its case. Appellant and N.Perumal examined D.W.1 and produced Ex.D1 to D3 in support of their case.

5. The case of the prosecution as seen from the evidence of prosecution witnesses, in brief, is as follows.

P.W.6 was the Deputy Registrar, Pondicherry University and was Head of evaluation of mark for the examination conducted for all the Engineering Colleges under Pondicherry University. During 2007, when the marks in wall marksheet were sought to be entered, she found that there were corrections in certain answer sheets. On a thorough examination, it was found that there are corrections in the mark. She prepared a list of answer sheet in which corrections were found and sent to the Controller of Examination on 01.02.2008. On 22.02.2008, on the basis of corrections, second mark list was sent. An enquiry committee was appointed with Professor Kuppusamy, Registrar Loganathan, Sampath Officer of Controller of Examination. The examiners who valued answer sheets relate to dummy numbers 1730, 369, 157, 1100 and 2080 were enquired. It was found that for dummy number 157 Mechanics of Solid - II paper, marks given were corrected and higher marks were awarded. Original total mark of 22 was corrected as 42.

6. P.W.2 was the Director of Education during 2006 to 2008. On registering the complaint from P.W.6 he sent a recommendation to Vice Chancellor to form a committee to enquire the matter as per Ex.P5. Accordingly, an enquiry committee was appointed. Enquiry committee conducted enquiry and examined the examiners who valued the questionable answer sheets and recorded their statements. Then, a direction was issued not to engage the Professors who wrongly valued the paper, for three years for evaluation purpose. It was found that inflated marks were awarded to N.Perumal, Akilan and Parthasarathy. P.W.5 was the Controller of Examination during the relevant point of time and P.W.2 was a Professor of Civil Engineering. They gave evidence with regard to the correction in marksheet relate to dummy number 157 as mentioned above. P.W.7 registered the first information report, conducted investigation and filed the final report.

7. The trial Court on considering the oral and documentary evidence found that the charges framed against the appellant for the offence under Section 120 B, 471 I.P.C and Section 13 (1)



(d) r/w. 13 (2) of the Prevention of Corruption Act, 1988, were not proved but, charges under Section 420, 468 I.P.C were proved. It is further held that the charges framed against the second accused N.Perumal, under Section 120 B I.P.C was not proved and acquitted the second accused N.Perumal. Appellant was convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- in default, to undergo three months rigorous imprisonment for the offence under Section 420 I.P.C and to undergo two years rigorous imprisonment, to pay fine of Rs.10,000/- in default, to undergo three months rigorous imprisonment for the offence under Section 468 I.P.C. Substantive sentences were ordered to run concurrently. Challenging this judgment, Criminal Appeal in Crl.A.No.249 of 2015 has been filed.

8.Learned counsel for the appellant submitted that though the appellant was charged for the offence under Section 120 B r/w. 420, 468 r/w. 471 I.P.C and Section 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988, he was convicted only for the offence under Section 420, 468 I.P.C. Prosecution has not produced any evidence to show that appellant corrected the answers given by N.Perumal with some ulterior and illegal motive. There was no answer key provided to the appellant. Therefore, the examiner is entitle to award marks which he found as correct for the answers written by a candidate. The examiner is entitled to correct the marks already given, in case, he found the marks awarded earlier is not correct and required to be corrected. Considering the answers given and with a view to liberally value the paper to extend the benefit to the students, he had corrected the answers. There is no ill-motive behind correcting the marks.

9.It is further submitted that even after the correction of the mark, the candidate N.Perumal got only fail marks. He awarded certain marks and then on re-consideration and re-evaluation, awarded higher marks, which is permissible and cannot be considered illegal in the absence of any other illegal motive suggested or proof against him. However, the trial Court has not considered this aspect and wrongly convicted and sentenced the appellant. During the trial before the trial Court, only xerox copies of the documents are produced and original documents not produced. In the absence of acceptable reasons for non producing original documents, the conviction recorded on the basis of copies of the documents, especially when there are no evidence to prove that appellant inflated marks with a view to see that accused N.Perumal passes the subject, cannot be sustained and it is against the charges and



the law. Thus, learned counsel for appellant prayed for setting aside the judgment of the trial Court and for acquitting the appellant.

10. Per contra, learned Special Public Prosecutor appearing for C.B.I cases, submitted that the corrections are not approved by scrutinizer in the first page of the mark list. Marks are abnormally inflated, obviously with an intention to help the students and most obviously for other illegal consideration. From the oral and documentary evidence produced in this case, and the admitted position of the appellant, it is established that it was the appellant who corrected the original mark and inflated with, higher marks without substance in the answer. The trial Court rightly convicted and sentenced appellant and thus, he prayed for confirming the judgment of the trial Court and for dismissal of this Criminal Appeal.

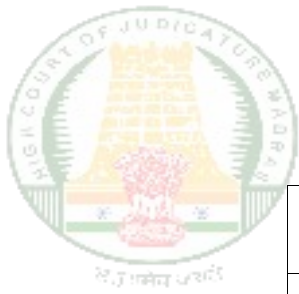
11. Point for consideration,

i) Whether the prosecution has failed to prove the charges against the appellant under Section 420, 468 I.P.C and the conviction was wrongly recorded and sentence imposed under these Sections against the appellant?

ii) Whether the appeal is required to be allowed?

12. Considered rival submissions and perused the records.

13. Before discussing the points, it is pertinent to note that the main allegation against the appellant and co-accused is that they conspired with each other to see that second accused N.Perumal gets a pass mark, in the subject Mechanics of Solid - II, though he did not get a pass mark. It is also pertinent to refer here that the learned counsel for the appellant produced the regulations, curriculum and syllabus for B.Tech Civil Engineering students, Pondicherry University, Pondicherry, to bring to the notice of this Court that, to get a pass mark in an engineering subject, a student has to get minimum of 50 marks. If any one gets less than 50 marks, it is deemed that he got a fail mark in the particular subject. It is also seen from Ex.D1, student grade report for examination conducted in November 2007, Pondicherry University, one Akilan got 'F' grade in Mechanics of Solids - II, the marks representing particular grade is found in page 86 (CrI.A.No.239 of 2015) of the typed set. It reads as follows,



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Range of Total Marks	Letter Grade	Grade Points
90 to 100	S	10
80 to 89	A	9
70 to 79	B	8
60 to 69	C	7
55 to 59	D	6
50 to 54	E	5
0 to 49	F	0
Incomplete	FA	

14.It is clear from this range of marks with reference to grade, if a student gets less than 50 marks, it is deemed that he failed in that subject. Thus, it is submitted by the learned counsel for the appellant that what is the purpose of getting a fail mark by entering into a conspiracy. Admittedly, even after the correction of marks, second accused N.Perumal got only 42 marks. Therefore, the very charge that accused in this case entered into conspiracy and that appellant awarded a pass mark to accused N.Perumal, though, he did not secure a pass mark falls to ground. In the light of the Ex.P3 answer script of Accused N.Perumal, Ex.P4 mark wall list and Ex.P1, that accused N.Perumal got only 42 marks despite, correction and awarding increased mark. Therefore, this Court finds a valid submission that the very charge against the accused, especially appellant, in this case falls to ground.

15.It is relevant to refer to evidence of certain witnesses to understand the evaluation process and whether there is any possibility of committing malpractice. P.W.2 was the Chairman, who also signed in the mark wall sheet Ex.P4. It is seen from his evidence that the answer sheet was valued by appellant and originally awarded of 22 was corrected as 42 with a corresponding increase in the answers given. It is his evidence that he has not raised any objection with regard to any wrong committed in the correction of answer script. Once the answer scripts are handed over to him, examiners cannot get it back. The evidence of P.W.3 shows that, it is usual to give answer key for correction of answer script. However, there was no answer key provided for subject Mechanics of Solid - II. It is also his evidence that when answer key is not given, the answer script would be valued by examiner as per his



understanding. He also stated that P.W.2 had signed in the mark wall sheet. He further stated that nobody can enter the evaluation center. The examiner would not know as to whose paper he was going to value. Finally, he said that there was no mistake committed in connection with evaluation of dummy number 157 and 369.

16.P.W.5 also confirms the evidence of P.W.3 that the examiner may not be in a position to know as to the person who wrote exam from dummy number. Examiner may not also know as to whose paper would be given to him for correction. He reiterated that no answer key was provided to the examiners and marks were awarded subject to the highest marks prescribed for a question. It is also his evidence that the case was registered on the basis of Ex.P.5 submitted by P.W.6 Tmt.Chitra, Deputy Registrar (Exam), Pondicherry University. He admitted it was alleged in the report that the examiner who valued the paper or the Chairman who was appointed to correct the answer script might have corrected the answers. It is also found in the report that the answers might have been corrected without the knowledge of the examiner or the Chairman of the Examining Committee. There is also a finding that the examiner's signature is forged.

17.In the light of his evidence, it is apparent that Ex.P5 report suspects not only the examiner, Chairman of Examining Committee and also some other persons as well. When multiple possibilities are there to implicate other accused in this case, implicating the appellant alone for the correction of mark, in the considered view of this Court is not correct, especially when the corrected mark does not result in declaring the accused N.Perumal, having passed this subject. It is no doubt that an examiner on re-evaluation and reconsideration can correct the marks. In the case before hand, the corrected marks were approved by P.W.2 Chairman in the mark wall list, though, there is no signature of scrutinizer in Ex.P3. We have also seen from the evidence of witnesses that when the answer key is not provided, it is for the examiner to value and award mark to the best of his understanding and ability. Thus, in the considered view of this Court, when there is absolutely no material to establish the alleged conspiracy between appellant and co-accused that with an intention to give pass mark to N.Perumal, appellant awarded pass mark, because of the corrections and awarding increased mark, we cannot convict the appellant for the offence under Section 420, 468 I.P.C.



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18. In this view of the matter, this Court finds that the prosecution miserably failed to establish the theory of conspiracy between the appellant and accused N.Perumal and that appellant had awarded N.Perumal a pass mark after correcting the originally awarded mark and therefore, the conviction of the appellant for offences under Section 420, 468 I.P.C. cannot be sustained and accordingly conviction recorded and sentence imposed of the offence under Section 420 and 468 I.P.C are set aside. Accordingly points are answered in favor of the appellant.

19. In the result, judgment of conviction recorded against the appellant and sentence imposed in Special Calendar Case No.10 of 2010 dated 31.03.2015 passed by the learned Special Judge at Puducherry - (under Prevention of Corruption Act) Principal Sessions Judge is set aside. Appellant is not found guilty of the charges under Section 420 and 468 I.P.C. and acquitted. Fine amount if any paid by the appellant is ordered to be refunded to the appellant. Accordingly, Criminal Appeal in CrI.A.No.239 of 2015 is allowed. Consequently, connected miscellaneous petitions stand closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Special Judge,
(under Prevention of Corruption Act) Principal Sessions Judge.
Puducherry.
2. The Inspector of Police,
CBI / ACB / Chennai.
Crime No.R.C.MA1 2008 (A) 0065.
3. The Judicial Magistrate No.1,
Puducherry.
4. The Chief Judicial Magistrate,
Puducherry.



5.The Public Prosecutor(CBI)
High Court of Madras.

+1cc to Mr.K.Srinivasan, Special Public Prosecutor Sr.30133
+1cc to Mr.R.C.Paul Kanagaraj, Advocate Sr.30825

CRL.A.No.239 of 2015
and M.P.Nos.1 & 2 of 2015

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