



Bail Slip

The Appellant namely V.Prabhakaran S/o T.Velayutham accused in Special Calender Case No.9/2010, Puducherry was directed to be released on bail as per order of this Court dated 24/04/2015 and made in M.P.No.1 and 2 of 2015 in Crl.A.No.240 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.240 of 2015
and M.P.Nos.1 & 2 of 2015

V.Prabhakaran

...Appellant/1st Accused

Vs.

State Represented by
Inspector of Police,
CBI / ACB / Chennai

Crime No.R.C.MA1 2008 (A) 0065.

...Respondent/Complainant

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.9 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.9 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 in this case. Appellant is a first accused and one P. Agilan is a second accused. Charges against the accused is that 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 declaring those candidates, who have otherwise not secured sufficient marks to be declared as passed the subject. On source information, a case was registered in R.C.No.MA1 2008A0065 on 21.12.2008, against the accused and some others 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. First accused/appellant was the Assistant Professor and the second accused was a student of Pondicherry Engineering College. Pondicherry University assigned dummy number 369 to the answer script of second accused P. Agilan. His answer script was evaluated by appellant. After the examination was over P. Agilan met appellant and enter into a criminal conspiracy to cheat Pondicherry University in the matter of inflating marks to P. Agilan in the subject Mechanics of Solid - II. Appellant awarded 8 marks each for question numbers 4, 6 and 9. However, while mentioning the total marks, he wrongly shown the total marks as 27 instead of 24 marks on the answer scripts as well as in the mark wall list on the same day by abusing his official position as an examiner. He struck off the originally awarded marks on the front page of the answer script and fraudulently and dishonestly awarded 12 marks for question number 3, 8 marks for question number 4, 14 marks for question number 6 and 14 marks for question number 9. As a result, total marks awarded had been inflated to 48 from 24, but appellant wrongly mentioned the total as 40 on the answer script as well as mark wall list. P. Agilan answered question numbers 4 and 6 alone and did not answer question number 3. Marks were awarded to un-answered question also. Therefore, these charges.

3. The Trial Court framed charges under Section 120 B r/w. 420 I.P.C against accused 1 and 2 and under Section 420 I.P.C r/w. 120-B I.P.C, 468 I.P.C r/w. 120-B I.P.C, 471 I.P.C r/w. 120-B I.P.C. and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988 against the appellant. Accused denied the charges and demanded trial.

4. Prosecution examined P.W.1 to P.W.7 witnesses and produced Ex.P1 to Ex.P8 documents in support of its case. Appellant and P. Agilan 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.3 was working as Controller of Examination during the relevant period. He was responsible for over all supervision of the examination conducted by Pondicherry University. There are persons responsible for each branch of subjects. P.W.4 Dr.V.Chitra was in charge of Engineering subject. She stated during the course of her evidence, the scheme of conducting examination, starting from issuance of notification, appointment of persons responsible for conducting the examination, preparation of question paper, conducting examination, evaluation of answer scripts and then declaration of results. P.W.4, when she was working as Deputy Registrar in Pondicherry University was responsible for over all supervision to conduct the examination for B.Tech, M.Phil., programs. After the evaluation of answer scripts, mark wall list will be taken from answer sheet and then sent to computer lab for making entry. While checking the mark wall list, she found some tampering of marks and on verifying the answer script found that there was discrepancy in mark wall list and original marks awarded in connection with B.Tech program. In this regard, she put up two notes on 01.02.2008 and 22.02.2008. On the basis of her notes, a committee was constituted under the Head of Professor S.Kuppuswami, Director of Studies. The committee enquired the matter and submitted a report. On the basis of the report one Haridass was suspended and Goriboi and Parasuraman were transferred. Some of the examiners were debarred for three years. Ex.P6 is the answer script of accused P.Agilan. Dummy number given to the answer script is 369. Out of 5 questions, he answered three questions and one question he just started and did not complete. He did not answer question number 3, but 12 marks was awarded to question number 3. P.Agilan secured only 23 marks, but his marks was inflated to 40.

6.P.W.2 was the Director of Education at Pondicherry University from September 2006 to August 2008. P.W.4 complained about certain discrepancies in the mark list and mark wall list. Therefore, committee was appointed and he was heading the committee to enquire the matter. The enquiry report of the committee is Ex.P4. It was found that there were corrections in the answer script relate to dummy numbers 157 and 369.

7.P.W.6 was Chairman of Board of Examination in 2008. Ex.P6 relates to dummy number 369 and it was given to the answer



script of accused P.Agilan. He answered question numbers 4, 6 and 9. He did not write answer to question number 3 but, 12 marks were awarded to question number 3. 8 marks awarded to question number 4 was corrected as 12. 8 marks awarded to question number 6 was corrected as 14 marks. Similar, correction was made for question number 9. P.W.7 registered the first information report in this case, conducted investigation, obtained sanction for prosecution from P.W.1 and filed final report.

8.On the basis of the oral and documentary evidence produced in this case, the trial Court found the charges framed against the appellant under Section 120-B I.P.C, 471 I.P.C and 13 (1) (d) r/w. 13 (2) of the Prevention of Corruption Act, 1988 are not proved. But the charges under Section 420, 468 I.P.C were proved. It was also found that the charges against the second accused P.Agilan under Section 120-B I.P.C was not proved and therefore acquitted the second accused. Appellant was convicted under Section 420, 468 I.P.C and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for three months for the offence under Section 420 I.P.C, to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- in default, to undergo rigorous imprisonment for three months for the offence under Section 468 I.P.C. Substantive sentences were ordered to run concurrently. Aggrieved against this judgment, appellant has filed this Criminal Appeal.

9.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 P.Agilan with some ulterior and illegal motive. There was no answer key provided to the appellant. Therefore, the examiner is entitled 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. It is not correct to state that appellant awarded marks for the question which was not answered by accused P.Agilan. He awarded marks only to question numbers 4, 6 and 9.



No mark was awarded to question number 3. 8 marks awarded to question number 4, was corrected as 12 marks and that was entered in the column meant for question number 3.

10. It is further submitted that even after the correction of the mark, the candidate P. Agilan 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 proved 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 P. Agilan 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.

11. 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.

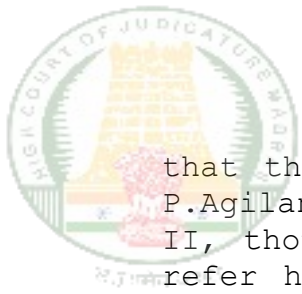
12. Point for consideration,

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?

13. Considered rival submissions and perused the records.

14. Before discussing the points, it is pertinent to note that the main allegation against the appellant and co-accused is

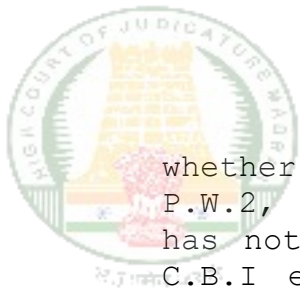


that they conspired with each other to see that second accused P.Agilan gets a pass mark, in the subject Mechanics of Solid - II, though he did not get a pass mark. It is also pertinent to refer here that the learned counsel for the appellant produced the regulations, curriculum and syllabus for B.Tech 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 (Crl.A.No.240 of 2015) of the typed set. It reads as follows,

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	

15.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 P.Agilan got only 40 marks. Therefore, the very charge that accused in this case entered into conspiracy and that appellant awarded a pass mark to accused P.Agilan, though, he did not secure a pass mark falls to ground. In the light of the Ex.P6 answer script of Accused P.Agilan, Ex.P7 mark wall list that accused P.Agilan got only 40 marks despite, correction and awarding increased mark, this Court finds a valid submission that the very charge against the accused, especially appellant, in this case falls to ground.

16.It is pertinent to refer to the evidence of witnesses to understand the process of evaluation of answer script and



whether there is any possibility of committing any malpractice. P.W.2, during the course of cross examination stated that, he has not mentioned the name of the accused during the course of C.B.I enquiry. Answer key was not provided to the examiners. When the answer key is not provided, it is for the examiners to decide whether the answer given by the candidate is correct or not. It is his evidence that outsiders cannot enter into the place where the answer scripts are evaluated. Answer script should be allotted to the examiners by the Chairman. Either the Chairman or the examiners do not identify the candidate from the answer script. Chairman is empowered to correct the marks awarded. He should also check the marks awarded and attest. It is evidence of P.W.3, during the course of his cross examination that the responsibility for allotting dummy number lies with P.W.4 and there is no possibility of leaking the dummy number. In the reports submitted by P.W.4, there is no mention about the dummy number of accused P.Agilan. He admitted that, if the marks given to 3 questions are added, the total marks comes to 40. Only if dummy number is known, there is a possibility of doing malpractice. Neither the Chairman nor the examiner knows about which answer script would be sent to which examiner. P.W.4 states that in Ex.P7 mark wall list, marks were approved by the Chairman.

17.P.W.6 states that he has not made any objection with regard to the marks awarded in Ex.P7. He has right to make correction and ask the examiners to correct the answer script when necessary. He admitted signing in mark wall list. It is his evidence that 24 marks were corrected as 40 marks in Ex.P6.

18.The perusal of Ex.P6 mark sheet shows that accused P.Agilan answered for question numbers 4, 6 and 9. He started to answer question number 8, but did not complete. However, only zero mark was awarded for question number 8. 8 marks awarded to question number 4 was corrected as 12. Instead of writing 12 marks in the same column, it was entered in the column meant for awarding mark for question number 3. Originally 8 marks were awarded for question number 6 and 9 and altered as 14. When 12+14+4 are added, total marks comes to 40. Therefore, the prosecution case that appellant awarded 12 marks for question number 3 is not correct. The correction is obvious. However, whether this correction was made in conspiracy with the accused P.Agilan with an intention to award a pass mark is a matter for consideration.



19.As seen from the evidence of P.W.7 that to get a pass mark in an engineering subject, a student has to get minimum of 50 marks and in the absence of any evidence to show the criminal conspiracy between appellant and accused P.Agilan, this Court is of the considered view that the appellant had committed the offence of cheating and forgery cannot be accepted in law. It is also found in Ex.P3 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. Ex.P3 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 P.Agilan, 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.6 Chairman in the mark wall list, though, there is no signature of scrutinizer in Ex.P6. 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 P.Agilan, 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.

20.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 P.Agilan that appellant had corrected and awarded higher marks with an intention to give pass mark, 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 offences under Section 420 and 468 I.P.C are set aside. Accordingly points are answered in favor of the appellant.

21.In the result, judgment of conviction recorded against the appellant and sentence imposed in Special Calendar Case No.9 of 2010 dated 31.03.2015 passed by the learned Special Judge , (under Prevention of Corruption Act) Principal Sessions



Judge, Puducherry 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.240 of 2015 is allowed. Consequently, connected miscellaneous petitions stand closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ep
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.30134

CrI.A.No.240 of 2015
and M.P.Nos.1 & 2 of 2015

ssi[co]
srg 30/05/2022