BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.02.2020
PRONOUNCED ON : 10.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.(MD)Nos.88 and 117 of 2015

J.John Christopher	... Appellant / A2 in Crl.A.88/2015
Kalleelul Rahuman	... Appellant / A1 in Crl.A.117/2015

Vs.

The State represented by Inspector of Police, CBI / ACB: Chennai (R.C.No.MA1 2003-A 0050)	... Respondent in both Appeals

COMMON PRAYER: Criminal Appeals filed under Section 374 (2) of Cr.P.C., to call for the records in C.C.No.2 of 2005, dated 20.03.2015, on the file of the II Additional District Judge for CBI cases, Madurai and to set aside the same.

For Appellant (In CA.87/2015)	:	Mr.G.Karuppasamy Pandian for Mr.F.Deepak
For Appellant (In CA.116/2015)	:	Mr.AR.Jeya Rhuthran
For Respondent	:	Mr.N.Nagenderan, Special Public Prosecutor

COMMON JUDGMENT

C.A.No.88 of 2015 is filed by one John Christopher/A2 and C.A.No. 117 of 2015 is filed by one Kalleelul Rahuman/A1.

2.The case of the prosecution is that A1 was working as Assistant [Cashier] and A2 was working as Sub-Staff in Oriental Insurance Company Limited, Nagercoil, Kanyakumari District. During the period 1996 to 2003, A1 and A2 entered into criminal conspiracy at Nagercoil and other places to commit illegal acts of misappropriation of amounts of Oriental Insurance Company Limited which were entrusted by customers/insurers. In pursuance to the conspiracy, A1 failed to account the entrusted premium by different insurers by cash and illegally made false entries in the Daily Cash Balance Book [DCB] to cover up the misappropriation. Further, A1 had access to the Back Office Computer Network System, selected at random any one of the loaded premium paid by the insures, reduced the loaded premium from the premium amount and failed to account the same. In some case, A1 also completely erased the details of the policy insured against the premium amount paid. In pursuance to the conspiracy, A2 knowing fully well about the misappropriation of the premium amounts made false entries in the DCB and accommodated A1 in 32 instances. From the 32 instances they totally misappropriated a sum of Rs.57,138/- and caused loss to the Oriental Insurance Company Limited. The CBI on source information registered FIR against the accused for the offences punishable under Sections 120(B) r/w. 409, 477A of IPC and Section 13(2) r/w. 13(1)(c)&(d) of the Prevention of Corruption Act, 1988. On completion of investigation, charge sheet filed and the same was taken on file in C.C.No.2 of 2005. Before the Trial Court, five charges were framed against the accused which reads as follows:

1.First Charge [A1 & A2] : U/s. 120B r/w. 409, 477A IPC and Sec. 13(1)(c)&(d) of P.C. Act, 1988
2.Second Charge [A1 & A2]: U/s. 409 IPC
3.Third Charge [A1 & A2]: U/s. 477A IPC
4.Fourth Charge [A1 & A2] : U/s. 13(2) r/w. 13(1)(c) of P.C. Act, 1988
5.Fifth Charge [A1 & A2] : U/s. 13(2) r/w. 13(1)(d) of P.C. Act, 1988

During trial, prosecution examined 47 witnesses and marked Ex.P1 to Ex.P279 and M.O.1 were marked. On the side of the accused, Ex.D1 to Ex.D5 were marked.

3.On conclusion of the trial, the Trial Court convicted and sentenced A1 and A2 as follows:

"Accused No.1

(i) To undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.120B IPC r/w. 409 IPC.

(ii) And to undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.477A IPC.

(iii) And to undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.13(2) r/w. 13(1)(c) of P.C. Act, 1988 and

(iv) And to undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.13(2) r/w. 13(1)(d) of P.C. Act, 1988 [Total fine Rs. 8,000/-]

Accused No.2

(v) To undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.120B

IPC r/w. 409 IPC.

(vi)And to undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.477A IPC.

(vii)And to undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.13(2) r/w. 13(1)(c) of P.C. Act, 1988 and

(viii)And to undergo Rigorous imprisonment of 1-year and to pay a fine of Rs.2,000/- in default to undergo Rigorous imprisonment for 3-months for the offence u/s.13(2) r/w. 13(1)(d) of P.C. Act, 1988 [Total fine Rs. 8,000/-]

Against which, the present criminal appeals are filed.

4.It is reported that the appellant/A1 in C.A.No.117 of 2015 died pending appeal. Hence the appeal as against the appellant/A1 stands abated.

5.The learned counsel appearing for the appellant/A2 submitted that the prosecution though projected 32 instances in the case, they had only let in evidence for 14 instances, to prove the 14 instances, 14 witnesses were examined, out of which only two witnesses, viz., P.W.23 and P.W.29 gave evidence and their evidences do not incriminate the appellant/A2 in any manner. He would submit that the charge of conspiracy is not proved for the reason that there is no iota of evidence available both oral and documentary. Further, there is nothing to infer any conspiracy ever existed. As regards the charge under Section 409 IPC, admittedly in this case the appellant is only a Sub-Staff and it was the Cashier and the Branch Manager who were incharge, of receipt of both Cheques and Cash from the insurers and agents, who have to appropriately account for, hence, the entrustment is with them and they had the domain. P.W.2, the Branch Manager confirms the same. He further submits that A2 is a Sub-Staff, acted as peon and the primary documents, namely, DCB and CRS not entrusted with the appellant. P.W.9, who was the alternate cashier in Oriental Insurance Company Limited, Nagercoil admits that whenever A1 was on leave, he acted as Cashier, he admits that Exs.P23, P26, P37, P52, P55, P63, P69, P75, P78, P81, P84 and P90 were authored and handled by him. Though P.W.9 handled substantial documents pertaining to the 14 instances, for the reasons best known he was not arrayed as accused. He further submitted that P.W.2 admits that he was a delinquent against whom departmental enquiry was pending and further states that along with him, five others from

Oriental Insurance Company Limited, Nagercoil were delinquents. Further, P.W.46 admits hat he was a witness in the departmental proceedings and no departmental proceeding was initiated against the appellant/A2. P.W.40/ conducted search in the house and office of A2 but no incriminating documents seized which is confirmed by P.W.44, another CBI officer. It is also stated that no specific evidence available both oral and documentary to show that the appellant/A2 made any wrongful gain or caused wrongful loss to the Insurance Company. Further, the confession letter/Ex.P5 though projected against the appellant, except for P.W.2 no other witness to the document was examined. P.W.2 admits that he is a delinquent facing departmental proceedings for the same issue who is in the nature of co-accused, P.W.2 to absolve himself from the misdeeds, with the aid of others, who are all superior officers to A2 coerced, forced, threatened and obtained the letter/Ex.P5. He further submitted that it is the admitted case is that A1 prior to Ex.P5 already given a confession letter/Ex.P2 in which he disclosed about the case, in such circumstances, without any new facts, Ex.P5 is of no consequence. Further, the appellant questioned P.W.2 about the same and had given a detailed explanation under Section 313 Cr.P.C. The Trial Court failed to consider these aspects.

6.He further submitted that the misappropriation was unearthed by a Committee consisting of Sundaresan, Nagarathinam, Balaguru and P.W.2. In this case, except P.W.2, the other three Committee members not examined as witnesses and the report is inadmissible. As submitted earlier, P.W.2 is a tainted witness. He further submitted that P.W.1, the Sanctioning Officer admits that the primary documents relating to the transaction are Daily Cash Balance Book and Cash Receipt Scroll[CRS], both these documents are entrusted with the Cashier and the Branch Manager. Further, P.W.1 admits that he has not looked into CRS to arrive at a subjective satisfaction before according sanction, hence the sanction itself is without application of mind. He further submitted that the appellant/A2 studied only upto 10th Standard, functional as messenger to deposit the cash, cheque given to him by the Cashier and handed over the bank documents to the Cashier other than that he had no other role. The writings in the reverse of the DCB is only on the instructions and on the particulars furnished by the Cashier, Branch Manager and his superiors, the appellant/A2 had to write, as instructed. Further, CBI conducted search in the house of A2, collected no incriminating documents, examined witnesses, analysed the status of the appellant's living, bank accounts and attendant circumstances, found there is no misappropriation, diversion of fund and the appellant/A2 not enriched in any manner. He further submitted that P.W.2, Branch Manager admits that the daily affairs of the Cashier is to prepare DCB and it is the Cashier who signs the DCB and place the DCB and CRS to the officers concerned, who in turn verify and sign the same on the same day. P.W.9, alternate Cashier whenever he was on duty used to remit the cheque and cash in the Bank through the appellant/A2. P.W.9, the alternate Cashier had dealt several instances, in such circumstances, the appellant/A2 conspired with A1 would be improper. P.W.42, the Accounts Incharge from the Divisional Office, Tirunelveli, on perusal of Ex.D1 to Ex.D14 states that he could not be certain and confirm that the writings found therein is that of the appellant or the other accused since deceased. The appellant has got nothing to do with the CRS which is a Computer generated printout, to which the officers alone have access. In this case, on a daily basis the DCB and CRS were compared and signed by the Cashier, verified and acknowledged by the Manager/P.W.2. Further, P.W.44 who received the information, registered FIR/Ex.P285 admit that information was given to him by his Superintendent and the same was given in writing. Though it is prerogative to the Investigating Officer not to disclose the identity of the informant, once the information has been reduced to writing, the same ought to have been produced which was done in this case. Hence, the credibility of the FIR itself is doubtful.

7.P.W.46, the main Investigating Officer submits that during investigation he came to know that A1 repaid the misappropriated amount. Though an attempt was made by the prosecution to project that the appellant/A2 also made some payments by Demand Drafts, the same could not be proved. These factors have not been considered by the Trial Court. He further submitted that though P.W.43, the Government Examiner of Questioned Documents [GEQD] was examined and some documents marked, he has not identified the questioned documents individually except a general overall statement. In his cross examination, he admits that he had not examined Exs.P23, P26, P29, P31, P34, P37, P40, P43, P46, P48, P52, P55, P63, P66, P69, P78, P81, P84, P87 and P90. These are the incriminating documents which were projected against the appellant/A2. In view of the admission of P.W.43, the charge of falsifying of accounts and writings of the appellant is not proved. He further submitted that for this reason, the Trial Court had not adverted to the evidence of P.W.43. Thus, the prosecution miserably failed to prove the case against the appellant/A2, on the contrary, the Trial Court convicted the appellant merely on surmises and conjunctures. Hence, he prayed for setting aside the judgment of the Trial Court and the appellant to be acquitted.

8.The learned Special Public Prosecutor submitted that on the side of the prosecution P.W.1 to P.W.47 examined, Ex.P1 to Ex.P279 marked, M.O.1 marked, on the side of the defence Ex.D1 to D15 marked. A1 and A2 who employed as Cashier and Sub-Staff respectively in the office of Oriental Insurance Company Limited, Nagercoil, Kanyakumari District who entered into a conspiracy in Nagercoil and other places to commit misappropriation on the amounts of Oriental Insurance Company Limited, the amounts which were entrusted to the Company by its customers/insurers were misappropriated by the accused in pursuance to the criminal conspiracy. A1 failed to account the entrusted premium by various insured persons, in Daily Cash Balance book by falsification of entries which is prepared at the end of the day after completing all transactions and in pursuance to the criminal conspiracy, A2 entered fictitious cheque details and false entries in DCB to cover up misappropriation of A1 in pursuance to the conspiracy and the amount misappropriated by the accused was to the tune of Rs.57,138/-. He would submit that there are totally 32 instances wherein misappropriation committed, P.W.2/Manager of the Oriental Insurance Company Limited, Nagercoil deposed about the same and through him, Ex.P8 to Ex.P94 marked. P.W.1 is the Sanctioning Authority, P.W.3 to P.W.8, P.W.10 to P.W.29 and P.W.39 are the witnesses residing in and around Nagerocil who insured their vehicles with Oriental Insurance Company Limited and Ex.P98 to Ex.P145 are the exhibits pertaining to insurance. Further, P.W.2 categorically spoken about the duties of A1 and A2. A1 as Cashier is to receive money from the Development Officer and Customers, enter the same in the computer, prepare receipts, at the end of the day he has to prepare Daily Cash Balance Book and on the next day, he has to remit the total collection in the Bank through the Sub-Staff/A2. A1 has to prepare Bank Reconciliation Statement in respect of both cash and cheque collection. Further, he has to send a copy of the same to the Divisional Office at Tirunelveli and a copy of the Statement is to be retained in the Branch Office.

9.He further submitted that the Daily Cash Balance Book is prepared in duplicate which is to be attested by the Assistant Administrative Officer daily. A2/Sub-Staff will collect the monthly statement from the Bank and hand over to the Cashier. At that time, the Oriental Insurance Company Limited had account in Canara Bank and Indian Overseas Bank at Nagercoil. From the Back Office Computer system, the Commission will be paid by cheques to the agents, with the payment of agent commission the entire transaction for the month is completed and a copy is filed and sent to Divisional Office at Tirunelveli. During the year 2002-2003, A1 was the Cashier, A2 was to collect the counterfoil for the deposits made and hand over to the Cashier which would be put in a book serial wise. P.W. 42/Jayapal, Accounts Incharge on 22.07.2003 came for inspection to Nagercoil Branch, he inspected the books of account and reported, that for the month of April, May and June, there was a huge outstanding in cheque collection from Indian Overseas Bank, Nagercoil and on further verification, it was found that misappropriation had been committed in the Branch. On the next day, i.e. on 23.07.2003 at about 7.30 a.m., Robert Vincent, Administrative Officer visited P.W.2's house along with A1 where A1 admitted that he committed misappropriation and requested to pardon him and they were informed to meet P.W.42. A1 and the said Robert Vincent went to meet P.W.42 and confessed about the misappropriation.

A1 gave a confession letter/Ex.P2 which is signed by P.W.2, P.W.42, Robert Vincent and one C.J.Joseph, Senior Divisional Manager. Ex.P5 is the confession letter of A2, both A1 and A2 admitted that misappropriated amount of Rs.8.95 lakhs would be remitted back to the account of Insurance Company. P.W.2 stated in detail about the 32 instances in which misappropriation was committed. P.W.9/Nambirajan is the alternate Cashier who acted in the absence of A1 and stated about the procedures followed. P.W.42 is the Accounts Incharge from the Divisional Officer who conducted detailed enquiry, verified the documents in detail and found the misappropriation committed by the accused herein. To verify the misappropriation, the insurers P.W.3 to P.W.8, P.W.10 to P.W.29 and P.W. 39 were examined. P.W.30, Manager, Indian Overseas Bank is the witness for the search conducted at the residence of A1 along with P.W.44 and P.W. 40 is the witness for the search conducted at the residence of A2 along with P.W.45. P.W.31 to P.W.38 and P.W.41 are the Bank witnesses who state about the demand drafts drawn in favour of the Oriental Insurance Company by one P.K.Raman and J.John and these demand drafts are the misappropriated amounts being recredited which would confirm the misappropriation committed by the accused. P.W.43 is the Government

Examiner for Questioned Documents, P.W.44 is the Investigating Officer who registered FIR, conducted search in the house and office of A1, P.W.45 was authorized by P.W.44 to conduct search at the residence of A2, thereafter P.W.46 took up investigation, conducted major portion of the investigation and all the witnesses confirmed the role played by the accused who have conspired to misappropriate, by falsifying the accounts of the Insurance Company. P.W.47 is the Investigating Officer who conducted further investigation, received the sanction for prosecution from P.W.1 and filed the final report. The Trial Court on the evidence of materials produced, discussed in detail and given a well reasoned judgment convicting the accused. Hence, he prayed for dismissal of the appeals.

10.Considering the submissions made and on perusal of the materials, it is seen that the witnesses can categorised as follows:

(1) P.W.1 is the Sanctioning Authority;

(2) P.W.2, P.W.9 and P.W.42 are the witnesses from Oriental Insurance Company Limited;

(3) P.W.3 to P.W.8, P.W.10 to P.W.29 and P.W.39 are the insurers with Oriental Insurance Company Limited;

(4) P.W.30 and P.W.40 are the witnesses to the search conducted at the residences of A1 and A2;

(5) P.W.31 to P.W.38 and P.W.41 are the Bank Officials of Indian Overseas Bank, State Bank of Travancore, Tamil Nadu Mercantile Bank, Canara Bank who state about the demand drafts taken in favour of Oriental Insurance Company Limited;

(6) P.W.43 is the Government Examiner for Questioned Document; and

(7) P.W.44 to P.W.47 are the Investigating Officers.

11.P.W.2 was the Branch Manager of Oriental Insurance Company Limited during the relevant point of time under whom Assistant Administrative Officer, Development Officer, Senior Assistant, Assistant Cashier and Sub-Staff were working. A1 was the Cashier and A2 was the Sub-Staff. The primary duty of the Cashier is to receive money from the Development Officer and Customers, enter the same in the computer, prepare receipts and policy, at the end of the day to prepare Daily Cash Balance Book, on the next day he has to ensure the remittance of the total collection in the Bank through the Sub-staff, he has to prepare a monthly reconciliation statement in respect of both cash and cheque collection, send a copy of the same to the Divisional Office at Tirunelveli and copy to the retained in the Branch. The Daily Cash Balance Book is prepared in duplicate, the original is sent to the Divisional Office, the duplicate is retained in the Branch and the Cashier has to send the DCB book for verification and attestation of the Assistant Administrative Officer everyday. This is the role of A1. As regards A2, he has to collect challans, bank receipt and monthly statement from the Bank and hand over to the Cashier. During the relevant point of time, the Oriental Insurance Company Limited, Nagercoil had account in Canara Bank and Indian Overseas Bank at Nagercoil. After the reconciliation statement is prepared by the Cashier, the commission payable to the agents will be calculated from the Back Office computer system and commission will be paid by cheque to the agents, with the payment of commission the entire transaction is completed and it is copied in a floppy and sent to the Divisional Office, Tirunelveli. The Sub-Staff is to collect the cash and the cheques daily from the Cashier, record the details on the reverse of the DCB with cheque particulars and total cash remitted to the Bank. These particulars are provided by the

Cashier. The counterfoil of the deposit is to be given by the Cashier to the Sub-Staff which would be put in a book form serial wise. The dishonoured cheque will also be collected by the Sub-Staff and given to the Cashier whenever given by the Bank. The role of Sub-Staff pertains to movement of files from one table to another. The Assistant Administrative Officer is incharge of the internal administration of the Branch and he confirms about the inspection conducted by P.W.42, Accounts Incharge from the Divisional Office, Tirunelveli.

12.The other witness is P.W.9, the alternate Cashier who act as Cashier in the absence of A1/Cashier and he identified the signature of A1 in several of the receipts, Ex.P104 to Ex.P113. He also state that one Jayapul was the Accounts Incharge and he further confirms that it is the Cashier and the Branch Manager who are responsible for daily collection receipts, etc. He categorically asserts that the Daily Cash Balance Book is prepared by the person who receive the cash, namely, the Cashier. The daily collection report would disclose the collection particulars which will be reflected in the computer and it is the duty of the Cashier and verified by the Branch Manager. The CRS will be verified by the Branch Manger who sign the same, P.W.9 admits that he prepared the documents Ex.P23, P26, P37, P52, P55, P63, P69, P73, P78, P81, P84 to P90 and these documents projected against the appellant/A2. He further admit that the documents prepared by him were verified and authorized by P.W.2/Branch Manager, in view of the same the case projected against the appellant/A2 falls.. Further, P.W.2/Branch Manager though states about the 32 instances for all the instances he confirms that it is only A1/Cashier who collects the premium amount and the same is entered in the computer, nowhere he states about A2 receiving any amount or making any entry. He further identifies and confirms the handwriting of A1 and about the specimen handwriting obtained from A1, James and Ponseli. P.W.2 admits that he is the 4th delinquent in the departmental enquiry and one Rajendran was the 5th delinquent for the same issue. He confirms that it is the duty of the Cashier to prepare Daily Cash receipts in DCB which is counter signed by the Officers and CRS is the computer generated document which needs no signature. The Sub-Staff have no access to the back office and front office computer. The accounts are maintained as per the Accounts Manual. During his period, statutory audit and company audit conducted periodically, auditors found no mistake, falsification of accounts, which is contrary to the case of the prosecution. In this case, no Statutory Auditor or Company Auditor examined, no reasons given for the same. P.W.2 admits that it is only the Officers who would sign in CRS, DCB and the CRS produced in this case were all generated after suspension of A1.

13.P.W.2 speaks only about A1 and nowhere he implicates or states anything against the appellant/A2. The evidence of P.W.2 is in conformity to the evidence of P.W.9 with regard to the receipt of cash, cheque, maintenance of DCB and CRS. It is admitted that there is no departmental enquiry initiated against the appellant which is confirmed by P.W.46, a CBI Investigating Officer. The Branch Manager/P.W.2 confirms it was P.W.42, Accounts Incharge from Divisional Office conducting inspection in the Branch Office, Nagercoil on 22.07.2003. P.W.42, on the instructions of one C.J.Joseph, the Divisional Manager, conducted inspection and verified DCB, CRS, front office and back office computer and its statements. Earlier, the Divisional Office Tirunelveli received the Bank Reconciliation Statement on 18.07.2003 in which huge outstanding was found and hence inspection was caused on 22.07.2003. During the inspection misappropriation was found, A1 and one Robert Vincent, Assistant Branch

Manager approached P.W.2 and thereafter P.W.42 before whom A1 admitted misappropriation, gave confession statement/Ex.P2 thereafter, A2 is said to have given a confession statement/Ex.P5. The presence of A1 and Robert Vincent is being spoken by P,W.2 as well as P.W.42. The said Robert Vincent is neither a witness nor an accused though he is an accused in other cases in C.C.No.1 of 2005 but acquitted. Likewise, in this case the Senior Divisional Manager, C.J.Joseph is not a witness. The only incriminating circumstances projected against the appellant is that the appellant gave a confession statement/Ex.P5. The appellant/A2 as a Sub-Staff completed his 10th Standard, he is in the lowest category in the office, his is a peon and his duty is to act as Messenger, to do the work assigned by his superiors including going to the Banks, making deposits, collecting challans, statements from the Bank and hand over to the office, A2 cannot act on his own, he has no access to any of the records, computer, has no authority to write or sign except on the instructions of his superior to write whatever is dictated or he is asked to do so and nothing more. In Ex.P2, A1 had already disclosed the fact of misappropriation, taking onus on him, in view of the same, Ex.P5 does not disclose any new fact. Added to it, apart from P.W.2, Ex.P5 is signed by Robert Vincent and C.J.Joseph, but both of them not examined as witness in this case. P.W.2 admits that he is a delinquent for the same charges facing departmental enquiry, P.W.2 is in the nature of co-accused, hence no credence can be given to his statement, the only other witness to be looked into is P.W.42, who though refers to the 32 instances he confirms as follows:

> "In instance Nos.1, 3, 4, 5, 12, 14, 22, 25 and 26, it is one K.Ulaganathan who certified the document prepared by A1 but strangely the said Ulaganathan was not examined as witness. In instance Nos.2, 6 ,7 ,8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 23 and 27, P.W.2 certified the documents. It is further seen that one Sundaresan, Nagarathinam and Balaguru from the other office of Oriental Insurance Company Limited along with P.W.2 conducted detailed inspection, except P.W.2, none examined as witness in this case."

14.P.W.42 admits that the statements prepared by the Cashier, authenticated, approved and signed by the Branch Manager. Further, as regards Ex/D1 to Ex.D9 for the writings found in the reverse of the prosecution documents, P.W.42 feigns ignorance does not identify the writing positively as that of appellant/accused. In this case, though P.W.

43/handwriting expert examined, his evidence was not considered by the Trial Court. Added to it, P.W.43 confirms the documents Ex.P23, P26, P29, P34, P37, P46, P48, P52, P55, P63, P69, P78, P81, P84, P87 and P90 were not examined by him, these are the documents projected against the appellant/accused not proved by oral evidence or scientifically. P.W. 44/Inspector of Police who registered Ex.P285/FIR admits that it was a source information collected by his Superintendent, given to him to register FIR and the information was in the written form, but strangely this written information not produced in this case. P.W.44 and P.W.45 admits that no incriminating documents seized from A2, during the search conducted in his house and office. P.W.46 is the Investigating Officer who conducted major portion of investigation admit that A1 repaid the misappropriated amount, not stated anything as regards the appellant/A2. Though an attempt was made through the Bank Officials who issued demand drafts and encashed the same to project, demand drafts was taken by A1 and A2, the Bank Officials state that the demand drafts were taken in the name of P.K.Rahman and J.John and none of the bank witness identified that the said P.KRahman and J.John are A1 and A2. Just referring to the name similar to the appellant would not cloth them with any criminality. P.W.47/Invesitgating

Office who filed the charge sheet though denied that it was P.W.9 who acted in 21 instances as Cashier, P.W.9 and the documents confirms that it was P.W.9 who dealt with these documents.

15.Insofar as the charge under Section 120-B r/w 409 IPC., is concerned, agreement between two or more persons is the requirement. It needs meeting of minds of the conspirators. In order to prove the criminal conspiracy, there must be a direct or circumstantial evidence to show or to infer that there was an agreement between two or more persons joined together to commit the offence. In the present case, neither direct nor circumstantial evidence available to prove the offence of criminal conspiracy, as against the accused and nothing is available on record even to remotely infer or to connect A2 with other accused. The prosecution miserably failed to prove that A2 conspired together with other accused to commit the offence, none of the prosecution witnesses spoken about the conspiracy, no documents produced to prove conspiracy with regard to the involvement of A2. The charge itself is wholly misconceived, as against A2, for the above said reasons, the charge under Section 120B r/w 409 IPC., not proved.

16.The sum and substance of the offence under Section 409 IPC and offence under section 13(1)(c) of the Prevention of Corruption Act, 1988 are one and the same ie. Misappropriation of a property entrusted to a public servant. Admittedly, the accused was a public servant, being a sub-staff of the Oriental Insurance Company Ltd., Nagercoil, Kanyakumari District. The case of the prosecution is that A2 misappropriated the amount collected by way of premium paid by the policy holders. In this case, there is no evidence to show there was an entrustment with A2. The condition is that the prosecution to prove entrustment and thereafter only the accused to prove his discharge. In this case there is no evidence of entrustment. So, under such circumstances, as correctly contended by the learned counsel for the appellant, the learned trial judge has wrongly convicted the accused for the offence of misappropriation under Section 409 IPC as well as under Section 13(1)(c) of the Prevention of Corruption of Act, 1988. Further P.W.2, P.W.9 and P.W.42 admit that it is the duty of Cashier and Officers to maintain the accounts and registers, who receive the chequs, cash and hence access to office computers who prepare DCB and CRS. Hence, I am of the considered view that the conviction and sentence against

A2 under Section 477A IPC and also under Section 13(1)(c) of the Prevention of Corruption Act, 1988, will not sustain, as the A2, as a sub-staff, doing the only work of messenger/postman.

17.With regard to the Charge under Section 13(1)(d) of the Prevention of Corruption Act, demand of bribe by abusing his position as public servant, obtain for himself or for any person any valuable thing or pecuniary advantage. In this case, there is nothing to show that A2 made any attempt to receive any pecuniary advantage by abusing his official position, in view of the same, A2 acquitted for the said offences.

18.From the evidence of P.W.2, it is seen that as a sub-staff, A2 has to collect the monthly statement of account from the Bank and handover it to the cashier. Further, as a sub-staff, on the instruction of cashier, A2 has go to the bank by carrying the total collection and remit it in the bank. Even according to P.W.2, P.W.9 and P.W.42, A2, as a sub-staff, acted only as a messenger. There is nothing to show A2 benefited out of these transaction. The appellant is only a sub-staff, acted as messenger on the instructions and directions of his superior A1/Cashier. Further, no departmental proceedings initiated against the appellant/A2. The evidence is that before whom the alleged admission letter is said to have been given by the appellant, P.W.2 a delinquent officer facing departmental enquiry for the same transaction. On the other hand, the proceedings were initiated against A1, PW2 and PW3 and against some officers of the Oriental Insurance Company. Thus looking from any angle, it is seen that the prosecution has miserably failed to prove the charges against the appellant/A2.

19.In view of the forgoing reasons, this Criminal Appeal filed by A2 in C.A.No.88 of 2015 is allowed and the Judgment passed by the learned II Additional District Judge for CBI cases, Madurai, C.C.No.1 of 2005, are set aside. A2 acquitted from all charges. The bail bonds stands cancelled. Sureties are discharged. The fine amount paid, if any, before the trial Court is directed to be released. Since the appellant/A1 in C.A.No.117 of 2015 is no more, the appeal abates.

10.11.2022

Index: Yes/No
Internet: Yes/No
cse

To

1. The II Additional District Judge for CBI cases,
   Madurai

2. The Inspector of Police,
   CBI / ACB: Chennai

3. The Public Prosecutor,
   High Court, Madras.

M.NIRMAL KUMAR, J.

cse

Pre-delivery common judgment made in

CRL.A.(MD)Nos.88 and 117 of 2015

10.11.2022