IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.03.2023	Pronounced on : 13.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.204 of 2010
and
Crl.M.P.Nos.4114 & 4115 of 2023

G.Moorthy, ... Appellant/Accused No.2

/versus/

State Rep. by
The Deputy Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Chennai.
(R.C.No.12(A/2000) ... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., pleased to set aside the judgment dated 18.03.2010 made in C.C.No.18 of 2003 by IX Additional Special Judge for CBI case/IX Additional City Civil Court, Chennai in so far as the accused No.2 is concerned and acquit the appellant from the above case.

For Appellant : Mr.V.Karthik, Senior Counsel
for Mr.K.Chandrasekaran.

For Respondent : Mr.R.Suderkumar
Special Public Prosecutor for CBI cases

JUDGMENT

G.Moorthy/the appellant herein is the second accused in C.C.No.18 of 2003 tried by the IX Additional City Civil Court, Chennai, for CBI cases, Chennai. The accused/A2 was found guilty of offence under Section 120 B r/w 420 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C Act, 1988 and sentenced to undergo R.I for a period of one year and to pay fine of Rs.2000/- and in default for payment of fine to undergo R.I for period of three months, convicted under Section 420 of I.P.C and sentenced to undergo R.I for period of one year and imposed fine of Rs.2000/- and in default for payment of fine to undergo R.I for period of three months. The period of sentence was ordered to run concurrently and the period of imprisonment already undergone if any ordered to be set off under Section 428 of Cr.P.C.

2. The case of the prosecution in nutshell is that, during the year 1998-99 one Manoharan while serving as Upper Division Clerk in Income Tax Department, Chennai along with the appellant/G.Moorthy, Income Tax Practitioner conspired to cheat the Income Tax Department along with Veerappan Cashier in Sangli Bank, West Mambalam, Chennai along with Gnanasekaran, Clerk in Sangli Bank, West Mambalam, Chennai, by submitting fake income tax returns in the name of fictitious persons viz., S.Arumugam of M/s.Polar Constructions and M/s.Vikram Transport Pvt Limited and the said refund orders were encashed by opening fictitious account with connivance of Veerappan, Cashier and Gnanasekaran, Clerk in Sangli Bank, West Mambalam respectively and thereby, obtained pecuniary gain to tune of Rs.3,58,604/- and corresponding wrongful loss to the Income Tax Department.

3. According to the prosecution, V.Manoharan, U.D.C, Income Tax Department, prepared TDS refund application in the name of S.Arumugam for Rs.63,800/-, showing the assessee address as No.76/2, K.R.Koil Street, West Mambalam, Chennai-33. Along with the application, TDS certificate in Form No.16-A, showing deduction of tax for Rs.59,320/- and Rs.32,680/- by Tamil Nadu Handloom Weavers Co-operative Society Limited was enclosed. To expedite the refund process, medical certificate in the name of Dr.M.S.Rao was enclosed. The application was processed and refund order was issued. The refund order was despatched to S.Arumugam at No.76/2, K.R.Koil Street, West Mambalam, Chennai-33 by registered post. The refund order was encashed through account maintained in Sangli Bank, West Mambalam and the accounts were opened by A2/Moorthy in connivance with A3 (Veerappan) and A4(Gnanasekaran), Cashier and Clerk at Sangli Bank, West Mambalam respectively.

4. Similarly, in the name of M/s.Vikram Transport Pvt. Ltd., refund application prepared by A1 Manoharan and the file was submitted to the higher Officer, who have requested the Head Clerk to check the returns calculated in the working sheet. Accordingly, Manoharan (A1) calculated refund of Rs.1,05,095/- and got the approval of the Deputy Commissioner of Income Tax for refund. Accordingly, refund order dated 26.08.1999 for Rs.1,05,095/- was issued. The refund order was despatched to one Sri.R.V.Shastri, Senior Manager (Finance), Ministry of Surface Transport, at No.501, Transport Bhavan, New Delhi. However, letter returned undelivered with an endorsement “no such person by name Sri.R.V.Shastri in the said address”. The TDS certificate in favour of M/s.Vikram Transport Pvt Limited was non-existing firm is a bogus certificate and using the bogus certificate A1 (Manoharan) managed to get the approval from his higher officials and got the refund order initially despatched to a non-existing address and later on delivered to a person at No.11, G.M. Street, Ellis Road, Chennai-2. In the said address, where M/s.Casio Air Travels is functioning and the Director of M/s.Casio Air Travels Smt.Uma Maheswari is none other than wife of A2/Moorthy. The refund order sent to the said address was collected by A2/Moorthy and encashed.

5. Similarly, the application for refund of Rs.1,62,145/- with interest of Rs.27,564/- totally Rs.1,89,709/- was claimed by M/s.Polar Construction Pvt Limited, at No.343, Triplicane High Road, Sathiyas Complex, Chennai–5, on 27.11.1998, for the assessment year 1998-99. The refund order was issued on 26.08.1999 for Rs.1,89,709/-. In the said claim for refund put by A1 (Manoharan), a bogus TDS certificate purported to have been issued by Airports Authority of India, International Airport Division, International Air Cargo Complex, Chennai Airport, Chennai was enclosed. M/s.Polar Constructions is a fictitious non-existing bogus Company and the TDS certificate in the name of Airport Authority of India also a fabricated document. The refund order obtained dubiously by A1 were encashed through the Bank account opened at Sangli Bank, West Mambalam, in the name of V.Inbaraj. The bank account was introduced by one K.B.Ravi Shankar, who is none other than co-tenant of A3/Veerappan. He being a Cashier in the said Sangli Bank, account in the name of V.Inbaraj was opened knowing fully well that, it is a fictitious person. The cheques issued in the name of Manoharan(A2) and Arumugam (A1) were encashed through the account opened in the name of V.Inbaraj with the connivance of the A3/Cashier and A4/Clerk of Sangli Bank, West Mambalam. The TDS refund amount dubiously siphoned and laid in the account opened in the name of V.Inbaraj a non-existing person was subsequently withdrawn in the name of one Narayanan. Again a fictitious person in whose name account was opened in ABN Amro Bank. The SB account form, specimen signature card for opening the account in the name of V.Inbaraj at Sangli Bank, West Mambalam, were all forged documents signed as V.Inbaraj, used those forged document as genuine for opening the account to enable siphoning of the income tax money.

6. To prove the charges, the prosecution has examined 30 witnesses (Ex.P.1 to Ex.P.30) and marked 109 Exhibits (Ex.P.1 to Ex.P.109). On the side of the defence, a letter sent by P.W.1 to the Assistant Commissioner of Income Tax dated 25.11.1999 been marked as Ex.D.1.

7. The trial Court acquitted A3 (Verrappan) & A4 (Gnanasekaran), who are Cashier and Clerk at Sangli Bank, West Mambalam Branch, were the account in the name of V.Inbaraj was opened to layer the refund orders issued by the Income Tax Department. However, V.Manoharan, U.D.C who has put up the application for refund along with fake TDS certificate and medical certificates and A2 who had opened the account in Sangli Bank and ABN Amro Bank misappropriated as if, he is V.Inbaraj and Narayanan and both were found guilty.

Submission made on behalf of the appellant/accused.

8. Mr.V.Karthick, Learned Senior Counsel appearing for A2/Moorthy, who is the appellant, submitted argued that, the trial Court has miserably failed to appreciate the evidence in proper perspective, due to the failure, it has arrived at a wrong conclusion. It is impossible for a person working as U.D.C, to get refund orders of the assessee, which should be scrutinised by Officer of higher rank and if the refund exceeds Rs.1,00,000/-, it should be ordered by Officer in the rank of Joint Commissioner, if it is less than Rs.1,00,000/- the Deputy Commissioner has to approve it. While so, no refund order will be issued without proper scrutiny of the applications for refund along with TDS certificates at various level in the Income Tax administrative hierarchy. Furthermore, the alleged conspiracy of this appellant, who is the Income Tax practitioner with the help of Manoharan(A1), U.D.C in the Income Tax department obtained refund orders fraudulently is totally impossible. An imaginary allegation against the appellant has been accepted by the trial Court without considering the enquiry report marked as Ex.P.104. Overlooking the finding in the said enquiry report, the Lower Court has relied upon the evidence of P.W.1 Tmt.Soundari and her report Ex.P.11, which is more or less a self serving and skin saving report. The contradiction among the Officials of Income Tax Department regarding the process of issuing refund orders and the scrutiny mechanism would go to show that the testimony of P.W.1 is totally unreliable. The Officials of Income Tax Department, who is shown as accused in column No.2 of the final report were not sent for trial. Being satisfied with departmental proceedings and criminal prosecution is not necessary. However, even departmental action was not initiated against them for the alleged issuance of refund order to a fictitious persons but they were examined as witnesses P.W.1, P.W.7 and P.W.15.

9. The refund amount finally been withdrawn by one Ramkumar at ABN Amro Bank, from the account maintained by one Narayanan. The prosecution has not seized the account opening form and other related documents pertaining to the account in the name of Narayanan at ABN Amro Bank. The evidence of P.W.13 V.S.Venkatesan, Manager, ABN Amro Bank and the evidence of P.W.25 R.Ashok Kumar, Branch Sales Leader, Yes BanK Ltd., are contradictory to each other. The trial Court has failed to appreciate these contradictions in favour of the accused. The statement of account (Ex.P.74) in the name of S.Narayanan is an inadmissible documents since it has not been marked as per the Bankers book of Evidence Act.

10. The hand writing expert opinion Ex.P.102 ought not to have been relied by the trial Court while 145 question documents were forwarded to hand writing expert P.W.27 of his opinion, he has given an conclusive opinion only in respect of 15 question documents and for the rest of the documents opinion is inconclusive and therefore, the opinion of the hand writing ought not to have given undue importance. The witnesses P.W.13 V.S.Venkatesan from ABN Amro Bank and P.W.23 Vasudev Phadnis of Sangli Bank have deposed that the accounts opened in the name of S.Narayanan and V.Inbaraj respectively were done after following due procedure. These two witnesses (P.W.13 and P.W.23) have admitted that, at the time of opening the account, the said persons appeared in person before them. While so, the contention of the prosecution that these are all fictitious persons and impersonated by A2/Moorthy, is an allegation without any foundation. While bank accounts are opened after fixing the copy of account holder, the allegation that fictitious accounts were opened by the appellant in different name in different bank remains as an allegation and not proved in the manner known to law. Therefore, the trial Court below has convicted this appellant on surmises and it is sought that the judgment of the trial Court has to be set aside.

11. Submission made by the respondent/prosecution:-

Per Contra, Mr.Sudar Kumar, Learned Special Public Prosecutor for the respondent/State submitted that the trial Court has convicted A2 along A1 not merely based on suspicion but on proven facts. The refund orders issued in the name of S.Arumugam, M/s.Polar Constructions and M/s.Vikram Transport Private Limited totally to a tune of Rs.3,68,604/- were ultimately encashed by this accused. The Income Tax Officers were induced to issue above said three refund orders by A1 (Manoharan), U.D.C, working in Income Tax Department and pursuant to the scheme of conspiracy of those refund orders issued based on fake TDS certificates was encashed by A2 through impersonation.

12. Further, the Learned Special Public Prosecutor for the respondent/State submitted that, as far as refund orders in the name of S.Arumugam is concerned, the said Arumugam is an Income Tax assessee and has filed returns for the year 1998-1999 and 1999-2000. He has shown his address as No.76/2, K.R.Koil Street, West Mambalam, Chennai-33 and the same is reflected in Form-II filed by S.Arumugam marked as Ex.P.2 and Ex.P.7.

13. P.W.4, Shanmugam, who was staying in the lodge during the year 1996 -1998 at No.2 Door No.76/2, K.R.Koil Street, West Mambalam, Chennai-32, had deposed that, during that period A2 was staying with him and he left the mansion after he got married in the year 1997. He did not received any letter addressed to S.Arumugam during the period he stayed in No.2, Door.76/2, K.R.Koil Street, West Mambalam, Chennai.

14. P.W.9, B.Arumugam, Postman of that area had deposed that, he has delivered a letter to a person in that address and he received it claiming as a friend of Arumugam. The refund order of Rs.63,800/- in favour of S.Arumugam was encashed through Sangli Bank, West Mambalam. The refund amount was credited in the account of one V.Inbaraj SB A/c No.1117 at Sangli Bank. The residential address of V.Inbaraj shown in the V.Inbaraj's bank account is a bogus address and P.W.29, the Investigating Officer has categorically deposed that, on the said address, they were not able to trace V.Inbaraj.

15. Relying upon the evidence of P.W.27, the hand writing expert, the Learned Special Public Prosecutor for the state submitted that, the income tax returns form marked as Ex.P.2 and Ex.P.7 filed in the name of Arumugam was written by A2. The refunded amount is Rs.63,500/- deposited in V.Inbaraj account maintained at Sangli Bank, West Mambalam branch subsequently withdrawn by way of cheque issued in favour of Narayanan and the said cheque is marked as Ex.P.55. The cheque has been encashed by said Narayanan from the account maintained at ABN Amro bank.

16. P.W.25, Ashok Kumar had deposed that, A2 (Moorthy) opened SB account for his friend S.Narayanan at ABN Amro bank. He being a Senior Sale Officer of that bank during that period arranged for opening account in ABN Amro Bank. The photocopy of S.Narayanan Passport (Ex.P.73) was produced by Narayanan and he had seen it and made an endorsement verified it. The address of S.Narayanan is shown as No.76/2, K.R.Koil Street, West Mambalam, Chennai. Thus, the chain of circumstances will clearly indicate that refund order raised in the name of Narayanan got deposited in the account of V.Inbaraj and from V.Inbaraj's account, it was transferred to the account of S.Narayanan, which was opened by A2 and later, amount has been withdrawn as per the Statement of account in the name of S.Narayanan maintained at ABN Amro Bank. To expedite the refund process along with fake TDS certificate alleged to have been issued by Tamil Nadu Handloom Weavers Co-operative Society Limited in the name of Arumugam is a fake TDS certificate prepared by this accused as per the hand writing expert opinion marked as Ex.P.102. Further, P.W.5 Rajadurai has deposed that, Ex.P.8 TDS Certificate in the name of S.Arumugam is not issued from their Office. Similarly, P.W.6, P.W.8 and P.W.11 have deposed that, they will not issue any TDS certificate in favour of M/s.Vikram Transport Private Limited. These evidence would clearly show that, conspiracy between the officials in the Income Tax Department and the accused had enabled to get refund orders and through accounts opened in the name of V.Inbaraj. The refund instalments been encashed and further withdrawn after transferring it to the account of Narayanan.

17. Further, the Learned Special Public Prosecutor for the respondent submitted that the refund orders in the name of Manoharan (A1), M/s.Polar Constructions Pvt Ltd and Vikram Transport Private Limited were all encashed in the similar manner and in all the fictitious accounts, the role of A2 is prominently seen. The accounts of Jayapal maintained at State Bank of Bikaner & Jaipur and the address of Narayanan in his bank account are the addresses where A2/Moorthy either residing or earlier resided. In such thing, it cannot be coincident unless a calculated design. The appellant is bound to explain and in fact given a statement to the Income Tax Officials who enquired him under Section 131 of the Income Tax Act, wherein, he has admitted that, many of the transactions in connection with encashing the refund orders were done by him and therefore, prayed that, the conviction of the trial Court order has to be confirmed.

18. Heard the Learned Senior Counsel for the appellant and the Learned Special Public Prosecutor for the respondent/State. Records perused.

19. As fas as this appellant/G.Moorthy is concerned, he was charged for the offence under Section 120-B r/w 420 of I.P.C and 13(2) r/w 13(1)(d) of P.C Act and exclusively for offence under Section 420 of I.P.C. The conspiracy alleged against him is with the public servant A1 Manoharan, serving as U.D.C in the Income Tax Department. From the evidence, the prosecution able to prove that five refund orders were issued based on fake TDS certificate in favour of S.Arumugam, M/s.Polar Constructions Pvt Limited and M/s.Vikram Transport Private Limited, Vengatesan and Rajagopgal. However, only three refund orders were encashed, rest of the two refund orders before issuance was withheld since, the department as found that something fishy in the refund application. As far as three refund orders encashed, the role of A1 (Manoharan) is induced his Officials to issue the refund order placing fake TDS forms. The role of A2/Moorthy is to collect the refund orders sent to the address where he had stayed earlier or presently staying, collected the orders and deposited in the account of one V.Inbaraj, a person not in-existence. The address of V.Inbaraj who are opening the account is the place where the accused staying prior to his marriage till the year 1997 as per the evidence of P.W.4.

20. The refund orders in the name of S.Arumugam is concerned, it has been emanated from the income tax returns filed in the name of S.Arumugam marked as Ex.P.2 and Ex.P.7 and same has been written by this appellant as per the hand writing expert. It has been explained by the witnesses how the refund order issued to S.Arumugam in the address at No.76/2, K.R.Koil Street, West Mambalam, Chennai, been collected by this accused and deposited in the account of V.Inbaraj maintained at Sangli Bank, West Mambalam. The address of V.Inbaraj is fake and non-existing address as spoken by Investigating Officer. However, the account has been actively operated and money from the account of V.Inbaraj been transferred to the account in the name of S.Narayanan at ABN Amro Bank. The account of S.Narayanan at ABN Amro Bank was opened at the instance of this accused as spoken by P.W.25 (Ashok Kumar). So, chain of circumstantial evidence without break proves the presence of accused at all stage starting from collecting the refund orders till it was encashed. Similarly, in case of M/s.Vikram Transport Private Limited, the income tax returns has been filled up and presented by this accused and the hand writing expert opinion has stated that, the written are in the hands of the appellant. The tax return refund intimation was resent to No.11, G.M. Street, Ellis Road, Mount Road, Chennai and thereafter, it has been addressed to No.7, Mariamman Koil Street, Korattur, Chennai. This refund order has been collected by the accused from No.11, G.M. Street, Ellis Road, Chennai and credited into the account of M/s.Polar Constructions Private Limited in Sangli Bank, Chennai (A/c No.599) and later, by way of three cheques Ex.P.47, Ex.P.48 and Ex.P.49, a sum of Rs.50,000/-, Rs.1,50,000/- and Rs.1,02,000/- has been transferred to the account of S.Narayanan and the said Narayanan has encashed it through ABN Amro Bank. It has already been found that the account in the name of S.Narayanan at ABN Amro Bank was opened by the accused showing the photocopy of the passport issued to S.Narayanan. Likewise, the refund order in favour of M/s.Polar Constructions for a sum of Rs.1,89,709/- was pursuant to the Income Tax returns Ex.P.17, which was filled up and submitted by the accused. Ex.P.17 Income tax returns and refund order intimation Ex.P.30, on comparison reveals that the assessee of M/s.Polar Constructions Private Limited mentioned his address as No.343, T.H.Road, Tatiaus Complex, Chennai but the address has been changed in the intimation as

C/o.No.11, G.M. Street, Ellis Road, Chennai.

21. P.W.12, Baladhandayutham, who is the Manger of Casio Air Travels had deposed that the Branch Officer of Casio Air Travels was functioning at No.11, G.M. Street, Ellis Road, Chennai, for the past 9 years and presently, they have closed the branch. The appellant/G.Moorthy use to come the Branch and met the owner of the building Hasan Alif regarding audit work and this prosecution witness has categorically stated that, at no point of time, M/s.Vikram Transport Private Limited and M/s.Polar Constructions were functioning in that address. Then again, Jayapal (P.W.10), stated that, in whose name the account in State Bank of Bikaner & Jaipur has been opened and cheques Ex.P.22 and Ex.P.23 in favour of M/s.Polar Constructions Private Limited had deposed that, he never opened an account in State Bank of Bikaner & Jaipur and he has not issued cheques marked as Ex.P.22 and Ex.P.23 and signatures found in those cheques are not of his signature. Though this prosecution witness was treated as hostile, his evidence was denied by opening the account at State Bank of Bikaner & Jaipur and also denying the issuance of cheques marked as Ex.P.22 and Ex.P.23. Whereas, the writings in those documents prove to be written by this appellant as per the evidence of P.W.27.

22. The prosecution is able to prove that the active role of the appellant had enabled to encash refund orders issued by the Income Tax Department on the inducement and connivance with the other accused in this case. While the prosecution able to prove that the address of the assessee, who got the refund order and the address of the account holder, who has encashed the refund order, all put together towards the accused A2/Moorthy, who had proximity and acquittance with those address. The stay in the mansion at No.76/2, K.R.Koil Street, West Mambalam, Chennai, was spoken by P.W.4 (Shanmugam) and P.W.14 (Selvamani). This is the address of S.Arumugam, who got refund order of Rs.63,800/- by providing fake TDS certificate and medical certificates. The refund order intimations marked as Ex.P.29 and Ex.P.30 were changed to a different address, which the appellant had acquittance, so that, it enable him to collect these refund orders.

23. In the above said circumstances, though the Learned Senior Counsel for the appellant had vehemently argued that, mere suspicion is not sufficient to convict the appellant and there must be a concrete unbreakable chain of circumstantial evidences, this Court finds that the evidence discussed above as well as the reasoning given by the trial Court in paragraph Nos.48 to 50 in its judgment are sufficient to hold that it is not mere suspicion but concrete evidence prove the guilty of the accused. The circumstances and chain of evidence which indicates the accused/appellant alone is the person responsible for collecting the refund order to a tune of Rs.3,58,604/- and encashed it through opening accounts in different name so that, the trail of ill-gotten money gets erased. However, the hand writing expert opinion and the person in whose name the account opened have exposed the appellant. The testimony of Jayapal (P.W.10) and the persons who stayed in the addresses where the refund order got redirected had exposed the scheme of conspiracy and design of the appellant, who had successfully cheated the Income Tax Department by inducing the officials to issue refund order, though there was no excess TDS collected from the assessee.

24. For the reasons stated above, this Court finds that there is no merit in the appeal. Hence, this ***Criminal Appeal is dismissed.*** The trial Court shall secure the accused person and commit him to prison to undergo remaining period of sentence. The period imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C. The bail bond executed, if any, shall stand cancelled. Consequently, connected Miscellaneous Petitions are closed.

13.04.2023

Index :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To:-

1. The IX Additional Special Judge (CBI cases)/
   IX Additional City Civil Court, Chennai.
2. The Deputy Superintendent of Police,
   Central Bureau of Investigation,
   Anti Corruption Branch,
   Chennai.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery judgment made in
Crl.A.No.204 of 2010
and Crl.M.P.Nos.4114 & 4115 of 2023

13.04.2023