# IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on :21.09.2023 | Pronounced on: 09.10.2023 |
|---|---|

Coram:

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN**

Criminal Appeal Nos.711 & 717 of 2015

**[Crl.A.No.711 of 2015 against Spl.C.C.No.6 of 2003]**

S.Iqbal, M/A 64 yrs,
S/o.Salimaraickar,
No.1, Big Mosque Street,
T.R.Pattnam, Karaikal. ... Appellant/Accused No.2
***(Reported dead, death certificate not filed)***

**/versus/**

State Rep. by,
The Inspector of Police,
Vigilance and Anti-Corruption Police Unit,
Pondicherry. ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to call for the records in Spl.C.C.No.6 of 2003, on the file of Special Judge (Under the Prevention of Corruption Act), Principal Sessions Judge at Puducherry, and set aside the judgment passed by the Learned Special Judge (Under the Prevention of Corruption Act) Principal Sessions Judge at Puducherry dated 28.10.2015 and allow the Criminal Appeal.

For Appellant :Mr.R.Bhagawat Krishna

For Respondent :Mr.K.S.Mohan Dass, P.P (Pondy)
Assisted by Mr.N.Danalachoumy

**[Crl.A.No.717 of 2015 against Spl.C.C.No.6 of 2003]**

S.Balasundaram, M/A 63 yrs,
S/o.Sinnathambi,
No.1, 1st Cross Street,
Kuppampet, Kombakkam,
Villianur, Puducherry – 605 110. ... Appellant/Accused No.1

**/versus/**

State Rep. by,
The Inspector of Police,
Vigilance and Anti-Corruption Police Unit,
Pondicherry. ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to call for the records in Spl.C.C.No.6 of 2003, on the file of Special Judge (Under the Prevention of Corruption Act), Principal Sessions Judge at Puducherry, and set aside the judgment passed by the Learned Special Judge (Under the Prevention of Corruption Act) Principal Sessions Judge at Puducherry dated 28.10.2015 and allow the Criminal Appeal.

For Appellant :Mr.G.Krishnakumar,

For Respondent :Mr.K.S.Mohan Dass, P.P (Pondy)
Assisted by Mr.N.Danalachoumy

**COMMON JUDGMENT**

On 27.06.1998, the Inspector of Police, Vigilance and Anti-Corruption, Puducherry, registered a case in Crime No.3 of 1998 against Thiru.S.Balasundaram, and four others, based on the complaint received from Thiru.Veeraraghavan, District Registrar, Register Office, Pondicherry, addressed through Superintendent of Police, Vigilance and Anti-Corruption Unit, Pondicherry.

**2.** The complaint disclosed that, Inter Department enquiry conducted had brought to light that, Balasundaram presently working as Assistant in the Office of Deputy Director of Education (Women), Pondicherry, while he was serving as Sub-Registrar at Karaikal, on deputation from 14.07.1994 to 20.08.1997, knowingly had registered deeds/documents improperly and irregularly for pecuniary advantage and extraneous consideration received from the parties. The findings of the preliminary enquiry are as follows:-

*Section 47-A of Indian Stamp Act, 1899 says that:-*

*"If the registering Officer while registering an instrument of conveyance, exchange, gift, release of*

*benami right or settlement has reason to believe that the market value of the property which the subject matter of conveyance, gift,release of 'benami right or settlement has not been truely set forth in the instruments, he may after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper stamp duty payable thereon*

*In the order No:723 of the Tamil Nadu Registration Manual Volume II, it has been stated that "47-A of the Stamp Act provides for a reference from the Registering Officer to the Collector only in respect of deeds of conveyance, exchange and gift".*

**3.** Contrary to Section 47-A of Indian Stamps Act, 1899 had under valued the property below the guideline value or over valued the property above the guideline value and thereby, caused unlawful gain to the Promoter Thiru.Oumar Farook in connivance with the Document Writer Thiru.K.L.Kesavelu and Thiru.S.Iqbal.

**4.** The said complaint in Crime No.3 of 1998. On completion of investigation, 7 separate final report filed and taken on file as Spl.C.C.No.2 of 2003 to Spl.C.C.No.8 of 2003. This appeal arose from Spl.C.C.No.6 of 2003.

**5.** The substance of the final report is as below:-

*The accused S. Balasundaram, (A1) is the then Sub-Registrar of Karaikal Sub-Registry the accused S. Iqbal, (A2) is the document writer, and the accused Y.M.Omar Farook, (A3) is the land promoter respectively.*

*During the period of his tenure as Sub Registrar of Karaikal Sub-Registry from 14/7/1994 to 20/8/1997, the accused S. Balasundaram used to take bribe, by abusing his position as Sub Registrar, from the document writers and the land promoters in particular and the parties to the documents in general to show some favour to them in the discharge of his official functions resulting in wrongful loss to government.*

*During the financial year 1995-1996 at the Sub Registrar Office, Karaikal, in furtherance of common intention of all the accused S. Balasundaram the then Sub Registrar of Karaikal Sub-Registry, had made manipulation in the Guide Line Register by increasing the GLR rate meant for the financial year 1995-96 of Karaikal Firka, Keezhavely Village Ward-G, Block-I, T.S.No. 5/3, 5/6 and 6/1 by fraudulently raising the existing cost of land per Are from Rs.9000/- to Rs.35,000/- for the purpose of cheating the land purchasers who came for registration and also made wrongful gain to the land promoters/land sellers and the document writer by registering the* *documents 518/95, 580/95, 640/95, 1202/95, 1473/95, 1495/95 and 1814/96 presented by the land promoter the accused Y.M. Omar Farook for registration by adopting the forged manipulated rate and thereby given an artificial increase in the land cost for gratification and those documents had been prepared by the accused S. Iqbal the document writer and also the accused S. Balasundaram had registered the document Nos.518/95, 380/95 and 640/95 and handed over to the parties to the documents before the receipt of the of 1995-96 and quite ignoring the GLR of Karaikal Firka and thereby all the accused have rendered themselves liable to be punished u/s 468 IPC and 13(1)(a) r/w 7 of Prevention of Corruption Act, 1988 r/w 34 IPC.*

**6.** Pending trial, the charge against Y.M.Omar Farook [A-3] was discharged. As against A1, the trial Court framed charges under Section 13(1)(a) r/w Section 7 of Prevention of Corruption Act, 1988 and Section 468 r/w 34 of I.P.C against A1. As Against A2, the charges under Section 468 r/w 34 of I.P.C was framed.

**7.** To prove the charges, the prosecution examined 17 witnesses (P.W.1 to P.W.17) and marked 35 Exhibits (Ex.P.1 to Ex.P.35). On the side of the defence, one witness (D.W.1) was examined and one exhibit (Ex.D.1) was marked.

**8.** The trial Court, on appreciation of evidence held that prosecution has let in positive evidence regarding the collusion between 1st and 2nd accused with respect to preparation of documents and production of the same for registration and in this case Ex.P3, Ex.P4 and Ex.P5 seen in conjunction with the evidence of PW6, PW8, PW9, PW12 and PW13 and PW14 and also Ex.P14, Ex.P15 and Ex.P16 show that there has been direct collusion between the 1st and 2nd accused in increasing the guideline value of T.S.No.5/3, 5/6 and 6/1 in Block-1, Ward-G. Keezhaveli Village, Karaikal Firka for the financial year 1995-1996 from Rs.9000/- to Rs.35,000/- per Are atleast with specific reference to Document Nos.518/95, 580/95, and 640/95 which had been registered at nearly four times the guideline value and also handed over to the parties before receiving the guideline register for 1995-1996 and ignoring the guideline register for Karaikal Firka. This constitutes commission of offence u/s 468 I.P.C.

**9.** The trial Court convicted the accused and sentenced him to undergo imprisonment as below:-

| ***Accused*** | ***Offences under Section*** | ***Conviction and Sentence passed by the trial Court.*** |
|---|---|---|
| Balasundaram (A1) | 13(1)(a) r/w Section 7 of P.C Act, 1988. | To undergo 2 years R.I and to pay fine of Rs.3000/-, in default to undergo 6 months R.I. |
| | 468 of I.P.C r/w 34 of I.P.C | To undergo 2 years R.I and to pay fine of Rs.3,000/-, in default to undergo 6 months R.I. |
| S.Iqbal (A2) | 468 of I.P.C r/w 34 of I.P.C | To undergo 2 years R.I and to pay fine of Rs.3,000/-, in default to undergo 6 months R.I. |

The period of sentence ordered to run concurrently. The period already undergone by the accused ordered to be set off under Section 428 of Cr.P.C.

**10.** Aggrieved by the conviction and sentence passed by the trial Court, the following Criminal Appeals preferred by the convicted accused:-

(i). Crl.A.No.717 of 2015 by A1 – Balasundaram and

(ii). Crl.A.No.711 of 2015 by A2 – S.Iqbal.

**11.** Pending appeal, the Learned Public Prosecutor (Puducherry) produced photocopy of the letter by VAO of T.R.Pattinam Revenue Village with Ref.No.216/VAO/TR PATTINAM/2022-23, dated 27.09.2023, which indicates that, the appellant/S.Iqbal [A2] died due to Covid-19. Hence, Criminal Appeal No.711 of 2015 is dismissed as abated.

**12.** The Learned Counsel appearing for the appellant submitted that sanction to prosecute is defective and not in accordance with law. The Sanctioning Authority has not applied his mind before according sanction. His competency to give sanction also questionable. According to the appellant, he was in the Registration Department on deputation. The Joint Secretary (Revenue), Government of Puducherry, is not the authority competent to remove him from service since his parent department is not the Revenue Department. Granting sanction is not an empty formality, the Competent Authority should apply his mind before according sanction. Whereas Ex.P.1 the sanction order suffers non-application of mind. First the District Registrar issued sanction to prosecute and in supersession of the earlier order, P.W.1 Uddipta Ray, the then Joint Secretary (Revenue) of the Government has accorded sanction. P.W.1 having admitted that, he had not verified all the 109 suspected sale deeds but had only referred the illustrative documents. It is also contended that, there was no loss to the department and no departmental action initiated against this appellant either to impose penalty or recovery of alleged loss. A preliminary enquiry was conducted within the department and the appellant was found innocent. The preliminary enquiry report deliberately suppressed by the prosecution.

**13.** The Learned Public Prosecutor appearing for the U.T of Puducherry submitted that, the appellant while on deputation as Sub-Registrar, Karaikal committed the offence. The District Registrar is the Authority Competent to remove Sub-Registrar from service, since, in this case, the District Registrar was a key witness for prosecution. The Joint Secretary (Revenue), who is Superior to District Registrar had accorded sanction and the said sanction is by the person competent to remove Sub-Registrar. P.W.1 Uddipta Ray, being the District Magistrate as well as Joint Secretary (Revenue), is the competent person to accord sanction for prosecuting the Appellant/Sub-Registrar. The offence committed by the appellant while he was working as Sub-Registrar on deputation in the Revenue Department, hence competency of the P.W.1 is not questionable. P.W.1 had applied his mind and on perusal of the records after *prima faciely* satisfied, he has accorded sanction and there is no error or illegality. Furthermore, the trial Court, after perusing the record had taken cognizances of the offence in view of the overwhelming material available to frame charge. The loss to the Government during the financial year clearly constitute an offence punishable under Section 13(1)(a) of P.C Act.

**14.** Heard the Learned Counsel for the appellants and the Learned Public Prosecutor for the respondent. Records perused.

**15.** The substance of the final report which has been taken cognizance in Spl.C.C.No.6 of 2003 is that, A-1 Balasundaram, while serving as Sub-Registry, Karaikal, was entrusted with the dominion in the Sub-Registry, Karaikal, from the period between 14.07.1994 to 20.08.1997 had taken bribe by abusing his official position from the Document Writers and the land promoters to show them favour in the discharge of official function with the common intention sharing with the other accused. The guideline register was manipulated by increasing the GLR rate for the financial year 1995-1996 of Karaikal Firka, Keezhavely Village, Ward-G, Block-I, T.S.No.5/3, 5/6 and 6/1 by fraudulently raising the existing cost of the land per Are from Rs.9000/- to Rs.35,000/- for the purpose of cheating the land purchasers, who came for registration and also made wrongful gain to the land promoters/land sellers and the document writers by registering 6 documents bearing Nos.586/95 (Ex.P.4), 640/95(Ex.P.5), 1202/95(Ex.P.6), 1473/95 (Ex.P.7), 1495/95 (Ex.P.8), 1814/96 (Ex.P.9) giving an artificial increase in the land cost for gratification. Those documents had been prepared by A2, A1 had registered the documents and handed over it to the parties.

**16.** P.W.5 Thiru.Mariyappan had spoken about the value shown in the guideline register and the value shown in the documents submitted for registration and how the GLR register been manipulated.

**17.** P.W.6 Thiru.Krishnavelu, a practising Advocate at Karaikal had deposed incriminating A2 the Document Writer, who was the blue eyed boy of A1 and how A1 used to boost the GLR value through A2 by registering the document showing higher value than the guideline value.

**18.** P.W.15 Thiru.Raja Kirubakaran, Sub Inspector of Police who investigated the case had deposed that during his enquiry, he found that GLR value for the 6 documents dishonestly boosted from Rs.9000/- to Rs.35,000/-, thereby causing loss to the purchasers and gain to the Government and the seller.

**19.** Unlike the other case, where the under valuation has caused loss to the Government, in the case, the value been boosted with some hidden agenda, the reason for boosting the value of the property manifold not come to light in the investigation. The intention behind the fact of boosting the value higher than the guideline value not been probed. The allegation that, by boosting the value, the buyer were cheated is not an offence cognizable at the instance of respondent police.

**20.** It is a specific case of the prosecution through P.W.6 Krishnavelu that, A1 used to take the service of A2 to prepare documents with higher value, thereby causing loss to the buyer and corresponding gain to the seller and the Government. However, his evidence or the evidence of other prosecution witnesses does not demonstrate how by boosting the value and getting the document registered, collecting higher stamp duty will affect the interest of the Government.

**21.** The value of any property not depends on the guideline value but on the propensity of the buyer. To purchase a piece of land paying fancy or high value than the markable value may be for multiple reason either to show the value of the property purchased is of very high value and make use of the document for any other financial purpose like mortgage etc., or a piece of land purchased for fanciful price. To use it as test document for fixing compensation of the adjoining land or may be for any other reason, higher price might have been paid by the buyer.

**22.** Unless, the prosecution is able to establish through evidence, that such manipulation of the value was with dishonest intention to cheat or to make any pecuniary advantage, merely because the Sub-Registrar permitted a document to be registered for higher value than guideline value *per se* cannot be an illegal act or misconduct. The variations in the value of the document advantageous to the Government unless and until, it is proved to have been done with some dishonest intention, will not attract any offence against the Sub-Registrar who had accepted the document for registration. Particularly, offence under Section 13(1)(a) r/w 7 of P.C Act or 468 I.P.C r/w 34 of I.P.C cannot be invoked for the said act. Ex.P.3 to Ex.P.9 sale deeds showing the value of the property as Rs.35,000/- contrary to the guideline value Ex.P.10 and Ex.P.11, which shows value at Rs.9000/-. Showing the value of the property at Rs.37,000/- instead of Rs.9000/-, there was no loss to the State.

**23.** This Court finds a manual correction in Ex.P.11 guideline value. Wherein, Rs.9000/- been corrected and re-written as Rs.35,000/-. Prosecution has not proved beyond doubt that this correction was done by A-1 or A-2 with some ulterior dishonest intention. The prosecution not even able to fix the person who has made the manual correction in the guideline value Register.

**24.** In the above said circumstances, this Court is of the view that, presumption under Section 20 of Prevention of Corruption Act cannot be drawn against the appellant/A1 for offence under Section 13(1)(a) of P.C Act. Since the prosecution was failed to prove the foundational fact. Likewise, regarding the manipulation or forgery in the document namely guideline value register, unless prosecution able to prove the person responsible for the correction, A1 has to be presumed as innocent for collecting higher stamp duty. It is pertinent to note that, none of the 6 buyers have challenged the collection of higher stamp duty and it is not a crime to purchase property for a value higher than the guideline value and disclosing the same in the document. While so, when it is not an offence to purchase a property for a value higher than the guideline value and when it is not an offence to accept such document for registration without restoring to Section 47-A of Stamp Act, the conviction and sentence imposed on this appellant is liable to be set aside for want of proof and for the reason the ingredient of the offences and charges are not made out. Therefore, the appeal preferred by Balasundaram/A1 is liable to be allowed.

**25.** In fine,

***(i).*** *The* ***Criminal Appeal No.717 of 2015 is allowed.*** The judgment of the trial Court passed in Spl.C.C.No.6 of 2003 on the file of Special Judge, Puducherry is hereby set aside. Fine amount paid if any, shall be refunded to the appellant/A1. Bail bond executed by the appellant shall stands cancelled.

(ii). The ***Criminal Appeal No.711 of 2015 filed by S.Iqbal [A2] is dismissed as abated.***

09.10.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
bsm

Copy To:-
1.The Learned Principal Sessions Judge, Puducherry
2.The Inspector of Police, Vigilance and Anti-Corruption Unit, Puducherry.
3.The Public Prosecutor (Pondicherry), High Court, Madras.

**DR.G.JAYACHANDRAN,J.**

bsm

Pre-delivery common judgment made in
Criminal Appeal Nos.711 & 717 of 2015

09.10.2023