



Crl.A.Nos.712 & 719 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :21.09.2023

Pronounced on: 09.10.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.712 & 719 of 2015

[Crl.A.No.712 against Spl.C.C.No.8 of 2003]

S.Iqbal, M/A 64 yrs,
S/o.Salimaraikar,
No.1, Big Mosque Street,
T.R.Pattinam, Karaikal.
(Reported dead, death certificate not filed)

... Appellant/Accused No.2

/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., pleaded to call for the records in Spl.C.C.No.8 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.



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For Appellant :Mr.R.Bhagawat Krishna,

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

[Crl.A.No.719 against Spl.C.C.No.8 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., pleaded to call for the records in Spl.C.C.No.8 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



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COMMON JUDGMENT

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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, the case was taken up for investigation.

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 to the documents. 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



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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 truly 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 1988. 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.8 of 2003.



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As against Balasundaram (A1) was found guilty of offence under Section 13(1)(a) r/w 7 of Prevention of Corruption Act 1988 and Section 468 r/w 34 of I.P.C. As against S.Iqbal (A2) was found guilty of offence under Section 468 r/w 34 of I.P.C.

5. The substance of the charge 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.

During the period of his tenure as Sub Registrar of Karaikal Sub-Registry i.e. 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 function resulting in wrongful loss to the government.

During the financial year 1995-1996 at the Sub Registrar Office, Karaikal, the accused S.Iqbal the document writer Prepared and presented a false document No.908195 showing the age of the building as 40 years instead of 7 years in order to claim increase in the depreciation value of the building and in furtherance of



common intention of all, the accused S.Balasundaram, the then Sub Registrar, Karaikal had registered the said document for gratification relying upon the false age of the building, without raising any queries and had allowed the parties to the document to avail a higher increase in the depreciation value and thereby cheated the Government and caused wrongful loss of Rs.4148/- as stamp duty and registration fee to the government and thereby jointly committed forgery and criminal misconduct to meet their personal end and thereby 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. The trial Court framed charges against the appellant/A1 under Section 13(1)(a) r/w Section 7 of P.C Act and 468 r/w 34 of I.P.C, as against A2 under Section 468 of I.P.C r/w 34 of I.P.C.

7. To prove the charges, the prosecution examined 13 witnesses (P.W.1 to P.W.13) and marked 19 Exhibits (Ex.P.1 to Ex.P.19). On the side of the defence, one witness (D.W.1) was examined and one exhibit (Ex.D.1) was marked.



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8. The trial Court, on appreciation of evidence held that, the prosecution also produced Ex.P.16, the Pondicherry Document Writers Licence Rules, 1977, in which it had been held that, the document writer "shall set forth fully truly the consideration or the market value and other facts and circumstances affecting the changeability of any instrument with duty or the amount of duty with which it is chargeable under the Indian Stamp Act, 1899 as amended from time to time" and further that he should not participate "in any illegal transactions or dealings with the staff attached to the Registration Offices." This constitutes commission of offence under Section 468 of I.P.C.

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

<i>Accused</i>	<i>Offences under Section</i>	<i>Conviction and Sentence passed by the trial Court.</i>
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
	Section 468 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)	Section 468 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



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undergone by the accused ordered to be set off under Section 428 of Cr.P.C.

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10. Aggrieved by the conviction and sentence passed by the trial Court, the appellant/Balasundaram [A1] has preferred Crl.A.Nos.719 of 2015 and the appellant/S.Iqbal [A2] has preferred Crl.A.No.712 of 2015.

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.712 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



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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 facie* 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 appellant and the Learned Public Prosecutor for the respondent. Records perused.

15. The sum and substance of the final report is that, A1 was working as Sub-Registrar at Karaikal along with A-2 the land broker had calculated the age of the building which is the subject matter of Doc.No.908/95



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by increasing it from 7 years to 40 years, in order to allow depreciation and fix the value of the building less than the true value and thereby, to cheat the Government by paying lesser stamp duty and registration fees.

16. It is the case of the prosecution that, the property which is the subject matter of Doc.No.908/95 is in respect of land and building sold by one M.Narayanasamy (P.W.9) in favour of one S.Raghunathan on 06.07.1995 for sale consideration of Rs.1,60,000/-. The schedule of the property indicates that, the building measuring 70.91 sq.mts upon land measuring 1872 sq.ft. The age of the building is shown as 40 years. Ex.P.7 which is Form 1-A annexed to the sale deed also shows the age of the building as 40 years with RCC roof.

17. The seller of the property M.Narayanasamy examined as P.W.9 had deposed that, he purchased vacant site measuring 30x60 feet and started construction during the year 1988-1990. He was not able to complete the construction and hence, sold it to Raghunathan in the year 1995 and the sale deed is marked as Ex.P.3. When P.W.9 sold the land and building, the complete construction was about 4 to 5 years old.



18. P.W.10 Selvanathan is the attestor to the sale deed marked as

Ex.P.3 and he had deposed that, when Raghunathan purchased the property in the year 1995, there was a residential house in that land with one floor. P.W.5 Krishanvelu and P.W.8 Haja Najeemudeen were examined by the prosecution to show that, A1 was favourable to A2 Document Writer and insisted the parties to engage A-2 for registering the documents. On similar line, P.W.7 has also deposed the same.

19. As far as the present case is concerned, it is to ascertain whether the document Ex.P.3 accepted for registration by A1 showing the age of the building as 40 years, but the age was only 7 years is proved by the prosecution and even if the age of the building was less than 40 years, what is the loss to the State by the alleged dishonest acceptance of the document. As discussed earlier, the document speaks for itself. Ex.P.3 stated that the building is 40 years old. Whereas, the person, who sold the property, examined as P.W.9 says, it was an incomplete construction aged about 5 or 6 years at the time of registration. If the age of the building is inflated and depreciation is shown it is evasion of stamp duty. A1 as Sub-Registrar has the responsibility to check the age of the building by physical verification and only after physical verification,



he should have released the document.

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20. In this case, it is to be presumed that, A1 has conducted physical verification and being satisfied about the age of the building, he had released the document without keeping it pending for decision under Section 47-A of Stamp Act. In Ex.P.7 Form 1-A or in the sale deed Ex.P.3, there is no indication to infer that at the time of registering the document, there was no building aged 40 years. P.W.9 the vendor M.Narayanasamy in his evidence had deposed that, he purchased vacant land measuring 30 x 60 in the year 1988, if it is so, in the year 1995 there cannot be a building aged 40 years in the said site. To prove this fact, prosecution should have collected the parent document of Narayanasamy which is Doc.No.952/1988. In the absence of proof regarding the age of the building which is the subject matter of Ex.P.3 Doc.No.908/95, Court cannot jump to the conclusion that it is not 40 years old as found in the document but only 7 years old building. The statement of the seller Narayanasamy lack reliability, he being a party to Ex.P.3 which declares the age of the building as 40 years. The contra oral evidence given by Narayanasamy P.W.9 should have a supportive document. The best document could have been his own title deed which is the Doc.No.952/1988 dated



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31.10.1988. In the absence of this document, the oral evidence of P.W.9 who is party and signatory to the document Ex.P.3 will not prevail. For the said reason, this Court holds that the prosecution failed to prove the charge against the appellant beyond reasonable doubt.

21. In fine,

(i). The ***Criminal Appeal No.719 of 2015 is allowed.*** The judgment of the trial Court passed in Spl.C.C.No.8 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.712 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



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Copy to:-

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



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DR.G.JAYACHANDRAN,J.

bsm

**Pre-delivery common judgment made in
Criminal Appeal Nos.712 & 719 of 2015**

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