



Crl.A.No.713 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 No.713 of 2015

[Crl.A.No.713 of 2015 against Spl.C.C.No.2 of 2003]

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

... Appellant/Accused

/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.2 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.G.Krishnakumar,

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

J U D G M E N T

The Inspector of Police, Vigilance and Anti Corruption, Puducherry, registered a case in Crime No.3 of 1998 against Thiru.S.Balasundaram, the then Sub-Registrar of Karaikal Sub-Registry, Thiru.K.L.Kesavelou, Thiru.S.Iqbal, Document Writers of Karaikal and Thiru.Y.M.Omar Farook, Land Promoter of Karaikal, based on the complaint given by Thiru.V.Veeraraghavan, District Registrar, Registration Department, Pondicherry.

2. The complaint revealed that, the accused S.Balasundaram, had registered 109 documents of sale/gift without taking into consideration the correct and true market value in accordance with the Guide Line Register issued by the Government of Puducherry obtaining illegal gratification. He had handed over the documents, so registered with lesser stamp duty, to the parties to the documents without any adjudication by referring it to the Deputy Collector (Revenue), Karaikal, to find out the correctness of the stamp duties



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paid by the parties and thereby, caused loss of revenue to the Government. By showing favour to the parties to the documents and the Document Writers, in the discharge of his official functions, he had committed offence of misconduct by public servant. Also committed criminal breach of trust to the Government.

3. On completion of investigation, final report was filed against Balasundaram for offence under Section 409 of I.P.C and 13(1)(a) r/w 7 of Prevention of Corruption Act 1988.

4. The substance of the charge is as below:-

“The accused S.Balasundaram, the then Sub-Registrar of Karaikal, Sub-Registry was entrusted with the dominion of the Sub Registry, Karaikal, for the period from 14-9-1994 to 20-8-1997.

During the period of his tenure as Sub Registrar, the accused 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 the government.



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During the financial year 1994-1995 at the Sub Registrar Office, Karaikal, the accused S. Balasundaram had registered 3 documents i.e., 9/95, 161/95, 430/95 of sale/gift without taking into consideration the correct and true market value in accordance with the Guide Line Register issued by the government and had handed over the documents, thus registered under a lesser stamp duty, to the parties to the documents without any adjudication to the Deputy Collector (Revenue), Karaikal to find out the correctness of the stamp duties paid by the parties and thereby caused registration under lesser stamp value for gratification and thereby caused loss of Rs.3858/- towards stamp duty and Rs.260/- towards registration fees to the government by showing favour to the parties to the documents and the document writers in the discharge of his official function and thereby, committed criminal breach of trust to the Government and criminal misconduct to meet his personal end which are punishable u/s 409 IPC and 13 (1) (a) r/w 7 of Prevention of Corruption Act 1988.”

5. The trial Court framed charges against the appellant and found guilty of offences under Section 409 of I.P.C and 13(1)(a) r/w Section 7 of Prevention of Corruption Act, 1988.



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6. To prove the charges, the prosecution examined 10 witnesses (P.W.1 to P.W.10) and marked 21 Exhibits (Ex.P.1 to Ex.P.21). On the side of the defence, one witness (D.W.1) was examined and one exhibit (Ex.D.1) was marked.

7. The trial Court, on appreciation of evidence held that, the accused had caused loss of revenue to the Government during the financial year 1994-1995, when he was Sub-Registrar, Karaikal Sub-Registry Office to an amount of Rs.4,118/- (stamp duty Rs.3858/- and registration fees Rs.260/-) for three documents namely 9/95, 161/95 and 430/95 by registering the same without taking into consideration the correct and true market value in accordance with the guideline register issued by the Government and had handed over the documents, thus registered under a lesser stamp duty, to the parties to the documents without any adjudication to the Deputy Collector (Revenue), Karaikal, to find out the correctness of the stamp duties paid to the parties and thereby, caused loss of Rs.3,858/- towards stamp duty and Rs.260/- towards registration fees to the Government by showing favour to the parties to the documents in discharge of his official function and thereby, committed criminal misconduct to meet his personal ends and criminal breach of trust to



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the Government.

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8. 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	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
	409 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.

9. Aggrieved by the conviction and sentence passed by the trial Court, the appellant/Balasundaram has preferred Crl.A.No.713 of 2015.

10. 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



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(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.

11. P.W.8 Raja Kirubakaran admits that, there is no evidence to show abuse of official position or obtainment of pecuniary advantage by the appellant. The Investigating Officer admits that, there was no proof against the appellant to show that, he manipulated/fabricated documents and there is no



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improper registration of documents during his tenure. While so, the valuation of the property which depends upon various other factors besides the guideline value fixed by the Government cannot be a criteria to suspect the appellant for any breach of trust. The Auditor report conducted by the District Registrar had not indicated any violation or loss to the Government.

12. 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 facie* satisfied, he has accorded sanction



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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.

13. The following three documents accepts for registration by the appellant under valued and lesser stamp duty and registration charges was collected causing loss to the Government.

<i>Sl. No.</i>	<i>Doc.No.</i>	<i>Date of Execution/ Registration</i>	<i>Value given in the document (Rs.)</i>	<i>Value as per GLR (Rs.)</i>	<i>Stamp duty paid (Rs.)</i>	<i>Actual stamp duty that should have been paid (Rs.)</i>	<i>Reg. Fee Collected (Rs.)</i>	<i>Reg. Fee that should have been collected (Rs.)</i>	<i>Total loss to Govt. (Rs.)</i>
1.	9/1995	19.12.1994/0 4.01.1995	46,000/-	65,813/-	4370/-	6270/-	236/-	336/-	2000/-
2.	161/1995	06.02.95 / 06.02.95	14,000/-	22,500/-	320/-	630/-	76/-	146/-	380/-
3.	430/95	23.03.95/ 2303.95	63,000/-	1,14,000/ -	6000/-	7648/-	321/-	411/-	1738/-

14. Without verifying the guideline value or knowing the guideline, the appellant has accepted the document for registration and without referring under Section 47-A of the Stamp Act, dishonestly released the documents.



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15. Ex.P.3, Ex.P.4 and Ex.P.5 which are the three documents registered with under valuation comparing with the guideline value. Ex.P.6, Ex.P.7 and Ex.P.8 are sufficient proof to convict the appellant. Therefore, prayed for confirmation of the trial Court judgment.

16. Heard the Learned Counsel for the appellant and the Learned Public Prosecutor for the respondent/U.T of Puducherry. Records perused.

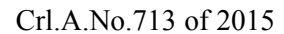
17. The prosecution while comparing the guideline value Ex.P.3, Ex.P.4 & Ex.P.5 and the value shown in the three documents Ex.P.6, Ex.P.7 & Ex.P.8 had established the fact that the three documents were registered showing under value than the guideline value. However, the accused contend that Karaikal Registration Office was not informed about the revised guideline value. For that purpose, he relies upon the evidence of P.W.2 who admits that, the guideline value did not reach the Karaikal Registration Office in time. This is far fetching explanation to accept Karaikal Registration Office did not receive the revised guideline value in time as a reason for accepting the documents submitted with under value. It is the responsibility of the Sub-Registrar to collect the appropriate stamp duty for the documents presented. It



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is the prime duty of the Sub-Registrar to check whether the valuation of property in the document to be registered is properly disclosed. If there is any discrepancy, the document should be kept pending under Section 47-A of the Stamp Act and only after collecting the necessary stamp duty, the document has to be released.

18. Ex.P.11 is the complaint in respect of accepting the document under value narrates the procedure to be adopted and when such under value documents are presented. The appellant herein during his tenure as Sub-Registrar, Karaikal, had in collusion with the parties to the document had accepted documents marked as Ex.P.3, Ex.P.4 and Ex.P.5 and collected lesser stamp duty. If it is one or two documents with lesser value than the guideline value, it can be considered as an inadvertence or simple negligence. There are about 115 documents been accepted with value less than guideline value by the appellant herein, by such acceptance, several lakhs of rupees been benefited by the parties to the transaction and corresponding loss to the State. The appellant herein, who is a public servant entrusted with the responsibility had been habitually obtaining documents with less than guideline value for extraneous consideration and had been consistently accepting the documents with lesser



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registration of under value document been knowingly done by the appellant, though there is no direct evidence to show that the appellant has obtained pecuniary advantage on this transaction, obviously the vendor and the buyer of these three properties had obtained pecuniary advantage by getting their documents registered paying stamp duty and registration charge less than what they are liable to pay. For them to obtain pecuniary advantage, the appellant has acted in their favour and against the interest of the State. Therefore, the conviction of the trial Court has to be upheld.

22. In the result, *this Criminal Appeal is dismissed.* The judgment of the trial Court passed in Spl.C.C.No.2 of 2003 on the file of Special Judge, Puducherry is hereby confirmed. The trial Court is directed to secure the accused and commit him to the prison to undergo the remaining period of sentence. The period of substantive sentence shall run concurrently. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

09.10.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
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DR.G.JAYACHANDRAN,J.

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Copy To:-

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

Pre-delivery judgment made in
Criminal Appeal No.713 of 2015

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