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 No.714 of 2015

[Crl.A.No.714 of 2015 against Spl.C.C.No.3 of 2003]

S.Balasundaram, M/A 63 yrs,
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., pleased to call for the records in Spl.C.C.No.3 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

JUDGMENT

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.Kesavelu, 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, the case was taken up for investigation.

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 and 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 paid by the parties and thereby, caused registration with lesser stamp value for gratification 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 Thiru.S.Balasundaram for offence under Section 409 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.

During the financial year 1995-1996 at the Sub Registrar Office, Karaikal, the accused S. Balasundaram had registered 45 documents i.e., 532/95, 533/95, 647/95, 673/95, 691/95, 694/95, 695/95, 696/95, 698/95, 699/95, 700/95, 702/95, 703/95, 742/95, 752/95, 799/95, 807/95, 832/95, 835/95, 836/95, 837/95, 842/95, 846/95, 868/95, 876/95, 877/95, 878/95, 879/95, 880/95, 881/95, 882/95, 895/95, 908/95, 934/95, 935/95, 936/95, 937/95, 993/95, 1291/95, 1629/95, 1727/95, 3/96, 406/96, 407/96 and 560/96 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 document 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.58,384/- towards stamp duty and Rs.3,355/- 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 under Section 409 of I.P.C and 13(1)(a) r/w Section 7 of Prevention of Corruption Act, 1988.

6. To prove the charges, the prosecution examined 10 witnesses (P.W.1 to P.W.10) and marked 74 Exhibits (Ex.P.1 to Ex.P.74). 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 1995-1996, when he was Sub-Registrar, Karaikal Sub-Registry Office to an amount of Rs.61,739/- (stamp duty Rs.58,384/- and registration fees Rs.3.335/-) for 45-documents namely 532/95, 533/95, 647/95, 673/95, 691/95, 694/95, 695/95, 696/95, 698/95, 699/95, 700/95, 702/95, 703/95, 742/95, 752/95, 799/95, 807/95, 832/95, 835/95, 836/95, 837/95, 842/95, 846/95, 868/95, 876/95, 877/95, 878/95, 879/95, 880/95, 881/95, 882/95, 895/95, 908/95, 934/95, 935/95, 936/95, 937/95, 993/95, 1291/95, 1629/95, 1727/95, 3/96, 406/96, 407/96, and 560/96 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.58,384/- towards stamp duty and Rs.3,335/- 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 the Government.

8. 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	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/S.Balasundaram has preferred Crl.A.No.714 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 (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 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 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.

13. The charge against the appellant is based on the fact that, during the financial year 1995-1996, the appellant while serving as Sub-Registrar at Karaikal had accepted 45 documents for registration showing lesser value than the guideline value and consequentially collected lesser stamp duty and registration fees, causing loss to the Government. As per the rule, even if the document shown lesser value than the guideline value, it is the duty of the Sub Registrar to collect stamp duty as per the guideline value and the proportionate registration charge. If the document is under valued, the District Registrar has to refer the matter to District Collector under Section 47-A of Stamp Act, who will determine the value of the property and the stamp duty to be paid. Only after collection of the stamp duty, the document given for registration has to be released. It is the duty of the Sub Registrar to check the value shown in the document given for registration and the guideline value. Even assuming the revised guideline value not sent to Karaikal Sub-Registrar Office, the Sub-Registrar has to collect the guideline value from the Deputy Collector Office, without ascertaining the guideline value and mentioning the same, the document should not be released. The guideline value of these 45 properties are marked as Ex.P.4, Ex.P.7, Ex.P.9, Ex.P.18, Ex.P.21, Ex.P.24, Ex.P.31, Ex.P.33, Ex.P.43, Ex.P.50, Ex.P.53, Ex.P.55, Ex.P.57, Ex.P.59 and Ex.P.62, the documents are Ex.P.3, Ex.P.5, Ex.P.6, Ex.P.8, Ex.P.10, Ex.P.11 to Ex.P.17, Ex.P.19, Ex.P.20, Ex.P.22, Ex.P.23, Ex.P.25 to Ex.P.30, Ex.P.32, Ex.P.34 to Ex.P.42, Ex.P.44 to Ex.P.49, Ex.P.51, Ex.P.52, Ex.P.54, Ex.P.56, Ex.P.58, Ex.P.60, Ex.P.61. The only explanation which has come forward from the appellant is that, he was not aware of the revised guideline value and the revised value was not received at SRO, Karaikal. A responsible Officer, who supposed to verify the guideline value whenever the property is presented for registration, cannot commit breach of trust over the property in which he has dominion. He has to collect the appropriate stamp duty from the party, who register the property and for that purpose, essentially he must be aware of the guideline value fixed by the Government. The non-availability of guideline value is not an excuse for accepting the under value documents.

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

15. Section 13(1)(a) of Prevention of Corruption Act deals with habitual acceptance of gratification other than legal remuneration as a motive or reward to do an Act.

16. Section 20 of Prevention of Corruption Act gives a presumption in respect of offence under Section 13(1)(a) of P.C Act and it is the burden of the accused to prove that, he has not accepted any pecuniary advantage by accepting the documents showing lesser value than the guideline value. Except the non-availability of the guideline value, there is no other reason given by the accused for consistently receiving the under value documents and helping the parties to the document to have undue pecuniary advantage.

17. The appellant had examined one Perumal as D.W.1 to show that the District Registrar has to conduct audit every year and submit his report. His evidence is very general in nature and even assuming that the Annual General Audit had not identified these violations, the report of the Special Team which has identified about 115 documents been under valued or over valued cannot be ignored. In none of the 45 documents, the appellant had invoked Section 47-A of the Stamp Act. He has not impounded the document and collected the difference in stamp duty. Not even in one case, the appellant has reported about the under valuation to his immediate superior namely the District Registrar.

18. Section 19(3)(a) of Prevention of Corruption Act says, if any error or omission or irregularity in the opinion of the Court does not result in failure of justice then the sanction to prosecute to be held valid.

19. In this case, P.W.1 Uddipta Ray, being the Joint Secretary in the Revenue Department had accorded sanction to prosecute the appellant for his misconduct, while he was serving in the Revenue Department as Sub Registrar. The service rule produced by Public Prosecutor indicates the Competent Authority to remove Sub-Registrar is the District Registrar since the District Registrar in this case is a key witness, the Revenue Department, after getting opinion from the Director of Prosecution had obtained sanction from the Joint Secretary (Revenue), the Officer Superior to District Registrar. Therefore, P.W.1 is the Competent Authority to accord sanction to prosecute, this Court finds no error or omission or irregularity in the order Sanctioning prosecution. Even if there is any semblance of error or irregularity, it has not led to any failure of justice and therefore, the conviction of the Learned Counsel for the appellant regarding questioning the validity of sanction order is bound to fail.

20. In the result, ***this Criminal Appeal is dismissed.*** The judgment of the trial Court passed in Spl.C.C.No.3 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
bsm
To:-
1. The Learned Principal Sessions Judge, Puducherry,
2. The Inspector of Police, Vigilance and Anti-Corruption Police Unit, Puducherry.
3. The Public Prosecutor (Pondicherry), High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery judgment made in
Criminal Appeal No.714 of 2015

09.10.2023