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.715 of 2015

[Crl.A.No.715 of 2015 against Spl.C.C.No.4 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.4 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

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. 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 Land Promoter Thiru.Oumar Farook in connivance with the Document Writer Thiru.K.L.Kesavelu and Thiru.S.Iqbal.

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 1996-1997 at the Sub Registrar Office, Karaikal, the accused S. Balasundaram had registered 46 documents i.e. 620/96, 626/96, 635/96, 681/96, 730/96, 731/96, 760/96, 784/96, 793/96, 815/96, 830/96, 832/96, 864/96, 874/96, 895/96, 901/96, 902/96, 914/96, 1056/96, 1639/96, 1640/96, 1643/96, 1648/96, 1652/96, 1662/96, 1678/96, 1679/96, 1718/96, 1764/96, 1866/96, 291/97, 116/97, 117/97, 155/97, 156/97, 157/97, 171/97, 175/97, 176/97, 177/97, 178/97, 179/97, 180/97, 292/97, 413/97 and 414/97 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.1,84,735/- towards stamp duty and Rs.9,805/- 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 the 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 84 Exhibits (Ex.P.1 to Ex.P.84). 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 1996-1997, when he was Sub-Registrar, Karaikal Sub-Registry Office to an amount of Rs.1,94,540/- (stamp duty Rs.1,84,735/- and registration fees Rs.9,805/-) for 46-documents namely 620/96, 626/96, 635/96, 681/96,730/96, 731/96, 760/96, 784/96, 793/96, 815/96, 830/96, 832/96, 864/96, 874/96, 895/96, 901/96, 902/96, 914/96, 1056/96, 1639/96, 1640/96, 1643/96, 1648/96, 1652/96, 1662/96, 1678/96, 1679/96, 1718/96, 1764/96, 1866/96, 29/97, 116/97, 117/97, 155/97, 156/97, 157/97, 171/97, 175/97, 176/97, 177/97,178/97,179/97, 180/97, 292/97, 413/97 and 414/97 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.1,84,735/- towards stamp duty and Rs.9,805/- 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/Balasundaram has preferred Crl.A.No.715 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. Heard the Learned Counsel for the appellant and the Learned Public Prosecutor for the respondent/U.T of Puducherry. Records perused.

14. In the final report, led to registration of Special C.C.No.4 of 2003, it is alleged that the appellant has registered 46 documents with lesser value than the guideline value and consequentially collected lesser stamp duty and registration charge thereby, caused loss to the Government. The details of the 46 documents are as below:-

Sl. No	Doc. No	Date of execution/ registration	Value given in the document (Rs.)	Value as per GLR (Rs.)	Stamp duty paid (Rs.)	Actual stamp duty that should have been paid (Rs.)	Regn Fee collected (Rs.)	Regn.fee that should have been collected (Rs.)	Total loss to Government (Rs.)
1	620/96	10 4.96/10 4.96	75000	133800	7500	12730	381	676	5525
2	626/96	15.4.96/15.4 96	150000	190000	14250	18050	756	956	4000
3	635/96	12.9,96/16.4.96	5000	45000	501	4275	31	231	3974
4	681/96	20.4.96/6.5.96	107200	160800	10220	15295	546	881	5340
5	730/96	10.5.96/13.5.96	15500	21425	1500	2043	86	116	573

6	731/96	10.5.96/13.5.96	15500	21425	1500	2043	86	116	573
7	760196	16.5.96/20.5.96	82000	103800	7300	9880	416	521	2185
8	784196	27.5.96/28.5.96	60000	67600	5720	6460	306	346	798
9	793/96	3.6.96/3.6.96	110000	137500	10500	13063	556	6696	2703
10	815/96	5.6.96/5.6.96	205000	219247	19500	20853	1031	1100	1423
11	830/96	6.6 96/10.6.96	147000	167450	14050	15913	741	846	1968
12	832/96	10.6.96/10.6.96	50000	93000	4750	8835	256	471	4200
13	864/96	17 6.96/17.6.96	7500	18300	715	1758	46	101	1098
14	874/96	18.6.96/18 6.96	23000	25524	2200	2423	121	136	238
15	895/96	19.6.96/19.6.96	53000	87270	5050	8313	271	446	3438
16	901/96	20 6.96/20 6 96	184000	265000	17500	25175	926	1331	8080
17	902/96	21.6.96/21.6.96	90000	100000	8600	9500	456	506	950
18	914/96	24.6 96/24.6 96	24500	30075	2330	2898	131	161	598
19	1056/96	22.7 96/22.7.96	5000	116314	11353	10878	31	606	1143
20	1639/96	25.10.96/25.10.96	80000	137800	7600	13110	406	691	5795
21	1640/96	25.10.96/25.10.96	70000	113500	6650	10830	356	576	4400
22	1643/96	25.10.96/25.10.96	50000	255000	4750	24225	256	1281	20500
23	1648/96	25.10.96/28.10.96	75000	114000	7130	10830	381	576	3895
24	1652/96	26.10.96/28.10 96	80000	11400	7601	10830	406	576	3399
25	1662/96	28.10.96/28.10.96	70000	118200	6650	11258	356	601	3895
26	1678/96	3010.96/30.10.96	15500	20040	1510	1948	86	111	463
27	1679196	30 10.96/30.10.96	15500	20040	1510	1948	86	111	463
28	1718/97	6.11.96/6.11 96	25500	41750	2501	3990	136	216	1569
29	1764/97	14.11.97/15.11.96	50000	119420	4750	1353	256	606	6953
30	1866/96	10.12.96/11.12.96	30000	159600	29600	15200	156	806	12950
31	29/97	8.1.97/8.1.97	157500	175297	15000	16700	796	886	1810
32	116/97	27.1.97/27.1.97	2000	15700	205	1520	16	86	1385
33	117/97	27.1.97/27.1.97	25500	41750	2450	3990	146	216	1620
34	155/97	5.2.97/5.2.97	40000	49250	3800	4703	206	256	953
35	156/97	5.2.9715.2.97	100000	122500	9500	116338	506	621	2253
36	157/97	5.2.97/5.2.97	50000	56700	5030	5415	256	291	420
37	171/97	7.2.97/7.2.97	2000	16200	205	1568	16	91	1438
38	175/97	7.2.97/7.297	200000	653500	19000	62083	1006	3276	45353
39	176/97	7.2.97/7.2,97	50000	89000	5000	8455	256	451	3660
40	177/97	7.2.97/7.2.97	50000	42000	2030	3990	106	216	2070
41	178/97	7.2.97(7.2.97	20000	33600	2025	3230	106	176	1275
42	179/97	7.2.97/7.2.97	20000	33600	2035	3230	106	176	1265
43	180/97	7.2.97/7.2.97	20000	33600	2030	3230	106	176	1270
44	292/97	26.2.97/26.2.97	55000	67300	5225	6413	431	346	1188
45	413/97	18.3.97/19.3.97	10000	31500	1020	2993	56	165	2083
46	414/97	18.3.97/19.3.97	10000	30750	1020	2945	56	161	2030

15. Ex.P.3 to Ex.P.71 are the 46 documents and the corresponding guideline value. The comparison of the guideline value and the value shown in the document clearly reveals that the documents were registered for the value less than the guideline value and less stamp duty collected. In such cases, it is the duty and the responsibility of the Sub-Registrar to collect the due before the releasing the document or initiate proceedings under Section 47-A of Stamp Act and refer the document to the Deputy Collector for further course of action. Without disclosing the under valuation, the documents were released and thereby caused loss to the Government. As excuse for such inadvertence, the accused blame the Government for not furnishing the latest guideline value register. However, from the witness, it is clearly established that, every Sub-Registrar Office is not furnished with the latest guideline value of the property in their jurisdiction or if they are not having the copy of the guideline value, the Sub-Registrar is supposed to collect it from the Deputy Collector Office. The annual inspection of the document and clean chit given to the appellant by not noticing the irregularity is not bar for initiating the criminal prosecution where gross violation leading to financial loss to the Government is unearthed.

16. P.W.6 Thiru.Dayalan Rasaiyan had explained the functions of Sub-Registrar and his duty. When a document with under value is present, the District Registrar should ensure appropriate stamp duty is collected orelse the document must be referred to Deputy Collector under Section 47-A of Stamp Act.

17. P.W.7. M.V.V.Satynarayana had deposed about the guideline value and the procedure to be followed by the Sub-Registrar when document with less value than the guideline value presented. 115 documents with less value than the guideline value accepted by the accused for registration during his tenure and none of these documents were referred for under valuation, to take action under Section 47-A of Stamp Act. The sale deeds and the guideline value for the corresponding land expose the misconduct of the appellant which attracts punishment under Section 13(1)(a) r/w 7 of P.C Act and 409 of I.P.C.

18. In the result, ***this Criminal Appeal is dismissed.*** The judgment of the trial Court passed in Spl.C.C.No.4 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
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.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery judgment made in
Criminal Appeal No.715 of 2015

09.10.2023