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.716 of 2015

[Crl.A.No.716 of 2015 against Spl.C.C.No.5 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.

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.

3. 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 Nady 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".

4. 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.

5. 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 1997-1998 at the Sub Registrar Office, Karaikal, the accused S. Balasundaram had registered 15 documents i.e. 582/97, 583/97, 584/97, 652/97, 653/97, 702/97, 703/97, 732/97, 733/97, 741/97, 821/97, 915/97, 993/97, 994/97 and 1038/97 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 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.37,359/-

towards stamp duty Rs.2,005/- 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 functions 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."

6. 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.

7. To prove the charges, the prosecution examined 11 witnesses (P.W.1 to P.W.11) and marked 39 Exhibits (Ex.P.1 to Ex.P.39). 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 the accused had caused loss of revenue to the Government during the financial year 1997-1998, when he was Sub-Registrar, Karaikal Sub-Registry Office to an amount of Rs.39,364/- (stamp duty Rs.37,359/- and registration fees Rs.2005/-) for 15-documents namely 582/97, 583/97, 584/97, 652/97, 653/97, 702/97, 703/97, 732/97, 733/97, 741/97, 821/97, 915/97, 993/97, 994/97 and 1038/97 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.37,359/- towards stamp duty and Rs.2005/- 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.

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	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.

10. Aggrieved by the conviction and sentence passed by the trial Court, the appellant/Balasundaram has preferred Crl.A.No.716 of 2015.

11. 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.

12. P.W.9 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.

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

15. In the complaint, it is stated that, the accused had registered 15 documents at lesser value than the guideline value and consequentially collected stamp duty and registration charges thereby, caused loss to the Government. The details are as follows:-

Sl. No.	Doc.No.	Date of execution/ registration	Value given in the document (Rs.)	Value as per GLR (Rs.)	Stamp duly paid (Rs.)	Actual stamp duty that should been collected (Rs.)	Regn. Fee collected (Re.)	Regn.fee that should have been collected (Rs.)	Total loss to Government (Rs.)
1	582/97	20.3.97/2.4.97	90000	10950	8550	10450	456	558	2000
2	583/97	20.3.97/2 4.97	90000	10950	A550	10450	456	558	2000
3	584/97	20.3.97/2.4.97	90000	10950	8850	10450	458	558	1700
4	732/97	31.3.97/2.5.97	22000	25800	2200	2470	116	136	290
5	733/97	31.3.97/7.5.97	22000	25800	7200	2470	116	136	290
6	852/97	21.4.97/7,4.97	20000	150750	2000	14321	105	760	12976
7	653/97	21.4.97/7.4.97	10000	42750	1000	4602	55	220	3767
8	702/97	26.4.97/28.4.97	8500	15030	850	1428	50	85	613
9	703/97	28.4.97/28.4.97	8500	15030	850	1428	50	85	613
10	714/97	30.4.97/2.5.97	10000	45500	950	4323	55	235	3553
11	821/97	13.5.97/20.5.97	5000	8000	180	760	la	48	295
12	915/97	9.6.97/9.6.97	100000	133800	9500	12711	505	675	3301
13	993/97	25 6.97/6 6.91	88000	103200	8500	9804	445	525	1384
14	994/97	26.6.97/26.8.97	22000	25800	2150	2451	115	135	321
15	1038/97	2.7.97/3.7.97	18000	61000	2850	8721	155	465	6181

16. The above table which are relates to 15 documents admitted for registration with lesser value than the guideline value is self explanatory. These 15 documents and the corresponding guideline value are found in Ex.P.3

to Ex.P.25. Though these 15 documents are under valued, same not referred to Deputy Collector under Section 47-A of Stamp Act.

17. Ex.P.28 is the 'A' Register maintained for documents referred under Section 47-A of Stamp Act. In the Register, these 15 documents does not find place. Due to under valuation of these 15 documents, the Government has incurred loss of Rs.37,359/- towards deficit stamp duty and Rs.2005/- for registration charge, totally Rs.39,364/-.

18. P.W.6 Thiru.Dayalan Rasaiyan has demonstrated how a document showing lesser value than the guideline value to be dealt with. Those documents has to be impounded and refer to Deputy Collector to take action under Section 47-A of Stamp Act. Whereas, none of the 15 documents mentioned above were referred for action under Section 47-A of Stamp Act. As per the guidelines to the Sub-Registrar issued to Registration Office, the following procedure to be followed:-

> *i). When documents are presented for registration, the Sub-Registrar should verify whether the value of the property given in the schedule is equivalent to the value given in the guideline value register.*

ii). If the value is the same, then the Sub-Registrar should calculate the stamp duty paid and verified whether the correct stamp duty had been paid.

iii). If the value given in the document is less than the guideline value, then, if the party refused to revise the value in accordance with the guideline value, then the document cannot be registered and handed over to the

iv). Such a document has to be referred to the Deputy Collector u/s 47- A who will determine the value of the property and the stamp duty to be paid.

v). Such determined stamp duty has to be collected.

vi). The registration fee also has to be collected in accordance with the stamp duty paid.

19. In the case in hand, the appellant who was serving as Sub-Registrar at the relevant point of time had admitted these 15 documents with lesser value than the guideline value but had not followed any of the procedure mentioned above. The appellant being a public servant for his habitual misconduct and causing pecuniary loss to the Government. P.W.1 Joint Secretary (Revenue), who is Superior to the Competent Authority to grant sanction his accorded sanction to prosecute. Therefore, there is no error or irregularity in the order sanctioning prosecution, even if any, it will not affect the prosecution since, there is no failure of justice prejudicing the accused.

20. For the reasons stated, the judgment of the trial Court is confirmed. In the result, this ***Criminal Appeal is dismissed.*** The judgment of the trial Court passed in Spl.C.C.No.5 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 Unit, Pondicherry.
3.The Public Prosecutor (Pondicherry), High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery judgment made in
Criminal Appeal No.716 of 2015

09.10.2023