



Crl.A.No.718 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.718 of 2015

[Crl.A.No.718 of 2015 against Spl.C.C.No.7 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.7 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

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, 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 of 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 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 seven final reports filed for each set of facts and same taken on file as Spl.C.C.No.2 of 2003 to Spl.C.C.No.8 of 2003. This appeal is in respect of Spl.C.C.No.7 of 2003. The substance of the charge against A1 and A-2 is as below:-

“First:- That during the period from 14.7.1994 to 20.8.1997, you A-1 were entrusted with the dominion of the Sub-Registry of Karaikal to officiate as Sub-Registrar and during the course of discharge of such duties as Sub-Registrar, you A-1 have taken bribe from document writers, including A-2 of you, land promoters and from the parties to the documents in general to show some favour to them by abuse of powers conferred upon you, causing wrongful loss to the Government and thereby you have committed an offence punishable under section 13(1)(a), r/w. section 7 of the Prevention of Corruption Act, 1988 and 34 of I.P.C.



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Second:- That you A-2 as Document Writer, during the financial year 1995-96, initially presented a document bearing number 821/95, showing the age of the building as one year and subsequently, you have fraudulently and dishonestly added a zero next to one, so as to make the age of the building appear as ten in order to claim increase in the depreciation value of the building and in furtherance of common intention of all, you A-1, during the course of discharge of your duties as the Sub-Registrar in the Sub-Registry of Karaikal as aforesaid, registered the said document by relying upon the forged entry about the age of the building, without raising any question and had allowed the parties to the document to avail a higher increase in the depreciation value, thus causing loss to the Government to a tune of Rs.3,305/- towards stamp duty and registration fees and thereby committed forgery for the purpose of cheating, an offence punishable under section 468 r/w 34 of I.P.C”

4. To prove the charges, the prosecution examined 10 witnesses (P.W.1 to P.W.10) and marked 26 Exhibits (Ex.P.1 to Ex.P.26). 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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5. Pending trial, Kesavalu [A-2] was discharged. As against A1 S.Balasundaram, the trial Court found him guilty of offence under Section 13(1)(a) r/w Section 7 of Prevention of Corruption Act, 1988 and Section 468 of I.P.C.

6. The trial Court, on appreciation of evidence held that the prosecution has proved the charges as against the accused u/s 13(1)(a) r/w Section 7 of P.C. Act, 1988 since there has been direct loss caused to the Government to an extent of Rs.3,305/- as stamp duty and registration fees to the Government and he is proved to have committed forgery and criminal misconduct to meet his personal ends. This was made possible by addition of digit "0" after the digit "1" in Ex.P3, Ex.P7 and Ex.P8 and thereby, increasing the age of the building from "1" to "10" years enabling to get more depreciation and reduce the value of land with building. This constitutes commission of offence under Section 468 of I.P.C.

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



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<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.
	468 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.

8. Aggrieved by the conviction and sentence passed by the trial Court, the appellant/Balasundaram has preferred Crl.A.No.718 of 2015.

9. 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



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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 had admitted in the cross examination 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.

10. 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



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(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 due to manipulation in the sale document clearly constitute an offence punishable under Section 13(1)(a) of P.C Act r/w Section 7 of Act and Section 468 of I.P.C.

11. Heard the Learned Counsel for the appellant and the Learned Public Prosecutor for the respondent. Records perused.

12. In Spl.C.C.No.7 of 2003, the substance of the charge against A1 the Sub-Registrar of Karaikal and Kesavalu A2 the Document Writer is that, in respect of building which is the subject matter of the document No.821/95 the age of the building been corrected for as 10 years by adding '0'



next to '1', so as to claim higher depreciation for the value of the building and evade proportionate stamp duty. The forgery of altering the age of the building from '1' to '10', though obviously seen through naked eye, A1 Sub-Registrar had not objected the alteration and forgery but accepted the document. He collected lesser stamp duty and registration charges, thereby had caused loss of Rs.3,305/- towards stamp duty and registration fees and loss to the Government.

13. To prove the charges under Section 13(1)(a) r/w 7 of P.C Act and 468 r/w 34 of I.P.C, the prosecution relies upon Ex.P.3 the document No.821/95 and Ex.P.4 the parent document No.717/95. On perusal of these documents indicates that, one Raghavan P.W.6 has purchased the property on 19.06.1995 and same got registered as document No.821/95.

14. Ex.P.8 is the annexure 1-A to the sale deed which indicates the value of the property and the age of the property. In column No.16, the age of the building is typed as '1' year '0' is added next to '1' manually to show the age of the building as 10 years. The adding of digit '0' next to digit '1' is easily seen through naked eye and the consequence of such manipulation is the parties



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have paid lesser stamp duty after reducing the depreciation value.

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15. P.W.5 had deposed that, at the time of registration the document, the structure on the site was only at foundation level and there was no building. There is no evidence to show the building in the said site existing for 10 years. The purchaser Ragahvan, who was examined as P.W.6 admits that, when he purchased the property in the year 1995, it was only at foundation level and no building. Thus, both the seller P.W.5 Datchanamurthy and the buyer P.W.6 corroborates each other about the structure existed at the time of registration. Now, the point is when there was no building at all at the time of registration and only foundation why should the seller and the buyer or the Document Writer should show that there was a building in the said piece of land and it is 10 years old and the construction is worth Rs.1,69,000/-.

16. Ex.P.8 is Annexure 1-A, it is the statement prepared by A1 based on the information given by executant (Seller) and claimant (buyer), A1 has prepared annexure 1-A, wherein, he has mentioned the value of the building as Rs.1,25,550/- and after giving depreciation of Rs.22,550/-, the net value of the building is fixed as Rs.1,03,000/-. The value of the site fixed at



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Rs.19,000/-, the value of the other items as Rs.24,000/- and the property is registered showing total value of Rs.1,46,000/-. From the prosecution document, the depreciation of Rs.22,550/- by boosting the age of the building is the proportionate concession on stamp duty and registration fees or pecuniary advantage obtained by the buyer and seller and the proportionate loss to the Government.

17. There is no evidence to show that there was 10 years old building in the site at the time of registering the property. From the evidence of P.W.5 (seller) and P.W.6 (buyer), it is proved that, there was only a vacant site with foundational level construction and not a building measuring 93 sq.mts with RCC roof as found in the Annexure 1-A (Ex.P.8).

18. This Court finds that, from Ex.P.8 and Ex.P.9 annexed to the sale deed Ex.P.7, the valuation of the building, whether it was existing or not was assessed and depreciation of Rs.22,550/- given by A-1 based on the document prepared by A-2. The buyer and seller, who are party to the document had spoken quite contrary to what found in Ex.P.7, Ex.P.8 and Ex.P.9. The oral evidence of P.W.5 and P.W.6 contrary to the documentary



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evidence highly unreliable. The manual correction of the age of the building whether done honestly or dishonestly, whether done to evade stamp duty are not requires proof beyond doubt. Mere manual correction by adding zero next to one is not an offence, if it is a fact. Whether it is false or manipulation done dishonestly to obtain wrongful gain must have been proved through evidence. Unfortunately, the evidence placed by the prosecution as spoken by P.W.5 and P.W.6, who are parties to the documents and contrary to the content of the document lack credibility.

19. In the said circumstances, this Court is of the view that conviction of the appellant for dishonestly accepting the document with a manual correction regarding the age of the building in the land to cause loss to Government not proved beyond doubt. For convicting the appellant for offence 13(1)(a) of P.C r/w 7 of P.C or under Section 468 r/w 34 of I.P.C, the material evidence place is not adequate.

20. For the said reason, this ***Criminal Appeal is allowed.*** The judgment of the trial Court passed in Spl.C.C.No.7 of 2003 on the file of Special Judge, Puducherry is hereby set aside. Fine amount paid if any, shall



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be refunded to the appellant/A1. Bail bond executed by the appellant shall

stands cancelled.

09.10.2023

Index :Yes/No.

Internet :Yes/No.

Speaking order/non speaking order

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Copy 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.



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DR.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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