



Crl.A.No.694 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 09.06.2023

Pronounced on : 06.07.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.694 of 2013

Kappudas Christdas Vara

Subhashit Rao @ KCVS Rao

... Appellant/Accused

/versus/

Additional Superintendent of Police,
CBI, ACB, Chennai.

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleaded to set aside the judgment dated 27.09.2013 in C.C.No.31/2006 on the file of the Learned XIII Additional Special Judge for CBI Cases, Chennai.

For Appellant :Mr.V.Krishnakumar

For Respondent :Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

J U D G M E N T

The appellant herein being a public servant, for misconduct was tried for the offences under Sections 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 besides under Section 420, 465, 468 and 471 of I.P.C.



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2. The trial Court, after considering the evidence for prosecution, had

held the accused guilty for the charges tried and sentenced him to undergo the punishment as under:-

<i>Accused</i>	<i>Offences</i>	<i>Conviction and Sentence imposed by the Trial Court</i>
Sole accused	13(2) r/w 13(1)(d) of P.C. Act, 1988	To undergo R.I for one year and to pay fine of Rs.1,000/-, in default to undergo S.I for 3 months.
	420 of I.P.C	To undergo R.I for one year and to pay fine of Rs.1,000/-, in default to undergo S.I for 3 months.
	465 of I.P.C	To undergo R.I for one year and to pay fine of Rs.1,000/-, in default to undergo S.I for 3 months.
	468 of I.P.C	To undergo R.I for one year and to pay fine of Rs.1,000/-, in default to undergo S.I for 3 months.
	471 of I.P.C	To undergo R.I for one year and to pay fine of Rs.1,000/-, in default to undergo S.I for 3 months.

3. The sum and substance of the prosecution case as spoken by its witnesses PW.1 to PW.26 and Exhibits P1 to Ex.P92 is that, Mr.Kappudas Christdas Vara Subhashit Rao @ KCVS Rao, the appellant herein (hereinafter referred as appellant) while functioning as General Manager, IDPL,Tamil Nadu, Chennai between 01.08.2003 and 08.09.2004 had abused his official position in leasing the IDPL land to Sh.K.Devendran of M/s.Highway Auto Services, Ms.Deepa Gandhi of M/s.Velu Agencies and Sh.K.Raja Shalone of M/s.Suvarna Petroleum Agencies on a rate which was less than the prevailing



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market rate. The said K.Raja Shalone was his own son. The appellant violated the procedure of IDPL Service Rules and in contravention to the provisions of law, misconducted himself in leasing out the IDPL land by creating false and forged documents and using the same as genuine.

4. Based on the source of information, the CBI registered a case on 24.10.2005 and took up the investigation on the completion of investigation filed final report. The trial Court framed charges under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, Sections 420, 465, 468 and 471 of I.P.C.

The gist of prosecution side evidence:-

P.W.1 the General Manager (I/C) of IDPL (Tamilnadu, Chennai). Mr.M.Loganathan who succeeded the accused has stated that the accused entered into lease agreements with M/s.Highway Auto Services, M/s.Velu Agency and M/s.Suvarna Petroleum Agency, Chennai. The agreements were approved by PW.8, Advocate. On behalf of IDPL the accused presented it for registration. He had suppressed the information that M/s.Suvarna Petroleum



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Agency belongs to his son K.Raja Shalone. Leasing out IDPL land to the relatives is contrary to the IDPL Service Conduct Rules. To mislead his institution, the accused had referred his son K.Raja Shalone as son of K.Chandrasekara Rao with intention to suppress his identity. When this dishonest conduct got exposed, the accused cancelled the lease granted to his son's firm. However, the other two leasee namely M/s.Velu Agencies and M/s.Highway Auto Services had proceeded against IDPL management for unilateral attempt to cancel the lease. They have filed Civil Suit against the management and same is pending.

4 (i). Thiru.K.M.Ramakrishnan [PW.2], the Finance Manager of IDPL, Tamilnadu had deposed that, contrary to the procedure, instead of forwarding the proposal of lease the IDPL property to Finance department, the accused prepared a note on 28.04.2004 and forwarded it to the Corporate office, Gurgaon and on 29.05.2005 in person submitted a letter to the head office and got approval for his proposal to lease out the land without following the regular procedure and influenced the Board of Directors to ratify his decision.

4(ii). Mr.V.Keerthivasan [PW.3], P.A., to General Manager had deposed



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that for leasing out the IDPL property to M/s.Highway Auto Service, M/s.Velu Agency and M/s.Suvarna Petroleum Agency, the accused directly dealt with them and he went to Registration Department for registering the lease deed. The draft agenda for the Board Meeting held on 24.06.2004 was in respect of leasing out the vacant land of IDPL. The accused struck down the agenda and on the back of it [Ex.P13] made a note suggesting to avoid paper advertisement calling for tender which may incur huge cost and unwanted publicity.

4(iii). Mrs.K.Laxmi [PW.4], Senior Personal Executive (Administration) otherwise called as Estate Officer of IDPL, had deposed that on the instructions of the accused, deed of cancellation of the lease agreements entered between M/s.Highway Auto Service, M/s.Velu Agency and M/s.Suvarna Petroleum Agency were prepared by her. The proposal for cancellation was sent to Finance Manager and after clarifying their query, it was again circulated to get opinion from the company's lawyer.

4(iv), Sh.Sandeep Majumdar [PW.7] had deposed about his role as Senior Regional Manager of Vigilance department in IDPL, Gurgaon in scrutinizing the proposal sent by the accused for leasing out the land and



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subsequent cancellation. He had deposed in respect of the Board Meeting held on 24.06.2004 in which the resolution to approve the proposal of leasing out the IDPL property to three private individuals, without public notice and at the rate suggested by the accused, passed.

4(v). Vijayalakshmi [PW.8], who is the company legal adviser had deposed about the preparation of lease deeds and cancellation of lease deeds on the instructions of the accused.

4(vi). Mr.L.Vasisth [PW.11], Deputy Personal Manager of IDPL had deposed that the land which was leased out to the three firms were not properly demarcated and therefore, the file was under circulation without taking any decision for want of complete information.

4(vii). Mr.K.Ramaswamy [PW.14] had deposed that when the agenda for leasing out the land came up for discussion before the Board, it was impressed upon them that the company is facing severe financial crisis and if the proposal is positively considered, the board will have advantage of generating fund. At the time of considering the Agenda, full details were not placed. The accused



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was present in the meeting and sought time to collect the papers and will submit it in the ensuing meeting. The accused also confirmed that his proposal has been approved by the Head Office. A month later, Mr.Parthasarathy Doss Gupta [PW.19] called him and informed that there was some mistake regarding the lease agreements which were approved on 24.06.2004. This witness has further deposed that since there was an objection from the union for granting lease in favour of the accused's son, all the three lease were cancelled.

4(viii). Parthasarathy Doss Gupta [PW.19] is one of the key witnesses for the prosecution he had deposed that during the relevant period he was functioning as Director (Marketing and Finance), Corporate office, Gurgaon as well as the Director of IDPL, Tamilnadu. He received Ex.P1- letter dated 29.05.2004 from the accused relating to the leasing out of the IDPL land to the private parties. In that letter, he had made an endorsement, which is marked as Ex.P58 in which he has suggested that there must be an escalation clause of 10% rent hike for every three years. He had deposed about his presence in the Board of Directors meeting held on 24.06.2004. The agenda was prepared by the accused being the General Manager (I/C) of IDPL, Tamilnadu. The board has approved the action taken by the accused as he has explained that, it is to



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protect the interest of the company.

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4(ix). The son of the accused been examined as PW.18, he had identified the signature in the lease agreement marked as Ex.P20 and the said lease agreement was executed in his favour by his father in the capacity as General Manager of IDPL. He had stated that on the instructions of his father, he signed in the documents and subsequently the lease was cancelled. The said lease was cancelled on 01.10.2004. He signed all the documents on the instructions of his father [accused]

4(x). The other lease holders K.Devendran and V.S.Vadivelu were examined as PW.10 and PW.12 and they have spoken about the lease granted in their favour by the accused and subsequent cancellation. K.Devendran [PW.10] had further deposed that against the cancellation of the lease deed, he filed a suit before the Subordinate Court, Chengalpet and the matter is now pending in the High Court.

4(xi) N.S.Vadivelu [PW.12] had deposed that his daughter V.Deepa



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Gandhi is the lease holder and after cancellation of the lease, through Devendran as Power Agent agitating before the Court challenging the cancellation.

5. From the documents and oral evidence, the prosecution has put forth the case that Ex.P46 dated 26.04.2004, Ex.P45 dated 11.05,2004 and Ex.P48 dated 03.05.2004 are the requisition letter from three private parties seeking IDPL land for lease. Ex.P1 and Ex.P32 are the letters written by the accused to the Director (Marketing/Finance) Corporate office, Gurgaon, prompting his proposal to lease out the land. The lease deeds in favour of these third parties are marked as Ex.P20, Ex.P35 and Ex.P34. Later these lease deeds were cancelled.

6. The board resolution dated 24.06.2004 regarding leasing of company's land for installation of petrol bunk to three private parties and the draft resolution which was struck down by the accused marked as Ex.P13 and suggesting to avoid publicity, substantiate the case of the prosecution that the accused had induced the board to lease out the land directly to third parties without inviting offer through publication and following transparent procedure.



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The lease amount was fixed unilaterally by him without taking opinion from the valuer. One of the lessee was his own son and as General Manager of IDPL leasing out IDPL land to his own son is contrary to the IDPL Service Rules. Mr.Parthasarathy Doss Gupta [PW.19] vide his note dated 24.07.2004, which is marked as Ex.P14, had specifically stated that the lease agreement in favour of the third parties are in violation of Section 44 A of Land Acquisition Act. Therefore, the agreement is null and void and he has suggested to cancel the lease by circular resolution. The circular resolution by the Directors regarding cancellation of three lease agreements are marked as Ex.P.15, Ex.P16 and Ex.P17. Since the misdeed of the accused got exposed, the accused has sought for VRS on 08.09.2004 and he was relieved from service as per Ex.P73.

7. The trial Court on due consideration of all these evidences and the apology letter given by the accused and considering the defence exhibits has held that, the accused has violated IDPL Rules. He dishonestly bypassed the tender process. Without publicity the IDPL land been leased without obtaining proper legal opinion.

8. The contention of the defence counsel is that, having cancelled the



lease, there is no loss to the IDPL negated by the trial Court observing that while one of the lease holders, who being the son of the accused had accepted the cancellation, the other two lease holders have dragged the IDPL to the Court and they are enjoying the land leased out to them by virtue of the Court order. Thereby, IDPL had incurred monetary loss.

9. The learned counsel appearing for the appellant while reiterating the arguments submitted before the trial Court, also submitted that the charges are illusory in nature and there was no loss to the IDPL department and there is no evidence to show that IDPL has suffered loss by the action of the appellant. The Board Meeting held on 24.06.2004 been approved and the action of the appellant been appreciated by the Board Members for his efforts taken to tide over financial crisis faced by the company. While so, he cannot be accused for causing loss to the IDPL. Leasing out the land to three parties namely M/s.Highway Auto Service, M/s.Velu Agency and M/s.Suvarna Petroleum Agency is a collective decision of Board of Directors and therefore, the accused cannot be isolated and prosecuted. The evidence of PW.20 was not worth relying and his opinion need to be rejected. Further, the learned counsel has also submitted that the accused, who discharged his duty bonafidely ought not



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to have been penalised.

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10. The learned Special Public Prosecutor (CBI) submitted that the evidence for prosecution has clearly established that the accused at the first instance, ought not to have proposed to lease the land violating the provision under the Land Acquisition Act. Next, having decided to lease the land, atleast should have followed transparent method for leasing the IDPL land. He, with dishonest intention omitted to follow transparency in leasing out the IDPL land. That apart by leasing a portion of IDPL land to his own son, he had violated IDPL Service Rules. By manipulating the board resolution, had misled the board members. Without getting proper legal advise, he had approved lease by private negotiations and the lease rent fixed was less when compare to the market value and that has been spoken by PW.20 in his valuation report marked as Ex.P59. Pointing that the accused by his misconduct has not only caused monetary loss to the IDPL, but also forced the management to undergo ordeal of litigation. Therefore, sought for confirmation of the trial Court judgment.

11. Point for consideration:-



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Whether the judgment of the trial Court is sustainable in law and facts?

12. IDPL (Tamil Nadu, Chennai) is a Government of India undertaking in the year 1966 for the establishment of the company. 122.98 acres of land at Nandambakkam near Chennai was allotted to IDPL by the Government of Tamil Nadu free of cost. While allotting the land, the Government of Tamil Nadu imposed a specific condition on IDPL that the IDPL should not lease out the land to any other party without prior permission of Government of Tamil Nadu. While so, the accused while functioning as General Manager of IDPL, Tamil Nadu had entered into private negotiations with three persons and send proposal to the Corporate office and got its approval, suppressing the fact that one of the lessee is his own son. The lease deeds and the cancellation lease deeds for these three firms are proved by the prosecution by marking the registered documents. While there is a specific bar for leasing out IDPL land to third party without prior permission of Government of Tamil Nadu, which has allotted the land at free of cost to IDPL, the act leasing out the land is *per se* illegal. The accused had not leased the land with bonafide intention, but with dishonest intention. He has misled the Board of Directors by suggesting that giving publicity for leasing out the land will



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incur huge costs and to avoid publicity, private negotiations to be adopted by suggesting so dishonestly, he has induced the Board of Directors to give approval for his proposal.

13. The evidence placed by the prosecution further proved the fact that the amount fixed as lease rent also not in consonance with market value. PW.20 and Ex.P59 the valuation certificate speaks about it. Though by circular resolution lease been cancelled, two of the lessees have got protection order from the Civil Court and been enjoying the lease land by paying lessor rent than the market value. Thus, it can not be claimed that by the action of the accused, the IDPL has not incurred loss. In fact, it IDPL Management has incurred monetary loss as well as put to inconvenience of litigating.

14. The exhibits relied by the defence to show that IDPL land been leased to third parties earlier including Airport Authority of India and L&T may not be an excuse for his dishonest and fraudulent contract. Particularly, the contract in the name of his son by producing forged documents proves the guilt of the accused.



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15. The charges framed against him for cheating, forgery using forged documents as genuine, forgery for the purpose of cheating all well proved.

Hence, this Court finds no reason to interfere the judgment of the trial Court.

16. Accordingly, this ***Criminal Appeal is dismissed.*** The conviction and sentence passed by the XIII Additional Judge (CBI Cases Relating to Banks and Financial Institutions), Chennai is confirmed. The trial Court is directed to secure the appellant/accused and commit them to the prison to undergo the remaining period of sentence. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

06.07.2023

Index :Yes/No.

Internet :Yes/No.

Speaking order/non speaking order

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To:-

1.The XIII Additional Judge (CBI Cases relating to Banks and Financial Institutions), Chennai.

2.The Additional Superintendent of Police,
CBI, ACB, Chennai.

3.The Special Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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