IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2023

Pronounced on : 28.04.2023

CORAM

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Criminal Appeal Nos.512 & 513 of 2014 and 497 & 498 of 2015

Crl.A.Nos.512 & 513/2014

N.Sankaran ... Appellant/2nd Accused

/versus/

State rep.by
The Inspector of Police,
V & AC, Salem ... Respondent / Complainant

Crl.A.Nos.497 & 498/2015

State rep.by
The Public Prosecutor,
High Court, Madras-104
(Crime Nos.8 & 10/2000
of Salem V&AC) ... Appellant/ Complainant

/versus/

1.P.Shanmugavel

2.M.Periyasamy ... Respondents/3rd & 4th Accused in Crl.A.No.497/2015
...3rd & 5th Accused in Crl.A.No.498/2015

Common Prayer in Crl.A.Nos.512 & 513/2014:- Criminal Appeals are filed under Section 374 of Cr.P.C., praying to set aside the judgment dated 30.09.2014 made in Spl.C.C.Nos.29 & 28 of 2014 on the file of the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem and allowing the Appeal by acquitting the appellant.

Common Prayer in Crl.A.Nos.497 & 498/2015:- Criminal Appeals are filed under Section 378 of Cr.P.C., praying to allow the appeals and set aside the acquittal judgment dated 30.09.2014 made in Spl.C.C.Nos.28 & 29 of 2014 on the file of the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem and convict the respondents/accused as charged.

Crl.A.Nos.512 & 513/2014

For Appellant : Mr.V.Krishnakumar

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl.Side)

Crl.A.Nos.497 & 498/2015

For Appellant : Mr.S.Udayakumar
Government Advocate (Crl.Side)

For R1 : Mr.M.Ramadoss

For R2 : Mr.Dr.A.Thiyagarajan, Sr.Counsel
for Mr.K.M.Jayapal

COMMON JUDGMENT

These batch of Criminal Appeals are preferred challenging the judgment passed by the Special Court for Trial of Cases under Prevention of Corruption Act, Salem in Spl.S.C.Nos.28 & 29 of 2014.

2. The Salem District Vigilance and Anti Corruption Wing on 03.11.2000 registered a complaint in Crime No.8/AC/2000 against the following four persons:

1.A.Neelamegam, Village Administrative Officer, Chandirapillai valasu.

2.N.Sankaran, Revenue Inspector, Belur Firka .

3.Shanmugavel, Special Tahsildar (Distress Relief Scheme), Salem.

4.R.C.Durai, Village Administrative Officer, Neermullikuttai.

for the alleged offences under Sections 109, 409, 467, 471, 420 IPC and Section 13(2) r/w. 13(1)(c)(d) of Prevention of Corruption Act.

3. The information taken up for investigation discloses that Neelamegam, who was working as a Assistant Administrative Officer, Chandirapillai valasu, Salem between 19.01.1995 and 30.06.1998, along with Sankaran, working as a Revenue Inspector, Belur Firka between 10.06.1997 and 07.01.1999. Shanmugavel (DRS) between 19.03.1998 and 30.11.1998 and R.C.Durai working as V.A.O., between 19.09.1997 and 30.06.1998 entered into conspiracy to misappropriate funds meant for Distress Relief Scheme introduced by the Government of Tamil Nadu for the widow breadwinner of the family. As per the scheme, the beneficiaries were given a sum of Rs.7,500/- for their livelihood on satisfaction of certain conditions. From 01.08.1998, the relief amount was enhanced from Rs.7,500/- to Rs.10,000/-.

4. To avail the benefit, the applicant must be an agriculture labourer holding less than Rs.2.5 acres of wet land or 5 acres of dry land. She must be a widow and annual income for her from all sources should not exceed Rs.7,200/- p.a., and there should not be any adult male member in the family. The application should accompany with the death certificate of the husband, Nativity certificate and Income certificate issued by the Tahsildar or Special Tahsildar (DRS). On receipt of applications, V.A.O concerned has to verify the details furnished by conducting an enquiry in the village. He should record the statement and forward the applications to the Special Tahsildar through Revenue Inspector. Before submitting it to the Special Tahsildar, the Revenue Inspector has to verify the particulars furnished in the applications, examine the documents and record the statement of the applicant and thereafter forward the application to the Special Tahsildar of the Taluk for consideration. On receipt of application after being duly verified by V.A.O and R.I., the special Tahsildar (DRS) after making enquiry and if satisfied, record the details of the beneficiaries in the eligibility register maintained at the Taluk office. If he is not satisfied the applicant is not eligible that will be summarily rejected. The allotment of relief funds as per seniority should be disbursed to the eligible applicant.

5. While so, the accused, who are holding the post of V.A.O, R.I. and Special Tahsildar being the public servants had connived together to cheat the Government and misappropriated the funds by making false entries in the death register using fictious details and generated applications in the fictious name. The name of the applicant widow and the death certificate of her husband were fabricated and annexed with the application for the relief. The Special Tahsildar (DRS), Salem received it and forwarded it to the V.A.O, who in turn clears the applications as if he has made due enquiry. Revenue Inspector also endorses the clearance and the Special Tahsildar (DRS) releases the relief amount at the rate of Rs.7,500/- to Rs.10,000/- to the fake applicants. To get the cheque for the relief amount, V.A.O hired persons to impersonate as if they are the applicants and got the cheques which was later encashed by the accused persons, getting the left thumb impression of those impersonated.

6. On a complaint, after investigation the Final Report was filed in two sets, one against six persons namely Neelamegam, Sankaran, Shanmugavel, Durai, Periasamy and Anthony Muthu, which was taken on file by the Special Court/Chief Judicial Magistrate, Salem in Spl.C.C.No.44 of 2004 and another against five persons namely R.C.Durai, N.Sankaran, Shanmugavel, Periasamy and Anthony Muthu before the Special Court/Chief Judicial Magistrate, Salem in Spl.S.C.No.45 of 2004 respectively. Later, after framing charges, on constitution of special Court for Trial of Cases under Prevention of Corruption Act, at Salem, the cases were transferred to that Court and re-numbered as Spl.C.C.Nos.28 & 29 of 2014. Pending trial, accused R.C.Durai and Anthony Muthu died.

7. In Spl.C.C.No.28 of 2014, on appreciating 23 witnesses and 82 exhibits let in by the prosecution, the Trial Court found Neelamegam, V.A.O and N.Sankaran, Revenue Inspector guilty of offence under Sections 120 B, 409, 419, 420, 467 r/w. 471 IPC (10 counts) and 468 r/w. 471 IPC (10 counts) and under Section 13(2) r/w. 13(1)(c) and (d) of P.C.Act. They were sentenced to undergo imprisonment and fine as below:-

Rank of the accused	***Section***	***Conviction***
A1 & A2	120 B	To undergo 6 months Simple Imprisonment each and fine of Rs.1,000/- each, in default 2 months S.I.
	409 IPC	To undergo 1 year Simple Imprisonment each and fine of Rs.1,000/- each, in default 2 months S.I.
	419 IPC	To undergo 6 months Simple Imprisonment each
	420 IPC	To undergo 1 year Simple Imprisonment each and fine of Rs.2,000/- each, in default 2 months S.I.
	467 r/w.471 IPC (10 counts)	To undergo 1 year Simple Imprisonment each for each count and fine of Rs.1,000/-

Rank of the accused	***Section***	***Conviction***
		each for each counts, in default 2 months S.I. each for each counts
	468 r/w.471 IPC (10 counts)	To undergo 1 year Simple Imprisonment each for each counts and fine of Rs.1,000/- each for each counts, in default 2 months S.I. each for each counts
	13(2) r/w.13(1)(c)(d) of P.C.Act	To undergo 2 years Simple Imprisonment each and fine of Rs.1,000/- each, in default 2 months S.I. each

The period of sentence was ordered to run concurrently and the period of incarceration undergone was ordered to be set off.

8. The R.C.Durai [A1] and Anthony Muthu [A6] died pending trial. Hence charge against them got abated. The other two surviving accused Shanmugavel [A3] and Periasamy [A4] were acquitted from all the charges. A1 Neelamegam and A2 Sankaran convicted.

9. Against the conviction in Spl.C.C.No.28 of 2014, A2, Sankaran has preferred appeal in Crl.A.No.513 of 2014. As against acquittal of Shanmugavel and Periasamy in Spl.C.C.No.28 of 2014, the State has preferred Crl.A.No. 497 of 2015.

10. A-1 Neelamegam filed C.A.No.520 of 2014. However, the appeal got abated in view of his death vide order dated 24.02.2023.

11. In Spl.C.C.No.29/2014 on appreciating 23 witnesses and 60 Exhibits let in by the prosecution, the Trial Court found Sankaran [A2] guilty of offence under Sections 120 B, 409, 419, 420, 467 r/w. 471 IPC (12 counts) and 468 r/w. 471 IPC (12 counts) and under Section 13(2) r/w. 13(1)(c) and (d) of P.C.Act. He was sentenced to undergo imprisonment and fine as below:-

Rank of the accused	***Section***	***Conviction***
A2	120 B	To undergo 6 months Simple Imprisonment and fine of Rs.1,000/-, in default 2 months S.I.
	409 IPC	To undergo 1 year Simple Imprisonment and fine of Rs.1,000/-, in default 2 months S.I.

Rank of the accused	*Section*	*Conviction*
	419 IPC	To undergo 6 months Simple Imprisonment
	420 IPC	To undergo 1 year Simple Imprisonment and fine of Rs.2,000/-, in default 2 months S.I.
	467 r/w.471 IPC (12 counts)	To undergo 1 year Simple Imprisonment for each count and fine of Rs.1,000/- for each counts, in default 2 months S.I. for each counts
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	13(2) r/w.13(1)(c)(d) of P.C.Act	To undergo 2 years Simple Imprisonment and fine of Rs.1,000/-, in default 2 months S.I.

The period of sentence ordered to run concurrently and the period of incarceration undergone ordered to be set off.

12. The Shanmugavel [A3] and Periyasamy [A4] found not guilty and acquitted. While Sankaran [A2] has preferred Crl.A.No.512 of 2014. State against the acquittal of Shanmugavel [A3] and Periyasamy [A5] has preferred Crl.A.No.497 of 2015.

13. For the sake of convenience, the Crl.A.Nos.513 of 2014 and 498 of 2015 arising from the judgment passed in Special C.C.No.28 of 2014, preferred against conviction of A2 and the State Appeal against the acquittal of A3 & A5 are taken together. Similarly, the Crl.A.Nos.512 of 2014 and 497 of 2015 arising out of judgment passed in Spl.C.C.No.29 of 2014 are taken together.

Appeals arising from Spl.S.C.No.28 of 2014

14. The case of the prosecution as unravelled by the witnesses for the prosecution and the documents disclose that the Director of vigilance and Anti corruption, Chennai based on the secret enquiry report submitted by the Enquiry Officer of the Vigilance and Anti corruption, Salem directed Mr.S.Girimurugan, the then Inspector of Police, vigilance and Anti corruption to register a case in connection with misappropriation of Distress Relief Scheme amount and pursuant to the said registration of First Information Report, which has been marked as

Ex.P82, investigation was conducted. The suspected fake beneficiaries under the name Ramayee Pappa, Angammal, Chinnapillai, Parvathy, Lakshmi, Amirtham, Pachaiammal, Pethayee and Arayee as found in the files marked as Ex.P8 to Ex.P17 were sent for comparison to the Forensic Department, in that all the signature found in the cheques and counterfoils for disbursing the amount, the thumb impression found in Ex.P19-counterfoils for withdrawing money in the names of various beneficiaries mentioned above were found to be the thumb impression of Neelamegam-A1, R.C.Durai (A4), Periayasamy (A5) and Anthony Muthu (A6). Similarly, the thumb impression of Rajeswaran, Arjunan, Gopal and Rosi were also secured and sent for Forensic Department for comparison. The report from the Tamil Nadu Forensic Laboratory reveals that the writings and the signatures are not that of real beneficiaries under whose name the scheme amount was disbursed. Most of the signatures, thumb impressions, questionable documents were that of the accused persons.

15. PW.1 to PW.4 were officials of Revenue Divisional Officer of Salem, Joint Commissioner, RA, Chennai, the Taluk Tahsildar, Vazhapadi and P.A.(General) to the Collector, who accorded sanction to prosecute Neelamegam

[A1], Sankaran [A2], R.C.Durai [A4] and Anthonymuthu [A6]. Tr.A.Vetrivel [PW.5], the Special Tahsildar (DRS), Salem deposed that in respect of 10 beneficiaries, defects and irregularity regarding the procedures for disbursement of Distress Relief Fund noticed and Ex.P5 to Ex.P19, which relates to the documents of the Distress Relief amount were marked. Tmt.M.Saraswathi [PW.8], who is an Assistant in the office of Special Tahsildar (DRS), Salem has deposed that she has brought to the knowledge of Shanmugavel, the 3rd accused in respect of defects found in the applications of the beneficiaries mentioned in Ex.P8 to Ex.P17 files. The beneficiaries of those files are Mariammal W/o.Ramasamy, Chandra W/o.Muniyan, Dhanalakshmi W/o.Kandan, PappaW/o.Periayasamy, Varuthammal W/o.Kaliyan, Lakshmi W/o.Dharmalingam, Alamelu W/o.Periayasamy, Ponnammal W/o.Periyasamy, Dhanabakkiyam W/o.Periyasamy, Pethayee W/o.Koothan, Pachaiammal W/o.Velu, Lakshmi W/o.Manickam, Pappa W/o.Mancickam, Parvathy W/o.Perumal, Chinnapillai W/o.Kuppan, Ramayee W/o.Lakshmanan, Rangammal W/o.Karuppannan.

16. The Village President of Neermullikuttai examined as PW.13 had disowned the certificates marked as Ex.P29 to Ex.P33, which are the death certificates stand in the name of Chandra, Ramayee, Kolandhai, Manickam and Dharmalingam. PW.9, Tahsildar of Vazhapadi had deposed that ahe conducted enquiry in respect of the names mentioned in Ex.P8 to Ex.P17 and found that there is no such persons, who have lost their husband to become widow to get the relief amount under DRS. Her report is marked as Ex.P22. The photocopy of the Family cards used to get the relief amount in the fake names was enquired through the Salesman of the respective Ration shop were examined as PW.11 and PW.12 they have been established that Ex.P23, the family card stands in the name of Pappa W/o.Manickam. Ex.P24, the family card in the name of Angammal. Ex.P25 in the name of Chinnapillai, Ex.P26 in the name of Parvathi, Ex.P27 in the name of Ramayee. All certificates indicating that they hold family card, but these persons were not issued by the respective salesman and they are all forged certificates. These certificates alleged to have been signed by V.A.O and R.I., were sent for handwriting comparison and found to be forged by the accused persons.

17. Thus, the name of the beneficiaries, the Nativity certificate, Income certificate and that the beneficiaries do not hold any Ration card and the cards that were produced are all found to be forged documents and forgery attributed to the accused persons have been proved through the Forensic Expert Report marked as Ex.P64. PW.7-Mr.Pachamuthu, the Assistant in the office of the Special Tahsildar (DRS), Salem had deposed about the procedure for granting assistance under the Distress Relief Scheme. As per the procedure explained by PW.7, the application which is received seeking assistant, under the DRS will be sent to the concerned section after getting the initial of the Special Tahsildar. The VAO, who contacted the R.I. and Village President to get the photocopy of the family cards and the death certificates of the applicants' husband and thereafter, the applications have to be registered as per seniority. In case if any defects in the documents to be annexed, it will be sent back to R.I. Atleast 10% of the applications received should be scrutinized by the Special Tahsildar directly. He has to make enquiry with the concerned VAO, RI and Village President about the existence of the applicants and eligibility of the applicants to get the financial assistance under the scheme. If satisfied, necessary order will be passed and thereafter, same will be intimated to the beneficiaries. On receipt of such intimation, the beneficiaries has to come in person to the office and the Deputy Tahsildar will verify the documents and after scrutiny, the Special Tahsildar will enquire the VAO for identification of beneficiaries and thereafter, cheque will be issued to the beneficiaries. The cheques have to be signed by the Special Tahsildar and for the receipt of cheque, stamp receipt will be obtained from the beneficiaries. The VAO will sign as a witness for the disbursement.

18. The Special Tahsildar to make endorsement regarding the disbursement of the cheque to the beneficiaries in person. The cheques will be encashed by the beneficiaries through SBI, where the Revenue Department had an exclusive account for the scheme. VAO will go along with the beneficiaries to the bank for their identification.

19. In this case most of the procedures have been flouted and through witnesses 10 applications pertaining Ex.P8 to Ex.P17 are proved to be bogus, they are in the name of fictious persons showing them as widows and their husband died. For the said purpose, death certificates were fabricated as if the Village President has issued the said certificate. However, the President of the Village, who was examined as PW.14 and the vice President – PW.13 had deposed that they have not issued any death certificate or Nativity certificate. The cheques issued without verifying the identity of the beneficiaries have been encashed by the accused persons. Though the accused have contented that the beneficiaries are real persons and living from Chinnapillai valasu and Kolathukombai village at the relevant point of time, there is no indication that these 10 beneficiaries were the residents of the said villages and whatever documents relied for disbursement of the relief amount were proved to be forged. The Enquiry Report of PW.9, which is marked as Ex.P39 had explicitly mentioned that the enquiry in the village reveals that the 10 widows namely Angammal, Chinnapillai, Parvathy, Lakshmi, Pappa, Amirtham, Pachaiammal, Arayee, Ramayee and Pethayee shown as residents of Chandirapillai valasu were never been the resident of that village. In the said report, it is also found that 13 other beneficiaries of Neermullikuttai were also non existing person and relief amount has been disbursed in those name to impersonate based on the forged documents. These 13 cases of fraudulent disbursement of the relief amount is the subject matter of Spl.C.C.No.29 of 2014.

20. The Trial Court on examination of the documents pertaining to the 10 beneficiaries mentioned in Ex.P8 to Ex.P17 who were never the residents of Chinnapillai valasu as spoken by the President of the village held that all the 10 applications marked as Ex.P8 to Ex.P17 are 100% forged documents in the name of imaginary widows. The certificates accompanied with the applications in the name of President or vice President of Chinnapillai valasu and enclosed along with the applications form part of Ex.P8 to Ex.P17 are proved to be forged and some of the writings, signatures and finger prints found are that of the accused 1 to 6 as per the expert opinion. The income certificates, nativity certificates and death certificates enclosed along with the applications in connection with the 10 widows were issued on the recommendation of the accused 1, 2 and 4. Their recommendations, were not borne on fact but with a scheme to misappropriate the Distress Relief amount. The 10 cheques which were given in the name of the fictious persons were encahsed by impersonation and false identification by A1 (Neelamegam) and A4 (R.C.Durai).

21. In fine, the Trial Court found A1 and A2 had committed offence under Section 13(1)(c) and (d) of P.C.Act, A3 and A5 found not guilty of misappropriation pursuant to the criminal conspiracy alleged and also the charge against A3 and A5 for offence under Section 13(2), 13(1)(c)(d) of P.C.Act are not proved beyond doubt.

Appeals arising from Spl.C.C.No.29 of 2014

22. The case of the prosecution through the evidence of Fair Price Shop Salesman [PW.13] who has deposed that during the relevant point of time no person by name Pappa, Mariammal and Palaniammal had family card and he has issued a certificate to that effect which is marked as Ex.P22 to Ex.P24. While so, having proved that the Distress Relief Fund of 12 persons been misappropriated by the accused persons. The Trial Court wrongly held that the name of the two respondents/accused 3 and 4 not found in the FIR marked as Ex.P59 and therefore, conspiracy charge against them not made out. FIR is not an encyclopedia of crime and only after the completion of investigation, the true facts could be ascertain from the evidence collected. PW.5 has explained the malpractice committed in each of the Distress Relief Scheme file particularly, in three cases necessary certificates were enclosed after disbursement of money which could clearly show that the records were fabricated to justify the misappropriation.

23. The testimony of PW.8 regarding issue of cheque without proper document by A3 not accepted by the Trial Court for any valid reason. The prosecution has proved through circumstantial evidence that the cheques were disbursed and given to A3 without identification of the beneficiaries. The Trial Court has wrongly acquitted A3 and A4. Whereas, the learned counsel, who are appearing for the 2nd accused/Sankaran was found guilty, submitted that the Trial Court ought not to have convicted the appellant/A2. The benefit extended to A3 and A4 ought to have been extended to A2, the appellant also. While two of the accused died pending trial and two others were acquitted, the appellant is the sole accused been convicted charge of conspiracy cannot be fastened against him being the sole accused. Therefore, the punishment for conspiracy is bad in law. The Sanction Order to prosecute him is defective and issued without application of mind. Therefore, cognizance taken based on the defective Sanction Order has prejudiced the accused. The appellant joined the post only on 10.06.1997 and the alleged misappropriation is soon after being the Revenue Inspector of Belur Firka. He has no idea about the genuineness of the applicant and wholely depending on the report of his subordinates. He has acted in good faith in discharge of duty and therefore, he cannot be prosecuted. Since the Trial Court has erred in holding guilty, the same is to be set aside.

Oral submissions made by the learned counsels:-

24. The learned counsel appearing for the convicted appellant-Sankaran as a submission in common in both his appeals argued that there is a defect in the sanction to prosecute. A common order to sanction to all the accused itself is an indication of non application of mind. No witness has implicated the appellant-Sankaran for the alleged offence of impersonating and misappropriation. The ten applications received in the course of normal transaction and they were scrutinized by hierarchy of officers. The applications which form part of file Ex.P8 to Ex.P17 and in the course of processing the applications, as VAO had dealt with the documents. Just because the Handwriting Expert opined that some of the writings found in Ex.P8 to Ex.P17 are in the hands of the appellant will not fasten criminality. It was also submitted that for convicting the appellant/2nd accused for offence under Sections 409, 419, 420, 467 r/w. 471 IPC (10 counts) and 468 r/w. 471 IPC (10 counts), the prosecution evidence is not sufficient to satisfy the required ingredients. Similar contention in the appeal against conviction in C.C.No.28 of 2014 was made by the counsels of the convicted accused.

25. The learned Government Advocate (Crl.Side) appearing for the State submitted that the ten applications were received in the name of the beneficiaries claiming them as widow, were not the residents of Chinnapillai valasu and Neermullikuttai village. The defence of the accused that they were at one point of time resided in the said village, but had migrated to other places to work for their livelihood is unbelievable. Since the Vice President and President of those villages had categorically said that no such person residing in the village, thereby denied the explanation given by the accused persons. In all, these files marked Ex.P8 to Ex.P17 has been recorded as if the villagers were examined before sanctioning. However, none of the villagers signed in the said statement and supported the content of the statement indicating that the fake signatures are affixed in the statement of public and therefore, submitted that not only the conviction of the appellant confirmed, the acquittal of other two accused to be set aside

26. Similarly, in their appeal against acquittal of A3 and A4 in Spl.C.C.No.29 of 2014, it is stated that the Trial Court had failed to note that the accused hatched up a criminal conspiracy to misappropriate money in the distress relief fund been executed by A1 and A2 with the help of A3 and A4, they were party to the criminal conspiracy and also benefited unlawfully. Ex.P5 to Ex.P16 are the files pertaining to 11 beneficiaries, who are imaginary persons created for the purpose of getting the relief fund and such creation was masterminded by all the accused including A3 and A4. PW.9-Tahsildar of Valapadi in her report marked as Ex.P19 has submitted that during the relevant period except Dhanam PW.16 and Palaniammal who are the beneficiary in Ex.P6 and Ex.P7 files respectively. None of them are residents of Neermullikuttai village as found in the file. The files of the beneficiaries which are marked as Ex.P5 to Ex.P16 contains fabricated documents with false particulars and the report PW.19 has concluded that files and the beneficiaries Ex.P5, Ex.P7 to Ex.P16 are preferred in the name of imaginary persons with fabricated records. The certificates alleged to have been issued by PW.11, the Vice President of Neermullikuttai village is not a genuine certificate and it has been spoken by PW.11 himself, who has disowned the signature found in disown certificate and he also deposed that no such persons found in the certificate reside in Neermullikuttai village.

27. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the State.

28. The evidence placed before the Court by the prosecution through the testimony of witnesses and content of exhibits, it is established beyond doubt that the documents contain in files marked as Ex.P8 to Ex.P17 in Spl.C.C.No.28 of 2014 and Ex.P5, Ex.P7 to Ex.P16 in Spl.C.C.No.29 of 2014 are bogus prepared in the name of imaginary widows, who never lived in Chandirapillai valasu and Neermullikuttai village. The President and Vice-President under whose name, certificates were given had come before the Court and deposed denying their signatures found in the certificates issued in their name. The Finger Print Expert-Nageswara Rao [PW.21], on comparing the sample signatures of the accused persons with that of the signature found in the documents alleged to have been affixed by the beneficiaries, had opined that these finger prints were affixed by A1 to A5.

29. A1 and A2 are supposed to conduct enquiry and recommend sanction of benefits under the DRS have recommended for grant of relief fund based on Income certificate, Nativity certificate and Death certificate, which are not genuine or proved to be fake. While so, when it is clearly proved that 10 cheques (Ex.P18 and Ex.P19 in Spl.C.C.No.28/2014) and 12 cheques issued in respect of beneficiaries found in respective DRS files show as if they were issued to them and encashed on the identification of the 1st accused. The only person Dhanam, who is one of the beneficiaries as per Ex.P6 in Spl.C.C.No.29/2014 is a real person and she had deposed before the Court that she did not seek for any benefit under the DRS nor she has received any cheque in respect of the claim and she has not affixed her thumb impression for receiving the cheque. Therefore, it is clearly established by the prosecution beyond any pale of doubt. DRS files marked as Ex.P8 to Ex.P17 in Spl.C.C.No.28/2014 and Ex.P5 to Ex.P16 in Spl.C.C.No.29/2014 prepared at the instance of A1 to A5. Later the cheques were encashed by them and those cheques issued in the name of widows were not really encashed by those widows. The sanction to prosecute had been granted only after due consideration of the material record collected and on application of mind there can be no doubt about its validity, just because in is accorded for all the accused in common.

30. The Trial Court had acquitted Periyasamy/Village Assistant on the ground that he being a low level staff. The crime of this nature can be done only by the higher level officers, who are responsible for preparation of report and recommending benefits. As far as Shanmugavel is concerned, the Trial Court has taken note of the fact that he joined the post only on 19.03.1998 and as per the entries found in the priority register. The applications connected with DRS files were received by the registered post much before A3 assumes charge as Special Tahsildar (DRS), Salem and therefore, he cannot be roped in charge of conspiracy for preparing files or for the charge of misappropriate the relief fund since he had no privy to the said seat prior to 19.03.1998.

31. The learned Government Advocate (Crl.Side) submitted that Tmt.Saraswathi [PW.8] in her deposition has stated that on perusing the applications in question, she found defects in it and she brought to the notice of A3 before disbursement of fund, but he overlooked the objection raised by her. Hence it is canvassed by the State in its appeal against acquittal. Since the prosecution through PW.8 had proved that before the disbursement, the defect in the file has been brought to the notice of A3, but he has neglected and issued the cheque without testing whether the cheque is received by real beneficiaries though he jointing at the later point of time cannot be exonerated from the charge of conspiracy. Conspiracy is like a chain, where the conspirator is a link, conspirator need not even met. It is suffice to charge them for conspiracy, if he contribute to keep the chain intact.

32. In this case though A3 has joined the said seat much later, but it was before disbursement of the cheques and he was warned about the defect in the files by PW.8. Despite warning, he has proceeded to disburse the cheques and he has not verified the identify of the beneficiaries to whom the cheques are disbursed.

33. However, taking note of the dictum laid down by the Hon'ble Supreme Court, if two views are possible, the view of the Trial Court acquitting the accused need not be substituted by the Appellate Court reversing the order of acquittal. The double benefit accrued to the accused need not be upset. For the said reason, this Court confirms the order of acquitting in respect of A1 by the Trial Court.

34. In the result, these Criminal Appeals are dismissed. The conviction and sentence awarded by the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem, in Spl.C.C.Nos.28 & 29 of 2014, vide impugned judgment dated 30.09.2014, are hereby confirmed. It is made clear that the period of incarceration undergone by the appellant/2nd accused during the course of investigation/trial is ordered to be set-off under section 428 Cr.P.C.

28.04.2023

Index : Yes/No
Speaking order/Non-speaking Order
rpl

To
1.The Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem.
2.The Inspector of Police,
V & AC, Salem.
3.The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN.J.,

rpl

Pre-Delivery Judgment made in
Criminal Appeal Nos.512 & 513 of 2014 and 497 & 498 of 2015

28.04.2023