THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:11.04.2023 Pronounced on:18.05.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.Nos.491 and 508 of 2021

Narashimman .. Appellant /5th accused in Crl.A.No.491 of 2021

P.K.Kuppusamy .. Appellant/3rd accused in Crl.A.No.508 of 2021

/versus/

State rep.by
The Deputy Superintendent of Police,
Crime Branch C.I.D.,
Vellore Range,
Crime No.656 of 1991. .. Respondent/Complainant in both Crl.As

Prayer in Crl.A.No.491 of 2021 : Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence rendered in Spl.Case No.3 of 2006 on the file of the learned Special Judge, Chief Judicial Magistrate, Tiruvannamalai District and acquit the accused from the offence.

Prayer in Crl.A.No.508 of 2021 : Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to call for records and to set aside the judgment of conviction and sentence passed by the Chief Judicial Magistrate, Tiruvannamalai made in Special Case No.3 of 2006 dated 15.09.2021.

For Appellant :Mr.V.Parivallal for
Mr.R.Rajesh Vivekananthan in
Crl.A.No.491 of 2021

For Appellant :Mr.B.Jawahar in
Crl.A.No.508 of 2021

For Respondent :Mr.R.Kishore Kumar
Government Advocate(crl.side) in
both Criminal Appeals.

COMMON JUDGMENT

The genesis of these appeals stems from the complaint of Mr.Lawrence Alexander, Joint Director of Agriculture Department, Thiruvannamalai, to the Superintendent of Police, alleging that during the course of audit of the accounts in the office of the Assistant Director of Agriculture (Oil Seeds), Cheyyar, misappropriation of the Government money to a tune of Rs.64,96,291/- by forging the contingent bills presented to the Sub Treasury, Cheyyar, between 1985 to 1990 noticed.

2. During that period, at different points of time, V.J.Sridharan (A1) and J.Mani serving as the Assistants in the Assistant Director Office, were in charge of preparation and submission of the contingent bills. M.Muthuraj, C.Venkatesan, R.Ponnan and M.Narshiman were the Assistant Directors

responsible for signing the bills as Drawing Officers. Annexing a list consisting of details about bills between 03/10/1985 and 03/10/1989, the complaint disclosed the *modus operandi* of misappropriation by the Assistants and Assistant Director of Agriculture (Oil Seeds) at Cheyyar, manipulating the bills by forging and presented it as genuine before the office of the Treasury and encashed money in connivance with the Token Clerk, Assistant and Assistant Treasury Officer.

3. The disclosure of the crime spanning to a period of about 6 years, resulted in registering 6 FIR's in Crime Nos: 652 to 657 of 1991 by the Sub Inspector of Police, Cheyyar Police Station. On completion of investigation, 6 separate Final Reports were filed after getting sanction to prosecute the accused persons, who were public servants and in service.

4. The *modus operandi* in all the cases is similar. Pursuant to the criminal conspiracy between the accused persons to misappropriate the Government money, the Assistant V.J.Sridharan entrusted with the responsibility of preparing and submission of the contingent bills in the Treasury for encashment, used to enter the actual amount in the office copy,

but inflate the amount in the fair copy of the bill presented to the Treasury for encashment. With the connivance of the Token Clerk, Assistant and the Assistant Treasury Officer those forged bills will be passed and encashed from State Bank of India, Cheyyar. Corresponding corrections will be made in the relevant column of MTC-70 register showing the inflated amount. Later, the corrections will be erased. Thus, the office copies of the bills will show the correct amount, whereas the fair copies of the bills will be for the inflated amount and from the bank, the inflated amount will be withdrawn by V.J.Sridharan, Assistant in the office of the Assistant Director of Agricultural (Oil Seeds), Cheyyar in whose name the pass order is issued by the Assistant Treasury Officer. .

5. The below six Final Reports were taken cognizance by the Chief Judicial Magistrate, Thiruvannamalai and assigned

1.Special Case No.1/2004 (in crime No: 652/1991)
2.Special Case No.2/2004 (in crime No: 653/1991)
3. Special Case No:3/ 2004 (in crime No 657/1991)
4 Special Case No.2/2006 (in crime No: 655/1991)
5.Special Case No.3/2006 (in crime No:656/1991)
6.Special Case No.1/2006 (in crime No:654/1991)

6. Special case No.3/2006 (Crime No.656 of 1991), which is the subject matter of these two appeals relates to the period 05/09/1989 to 30/03/1990. The following 6 persons were charged for conspiracy, forgery, falsification of documents, using forged documents as genuine, misappropriation of Rs.16,23,297/- and misconduct to obtain pecuniary gain..

(1)V.J Sridharan(A-1), Assistant at the Office of the Assistant Director of Agriculture (Oil Seeds) Cheyyar, from 27/02/1985 to 23/04/1990 and 10/05/1990 to 27/10/1991.

(2) M. Muthuraj(A-2), Assistant, Director of Agriculture (Oil Seeds) at Cheyyar, from 24/07/1986 to 01/04/1990.

(3) P.K. Kuppusamy (A-3), Assistant in Sub-Treasury, Cheyyar, from 01/04/1985 to 18/02/1988 and from 07/03/1989 to 15/10/1992.

(4) G. Selvaraj (A-4), Cashier, Sub-Treasury, Cheyyar, from 19/06/1986 to 10/01/1991.

(5) M. Narashimman (A-5), Sub Treasury Officer at the office of Sub Treasury, Cheyyar (in charge) from 29.12.1987, 06.10.1987, 26.12.1988, 29.12.1988, 13.11.1989, 28.11.1989, 25.09.1988, 15.10.1988, 28.12.1988,

30.01.1989, 01.02.1989, 18.11.1989.

(6) S.P. Ramanathan (A-6), Sub-Treasury Officer, in Sub Treasury, Cheyyar from 07/06/1989 to 13/07/1990.

7. <u>The charges against the accused are as below:-</u>

A1 and A2: For the offence punishable under Sections 120 (b), 409, 467, 468, 471, 477-A of IPC and Section 5(1)(c) and (d) of the old Prevention of Corruption Act.

A3 to A6: For the offence punishable under Sections 120(b), 409, 467, 468, 471, 477-A of IPC and Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

8. Pending trial, A-1[V.J.Sridharan], A-2[M.Muthuraj] and A-6 [S.P.Ramanathan] died. The charges against them got abated.

9. The prosecution, to prove the charges against the accused, examined 48 witnesses and marked 123 exhibits. After considering the evidence, the trial Court convicted P.K.Kuppusamy (A-3) and Narasimman (A-5) and acquitted Selvaraj (A-4). The judgment of conviction and sentence imposed on the

appellants is as below:-

Name and rank of the accused	**Conviction imposed on both the accused under Section by the trial Court**	**Sentence imposed by the trial Court on both the accused**
P.K.Kuppusamy (A3) and Narasimman (A5)	Section 120(B)IPC	Undergo Simple Imprisonment for 1 year.
	Section 409 IPC	Undergo Simple Imprisonment for 1 year and fine of Rs.5000/- in default to undergo 3 months SI.
	Section 467 IPC	Undergo Simple Imprisonment for 1 year and fine of Rs.5000/- in default to undergo 3 months SI.
	Section 468 IPC	Undergo Simple Imprisonment for 1 year and fine of Rs.5000/- in default to undergo 3 months SI.
	Section 471 IPC	Undergo Simple Imprisonment for 1 year and fine of Rs.5000/- in default to undergo 3 months SI.
	Section 477-A IPC	Undergo Simple Imprisonment for 1 year and fine of Rs.5000/- in default to undergo 3 months SI.
	Section 13(1)(c) and (d) of Prevention of Corruption Act,1988	Undergo Simple Imprisonment for 1 year and fine of Rs.5000/- in default to undergo 3 months SI.

The period of sentence was ordered to run concurrently, since the third accused was also found guilty in Spl.C.Nos.1/2004, 2/2004, 3/2004, 1/2006 and 2/2006. The 5th accused was found guilty in Spl.C.Nos.1/2006 and 2/2006 The sentence ordered to run concurrently along with sentence imposed in those cases also. The period of imprisonment already undergone was ordered to set off under Section 428 of Cr.P.C.

10. Being aggrieved by the conviction and sentence, Crl.A.No.491 of 2021 is preferred by Narashimman (A-5) and Crl.A.No.508 of 2021 is preferred by P.K.Kuppusamy (A-3).

11. The case of the prosecution is that V.J.Sridharan (A1) deceased, serving as Assistant in the office of Assistant Director of Agriculture (Oil Seeds), Cheyyar, along with M.Muthuraj (A2) deceased, serving as Assistant in the office of the Assistant Director of Agriculture (Oil Seeds), Cheyyar, both responsible for preparation and presenting the bills to the Sub Treasury for encashment through the State Bank of India, Cheyyar, in collusion with A-3 [P.K.Kuppusamy], the appellant in Crl.A.No.508 of 2021 and G.Selvaraj (A-4), M.Narasimman (A-5), the appellant in Crl.A.No.491 of 2021 entered into a criminal conspiracy between 05.09.1989 and 30.03.1990 to do the illegal act of committing forgery of valuable securities, falsification of accounts, using forged documents as genuine, forgery for the purpose of misappropriating the fund of the Government of Tamil Nadu, by preparing untrue bills by putting actual amounts in the office copy of the bills, but manipulated the fair copy by

prefixing number to boost up the value of the bills and get the bills passed for payment. The accused at the Sub Treasury knowing well that the bills are forged and not genuine in pursuant to the conspiracy had passed the said bills, without verifying the entries of amounts, allotted and spent in the relevant head of account and tokens were issued in the Sub Treasury, without scrutinizing relevant column in MTC-70 and other records and in some cases even without getting signature of the Drawing Officer in MTC-70. The bills in excess to the tune of Rs.16,23,297/- passed and misappropriated.

12. As far as these two appellants, who were working as Assistant/Accountant and Sub Treasury Officer in the Sub Treasury, Cheyyar, respectively, had cleared the following forged bills between 05.09.1989 and 30.03.1990.

Sl.No. As mentioned in the annexure	**Bill Date**	**Accountant Mr.**	**STO/ATO Mr.**	**Actual Bill Amount Rs.**	**Bill passed Rs.**	**Misappropriation Rs.**
43	13.11.1989	P.K.Kuppusamy	Narasimhan	100	9100	9000
44	13.11.1989	P.K.Kuppusamy	Narasimhan	100	9100	9000
45	13.11.1989	P.K.Kuppusamy	Narasimhan	100	9100	9000
46	**13.11.1989**	**P.K.Kuppusamy**	**Narasimhan**	**100**	**9100**	**9000**

Sl.No. As mentioned in the annexure	Bill Date	Accountant Mr.	STO/ATO Mr.	Actual Bill Amount Rs.	Bill passed Rs.	Misappropriation Rs.
47	**13.11.1989**	**P.K.Kuppusamy**	**Narasimhan**	**100**	**9100**	**9000**
180	16.03.1990	P.K.Kuppusamy		450	9450	9000
....and in addition to that upto 30.03.1990 Mr.P.K.Kuppusamy worked as a Assistant/Accountant and passed total 181 contingent bills.						

13. M.Narashimman, Sub Treasury Officer, the appellant in Crl.A.No.491 of 2021 challenged the conviction and sentence passed by the trial Court on the following grounds:-

The disputed bills are admittedly raised by the Agriculture Department. The officials in the Treasury Department are not expert to tests the genuineness of the bill. Once the bill is raised and signed by the competent authority and presented for passing, except verifying the MTC-70 register, there is no other responsibility for the Treasury Department. The main allegation against the appellant is that during the year 1985-1990, there was a misappropriation of fund belongs to Agriculture Department and the said misappropriation came to light during the inspection and auditing report conducted in the year 1991. The appellant, who joined as Sub Treasury Officer, Cheyyar, in the year 1987 and retired in the year 2005, was not shown as an accused in the First Information Report, but in the Final Report, he was arrayed as an accused, after his retirement and he has been implicated in three cases, out of six cases. PW-5 [Tmt.Sulochana], Assistant Treasury Officer, had deposed about the procedure adopted and followed in maintaining the register of MTC-70, MTC 103 and the responsibility of the officers in the Sub Treasury. She had categorically deposed that the records at Treasury had been maintained properly. Therefore, for passing the bill presented by the Agriculture Department believing it as a genuine, not aware of the alleged manipulation by the Assistant working in the Agriculture Department, he has been prosecuted maliciously. The alleged misappropriation of bills raised by the Deputy Director of OilSeeds, Cheyyar, alleged to have been from 1985 to 1990. The Treasury Officer, who passed the bills, prior to his assuming office of the Sub Treasury, Cheyyar, were not prosecuted, but he alone been prosecuted by cherry-picking after retirement.

14. The delay of 15 years in filing the Final Report, after registering the First Information Report itself is a reason to vitiate the trial, more particularly, when the appellant has not cited as an accused and been all along during the course of investigation, treated as an witness. While defalcation accounts

alleged to have been of the year 1985, the prosecution intentionally omitted to file the Final Report in respect of falsification during the period 1985 -1986 and 1986 and 1987. For the fault of the Agriculture Department not conducting the Audit for several years and not reconciling the account periodically, the staff of the Treasury Department cannot be held as responsible. The bills are passed, after being satisfied with the signatures of the Drawing Officer in the Bills were genuine. The prosecution has not placed all the documents particularly, the fair copies of the bills presented to the Sub Treasury. The Drawing Officer, who is supposed to send control of expenditure statement of every month, has failed to do so. Had he done his duty, the misappropriation could not have occurred or could have been detected at the initial stage itself. The delay in lodging the First Information Report, reporting misappropriation of the year 1985-1989 in the year 1991 and further delay of 15 years to complete the investigation has highly prejudiced the accused to put forth his defence. Therefore, the trial Court judgment is liable to be set aside.

15. P.K.Kuppusamy, Assistant, the appellant in Crl.A.No.508 of 2021 challenged the conviction and sentence passed by the trial Court on the following grounds:-

The trial Court erred in convicting the appellant for the offence under Sections 120-B, 409, 467, 468, 471, 477-A of IPC, without any iota of evidence against this appellant to attract these offences. While the case of the prosecution is that the forgery and falsification was done by A1 and A2 and pursuant to the conspiracy, the forged bills were passed by the Treasury, no allegation or evidence against this appellant regarding forgery or falsification placed before the Court. Even for the alleged conspiracy no evidence let in by the prosecution. While so, the passing of bills is the responsibility of the Sub Treasury Officer and not the appellant, who is working as an Assistant. If at all there is any lapse in scrutinising the bills properly and omission to note the erasures and corrections, it could at the most attract departmental action for dereliction of duty and not criminal action for the offences like, forgery and falsification of account and using the forged document as genuine. All these offences alleged to have been committed by A1 and A2, who died pending trial and who are the authors of the alleged forged documents. At the Treasury, the role of this appellant (A3) is very limited and inspite of inordinate delay in completing the investigation, the prosecution has not placed all the registers related to passing of bills and the fair copies of the bills. This would show that, had the prosecution produced those documents, it could have disclosed the fact that all the alleged manipulation of documents had been done only by A1 and A2 without any knowledge of the officials of the Treasury. MTC-100 register maintained by the Treasury shows the boosted amount. Whereas, the entry found in the MTC-70 at the time of presentation with boosted amount, later been erased and tick mark is affixed to camouflage the error. This shows that while presenting the bills with boosted value to the Treasury, the records were manipulated uniformly. After encashment, at the agriculture office, the fabrication has been reversed. There is no role placed by the appellant herein in dealing with those disputed documents. While so, the judgment of conviction against this appellant is liable to be set aside.

16. The learned Government Advocate (Crl.Side) appearing for the State submitted that continuous and sustained misappropriation of the government fund by manipulating the contingent bills of the Assistant Director, Agriculture, (Oil Seeds) Cheyyar, since 1985 been going on in connivance with the Sub Treasury Officials. This came to light during the Audit inspection conducted in the month of August and September 1991. Thereafter, the complaint by the Joint Director, Agriculture, (Oil Seeds), Cheyyar, was given and six cases were registered in Crime No.652 to 657 of 1991. Final Reports were filed on

24.12.2002, which was taken cognizance by the trial Court on 05.03.2004. The forged bills though emanated from the office of the Assistant Director of Agriculture (Oil Seeds), Cheyyar, those bills were supposed to be scrutinised and passed, after verifying the genuineness. They mechanically passing the bills without noting the manipulation, corrections and fabrication in the documents for extraneous reasons and for continuous long period of years. The accused cannot escape from the prosecution by pleading that they are innocent at the most it is only a dereliction of duty. In fact, it is a serious misconduct causing pecuniary loss to the State. Particularly, the Treasury Officials, who received the bills to obtain cash, has to verify the entries made in the relevant columns of MTC-70 and other records. In the relevant column, the Drawing Officer has to affix his signature and in case of any omission, the bills ought not to have been passed. Further, MTC-70 register has to be accompanied with the bills presented. While scrutinising MTC-70 register, a consistent erasures and correction in the previous entry ought to have been drawn the attention of any prudent person. In this case, the column meant for amount been continuously corrected and this has not been questioned before passing the bills. Further more, the reconciliation of the account is the joint responsibility of the Department as well as the Treasury. The lapse of reconciling the weekly account by the department is because of the contribution of the Treasury officials and therefore, that cannot be a reason to exonerate the appellants who were serving as Assistant at Sub Treasury Officer. Only with active assistants of these two appellants, A1 and A2 were able to misappropriate the Government money to make unlawful pecuniary advantage. Therefore, liable to be punished under the Prevention of Corruption Act as well as Indian Penal Code. Stating that to prove the charges, the prosecution has examined 48 witnesses and marked 123 exhibits. PW-5 [Sulochana] had deposed about the procedure and how, by passing the forged bills. These appellants have aided A1 and A2 to obtain pecuniary advantage and misappropriate the government fund. The learned Government Advocate (Crl.Side), referring the provision of Tamil Nadu Treasury Code dealing with passing of bills, which is also extensively extracted by the trial Court in its judgment, submitted that the grave omission to follow the Treasury Code scrupulously and knowingly passing the forged bills, the conviction of the appellants has to be upheld.

17. Heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl.Side) appearing for the State and perused the records.

18. The *modus operandi* of the accused persons to misappropriate the government money by forging the contingent bills is plain and simple. Had the officials both at the Agriculture Department as well as the Treasury Department had scrupulously followed the Rules and Code, this massive misappropriation to the tune of Rs.64,00,000/- spanning for the period of five years could have been averted. The gross failure on the part of the officials both in the Assistant Director of Agriculture (Oil Seeds), Cheyyar as well as the Officials in Sub-Treasury, Cheyyar has resulted in this fraud. The main perpetrator of the crime namely, Sridharan, had met his maker before the trial completed.

19. The learned Government Advocate (Crl.Side) had justified the enormous delay in completing the investigation and the said justification also for the delay in filing the final report has been accepted by the trial Court. The evidence of PW-5 [Sulochana] discloses the fact that the Assistant/Accountant in the Sub Treasury Office has to scrutinise the bills presented and after being satisfied that the entries in the bills are corrected, token to be given and the vouchers after being passed should be cancelled. Those documents should be placed before the Sub Treasury Officer, who will pass the bill. In this case, the

disputed bills presented by A1 [Sridharan] (deceased). Number 9 has been prefixed and the bill for Rs.100/- been altered to Rs.9100/-. Had the bill meticulously scrutinised by A3 [Assistant], the fraud could have been averted. Even if he was not able to scan the manipulation in the bills, the MTC-70 register, which is accompanied with the bills, could have exposed the corrections. More so, when the Drawing Officer has not signed in the MTC-70 bills before presenting to the Treasury, the bills ought not have been passed.

20. Here is the case, where certain bills were passed even without Drawing Officer's signature in the MTC-70 register. The corrections and the erasures which are seen in the naked eyes should have been noticed, when the MTC-70 register is presented subsequently. In this case, the appellants have failed to exercise even a minimum amount of diligence, if it is one or two occasions the omission and negligence could have been condoned, but continuous negligence leads to presumption that it is the wanton omission to facilitate A1 and A2 to get pecuniary advantage. In this juncture, it is necessary to reiterate and extract the relevant portion in the Tamil Nadu Treasury Code, Volume-I, page number 331,

> “It is mentioned as “2(b):- Whenever a drawing officer signs a fully-vouched contingent bill for presentation

at the treasury for payment or a detailed contingent bill for submission to controlling authority he should at the same time cancell all the sub-vouchers which relate to the bill but are not attached to it and are retained for record in his office. He should endorse the word “cancelled” across each such sub-voucher in red ink or by a rubber stamp and initial it with the date. He should certify on the bill that all the sub-vouchers relating to it other than those attached to it have been so cancelled that they cannot be used again. When the amount of a sub-voucher exceeds the permanent advance it should be cancelled in the manner described above as soon as the payment has been made and entering in the contingent register”.

Tamil Nadu Treasury Code Volume-I T.R.-16-S.R.2(c):- Every bill or voucher shall be filling in ink type-writer processed in Bradma machines and signed in ink. The total amount claimed shall so far as the whole rupees are concerned be written words as in figures. The amount of the paise may be written in figures after the words stating the numbers of rupees e.g., “Rupees Twenty Five 30” If there are no paise the word “only” shall be written after the number of whole rupees e.g., “Rupees Twenty Six only”. In either case grate care shall be taken to leave no space that could be used for making an interpolation.

9.14 The spaces left blank either in the money coloumn or in the column for particulars of the bill should invariably be covered by oblique lines. A note to the effect that the amount of the bill is below a specified amount expressed in whole rupees should invariably be recorded in the body of the bill in red ink. The amount so specified

> should be sum slightly in excess of the total amount of the bill.
>
> 2(d):- No bill or voucher containing any erasure shall be presented at the treasury. Every correction or alteration in the total of a bill shall be separately attested by the full signature of the person who sign the receipt. Every correction or alteration in the payment order shall be similarly attested by the signing officer, it is drawn on the bank and in other cases, by the Treasury or Sub-Treasury Officer, who signs it."

21. Ex.P1 series, which is MTC-103 with boosted figure does not co-relate with MTC form-58 vouchers. This clearly proves the fact that number 9 had been prefixed to the original amount. While the Tamil Nadu Treasury Code mandates that no bill or voucher containing any erasure shall be presented at the Treasury, every correction or alteration in the total of a bill shall be separately attested by the full signature of the person, who sign the receipt. Every correction or alteration in the payment order shall be similarly attested by the signing officer, it is drawn on the bank and in other cases, by the Treasury or Sub-Treasury Officer, who signs it. Whereas in this case, in erasures and corrections found in the bills and vouchers not been attested as mandated by the Code. This wilful omission *per se* sufficient to hold the appellants guilty of misconduct.

22. In violation of above Code, the appellants have allowed the bills to be passed. Therefore, though there is no direct evidence to prove the conspiracy between A1 & A2 and these two appellants/accused and there is no evidence to show that they have forged the bills, the fact that their misconduct has led to misappropriation of the government fund by A1 and A2 and thereby they have facilitated A1 and A2 by illegal means to get pecuniary advantage is established and this is an offence punishable under Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988, is proved by the prosecution.

23. To bring home the charge of conspiracy within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is difficult in most of the cases to establish conspiracy by direct evidence, since the conspiracy is hatched in secrecy. However, the circumstantial evidence will being forth the elements of the criminal conspiracy, such as, a plain or scheme embodying means to accomplish that object and an agreement or understanding between two or more of the accused persons whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement. It is well settled principle that for an offence punishable under

Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done an illegal act, the agreement may be proved by necessary implication. In ***Devender Pal Singh V. State of NCT of Delhi reported in [2002 SCC (Cri.) 978],*** the Hon'ble Supreme Court, explained the expression 'conspiracy' as below:-

> **50.** In *Kehar Singh* v. *State (Delhi Admn.)*[(1988) 3 SCC 609 : 1988 SCC (Cri) 711 : AIR 1988 SC 1883] (AIR at p. 1954) this Court observed : (SCC pp. 732-33, para 275)
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> "*275.* Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor is it necessary to prove the actual words

of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient."

Conspiracy can be proved by circumstances and other materials. (See *State of Bihar* v. *Paramhans Yadav* [1986 Pat LJR 688] .)

"[T]o establish a charge of conspiracy *knowledge* about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, *intent* of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a *particular* unlawful use was intended, so long as the goods or services in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborators would do, so long as it is known that the collaborator would put the goods or services to an unlawful use." (See :*State of Maharashtra* v. *Som Nath Thapa* [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : 1996 Cri LJ 2448] , Cri LJ at p. 2453, SCC at p. 668, para 24.)

24. In this judgment, the Hon'ble Supreme Court has explained how the ingredient of the offence of criminal conspiracy could be established. When the offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of

the conspirators had the knowledge of what the collaborators would do, so long as it is known that the collaborator would put the goods or services to an unlawful use.

25. In the case in hand, the chain of actions emanating from the office of Assistant Director of Agriculture (Oil Seeds) Cheyyar had culminated by encashment of the forged bills and withdrawing the money from the State Bank of India, Cheyyar. The Assistant and Assistant Treasury Officer, who are the appellants herein have cleared the bills for payment.

26. As far as P.K.Kuppusamy, Assistant, who is supposed to scrutinise the bills and entries in the MTC-70 register, which is that of the entries found in MTC-103 had miserably failed to scrutinise diligently. The omission to scrutinise diligently cannot be believed as an innocent omission, since the said omission been perpetually done for more than five years. A mere verification of the earlier entries in the MTC-70 register, which has been manipulated consistently could have prevented the misappropriation. Similarly, the accused Narasimman had passed the bills without showing an iota of diligence. The chain of actions indicates that there had been an agreement between the accused

and pursuant to the said agreement, forged bills been cleared for encashment. The cashier payment scroll register and the entries in MTC-70 register and MTC form 58 does not tally and for six years it is unbelievable that without the knowledge and connivance of these appellants, forged bills were cleared innocently. Therefore, the offence placed by the accused clearly establishes the necessary ingredient to attract the offence under Section 120-B of IPC. Hence, the appellants conviction for conspiracy and for misconduct to obtain pecuniary advantage is proved. However, there is no evidence to show that the forgery and falsification of records is done by these accused and therefore, their conviction for the offences under Sections 409, 467, 468, 471, 477-A of IPC is set aside, since the offences under these Sections is done by the deceased accused Sridharan (A1) and Muthuraj (A2) and these appellants have joined in the crime in between to pass those forged documents, pursuant to the conspiracy and thereby enabling the others to get the pecuniary advantage illegally.

27. In the result, **these Criminal Appeals are partly allowed.** The appellants are acquitted for the offence under Sections 409, 467, 468, 471, 477-A of IPC. Whereas the appellants are held guilty for the offence under Section 120-B of IPC and Section 13(1)(c) and(d) of the Prevention of

Corruption Act, 1988. The conviction and sentence imposed by the trial Court for these offences is confirmed. The period of sentence already undergone by the accused ordered to set off under Section 428 of Cr.P.C. Further, for A3, the sentence ordered to run concurrently along with sentence passed in connected Spl.C.No.1/2004, 2/2004, 3/2004, 1/2006 and 2/2006. For A5, the sentence ordered to run concurrently along with sentence passed in Spl.C.Nos.1/2006 and 2/2006. Bail bond if any executed by the appellants shall stand cancelled. The trial Court is directed to secure the appellants and commit them to prison to undergo the remaining period of sentence imposed by the trial Court.

18.05.2023

Index:yes
Speaking order/non speaking order
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To:
1.The Special Judge, Chief Judicial Magistrate, Tiruvannamalai.
2.The Deputy Superintendent of Police, Crime Branch C.I.D.,
Vellore Range.
3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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delivery Common Judgment made in
Crl.A.Nos.491 and 508 of 2021

18.05.2023