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1 Crl.A(MD)Nos.42 and 43 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2023

Pronounced on : 07.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**

Crl.A(MD)Nos.42 and 43 of 2015

(1).Crl.A(MD)No.42 of 2015:-

P.Rajagopal : Appellant/A3

Vs.

State through
The Deputy Superintendent of Police,
Vigilance and Anti-corruption,
Nagercoil.

(In Crime No.6 of 2007) : Respondent/Complainant

Prayer: Criminal Appeal filed under section 27 of the Prevention of Corruption Act r/w 374(2) of the Criminal Procedure Code, to call for the records of the Special Case No.2 of 2011 on the file of the Special Judge-cum-Chief Judicial Magistrate, Nagercoil and set aside the order of conviction and sentenced passed, on 29/01/2015 against the appellant/A3, acquit the appellant/A3 and pass further or any other orders.

For Appellant : Mr.N.Ananthapadmanaban
Senior counsel
for Mr.S.C.Herold Singh

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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Crl.A(MD)Nos.42 and 43 of 2015

(2).Crl.A(MD)No.43 of 2015:-

1.Y.M.Maria Aloysious

2.K.Subramaniapillai

: Appellants/A1 and A2

Vs.

State through

The Deputy Superintendent of Police,

Vigilance and Anti-corruption,

Nagercoil.

(In Crime No.6 of 2007)

: Respondent/Complainant

Prayer:Criminal Appeal filed under section 27 of the Prevention of Corruption Act r/w 374(2) of the Criminal Procedure Code, to call for the records of the Special Case No.2 of 2011 on the file of the Special Judge-cum-Chief Judicial Magistrate, Nagercoil and set aside the order of conviction and sentenced passed on 29/01/2015 against the appellants/A1 and A2, acquit the appellants/A1 and A2 and pass further or any other orders.

For Appellants : Mr.N.Ananthapadmanaban
Senior counsel
for Mr.M.Saravanan

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

COMMON JUDGMENT

These criminal appeals have been preferred to set aside the judgment of conviction and sentence passed by the Special Judge-cum-Chief Judicial Magistrate, Nagercoil, in Special Case No.2 of 2011, dated 29/01/2015.

**2.The case of the prosecution in brief:-**

A1 was working as Assistant Executive Engineer in the Public Works Department from 24/08/2002 to 20/05/2005. A2 is the Assistant Engineer from 31/12/2003 to 18/07/2005. A3 was the Contractor. In pursuance of the permission granted by the District Collector, Kanyakumari District, for desilting of Ananthakulam Kanmai, contract was given to A3, on 03/01/2005. Now the charge is that without making desilting work, money was misappropriated as per the conspiracy hatched between the accused persons.

3.PW24 was working as Project Officer in Kanyakumari District between 2004 and 2005. A sum of Rs.9,00,000/- was sanctioned to desilt the Ananthakulam Kanmai. One Punitha Domis Savio Youth Federation lodged a complaint, on 15/03/2005 stating that no desilt work was undertaken in Ananthakulam Kanmai. So, he visited the spot as per the direction of the District Collector, on 24/03/2005. Finding that no desilting work was done, after making enquiry with the neighbours of Ananthakulam Kanmai, he filed a report before the District Collector. On the basis of the recommendation made by the District Collector, Kanyakumari, the case was registered by one Sundararajan, who was working as Deputy Superintendent of Police, (Vigilance and Anti-Corruption) Department, Nagercoil. He



received the order from the Director of Vigilance and Anti-Corruption Department, Chennai, on 20/06/2007. So, a case was registered in Crime No.6 of 2007 for the offences under section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act and sections 120(b), 420, 409, 465 and 477 IPC. He took up the investigation and recorded the statements of various persons. He received the sanction order for prosecuting A1 and A2. He recorded the statement of the sanctioning authority and collected the relevant documents from various Government Offices. After completing the investigation, he filed a final report, on 16/03/2011 for the offences under sections 167, 465, 468, 471, 477-A and 409 IPC r/w 120(b) IPC and section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

4.PW1 was the Principal Secretary to Government working in the Public Works Department. He accorded sanction for prosecuting A1.

5.PW2 accorded sanction for prosecuting A2.

6.PW15 was working as Junior Draft-man. He has spoken about the above said contract work details. He prepared a draft report for completing the work. A3's Tender was accepted. The work was allotted for Rs.



6,57,887/- . Estimation was prepared by the Assistant Engineer, on 15/09/2004 for Rs.9,00,000/- . As per the estimate, 28025 cubic meter was estimated to be desilted and the sanction was granted by the Executive Engineer. Another estimation was prepared for removing sand and constructing a wall by the Assistant Engineer, Irrigation Department. For which also, the Executive Engineer granted technical sanction.

7.PW19 has spoken about the preparation of bill for distribution of the contract. After completion of contract, she prepared the bill at the instance of A1 and A2. With that, the prosecution evidence was over.

8.At the conclusion of the trial, the accused were put to section 313 Cr.P.C proceedings. They denied the facts narrated by the prosecution witnesses and on the side of the accused, none examined and no document was marked.

9.At the conclusion of the trial, the trial court found the accused guilty, convicted A1 and A2 and sentenced them to undergo 3 years RI each and imposed a fine of Rs.2,000/- each for the offences under sections 120(B), 468, 471, 477-A IPC and section 13(1)(c)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and Rs.10,000/- each



for the offence under section 13(1)(c)(d) r/w 13(2) of the Prevention of Corruption Act; A3 was convicted and sentenced to undergo 2 years RI each and imposed a fine of 1,000/- with default clause; Rs.5,000/- for the offence under section 13(1)(c)(d) r/w 13(2) r/w 109 IPC with default clause and directed the sentences to run concurrently.

10. Aggrieved over the above said judgment of conviction and sentence, A1 and A2 filed Crl.A(MD)No.43 of 2015 and A3 preferred Crl.A(MD)No.42 of 2015

11. Now the origin of the issue may be kept in mind:-

PW3 was stated to be the Municipal Councillor for Ward No.25, for the period from 2001 to 2006 in Nagercoil Municipal Corporation. He came to know that for desilting work in Ananthakulam Kanmai, the Government released funds, noticing that till 2005, no desilting work was carried out, he made a complaint. This is the origin of initiation of the prosecution.

12. Similarly, several complaints from the villagers and from various Associations were received by the



Government. It was received by PW14-Anga Pillai, when he was working as Chief Engineer of Tamil Nadu Tamirabarani River Project, as per the Letter No.45/5167/2005. So, he has made a spot inspection and enquired various persons and officials, on 19/04/2005. And also, he collected relevant records and documents. He noticed only 4 pits with water available in the Ananthakulam Kanmai, but there was no traces for putting up new bunds and storing of the sand. He also found that no proper check and inspection was undertaken by the officials. But several pits were found in the Kanmai. He also found that desilting work was done in the above said Kanmai during 2003-2004 against the Government norms and circular. Desilting work must be undertaken once in three years. On the basis of the report, disciplinary action was initiated against A1 and A2. This is the basis and origin of the issue.

13.It is further to be seen that whether without any proper approval, the above said work was undertaken and without undertaking of work. The amount has been disbursed to A3, who was the Contractor. So this appears to be a simple issue. Whether the above said work was an approved one and whether any work was undertaken by A3 in pursuance of the contract is a simple issue, which arises for consideration. But unfortunately, on going through the



entire records and after hearing both sides, it is seen that no proper records or documents have been maintained for undertaking the above said work. This has been greatly commented by the trial court also, which led to the trial court, finding that misappropriation occurred under the guise of carrying out the desilting work.

14.Opening the argument on the side of the accused, learned Senior Counsel appearing for the accused would submit that serious prejudice was caused to the defence, since the complainant itself became the Investigating Officer; In 2005 file was received and preliminary enquiry was undertaken by the complainant by examining 24 witnesses; But he did not file any final report. Instead of that, he filed FIR and thereafter took up the investigation and those documents were not properly collected; Since the complainant himself became an Investigating Officer, it was one sided and biased investigation; he already came to the conclusion that some mal-practise has been taken place even before the registration of the FIR. It is further seen that the total area of the kanmai is 39 acres and only a small portion was permitted; Even though, as per the proposal 2800 cubic meter sand to be excavated, actually 30000 cubic meters have been removed. After the above said completion of work, no proper measurement was made to ascertain the



actual position; There was no complaint by DRDA authorities about the non-completion of work; Even though the statement was recorded by the informant, it was not produced along with the final report; At the conclusion of the argument he would submit that the entire complaint was a motivated one and the prosecution also biased without properly measuring the actual sand excavated; It is in half-hearted manner, the final report has been filed.

15.Per contra, the learned Additional Public Prosecutor would submit that measurements were taken on 27/01/2005 and 14/02/2005. Work was stated to be completed on 03/01/2005. But the enquiry report by two officers reveals that no such work was actually performed. Even at the time of inspection, which was made by PW24, PW14 in the presence of the accused, he is not able to identify the area, wherein the above said work was done. Only on the detailed enquiry, after finding the *prima facie* materials, First Information Report was registered and final report was also filed after completing the investigation. So, according to him, absolutely, there was no bias on the prosecution side and the defence put forwarded by the accused are all without any basis.



16.Now let us take the first issue, whether the above said work is approved or not. For answering this issue, again the process of work must be looked into. So for that purpose, the evidence of PW24 Project Officer is relevant. He was working as Project Officer in Kanyakumari District for the period of 2004-2005. He was also looking after the work undertaken as per the funds provided to MPs, MLAs, etc. For desilting Ananthakulam Kanmai, a sum of Rs.9,00,000/- was sanctioned to the work from MLAs funds. The administrative sanction of the above said work was issued two days prior to the joining of his duty I.e., on 18/08/2004.

17.Now let us see how the above said administrative sanction was accorded. The estimation was prepared by the Assistant Engineer, attached to Irrigation Department for Rs.9,00,000/-, by which 2025 cubic meter sand was proposed to be excavated. The above said estimate was approved by the Assistant Executive Engineer, on 15/09/2004. It was submitted to the Executive Engineer and technical sanction was given, on 28/10/2004. Similarly, it relates to renovation work of Ananthakulam Kanmai. The estimate was prepared for Rs.5,00,000/-, on 01/07/2003. As per the above said estimate, retaining wall was proposed to be constructed and for removal of 2025 cubic meter sand from



the Kanmai, technical sanction was accorded, on 31/03/2004.

As per the records, the above said estimate was prepared and approved by the Executive Engineer. Later, administrative sanction was also accorded by the District Collector and other local body Chairman, Rural Development Authority, etc. After the above said technical and administrative sanction, tender was called for. Among the above said tenders, least amount was cited by the third accused. It was accepted by the Executive Engineer. The total estimate was accepted for Rs.6,57,887/-. Apart from that, caution deposit or security deposit of Rs.1,10,000/- has been paid by the third accused. So this process has been spoken by the Additional Draft-Man namely PW15. He has also admitted that the above said process was undertaken in a proper manner.

18.Now let us stop, here, for a moment. Let us go back to the evidence of PW14. As mentioned above, he has stated that the above said work was undertaken without any proper approval. But from the evidence of PW15, it is seen that process was undertaken in a proper manner. So absolutely, there is no doubt with regard to the above said process of estimation, approval, Tender and sanctioning, etc. It is also admitted that the competent authority is the Executive Engineer. The Chief Engineer is only the



Supervising Officer. But he would say that as per the Government norms, within three years from the earlier work, no further work is to be undertaken. But he would admit that there is no such circular or Government Order prohibiting the work. So, the evidence of PW14 cannot be relied upon.

19.Now coming back to the approval, as mentioned earlier, the District Collector as well as the Rural Development Officials have also approved the above said project. But it appears that no proper intimation was sent to the Chief Engineer.

20.Reading of his evidence would show that he did not peruse the files properly and he has not able to inform the court as to who is the authorised person to accord sanction for the above said work. His entire evidence is one sided. So, with regard to the approval, his evidence need not be relied upon. But however, records shows that the above said proposal was properly processed.

21.Now coming to the execution, here is the problem. To discuss this issue also, we have to go to the process of checking, rechecking and statements of the periodical reports.



22.PW14 would say that it is the duty of the Executive Engineer to periodically super-check the work, if the amount involved is more than Rs.1,00,000/-. A report must be prepared by the Project Officer and submitted to the Executive Engineer, who has to countersign the same and submit to the Government. The above said report must be submitted every month. After completion of the work, check-in must be undertaken with reference to the maintenance of M-book at the work site. So far as this case is concerned, A2 namely Subramaniapillai made entry in the measurement book. In this context, the evidence of PW24, who was working as Projector Officer is relevant. As mentioned above, the monthly report must be prepared by the Project Officer. But he would say that along with this project, two other projects were also approved and the duty assigned to him was to super-check or supervise the work. He would admit that he inspected the spot periodically. The report will be taken for discussion in the monthly meeting scheduled by the District Collector and his evidence also entirely one sided. At one point of time, he would state that he made spot visit to check the improvements in the work. But at the same time, he would say that no work was undertaken in the above said site.



23.We will discuss about his evidence in the later portion of the judgment. Now coming back to the process, after completion of the work, report has to be submitted and the bill will be prepared by checking the measurement, mentioned in the M-book as well as in the site. Only after that, the bill will be passed or approved. The bill must accompany M-book and L-book also. This is the process of execution of the work. Whether it has been properly undertaken has to be discussed.

24.As stated above, PW24 appears not to be a reliable person. He was the Project Officer, for utilizing the funds of MLA and MP. But the work will be undertaken only through DRDA and the Project Officer I.e., PW24. But the work will be executed by PWD Department headed by the Executive Engineer namely A1 herein. So, it is a joint venture. Both of them must cross check the execution work. Whether it has been properly undertaken is the point for consideration.

25.PW2 was bold enough to say that cross check report was not submitted by the Executive Engineer. This shows that he failed in his duty. It appears that he has simply forwarded the periodical report. Actually, funds were allotted by him, after the above said administrative



sanction. Even at that time of passing the bill, they did not make any spot inspection with reference to digging work and also has not taken any measurement on the site. But he was assigned with the enquiry work by the District Collector on the pretext that demonstration has been made by the public by making objection over the above said work. His evidence shows that he was not departmentally proceeded. Now, he is saying that the above said work was not properly executed. So, his evidence need not be relied for any purpose. A simple measurement on the site would have brought everything to light. But everyone failed right from PW25 Projector Officer, Executive Officer, A1 herein and A2. But A1 to A3 are saying that work order was properly executed.

26. Whether any trace has been made out for the above said work, circumstances only available. After completion of the work, the first visit was made by PW24, (the then Project Officer to the site). The demonstration was made by the public, on 15/03/2003. On 16/03/2005, PW24 was directed by the District Collector to make an enquiry within one month from the date of the compliance report, which was submitted, on 16/02/2005. Even though, I discarded the evidence of PW24, for this point, his evidence has been taken into account. PW24 would say that



he made spot inspection, on 23/04/2005. At that time, he found some pits. Some of them are regular and some of them are irregular. Again, he made a spot inspection and took measurement. At the time of inspection, the Executive Engineer was also present. He would give reason for not taking the measurement stating that it is visible apparently. So, this shows that not only he failed to make spot inspection, but also to take measurement or check-in periodically report and execution of work, while making enquiry on the site. So this shows that his evidence can be discarded.

27. Now let us go to the evidence of the Regional Chief Engineer, PW14. He would also say that on the spot inspection. PW14 has also failed to maintain the measurement or to take up the measurement. But however, he found pits in the kanmai. Then how, he confirmed that no proper execution of the work was undertaken which is not explained by PW14. As mentioned above, simple measurement would have fixed the issue. But why, the common sense approach was not adopted is not explained even by the top officials. I find that the evidence of PW14 can also equally be discarded like that of the evidence of the Project Officer namely PW24.



28.Now let us turn to the M-book. Maintenance of M-book was not proper and also not complying with the rules mentioned in the guideline. It has been greatly commented by the trial court also.

29.Let me briefly extract the relevant rules. Rule 10,12,13 and 14 are relevant for consideration.

"10.The signature of the contractor or his agent should be obtained in measurement books, after each set of measurements with the addition 'I accepted all measurements'. In the case of illiterate men their marks should be attested by one independent witness.

12.Sub-divisional Officers are responsible for the correctness of the entries in the 'contents' column of measurement book.

13.Check measurements should be noted in measurement books, the items actually check-measured being distinguished by the initial of the checking officer on the left side of the column. 'Particulars' in line with the items check-measured.



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14. From the measurement book, all quantities should clearly traceable into the documents on which payments are made. When a bill is prepared for work or supplies measured a remarks Sub-divisional Officer to the effect " Bill submitted..... Executive Engineer on..... should be endorsed on the abstract of measurements. The officer who signs the pay order should immediately on signing it, cross out every page containing the detailed measurements of the work or supplies paid for, by a diagonal red ink line. The Officer who actually disburse the amount should enter the number and date of the voucher of payment with the mark 'paid on..... by voucher No..on the abstract of measurements.

30. With this background in mind, let us go to the M-book. According to the accused, work was done between 10/10/2005 and 17/10/2005. On 14/12/2005, PW1 to PW4 work was done and it has been certified that the sand taken from pit 1 and 2 was put on the bund. On 27/01/2005, pit 5 to 14 work was done and other works were subsequently done and certification was made stating that the entire work has been completed in all respects, by the Assistant Engineer Certification, dated 22/02/2005, we find no counter-signature by the Assistant Executive Engineer.



31.From the M-book, it is seen that the work was done on 28/02/2005 in all respects and totally, 14 pits were made in the desilting work.

32.Now we will co-relate the entries with the Level Book. On 15/09/2004, first measurement was taken and final level is also mentioned in the L-Book and it has been entered as if account has been checked and it was closed on 14/02/2005. So as per the L-Book, totally 14 pits were dug, sand has been removed.

33.Let us go to the inspection report prepared by PW24. As mentioned above, he has stated in the enquiry report that he found several pits. But the pits 1 and 2 having regular edges.

34.Let us go to the evidence of PW14. He would say that on the date of inspection, he also found several pits, but as mentioned above, no measurements were taken, either by PW14 or PW24 as the case may be. As per L-book, 14 pits alleged to have been made for excavating the sand. Now, by calculating the same with that of the M-book prepared for the restoration of Ananthakulam kanmai as per the Government work for pit scheme, wherein, we also find that total amount of Rs.5,00,000/- has been allocated for



restoration of Ananthakulam kanmai. The work includes excavation and strengthening of Kanmai. That was also completed for Rs.4,74,800/-, on 01/10/2003 and cash for the above said amount was also given.

35.The prosecution has relied upon this M-Book for the purpose of argument that the work that was done in the above said kanmai, as per the above said food for work scheme, dated 01/10/2004. Now the accused wants to say that the subject matter of the work has been done as per the present scheme. That is why, PW14 has stated that no digging work is to be undertaken within a period of 3 years from the earlier work. So probably, as contended by the prosecution, the above said pits would have been made as per the above said Government Scheme. Now by misusing the above said scheme work, now the accused persons try to say that, that is the present work. No doubt that no proper accounting or measuring has been taken, for which the officers are bound to take. So the question, which arises for consideration is whether from this alone, criminal liability can be imposed upon the accused.

36.But however, the prosecution relies upon the subsequent events also to show that there was a criminal conspiracy between all the accused persons to misuse the



Government funds by misusing the earlier work done. For that purpose, they would rely upon the payment for the subject work. Even also, according to the prosecution, proper procedure was not followed in approving the bill presented by A3. Now we will go to that issue.

37.As per Ex.P34, which is the audit slip says that measurements were taken on 27/01/2005, 14/02/2005 and 22/02/2005, it was counter signed by Mary Stella, who is examined as PW19. She has stated in her evidence that she was a temporary employee and the bill was presented to her without proper documents and the Assistant Executive Engineer has also not signed in the above said bill. There is no date of inspection. On the compulsion of A1, she prepared the check without proper documentation and it was also encashed on 03/03/2005 itself. Later, PW19 was also issued with charge memo for not properly verifying the documents and records. But it is seen that along with the bill, M-book was also enclosed. Here comes proper maintenance of M-book. I have already extracted the rules for maintaining the above said M-book.

38.Perusal of the records shows that none of the rules for taking the measurement has been followed. The counter signature and the signature of the contractor are



not available. So the M-book is also not a reliable document for the purpose of showing the work undertaken.

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39.Now let us go to the enquiry report. In Ex.P21, it has been stated that within time, the bill was not presented to the Regional office and work was also not checked by the Superintending Engineer or the Assistant Superintending Engineer. So, because of the non-submission of the records, the above said expenditure was put under the head of miscellaneous account of the Assistant Executive Engineer. As per the procedure, approval for measurement cheque must be obtained from the Regional Office. But without following the above said procedure, cheque has been issued and also encashed. So this shows that the cheque was processed and drawn, issued and encashed, without following the proper procedure and rules. This, according to the prosecution, strengthen the case of the prosecution that there was a conspiracy between all the accused persons.

40.In the light of the evidence of PW19, it is seen that only at the instigation of A1, the above said cheque was issued in a hurry and burry manner. Absolutely, there is no answer for this from the accused. It has been simply stated that everything was done as per the procedure and



rules. But nothing was done as per the procedure and rules. So this creates suspicion in the entire act. The prosecution has also relied upon other circumstances to show that absolutely there was no possibility and probability for the above said work to be undertaken in time as mentioned by the accused.

41.Let us take the other circumstance one by one.

42.The first circumstance is that the accidental drowning took place in the Kanmai. The case in Crime No.282 of 2004 was registered for the death of one Mukeshkumar, due to drowning in the kanmai, wherein it has been stated that on 01/12/2004, Mukeshkumar drowned down in the kanmai and died. But the date of occurrence is mentioned as 01/11/2004. As mentioned above, the date of desilting work alleged to have been undertaken between 10/01/2005 and 17/01/2005. The prosecution would also press the argument to the effect that on 01/02/2004, digging work would not have been taken place, when the entire kamnai was filled with water. Absolutely, there is no possibility to do the work between 10/01/2005 and 17/01/2005. None of them was examined to show the above said drowning and other things.



43.The learned counsel appearing for the appellants would submit that absolutely, there is no indication in the FIR or in other documents or even by oral evidence to show that the entire kanmai was filled with water, is only a remote point. We need not give any importance. What happened after the above said drowning is not clear on record. One month has been passed away.

44.The next circumstance is that releasing of the water through channel to the above said kanmai during the relevant time. Exs.P14 to P20 are relevant documents relied by the prosecution. Among these documents, Ex.P19 is pertaining to the above said period. For this point, the prosecution examined several witnesses. We will take up the oral evidence on this aspect.

45.PW13 was working as Assistant Engineer In-charge in the Irrigation Department. He would say that Ananthakumam kanmai and Narikulam kanmai are fed with Karavilai channel. He would also say that between 02/01/2005 and 13/01/2005 & 25/01/2005 and 02/02/2005, water was released through the above said channel. But PW13 was unable to say the water level available in the kanmai. So, the evidence of PW13 can be taken into account only to the limited extent of saying that water was



released to the above said kanmai through the channel during the relevant time. So, his evidence do not support the case of the prosecution to show that the entire Kanmai was filled with water. This is a remote point, led by the prosecution.

46.Now the next circumstance, is, giving of fishing right in the kanmai. Ex.P10 is the order passed by the Fisheries Department issuing fishery right to PW10, Devid Michael. He would say that he was issued with right upto 2004. According to him, till the end of 2003, the Kanmai was filled with water. Even though, he turned hostile. His evidence is relied by both sides. He would say that he was doing fishing between April-2000 and April-2005 and only a small portion available adjoining the banayan tree on the south-eastern portion. So, his evidence shows that only a portion of the kamai was given for fishing purpose.

47.PW11 was working in the Fisheries Department as Assistant Director in Chinnamottam area, Nagercoil. He has spoken about the fishing right given to several persons. His evidence also fully supported the case of the prosecution that the entire kanmai was filled with water during the relevant time. So all the above said three circumstances led by the prosecution are not sufficient to substantiate the point.



48.Now, we will go to the other oral evidence on this aspect. As stated above, PW3 was the originator of the issue. So, he has stated that during April 2003, no desilting work was done. But, as mentioned above, during 2003, desilting work was undertaken in the Ananthakulam kanmai. He would fairly admit that he was one of the Municipal Councillors. But the Ananthakulam kanmai is not situated within his limit.

49.PW4 also one of the complainants. He would also say that no such work was done. He has also spoken about the importance of the parish Priest in the village. He has also spoken about the motive for the above said complaint.

50.At this juncture, it is contended on behalf of the accused that the Revenue Officials as well as the Local Authorities tried to remove the playing area, over which trouble has arisen and because of the enmity only, he has given such a complaint.

51.PW5 was the Office-bearer of the Punitha Domis Savio Youth Association. According to him, he also gave a complaint over the non-performance of the work and motive has also been suggested to him. They made objection for removing his playing area. But the above said motive is totally irrelevant and remote to the issue.



52.PW6 one of the Office-bearers of Parish, has also given one petition. So also PW7, one of the petitioners and PW8, one of the villagers also participated in the protest made by the villagers over the non-performance of the work.

53.PW9 was also one of the villagers, who made the protest. It was told that because of the political enmity only, such a complaint has been made. So, the oral evidence of these persons, supported the case of the prosecution. Now in the backgrounds of the oral evidence, coupled with the documentary evidence, it is clearly established on the side of the prosecution that without properly executing the work, the documents have been created as if the work was done. And the Periodical reports have been submitted to the higher authorities by A1 and A2.

54.In the light of the above said, now the question, which arises for consideration is whether there is any criminal conspiracy between all the three persons.

55.Section 120(b) IPC will be attracted in the following circumstances:-

"(a).Ingredients of criminal
conspiracy:-



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(i)an agreement between two or more persons;

(ii)the agreement should be to do or cause to be done some illegal act or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove;

(iii)That some act besides the agreement was done by one or more of the parties in pursuance of it."

56.As per the above said criminal conspiracy, every act done by the person and in furtherance of the conspiracy, they are liable to be punished. Here, each and every person has taken independent role in the above said commission of the offence. Each act done by all the three accused persons will show that there was meeting of mind between them to commit the above said misappropriation and fabrication of records, etc.

57.For all the reasons stated above, this court is of the considered view that no interference is called for by the judgment passed by the trial court.



58. So, the conviction and sentence passed by the trial court against A1 and A2 to undergo 3 years RI each and imposed a fine of Rs.2,000/- each for the offences under sections 120(B), 468, 471, 477-A IPC and section 13(1)(c)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and Rs.10,000/- each for the offence under section 13(1)(c)(d) r/w 13(2) of the Prevention of Corruption Act and against A3 to undergo 2 years RI each and imposed a fine of 1,000/- with default clause; Rs.5,000/- for the offence under section 13(1)(c)(d) r/w 13(2) r/w 109 IPC with default clause, are confirmed.

59. In the result, both criminal appeals are **dismissed.**

07/06/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Special Judge-cum-Chief Judicial Magistrate, Nagercoil.
- 2.The Deputy Superintendent of Police, Vigilance and Anti-Corruption, Nagercoil.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.



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G. ILANGO VAN, J

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CrI.A(MD)Nos.42 and 43 of 2015

07/06/2023



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