BAIL SLIP

The Appellant/Sole Accused R.Murugesan S/o. Rengasamy was directed to be bail order of this Court dated 24.04.2017 and made in Crl MP(MD).3472/17 in Crl A(MD)No.128/2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.12.2022
Delivered On: 02.03.2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).Nos.128 of 2017 and 605 of 2019

Crl.A.(MD).No.128 of 2017

R.Murugesan ... Appellant / Accused No.2

Vs.

State rep. by
The Deputy Superintendent Police,
Vigilance and Anticorruption Cell,
Pudukkottai.
In Cr.No.6/2002,
Pudukkottai District. ... Respondent/Complainant

Prayer: Criminal Appeal has been preferred under Section 374 Cr.P.C., to set aside the judgment of conviction and sentence imposed upon the appellant / Accused No.2, in Special C.C.No.4 of 2005 dated 28.03.2017, by the learned Chief Judicial Magistrate, Pudukkottai, Pudukkottai District.

For Appellant : Mr.G.Mathavan

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

Crl.A.(MD).No.605 of 2019

State of Tamil Nadu Rep. by
The Public Prosecutor,
High Court,
Madras - 600 104

The Deputy Superintendent of Police,
V & AC, Pudukkottai,
(V & AC Pudukkottai Crime No.6 of 2002) ... Appellant/Complainant

Vs.

1.G.Seetharaman
2.K.P.Pugazhendi
3.P.Krishnamoorthy
4.S.Arivukkarasu ... Respondents/Accused Nos.3, 5, 6 & 7)

Prayer: Criminal Appeal has been preferred under Section 372 (1) Cr.P.C., to set aside the judgment of acquittal of the respondents / Accused Nos.3, 5 to 7, dated 28.03.2017 in Spl.C.C.No.4 of 2005 learned Chief Judicial Magistrate / Special Judge, Pudukkottai and convict the respondents / Accused Nos.3, 5 to 7 for the charges framed against them.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For Respondents : Mr.V.S.Badrinath for R1 to R3
Mr.B.K.Rajendran for R4

COMMON JUDGMENT

Crl.A.(MD).No.128 of 2017 has been filed by the second accused against the conviction and sentence imposed against him vide Judgment passed in Spl.C.C.No.4 of 2005 learned Chief Judicial Magistrate / Special Judge, Pudukkottai, dated 28.03.2017, whereas, Crl.A.(MD).No.605 of 2019 has been filed by the State against the acquittal of Accused Nos.3 and 5 to 7 vide the same judgment.

2.The case of the prosecution in brief:

PW19 on the basis of the report and the advise of the Government Order, dated 05.11.1998 and letter, dated 14.03.2002, registered a case in Crime No.6 of 2002 on 10.07.2002, against the accused persons. After completing the investigating process finding that all the accused persons have committed the offence under Sections 120(b), 467 r/w 109, 468, r/w 109, 471, 167, 419, 420 of IPC and Section 13(2) r/w.13(1)(E) of the Prevention of Corruption Act, final report was filed. In the final report, he has stated that the Government issued Government Order for acquiring the property for issuing free patta to backward class and most backward class community people, whose income is below Rs.12,000/- through private negotiations. Accused Nos.1 and 2 are private individuals. The first accused person presented a petition on 27.12.1997, before the third accused, expressing his willingness to sell the property in S.F.No.175 measuring about 2.62 hectares situated in Natham Pannai Village to the Government on private negotiations. He represented himself as the power agent of one Krishnakonar, who is the original owner. But, the original owner died even 30 years prior to the above said presentation of the petition. The above said petition was forwarded to accused Nos.3 to 8 for verification. Accused No.9 was also one of the Committee members of the panel. On the basis of the recommendation made by the accused Nos.3 to 8, amount was fixed by the panel at Rs.9.80 lakhs. The amount was also disbursed to that person. Later one Lakshmi lodged a complaint stating that the property belongs to one Krishnakonar, who died 30 years back and accused Nos.1 and 2 created forged documents by impersonation. On the basis of the above said complaint, the case was registered.

3.On completion of investigation, final report was filed and after appearance of the accused the following charges were framed.

Sl. No.	Accused Persons	Charges
1.	Accused Nos.1 to 7	120(b) IPC
2.	Accused Nos.1 & 2	467 IPC
3.	Accused Nos.3 to 7	467 r/w 109 IPC
4.	Accused Nos.1 & 2	468 IPC
5.	Accused Nos.3 to 7	468 r/w 109 IPC
6.	Accused Nos.1 to 7	471 IPC
7.	Accused Nos.3 to 7	167 IPC
8.	Accused Nos.1 & 2	419 IPC
9.	Accused Nos.1 to 7	420 IPC
10.	Accused Nos.3 to 7 and deceased Ramachandran and Ramasamy	13(2) r/w 13(1)(E) of Prevention of Corruption Act

4.Among the accused charged, accused Nos.6 & 8 died. To prove the prosecution case, 21 witnesses have been examined on the side of the prosecution and 38 documents marked. On the side of the accused persons no witness was examined, but 7 documents were marked.

5.At the conclusion of the trial, the trial Court found guilty the accused persons 1 and 2. The trial Court also found that since the first accused died, the charges against him abated. The second accused was convicted by the trial Court for the offence punishable under Sections 120(b), 467, 468, 471, 419, 420 IPC. He was sentenced to undergo 2 years rigorous imprisonment and imposed fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 120(b) IPC, sentenced to undergo 2 years rigorous imprisonment and imposed fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 467 IPC, sentenced to undergo 2 years rigorous imprisonment and imposed fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 468 IPC, sentenced to undergo 2 years rigorous imprisonment and imposed fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 471 IPC, sentenced to undergo 2 years rigorous imprisonment for the offence under Section 419 IPC and sentenced to undergo 2 years rigorous imprisonment and imposed fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 420 IPC. The sentences were ordered to run concurrently and set off under Section 428 Cr.P.C. was also ordered. The trial Court not found guilty in respect of the accused No.3 G.Seetharaman, accused No.5, K.P.Pugazhendi, accused No.6 P.Krishnamoorthy and accused No.7 S.Arivukkarasu and acquitted them from the charges 120(b), 467 r/w 109, 468, r/w 109, 471, 167, 419, 420 of IPC and Section 13(2) r/w.13(1)(E) of the Prevention of Corruption Act.

6.Now against the conviction and sentence imposed upon the second accused, he has preferred an appeal in Crl.A.(MD).No.128 of 2017 and against the acquittal of accused No.3 G.Seetharaman, accused No.5, K.P.Pugazhendi, accused No.6 P.Krishnamoorthy and accused No.7 S.Arivukkarasu, the State has preferred separate appeal in Crl.A.(MD).No.605 of 2019.

7.The case of the prosecution as narrated through the evidence:

PW2 was working as District Collector, Pudukottai, from January 1997 to 21.04.1998 and during his tenure, the Government introduced a scheme, which proposed to issue free house site patta to deserved people, whose annual income was below Rs.12,000/-. As per the scheme lands were proposed to be acquired through private negotiations, etc., and a panel was also appointed to fix the amount by making negotiations with the land owners. He was the head of the panel, the District Revenue Officer, who is the 9th accused was the Executive member. The 8th accused was Backward Classes Welfare Officer. The Joint Director from the Registration Department, Revenue Divisional Officer, Pudukottai, were also other members. As per the above said scheme and procedure, lands and as well as the land owners will be identified at the Village level through Village Administrative Officer by making recommendations. Inspection must be undertaken by the Revenue Inspector, Deputy Tahsildar and Tahsildar. So the above said team of Officers must make recommendation to Revenue Divisional

Officer. The Revenue Divisional Officer has to in turn submit the recommendation to the District Backward Classes Welfare Officer. The spot inspection must be undertaken by District Revenue Officer. All the reports must be placed before the panel and that will decide and fix the price.

8.In pursuance of the above said process and the request made by the first accused, the property in survey No.175 measuring about 2.68 hectares were inspected. The District Revenue Officer also made spot inspection. On the basis of the recommendation, amount was fixed by panel on 30.03.1998, by which, a total amount of Rs.9,84,600/- was ordered to be paid. Before the panel one Krishnakonar and his power agent appeared. The above said power agent Kanakaraj gave a statement, which was reduced to writing under Ex.P3.

9.PW8 is the brother's daughter of the above said Krishnakonar. According to her, Krishnakonar died when she was aged about 7 or 8 years, he was working in a temple and also taking care of the temple cattle. So the above said Krishnakonar was given maniyam land. After the death of the Krishnakonar, they came into possession. Only on the basis of her complaint, prosecution was initiated.

10.PW12 was working as Sub Registrar between 1995 and 1998, in Pudukottai District Registrar Office. One Krishnakonar attended the Office on 20.01.1998 for executing Power of attorney in favour of one Kanakaraj. In that above said document, one Rajagopalan and Palanisamy signed as Witnesses.

11.As stated above, PW19, on the basis of the report received from the Government, registered a case in Crime No.6 of 2002 and took up the investigation and recorded the statement of witnesses. He obtained the sample signatures of the accused and submitted the same to the Forensic Laboratory, Chennai, for examination.

12.Further investigation was undertaken by PW21, who was working as Deputy superintendent of Police in Vigilance and Anticorruption Department in Pudukottai. He recorded the statement of witnesses and after obtaining the sanction order, filed the final report stating that the accused persons have committed the offence punishable under Sections 120(b), 467 r/w 109, 468, r/w 109, 471, 167, 419, 420 of IPC and Section 13(2) r/w.13(1)(E) of the Prevention of Corruption Act.

13.PW15, who was working as Handwriting Expert in the Forensic Laboratory, Chennai, examined the documents sent for his opinion with regard to the signature and on the basis of the examination, he filed the report under Ex.P25.

14.At the conclusion of the prosecution evidence the accused was put on questioning as per Section 313 Cr.P.C.. He denied the facts narrated by the witnesses. On his side none was examined.

15.The background facts as we seen from the evidence is that originally the property, which was acquired for issuance of patta to landless poor as per the Government policy and Government Order, which referred above was a Keethari Maniyam, which is a minor Inam, assigned to one Krishnakonar. There is some controversy with regard to the assignment of land in favour of Krishnakonar, because the date of assignment is only after the death of the Krishnakonar. Being assigned land that cannot be either sold or assigned in any other form in favour of any other person. This is the position, which is admitted by the prosecution and as well as the accused. But, however, proposal has been made to acquire the above said land for the purpose of assigning patta to the landless poor. Without knowing even the history of property, the above said proposal has been made by the Revenue Officials. Later that was also acquired and money was also paid to the first accused, who is now dead, by the Committee. Now let us proceed on the assumption that the property was standing in the name of Krishnakonar and Krishnakonar did not having any direct descendents or legal heirs. PW8 claims herself as the legal heir of Krishnakonar and she would state that she was her senior paternal uncle. PW9 is her husband. It is also stated that the property belongs to the above said Krishnakonar, which was assigned to him as Keethari maniyam. After the death of Krishnakonar, since no direct legal heirs were available to him, they were in possession and cultivate the land. On particular day, when they visited the land, it was found to have planted with stone. After enquiry only the above said complaint has been given.

16.On the basis of the complaint given by PW8, PW4 was directed to make enquiry, who was working as Tahsildar during the relevant time. He would say that during his enquiry it came to light that the accused Seetharaman who was working as Regional Deputy Tahsildar, received the petition from the first accused namely Kanakaraj, expressing his willingness to sell the property to the Government on private negotiations. Later, the first accused stated that he is the power agent of Krishnakonar as per the deed dated 25.12.1997. But in the assignment document, Krishnakonar put his thumb impression. So it created doubt with regard to the genuineness of the power deed. The first accused claimed that he was assigned with power by the above said Krishnakonar. The accused Seetharaman did not examine the above said Krishnakonar. But created document as if he made spot visit and also made a proposal. On the basis of the proposal only further process was undertaken by the above said committee.

Seetharaman was the man behind all the above illegal activity. Further it was revealed that Krishnakonar died some 30 years back. So absolutely, there was no possibility for Krishnakonar to have executed power deed in favour of the first accused. During enquiry and investigation, it was found that the second accused acted as Krishnakonar and impersonated and signed in the power deed, etc. This is the background fact with regard to the above said issue.

17.Now let us go to the scheme and procedure for acquiring the land. So that the role played by each of the accused can be seen. As per G.O.Ms.No.885 dated 21.09.1995, a Committee was constituted. In that Committee District Collector was the President and the District Revenue Officer, who is one of the accused, was the Member Secretary. Apart from that a representative by the Department of Revenue and member from the Registration Department. On that ground accused Arivukarasu was appointed as Member Secretary and accused Ramasamy from the Backward Classes Community as member, Thiru Annamalai from the Revenue Department as another member. So the above said Committee jointly undertook the process of short listing the willingness of the owners and in turn had decided and fixed the compensation amount to be paid to the owners.

18.To aid the above said Committee in making the preliminary assessment with regard to the ownership, etc., facts, the Revenue Officials were also assigned with duty. So the duty of the Revenue Officials to look into the issue, after enquiry, proposal must be submitted to the Committee and the Committee will in turn fix the compensation as mentioned above. On 06.08.1997, the District Revenue Officer asked the above said Regional Deputy Tahsildar to make enquiry. As mentioned above, the further process was undertaken by the accused.

19.Now let us go to the another aspect as to how the above said lapse occurred in assessing the ownership and making recommendations for acquisition. According to the prosecution witness PW4 as mentioned above, the above said accused Seetharaman have prepared all the notes and got the signature of Pugazhendhi, Tahsildar. The proposal was not also signed by Seetharaman. It was received by the Collector Office on 04.03.1998. The District Revenue Officer made an Office note to forward the file to Backward Classes Officer for their opinion. On 17.03.1998, the District Revenue Officer namely the accused herein inspected the spot and recommended for further action on 25.03.1998, that was accepted by the Committee President namely the District Collector. The compensation was fixed at Rs.1.80 lakhs per acre.

20.Now the next stage of process was that before the Committee, one Krishnakonar and his power agent Kanakaraj appeared. The above said Kanakaraj gave a statement, that was recorded under Ex.P3. But the above said statement under Ex.P3 was not recorded by any of the Committee members as admitted by PW1 during the course of cross examination. Now we will see, how the above said statement of first accused was recorded by the Committee. PW10 has spoken about the event that took place on that date. He would say that he was working as Village Assistant and on the direction of Village Administrative Officer, they brought the revenue records to the Taluk Office on 07.07.1998. The Village Administrative Officer Palanivel asked him to get signatures from four or five persons. Therefore, he obtained signatures from Raman, Karuppiah, Subban, Murugan. PW11 also would say that they obtained signatures from Raman, Karuppiah, Murugesan, Veeran and subban. The purpose was not known to them. So this is how the above said lapse is occurred. It appears that the Committee did not directly examine the owners and the signatures has been obtained in the statements. So this is the lapse on the part of the Committee led to this extent.

21.Now we will see as to how the power of attorney was created. PW20, Palanisamy was the witness to the above said power of attorney deed. He would say that his signature was obtained by the first accused in a paper stating that they will get their salary.

22.PW12 was working as Grade II Registrar in District Registration Department from 1995-1998. He would say that on 20.01.1998 for the purpose of registering the power deed one Krishnakonar and two witnesses namely Raja Gopalan and Palanisamy attended the Office. It was executed in favour of one Kanakaraj, who is the first accused herein. As stated above one of the witnesses namely Palanisamy namely PW20 has stated that he was not aware of the nature of the document. So this is also clearly shows that this is a created document.

23.Now, in view of the above said facts and circumstances, it is clearly established that Krishnakonar even though was assigned with patta, he stated to be died in 1968 itself. But, the assignment was issued in 1972. So this is the confusion with regard to the availability of Krishnakonar during the relevant time. Whatever it may be, during the enquiry by PW4 and enquiry by other Revenue Officer it is clearly established that the assignee namely Krishnakonar was not alive when the property was acquired. The first accused by impersonating Krishnakonar through the second accused got the power deed registering in his favour, made the representation to the Committee to award the compensation in his favour and he became successful by this illegal way. So this is how it occurred and as I mentioned earlier, the lapse occurred due to the non examination of the owner by the Committee in person and non performance of proper enquiry to trace the history of the property by the revenue officials and the blame has been shifted to third accused namely Seetharaman, who alleged to have played a major role.

24.The fraudulent activity of the first accused and second accused has been clearly established by the prosecution before the trial Court and many contentions have been raised by the counsel for the petitioner by pointing out the discrepancies in the prosecution case. First is with regard to the very availability of assignment in favour of Krishnakonar, since as mentioned above assignment was stated to be made only after the death of the Krishnakonar. So the prosecution case that Krishnakonar put his thumb impression in the assignment order itself is doubtful. Absolutely, there is no evidence on record to show the correct date of death of Krishnakonar, whether it before the assignment or after the assignment is not known, whether any other person was also living in that Village in his name is also not known. But as mentioned above, it is established through revenue records that it was assigned land in favour of Krishnakonar. He is related to Lakshmi. No other corroborative evidence is available and it is for the above said Lakshmi to substantiate her right in the property through civil suit. So I am not going to decide now the right of the above said Lakshmi. It is suffice to say that the property was assigned to Krishnakonar as per the revenue records.

25.The next argument is that even as per the evidence of PW1, the President of the Committee, Krishnakonar and other person appeared in person; So according to him, absolutely the prosecution case fails. But this is also not accepted for single reason that during the spot inspection and enquiry made by the revenue officials, it was found that Krishnakonar was not alive. It is a clear case of impersonation, by which, the first accused appears to have produced the second accused as Krishnakonar before the Committee and before the Sub Registrar. So the argument that Krishnakonar appeared before the Committee must be accepted by this Court is completely misplaced and cannot be accepted.

26.The next argument is with regard to the taking and sending of thumb impression of Krishnakonar and signature of first accused for examination by witnesses Nos.17 & 18. No doubt that only the xerox copies of the signatures of the first accused and thumb impression of the Krishnakonar have been sent for examination. Even though the test result have been submitted, I am not going to rely upon those documents for the simple reason that xerox copies ought not have been compared to identify the signatures and thumb impressions. On that ground, the evidence of PW15, 17 & 18 need not be relied upon.

27.I am not convinced with any of the arguments that has been advanced by accused No.2, since the accused No.1 already dead, who impersonated the above said Krishnakonar in all the transaction. I find absolutely, no reason to differ from the view that has been taken by the trial Court.

28.The learned counsel for the second accused would rely upon the following Judgment of the Honourable Supreme Court passed in the case of ***SVL.Murthy Vs. State of Hyderabad*** reported in ***(2009) 6 SCC 77***, for the purpose of argument that the intention to cheat must exists at the initial stage. But, this judgment will not help the case of the second accused, since it is a clear case of impersonation.

29.So the conviction which was recorded against the second accused cannot be interfered and which is liable to be confirmed. Regarding the sentence also, the trial Court has taken into account his health condition.. On that ground also no interference is called for.

30.Insofar as other accused are concerned, State is the appellant, which has been filed against the judgment of acquittal passed in favour of accused Nos.3, 5, 6 & 7. Now coming to the appeal filed by the State. It was contended by the learned Additional Public Prosecutor that the duty that was assigned to the Government Officials was not properly performed and they also conspired with first accused and second accused to cheat the Government and misappropriated the money.

31.As stated above, in the said judgment, allegation has been made against the third accused namely Seetharaman that he only prepared all the proposals, documents, without properly verifying the ground situation and history of the property. He was not a member in the above said Committee. 5th accused was working as Tahsildar, Pudukottai, during the relevant time. and as mentioned above, his signature alleged to have been obtained by the third accused in the proposal form. He also failed in Committee to discharge his duty. Accused No.6 was working as Senior Assistant and accused No.7 was working as District Revenue Officer, who was Member Secretary as noted above.

32.As detailed in the above said judgment, it was clearly established that all the Government Officials namely accused No.3 to 7 have not discharged their official duty properly and enquired the owners of the property in person. Every thing has been delicated to the subordinates and they have played the spoil sport to the extend possible, without making the ground assessment. So this can be considered as serious lapse. But absolutely, there is no evidence on record to show that the Government Officials also colluded with accused Nos.1 and 2 in creating the above said power deed, impersonation and falsification of records and sharing of the profit of the crime. Absolutely, there was no meeting of minds as pointed out by the trial Court. Unless there is clear material on record to show that it was a clear prearranged plan to cheat the Government and mis-appropriate the money, the lapse that have been committed by the revenue officials and Committee itself, while assessing the ground situation will not entail a criminal prosecution.

33.The 7th accused, who was working as Member Secretary ought to have taken proper verification of the records and identity of the owners before making the proposal to the Committee. The President namely PW1 would also have taken all possible efforts to properly verify the ground situation, but he simply acted upon the proposal that was made by the 7th accused, in turn relied upon the records and proposals submitted by the third and fifth accused without making any Inspection, enquiry as the case may be.

34.Equally the other accused are also responsible for not making the enquiry at the ground level before fixing the amount. They also failed in their duty. So the question which arises for consideration is, whether the is lapse on the part of the Committee itself comprising the PW1, 7th accused and two other department officials are liable to be prosecuted criminally.

35.But, I am unable to convince as to the materials available and collected during the course of investigation to involve these persons also in the case of impersonation, misappropriation, cheating etc. If at all, they ought to have proceeded departmentally for their lapse. I could not conceive even the Officers in the cadre of District Revenue Officer and District Collector would have indulged in such sort of activity colluding with impersonators to cheat the Government. So this is totalling an inconceivable situation. From the records, it is seen that they have acted without any proper care and caution. Whether they have acted dishonestly is a point for consideration and if material is available to show that they acted in dishonest manner, they are liable to be proceed criminally.

36.Section 24 of the Indian Penal Code defines the word dishonestly.
24. "Dishonestly" — Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

37.There is a difference between 'dishonesty' and 'negligence'. Clear *mens rea* or intention must be brought on record to bring the lapse on the part of the accused officers, within the parameter of dishonesty. As I mentioned earlier, absolutely, no intention or *mens rea* of the accused officers have been brought either during the course of investigation or during the course of trial.

38.When we apply the above said principle, I am of the considered view that the lapses on the part of the accused officers cannot be fit into the above said category.

39.So the argument that was advanced by the prosecution that these officers ought to have been convicted by the trial Court is completely out of place and cannot be accepted. The judgment of acquittal rendered against these respondents requires no interference.

40.Accordingly, both criminal appeals fail and stand dismissed. The judgment passed by the learned Chief Judicial Magistrate, Pudukkottai, Pudukkottai District Special C.C.No.4 of 2005, dated 28.03.2017, is hereby confirmed. The conviction and sentence imposed by the Trial Court in respect of the second accused/appellant in Crl.A.(MD).No.128 of 2017 are confirmed. The second accused is directed to surrender before the Trial Court immediately, which shall take him to custody and commit him to prison to serve the remaining period of the sentence.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/03/2023

Sub Assistant Registrar(CS)

TM

To

1.The Judicial Magistrate, Pudukkottai.

2.The Chief Judicial Magistrate,
Pudukkottai, Pudukkottai District.

3.The Deputy Superintendent Police,
Vigilance and Anticorruption Cell,
Pudukkottai.
Pudukkottai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

5.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

Crl.A.(MD).Nos.128 of 2017 and 605 of 2019
02.03.2023

SS/27/03/2023/13P/8C