IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.111 of 2011

S.Dhana Pandian ..Appellant/Accused

Vs

State Rep. By
Inspector of Police,
SPI/CBI/ACB
Chennai ..Respondent/Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) Cr.P.C to set aside the judgment of conviction of the appellant/accused made in C.C.No. 28 of 2003, dated 9.2.2011 by the IX Additional Special Judge for CBI Cases, Chennai.

For Appellant : Mr.B.Kumar, Sr. Counsel for
Mr.A.R.Nixon

For Respondent : Mr.K.Srinivasan,
Spl. Public Prosecutor

JUDGEMENT

Aggrieved by the judgment of conviction of the respondent/accused-1 in Special C.C.No. 28 of 2003, dated 9.02.2011 by the IX Additional

Special Court for CBI cases, the present criminal appeal has been filed by the Accused-1.

Case of the prosecution:

2.1 The appellant/A1 and A2 entered into a criminal conspiracy during the month of November 1998 to cheat Southern Railways to the tune of Rs.62,000/- by creating fabricated ledger folio and using the same as genuine and in pursuance of the above said conspiracy, A-2 submitted a P.F. application on 11.11.1998 for availing final withdrawal of Rs.70,000/- for meeting the marriage expenses of his non existent younger sister Sow.Geetha Lakshmi knowing fully well that there was only a balance of Rs.4447/- during November 1998 in his P.F. account in order to facilitate A-2, in pursuance of the conspiracy hatched between them, the appellant who was maintaining the P.F. accounts of the employees, Southern Railways, Chennai division, fabricated a separate P.F. ledger folio as if there was a balance of Rs.66,010/- during November 1998 in the P.F. account of A-2 and thereby enabled A-2 to obtain a sum of Rs.62,000/- towards P.F. advance and thus, the appellant abused and misused their official position as public servant and cheated the Southern Railways to the extent of Rs.57,553/- and thereby obtained unlawful enrichment of the above said amount and thus, committed the offence punishable under Sec.120-B r/w 420, 420, 467 r/w 471 I.P.C. and Sec.13(2) r/w 13(1) (d) of P.C. Act, 1988. F.I.R. has been registered against the appellant in R.C.No.MA1 2001 A0047 by the Inspector of Police, ACB, Chennai. After investigation, the investigation officer collected the relevant records from the establishment, obtained sanction from the competent authorities for the prosecution of the appellant and laid the final report.

2.2 On appearance of the accused the trial court framed charges against the accused for the offences U/Sec.120-B r/w 420, 420, 467 r/w 471 I.P.C. and Sec.13(2) r/w 13(1) (d) of P.C. Act, 1988. In order to prove its case, the prosecution has examined witnesses PW1 to PW38 and marked documents Ex.P1 to P126. When questioned with regard to incriminating offences under Section 313 Cr PC, the accused denied the same. A-1 examined himself as D.W.1 and marked Ex.D1 to D3 on his side. The trial Court after hearing both sides and after analysis of evidence on record found both A-1 and A-2 guilty of the offences and imposed conviction and sentence as on A1 as follows;

Section	*Sentence*
Under Section 120 B r/w 420 IPC	*To undergo Rigorous Imprisonment for 2 years each and also to pay a fine of Rs.2500/- each in default to undergo Rigorous Imprisonment for 3 months*
Under Section 420 IPC	*To undergo Rigorous Imprisonment for 2 years each and also to pay a fine of Rs.2500/- each in default to undergo Rigorous Imprisonment for 3 months.*
Under Section 467 r/w 471 IPC	*To undergo Rigorous Imprisonment for 2 years each and also to pay a fine of Rs.2500/- each in default to undergo Rigorous Imprisonment for 3 months*
Under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act	*To undergo Rigorous Imprisonment for 2 years each and also to pay a fine of Rs.2,500/- each in default to under Rigorous Imprisonment for 3 months*
Under Section 467 IPC	*To undergo Rigorous Imprisonment for 2 years and also to pay a fine of Rs.2,500/- in default to undergo Rigorous Imprisonment for 3 months*
Under Section 477 A IPC	*To undergo Rigorous Imprisonment for 2 years and also to pay a fine of Rs.2,500/- in default to undergo Rigorous Imprisonment for 3 months.*

3.Assailing the judgment of conviction and sentence, A1 has preferred this appeal.

4. Mr.B.Kumar, learned Senior Counsel appearing for the appellant/1st accused would submit the alleged offences are said to have been committed during the years 1998 and 1999. and during such time the appellant was working in Chennai Park Town(Central Railway Station) as Accounts Assistant,Class C in the PF Section of Southern Railways, Central Railway Station, Chennai. A2 namely P.Pandian Sundararajan was worked as Chief Commercial Clerk in Royapuram Railway Station, Chennai, which also comes under the Madras jurisdiction. During the relevant period the appellant was in charge of 3000 accounts and they were maintained by the appellant in the PF Section. As per evidence PW16 and PW18 there are more than 35000 employees in Southern Railway and on any given single day 300 application for drawing PF loan benefits are disbursed. The PF loan application of A2 was endorsed by the Station Master of Royapuram Railway Station and as per the procedure, it will be

received in the Personal Department and employees are identified only with their PF number. With regard to other lapses committed by the appellant as alleged, there is absolutely no evidence to prove that A1 had even known A2 or they conspired together in the commission of offence. Further there is absolutely no evidence to show that the petitioner by corrupt or illegal means or otherwise abuse his position to obtain pecuniary advantage to the tune of Rs. 78,100/- in the transaction.

5. The learned Senior Counsel would further submit that there is absolutely no evidence on record to show that they are known to each other and there is no material to show that they conspired in order to commit the offences and no question under Section 313 Cr.P.C was put to the accused in this regard. As per Ex.P1/ Rules of the Railway Board, if any employee overdraws or disburse more money from PF account other than what he is entitled to, the excess amount will be recovered from the concerned employees. Rules also provided that the recovery must be in easy installments as it may cause financial hardship to the employee.

6. The learned senior counsel would further submit that as per evidence of PW 38, the management of Railway have recovered the excess payment made to A2 from him by installments between October 2000 - October 2001 and this has been done even prior to the registration of FIR on source information which was only on 10.12.2001. Even as per prosecution, no pecuniary advantage had accrued to A2. The learned counsel would further submit that during the alleged payment on 11.11.1998, there was confusion in the maintenance of accounts in the Southern Railway due to computerization of all accounts. That is why against the norm of an employee having a unique PF number, A2 had two PF numbers viz., 3938773 & 02528009.

7. The learned senior counsel would further submit that there is absolutely no evidence for the charge of offence under Section 13(1)(d) of Prevention of Corruption Act. In order to attract the offence punishable under Section 13(1)(d) of Prevention of Corruption Act the prosecution is bound to prove that the accused acted with dishonest intention. Mere conduct and action of accused contrary to the rules and departmental norms

would not amount to criminal misconduct by public servant. At the most the appellant can be proceeded departmentally for lapses or violation of rules and departmental norms and it would not amount to offence under Section 13(1)(d) of Prevention of Corruption Act. There is no also no material to show that the petitioner had obtained any pecuniary advantage by misusing his official position in sanctioning more money than what A2 was entitled to. In respect of offence under Section 420 IPC, A2 has paid back the entire money of Rs.78,1000/- allegedly over drawn by him from the PF account even prior to the registration of FIR and thereby the Railways has not suffered any loss. The other offences regarding the allegations of the appellant having made wrong entries to enable A2 to withdraw excess amount is concerned the case of the prosecution is infirmed on account of the non production of 'D' sheets from which the information with regard to A2 are entered into the records, thereby the offence under Section 477 A IPC can also not be made out against the appellant.

8. The learned senior counsel while reiterating that the offence under

Prevention of Corruption Act cannot be made out against the appellant would submit that though there are several arguable points available in the appeal in respect of the remaining offences under the Indian Penal Code the appellant at this stage is not inclined to press the appeal on merits in respect of the offences under the Indian Penal Code and would submit that he would only seek for leniency and pray for reduction of sentence. He would submit that the appellant has put in unblemished service all along and due to certain lapses committed without any criminal intention he is undergoing the ordeal of the case from the year 2001 and that after departmental enquiry he has been terminated and the terminal benefits have been forfeited by the Railways and that the mitigating circumstances may be taken for consideration.

9. On the other hand, Mr. Srinivasan, learned Special Public Prosecutor appearing for the respondent has submitted that the appellant/A1 who was working as Accounts Assistant, PF Section of Southern Railways, Central Railway Station, Chennai entered into a criminal conspiracy with A2 who Chief Commercial Clerk in Royapuram Railway Station, Chennai,

in November 1998 to cheat Southern Railways of Rs.62,000 by creating a fabricated ledger folio. A-2, in pursuance of this conspiracy, submitted a P.F. application on 11.11.1998 for final withdrawal of Rs.70,000 for his non-existent younger sister namely Geetha Lakshmi, despite having only a balance of Rs.4447 in his P.F. account. To facilitate A-2, the appellant, who maintained the P.F. accounts, fabricated a separate P.F. ledger folio showing a balance of Rs.66,010 in A-2's account, enabling A-2 to obtain Rs.62,000 towards P.F. advance. This act amounted to abuse and misuse of their official positions as public servants, cheating Southern Railways of Rs.57,553 and unlawfully enriching themselves. An F.I.R. was registered against the appellant in R.C.No.MA1 2001 A0047 by the Inspector of Police, ACB, Chennai. After investigation, the relevant records were collected, sanction for prosecution was obtained, and the final report was filed.

10. The learned Special Public Prosecutor appearing for the respondent has further submitted that the prosecution by examining witnesses PW1 to PW38 and documents Ex.P1 to P126 had proved the

case. The trial Court after detailed examination of both evidences and records found both A1 and A2 guilty of the offences and had convicted and sentenced them.

11. Heard Mr. Mr.B.Kumar, learned senior counsel appearing for the appellant/A1 and Mr.Mr.K.Srinivasan, learned Special Public Prosecutor, appearing for the respondent and perused the materials available on record.

12. On perusal of the records, it reveals that the prosecution has examined witnesses PW1 to PW38 and marked documents Ex.P1 to P126 and exhibits D1 to D3 were marked by the defense. After careful perusal of records, this Court finds no material to show that the appellant herein/A1 and A2 are known to each other and there is no material to show that there was conspiracy between them. It is an admitted case of the prosecution that more than three thousand accounts were maintained by the appellant in the PF Section. It is proved from the statement of PW16 and PW18, that there are 35000 employees in the Southern Railways and daily 300 application for drawing PF loan benefit are disbursed.

13. In respect of offence registered under Section 13(1)(d) of the Prevention of Corruption Act, as per evidence of PW 38, the management of railways recovered the alleged excess payment from A2 by equal installments between the period October 2000 and October 2001. There is no loss to the Railways. Having meticulously perused all the evidence and records presented in this case, this Court finds no substantial evidence to establish the case registered against the appellant under Section 13(1)(d) of

the Prevention of Corruption Act. As discussed above, there was no material to indicate any personal acquaintance between the appellant/A1 and A2, nor was there any evidence of a conspiracy between them. Further the appellant's actions did not result in any financial loss to the Railways, and there was no evidence or material that the appellant derived any personal benefit from the transaction.

14. Furthermore, the prosecution's case under Section 13(1)(d) of Prevention of Corruption Act hinges on proving that the accused intentionally abused their position for the benefit of another, resulting in a pecuniary advantage. However, based on the evidence presented, the prosecution has failed to establish such intent or action on the part of the appellant. In this regard, it is relevant to refer the judgment of the Hon'ble Apex Court in the case of **State of M.P. v. Sheetla Sahai [(2009) 8 SCC 617],** wherein the Apex Court has held as follows:~

> *?Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned*

provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused.?

18. In Zakia Ahsan Jafri v. State of Gujarat (AIR 2022 SC 3050), the Apex Court held that every act of commission and omission would not result in hatching criminal conspiracy unless the acts have been done deliberately and there is meeting of minds of all concerned.

19. Dishonest intention is sine qua non to attract the offence punishable under Section 13(1)(d) of the Act. Mere conduct and action of the accused contrary to rules and departmental norms would not amount to criminal misconduct by a public servant.

20. A fundamental principle of criminal jurisprudence with regard to the liability of an accused is the element of mens rea. On the principles of actus reus and mens rea, the learned author Sri.Glanville Williams in the -Textbook of Criminal Law- [Third Edition, Dennis.J.Baker, page 95] comments thus:

?The mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of the more serious crimes. These generally require, in addition, some element of wrongful intent or other fault. Increasing insistence upon this fault element was the mark of advancing civilization.?

21. On the principles of Criminal Liability, the learned author Sri.K.D. Gaur in his book Criminal Law [Lexis Nexis, Butterworths, page 37] explains thus:

?Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two

components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively.?

22. Dishonest intention is the crux of the offence under Section 13(1)(d) of the PC Act. The question of whether violation of the rules and departmental norms would amount to the offence under Section 13(1)(d) of the PC Act was considered by the Apex Court in C.K.Jaffer Sharief v. State [2013 (1) SCC 205]. The Apex Court held thus:

> *?If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant.?*

23. In M. Narayanan Nambiar v. State of Kerala (AIR 1963 SC 1116), while dealing with Section 5 of the 1947 Act, the Apex Court held that dishonest intention is the gist of the offence.?

15.Further in the case of in the case of ***A.Sivaprakash Vs.State of Kerala (Crl.Appeal No. 131 of 2007, dated 10.05.2016)*** reported in ***(2016) 12 SCC 273***, the Hon-ble Supreme Court reversed the conviction on the ground that no evidence to prove the allegation of committing criminal misconduct made against a public servant under Section 13(1)(d) of the Prevention of Corruption Act. The relevant portion is extracted below;

?19. It was not even the case set up by the prosecution that appellant had taken that money from some person and had obtained any pecuniary advantage thereby. It was the obligation of the prosecution to satisfy the aforesaid mandatory ingredients which could implicate the appellant under the provisions of Section 13(1)(d)(ii). The attempt of the prosecution was to bring the case within the fold of clause (ii) alleging that he misused his official position in issuing the certificate utterly fails as it is not even alleged in the charge sheet and not even iota of evidence is led as to what kind of pecuniary advantage was obtained by the appellant in issuing the said letter.

20. In C. Chenga Reddy & Ors. v. State of A.P., (1996) 10 SCC 193, this Court held that even when codal violations were established and it was also proved that there were irregularities committed by allotting/ awarding the work in violation of circulars, that by itself was not sufficient to prove that a criminal case was made out. The

Court went on to hold:

?22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In Abdulla Mohd. Pagarkar v. State (Union Territory of Goa, Daman and Diu), (1980) 3 SCC 110, under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and

the High Court to the requirements of proof in relation to a criminal charge was not proper?

16. Therefore, considering the lack of concrete evidence and the absence of any material indicating corrupt intent or action on the part of the appellant, this Court is of the view that the conviction and sentence imposed on the appellant under Section 13(1)(d) of the Prevention of Corruption Act is liable to be set aside.

17. Insofar as conviction and sentence imposed for IPC offenses, the learned senior counsel representing the appellant is not arguing on the merits but is instead seeking leniency from this Court. The appellant/A1 is present before this court and he has filed an affidavit requesting a lenient view regarding his conviction for IPC offenses. The relevant paragraphs are extracted below;

> "*13. I sincerely submit that as regard Section 420 IPC Cheating, A2 has paid back the entire money of Rs.78,100/- allegedly over drawn by him from the PF account and the rules provided him for deducting from the salary and even before the registration of FIR entire money was recovered.*
>
> *14. In sincerely submit that as regards Section 467, 471 IPC, I submit that prosecution case appears to be infirmed on account of non production of D sheets from which alone I must post in*

the folio of A2. Same will be the position as regards Sec 477 A. In this regard I most humbly and respectfully submit that I had worked for 21 years as an account clerk in Southern Railway. I have been dismissed from service which dismissal as become final. On account of the dismissal, I will not be entitled to any pecuniary benefits for having put in 21 years of service.

15. I submit that as the FIR was registered in 10th December 2001, I have been facing the ordeal of trial and subsequent proceedings for the last 23 years.

16.I sincerely submit that I am being 64 years old now and not being in good health as also taking the facts mentioned above into consideration, I humbly pray before this Hon'ble Court to take a lenient view against my conviction under IPC offences in the interest of justice."

18. This Court considered the appellant's statement in the affidavit that he had been appointed under the sports quota in Southern Railways and has rendered 21 years of unblemished service as an account clerk and was dismissed from service based on disciplinary proceedings initiated based on the registration of alleged FIR. The appellant has also been facing the ordeal of trial for the last 23 years and he has been denied his entire terminal benefits. The Court acknowledges the appellant's long

unblemished service and the denial of terminal benefits at his old age. The second accused has also repaid the amount which was paid in excess to him and there is no loss to the Department. Further there is no other material to show that the appellant/accused has deliberately made any payments to other employees. Taking into consideration the above mitigating circumstances and that the appellant had expressed his remorse, this Court is of the opinion that some leniency may be granted to him regarding the sentence imposed on him for the offences registered under Indian Penal Code.

19. In light of these circumstances and on a overall consideration of the evidence and records and the submissions made by the learned counsels appearing for the parties concerned, the criminal appeal is allowed in part on the following terms;

i. Conviction and sentence imposed for offences under Section 13(1)(d) of Prevention of Corruption Act is set aside.

ii. Conviction in respect of other IPC offences viz. 420, 467, 471, 477A IPC are confirmed. However, the sentence of imprisonment is modified to one of till raising of the Court.

iii. As per the modified imprisonment, the appellant who is present before this Court, has served the sentence.

iv. The fine amount paid under for the offences under Section 13(1)(d) of Prevention of Corruption Act is directed to be refunded to the appellant/A1.

v. Bail bonds if any executed by the appellant/A1 shall stand cancelled.

vi. Conviction and sentenced awarded in C.C.No. 28 of 2003, dated 9.2.2011 by the IX Additional Special Judge for CBI Cases, Chennai is modified as above.

22.02.2024

Internet: Yes/No
Index : Yes/No
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To

1.The Inspector of Police,
SPI/CBI/ACB
Chennai

2. The Public Prosecutor,
High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

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