



CRLA.Nos.94 and 118 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 22.10.2024

CORAM : MR.JUSTICE N.SESHASAYEE

Crl.A.Nos.94 and 118 of 2018

1.Agalya
2.Selvarani
3.E.Manohar

... Appellants in Crl.A.94/2018

S.Annadurai

... Appellant in Crl.A.118/2018

Vs.

The State rep. by
The Inspector of Police
Vigilance and Anti-Corruption
Salem
Crime No.14/AC/2002

... Respondent in both Crl.As.

Prayer in Crl.A.No.94 of 2018: Criminal Appeal is filed under Section 374(2) Cr.P.C., to call for entire records in Spl.C.C.No.40 of 2014 on the file of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem and set aside the Judgment dated 30.01.2018 imposed on the appellants / accused Nos.2, 4 and 5 in Spl.C.C.No.40 of 2014 by the learned Special Judge (Special Court for trial of cases under the Prevention of Corruption Act), Salem and acquit the appellants from all the charges.

Prayer in Crl.A.No.118 of 2018: Criminal Appeal is filed under Section 374(2)



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Cr.P.C., to admit the above appeal and set aside the conviction and sentence imposed on the appellant by the judgment dated 30.01.2018 passed in Spl.C.C.No.40 of 2014 on the file of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem by allowing the present appeal filed before this Court.

For Appellants : Mr.A.Ramesh
in Crl.A.94/2018 Senior counsel for M/s.G.Pugazhenthir

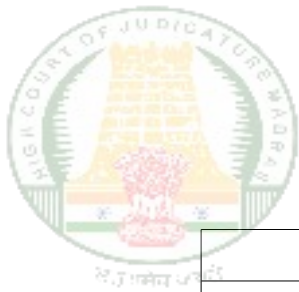
For Appellant : M/s.P.Rajavel & C.Mahendran

For Respondent : Dr.C.E.Pratap
in both Crl.As. Government Advocate (Crl. Side)

COMMON JUDGMENT

This batch of two appeals is preferred by A1 (Crl.A.No.118 of 2018) and A2, A4 and A5 (Crl.A.No.94 of 2018), challenging their respective conviction as well as the sentence imposed on them by the trial Court. The details are as below:

<i>Accused</i>	<i>Conviction and sentence imposed</i>
A1 (Appellant in Crl.A.No.118 of 2018) for offences U/s.7 of P.C. Act, U/s.109 r/w 167, 467, 468, 471, 420 IPC & Section 13(2) r/w 13(1)(d) of P.C. Act.	1 year R.I. for offence U/s.167 r/w 109 IPC and fine of Rs.1,000/- in default, 1 month S.I. 2 years R.I. each for offences U/s.420, 467, 468, 471 IPC along with fine of Rs.2,000/- in default 3 months S.I. for each offence
A2, A4 and A5 (Appellants in	1 year R.I. for offence U/s.167 r/w 109



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<i>Accused</i>	<i>Conviction and sentence imposed</i>
CrI.A.No.94 of 2018) for offences U/s.109 r/w 167, 467, 468, 471, 420 r/w Section 13(2) r/w 13(1)(d) of P.C.Act	I.P.C. and Rs.1,000/- fine. 2 years R.I. for offence U/s.420 r/w 109 I.P.C. and Rs.2,000/- fine and in default 3 months S.I. 2 years R.I. for offence U/s.467 r/w 109 I.P.C. and Rs.2,000/- fine and in default 3 months S.I. 2 years R.I. for offence U/s.468 r/w 109 I.P.C. and Rs.2,000/- fine and in default 3 months S.I. 2 years R.I. for offence U/s.471 r/w 109 I.P.C. and Rs.2,000/- fine in default 3 months S.I.

2.1 The case of the prosecution is as below:

- A2's father was working as a Primary school teacher in a primary school run by Thodavur West Panchayat Union and he passed away. A2 is his daughter and she had passed her XII Standard. She applied for a compassionate appointment in the said school.
- To secure her appointment, she approached PW5, the Tahsildhar concerned, to issue few certificates. The Tahsildhar after enquiry at his level had issued the following five certificates and they are as below:

<i>Exhibit</i>	<i>Certificate issued</i>
Ext.P4	Certificate that A4, the widow of the deceased and mother of A2 was not remarried.
Ext.P5	Certificate that A2 is unmarried.



<i>Exhibit</i>	<i>Certificate issued</i>
Ext.P6	Certificate that the deceased did not possess properties.
Ext.P7	Certificate that there are no other working member in the family of the deceased.
Ext.P8	Certificate that A2 is in below poverty line.

- c) Acting on the said certificates, A2 was issued Ext.P12 - Appointment order.
- d) The accusation of the prosecution is that A2, the daughter of the deceased was married to PW14 at the relevant time and in terms of the applicable rules, a married daughter would not be eligible to obtain compassionate appointment. A1 to A6 have joined to fabricate false forged documents to secure an appointment for A2.

2.2 On receipt of the appointment order, A2 presented the same before PW12, the Head Master of the school. When PW12 inquired A2 if she was married, the latter replied that she had. Therefore, PW12 informed A6, the District Educational Officer about it and did not permit her to join duty.

2.3 Subsequently, Both A2 and her mother A4 filed Ext.P14 and Ext.P15, separate affidavits examined by PW11, Notary, wherein A2 has averred that she is not living with her husband as her husband deserted her. In essence, she



claims herself to be a destitute. She gives these certificates to A6, the District Educational Officer, acting on which, the District Educational Officer issued Ext.P19, appointment order, directing A2 to join duty as a school teacher in some other school.

2.4 On a random verification, PW26 felt there was some irregularity which is blended with criminality and initiated *suo motu* action. On the above narration of facts, the prosecution proceeds that A1, the Village Administrative Officer and A3, the Revenue Inspector concerned in the said village have written recommendation to the Tahsildhar to issue Ext.P4 to Ext.P8 certificates. Inasmuch as they have given a false certificate that A2 was not married, a case came to be registered against them.

3. PW26, on investigation laid the charge sheet. Based on the same, charges were framed as below:

<i>Accused</i>	<i>charges framed</i>
A1 - VAO	U/s.7 of P.C. Act, U/s.167, 467, 468, 471, 420 IPC & Section 13(2) r/w 13(1)(d) of P.C. Act.
A3 - Revenue Inspector	Sections 167, 467, 468, 471, 420 I.P.C. and Section 13(2) r/w 13(1)(d) of P.C.Act.
A2, A4, and A5	U/s.109 r/w 167, 467, 468, 471, 420 r/w Section 13(2) r/w 13(1)(d) of P.C.Act
A6	Sections 471 r/w 467, 468 & Sections 468,



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<i>Accused</i>	<i>charges framed</i>
	420 r/w Section 13(2) r/w 13(1)(c) of P.C. Act.

4.1 Before trial A3 passed away and the charges framed against him got abated. However, the trial Court did not re-arrange the ranks of the accused persons and proceeded to try A1, A2, A4, A5 and A6 for the charges that it has framed against them. During trial, the prosecution examined PW1 to PW26, marked Ext.P1 to Ext.P34.

4.2. On appreciating the evidence, the Court found that A3 was a kingpin behind the crime committed, but proceeded to convict A1, A2, A4 and A5 for the charges framed against them and it acquitted A6, the District Educational Officer.

5. These appeals are now under challenge.

6. Mr. A. Ramesh, the learned Senior Counsel for A2, A4 and A5 and Mr. P. Rajavel, the learned counsel for A1 made the following submissions:

- (a) If the case of the prosecution is scanned for material particulars which according to the prosecution would constitute the offences that it alleges,



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then it will disclose that Ext.P19, the appointment order was not issued based on any of the certificates that PW5 had issued but based on the recommendation of A1, the Village Administrative Officer and A3, the Revenue Inspector.

(b) Secondly, Ext.P19 was issued by A6 acting on Ext.P14 and Ext.P15 affidavits, filed by A2 and A4. However, the charges were framed based on the recommendations of A1 and A3 and tagging A2, A4 and A5 to these recommendations has zero relevance in the context of the crime alleged.

(c) So far as Ext.P14 and Ext.P15 affidavits are concerned, while the deponents of these affidavits viz. A2 and A4 averred that PW14, the husband of A2 had deserted her, PW14, whom the prosecution relies on to prove the charges, deposes that there was a living in arrangement with A2 and he had left her. Even though prosecution has declared PW14 hostile and cross examined him, except suggesting an unsigned 161(3) statement, it has done precious little to establish that the statement which A2 and A4 had made in their respective Ext.P14 and Ext.P15 affidavits are false. At any rate, no charge is framed vis-a-vis Ext.P14 and Ext.P15.



7. Before delving on the merit of submissions made on either side, this Court needs to record that the trial Court judgment vis-a-vis A3 is plainly bad and not approvable in law. Here is a man against whom charges were framed, but he did not live to defend the charges during trial. The charges are abated against him and the trial Court went wrong in entering findings against a dead man.

8. Refuting the submissions of the learned counsel for the appellants, Dr.C.E.Pratap, the learned Government Advocate (Crl. Side) submitted that A2 had not disputed the fact that she indeed had informed the Head Master of the Gopalapuram school that she was married. When she was married even according to her own statement, then the Revenue Inspector in his field enquiry would have known it, but both A3, the Revenue Inspector and A1, the Village Administrative Officer, colluded to fabricate documents, and acting on which PW5 had issued certificates. But for the alertness or the alacrity of the Head Master of the Gopalapuram school, fabrication of the documents would have been suppressed. He submitted that appointment on compassionate basis is a benevolence which is extended to the family of the Government servants who die in harness or any such servants of any institution which assumes the character of instrumentalities of the State, though the Rules may vary as



between them. Extending this benevolence is circumscribed by multiple conditions and any fraud played there will hijack the benevolence which otherwise will be available to other eligible candidates.

9.Rival Submissions are carefully weighed. This Court may have to state that the submissions made by the learned Prosecutor carry an overwhelming dose of sentiments. This Court agrees with the learned prosecutor that any benevolence which the State extends shall go to the right candidate and there can never be any attempt to pilferage such benefits by anyone who is not eligible to be benefited under the scheme. However, this Court deals with the issue whether the appellants before this Court have committed the crime as alleged by the prosecution where the evidence on record would be its only guide to its conclusion.

10. There are two important facts:

- a) A certificate was issued by PW5 based on a recommendation of A1 and A3 that A2 was not married. Notwithstanding the fact that PW14 has turned hostile, the fact remains A2 attempted to secure a job based on the certificate issued by PW5 at the first instance, but eventually got an appointment not based on the certificate issued by PW5 but on the



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strength of an affidavit that she had filed before A6. Therefore, the job was secured not on the strength of the certificate issued, but on the strength of the affidavit which A2 had filed.

- b) There is nothing to connect the certificate issued by PW5 and the appointment order issued by A6, for the latter had relied only on the affidavits given by A2 and A4, and there is no charge against the appellants A2 and A4 that the affidavits filed by them were false and they have secured a job on the strength of the false affidavits.

11. In the result, these Criminal Appeals stand allowed. The conviction and sentence imposed on the appellants in Spl.C.C.No.40 of 2014 on the file of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem is set aside. The appellants are acquitted from all the charges framed against them. Fine amounts if it had been paid by the appellants are directed to be refunded. No costs.

22.10.2024

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Index : yes / no
Neutral Citation

To.



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1.The Inspector of Police
Vigilance and Anti-Corruption
Salem
Crime No.14/AC/2002

2.The Public Prosecutor
DVAC
High Court of Madras

N.SESHASAYEE, J.

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