



Crl.A.No.545 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2024

Pronounced on: 05.09.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

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1.Tmt.Indira Kumari. (*died*) 1st Appellant/Accused No.1

2. Tr.A.Babu. 2nd Appellant/Accused No.4

/versus/

State Rep. by,
The Deputy Superintendent of Police,
Crime Branch CID, Metro Wing,
Chennai – 600 002. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (ii) of Cr.P.C., to call for the records and set aside the judgment and sentence dated 29.09.2021 imposed in C.C.No.12 of 2019 on the file of the Learned Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to Elected MP's and MLA's Singaravelan Maaligai, Chennai – 1.

For Appellants : Mr.V.Karthik, Senior Counsel,
for Mr.S.Karthikeyan.

For Respondent : Mr.K.M.D.Muhilan,
Government Advocate (Crl.Side).



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JUDGMENT

The Criminal Appeal is directed against the judgment in C.C.No.12/2019 (on the file of Learned Additional Special Court for Trial of Criminal Cases relating to Elected M.P's and M.L.A's, Singaravelar Maaligai, Chennai) dated 29/09/2021, by A-1 (Indirakumari-, Former M.L.A and Minister for Social Welfare and Nutritious Meals Scheme) and A-4 (A.Babu – the husband of A-1).

2. Before the trial Court, along with Indirakumari (A-1), Tr.Kirubakaran (A2 - Secretary to the Government, Social Welfare and Nutritious Meals Scheme), Dr.P.Shanmugam (A3 - Director of Rehabilitation of the Disabled), A.Babu, (A4 - the husband of A-1) and Mr.R.Venkatakrishnan (A5-Junior P.A to A-1) were arrayed as an accused for criminal conspiracy and pursuant to the criminal conspiracy, A-1 to A-3 and A-5 being public servant, for committed criminal breach of trust, by abusing their official position, aid and abetted to obtain pecuniary advantage of Rs.15,45,000/- illegally for the Trusts in the name of M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swathi Educational Trust, both floated by A-1, declaring her



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mother Lakshmiammal as the Founder, her husband Babu (A4 - the second appellant herein) as its Managing Trustee and few others close associates to her as its Trustees.

3. The specific case of the prosecution is that, during the Assembly General Election 1991 A-1 was elected as a Member of the Legislative Assembly, Natrampalli Constituency on behalf of the AIADMK party. She was the Minister for Social Welfare and Nutritious Meals Scheme from 24/06/1991 to 09/05/1996. A-1 registered two trusts, i) M/s.Mercy Mother India Charitable Trust and ii) M/s.Bharani Swathi Educational Trust, showing her mother Tmt. Lakshmiammal as its founder.

4. M/s.Mercy Mother India Charitable Trust founded by Lakshmiammal, the mother of A-1. The Trust deed (Document No:924/1992) was registered at SRO, Virugambakkam, Chennai on 16/11/1992. In the said Trust, Indirakumari (A-1), her husband Babu (A-4), Tmt.Sakthi W/o.Kirubakaran (A-2, the Secretary to Government, Social Welfare and Nutritious Meals Scheme), S.Jeevarathinam (the driver of A-1) and



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VENKATAKRISHNAN (A-5- Junior PA of A-1) were the Trustees. A.Babu, the husband of A1 was appointed as Lifetime Managing Trustee vested with all powers and functions of the said Trust. M/s.Bharani Swathi Educational Trust was also founded by Tmt.Lakshmiammal the mother of A-1. The Trust deed (document No: 1282/1992) was registered at the Sub Registrar Office, Adayar, Chennai on 23/11/1992. In this Trust, Indirakumari (A-1), A.Babu (A-4) and S.Jeevarathinam were the trustees. In this trust also, Mr.Babu, the husband of A1 was appointed as Lifetime Managing Trustee vested with all powers and functions. By a rectification deeds dated 25/11/1992, A-1 Indirakumari was relieved from both the Trusts. In her place, Mr.P.Muniyandi was inducted as Trustee in M/s.Mercy Mother India Charitable Trust and Mr.Pazhamalai was inducted as a Trustee in M/s.Bharani Swathi Educational Trust.

5. In the Standing Finance Committee (SFC) meeting held on 22/01/1993, the Social Welfare Department took a policy decision to start School for the Severely Orthopaedically Handicapped Children, through Non-Governmental Organisation (NGO). In continuation of the said decision, Thiru.P.Pitchandi IAS, Joint Secretary to Social Welfare and Nutritious Meals



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Department wrote to the Director of Rehabilitation for Disabled, informing about the policy decision of the Government. The Social Welfare Department for which A-1 was the Minister issued G.O.Ms.No.235 (Social Welfare Department), Dated 01/09/1993 sanctioning a school for Deaf in North Arcot Ambedkar District through a NGO with Government aid and G.O.Ms.No.236 (Social Welfare Department), dated 01/09/1993 sanctioning a school for Severely Orthopaedically Handicapped Children in Madras to run through NGO's was issued. A-2 Kirubakaran signed these two Government Orders as Secretary to Government, Social Welfare and Nutritious Meals Scheme Department.

6. Based on these two Government Orders, (A-3) P.Shanmugam, the Director of Rehabilitation of the Disabled *vide* letters dated 27/10/1993 approved an estimation cost of Rs.5.46 lakhs for establishing a school for deaf children in the North Arcot District and the estimated cost of Rs.4,03,560/- to establish and run a school for Severely Orthopaedically Handicapped Children in Madras.

7. The Directorate of Rehabilitation for Disabled, ought to have



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communicated to all NGO's about the Government Policy and the two G.O's issued pursuant to the policy decision. It should have called for letter of intent from the willing NGO's. Contrarily, on the instruction of A-3, to facilitate the two trusts in which A-1 and her family members had interest and to make wrongful gain, the draft letters calling for willingness from the NGO's though prepared was not despatched to the NGO's. A-3 handed over two letters which is in the name of M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swathi Educational Trust, signed by A.Babu (A-4) the Managing Trustee of these Trusts, to his staff, to prepare proposal. The said proposal for sanctioning Rs.4,05,960/- for the whole of the financial year 1993-1994 was prepared and forwarded to the Government by A-3 on 30/12/1993.

8. The Tamil Nadu Private School Regulation Act, 1973 prohibits Grant-in-aid to unrecognised schools. In violation of the Act, on 30/12/1993, A3, Dr.P.Shanmugam forwarded the proposal recommending aid to the Special School for Deaf Children run by M/s.Mercy Mother India Charitable Trust, despite the fact that the temporary recognition to the said Trust expired on 25/11/1993.



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9. Likewise, for M/s.Bharani Swathi Educational Trust which had no recognition to run a Special School for Severely Orthopaedically handicapped Children, A-3 forwarded the proposal recommending sanction of Grant-in-aid to the said Trust to run the Special School.

10. On 09/02/1994, Thiru.R.Kirubakaran I.A.S, (A-2) knowing well that his wife Tmt.Sakthi is one of the Trustee in M/s.Mercy Mother India Charitable Trust cleared the proposal and A-1 Indirakumari approved the proposal knowing well that her husband is the Managing Trustee and her mother was the founder of the Trust. Based on the approval of A1, G.O.Ms.No.39 (Social Welfare and Nutritious Meals Programme Department), dated 10/02/1994 granting permission to M/s.Mercy Mother India Charitable Trust to run the school for children in North Arcot District with the Government grant of Rs.4.10 lakhs and G.O.Ms.No.38 (Social Welfare and Nutritious Meals Scheme Department), dated 10/02/1994 granting permission to M/s.Bharani Swathi Educational Trust to run a Special School for severely orthopedically handicapped Children in Madras with Government Grant of Rs.4.31 lakhs were



11. On 25/02/1994, A-3 sanctioned a sum of Rs.3.92 lakhs being the 90% of recurring expenditure and Rs.97,000/- as non-recurring expenditure for the whole of the financial year 1993-1994 to M/s.Mercy Mother India Charitable Trust without personal inspection of the School premises. A sum of Rs.4.10 lakhs was disbursed to the said trust through cheques. Similarly, A-3 without inspection of the premises of M/s.Bharani Swathi Educational Trust, sanctioned a sum of Rs.3.52 lakhs being the 90% of the recurring expenditure and Rs 0.40 lakhs as non-recurring expenditure to M/s.Bharani Swathi Educational Trust, despite the fact that A-4 (Babu) the Managing Trustee expressed his inability to establish and run the school through his letter dated 23/02/1994.

12. In the course of investigation, it was found that M/s.Mercy Mother India Charitable Trust not running any school for deaf children in Natrampalli, Bethlehem Nagar, Ambur, the place where they first sought permission to run the School, neither it was running a school for deaf children at



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Pachaikuppam Village, the place where they claimed to have temporarily sifted the school. Nevertheless, when A-4 A.Babu, forwarded a letter to A-3 on 31/03/1995 for permission to shift the school from Pachaikuppam, North Arcot District to Chengalpattu , MGR District, accepted the request and forwarded the proposal for shifting, to the Government. A-1 being the Minister in-charge of the concern Department, cleared the request for shifting, though she know well that no school for deaf children is run by M/s.Mercy Mother India Charitable Trust.

13. Contrary to the conditions imposed in G.O.Ms.No.38 and G.O.Ms.No.39 (Social Welfare and Nutritious Meal Programme) Department, dated 10/02/1994, without statement of expenditure and without conducting audit and inspection, grant-in-aid was released in single instalment to both the trust for the financial year 1994-1995 on 07/04/1995. The agreement and statement of accounts were obtained subsequent to the disbursement of money. The grant received by A-4 for running a School for deaf and a Special School for Severely Orthopaedically handicapped children was not utilised for establishing the special schools.



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14. Thus, pursuant to the conspiracy between the accused persons, by abuse of power, financial grant of Rs.7.23 lakhs for M/s Mercy Mother India Charitable Trust and Rs.8.22 lakhs to M/s.Bharani Swathi Educational Trust for the financial years 1993-1994 and 1994-1995 were made illegally to the Trusts which had not established Special School for Deaf at North Arcot District and Special School for Severely Orthopaedically Handicapped Children at Chennai. However, for the subsequent financial years, the recommendations of A3 to grant sanction for enhanced amount and on revised estimation was declined after found that no such schools were established by the respective trusts.

15. Pending Trial, the second accused by name, Kirubakaran died and charges against him got abated. Rest of the accused were convicted by the trial Court. The first accused (Indirakumari) and the fourth Accused (A.Babu) jointly preferred the Criminal Appeal No.545 of 2021. Pending Appeal, the first accused/first appellant died. Hence, her appeal got abated. The 4th accused, the surviving appellant challenges the conviction and sentence imposed by the trial Court is now under consideration.



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16. Conviction and Sentence imposed on the Appellant (A-4):-

A.Babu, the second appellant herein, was held guilty by the trial Court for the offences under section 120 (B) I.P.C r/w 409 I.P.C r/w Section 13(2) r/w 13(1)(d) of P.C Act, Section 109 r/w 409 I.P.C and section 109 I.P.C r/w 13(2) r/w 13(1)(d) of Prevention of corruption Act, 1988. He was sentenced to undergo the below punishment and the period of sentences ordered to run concurrently.

<i>Accused</i>	<i>Sections</i>	<i>Conviction and Sentence imposed by the trail Court</i>
A4	120(B) IPC r/w 409 IPC r/w Section 13(2) read with 13(1)(d) of P.C Act, 1988.	Sentenced to undergo 5 years R.I and to pay a fine of Rs.10,000/-, in default to undergo 6 months R.I.
	109 r/w 409 IPC	Sentenced to undergo 5 years R.I and to pay a fine of Rs.10,000/-, in default to undergo 6 months R.I.
	109 IPC r/w Section 13(2) r/w 13(1)(d) of P.C Act, 1988.	Sentenced to undergo 5 years R.I and to pay a fine of Rs.10,000/-, in default to undergo 6 months R.I.

17. Pleading innocence, the fourth accused who is the second



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appellant herein had putforth his case through the Learned Senior Counsel Mr.V.Karthik. On the side of the prosecution, the Learned Government Advocate (Criminal side), Mr.K.M.D.Muhilan appeared representing the Deputy Superintendent of Police, Crime Branch, CID, Metro Wing, Chennai.

18. Grounds of Appeal and submissions made on behalf of the appellant(A-4):-

The case of the second appellant is that, Lakshmiammal the mother of Indirakumari, (the deceased first appellant) without the knowledge and consent of her daughter, nominated her daughter as one of the Trustee in M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swathi Educational Trust. Later, when her daughter came to know about it, she asked to remove her name from the Trusts. Accordingly, Indirakumari name was removed through a Deed of Rectification and new Trustees were inducted in her place. This happened long before the trusts applied for permission to run a School for Deaf at North Arcot District and a school for severely orthopedically handicapped Children at Chennai. Ex.P-37 and Ex.P-35 which are the registered rectification



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deeds executed on 23/11/1992 will vouchsafe the said fact.

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19. The G.O.Ms.No.235 and G.O.Ms.No.236 both dated 01/09/1993 issued by the Social Welfare Department. Consequent to the Government Orders, the expression of willingness to run the Special Schools was made by the appellant (A-4), the Managing Trustee of these two Trust. His letter expressing willingness on behalf of the Trusts, has nothing to do with A1. Due to political and personal reasons, after the change of Government, Smt.Lakshmi Pranesh (PW-1) the incumbent Secretary to the Government, Social Welfare and Nutritious Meals Scheme Department had given the compliant against A-1, to wreck vengeance, since A-1 while as Minister in the AIADMK Government was instrumental for the transfer of PW-1's husband Mr.Pranesh/A5 from the post of Secretary to Government, Social Welfare and Nutritious Meals Scheme Department.

20. This appellant being the husband of A-1 been made an accused, despite evidence available to show he as Managing Trustee of the above said



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Trust been, administering the School for Deaf children initially at Bethel Nagar, Ambur, then temporarily shifted to Pachaikuppam and then to Chengalpattu. Taking into consideration about the need for shifting the School, the Department granted permission for shifting and there is no illegality or error in the grant of permission for shifting. The financial aid received were properly utilised for running the schools and for payment of the staff. Proper account been maintained and subjected to audit. The statement of accounts of the Trusts will prove beyond any iota of doubt that these two trust were running Special Schools at the relevant point of time.

21. The entire transactions starting from application to grant permission to run the special schools through these two trusts and the sanction of permission, grant-of-aid and expenditures both recurring and non-recurring were done in the normal course and properly. There is nothing to suspect. The prosecution has not come out with any reliable piece of evidence to show meeting of minds between this appellant and others to do an illegal act or legal act in illegal means to attract offence under section 120 B of I.P.C.



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22. The files relating to grant of permission and sanction of aid were dealt by officials of different hierarchy in the Social Welfare Department. It is wholly untrue to say, the files were dealt by A-3 alone on the influence of A-1 to facilitate A-4 and others in the Trust to get pecuniary advantage, by abuse of position. The trial Court, gravely erred in believing the testimony of some of the official witnesses like P.W-7 and P.W-8, who fearing the wrath of the ruling dispensation had falsely deposed, contrary to the documents and their own prior statements.

23. The schools were running during the relevant point of time in the respective places. The investigation not done properly and the documents seized during the investigation were not produced before the Court since it will disprove the case of the prosecution. P.W.42 (S.Thulasi) had clearly deposed that on 29/02/2000, the police contacted her over phone and asked her to bring all the documents relating to the schools run by the two Trust. She handed over those documents to the police. The police neither returned those documents/records nor produced before the Court. The suppression of those documents and tampering of records by the prosecution has lead to miscarriage



24. The District Inspection Cell Officer Mr.Veeraragavan who alleged to have visited the Chithalapakkam Village, at Saidapet Taluk and submitted the report Ex.P-48 to the District Collector was not examined by the prosecution. The inspection report of Mr.Veeraragavan been spoken by Mr.D.Gopinathan (P.W.44, a Tahsildar Rank Officer). The inspection alleged to have been conducted on 25/09/1996, after the schools were closed at the end of the academic year 1995-1996. There is no evidence to show the said D.Gopinathan accompanied Mr.Veeraragavan for the inspection. His competency to speak about the inspection report is doubtful. Insofar as the School for severely Orthopaedically handicapped children at Adyar, no inspection was conducted. The Department never asked the District Collector of Chennai to conduct inspection and ascertain whether the School for severely Orthopaedically handicapped children is functioning or not.

25. The Learned Senior Counsel for the appellant further submitted that, the charges framed and read over to the accused persons on 25/02/2011



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was altered after examination of witnesses. However, the accused persons were not given opportunity to recall the witnesses and cross examine them about the altered charges. Thus, the valuable right of the accused denied by not allowing them to cross examine the witnesses after alteration of the charge.

26. The contention of the prosecution that the letter inviting willingness from NGO's not despatched is not proved. Even otherwise, the appellant cannot be held responsible for the said dereliction by the staff of the Social Welfare Department. There cannot be any inference adverse to the appellant, that the G.O.Ms.No.235 and G.O.Ms.No.236 dated 01/09/1993 or G.O.Ms.No.38 and G.O.Ms.No.39 dated 10/02/1994 were issued with illegal intention to get pecuniary advantage for the Trusts.

27. The Special schools were functioning at Chithalapakkam and Adyar properly during the financial years 1993-1994 and 1994-1995. The inspections of these schools alleged to have conducted after the closure of these schools. In fact, P.W-11 Ravindranath Singh, Assistant Director in the Directorate of Rehabilitation of Disabled had deposed that he along with



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Mr. Shanmugasundaram, Deputy Director, the Director of Rehabilitation of Disabled and Mr. Sridhar, the Placement Officer visited the School run by M/s. Mercy Mother India Charitable Trust functioning at Valasaravakkam and the report is Ex.P-14. In the cross examination, he has admitted that during the inspection of the School in the year 1993, it was functioning. Also, from the Auditor report and the testimony of PW-53 Ms.D.Uma, the Manager of Indian Bank in which the trusts were maintaining account it will go to show that both the trusts had active accounts and transactions to prove the existence of the Institutes.

28. Further, the Learned Senior Counsel for the appellant submitted that the case of the prosecution that the grant given to these two Trusts were diverted for other purpose, has no basis and not proved. Mr. Kumar (PW-56), the partner of M/s. Marutham Engineering and Promoters admitted in the cross examination that a sum of Rs.3,00,000/- was transferred from the accounts of Trust to the account of his firm on 19/06/1996. In the chief examination, P.W-56 has stated that A-4 and his firm entered into a construction contract in respect of putting up a school at Medavakkam during the year 1995. The



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contract was entered during the year 1995 and construction completed in the year 1997. A sum of Rs.26.5 lakhs was received through bearer cheques and Account Payee cheques. For the additional cost of construction, A-4 paid Rs.60,000/- by cash. Thus, there is no proximity with the fund granted to the Trust by the Government between 09/03/1994 to 07/04/1995 to the construction commenced thereafter and payment made.

29. Submissions on behalf of the Respondent:-

The Learned Government Advocate (Criminal side) appearing for the respondent submits that, on the complaint given by the Secretary to the Government, Social Welfare and Nutritious Meals Scheme Department regarding misappropriation of Government funds to a tune of Rs.15,45,000/- which was given as grant to the two Trusts namely, M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swadhi Educational Trust, the Crime Branch of CID of the State registered the case in Crime No:15 of 1997 and investigated.

30. On completion of investigation, final report filed against 5 persons. The appellant herein was arrayed as 4th accused. Based on the material relied by the prosecution, charges under Section 120B r/w 409 of I.P.C and



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13(2) r/w 13 (1)(d) r/w 109 of I.P.C were framed and witnesses were examined.

The trial Court later altered the 9th charge against the 2nd appellant/4th accused to Sections 109 r/w 13(2) r/w 13(1)(d) of P.C r/w 109 of I.P.C.

31. To prove the charges, prosecution examined 63 witnesses (P.W.1 to P.W.63) and 82 exhibits (Ex.P.1 to Ex.P.82) were marked. In defence, 3 documents (Ex.D.1 to Ex.D.3) were marked. The trial Court held the charges against the 2nd appellant proved and convicted him. He was sentenced to undergo punishment as under and the period of substantive sentence to run concurrently:-

<i>Sections</i>	<i>Conviction and Sentence imposed by the trial Court</i>
120(B) IPC r/w 409 IPC r/w Section 13(2) read with 13(1)(d) of P.C Act, 1988.	Sentenced to undergo 5 years R.I and to pay a fine of Rs.10,000/-, in default to undergo 6 months R.I.
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109 IPC r/w Section 13(2) r/w 13(1)(d) of P.C Act, 1988.	Sentenced to undergo 5 years R.I and to pay a fine of Rs.10,000/-, in default to undergo 6 months R.I.



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32. The Learned Government Advocate (Crl.Side) for the respondent referring Ex.P-1 and Ex.P-5, the two GO's even dated 01/09/1993 and the letters of willingness Ex.P-15 and Ex.P-25, dated 14/12/1993, given by the 2nd appellant on behalf of the two Trusts, namely, M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swadhi Educational Trust in the capacity of its Managing Trustee, submitted that on scrutiny it will disclose that in Ex.P-25, the letter of willingness given on behalf of M/s.Bharani Swadhi Educational Trust, a letter dated 25/02/1993 from the then Director of Rehabilitation for Disabled (A-3) is referred. Whereas, in the letter of willingness given on behalf of M/s.Mercy Mother India Charitable Trust, the letter of A-3 dated 24/11/1993 is referred. The expression of willingness to run special school by M/s.Bharani Swadhi Educational Trust referring a letter dated 25/02/1993 much prior to the G.O.Ms.No.235 and G.O.Ms.No.236 dated 01/09/1993 regarding the policy decision to entrust the running of Special Schools to NGO's, on the face of the records establishes the nexus between the appellant being the husband of A-1 the Minister in-charge of the said Department and Senior Officials of that



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department A-2 and A-3. Without meeting of mind between the A-1 to A-3 and A-4, the letter of willingness referring a communication which was not despatched and a reference to a document presupposing the change of policy could not have occurred.

33. The Learned Government Advocate (Crl.Side) for the respondent submit that Ex.P.8 is the file relating to M/s.Mercy Mother India Charitable Trust. As per the proceedings of the then Director of Rehabilitation and Disabled in R.O.C.No.l30854/HW-IV(4)/92 dated 22.12.1992 temporary recognition was granted to the said Institute at Valasaravakkam, Chennai for a period of one year from 26.11.1992 to 25.11.1993. This recognition was granted for conducting educatable and trainable classes on condition that the Management should run the School in accordance with the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973. Further, on condition that any application for granting further continuation of the Temporary recognition should be submitted three months in advance before the expiry of the temporary recognition granted.

34. The appellant herein (A4) initially made an application seeking



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Central Scheme of Assistance/grant-in-aid for a sum of Rs.22,05,000/-. While so, abusing the authority of A1 without any verification of the fact whether the said Trust has established any school for the deaf children, (Ex.P.10) G.O.Ms.39/SW, dated 10.02.1994 was passed. Ex.P.10 was issued after expiry of the temporary recognition granted to M/s.Mercy Mother India Charitable Trust at Valasaravakkam. The said G.O was issued from the department for which A1 was the Minister. Hence, the Learned Government Advocate (Crl.Side) submitted that while recognition of Private Special Schools, permission for opening new schools and sanction of grant to the schools already recognition, all vest with the department of School Education and the same been delegated to the Directorate of Social Welfare and Directorate of Rehabilitation as per the G.O.Ms.No.69, dated 15.03.1993 (Ex.P.76). In this G.O, there is mandate on the Directorate of Rehabilitation to conduct annual inspection of the institutions and internal audit of the accounts of the institution, which was not carried out in this case.

35. The sequence of events would clearly show that a Trust formed in the name of the relatives of A1 and grant was sanctioned after recognition to



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the school got expired. Grant disbursed without proper inspection and in violation of G.O.Ms.No.39, all these action attracts offence of abetment read with breach of trust by a public servant.

36. As far as, M/s.Bharani Swadhi Educational Trust is concerned, no school was recognised under its management, no evidence to show it was running any school for Severely Orthopaedically Handicapped Children, when A2 submitted his willingness to run the school. However, grant-in-aid was disbursed to make unlawful gain.

37. In Ex.P.25, A4 (the appellant herein) has addressed to the Directorate of Rehabilitation and disabled, expressed his willingness to start the school for Severely Orthopaedically Handicapped Children. Obviously, on the date of this letter i.e., 14.12.1993, there was no school for Severely Orthopaedically Handicapped Children at Chennai run by the said trust. The letter also does not disclose the proposed place at which the school likely to be established. However, pursuant to the conspiracy between him and the other



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accused persons, A3 recommended the proposal of A4 and got the approval of A1 under Ex.P.11.

38. Regarding the alleged location of the schools run by these two Trust, the Learned Government Advocate (Crl.Side) for the respondent submits that M/s.Mercy Mother India Charitable Trust was supposed to function in the North Arcot District. Initially, the appellant on behalf of the Trust executed a security bond Ex.P.17 stating the address of the proposed school for deaf children as No.10, 5th street New Bethlehem, Ambur, North Arcot District. In the subsequent communication of A1 dated 30.03.1995 (Ex.P.63), he has addressed the Secretary to Government seeking permission to run the school for deaf children at Chennai instead of North Arcot District. For obvious reason, without any verification, same has been accepted and G.O.Ms.No.32 dated 30.01.1996 was issued from the department according sanction for shifting school for deaf children from Pachakuppam Village, Vaniyambadi Taluk, North Arcot District to Chennai.

39. The prosecution has adduced evidence to establish that there



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was no school at Pachakuppam in Vaniyambadi Taluk or new Bethlehem Nagar, Ambur. P.W.22 the Village Administrative Officer of Pachakuppam village had categorically deposed that when A4 sought for certificate that the school for deaf and dumb was running in that area, he refuse to give such certificate. He does not know of any school for deaf functioning in this area and later shifted. The evidence of VAO also corroborated by the evidence of Village President P.W.23 who had deposed that in Pachakuppam Village, there was only one school by name, BS Matriculation, for which tax was imposed. Though, in the cross of P.W.23, he says that in one block of BS Matriculation School, for few months from January 1996, school for deaf was functioning and on the same year, it was shifted. This does not really support the case of A4 that the school which was supposed to be establish at New Bethlehem Nagar, Ambur was really established at the said place, later temporarily shifted to Pachakuppam Village and then to Chennai. Even assuming that it was shifted from new Bethlehem Nagar, Ambur, North Arcot District to Pachakuppam, it was not with due permission and intimation to the Government. Therefore, the claim of the appellant that he was really running the school for deaf and utilised the funds sanctioned to it, is a tall claim without any evidence.



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40. Further, relying upon the evidence of PW.25 Sheela, the Learned Government Advocate (Crl.Side) for the respondent submitted that this witness who claims to be the Head Mistress of Matriculation School at Pachakuppam had deposed that A4 is the Correspondent and Managing Trustee of the said school. The school was inaugurated by A1. The accused 1 and 2 established a school for deaf at New Bethlehem Nagar at Ambur in the year 1992-1993 and shifted the school to Chialapakkam in the year 1994-95 and after shifting, that school was functioning for Severely Orthopaedically Handicapped Children. This witness who is closely associated with A1 and A2 had in fact supported the case of the prosecution by making inconsistent and contrary statement and had made her testimony wholly unreliable.

41. Since there is no evidence to show any school for deaf in new Bethlehem Nagar, Ambur or in Pachakuppam. The claim that the school shifted was to Chithalapakkam and started functioning as a school for Severely Orthopaedically Handicapped Children, the trial Court has rightly held the appellant guilty.



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42. The Learned Government Advocate (Crl.Side) for the respondent emphasis that one trust by name, M/s.Mercy Mother India Charitable Trust was granted aid for Rs.4,10,000/- during the financial year 1993-1994 and Rs.3,13,000/- for the financial year 1994-1995. The other trust by name M/s.Bharani Swathi Educational Trust was granted fund for Rs.4.31 lakhs for the financial year 1993-94 and Rs.3.91 lakhs for the financial year 1994-95 for running Severely Orthopaedically Handicapped Children, Chennai. The trust are different and purpose for which grant was given different. Since A1 and her husband A4 (the appellant herein) were in control of both the Trust without really establishing the school but only paper records were created and when inspection team went to verify about its existence, conflicting and contradictory statements were made by the persons closely associated with the accused.

43. The Learned Government Advocate (Crl.Side) for the respondent submit that sum of Rs.7,23,000/- was sanctioned to M/s.Mercy Mother India Charitable Trust to establish a school for the deaf children at



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Bethlehem Nagar, North Arcot, Ambur. However, there is no trace of any school established in that place. The contention of the appellant that the said school for deaf was shifted to Chennai subsequently and permission obtained also not found to be correct since the subsequent inspection conducted by P.W.44 along with one Veeraraghavan, the District Revenue Committee Officer to the Chitlapakkam village had disclosed that there was no school for deaf by M/s.Mercy Mother India Charitable Trust or school for Severely Orthopaedically Handicapped Children, by M/s.Bharani Swathi Educational Trust functioning. As far as M/s.Bharani Swathi Educational Trust is concerned, funds was sanctioned to the institute which had no recognition. False report been recorded as if the institution was running satisfactorily. In this said circumstances, the Learned Government Advocate submits that it is clear case of abuse of official position. In connivance with Official, public money been disbursed to A4 under the pretext of establishing school for deaf children and Severely Orthopaedically Handicapped Children at North Arcot District and Chennai respectively.

44. The Learned Government Advocate (Crl.Side) for the respondent further submits that non-examination of Veeraraghavan, the District



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Research Officer, who headed the inspection team has no significance, since P.W.44 Gopinathan and P.W.48 Rajamanicakm, the District Collector, who ordered inspection were examined by the prosecution and they have spoken about the content of the enquiry report. The funds sanctioned to the two Trusts and received by A4 the Managing Trustee not been utilised for establishing school for deaf children and school for Severely Orthopaedically Handicapped Children. Contrarily, the fund has been mis-utilised for constructing a building at Medavakkam in the name of B.S College of Physiotherapy. The evidence of P.W.56 the partner of Marutham Engineers and Promoters proved that the construction of the building was made at the instance of A1, pursuant to the agreement entered with M/s.M/s.Bharani Swathi Educational Trust. The said construction which commenced in the year 1995 and completed in the year 1997. Thus, the Learned Government Advocate (Crl.Side) submits that the charge against the appellant been clearly proved through evidence. Therefore, the judgment of the trial Court has to be confirmed.

45. Regarding the alteration of the charge, the Learned Government Advocate (Crl.Side) submitted that the trial Court after examination of witnesses taken note of the fact that, alteration has to be done to



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the charges framed, accordingly in exercise of its power under Section 216 of Cr.P.C., charges were altered and the appellant was questioned. First, the charge for abetment was brought and penal provisions under the Prevention of Corruption Act was mentioned subsequently. Further, he submits that the alteration of the charge in exercise of its power under Section 216 of Cr.P.C., has no way prejudiced the accused/appellant in any manner.

46. Heard the Learned Senior Counsel for the appellants and the Learned Government Advocate (Crl.Side) for the respondent. Records perused.

47. It is a case of criminal breach of trust by Public Servant and abuse of official position with non public servants pursuant to the conspiracy to obtain pecuniary advantage to a tune of Rs.15,45,000/-. Admitted case of the appellant is that his wife A1 was Minister for Social Welfare and Nutritious Meal Scheme between 24.06.1991 to 09.05.1996. She was a Trustee, later relieved. He was the Managing Trustee for M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swathi Educational Trust. It is also admitted case of the



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appellant that on behalf of two trusts, he gave willingness to run school for deaf children by M/s.Mercy Mother India Charitable and school for Severely Orthopaedically Handicapped Children by M/s.Bharani Swathi Educational Trust. It is also admitted case of the appellant that on behalf of M/s.Mercy Mother India Charitable, he received a sum of Rs.3,79,000/- as per Ex.P.54, Rs.31,000/- as per Ex.P.55, Rs.3,13,000/- as per Ex.P.64, Ex.P.65 and Ex.P.66. Similarly, on behalf of M/s.Bharani Swadhi Educational Trust received Rs.3,92,000/- as per Ex.P.56, Rs.39,000/- as per Ex.P.57, Rs.3,91,000/- as per Ex.P.66, Ex.P.67 and Ex.P.69. By cross examining the prosecution witnesses and by marking Ex.D.1 to Ex.D.3, the appellant projected his defence that he had no criminal intention to commit any misappropriation of the fund granted to the Trusts. M/s.Mercy Mother India Charitable Trust in fact had established school for deaf and blind children at new Bethlehem Nagar, Ambur, North Arcot District. Later, temporarily shifted to Pachakuppam, Vaniyambadi Taluk, Vellore District and then to Chennai after obtaining due permission from the Department. Similarly, he contend that the school for Severely Orthopaedically Handicapped Children was established and run by M/s.Bharani Swadhi Educational Trust. To prove the said fact, he rely upon the statement of



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accounts given by his auditor and certain admissions by the prosecution witnesses and also take advantage of the phonetic similarity between two villages, namely Sithalapakkam and Chitlapakkam to plead that the inspection team did not visit the place where the school located.

48. The investigation was set into motion on the complaint given by P.W.1 Lakshmi Pranesh, Secretary to Social Welfare. Suspecting foul play in granting sanction to the schools run by M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swadhi Educational Trust. She had requested the District Collector of the then Chengalpattu District to conduct inspection and report. Her letter to District Collector is Ex.P.3 dated 12.09.1996. The letter of P.W.1 reads as below:-

“It has come to the notice of the Government that the following two trusts

(1) Mercy Mother India Trust.

(2) Bharani Swathi Educational Trust were given grants by Government of Tamil Nadu during 1993-94 for starting a Special School for the deaf children and a Special School for the severe orthopedically handicapped respectively. It is



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reported to the Government that both the above schools are functioning at Sithlapakkam Village via Medavakkam, Chennai, M.G.R District. I request you to depute a responsible Officer from the Collectorate other than the District Social Welfare Officer and the District Rehabilitation Officer, who inspect the above schools and send a report to Government immediately. Since some foul play is suspected, this may be treated as 'Strictly Confidential' and the report sent to me within two days."

49. In response, P.W.48 Rajamanickam, the District Collector had deputed Tr.Veeraragavan (District Research Officer) to inspect the village and report. Accordingly, the said Veeraragavan along with Mr.Gopinathan, P.W.44, Tahsildar in-charge of People Grievance Redressal Centre in Collectorate, Kancheepuram had conducted enquiry and submitted the report to P.W.1. Based on the report which has disclosed the fact of non-functioning of the Schools, P.W.1 had given the complaint Ex.P.7 regarding misappropriation of Government funds with connivance of A-1, the then Minister of Social Welfare, Secretary to Social Welfare, Managing Trustee and the other Trustees of the two



50. The Learned Senior Counsel for the appellant referring the cross examination of P.W.1 who has admitted that it was the fourth complaint in this matter, submitted that the earlier three complaint been suppressed by P.W.1. However, in the further cross of P.W.1, by saying her earlier complaints sent to Mr.Rajasekar Nair I.P.S and others were not entertained by them, since the complaint does not come within their purview. Hence, Ex.P.7 was addressed to Additional Deputy Superintendent of Police, CID, Crime Branch. Thereby, she had explained why she had not referred the earlier three complaints

51. In Ex.P.7 the scheme of conspiracy perceived by the accused persons soon after A1 assumed charge as Minister of Social Welfare and Nutritious Meal Programme is narrated in detail. In the course of investigation, the prosecution has found that this appellant being the husband of A1 (deceased first appellant) had privy to the Government Policy decision. Along with A1 and other accused through the mother of A1 Trust Deeds has been registered.



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Ex.P.36, the trust deed of M/s.Mercy Mother India Charitable Trust reveals it was registered at SRO, Virugambakkam, Chennai on 16.11.1992. Ex.P.34 is the Trust deed of M/s.Bharani Swadhi Educational Trust reveals it was registered as SRO, Adayar, Chennai on 19.11.1992. In both the Trust, the founder had made her daughter A1/First Appellant (deceased) as one of the Trustee. However, through a rectification deed Ex.P.35 and Ex.P.37 dated 23.11.1992, A1 name had been deleted. In both the Trusts this appellant (A4) been shown as the Lifetime Managing Trustees.

52. It is evident from Ex.P.8, the file maintained by Social Welfare Department in respect of Special School for deaf children at North Arcot District, this appellant on behalf of M/s.Mercy Mother India Charitable Trust through his letter had addressed the Director of Rehabilitation of the disabled to recommend the Government of India to sanction grant-in-aid of Rs.22,05,000/- to the Trust at Chennai for free supply of aids/appliances to the handicapped. In this application, the appellant has stated that the trust is functioning at No.4, Brindavan Colony, Valasaravakkam, Chennai. The grant-in-aid is needed to provide aids/appliances. He has also stated in this application that the said trust



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run a school for mentally retarded and provides residential facilities. At present, 15 children has benefited and the strength will be increased to 25 by 15th June 1993. The Regional Rehabilitation Officer of Madras region had recommended the grant of Rs.22,05,000/- to the M/s.Mercy Mother India Charitable Trust, so that 2500 handicapped persons from Madras and North Arcot District will be benefited. It is surprising to note that without any information or supporting document, the above recommendation been made, as if the Trust is running the school successfully and the grant-in-aid will help about 2500 handicapped persons.

53. It is pertinent to note, after the Social Welfare Department in the State Government issued Ex.P.1, the G.O.Ms.No.235 dated 01.09.1993, requesting the Director of Rehabilitation for Disabled to sent the proposal as to cost estimation for the year 1993-1994 for teaching and non-teaching staff to run school for deaf in North Arcot District, the appellant had promptly sent a willingness letter dated 14.12.1993, stating the M/s.Mercy Mother India Charitable Trust, Madras consent to start and run the school for deaf children at Natrampalli of North Arcot District. The said letter of the appellant is marked as Ex.P.15. In this letter, the letter of the Director of Rehabilitation of the disabled



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dated 24.11.1993 (Ex.D.2) is referred.

54. The perusal of Ex.D.2 reveals that under the G.O, the Government has allotted Rs.3.57 lakhs for school for deaf children at North Arcot, Ambedkar District. The letter of willingness from NGO's to be obtained before 15.12.1993 Paragraph No.3 of this letter specifically states that the Special School must have strength of not less than 100. The letter of consent given by the appellant only states that the Trust has all infrastructure facility to start and run the school for deaf children at Natrampalli of North Arcot, never the existence of infrastructure to run a school at Natrampalli verified by the officials of Social Welfare Department. Neither the appellant has placed evidence to prove that on 14.12.1993 when he expressed his willingness to start the school for deaf children at Natrampalli, there was infrastructure to cater not less than 100 children to qualify for the grant-in-aid.

55. For reason obvious, without any infrastructure at Natrampalli, the request of the appellant to sanction grant-in-aid to M/s.Mercy Mother India Charitable Trust was considered and sanctioned. The Government has disbursed



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the aid as below:-

09.03.1994	Rs.3.79 lakhs
15.04.1994	Rs.0.31 lakhs
07.04.1995	Rs.3.13 lakhs

56. When the Trust sought for an enhanced grant for the year 1996, P.W.1 suspected foul play, since both the school for deaf by M/s.Mercy Mother India Charitable Trust and the school for Severely Orthopaedically Disabled by M/s.Bharani Swadhi Educational Trust were shown to be functioning at Sithalapakkam Village via Medavakkam. Hence, she ordered enquiry by the District Collector. Based on the report of the District Collector, complaint given to the police.

57. The case of the appellant is that the school for deaf was initially functioning at New Bethlehem Nagar, Ambur. Later, temporarily shifted to Pachaikuppam, Vaniyambadi Taluk, then to Madras. It is to be noted that Ex.P.10, G.O.Ms.No.39 dated 10.02.1994 was issued by the Social Welfare department permitting M/s.Mercy Mother India Charitable Trust to run school for deaf in North Arcot District. A sum of Rs.3.13 lakhs recurring and Rs.0.97



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lakhs non-recurring sanctioned on condition that it should be released only after the inspection by the Director of Rehabilitation for disabled and if he is personally satisfied. However, without inspection, the money was ordered to be released by the 3rd accused, Dr.P.Shanmugam *vide* proceedings dated 25.02.1994 (Ex.P.16). In this proceedings the place where the school functioning not mentioned. However, in the security bond (no date) executed by the appellant on behalf of M/s.Mercy Mother India Charitable Trust (Ex.P.17), the appellant had mentioned the school is running at No.10, 5th street, New Bethlehem Nagar, Ambur, North Arcot District. Whereas, in Ex.P.18 proceedings dated 24.03.1994 issued by A3, it is stated that M/s.Mercy Mother India Charitable Trust is running a school for mentally retarded children at Plot No.4, Door No.13, Brindavan Colony, Valasaravakkam, Madras wherein 25 mentally retarded children have been admitted and they are given special education.

58. Thus, with connivance of the Senior Officials (i.e.,) Director of Rehabilitation and others, the Government funds were released to the M/s.Mercy Mother India Charitable Trust even without existence of school for deaf is clearly proved by the prosecution through the documents of the appellant



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and the proceedings issued by the officials in Social Welfare Department. In this regard, the testimony of P.W.7 E.Shanmugasundaram, the Deputy Director in the Directorate of Rehabilitation of Disabled is worth referring which explains the circumstances under which the grant was sanctioned to M/s.Mercy Mother India Charitable Trust and M/s.Bharani Swathi Educational Trust. This witness who was under A1 and A3 had deposed that he told his immediate superior the Director, (A3) that sanctioning grant-in-aid to these two trusts, in which the husband of the Minister (i.e.,) the appellant and the wife of the Secretary (i.e.,) A2 and the Personal Assistant of the Minister (A5) are trustees, will not be proper and it may lead to problem in future. A3 did not react to his advice. Thereafter, on 19.01.1994 he received a phone call from the office of the Minister (A-1) since the Director (A3) was not present, he went to the Minister office. In the Minister's Chamber, the Minister (Indirakumari A-1), Personal Assistant Venkatakrishnan were present. A-1 scolded him for delaying the files though knowing those Trusts are run by her. He was threatened by A1 that if he does not clear the file within one hour, he will be placed under suspension. Under threat, he cleared the file on the same day and placed the file for approval of the Director (A3) for post approval. This witness on 13.01.1994 had made a



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specific note in the file that, the background of the school to be inspected and reported, however, due to the threat of the Minister (A1) and her P.A (A5), had forced to clear the file on 19.01.1994 without inspection report. In the cross examination on behalf of A1 and A4 as well as A5, the incident dated 19.01.1994 spoken by P.W.7 is suggested as false. Whereas, the Learned Counsel for A3 (Director) has suggested that between 17.01.1994 to 19.01.1994, the Director was in Delhi to attend a meeting. These suggestions denied by the witness, does not cause any impact on the credit worthiness of the witness.

59. The appellant who had sought grant-in-aid for running a school for deaf in North Arcot District claiming that the trust has infrastructure at Natrampalli, later executed bond stating that the school to function from New Bethlehem Nagar, Ambur. From Ex.P.41, the proceedings of A-3 dated 31.03.1995 it appears that this appellant (A-Babu) had given a request letter dated 30.03.1995 to the Director for Rehabilitation of Disabled for permission to run the school at Chengalpattu District instead of Pachakuppam Village, Vaniyambadi Taluk, North Arcot District. In this proceedings Ex.P.41, issued



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by A3 referring the earlier G.O.Ms.No.39, Social Welfare and Nutritious Meal Programme Department dated: 10.02.1994 and G.O. Ms. No. 235 of Social Welfare and Nutritious Meal Programme Department, dated 01/09/1993. A-3 has requested the Secretary to Government, Social Welfare and Nutritious Meal Programme Department to issue early orders, as the request of the institution is genuine and can be considered favourably.

60. As discussed earlier, G.O.Ms.No.235 (Ex.P.1) is in respect of according sanction to start school for deaf in North Arcot District. G.O.Ms.No.39, Social Welfare and Nutritious Meal Programme Department dated 10.02.1994 (Ex.P.10) issued in respect of permitting M/s.Mercy Mother India Charitable Trust to run the school for deaf in North Arcot District based on the letter of the Director of Rehabilitation for Disabled (A-3) dated 29.12.1993. Neither in Ex.P.10 nor in the letter of A3 the address of the school mentioned. As found from the letter of consent Ex.P.15, the trust has stated that they want to start the school in Natrampalli at North Arcot District. In Ex.P.17 security bond, they have stated the school will be at New Bethlehem Nagar,



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Ambar. Never the M/s.Mercy Mother India Charitable Trust was permitted to run the school at Pachakuppam nor it has intimated to the Government about shifting of the school to Pachakuppam, however A-3 was gracious to recommend shifting of a non-existing school at Pachakuppam Village to Chengalpattu, M.G.R District even without any address where the school to be shifted.

61. The Criminal intention of the accused persons particularly A3 who was working under A-1 and A-4 the present appellant the husband of A1 gets exposed through Ex.P.41. Hence, same is extracted below:-

I enclosed herewith a copy of the letter received from Thiru A.Babu, Managing Trustee, Mercy Mother India Charitable Trust, Madras, which is running a School for the Deaf children in North Arcot, Ambedkar District as permitted by G.O.Ms.No.39, Social Welfare & NMP Department, dated.10.2.94 & G.O.Ms.No.235, SW & NMP dated 01.09.1993.



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2) The Managing Trustee of Mercy Mother India Charitable Trust in his letter cited above has informed that the above trust is running a school for the deaf in Pachakuppam village, Vaniyampadi Taluk, in North Arcot Ambedkar District since 1.6.1993 with a strength of 50 deaf children. However the school authorities now feel that the most of the students studying at present are hailing from either Madras or Chengalpattu MGR District. In North Arcot Ambedkar District there is already one school for the deaf run by I.E.L.C. The Institution further feels that there is greater demand for starting of the in Chengalpattu MGR district rather in N.A.Ambedkar District.

3) Therefore the institution has requested permission to run the school which was permitted by government as per G.O.Ms.No.235, SW & NMP Department dated.1.9.93 and G.O.Ms.No.39, SW & NMP Department, dtd.10.2.94 at CHENGALPATTU MGR DISTRICT instead of NORTH ARCOT AMBEDKAR DIST. I request for issue of early orders



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as the request of the institution is genuine and can be considered favourably. (Emphasis added)

62. At this juncture, it is appropriate to recollect that in Ex.D.2, dated 24.11.1993, it is specifically stated that willingness from NGO which runs Special School with not less than 100 students to be obtained and forwarded for considering grant-in-aid. Whereas, even according to A4 in his own letter in Ex.P.41 say that the M/s.Mercy Mother India Charitable Trust running with 50 students. While G.O.Ms.No.235 and G.O.Ms.No.39 are specifically for school to run at North Arcot, District, even after referring these two G.O's, A-3 had the audacity to recommend a non eligible, non existing institute as genuine. The crime of conspiracy is unravelled through documents. A-1 (the Minister of Social Welfare Department), A-2, the Secretary of the Social Welfare Department and A-3, the Director of the Rehabilitation for Disabled had conspired to misappropriate the public fund meant for the welfare of the disabled and pursuant to the conspiracy. A-4 the appellant had abetted, proving through requisition letter containing falsehood regarding the existence of the Special schools and thereby, committed criminal breach of trust, abetment and misappropriated the funds entrusted.



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63. In the case of the other trust, namely, M/s.Bharani Swadhi Educational Trust the scandal of misappropriating the Government fund meant for welfare of differently disabled persons is more explicit and shocking. The accused persons who are supposed to ensure the marginalized weaker section of the society receive the benefit of the financial aid had without any compunction created records as if the fund utilised for Severely Orthopaedically disabled and disbursed money for two financial year 1993-1994 & 1994-1995. Being embolden of their success, had attempted to enhance their loot and sought for enhanced grant for the year 1995-1996, the proposal was almost cleared and would have been disbursed but for the change of Government and new Secretary who assumed charge.

64. Like M/s.Mercy Mother India Charitable Trust, M/s.Bharani Swadhi Educational Trust at Chennai had also expressed its willingness to start and run the school for Severely Orthopaedically handicapped persons at Madras with the Government aid. A4 the Managing trustee of the said Trust had addressed a letter dated 14.12.1993 (Ex.P.25) to the Director of Rehabilitation



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of Disabled. His letter reads as below:-

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Sub: School for severely Orthopaedically handicapped at Madras - Willingness to start and run the school by Bharani Swathi Educational Trust, Madras - Regarding.

Ref: Your letter No: Rc.No: 11565/SW IV (1)93
dt: 25-2-93

This is with reference to your letter cited.

2) The Management of Bharani Swathi Educational Trust, Madras hereby gives its consent to start and run the school for severely Orthopaedically handicapped persons at Madras with the Government grant.

3) I am to state further that the Bharani Swathi Educational Trust, Madras has got all the infrastructure facilities to start and run the school for severely Orthopaedically at Madras.

4) However I request that a copy of the Government order sanctioning the scheme may be communicated to us so that we will be able to follow the guidelines of the Government.



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65. In the letter of consent A4 has referred the letter No.11565/HW.4-1/93 dated 29/12/93. The notes file (Ex.P.14) pertaining to the sanction of Grant-in-aid to M/s.Bharani Swadhi Educational Trust, we find that ROC No.11565, is the prelude for the G.O.Ms.No.236, Social Welfare and Nutritious Meal Programme Department, dated 01.09.1993. After issuance of G.O.Ms.No.236, on 24.11.1993, letter of intent from interested NGO's to start school for Severely Orthopaedically Handicapped Children at Chennai ought to have been invited. Allocation of Rs.3.63 lakhs for the purpose is mentioned in this letter dated 24.11.1993. However, this letter dated 24.11.1993 which meant for circulation to all NGO's, though prepared not circulated. It was kept in abeyance on the instruction of A-2. Some of the NGO's were also examined and they all have deposed that they did not receive the letter dated 24.11.1993 calling for willingness to start special school for Severely Orthopaedically Handicapped Children at Madras. In the said scenario, even without any reference to the letter dated 24.11.1993, the appellant had expressed his willingness through Ex.P.25 extracted above and based on that letter, grant-in-aid was sanctioned to M/s.Bharani Swadhi Educational Trust, Madras.

66. In Ex.P.9, the notes file for sanctioning aid to establish school



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for Severely Orthopaedically Handicapped Persons at Madras indicates that for the year 1993-1994 a sum of Rs.3.65 lakhs allotted to M/s.Bharani Swadhi Educational Trust to start the Special School for Severely Orthopaedically Handicapped Children. This letter also say that except this Trust no other NGO had come forward with their willingness. This was because, no NGO's were put to notice about the letter dated 14.11.1993. When the Deputy Secretary from Social Welfare Department wrote to the Director for Rehabilitation of the disabled (A-3) to send a brief note on the background of the institution, M/s.Bharani Swadhi Educational Trust, A-3 has given a detailed credential about the said Trust, including the fact that the said trust functioning as an unregistered Trust since 1989 conducted rehabilitation campaign in the District of Madras, Chengalpattu and North Arcot District benefiting 2500 persons. To substantiate the content of the A-3 letter dated 19.01.1994, there is no corresponding material from the Trust concern. The appellant as Managing Trustee had all the opportunity to produce document to show *prima facie* proof about the existence of a school at a particular place and the details of the beneficiaries. However, the said opportunity has not been availed. Contrarily, we find on 23.02.1994, A4 had addressed a letter to the Director for the



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Rehabilitation of the Disabled (Ex.P.27) expressing his inability to establish and run the proposed school for Severely Orthopaedically Handicapped Children.

67. G.O.Ms.No.38, Social Welfare and Nutritious Meal Programme Department, dated 10.02.1994 issued for selecting M/s.Bharani Swadhi Educational Trust to start Special School for Severely Orthopaedically Handicapped children and sanction of grant-in-aid. The appellant having received the initial grant of Rs.3,91,000/- for the year 1993-1994 had executed a security bond Ex.P.31 (undated and unattested by witnesses). Later, expressed his unwillingness through letter Ex.P.27.

68. Ex.P.14 the notes file relating to grant-in-aid for M/s.Bharani Swadhi Educational Trust further reveals that under G.O.Ms.No.38 is Ex.P.6, the trust has received Rs.3.91 lakhs towards recurring expenses and Rs.0.39 lakhs towards Non-recurring expenditure for the financial year 1993-1994 and sum of Rs.3.91 lakhs for the financial year 1994-1995. A4, the appellant herein not denying the receipt of the above money from the Social Welfare Department, however, he has not explained, why he received the money after



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his letter dated 23.02.1994 marked as Ex.P.27, which reads as under:-

“The Management of Bharani Swathi Educational Trust Madras, is thankful to Government for permitting the trust to establish and run a school for severely Orthopaedically handicapped children with Government Grant at Madras.

2) But I request to inform that the trust is not in a position now, to take up the above responsibility of establishing and running the proposed school Severely Orthopaedically handicapped children.”

69. The appellant's own letter (Ex.P.27) is sufficient to hold that he knowingly received grant from the Government taking advantage of his proximity with the Minister in-charge of the Social Welfare Department and the Senior Officials in that Department.

70. For a non existing, non functional school, he had obtained grant as if it is functioning at No.4, Basement, I Main Road, Kasturiba Nagar, Adyar,



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Chennai-20 and had executed Security Bond Ex.P.31. On 14.12.1993 *vide* Ex.P.25, he had expressed willingness to start and run the school for Severely Orthopaedically Handicapped Children. He had assured that the M/s.Bharani Swadhi Educational Trust got all infrastructure facilities to start and run the school and on 23.02.1994. Later, *vide* Ex.P.27 says the Trust is not in a position to take up the responsibility to run the proposed school. However, receives a sum of Rs.3.91 lakhs and execute the security Bond (Ex.P.17) and also continued to receive the grant for the year 1994-1995 and attempted to get enhanced grant for the year 1995-1996. Thus, the prosecution through the documents of the accused persons had clearly established the scheme of conspiracy and proved the crime of breach of trust leading to misappropriation.

71. The Learned Senior Counsel for the appellant would only rely on the statement of accounts and the auditor certificate to show the receipt and expenditure of the grant-in-aid to these two trust. A self serving document on paper, without any sign of physical existence of the two Special Schools for the purpose for which grant received and without any particulars of the beneficiaries either by place or name or other identity, is hard to accept as a



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piece of evidence to infer that a school for deaf and a school for Severely Orthopaedically Handicapped Children were run by the appellant through two Trusts. Hence, the finding of the trial Court after thorough scrutiny of evidence is confirmed. Accordingly, the conviction stands confirmed.

72. Considering, the contention that the charges altered after examination of witnesses without affording opportunity is violation of fairness, this Court find that initially as against this appellant and others charges framed as under:-

- (i). 120 B r/w 409 of I.P.C.
- (ii). 13(2) r/w 13(1)(d) of P.C Act r/w 109 of I.P.C

73. As against this appellant specifically charge under Section 13(2) r/w 13(1)(d) of P.C Act alone were framed. Subsequently, in exercise of power under Section 216 of Cr.P.C., the last charge been altered to 109 r/w 13(2) r/w 13(1)(d) of P.C Act.

74. The alteration of charge was essential since offence under P.C



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Act simplicitor against a non-public servant cannot sustain. The charge for abetment which was omitted, noticed later and hence added to bring the charge of abetment and then the respective penal provisions of the substantive offence.

75. The trial Court in its judgment has explicitly recorded the reason for the alteration. The substance of charge which were read over to the accused before commencement of the trial on 25.02.2011 contains all the ingredients necessary to frame charge of abetment of the appellant for the public servant to commit offence punishable for misconduct. Due to inadvertence the omission of the Section for abetment to be read along with the substantive offence under P.C Act later noticed and rectified by altering the charge. This has not caused any prejudice to the appellant, since the appellant had participated in the trial. Knowing well about the charge against him for aiding the public servant in the commission of misconduct and breach of Trust.

76. Therefore, for the substance of charges which were read over to the appellant on 25.02.2011 and afforded opportunity to cross examine the witnesses for prosecution, the subsequent alteration rectifying the



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error/omission in exercise of power under Section 216 of Cr.P.C had not prejudiced the appellant in any way. Therefore, the plea on this ground does not carry any merits.

77. In the result, this ***Criminal Appeal No.545 of 2021 stands dismissed.*** The conviction and sentence on the appellant/A.Babu (A-4) in C.C.No.12 of 2019 on the file of the Learned Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to elected MP's and MLA's, Chennai is confirmed. The trial Court is hereby directed to issue warrant and commit the appellant/A.Babu to prison to undergo the remaining period of sentence.

05.09.2024

Index :Yes.

Internet :Yes.

Speaking Order.

bsm

To:-

1. The Learned Assistant Sessions Judge, Additional Special Court, Singaravelan Maaligai, Chennai
2. The Deputy Superintendent of Police, Crime Branch CID, Metro Wing, Chennai – 600 002.
3. The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

bsm

Pre delivery judgment made in
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05.09.2024