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CrI.A.No.820 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

CORAM : JUSTICE **N.SESHASAYEE**

CrI.A.No.820 of 2018

Poongodai

... Appellant / Accused-2

Vs.

State by Inspector of Police
Vigilance and Anti Corruption
Vellore, Vellore District.
(Crime No.19 of 2012)

... Respondent / Complainant

Prayer : Civil Appeal filed under Section 374 of Cr.P.C., praying to set aside the judgment of the learned Special Judge for Vigilance and Anti Corruption Cases cum Chief Judicial Magistrate, Vellore in Spl. Case No.3 of 2015 dated 06.12.2018, and acquit the appellant herein from the said charges.

For Appellant : Mr.Arun Anbumani

For Respondent : Dr.C.E.Pratap
Government Advocate [CrI. Side]

JUDGMENT

1. A2 who faced trial for offences under Sections 120B, 409, 420, 465, 468,



471, 477(A) of IPC and Section 13(2) r/w. Sec.13(1)(c) of the Prevention of Corruption Act, who suffered a judgment convicting her only for offences under Sections 120B r/w. 420, 465 of IPC and 13(2) r/w. Sec.13(1)(d) of P.C. Act, has come forward with this appeal. The sentence imposed on her is as below, and are directed to run concurrently:

<i>Offences</i>	<i>Sentences</i>
120B r/w.420 IPC	Four years rigorous imprisonment with a fine of Rs.1,000/-, in default, to undergo two months simple imprisonment
465 IPC	Two years simple imprisonment with a fine of Rs.500/-, in default, to undergo one month simple imprisonment
13(2) r/w. Sec.13(1)(d) of Prevention of Corruption Act	Four years rigorous imprisonment with a fine of Rs.2,500/-, in default, to undergo two months simple imprisonment.

The prosecution registered a case based on Ext.P2, complaint preferred by P.W.2 in Crime No.19/2012 vide Ext.P40, FIR. The quintessence of the allegation is that a certain Aided Middle School in Wallaja Division in Vellore District, of which, A1 was the Correspondent, had shown excess number of students over the existing number of students and availed certain benefits from the Government and misappropriated them. A2, the present appellant, was the Assistant Elementary Education Officer (AEEO) at the relevant time, i.e., during 2010-2012.



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3. On the same day of the registration of the FIR, the Investigating Agency inspected the school along with P.W.3, an official of the District Inspection Cell and P.W.5, a teaching instructor. During the investigation, A1 passed away and final report was laid against the present appellant herein, who to remind was shown as A2 in Ext.P40 FIR, and she was the sole accused to face the trial.

4. The trial Court framed charges as detailed in paragraph No.1 of this judgment and proceeded to try those charges. As per the charges framed, in the register maintained by the School concerned, the total students strength was shown as 664, whereas at the relevant time only 374 students were studying. While only 374 students were studying in the school, the benefit from the Government under the heads (a) Noon Meal Scheme, and (b) Uniform Scheme were received for 664 students. On other words, the Government's grant or benefit was received for 290 students which is in excess of students who were studying in the school.

5.1 During trial, the prosecution examined P.W.1 to P.W.39 and produced Ext.P1 to Ext.P47. As stated earlier, after appreciating the evidence, the



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Court found the appellant guilty only of offences under Sections 120B r/w. 420, 465 of IPC and 13(2) r/w. Sec.13(1)(c) of P.C. Act. While handing over the sentence, the trial Court sentenced the appellant under Section 13(1)(d) of P.C. Act even though it ended the verdict of guilt under 13(1)(c) of P.C.Act.

5.2 The manner in which the prosecution attempted to establish the charge may be briefly stated. Of the many witnesses which the prosecution examined, P.W.1 is the sanctioning authority, P.W.2 is the complainant, P.W.3 and P.W.5 were the officials who conducted the inspection in the school concerned on 27.08.2012. Moving further, P.W.4, P.W.6 to P.W.21, were the teachers of various classes in the said school. P.W.29 was the Noon Meal Organiser of the school. P.W.30, was the record clerk in the Office of AEEO, and P.W.31 and P.W.32 are AEOs.

5.3 Turning to the evidences the following comes out of the evidence:

- a) P.W.3 and P.W.5, as mentioned earlier were the officials who accompanied the Investigating Officer for inspection of the school, pursuant to the registration of the FIR. They in their report would say that while the total number of students shown as per the register



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comes to 669, only 269 students were actually studying. However, in the final report, the prosecution itself states that the total number of students studying in the school on 27.08.2012 was 374.

- b) P.W.4, P.W.6 to P.W.21 in their evidence supported by documents would testify that only at the instruction of A1, they have shown excess number of students in each of the classes. The sum total number of students is 664.
- c) P.W.22 is the Noon Meal Organiser of the school concerned and who was working under the direct control of the Block Development Officer. According to her, Noon Meal was provided for the students studying in the school and that indent was prepared for 320 students and that noon meal items and eggs were being provided. The Noon meal register was marked as Ext.P22.
- d) P.W.30, in his testimony supported by Ext.P35 register, would state that for the academic year 2011-2012, uniforms were provided only for 320 students and textbooks were given for 381 students.
- e) P.W.31 held the additional charge of AEEO between 19.10.2012 and 28.12.2012, after A2 was placed under suspension. He conducted a special visit of the school on 20.12.2012 instead of an annual inspection. On that day, while the attendance register



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mentioned 382 students, 364 students were shown as present but however only 352 students were in the school.

- f) P.W.32 (now retired since August 2014) was an AEEO himself from another division and who was deputed to conduct a special visit of the school concerned as per the procedures of the Education Department. It is more like an external examiner holding an examination. On the instructions of District Primary Educational Officer had gone to the school for inspection on 12.09.2011, that the inspection took time and the Correspondent of the school who is now dead has given him a slip that 649 students are studying in the school, and that he had circulated this slip to the appellant who is the AEEO of the division concerned.
- g) P.W.33 to P.W.37 are other official witnesses who speak about their duties, role of AEEO and about handing over of certain documents to the Investigating Officer.

5.4 The trial Court has held that inasmuch as the appellant after assuming charge as AEEO had gone for inspection of the school concerned for the academic year 2010-2011 but had not gone to this school for inspection during 2012 and therefore, presuming that the appellant had conspired with



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A1 and committed offence under Sections 120B r/w. 420, 465 of IPC and 13(2) r/w. Sec.13(1)(d) of P.C. Act. The trial Court further held that by falsely claiming that 660 students were studying in the school, 19 teachers were working in the school and that as per the teacher-pupil ratio 9 teachers were in excess for the school and held that A2 had conspired with A1 in that regard also.

6. Heard both sides. The learned counsel for the appellant made the pointed submissions :

- a) The accusation here is not about showing excess number of students but whether the school has manipulated its records to get the benefits of Government Schemes applicable to students of Aided School for the numbers shown in the registers of the school, where the total students strength of the school as per the register, according to the prosecution for the academic year 2012-2013 is 664.
- b) Going by the testimony of P.W30, uniforms have been received only for 320 students which is less than the actual number of 381 students which almost matches the total number of students. This would mean that so far as the scheme involving distribution of the



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uniforms and text books are concerned, it has been issued less than the actual or substantially the actuals and therefore, there cannot be an evidence pertaining to that.

- c) So far as the Noon Meal Scheme is concerned, the testimony of P.W.22 would go to show that indent was prepared and noon meal items and eggs were obtained only for 320 students. This bursts the allegation that the appellant had conspired with the then Correspondent to commit the offence under Section 120B, 420 and also an offence under 465 IPC.
- d) This apart, the trial Court also finds the school has 9 teachers in excess based on teacher-pupil ratio and has held, if the appellant had inspected the school in 2012, the Government would not have lost the salary money. No specific charge was framed by the trial Court against A2 in this regard but however the trial Court held against A2. It would be seen from Ext.P26, annual inspection register, that from the year 2007 itself 19 teachers were working in the school and the students strength was shown in the range of 650. No teacher was appointed during the tenure of A2. None of the earlier AEEOs who conducted the annual inspections or special visits have been implicated in the case.



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- e) The trial Court having found the appellant not guilty under Section 409 IPC could not have convicted her under Section 13(2) r/w. 13(1)(d) of the P.C. Act. Quite strangely the trial Court sentenced the appellant under Section 13(1)(d) of P.C. Act. The ingredients of Sec.13(1) (c) and 13(1)(d) are entirely different and in any event, without any admissible evidence, the trial Court convicted the appellant under the P.C.Act.
- f) It was not even the case set up by the prosecution that the appellant had taken money from the deceased A1 and had obtained any pecuniary advantage. Not even an iota of evidence was led as to what pecuniary advantage was obtained by the appellant. Thus the prosecution miserably failed to proved the mandatory ingredients of Section 13(1)(d) of the PC Act. Hence, the sentence awarded was unsustainable.

7. The learned prosecutor adopted the line of reasoning of the trial court as his line of arguments.

8. This Court finds considerable merit in the submissions of the counsel for the appellant, more so when the facts which he had culled out from evidence



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were not adequately (See paragraph 6 above) met by the respondent. The appeal necessarily deserves to be allowed, and the principal reason is: the accusation in essence is that A1 has inflated the student strength, and A2 conspired with with A1, the correspondent of the school in question, and enabled A1 to claim benefits such as free uniform and textbooks and also the noon meal for these fictitious, non-existing students. Its claim is 664 students were shown to be studying, whereas the total strength of the school is no more than 381 students who actually studied in the school in the relevant academic year. What is significant is that the number of students for whose benefit free uniform, free textbooks or noon meal benefits were obtained by the schools was less than the actual. Indeed, the prosecution case is wobbling on the total strength of the students itself.

9. In the result, the appeal is allowed, and the judgment of the learned Special Judge for Vigilance and Anti Corruption Cases cum Chief Judicial Magistrate, Vellore in Spl. Case No.3 of 2015 dated 06.12.2018, is set aside. The appellant is set at liberty and the bail bond executed by the appellant is discharged.

15.10.2024

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

To:

- 1.The Special Judge
Vigilance and Anti Corruption cases - cum -
Chief Judicial Magistrate
Vellore, Vellore District.
- 2.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE.J.,

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