BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced on	:	19.03.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.24 and 34 of 2017

Crl.A(MD)No.24 of 2017:

M.Vellammal .. Appellant/Accused No.1

Vs.

The State of Tamil Nadu,
represented by its
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Virudhunagar, Virudhunagar District.
(Crime No.2 of 1999) .. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records relating to the judgment dated 10.01.2017 in Special C.C.No.18 of 2014 on the file of the Special Court for cases under the Prevention of Corruption Act, Virudhunagar at Srivilliputhur District in Crime No.02 of 1999 on the file of the respondent police and set aside the same and acquit the appellant/sole accused.

For Appellant : Mr.A.Robinson
for Mr.M.Saravanan

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

Crl.A(MD)No.34 of 2017:

Soundararajan .. Appellant/Accused No.3

Vs.

The State of Tamil Nadu
represented by its
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Virudhunagar,
Virudhunagar District.
(Crime No.2 of 1999) .. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records relating to the judgment dated 10.01.2017 in Special C.C.No.18 of 2014 on the file of the Special Court for trial of cases under the Prevention of Corruption Act cum Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.S.Sivakumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

These appeals have been filed by the appellants/A1&A3 against the judgment dated 10.01.2017 in Special C.C.No.18 of 2014 on the file of the Special Court for trial of cases under the Prevention of Corruption Act cum Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

2. Brief facts for necessary for deciding these appeals:

P.W.3, P.W.10 and P.W.11 are the registered contractors in the Kariyappatti Panchayat Union. The department awarded contract to P.W.10 and P.W.11 to lay a link road between Tharanganenthal and Vepankulam Village. For the purpose of laying the said link road, P.W.3 was awarded contract to supply the blue metals to the value of Rs.85,983/-. As per the contract, he supplied the blue metals. The said due amount was not paid and he on verification, found that the said amount was withdrawn from his account in the Aruppukkottai Post Office. Therefore, he made a complaint before the District Collector. The District Collector directed P.W.6 to conduct enquiry. He conducted the detailed enquiry and found that A1 to A3 jointly committed misappropriation by conspired acts of both forgery of the signature of P.W.3 and impersonated and encashed the cheque amount in Aruppukkottai Post Office from the savings account of P.W.3. Therefore, P.W.6 gave a complaint to the respondent Police. The respondent police registered the case for the offence under Sections 409, 467, 468, 471 and 477-A IPC and Section 13(2)(c) and (d) read with 13(2) of the Prevention of Corruption Act, 1988. After completion of investigation, they filed the final report for the offence under Sections 409, 467, 468, 471 and 477-A IPC and Section 13(2)(c) and (d) read with 13(2) of the Prevention of Corruption Act, 1988. In the final report, it is specifically alleged that A1,A2 and A3 conspired together and misappropriated the due amount of P.W.3 ie., Rs.85,983/- by forging the signature of PW3 and encashing the same from the account of P.W.3 in Aruppukkottai Post Office.

3.The learned trial Judge issued summons to the accused and after their appearance, served the copies under Section 207 Cr.P.C. Thereafter, the case was taken on file in Spl.C.C.No.18 of 2014. Thereafter, he framed necessary charges and questioned the accused. The accused pleaded not guilty and they stood for trial.

4. To prove the charges against the accused, the prosecution examined PW1 to PW34 and marked Ex.P1 to Ex.P80 and no material objects were marked. The learned trial Judge thereafter questioned the accused under Section 313 Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witness and documents against them and they denied the same as false and thereafter, the case was posted for examination of the witnesses on the side of the accused. On the side of the defence, A1 gave a detailed explanation and also she examined herself as D.W.1 and deposed before the trial Court that the case was registered with motive and she filed document and the same was marked as Ex.D1. A1 pleaded that she never committed any offence as alleged in the final report as well as charges framed against her and there was no evidence against her and pleaded for acquittal.

5. The learned Special Judge after considering the entire evidence adduced by the prosecution and the defence convicted the A1 and A3/appellants for the offence under Sections 120B, 409, 409 r/w 109, 467 r/w 109, 468 r/w 109, 477A, 471 r/w 109 IPC and Section 13(2) r/w 13(1) (c)&(d) of the Prevention of Corruption Act, 1988 and sentenced the accused Nos.1 and 3 as follows:

Accused Rank	**Conviction for the offence under Section**	**Punishment**
A1	120B IPC	3 months simple imprisonment and a fine of Rs.5000/-, in default, to undergo one month simple imprisonment.
	409 IPC	5 years simple imprisonment and a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.
	467 r/w 109 IPC	3 years simple imprisonment and a fine of Rs.10,000/-, in default, to undergo 3 months simple imprisonment.
	468 r/w 109 IPC	3 years simple imprisonment and a fine of Rs.10,000/- in default, to undergo 3 months simple imprisonment.
	471 r/w 109 IPC	3 years simple imprisonment and a fine of Rs.10,000/- in default, to undergo 3 months simple imprisonment.
	13(2) r/w 13(1)(c) &(d) of PC Act	5 years simple imprisonment and a fine of Rs.20,000/- in default, to undergo 3 months simple imprisonment.

Accused Rank	Conviction for the offence under Section	Punishment
A3	120B IPC	3 months simple imprisonment and a fine of Rs.5000/-, in default, to undergo one month simple imprisonment.
	409 r/w 109 IPC	5 years simple imprisonment and a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.
	467 IPC	3 years simple imprisonment and a fine of Rs.10,000/-, in default, to undergo 3 months simple imprisonment.
	468 IPC	3 years simple imprisonment and a fine of Rs.10,000/- in default, to undergo 3 months simple imprisonment.
	471 IPC	3 years simple imprisonment and a fine of Rs.10,000/- in default, to undergo 3 months simple imprisonment.
	13(2) r/w 13(1) (c) &(d) of PC Act	5 years simple imprisonment and a fine of Rs.20,000/- in default, to undergo 3 months simple imprisonment.

6. The learned Special Judge *acquitted A2 from all the charges* by the impugned judgment dated 10.01.2017 in Special C.C.No.18 of 2014. Challenging the same, no appeal was filed against the acquittal of A2. A1 filed this appeal in Crl.A.(MD).No.24 of 2017 and A3 filed this appeal in Crl.A.(MD).No.34 of 2017. Since the appellants in both the appeals are arrayed as Accused Nos.1 and 3 in the same crime number, these appeals are taken up together for hearing and disposed by way of this common judgment.

6.1.**Appellants' Submission:**

A1 namely appellant in Crl.A.(MD).No.24 of 2017 would submit that she belongs to Scheduled Caste and she had been discharging her duty without any allegation for past 22 years before the date of registration of this case. She was honest in her entire career. P.W.3 and other officers are Caste Hindus. P.W.3 contractor, had committed some irregularity in doing the contract work. Hence, no work had been allotted by A1 to him. Further, she was not amenable to him. Therefore, P.W.6 and others joined together and made this allegation against her on the basis of the extra judicial confession obtained from A3 during the course of the enquiry conducted on the basis of the complaint given by P.W.3 stating that A3 and this appellant jointly taken the cheques bearing Nos: 387718, 387720 and appended his signature in the counterfoil and presented the said cheque in P.W.3's saving account and made impersonation and misappropriated the said fund of Rs.85,983/-. The investigation was not done in a proper manner for the said allegation. The investigating agency obtained the handwriting expert opinion. The said handwriting expert opined that even in the signature of P.W.3 found in the admitted number of cheques and other documents are found to be forged. Therefore, the conviction on the basis of the handwriting expert opinion without any corroborating material is not legally valid.

6.2. The learned trial Judge framed conspiracy charges against A1 to A3. He acquitted A2. When the evidence is collectively against A1 to A3 and said evidence is inseparable, the acquittal under Section 120(b) against A2 alone is not legally valid. The same benefit has to be given to A1 and A3 also.

6.3. A1 specifically pleaded the motive during the course of the questioning under Section 313 Cr.P.C., and on the basis of the motive, she had been falsely implicated in this case. To prove her stand, she examined herself as P.W.1 and narrated the events and also earlier initiation of the departmental proceedings with false allegations and the same was found to be motivated and false one. Similarly, the present case was registered by obtaining the extra judicial confession by P.W.6 during the enquiry and this case was registered. The same was not properly considered by the learned trial Judge. Therefore, she seeks for acquittal.

6.4. The prosecution relied the following chain of events to prove the guilt against the appellant:

6.4.1. A3 obtained the two disputed cheques and appended the signature of P.W.3 in the counterfoil in the presence of A1. The said cheques were prepared by A2.

6.4.2. A3 presented the said cheques in P.W.3's savings account and withdrew the amount of Rs.85,983/- and A1 to A3 misappropriated the same.

6.4.3. To prove the same, they examined the witnesses from Arupukkottai head Post office. The officers categorically deposed that A1 and A3 did not come and they firmly deposed that only after verification of the parties, they disbursed the amount on the presentation of the cheques. The said evidence was not properly considered by the learned trial Judge. Therefore, the second chain of the event has not been proved beyond reasonable doubt.

6.4.4. to prove the forgery of signature,P.W.3 by A3, the prosecution mainly relied the handwriting expert's opinion. As already argued that the said report has not supported the case of the prosecution. No other evidence had been adduced by the prosecution. Therefore, the first chain of events has not been proved beyond reasonable doubt.

6.4.5. In view of the above submission, the appellants seek for acquittal.

6.5. The submission of the learned Additional Public Prosecutor:

6.5.1. The prosecution clearly proved the charges on the basis of the deposition of the witnesses P.W.1 to P.W.34. D.W.1 namely A1 has admitted many of incriminating circumstances in her examination and hence, the learned trial Judge correctly convicted the appellants.

6.5.2. The acquittal judgment passed against A2 is not a ground to acquit the appellants herein. Abundant materials are available to prove the charge against the appellants and the same was properly considered by the learned trial judge.

6.5.3. The handwriting expert clearly deposed that the signature found in the disputed documents tallied with the signature of A3. Therefore, the learned trial Judge correctly relied the handwriting expert and convicted the appellants.

6.5.4. When the handwriting expert clearly deposed that A3's signature was found in the disputed documents, presumption is that A3 misappropriated fund and the same was appropriated by A1. Therefore, he seeks for confirmation of the conviction passed against A1 and A3.

6.6. This Court considered the rival submission and perused the documents and the impugned judgment and the precedents relied by them.

6.7. whether the conviction and sentence of imprisonment imposed against the appellants is sustainable?

7. According to the prosecution, PW.3 was a registered contractor in Kariyapatti Panchayat Union. He is said to have supplied the blue metals for laying a link road between Tharanganenthal and Vepankulam. Which has been allotted to the contractor "Aandi"/P.W.11 and "Machakalai"/P.W.10. After supply, PW.3 has received cheque payment and encashed the same in the Arupukkottai Head Post Office except two cheques. According to PW.3, he had not encashed the two cheques bearing cheque Nos.387718, dated 18.03.1994, marked as Ex.P17 and 387720 dated 18.03.1994, marked as Ex.P16. He gave the complaint to the District Collector much later namely one year and four months from the date of the said transaction. The District Collector directed P.W.6 to conduct the preliminary enquiry. During the enquiry, in the presence of P.W.19, A3 stated that in order to gain his revocation of suspension order, he forged the signature of A3 at the instigation of the A1 and thereafter, he had encashed and misappropriated the said amount. Therefore, a criminal case was registered against A1 under the charge of conspiracy with other accused. The prosecution heavily relied on the extra judicial confession of A1 marked under Ex.P.50. The case of the prosecution on the basis of the said extra judicial confession has not been accepted by the learned trial Judge. The learned trial Judge found that the said document is inadmissible. Accused No.1 joined the office on 01.09.1992. Even before her joining of the office on 01.09.1992, suspension order of A3 was revoked. Therefore, the prosecution case is false.

8. According to the prosecution, A1, A2 & A3 conspired together to encashed the said cheques by impersonation and forgery of the signature of PW.3. As per the conspiracy, A2 prepared the cheques and A3 forged the signature of the PW.3 in the presence of A1 and A1 attested the said cheques in order to facilitate A3 to encash the amount. In this case, according to the prosecution, Aandi and Machakkalai are the contractors. The department allotted the work to them. For execution of the said work, PW.3 supplied the blue metals. But, the said prosecution witness were treated as hostile and said that they had not been allotted any work and the road had not been laid by them. PW.3 also stated that no work order was granted. Hence, the prosecution miserably failed to prove the first link of the case that the blue metal was supplied to execute the work allotted to the said Aandi and Machakkalai.

According to the prosecution, following events formed the chain to constitute the offence:

A3 received the cheque belonging to P.W.3

A1 Acknowledged the same

P.W.3 presented the same in the bank of P.W.3 and encashed the same

A1, A3 misappropriated the said amount

Therefore, the prosecution must have proved the following foundational facts:

8.1. A1, A2 & A3 conspired together to encash the two cheque amounts.

8.2. A3 forged the signature of the PW.3 in the above cheques and the same was attested by A1 to facilitate A3 to encash the amount.

8.3. A3 presented the said cheques before PW.12 in the Post Office and encashed the amount.

8.4. The said encashed amount was jointly utilised by the A1, A2 & A3.

9**.** To prove the above chain of events, this Court finds no materials and also no circumstances were established by the prosecution to presume the above chain of events. The prosecution examined PW.12, PW.13 & PW. 25 to prove that A3 encashed the amount. PW.12, PW.13 and PW.25 are the staff of the Aruppukkotai Head Post Office. As per the evidence of the staff of the Post Office, most particularly, PW.25, they allowed encashing the cheque after verifying the specimen signature. According to PW.12, staff of the Post Office, they usually allow to withdraw the amount after verifying the identity of the person and hand over the money. They further deposed that the accused never came to their office and encashed the same. According to the evidence of PW.3, he would usually go to the post office to encash the amount. As per the prosecution, he regularly went to the post office even prior to the material date and encashed the amount. In the said situation, the prosecution miserably failed to prove the encashment made by A3. From their evidence, it is clear that the prosecution never proved beyond reasonable doubt that A3 presented the cheques and encashed the amount.

10.According to the prosecution, P.W.3 supplied the blue metals. Therefore, he received the cheques bearing Cheque Nos.387982, 387902, 387905, 387907 and 387911. He received the above cheques and encashed the same in his account in the Head Post office, Arupukkottai. He disputed the two cheques bearing Cheque Nos.387718 and 387720. According to P.W.3 and the prosecution, A3 forged his signature and presented the same in his post office account and encashed the same and appropriated with the help of A1 and A2. The investigating officer took the sample signature from P.W.3 under Ex.P5 and P.13 and the same were marked as S1 and S22. His admitted signature is also found in Exs.P.7 to p11. The Handwriting Expert gave the opinion under Ex.P.38. In his opinion, it is stated that even the signature admitted by P.W.3 in Exs.P7 to P11 ie., the amount encashed by P.W.3 vide the Cheque Nos.387982, 387902, 387905, 387907 and 387911 were not the signature of P.W.3. According to the Handwriting Expert, A3's signature tallied not only with the disputed Cheque Nos."387718 and 387720" and even in the admitted signature, in the cheque Nos.387982, 387902, 387905, 3879907 and 387911.

10.1. This Court perused the above documents and finds that the report of Handwriting Expert no way helps the prosecution. When the handwriting expert opinion suffers from material infirmities, the conviction cannot be sustained without any substantial corroboration. The same was fortified by the following paragraph of the Honourable three Judges Bench of the Supreme Court:

10.2.(i).In the case of **Chennadi Jalapathi Reddy Vs. Baddam Pratapa Reddy** reported in **(2019) 14 SCC 220**:

> ***10.****By now, it is well settled that the court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it.*

10.2.(ii).In view of the above specific circumstances of the case, the learned trial judge committed error in giving a finding against A3 that he forged the signature of the P.W.3 and withdrawn amount from the account of the P.W.3 in Arupukkottai Head Post office. From handwriting expert's evidence, it is clear that the signature of P.W.3 found place in the disputed and undisputed cheques and the signature of P.W.3 in other documents tallied with the signature of P.W.3. Merely on the basis of the said handwriting expert's opinion, without any connecting link, "conviction on the basis of the circumstantial evidence" without satisfying the following "panchasheela principle" laid down by the Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in ***1984 (4) SCC 116*** is not sustainable:

> ***153.*** *A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
>
> *It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

11. The learned trial Judge as well as the learned Additional Public Prosecutor relied only on one circumstance against A1, ie., A1 attested the signature of the Rajamani in the disputed cheques and appended the signature in the counterfoil. According to A1,earlier, the said cheques were prepared in the name of Aandi, so, she cancelled the same and after rectification of the same, she appended the signature in the cheques. In the special circumstances, she made such endorsement. For establishing the same, she deposed before the Court by examining herself as DW.1. The learned Trial Judge without considering the entire evidence of D.W.1, taking into account the evidence of D.W.1 admitting the signature in the undisputed documents and held against her. The learned trial Judge has not assessed the defence of DW.1 in considering the remaining circumstances emanated from the prosecution witnesses and the documents which clearly proved that the case of the prosecution that A1 conspired to swindle the money of PW.3 is false one. The circumstances available in the prosecution documents also has not supported the theory of conspiracy. To prove the conspiracy, it is the duty of the prosecution to adduce the evidence or enumerate the circumstances to presume the conspiracy as held by the Hon'ble Supreme Court in the case of ***Mohan v. State of M.P.*,** reported in ***(2020) 10 SCC 531*** at page 532

> ***4.*** *... Conspiracy cannot be assumed from a set of unconnected facts or from a set of conduct at different places and times without a reasonable link...*

12. The learned trial Judge in one place stated that PW.3 obtained the cheques from A2. PW.3 stated before P.W.6 during his enquiry that he always used to receive the cheque from A2. Quite contrary to that, he deposed that he always received the cheque from A1. The said contradiction further strengthens that A1 is falsely implicated in as a victim of circumstances.

13. A1 specifically pleaded two motives. She did not allot any contract to supply the materials to PW.3. She also specifically pleaded that she belongs to scheduled caste and she honestly discharged her duty and hence, number of false charges were made against her. Hence, disciplinary proceedings was initiated against her with 8 charges during the relevant period. The same was enquired by the higher officer. The higher officer, after conducting detailed enquiry, specifically held that the charges were not proved and the same was accepted by the District Collector, competent authority. During the said period, these allegation of encashment of amount through the A3 was made. Eventhough, the said document was filed before the learned trial Judge, the learned trial Judge did not consider the same. In the said circumstances, this Court, without any hesitation holds that the complaint was motivated one.

14.The charge against the accused Nos.1, 2, 3 is that they conspired together to misappropriate the amount of P.W.3. As per the conspiracy, A3 forged the signature of P.W.3 and obtained two cheques meant for A3 and A3 presented the same in P.W.3's account with the Arupukkottai post office and A3 withdrawn the amount by forging the signature of P.W.3. To prove the conspiracy, the prosecution relied upon the circumstantial evidence. A3's signature was found in the cheque and the withdrawal slip. Therefore, the trial Court convicted A3 and A1 and acquitted A2 on the ground that A2's involvement after the preparation of the cheque has not been made out. A1 specifically pleaded not guilty. She herself got into witness box as D.W.1. She narrated the events cogently. She specifically deposed that she belonged to scheduled caste community and P.W.3 is a caste Hindu. She was honest in discharging her duty. She raised number of queries relating to the execution of the various works. Therefore, P.W.3 and other officials had motive against her. Hence, the department earlier initiated the departmental proceedings relating to the other work. In the said proceedings, the high level enquiry was conducted. The enquiry officer submitted the report which reads as follows:

> *Considering the aforesaid reasons, points and circumstances carefully, I am of the opinion that the accused officer has not made any excess expenditure and the charges framed against her may be reconsidered and may be treated as not proved.*
>
> *The Accused Officer is fighting for justice from that date to till date and suffered very much.*

The Collector also accepted the said report by passing the following order:

> *இவர் மீது சுமத்தப்பட்ட குற்றச்சாட்டுகளில் பொருள் எதுவும் இருப்பதாக தெரியவில்லை. எனவே திருமதி.எம்.வேலம்மாள் என்பவர் மீது சுமத்தப்பட்ட குற்றச்சாட்டுகளை விட்டு விடலாம் என முடிவு செய்து அவ்வாறே உத்தரவிடுகிறேன்.*

15. Thereafter, P.W.3 with active connivance of the remaining officials made a complaint to the Collector as if she conspired with A3 and swindled the amount of P.W.3 by forging his signature in the voucher and the withdrawal slips. Therefore, during the questioning under Section 313 of Cr.P.C., she submitted detailed explanation. In the explanation, she stated that P.W.3 in his cross examination has not ascertained his signature found in the voucher dated 13.08.1994. which according to the prosecution, A3

forged in the presence of A1. She further stated that in Ex.P14 to Ex.P22, according to P.W.4(BDO), his signature was absent. P.W.6 who conducted the enquiry at the first instance, upon receipt of the complaint of P.W.3, without getting any opinion and without collecting any material stated that she committed offence. P.W.7, clearly deposed that P.W.3 received the cheque. P.W.8 deposed that P.W.3 never stated that he never received the amount. P.W.9 also deposed that he was unable to recollect who received the amount from the post office. P.W.12 specifically stated that at the time of receiving the amount in the cheque none of the accused came to the office. P.W.19 in whose presence, the alleged extra judicial confession was recorded from A3, specifically deposed that the said confession was recorded by the police officer and he only subscribed his signature. P.W.30 deposed that A3 joined the duty on 01.09.1992 after his revocation of the suspension order, much prior to the joining of A1 in the said office ie, 01.11.1993. Therefore, the prosecution case that in order to revoke the suspension order of A3, A3 forced to withdraw the amount by forging the signature of P.W.3 is not correct. P.W.33/Investigating Officer admitted that the documents relating to the transaction dated 31.03.1995 was destroyed as per the communication RC70/99/RDB/UM/05-10-2011 but he deposed that he obtained the said records on 24.10.2011. Therefore a grave suspicion arises regarding the genuineness of the documents. She finally pleaded that she was innocent and she was fighting for justice for the past 22 years and the P.W.3, P.W.6 and other witnesses in order to take revenge against her, initiated the false case against her. The said detailed and proved explanation of the appellant A1 was not considered by the learned trial Judge. The Hon'ble Supreme Court in the following judgment specifically mandates the trial Court to consider the explanation under Section 313 Cr.P.C., which forms part of the fair justice: ***Parminder Kaur v. State of Punjab*,** reported in **(2020) 8 SCC 811** at page 820

> ***IV. Failure to refute Section 313 CrPC statement***
> ***22.*** *Under the Code of Criminal Procedure, 1973, after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through Section 313(1) (b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial court in compliance with the mandate of Section 313(4). Such opportunity is a*

valuable right of the accused to seek justice and defend oneself. Failure of the trial court to fairly apply its mind and consider the defence, could endanger the conviction itself [Reena Hazarika v. State of Assam, (2019) 13 SCC 289, para 19 : (2019) 4 SCC (Cri) 546] . Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities [M. Abbas v. State of Kerala, (2001) 10 SCC 103, para 10 : 2002 SCC (Cri) 1270] . Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defence plea.

16. But, in this case, the learned trial Judge never considered the same. Apart from that, accused No.1, examined herself as D.W.1 and deposed the said fact cogently. This Court finds no reason to disbelieve her version. Her evidence is trustworthy. It is settled principle that the evidence of the defence is to be treated on par with the prosecution evidence as held by the Hon'ble Supreme Court in the case of ***Anil Sharma v. State of***

***Jharkhand*, (2004) 5 SCC 679 at page 686**

> ***15.*** *So far as the question as to whether equal treatment was being given to the evidence of prosecution and defence witnesses, is concerned, there can be no quarrel with the proposition in law....*

But in this case, the learned trial Judge, without properly considering the evidence of D.W.1 convicted the appellant without any evidence for the misappropriation of the funds of P.W.3 by forging his signature. It is settled principle that conspiracy is to be proved through the circumstances established by the legal evidence. In this Case, this Court finds no evidence against A1 that she has entered into conspiracy with A3 to misappropriate the funds of P.W.3. In result, this Court finds that the prosecution miserably failed to prove the case against the appellants.

17. The work allotted to the PW.3 was completed in October, 1994. Thereafter, A1 has not allotted any work to him. So, he made the complaint on 26.12.1995 to the District Collector alleging that two disputed cheque amount was encashed by somebody. On the basis of that, PW.6 was appointed to enquire into the allegation. PW.6 submitted report on

28.07.1995. On the basis of the same, she was suspended and criminal case was registered. PW.6 mainly relied the extra judicial confession allegedly given by A3 to P.W.6 during the enquiry, which has been marked as Ex.P.50 and he came to the conclusion that A2 committed the offence. The said document according to the finding of the learned trial Judge is inadmissible and also as per law, the same is not reliable evidence. So, without any connecting materials, Ex.P.50 was obtained from A3 and this criminal case was registered.

18**.** The learned trial Judge, without any special circumstances and evidence against A1 and A3, committed error of law in convicting the appellants under Section 120B IPC and acquitting A2 when the charge and evidence of the witnesses are inextricably inseparable against all the accused to constitute the conspiracy. The prosecution evidence is not separable against A2 alone. In the said circumstances, the theory of removing the chaff from grain is not applicable to convict A1 and A3.

19. A honest man is a headache to the corrupt administration and hence, it is the duty of this Court to protect a honest officer from the false implication. In this case, the lady officer/accused No.1 got into the witness box and deposed that she was falsely implicated in the case. She further deposed that prior to this allegation, disciplinary enquiry was conducted against her with motive and the same was found to be false by the competent authorities and they exonerated with finding that she was unnecessarily subjected to the baseless allegation. This Court also considered the above documents and her evidence. From the evidence adduced and the specific stand of the accused in the witness box that she was falsely implicated on the ground that she was strict in discharge of her duty as per the procedure. Therefore, P.W.3 acted as a pawn to lay a false complaint against her. Therefore, this Court is inclined to accept her plea of motive on facts.

20. Accordingly, these Criminal Appeals are allowed by setting aside the judgment in Special C.C.No.18 of 2014, dated 10.01.2017, on the file of the Sepcial Court for trial of cases under the Prevention of

Corruption Act, Virudhunagar at Srivilliputhur District. The fine amount, if any, paid by the appellants shall be refunded to them. The bail bond, if any, executed by the appellants shall stand cancelled. The appellants are set at liberty unless their presence is required in any other case.

19.03.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
PJL/sbn

To

1.The Special Judge for cases
under the Prevention of Corruption Act,
Virudhunagar at Srivilliputhur District.

2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Virudhunagar, Virudhunagar District.

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

4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN, J.

PJL/sbn

Predelivery Judgement made in
Crl.A.(MD).No.24 &34 of 2017

19.03.2024