IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

Crl.A.No.138 of 2014

T.Elangovan ...Appellant

Vs.

The Inspector of Police,
CBI, Anti Corruption Bureau,
Chennai. ...Respondent

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C, to set aside the order of conviction against the accused/appellant passed in C.C.No. 35/2009 dated 20.02.2014 by the XIII Additional Special Judge for CBI cases, Chennai.

For Appellant : Mr.S.Ashok Kumar, Senior Counsel
assisted by Mr.M.Muthappan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI cases

ORDER

This appeal is directed against the judgement of the XIII Additional Court for CBI Cases dated 20.02.2014 in C.C. No. 35 of 2009.

2. By the said judgement, the appellant/sole accused was convicted of an offence under Section 420 of IPC and sentenced to undergo rigorous imprisonment for one year, and to pay a fine of Rs.1,000/-; in default, to undergo simple imprisonment for three months. He was also convicted of an offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, and sentenced to undergo rigorous imprisonment for one year, and to pay a fine of Rs.1,000/-; in default, to undergo simple imprisonment for three months.

3. The case of the prosecution is that the appellant, T. Elangovan, was an employee of New India Assurance Company Limited during the relevant period of 2006 – 2008 and worked as a Branch Manager in Nagapattinam. During this time, he travelled abroad, to places such as Singapore and Srilanka, seven times for intermediate periods totalling 117 days. During these visits, he neither sought prior permission nor obtained a No Objection Certificate, and he did not have the leave sanctioned. Throughout the 117 days

of unauthorised absence, he continued to receive his salary. The total salary received for this period amounted to Rs. 1,02,916/-. Therefore, he caused wrongful loss to the company while obtaining wrongful gain for himself; thus cheated the company and committed criminal misconduct under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, leading to the registration of a case as RC 6(A)/20090. After investigation, the final report was filed and was taken on record as C.C. No. 35 of 2009. Following the issuance of summons, the appellant appeared before the Trial Court, and after hearing the parties, the following charges were framed:

> "*Firstly, that you are an employee of New India Assurance Company Limited and while working as Branch Manager, Nagapattinam, you have cheated their company in the matters of leave and salary and thereby caused wrongful loss to their company and wrongful gain to you and thereby you have committed an offence of cheating u/s 420 IPC and within my cognizance.*
>
> *Secondly, that in furtherance of the said transaction during the years 2006 to 2008 you without obtaining No Objection Certificate from the competent authority and without applying for leave for the period covered under the journey to abroad, you have absented yourself unauthorizedly and you have never latimated your foreign visits to the Department, but you have received Pay and Allowances for the unauthorised absence of 117 days including 12 holidays and wrongfully gained Rs.1,02,916/- by salary and thereby you have caused wrongful loss to the*

company ie. New India Assurance Co., Limited and thereby you have committed an offence u/s 13 (2) 1/w 13 (1)(d) of P.C.Act 1988 and within my cognizance for which you are charged.

Take notice you will be tried by this Court for the said offences."

4. The appellant denied the charges and stood trial. To prove the charges, P.W.1 to P.W.22 were examined on behalf of the prosecution, and Ex.P1 to P43 were marked. When questioned under Section 313 of the Code of Criminal Procedure, the accused denied the allegations and the evidence. Subsequently, D.W.1 and D.W.2 were examined on behalf of the defence. During the trial, Exs. D1 to D21 were also marked as defence documents. The trial court then considered the case of the parties. Firstly, it examined the issue of sanction in detail, and after hearing the arguments made by the accused, concluded that the sanction was granted in accordance with the law and that there were no shortcomings in this regard.

5. Thereafter, it considered the fact that the accused had not obtained prior approval for these seven visits abroad. The trial Court examined the relevant circular, which mandates prior approval as well as a No Objection Certificate before travelling abroad. It then reviewed Exhibits P3, P4, D5, and

D6, which were leave letters. It found that although these documents were presented by the appellant, who was the Branch Manager, it was not his specific claim that he visited abroad only after having leave sanctioned for all those dates and traveling according to procedure. Once the accused did not properly obtain leave sanctioned for these periods as per the service regulations, namely Regulation 18.2, these periods became unauthorized absences. As he received salary for the unauthorized absence, his actions amounted to false representation and deceiving the company. Consequently, Section 420 was made out, and the very same actions also constituted criminal misconduct under Section 13(1)(d) of the Prevention of Corruption Act, 1988, as he received unlawful gain to which he was not entitled. The trial Court, therefore, convicted the accused on both charges and imposed the sentence as noted above. Aggrieved by the same, the present appeal was filed before this Court.

6. Heard *Mr. S. Ashok Kumar,* learned senior counsel appearing on behalf of the appellant. The learned senior counsel first took this Court through the charge and submitted that, when the prosecution's case was that the accused went abroad without even applying for leave, this assertion was

disproved by the evidence of P.W.21, the sanctioning officer. He took this Court through Ex.P.35, the sanction order, more specifically the tabular column contained in the document. He submitted that the prosecution's charge stood disproved by the very tabular column itself, which clearly stated that, on at least five occasions, it was not denied that leave was sanctioned. Even regarding the two instances mentioned as Serial Nos. 2 and 5, it was only noted that no leave was sanctioned. Even for those periods, the appellant had submitted his leave applications. It is to be noted that no order was passed denying the appellant's leave. Therefore, he would submit that once leave is granted, the period cannot be treated as unauthorized absence. Even if the circular requires a No Objection Certificate or prior permission, mere violation of the circular cannot amount to an offence under Section 420 or under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

7. He further submitted that, as the Branch Manager, there was no necessity for the appellant to sign any attendance register. It was the responsibility of the Divisional Office to refuse the leave or direct the appellant to remain in the office. The appellant did not make any false representation, nor did he prepare any false record to indicate that he was working on those dates. The appellant worked with extraordinary zeal and

even travelled abroad in the best interest of the branch. His services were commended by higher authorities for generating the highest amount of deposits for the Nagapattinam branch. He argued that only due to prejudice against the appellant, the prosecution was belatedly initiated. Without prejudice to the foregoing submissions, the learned senior counsel submitted that even assuming every allegation of the prosecution is proven, the same would still not constitute an offence under Section 420 or under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

8. Per contra, *Mr. K. Srinivasan*, the learned Special Public Prosecutor appearing on behalf of the respondent/prosecution, took this Court through the extensive findings of the trial Court, first drawing attention to Circular Ex.P.34. He submitted that it is clear that employees, before going abroad, must obtain a No Objection Certificate and also seek permission when applying for a visa. Furthermore, they can travel abroad only for the duration for which leave has been sanctioned. Therefore, unless these twin conditions are satisfied by the appellant, he is considered to be in unauthorized absence. He then directed the Court's attention to the service regulations marked as Ex.D4. The learned Special Public Prosecutor stated that, as per Regulation 18.2, an employee is not entitled to salary for the period of unauthorized

absence. Thus, by reading the circular and the rules together, it is evident that the appellant's actions constituted unauthorized absence. Once his actions amounted to unauthorized absence, he was not entitled to salary for the period of 117 days. As he is not entitled to salary for this 117-day period, it constitutes obtaining wrongful gain and consequently causing wrongful loss. This wrongful loss, despite the responsible position held by the appellant as Branch Manager, could have been avoided by properly informing the Divisional Office, which the appellant failed to do. No evidence whatsoever was presented by the appellant to demonstrate that he had informed the Divisional Office regarding his leave period. Therefore, once the appellant obtained wrongful gain, it would amount to criminal misconduct as per Section 13(2) read with 13(1)(d), as he had gained undue pecuniary advantage through illegal means. Once he gained such undue pecuniary advantage, it became an offence punishable under Section 13(2) of the Prevention of Corruption Act, 1988. Consequently, Section 420 is also made out. Therefore, the trial Court rightly convicted the petitioner and imposed the sentence, and there is nothing for this Court to interfere with in this present appeal.

9. Finally, drawing the attention of this Court to the tabular column relied upon by the learned Senior Counsel for the appellant in Exhibit P.34, he

submits that, regarding serial Nos. 2 and 5, the entire period remained unauthorised as no leave was sanctioned. Even for the other periods, the number of days of unauthorised absence has been compiled and presented in the last column of the table. Therefore, on every occasion, there is unauthorised absence on the part of the appellant, and only that period of unauthorised absence is calculated to arrive at the finding of 117 days and to determine the wrongful loss. Thus, he submits that the appeal deserves to be dismissed.

10. I have considered the rival submissions made on either side and perused the material records of the case.

11. First, it is essential to extract the relevant portion of Ex. P.34, which is as under:

> "*1. NOC for passport shall be issued by RO only after obtaining application in the prescribed format, and after receipt of clearance from Head Office, Vigilance Department. RO will directly seek vigilance Clearance from Vigilance Department, Head Office. Regarding NOC for going abroad. RO shall obtain clearance from Vigilance Department HO and also clearance from IDD (Industrial Dispute & Discipline) Department of RO/HO as per cadre of the applicant officer.*

2. For going abroad, NOC shall be issued for the period of sanctioned leave only. Leave may be sanctioned to the officer as per rules. While sanctioning such leave, it should be made clear to the officer concerned that under no circumstances the leave approved will be allowed to be extended. The officers should also be informed that in case of overstay, the period of leave will be treated as unauthorized absence and accordingly disciplinary action under CDA Rules will be taken.

3. RO shall ensure that for going abroad, leave of officer should be sanctioned for reasonable period keeping in view merit of the application. RO shall also examine before issuance of NOC whether such a certificate can be issued for the purpose of the visit as put forth by the officers.

4. RO shall forward copy of NOC to Class I Cell. Corp HRM Department, Head office for our record."

12. Similarly, Rule 18 of Exhibit D4 reads as follows: -

"18. EMPLOYEES NOT TO BE ABSENT FROM DUTY WITHOUT PERMISSION OR BE LATE IN ATTENDANCE.

(1) An employee shall not absent himself from his duties without having obtained the permission of the competent authority, nor shall he absent himself in case of sickness or accident without submitting a medical certificate satisfactory to the competent authority.

Provided that in case of an emergency an employee any be allowed to avail of one day's casual leave without prior sanction, subject to the condition that the competent authority is promptly advised of the circumstances in which prior sanction could not be obtained.

(2), An employee who absents himself from duty without leave or overstays his leaves shall not be entitled to draw any pay or allowances during such absence or overstayal, and shall further be liable to such disciplinary measures as the competent authority may deem necessary. Provided however, that the competent authority may treat such period of absence or overstayal if not followed by termination of service, as period spent on Casual Leave, Earned Leave, Sick Leave or Leave on Loss of Pay, but the employee shall not be entitled as of right to such treatment. Provided furtner that the competent authority may treat such absence or overstayal as period spent on leave on loss of pay irrespective of whether the employee has any other leave to his credit or not.

(3) An employee who frequently attends the office late and/or leaves the office early shall in addition to such other penalty as the competent authority may deem fit to impose, have half-a-day of casual leave forfeited for the fourth and the subsequent occasions of late attending and/or early leaving in a calendar month. Where such an employee has no casual leave due to him, the period of leave to be forfeited may be treated as earned leave or loss of pay as the competent authority may determine."

13. In this case, by examining the relevant witnesses, the prosecution clearly establishes that the appellant did not obtain the NOC or permission from the higher officials before leaving for abroad, and the fact that he left was also not communicated to the authorities. Nevertheless, when the appellant violates both the circular and the service regulations, this constitutes a serious misconduct for which the authorities can take disciplinary action, and there can be no dispute about that. The only question that arises is whether this action alone would constitute an offence under Section 420 of the Indian Penal Code, and whether this action alone would qualify as criminal misconduct under Section 13(1)(d) of the Prevention of Corruption Act, 1988.

14. In this regard, the charge was extracted above. The original charge of the prosecution is that, without any leave, the appellant went abroad. On the contrary, it can be seen from the sanction order itself that this fact claim of the prosecution is incorrect, and the relevant table contained in Ex.P.35 is extracted hereunder:

Sl.No.	***Leave Sanctioned during the foreign visit***	***Period of visit to foreign countries***	***Period of unauthorized absence***	***No. of days of unauthorize d absence***
1	*15 days 24.04.06 to*	*19.04.06 to 06.05.06*	*19.04.06 to 23.04.06*	*5*

	08.05.06			
2	No leave sanctioned	06.08.06 to 20.08.06	06.08.06 to 20.08.06	15
3	16.01.06 to 20.10.06	11.10.06 to 30.10.06	11.10.06 to 15.10.06 and 21.10.06 to 30.10.06	15
4	29.01.07 to 04.02.07	25.01.07 to 23.02.07	25.01.07 to 28.01.08 and 05.02.07 to 23.02.07	23
5	No leave Sanctioned	10.04.07 to 15.05.2007	10.04.7 to 15.05.07	36
6	15 days 10.10.07 to 24.10.07	09.10.07 to 04.11.07	25.10.07 to 04.11.07	11
7	15 days 15.04.08 to 29.04.08	12.04.08 to 08.05.08	12.04.08 to 14.04.08 and 30.04.08 to 08.05.08	12
	Total days			117

15. As a matter of fact, the relevant leave letters are in printed form. They read as if they are a composite form for sick leave, earned leave, etc. The appellant has not specifically struck off the irrelevant portion or tick-marked the correct category; however, upon verifying, the leave letters seem to indicate that he is requesting earned leave. It is evident from the form that, concerning earned leave, the management does not require any reasons. Only regarding sick leave are employees required to provide reasons.

16. Therefore, the leave letters do not provide any reasons; they are merely requests for earned leave for a specific period. In some forms, the

column pertaining to sanction includes the signatures of the authorities; in others, it does not. Against this backdrop, it can be observed that, under service jurisprudence, a person can either be on duty, on leave, or on unauthorised absence. Once the leave is sanctioned, the designated period cannot be regarded as unauthorised absence. Consequently, in this case, whether the period can be classified as unauthorised absence becomes questionable. Nevertheless, for the purposes of prosecution, even if we treat the period as unauthorised absence, I believe that simply because the employee is unauthorisedly absent, if management has proceeded to sanction and credit the salary to their account, this would not constitute an offense of cheating under Section 420 of the Indian Penal Code, although it would give rise to the management's right to recover any excess salary paid.

17. The petitioner has not submitted any further records indicating that he was working, nor has he falsified any attendance registers, etc. He has also not played any role in drawing up the salary bills, whereby he positively claimed his days of foreign visits as days of duty or sanctioned leave. In the absence of any further positive action by the employee, merely remaining unauthorizedly absent does not equate to making a representation or causing the organization, namely the New India Assurance Company, to believe in a

particular version and subsequently sanction the salary. Therefore, the offence under Section 420 of the IPC cannot be substantiated. Moreover, a thorough reading of Section 13(1)(d) indicates that it applies when a person obtains a pecuniary advantage for himself by illegal means. For instance, in this case, if the abroad trips were sponsored by the customers of the bank, or if he was involved with the customers, or if he utilized the bank's funds for personal enjoyment or foreign travel, then it could be considered that he obtained an undue pecuniary advantage through illegal means. The facts indicate that it is only the salary that is claimed to be an undue pecuniary advantage, especially since leave letters were submitted, and the periods were at times sanctioned and at other times only partially sanctioned, with the remaining period being unauthorized. Furthermore, ‘abusing his position’ is an essential ingredient. Useful reference can be made in this regard to paragraphs 15 and 16 of the Judgment of the Hon’ble Supreme Court of India in ***State of Gujarat -Vs- M.P. Dwivedi(1972 2CC 392).*** Thus, dishonest action on the part of the public servant is necessary to bring it into the fold of ‘criminal misconduct’. However, conduct that is blameworthy for the government servant in the context of conduct Rules would be deemed a misconduct for disciplinary action. It involves conduct that is inconsistent with the due and faithful discharge of duty or disregard of an essential condition of service. Useful reference in this regard can be made to paragraph 11 of the judgment of the Hon'ble Supreme Court of India in ***Union of India -Vs-J. Ahmed (1979 2 SCC 286)***. Thus, even if the action amounted to the misconduct of unauthorized absence under the conduct rules/service regulations, unless there is further action on the part of the accused to have dishonestly represented to the management, it would not amount to cheating. Furthermore, when it is admitted that he left leave letters on these occasions, merely because they are not expressly sanctioned or only a lesser number of days are sanctioned, it cannot be held that the appellant left abroad with an intention to make unlawful gain for himself or to cause unlawful loss to the management, especially when the management chose to credit the salary as usual. Useful reference in this regard can be made to the Paragraph No. 17 of the judgement of the Hon'ble Supreme Court of India in **C.K.Jaffer Sharief vs. State (Thr C.B.I)[1].** Thus, viewed from any angle, the conspectus of the facts does not make out the offences under Section 420 of the Indian Penal Code or Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Therefore, I must disagree with Mr. K. Srinivasan, the learned Special Public Prosecutor, that the offences punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 of the Indian Penal Code

1 2013 (1) SCC 205

are established.

18. In the result:

(i)This criminal appeal in Crl. A.No. 138 of 2014 is allowed;

(ii)The Judgment in C.C. No.35/2009, dated 20.02.2014, by the XIII Additional Special Judge for CBI cases, Chennai, convicting the appellant under Section 420 of I.P.C. and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, and the consequential sentence imposed, are set aside;

(iii)The fine amount paid by the appellant shall be refunded.

(iv)No costs.

11.06.2025

Neutral Citation: Yes
nsl

D.BHARATHA CHAKRAVARTHY, J.

nsl

To
1. The XIII Additional Court for CBI Cases,
Chennai.

2. The Inspector of Police,
CBI, Anti Corruption Bureau,
Chennai.

3. The Special Public Prosecutor for CBI cases,
Madras High Court.

Crl.A.No.138 of 2014

11.06.2025