IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.07.2025

PRONOUNCED ON : 07.10.2025

CORAM

THE HONOURABLE MR. JUSTICE D. BHARATHA CHAKRAVARTHY

Crl.A.Nos.218 and 219 of 2014
and
Crl.A.No.76 of 2015

Crl.A.No.218 of 2014

V. Adhikesavan ... Appellant/ Accused No.1

Vs.

State represented by,
The Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti Corruption Bureau,
Chennai - 600006. ... Respondent/ Complainant

PRAYER in Crl.A.No.218 of 2014: This Criminal Appeal is filed under Section 374 r/w 382 of Cr.P.C to set aside the order of conviction and sentence of one year Rigorous Imprisonment imposed on the appellants/ accused of one year Rigorous Imprisonment imposed on the appellant for offences under Section 420 and 409 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act by the IX Additional Special Judge for CBI Cases, Chennai in C.C.No.06 of 2009, dated 28.03.2014 and to acquit the appellant.

Crl.A.No.219 of 2014

A. Vijay Anand ... Appellant/ Accused No.2

Vs.

State represented by,
The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Bureau, Chennai.
(Ref. Cr.No.RC MA1 2008 A 0024, dated 21.05.2008) ... Respondent/ Complainant

PRAYER in Crl.A.No.219 of 2014: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the judgment of conviction passed by the learned IX Additional Special Judge for CBI Cases, Chennai in C.C.No.06 of 2009 as against the appellant under Section 420 of IPC.

Crl.A.No.76 of 2015

State represented by,
The Additional Superintendent of Police,
CBI : ACB : Chennai.
(RC 24(A)/ 2008: CBI: ACB: Chennai) ... Appellant/ Complainant

Vs.

1. V. Adikesavan
2. A. Vijay Anand ... Respondents/ A1 and A2

PRAYER in Crl.A.No.76 of 2015: This Criminal Appeal is filed under Section 378 of Cr.P.C to set aside the order of the Trial Court dated 28.03.2014 passed in C.C.No.06 of 2009 by the learned IX Additional Special Judge for CBI Cases, Chennai in so far as it relates to the acquittal of A1 and A2 for the charge under Section 120-B IPC r/w 420 and 409 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

For Appellant in Crl.A.No.218 of 2014
and for R-1 in Crl.A.No.76 of 2015 : Mr. G.M. Ramasubramanian
(For M/s. Ram and Ram)

For Appellant in Crl.A.No.219 of 2014
and for R-2 in Crl.A.No.76 of 2015 : Mr. G.R. Hari

For Appellant in Crl.A.No.76 of 2015 and
for Respondent in Crl.A.Nos.218 and 219 of 2014: Mr. K.Srinivasan
(Spl.P.P. for CBI cases)

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COMMON JUDGMENT

A. The Appeals:

1. These appeals originate from the judgment dated 28.03.2014 made in C.C.No.6 of 2009 on the file of the IX Additional Special Judge for CBI cases, Chennai. By that judgment, two accused, who are involved in the case, namely Accused No.1 - V. Adikesavan and Accused No.2 - Vijay Anand, were found guilty in the following manner.

Accused	*Under Section*	*Sentence*
A1	Found guilty and convicted for the offence under Sections 420 & 409 IPC and under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	Sentenced to undergo RI for one and to pay a fine of Rs.10,000/-, i/d to undergo RI for two months for the offence u/s 420 IPC. Sentenced to undergo RI for one year

Accused	*Under Section*	*Sentence*
		and to pay a fine of Rs.10,000/-, i/d to undergo RI for two months for the offence u/s 409 IPC. Sentenced to undergo RI for one year and to pay a fine of Rs.10,000/-, i/d to undergo RI for two months for the offence u/s 13(2) r/w 13(1)(d) of P.C. Act. 1988.
A2	Found guilty and convicted for the offence under Sections 420 IPC.	Sentenced to undergo RI for one and to pay a fine of Rs.10,000/-, i/d to undergo RI for two months for the offence u/s 420 IPC.

1.1 By the same judgment, Accused No.1 and Accused No.2 were found not guilty of the charges under Section 120B read with Section 420 and 409 of IPC, and under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Aggrieved by the conviction and sentence, Accused No.1 has filed an appeal in Crl.A.No.218 of 2014, and Accused No.2 has filed an appeal in Crl.A.No.219 of 2014. While being dissatisfied with the acquittal of the charge under Section 120-B, the prosecution has filed an appeal in Crl.A.No.76 of 2015. Accordingly, all three appeals are taken up together and disposed of by this common judgment.

B. The Case of the Prosecution:

2. On 21.05.2008, upon receiving reliable information containing an allegation that Accused No.1, namely Adikesavan, who at that time was working as the Administrative Officer at the Tuberclosis Research Centre (TRC hereinafter), Chennai, and Accused No.2—A. Vijay Anand, being his son—who is only a direct Post Graduate in Public Administration [M.A. in Public Administration] and has Tamil as his mother tongue, submitted an application in response to an advertisement dated 23.04.2005 for a temporary post of 'Supervisor' without possessing the required qualifications. Despite knowing that Accused No.2 did not possess the relevant qualifications, Accused No.1 signed the application, processed it, and included the name of Accused No.2 in the pre-approved list. Subsequently, when the Selection Committee was formed and after the interview, his son/Accused No.2 was selected for the temporary post of Supervisor.

2.1 During October 2005, the TRC issued a circular inviting applications from serving employees for the position of 'Technician' (Field Work), stating that XII Standard and knowledge of Tamil were basic qualifications. The Accused No.2 - Vijay Anand applied for this post, and the Accused No.1 -

Adikesavan considered and processed his application, including him in the list of eligible candidates, despite him not possessing the required qualifications. Ultimately, he was appointed. Therefore, Accused No.2 abused his official position by processing the application of an ineligible candidate, who was his son, leading to his appointment.

2.2 On the strength of the said allegation, regular case in R.C.No.2008/0024 for the alleged offences alleged under Sections 120-B, 420, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 was registered by P.W.19. Thereafter, he completed the investigation and filed charge sheet against the said two persons proposing them as guilty for the aforesaid mentioned offences and also for an offence under Section 409 of IPC.

<u>C. The Trial & The Judgment:</u>

3. Upon appearance of the accused and furnishing of the copies, the following four charges were framed against Accused No.1 and Accused No.2 on 12.01.2010.

> *"FIRSTLY, that you Accused No.1 - Adikesavan, Administrative Officer, TRC, Chennai and Accused No.2 - Vijay Anand and Sri. B. Romdoss (approver), the then Section Officer, TRC, Chennai, during the year 2005, entered*

into criminal conspiracy at Chennai and other places to cheat Tuberculosis Research Center, Chennai in the matter of recruitment for regular appointment of Technician (Field worker) in TRC, Chennai, and in pursuance of the said criminal conspiracy, you Accused No.2- Vijay Anand applied for the post of Supervisor (Temporary) in mortality survey knowing fully well that you Vijay Anand was not having prescribed educational qualification i.e., Post Graduate in Sociology/ Social Work and health/ training related to health investigation, in pursuance of the said criminal conspiracy you Accused No.1- Adikesavan by corrupt or illegal means or by abusing your official position as Administrative Officer in TRC Chennai, dishonestly accepted the application of Vijay Anand/ Accused No.2, knowing fully well that Accused No.2/ Vijay Anand had not possessed the requisite qualification and experience for the post of Supervisor (temporary) in Mortality Survey project and the application reached the office after the last date of submission prescribed in the advertisement. In pursuance of the said criminal conspiracy you Adikesavan/ Accused No.1 included the name of Accused No.2 who had not possessed the requisite qualification and experience for the post of Supervisor Temporary in Mortality Survey Project, in the eligible list. In pursuance of the said criminal conspiracy you Accused No.1/ Adikesavan dishonestly took printout of question paper and answer keys pertaining to written examination for the post of Supervisor (Temporary) and Health Worker well in advance by using the floppy diskette entrusted to him by Dr.C.Kolappan, the Chairman of Selection Committee for the said recruitment and handed over the question paper and answer keys for the post of Supervisor to your son Vinay Anand/Accused No.2. In pursuance of the criminal conspiracy, you Vijay Anand/ Accused No.2 received the question paper and answer keys for the post of Supervisor from you Adikesavn, used the same and scored 25 marks out of 25 marks in the written examination and thereby you Accused No.2/ Vijay Anand was selected for the post of Supervisor and served in the post of Supervisor (temporary) in mortality survey project from 04.08.2005 to 22.11.2005. In pursuance of the said conspiracy you Adikesavan also handed over a copy of question paper and answer keys pertaining to the post of Health Worker to B.Ramdoss (approver) whose son Sri Raja Selva Sekharan was a candidate appeared for the written test for the post of Health Worker on 23.07.2008 at Hyderabad. Sri.B.Ramdoss (approver) whose son Sri Raja Selva Sekharan was a candidate appeared for the written test of the post of Health Worker on 23.07.2008 at Hyderabad. Sri B.Ramdoss (approver) handed over the question paper and answer keys which he received from you Accused No.1 Adikesavan to his son Raja Selva Sekharan along with some other question papers under the pretext that those question papers and answer keys are the model question paper and thereby you Accused No.1/ Adikesavan, Vijay Anand/ Accused No.2 and approver B.Ramdoss committed an offence punishable u/s. 120-B r/w 420 IPC, 409 IPC and 13(2) r/w 13(1)(d) of IPC Act, 1988 and within my cognizance.

SECONDLY, that you Adikesavan/ Accused No.1 and Vijay Anand/ Accused No.2 on or about the period and place as stated in the previous charge *and in furtherance of the above said criminal conspiracy you Accused No.1 by abusing or misusing your official position cheated the Tuberculosis Research Center by fraudulently and dishonestly issued a circular under reference No.4432/E/205 dated 20.10.2005 by violating the ICMR recruitment rules and by inserting a clause in the circular "Desirable experience" to accommodate your son Vijay Anand/ Accused No.2 who was having only 04 months experience in the post of Technician (FW) in TRC and induced TRC Chennai to issue appointment order to your son Vijay Anand, who was not having essential experience for the post of Technician (FS) and you Accused No.2/ Vijay Anand dishonestly applied for the post of Supervisor (Temp.) in TRC (Mortality Survey) Chennai knowing fully well that you Accused No.2 were not having the requisite qualification (M.A., Sociology) and experience for the post of Supervisor (Temp.) you Accused No.2 fraudulently and dishonestly concealed your optional subject (Public Administration) on the application and you Accused No.2/ Vijay Anand received the questions and answer keys for the post of Supervisor (Temporary) from your father Adikesavan/ Accused No.1 knowing fully well that your father had fraudulently took the print out by abusing his official position and thereby you Adikesavan/ Accused No.1 and Accused No.2/ Vijay Anand cheated the Tuberculosis Research Center and thereby committed offence punishable u/s.420 IPC and within my cognizance.*

THIRDLY, that you Accused No.1/Adikesavan during the period and place as stated in the previous charge, being a public servant, employed in the department as stated in the first charge and during the process of recruitment of staff for the post of Supervisor (Temporary) and Health worker in the project entitled "Mortality Survey in Andhra Pradesh and Orissa", Dr. C.Kolappan, the Principal Investigator entrusted a floppy diskette containing question paper and answer keys for the written examination for the post of Supervisor (Temporary) and Health Worker to you Accused No.1/ Adikesavan with clear instruction to maintain strict confidentiality and take print out/ hard copy of the question paper on day prior to departure to Hyderabad and as such you Accused No.1/ Adikesavan having dominion over the floppy diskette containing question paper and answer keys in your capacity as Administrative Officer, TRC, Chennai, you Accused No.1/ Adikesavan dishonestly took print out of the question paper and answer keys pertaining to the post of Supervisor (Temporary) and handed over the same to your son Vijay Anand/ Accused No.2 and the same was used by you Vijay Anand. Similarly you Adikesavan took the print out of the question paper and answer keys pertaining to the post of Health Worker and handed over the same to B.Ramdoss (approver), Section Officer (Retd.), TRC and thereby committed criminal breach of trust by fraudulently and dishonestly took the print out of question paper and answer keys pertaining to the post of Supervisor and Health Worker from the floppy diskette which was handed over by Dr.C.Kolappan and thereby you Accused No.1/ Adikesavan committed Criminal Brach of Trust with respective the said property and thereby committed offence punishable u/s.409 IPC and within my cognizance.

FOURTHLY, that you Accused No.1/ Adikesavan during the period and place as stated in the first charge, being a public servant, abused your official position, processed the application for the post of Supervisor submitted by your son Vijay Anand who was not having requisite qualification for the said post by misusing your official position inserted the name of your son in the eligible list of candidate and got appointed your son Vijay Anand in the post of Supervisor (temporary) and further you Accused No.1/ Adikesavan by abusing and misusing your official position as Administrative Officer issued a circular vide reference No.4432/E/2005 dated 20.10.2005 to fill up the post of Technician (FW) without obtaining any administrative approval from the competent authority and you Adikesavan by abusing your official position inserted desirable clause in the circular to accommodate your son Vijay Anand who was having only 04 months experience and thereby you Adikesavan got appointment of your son Vijay Anand for the post of Technician (FW) in TRC and thereby you Accused No.1 Adikesavan committed an offence punishable u/s. 13(2) r/w. 31(1)(d) of Prevention of Corruption Act, 1988 and within my cognizance."

3.1 The accused denied the charges and stood trial to contest them. On behalf of the prosecution, 19 witnesses, P.W.1 to P.W.19, were examined. P.W.1 - Dr. Vishwa Mohan Katoch, who was then the Director General of ICMR, processed and granted the sanction. P.W.2 - P.R. Narayanan, retired as the Director of TRC, testified about the responsibilities of the accused no.1 as an Administrative Officer and for nominating Kolappan as the Principal Investigator, along with the subsequent advertisement for other posts. P.W.3 - Devaki, a Section Officer working in the institute, deposed about the maintenance of the despatch register and other documents maintained with regards to the recruitment process and related communications.

3.2 One R. Lakshminarayanan was examined as P.W.4, the Senior Administrative Officer, who deposed about the TRC, being a center of the ICMR, and discussed the framing and amendment of recruitment rules related to the post. He also mentioned that the Accused No. 2 did not possess the essential qualifications. The typist working in the institute, Kousalya, was examined as P.W.5 and deposed about the day-to-day activities, including receiving applications in response to the advertisement and maintaining registers, etc. G. Vengadajalapathi, an officer from Annamalai University, was examined as P.W.6 and deposed about the educational qualifications of the Accused No. 2. K. Rajeswari, another temporary employee in the institute who handled files related to incoming letters, was examined as P.W.7. Rangamma, the Private Secretary working in the institute, was examined as P.W.8 to depose about the personal folder of the Accused No. 2, including the appointment orders and his qualifications.

3.3 One H.L. Arora, who was the Senior Administrative Officer at ICMR and also investigated the matter upon receiving the complaint from the Chief Vigilance Commissioner, was examined as P.W.9. One K. Sadacharam, who was the Deputy Director of Senior Grade at the institute, was examined as P.W.10. He was a member of the Selection Committee that nominated and selected the Accused No.2. One M. Subramanian was examined as P.W.11; he was also part of the Selection Committee. One Dr. C. Kolappan, the retired Senior Deputy Director, was examined as P.W.12. He testified about heading the selection committee, entrusting the question papers to Accused No.1, and completing the selection procedures afterward. One Dr. Bhaskaran, another member of the Selection Committee, was examined as P.W.13. One V. Kumarasami was examined as P.W.14 to demonstrate that Ex.P.12 - the circular – was issued by Accused No.1 without any approval.

3.4 One Ramdoss, who is the 'Approver' in this case, was examined as P.W.15, and his son was also selected in the process. He spoke about the fact that the Accused No.1 handed over the question papers to him for his son's purpose and had also said that he would not repay the loan previously obtained by him, a sum of Rs.2,00,000/-, in view of the said favour done by him. One Sridharan was examined as P.W.16, who spoke about the sanction given for the mortality study projects and the appointment of Accused No.2 as a Temporary Supervisor. One V. Venkateswaralu, who was also a member of the interview board for the post of Supervisor, was examined as P.W.17. One A.V. K. Murthy, who was a witness to the seizure and search proceedings and the preparation of the Magazar related to the recovery proceedings, was examined as P.W.18. One

C. S. Moni, the Investigating Officer, was examined as P.W.19. Apart from this, 77 exhibits were marked as Exs. P.1 to P.77.

3.5 Upon being questioned about the incriminating evidence on record, the accused denied it. Thereafter, Accused No.1 examined himself as D.W.1, and Exs.D.1 to D.4 were also marked on behalf of the defence. The Trial Court considered the arguments of the learned Special Public Prosecutor and the learned counsel for the accused. It found that the prosecution had not failed to prove the charges framed against the accused under Sections 120-B read with 420 and 409 of IPC and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, because there could not have been pre-meditation of the entire episode, which unfolded later. However, the Trial Court found Accused No.1 guilty of the offences of cheating under Section 420 of IPC, criminal breach of trust under Section 409, and criminal misconduct under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act. Accused No.2 was found guilty of cheating, and both were sentenced as mentioned above. Aggrieved, they filed the present appeals.

D. The arguments:

4. Mr.G.M. Ramasubramanian, the learned counsel appearing on behalf of the Accused No.1, by taking this Court through the evidence and by detailed memorandum of grounds that was filed in the instance case would submit that, the first and foremost allegation against the Accused No.1 as if, he had inserted the application of Accused No.2 belatedly by abusing his official position is not at all proved by the prosecution. It can be seen that the advertisement was of very short duration. The entries in Ex.P.7 - Receipt Register was made *en masse* relating to the list of last bunch of applications. In the absence of evidence that application of the Accused No.2 alone being entered belatedly, the finding in this regard is only based on surmises and not made out by the evidence of P.W.7. Once the application was taken on file, except to maintain that file relating to the number of applications that are received, no part is played by the Accused No.1, with reference to the first selection of Accused No.2 as ‘Supervisor' in the scheme employment. It can be seen that the call letter was sent by due process to all the candidates, it was decided to send the call letters to everyone, considering the fact that the majority of them did not have have 'Telugu' or 'Oriya' as their mother tongue and even the experience and qualification was lacking for majority of the applicants. Considering the fact

that it was a temporary post on a consolidated pay, the decision was made by the institute to send the call letter to everyone. The learned counsel would point out to the evidence of P.W.11 to this effect that the decision was made by the Chairman and the Committee.

4.1 The next allegation that is made against Accused No.1 is relating to the leaking out of the question paper. Firstly, on a perusal of the question and answers, it can be seen that the same are very simple question and answers and merely because, Accused No.2 had got full marks (25 out of 25) in the written examination, the same by itself would not prove the act of the Accused No.1 sharing the question paper. Howsoever strong the suspicion may be, it cannot take place of proof for proving the criminal charge. The evidence relating to the handing over of the floppy-disc itself is riddled with contradiction. There is no such evidence at all that Accused No.1 took print outs of the question paper with answer and handed over to the Accused No.2. The original floppy disk or the computer that is seized was never produced before the Court. The recovery proceedings does not corroborate and reflect the exact case of the prosecution. Further, P.W.18, who was the Bank of Baroda official, who was called as a witness for the recovery proceedings, did not speak about the dates of which the computer has been accessed and the very proceedings were conducted, which would only throw even more doubt in the case of the prosecution.

4.2 P.W.5 - Kousalya categorically deposed that she had taken print outs only on 22.07.2005. The technical evidence that is brought on record by the prosecution does not corroborate the said version and it is contradictory to one another. As a matter of fact, the so called approver- P.W.15 has deposed that the question paper was handed over on 17.07.2005 itself, whereas recovery proceedings would show that the print outs were made only on 22.07.2005. Merely because the Accused No.1's son got selected and got 100% marks in the written examination, only out of strong suspicion, the allegation is made. Though Accused No.1 could have recused himself from the entire exercise, the error that is committed being not recusing, cannot be made as an instance to fasten the criminal liability.

4.3 The next allegation that is made against Accused No.1 is that, he only issued the circular dated 20.10.2005, which is marked as Ex.P.12. Firstly, it can be seen that though the circular was issued by Accused No.1, thereafter when the Director was examined as P.W.2, he has categorically deposed that Accused No.1 had informed him about the same and authorisation given to him to issue such circular and thereafter, P.W.2 has also ratified the same. In the cross examination, there is a specific admission, that he had ratified the issuance of such circular, therefore the very issue of circular, by itself is only part of the functions as an Administrative Officer and has got nothing to do with the fact that his son applied and also got selected.

4.4 On the contrary, the concerned witnesses have admitted that the selection of Accused No.2 in the said interview was clearly based on merit. The Selection Committee members have categorically deposed about the same. The very process of short-listing the applications and calling for interview are all done only by the Selection Committee and the appellant/ Accused No.2 has got nothing to do with the same. On the whole, it can be seen that, the prosecution had proved nothing but the fact that Accused No.2 was selected earlier as 'Supervisor' and thereafter, as 'Technician', both in violation of certain conditions in the recruitment rules. The recruitment being done only by the Selection Committee and it is not the act of any abuse of official position of Accused No.1, absolutely no offence what so ever is made out against the Accused No.1.

4.5 Mr. G.R. Hari, the learned counsel appearing on behalf of the Accused No.2 would submit that Accused No.2 is not in a position of power or authority. But, it is normal that these organisations, in their objective to make the project within the sanctioned budget to engage temporary hands for lesser salary. Not many of the candidates with proper qualifications apply to these posts. Organisations like ICMR, tend to call for these candidates also, even if they do not posses the exact qualification. Even though Accused No.2 did not possess the exact qualification of 'Post Graduate in Sociology', he had 'Post Graduate in Public Administration' and he had some experience with reference to collection of data, etc., therefore, only by way of taking a chance, Accused No.2 had applied. Merely because, an ineligible applied to a post, it cannot be said that he is making an attempt to cheat the organisation.

4.6 The Selection Committee thought it fit to issue the call letter and thereafter, selected Accused No.2 as per merits. As far as the marks obtained by Accused No.2 in the written examination is concerned, it is the imagination of the prosecution it was because the Accused No.1 who is the father of Accused No.2 happens to be the Administrative Officer of the said organisation. The question paper is very simple that any school going of VIII Standard can answer all the questions correctly. It so happened that Accused No.2 and the other approver's son have answered all the questions correctly. That by itself cannot be a conclusive proof that any attempt made by Accused No.2 to cheat. On a perusal of the application as well as the bio-data, Accused No.2 neither suppressed that he is the son of Accused No.1 nor any other false information was furnished. Even with reference to Telugu, Accused No.2 only mentioned that he knew Telugu and did not say that his mother tongue is Telugu. Therefore, when the applicants like Accused No.2, with a fond hope, apply to the post, if sometimes the required qualified candidates are not available, the organisation calls for the candidates with equivalent qualifications, that itself cannot be termed as cheating.

4.7 It can be seen from the evidence on record, that majority of the candidates, who applied for the post of Supervisor, etc., possess different qualifications other than the actual qualifications required by the organisation. It is not the case of the prosecution that all of them were relatives of Accused No.1 or the other officials of the organisation. Normally upon information the relatives also apply and the selection of the relatives is a widely prevalent phenomenon in ICMR and other organisations. In these circumstances applying for the post cannot amount to an offence under Section 420 of IPC. The stand of the Selection Committee with reference to the second post is that, Accused No.2 was selected only on merit.

4.8 It is his further contention that with reference to the recovery proceedings, the path only shows about the saving of the file from the pen drive to the system and it does not demonstrate about the opening of the file and taking of print out of the question paper, more specifically the date of accessing of the print out. Therefore, in the guise of the technical evidence, the prosecution only has attempted to bring in some material which does not throw any light on the truth. The further allegation with reference to non obtaining of required qualification is concerned, the learned counsel would also submit that Accused No.2 after completion of X Standard, he has also obtained diploma, which is treated as equivalent to XII Standard in many occasions by many institutions. Even considering the act of applying itself is erroneous, such a mis-judgment on the part of Accused No.2 can never be treated as cheating the organisation.

4.9 It is only a case, where he applied for an employment and got selected. Even if the selection is found to be erroneous, appropriate proceedings can be taken with reference to the service. Nobody unduly lost selection as Supervisor. Accused No. 2 had performed his duties and earned his salary. There is no financial loss to the organisation. Therefore, the offence of under Section 420 of IPC is not made out. Nobody lost any valuable security or property in the matter, therefore the offence under Section 420 of IPC is not made out.

4.10 Both learned counsel for Accused No.1 and Accused No.2 also relied upon the judgment of the Hon'ble Supreme Court of India in ***A.Sivaprakash vs. State of Kerala***[1] with reference to the term criminal misconduct and submit that the entire episode does not relate to corruption. The entire selection was done by the duly constituted Selection Committee. The initial investigation reports submitted by the prosecution witnesses categorically gave a clean chit for the selection. No allegation be made. Mere violation of a procedure, will never become a criminal misconduct. In the absence of a criminal misconduct, the conviction of Accused No.1 in that regard is also erroneous. There is no specific evidence of conspiracy between Accused No.1 and Accused No.2. At the end of the day, a son/ Accused No.2 came to be employed in the organisation, where father/ Accused No.1 is an Administrative Officer in the same organisation and only for the said fact, both Accused No.1 and Accused No.2 have been prosecuted and convicted. For that matter, there are enumerable number of father and sons, who are working in the same organisations throughout the Country.

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4.11 Per contra, the learned Special Public Prosecutor would submit that in the instant case, the thread of constant behaviour of deception and abuse on the part of Accused No.1 and Accused No.2 from the inception till the end has been demonstrated by the prosecution. The charge under Section 120-B can also be proved by circumstantial evidence. In this case, the circumstances are such that it points out the only hypothesis of both acting in tandem so as to cheat the organisation. Therefore the acquittal in respect of the charge of conspiracy should also be reversed by this Court and the appeal filed by the prosecution has to be allowed.

4.12 With reference to the appeals that are filed by the accused, the learned Public Prosecutor submitted that the prosecution has proved the offences to the hilt. Firstly, in the first advertisement, the essential qualification and the desirable qualifications are swapped. It should be seen in the particular context that Accused No.2 is a direct Post Graduate holder without a degree. In order to somewhat look like as if he had got some qualification, the essential and desirable qualifications were swapped, even in the first advertisement.

4.13 Secondly, it can be seen that the application of Accused No.2 was not made within time. P.W.7 has been examined in this regard and the register has been produced. The prosecution has proved that the application of Accused No.2 was belatedly inserted. Merely because some other applications could have also been inserted belatedly that doesn't absolve the accused of this misconduct. Accused No.1 being the father and also the Administrative Officer of the institute, who was dealing with the file of recruitment, firstly ought to have recused himself from the entire transaction by stating that his son/ Accused No.2 is participating in the recruitment. Secondly, he himself has initialled in his own son's application and enlisted the same for the consideration of the Selection Committee.

4.14 P.W.12 - Kolappan has categorically spoken about the fact that the floppy disk containing the question paper and also the answer keys were handed over to Accused No.1 with a request to take print out of the same and bring to Hyderabad at the time of examination. Even at that point of time, Accused No.1 did not disclose the said information to the said Selection Committee Head and did not recuse himself from the selection process.

4.15 On the contrary, he not only took print out of the question paper and answer keys and handed over to his son, but from the evidence of P.W.15 - Approver, it can be seen that, he has handed over a copy of the question paper to him also for the sake of the Approver's son in who was also participating in the selection. The circumstance that only these two candidates alone got full marks (25 out of 25) in the written examination would itself adumbrate the mis-conduct on the part of Accused No.1. Being entrusted with the floppy disk, which is sensitive information relating to the question paper and answer keys for the recruitment, there is a breach of trust imposed on him, he has taken print out of the same and helped his son/ Accused No.2.

4.16 The contradictions that are pleaded by the learned counsels on behalf of the appellants/ accused are not correct and the recovery proceedings further buttress and corroborate to the allegations made. Further, he would submit that the further conduct of Accused No.1 became even more questionable, when the regular post of Technician was to be filled up. The recruitment rules mandate that the recruitment has to be done by way of direct recruitment, that is, calling for application from the employment exchange and by making an advertisement in the open market. Without doing both of the above, the Accused No.1 had issued the circular, calling for applications from among the existing servants/persons working on adhoc basis in the institute itself.

4.17 P.W.1 and P.W.2, have deposed that there was no authorisation for Accused No.1 to issue such a circular. The circular was in gross violation of the recruitment rules. Further the circular was also manipulated to wrongly mention the un-amended qualification, while the recruitment rules were already amended by that time. All these manipulations were done only with the sole intention of personally enriching himself by appointing his own son/ Accused No.2. Ultimately in the interview, it so happened that Accused No.2 was promptly selected and it can be seen that on both occasions, Accused No.2 does not have the required educational qualifications, experience or the qualification relating to the language. Therefore, the prosecution has proved to the hilt that both accused have conspired together and Accused No.2 with the instigation of Accused No.1 has made false representation as if he is fully qualified to apply for the post and Accused No.1 by abusing his position in the institute and manipulating the entire transactions. He had initially made Accused No.2 to be appointed to the post of 'Supervisor' on temporary basis and thereafter to the post of 'Technician' on permanent basis and thus both accused are guilty of all the four charges. The Trial Court erred in acquitting the accused of the charge under Section 120-B, which is also proved to hilt by the prosecution, therefore, he would submit that the appeal filed by the prosecution in Crl.A.No.76 of 2015 has to be allowed. The very fact that Accused No.2 has obtained the job and also drawing salary would satisfy the ingredients of Section 13(1)(d) of the Prevention of Corruption Act, 1988 so as to attract the punishment as per Section 13(2) of the Prevention of Corruption Act, 1988. He would submit that ICMR being the agency that was cheated, the offence of cheating is also made out.

E. Discussion & Findings :

5. At the outset, it must be accepted that an error in appointment is a service matter and employment can be terminated according to the rules and in the manner known to law. Such action by itself would not amount to a criminal offense. The ingredients of the criminal offense alleged have to be proved by the prosecution beyond a reasonable doubt, and the accused cannot be punished based solely on suspicion, no matter how strong it may be.

5.1 The core argument of the accused is that, although accused No.1 exhibited some indiscretion by not recusing himself from the entire transactions, simply handling the files routinely regarding selections involving his son does not constitute abuse of office, especially not with dishonest intent, and there is no loss to anyone. Regarding Accused No. 2, although his father was the head of the organization, like other less deserving candidates hoping for organizational benevolence, he merely took a chance and applied without making any misrepresentation. It so happened that the organization's process proceeded as expected: he was selected through written examination and interview, and subsequently in the second post through an interview by a duly constituted selection committee. If no offense or dishonesty can be linked to the selection committee, then nothing can be attributed to the selectee.

5.2 In this context, let us consider the facts proven by the prosecution. The first transaction involves recruitment for the project known as ‘Mortality Survey in Andhra Pradesh and Orissa,’ and as per Ex.P5, they were to recruit 3 Supervisors, 15 Health Workers, 3 Field Attenders, and 2 Data Entry Operators. The issued advertisement is marked as Ex.P6. It is noteworthy that, regarding the post of Supervisor, a Post Graduate Degree is listed as essential, while graduation is mentioned as desirable. This cannot be dismissed as a mere mistake, since in row no. 2, the same graduate qualification repeated both in the essential and desirable columns, whereas in Rows 3 and 4, the entries are correctly stated. The sinister design becomes evident upon a careful reading of the advertisement. It is also noteworthy that Accused No. 2 does not possess a basic degree and was a direct postgraduate.

5.3 Accused No. 2 applied for the post of Supervisor. The covering letter is marked as Ex.P22 and also includes his resume. In the resume, Accused No. 2 mentions his qualification as "M.A." - suppressed that he does not possess the qualification in Sociology. As shown in Ex.P-32, he holds an Open University System MA in Public Administration from Annamalai University. It is common to specify one's subject of study. Accused No. 2 was aware that mentioning his subject could prevent his application from being accepted by verifying officials and therefore, he concealed this information. He also made a false claim that he knew Telugu, despite never studying Telugu as a subject, nor was it his medium of instruction. Further, mother tongue is Tamil. Hence, he made a false statement in his resume. This is not an innocent mistake by an applicant but a deliberate act.

5.4 Next is the scrutiny of the application. PW-12 Kolappan, has deposed as follows:

> *"A1 was entrusted the work of scrutinising the applications based on eligibility criteria and submit eligible candidates to the selection committee at the time of interview."*

5.5 Thus, Accused No. 1 wilfully did not weed out the application. Additionally, it can be seen from Ex.P42, which is the list of 12 candidates compiled and presented before the selection committee, that for every other candidate with an MA degree, the subject is mentioned. However, for Sl.No. 7, Vijay Anand (Accused No. 2), only 'MA' is mentioned.

5.6 What follows is the written examination. It was scheduled on 23/07/2005. PW-12, Kolappan, the Principal Investigator in charge of the project, prepared the question papers and answer keys. He was on medical leave from 13/06/2005 and therefore handed over the materials to Accused No.1 in a floppy disk inside a cover, with instructions to keep it confidential and to print a sufficient number of copies the day before the examination. It is evident that the contents of the floppy disk were copied onto a computer, and according to Ex.P56, the recovery proceedings report by the expert, the file relating to the question paper for the post of Supervisor indicates a modified date of 17/07/2005, and for the Health Worker, a modified date of 19/07/2005, further supporting the fact of printing. Mr. Hari, the learned Counsel, argued that the path shown is that of a floppy disk file and does not demonstrate its opening. Even if one agrees with that, if an official entrusted with the floppy disk and instructed to keep it confidential has his son participating, it is expected that he recuse himself. Additionally, any officer would maintain strict confidentiality as instructed by the examiner. Accused No.1 did not keep the floppy disk confidential until the day before the exam; he copied the contents to the computer well in advance. At least by 17/07/2005, the floppy disk was inserted into the computer, and the files were copied/dealt with in some manner, which is in complete breach of trust that was reposed on Accused No.1.

5.7 It is the case of the prosecution that Accused No.1 had carried this through the typist PW-5 Kouwsalya. PW-5 Kouwsalya is said to be present during the recovery proceedings as per the independent official witness PW-18. PW-5 was initially brought before the Learned Magistrate to give a statement under Section 164 Cr.P.C., which was later marked during the trial as Ex.P20. She only stated that she did not know anything about the case. However, the prosecution proceeded to examine her as PW-5. She was treated as hostile and was cross-examined by the prosecution. In the cross-examination, she finally admitted that she took printouts of the relevant materials two days before the examination. From the entire reading of the evidence, it is clear that Kouwsalya is a liar and is completely unreliable, and from the beginning, she only parroted that she did her job and knows nothing, including the fact that Accused No. 2 was the son of Accused No. 1.

5.8 PW-15, approver Ramadoss, deposed that he was handed the question papers for the post of Health Worker, in which his son was participating, on 19/07/2005, corroborated by Ex.P56 technical report. There is no reason to disbelieve the approver's version, and his testimony inspires the confidence of the Court. Above all, it is only two persons in the entire list of participants who scored a perfect 25/25 in the written examination. One is Accused No. 2 Vijay Anand and another is the son of PW-15, the approver, namely Raja Selvasekar. It is argued that the question paper was so easy that it is probable that Accused No. 2 scored a perfect 25. It is true that Ex.P64 contains relatively simple and straightforward questions and answers. But that does not mean that any person who attempts will get a perfect score. Even if the questions are circulated to persons who are preparing questions at Group-III or II level, though most of them would be above 80% or 90%, still getting a 100% will be a rarity. In this case, it can be seen that of all the candidates, only Accused No. 2 and the son of the approver alone got the perfect score. Therefore, the argument that the question paper was so easy and the perfect scores should not be doubted stands rejected. It is not the perfect score alone which is taken as conclusive proof, but along with all the aforementioned facts that are proven by the prosecution. Thus, there is no difficulty whatsoever in holding that the Accused No. 2 cleared the written examination way ahead of others only by cheating as the Accused No. 1, his own father, had supplied him the question paper in advance.

5.9 Next, before the selection committee, vide Ex.P71, the qualification of Accused No. 1 is mentioned simply as MA so that the selection committee members do not note the ineligibility. Due to all the above fraud and cheating, Accused No. 2 was initially appointed as a Supervisor on consolidated pay in July 2005.

5.10 There exists a post, namely, Technician, which is a Group C position in the ICMR. Originally, as per the recruitment rules Ex.P9, the educational qualification required is 10 + 2 with one year of experience in the field work related to health or health investigation training. The method of recruitment is by direct recruitment from among candidates sponsored through an employment exchange or through open advertisement. Vide Ex.P36, the recruitment rules were amended, and the essential qualification now required is '*Graduate with a certificate of training as a Para Medical Worker from a recognized institute*,' effective from 15/10/2003.

5.11 Emboldened by the success of their first mission, this time, Accused No.1 and 2 decide to secure permanent posts. Despite a constitutional mandate that direct recruitment must be done only through open advertisement, and in gross violation of the recruitment rules and by playing fraud on the Constitution of India, Accused No.1, on his own and without any direction from others, issued Ex.P12 circular inviting applications only from the current staff of the organization. It is fraudulently drafted to appear as if it is for regular staff, but it also includes project staff on consolidated pay, as reproduced here:

> "*Those* ***regular staff*** *who fulfil the requisite qualification and willing to be considered for the post and also staff recruited through employment exchange/advertisement and* ***working in the projects on consolidated salary*** *and possessing the following qualifications may submit the application to this office through proper channel on or before 07/11/2005.*"

5.12 The essential educational qualification is mentioned as 10+2 with one year of experience in fieldwork related to health or training in health investigation. The amended qualification is described as desirable, that is, a graduate with experience in fieldwork related to health or training in health investigation. In any event, it can be seen that Accused No. 2 neither holds a 10+2 nor is a graduate. Yet he promptly applies.

5.13 Out of the 30 applications received, 15 were rejected after scrutiny, including for not having the required educational qualification. However, accused No.2 was shortlisted as an eligible candidate. Vide Ex.P13, it was decided to fill the post through an interview alone, and the interview committee selected accused No.2. PW-2 speaks about the representation of accused No.1 himself that he is authorised to issue such a circular calling for applications from the staff alone. In Ex.P19, the qualification of accused No.2 is listed as MA and a Diploma in Mechanical Engineering, and he was selected as the top-ranked candidate, ranked No. 1. The approver's son, Raja Selva Sekaran, was ranked No. 4. Although five posts were advertised, nine persons were ultimately selected.

5.14 Accused No. 2 had only studied up to the 10th standard and then completed a Diploma in Mechanical Engineering. He has no background in health or sociology. Additionally, he obtained an M.A. in Public Administration through an open university, which cannot be considered for positions like Supervisor, Technician, etc., firstly because it is not relevant and secondly because it lacks the rigour of 10+2+3+2, making it invalid.

5.15 Thus, on both occasions, the conspiracy to deceive the organization is evident. The actions of Accused No.1 are entirely dishonest and not typical of handling a file routinely. At every stage, rules are violated and fraud perpetrated.

5.16 The argument that no person was cheated or no valuable security or property was delivered is without any substance. With dishonest intent, a false representation was made, and the job was obtained on both occasions from the Organisation, namely ICMR. The ingredients of the offence under Section 420 IPC are clearly proven beyond reasonable doubt. Similarly, the question paper was handed over by Accused No.1, is a complete breach of trust, and the ingredients of Section 409 are also proven. Accused No.1 abused his office not only for his son but also for the son of the Approver, and sought to adjust the money owed by him to PW-5 in that regard. Thus, the ingredients of the offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 are also proven.

5.17 The arguments relating to the sanction order are liable to be rejected. There is application of mind and the sanction order was given on 30.12.2008. Proper explanation has been rendered by the prosecution with reference to the communication that is referred to as dated 19.12.2008. It should be seen that any argument relating to the validity or the otherwise of the sanction order should be made by duly demonstrating the prejudice that is caused. In the instant case, I do not see any prejudice whatsoever that is caused to the accused, as such the plea relating to the sanction order stands rejected.

5.18 With reference to the charge under Section 120 B read with 420, 409 of IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988, from the above evidence, it can be concluded that the accused No.1 and 2 have acted in tandem in a concerted manner with a dishonest intention to cheat the organisation and secure an employment. However, it cannot be said that the abuse of office including furnishing of question paper to the son of approver, etc., is with conspiracy with the accused No.2. Therefore, I am of the view that as far as the appeal filed on behalf of the prosecution is concerned it has to be partly allowed in as much as I find the appellants guilty for the offence under Section 120 B read with Section 420 of IPC alone.

5.19 Now, coming to the question of sentence, as far as the accused No.1 is concerned, it is pleaded that the accused is ailing and he has to carry the urine bag and is presently aged about 86 years. It has to be seen that the Trial Court itself had imposed a minimum sentence, the quantum of sentence cannot be reduced. However, instead of Rigorous Imprisonment, the same shall be modified as Simple Imprisonment.

5.20 As far as the accused No.2 is concerned, considering his age and the part played by him, I am of the view that the sentence of imprisonment that is imposed for the offence under Section 420 can be reduced as three months Simple Imprisonment. As far as the offence under Section 120 B read with Section 420 of IPC is concerned, both the accused can be awarded Simple Imprisonment for a period of three months. In view of the fact that there is minimum punishment for the accused No.1 and the punishment that is now imposed in respect of Section 120 B of IPC is lesser that the same, separate hearing as to the question of sentence is not held.

F. Some Observations:

6. The affairs of the organization (ICMR) shock the conscience of the Court. It is not uncommon for children to pursue their parents' career path, as the parents are there to guide them. But that should only be in a manner known to law. When the Government of India spends taxpayers' money, in this case, a Diploma in Mechanical Engineering candidate is pushed in as Supervisor and

then as Technician, in matters related to health work. The conduct of the selection committees in not even checking the essential qualifications led to the Accused 1 and 2 successfully committing the crime. Not only that, when the offences came to light, the subsequent inquiry reports of the superior officers trying to give a clean chit and hush things under the carpet show that all is not well in the entire organization. There is complete ethical and moral illiteracy among those involved. If the relevant service rules permit initiation of disciplinary action even after retirement, this judgment shall be treated as the starting point, ICMR shall initiate disciplinary action against the authorities who submitted reports giving a clean chit to the transactions. The ICMR shall also conduct a discreet audit to determine the number of kith and kin of their own existing/former employees who are employed and whether they possess the essential qualifications for the posts for which they were recruited. The learned counsel appearing for the accused pointed out specific facts to bring to the notice of the court that this is a regular practice in the organisation. As such, a copy of this judgment is marked to the Director General, ICMR, New Delhi, and the Secretary to the Government, Ministry of Health and Family Welfare, New Delhi, for appropriate action.

G. The Result:

7. In the result:

(a) The Criminal Appeal Nos. 218 and 219 of 2014 and Crl.A.No.76 of 2015 stand **Partly allowed** on the following terms:

(b) The conviction of the accused No.1 in respect of the offence under Section 420, 409 of IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 stands confirmed. The period of sentence of imprisonment for one year and the fine amount shall stand confirmed. However, the sentence is modified as one year Simple Imprisonment in respect of each of the offences under Section 420, 409 of IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act,1988 and the fine amount shall remain the same;

(c) The accused No.1 is found guilty and shall also undergo Simple Imprisonment for a period of three months for the offence under Section 120 B read with 420 of IPC and to pay the fine of Rs.1,000/- and in default of payment of fine, shall undergo further imprisonment for a period of ten days;

(d) The conviction of the accused No.2 for the offence under Section 420 of IPC is confirmed. The sentence of imprisonment alone is modified as that of three months Simple Imprisonment and the fine amount shall remain the same;

(e) The accused No.2 shall also undergo Simple Imprisonment for a period of three months for the offence under Section 120 B read with 420 of IPC and to pay the fine of Rs.1,000/- and in default of payment of fine, shall undergo Simple Imprisonment for a period of ten days.

(f) The sentences to run concurrently and the period already undergone shall be set off.

(g) Both the accused are granted eight weeks time from today to surrender before the Trial Court to undergo the remainder of the sentence.

(h) It is further submitted that Accused No.1 is aged about 86 years and is required to carry an urinary bag. Considering his health condition, the Jail authorities are directed to ensure that he receives necessary medical attention. If hospitalization or continued treatment is required, the same shall be provided, in accordance with law.

Stn **07.10.2025**

Neutral citation : Yes

To

1. The IX Additional Special Judge for CBI Cases,
   Chennai.

2. The Inspector of Police,
   Special Police Establishment,
   Central Bureau of Investigation,
   Anti Corruption Bureau,
   Chennai - 600006.

3. The Public Prosecutor,
   High Court of Madras.

4. The Section Officer,
   V.R. Section,
   High Court, Madras.

D. BHARATHA CHAKRAVARTHY, J.

stn

Pre-delivery Judgment made
in Crl.A.Nos.218 & 219 of 2014
and Crl.A.No.76 of 2015

07.10.2025

Crl.A.Nos.218 and 219 of 2014
and Crl.A.No.76 of 2015

D.BHARATHA CHAKRAVARTHY.J.,

These matters are listed under the caption "for being mentioned".

2. When the matter came up for hearing, the learned counsel appearing for the appellant in Crl.A.No.218 of 2014 submitted that in the order dated 07.10.2025, in paragraph No.7, clause (h), the age of the first accused has been wrongly mentioned as 86 instead of 76. Hence, the age of the first accused shall be corrected and read as **“76”.**

3. In addition, a clause (i) shall be inserted after clause (h) in paragraph No.7, which reads as follows:

> **“In view of the additional amount of Rs.1,000/- imposed by this Court, the same shall be paid by the respective accused before the IX Additional Special Judge for CBI Cases, Chennai in C.C.No.6 of 2009.”**

4. The Registry is directed to issue a fresh order copy by carrying out the above said correction.

15.10.2025

nsl

D.BHARATHA CHAKRAVARTHY.J.,

nsl

Crl.A.Nos.218 and 219 of 2014
and
Crl.A.No.76 of 2015

15.10.2025