

(2007) 10 MAD CK 0098

In the Madras High Court

Case No : Criminal Appeal No"s. 626 to 628 of 1998

K. Rajendra Babu

APPELLANT

Vs

State by Inspector of Police, S.P.E./CBI/ACB

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 465

Penal Code, 1860 (IPC) — Section 420, 477A

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(1), 19(3), 19(4)

Citation : (2007) 10 MAD CK 0098

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : E.R. Sumathy, for S. Selvathirumugan, for the Appellant; N. Chandrasekaran, Spl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The accused, who was convicted for offences punishable u/s 420 IPC (3 counts), u/s 477A IPC (3 counts) and u/s 13(2)

read with 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 (3 counts) and was sentenced to undergo three years rigorous imprisonment for

each of the charges under the aforesaid penal provisions in respect of each of the cases for a period of three years and to pay a fine of Rs. 500/=

to each of the offences in default to undergo three months rigorous imprisonment with an order to run the entire substantive sentence concurrently,

has preferred the present appeal.

2. This Court was pleased to take up the appeal for disposal on 21.2.2007. Recording the submission made by the learned Senior Counsel Mr. A.

Natarajan, appearing on behalf of the appellant that he had not proposed to argue on the question of conviction recorded by the Trial Court, but,

would argue only on modification of the sentence, this Court, having heard the submission made on either side with respect to the quantum of

sentence alone, has chosen to reduce the sentence from three years to one year for each of the offences under the respective cases. Of course, this

Court was pleased to confirm the imposition of fine by the Trial Court.

3. The appellant carried the matter to the Honourable Supreme Court. The Honourable Supreme Court, having granted Special Leave, remitted

the matter to this Court for fresh consideration on merits, reminding the appellant to take the risk of imposition of the term of imprisonment for

more than one year while arguing the case on merit.

4. Three charges have been framed in each of the cases. As far as C.C. No. 21 of 1998 and 22 of 1998 are concerned, the occurrence is said to

have taken place on 6.5.1993 and as far as C.C. No. 23 of 1998 is concerned, the occurrence is said to have taken place on 26.5.1993. The first

set of charge in each of the case would read that the accused while working as Deputy Manager (Personal) State Bank of India, City Branch at

Coimbatore fraudulently and dishonestly prepared a debit voucher for Rs. 30,000/=, Rs. 33,000/= and Rs. 33,000/= respectively from Public

Provident Fund Account No. 331 of Thiru. V.R. Rubani, Public Provident Fund Account No. 332 of Thiru. M. Ramasamy and Public Provident

Fund Account No. 1/1974 of Gothawari Bai and induced the State Bank of India Coimbatore to deliver the said sum to the accused himself and

thereby, he committed an offence punishable u/s 420 IPC. The second set of charge in all the three cases is that the accused wilfully and also with

an intention to defraud the State Bank of India, falsified the accounts of the bank in respect of the aforesaid transaction and thereby committed an

offence punishable u/s 477A IPC in each of the cases. The third set of charge is that the accused by corrupt and illegal means of abusing his

position as Public Servant, obtained for himself pecuniary advantage to the extent of the afore-referred amount and thereby he committed the

offence punishable u/s 13(2) read with 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 in each of the cases.

5. The Trial Court has chosen to frame charges separately and take up the cases together as common evidence was sufficient to dispose of all the

three criminal cases. Based on the common judgment pronounced by the Trial

Court, three separate appeals have been preferred by the very same accused and therefore, all the three appeals have been taken up for common disposal by this Court.

6. The sum and substance of the material evidence adduced before the Trial Court is as follows:

a) Thiru. S. Subramaniam, PW1 was working as Manager of State Bank of India, City Branch, Coimbatore. The accused, who was serving as

Accountant in the City Branch, was in charge of Public Provident Fund (PPF) Accounts. The PPF accounts were directly dealt with by the

accused during the period from June 1990 to June 1993. In his capacity as Accountant, the accused was bound to verify the correctness of the

relevant entries made in Form "C", Ledger and Debit Vouchers relating to the PPF account holder.

b) S. Padmini Chary (PW3) was working as Chief Manager in State Bank of India, City Branch, Coimbatore at the relevant point of time. She

would depose that only on the written request of the PPF account holder by submitting a filled in and signed Form "C", the required amount would

be paid to the party concerned. She would further depose that cheques will be issued only in the name of the account holder after verifying the

entries of the debit voucher and the credit voucher and the relevant ledger by the Accounts Clerk and the Accountant. A reconciliation of the

transaction would be made with the Focal Point Branch at Ganapathy once in a month.

c) The bank officials including the Accountant are duty bound to compare the particulars of reconciliation statement. Exs.P7 to P11, Debit and

Credit Vouchers dated 6.5.1993, 9.5.1993 and 26.5.1993 were prepared and passed by the accused himself in his own handwriting. The account

pass books pertaining to the PPF account of V.R. Rubani (PW13), Gothawari Bai, mother of PW14 and M. Ramasamy (PW12) are marked as

Exs.P13, P14 and P15. Credit Voucher under Ex.P11 dated 26.5.1993 for Rs. 33,000/= from the PPF Account of Smt. Gothawari Bai was

prepared and passed by the accused himself in the name of his wife R. Vijaya Bai. Subsequently, the cheque dated 26.5.1993 (Ex.P16) for Rs.

33,000/= was drawn in the name of Vijaya Bai. No cheque from any of the PPF account would be prepared and passed in the name of a third

party. Another cheque, Ex.P17 for a sum of Rs. 63,000/= was prepared and passed on the basis of credit voucher under Ex.P10 to Karupannan,

PW5. No corresponding entry in respect of Debit Vouchers Exs.P7 and P8 were found in the Day Book, Ex.P1 and the other Registers, Exs.P2

and P3. The accused being an Accountant should have checked the corresponding entries in respect of Exs.P7 and P8 in the relevant registers,

Exs.P1 to P4. The corresponding entries in respect of Exs.P10, P11, P16 and P17 were not at all made by the accused in the relevant registers,

Exs.P5 and P6.

d) The accused handed over a confession letter, Ex.P19 dated 30.7.1993 to V. Natarajan, the then Manager of State Bank of India, SIDCO

Kurichi Branch (PW11), who, in turn, submitted the same in person to the Chief Manager, PW3. PW5 has spoken to the encashment of the

cheque and the credit made in his SB Account No. 9699 of Karur Vysya Bank, Oppanakara Street, Coimbatore on 8.5.1993.

e) G.Ambikavathi, PW8 was serving as a Clerk cum Cashier at the City Branch, State Bank of India, Coimbatore at the relevant point of time. He

prepared two cheques under Exs.P16 and P17 on the basis of Credit Vouchers, Exs.P11 and P10. PW7 had counterchecked those two cheques.

The job of preparing the cheque and credit vouchers was given to the Clerk Mr. P. Murugesan, PW10 at the relevant point of time, but, the

accused himself prepared the Debit and Credit Vouchers, Exs.P7 to P11. He could not carry out the corresponding entries in the Day Book,

Ex.P1 as he had no knowledge about the preparation of Debit and Credit Vouchers, Exs.P7 to P11. He identified the signature of the accused

found in Ex.P19.

f) Mr. N. Komathinayagam, the then General Manager, State Bank of India (PW2), having perused the relevant materials submitted to him in

connection with this case and having subjectively satisfied with the sufficient materials that are available for prosecution as against the employee

serving under his authority and control, passed the order of sanction, Ex.P12 to prosecute the accused.

7. On the side of the prosecution, as many as 16 witnesses were examined and 20 documents were marked. Neither oral nor any documentary

evidence was let in on the side of the accused. The points that arose for

determination in these appeals are whether the appellant has committed the offences punishable under Sections 420 IPC (3 counts), 477A IPC (3 counts) and 13(2) read with 13(1)(d)(ii) of the Prevention of Corruption Act (3 counts).

8. Learned Counsel appearing for the appellant would submit that the appellant was not the only person who was in charge of maintaining the PPF

account in the City Branch, Coimbatore. Many bank officials had dealt with the PPF account section. The account holders had deposed before the

court that the amount in their accounts were intact. The confession, Ex.P19 was allegedly given by the accused on 30.7.1993 but the first

information report would read that the consolidation of the PPF account was made by the accused during August 1993. The accused could not

have played any role in the month of August 1993 after his alleged confession dated 30.7.1993. The author of the first information report himself

has investigated this case. It is totally unfair and unjust for the police sleuth who investigate the matter when he was the author of FIR. No

complaint was given by the bank setting the law in motion. It is further submitted that the sanction for prosecution was given by PW2 without

application of mind. Therefore, the learned Counsel appearing for the appellant would submit that the evidence let in on the side of prosecution

does not establish beyond reasonable doubt that the accused committed various offences charged as against him.

9. Learned Public Prosecutor for the Central Bureau of Investigation (CBI) would submit that even if we construe that the sanction granted by

PW2 is defective, the court will have to see whether there was failure of justice. There is no material on record to show that there was failure of

justice on account of defective sanction. Therefore, the appellant cannot be directed to go scot-free on the ground that the sanction for prosecution

is defective. The accused has come out with an inconsistent stand as to his confession, Ex.P19. On the one hand, the appellant had taken a plea

that on account of coercion and enticement, he signed the confession letter. On the other hand, he would take a plea that Ex.P19 is not the

confession letter written by him. No complaint was given by the accused alleging that he was coerced or enticed to sign in the confession letter.

The learned Special Public Prosecutor would further submit that the officials who

worked along with him at the time of commission of the offence

has spoken to the handwriting and the signature of the accused found in the relevant documents produced before this Court. The accused, who

completely denies the offences committed by him, in fact, repaid a sum of Rs. 96,000/= to the bank. PW4 has spoken to the amount credited to

the joint account of the appellant and his wife based on banker's cheque, Ex.P16 and the Contractor, PW5 has also deposed before the court that

he received a sum of Rs. 63,000/= from the accused through the cheque, Ex.P17. Falsification of the accounts, cheating committed by the accused

causing loss to the bank and the corrupt means adopted by the appellant abusing his official position and pecuniary advantage availed for himself

have been established beyond reasonable doubt and that therefore, the judgment of the Trial Court does not warrant interference, he contends.

10. PW1, the Manager and PW3, the chief Manager of State Bank of India, City Branch, Coimbatore have categorically spoken to the work

assigned to the appellant. It is found from their testimony that the PPF accounts were directly dealt with by the appellant. His duty as Accountant is

to verify the correctness of the relevant entries made in Form "C", Ledger and Debit Voucher relating to the PPF account holder has been

deposed to by P.Ws.1 and 3. It is their categorical version that unless the account holder submits a filled in and signed Form "C", no amount will

be disbursed to him. Here, there was no request in Form "C" made by any of the PPF account holders. PW3 has deposed before the court that

cheques would be issued only to the account holder and not to third parties. Reconciliation of the accounts maintained by the branch at Focal Point

at Ganapathy was also not made by the Accountant. It is the assertion of PW3 that the Debit and Credit Vouchers, Exs.P7 to P11 dated

6.5.1993, 9.5.1993 and 26.5.1993 were prepared and passed by the appellant himself in his own handwriting. The testimony of PW3 in the

background of the documentary evidence would establish that the credit voucher under Ex.P11 dated 26.5.1993 for a sum of Rs. 33,000/=

relating to the PPF account holder Smt. Gothawari Bai was prepared and passed by the accused in the name of his wife vijaya Bai. He had also

drawn the cheque, Ex.P16 for the aforesaid amount of Rs. 33,000/= in the name of his wife. PW5 has deposed before the court that he received

the cheque, Ex.P17 dated 6.5.1993 for a sum of Rs. 63,000/= and the same was encashed by him. The accused had not discharged his duty by

making corresponding entries in the account books, Ex.P5 and P6 relating to the business transaction under Ex.P10, P11, P16 and P17. Mr. P.

Murugesan, PW10, the Clerk attached to City Branch, Coimbatore has categorically deposed before the court that he was assigned with the job

of preparing Debit and Credit vouchers, but, the appellant himself, contrary to the assignment protocol, prepared Exs.P7 to P11. It is his version

that he used to maintain the Day Book, Ex.P1. He did not make entry in Ex.P1 relating to the business transaction under Exs.P7 to P11 as it was

not brought to his knowledge by the appellant.

11. It is the admitted case that the appellant himself has subsequently made good the loss of Rs. 96,000/= to the bank. Of course, PW13, V.R.

Rubani and Banjilal, PW14 would depose that in the account of PW13 and also in the account of mother of PW14 no debit entry for the subject

transaction was made in their pass book. It is not the case of the prosecution that the pass books maintained by the account holders were also

tampered with by the appellant herein. The entire offence was committed without the knowledge of the customers as per the case of the

prosecution. No wonder, debit entries were not found in the respective pass books issued to the account holders. The bank officials who worked

along with the accountant have categorically identified not only the handwriting but also the signature of the appellant in the relevant documents

prepared by him. Therefore, the necessity to subject the documents required in this case for handwriting expert's opinion does not arise for

consideration. No complaint need be given by an aggrieved person to set the law in motion on coming to know of the commission of cognizable

offences. Police sleuth has every authority to set the law in motion by authoring the first information report.

12. The accused had taken an oscillating stand as regards the confession statement, Ex.P19 given by him. PW3 and PW11 have spoken in one

voice that the appellant handed over the confession letter, Ex.P9 to PW3, who, in turn, passed the same to PW11. The appellant has put

suggestions to the prosecution witnesses that he was coerced and enticed to put his signature in the confession letter. No evidence was let in on the

side of the accused to establish that there was coercion or enticement on the part of the bank officials to obtain the confession, Ex.P19. No

complaint had been lodged by the appellant alleging such coercion or enticement in obtaining Ex.P19 by the bank officials. There is no reason to

disbelieve the testimony of the colleagues of the accused.

13. The first information report, is not an encyclopaedia of the case of the prosecution. Based on the furtive information received by the

respondent, the first information report had been registered. The discrepancy with regard to the consolidation of accounts done by the accused

found in the first information report not authored by any of the bank officials, but, authored by the police sleuth, does not shake the very foundation

of the prosecution case.

14. The prosecution has established that the accused, having prepared the debit and credit vouchers himself, has issued banker's cheque to his

wife and a contractor, PW5 misusing his official position as public servant and obtained for himself pecuniary advantage to the total extent of Rs.

96,000/= and cheated the bank.

15. The learned Counsel appearing for the appellant submitted the ratio laid down by this Court in *Kalaiselvan Vs. The State*, wherein it has been

held that the officer who gives the first information report shall not conduct the investigation of the case.

16. The Honourable Supreme Court in *S. Jeevanantham v. State* 2004 SCC (CRI) 1584 has observed that the investigation by the complainant

Police Officer himself is quite permissible unless it is shown that the investigation done in that matter has caused prejudice to the accused. In yet

another case in *State v. V. Jayapaul* 2004 SCC (Cri) 1607, the Honourable Supreme Court has held that the investigation done by the Police

Officer, who lodged the first information report, can be challenged only on the ground of bias or real likelihood of bias in that matter of investigation

by the investigating officer concerned.

17. If it is a case where the Police Officer gives the first information report where his close relative was one of the victims of the occurrence which

culminated in lodging the first information report, then, in that case, the Police Officer should recuse himself from the process of investigation as it

would definitely culminate in biased investigation. But, in this case, based on the

furtive information received by the police sleuth, a case has been registered and impartially investigated culminating in laying charge sheet. Further, it is found that in this case that there is no material to show that investigation was a biased one prejudicing the interest of the accused.

18. This Court in *Charles Waker Devadas v. State by the Inspector of Police, etc.* 1993 LW (Cri.) 346, has held referring to the ratio laid down

by the Honourable Supreme Court in para 25 of the said judgment that the order of sanction is vitiated if it is a mere repetition of the allegation in

the charge sheet and was passed sans application of mind. It has been held therein that

It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for

sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself

contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show the facts placed before the

Sanctioning Authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest

defect in the prosecution, the entire proceedings are rendered void, ab initio. What the Court has to see is whether or not the Sanctioning Authority

at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may

come into existence after the grant of sanction is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a

solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions and must therefore be strictly complied

with before any prosecution can be launched against the public servant concerned.

In latest decision in *State v. T. Venkatesh Murthy* 2004 SCC (Cri.) 2140, the Honourable Supreme Court has held referring specifically to

Sections 19(3) and (4) of the Prevention of Corruption Act, 1988 that omission, error or irregularity in the matter of according sanction does not

affect the validity of the procedure unless the court comes to the decision that the earlier omission or irregularity has resulted in failure of justice.

19. Section 19(3)(a) of the Prevention of Corruption Act, 1988 would read that

no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under Sub-section (1) unless in the opinion of that court, a failure of justice has occasioned thereby. An analogous provision referred to above is also found enshrined in Section 465 of the Code of Criminal Procedure.

20. In Charles Waker Devadas's case, pronounced by this Court, neither the provision u/s 19(3)(1) of the Prevention of Corruption Act nor

Section 465 of the Code of Criminal Procedure was brought to the notice of this Court. In T. Venkatesh Murthy's case, the court held that mere

omission or error in the matter of according sanction does not affect the validity of the procedure. In the instant case, it is found that the sanctioning

authority viz., PW2, having adverted to the materials available on record, returned a finding after satisfying subjectively that it is a fit case for

launching prosecution as against the appellant herein, accorded sanction. Even assuming for the sake of arguments that certain documents were not

referred to by him while passing the order of sanction for prosecution, the irregularity committed by the sanctioning authority will not nullify the

whole proceedings unless failure of justice has occasioned. Here, in this case, in the considered opinion of this Court, no failure of justice has

occasioned to the accused.

21. The Trial Court has rightly returned a verdict based on the clinching materials available on record that the appellant did commit the offences

punishable u/s 420 IPC (3 counts), u/s 477A IPC (3 counts) and u/s 13(2) read with 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 (3

counts) Therefore, there is no warrant for interference with the well considered judgment passed by the Trial Court.

22. Coming to the quantum of sentence, the court finds that the petitioner has waited for about nine long years for the disposal of this case after

preferring the appeal. He had also made good the loss occasioned to the bank. Considering the above facts and circumstances of the case,

sustaining the imposition of fine awarded for each of the offences u/s 420 IPC (3 counts), u/s 477A IPC (3 counts) and u/s 13(2) read with 13(1)

(d)(ii) of the Prevention of Corruption Act, 1988 (3 counts), the sentence of

imprisonment for one year for each of the offences u/s 420 IPC (3 counts), u/s 477A IPC (3 counts) and u/s 13(2) read with 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 (3 counts) is awarded. The substantive part of the sentences shall run concurrently.

23. With the above modification with respect to the sentence part of the judgment, the appeals stand dismissed. The appellant is directed to undergo the unserved part of sentence. The Trial Court shall issue warrant to secure the custody of the appellant to undergo the unserved part of sentence.