

(2010) 07 MAD CK 0108
In the Madras High Court
Case No : Criminal Appeal No. 399 of 2001

K. Ramachandran

APPELLANT

Vs

Superintendent of Police, CBI, (ACB)

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 465(2)
Penal Code, 1860 (IPC) — Section 409, 420, 477(A)
Prevention of Corruption Act, 1947 — Section 6(2)
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 13(1), 13(2)

Citation : (2010) 07 MAD CK 0108

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : R. Shanmugha Velayutham for J. Vijayaraghavan, for the Appellant;
N. Chandrasekaran, Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Sudanthiram, J.—The appellant herein is the accused in C.C. No. 198 of 1997 on the file of the learned Principal Special Judge for CBI

Cases, Chennai and he stands convicted for the offences under Sections 409, 420 (19 counts), 477(A) of I.P.C. and Section 13(1)(c) & (d) r/w.

13(2) of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 100/-, in default, to

undergo rigorous imprisonment for six months for each charge. (Total fine of Rs. 2,300/-). Aggrieved by the said conviction and sentence, the

appellant has preferred this criminal appeal.

2. The case of the prosecution, in brief, is as follows:

During the year 1994, the accused Ramachandran was functioning as a Senior Commercial Clerk in the office of the Chief Booking Supervisor,

Southern Railway at Jolarpet. During that relevant period, the paper tickets were prepared in triplicate carbon copy and one copy would be given to the passenger and another copy would be given to the accounts Section and the third copy would be retained in the book itself. The passengers entrusted the train fair to the accused. The accused entered the actual train fair in the passengers form but he has entered the lessor amount in the counter part. Similarly, from 19 passengers, he received the actual fair totally in a sum of Rs. 8,542/- and out of that amount, he had shown in the counter part only a sum of Rs. 1,645/- and remitted the said amount and misappropriated the balance amount of Rs. 6,897/-. On 07.07.1995, as per the instructions of the Senior Officer, P.W.3 and his colleague proceeded to the Jolarpet railway station and also verified the records. On verification of records, it was found that on various dates, the accused had entered false account in the counter part and thereby misappropriated the amount as mentioned above. Then the accused has also admitted his guilt and mentioned that even on earlier occasion, he had committed the similar offence of misappropriation totally to the tune of Rs. 1,00,000/- and he was prepared to repay the amount. The accused has given written acknowledgment under Ex.P.93 and also paid a sum of Rs. 10,000/- on the same day i.e., on 07.07.1995 towards the part payment of misappropriated amount.

(ii) P.W.11, the Inspector of Police, CBI, had registered a case against the accused and prepared the First Information Report Ex.P.110. P.W.12, the Inspector of Police, who took up further investigation in this case, had obtained the specimen signatures from the accused and sent the same to the Handwriting Expert Opinion for comparison. P.W.9, handwriting expert, also has given his opinion with the detailed reasons in Ex.P.103 series. P.W.12, the Investigating Officer, has also obtained the sanction order under Ex.P.1 from the competent authority and filed the final report against the accused.

3. In order to establish the case, the prosecution examined P.Ws.1 to 12; marked Exs.P.1 to P.110. The accused was questioned u/s 313 Cr.P.C.

with regard to the incriminating circumstances and he denied his complicity. On behalf of the accused, D.Ws.1 to 4 were examined and Exs.D.1 to

D.4 were marked.

4. D.W.1 is the Officer who had accompanied P.W.3. D.W.2 is the Vigilance Inspector of Police at Southern Office who had not conducted any independent enquiry regarding the alleged misappropriation. D.W.3 was employed as the Deputy Chief Accounts Officer, Traffic Southern

Railway at Chennai. He deputed P.W.3 and P.W.1 in connection with the present case to Jolarpet Junction and gave them instruction orally to

verify the accounts. The accused examined himself as D.W.4. He had deposed that he had not signed in some of the documents and he denied the

contents of the documents as being written by him. He had also deposed that he was threatened to write the sentences in Ex.P.93. Further, on

07.07.1995, the Inspector of Police, CBI and Rule 3 Inspector also were present and threatened him to write the sentences in Ex.P.97 also. He

has also deposed that a sum of Rs. 10,000/- was paid on 07.07.1995 by one Mr. Sampath and not by him and on 08.07.1995, one Mr.

Kanagaraj pledged certain jewels at Jolarpet State Bank and obtained a loan of Rs. 40,000/- and the accused had pledged his jewels for a sum of

Rs. 50,000/- and the said amount was paid only at the compulsion by the CBI Officer. Totally, a sum of Rs. 1,00,000/- was paid only by him at

the compulsion of the CBI Officer.

5. The Trial Court, after analyzing the oral and documentary evidence, found the accused guilty and sentenced him as already stated above.

6. Mr. R. Shanmugha Velayutham, learned Senior Counsel appearing for the appellant/accused has submitted that the sanction is not proper in this

case and the same was not given by the competent authority. The Senior Commercial Manager is not the competent authority to remove the

accused from service and it was only the General Manager, who was the competent authority to remove the accused from service. The learned

Senior Counsel further submitted that the trial Court ought to have taken into consideration the evidence of D.W.4. D.W.4 had specifically stated

that Exs.P.93 and 97 are not given by him voluntarily.

7. Per contra, the learned Special Public Prosecutor for CBI Cases submitted that P.W.1, the Senior Commercial Manager had specifically stated

that he was the competent authority to take disciplinary proceedings against the accused including removal from service and as such, he is the

competent authority and no relevant documents are filed by the defence or in the

cross-examination, it is not established that it is only the General Manager, who is the competent authority to remove the accused from service. It is further submitted that to prove the charge of misappropriation by the accused, the relevant documents viz., Exs.P.2 to P.87 were marked and the accused also admitted before the officials about his guilt and also paid a sum of Rs. 10,000/- on 07.07.1995 as mentioned in Ex.P.94. Further, he has paid a sum of Rs. 90,000/- on 08.07.1995 as mentioned in Exs.P.95 and 96. The confession statement of the accused is also marked as Ex.P.97.

8. This Court has considered the submissions made by both parties and perused the materials available on record.

9. Though it is contended by the learned Senior Counsel appearing for the appellant/accused that Ex.P.1-sanction order was not given by a competent authority, P.W.1-the Senior Commercial Manager specifically had given evidence stating that during the relevant period, he was working as a Divisional Commercial Manager and he was the competent authority to take disciplinary action against the accused including removal from service. Even in Ex.P.1, he had stated that he was the competent authority to remove the accused from service and during Cross-examination, he has also denied the suggestion put forth by the defence that the General Manager alone is the competent authority to remove the accused from service. Therefore, the contention of the learned Senior Counsel that P.W.1 was only an authority to take disciplinary proceedings and not for removing the accused from service cannot be accepted.

10. Section 19 of the Prevention of Corruption Act reads as follows:

19. Previous sanction necessary for prosecution.- (1) No Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under Sub-section (1) should be given by

the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would

have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) 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, commission or irregularity in, the sanction required under Sub-section (1), unless in the opinion of that

Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority

unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any

interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under Sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted

in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the

proceedings.

Explanation.- For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or

with the sanction of a specified person or any requirement of a similar nature.

11. It is held by the Hon'ble Supreme Court in the decision reported in 1999 SCC (Cri.) 1494 (CBI v. V.K. Sehgal) at paragraph No. 10 as

follows:

A Court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or

irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining

whether want of valid sanction had in fact occasioned failure of justice the aforesaid Sub-section (2) enjoins on the court a duty to consider

whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly

sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the

trial stage cannot possibly sustain such a plea made for the first time in the appellate court. In *Kalp Nath Rai v. State* this Court has observed in para

29 thus:

29. Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if

objection thereto was raised at the first instance itself. The Sub-section only says that "the court shall have regard to the fact" that objection has

been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was

raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void

trial".

12. It is also held by the Hon'ble Supreme Court in the decision reported in 2004 SCC (Cri) 2140 (*State v. T. Venkatesh Murthy*), at paragraph

No. 14 as follows:

In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of Sub-section (3) relating to question

regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the

validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same

logic also applies to the appellate or revisional court. The requirement of Sub-section (4) about raising the issue at the earliest stage has not been

also considered. Unfortunately, the High Court by a practically non-reasoned

order, confirmed the order passed by the learned trial Judge. The orders are, therefore, indefensible. We set aside the said orders. It would be appropriate to require the trial court to record findings in terms of

Clause (b) of Sub-section (3) and Sub-section (4) of Section 19.

13. In the decision of the Hon''ble Supreme Court reported in (2007) 1 SCC (Cri.) 193 (Prakash Singh Badal v. State of Punjab) in paragraph

No. 8, it was observed as follows:

8. The effect of Sub-sections (3) and (4) of Section 19 of the Act is of considerable significance as noted in Prakash Singh Badal v. State of

Punjab. In Sub-section (3) the stress is on ""failure of justice"" and that too ""in the opinion of the court"". In Sub-section (4), the stress is on raising

the plea at the appropriate time. Significantly, the ""failure of justice"" is relatable to error, omission or irregularity in the sanction. Therefore, mere

error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or (sic failure of justice) has been

occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction. Sub-section (3)(c) of Section 19 reduces

the rigour of prohibition. In Section 6(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as ""the old Act"") corresponding to

Section 19(2) of the Act, question relates to doubt about authority to grant sanction and not whether sanction is necessary.

14. In view of the ratio laid down by the Hon''ble Supreme Court in the above said cases, the accused cannot be acquitted on the ground of mere

error in sanction since it is not possible to hold that failure of justice had been occasioned or resulted in this case.

15. P.W.2 was working as a Chief Booking Supervisor in the Jolarpet booking office at Southern Railway. He had deposed that he knows the

handwriting of the accused. He had specifically pointed out the documents contained in the paper tickets issued by the accused and the

corresponding carbon copies. The amounts shown in the carbon copy of the paper tickets were less and those documents are in the handwriting of

the accused. The handwriting expert also has given his opinion confirming that those writings were made by the accused. The accused was

examined himself as D.W.4. He had denied his signatures in Exs.P.3, P.8, P.12, P.15, P.21, P.26, P.30, P.35, P.40, P.45, P.50, P.55, P.60,

P.65, P.69, P.73, P.77, P.82 and P.86. These are all the counter foils related to the paper tickets.

16. For example, Ex.P.3, which the accused denied, bears the serial No. 320629 and in the said document, the amount is mentioned as Rs. 152

wherein Ex.P.2, which bears the same serial number, the amount is mentioned as Rs. 43. As the accused has not denied his handwriting in Ex.P.2,

then the corresponding document with same serial number issued bears the same amount. The original blank paper tickets and its counter foil

should be prepared at one and the same. If not, then the accused only is responsible for such preparation. The denial of the accused cannot be

accepted. Further, P.W.3-Senior Travelling Inspector of accounts, on instruction of the Officer, noticed the irregularity and also gave his report

under Ex.P.93 to the Divisional Manager. In Ex.P.93, the accused had stated that due to his family circumstances, he had resorted the fraudulent

carbon tickets and misappropriated the railway cash of Rs. 1,00,000/-. He has also paid a sum of Rs. 10,000/- on 07.07.1995 towards part

payment of misappropriation. Subsequently, on 08.07.1995, he has paid the total sum of Rs. 90,000/- and for the payment of Rs. 1,00,000/-,

receipts Exs.P.94 to P.96 also issued by the Commercial Department, Southern Railway. Ex.P.97 is the confession statement given by the accused

to P.W.2. The evidence of D.Ws.1 to 3 does not help in any manner the denial version of the accused, who examined himself as D.W.4. In fact

D.W.4 had admitted in his evidence about the payment of Rs. 1,00,000/- made by him towards the misappropriated amount. The prosecution had

proved the guilt of the accused beyond reasonable doubt. This Court does not find any infirmity in the Judgment given by the trial Court convicting

the accused.

17. The learned Senior Counsel appearing for the appellant/accused had prayed for leniency with regard to the sentence imposed on the accused

and also prayed for the sentence of rigorous imprisonment to be modified as simple imprisonment.

18. Considering the submission made by the learned Senior Counsel appearing for the appellant/accused, this Court confirming the conviction

modifies the sentence of rigorous imprisonment for one year imposed on the accused as the sentence of simple imprisonment for one year. The fine

amount imposed on the appellant/accused by the Trial Court are confirmed.

19. Except with the above modification, this Criminal Appeal is dismissed.