

Madras High Court
B. Madappan vs The State By

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.02.2018
Pronounced on: 26.02.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos. 782 & 848 of 2003

- | | |
|----------------|--|
| 1. B. Madappan | ... Appellant/1st Accused
in CrI.A.No.782 of 2003 |
| 2. R. Kittan | ... Appellant/2nd Accused
in CrI.A.No.848 of 2003 |

/versus/

- | | |
|---|---|
| 1. The State by
The Deputy Superintendent of Police,
C.B.C.I.D, Nilgiris Coimbatore | ... Respondent/Complainant |
| 2. The State of Tamil Nadu
Rep.by Deputy Superintendent of Police,
CB CID Nilgiri at Coimbatore,
(Crime No.1/97) | ... Respondent/Complainant
in CrI.A.No.848 of 2003 |

PRAYER in CrI.A.No.782 of 2003: Criminal Appeal is filed under Section 374 of Cr.P.C r/w

PRAYER in CrI.A.No.848 of 2003: Criminal Appeal is filed under Section 374 of Cr.P.C r/
For Appellant : Mr. R.Rajasekaran
in CrI.A.No.782 of 2003

For Appellant : Mr. S.Ashok Kumar, Senior Counsel
in CrI.A.No.848 of 2003 for Mr.C.D.Johnson

For Respondent : Mr. P.Govindarajan,
in both the appeals Additional Public Prosecutor

COMMON JUDGMENT Batch of appeals arising from the judgements of the trial court in Special C.C.No.4 to 12 of 2001 on the file of District and Sessions/Special Court, Udthagamandalam, Nilgiris District traces its root to a common complaint.

2. In Special C.C.No.12 of 2001, the accused persons Thiru.B.Mathappan (A1) and Thiru. R.Kittan (A2) who are now appellants before this court are public servants employed in Education Department as Assistant Elementary Education Officer (AEEO) and Junior Assistant respectively at Kothagiri Additional Elementary Educational Office. The charges against them are criminal breach of trust, misappropriation, forgery, and using forged document as genuine, falsification of accounts, creation of false documents and abuse of official position for illegal pecuniary advantage.

3. The criminal law has been set into motion based on the complaint lodged by Thiru.R.Narayanasamy Director of Elementary Education on 17.09.1997 detailing out several instances of falsification of accounts, financial irregularities including misappropriation and forgery. Though the complaint named only Mathappan (AEEO) and Thathan (AEEO) as suspects of crime, in the course of the investigation apart from these two named accused, few others working in the Kothagiri Assistant Elementary Education Office were also found involved in the crime, resulting in 9 separate final reports against the persons involved in respective act of forgery, misappropriation, creation of false documents and falsification of accounts.

4. The present appeals Crl.A.No.782 and 848 of 2003 arises from the judgement in Special C.C.No.12 of 2003 wherein Thiru. Mathappan (A-1) appellant in Crl.A.No.782 of 2003 found guilty of offences under sections 467, 477 A, 409 IPC and 13(2) r/w 13(1)(c) and (d) of PC Act and sentenced to undergo R.I for a period of 5 years and pay fine of Rs.2,000/- each in default S.I. of 6 months each. He was also found guilty of offence under section 471 IPC and sentenced to undergo 2 years R.I and to pay a fine of Rs.1,000/- in default simple imprisonment of 3 months. The period of sentence to run concurrently along with the sentence imposed in Special C.C.No.4/2011, 10/2001, 11/2001 and 12/2001.

5. The Appellant in Crl.A.No.848/2003, Thiru. Kittan A-2, found guilty of offences under section 467, 477A, 409 r/w 109 IPC and Section 13(2) r/w 13(1)(c)(d) of PC Act, 1988 and sentenced to undergo R.I for period of 5 years and pay fine of Rs. 2000/-each in default S.I. of 6 months each. Also found guilty of offence under section 471 IPC and sentenced to under R.I for 2 years and to pay fine of Rs 1,000/- in default simple imprisonment for 3 months. The period of sentence to run concurrently along with sentence imposed in Spl.C.C. 4 of 2001, 8/2001, 9/2001, 10/2001, 11/2001 and 12/2001.

Case of the Prosecution in brief:

6. Between 12.10.1994 and 11.10.1995 while A-1 was the serving as Assistant Elementary Education Officer and A-2 as Junior Assistant in the Assistant Educational Office, Kotagiri, A-1 as pay drawing officer, was responsible for drawing money from the Sub-treasury, presentation of bills towards the salary of the teachers. He was authorised to draw Teachers Provident Fund at the request of the respective teachers working under his jurisdiction and distribute it to them immediately. A-2 who was working under A-1 as Junior Assistant was entrusted with the responsibility of preparing the pay bills of the teaching staff, to maintain MTC 70 register, Cash book, disbursement register, undisbursement register, pay register etc. A-1 and A-2 having access to the records and dominion over the property viz., salary and other bills like Provident Fund, had forged the signatures, created

false documents, used the forged document as genuine and also dishonestly misappropriated cash entrusted to them, besides pecuniary advantage by illegal means.

7. Precisely, Special C.C.No. 12 of 2003, the charges against the appellants are to cheat and misappropriate a sum of Rs.2,11,224/- from the Provident Fund accounts of PW.2 [Gayathri devi], PW.3 [Paripoornam], PW.5 [Saraswathi], PW.8[Madhan], PW.6 [Thomas] and PW.7 [Stella Margarette] signatures were forged or obtained without payment in the disbursement register and had falsified the Account as if the said amount was paid to them. The PF amount payable to these teachers had been misappropriated by A-1 with the aid and assistance of A-2. Thereby A-1 had committed offences punishable under sections 467, 471, 477A, 409 IPC and 13(2) r/w 13(1)(c) and (d) of PC Act and A-2 had committed offences punishable under section 467, 471, 477-A, 409 r/w 109 IPC and 13(2) r/w 13 (1)(c) and (d) of PC Act, 1988.

8. To substantiate the charges the prosecution has examined 16 witnesses and marked 94 exhibits. The trial court has found the prosecution case proved and held the accused guilty of charges and sentenced them as stated supra.

9. Aggrieved by the judgement of sentence, this A1 [Mathappan] has preferred C.A.No. 782 of 2003 and A2 [Kittan] has filed C.A.No.848 of 2003.

10. The learned Counsel appearing for the appellant Thiru.Mathappan the first accused/appellant in Crl.A.No.782 of 2003, would submit that, the prosecution has not made out any offence against this appellant. Even according to the prosecution witnesses, it was the second accused who as Junior Assistant was maintaining the records and the bills were prepared by A-2. The handwriting of the accused were not obtained for comparison with the disputed signature to prove forgery. The evidence of PW-1 cannot be relied upon since its is purely based on the report of Tmt.Umarani who was not examined as prosecution witness. In the absence of mensrea, for the omission and commission of the subordinate, this appellant who was the head of the office as Additional Assistant Elementary Education Officer cannot be criminally held liable.

11. On behalf of the second accused/appellant in Crl.A. No. 848 of 2003, the Learned counsel would submit that, the trial court has miserably failed to note that to allege criminal breach of trust by public servant, it should satisfy the twin requirement namely entrustment or dominion with property and dishonest misappropriation or conversion for his own use. In this case the prosecution has proved neither entrustment nor dominion over the property. The case as projected by the prosecution against this appellant would not attract the ingredients of section 477A, 409 IPC or the section 13(1) (c) and (d) of PC Act.

12. The responsibility of maintaining records like MTC 70 register, disbursement registers, cash book, UDP and pay register alone entrusted to him and the actual payment, correspondence regarding TPF advances and requisition are carried out under the supervision and direction of A-1 and he alone has dominion over the affairs.

13. In this case the prosecution has failed to prove the appellant as Junior Assistant was entrusted with the dominion over the property and taking advantage of the said dominion over the property, he has abetted A-1 to misappropriate the money. The case as projected by the prosecution against this appellant would not attract the ingredients of section 477-A, 409 IPC or the section 13(1) (c) and (d) of PC Act. In the absence of proof to show this appellant forged the acquaintance register, the trial court judgment of conviction is liable to be set aside.

14. Per contra, the learned Additional Public Prosecutor would submit that, A-1 as AEEO has to periodically verify the registers regarding remittance and acquaintance. He is the officer responsible for the supervising the proper maintenance of and records. He and A-2 had connived and had misappropriated the PF money of PW.2 [Gayathri devi], PW.3 [Paripoornam], PW.5 [Saraswathi], PW.8 [Madhan], PW.6 [Thomas] and PW.7 [Stella Margarete] by forging their signature in the acquaintance register or by obtaining their signature without paying the money. The evidence of PW.2 [Gayathri Devi], PW.3 [Paripoornam], PW.5 [Saraswathi], PW.8 [Madhan], PW.6 [Thomas] and PW.7 [Stella Margarete] denying the signature found in Ex.P-4 Her admitted signatures found in Ex.P-5 Medical Leave letter and the specimen signatures Ex.P-6 does not tally with the signature found in the acquaintance register Ex.P-4. This proves beyond doubt the case of forgery and use of forged document as genuine by the accused persons to misappropriate Rs.2,11,224/-. The signature found in Ex.P.4 is proved to be forgery through expert evidence. Thus, the prosecution has proved beyond reasonable doubts the charges against the appellants hence the trial court judgement has to be confirmed.

Point for consideration Whether the Trial Court finding that prosecution has proved forgery, falsification of accounts and misappropriation beyond reasonable doubt is subjected by the evidence?

15. PW.2 [Gayathri Devi] had deposed that she gave an application seeking Rs.3,000/- as PF advance to meet out her family expenses though she applied on 12.10.1994 she got the money only during the month of August 1997. Ex.P.4 the acquaintance register for disbursement of Rs.3,000/- has been identified by her. She has specifically stated that no signature found in the acquaintance register, she was never asked to sign in the acquaintance register.

16. Perusal of Ex.P.4 proves the evidence of PW.2. Though stamp is affixed and name of PW.2 is written in Ex.P.4 there is no signature on the Revenue Stamp. According to the PW.2 after lapse of several years A2 gave the money to her. While PW.2 has given her application for advance of Rs.3,000/- from her PF account on 27.09.1994 vide her letter marked as Ex.P.5, the money has been given to her by A2 only during the month of August 1997. In the acquaintance register it appears as if a sum of Rs.3,000/- has been disbursed to PW.2 [Gayathri Devi] on 12.10.1994. Along with PW.2 [Gayathri Devi] five others were also appears to have been received advances on that day. While only 3 of them have signed, PW.2 [Gayathri Devi] and PW.3 [Paripoornam] have not signed in the acquaintance register. However, A1 as Assistant Educational Officer has affixed its seal and signature in the consolidate statement as if a sum of Rs.50,000/- disbursed to five staff including [Gayathri devi] Rs.3,000/- and PW.3 [Paripoornam] Rs.10,000/- Through the evidence of [Gayathri Devi] PW.2 and evidence of PW.3 [Paripoornam], the prosecution has proved that though in the

acquittance register a sum of Rs.3,000/- to [Gayathri Devi] and a sum of Rs.10,000/- to PW.3 [Paripoornam] being disbursed on 12.10.1994, in fact for PW.3 and PW.4 the payment has not been disbursed the signatures have not been obtained in the acquittance register but it is shown in the consolidated account as if they were paid on that day. Later the money after several years paid to these two witnesses by A2. This one piece of evidence is singularly enough to hold A1 and A2 guilty of the offence charged against them.

17. Perusal of the evidence given by PW.5 [Saraswathi], this Court finds that she retired on 21.12.1994 applied for the provident fund money which is entitled. However, she was not paid money and there was a delay in disbursement. Therefore, she gave her representation to District Collector, she admits her signature in the acquittance register marked as Ex.P.17. Perusal of Ex.P.17 indicates that on 11.07.1995 a sum of Rs.22,848/- was encashed and disbursed to PW.5 [Saraswathi]. Though PW.5 has deposed that the money was given to her belatedly, since she admits her signature the appellant herein are liable only for the temporary misappropriation whatsoever in the matter of PW.5. However, the prosecution has proved beyond doubt misappropriation and falsification of account in respect of PW.2 PF account and PW.3 PF account which is sufficient to hold that them for offence under 447, 471, 477-A and 409 IPC and 13(2) r/w 13(1)(c)(d) of PC Act.

18. In respect of disbursement of Provident Fund amount to PW.8 [Madhan], PW.6 [Thomas], PW.7 [StellaMargarette] and PW.12 [Raju] their evidence is cogent and consistent in respect of belated payment of Provident Fund though the respective entries found in the acquittance register indicates that the amount was encashed and disbursed to them much earlier. They have got their money only after lodging complaint to the higher official and thereafter A2 has given them the balance money. The delay in payment ranges from two months to 2 = years. The signature found in the acquittance register also does not tally with the specimen signature compared by expert however, this witnesses are not sure about the fact. Whether they have signed in the acquittance register are not but the belated payment of the money proves the temporary misappropriation by A1 and A2 and endorsement made in the acquittance register by A1 as if the money was disbursed to the respective claimants is a false entry and for the said offence he is squarely liable.

19. Ex.P.94 in G.O.M.s.No.1229 dated 13.12.1994 specific the duties and responsibility of AEO. A1 who was holding the post of AEO is responsible for withdrawal of allowance and disbursement of the same to the teachers. He has to supervision the maintenance of registers and sign in the payment acquittance registers endorsing the disbursement made on a particular day. From Ex.P.4 and Ex.P.6, it is proved by prosecution that without getting the signature of concern person namely PW.2[Gayathri Devi] and PW.3 [Paripoornam] records been created as if they were paid Rs.3,000/- and Rs.10,000/- respectively on 12.10.1994. Similarly Ex.P.13 the acquittance register pertaining to the PW.8 [Madhan], though it is recorded in the acquittance register as if he was paid Rs.64,149/- on 12.01.1995. The complaint of [PW.8] Madhan. Ex.P.12 reveals that till 11.09.1995 he was not paid his PF money in spite of being retired on 01.08.1994. Ex.P.14 though it appears that on 06.03.1995 PW.8 was paid Rs.21,386/-. According to PW.4 the said money was paid to him only after 3 = years. The hand writing expert who compared the disputed signature of [PW.8] Madhan found in Ex.P.13 and Ex.P.14 with that of the admitted signature as deposed that it was not possible for him to give any opinion about the signatures. Therefore, it can be taken has not proved of allegation regarding

misappropriation and forgery in respect of Provident fund amount stood in the name of PW.8 [Madhan].

20. PW.6 [Thomas] had deposed pointing out the discrepancy in the disbursement acquittance register and variation in signature. Due to delay in payment of his PF amount, he had gave a complaint to District Educational Office which is marked as Ex.P.21. Though he applied for the loan of Rs.30,000/- from his PF account as per the Ex.P.25, only a sum of Rs.11,092/- has been disbursed to him on 20.09.1995.

21. PW.7 [Stella Margarete] admits the signature found in the acquittance register marked as Ex.P.29. Therefore the case of forgery will not arise in her case but belated payment despite encashment is found to be proved through her complainant Ex.P.33 and correction in the date is marked as Ex.P.29.

22. PW.12 [Raju] who retired from service in the July 1995, has applied for his PF amount immediately after his retirement since he was not paid the PF he has given a complaint to AEO on 21.01.1997 which is marked as Ex.P.67 and another complainant on 01.08.1997 which is marked as Ex.P.68. Only thereafter, A2 has gone to the house of PW.12[Raju] and gave the money to him. However, on perusal of the Acquittance Register marked as Ex.P.66 it appears that a sum of Rs.23,430/- was disbursed to PW.12 [Raju] on 04.07.1995. The signature found on the stamp paper of the Acquittance register has been subjected to comparison with the admitted signature. From the opinion of the expert which is marked as Ex.P.85, it is established that the signature found in the acquittance register marked as Ex.P.66 showing as if Raju [PW.12] has received the money on 04.07.1997 itself is not the signature of Raju [PW.12] had been forged by someone else.

23. No doubt the prosecution has not taken the signature of the accused person to fix the person who has forged the signature of Raju [PW.12] in Ex.P.66 the acquittance Register. But the fact remains, the said register is maintained by A2 and it is under the overall custody of A1. The duties and responsibility of A1 is listed out in the G.O.M.s.128 dated 30.12.1994 which is marked as Ex.P.94 which makes very clear that neither A1 nor A2 can shift the blame to other accused person and escape the criminal liability of forgery found in the record kept under their custody, falsification of entry in the account of misappropriation of money which belongs to PW.2 [Gayarathi Devi] and PW.3 [Paripoornam] but holding the money without disbursing the same but falsifying the record as if the money was paid to them.

24. In the light of the above discussion and the analysis of the evidence let in by the prosecution, though the trial Court judgment has missed some of the lacuna in the prosecution case but overall finding of the Trial Court is un impeccable and requires no interference. Since most of the victims have deposed that after complainant to the authorities and commencement of investigation by the Police, they have received back the money either in full or substantially. This Court finds that the period of sentence shall be modified taking note of the mitigate circumstances and the period lost in disposing the appeal.

25. In the result, this court finds no ground to interfere with the Trial Court judgment. Accordingly, the Criminal Appeal No.782 of 2003 and 848 of 2003 are dismissed. The judgment of the Trial Court in C.C.No.12 of 2001 dated 30.04.2003 are hereby confirmed.

26. While dismissing the appeals, this court modifies the period of sentence by reducing the sentence to one year sentence stand unaltered.

Rank of the accused Conviction under Section Sentence imposed by the Trial Court Sentence modified by this Court.

A1 Under Section 467, 477-A, 409 IPC and 13 (2) r/w 13 (1) (c) & (d) of PC. Act Under Section 471 IPC To undergo 5 years R.I and a fine of Rs. 2,000/- each in default 6 months S.I To undergo 2 years R.I and a fine of Rs. 1,000/- in default 3 months S.I To undergo 1 year R.I and a fine of Rs. 2,000/- each in default 6 months S.I To undergo 1 year R.I and a fine of Rs.1,000/-in default 3 months S.I A2 Under Section 467, 477-A, 409 r/w 109 IPC and 13 (2) r/w 13 (1) (c) & (d) of PC. Act Under Section 471 IPC To undergo 5 years R.I and a fine of Rs. 2,000/- each in default 6 months S.I To undergo 2 years R.I and a fine of Rs.1,000/- in default 3 months S.I To undergo 1 year R.I and a fine of Rs.2,000/- each in default 6 months S.I.

To undergo 1 year R.I and a fine of Rs.1,000/- in default 3 months S.I

27. For A1, the period of sentence for each offence shall run concurrently along with the sentence imposed on A1 in Special C.C.Nos.4/2001, 10/2001 and 11/2001 as modified in Crl.A.Nos.774 of 2003, 780 of 2003 and 781 of 2003. Similarly, the period of sentence imposed on A2 shall run concurrently along with the sentenced imposed in Special C.C.Nos.4/2001, 8/2001, 9/2001, 10/2001 and 11/2001 as modified in Crl.A.Nos.843 of 2003, 844 of 2003, 845 of 2003, 846 of 2003 and 849 of 2003 are ordered to run concurrently.

The period of sentence already undergone shall be set off under Section 428 of Cr.P.C.

26.02.2018 Index:yes/no Internet:yes/no bsm To

1. The learned Special Judge, Nilgiri, Udthagamandalam.
2. The Deputy Superintendent of Police, C.B.C.I.D, Nilgiri, Coimbatore
3. The Additional Public Prosecutor, High Court, Madras.

Dr.G.Jayachandran,J.

Bsm Pre-delivery judgment made in Criminal Appeal Nos.782 & 848 of 2003 26.02.2018