

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.780 & 845 of 2003

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| 1. B. Madappan | ... Appellant/1st Accused<br>in CrI.A.No.780 of 2003 |
| 2. R. Kittan   | ... Appellant/2nd Accused<br>in CrI.A.No.845 of 2003 |

/versus/

- |  |                            |
|--|----------------------------|
| 1. The State by<br>The Deputy Superintendent of Police,<br>C.B.C.I.D, Nilgiri  | ... Respondent/Complainant |
| 2. The State of Tamil Nadu<br>Rep.by Deputy Superintendent of Police,<br>CB CID Nilgiri at Coimbatore,<br>(Crime No.1 of 97) | ... Respondent/Complainant |

PRAYER in CrI.A.No.780 of 2003: Criminal Appeal is filed under Section 374 of Cr.P.C r/w

PRAYER in CrI.A.No.845 of 2003: Criminal Appeal is filed under Section 374 of Criminal

For Appellant : Mr. T.R.Ravi  
in CrI.A.No.780 of 2003

For Appellant : Mr. S.Ashok Kumar, Senior Counsel  
in CrI.A.No.845 of 2003 for Mr.C.D.Johnson

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

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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.10/2001, the accused persons Thiru.B.Mathappan (A-1) and Thiru. R.Kittan (A-2) 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 use of 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 B. 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.780 & 845 of 2003 arises from the judgement in Special C.C.No.10 of 2001 wherein Thiru. Mathappan (A-1) appellant in Crl.A.No.780 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 pay 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 4/2011, 10/2001, 11/2001 and 12/2001.

5. The Appellant in Crl.No.845 of 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.2,000/-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 pay fine of Rs.1,000/- in default simple imprisonment for 3 months. The period of sentence to run concurrently alone with sentence imposed in Special C.C.No.4 of 2001, 8 of 2001, 9 of 2001, 11 of 2001 and 12 of 2001.

#### Case of the Prosecution in brief:

6. Between 04.03.1996 and 03.08.1996 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, in this case, to cheat and misappropriate a sum of Rs.40,342/- from the Provident Fund account of Tmt.Suguna, her signature was forged in the disbursement register and had falsified the Account as if the said amount was paid to her. The PF amount payable to Smt.Suguna had been misappropriated by A-1 with the aid and assistance of A-2. Thereby A-1 had committed offences punishable under sections 467, 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, 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 10 witnesses and marked 57 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, these two appeals are preferred.

10.The learned Counsel appearing for the appellant Thiru.Mathappan the first accused/appellant in Crl.A.No.780 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 was not obtained for comparison with the disputed signature to prove forgery. The evidence of PW-1 cannot be relied upon since it 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.845 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 467, 477-A, 409 IPC or the section 13(1) (c) and (d) of PC Act.

12. The responsibility of maintaining records like MTC 70, 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 have 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 467, 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 acquittance. 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 Smt.Suguna by forging her signature in the acquittance register. The evidence of PW-2 [Suguna] 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 acquittance 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.40,342/-. The signature found in Ex.P.4 is proved to be forgery through expert evidence. Thus, the prosecution has proved beyond doubt the charges against the appellants hence the trial court judgement has to be confirmed.

Point for Consideration Whether the prosecution has proved forgery, falsification of accounts and misappropriation beyond doubt?

15. Ex.P.1, is the report of Tmt.Umarani, DEEO, Nilgiris District dated 29.09.1997. In her report she has given extensive details about the irregularities found during the inspection of records maintained in Kothagiri Assistant Elementary Education Office. The report reveals several financial irregularities inviting department action and criminal prosecution against the appellants herein and others who are subsequently prosecuted. PW-1 [Mr.Narayanasamy] to whom the report was forwarded by Tmt.Umarani has deposed that on receipt of the report he perused it and being satisfied that the irregularities found in the report requires investigation by police, he forwarded the complaint Ex.P.2 to the Director, Crime Branch, Chennai. Pursuant to the said complaint, the first information report which is marked as Ex.P-56 has been registered on 22.10.1997.

16. From the evidence adduced by the prosecution, it is proved through the evidence of PW-2 [Suguna] that she retired from service in the year 1996. She on her retirement entitle for PF Rs 40,440/-. Though it was encashed on 4.3.1996, A-2 [Kittan] paid her the money only in the month of September 1997, one month after her husband's demise on 3.8.1997. She has denied the signature found in Ex.P.4. The expert opinion also fortifies this fact. Though the appellants plead that the PW-2 received the money on 04.03.1996 and has signed the acquittance register, the proved facts speaks otherwise.

17. The entries found in the acquittance register Ex.P.4 is proved to be false entry and the signature forged. The money drawn from the treasury for payment to PW-2 [Suguna] had neither been paid nor re-deposited and recorded in the undistributed payment register. A-1 as AEEO being the officer in charge of payment and registers has allowed A-2 to make false entry in the register, forge the signature and misappropriated the money, which has been paid belatedly after the investigation in the case commenced.

18. The acquittance register is with the custody of A-1 and A-2. While so they are to be held responsible for any falsification and forgery. Though it is not proved by the prosecution that either A-1 or A-2 has forged the signature of PW-2 [Suguna], undoubtedly the signature found in Ex P-4 is not that of PW-2 [Suguna]. A-1 and A-2 who are responsible to get the acquittance from the right person and disburse the money has failed to do so and they cannot claim ignorance of the forgery, falsification of account and misappropriation of the money upon which they had dominion.

19. The prosecution through witnesses have proved the role of A-2 as Junior Assistant responsible for maintaining the account and registers both the acquittance register and undisbursed register. A-1 being the head of the office vested with the responsibility of payment of Provident Fund and other allowances as per G.O.M.s.No.1228 dated 30.12.1994 marked as Ex.P-57. Therefore, this court finds no force in the submissions of the learned counsels appearing for the appellants which requires interference of the trial court judgment.

20. Taking into consideration the fact that the money misappropriated by forgery has been paid to PW-2 subsequently and the circumstances like the present age of the appellants and years passed due to pending litigation, this court is of the view that some leniency should be extended by reducing the period of sentence.

21. In the result, this court no ground to interfere with the Trial Court judgment. Accordingly, the Criminal Appeal Nos.780 of 2003 and 845 of 2003 are dismissed. The judgment of the Trial Court in C.C.No.10 of 2001 dated 30.04.2003 are hereby confirmed. While confirming the trial court judgment, the period of sentence is reduced to one year R.I for each of the offences.

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 IPC 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

22. For A1, the appellant in Crl.A.No. 780 of 2003 the period of sentence shall run concurrently along with the sentence imposed in C.C.Nos.4 of 2001, 11 of 2001 and 12 of 2001 as modified in the Crl.A.Nos.774 of 2003, 781 of 2003 and 782 of 2003 by this Court. For A2 the appellant in Crl.A.No.845 of 2003, the period of sentence shall run concurrently along with the sentence imposed in C.C.Nos.4 of 2001, 8 of 2001, 9 of 2001, 11 of 2001 and 12 of 2001 as modified in Crl.A.Nos.843 of 2003, 844 of 2003, 846 of 2003, 848 of 2003, 849 of 2003.

The period of sentence already undergone shall be set off under section 428 of Cr.P.C. No charge in the fine imposed.

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

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

Dr.G.Jayachandran,J.

Bsm Pre-delivery judgment made in Criminal Appeal Nos. 780 & 845 of 2003 26.02.2018