

State Represented By vs / on 24 July, 2013

Crl.A.Nos.516 & 763 of 2016 and

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2023

Pronounced on: 21 .1

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.516 & 763 of 2016
& Crl.A.No.1402 of 2023

Crl.A.No.516 of 2016:-

State represented by:
The Public Prosecutor,
High Court, Madras.

... Appellant/Complainant

/versus/

Kalyanasundaram, Male Aged 34 years (A-1),
S/o.Thangavelu @ Periannan,
No.53, Maariamman Kovil Street,
Karuvaddikuppam,
Pondicherry.

.... Respondents/Accused [A1]

Prayer: Criminal Appeal has been filed under Section 378 of Cr.P.C., ple
to set aside the judgment of acquittal passed in Crl.A.No.17 of 2013 (co
judgment passed in Crl.Appeal Nos.16/2013, 17/2013 & 18/2023], dated
24.07.2013 by the Hon'ble II Additional District and Sessions Judge,
Tindivanam against C.C.No.32 of 2012, Judicial Magistrate-I, Tindivanam
convict the respondent/accused [A-1] as charged.

For Appellant : Mr.Babu Muthu Meeran,
Additional Public Prosec

For Respondent : Mr.R.John Sathyan, Senior
for Mr.Swami Subramanian

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Crl.A.No.763 of 2016:-

State represented by:
The Public Prosecutor,
High Court, Madras.

... Appellant/Complainant

/versus/

Rajinikanth, Male Aged 33 years [A-3],

S/o.Annamalai,
No.9, Meenatchi Amman Kovil Street,
Tindivanam,
(At present) No.3, Vanidhasan Kurukku Street,
Kamaraj Nagar, Pondicherry.

... Respondent/Accused [A-3]

Prayer: Criminal Appeal has been filed under Section 378 of Cr.P.C., ple
to set aside the judgment of acquittal passed in Crl.A.No.18 of 2013 (co
judgment passed in Crl.Appeal Nos.16/2013, 17/2013 & 18/2023], dated
24.07.2013 by the Hon'ble II Additional District and Sessions Judge, aga
C.C.No.32 of 2012, Judicial Magistrate-I, Tindivanam and convict the
respondents/accused [A-1 to A-3] as charged.

For Appellant : Mr.Babu Muthu Meeran,
Additional Public Prosecutor.

For Respondent : Mr.V.Balamurugane.

Crl.A.No.1402 of 2023:-

State represented by:
The Public Prosecutor,
High Court, Madras.

... Appellant/Complainant

/versus/

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Crl.A.Nos.516 & 763 of 2016 and

Aathavan, Male, Aged/40 years (A-2),
S/o.Ponnusamy,
No.22-A, Udaya Nagar,
Chennai Main Road,
Tindivanam.

... Respondent/Accused [A-2]

Prayer: Criminal Appeal has been filed under Section 378 of Cr.P.C., ple
to set aside the judgment of acquittal passed in Crl.A.No.16 of 2013 (co
judgment passed in Crl.Appeal Nos.16/2013, 17/2013 & 18/2013], dated
24.07.2013 by the Hon'ble II Additional District and Sessions Judge,
Tindivanam and convict the respondent/accused [A-1] as charged.

For Appellant : Mr.Babu Muthu Meeran,
Additional Public Prosecut

For Respondent : Mr.S.Ashok Kumar, Senior C
for Mr.P.Palaninathan.

COMMONJUDGMENT

These three Criminal Appeals are preferred by the State against the Lower Appellate Court judgment of acquittal reversing the trial Court judgment of conviction.

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2. The case of the prosecution:-

On 30/09/2011, P.Kuppusamy (P.W.1), the Chief Education Officer, in-charge of Villupuram and Tindivanam District was on duty at Chennai in connection with preparation of text books. At about, 10.15 a.m. P.W.1 received a call from an unknown person in his Mobile phone and the caller informed him that at Tagore Higher Secondary School, Tindivanam instead of the Student by name P.Kalyanasundaram, somebody else is writing the supplementary examination for the 10th standard Social Science exam. The caller also informed P.W-1 that, even on the previous day (29/09/2011) for Social Science exam only the impersonator wrote the examination instead of P.Kalyanasundaram

3. Immediately P.W.1 called P.W.2 Mr.Shanmugam, the District Education Officer at Tindivanam and instructed him to visit Tagore Higher Secondary School and verify the hall tickets and identity card and find out whether there is any impersonation. Accordingly, P.W.2 went to Tagore Higher Secondary school and found that the student by name P.Kalyanasundaram did not take up his examination on 30/09/2011 and in the attendance register

was shown as 'absent'.

However, he found that, the address of

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P.Kalyanasundaram was shown as P.Aathavan (guardian), Udaya Nagar, Chennai Road, Tindivanam. The said Aathavan is the Teacher at Singanur Government Higher Secondary School and he was the room supervisor of the Hall No:14 in which the said P.Kalyanasundaram wrote his Science exam on 29/09/2011. In the ledger for the exam dated 29/09/2011, the entries were made by the Chief Invigilator for the rest of the halls in blue colour in Hall No:14, it was in red colour ink. With these observations P.W.2 forwarded his report to the Director of School Examination and to the Chief Educational Officer (P.W.1)

4. P.W-2 in his proceedings dated 16/09/2011 had appointed Invigilators. Over phone, the School Management had sought for one more invigilator. So, P.W-2 had included the name of Mr.Karthick as 23 rd Invigilator for Tagore Higher Secondary School and issued proceedings Ex.P.9. While Rajinikanth (A-3) the Clerk in D.E.O Office without the knowledge of P.W-2 had substituted the proceedings with Ex.P.10 by deleting the name of Karthick at Serial No:23 and wrote the name of Aathavan (A-2). Rajinikanth (A-3) affixed the facsimile signature of P.W-2 and rubber stamp. The said false document prepared by Rajinikanth to facilitate Aathavan to be in the Hall

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Invigilator. To aid and assist P.Kalyasundaram wrote his exam in writing examination by collecting answers over phone.

5. With the false document prepared by Rajinikanth (A-1) and Aathavan (A-2) along with Kartick had met Mrs.Rajalakshmi (P.W-4), the Headmistress of Tagore Higher Secondary School and produced the fake proceedings without the relieving order from their respective Schools. T. Kartick promised to produce it later. Aathavan (A-2) was allotted room No:9. He did not report duty on 28/09/2011. He came on 29/09/2011 but did not produce relieving order from his School. He informed P.W-4 that, his School Headmaster was on leave, so he will produce it next day. On 29/09/2011 Aathavan was allotted Room No:14 for invigilation. On 30/09/2011, he was allotted room No:5 for invigilation.

6. Through P.W-10, Tmt.Kanaga, the Head Mistress, in-charge of Adi Dravidar Higher secondary School, Singanur, it has been confirmed that Aathavan (A-2) did not attend the School on 29/09/2011. He did not intimate about his deputation for exam duty. There is no proceedings received from D.E.O office intimating deputation of Aathavan for exam duty at Tagore Higher Secondary School.

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Secondary School.

7. The School Education department conducted preliminary enquiry through Jayashree Ragunathan (P.W.19), the State Planning Officer and Director of School Education. She, in her report submitted that from

enquiry, prima facie case of forging the proceedings nominating Aathavan invigilator for Tagore Higher Secondary School made out. She also noticed malpractice during the examination and recommended for detailed enquiry. Meanwhile, the Director of School Examination P.W.55 Vasundra Devi, based on the enquiry took action against the students indulged in malpractice, blacklisted Tagore Higher Secondary School besides recommended action against the Headmistress Rajalakshmi.

8. On the complaint given by P.W.1 Kuppusamy, Chief Educational Officer, case was registered by the Crime Branch, Sub Inspector of Police, Pramilasasi Kumari P.W.52 for the offences under section 465, 468, 471, 473, 419, 420 r/w 120(b) IPC in Crime No.74/2011. The investigation was conducted by the Inspector of Police Mr.Shankar P.W.56. He, in the course of investigation recorded the statements of staff of T

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Higher Secondary School, the Invigilators who were on examination duty for supplementary 10th Standard examination held during the 4th week of September 2011 at Tagore Higher Secondary School examination centre, the members of flying squad and the students who wrote examination on 29th and 30th September, 2011 in Hall No:14 and the Officials of Directorate of School Examination. He collected the admitted signatures and P.Kalyanasundaram (A-1) and Rajinikanth (A-3), sent them along with the questionable writings and signatures for Forensic examination by expert. Associates of P.Kalyanasundaram, who helped him in filing the application

were examined and their statements were recorded.

9. On completion of investigation, P.W.56 Shankar, Inspector of Police, being satisfied that, pursuant to the conspiracy hatched, to facilitate P.Kalyanasundaram (A-1) the then Minister for Education in the Government of Pondicherry, to complete X-Standard and pursue his further studies, his associates particularly, P.W-39 Jayasankar @ Kalaipuli Sankar advised A-1 to take up the supplementary exam at Tindivanam and provided his cousin Aathavan A-2's address at Tindivanam so that, A-1 will be allotted Examination centre at Tindivanam. Aathavan (A-2) a School Teacher in the Adi Dravidar

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School near Tindivanam sought the help of Rajinikanth (A-3) a Clerk in the D.E.O office. In furtherance of the conspiracy, A-3 Rajinikanth, fabricated a false document viz., the proceedings of D.E.O (P.W-2) by including the name of Aathavan A-2 as one of the invigilators for Tagore Higher Secondary School. A-3 Affixed the facsimile signature of D.E.O and gave it to A-2 to use it as a false document so as to gain entry in the Examination Hall and aid A-1 provide answers. Thus, using the false document Ex.P-10 as genuine, A-2 got himself allotted to the Room No:14 as invigilator in which, A-1 wrote his examination on 29/09/2011 and aided him by providing answers by consulting outsiders through his mobile phone.

10. Charges and trial court findings:-

On the basis of material relied by the prosecution, the District Magistrate, Tindivanam framed the following charges against Kalyanasundaram

(A-1), Aathavan (A-2) and Rajinikanth (A-3).

P.Kalyanasundaram (A-1):-

Sections 120(b) of I.P.C, Section 468 r/w 109 I.P.C and
Section 471 r/w 109 I.P.C

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Aathavan (A-2):-

Sections 120(b) of I.P.C, Section 468 r/w 109 I.P.C and
Section 471 of I.P.C

Rajinikanth (A-3):-

Sections 120(b) of I.P.C, Section 468 of I.P.C and Section 471
r/w 109 I.P.C of I.P.C

11. On the side of the prosecution, 56 witnesses (P.1 to P.56) were examined, 67 Exhibits (Ex.P.1 to Ex.P.67) were marked and one mark stamp of D.E.O was marked as material object. On the side of the defence, 10 letters date 30/09/2011 wrote by Tmt.Rajalakshmi P.W.4 to the Chief Educational Officer marked as defence exhibit.

12. The trial Court held the charges against A1 to A3 and sentenced them to undergo punishment as under:

Accused	Offences under Section	Conviction and Sentence passed
A-1	120(b) of I.P.C, 471 r/w 109 of I.P.C 468 r/w 109 of I.P.C	To undergo two years S.I. To undergo two years S.I and t in default of payment of fine
A-2	120(b) of I.P.C and 471 of I.P.C 468 r/w 109 of I.P.C	To undergo two years S.I. To undergo two years S.I and t in default of payment of fine

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Accused	Offences under Section	Conviction and Sentence passed
A-3	120 (b) of I.P.C and 471 r/w 109 of I.P.C	To undergo two years S.I
	468 of I.P.C	To undergo two years S.I and t in default of payment of fine

13. Being aggrieved by the judgement of conviction b
Court, Appeal was preferred by the accused and they were taken up for
consideration before the II Additional District and Sessions Judge, Tind
in Criminal Appeal Nos.16 of 2013, 17 of 2013 and 18 of 2013.

14. The Appellate Court, on re-appreciating the evid
the prosecution has failed to prove conspiracy among the accused. Though
is strong suspicion about the manner in which A-2 entered the examinatio
centre as Invigilator for Hall No.14 in Tagore Higher Secondary School,
Tindivanam, on 29/09/2011 and A-1 (P.Kalyanasundaram) declaring the
address of A-2 (Aathavan) to get the centre at Tindivanam, the same has
blossomed into proof to sustain the conviction. Therefore, the Criminal
were allowed and the judgement of the trial Court was set aside, resulti
acquittal of all the accused.

15. The Learned Additional Public P

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Appellant/State Mr.Babu Muthu Meeran, submitted that, the Lower Court

ought not have reversed the well considered judgement of the trial Court ignoring the clinching evidence through Ex.P.3 application form of (A1) mentioning the address as P.Kalyanasundaram, C/o.P.Aathavan, No.22/A, Udaya Nagar, Chennai Main Road, Tindivanam. The said address is that of (Aathavan) and same is proved through the documents like surrender application and memo of appearance filed on behalf of accused with his signature. The First accused, Education Minister of Pondicherry, having his residence at Pondicherry. There is no necessity to give a temporary address the address of (A-2), who was the Invigilator for the room in which, A1 took his exam at Tagore Higher Secondary School. Having proved that, Ex.P.10 proceedings issued in the name of D.E.0 is a document fabricated by A-3 used by A-2 as genuine to be with the A-1 in the Examination Hall to assist is adequate proof and material to attract offence of conspiracy, fabrication of document and used the fabricated document as genuine.

16. The Learned Additional Public Prosecutor, appellant/State further submitted that, P.W.2 D.E.0 has identified Ex.P.10 had categorically deposed that the proceedings marked as Ex.P.10 was not

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Crl.A.Nos.516 & 763 of 2016 and Criminal Appeal Nos. 1000 of 2016 and Criminal Appeal Nos. 1000 of 2016 issued on his instruction. The facsimile signature and his name affixed without his knowledge and intimation. The correction in the said proceedings inserting the name of A2 as one of the Invigilator did not emanate on his instruction. This piece of evidence is strong and sufficient to hold that the accused, abusing his office as a Clerk in the D.E.0 Office had fabricated a proceeding in the name of P.W.2, which attract the offence under Section 468 of I.P.C.

committing this offence, A1 & A2 had abetted A3. Hence, they both are liable to be punished for the offences under Section 468 r/w 109 of I.P.C.

17. According to P.W.4 Rajalakshmi, the Headmistress of Tagore Higher Secondary School and the Chief Examiner/Superintendent for the Supplementary Exam held during September 2011 had deposed that, A2 Aathavan along with another Invigilator by name Karthick P.W.12 came to Tagore Higher Secondary School with Ex.P.10 and reported that, they have been nominated as Invigilator.

18. It is contended by the Additional Public Prosecutor, Appellant/State that the trial Court, while rightly ignoring the fact that witnesses, 26 witnesses were turned hostile, since they are interested w

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and held that, the evidence of P.W.3, P.W.10, P.W.56 are sufficient to hold that the A-3 had fabricated proceedings of D.E.0 appointing Invigilators for examination held in Tagore Higher Secondary School and that fabricated document was used as genuine by A-2. His presence in the Hall No.14, on 29.09.2011 as Invigilator and A1/Kalyanasundaram as Student/examination candidate been spoken by witnesses, who were present in the Hall and wrote exam.

19. P.Kalyansundaram (A-1) had given the address of A-1 in the Application Form and same never denied. The surrender application and Me

of Appearance are the documents filed before the Court by him through his Advocate. These documents are admission in nature and cannot be ignored. Unfortunately, the Lower Appellate Court erred in ignoring the admission

20. Per contra, the Learned Senior Counsel for the respondent submitted that, upon an unanimous call alleging impersonation in the Tagore Higher Secondary School, Tindivanam, Examination Centre, the Higher Officials of School Education Department had immediately inspected the Examination Centre and the Hall No.14 in particular. The information about

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Crl.A.Nos.516 & 763 of 2016 and the impersonation of a candidate by name P.Kalyasundaram found to be false since on 30.09.2011, the candidate P.Kalyasundaram, (A-1) did not take up examination and he was shown as absent in the attendance register. The District who had conducted inspection had brought to the notice of the Senior Officials particularly P.W.1 that, though P.Kalyasundaram did not take up examination on 30.09.2011, he had taken up his Social Science examination on 29.09.2011 in that centre at Hall No.14. Also, he has collected certain materials regarding malpractice in that centre which was probed by the Departmental Higher Officials. The police having failed to find material for impersonation prosecuted the respondent/accused on the premise that, the presence of P.Kalyasundaram as a candidate in Tagore Higher Secondary School and A-2 as Invigilator of the room in which Kalyasundaram wrote examination is a consequence of conspiracy. Therefore, it is alleged that, the proceeding name of D.E.0 marked as Ex.P.10 is a fabricated document and that fabricated document was done by A-3 Rajinikanth. Using that fabricated document, A-

was assigned as an Invigilator for room No.14 on 29.09.2011. On that day wrote his Social Science examination in the Hall No.14. The Hall Ticket and other documents of A-1 show that, he has given the address of A-2 (Aathavan)

21. However, the prosecution has failed to prove that,

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who was shown as Guardian of A-1 (P.Kalyanasundaram) in the Application Form Ex.P.3 is the Aathavan, who was secured and tried before the Court as A2.

22. While the trial Court ignored the evidence of P.W. Jayasankar @ Kalaipulisankar, who had categorically deposed that, the Application Form Ex.P.3 was filled by the Office Assistant of A-1, since that being an Education Minister, writing examination for X-Standard will headline news and will give room to comment and criticism. Therefore, he wanted to write up the examination somewhere outside Pondicherry. A-1 was suggested to write the examination at Tindivanam and he provided his cousin's address, whose name was also Aadhavan but that Aathavan is not the Aathavan, who is present in the Court as A2.

23. Regarding the address shown in the Memo of Appearance and Surrender Petition of A-1, it was contended that they are not the documents emanated from the accused maintained in the ordinary course but were prepared by the respective Counsels based on the F.I.R and therefore, the entries in those documents are not at all reliable and that is not the proof for the

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of the accused.

24. The Appellate Court has rightly considered this fact in the absence of reliable evidence for the proof of identity of the Aathavan, mentioned in the Application form Ex.P.3, the acquittal of the petitioner on charge of conspiracy is sustainable.

25. Regarding the alleged fabrication of proceedings E, Learned Senior Counsels for the respondent argued that, except P.W.2, there is no evidence to show that, it is a fabricated document. Even P.W.2 admits the use to issue orders affixing his facsimile signature, he also admits in this case, if he is out of station, he will instruct the office to issue the order in his name by affixing the facsimile signatures. Later, he will come back and check the order or proceedings issued on his instruction in his absence.

26. The Appellate Court has rightly taken into account the fact that, the Management of Tagore Higher Secondary School wrote letter to D.E.O seeking additional Invigilators. The Management of that School has felt that the proceedings of D.E.O dated 16.09.2011 nominating 22 Invigilators might not

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sufficient. This has spoken by the prosecution witnesses P.W.4 Rajalakshmi as well as P.W.12 Karthick. In response to the request to allot

Invigilators Karthick (P.W.12) and P.Aathavan (A-2) were nominated as Invigilators.

27. Ex.P.9 is the proceedings initially issued including Karthick P.W.12. Ex.P.10 is the proceedings in the name of A-2 (P.Aathavan D.E.0 showing A-2 as the 23 rd Invigilator in the place of Karthick. prosecution witness had also spoken that, P.W.10 Kanaga, was in-charge of A-2 School as Headmistress, due to casual leave of the regular Headmaster Madhivanan and had admitted in the cross examination that, before attending the examination duty, A-2 sought for permission but she refused to grant the said permission since she was not the Competent Authority to grant leave 'Duty' in the absence of the regular Headmaster.

28. Further, the Learned Senior Counsels for the respondents submitted that the alleged information received by P.W.1 over phone about impersonation turned to be hoax. Including the members of the flying squad deposed that there was nothing untoward happened on 29.09.2011 and on

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Crl.A.Nos.516 & 763 of 2016 and 30.09.2011. When sudden inspection conducted on receipt of the unanimous phone call, it was found that the said P.Kalyasundaram had not even attended the exam. Despite that, the prosecution been launched due to political exigencies. The error in appreciating the evidence by the trial Court was revisited by the Lower Appellate Court. When two views are possible, then view which is in favour of the accused has to be taken into account.

29. Finding:-

As per the prosecution, the presence of A-1 in the Hall where A-2 was assigned to be an invigilator on 29.09.2011 is the consequence of the conspiracy hatched by the accused persons few days earlier to the examination, when they met in a hotel.

30. Further, the case of the prosecution is that, A-3 proceedings in the name of A-2. The said proceedings Ex.P.10 was used as genuine by A-2. The perusal of Ex.P.10 reveals that the name of A-2 alone written in hand by A-3, while rest of the 22 Invigilators names are typed. While the other two proceedings of A-2 which are marked as Ex.P.8 and Ex.P.9, are also in respect of appointing of Invigilators to the Tagore

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Secondary School, Tindivanam, Examination Centre No.5303. These two proceedings are signed by A-2 manually. In Ex.P.10 the facsimile signature of P.W.2 is fixed. P.W.2 had categorically deposed that, Ex.P.10 proceeding not issued by him. He did not permit to include Aathavan as one of the Invigilators for Tagore Higher Secondary School, Tindivanam. His name has been written in hand by A-3, a Clerk working at D.E.O Office.

31. Further, the case of the prosecution is that Ex.P.10 dated 16.09.2011 is the genuine proceedings issued by P.W.2 duly signed manually by him. In the proceedings, Court finds that, 23 rd Invigilator name (K) has been written manually below the names of the Invigilators in typed format.

this proceedings Ex.P.9 one Karthick is added as Invigilator for Tagore Secondary School, Tindivanam. Using the proceedings Ex.P.9, Karthick (P.W.12) had attended the Invigilator duty at Tagore Higher Secondary School Tindivanam on 23.09.2011, 24.09.2011, 26.09.2011, 27.09.2011 and 29.09.2011. This witness had further deposed that, on 29.09.2011, he was allotted Hall No.12. P.W.12 was not aware who was the Invigilator for room No.14 on 29.09.2011.

32. The use of facsimile signature of D.E.O in the pro

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not banned or barred as per P.W.2. He admits that, at the time of exigent facsimile signatures was allowed to be used on his consent and ratification. Whether, in this case such consent or rectification took place or not is in dispute. The defence had probablise that the facsimile found in Ex.P.10 was affixed by A3 on consent of P.W.2 since there was dire need of additional Invigilators and the D.E.O was out of station. Ex.P.10 was prepared on his instruction by A-3 and despatched.

33. To link A2 and A1, the address declared by A-1 in his application form and the address in the surrender application and memo of appearance filed on his behalf of A-2 is the only evidence. While the trial court has accepted the same as a reliable evidence, the Lower Appellate Court has declined to accept the information furnished in the Memo of Appearance and Surrender Petition as a proof of A-2's residential address. Except these pieces of evidence which were emanated after registration of the complain

Investigating Officer in the course of the investigation, not collected piece of evidence for proof of address. The prosecution ought to have collected material regarding the residence of A2 and the proximity between A1 and A2. The only witness which the prosecution rely is evidence of P.W.39, who is a friend of A1. This witness had categorically deposed before the Court that he has provided the address of his cousin by name Aathavan to A1's P.A, who filled up the Application form Ex.P.3. He had stated that the A-2 present before the Court is not his cousin Aathavan. This witness was treated as hostile and was examined by the State, but nothing could be elucidated in favour of the prosecution to hold P.W.39 had turned hostile to favour A1 or A2.

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friend of A1. This witness had categorically deposed before the Court that he has provided the address of his cousin by name Aathavan to A1's P.A, who filled up the Application form Ex.P.3. He had stated that the A-2 present before the Court is not his cousin Aathavan. This witness was treated as hostile and was examined by the State, but nothing could be elucidated in favour of the prosecution to hold P.W.39 had turned hostile to favour A1 or A2.

34. It is noted that P.W.5 Vijayakumar the member of the squad had deposed that, on 29.09.2011, he inspected Tagore Higher Secondary School, Tindivanam and found nothing to attribute malpractice in examination Hall. P.W.20 to P.W.34 are students, who wrote Supplementary Examination at Tagore Higher Secondary School during the 4th week of September 2011. They have identified A-1 as one of the candidate, who wrote the examination in the Hall No.14 and some of them had identified A-2 also as the Invigilator. None of them had deposed that, A-1 aided A-2 to write answers. They all were declared as hostile witnesses by the prosecution because they did not support their earlier statement given to the Police.

35. The material placed by the prosecution only prove

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Ex.P.3 application form, A-1 gave his address as C/o.Aathavan, No.22/A, Udhaya Nagar, Chennai Main Road, Tindivanam. A-1 wrote his Social Science examination on 29.09.2011 at Tagore Higher Secondary School. Though, A-1 was supposed to take up his science exam on 30.09.2011 also, he did not show up to take the examination. There is nothing untoward on 29.09.2011 in the Examination Centre as per the evidence of the Chief Superintendent or Member of the Flying Squad or any Invigilators or by students. The opinion given by P.W.47 the hand writing expert is marked as Ex.P.43. It does not incriminate A1. The answer script and signature in the Hall Ticket attendance are all in the name of A-1, to show that there was no impersonation and answers were written by A-1 and nonelse. There is no evidence to show that for writing this exam, there was external aid for A1. Specifically from A-2, who was the Invigilator of Room No.14 on 29.09.2011.

36. The prosecution has failed to collect call details from A2 to show whether while on duty as invigilator, A2 called or received any phone to show that he collected answers from outside and aided to A-1.

37. The main charge is for fabricating document and using

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genuine i.e., for the offences under Section 468 and 471 of I.P.C. Having proved the fact that, Ex.P.10 is a forged document by A-3 without knowle

and consent of P.W.2, the admission of P.W.2 that the practice of affixing facsimile signature in proceedings and getting post ratification from him in vogue in his office, renders the prosecution case and evidence not reliable to convict the accused (A1 to A3), for the offence under Section 468 or Section 471 of I.P.C.

38. In the said circumstances, the view of the Appellate Court in its judgment is more probable and possible. Hence, these Criminal Appeals Nos.516 & 763 of 2016 and Crl.A.No.1402 of 2023 are dismissed. The judgment passed by the II Additional District and Sessions Judge, Tindivanam in Crl.A.Nos.16 to 18 of 2013, dated 24.07.2013 are hereby confirmed.

21.12.2023

Index :Yes/No.

Internet :Yes/No.

bsm

Copy To:-

1. The II Additional District and Sessions Judge, Tindivanam.
2. The Judicial Magistrate-I, Tindivanam
3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,

_____ <https://www.mhc.tn.gov.in/judis> Crl.A.Nos.516 & 763 of 2016 and Crl.A.No.1402 of 2023 bsm Pre-delivery common judgment made in Crl.A.Nos.516 & 763 of 2016 21.12.2023
_____ <https://www.mhc.tn.gov.in/judis>