

# SUPREME COURT OF INDIA

L. Chandraiah

Vs.

State of A.P.

(B.P. Singh and A.R. Lakshmanan JJ.)

06.11.2003

## ORDER

1. These two appeals are directed against the judgment and order of the High Court of Judicature, Andhra Pradesh at Hyderabad dated April 11, 1996 in Criminal Appeal No. 453 of 1993. The High Court by its impugned judgment and order dismissed the appeal filed by the appellants and affirmed their conviction and sentence under Sections 409, 467 and 471 IPC as also under Section 5(1)(c) and (d) read with 5(2) of the Prevention of Corruption Act. The appellant in Criminal Appeal 204 of 1997 namely L. Chandraiah has been sentenced to undergo rigorous imprisonment for a period of one year under Section 409 IPC and Section 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act, and to undergo simple imprisonment for one month for the offence punishable under Section 467 IPC. So far as the appellant in Criminal Appeal No. 312 of 1997 namely Y.V. Kamesham is concerned he has been sentenced to undergo rigorous imprisonment for a period of two years under Section 409 and Section 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act, and has also been found guilty of the offence under Section 467 IPC for which he has been sentenced to undergo 1 month simple imprisonment. The trial court also imposed the sentence of fine against both.

2. Six persons were put up for trial before the Special Judge for C.B.I. Cases, Hyderabad in CC No. 7 of 1990. L. Chandraiah was A-1 before the trial court while Y.V. Kamesham was A-2. The third accused namely G. Sambamurthy was also convicted and sentenced in the same manner as appellant Y.V. Kamesham, but he did not prefer any appeal before the High Court. Only the appellants in these two appeals preferred an appeal before the High Court which was numbered as Criminal Appeal No. 453 of 1993. It may here be noticed that the other three accused namely A-4, A-5 and A-6 were acquitted of the charges leveled against them by the trial court and no appeal was preferred by the State against their acquittal. The appellants have assailed the judgment of the High Court before us in these appeals by special leave.

3. The brief facts of the case are that A-1 was a Sub-Post Master at Bellampally Sub-Post Office, from April 1986 to May 8, 1987. He was succeeded by A-2 as Sub-Post Master who worked as such from May 8, 1987 to November 16, 1987. At the relevant time A-3 worked as Postal Assistant in the same Sub-Post Office. A-4 was employed as a Postman in the said

Post Office during the relevant period. A-5 who was earlier an employee of the Postal Department had resigned, from his post in the year 1987. A-6 is a student and is related to A-3 and was staying with A-3 as a tenant at Bellampally.

4. The case of the prosecution is that several recurring deposit accounts were opened in the said Sub-Post Office in the names of a large number of workers of M/s. Singareni Collieries Ltd. The amount contributed in the said account by the concerned workers was deducted from their wages and directly remitted to the Post Office by the management. Instead of remitting large number of cheques, a single cheque was remitted for the total sum and thereafter the Postal Authorities made the necessary entries in each account as per the list attached to the communication received from the management. The procedure prescribed for withdrawal of amount from the recurring deposit account was that the management after fixing its seal on the withdrawal voucher would send the, same to the Post Master, and the concerned workman with a view to withdraw the amount would sign the said voucher in the presence of the Post Master, whereafter the withdrawal was permitted. The case of the prosecution is that a large number of withdrawals were made during the period in question and approximately a sum of Rs. 91,280/- was withdrawn from these accounts in a clandestine manner pursuant to a conspiracy between the accused. It is the case of the: prosecution that fabricated vouchers were prepared with forged signatures and forged seal of the management and payment was made on the basis of the said forged vouchers.

5. Evidence, was examined before the trial court to prove such withdrawals and the concerned workmen deposed to the fact that they had never withdrawn the amounts in question from their accounts. The writings on the vouchers were also sent for expert opinion and the opinion of the hand writing expert disclosed that the writings tallied with the writing of A-3 while some of the signatures were forged and some of the thumb impressions were thumb impressions of A-5 and A-6.

6. The trial court after considering the evidence on record came to the conclusion that the prosecution had proved its case against A-1, A-2 and A-3 under Sections 409, 467, 471 IPC and Section 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act. It, however, recorded a categorical finding that there was no evidence on record to support the case of conspiracy as there was no evidence to show that A-1, A-2 and A-3 acted pursuant to a common plan.

7. The trial court, however, observed that even if the evidence on record disclosed that the vouchers were prepared by A-3, the appellants who functioned as Sub-Post Master during the relevant period could have taken pains to verify the genuineness of the vouchers passed by them. They did not take requisite care before passing the vouchers and did not care to verify whether the vouchers were genuine or forged. In this manner they permitted a large number of fraudulent withdrawals on the basis of forged vouchers. The vouchers were prepared in most of the cases by A-3 and the vouchers were also initialled by him on the reverse side. From this the trial court came to the conclusion that it was proved that A-1 to A-3 used forged documents as genuine documents for withdrawal of the amount from the accounts of recurring deposit account holders. They were, therefore, guilty as public servants for having

committed offences under Sections 409, 467 and 471 IPC and for the offences under the aforesaid provisions of Prevention of Corruption Act.

8. As noticed earlier A-3 did not prefer any appeal against his conviction but the appellants before us preferred an appeal before the High Court which has been dismissed. We have gone through the judgment of the High Court and we find that the High Court also fell into the same error as the trial court. It has considered the evidence adduced by the prosecution. It has also considered the procedure which was followed for making such withdrawals. It has noticed the fact that the vouchers had been forged and fabricated by A-3 and the vouchers contained initials of A-3 on the reverse side of the vouchers. It has considered the evidence of the hand writing expert as also the investigating officer PW.5. Having considered the material on record the High Court has recorded the following finding:

"Thus, it is clear that the amounts of R.D. Accounts of Singarani Collieries i.e., PWs.7, 12 to 47 were misappropriated by A-1 to A-3 by forging their signatures and thumb impressions. The Expert opinions of PWs 48 and 49 confirm this fact. A-1 and A-2 cannot -be heard to say that in the routine manner they passed the vouchers when put up by A-3. It is their primary duty to compare the signatures and thumb impressions from the specimen signatures and thumb impressions available in the bank while passing the vouchers. They have to follow the procedure as stated by PW.1. They have certainly failed to do so with ulterior motive."

9. Learned counsel appearing on behalf of the appellants submitted that even on the finding recorded by the High Court the offence under Sections 409, 467, or 471 IPC is not made out and consequently no offence is made out under the Prevention of Corruption Act. This submission appears to have substance. So far the evidence relating to the offence under Section 467 IPC is concerned, there is no evidence to show that the appellants before us forged the documents which purported to be a valuable security. The evidence is only to the effect that they had negligently put their signatures on those vouchers while passing the vouchers for payment. There is no evidence to show that the appellants had knowledge of the fact that the vouchers were forged vouchers. The trial court has found in clear terms that A-1, A-2 and A-3 were not acting pursuant to a conspiracy and therefore, acquitted them of that charge. Such being the position, before recording a conviction, the court should have insisted on evidence which would have proved that A-1 to A-3 passed the vouchers with knowledge that the vouchers were forged and fabricated. It appears that no such evidence is available on record. So far as the offence under Section 409 IPC is concerned it must be proved that a person entrusted with property or with any dominion over property, in his capacity as public servant commits criminal breach of trust in respect of such property, as defined in Section 405 IPC, meaning thereby that he dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. The crucial word used in Section 405 IPC is "dishonestly" and, therefore, it implies the existence of mens rea, that is to say a guilty mind. If there is no evidence to show that the appellants had knowledge that the vouchers were fabricated by A-

3, it cannot be said that they acted with a criminal intent. It may be, and, as rightly observed by the courts below, that they acted in a negligent manner and if they had taken due care they would have detected the fraud, but they failed to do so. However, that by itself would not constitute an offence under Section 409 IPC though it may expose the appellants to disciplinary action under the relevant rules. Learned counsel also brought to our notice the fact that in respect of the same Sub-Post Office some vouchers prepared and counter-signed by A-3 on the reverse side were sent to the Head Post Office at Mancherial. PW.5 the investigating officer has referred to several such vouchers which were sent to the Head Post Office for payment, and the officers of the Head Office also sanctioned payment on the basis of such fabricated vouchers. " Obviously, the officers at the Head Post Office were also not very careful, and as a result A-3 succeeded in his evil design to fraudulently withdraw a large sum of money. Learned counsel submitted that on the basis of these facts not only the appellants were cheated by A-3 but even the officers of the Head Post Office were similarly cheated by A-3.

10. In the absence of any evidence to show that A-3 was acting in conspiracy with A-1 and A-2 or that A-1 and A-2 had knowledge of the fact that A-3 had fraudulently and dishonestly prepared forged vouchers on the basis of which the amounts were sought to be withdrawn, the offences under Sections 467, 471 or 409 IPC are not proved against the appellants. Consequently, the offence under the provisions of the Prevention of Corruption Act is also not made out.

11. In the result, these appeals are allowed and the appellants are acquitted of the charges leveled against them. The appellants are on bail. Their bail bonds shall stand discharged.