SUPREME COURT OF INDIA

Ravichandran

Vs.

State By Dy.Superin.of Police, Madras

Crl.A.Nos.909-910 of 2003

(DR. Mukundakam Sharma and H.L. Dattu JJ.)

25.03.2010

ORDER

1. All these appeals involve similar and connected facts. Since, the legal issues that arise for our consideration are also similar, we proceed to dispose of all these appeals by this common judgment and order.

2. Before we delve into the facts of the case, it would be appropriate for us to deal with the miscellaneous applications that have been filed in this Court and also the statement of the learned counsel for the appellant in Criminal Appeal Nos. 805-806 of 2003.

3. Criminal Miscellaneous Petition Nos. 6391 to 6394 of 2010 in Criminal Appeal Nos. 1515-1516 of 2003 and Criminal Miscellaneous Petition Nos. 6396-6399 of 2010 in Criminal Appeal Nos. 1527-1528 of 2003 are applications filed by the legal representatives of the accused No. 1 namely, Kumaraguru seeking for substitution of their names in place of the deceased appellant- accused No. 1. During the pendency of the appeals in this Court, appellant-accused No. 1 died on 9th April, 2007. The present applications have therefore been filed by his legal representatives seeking for substitution of their names in place of the deceased appellant accused No. 1. In support of the aforesaid prayer, the legal representatives of the deceased appellant-accused No. 1 have relied upon the provisions of Section 394 of the Criminal Procedure Code, 1973. For the reasons stated in the said applications, the applications are allowed. The names of the applicants who are the legal representatives of the deceased-appellant accused No. 1 are, thus, allowed to be brought on record. The said applications stand disposed of in terms of the aforesaid order.

4. It is pointed out that during the pendency of the appeals in this Court, accused No. 3 namely, Tamizhselvan who was the owner of shop No. 18 had died. In that view of the matter, so far as the appeals against accused No. 3 are concerned, i.e. Criminal Appeal Nos. 805-806 of 2003, they stand abated. The same are dismissed, accordingly. The owner of shop No. 30, Kandasamy, accused No. 3 in the first appeal has not filed any appeal in this Court

against the order of conviction and sentence passed against him. It has been stated that he has served out the sentence awarded to him.

5. Brief facts, which are necessary to dispose of the present appeals, are that the appellants herein were charged under the provisions of Section 120-B, Section 420 read with Section 120B, Section 477A read with Section 120B IPC and under Section 5(1) (d) and 5(2) of the Prevention of Corruption Act, 1947 in SLP. C.C. No. 1 of 1985. In C.C. No. 3 of 1985, charges were framed against the appellants herein under clause 4(a) of the Pondicherry Essential Commodities (Display of Stocks, Price and Maintenance of Accounts) Order, 1975 read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955.

> "The case of the prosecution is that the appellants herein, i.e., accused Nos. 1 and 2 prepared the permit for issuance of palmolein oil and the counter foil thereof was retained in the office. Both the aforesaid permits and the counter foil were in the handwriting of accused No. 2 which are also initialed and signed by A1 and A2.
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> Subsequently, however, in the permit it was detected that there was interpolation and forgery in respect of shop No. 30. One of such permits indicates that the palmolein oil was meant to be issued in favour of Shop No. 38. The counter foil retained in the office indicates that it was meant to be issued and was in fact issued in favour of shop No. 38 but in the permit, it was detected later on that the same was converted and interpolated as shop No. 30. Delivery of the palmolein oil was also taken on behalf of shop No.30."

6. In view of the aforesaid interpolation and forgery in the said documents, two separate cases were registered under the aforesaid provisions. After submission of the charge-sheet, trial was conducted and a number of witnesses i.e. P.W. 1 to P.W. 19 were examined and several documents were also placed on record which were marked as Exhibits P1 to P57.

7. All the accused were examined under Section 313 of the Code of Criminal Procedure and on conclusion of the trial, the trial Court, in Spl. C.C. No. 1 of 1985, convicted all the accused persons namely A1-A3 for an offence under Section 120B IPC and sentenced each to undergo three years rigorous imprisonment and also convicted them under Section 420 read with Section 120B IPC and sentenced each of them to undergo three years rigorous imprisonment and also to pay a fine of Rs. 500/- each, in default to undergo one month simple imprisonment. The accused persons were further also convicted under Section 477A read with Section 120B IPC and sentenced each to undergo three years rigorous imprisonment.

> "Ravichandran, A2 and A1 were also convicted under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 read with Section 120B IPC and sentenced each to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/- each, in default to undergo simple imprisonment for one month. Kandasamy A3 was convicted under Section 5(1)(d) read with Section 5(2) of the

> Prevention of Corruption Act, 1947 read with Section 109 IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs. 500/-, in default to undergo simple imprisonment for one month. All the sentences were directed to run concurrently."

8. With respect to Spl. C.C. No. 3 of 1985, accused Nos. 1 and 2 were convicted under clause 4(a) of the Pondicherry Essential Commodities (Display of Stock, Prices and Maintenance of Accounts) Order 1975 read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 read with Section 109 of I.P.C. and sentenced each to undergo R.I. for 6 months.

> "Accused No. 3 was convicted under clause 4(a) of the Pondicherry Essential Commodities (Display of Stocks, Prices and Maintenance of Accounts) Order 1975 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955 and he was sentenced to undergo R.I. for 6 months."

9. Aggrieved by the aforesaid judgment and order passed by the trial Court, the appellants preferred four separate appeals. Two appeals being C.A. Nos. 181 and 184 of 1994 were filed by accused No. 1. The other two appeals being C.A. Nos. 220 and 222 of 1994 were filed by accused Nos. 2 and 3 jointly. The High Court by its judgment and order dated 31.12.2003 dismissed all the appeals.

10. Aggrieved by the aforesaid judgment and order of conviction and sentences, the appellants before us filed the appeals which were entertained. All the appeals have been listed for hearing and we have heard the learned counsel appearing for the parties.

11. Counsel for the appellants have submitted before us that the judgments are required to be set aside as none of the accused persons could be said to be guilty of the offences alleged against them. It is pointed out that although the aforesaid permit as also the counter foil were prepared by accused No. 2 and were signed by both the accused no. 2 and accused No. 1, yet there is no conclusive proof that the interpolation and forgery was done by both the accused persons. It was also pointed out during the course of arguments by the learned counsel appearing for the appellants that so far as accused No. 3 is concerned, he died during the pendency of the present appeals and he did not file any appeal himself before the Court.

> "So far as accused No. 4 is concerned, counsel appearing on his behalf has drawn our attention to the fact that although he is the brother of A3 there is no evidence to show that he in fact knew that the aforesaid permit which was delivered by him in the office of the Federation was in any manner interpolated or forged."

12. Mr. P.P. Malhotra, the Additional Solicitor General of India appearing for the respondent-CBI tried to contend that it is the concurrent finding of facts of the two Courts below and therefore, the findings should not and cannot be interfered with by this Court. He also submitted that the findings on record fully prove and establish the guilt of the two accused persons and that there is enough material on record to show that the documents in

question were forged at least with the knowledge and consent of the accused persons and therefore, the conviction and sentences passed against them are legal and valid.

13. In the light of the aforesaid submissions, we have considered the entire record of the case. We have carefully scrutinised the evidence adduced in the present cases. After going through the same, we are of the considered opinion that there is no evidence on record to indicate any link to prove and establish that the interpolation and forgery was done by any of the accused persons namely, A1, A2 or A4. Only because A4 is the brother of A3 does not in any manner prove and establish that he had knowledge that the permit was interpolated when he had presented it before the office of the Federation.

14. In order to prove that the interpolation and the forgery was done by A1 and A2, the prosecution has led evidence of P.W. 3 and P.W. 6 who have stated that they knew the handwriting, signatures, initials and mode of writing the figures of A1 and A2. Before we deal with the testimony of P.W. 3 and P.W. 6 on the point of handwriting, signatures, initials of the accused persons, we wish to refer to two judgments of this Court. In 660], this Court held as follows:

> "39. There is also oral evidence identifying the signature of the returned candidate on Exhibits P3 and PW 11/1, particularly in the deposition of Habib, PW 23. He has not spoken to his familiarity with the handwriting of the appellant. Opinion evidence is hearsay and becomes relevant only if the condition laid down in Section 47 of the Evidence Act is first proved. There is some conflict of judicial opinion on this matter, but we need not resolve it here, because, although there is close resemblance between the signature of Rahim Khan on admitted documents and that in Exhibits P3 and PW 11/1, we do not wish to hazard a conclusion based on dubious evidence or lay comparison of signatures by Courts. In these circumstances, we have to search for other evidence, if any, in proof of circulation of the printed handbills by the returned candidate, or with his consent."
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> Court held as under:-
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> "11. We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an

argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted."

15. P.W. 6 stated in his examination-in-chief that he knew the accused persons, viz., A1 to A3 and that A2 was working in Civil Supplies Inspector's Office in the rank of UDC and that he had earlier worked with him in the Finance Department. P.W. 6 has however, nowhere stated in the examination-in-chief that the present instance of interpolation or forgery was in the hand of A2. In the cross-examination, P.W. 6 stated that although he had worked along with A2 in the Finance Department, but he was working in a different Section of the Department. He has clearly stated that he was working in the Budget Section called F1 whereas A2 was working in the Motor Conveyance Section called F2 Section. It has also been brought to our notice that in the cross-examination, it was said that the files dealt by A2 and F2 Section in the Finance Department never came to the F1 Section where P.W. 6 was working. Therefore, in our considered opinion the interpolation as also the initials appended thereto have not been proved and established to be in the hand of A2 and A1.

16. In that view of the matter, we are of the considered opinion that the prosecution has miserably failed to prove and establish that the alleged interpolation and forgery was done by either A1, A2 or A4.

17. As earlier noted by us, Criminal Appeal Nos. 805-806 of 2003 stand abated. We allow all the other appeals and set aside the orders of conviction and sentences passed against each of the accused persons.

18. The bail bonds stand discharged.