SUPREME COURT OF INDIA

Hema

Vs.

State, Thr. Inspector of Police, Madras

Crl.A.No.31 of 2013

(P.Sathasivam, Ranjan Gogoi and V.Gopala Gowda JJ.)

07.01.2013

JUDGMENT

P.SATHASIVAM,J.

1. Leave granted.

2. This appeal is directed against the final judgment and common order dated 29.04.2011 passed by the Madurai Bench of the Madras High Court in Criminal Appeal (MD) No. 37 of 2004 whereby the High Court dismissed the appeal filed by the appellant herein (A-5 therein) while confirming the judgment dated 28.07.2004, passed by the Court of Principal Special Judge for CBI Cases, Madurai.

3. Brief facts:

a) According to the prosecution, during the year 1992, the appellant herein (A-5), along with other accused persons (A-1 to A-4 therein) had entered into a criminal conspiracy to cheat the Regional Passport Office, Trichy in order to obtain passports on the basis of creating ante- dated passport applications with duplicate file numbers, so as to make them appear as old cases, accompanied by forged enclosures such as police verification certificates etc. In pursuance of the said conspiracy, A-2 being the Lower Division Clerk in the Regional Passport Office, Trichy fraudulently received and processed 42 forged passport applications filed by one Goodluck Travels, Trichy run by A-3 with the assistance of A-4 and A- 5 (the appellant herein) and made false endorsement of reference numbers, fee

certifications etc. and A-1, being the Superintendent of the Regional Passport Office, Trichy, by abusing his official position, granted orders for the issue of passports in respect of the said 42 applications.

b) In pursuance of the same, on 09.02.1993, the District Crime Branch at Ramanathapuram, Tamil Nadu received a letter from Deputy Superintendent of Police (DSP), DCRB Ramanad, containing a complaint given by the Passport Officer, Trichy. On the basis of the same, a case was registered by the District Crime Branch, Ramanad as Criminal Case No. 1 of 1993 under Sections 419, 420, 465 and 467 of the Indian Penal Code, 1860 (in short 'the IPC').

c) When the Inspector of Police, DCB, took up the investigation, the CBI intervened and filed a First Information Report being RC-21(A)/93 on 11.05.1973 under Section 120-B read with Sections 420, 467, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short 'the PC Act'). After investigation, the case was committed to the Special Court for CBI Cases, Madurai and numbered as CC No. 38 of 1996. On 01.08.1996, the Special Court, framed charges under Section 120-B of IPC against A-1 to A-5 and under Sections 420, 465 and 471 of IPC against the appellant herein (A-5) and specific charges under Section 13(1)(d) read with Section 13(2) of the PC Act against A-1 and under Sections 420, 467, 468 and 471 of IPC and under Section 13(1)(d) read with Section 13(2) of the PC Act against A-2 and under Sections 420, 465 and 471 of IPC against A-3.

d) By order dated 28.07.2004, the Principal Special Judge convicted and sentenced A-1 to A-3 and A-5. In the present appeal, we are concerned only with A-5 who was convicted and sentenced to undergo RI for 2 years along with a fine of Rs.5,000/-, in default, to further undergo RI for 6 months for each of the offences under Sections 120-B, 420 read with Sections 511, 465 and 471 of IPC. (Total fine of Rs. 15,000/-).

e) Aggrieved by the said order of conviction and sentence, the appellant herein filed Criminal Appeal No. 37 of 2004 before the Madurai Bench of the Madras High Court. By impugned order dated 29.04.2011, the High Court dismissed the same along with other set of appeals filed in respect of other accused and confirmed their conviction and sentence awarded by the trial Court. Being aggrieved by the judgment of the High Court, A-5 alone has preferred this appeal by way of special leave before this Court. 4) Heard

Mr. S. Prabhakaran, learned counsel for the appellant and Mr. H.P. Rawal, learned Additional Solicitor General for the respondent-CBI. Contentions:

5. Mr. S. Prabhakaran, learned counsel for the appellant, after taking us through the entire materials including the order of the trial Court and the High Court submitted that the initial proceedings by the State Crime Branch and the subsequent proceedings by the CBI cannot be permitted, hence, the entire investigation is to be thrown out. In other words, according to him, parallel proceedings by the State Crime Branch and the CBI are not permissible. In addition to the same, he submitted that the original seals and rubber stamps have not been seized from the police officials and those were not produced by the I.O. to prove that the seals and stamps were forged. He further submitted that the prosecution has failed to exhibit the FSL report with regard to the impression of seals of M.Os 1 to 3 alleged to have been recovered by the prosecution at the instance of A-3 despite the same were being sent by Shri Madavanan (PW-30), Inspector of Police. According to him, the specimen signatures of Shri Natarajan (PW-16), DSP, and R. Muniyandi (PW-29), Sub-Inspector of Police, have not been sent to the hand writing expert for his opinion. Further, the seal and specimen signature of attesting officer, viz., Dr. Muthu (PW- 18) were not collected by the CBI to prove that the seal and specimen signature were forged. There is no document or indication found in Exh.P-3 to P-43 to show that they were sent by M/s Goodluck Travels to the Passport Office at Trichy. Finally, he submitted that inasmuch as the certificates issued by the Village Administrative Officers that the applicants were not the residents of the place mentioned in the application form, their reports have no legal sanctity in the absence of certification by the Tahsildar.

6. Mr. Rawal, learned ASG appearing for the CBI, met all the contentions. He submitted that the claim that parallel proceedings by the District Crime Branch (DCB) and the CBI, though not urged before the trial Court, High Court and even in the grounds of appeal, however, there is no legal basis for such claim. Even otherwise, according to him, if there is any defect in the investigation, the accused cannot be acquitted on this ground. By taking us through the evidence relied on by the prosecution, findings by the trial Court and the High Court, learned ASG submitted that in view of concurrent decision of two courts, in the absence of any perversity, interference by this Court exercising jurisdiction under Article 136 is not warranted.

Discussion:

7. With regard to the main objection as to parallel proceedings as claimed by Mr. Prabhakaran, learned counsel for the appellant, as stated earlier, this objection was not raised either before the trial Court or before the High Court and even in the grounds of appeal before this Court, however, considering the fact that we are dealing with a matter pertaining to criminal prosecution, we heard the counsel on this aspect. He pointed out that the first FIR dated 09.02.1993 was registered at the instance of the complaint by Shri V.A. Britto, Passport Officer, Trichy. The said FIR has been marked as Exh.P-214. He also pointed out that the second FIR, at the instance of the Special Police Establishment, Madras Branch, was lodged on 11.05.1993 against three persons, namely, (1) P. Durai, Superintendent, Passport Office, Trichy (2) P.M. Rajendran, LDC, Passport Office, Trichy and (3) M/s Goodluck Travels, Thiruvadanai, Ramanad District, Tamil Nadu. By taking us through the said reports, particularly, the second FIR, the counsel for the appellant has pointed out that the said report proceeds on the basis of credible information from a reliable source. The same was entertained and registered as R.C.No. 21(A)/93 by S. Arulnadu, Inspector of Police, SPE:CBI:ACB:Madras. By pointing out these details, it is contended by the counsel for the appellant that the course adopted by the prosecution in examining certain persons by the DCB, namely, the State Police and the remaining persons by the CBI is not permissible.

8. It is settled law that not only fair trial, but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Accordingly, investigation must be fair, transparent and judicious and it is the immediate requirement of rule of law. As observed by this Court in Babubhai vs. State of Gujarat and Others, 2010 (12) SCC 254, the Investigating Officer cannot be permitted to conduct an investigation in a tainted and biased manner. It was further observed that where non-interference of the Court would ultimately result in failure of justice, the Court must interfere. Though reliance was placed on the above decision by the appellant, it is not in dispute that in that case, the High Court has concluded by giving detailed reasons that the investigation has been totally one-sided based on malafide. Further, in that case, the charge-sheets filed by the Investigating Agency in both the cases were against the same set of accused. This was not the situation in the case on hand. Though the State Crime Branch initiated investigation, subsequently, the same was taken over by the CBI considering the volume and importance of the offence.

9. In this regard, Mr. Rawal, learned ASG by drawing our attention to the relevant provisions of the Delhi Special Police Establishment Act, 1946 submitted that the course adopted by the CBI is, undoubtedly, within the ambit of the said Act and legally sustainable. Section 5 of the said Act speaks about extension of powers and

jurisdiction of special establishment to other areas. Section 5 of the Act is relevant for our purpose which reads as under:-

> "5. Extension of powers and jurisdiction of special police establishment to other areas.—
>
> (1) The Central Government may by order extend to any area (including Railway areas), in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.
>
> (2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject of any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of a police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police station.
>
> (3) where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2) any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station."

Sub-section (3) which was inserted with effect from 18.12.1964 by Act 40 of 1964 makes it clear that on the orders of the Central Government, any member of the Delhi Special Police Establishment is permitted to exercise the powers of the officer in charge of a police station in that area and while exercising such powers, he shall be deemed to be an officer in charge of a police station concerned discharging the functions of such officer within the limits of his station. In the light of the mandates as provided in sub-section (3), we are of the view that learned ASG is right in contending that there is no infirmity or flaw in continuing the investigation by the officers of the CBI

> in spite of the fact that the State Crime Branch registered a complaint and proceeded with the investigation to a certain extent.

10. It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In C. Muniappan and Others vs. State of Tamil Nadu, 2010 (9) SCC 567, the following discussion and conclusion are relevant which are as follows:-

> "55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

11. In Dayal Singh and Others vs. State of Uttaranchal, 2012 (8) SCC 263, while reiterating the principles rendered in C. Muniappan (supra), this Court held thus:

> "18. … Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground. …"

12. In Gajoo vs. State of Uttarakhand, 2012 (9) SCC 532, while reiterating the same principle again, this Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court. Since, the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp.280-83, paras 27-36)

"27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab, held: (SCC p. 657, para 5)

'5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so [pic]would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.'

28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Biharenunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In Zahira Habibullah Sheikh (5) v. State of Gujarat, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

'42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need

of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.' (emphasis in original)

30. With the passage of time, the law also developed and the dictum of the court emphasised that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in NHRC v. State of Gujarat held as under: (SCC pp.777-78, para 6)

[pic]'6. … "35. … The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators." (Zahira Habibullah case, SCC p. 395, para 35)'

32. In State of Karnataka v. K. Yarappa Reddy this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p. 720)

'19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the [pic]action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.'

33. In Ram Bali v. State of U.P. the judgment in Karnel Singh v. State of M.P. was reiterated and this Court had observed that: (Ram Bali case15, SCC p. 604, para 12)

'12. … In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.'

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that

no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a 'fair trial', the court should leave no stone unturned to do justice and protect the interest of the society as well.

35. This brings us to an ancillary issue as to how the court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab, the Court, while [pic]dealing with discrepancies between ocular and medical evidence, held: (SCC p. 159, para 8)

'8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.'

36. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

'34. … The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion,

> because once the expert's opinion is accepted, it is not the opinion of the medical officer but [that] of the court.'"

13. It is clear that merely because of some defect in the investigation, lapse on the part of the I.O., it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions etc., it is the obligation on the part of the Court to scrutinize the prosecution evidence de hors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth. In the light of the above principles, as noticed, we reject the main contention of the learned counsel for the appellant, however, as observed in the above decisions, let us examine the material relied on by the prosecution and find out whether a case has been made out against the appellant.

Discussion as to the merits of the prosecution case:

14. It is the claim of the appellant that the prosecution has not proved that the travel agency was purported to have been run by S. Rajendran (A-3) for the purpose of submitting passport applications. According to the appellant, Exh.P-2 to P-43 is incorrect. The said contention is liable to be rejected since Palaniappan (PW-11), who is the owner of the building bearing No.48/9, MCT Building, near Bus Stand, Karaikudi has leased out the first floor of the said building to S. Rajendran (A-3) for the purpose of running a travel agency in the name and style of Goodluck Travels. Even in the cross-examination, PW-11, the owner of the said building, admitted that A-3 was a tenant under him. In addition to the same, it is also clear from the evidence of one Dawood (PW-13) that Rajendran (A-3) was running a travel agency at Karaikudi in the name and style of Goodluck Travels. It is also relevant to point out that as per the evidence of Assistant Registrar, Ramanad District (PW-9), Goodluck Travels was registered as a firm in the Office of the District Registrar, Karaikudi. It is clear from the above materials that A-3 was occupying the said premises pertaining to PW-11 during the period from 1991-93 and he was running a travel agency in that place.

15. The claim of the appellant that there is no evidence to show that Exh.P-2 to P-43 had been presented by the Goodluck Travels is incorrect since Hema (A-5), who was working as a clerk in the said travel agency of A- 3 has admitted in the statement under Section 313 of the Code of Criminal Procedure that at the relevant time she was working with the Goodluck Travels and she used to submit the passport applications in the passport office and receive the passports from the office. The above statement makes it clear that she was assisting S. Rajendran (A-

3) in preparing applications and filing them before the passport office and dealing the affairs connected therewith. This fact is also evident from Exh. P-2, which is a folder marked on the side of the prosecution and captioned as "Goodluck Travels".

16. The other relevant aspect is the admissible portion of the confessional statement of A-3 which is marked as Exh.P-215 and which led to the recovery of forged/fabricated rubber stamp seals, M.Os 1 to 3 seized at his behest under Exh.P-216, the Mazahar, in the presence of Village Administrative Officer (PW-15) and Village Menial also prove the prosecution case and disprove the stand of the appellant.

17. The trial Court, on verification and perusal of Exh.P-2 to P-43, passport applications, noted that the same were filed by Goodluck Travels. It is pointed out that the applicant concerned in Exh.P-2 (passport application) namely, Shri Rasool, authorized M/s Goodluck Travels to deal with the matter relating to his passport and to receive the same on his behalf. The evidence of PW-12 and PW-13 also lends credence to the above aspect. Further, we have already noted that the appellant (A-5) has admitted in her examination under Section 313 that she was working with Goodluck Travels and she used to submit the applications in the passport office and receive the passports from the office.

18. Next, it is contended by the appellant that the police verification forms, namely, Exh.128 to 136 and 161 to 202 were not proved to have been forged in the light of the fact that the subsequent signatures of PWs 16 and 29 were not sent to PW-28, the hand writing expert, for his opinion. The said contention is liable to be rejected in view of the categorical statement of Shri Selvin (PW-26), DSP, DCRB, Ramanad who has stated that as soon as the personal particulars, forms of passport applications were received from the Passport Office for police verification, they were entered in the register maintained for the purpose and each application was given a number and all the applications were sent to the respective Police Stations for report. He further explained that after verification by the officials concerned, the paper would again come to the office of DSP, DCRB for forwarding the same to the concerned Passport Offices. He asserted that 42 application forms, viz., Exh. P-2 to P-43 were not received at the office of DSP, DCRB, Ramanad. He also highlighted that these forms were neither sent to the sub-Inspector of Police Thiruvadanai for verification nor received back from the S.I. Police and not dispatched to the Passport Office, Trichy for recommendation for issue of passports. A perusal of the evidence of Shri Natarajan (PW-16), DSP, R. Muniyadi (PW-29), Sub-Inspector of Police clearly shows that they did not sign the verification forms. PW- 29 specifically stated that during the relevant time,

passport applications (Exh.P-2 to 43) were not received by his office and he did not sign the verification forms Exh.P-161 to P-202. It is clear from their statements and assertions that the verification forms of the said 42 applications have not been dealt with by the concerned officials and the trial Judge was right in concluding that they were forged. Mere non-production of registers maintained in the office of DSP, DCRB, Ramanad cannot be construed to be an infirmity in this case in the light of the evidence of PWs 16, 26 and 29 who are relevant officers concerned with those documents.

19. Regarding the contention that the specimen signatures of Dr. Muthu (PW-18), Civil Surgeon, Government Hospital and Shri Vairavan (PW-20), Executive Officer (Retired), Town Panchayat, Thondi in Ramanad District, who are all independent witnesses, were not forged, it is very much clear from their evidence that their signatures were forged in the applications. There is no reason to disbelieve their evidence and the trial Judge has rightly accepted the same.

20. Regarding the evidence of Village Administrative Officers and the certificates issued by them, it is relevant to point out that those documents were properly marked through Village Administrative Officers of the villages concerned and also by the officers who made a field enquiry for the same. We are satisfied that there is no legal infirmity as claimed.

21. Insofar as the contention relating to recoveries of M.Os 1 to 3 – Seals of Superintendent of Police, Ramanad, as rightly concluded by the trial Court, the evidence of the concerned Village Administrative Officers, Deputy Superintendent of Police, Civil Surgeon (PW-18), Government Hospital, Executive Officer (Retired) of Town Panchayat (PW-20) are sufficient to establish that the forged attested documents were created and enclosed for the purpose of getting passports in support of false addresses given in the applications by the appellant. The above fact is also evident from the evidence of Village Administrative Officer (PW-15), Thiruvadanani, the confessional statement given by A-3 which was recorded under Section 27 of the Evidence Act in his presence and M.Os 1 to 3 which were recovered under a cover of mazahar (Exh. P-216) at the behest of A-3 and the admissible portion of the evidence leading to recovery which is marked as Exh. 215. The contradictions as pointed out by the learned counsel for the appellant are only trivial in nature as found by both the trial Court and the High Court, accordingly, it cannot be construed to be a material one so as to affect the version of the prosecution. We are satisfied that there is no infirmity in the recovery and reject the argument of the learned counsel for the appellant.

22. Coming to the next contention, namely, the failure of the prosecution to exhibit the report of FSL, Chennai with regard to the impression of seals M.Os 1 to 3 is fatal to the prosecution, it is relevant to note that PWs 16, 26 and 29 DSPs and S.I. of Police have categorically denied the genuineness of the above seals since the same were recovered pursuant to the confessional statement of A-3 and the absence of expert opinion by itself does not absolve the liability of the appellant.

23. The contention that the evidence of Sundaram (PW-14), who was examined for the purpose of proving the handwriting of the appellant and whose competency to identify the writing of the appellant itself is doubtful, as rightly pointed out by the respondent that it was admitted by A-5 (appellant herein), while questioning under Section 313 that she had been working in Sugir Tours and Travels run by PW-14 during 1987-91 and, hence, the evidence of PW-14, who identified the writings available in Exhs.P-2 to P-43 as that of A-5 is admissible under Section 47 of the Indian Evidence Act. We are satisfied that the same was rightly acted upon by the trial Court and the High Court while holding the charge against the accused-appellant as proved to have committed in pursuance of the conspiracy.

24. Finally, the contention of the appellant that simply because the applications were filled up by a person does not automatically lead to the inference that a person is a party to the conspiracy. In the case on hand, it is very well established by the prosecution that the filled up passport applications were submitted by A-5 (appellant herein) on behalf of her employer A-3. Further, in majority of passport applications (Exh. P-2 to P- 43), bogus particulars were filled by A-5 (appellant herein), at Trichy. The prosecution has also established that A-5 has given false particulars regarding the place of residence of applicants' in the passport applications in view of her admission in 313 statement that she was working in Goodluck Travels and assisting Rajendran (A-3) in preparing applications and filing them before the Passport Office as well as handling the affairs connected therewith which clearly prove that A-5 has filled up the said passport applications (Exh.P-2 to P-43). We are also satisfied that the prosecution has clearly established that false documents were made for the purpose of cheating and those documents were used as genuine for obtaining passports.

25. In the light of the overwhelming evidence placed by the prosecution, analyzed by the trial Court and affirmed by the High Court, interference by this Court with concurrent findings of fact by the courts below is not warranted except where there is some serious infirmity in the appreciation of evidence and the findings are perverse. Further, this Court will not ordinarily interfere with appreciation of

evidence by the High Court and re-appreciation is permissible only if an error of law or procedure and conclusion arrived are perverse.

26. Taking note of the fact that the appellant is having a small child, while confirming the conviction we reduce the sentence to six months from two years.

27. With the above modification i.e., reduction of sentence, the appeal stands disposed of.