

State Rep. By Vs. 1.M.Surendran

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Court : Chennai

Decided On : Nov-19-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : State Rep. By

Respondent : 1.M.Surendran

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 19.11.2014 CORAM THE HONOURABLE Ms.JUSTICE R.MALA Criminal Appeal (Md.No.302 of 2010 State rep.

By The Deputy Superintendent of Police SPE/CBI/ACB Chennai in RC1A)/2003/CBI/ACB/CHE ..Appellant Vs 1.M.Surendran 2.M.Muthu Krishnan ..Respondents/A2&3 Prayer Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the judgment of acquittal passed in C.C.No.17 of 2004 on the file of the Special District and Sessions Judge for CBI Cases, Madurai dated 18.12.2009.

!For Appellant : Mr.G.R.Swaminathan, ASCGI for CBI Cases ^For Respondents : Mr.S.Thirupathy for R1 Mr.G.Maruthiah for R2 :

JUDGMENT

The Criminal Appeal is directed against the judgment of acquittal passed by the learned Special District and Sessions Judge for CBI Cases, Madurai dated 18.12.2009 in C.C.No.17 of 2004.

2.The prosecution case in brief is as follows: (i) A1 Anbalagan was working as Divisional Manager in the United India Insurance Company at Madurai from February 1997 to July 2000.

The fiRs.appellant/A2 Surendran was working as Assistant Divisional Manager.

A3 Muthukrishnan was working as Assistant Administrative Officer (Accounts) and he was also a member of Divisional In-house Conciliatory Committee.

If any Motor Accidents Claim Petition filed by the claimant is referred for compromise before the Lok Adalat, the Divisional Manager has power to settle the matter in respect of quantum of compensation and he has to follow the guidelines issued by the Head Office of United India Insurance, Chennai in Circular No.H.O.:MOD:402:98 dated 30.11.998 Ex.P2.

(ii)A2 Surendran was the Officer-incharge of Division No.4 of Motor third party claim section in United India Insurance Company at Madurai.

The nature of the duty of A2 is to prepare Motor T.P.Claim note on the basis of the documents.

A2 should be assisted for the Divisional Manager to verify each and every documents.

A3 Muthu Krishnan was the Assistant Administrative Officer (Accounts) and he was also a member of Divisional In-house Conciliatory Committee.

As per the circular issued by the Head Office of United India Insurance company, if the award of the Lok Adalat is reasonable, then he approve the same and put his signature.

(iii).Motor Accident Claim Petition in M.C.O.P.No.1145 of 1995 was filed before the Motor Accidents Claim Tribunal, Madurai, claiming compensation by the claimant, which was taken on file by the Insurance Company in file No.507/1995-1996, Ex.P1 series.

The claim petition has been filed relating to an accident occurred on 18.03.1995, wherein one Ghouse @ Hafiz sustained injuries by the Lorry bearing Reg.No.TSE6373 belongs to one Muthuandi, which was insured from the period 02.09.1994 to 01.09.1994 and the policy number is 090201/31/21/16/558/4167/94.

A2 handed over the case to one Murugesan, who was the Panel Advocate to conduct the case in M.C.O.P.1145 of 1995.

One Rajendran, P.W.9 was appointed as Insurance investigator and to file an investigation report in respect of that case.

(iv)P.W.9 Rajendran filed investigation report, wherein it was stated that the alleged accident is true, whereas, at the time of the accident, the claimant, who is the driver of the two wheeler has driven the vehicle without valid driving licence.

But, in the police report, it was stated that one Nazar has driven the vehicle and the petitioner/claimant was travelling as pillion rider and the same has been mentioned in the final report also and there are contradictions between the investigation report and the police report.

As per the driver of lorry, the claimant has only driven the vehicle.

But, knowing fully well that as per the report, the said motor accident claim petition was not a fit case to refer the matter before Lok Adalat, to cause wrongful loss to the United India Insurance Company in the matter of paying compensation to the claimant in file No.507/1995-96 in M.C.O.P.No.1145/95 on the file of Motor Accidents Claim Tribunal, Madurai, A1 to A3 entered into a criminal conspiracy along with the panel advocate Ilangovan, referred the matter before the Lok Adalat under Ex.P10 filed a joint memo, before the Lok Adalat settlement for Rs.1,87,000/- and as per the joint memo, the award has also been passed.

As per the receipts available in the file, the injured claimant Ghouse Mohideen @ Hafiz incurred a sum of Rs.75,000/- for treatment.

A2 has not obtained any opinion from the Advocate, who conducted the case.

But, A2 fraudulently prepared motor TP claim note stating that he incurred a sum of Rs.1,30,000/- for hospital expenses and since the award amount is above their jurisdiction, the file was put up before DICC committee.

A1 in the capacity of Chairman and A2 and A3 as members of DICC, they approved the same, by misusing their official capacity.

The matter would have been settled for a sum of Rs.90,000/- including the medical expenses of Rs.75,000/- and hence, A1 to A3, by abusing the official position, caused wrongful loss of Rs.97,000/- to the United Insurance Company and hence, they committed the offence and based on the source information, P.W.10 N.P.Raju, Inspector of Police registered the case in R.C.1 A of 2003 against the accused on 13.01.2003 under Sections 120(b) read with 420 of I.P.C.and and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and Section 420 of I.P.C.and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

(v)P.W.11, Sankar, the Superintendent of Police take over the investigation and after getting proper permission from the Court and as per the search warrants Ex.P19 and 20, they prepared search list Ex.P21 and 22 and recovered documents from the residence of the accused.

After due completion of investigation, he filed charge sheet against the accused for the offence as stated above.

3.The learned trial Judge after following the procedure, framed necessary charges against the accused.

Since the accused pleaded not guilty, to prove the charges, P.Ws.1 to 11 were examined and marked Exs.P1 to P26.

Accused were questioned under Section 313 Cr.P.C.about the incriminating evidence and circumstances.

Accused denied the same and stated that a false case has been foisted against them.

No defence witness was examined on the side of the accused.

4. On considering the oral and documentary evidence, the learned Sessions Judge found the appellants/A2 and A3 found the accused not guilty for the offence under Sections 120(b) read with 420 of I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and Section 420 of I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and acquitted them from all the charges levelled against them.

Since A1 died, the charges levelled against him are abated.

5. Challenging the judgment of acquittal, the Deputy Superintendent of Police, CBI, Chennai has preferred the present Criminal Appeal.

6. Challenging the judgment of acquittal, Mr. G.R. Swaminathan, the learned Assistant Solicitor General of India appearing for C.B.I. would submit that the trial Court has not appreciated the evidence of the prosecution witnesses and even though there is violation of policy condition that the injured has not possessed valid driving license to drive the two wheeler and that was not a fit case for referring the matter before the Lok Adalat, knowing fully well the same, the respondents herein, have referred the matter before the Lok Adalat and caused wrongful loss to the Insurance Company.

7. He would further submit that the trial Court has failed to consider the fact that the injured has incurred medical expenses only to the tune of Rs.75,000/-, but the award has been passed for a sum of Rs.1,87,000/- and hence, he prayed for setting aside the judgment of acquittal and prayed for conviction of the respondents.

8. Resisting the same, Mr. Thirupathy, learned counsel for the fiRs. respondent/A2 would submit that the fiRs. respondent/A2 is only the Assistant Divisional Manager and the nature of his duty is to prepare Motor T.P. Claim note on the basis of the documents, but, the charges framed against him are entirely different.

He would further submit that the medical expenses incurred by the claimant is only for a sum of Rs.75,000/-.

But, award has been passed for a sum of Rs.1,87,000/- without any bill and voucher.

Admittedly, A2 had prepared the claim note only after the matter was settled before Lok Adalat and that factum was correctly considered by the trial Court and hence, he prayed for dismissed of the appeal against R1/A2.

9.Mr.G.Maruthiah, learned counsel for the second respondent/A3 would submit that the second respondent/A3 is only the Assistant Administrative Officer (Accounts) and also a member of Divisional In-house Conciliatory Committee and he has nothing to do with the commission of offence and after the matter has been settled before the Lok Adalat only, the claim note has been prepared, wherein, he signed the same and he was not played any role for fixing the compensation of Rs.1,87,000/- and the trial Court has rightly held that Rs.1,87,000/- is not only for medical expenses but also for other expenses and hence, he prayed for dismissal of the appeal against R2/A3.

10.Further, both the learned counsel for the respective respondents/A2 and A3 would submit that in the case of appeal against acquittal, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court and the view favoring the accused has to be taken into consideration and hence, they prayed for the dismissal of the appeal.

11.Considering the rival submissions made by both sides and perusal of typed set of papers would show that A1 was the Divisional Manager, A2 was the Assistant Divisional Manager and A3 was the Assistant Administrative Officer (Accounts) and also a member of Divisional In-house Conciliatory Committee of United India Insurance Company.

It is the case of the prosecution that one Ghouse Mohideen @ Hafiz has met with an accident and sustained injuries and he filed a motor accident claim petition in

M.C.O.P.No.1145 of 1995 before the Motor Accidents Claim Tribunal, Madurai for claiming compensation.

The insurance file No.207/1995-1996.

12.The vehicle involved in the accident is a two wheeler bearing registration No.TN75F6373 In the M.C.O.P.case, A2 appointed a counsel viz., one Murugesan.

He filed counter affidavit.

It is also an admitted fact that P.W.9 Rajendran was appointed as Insurance Investigator and he made investigation and filed a report.

A2 Surendran was the Officer-in-charge of Division No.4 of motor third party claim section.

Since it is a third party claim, the matter was referred to Lok Adalat.

At this juncture, it is appropriate to consider the charges framed against the respondents.

Perusal of the charges framed against the respondents would show that no charges have been framed against the respondents for referring the matter dishonestly, as if the matter is not fit for Lok Adalat.

The only charge against them is that even though the claimant sustained injuries and he incurred a sum of Rs.75,000/- toward medical expenses, the award has been passed for a sum of Rs.1,87,000/- and thereby, they caused wrongful loss to the Insurance Company.

Admittedly, during the Lok Adalat, the amount has been settled and thereafter only, the claim note has been prepared and the respondents and A1 to A3 have signed on the same.

In such circumstances, there is no evidence to show that these respondents, with an intention to cause wrongly loss to the Insurance Company, fraudulently and

dishonestly prepared the claim note and that factum was rightly considered by the trial Court.

After arriving the settlement before the Lok Adalat only, joint memo has been filed and thereafter, the claim note has been prepared by the respondents and A1.

13.It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference.

The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused.

The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence.

But, here in this case, it is pertinent to note that the complaint has not been given by the Insurance Company for the dereliction of duty of the respondents, whereas, only on the source of information, the case has been registered and after the investigation, charge sheet has been levelled against the Divisional Manager and Assistant Divisional Manager and the Assistant Administrative Officer (Accounts).who was also a member of Divisional In-house Conciliatory Committee of United India Insurance Company.

14.In such circumstances, there is no evidence on the side of the prosecution to prove that with a view to cause wrongful loss to the Insurance Company, the fiRs.respondent/A2 referred the matter to Lok Adalat.

Furthermore, it is well settled that if two reasonable views are possible on the basis of the evidence on records, the appellate should not disturb the finding of acquittal recorded by the trial Court and and the view favoring the accused has to be taken into consideration.

Therefore, I am of the view that there is no iota of evidence before this Court to show that the respondents have committed the offences under Sections 120(b) read with 420 of I.P.C.and and Section 13(2) read with 13(1)(d) of Prevention of

Corruption Act, 1988 and Section 420 of I.P.C.and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

The trial Court has also considered the same in a proper perspective and came to the correct conclusion and hence, I do not find any merits in the appeal and the same deserves to be dismissed.

15.In the result Criminal Appeal is dismissed.

Judgment of conviction and sentence dated 18.12.2009 passed in C.C.No.17 of 2004 on the file of the Special Court for CBI Cases, Madurai is hereby confirmed.

To 1.The Deputy Superintendent of Police SPE/CBI/ACB, Chennai.

2.The Special District and Sessions Judge for CBI Cases, Madurai.

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