

LAW PAPER III

Question No. : 1

Between 19/06/2009 and 11/11/2010, Dharmadevi was the Elected President of Iyangunan Panchayat. The second accused was its Vice-President. Based on complaint alleging the President of Iyangunan had obtained a card under MGNREGA scheme for herself and received wages, enquiry was conducted by the Assistant Project Officer Mr.Jayabalan. In his report, Jayabalan enlisted irregularities in maintaining the Registers under MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act), 2005 and found fabrication of the Attendance Register and misappropriation of Rs.5,140/- by Dharmadevi. The enquiry report was taken cognizance to register F.I.R in Crime No.97/2011 dated 11/06/2011. On completion of the enquiry, Final Report filed as against 4 persons.

As per the Final report Dharmadevi and 3 other conspired to cheat the Government, fabricated MGNREGA work card, enabled Dharmadevi (A-1) to receive Rs.5,140/- as wages without working. Along with Dharmadevi, the Vice President (2nd accused) and two others, Padmanaban (3rd accused) and Mathialagan (4th accused) who were working as Assistants in the Panchayat Office, aided A-1 to get undue advantage of her position and they were charged for fabrication of documents to facilitated the misappropriation. A-1 is the Panchayat President and A-2, the Vice President. The wages for the MGNREGA Scheme has to be paid through the Makkal Nala Paniyar (MNP). In her presence, the beneficiaries should sign the attendance and her responsibility is to supervise the execution of the work. The money for payment of the wages has to be drawn by cheque to be signed by the President (A-1) and the Vice-President (A-2). Therefore, the President and Vice-President of Panchayat, are public servant within the meaning of Section 21 of I.P.C, though not paid any salary.

The receipt of wages under the scheme is admitted by the First Accused. The second accused the Vice-President, who is responsible to draw money from the bank and disburse the wages admits that Rs. 5,140/- was paid as wages to the President (A-1) under the scheme based on the attendance register. The MNP do not deny that they allowed A-1 to sign the attendance register to enable her to get the wages.

According to the prosecution, by virtue of the Office held by A-1, she is not eligible to be a card holder under the MGNREGA Scheme. Wages paid based on the false entry made in the attendance register. Whereas, the defence taken by the accused persons, there is no bar under MGNREGA Scheme for the President to be a card holder. She attendant the work and for the work done by her, wages paid.

Question No. : 2

The brief facts of the prosecution case as narrated by its witnesses :

PW-1 and PW-2 are husband and wife. They are resident of Perunthottam Village near Sirkali. On 22/11/2005 at about 5.30 p.m, for medical check up, PW-1 and PW-2 left to Sirkali from their home in a two wheeler Bajaj CT 100 bearing Registration No: TN 49 T 6553, After consultation, while they were returning home through Poombukar Road, at about 08.45 p.m, near Manalmedu Village, PW-1 saw three persons in a motor cycle following him menacingly. Suspecting danger, PW-1 raised the speed of his vehicle, however, the trio overtook him and restrained him from proceeding. Both PW-1 and PW-2 fell down and got hurt. When PW-1 and PW-2 raised alarm and screamed, one of them took a knife and threatened not to shout and snatched the chain from PW-2. When PW-2 resisted, the chain got cut, the chain remained with PW-2, the trio removed 3 grams gold thali, 2 gold coins stringed to the chain and fled away on seeing the public rushing towards them.

PW-1 and PW-2, got admitted in the Government Hospital at Sirkali as in-patient for treatment to the injuries sustained. On receipt of the intimation from the Hospital, PW-15, the Sub-Inspector of Police attached to Vaitheeswaran Koil Police Station, came to the hospital and recorded the complaint (Ex.P-1) from PW-1 and registered First Information Report (Ex.P-14), in Crime No.261/2005 against three unknown persons. The investigation was taken up by PW-16, the Inspector of Police. IO visited the crime spot, prepared sketch, observation mahazar and recorded statements of witnesses.

A-1 [Kothandaraman] was arrested on 24/11/2005 at 6.00 pm. He confessed the guilt and his statement was recorded in the presence of PW-10 and PW-14. The Hero Honda motorcycle bearing registration No: TN 22 E 6784 used for the crime by the trio and part of the stolen properties, (ie) the gold thali gundu with two copper tubes (M.O 1 and M.O. 2) were recovered from A-1 based on his confession.

On 28/11/2005, at about 03.00 pm, A-3 was arrested and his statement was recorded. Based on his confession, 2 gram thali (M.O.3) and 2 gold coins- $\frac{1}{2}$ gram (M.O.4) were recovered. The witnesses to the recovery mahazar turned hostile and corroborated the version of PW-16.

Nearly after two months, Identification Parade in the prison was conducted by the Judicial Magistrate. PW-1 identify the A-1 to A-3. PW-2 identified A-1 and A-3. The Identification Parade proceedings recorded by the Judicial Magistrate marked through the Investigating Officer as Ex.P18.

Recovery Mahazar witnesses PW-4 to PW-7, PW-10 and PW-14 turned hostile. The villagers who saw the incident corroborated the version of PW-1 and PW-2 about the incident. The prosecution witnesses PW-10 and PW-14 did not

support the case of the prosecution regarding the recovery of M.O.3 and M.O.4 from A-3. PW-2 has deposed that M.O.2 series was recovered from A-1 at the police station. A-1 split gold thali and gundu from his mouth, when he was hit by the police. The Judicial Magistrate who conducted the Identification Parade, was not examined, PW-3- Doctor, who treated PW-1 and PW-2 certified stating that the injuries found on PW-1 and PW-2 are simple in nature. The Accident Registers of them were marked as Ex.P-2 and Ex.P-3.

The public prosecutor argument :

The victim was able to identify A-1 and A-3 during the Identification Parade as well as in the Court, Examination of the Judicial Magistrate, who conducted the ID parade is not necessary in all cases. PW-8, PW-9, PW-11 to PW-13 are the villagers, who rushed to the spot on hearing the commotion, had deposed that they saw PW-1 and PW-2 fell from the two wheeler, they told, three persons in the motorcycle snatched the chain and pulled them down. PW-3, Doctor and the Accident Registers (Ex.P-2 and Ex.P-3) prove the fact that PW-1 and PW-2 sustained injuries, M.O.3 and M.O.4 which belongs to PW-2 was later recovered from A-3. Thus, the prosecution has proved the fact that the chain was snatched by causing hurt.

Frame charges and write judgement.

Question No. : 3

The gist of the prosecution case is that the complainant Company is engaged in the business of Satellite Television Broadcast and they broadcast various programs and also cinematography films in Tamil language. The main source of revenue for the complainant is through telecasting serials, advertisements, hiring slots to develop business. The accused hired slots for developing his business and issued a cheque (Ex.P2) bearing No.519210, dated 21 .09.2008 for Rs.1,13,500/-, drawn on Indian Bank, South Usman Road, Branch, Chennai.

When the cheque was presented for encashment in Canara Bank, Teynampet Branch, the same was returned with an endorsement 'Insufficient Fund' through the return memo, dated 04.02.2009. Thereafter, the complainant issued a statutory notice (Ex.P5), dated 13.02.2009 calling the accused to pay the entire cheque amount within 15 days from the date of receipt of notice. But the petitioner neither paid the cheque amount, nor made any reply to the respondent. Hence, the complaint.

On the side of the complainant company its Manager was examined as PW1. and six documents were marked as Exs.P1 to P6. On the side of the defence, no witness was examined and no document marked.

PW1 during trial, in the chief examination stated that he personally know about the transaction between the complainant and the accused, in the cross examination he admit that he came to know about the transaction from the records/documents. He admit that the cheque was given to one of the Director of the Company but denied the suggestion that the cheque was not given to discharge liability but only as security for the loan availed from the said Director.

Question No. : 4

The gist of the complainant is to the effect that the land in old survey No.441/3 and new survey No.441/3C at Aundipatti Village, totally comprised of 84 cents and the same was sub-divided and an extent of about 11 cents belongs to the father of the de-facto complainant namely, Paramasivam Pillai. The said Paramasivam Pillai had four sons and the elder son Sakthivel expired and yet another son Selvaraj executed a release deed, dated 09.11.1981 in favour of other family members and the de-facto complainant has also executed a release deed on 17.02.1983 and relinquished his rights in favour of family members. Thereafter, a family arrangement was entered into between the family members on 13.02.1997 and some of the properties were sold.

According to the de-facto complainant, his share was sold without his consent and the brother of the de-facto complainant namely, Singaravelan along with other legal heirs created a power of attorney deed and alienated the property to various persons (A13 to A17). Thus the crux of the allegations made in the complaint is that his property has been grabbed by the accused persons by creating false documents and by cheating the de-facto complainant. When the de-facto complainant questioned about the same, he was also criminally intimidated by the accused persons.

Investigation ended in final report saying, the defacto complainant has a share in the property. The signature of the defacto complainant found in the power of attorney deed is genuine signature, but account not produced to him by the power agent. No sale consideration passed to the defacto complainant. When he demanded his share in the sale consideration, there was wordy quarrel between him and other sharers. During the registration of the document, some body else had impersonated the defacto complainant and signed in the Register maintained in the Sub-Registrar Office.

Witnesses for prosecution had deposed in support of the prosecution as found in the final report. No defence witness.

Frame charges and write judgment.

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