BAIL SLIP

Appellant in Crl.A.No.176/2004 (1st Accused in e.c.No.221/1997 on the file of the Principal, Special Judge, for CBI Cases, Chennai) was released on bail as per order of this Court dated 26/2/2004 in Crl.A.No.1414 of 2004 in Crl.A.No.176/2004.

Appellant in Crl.A.No.302/2004(2nd Accused in e.c.No.221/199 on the file of the Principal, Special Judge for Cbi Cases, Chennai) was released on bail as per order of this Court dated 1/3/2004 in Crl.M.P.No 2371/2004 in Crl.A.No.302/2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal Nos.176 and 302 of 2004

Judgment reserved on :19.03.2015
Judgment pronounced on : 25 .03.2015

N.Antony
... Appellant/A1 in Crl.A.No.176 of 2004

Shabir A.Bharmal ... Appellant/A2 in Crl.A.No.302 of 2004

vs.

State rep. by
Inspector of Police
SPE/ACB/CBI, Chennai
RC.No.18/A/96.
... Respondent/Complainant in both the appeals

Prayer:Criminal Appeals filed under Section 374 CrPC. against the judgment of conviction and sentence dated 04.02.2004 made in C.C.No.221 of 1997 on the file of the learned Principal Special Judge for CBI cases, Chennai.

For A1	:	Mr.R.Shanmugasundaram, senior counsel for Mr.S.Anbalagan
For A2	:	Mr.M.Nirmal Kunal Mr.P.R.Gowthaman
For Respondent	:	Mr.K.Srinivasn Special Public Prosecutor (CBI cases)

C O M M O N J U D G M E N T

The Criminal Appeals arise out of the judgment of conviction and sentence dated 04.02.2004 made in C.C.No.221 of 1997 on the file of the learned Principal Special Judge for CBI cases, Chennai, whereby the accused 1 and 2 were convicted and sentenced as follows:

Accused	Conviction for Offence under Section	Sentence
A1 and A2	120B read with 420, 511 IPC and Section 13(1)(d) of P.C.Act, 1988	To undergo one year rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo three months rigorous imprisonment each.
A1 and A2	420 IPC	To undergo one year rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo three months rigorous imprisonment each.
A1 and A2	420 read with 511 IPC	To undergo one year rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo three months rigorous imprisonment each.
A1	468 IPC	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment.

Accused	Conviction for Offence under Section	Sentence
A1	468 IPC	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment.
A1	471 (two counts)	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in each count in default to undergo three months rigorous imprisonment in each count.
A1	13(2) read with 13(1)(d) of P.C.Act	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment.

The sentences are ordered to be run concurrently.

2.For the sake of convenience, the appellants herein are referred to as A1 and A2.

3.The case of the prosecution is as follows:

(i) P.W.1/Durai singh is working as Executive Engineer in the main office at Chennai Port Trust, Area 1, 2 and 3 are under his control. Area 1 and 2 are looked after A1/Assistant Engineer, Area 3 is looked after by P.W.3/Mathivanan/Assistant Engineer. A2 is the supplier to Madras Port Trust. P.W.3 and Area 3 Supervisor namely, P.W.12/Mohan Mani gave an indent for 15 numbers of slew motor couplings which was signed by him and sent to the stores for purchase along with drawings; After due compliance of the procedures involved in respect of materials to be purchased and on receipt of materials, the stores department sent Ex.P1 inspection note. As per Ex.P1, P.W.8/Samuel, P.W.12 and P.W.3 inspected the materials and made an endorsement stating that the materials are not as per indent and thus the materials were rejected and they were returned to R and C Section through internal gate pass prepared by P.W.12. But P.W.8/Mechanic informed him that the rejected materials were re-accepted by A1 by making an endorsement in Ex.P2 small acceptance memo book that the said items of materials were reinspected by him and found that they are as per Port Trust drawing. The endorsement is Ex.P3 and was signed by A1. According to P.W.1, after his personal inspection, he issued a fresh rejected memo Ex.P5 on 11.12.1995 itself as the materials were not as per the drawings of Port Trust and handed over Ex.P5 to one Aiyasamy, Assistant Controller of Stores and his signature is not available in Ex.P4.

(ii)P.W.1 further deposed that Ex.P6 is the indent dated 04.11.1994 prepared in Area 2 for 20 sets of upper guide rollers with shaft and 40 sets of bottom guide rollers and signed by him and A1. EX.P7 is the purchase order dated 03.08.1995 to their suppliers M/S.Sterling Engineering Enterprises and the concerned materials to his knowledge were not supplied by the supplier.

(iii)P.W.2/Arumuga Perumal, Supervisor, Grade-1 in Area 2, deposed that indent and purchase orders are meant for Area 2 and during that period, Area 1 and 2 were under the control of A1.

(iv) P.W.4/P.Mohan, Assistant Technician in Area 1, deposed that A1 asked to transport 10 sets of upper guide rollers from Area 2 to stores and he refused to do the same, but at the instruction of A1, P.W.13/Santhanam transported the said materials from Area 2 to Area 1. After one week, A1 asked him to transport the rejected goods to stores and accordingly, they were transported.

(v) P.W.5/Chelladurai, Controller of Stores, deposed that an order dated 18.07.1995 for manufacture and supply of slew motor couplings as per the approved drawing, was placed with M/S.Sterling Enterprises but the total quantity was rejected as they have not complied with the Trust requirements. P.W.8/Samuel has also deposed the same.

(vi) P.W.6/Durairaj, Superintending Engineer, deposed that rejected materials were taken to Area 1 by A1.

(vii)P.W.12/Mohanmani, Supervisor deposed that after inspecting the couplings, he found that the same was not in accordance with the specification contained in the indent and hence, it is rejected and returned to the Stores Department and after that he came to know that the rejected materials were accepted by A1.

(viii) P.W.13/Santhanam, Assistant Technician in Area 1 deposed that when the guide rollers were transported from Area 2 to Area 1 under Ex.P35 gate pass, A1 asked him to divert the guide rollers to Stores Department.

(ix) P.W.15/C.M.Gandhi, Hand Writing Expert, compared the signatures and gave his opinion Ex.P36.

(x) As per the orders of S.P., on 29.03.1996, P.W.17/A.K.Sunil, investigating officer, registered a case in R.C.No.18/A/96 under F.I.R./Ex.P38 against A1 and two others for offences under Sections 120B read with 420, 468, 471 IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. He examined all the witnesses and recorded their statements. He collected various documents from the Port Trust and obtained Ex.P37/sanction order for prosecuting A1 and A3 from P.W.16/S.Ramakrishna, who is the then Chairman, Port Trust.

(xi) P.W.17 after completing investigation, filed a final report against A1 to A3 for offences under Sections 120B read with 420, 468, 471 IPC and Section 13(2) read with 13(1)(d) of the P.C.Act, 1988.

4.The learned Principal Special Judge for CBI Cases, Chennai after following the procedure, framed necessary charges. Since the accused pleaded not guilty, the Special Court examined the witnesses P.W.1 to P.W.17 and marked the documents Exs.P1 to P38 and placed the incriminating evidence before the accused and the accused denied the same in toto. On the side of the accused, Exs.D1 to D5 were marked. The Special Court after considering the oral and documentary evidence, convicted and sentenced A1 and A2 as stated above and acquitted A3 from the charges levelled against him.

5.Challenging the judgment of conviction and sentence passed by the Special Court, learned senior counsel appearing for A1 has raised the following points for consideration:

(i) Sanction is invalid for non application of mind by P.W.16/sanctioning authority while according sanction by following wrong facts of the case, which will cause injustice to the appellants. To substantiate his arguments, he relied upon the following judgments:

(1)(2007) 11 SCC 273 (State of Karnataka v. Ameerjan) and submits that while according sanction, the sanctioning authority has not applied his mind.

(2) (1997) (7) SCC 622 (Mansukhlal Vithaldas Chauhan v. State of Gujarat);

(3) (2006) 13 SCC 305 (V.Venkata Subbarao v. State represented by Inspector of Police, A.P.);

(ii) There are eight charges framed against three accused. Eighth charge was framed against A3, but he was acquitted from the eighth charge and hence, there are seven charges framed against A1 and A2. In respect of first instance, charges 1, 3 and 5 were framed and in respect of second instance, charges 2,4 and 7 were framed. 6th charge is framed for both instances.

(iii)In respect of first instance on 23.03.1995, Area 3 gave an indent for purchase of 15 numbers of slew motor couplings to stores along with the drawings of the Trust. A1 is the Assistant Engineer and he is the in-charge of Area 1 and 2. P.W.3/Assistant Engineer and P.W.12/Supervisor, Grade 1 are in-charge of Area 3. On 09.10.1995, A2 supplied the same. But P.W.1/Executive Engineer, P.W.3 and P.W.12 are rejected the same. On 09.11.1995, A1 has accepted the rejected materials by preparing acceptance memo and stated that the rejected materials were re-inspected and they are in accordance with the Port Trust drawings. On 11.12.1995, P.W.1

subsequently rejected the acceptance memo. So charges have been framed against A1 for offences under Sections 120B read with 420 and 511 IPC. Admittedly, drawing has been given and materials have been purchased for Area 2, where A1 is the in-charge and he has given an indent as per Ex.P13, in which, it was specifically mentioned that indentor code is 205 and Area is Area II. Subsequently, it was rejected and no materials were purchased. It shows that no payment was also made. Further, the goods have been supplied in accordance with the drawing as submitted by A1. But the drawing was not marked before the Special Court and this aspect has not been considered by the Special Court.

(iv)Further, the learned senior counsel appearing for A1 has drawn attention of this Court through Ex.P3/dated 09.11.1995, wherein it was stated that the above item was reinspected and found that item is as per the trust drawing EXM (E.C./O & C/071/94) and hence accepted the item. Hence, the rejection memo already sent was cancelled. Subsequently, on 11.12.1995 as per Ex.P5, it was cancelled. So there is no evidence to show that A1 has forged the signature of his higher official and fabricated the document.

6.Per contra, the learned Special Public Prosecutor (CBI cases) submits that P.W.16/sanctioning authority is a competent person to accord sanction and after applying his mind, he accorded sanction and therefore, the sanction is valid. It is true, A1 is the in-charge of Area 1 and 2, once the higher officials P.W.1 along with P.W.3 rejected the materials and sent a letter for cancellation, A1 cannot accept the rejected materials. That factum was rightly considered by the Special Court. But he fairly conceded that subsequently goods have been rejected and slew motor couplings 15 in numbers have not been received and no payment has been made and no loss. However, he prayed for dismissal of the appeals.

7.In respect of second instance is concerned, learned senior counsel for A1 submits that according to the case of prosecution, indent has been given for purchase of 20 sets of upper guide rollers and 40 sets of bottom guide rollers for Area 2 and A1 purchased the materials as per purchase order dated 03.08.1995/Ex.P7. As per Ex.P8, out of 20 sets of upper guide rollers, 18 sets were utilised. Out of 40 sets of bottom guide rollers, 36 sets were utilised and that has been shown in Exs.D2 and D3 as per the evidence of P.W.5. So the second instance is also not proved by the prosecution beyond reasonable doubt. Therefore, he prayed for allowing the appeal.

8.Learned counsel for A2 submits that as soon as A2, who is an Agent, supplied the goods, the same has been accepted by the Account section, which issued cheque and payment was made. So he has not conspired with A1 and that factum was not considered by the Special Court. Therefore, he prayed for allowing the appeal.

9.Resisting the same, learned Special Public Prosecutor (CBI cases) submits that evidence of P.W.3 and P.W.12 clearly proved that there is no such upper and bottom guide rollers received by the Port Trust. A1 has made the same as if he received the above materials and thereby caused loss to the Trust. Therefore, he prayed for dismissal of the appeals.

10.Considered the rival submissions made on both sides and perused the materials available on record.

First Instance:

11.The first and foremost point to be decided is that whether any indent dated 23.03.1995 was given by P.W.3 who is the in-charge of Area III for purchasing 15 slew motor couplings? Before that, the admitted facts are as follows:

A1 is the Assistant Engineer, Madras Port Trust and he is the in-charge of Area 1 and 2. A2 is the Supplier. P.W.3/Mathivanan is the in-charge of Area 3. As per Ex.P1, the indent has been given by the Stores Department for the following materials:

> "Slew motor couplings as per Trust drawing E.M. (EC)/ Dec/071/34 - 15 nos."

The indent number is 205/03335. But the above indent was rejected on 17.10.1995 by the following reason:

> "The above item is not as per our indent. So, it is rejected and returned all 15 Nos."

12.As per Ex.P3 dated 09.11.1995, A1 sent a letter, in which, it was stated as "The above item was re-inspected and found that the item is as per our trust drawing EXM (E.C./O & C/071/94) and hence accepted the items. Hence, our rejection memo already sent was cancelled."

13.As per Ex.P5 dated 11.12.1995, it was stated as follows:

> "The continuation of the above, the slewing motor couplings were personally inspected on 11.12.1995 at R and C Depot, it is found that the above materials are not as per drawing. Hence, the supplied materials are rejected. The earlier memo may be treated as cancelled."

14.Admittedly, materials have been rejected and no payment has been made. But the prosecution has not proved that the slew motor couplings supplied by A2 are not in accordance with the Trust drawing. That drawing was also not filed before the Court to show that whether the goods supplied by A2 are not in accordance with the indent and specification mentioned in the drawing and there is no evidence to prove the same.

15.As per Ex.P3, indent was given by A1, who is the in-charge of Area 1 and 2 for purchasing slew motor couplings for Area 2. Now it is appropriate to consider the evidence of P.W.1 and in his chief-examination, in page No.12 of the pleadings set, he deposed as follows:

> " .. .. In Ex.P2, the accused endorsed (A1) that the above item was re-inspected and found that the item is as per port trust drawing EXM (E.C./O & C/071/94). .. .. In Ex.P3 original, my signature is not available. In Ex.P4 in the place of EXM (E.C.), in that column one signature is available which is not mine. .. .. "

P.W.1 fairly conceded that fresh rejection memo Ex.P5 has been issued. But the drawing was not filed to prove that the slew motor couplings are not in accordance with the drawing.

16.P.W.1 in his cross-examination deposed as follows:

> "In the Port Trust for each and every area separate indent registers were maintained. Like wise each and every area indent numbers also maintained in separate order. In Ex.P13, it is mentioned that the indent was prepared for area 2. In Ex.P13, A1 has signed in the particular column. In Ex.P13, P.W.2/Arumugaperumal signature is also available. In Ex.P13 neither Mohanmani nor Mathivanan signatures were available. .. .. "

The above para shows that in Ex.P13 indent, which is for Area 2 neither the signatures of P.W.12 nor P.W.3 are available. So it is clear that the indent is for Area 2. Admittedly, the drawing submitted by A1 along with indent under Ex.P13 was not filed before the trial Court to prove that slew motor couplings are not in accordance with the drawing. However, P.W.1 fairly conceded that he has not mentioned the exact reason for rejection. So it is appropriate to incorporate the following portion:

> " .. .. In Ex.P1, there is mentioned that the materials are rejected, exact reason for the rejection

has to be mentioned. In Ex.P1, it is not mentioned that the rejected materials were compared with drawings. .. .. "

It shows that without giving any reason, P.W.1 has rejected the materials. But A1, who has given indent, purchased the materials and accepted that they are in accordance with the drawing. Subsequently, the superior officer P.W.1 rejecting the same stated that they have not received the materials. In such circumstances, the first instance that the charge Nos.1, 3 and 5 have not been proved by the prosecution beyond reasonable doubt. Accordingly, A1 and A2 were acquitted from the charges 1, 3 and 5 levelled against them.

Second instance:

17.The case of the prosecution is that due to some break down in the crane, A1 has received 20 sets of upper guide rollers and 40 sets of bottom guide rollers from A2 by forging the signature of P.W.1 and A1 without receiving materials created bogus acceptance memo and thereby committed the offences under Sections 420, 468, 471 IPC (2 counts) IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. It is appropriate to incorporate charges 2,4,6 and 7, which run as follows:

"Charge No.2:

Secondly, that you Antony was working as Assistant Engineer (Mechanical) on 21.10.1995, you fraudulently prepared an Acceptance Memo stating that 20 and 40 sets of upper and bottom guide rollers without accepting these materials and Antony had produced Delivery Challan dated 13.10.1995 to A.Bharmal firm, M/S.Sterling Engineering Enterprises in which G.Venkatesan had signed in the challan as asked by you Antony without receiving the materials. On the basis of the delivery challan Madras Port Trust had paid Rs.90,135/- to A.Bharmal firm by the above said illegal act you Antony, A.Bharmal firm and Venkatesan committed an offence punishable under Section 420 IPC and within my cognizance.

Charge No.4:

Fourthly, that you Antony as stated in the previous charges, on 21.10.1995, you have fraudulently prepared an Acceptance Memo without receiving the materials of 20 and 40 sets of upper and bottom guide rollers from A.Bharmal firm and you have forged the signature of Shri Durai Raj (SMEOP) and Shri S.L.Durai Singh (EXM) (EC) in the above Acceptance Memo for the purpose of cheating Madras Port Trust and that you thereby committed an offence punishable under Section 468 IPC and without my cognizance.

Charge No.6:

Sixthly, that you Antony, as mentioned in the previous charges, on 21.10.95, at Chennai had fraudulently or dishonestly used certain documents as genuine to wit bogus acceptance memo dated 21.10.95 and 09.10.95 and that you forged the signature of higher authority without their knowledge, which you knew or had reason to believe at the time you used it to be forged document and that you thereby committed an offence punishable under Section 471 IPC (2 counts) and within my cognizance.

Charge No.7:

Seventhly, that you Antony being a public servant employed as Assistant Engineer (Mechanical) at Madras Port Trust, on 21.10.95, that you have prepared bogus Acceptance Memo and forged the signature of higher authorities for accepting the materials without physically receiving the same by corrupt or illegal means or otherwise abusing your official position as such public servant obtained for yourself or any person pecuniary advantage of Rs.90,135/- by the act of you the Madras Port Trust paid the amount to A.Bharmal firm and thereby committed an offence punishable under Section 13(2) read with 13(1)(d) of P.C.Actt, and within my cognizance. "

18.According to the case of prosecution, A2 supplied 20 sets of upper guide rollers and 40 sets of bottom guide rollers and A1 received the same by issuing acceptance memo by forging the signatures of P.W.1 and P.W.2.

19.At this juncture, learned counsel for the appellants culled out the following portions from the chief-examination of P.W.1, which is as follows:

> ".. .. Ex.P9 was prepared and signed by A1. Ex.P9 is the original of Ex.P8. I have seized Exs.P8 and P9 from A1. My signature is not available in Ex.P9. The covering indent dated 18.10.95 of Area-I is Ex.P10. .. .. The Indent Book, Area-I maintained in the Port Trust Electric Train Shop, Area-I is Ex.P11. The original Indent No.205/027/95/ CWS dated 18.10.95 is Ex.P12. Ex.P12 is the original indent of Ex.P10. .. .. In Ex.P12 my designation was written but my signature is not available. .. .. "

20.As per Ex.P6/indent, 20 sets of upper guide rollers and 40 sets of bottom guide rollers required for Area II. In pursuance of that, Ex.P7 purchase order dated 03.08.95 was given. On perusal of Exs.P8 and P9 dated 21.10.1995, it reveals as follows:

> "Out of 20 sets of luffing rack upper guide roller spares with shaft Assy. 18 sets were utilised.

> Out of 40 sets fo bottom guide roller spares with Shaft Assy., 36 sets were utilised."

21.In Ex.P10/requisition and issue note of Port Trust, it was stated that quantity demanded 18 sets of upper guide rollers.

22.In Ex.P20/office copy of daily receipt statements issued by the Stores Department, it was stated that it was accepted by the Stores on 13.10.1995 and Ex.P21 bill has been prepared.

23.During trial, documents were sent for from the Port Trust and the same were marked as Ex.D1. Exs.D2 and D3 are the inventory registers card for bottom and upper guide rollers sent by Port Trust.

24.On perusal of Exs.D2 and D3, it clearly shows the receipts of 40 and 20 sets of upper and bottom guide rollers, in which, 36 and 18 were utilised and remaining 4 and 2 kept in the Stores Department. In such circumstances, it is clear that receipt has been accepted and utlisation has also been accepted. So the Special Court without considering the same held that A1 has given bogus acceptance memo without receiving the materials.

25.Now this Court has to decide whether A1 has concocted or forged or fabricated the signature of his superior official P.W.2? It is pertinent to note that documents were sent for Forensic Science Department, wherein P.W.15/C.H.Gandhi, an expert was examined and through him, Ex.P36 expert's opinion was marked. In para-7 of Ex.P36, it reads as follows:

> "7.A few admittedly genuine short and full signatures of S/Shri S.L.Durai Singh, P.K.Durai Raj and Arumuga Perumal written by each of them in routine course are also needed for comparison with their respective questioned signatures. "

26.P.W.15 in his chief-examination opined that "the person who wrote the red enclosed signatures stamped and marked S1 to S3 also wrote the red enclosed signatures similarly stamped and marked. Q1, Q1/1, Q1/2, Q1/3, Q1/4, Q2, Q2/1 and Q2/3. The person who wrote the red enclosed signatures stamped and marked S9 also wrote the red enclosed signature similarly stamped and marked Q9 and Q9/1."

27.Admittedly, there is no evidence to show that signatures of P.W.1, P.W.2 and P.W.6 were sent for Forensic Science Department for comparison. Furthermore, in Ex.P36, work sheet has not been filed and there is no evidence to show that which document has been marked as S1 to S3 and which document has been stamped and marked as Q1, Q1/1, Q1/2, Q1/3, Q1/4, Q2, Q2/1 and Q2/3 and to whom S1 to S3 belonged.

28.P.W.15 in his cross-examination fairly conceded that "both of use felt the necessity of the admitted genuine signatures of Duraisingh, B.K.Durairaj and Arumuga Perumal. I cannot say whether my officers received the said signatures in the options of the file. "

29.On going through the evidence of P.W.15, it is clear that it is not helpful to the case of prosecution. Furthermore, it is well settled dictum of the Apex Court that evidence of expert's opinion is not a substantial piece of evidence. There is no evidence to show that A1 has forged the signature of his higher official and in the available evidence, no one stated so. In such circumstances, no reliance can be placed on the evidence of P.W.15 and Ex.P36, since the case is based only on the allegation that A1 has fabricated the document and forged the signatures of his higher officials as if he received the materials.

30.As already stated that documents maintained by the Stores Department, Port Trust clearly proved the receipt of 20 and 40 sets of upper and bottom guide rollers and utilisation of 18 and 36 sets respectively. So the prosecution has miserably failed to prove that A1 has fabricated the documents and forged the signatures of P.W.1, P.W.2 and P.W.6 beyond all reasonable doubt.

31.According to A2, he has supplied the goods and Account Section has also passed a bill and amount has been paid and that has been substantiated by the documents. In such circumstances, A2 cannot conspire with A1 to create any false document and that factum was not considered by the Special Court. So the second instance that the charge Nos.2,4,6 and 7 have not been proved by the prosecution beyond reasonable doubt. Once A1 has been acquitted from the charges levelled against him, A2 supplier is also acquitted from the charges levelled against him. Accordingly, A1 and A2 were acquitted from the charges 2,4,6 and 7 levelled against them.

Sanction:

32.Now this Court has to decide whether sanction accorded by P.W.16/sanctioning authority is valid in law? Learned senior counsel appearing for A1 would submit that while according sanction, P.W.16 has not applied his mind. Now it is appropriate to incorporate the following portions from Ex.P37/sanction order, which runs as follows:

> "Whereas it is alleged that Shri N.Antony and Shri Shabbir A.Bharmal entered into a criminal conspiracy at

> Madras and other places during 1994-1995 to cheat the Madras Port Trust to the tune of Rs.90,135/- by submitting forged documents as if Shri Shabbir A.Bharmal had supplied 15 numbers slew motor couplings and also 20 and 40 numbers of upper and bottom rollers but infact Shri. Shabbir A.Bharmal did not supply the above 20 and 40 numbers of upper and bottom guide rollers and in pursuance of the conspiracy Shri N.Antony fraudulently and dishonestly forged the Port Trust documents as if he had received the above materials but actually no such materials was received at the Madras Port Trust. .. ..”

33.The case of the prosecution is that A1 has forged the signature of P.W.1/Executive Engineer and re-accepted the rejected materials (i.e.) 15 numbers of slew motor couplings which is not in accordance with the drawing of Port Trust. But P.W.16 without perusing the drawing, accorded sanction. Furthermore, in the earlier paragraph, P.W.16 stated that without receiving materials, A1 conspired with A2/supplier has given the document as if he received the above materials, which is contrary with each other.

34.In Ex.P37/sanction order, further it was stated as follows:

> “As per the existing procedure whenever any of the units like Area I & II etc., required materials for use in their respective departments, the Supervisor or foreman will initial in the indent which will be signed by the concerned AE and Executive Engineer. The Indent accompanied with the drawings showing the specifications of the materials will be sent to the Stores through the P & D Cell. At the Stores the indent will be received at the vendor's signature along with the drawings and after scrutiny, it will be sent to the concerned purchase section. At the purchase section tenders will be invited from the approved suppliers. On receipt of quotation, a comparative statement will be prepared showing the names of the firm, description of items, rate per unit at the total value comparative price offered by various suppliers and remarks. This statement will be sent to indenting officer for scrutiny and recommendations. The indentor will send the recommendations along with the administrative sanction to the Stores Purchase Section. The Deputy Controller of Stores can accord administrative sanction

for purchase upto Rs.25,000/-. If the value exceeds Rs.25,000/- but less than Rs.50,000/-, the DCOS will get the approval of tender committee. If the value exceeds Rs.50,000/- but less than Rs.3 lakhs the Controller of Stores is authorised to sanction after the approval of tender committee. After getting approval from the competent authority, purchase order will be prepared at the purchase section showing the name of supplier, item called, description of item, unit, quantity, rate, value etc. One copy of item, unit, quantity, one copy of the purchase order will be sent to the supplier. One copy to the indenter, one to the accounts section, one to the audit section, one to the Stores Receipt section, one to the stock section, one to the R & C Section etc. The role of Stores (purchase section) ends with the despatch of purchase order to the supplier and to various other sections as mentioned above. "

The above para shows that what are the procedures to be supplied for purchasing goods.

35.In Ex.P37/sanction order, further it was stated as follows:

"On 23.03.1995, 15 numbers of slew motor couplings were required at Area-III. Accordingly an indent was prepared by P.W.12/Mohanmani, Supervisor, Area II along with the drawings as per the instructions of Shri.Mathivanan/P.W.3/A.E. This indent was signed by Shri Mathivanan and Shri S.L.Durai Singh, Executive Engineer and sent to P & D cell to be forwarded to Stores. .. .."

But as per Ex.P13/indent, it is given by A1 for purchasing 15 numbers of slew motor couplings required for Area 2 and not for Area 3. This aspect is clearly corroborated by the evidence of P.W.3. P.W.3 in his cross-examination deposed that he has not stated slew motor couplings have been required for Area 3. So the factual aspect itself is wrong and it shows the non application of mind by the sanctioning authority while according sanction.

36.Now it is appropriate to consider the following decisions of the Apex Court relied upon by the learned senior counsel for A1:

(i) In (2007) 11 SCC 273 (State of Karnataka v. Ameerjan), in para-9, 10 and 19, it was held as follows:

"9.We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10.For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.

19. In this case, the High Court called for the original records. It had gone thereinto. It was found that except the report, no other record was made available before the sanctioning authority. The order of sanction also stated so. PW-8 also did not have the occasion to consider the records except the purported report."

(ii) In (1997) (7) SCC 622 (Mansukhlal Vithaldas Chauhan v. State of Gujarat), in para-18 to 20, it read as follows:

“18.The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuie satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be had for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

20.The narration of facts, set out in the beginning of the judgment, would show that while the matter of grant of sanction was under the consideration of the State Government, Harshadrai had filed a petition on behalf of his firm in the Gujarat High Court under Article 226 of the Constitution for a writ in the nature of mandamus directing the State Government to grant sanction. In this petition, the Secretary of Department who, originally was not impleaded, was, subsequently, arrayed as respondent No.7 and a

> direction was issued to him to grant sanction and the Secretary, acting in pursuance of the order of the High Court, granted the sanction."

(iii) In (2006) 13 SCC 305 (V.Venkata Subbarao v. State represented by Inspector of Police, A.P.), para-23 is extracted hereunder:

> "23.It is also accepted that before the Sanctioning Authority, the vital documents showing involvement of the M.R.O. had not been produced. The Sanctioning Authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppressio veri deserves serious condemnation."

Considering the above evidence along with the above decisions, I am of the view, P.W.16/sanctioning authority has not applied his mind while according sanction. Since there is a mistake in material facts of the case, issuance of sanction order by non application of mind itself vitiates the entire case of prosecution.

37.To sum up,

(i)While according sanction for prosecuting A1, P.W.16/sanctioning authority has not applied his mind. Therefore, sanction itself vitiates entire case of prosecution.

(ii) There is no document to show that A1 forged the signatures of P.W.1, P.W.2 and P.W.6. So the ingredients of sections 120B read with 420, 511, 468, 471(2 counts) and Sections 13(2) read with 13(1)(d) of P.C.Act have not been made out. Accordingly, first and second instance have not been proved.

38.Considering the aforestated circumstances of the case, I am of the considered opinion, the prosecution has miserably failed to prove that the appellants/A1 and A2 are guilty for offences under Sections 120B read with 420, 511, 468 and 471 IPC and Section 13(2) read with 13(1)(d) of P.C.Act, 1988 beyond all reasonable doubt. The benefit of doubt is given in favour of the appellants/A1 and A2 and they are acquitted from the charges levelled against them. The Special Court has committed an error in convicting the appellants/A1 and A2 for the aforesaid offences and hence, the judgment of conviction and sentence passed by the Special Court is hereby set aside.

39.In fine,

- The Criminal Appeals are allowed by setting aside the judgment of conviction and sentence dated 04.02.2004 made in C.C.No.221 of 1997 on the file of the learned Principal Special Judge for CBI cases, Chennai.
- The appellants/A1 and A2 are acquitted from the charges levelled against them and they are set free.
- The fine amounts paid by the appellants are ordered to be refunded to them.
- Bail bond executed by the appellants/A1 and A2 shall stand cancelled.
- Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1. Inspector of Police
   SPE/CBI/ACB, Chennai.

2. The Principal Special Judge for CBI cases
   Chennai.

3. The Special Public Prosecutor (CBI cases)
   High Court, Chennai.

4. The Record Keeper
   Criminal Section, High Court, Chennai.

+2cc's to Mr.S.Anbalagan, Advocate, S.R.No.16567
+1cc to Mr.K.Srinivasan, Advocate, S.R.No.16729
+1cc to Mr.M.Nirmal Kumar, Advocate, S.R.No.17079

Crl.A.Nos.176 & 302 of 2004

TEJ(CO)
CA(06/04/2015)