CRL.A.No.507/2008:- That the Appellant herein/Accused No.3 viz Sivakami, was directed to be released on bail as per the order of this Court dated 08/07/2008 and made in MP.NO.1 of 2008 in Crl.A.No.507/2008.

CRL.A.No.510/2008:-That the Appellant herein/Accused viz Thanickachalam, was directed to be released on bail as per the order of this Court dated 08/07/2008 and made in MP.NO.1 of 2008 in Crl.A.No.510/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal Nos.507, 510 and 700 of 2008

Crl.A.No.507/2008:

Sivakami ... Appellant/Accused No.3

Vs.

State Rep. By
SPE:CBI:ACB, Chennai ... Respondent/Complainant

Crl.A.No.510/2008:

Thanikachalam ... Appellant/Accused No.1

Vs.

State Rep. By
SPE:CBI:ACB, Chennai ... Respondent/Complainant

Crl.A.No.700/2008:

Inspector of Police
ACB/CBI/Chennai ... Appellant/ Complainant

Vs.

R.G.Anandan ... Respondent/Accused No.2

Prayer in Crl.A.No.507/2008: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 10.6.2008 made in C.C.No.8 of 2006 on the file of II Additional district Judge and Special Court for CBI Cases, Coimbatore.

Prayer in Crl.A.No.510/2008: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 10.6.2008 made in C.C.No.8 of 2006 on the file of II Additional district Judge and Special Court for CBI Cases, Coimbatore.

Prayer in Crl.A.No.700/2008: Criminal Appeal filed under Section 378 (2)(b) of Cr.P.C., against the judgment dated 10.6.2008 made in C.C.No.8 of 2006 on the file of II Additional district Judge and Special Court for CBI Cases, Coimbatore.

For appellant in
Crl.A.Nos.507 & 510/2008
& for respondent in
Crl.A.No.700/2008 : Mr.C.D.Johnson

For Respondent in
Crl.A.Nos.507 & 510/2008
& for appellant in
Crl.A.No.700/2008 : Mr.K.Srinivasan
CBI Special Public Prosecutor.

COMMON JUDGMENT

The convictions and sentences as well as order of acquittal passed in Calendar Case No.8 of 2006 by the II Additional District and Sessions Court, Special Court for CBI Cases, Coimbatore are being challenged in the present Criminal Appeals.

2. The case of the prosecution is that all the accused have had conspiracy with a view to receive illegal gratification for the purpose of sanctioning loan to one Prabakaran, who applied for getting loan to purchase J.P.C.Earth Mover. The first accused has approached the said Prabakaran and demanded a sum of Rs.25,000/- as illegal gratification, for the purpose of giving the same to the second accused, who has had connection with the sanction of loan. The third accused is the wife of the second accused. The said Prabakaran has not decided to give bribe as demanded by the first accused and therefore, he has given a complaint to the concerned Superintendent of Police and subsequently trap proceedings have been initiated and the amount demanded by the first accused has been given to him by the said Prabakaran. The first accused has handed over the same to the third accused and subsequently other formalities have been

observed and after completing investigation, final report has been filed on the file of the trial court. The trial court has taken the same in Calendar Case No.8 of 2006.

3. The trial court, after hearing arguments of both sides, has framed necessary charges against all the accused and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

4. On the basis of the evidence adduced on the side of the prosecution, all the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

5. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found the accused 1 and 3 guilty as per sections mentioned in the charges and imposed sentences as well as fine as mentioned in the judgment. Against the convictions and sentences passed by the trial court, the third accused has preferred Criminal Appeal No.507 of 2008, first accused has preferred Criminal Appeal No.510 of 2008 and against the order of acquittal passed against the second accused, the complainant as well as appellant has filed Criminal Appeal No.700 of 2008.

6. Since common questions of law and facts are involved in all the proceedings, common judgment is pronounced.

7. The learned counsel appearing for the appellants in Criminal Appeal Nos.507 and 510 of 2008 has repeatedly contended that the complaint in question has been sent to the concerned Superintendent of Police on 2.12.2005 and the same has reached office of P.W.9 (Trap Laying Officer) on 4.12.2005. But, before registering the same, the alleged trap has been conducted on 3.12.2005 and therefore, the entire trap proceedings have become illegal and further, the first accused is the friend of the defacto complainant. Under the said circumstances, he has simply given Rs.5,000/- by way of hand loan to the defacto complainant and the trial court, without considering the defect in the trap proceedings as well as the clear defence taken on the side of the first accused, has erroneously found the accused 1 and 3 guilty under the sections mentioned in the charges and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

8. Per contra, the learned Special Public Prosecutor appearing for the respondent in Criminal Appeal Nos.507 and 510

of 2008 as well as the appellant in Criminal Appeal No.700 of 2008 has also equally contended that in the instant case, the alleged demand of illegal gratification for the second and third accused by the first accused has been clearly mentioned in the complaint and accordingly P.W.9 has taken trap proceedings and for the purpose of proving the same, the defact complainant has been examined as P.W.4 and his brother by name Stalin has been examined as P.W.5 and both of them have consistently stated in their evidence about the trap proceedings and the trial court, after considering the relevant evidence available on record, has rightly found the accused 1 and 3 guilty under the sections mentioned in the charges, but the trial court, without considering the fact that after receipt of Rs.25,000/- as illegal gratification by the first accused, he handed over the same to the third accused has acquitted the second accused and therefore, the convictions and sentences passed against the accused 1 and 3 are liable to be confirmed and the order of acquittal passed against the 2nd accused is liable to be set aside.

9. For considering the divergent contentions put forth on either side, this Court has to look into the following aspects:

It is seen from the records that the complaint in question has been sent to the Superintendent of Police on 2.12.2005, but it has reached the office of P.W.9, Trap Laying Officer on 4.12.2005 and admittedly, the entire trap proceedings have been taken on 3.12.2005. Therefore, it goes without saying that before registering the complaint by P.W.9, he conducted trap proceedings on 3.12.2005 and the same is not permissible under law. Under the said circumstances, the entire trap proceedings are liable to be vitiated.

10. Now the Court has to look into the other aspect of the matter put forth on the side of the prosecution. The specific case of the prosecution is that the first accused has approached the defacto complainant and thereby demanded Rs.25,000/- by way of illegal gratification so as to give the same to the second accused for sanction of loan and accordingly P.W.4, defacto complainant has arranged a sum of Rs.20,000/- and the first accused has given to him a sum of Rs.5,000/- for giving the entire amount of Rs.25,000/- as bribe to the second accused.

11. The first accused has been examined as D.W.1 and his specific evidence is that he has not made any arrangements for getting bribe from the defacto complainant for the benefit of the second accused and since the defacto complainant is his close friend, by way of hand loan he received a sum of Rs.5,000/- from him.

12. It has already been pointed out that before registering the complaint, entire trap proceedings have been done on 3.12.2005. Further, the specific case of the prosecution is that for making alleged bribe amount to the tune of Rs.25,000/-, P.W.4, defacto complainant has received a sum of Rs.5,000/- from the first accused. The story given by the prosecution cannot be accepted.

13. Further, as stated earlier, the entire trap proceedings are liable to be vitiated since the same have been done before registering a case. Since before registering a case, P.W.9 has done all the proceedings, it is needless to say that the entire proceedings taken by P.W.9 are totally illegal and on that score alone, the convictions and sentences passed by the trial court against the accused 1 and 3 are liable to be set aside.

14. Since it has already been pointed out that the entire proceedings initiated by P.W.9 are totally illegal, it is needless on the part of the Court to come to a conclusion that the second accused is also liable for the offences mentioned in the charges and altogether, Criminal Appeal Nos.507 and 510 of 2008 are liable to be allowed and Criminal Appeal No.700 of 2008 is liable to be dismissed.

In fine, Criminal Appeal Nos.507 and 510 of 2008 are allowed. The convictions and sentences passed against the appellants in Criminal Appeal Nos.507 and 510 of 2008 /accused 1 and 3 in Calendar Case No.8 of 2006 by the trial court are set aside. The appellants in Criminal Appeal Nos.507 and 510 of 2008 /accused 1 and 3 are acquitted. Bail bonds, if any, executed by them shall stand cancelled. Fine amounts, if any paid by them, are ordered to be refunded forthwith.

In fine, Criminal Appeal No.700 of 2008 is dismissed.

sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub-Assistant Registrar

ajr

To :

1.The II Additional district Judge
and Special Court for CBI Cases,
Coimbatore.

2. SPE:CBI:ACB, Chennai

3. The Spl. Public Prosecutor for CBI Cases,
Chennai

4.The Superintendent
Central Prison,Coimbatore.

+1 CC to MR.C.D.Johnson Advocate. SR.NO.1817
+1 CC to MR.K.Srinivasan Advocate. SR.NO.1531

CO-UG
JD 27/01/2016