

BAIL SLIP

The Appellant/Accused namely Gajendran, S/o. R. Kandasamy was directed to released on bail as per order of this Court dt. 8.6.07 and made in MP.1/07 in CrI.A.No.477/07 on the file of this Court

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

(Judgment reserved on 03.08.2016)

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

CrI.A.No.477 of 2007

Gajendran

.. Appellant/Accused

Vs.

State rep. by Inspector of Police,
SPE/CBI/ACB/Chennai.

R.C.No.36 of 2004. ... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment dated 29.03.2007 in C.C.No.2 of 2005 on the file of the II Additional District Court, CBI Cases, Coimbatore.

For appellant : Mr. R. John Sathyan, Amicus Curiae

For respondent : Mr. K. Srinivasan, Spl. P.P. for CBI cases

JUDGMENT

This Criminal Appeal is filed by the appellant/accused against the judgment dated 29.03.2007 in C.C.No.2 of 2005 on the file of the II Additional District Court, CBI Cases, Coimbatore, in and by which, he was convicted and sentenced as tabulated hereunder:

Sl. No.	Conviction under Section	Sentence of imprisonment	Fine
1	Section 7 of the Prevention of Corruption Act	Rigorous imprisonment for six months	Rs.200/-, in default to undergo 15 days rigorous imprisonment
2	Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act	Rigorous imprisonment for one year	Rs.500/-, in default to undergo rigorous imprisonment for one month

The trial Court ordered the sentences imposed on the appellant to run concurrently.

2. The gist of the prosecution case leading to the conviction of the appellant is that P.W.2/de-facto complainant submitted application form/Ex.P-7 on 11.05.2004 for obtaining new BSNL connection. Thereafter, a demand note, dated 14.05.2004 (Ex.P-4) was issued by the Telephone Department, asking the de-facto complainant/P.W.2 to pay a sum of Rs.1,520/- for obtaining the telephone connection. Pursuant to the same, P.W.2 paid the said amount in West Post Office, Tiruchengode. On receipt of the amount, the bill bearing No.003882 with receipt No.132, dated 15.05.2004 was also issued. P.W.2 was informed by the Telephone Department that the telephone connection will be given in his residence. But, the telephone connection was not provided till 03.06.2004. On enquiry, P.W.2/de-facto complainant found that only Line-man used to give telephone connection and therefore, P.W.2 met the appellant/accused who was working as Line-man (Group-C employee) in Vaiyappamalai Telephone Exchange, Tiruchengode, Namakkal District, on 03.06.2004. The appellant demanded Rs.750/- as bribe to provide the telephone connection and further stated if the amount is not paid, he will not give the telephone connection to his house. As the amount was not paid to the appellant, P.W.2 did not get the telephone connection. The appellant stated that he would come to P.W.2's house on the next day at about 2 p.m., for receiving the amount. P.W.2 was not inclined to give the bribe amount demanded by the appellant. Hence, on the same day, i.e. on 03.06.2004 at about 6 p.m., P.W.2 reported about the demand made by the appellant to the Vigilance Department of Salem. Apart from getting a written complaint from P.W.2, the Vigilance Office gave a telephone number to P.W.2 and he was asked to contact in that telephone number and that they will come to his house on the next day. Accordingly, P.W.7 Anboli, who was the then Inspector of Police in CBI, ACB, came to P.W.2's house on 04.06.2004 at about 5.30 a.m. and asked P.W.2 to keep ready the bribe amount by 12 noon and he also informed P.W.2 that they would come back. By 12 noon, P.W.7 again came to P.W.2's house along with two Inspectors of Police and one Head Constable and two other independent witnesses. They were introduced by P.W.7 to P.W.2. The complaint given by P.W.2 was read over to those persons and arrangements were made to lay a trap. P.W.2 also informed that he has brought the amount of Rs.750/- for laying the trap against the appellant. The denomination of currency notes of Rs.100/- (7 numbers) and one Rs.50/- were noted for the purpose of entrustment and the same is noted in the entrustment mahazar, which is marked as Ex.P-8, in which all the trap personnel have signed and as per the instructions of the trap laying personnel, including P.W.7, they were in their respective places for conducting the trap. At about 3 p.m., the appellant/accused

came to P.W.2's house and demanded as to whether the money is ready. When P.W.2 answered in the affirmative, the accused undertook the process of effecting the telephone connection, which took nearly 45 minutes. After completing the process, the accused made a call from the telephone instrument, which was brought along with him and thereafter, he demanded the bribe amount. P.W.2 gave Rs.750/- to the appellant/accused, who kept the amount in his left side shirt pocket. P.W.2 gave the pre-arrangement trap signal to the Trap Laying Officer by wiping his face with towel. On seeing this, P.W.7 and others came to the spot and on revealing his identity, P.W.7 asked the appellant as to whether he has received the amount from P.W.2. The appellant was nervous and after some time, he confessed that he demanded and received money of Rs.750/- and kept the same in his left side pocket of his shirt. P.W.7 conducted sodium carbonate test on the hands of the appellant/accused by dipping his right and left hands on the sodium carbonate solution and the colour of the solution turned pink. Thereafter, P.W.7 instructed the appellant to hand over the currency notes to independent witness P.W.4 Manoharan. The shirt of the accused was also tested with sodium carbonate solution and the colourless solution turned into pink and the pink solution was taken in a bottle and sealed separately. The currency notes recovered from the appellant/accused tallied with the numbers specified in the entrustment mahazar Ex.P-8 and they were found to be identical. The entire trap proceedings were recorded by way of mahazar in Ex.P-10. Subsequently, P.W.7 Trap Laying Officer arrested the appellant/accused and released him on bail on his own bond. The officers of the Telephone Department, Tiruchengode Telephone Exchange were contacted and informed about the trap, they came to the spot and the witnesses identified the currency notes Ex.P-1 series. The Telephone instrument brought by the accused on that day was marked as M.O.2. The Trap Laying Officer-P.W.7 recorded the statement of the witnesses. Thereafter, on the basis of the complaint given by P.W.2, P.W.10 Inspector of Police registered the complaint in R.C.No.36 of 2004 against the accused under Section 7 of the Prevention of Corruption Act. He continued the investigation. He took steps for sending the solution bottle to Forensic Laboratory and sought permission from the jurisdictional Magistrate to send the same and likewise, he also arranged for conducting chemical analysis test. After examining the witnesses and after completing all formalities, P.W.10 filed charge-sheet against the appellant/accused. Thereafter, based on the charge sheet filed before the trial Court for the above offences, the case was taken on file in C.C.No.2 of 2005. During the course of trial, in order to prove the case, the prosecution has examined P.Ws.1 to 10, Exs.P-1 to 28 were marked and M.Os.1 to 6 were produced. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He examined himself as D.W.1 and marked Ex.D-1. Upon hearing the

submissions of either side and considering the oral and documentary evidence available on record, after conducting trial, the trial Court convicted and sentenced as tabulated supra. Challenging the same, the accused has filed this appeal.

3. As there was no appearance for the appellant/accused inspite of a counsel who entered appearance for him, this Court appointed Mr. John Sathyan, learned counsel as Amicus Curiae to appear for the appellant and argue the case. Accordingly, the learned Amicus Curiae submitted that in the evidence of P.W.2, he has admitted that he has spoken to Superintendent of Police over phone on 03.06.2004 at about 6 p.m. and the investigation commenced even on 03.06.2004 without even receipt of formal complaint. Pursuant to the telephonic conversation, P.W.7 Trap Laying Officer made direct enquiry, which is an anomaly deviating from the normal practice, thereby raising suspicion on the bona-fide in the case of the prosecution. Learned Amicus Curiae further submitted that the appellant/accused is only a Line-man and he has no authority to give sanction for the connection of telephone. In fact, P.W.4 Junior Telecom Officer adduced evidence to the effect that the installation of the telephone line was completed as early as on 28.05.2004, but in Ex.P-5 external note marked on the side of prosecution, in column No.5, it has been noted that the installation of the telephone was completed on 05.06.2004, whereas, according to the prosecution, the installation was completed only on 04.06.2004, on which date, the alleged occurrence was said to have taken place. The evidence of P.W.4 shows that the prosecution documents have been tampered with subsequently to suit the prosecution case. Learned Amicus Curiae further submitted that it is the case of the prosecution that on 04.06.2004, the appellant called P.W.4 and informed that the installation of the telephone was completed. Even accepting without admitting the case of the prosecution, that Ex.P-5 should have been dated on 04.06.2004, but, the date in column No.5 of Ex.P-5 is mentioned as 05.06.2004. This contradiction has not been explained by the prosecution.

4. Learned Amicus Curiae appearing for the appellant further submitted that the prosecution has not proved the case by cogent and convincing evidence and that from the evidence of P.W.7, it is clear that the trap was laid on 03.06.2004 based on the telephonic complaint given by P.W.2, but actually, the written complaint was lodged only on 04.06.2004, by that time, the trap party already came to the house of P.W.2 without preparing the clue that the appellant would come there on 04.06.2004, and hence, the trap proceedings are nothing but sham. Thus, for the above reasons, learned Amicus Curiae prayed for acquitting the accused by allowing this appeal.

5. Countering the above submissions, learned Special Public

Prosecutor appearing for the respondent, by inviting the attention of this Court to the evidence of P.W.4, submitted that P.W.4 has categorically admitted in his cross-examination that he has corrected the date as 28.05.2004 in Ex.P-5 only on the instructions given by the officers and since the accused/Line-man has informed him that the connection was completed as early as on 28.05.2004 itself and subsequently, when he came to know that the work was completed even on 04.06.2004 and not on 28.05.2004, he made correction in Ex.P-5 in column No.5 as 05.06.2004, though admittedly the work was completed on 04.06.2004 itself. Therefore, the case projected by the prosecution that only on 04.06.2004, the accused came to the house of P.W.4 and demanded bribe amount and installed the telephone connection, after which, he collected the bribe amount and was caught red-handed in the trap laid by P.W.7 Trap Laying Officer, had been clearly established. In fact, on the side of the defence/accused, the accused examined himself as D.W.1 and pleaded alibi in order to show that he was not present on 04.06.2004 as he attended his relative's marriage, in support of which, he marked Ex.D-1 marriage invitation. But, in order to substantiate his above plea of alibi, except marking of Ex.D-1 marriage invitation, the accused has not examined any independent witness. Therefore, no significance could be attached either to the evidence of D.W.1 or to the document Ex.D-1. Moreover, on a perusal of Ex.D-1 marriage invitation, it is seen that the marriage function was fixed between 6 a.m and 7.30 a.m, whereas the occurrence took place in the afternoon of 04.06.2004, which is evident from the evidence of P.W.2 that the appellant came to P.W.2's house at about 3 p.m. on that day. Therefore, learned Special Public Prosecutor submitted that the prosecution has proved its case through cogent and convincing evidence, more particularly, when the appellant was caught red-handed in the trap laid, which is crystal clear from the evidence of P.Ws.2 and 7. Hence, he prayed for dismissal of the appeal by confirming the conviction and sentence imposed on the appellant/accused.

6. I have given my anxious consideration to the submissions made by learned counsel on both sides and perused the materials available on record.

7. It is the main submission of the learned Amicus Curiae appearing for the appellant/accused that without even a written complaint, P.W.7 Trap Laying Officer made direct enquiry, which is in deviation of the normal procedures for the laying of trap and thereby, this creates suspicion whether actually the appellant demanded the bribe amount. He further submitted that according to prosecution, on 03.06.2004 at about 6 p.m., he contacted the Department of Vigilance, and he was given the telephone number of the Salem Vigilance Department, and was directed to contact the officer, and the concerned officials

informed that they would come on the next day morning. As per the version of the prosecution, P.W.7 came to the house of P.W.2 by 12 noon on 04.06.2004 and received a complaint. Therefore, it is clear that even before laying the trap itself, the complaint was received by P.W.7. Hence, the submission made by the learned Amicus Curiae that pursuant to the telephonic conversation, P.W.7 Trap Laying Officer made direct enquiry even without the written complaint, has no force. Thereafter, P.W.7 Trap Laying Officer came along with group of officials and completed all formalities for laying the trap. P.W.2 clearly stated in his evidence that by 3 p.m., the appellant came and demanded the bribe money and after installation of the telephone/connection, again he demanded and accepted the alleged bribe amount of Rs.750/-. The trap process was already entered in Ex.P-8 entrustment mahazar. P.W.7 Trap Laying Officer immediately after receipt of the bribe amount by the appellant, caught him red-handed, subsequent to which, the phenolphthalein test was conducted, which showed positive result, after which, he was duly arrested. This Court is of the opinion that the prosecution case was clearly proved through the evidence of P.Ws.2 and 7 and their evidence has not been shaken in cross-examination. The appellant/accused is trying to pick some minor contradictions, which do not attach any importance to a great extent to drive home the case of the prosecution. Moreover, this Court is of the view that the said minor contradictions will not vitiate the entire case of the prosecution and it can, at the most be termed only as an insignificant error, unless the contradictions or infirmities found in the evidence raise great suspicion in the mind of the Court with regard to the presence of the witnesses, etc., coupled with the fact that in the case on hand, there are no material contradictions in the evidence of the witnesses or documents marked. Though as alleged by the learned Amicus Curiae, the case of the prosecution is brimming with contradictions, the same has not affected the genesis of the case of the prosecution in its entirety, and hence, no credence could be shown on the same, thereby, this Court comes to irresistible conclusion that the prosecution has proved its case beyond reasonable doubt and accordingly, the conviction imposed by the trial Court on the appellant/accused for the above offences is liable to be confirmed.

8. With regard to the other submission of the learned Amicus Curiae that in Ex.P-5 external note of the BSNL, P.W.4 has stated in his evidence that an entry was made after the installation of telephone work was completed on 28.05.2004. But, actually, in his cross-examination, P.W.4 has admitted that only on the information given by the appellant/accused, he made endorsement as 28.05.2004, but later he was informed that the work was completed on 05.06.2004, but actually the work was over on 04.06.2004 itself. Therefore, it is clear that Ex.P-5 was

tampered with only on the instructions of the appellant/accused, when P.W.4 himself admitted in the cross-examination that the work was completed only on 04.06.2004. Hence, this Court does not find any anomaly with regard to the date of installation of the telephone being the date of offence as contended by the learned Amicus Curiae.

9. From the above discussion, I find that the prosecution has been proved its case beyond reasonable doubt, by producing cogent and convincing evidence. Absolutely, this Court does not find any valid ground to interfere with the impugned judgment of conviction passed by the trial Court.

10. At this juncture, it is submitted by the learned Amicus Curiae that the appellant/accused is a Group-C (Class-4) employee in the BSNL and due to his above act of collecting bribe, he was terminated from service and from the date of occurrence, almost twelve years have lapsed and he is suffering from ailments, and hence, he prayed that some leniency may be shown to the appellant/accused with regard to the sentence of imprisonment.

11. In the above context, it is worthwhile to notice a judgment of this Court reported in 2009 Cri.L.J. 239 = 2008 (2) LW (Crl) 1049 = MANU/TN/1671/2008 (A.S.Subramanian Vs. State, rep. by DSP, V & AC, Kancheepuram) (Crl.A.No.1330 of 2002, dated 31.07.2008), wherein, in a similar situation, this Court modified the sentence of rigorous imprisonment to that of simple imprisonment so as to enable the accused therein to approach the State under Section 433 Cr.P.C. for commutation of sentence/remission of sentence. The relevant portion of the said judgment reads as follows:

"9. The learned Counsel for the appellant by abundant caution, made submission that the accused is aged about 70 years and had heart surgery and in the event of confirming conviction prayed that the rigorous imprisonment may be converted as simple imprisonment thereby enabling the accused to approach the State Government under Sub-clause (d) of Section 433 Cr.P.C for commutation of imprisonment to a fine. He further submitted that the accused is prepared to pay any additional fine and sought for a recommendation from this Court to the State Government. The learned Counsel also submitted that there are some precedents and placed reliance on the decision of this Honourable High Court reported in 2007 L.W.(Crl.) 123 (S.P. Meriappan v. State of Tamil Nadu) and also the unreported judgment of this Court in Crl.A. No. 545 of 1999 dated 26.06.2007.

.. .. .

18. With regard to the sentence, the accused is already sentenced only to a minimum period of one year imprisonment. With regard to the request made by the learned Counsel for the appellant, to convert the rigorous imprisonment to simple imprisonment and for a direction to the State Government to invoke Section 433(b) of Cr.P.C., this Court is reluctant to make such recommendation in this case.

19. In the decision reported in 2007 (1) LW (Cr1) 123 = MANU/TN/9776/2006 (S.P. Meiappan v. State of Tamil Nadu), it has been held as follows:

15. However, Mr.S.Ashok Kumar, learned Senior Counsel would submit that the accused has paid the entire amount as admitted by the prosecution and thus there is no loss to the Bank. The Bank has not lodged any complaint. But on some information, the CBI itself has registered a case and prosecuted the accused which ended in conviction. At the time of conviction the accused was 64 years of age and now he is 72 years old and according to the learned Senior Counsel his movements are restricted and he is not able to move freely without the assistance of his close relatives and would submit that if he is sent to jail he will not survive. Therefore, the learned senior counsel would submit the following judgments of the Honourable Supreme Court.

16. In N. Sukumaran Nair v. Food Inspector, Mavelikara reported in 1997 SCC (Cri) 608, it has been held as follows:

"3.The offence took place in the year 1984. The appellant has been awarded six months simple imprisonment and has also been ordered to pay a fine of Rs. 1000/- Under Clause (d) of Section 433 of the Code of Criminal Procedure, "the appropriate Government" is empowered to commute the sentence of simple imprisonment for fine. We think that this would be an appropriate case for commutation of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial court a sum of Rs. 6000/- as fine in commutation of the sentence of six months simple imprisonment within a period of six weeks from today and intimate to the appropriate Government that such fine has

been deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate orders under Clause (d) of Section 433 of the Code of Criminal Procedure."

17. In *Badri Prasad v. State of M.P.* reported in 1996 SCC (Cri.) 79, their Lordships have taken the similar view, which is as follows:

"2. There is some scope, however, towards the sentence because this Court granted in 1989 leave and the appellant is on bail. We would rather now scale down the sentence of six months RI to three months simple imprisonment, which sustaining the fine of Rs. 1000 as awarded by the Courts below. Subject to this modification in the sentence, the appeal otherwise fails. This has been made to enable the appellant to approach the State Government under Sub-clause (d) of Section 433 for conversion of simple imprisonment of fine. Since the adulteration was only by adding a colouring agent in the chillies powder and that was possibly done to please the customer's eye, we recommend that the State Government release the appellant on the charging of Rs. 2000/- as fine and that an appropriate order be passed by the State Government to that effect within a period of three months. The appellant shall deposit in the trial court under two heads the fine imposed by the Court i.e., Rs. 1000/- as also the alterable fine of Rs. 2000/- within a period of three weeks from today and apprise the State Government of his having discharging his obligation. On his doing so the appellant need not be arrested.

18. Considering the age of the accused, the fact that he has already repaid the amount and the misappropriation was only temporary in nature and also the fact that the said offence took place in the year 1990, I am inclined to modify the sentence. As far as conviction under Section 409 IPC and 13(1)(c) of the Prevention of Corruption Act, 1988 are concerned, the sentence of two years rigorous imprisonment imposed for each offence is modified as one year simple imprisonment under both the Sections and the first accused is

directed to pay an additional fine of Rs. 25,000/- to be deposited before the Special Court for CBI cases, Coimbatore. This is to enable the appellant/ accused to approach the State Government under Sub-clause (d) of Section 433 Cr.P.C., for conversion of simple imprisonment to fine. Since there is no loss to the Bank and no complaint has been preferred by the Bank in this regard, I recommend that the State Government release the appellant on the charging of Rs. 3000/- as fine and that an appropriate order be passed by the State Government to that effect within a period of three months. The appellant shall deposit in the trial court under two heads the fine imposed by the Trial Court i.e., Rs. 1000/- and the additional fine of Rs. 25,000/- imposed by this Court as also the alterable fine of Rs. 3000/- within a period of three weeks from today and apprise the State Government of his having discharged his obligation. On his doing so, the appellant need not undergo the sentence of imprisonment. Otherwise, he shall undergo the modified sentence as stated earlier."

20. Similarly in CrI.A. No. 545 of 1999 dated 26.06.2007, His Lordship Justice A.C. Arumuga Perumal Adityan, passed an order as follows:

"20. Under such circumstances, considering the age of the accused and the fact that he has already repaid the entire amount of ill gotten money and also the fact that the accused had undergone by-pass surgery even in the year 1990, I am inclined to modify the sentence alone as indicated above. As far as the conviction of the trial Court is concerned the same is confirmed, but the sentence alone is modified as follows:

As far as the sentence under Sections 120(B), 420, 467, 468, 471 r/w 465 IPC is concerned the sentence of one year rigorous imprisonment is modified to that of one year simple imprisonment and under Section 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, is concerned the sentence of two years RI for each offence is modified to that of one year SI each. The appellant/A1 is further directed to pay an additional fine of Rs. 25,000/- to be deposited

before the Principal Sessions Court for CBI Cases, Chennai, to enable the appellant/A1 to approach the State Government under Sub-section 3 of Section 432 of Cr.P.C., for conversion of simple imprisonment to fine. Since there is no loss to the bank and no complaint has been preferred by the bank in this case, it is further charging fine of Rs. 3000/- and to pass an appropriate order to that effect within a period of three months from this date. The appellant shall deposit the additional fine of Rs. 25,000/- imposed by this Court and also three weeks from today and appraise the State Government to dispose of this application. On doing so, the appellant need not undergo the sentence of imprisonment, otherwise he shall undergo the modified sentence as stated earlier. With this direction Crl.A. No. 545 of 1999 preferred by the appellant/A1 stands disposed of.

21. Section 433 (d) of Cr.P.C reads as follows:

"433. Power to commute sentence:- The appropriate Government may, without the consent of the person sentenced, commute:

- (a) ...
- (b) ...
- (c) ...
- (d) a sentence of simple imprisonment, for fine.

Commutation of simple imprisonment under Section 433(d) Cr.P.Code:-

When High Court imposed sentence of six months simple imprisonment and a fine of Rs. 1000 for an offence under the Prevention of Food Adulteration Act, 1954, the Supreme Court having found that the offence was committed long ago, i.e., in 1984, held that it would be an appropriate case for commutation of sentence of simple imprisonment under Section 433(d), Cr.P.C when almost a decade had passed. The Supreme Court directed the appellant to deposit in trial Court Rs. 6,000/- as fine in commutation of imprisonment and to move

the State Government for commutation of the sentence of imprisonment- vide- N. Sukumaran Nair v. Food Inspector (1997 (9) SCC 101 = 1997 SCC (Cri) 608. Similarly, in another decision when adulteration consisted of addition of colouring matter to chilli powder, the Supreme Court reduced the sentence of 6 months rigorous imprisonment to simple imprisonment for three months and a fine of Rs. 1000 so that the appellant could move the State Government for commutation of sentence of simple imprisonment to fine under Section 433(d), Cr.P. Code and directed the State Government to impose further fine of Rs. 2000 in lieu of sentence over and above the fine of Rs. 1000 as already imposed and release the appellant- vide Badri Prasad v. State of M.P., 1996 SCC (Cri) 79 = 1995 (4) (Supp) 682.

22. It is true that the Honourable Supreme Court in some of the cases wherein the accused had been sentenced to simple imprisonment, directed him to pay some fine amount and then recommended to the State Government to pass appropriate orders under Clause(d) of Section 433 Cr.P.C. This Honourable High Court also has followed the same method.

23. As far as this Court is concerned, it is felt that the power to commute sentence under Section 433 Cr.P.C. is purely vested with the appropriate Government. While so, under Section 433(d) for converting sentence of simple imprisonment and fine, the quantum of fine amount should be fixed only by the appropriate Government. Of course, the Honourable Supreme Court with the plenary power may fix the quantum and direct the appropriate Government to consider the case under Section 433 Cr.P.C. Though the High Court also may have the inherent power, whether such a recommendation could be made after fixing the quantum of the fine amount for an accused convicted under the Prevention of Corruption Act? Even the Probation of Offenders Act is not applicable for the person convicted under the Prevention of Corruption Act. As per the copy of the Government Orders produced, G.O. Ms. No. 1762, Home (Prisons VI) Department, dated 20.07.1987 and G.O.Ms. No. 164 Home(Prison-IV) Department dated 02.02.1996, the premature release of the prisoners was made applicable not for the prisoners sentenced under the Prevention of Corruption Act,

Immoral Traffic Rules, Drugs Act and Prevention of Food Adulteration Act. In the said circumstances, this Court feels that it is not proper for the Court to recommend for commutation of sentence to a prisoner under the Prevention of Corruption Act. At the same time, it is made clear that it is only for the Government to decide whether to commute the sentence on the prisoner under Section 433 Cr.P.C, or not.

24. With the above observation, though the Court is not fixing the amount of fine and not recommending to the Government to invoke Section 433 Cr.P.C., the sentence of imprisonment imposed on the accused is altered from rigorous imprisonment to simple imprisonment. Now it is purely a matter between the accused and the Government under Section 433 Cr.P.C.

.... ."

12. Following the above dictum laid down by this Court, in which, the decisions of the Supreme Court have been discussed, and also taking into account the fact that the demand and acceptance of the bribe amount of Rs.750/- by the accused, had been clinchingly proved by the prosecution beyond reasonable doubt and that the trap laid had also confirmed the same, and also taking into consideration the submission made by the learned Amicus Curiae that the accused who is a Group-C employee of BSNL (Class-4 employee) had been terminated from service and that he is suffering economically without proper income, this Court, while confirming the conviction imposed on the appellant/accused for both the offences, modifies the sentence of rigorous imprisonment to that of simple imprisonment for both the offences. The sentence shall run concurrently.

13. The appellant/accused is at liberty to move the Government for appropriate relief under Section 433(d) Cr.P.C., by making a representation within a period of four weeks from the date of receipt of a copy of this judgment with regard to the commutation of the simple imprisonment to that of fine, as it is a matter between the accused and the Government in that regard. If such a representation is received from the appellant/accused, it is for the Government to pass appropriate orders under Section 433(d) Cr.P.C. Hence, until the Government decides one way or the other on receipt of such representation, the appellant/accused need not surrender, as he is on bail pending this appeal.

14. With the above observations and modification in the

sentence, the appeal is partly allowed.

15. This Court, while appreciating the services rendered by Mr. John Sathyan, Advocate, who appeared in this case for the appellant/accused as Amicus Curiae and assisted the Court, directs the Tamil Nadu State Legal Services Authority, High Court Buildings, Chennai, to pay him Rs.5,000/- (Rupees five thousand only) for assisting this Court in this Criminal Appeal.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

Copy to

1. The Second Additional District Judge, CBI Cases, Coimbatore.
2. The Special Public Prosecutor (CBI Cases), High Court, Madras.
3. Inspector of Police, SPE/CBI/ACB/Chennai.
(R.C.No.36 of 2004)
4. The Section Officer, Criminal Section (Records), High Court, Madras.
5. The Member Secretary, Tamil Nadu State Legal Services Authority,
High Court Buildings, Chennai-600 104.
6. The Principal Secretary to Government, Home Department, Secretariat, Chennai-600 009.

rsy(co)
krd 15/9

CrI.A.No.477 of 2007

सत्यमेव जयते

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