

Bali Slip

The Petitioner/Accused No.2 namely S.Malliga was directed to be released on Bail as per order of this Honourable Court dated 29.08.2000 in Crl.MP.No.5765/2000 in Crl.A.No.729/2000 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.729 of 2000

S.Malliga
No.2

...Appellant/Accused

Vs

State rep. by
The Inspector of Police,
CS CID, Chennai.
Crime No.137/91
Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to call for the records in S.T.C.No.9/95 and set aside the judgement made in S.T.C.No.9/95 and set the appellant/accused at liberty.

For Appellant : Mr.G.Sakthivel
Legal Aid Counsel

For Respondent : Mr.R.Sekar
Government Advocate

JUDGMENT

The Second accused in S.T.C.No.9 of 1995 on the file of the Special Judge for E.C. Act, Chennai, is the appellant herein. Totally there are four accused. They stood charge for the offences under Clause 6(2) & (3) of TNSC (RDCS) Order, 1982 r/w. 7(1) (a) (ii) of E.C. Act, 1955. The trial Court convicted the appellant/A2 and sentenced him to undergo Rigorous Imprisonment for 3 months and to pay a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for one month and

acquitted the other accused. Now, challenging the above said conviction and sentence, the appellant/A2 is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:

The appellant/A2 was working as a bill clerk in a fair price shop run by one Cooperative society, by name, NAMCO. On 03.05.1991, pursuant to the order passed by the Assistant Commissioner, Civil Supplies, P.W.1, auditor, working in the above office, conducted an inspection in the Fair Price Shop. During the verification of the drawal register maintained in the Fair Price Shop with reference to the family cards, it was noticed that 111 bills were prepared by the bill clerk, the appellant herein, without actually giving the essential commodities to the card holders and they obtained a statement from the card holders, and they have also confirmed that they have not received the essential commodities through their cards, thereby all the accused had misappropriated a sum of Rs.1446/-. In the above circumstances, the Assistant Commissioner of Civil Supplies, Tondiarpet Zone, Chennai, has filed a complaint before the respondent police. P.W.3, Inspector of Police, on receipt of the complaint registered a case in Crime No.137/1991 for the offences under clause 6 (2) and (3) of TNSC (RDSCS) Order, 1982 r/w. 7(1) (a) (ii) of E.C. Act, 1955. Thereafter he commenced investigation and recorded the statements of family card holders and also recorded the statements of P.Ws.1 and 2 and handed over the investigation to P.W.4 and after completion of investigation, he filed the final report.

3. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 4 witnesses were examined and 37 documents were exhibited.

4. Out of the witnesses examined, P.W.1 is the Auditor, working in the office of the Assistant Commissioner of Civil Supplies, Tondiarpet, based on the order passed by the Assistant Commissioner, Civil Supplies, conducted the inspection and verified the bill book drawal register, also some family cards, and found that without supplying the essential commodities to the family card holders, the accused had sold the essential commodities in the open market and thereby they had misappropriated a sum of Rs.2411.70. Then he recorded the statement of the card holders and filed a report before the Assistant Commissioner. P.W.2 was also working in the civil supplies Corporation and he had also accompanied P.W.1 during the inspection. P.W.3, Inspector of Police, registered a case in Crime No.137/1991 and P.W.4, Inspector of Police, completed the

investigation and filed the final report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not examine any witness or mark any documents on his side.

6. Having considered all the above materials, the trial Court convicted the appellant/A2 as mentioned in paragraph one of the judgment and acquitted the other accused. Now, challenging the said conviction and sentence, the appellant/A2 is before this Court with this appeal.

7. Earlier when the matter was taken up for hearing, the learned counsel appearing for the appellant filed a memo withdrawing his appearance, and even though notice has been ordered to the appellant, notice could not be served as he left the address, an another attempt was made by this Court to serve the notice through the jurisdiction police, but it could not served as the appellant is not residing in the last known address. In the above circumstances, Mr.G.Sakthivel, learned counsel, is appointed as legal aid counsel.

8. I have heard, Mr.G.Sakthivel, learned counsel for the appellant and Mr.R.Sekar, learned Government Advocate for the respondent and I have also perused the records carefully.

9. The case of the prosecution is that all the accused A1 to A4, namely, the Special Officer in the Society, the Bill Clerk and two packers packing in the essential commodities were colluded together and sold the essential commodities in the open market and maintained entries in the drawal register and prepared the bill book as if it has been distributed to the 15 family card holders. Based on the audit conducted by P.W.1, the Assistant Commissioner of Civil Supplies filed a complaint, but, he did not examine himself as witness before the trial Court. P.W.1, the person, who said to have conducted audit, in his cross examination has stated that he has not verified the bill books at the time of inspection and he has also not aware who was responsible for the misappropriated cash. P.W.2, Assistant, in the office of the Assistant Commissioner, Civil Supplies Corporation, who accompanied P.W.1 also in his cross-examination has stated that they have not signed in the drawl register (Ex.P.32) and he has also stated that they have not obtained any statement from the card holders and he has also further stated that they have not received any complaint regarding the allegations that the accused had sold the essential commodities in the open market. The main allegation

is that the appellant and others sold the essential commodities in the open market as if it has been received by 15 card holders, during the enquiry by P.W.1, he said to have obtained statement from the card holders and the statements of them were marked as Ex.P.17 to 31 and the ration cards were also marked as Ex.P.2 to Ex.P.16, but none of the card holders were examined by the prosecution to substantiate the same. In view of the evidence of P.W.2, that, they have not obtained any statement from the card holders, it creates a doubt, whether the statements were actually given by the card holders.

10. Eventhough the allegations were made against all the four accused, the trial Court simply acquitted A1, A3 and A4 and convicted A2 alone. Considering all those materials, I am of the considered view that the prosecution has failed to prove the charges against the appellant beyond any reasonable doubt and hence, the appellant is entitled for acquittal.

11. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant are set aside and he is acquitted from the charges. The bail bond, if any executed by him shall stand cancelled. The fine amount if any paid by him is directed to be refunded.

12. While parting with the case, I appreciate the services rendered by Mr.G.Shakthivel, learned counsel who appeared on behalf of the appellant/A2, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The learned Special Judge for E.C.Act,
Chennai.

2.The Inspector of Police
CSCID Chennai

3.The Public Prosecutor
High Court, Madras

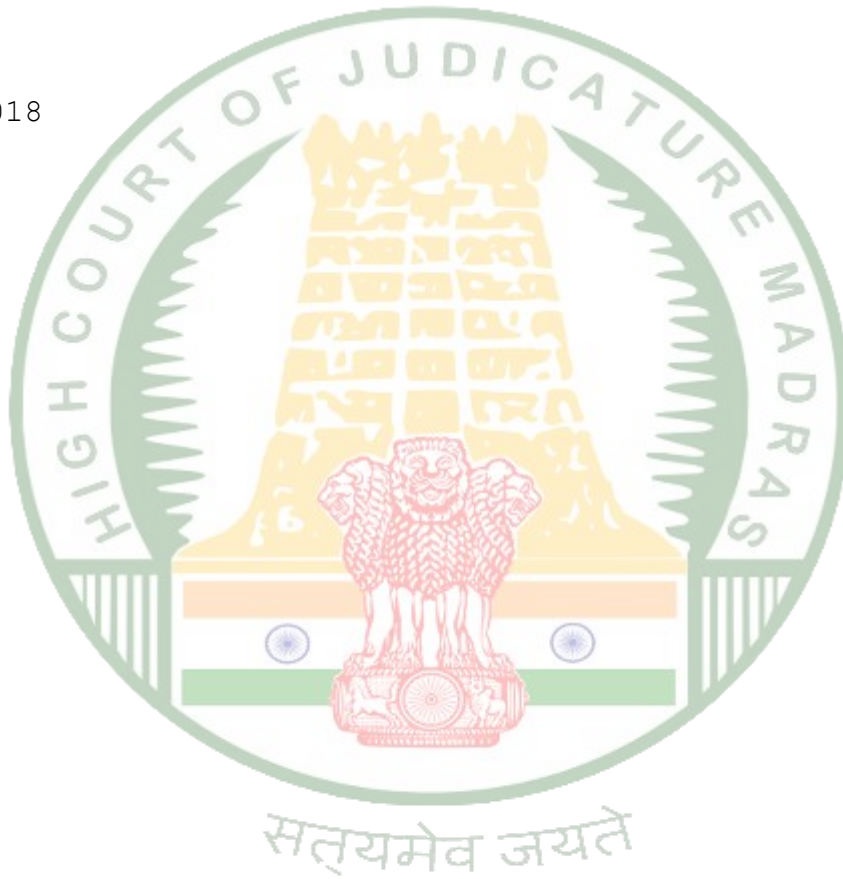
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4.The Member Secretary
High Court Legal Service Authority
High Court,Chennai

+1 cc to Mr.G.Sakthivel Advocate sr 84986

Cr1.A.No.729 of 2000

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