

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.05.2017

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

Crl. Appeal Nos 21 and 37 of 2015

1. Thiru. K.S.S.V.P. Murthy Raju,
S/o. Thiru. K. Ranga Raju,
the then Deputy Chief Engineer
(Construction), **Madras.**

2. R. Adaikalavan,
S/o. Ramanathan, (Partner)
C.T. Ramanathan & Co.,
R/o. No. 138, A.K. Swamy Nagar, 9th Street,
Second Lane, Kilpauk,
Chennai 600 010

...Appellants/ Accused 1 and

2

Vs

State, by Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch (ACB)
No. 26, Haddows Road,
Nungambakkam, III Floor,
Chennai – 600 034.

...Respondent/Complainant

The appellants /A1 & A2 have preferred these appeals under Section 374 (2) of the Code of Criminal Procedure challenging the correctness of the Judgment and order of conviction dated 23.12.2014, recorded against them in the Calendar Case in C.C.No.31 of 2009, on the file of the learned Special Judge for Corruption Cases (XIV Addl. Judge, (City Civil Court), Chennai.

Appearance

Appellants in Crl.A.No.21 of 2015 : Mr. B. Kumar, learned senior counsel assisted by Mr. Rajinishpathiyil

Appellant in Crl.A.No. 37 of 2015 : Mr. V.S.Venkatesh, learned counsel

Respondents (in both the Appels) : Mr. K.Srinivansan, learned Special Public Prosecutor for CBI Cases.

Judgment

Invoking the provisions of Section 374(2) of the Code of Criminal Procedure these memorandum of criminal appeals have been directed against the Judgment and order of conviction, dated 23.12.2014, recorded against the appellants/A1 and A2 in the Criminal Case in C.C.No.31 of 2009, on the file of the learned Special Judge for CBI Cases (Addl. Sessions Judge, City Civil Court), Chennai convicting the appellants/A1 and A2 under Section 120B IPC r/w Section 13(2) r/w Section 13(1)(d), Section 7 and 12 of Prevention of Corruption Act, 1988 and sentencing them(A1 & A2) to suffer rigorous imprisonment for two years each and to pay a fine of Rs.20,000/- each in default to suffer a further period of simple imprisonment for three months each under Section 120B IPC r/w 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Sentencing the appellant (A1) to suffer two years of rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for three months under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

Sentencing the appellant (A1) to suffer two years of rigorous imprisonment and to pay a fine of Rs.25,000/ in default to suffer a further period of simple imprisonment for three months under Section 7 of the Prevention of Corruption Act, 1988.

Sentencing the appellant (A2) to suffer one year of rigorous imprisonment and to pay a fine of Rs.15,000/- in default to suffer a further period of three months' simple imprisonment under Section 12 of the Prevention of Corruption Act, 1988.

Total fine imposed on A1 (Appellant in CrI.A.No.21 of 2015) (Rs.20,000/- + Rs.25,000/- + Rs.25,000/- = Rs.70,000/-)

Total fine imposed on A2 (Appellant in CrI.A.No.37 of 2015) (Rs.20,000/- + Rs.15,000/- = Rs.35,000/-)

Grand total fine imposed on A1 and A2 is Rs.1,05,000/-.

The entire fine amount was paid on receipt.

3. With the issue involved in both the criminal appeals is one and the same and the appellants as well as the respondent are one and the same, both the appeals have been consolidated together, heard jointly and disposed of in this common Judgment.

4. For easy reference and for the sake of convenience the appellants may hereinafter be referred to as A1 and A2, wherever the context so require.

5. That on 18.09.2008, P.W.29, Mr. C.Poonazhagan, the then Inspector of Police attached to CBI (ACB) had laid a final report under Section 173 (2) of the Code of Criminal Procedure as against the Accused 1 and 2 alleging that they had committed the offences punishable under Sections 120B IPC r/w Sections 7 and 12 and Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 on the file of learned Special Judge for CBI Cases(XIV Addl. Judge (City Civil Court)Chennai.

6. The learned Special Judge, after taking cognizance of the offences, had taken the final report on his file in C.C.No.31 of 2009 .After furnishing copies to the accused 1 and 2 as required under Section 207(a) of the Code of Criminal Procedure the learned Special Judge had framed four charges:

Firstly, - Under Section 120B IPC r/w Section 13(2), r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 as

against A1 and A2

Secondly - Under Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 as against A1

Thirdly- Under Section 7 of Prevention of Corruption Act, 1988 as against A1

Fourthly- Under Section 12 of Prevention of Corruption Act, 1988 as against A2

7. When the ingredients of the charges were explained and questioned A1 and A2 had denied the charges and claimed to be tried, and hence they were put on trial.

8. The prosecuting agency in order to prove their case had totally examined 30 witnesses and during the course of their examination 81 documents were exhibited and four material objects were also marked.

The gravamen of prosecution is this

9. The first accused was the deputy Chief Engineer, construction, Southern Railways, My Ladye's Garden, Park Town, Chennai and the second accused was a partner of M/s. C.T.Ramanathan & Co., and also a working Contractor under the Southern Railways. The Southern Railways had floated an open tender for "the provision of third line between Korukupet and Athipattu Stations-Earth Work in forming bank and other incidental works from 15/950 km. to 18/800 km. including a major bridge No.46". Since the previous contractor with whom the work had been entrusted had abandoned it, fresh tender was floated and the contract was awarded to the second accused at a total cost of Rs.21.91 cores.

10. In the evening of 17.10.2008, P.W.7 deputy Superintendent of Police attached to Anti Corruption Branch of CBI Chennai had received an information, informing that the first accused Mr. K.S.S.V,P,Murthy Raju, who was working as Deputy Chief Engineer (Construction), Southern Railway was carrying a huge cash after receiving the same as bribe from various contractors of Railways in A/C Coach of train No. 3352 Allaphey Dhanbad Express towards his native place or his wife's native place.

11. P.W.7, Deputy Superintendent of Police as per the orders of Superintendent of Police, CBI had organized a team of Officers under his lead and proceeded to conduct surprise check in the above said train , departing from Chennai Central Railway Station towards Dhanbad Railways Station on 17.10.2008

12. The train had left the Chennai Central Railway Station at 22.30 hrs. on that day. Then, he had contacted P.W.1 Mr. N.Prabakar Rao, Chief Ticket Inspector who was manning A/C Coaches. He had asked P.W.1 to check the passengers of A1 Coach in respect of berths between 31 to 34. When he had checked, P.W.7 had found that A1 Mr. Murthy Raju was travelling along with his family on confirmed berths bearing Nos. 31, 32 and 34.

13. P.W.7 had introduced himself to A1 and asked him to identify himself. He (A1) had in turn, identified himself as K.S.S.V.P. Murthy Raju working as Deputy Chief Engineer (Constructions). Then P.W.7 had asked him to identify his baggage. Accordingly, he had identified one samsonite bag, one VIP sky bag and one carton box of custard apples . A1's son had identified one brown, black stripped bag to be of themselves. Tmt. Pushpavalli, wife of Mr. Murthy Raju (A1) was carrying a black colour hand bag with her.

14. Thereafter, PW.7 had asked A1 to open and reveal the contents of the packages. During this process, P.W. 7 had found five bundles of 1000 rupee currency notes amounting to Rs.5 lakhs in a plastic bag of landmark Chennai . That bundles bore slips of City Union Bank T.Nagar, Chennai. When asked Tmt. Pushpavalli had produced her hand bag which contained an amount of Rs.1,65,000/- in the denomination of 22 x Rs.1000 currency notes, 100X Rs.1000 rupee notes and 86 X 500 Rs notes in three bundles. When questioned A1 had answered in an unconvincing way and stated that amount was belonged to P.W.30 Kotteweswara Rao.

15. P.W.7, DSP, had then sized the amount of Rs.6,65,000/-,(MO 4 series) the 11 slips of papers, the plastic cover landmark (MO 3)

Chennai and black brown stripped zip bag (MO 1). Subsequent to that, with the help of one Inspector Sundararaman (not examined) P.W.7 had drawn the proceedings of the surprise check. (Ex.P2) . P.W.1 Mr. N.Prabakara Rao, Chief Ticket Inspector had signed as one of the witnesses to the abovesaid proceedings. Thereafter he had requested Mr.Murthy Raju (A1) to come along with him to Chennai for further interrogation. The surprise proceedings were completed at 1.00 a.m. on 18.10.2008 and by that time, the train had just crossed Naidupeta Railway Station. After arriving at the CBI Office at 5.15 am on 18.10.2008, P.W. 7 had discussed with the Superintendent of Police CBI (ACB) Chennai and registered a case in Crime No. RC/51/A of 2008 at 6.30 am. After making a search of the house of A1 at about 3.45 p.m. he was arrested after following all the legal formalities.

16. P.W.7, the Deputy Superintendent of Police had then visited City Union Bank T Nagar Branch, Chennai and seized cheque No.1600 dt. 17.10.2008 for Rs.20 lakhs (P.12) drawn by M/s. C.T.Ramanathan Infrastructure Private Ltd., from the Account No.92810 of the company at City Union Bank. Then the first accused was produced before the learned special Judge at 5.40 p.m. for being remanded to judicial custody. The First Information Report was marked as Ex.P.24 . Then P.W.7 had entrusted the case records with P.W.29 Mr. C.Poonazhagan Inspector of Police for further investigation.

17. He had continued the investigation and recorded the statements of prosecution witnesses. During the course of his investigation he had collected the material and vital documents to support the case of prosecution. After obtaining the order of sanction, (Ex.P50) dated 31.08.2009 from P.W.24 Mr.Sunilkumar Agarwal Deputy Secretary EO (I) in the Ministry of Railways, New Delhi to launch prosecution as against the first accused he had laid a final report on 18.09.2009 as against the accused 1 and 2 under Section 120B IPC r/w Sections 7, r/w Section 12 and 13(2) r/w Section 13(1(d) of the Prevention of Corruption Act, 1988.

18. With the evidence of P.W.30, the prosecution has closed it's

side. When the incriminating circumstances arising out of the testimonies of the prosecution witnesses were explained and put to the accused 1 and 2, as required under Section 313(1)(b) of the Code of Criminal Procedure Code, while they had denied the evidences adduced by the prosecution witnesses, they had replied denying that the case was foisted against them.

19. The first accused as well as the second accused had given their respective oral statements which were reduced into writing and recorded by the learned Special Judge. The oral statement of the first accused is extracted as under:

" It is a false case against me. My submission to this is as follows:

I am now working as Deputy Chief Engineer in south western Railway. I am working in this capacity from April, 2009. I am not in any way connected with the award of the subject contract to A2 or his firm. The bills to A2 was passed in regular manner and there was no violation of rules or unfair favouritism. On 17.10.2008, I was leaving along with my family to our in laws place Guntur by train. Before leaving, myself and my wife were having a total cash of Rs.10 lakh. Rs.5 lakh was the money given by Dinesh at my request through Sivaramaraju to my wife which I came to know subsequently and Rs.5 lakhs was given to my wife by Koteeswaran for handing over to his mother in Guntur.

Out of the said Rs.10 lakhs, we kept Rs.5 lakhs apart as Koteeswaran's money and my wife was carrying some amount which I learnt subsequently as amounting to Rs. 1.65 lakhs for some expenses. The balance of Rs.3.35 lakhs was in my house which Police never seized. Myself, my family and my bungalow peon with his brother had travelled by a car brought by my bungalow peon brother for which I paid an amount of Rs. 300/- to him. We never stopped midway anywhere nor talked to any one. We reached Railway Station and boarded the train.

Shortly, after the train departed the CBI officials came and asked me to open the bags and I accordingly opened my bags and shown to him.

When asked about Rs.5 lakh I told that it was for one Kotteswaran. Though I was ready to tell the details, the Police Officer did not allow me to say and took the Rs.5 lakh cash and Rs.1.65 lakhs carried by my wife. We were brought back to Chennai and this case was falsely filed against me.

20. The second accused Mr. R.Adaikalam's oral statement is also extracted hereunder:

"A1 has not awarded any contract agreement dated 03.06.2008 (Ex.P17) to M/s. C.T.Ramanathan & Co., A1 did not fix the rate of contract. No rules or regulations of Southern Railway Board or CVC were violated in this case. This case was falsely filed against me. "

21. Neither oral nor any documentary evidence was adduced on behalf of the defence. On appreciation of the evidences, both oral and documentary, the learned Special Judge had found the accused 1 and 2 guilty and sentenced as afore stated.

22. A First Information Report and some untrusted and unworthy witnesses alone are not sufficient to maintain conviction on the person who is indicted.

22A. It is the proverb of criminal jurisprudence that

' Insufficiency of evidence + inefficiency in investigation = acquittal'

But unfortunately, this basic ingredient is not known to the learned trial Judge. Secondly, in order to prove the corruption charge, the prosecution has to mainly establish the following two ingredients:

Demand

Acceptance

In the absence of these two ingredients, it cannot be heard to say that the prosecution has proved its case.

23. Mr B.Kumar learned senior counsel, at the first instance has adverted to that the first accused was never functioning as Deputy Chief Engineer and that he had never awarded any contract in favour of the

second accused. In this connection, he has also raised a question as to "when the contract was not awarded in favour of the second accused, the question of loss Rs.22.91 crores would not arise.

24. In the present case on hand, P.W.7, Mr. S.B.Shankar had conducted a surprise check in the Train bearing No.3352 Coach A1 – Alleppey Dhanbad Express . Even prior to the registration of the case, according to P.W.7 five persons were participating in the team of surprise check. However, excepting Mr. S.B.Shankar (P.W.7) nobody was examined. P.W.7 says that in the evening on 17.10.2008 an information was received in the office of the Superintendent of Police, CBI, ACB, Chennai. He did not say from whom the information was received. Equally he has also not stated as to who had received the information.

25. On perusal of the First Information Report it is revealed that it was registered on 18.10.2008 at 6.30 hrs. In column No .3(b) of the First Information Report with reference to the suspected offence, it is stated as '17/18.10.2008'. But column No.3 (c) with reference to the information received at P.S. is left blank. Even in Column No.4 with reference to the type of information it is left blank. Column No.6 is regarding source of information. It is also left blank. Column No.7(1) with regard to the details of the accused persons, it is revealed that at first the case was originally registered against the first accused Thiru. K.S.S.V.P.Murthy Raju. The time at which the information was received has not been stated. In the column of 'details of information' it is stated that reliable information was received in the Office of the Superintendent of Police, CBI ACB, Chennai that Thiru. K.S.S.V.P.Murthy Raju, working as Deputy Chief Engineer (Construction) Southern Railways, Chennai has received huge bribe amounting to approximately Rs. 6 lakhs from various contractors by abusing his official position.

26. In chief examination P.W.1 has stated that as per the orders of the Superintendent of Police, CBI, ACB, Chennai he had organized a team of officers. But the so called order has not been produced in this case. Secondly, after the completion of the proceedings of surprise check, he

had reached Chennai at 5.15 a.m on 18.10.2008. Thereafter, he had discussions with the Superintendent of Police, CBI, ACB, Chennai and registered a case in RC/51A/2008 at 6.30 a.m. on 18.10.2008.

27. From the evidence in chief of P.W.7, it can be inferred that the case was registered as against the first accused by P.W.7 after confabulation and due deliberations with the Superintendent of Police, after the completion of the proceedings of surprise check.

28. In this connection this Court would like to point out that the alleged first information report registered by P.W. 7 after due deliberations or consultations with his Superintendent of Police after the completion of surprise check proceedings cannot be construed as first information report, instead it must be construed as charge sheet.

29. Section 154 of Code of Criminal Procedure Code contemplates Information in cognizable cases -

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and

every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

30. As rightly indicated by Mr. B.Kumar, learned senior counsel the first information was first received by the office of the Superintendent of Police, CBI, Chennai. And then, as per the orders of Superintendent of Police P.W. 7 had organized a team to conduct the surprise check in the train. Even P.W.7 or the Superintendent of Police, ACB had not conducted any preliminary enquiry prior to the registration of the case as required under Chapter IX of CBI Manual. The procedure in registering the case after the completion of surprise check and after confabulation with the Superintendent of Police CBI, ACB, Chennai was absolutely wrong.

31. In this connection this Court would like to have reference to the

case of the Full Bench decision of **Kerala High Court in "State of Kerala Vs Samuel"** (AIR 1961 Kerala 99). A Full Bench of Kerala High Court comprising of Their Lordships Hon'ble Mr Justice M.A.Ansari, Chief Justice (as he then was), Hon'ble Mr Justice Anna Chandy and Hon'ble Mr Justice Govinda Menon had an occasion to explain the scope and applicability of the provisions of Section 154, 162 and 173 of the Code of Criminal Procedure. Their Lordships have also defined as to what amounts is First Information Report and equally explained as to when an investigation starts.

In the above said decision the Full Bench of Kerala High Court has held that

"whether or not a particular statement would contemplate the First Information Report in a case is a question of fact and would depend on the circumstances of that case. However, it can be stated on a general principle that it is not every piece of information however vague, indefinite and unauthenticated. It may be, that should be recorded on the First Information Report for the sole reason that such information was the first in point of time to be received by the police regarding the commission of an offence. On the other hand, it is equally clear that to permit a preliminary enquiry before recording the first information is to diminish if not destroy the value of the First Information Report itself. Their Lordships have also held that "the report filed by the police amounted to a charge sheet and not First information report affording a starting point for a fresh investigation."

32. As indicated in the preceding paragraph, P.W.7 had conducted a surprise check even prior to the registration of the case. Thereafter, in the light of the principles laid down by the Full Bench of the Kerala High Court in **State of Kerala Vs Samuel's** (cited supra), this Court holds that the first information report (Ex.P24) is construed to be a charge sheet and not a first information report affording a starting point for further investigation.

33. Apart from the charge under Section 120B IPC, the accused 1 and 2 had been facing the charges under Sections 13(2) r/w Section 13(1)(d) and Sections 7 and 12 of the Prevention of Corruption Act, 1988.

Section 13 envisages criminal misconduct by a public servant. Sub section (1) contemplates a public servant, if said to commit the offence of criminal misconduct-

(a).....

(b).....

(c).....

(d) If he -

(i) by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant obtains for any person any valuable thing or pecuniary advantage without any public interest; ;

34. According to the prosecution, in so far as this case is concerned, sub clause (ii) of clause (d) of sub section (1) to Section 13 is more applicable .

Section 7 reads as under:

"7. Public Servant taking gratification other than legal remuneration in respect of an official Act.-

Whoever, being, or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever , other than legal

remuneration, as a motive or reward for doing or forbearing to do any

official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person with the Central Government or any State Government or Parliament or the legislature of any State or with any local authority, corporation or Government Company referred to clause (c) of Section 2 or with any public servant whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

35. Section 12 is the penal provision for abatement of offences defined in Section 7 or 11. In so far as the charge of criminal conspiracy is concerned, (Sections 120A & 120B of IPC) the offence of a conspiracy to commit a crime is different from the crime that is the object of the conspiracy, because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed. Equally, the crime attempted or committed does not require the element of conspiracy as of its ingredients. For the offence of conspiracy—essential ingredients are –

(1) The parties to such an agreement will be guilty of criminal conspiracy though the illegal act agreed to be done has not been done. So too it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. The entire gist in the case of conspiracy is the agreement to commit an offence. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences, even if some of them had not actively participated in the commission of the offences.

If the agreement to commit an offence is not proved then the charge under section 120B IPC must be thrown out .

36. Section 20 of the Act is very much relevant in so far as this case is concerned. It says about presumption where public servant accepts

gratification other than legal remuneration. The very caption of this Section implies the meaning that presumption would arise where public servant accepts gratification. As discussed in the earlier paragraphs, in so far as the corruption cases are concerned, the two ingredients viz., (i) demand & (ii) acceptance must be proved. In the absence of demand, and in the absence of acceptance, the question of presumption does not arise.

Sub Section (1) of Section 20 reads as under:

Where, in any of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain the gratification or that valuable thing as the case may be, as a motive or reward such as is mentioned in section 7 or , as the case may be without consideration or for a consideration which he knows to be inadequate.

37. From the languages employed under Section 20(1) it is thus made clear that it must be proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself or for any other person any gratification or any valuable thing from any person then, it shall be presumed unless the contrary is proved, that he had accepted or obtained or agreed to accept or attempted to obtain that gratification as a motive as is mentioned in Section 7.

38. The above principles are totally absent in the given case on hand.

39. In **V.Venkatasubbarao Vs State** (2007) CrI.J. 754 (SC) the apex Court has observed that it may be quite relevant that Section 20 of the Act provides for raising a presumption, only if a demand is proved.

<http://www.judis.nic.in> Further more, even in such a case, the burden on hand accused does not

have to make the same standard of proof as is required to be made by the prosecution. The same principle has been followed in **A.S. Kannan Vs The Inspector of Police Vigilance and Anti Corruption reported in (CDJ 2011 MHC 5350: 2011 (4) CrI. LJ 950)**

40. It is well settled by the Hon'ble Supreme Court in **B.D.Jhingan Vs State of UP** (AIR 1966 SC 1762: 1966 CrI.LJ 1357) that the preponderance of probability would be sufficient to rebut presumption. The extent of the burden of proof placed on the accused person to rebut the presumption has been considered once again and it has been held that it is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. Their Lordship observed as follows:

"The next question arising in this case is as to what is the burden of proof placed upon the accused person against whom the presumption is drawn under Section 4(1) of the Prevention of Corruption Act. It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts, i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt. It was observed by **Viscount Sankey in Woolmington V Director of Public Prosecution**, (1935 AC 462) that "no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the

common law of England and no attempt to whittle it down can be entertained."

41. It is settled principle of law that to prove the allegations of demand and acceptance of bribe by an accused person, the evidence of the complainant or trap witnesses cannot be safely acted upon in the absence of some independent corroborative evidence. In such a situation, bribe giver is normally treated as no better than an accomplice and so his evidence needs, corroboration from an independent source. The same value is to be attached to the evidence of the shadow witness especially when he is not proved to be an independent witness. Independent corroboration to the evidence of such witness is generally required by the Court, if not as a rule of law, then at least as a rule of caution and prudence. This principle is laid down in **Guruchandran Singh V State of Haryana**, 1994 CrL.J.710

42. On coming to instant case on hand, , the alleged bribe giver i.e., the 2nd accused Mr.R Adaikalavan, according to the prosecution, an accomplice who is said to have abetted the 1st accused to receive the money for awarding contract in his favour. It is obvious to note here that in his statement which was given during the time of, Sec.313 (1) (b) of Cr.P.C. proceedings he had denied the allegation stating that A1 had not awarded any contract agreement dated 3.6.2018 to M/s. C.T. Ramanathan & Co.,

43. In this case a total sum of Rs.6,65,000 was seized from the 1st accused while he was travelling in the train bearing No.3352 from Chennai to Guntur along with his family. According to prosecution, there was a conspiracy between the accused 1 & 2 and in pursuance of the same, the 1st accused had awarded the contract for the work of "provision of 3rd line between Korukupet and Athipattu Stations- Earthwork in forming bank and other incidental works from 15/9.50 km to 18/800 km. including a major bridge No.46" to the 2nd accused in an illegal manner and for an exorbitant rate of Rs. 21.91 crores and passed the bill No.CC4 and part dated 15.10.2008 violating several rules and standing guidelines

of Railway Board and for that the 1st accused had received illegal gratification from the 2nd accused.

44. It is significant to note here that as per the case of prosecution, a sum of Rs.1,65,000/- which was seized from the wife of the 1st accused was received by the 1st accused from various contractors. The trial court has held that the prosecution had failed to prove that the amount represent the proceeds of any crime and this represents the sum of ts.1,65,000 to the 1st accused.

45. In this connection Mr. B. Kumar, the Learned Senior Counsel has raised a crucial question for the consideration of this court,

"Whether there is conspiracy, as well as demand and receipt of illegal gratification of Rs.5,00,000?"

46. Learned Senior Counsel has maintained that the awarding of tender was done entirely by different set of senior Officers of Southern Railway and the 1st accused had played no role in it and that, in the Railways awarding of any contract worth of Rs.8 crores. and above would be done by a tender committee consisting of the Chief Engineer, Chief Signal and Tele-Communication Engineer and Financial Advisor /Chief Accounts Officer and the recommendations of the tender committee would be placed before the Chief Administrative Officer who would issue the letter of acceptance.

47. The Learned Senior Counsel has further continued that, the tender in question was awarded after following all the rules and procedures and hence, the Learned Trial Judge was not correct in coming to the conclusion that the 1st accused had conspired with the 2nd accused and in consequence thereof, the 1st accused had abused his official position in awarding the contract in favour of the 2nd accused.

48. While advancing this argument Mr. B. Kumar, Learned Senior Counsel has drawn the attention of this court to the evidence of PW6 in cross who was, at the material time working as Junior Engineer in the Office attached to Deputy Chief Engineer, Construction. He has spoken

to about the awarding of Contract to the 2nd accused. As per his

evidence, all the calculations made by M/s. C.T. Ramanathan & Co., were found tallied with his calculation and he had found no mistake in the calculation. In his cross examination PW6 has proceeded to say that in the tender allotment, the 1st accused had no role to play as there was a separate committee for it, and only that committee alone would decide the work allotment including the rates. He has also deposed in his cross examination that the tender purchase committee itself had awarded the re tender for higher rates to the 2nd accused.

49. The Investigating Officer (PW29) had, in his cross examination admitted that the documents relating to the award of contract at an exorbitant rate were not marked as exhibits in this case. He has also stated in his cross examination that the Chief Engineer had awarded the tender and signed the contract and only thereafter, the 1st accused was assigned with the supervisory work of the contract.

To a question, "Is it correct to say that till the signing of ex. P17 and awarding the work to A2, A1 has no role to play?" For this question the investigating officer PW29, has given the answer "Yes, it is correct."

50. As argued by the Learned Senior Counsel there is no other witness to speak about the alleged conspiracy between the accused 1 & 2 in the matter of awarding of contract. Obviously, none of the witnesses in this case has spoken to the effect that the 1st accused had awarded the contract in favour of the 2nd accused of an exorbitant rate.

51. In respect of the allegation that the bills raised by the 2nd accused were passed by the 1st accused hurriedly i.e., within 2 days, PW6 Mr. Sridhar Narasimhan, Junior Engineer has stated that he had examined the worksite and recorded the measurements in the measurement books exhibits P18 & 19. PW5 Mr. V. Sankara Narayanan, Executive Engineer has corroborated the evidence of PW6 and stated that he had test-checked the measurements made by PW6. He would further state that, the bill CC4 is the part bill. This bill was passed for R.1,74,39,339/-. It was initiated by JE (PW6) on 14.10.2008 and he had conducted test-check on 14.10.2008 for which he had certified the bill as

Executive Engineer on the same date. Then the bill was forwarded to Deputy Chief Engineer Office for passing the bill. This bill was passed by Mr. Murthy Raja (A1) as part bill. The net value of the bill was Rs.1,26,01,634/-.

52. From the proceedings Exhibit P22 (dated 30.10.2008) it is made clear that the Investigating Officer PW29 had checked the work done by the 2nd accused. PW9 Mr. Mohan, Manager of M/S. C.T. Ramanathan & Co., has stated that there was nothing unusual either in passing of bills or in the issuance of cheque. This has also been ratified by the Investigating Officer PW29. Even PW29 (I.O.) would go one step further and state that the Chief Engineer had recommended for payment of cheque. From the evidence of PW29 it is palpable that the work done by the 2nd accused was verified by the Officials of the Southern Railways and the same was checked by the Investigating Officer and his team. From the above context it can easily be inferred that there was no procedural irregularities on the part of the 1st accused in issuing the cheque to the 2nd accused.

53. In support of his contention the Learned Senior Counsel has placed reliance upon the decision of the Apex Court in C. CHENGAREDDY AND ors. Vs. State of A.P. (MANU/SC/0928/1996) wherein it is held that even if it was proved that there were irregularities committed in the matter of allotment/ award of work in violation of circulars, that by itself would not be sufficient to prove that the criminal case was made out.

54. Ex.P75 is the attested xerox copy of Railway Board letter (5 sheets) dated 11.5.2004 wherein it is stated that the delays lead to corruption and the delay in making payment is to be cut down. It implies that it was issued with a view to implement electronic clearance systems in the matter of making payments in all officer, and emphasis to its importance.

55. From the testimonies of PW5 & PW6 as well as of PW29 (I.O.) it is explicit that it is only the Chief Engineer who recommended for payment by cheque and not by the 1st accused as can be seen from the

Ex. P26 and therefore the 1st accused cannot be made liable.

56. Mr. V.S. Venkatesh, Learned Counsel appearing for the 2nd accused has contended that the 1st accused had not awarded the contract to the 2nd accused and that when he had not fixed the rate which as per the prosecution was exorbitant to the tune of Rs.21.91 crores and when there was no violation of any rule or guideline of the Railway Board, there was no question of conspiracy between the accused for the commission of an offence punishable for the Sec.13 (1) (d) of the provision of corruption Act.

57. In this connection, this court would like to make reference to the evidence of PW29. He has stated that :

"As per my investigation gathered by examination of Shri. Venkatesan for the recommendation of awarding the tender for a value of Rs.21.91 crores, the tender committee namely the above said three persons are responsible. It is correct to say that based on the above recommendations Shri. Venkatesan, Chief Engineer has signed the contract awarding the work to A-2. It is correct to say that in awarding the contract for value of Rs.21.91 crores A-1 has no role to play.

... .. Yes, the documents related to the events are not marked as exhibits in this case. With regard to the work done by A2, four bills have been passed. Yes, as per statement of LW6 (PW5) those details are correct. It is correct the first bill was paid on the next day and other two bills were paid on the same day and the fourth bill was paid on the second day i.e. 16.10.2008. It is correct to say that all these four bills were paid as per usual manner."

58. Mr. B. Kumar, Learned Senior Counsel has raised another important question as to "whether the prosecution has brought home the charge of receipt of bribe or gratification of Rs.5 lakhs by the 1st accused." The 1st accused in his oral statement given during the proceedings of 313 (1) (b) of the Code of Criminal Procedure has

admitted, that he was in position of Rs.5 lacs when he was travelling. But the prosecution has failed to prove that the said sum of Rs.5 lacs was received by the 1st accused as bribe from the 2nd accused. It is pertinent note here the PW30 Kooteswara Rao had turned hostile.

59. The defense case of 1st accused is that at the time of seizure the said amount of Rs.5 lacs was given by PW30 Kooteswara Rao.

60. In this connection, Mr. B. Kumar, Learned Senior Counsel appearing for the 1st accused has submitted that "Mere recovery of money from the 1st accused would not amount to establish any offence under Sec.13 (1) (b) of the prevention of Corruption Act."

61. In so far as this case is concerned, the prosecution witness viz., PW1 has spoken to that a sum of Rs.5 lacs was seized from the 1st accused while he was travelling in train along with his family. But there is no evidence to establish the accusation that the 1st accused had obtained a sum of Rs.5 lacs by corrupt or illegal means or by abusing his official position as a public servant or while holding of his as a public servant. Equally there is also no evidence to show that the 1st accused had demanded any money from the 2nd accused which is the main ingredient to prove the offence under Section 13 (1) (d) of the prevention of corruption Act.

62. As rightly pointed out by Mr. B. Kumar, Learned Senior Counsel no question was posed to the 1st accused during the 313 Cr.P.C. proceedings that he had demanded a sum of Rs.5 lakhs from the 2nd accused.

63. In order to fortify his argument Mr. B. Kumar has made reference to Mr. SELVARAJ Vs. STATE OF KARNATAKA (AIR 2015 SC 3834). In this case, Hon'ble Supreme Court of India has held that the recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe and when the complainant is not available for examination during the trial, the Court has to be cautious while sifting the evidence of other witnesses. Therefore, it is not safe to come to the

conclusion that the offence under Section 13 (1)(d) of the Prevention of Corruption Act is proved by the prosecution beyond reasonable doubts.

64. It is the specific case of prosecution that the cheque for Rs.1.26 crores issued by the Southern Railways was deposited into the account of 2nd accused at City Union Bank, T. Nagar Branch, Chennai on 16.10.2008. PW10 Mr. Poorna Srinivasan has stated that he was working in M/s. C.T. Ramanathan & Co., and that he was looking after the work relating to Bank. He has deposed that he had withdrawn a sum of Rs.20 lakhs on 17.10.2008 and given Rs.17 lacs to the wife of the 2nd accused and handed over the remaining amount of Rs.3 lacs in the office of the 2nd accused. In this connection, PW3 in his cross examination has stated that he never identified the bundles shown by the CBI. PW13 who was working as cashier in City Union Bank, T. Nagar Branch has spoken to that he could not identify the cash bundles. It may be relevant to note here that Pw13 was treated as hostile. In exhibit P2 (surprise check proceedings) conducted by PW7 it is recorded that 5 bundles of Rs.1000 currency notes bearing the packing slips, City Union Bank, T, Nagar, Chennai – 17. PW1 Chief Ticket Inspector, had counted all the 5 bundles of Rs.1000 currency notes and found that the amount was Rs.5 lakhs. In his cross examination he has stated that no slips were available on the bundles on that day and that the colour of M.O.1 bag was entirely different at the time of his giving evidence. His evidence with reference to this point is extracted hereunder:

“In the bundles (2) shown to me no slips were available on that day. At the time of proceedings, afterwards recording the statement, no mention about the slips in the date. M.O.1 apart from brown and black colour, yellow colour and white colours are there. In the bag M.O.1 produced before this court, before recording this proceeding, bag colour is entirely different now.”

65. The Investigating Officer has admitted in its cross examination that at the time of his examination PW7 did not mention about the date seal of 17.10.2008 on the packing slip of M.O.4, the seal of Pothys on one

of the currency bundles of M.O.4 and the date seal of 16.10.2008 on the reverse side of packing slips of M.O.4 currency bundles.

66.The Investigating Officer PW29 has also admitted that in exhibit P2 (surprise check proceedings) nothing was stated about the seal of City Union Bank or the date seal of 17.10.2008 or the seal of Pothys or the date seal of 16.10.2008 of Pothys.

67. With reference to this, Mr. B. Kumar, Learned Senior Counsel would submit that if really the above facts viz., the seal of City Union Bank, date seal of 17.10.2008, were found on M.O.4 at the time of preparation of exhibit P2, it would have been specifically described in exhibit P2. PW1 who has attested Ex.P2 has not spoken about these aspects. PW7 who had prepared Ex. P2 has admitted that he did not mention about the date on the packing slips. PW29 (I.O.) has not put any question in respect of this fact to PW7 and even PW13 Cashier of City Union Bank has not spoken to about this fact. It is to be noted that PW10 to 13 were treated hostile as they have not supported the case of prosecution.

68 .It may also be relevant note here that M.O.4 cash bundles were not deposited in the Court for a period of 38 days and therefore Mr. B. Kumar, Learned Senior Counsel has submitted that the prosecution had failed to prove the charge Nos. 2 & 3 as against the accused.

69 .There is no dispute that the company owned by the 2nd accused had withdrawn a sum of Rs.20 lakhs on 17.10.2008. The Chief Engineer had permitted cheque payment and the very purpose of issuance of cheque was to expedite payment and therefore the withdrawal of money of Rs.20 lacs on 17.10.2008 cannot be faulted with. PW3 had not identified the currency notes seized by the 1st accused (M.O.4 series). PW13 was not able to identify the cash bundle. Though PW13 was treated hostile still his evidence assumes importance, as he is an employee of City Union Bank, T. Nagar Branch. Ex. P2 mahazar drawn by PW7 does not say about the bank slips which were said to be on the bundle. Ex. P2 does not speak about the signature or any date

thereon.

70. The investigating Officer (PW29) has admitted that he had neither asked PW7 nor PW13 at the time of his examination during the time of investigation about any date seal.

71. In this regard, Mr. B. Kumar, Learned Senior Counsel has submitted that, what was available in the M.O.4 could not be linked to Rs.20 lakhs withdrawn by the 2nd accused and that M.O.4 series might have been tampered with, to suite the case of prosecution.

72. The case of prosecution that the 2nd accused had given Rs.5 lakhs to the 1st accused as illegal gratification was disproved as the witnesses who were examined in this connection were turned hostile.

73. It was indicated by Mr. B. Kumar that the prosecution had pressed into service the telephonic conversation which the 1st accused had with PW11 to prove that the cover containing cash bundles was handed over to the 1st accused. It is pertinent note here the PW11 has not supported the case of prosecution. The Senior Counsel in support of his contention has placed reliance upon decision of the the Apex Court in **Anwar Vs. Basheer (2014 (101)SCC 473)**. In this case the Apex Court has observed that,

"any documentary evidence by way of an electronic record under the Evidence Act can be proved only in accordance with the procedure prescribed under Section 65B of the Evidence Act, which deals with the admissibility of the electronic record. The Supreme Court further held that the conditions and safeguards under Section 65N(2) and 65B (4) are to be followed to ensure the source and authenticity which are the two hallmarks pertaining to electronic record sought to be used as evidence and since electronic records are more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice."

74. On the other hand, the learned Special Public Prosecutor for

dispute is in respect of Rs.5 lakhs alone. He has also invited the attention of this Court to Ex. P2 dated 17.10.2008 (proceedings of surprise check) conducted on 17.10.2008 in Train No.3352, Alleppey - Dhanbad Express. With reference to this, he has argued that this proceeding was completed at 1.00am on 18.10.2008. The prosecution has mostly trusted upon the evidence of PW30 Mr. Kotteswaran who has not supported the case of prosecution as he had turned hostile. Mr.K. Sreenivasan, Learned Special Public Prosecutor has raised the question as to whether the earliest explanation given by the accused could be admitted? He has also continued that the recovery of Rs.5 lakhs was accepted by the 1st accused but he had stated that it was belonged to PW30 Kotteswaran. With regard to the encashment of 20 lakhs rupees from City Union Bank, T. Nagar Branch by way of cheque (Ex.P9). He has raised a question as to whether the disputed Rs.5 lakhs form part of Rs.20 lakhs . Even for this question also the prosecution has miserably failed to answer in their favour. Even PW3 has fairly admitted in his cross examination that he had not identified the currency notes seized from the first accused i.e. M.O.4 as belonged to or having been given by the bank. As already stated, PW10 to PW13 have turned hostile. The evidence of PW29 is suffered from several infirmity as there is inefficiency in investigation. At the time of hearing the appeal this court had called for M.O.4 series from the Trial Court and personally verified, and found that excepting PW1's signature and CUB seal no other signature was found. The slip rapped on the bundle did not contain any bank officials' signature. It is to be noted that as held by the Apex Court mere recovery of amount cannot be taken into account to come to the conclusion that the 1st accused had received the bribe amount from A2.

75. This Court has considered the submissions made by Mr. B. Kumar, Learned Senior Counsel assisted by Rajnish Pathyil who is on record for the 1st accused and Mr.V.S. Ventakesh, Learned counsel appearing for the 2nd accused and also the submission made by Mr. K. Srinivasan, learned Special Public Prosecutor. This court has also perused the impugned Judgment of the Trial Court and found that the

Learned Trial Judge has failed in many aspect to consider and appreciate the testimonies of the prosecution witnesses.

76. Having regard to all the relevant and circumstances this court is a firm view that all the charges (1 to 4) have not been proved by the prosecuting agency beyond all reasonable doubts.

77. In the result both the appeals are allowed. The order of conviction and sentence recorded against the accused 1& 2 are set aside and the accused 1 & 2 are acquitted of the charges under Sections 120-B IPC r/w 13 (2) r/w 13(1) (d), , 13(2) r/w 13(1)(d), 7 and 12 of the Prevention Corruption Act 1988. The bail bonds executed by and on behalf of the appellants shall stand cancelled and the fine amount, paid if any, shall be refunded to the accused 1 & 2/appellants. Consequently, connected miscellaneous petitions are closed.

15.05.2017

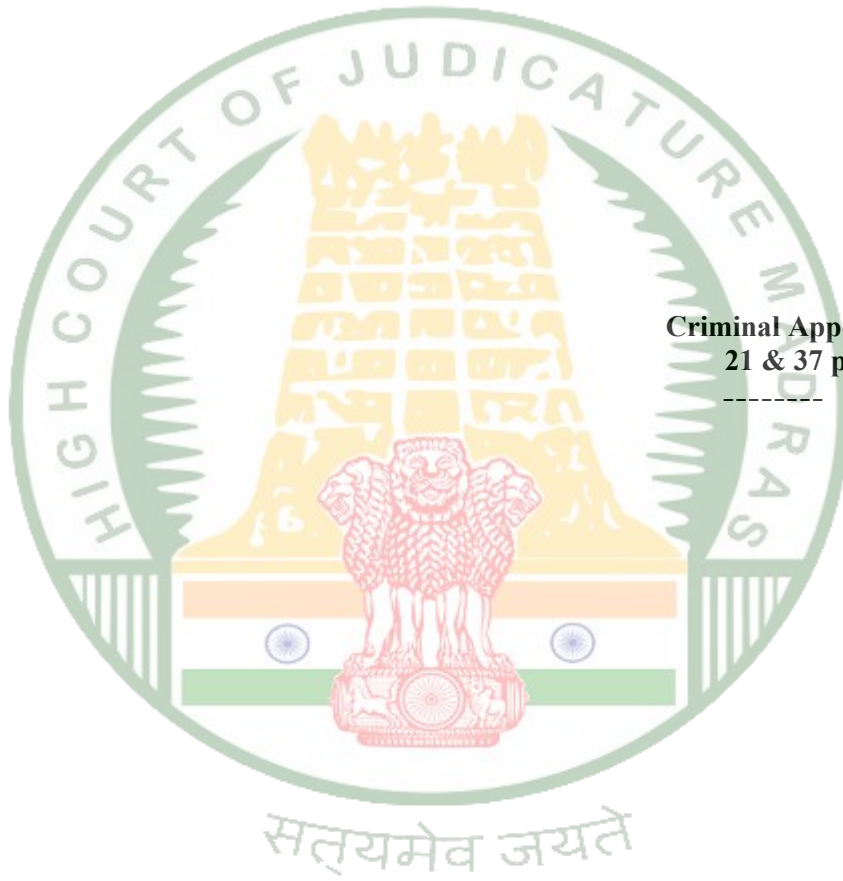
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T. MATHIVANAN, J



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21 & 37 pf 2015**

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