



Bail Slip

The appellant herein/Accused viz., N.Ayyamuthu, S/o.Late Natarajan was directed to be released on bail as per order of this Court dt.4.2.2015 made in CrI.MP.No.1 of 2015 in CrI.A.No.71 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.05.2017

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

CrI. Appeal Nos 71 of 2015 &
509 of 2016

Against

CC.No.7 of 2008

(On the file of the learned Special Judge for CBI Cases (II
Addl. Sessions Judge) Coimbatore)

Thiru.N.Ayyamuthu,
S/o.Natarajan,
Formerly Head Constable
25/26 Police Quarters,
N.K.Palayam,
Singanallur,
Coimbatore

.. Appellant in CrI. Appeal
No.71 of 2005 & respondent
in CrI. Appeal No.509 of 2016

Vs

State rep. by Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch (ACB)
Chennai - (FIR No.RC29/A/2008/CBI/ACB/Chennai).

Respondent in CrI.Appeal
No.71 of 2015 &
Appellant in CrI.Appeal
No.509 of 2016

CrI. Appeal No.71 of 2015

Prayer

This Criminal Appeal is filed to set aside the order of conviction and sentence recorded against the appellant, dated 13.01.2015 and made in C.C.No.7 of 2008, on the file of the learned Special Judge for CBI cases, (Second Additional Sessions Judge), Coimbatore.

CrI. Appeal No.509 of 2016

Prayer

This Criminal Appeal is filed by the State represented by the Inspector of Police, CBI/ACB, Chennai to set aside the acquittal of the respondent/A1 in respect of the



offences under Section 120B, 420 r/w 511 IPC and under Section 13(1)(d) of the Prevention of Corruption Act, 1988, dated 13.01.2015 and made in C.C.No.7 of 2008, on the file of the Special Judge for CBI cases, (Second Additional Sessions Judge), Coimbatore.

Appearance

For the Appellant in CrI.A.No.7 of 2015 & respondent in CrI.A.509 of 2016:

Mr.K.K.Sivashanmugham, learned counsel
assisted by Mr. A.Thiagarajan, learned counsel
who is on record for the
appellant/respondent & 1st accused

For respondent/appellant :

Mr. K.Srinivansan learned Special Public Prosecutor for
CBI Cases for respondent/appellant/complainant
in CrI.A.509 of 2016

JUDGMENT

With the crucial issue involved in both the criminal appeals is one and the same and the parties to the appeals are also one and the same, these two Criminal Appeals have been consolidated together, heard jointly and disposed of in this common Judgment.

2. Challenging the Judgment, order of conviction and sentence dated 13.01.2015 and made in C.C.No.7 of 2008, on the file of the learned Special Judge for CBI cases (Second Additional Judge), Coimbatore, this Criminal Appeal is filed by the appellant/1st accused after invoking the provisions of Section 374(2) of the Code of Criminal Procedure, convicting him under Sections 468 & 471 IPC and Section 13(2) of the Prevention of Corruption Act, 1988 and sentencing him to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to suffer a further period of two months of rigorous imprisonment under Section 468 IPC and to suffer rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- in default to suffer a further period of two months of rigorous imprisonment under Section 471 IPC and also to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- in default to suffer a further period of one month under section 13(2) of the Prevention of Corruption Act, 1988. The sentences were directed to run concurrently. The period of pre-conviction incarceration undergone by the appellant was directed to be given set off under Section 428 of the Code of Criminal Procedure. He was directed to be acquitted of the charges under Sections 120B, 420 r/w Section 511 of IPC and under Section 13(1)(d) of the Prevention of Corruption Act, 1988. The total fine amount of Rs.7,000/- was paid on receipt.



WEB COPY

3. A misfortune had descended on Mr. N.Ayyamuthu, formerly Head Constable at Perur Police Station, Coimbatore District, when the investigation was entrusted with the hands of CBI, in pursuant to the order of this Court, dated 22.04.2008 and made in W.P.No.7389 of 2005.

4 . It is manifested from the records that, the National Insurance Company and other companies had filed several writ petitions before this Court seeking CBI investigation into a large scale of bogus accident claims made by various claimants based on fake and forged documents as well as fabricated records to substantiate their claims. It was alleged by the Insurance Companies before this Court, that even the First Information Reports (FIRs) were forged deliberately to facilitate or to support fraudulent insurance claims. A Division Bench of this Court headed by the Hon'ble the Chief Justice (as he then was) while disposing of a writ petition in W.P.No.7389 of 2005 vide order, dated 22.04.2008 had directed the CBI to investigate nine number of cases, including the case in Crime No.75 of 2006 on the file of Perur Police Station, Coimbatore. The records further reveal, that the CBI was initially directed by an order, dated 20.-07.2006 to investigate 13 cases and to complete the investigation within a period of three months and to file their report. Subsequently, a learned counsel who was appearing on behalf of the Insurance Companies had given a list of 427 cases (MCOPs/WCs) and submitted that some of the cases were withdrawn as not pressed in the wake of entrustment of investigation with the CBI. The learned counsel had furnished the particulars of nine cases which were also entrusted with the CBI including the case in Crime No.75 of 2006, on the file of Perur Police Station, Coimbatore.

5. It is pertinent to note here that the Hon'ble Division Bench of this Court has precisely employed the word 'investigation'. The order, did not direct the CBI to reinvestigate the case. Because the word 're-investigation' is unknown to the Criminal Procedure Code. Further investigation alone is permissible under Section 173(8) of the Code. However, in a petition filed by the Inspector of Police CBI/ACB/Chennai in RC 29/A-2008-CBI/Chennai, the Inspector of Police, who is the respondent herein has inadvertently stated, as if the High Court in its order, dated 22.04.2008 and made in W.P.No.7389 of 2005 had directed the CBI to reinvestigate nine number of cases including the case in Crime No.75 of 2006, on the file of Perur Police Station, Coimbatore.

6. The above petition seems to have been filed with a prayer to add the sections of law i.e. sections 120-B r/w 468, 468, 471, 420 r/w 511 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 as against the following three persons:



1. N.Ayyamuthu, Head Constable 1469
2. V.Chandru @ Ranjithchander , son of Mr.Venkatapathy &
3. S.Rengaraj, son of Subbiah Gowder.

WEB COPY

7. Originally, as per the orders of this Court dated 22.04.2008 and made in W.P.No.7389 of 2005, the First Information Report was registered in FCMA1/2008-A-0029 on 25.06.2008 at about 3.30 p.m. under Sections 279, 338 IPC by one Mr. R.Ravi (PW16), Inspector of Police attached to CBI/ACB Chennai against the driver of the vehicle bearing registration No. TN-37-AJ-3226 (Pajero Car). In the FIR there was no mention about the name of the driver, who drove the vehicle at the material time. In connection thereof, the Inspector Police attached to CBI/ACB, has stated in his petition filed before this Court, that the records such as FIR, FIR index, carbon copy of case diary file, letter of inspector addressed to the RTO (South) Coimbatore for inspection of vehicle , docket sheet, counterfoil and charge sheet etc., clearly show that the accident was caused by Mr. Chandru, son of Venkatapathy and Mr. N.Ayyamuthu, Head Constable had forged and fabricated another charge sheet and Mr. S.Rengaraj was forced to admit the guilt. He would further state that since the investigation had revealed that Mr. Ayyamuthu, the Head Constable, in pursuance of the criminal conspiracy with Chandru and S.Rengaraj, had abused his official position and had forged and filed a fake charge sheet against S.Rengaraj and in pursuance of the same Mr. S.Rengaraj had also falsely admitted the guilt before the trial Court. According to the Inspector of Police, Mr. R.Ravi, (PW 16), the above facts prima facie disclose the commission of offences punishable under Sections 120-B, r/w 468, 468, 471 & 420 IPC r/w 511 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against A1 to A3 and substantive offences under Sections 279 and 338 IPC against Chandru.

8. The road traffic accident, which took place on 12.03.2006 near Madampatti Thanneerpandal within the jurisdiction of Perur Police Station involving a Car (Pajero) bearing Registration No.TN-37-AJ-3226, had led PW7 Brammagiri (Head Constable) to register a criminal case in Crime No.75 of 2006 under Sections 279 and 338 of IPC , on the file of the Perur Police Station, Coimbatore based on the complaint lodged by PW8 Jayaraj.

9. In the above said accident one Priyanka, a minor girl, daughter of PW8 Jayaraj had sustained multiple grievous injuries.

10. This case was investigated by P.W.4 Anbalagan, Inspector of Police attached to Perur Police Station, Coimbatore. During his investigation, it was revealed that the said vehicle was driven by one minor V.Chandru, son of Venkatapathy, Coimbatore. According to the case of prosecution, PW 4 Mr. Anbalagan, Inspector of Police, after



completion of his investigation, had prepared a charge sheet as against the said minor Chandru, son of Mr. Venkataathy under Sections 279, & 338 of IPC, which was intended to be filed before the concerned Court.

WEB COPY

11. In pursuance of the criminal conspiracy with V.Chandru @ Rajinth Chander and S.Rengaraj (PW2) Mr. N.Ayyamuthu Head Constable (appellant herein), who was then working in Perur Police Station, had abused his official position prepared and filed another charge sheet before the Court, showing PW2 Rengaraj as an accused.

12. The opinion given by PW 12 Mr. N.Ravi, Principal Scientific Officer, Central Forensic Science, Laboratory has also confirmed the writings of the appellant Mr. N.Ayyamuthu in the charge sheet showing the accused as S.Rengaraj.

13. In the meanwhile, P.W.2 S.Rengaraj had surrendered before the learned Judicial Magistrate- I, Coimbatore and had admitted the offence saying that he had driven the vehicle and caused the accident at the material point of time and therefore he was, on his admission, found guilty, convicted and sentenced to pay the fine amount. . Based on the Judgment of the learned Judicial Magistrate I, Coimbatore, P.W.8, Mr. Jayaraj, who is the father of the injured minor girl Prianka had filed a Claim Petition before the concerned Motor Accidents Claims Tribunal, Coimbatore in M.C.O.P.No.672 of 2006, claiming a sum of Rs.1.5 lakhs for the injuries sustained by his minor daughter as against the Oriental Insurance Company Ltd., in which the offending vehicle was registered at the relevant point of time.

14. In the Interregnum, the Oriental Insurance Company Ltd., had deputed PW15 Mr. Dhamodharan, a private Investigator to conduct an enquiry with regard to the nature of the accident, the driver who had actually driven the vehicle at the time of occurrence, the nature of the injuries sustained by the injured minor girl and he was also directed to submit a detailed report with reference to the above said particulars.

15. P.W.15, Mr. Dhamodharan during his enquiry was put to understand that P.W.4, Mr. Anbahzhagan Inspector of Police attached to Perur Police Station, Coimbatore, had prepared a charge sheet as against the driver of the vehicle Mr. Chandru, minor son of Mr. Venkatapathy under Sections 279 and 338 IPC, wherein the minor Chandru was shown in the 'absconding' column. Since he was a minor, at the request made by his father, Mr. Venkatapathy, P.W.2 Rengaraj was produced before the Judicial Magistrate I, Coimbatore and he had impersonated himself, as if he had actually driven the vehicle on the date of the occurrence. He also had admitted the offence and on his admission, he was convicted under Sections 279 and 338 IPC and sentenced to pay a fine of Rs.1500/- on 23.08.2006.



16. During the course of his enquiry, P.W.2 Rengaraj had given a letter (Ex.P3), dated 12.09.2006, to P.W.15 by setting his own hand, admitting that he was made to surrender in this case instead of Chandru, as he was a minor and not having valid driving licence at the time of accident. P.W.15 had also enquired the owner of the vehicle Mr. Venkatapathy. Thereafter, he came to know that the final report which was originally prepared by the Inspector of Police attached to Perur Police Station, Coimbatore was subsequently altered and thereby P.W.2 Rengaraj was made an accused instead of the original driver minor Chandru, who had actually driven the vehicle at the relevant point of time. He was also put to understand that P.W.2 Rngaraj had nothing to do with the road traffic accident which was said to have been taken place on 12.03.2006 at about 2.45 p.m. involving the Car (Pajero) bearing Registration No. TN-37-AJ-3226 owned by Mr. Venkatapathy.

17. Stating all the above reasons, P.W.15 had submitted a report to Oriental Insurance Company Ltd., expressing his opinion that an enquiry by CBI was essential. Accordingly, the Oriental Insurance Company Ltd., had filed the Writ Petition before this Court in W.P.No.7389 of 2005.. While disposing of the said writ petition, this Court had directed the CBI to investigate the case in Crime No.75 of 2006 which was registered by Perur Police Station, Coimbatore and in accordance with the said orders of this Court, the CBI had registered a case on 29.08.2008 vide RC No.29(A)/2008-CBI/ACB/Chennai as against the driver of the vehicle bearing Registration No. No. TN-37-AJ-3226 under Sections 279 & 338 IPC and subsequently the same was sent to the file of the learned Judicial Magistrate I, Coimbatore.

18. During the course of his investigation, PW 16 came to know that the appellant Thiru.N. Ayyamuthu, Head Constable being a public servant had involved in the case and accordingly the case was transferred to the learned Special Judge (CBI cases). After completion of his investigation, P.W.16, the Inspector of Police attached to CBI had filed a final report before the learned Special Judge, Coimbatore and the same was taken on his file in C.C.No.7 of 2008 with the evidence of PW 16, the prosecution has closed their side.

19. The learned Special Judge, Coimbatore based on the final report filed by PW16 Investigating Officer (CBI) had framed the following four charges as against the appellant Thiru.Ayyamuthu:

- 1) Under Section 120-B of IPC(two counts);
- 2) Under Section 468 of IPC (three counts);
- 3) Under Section 471 of IPC (three counts);
- 4) Under Sections 420 r/w 511 of IPC (two counts); &
- 5) Under Section 13(2) r/w 13(1) of Prevention of

Corruption Act, 1988.



20. Since the ingredients of the charges were denied and claimed to be tried when the appellant was questioned, he was put on trial.

21. The prosecution in order to substantiate their case had totally examined as nearly as 16 witnesses and marked 42 documents. Since the crux of the prosecution case has already been narrated it need not be reiterated once again. It can be done in the progress of discussion with reference to the evidence of the prosecution witnesses.

Whether Ex.P1 the order of sanction is improper:

22. It is explicit from clause (b) to Sub Section 1 of Section 197 of the Code of Criminal Procedure that "the Court shall not take cognizance of such offence, except with the previous sanction of the State Government" in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State.

23. As observed by the Apex Court in *Srivastava vs Misra* (AIR 1970 SC 1661: (1970) 2 SCC 56: 1970 CrLJ 1401), this section is designed to facilitate an effective and unhampered performance of their official duty by public servants, by providing for scrutiny to the allegations against them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the Courts, so that this may be protected from frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty.

24. PW1, Mr. K. Shanmugavel, Deputy Commissioner of Police, Coimbatore (2008-2009), has accorded sanction (Ex.P1) to launch prosecution against the appellant. Paragraph Nos. 21 & 22 of Ex.P1 are extracted hereunder:

"21. WHEREAS, I, K. Shanmugavel, IPS, the Deputy Commissioner of Police, Crime and Traffic, Coimbatore City being the competent authority to remove the said Shri V.N. Ayyamuthu, HC 1469 from office, after perusing the FIR, copies of relevant documents and statement of witnesses and applying mind have come to the conclusion that Shri V.N. Ayyamuthu, HC-1469 is required to be prosecuted in a Court of law.

22. NOW THEREFORE, I, K. Shanmugavel, IPS do hereby accord sanction under Section 19(1)(C) of Prevention of Corruption Act, 1988 for the prosecution of Shri V.N. Ayyamuthu, HC 1469 in a Court of law for the offences punishable under Section 120-B r/w 468 IPC, 468 IPC, 471 IPC, 420 IPC r/w 511 IPC and U/Sec. 13(2) r/w 13(1)(d) of PC Act 1988 for taking cognizance of the said offence by



the Court of Competent jurisdiction. "

25. As it appears from paragraph 22 the order of sanction has been accorded under Section 19(1)(C) of the Prevention of Corruption Act, 1988 to launch prosecution against the appellant. It is to be noted that besides the offence under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, the appellant has also been charged with Sections 120B r/w Sections 468, 468, 471 and 420 r/w 511 of IPC.

26. Mr. K.K. Sivashanmugham learned counsel for the appellant while advancing his arguments has emphasized that no materials were placed before P.W.1 for according proper sanction to launch prosecution against the appellant.

27. He has added further that when the offences under IPC Sections had also been included the sanction under Section 19(1) of the Prevention of Corruption Act, 1988 alone was not sufficient, but the sanction as required under Section 197 of the Code of Criminal Procedure Code was also very much essential. Since the sanction was not accorded as contemplated under Section 197(1)(b) of the Code of Criminal Procedure, the order of sanction under Ex.P1 accorded by P.W.1 was improper.

28. Obviously the sanctioning authority has to apply its mind to the facts of the case before it accords sanction. Independent application of mind to the facts of the case as well as to the relevant materials and evidence collected during investigation is necessary. As observed by the Hon'ble Supreme Court of India in *Bajnath v. State of Madhya Pradesh* AIR 1966 SC 220: (1966) CrL.J.179: (1966) 1SCR 210 since the existence of sanction is a condition precedent to taking cognizance of the offence, if cognizance is taken without sanction, this initial absence of jurisdiction cannot be cured by subsequently obtaining sanction.

29. In this connection this court would like to place reliance upon the decisions of the Apex Court in *State of Madhya Pradesh V Sheetla Sahai & others* (2009 (8) SCC 617) wherein Hon'ble Mr Justice S.B. Sinha while speaking on behalf of the Division Bench in paragraphs 55 and 56 has observed as follows:

"55. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in terms of section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants.



WEB COPY

Strong reliance has been placed by Mr. Tulsi on a Judgment of this Court in Centre for Public Interest Litigation V Union of India (2005) 8 SCC 202: (2006) 1 SCC (Crl) 23). In that case, it was held (SCC pp.208-09), paras-9-11)

" 9. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant but whether it was committed by a public servant acting or purporting to act as such to the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in the dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in



of Section 197 of the Code of Criminal Procedure were squarely applicable to the facts of the case and that prior sanction of Central Government was required to be taken by the respondent before the Special Judge took cognizance of the offence once final report was filed under Section 173(2) of the Code of Criminal Procedure.

32. On coming to the present case on hand, this Court is of firm view that, had the sanctioning authority viz., P.W.1 Deputy Commissioner of Police (Crime & Traffic), Coimbatore city, gone through the statement of P.W.4 Anbalagan, Inspector of Police attached to Perur Police Station, Coimbatore District along with the investigation report of P.W.16 Mr. Ravi, Investigating Officer (CBI/ACB), he would not have accorded sanction because there are a lot of discrepancy and self-contradiction in their statements. This Court is therefore of the view that P.W.1 the sanctioning authority has not applied its mind in according sanction to launch prosecution against the appellant.

33. It is the duty of this Court (High Court) to consider the following two points before setting aside the conviction of the accused only on the ground of sanction

(i) whether the want of sanction has occasioned a failure of justice? &

(ii) Whether the validity of the sanction had taken at the earliest stage before the trial Court?

34. In so far as this case is concerned, this Court finds that the trial Court ought not to have taken cognizance of the offence for want of proper sanction to launch prosecution against the appellant.

34A. PW1 (sanctioning authority) has fairly admitted the following facts during the course of his cross examination.

(a) In the First Information Report (Crime No.75 of 2006), the driver's name has not been mentioned;

(b) In his confessional statement under Section 164 of the Code of Criminal Procedure, given before the learned Judicial Magistrate, PW2 Rengaraj has not stated anything about the appellant Ayyamuthu. Neither he had stated that the appellant had induced him to surrender before the Court nor had he stated that he had conspired with him to protect Chandru from the criminal proceedings;

(c) PW2 Rengaraj had stated in his confessional statement that one Ganesan, a man of his owner had asked him to come to Court and surrender. He has also stated that his owner's Lawyer had asked him to go to the Police Station and sign before the Inspector of Police for 15 days and as such he had gone to the Police Station and signed;

(d) Neither Ganesan a man of his owner nor his Advocate has been cited as a prosecution witness nor even cited them as

<https://hcservices.ecourts.gov.in/hcservices> PW1 had gone through the requisition Ex.P15 given by



PW4 to the Regional Transport Officer, for examining the offending vehicle. In the said requisition the name of the driver was written as Rengaraj age 40 years and subsequently it was struck off and over written as Chandru;

(e) In the report given by the Motor Vehicles Inspector, the driver's name was written as Rengaraj and his address was also given with reference to his driving licence;

(f) PW4 had taken up the case in Crime No.75 of 2006 for investigation on 28.04.2006 and he had prepared a final report in the name of Chandru and produced it before the Court. PW4 had stated that during the course of trial some other accused was standing in the dock instead of Chandru and he (PW4) had also reported this matter to the Assistant Public Prosecutor saying that the man who was standing in the dock was not the real accused, for that the Assistant Public Prosecutor had told him that on the next date of hearing an affidavit might be filed to that effect before the Court;

(g) PW4 has also stated that no summon was received by him thereafter from the Court;

(h) PW3 Gurusamy in his statement under Section 164 of the Code of Criminal Procedure, dated 07.11.2008 has stated that the car window screen glass was broken, but in the Motor Vehicles Inspector's report, the damage caused to the car had not been mentioned. Here, the Assistant Public Prosecutor has not been cited as a witness to corroborate the statement of PW4 Anbalagan, Inspector of Police;.

(i) Since the name of the driver of the car was not mentioned in the First Information Report and some confusion was prevailing over the issue of the driver, no test identification parade was conducted.

(j) The appellant has not received any monetary benefit from the alleged criminal conspiracy.

35. Since PW1 who is the sanctioning authority has admitted the above said lacuna in the prosecution case, he ought not to have granted the sanction to launch prosecution against the appellant and the order of sanction is also not in accordance with the provisions of Section 197(1)(b) of the Code of Criminal Procedure. The order of sanction Ex.P1 itself cannot be said to be proper as it is improper and lost its sanctity.

36. From the foregoing admissions made by PW1, this Court finds that, had PW1, the sanctioning authority applied his mind and analyzed the statements, particularly the statements of PW4 and PW16, certainly he would not have accorded sanction to launch prosecution against the appellant. By his non application of mind, an innocent officer viz., the appellant had to suffer and to pay a lot by sacrificing his services and he had also suffered with loss of money, mental agony and bears a permanent stigma which cannot be cured or obliterated in any way.



Hence this Court would like to place it on record that Ex.P1 the order of sanction is improper, as it was not accorded in consonance with the provisions of Section 197(1) (b) of the Code of Criminal Procedure.

WEB COPY

37. The effect of non compliance with Section 313 of Criminal Procedure Code

The purpose of examining the accused under Section 313 of the Code of Criminal Procedure is to meet the requirements of the principles of audi alteram partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him and the Court must take note of such explanation. No matter how the evidence of the prosecution may be, it is the duty of the Court to examine the accused and to seek his explanation as regards the incriminating material that has been placed against him. The circumstances which were not put to the accused under Section 313 of the Code of Criminal Procedure may not be used against him and must be excluded from consideration.

38.. As observed by the Supreme Court in Basavaraj R. Patil V State of Karnataka (2000) 8 SCC 740: AIR 2000 SC 3214: 2000 CrL.J. 4604) Section 313(1) (b) of Cr.P.C. is mainly introduced to benefit the accused and it is corollary to benefit the Court in making a final decision. The provision is not to nail the accused to any position but to comply with the solitary principles of natural justice as enshrined in the maxim audi alteram partem

86. Section 313(1) of the Code of Criminal Procedure envisages that

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b)

39. .. Obviously the charges levelled against the appellant are warrant in nature. It is not summons case and therefore the court cannot dispense with his examination under clause (b). The object of this Section is to establish a



direct dialogue between the Court and the accused, brushing aside all third parties such as counsel, witnesses and the like. But its object is not inquisitorial. Its only object as explained in Sub Section (1) is to give an opportunity to the accused to 'personally' explain any circumstances appearing in the evidence against him.

If a point, in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity to explain it, if he so desires.

It is significant to note here that Sub section (1) of Section 313 of the Code of Criminal Procedure has two parts dealing with two stages at which the 'power' may be used by the Court with different incidents.

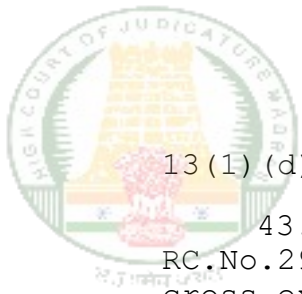
40. Under the first part i.e. under clause (a) to Sub Section (1) of Section 313 of the Code of Criminal Procedure it is discretionary with the Court to put any questions to the accused without previously warning him, provided there is something in the evidence against him, which he should be allowed to explain.

41. Therefore the examination of the accused before the close of prosecution evidence without giving him any previous warning is discretionary.

The use of the word 'may' in clause (a) to Sub section (1) and the word 'shall' in clause (b) to Sub section (1) of Section 313 of Cr.P.C. make it clear that the Court is empowered to examine the accused at any stage of enquiry or trial while clause (b) to Sub Section (1) obligates the Court to do so before he enters into defence.

Under the second part, i.e under clause (b) to Sub Section (1) of Section 313 Cr.P.C. the examination of the accused is obligatory upon the Court and the scope of such examination is also wider. This is the stage after prosecution witnesses have been examined and before the accused is called on for his defence. At this stage, the Court must question the accused generally, in order to give him an opportunity to explain any circumstances appearing from the prosecution witnesses. The word 'generally' indicates that the interrogation should not be in the nature of cross-examination or should not be unfair to the accused.

42. . On coming to the instant case on hand, P.W.16, the Investigating Officer has stated that after the completion of investigation, he had laid a final report against the appellant Mr.N.Ayyamuthu, a former Head Constable attached to Perur Police Station (A-1) and Chandru (A-2) as well as against Rengaraj(A-3) under Section Sections 120B r/w 468, 468, 471, 420 r/w 511 IPC and under Section 13(2) r/w Section



13(1)(d) of the Prevention of Corruption Act, 1988.

43. . Chandru is also one of the accused in the case in RC.No.29(A)/2008 of CBI/ACB/Chennai. It was revealed from his cross-examination that since Chandru was about 17 years at the time of accident, the case against him was split up and sent to Juvenile Justice Board, Coimbatore and it was taken on its file as JC.No.35 of 2009. Since the allegations levelled against Chandru are also part and parcel of the allegations made against the appellant tMr.N.Ayyamuthu he is certainly entitled to know the fate of the case against Chandru in JC.No.35 of 2009.

44. . Secondly, PW 16 the Investigating Officer has spoken to in his cross-examination that he was put to understand that the case against Chandru before the Juvenile Justice Board was under trial and thereafter the case was quashed by the Madras High Court.

45. . It is obvious to note here that P.W.4 Anbazhagan, Inspector of Police attached to Perur Police Station who had investigated the case in Crime No.75 of 2006 has not spoken to about these facts.. Since P.W.16 has specifically spoken to about the case pending against Chandru in JC No.35 of 2009 as well as its quashment by the Madras High Court, these circumstances must have been put to the appellant during the course of the proceedings under Section 313(1)(b) of the Code of Criminal Procedure.

46. Learned counsel appearing for the appellant/A1 before the trial Court while advancing his arguments had made reference to the submissions made by the Assistant Public Prosecutor saying that the admission of Chandru in CrI.O.P.No.31828 of 2012 before the Hon'ble High Court, Madras at the time of compounding the case with that of PW8/complainant amounts to 'confession' and it was clearly proved that it was Chandru, who caused the accident and not PW2. The learned counsel appearing for the appellant before the trial Court had also contended that the arguments advanced by the learned Assistant Public Prosecutor could not be accepted for the simple reason that those circumstances were not put and explained to the accused under Section 313 of the Code of Criminal Procedure. Therefore it caused grave prejudice to the accused as held in Narendra Singh & Another V State of M.P. (2004) SCC CrI. 1893)

47. . While dealing with these arguments advanced by learned counsel appearing for the appellant before the trial Court, the learned Special Judge in paragraph 25 of his Judgment (running page No.525 of typed set of papers) has observed that the act of compounding the case by one Chandru in CrI.O.P.No.31828 of 2012 before the Madras High Court was not 'confession' and that the Judgment made in CrI.O.P.No.31828 of 2012 was not marked and not referred to in evidence. Hence it cannot be shown to the accused while



questioning him under Section 313 of the Code of Criminal Procedure. However, this Court can take judicial notice of the said Judgment, as such the observations made by the Hon'ble Supreme Court in Narendra Singh & Another V State of M.P. (2004) SCC CrI. 1893) were not applicable as the facts are entirely different.

48. The observations made by learned Special Judge would disclose the fact that he has not approached the facts of the case with proper perspective.

49. It is to be noted that Chandru has been shown as the second accused in this case by P.W.16 Inspector of Police CBI/CRC 29(A)/2008/CBI/ACB/Chennai. Since he was said to be a minor at the time of accident, the case against him was split up and was sent to the Juvenile Justice Board, Coimbatore. Hence, the records pertaining the accused Chandru form part of the records concerned in CC No.7 of 2008 in which the appellant N.Ayyamuthu has been shown as 1st accused.

50. Therefore, the circumstances narrated in the Order made in CrI.O.P.No.31828 of 2012 with reference to the compounding of the offence by Chandru-Accused in JC No.35 of 2009 with the complainant Jayaraj (PW8) and in consequence thereof the quashing the criminal proceedings in JC No.35 of 2009 by the Madras High Court ought to have been put to the appellant, and invited his explanation. But without understanding the nuance of the provisions of Section 313 of the Code of Criminal Procedure and without understanding the law laid down by the Hon'ble Supreme Court in Narendra Singh & Another V State of M.P. (2004) SCC CrI. 1893) cited supra, the findings given by the learned special Judge has caused grave prejudice to the appellant.

51. In the decision cited supra viz., Narendra Singh & Another V State of M.P. (2004) SCC CrI. 1893) Hon'ble Mr Justice Y.K.Sabharwal, while speaking on behalf of a Division Bench has observed as under:

"It also does not appear that the attention of the appellants had been drawn by the Sessions Judge to any piece of evidence seeking their explanation thereabout in their examination under Section 313 of the Code of Criminal procedure. Had it been the prosecution case that the appellant No.1 after throttling the deceased and setting her on fire escaped through one of the two open places mentioned by the High Court, it was obligatory on the part of the Court to give an opportunity to the appellants to explain thereabout. Such a circumstances, had it been put to the appellant No.1, could have been explained away by him. The appellants were, therefore, prejudiced by not being given a chance to explain the said purported martial against him. It is not a case where no prejudice can be said to have been caused to the appellants."



52. From the observations made by Hon'ble Mr Justice Y.K.Sabharwal, it can easily be understood the mandatory nature and obligation on the part of the Court to put the important circumstances to the accused at the time of the proceedings under Section 313 of the Code of Criminal Procedure and to invite his explanation, after affording him an opportunity. But on perusal of the Judgment of the trial Court, this Court finds that the non-compliance of the provisions of Section 313 of the Code of Criminal Procedure has caused grave prejudice to the accused/appellant and therefore, the conviction recorded against him is liable to be set aside.

Whether the stage at which PW2 Rengaraj was made as an approver is not correct?

53.. Based on Ex.P3 letter said to have been given by PW2 Mr.S.Rengaraj to PW15 Mr. Damodharan, private Investigator of Oriental Insurance Company and based on Ex.P6, tender of pardon (Ex.P6) tendered to PW2 by the learned Chief Judicial Magistrate, Coimbatore, the appellant N.Ayyamuthu and the second accused Chandru have been roped into the alleged criminality. It is significant to note here that as it is seen from Ex.P14 the case in Crime No.75 of 2006 (STC No.2478 of 2006) was ended in conviction on the admission of the guilt made by P.W.2 Mr. S.Rengaraj on 23.08.2006.

54.. Despite the allegation that the appellant Ayyamuthu had conspired together with Chandru and Rengraj to protect Chandru from the criminal prosecution and made PW2 Rengaraj as a scape goat, the prosecution had never preferred any Appeal against the Judgment of the Case in STC No.2478 of 2006.

55.. This Court would like to place it on record that after the conviction of PW2 in STC.No.2478 of 2006 (Crime No.75 of 2006) he was made as an approver at the instance of PW16 and for this purpose the pardon was tendered on 12.12.2008, i.e. after passing of more than two years. In pursuant to the tender of pardon, PW2 was made as a prosecution witness. On perusal of his evidence, this Court finds that even though he did not speak anything about the involvement of the appellant Ayyamuthu, PW 16 had foisted the entire prosecution case and in consequence thereof, the appellant Ayyamuthu, Chandru (A-2) and S.Rengaraj(PW2) were all made as accused.

56. . The stage at which P.W.2 S.Rengaraj was made as an approver is not correct and he could not have been made as an accused, based on his confessional statement that too , after he was convicted in STC.No.2478 of 2006 for the very same offence under Sections 279 and 338 of IPC.

57. . In this connection, this Court would like to have reference of Angomkala Singh and Another Vs Manipur State (1954 CrLJ 148 (Manipur)). In this case, the approver was



convicted by the Additional District Magistrate in the very same case on 21.01.1952 for seven years rigorous imprisonment. On appeal, the conviction was set aside by the High Court on 27.02.1952 due to defects and irregularities in the proceedings. After remand by the High Court, a pardon was tendered to the accused, who was subsequently made as approver PW1 on 17.04.1952. Under these circumstances, the High Court has held that the above circumstances alone is sufficient to discredit the evidence of the approver. It was not a case in which pardon should have been tendered to the accused at this stage. No reliance could be placed on the statement of such an approver.

58. . On coming to the instant case on hand, the approver, PW2 was convicted for the very same offence on 23.08.2006, but subsequently, in pursuant to the direction of this Court, PW 16 had re registered the case and took up the investigation and thereafter on his request the statement of PW2 was recorded by the learned Chief Judicial Magistrate, Coimbatore and thereafter the pardon was tendered to him on 12.12.2008 by the learned Chief Judicial Magistrate and only under this circumstance, he was made as a prosecution witness and he was also examined as PW2 in this case.

59. . In the light of the ratio laid down by Manipur JC's Court reported in 1954 CrL LJ 148 (Manipur) cited supra, this Court finds that the evidence given by PW 2 cannot be relied upon as his evidence seems to be inherently incredible. Secondly the evidence of an approver being an accomplice is prima face of a tainted matter and has therefore to be scrutinized with utmost care and accepted with caution. As a matter of law, pure and simple, a conviction is not bad simply because it proceeds upon the uncorroborated testimony of an accomplice (vide Section 193 of Indian Evidence Act). It has now become almost a universal rule of practice not to base a conviction on the testimony of accomplice unless it is corroborated in material particulars. As to what amount to corroboration, which is necessary, no hard and fast rule can be laid down. It will depend upon the various factors, such as the nature of the crime, the nature of the approver's evidence, the extent of his complicity and so forth. But as a matter of rule of corroboration is concerned necessary not in respect of the general story of the approver, but in respect of the facts of establishing his identity in respect of his participation in the crime.

60.. Article 20(3) of the Constitution of India envisages that no person accused of any offence shall be compelled to be a witness against himself. In order to avail protection of Article 20(3) of Constitution of India, the following three ingredients must be satisfied:

Firstly, the person must be accused of an offence;
secondly, the element of compulsion should be there &
it must be against himself.



61. All the above three ingredients' must necessarily exist before protection of Article 20(3) of Constitution of India is available. In this case, this court finds that all the three ingredients are fully satisfied. Unless there is compulsion on the part of PW16 Investigating Officer, Rengaraj (PW2) would not have volunteered himself to be a prosecution witness after getting pardon. Once he is convicted in STC.No.2478 of 2006, he cannot be made as an approver based on the alleged letter under Ex.P3 to adduce evidence against him.

Once the trial has come to an end by convicting the accused it cannot be open for further investigation

62. The road accident which took place on 12.03.2006 involving a car Pajero bearing Registration No.TN-37-AJ-3226 form basis for the entire prosecution. Though the case in Crime No.75 of 2006 which was registered on the file of Perur Police Station, Coimbatore based on the complaint lodged by PW8 Jayaraj was disposed of on 23.08.2006 on the basis of the admission of guilt by PW 2 Rengaraj, subsequently it took a different dimension which culminated in re-registering the case by CBI wide RC.No.29(A)/2008-CBI/ACB/Chennai on 29.08.2008 as against the driver of the vehicle under Sections 279 and 338 IPC.

63. Though this Court had directed the CBI to investigate the case in Crime No.75 of 2006, on the file of Perur Police Station, Coimbatore District in pursuant to the order, dated 22.04.2008 and made in W.P.No.7389 of 2005, Mr. R.Ravi, who had registered the case, did not evince any interest in specifying the name of the driver of the vehicle in the First Information Report. Obviously in the original First Information Report, concerned in Criminal Case No.75 of 2006, dated 12.03.2006 also, there was no mention about the name of the driver, who was sitting on the steering wheel of the vehicle at the relevant point of time. Only under this circumstance, P.W.2 Mr. Rengaraj had surrendered on 14.03.2006 before the learned Judicial Magistrate I, Coimbatore and thereafter released on conditional bail and after filing of the charge sheet, PW2 Rengaraj had admitted the guilt and paid the fine amount of Rs.1,500/- on 23.08.2006.

64. From the above context, it is thus made clear that the case in Crime No.75 of 2006 was already disposed of, as PW2 had admitted the guilt. It is the settled principle of law that once the trial has come to an end by acquitting or convicting the accused it cannot be open for the Investigating Agency to further investigate into the matter in pursuant to a complaint of the complainant or a complaint being made by some other person.



65. In an identical case in N.R. GOVINDARAJI Vs S.VENKATACHALAM & OTHERS(I(2001) CCR 68 (SC) 68)a short question was arisen for the consideration of the Division Bench of the Apex Court as to whether the High Court was justified in exercising inherent power under Section 482 of the Code of Criminal Procedure to set aside the conviction which had been recorded by the Magistrate after trial under Section 304-A of Indian Penal Code against one Rajasekaran and to direct that proceedings be initiated against the present appellant Govindarai,, who according to the High Court was the real accused.

66. In the said case, the occurrence itself was taken place on 22.12.1995 and the charge sheet was submitted therein on 22.02.1996 against the said Rajasekaran, on the allegation that he was driving the vehicle and on account of his negligent driving the accident occurred. The Magistrate convicted the said Rajasekaran under Section 304A IPC by order, dated 27.02.1997. Thereafter the complainant moved Madras High Court under Section 482 of the Code of Criminal Procedure, alleging therein that Rajasekaran was not the real accused, but it was Govindaraii, who was driving the vehicle at the relevant date and therefore the conviction of Rajasekaran should be set aside, instead Govindaraji be proceeded with.

67. The High Court was persuaded to accept this contention of the learned counsel for the complainant. Having interfered with the conviction of Rajasekaran and having directed the officials concerned to initiate criminal proceedings against Govindaraji an appeal was filed before the Hon'ble Supreme Court of India. On considering the question as to whether the High Court was justified in exercising inherent power under Section 482 of the Code of Criminal Procedure to set aside the conviction which had been recorded by the Magistrate, after trial under Section 304-A of Indian Penal Code against one Rajasekaran and direct that proceeding be initiated against the appellant Govindaraji, the Division Bench of the Apex Court has held that once the trial has come to an end by convicting Rajasekaran under Section 304A IPC, it could not be open for the Investigating Agency to further investigate into the matter in pursuant to a complaint of the complainant or a complaint being made by some other person. This being the position there does not remain any material on the basis of which the High Court could not have come to the conclusion that a wrong man has been convicted and the real accused is still at large and then directed the criminal proceedings against Govindaraji. The complainant could have filed a complaint under Section 200 IPC and then produced the relevant materials. In that case, the Magistrate could have proceeded with the complainant's case. That having not been done in the present case, we have no hesitation to come to a conclusion that the impugned order of the High Court cannot be sustained.



WEB COPY

68. On coming to the given case on hand, PW2 Mr. Rengaraj had never disclosed at any point of time prior to the re-registration of the case by CBI in pursuance to the direction of this Court in W.P.No.7389 of 2005, dated 22.04.2008 that he was not the real accused and that on the request made by the owner of the vehicle Mr. Venkatapathy (since deceased), as his son Chandru was a minor at the time of the accident and since he was not having a valid driving licence to drive the class of vehicle, he himself had surrendered before the Judicial Magistrate I, Coimbatore on 14.03.2006 and subsequently convicted and sentenced under Sections 279, 338 IPC to pay a sum of Rs. 1500/- towards fine.

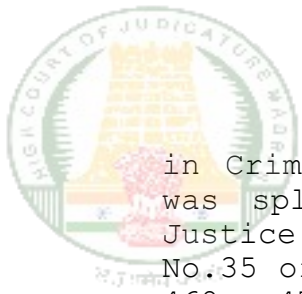
69. As disclosed from the evidence of P.W.4 Anbazhagan, Inspector of Police attached to Perur Police Station. He knew the fact already that P.W.2 Rengaraj was not the real accused under the following two instances viz.,

(i) On his surrender, Rengaraj was released on conditional bail by the Judicial Magistrate I, Coimbatore directing him to appear before the Station House Officer, Perur Police Station and to sign before him daily at 10.30 a.m for about 15 days. Accordingly, he made his appearance before P.W.4 Anbazhagan, Inspector of Police and signed. Despite he knew the fact that PW2 Rengaraj was not the real accused, he never evinced any interest to question him as to why he was made to surrender?

(ii) When P.W.4 was summoned by Judicial Magistrate I, Coimbatore to give evidence in respect of the accident case, it was surprise for him to note that the real accused Chandru was not standing in the dock instead P.W.2 Rengaraj was standing. According to him, he had immediately disclosed this fact to the Assistant Public Prosecutor, but the Assistant Public Prosecutor had not taken any steps to bring this fact to the notice of learned Judicial Magistrate I, Coimbatore, who was recording the evidence of P.W.4. Consequently P.W.4 also has stated that he had directly brought this fact to the notice of learned Judicial Magistrate I, Coimbatore, but he did not know as to whether the learned Judicial Magistrate had recorded his representation or not.

70. . No reference is available to show as to whether PW4 had brought the impersonation made by PW2 Rengaraj to the notice of learned Judicial Magistrate I Coimbatore. However, PW2 Rengaraj had ultimately admitted the guilt and in consequence thereof he was convicted and sentenced to pay a fine amount of Rs.1500/-. In this way, the case in Crime No.75 of 2006 was given a quietus.

71. Once P.W.2 Chandru was convicted in the criminal case, no proceedings were subsisting, after recording the conviction. But, based on the final report filed by P.W.16, the Investigating Officer (CBI), the substantive charge under Sections 279 & 338 IPC (as it is revealed in the case



WEB COPY

in CrimeNo.75 of 2006) as against the second accused Chandru was split up and transferred to the file of the Juvenile Justice Board and the same was also taken on his file in JC No.35 of 2009 under Sections 279, 338 and 120B IPC r/w Sections 468, 471 and 420 r/w 511 IPC.

72. It may also be relevant to note here that while the case in CC No.7 of 2008 was pending as against the appellant N.Ayyamuthu, the second accused V.Chandru @ Ranjthchander, who was facing the charges under Sections 279 & 338 IPC, had taken out a petition in CrI.O.P.No.31828 of 2012 before this Court under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings against him, which was pending on the file of the Juvenile Justice Board, Coimbatore in JC No.35 of 2009

73. That petition was filed by the second accused V.Chandru @ Ranjthchander before this Court on the following three grounds:

(i) there is no material available to indicate his involvement in any manner in the commission of any acts, constituting the offences as referred to above;

(ii) the conspiracy, if any, was entered into only by his father Mr.Venkatapathy (since deceased), who was referred to as the owner of the car in the statement of the approver Rengaraj (PW2) and he (V.Chandru @ Ranjthchander) being minor at the relevant point of time had nothing to do with the act of conspiracy; and

(iii) as far as the other offences under Sections 279 & 338 IPC are concerned, the charge under Section 279 IPC is time barred, as contemplated under Section 468(2)(b) of the Code of Criminal Procedure and the charge under Section 338 IPC can be compounded with the permission of the Court.

74. It is pertinent to note here that the complainant Mr. Jayaraj (PW8) had filed a petition in M.P.No.2 of 2013 in CrI.O.P.No.31828 of 2012 before this Court, seeking permission to compound the offences under Section 338 IPC, as the payment of compensation was made by the petitioner V.Chandru @ Ranjthchander, as per the award, dated 14.12.2007.

75. With very great respect to the learned single Judge of this Court, this Court would like to point out, that when considering the fact that the case in Crime No.75 of 2006 (STC No.2478 of 2006) was ended in conviction, as PW2 Rengaraj had admitted the guilt, she had proceeded to allow the petition, with a finding that the entire prosecution initiated against the petitioner viz., V.Chandru @ Ranjthchander for the offences under Sections 120B r/w 468, 471, 420 r/w 511 IPC for want of prima facie case and the offence under Section 279 IPC, on the ground of limitation and the offence under Section 338 IPC for the reason of the settlement arrived at between



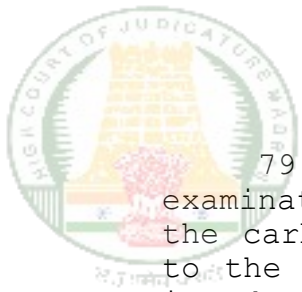
the parties cannot and need not continue to go on and in the event of the same being continued it is likely to cause serious prejudice to the petitioner and hence liable to be set aside. Ultimately the proceedings in JC No.35 of 2009 pending against V.Chandru @ Ranjthchander on the file of the Juvenile Justice Board, Coimbatore was quashed and the petition in M.P.No.2 of 2013 in CrI. O.P.No.31828 of 2012 filed by the complainant seeking permission of this Court to get the case compounded was allowed.

Can the evidence of PW4 be relied upon when he makes different statements at different stages?

76. As it is seen from the chief examination of P.W.4 Anbalagan, Inspector of Police, the First Information Report in respect of Crime No.75 of 2006 was registered by P.W.9, R. Munusamy, Head Constable 836 on 12.03.2006 based on the complaint lodged by P.W.8 Jayaraj. The original of the First Information Report was forwarded to Judicial Magistrate I, Coimbatore. Indeed, the name of the driver of the vehicle (Pajero Car) bearing Registration No.TN 37 AJ 3226 was not mentioned in the First Information Report.

77. P.W.4 has admitted that he had taken up the case for investigation on the very same day i.e. on 12.03.2006 and proceeded to the place of occurrence, inspected, prepared an observation mahazar and drawn a rough sketch in the presence of the witnesses. Thereafter, he had examined the witnesses viz., K.M.Jayaraj (PW.8), M. Kumar (PW 14), R.Subramaniam and Chandrakumar and recorded their respective statements. The case diary was marked as Ex.P8 and he had also signed in the last page.

78. Subsequent to his admission, he has taken an 'u' turn and says in his chief examination next to the above portion that the statements of the witnesses KM.Jayaraj (PW.8), Kumar (PW 14), R.Subramaniam and Gurusamy (PW3) were not recorded by him. Again he would say that the observation mahazar, rough sketch were not prepared by him in his presence. It is to be noted that in the previous portion he has deposed that he had taken up the case in Crime No.75 of 2006 for investigation, proceeded to the place of occurrence, inspected the same in the presence of the witnesses, prepared an observation mahazar and drawn a rough sketch. In his chief-examination itself he has detracted himself and gone against his own evidence. In this connection this court would like to pose a question as to why the learned Special Public Prosecutor for CBI cases had not sought the permission of the trial Court to treat PW4 as hostile witness. Another question is as to why the learned Special Public Prosecutor had kept quiet when P.W.4 had deviated from his original track of evidence in chief?



79. P.W.4 would go a further step and depose in his chief examination, that the documents which were shown to him were the carbon copies of the case diary dated 28.04.2006 relating to the case in Crime No.75 of 2006. He has also admitted that in the said charge sheet, Chandru had been shown as an absconding accused and that the charge sheet was filed before the learned Judicial Magistrate I, Coimbatore. He has admitted his signature find a place in the above said documents. The case diary was marked as Ex.P.11. Again he says that the documents which were shown to him while he was standing in the witness box were the charge sheet as well as the memorandum of list of witnesses relating to the case in Crime No.75 of 2006, on the file of the Perur Police Station, Coimbatore.

80. In the previous portion while admitting his signature found in the documents relating to the case diary pertaining to crime No.75 of 2006 (Ex.P11), now he has denied that the signature found in the place of Inspector of Police was not that of him. Again he would state that the documents under Ex.P.12 consisting of two sheets were not prepared either by himself or by somebody else on his instructions. He has also added that the statement of Motor Vehicle Inspector, T.S. Krishnaraj was not recorded by him, and that the signature found in the place of Inspector of Police was not that of him (Ex.P13). When he is able to deny his signatures in the records, another question would arise as to how he could have prepared the charge sheet? The final report would be prepared only after the completion of the investigation. He has also earlier stated that the final report was sent to Judicial Magistrate I, Coimbatore. When such is the evidence of P.W.4 it could easily be inferred that he was not conscious enough to give proper evidence before the Court of law and that too before the learned Special Judge for CBI cases. Once again he has admitted, when he was recalled by the Public Prosecutor and examined in chief on 15.02.2011, that Ex.P.15 is the letter issued by the Regional Transport Officer, Coimbatore city, after inspecting the vehicle bearing Registration No.TN 37 AJ 3226 (Pajero Car). He has also admitted that the signature found in the place of Inspector of Police was that of him.

81. With reference to Ex.P15 he has deposed that in this letter, the name of the accused was originally written as Rengaraju and subsequently it was struck off and re-written as Chandru. With regard to this correction, he would depose that the station writer while writing the name of the accused had written as Rengaraju by mistake and on seeing this he (PW4) had struck off the name of Rengaraju and re-written the name as Chandru and put his initial. But in Ex.P16, Motor Vehicle Inspector's Report, dated 17.03.2006 the Motor Vehicles Inspector has mentioned the name of the accused as Rengaraj. How? When the name Rengaraju was subsequently corrected by him (PW4) as Chandru, how the Motor Vehicles Inspector would have written the name of the accused as Rengaraj? The correction



made by PW4 in Ex.P15 creates suspicion and lead the Court to infer that it could have been subsequently corrected to suit the convenience of CBI. In this connection, PW4 has given an explanation saying that " on seeing this, he had contacted the Motor Vehicles Inspector over phone, and informed him that instead of writing the name of the accused as Chandru in the report it was wrongly written as Rengaraju, for which the Motor Vehicle Inspector had replied that the accused name was wrongly written as Rengaraju instead of Chandru. This fact was disclosed by the Motor Vehicle Inspector in his statement, while he was examined under Section 161(3) of the Code of Criminal Procedure.

82. When PW4 was giving his evidence in chief on 15.02.2011, he had admitted that Ex.P.18 are the final report as well as the list of witnesses and rough sketch. With reference to the signature found in the place of 'Inspector of Police', he has stated that it was not that of him and that he had not prepared the said documents. Again he was recalled and examined in chief on 23.05.2011. Now he has stated that the statement of the witnesses contained in Ex.P.18 were written by the appellant/accused and that the signature found in the place of Inspector of Police was not that of him. Immediately after his denial, he has admitted that in the final report, the statement of the witnesses viz., Kumar P.W.14, Kumarasamy PW13 were written by the Head Constable on his narration, and that the signature found in the place of Inspector of Police was that of him. Chandru, son of Venkatapathy was shown as absconding accused in Ex.P.19 and that, there was a note saying that the vehicle was driven by Chandru and it was he who had caused the accident. He has further admitted that he had forwarded Ex.P.19 to the file of Judicial Magistrate I, Coimbatore, but the accused name was shown as Rengaraju in Ex.P.19. How?

83. With reference to the change of name of the accused, he has not given any satisfactory explanation. When he himself has admitted that Ex.P.19 charge sheet along with the list of witnesses were forwarded by him to the file of the Judicial Magistrate I, Coimbatore, how the name of the accused could have been changed as Rangaraju instead of Chandru? The prosecution is under the obligation to explain this grey area.

84. Exs.P12, P18 and P23 are described as charge sheets. As per the description of documents Ex.P12 is the charge sheet (carbon copy) tagged with list of witnesses.

Ex.P18 is the charge sheet which consists of list of witnesses and rough sketch pertaining to the case in to Crime No.75 of 2006.

Ex.P23 is also said to be the Xerox copy of the charge sheet in Crime No.75 of 2006.



him, which contains the statements of PW3, PW14 viz., Kumar and Gurusamy PW3. Even in Ex.P8 also in their respective statements they have categorically stated that the vehicle was driven by PW2 Rengaraj. While admitting Ex.P8, PW4 has denied Ex.P9. He cannot approbate or reprobate simultaneously. Society takes always the reprobate behavior.

92. Ex.P11 is the case diary relating to the date 28.04.2006. In this case diary the name of the accused has been mentioned as Chandru aged about 19 years. This has been admitted by PW4. In so far as Ex.P11 case diary and the charge sheet are concerned PW4 would state that the charge sheet was sent to Judicial Magistrate I. But why he did not say as to who had filed it before the Judicial Magistrate I? He has also not stated as to whether this charge sheet was taken on the file of the Judicial Magistrate I or not?. No proof is forthcoming for the production of this charge sheet before the Judicial Magistrate No.I, Coimbatore.

93. Ex.P12 is the charge sheet, containing the list of witnesses, but it was denied by PW4 because in this charge sheet, the name of the accused has been shown as Rengaraj (PW2) and he has also disputed the signature found beneath the charge sheet in the place of the Inspector of Police.

94. As afore stated Ex.P18 is the charge sheet filed before the Judicial Magistrate I by the Inspector of Police, Perur Police Station. This charge sheet was filed before the Judicial Magistrate on 28.04.2006 and taken on file as STC No.2478 of 2006 on 23.08.2006. In this final report, two charges have been levelled against Rengaraj, one is under Section 279 IPC and the other one is under Section 338 IPC.

95. On thorough perusal of the records, this Court is not able to find the charge sheet alleged to have been filed before the Judicial Magistrate I as against Chandru. Ex.P18 further reveals that after taking the charge sheet on file on 23.08.2006 as against Rengaraj (PW2), the copies were furnished to him and when he was questioned about the ingredients of the charges, he had voluntarily admitted the guilt and therefore, the learned Judicial Magistrate No.I on 23.08.2006 by his judgment in STC No.2478 of 2006 had convicted Rengaraj (PW2) under Sections 279 and 338 IPC and sentenced him to pay a fine of Rs.750/- for each offence and the total fine amount of Rs.1500/- was paid by Rengaraj (PW2) (See-page No.414 of the typed set of papers-Judgment of Judicial Magistrate in STC No.4278 of 2006).

96. It may also be relevant to note here that in Ex.P16 (Motor Vehicle Inspector's Report), Rengaraj (PW2) alone has been shown as an accused). In so far as Ex.P18 charge sheet is concerned, PW4 has stated that it was not written by him and the signature found place in the charge sheet has also been disputed by him. At the same time, even in his chief



examination dated 23.05.2011 he has admitted that the statements of Kumar PW14 and Gurusamy PW3 were recorded by him.

97. Both the witnesses have stated in their respective statements recorded under Section 161(3) of the Code of Criminal Procedure that Rengaraj alone had driven the vehicle at the material time.

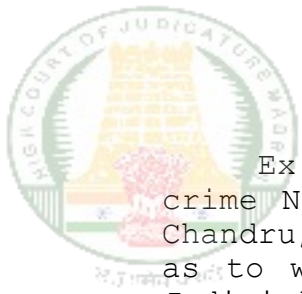
98. Ex.P19 is said to be the crime report, list of witnesses and the report of the Inspector of Police, who had recorded the statements of the witnesses. Ex.P19 has been admitted by PW4 and he has also admitted that the statements of PW3 Gurusamy and PW14 Kumar were recorded by him and that the charge sheet was also sent to Judicial Magistrate I. In Ex.P 19, the name of the witnesses and other details are not visible and in some places there are corrections and over writings. In this document, it is stated as if the witnesses Kumar and Gurusamy have mentioned the name of Chandru being the driver of the offending vehicle. It is true, at the first instance i.e. at the time of investigation of PW4 how these witnesses had stated that Rengaraj alone had driven the vehicle?

99 . Despite their unambiguous statements saying that Rengaraj had driven the vehicle and caused the accident, how PW4 had proceeded to write the case diary (Ex.P8) mentioning the name of the driver as Chandru in column No.III? All the above facts would go to show that PW4 had been trying to manipulate the things and also trying to screening the existing truth. From his evidence, it could easily be understood that he knew that it was Rengaraj, when he happened to sign before him in Perur Police Station in order to comply with the conditional bail order passed by the Judicial Magistrate No.I. Coimbatore.

100.. Once the charge sheet is filed before the concerned Court and taken on file as against a particular accused how the name of another accused could have been subsequently inserted?. This question has not been answered by the prosecuting agency.

101. Ex.P20 is the FIR maintained at Perur Police Station (first register).

Ex.P21 contains two different particulars in respect of the name of the accused. As it is revealed from page No.218 of the typed set of papers, in the first half, the name of the accused has been specified as Chandru, son of Venkatapathy while in the second half it is shown as Rengaraj son of Subbiah Gowder. In the second half it is also stated that in STC No.2478 of 2006 the accused Rengaraj was convicted and fined Rs.1500/- on 23.08.2006.



WEB COPY

Ex.P23 is also another charge sheet in the very same crime No.75 of 2006 under Section 279 and 338 IPC as against Chandru, son of Venkatapathy,. but no reference is available, as to whether it was filed before the Court i.e. before the Judicial Magistrate I, Coimbatore and taken on file?

102. In so far as this case is concerned even though three kinds of charge sheets were said to have been prepared Ex.P18 alone was taken on file on 23.08.2006 and subsequently, on the same day, on the admission of Rengaraj (PW2) who has been shown as an accused in this charge sheet, he was convicted and sentenced to pay Rs.1500/- towards fine.

103. From the cross examination of P..W.4 this Court is able to understand that if the motor vehicle accident ended in fatal, the Inspector of Police attached to a particular Police Station in whose jurisdiction the accident was taken place would take up the investigation and file the charge sheet. If it is non fatal accident, the investigation might be taken up by the Sub Inspector of Police attached to that Police station and after the completion of the investigation he could also file the final report. But the Head Constable is not authorized to file the final report. However, he could take up the investigation in non- fatal accident.

104. It is significant to note here that the First Information Report relating to the case in Crime No.75 of 2006 does not have any reference with regard to the name of the driver. A blurry state /has been prevailing till date about the driver who actually drove the vehicle at the relevant point of time. Of course, admittedly no identification parade was conducted for the purpose of identifying the driver. Under these circumstances, P.W.4 says that after registering the case in Crime No.75 of 2006 on receipt of information, he himself had been to the Police station and received the First Information Report, and thereafter, at about 8.00 p.m. on the same day, he had been to the place of occurrence. But he had not found the offending vehicle at the place of occurrence. He himself had accepted in his cross examination that at the time of inspection of the place of occurrence, P.W.8 Jayaraj (complainant), Kumar P.W.14 ,K. Gurusamy PW3, Subramaniam (not examined) and one Sampathkumar (not examined) were present and their statements under Section 161(3) of the Code of Criminal Procedure were recorded.

105. It is to be emphasized that the statements of the above said witnesses were reduced into writing by the Head Constable Munusamy (PW9) , on his narration. But PW4 has stated that the documents which were recorded by Munusamy (PW9) were not available. In so far as the case in Crime No.75 of 2006 is concerned as per PW4, after completion of investigation he had prepared the final report and other materials in duplicate and subsequently forwarded to the Court. It shows that the final report prepared by PW4 in the



case in Crime No. 75 of 2006 was sent to J.M. I, Coimbatore and the copy of the same was also sent to the Deputy Superintendent of Police, Coimbatore for his reference. In the cross examination he has admitted that the statements of the Motor Vehicle Inspector and the Doctor, who treated the injured girl Prianka were recorded by another head Constable on his narration. But he says that he had forgotten his name. Nothing is available on record to show that the charge sheet alleged to have been sent to Judicial Magistrate I, Coimbatore by PW4 was taken on file or not?

106. With reference to the vehicle bearing Registration No.TN 37 AJ 3226 (Pajero car), PW2 Rengaraj says that the accident had taken place at about 2.30 p.m. and thereafter the injured girl was taken to the hospital and since a crowd was begun to gather, he had taken the vehicle to the Perur Police Station. In his cross examination again he says that after 15 minutes of the accident, police came to the place of occurrence and a woman Sub Inspector of Police had asked him to take the vehicle to the Police Station. According to PW2, after 15 minutes of the accident, on the instructions given by a woman Sub Inspector of Police he had taken the vehicle to the Police Station. But PW4 says that the vehicle was produced before the Police Station on 16.03.2006. It is to be understood that the accident had taken place on 12.03.2006. It shows that PW4 did not have direct knowledge about the production of the vehicle before the Police Station.

107. From his investigation PW4 came to know that the accident was caused by Chandru aged about 17. Again he says that since the complainant Jayaraj (PW8) had told him that the age of Chandru would be 17, he had come to the conclusion that the age of Chandru would be 17 years. According to PW4 he knew pretty well that if any case is registered against a juvenile offender, the relevant records must be sent to the Juvenile Justice Board. In so far as this case is concerned, he has stated in his cross examination that prior to the filing of the final report he had been to the School, where Chandru had studied and on his enquiry, he came to know that his age was 19 years. Accordingly he had prepared the final report stating the age of Chandru was 19 years and subsequently sent the final report to Judicial Magistrate I, Coimbatore on 28.04.2006. But in order to ascertain the age of Chandru as 19 years, he had not obtained either the birth certificate or the School Transfer Certificate from the concerned School, where Chandru had studied.

108. It is his specific admission that from the beginning of the investigation and till the date of filing of the final report he did not go to the residence of Chandru and his father Mr. Venkatapathy was not at all examined by him. According to PW4, Chandru was a major at the relevant point of time. But he had not produced any documentary proof to that effect.



109. . In paragraph 27 of the Judgment at page No.71 running page No.527 of the typed set of papers, the learned Special Judge has observed as under:

"The accused Ayyamuthu, Head Constable has been charged by the complainant/CBI Under Sections 120B, r/w 468 IPC, 468 r/w 471 and 420 r/w 511 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sustentative offences under Sections 279 and 338 IPC. However the case against Chandru was split up as he was a minor and the case was transferred to Juvenile Board, Coimbatore.

110.. It may be relevant to note here that PW 16 Inspector of Police CBI (Investigating Officer) had filed the final report against the appellant as well as against Chandru on 19.12.2008. As observed by the learned Special Judge, as on 12.03.2006 on which date the accident was taken place, Chandru was a minor and therefore, the case was split up and the split up case was transferred to Juvenile Justice Board, Coimbatore.

111. When the accused Chandru was a minor at the time of accident i.e. on 12.03.2006, how, PW4 could have determined the age of Chandru as 19 years and filed the final report against him before the Judicial Magistrate I, Coimbatore?. As observed in the foregoing paragraphs there is not a vestige of truth in the evidence of PW4 and therefore, it lost its evidentiary value and credit worthiness. This itself would go to show the tenor as well as the veracity of PW4 being a public servant and responsible Police Officer. In this connection this Court finds that a stricture can be passed against him for his irresponsible, inefficient investigation.

112.. From page No.14 of the Judgment(running page no.470 of the typed set of papers), this Court understands that the accused Chandru had filed a petition before this Court in CrI.O.P.No.31828 of 2012 to quash the case in JC.No.35 of 2009 which was pending against him before Juvenile Justice Board. At the time of disposal of CrI.O.P.No.31828 of 2012, this Court has observed that the accused Chandru and the father of the injured girl Prianka and Mr. Jayaraj PW8 had got the case compounded. But this has not been spoken to by PW 4. At page No. 28 of the Judgment in the last paragraph (running page 484 of the typed set of papers), the learned Special Judge has extracted a portion of the of the memorandum of written arguments submitted on behalf of the appellant under Section 314 of the Code of Criminal Procedure which is reproduced hereunder: (running page No. 484 of typed set of papers)

"that the learned Public Prosecutor had argued that the affidavit of Chandru in CrI.O.P.No.31828 of 2012 filed before the Hon'ble High Court for compounding the case with PW8 amounts to confession and it is clearly proved that it is Chandru who caused the accident and not PW2. However the said argument cannot be accepted for the reason that the said



circumstance was not put to accused at the time of 313 Cr.P.C. proceedings and hence it caused prejudice to the accused as held in 2004 SCC (Crl) 1983."

113. At page No.32 of the Judgment (running page No.488 of the typed set of papers) in the last paragraph, the learned Special Judge has extracted the submissions made on behalf of the appellant which is reproduced hereunder:

"the learned Public Prosecutor relied upon the disposal of JC.No.35 of 2009 by the High Court in Crl.O.P.No.31828 of 2012 dated 22.11.2013, the copy of which is served to the Court from the High Court and argued that the conspiracy is proved against the accused Ayyamuthu and also the co- accused Chandru admitted that it is he who caused the accident by driving the vehicle and so he paid the compensation amount to PW8 in High Court and thereby compounded the case. This accused (appellant) submits that he is not a party to the above said Crl.O.P.No.31828 of 2012 and so the above said Judgment cannot bind him."

114.. Prior to the disposal of STC.No.2478 of 2006, which was ended in conviction of Rengaraj (PW2), Chandru had not whispered anything much less admitting the guilt that he had caused the accident. After filing of final report by PW16 the case against Chandru was split up and sent to Juvenile Justice Board (JC No.35 of 2009,) and then Chandru had filed Crl.O.P.No.31828 of 2012 to quash the case in J.C.No.35 of 2009, on the file of the Juvenile Justice Board. But no criminal action was initiated against Chandru, for the suppression of material fact nor even any case was registered against Rengaraj for his impersonation. The State Government has not preferred any Appeal against the Judgment of the Judicial Magistrate-I, Coimbatore and made in STC No.2478 of 2006. Though this circumstance was spoken to by PW16, PW4 has not spoken who happened to investigate the case in Crime No.75 of 2006.

115.. On coming to the evidence of PW16, he has admitted that on 19.12.2008 he had laid the final report against the appellant Ayyamuthu and Chandru and since it came to be revealed that at the time of accident, the age of Chandru was 17 years, the case against Chandru was split up and sent to Juvenile Justice Board, Coimbatore and thereafter the enquiry was pending before that Juvenile Justice Board. It was brought to his notice that the case which was pending against Chandru before the Juvenile Justice was subsequently quashed by the High Court. With reference to this circumstance, in his cross examination PW 16 has stated that when he had examined PW 4 Anbalagan, Inspector of Police attached to Perur Police Station, Coimbatore he had stated that during the investigation it came to his knowledge that at the time of accident Chandru was a major and therefore, the final report was sent to the learned Judicial Magistrate's Court. But PW



16 being the Investigating Officer had not sought any explanation from PW4 Anbalagan with reference to his complicated, contradictory and discrepant answer. P.W.16 has also stated that PW4 Anbalagan Inspector of Police, after completion of his investigation in Crime No.75 of 2006, had prepared the final report on 28.04.2006 as against Chandru.

116. With reference to the appreciation of evidence of prosecution witnesses, this Court would like to have reference to Section 3 of Indian Evidence Act. Section 3 of Indian Evidence Act, defines the terms 'proved', 'disproved' and 'not proved'. A fact is said to be proved, when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

A fact is said not to be proved when it is neither proved nor disproved.

117. Section 118 of Indian Evidence Act contemplates 'who may testify'. -All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

118.. As already discussed in the preceding paragraph the evidence of PW4 seems to be self-contradictory, discrepant and having lot of infirmities as well as complications. It is always to be determined whether the discrepancies in the prosecution evidence are minor or material. If the statements of prosecution witnesses are at variance on salient points and the case rests wholly on oral testimony, such contradictions cannot be lightly ignored. This proposition has been laid down in AIR 1958 NUC 493.

119. . Since the evidence of PW 4 and PW 16 are not fit to be in fair congruence, this Court is under the obligation to appraise the value and effect of the evidence of P.W.4 and P.W.16 respectively. While analyzing appraising the evidence of P.W. 4 and P.W.16, particularly, this Court finds that there are discrepancies of truth as well as the discrepancies of falsehood. Since there are self-contradictory statements, one of which is obviously wrong either due to trick of memory or intentional variation, the proper course is to reject both.



120.. As observed in 1947 JLR 365: AIR 1965 Raj 32, when a witness makes different statements at different stages in a case, like the present case on hand, he cannot be relied upon.

121. . For the foregoing reasons, this Court finds that had P.W.1 ,the sanctioning authority applied his mind and analyzed the statements, particularly P.W.4 and P.W. 16, certainly he would not have accorded sanction to launch prosecution against the appellant. By non-application of mind an innocent officer viz., the appellant had to suffer and pay a lot by sacrificing his services and suffered with monetary loss and also suffered with a permanent stigma which cannot be cured or obliterated in any way.

122. . Hence, this Court would like to place it on record that Ex.P1 the order of sanction is improper as it was not accorded in consonance with the provisions of Section 197(1) (b) of Code of Criminal Procedure.

123. . Another piece of evidence given by PW 4 in his cross-examination would go to prove that he is a perjurer and wantonly suppressed the material fact. He has stated in his cross examination that the charge sheet, filed by him was taken on the file of the learned Judicial Magistrate I Coimbatore. After getting transferred from Perur Police Station, he was summoned by Judicial Magistrate I, Coimbatore to give evidence in respect of the case in Crime No.75 of 2006. He had also given his evidence and his evidence was recorded. While so, he had found that Chandru was not standing in the dock as an accused, instead P.W.2 Rengaraj was standing. However, while deposing evidence, he had mentioned the accused 'sname as Chandru. Then the Assistant Public Prosecutor had asked him as to whether the man, who was standing oi the dock was Chandru. For that, he replied 'no'. He has stated that this fact was disclosed to Court by him and he did not know whether it was recorded by the Judicial Magistrate, Coimbatore or not.

124. . On verification of the records, he had found that Chandru was not shown as accused instead Rengaraj (PW2) alone was shown as an accused. After giving evidence, he had disclosed this fact to the Assistant Public Prosecutor and subsequently on the request made by Assistant Public Prosecutor he had prepared a report. The original report was given to the Assistant Public Prosecutor, the copy of which was retained by him. That report according to P.W.4 was filed before the Court. But no such document of proof is available to show that the impersonation of P.W.2 Chandru was apprised or disclosed to the learned Judicial Magistrate I, Coimbatore. Thereafter, he came to know that P.W.2 had admitted the offence and paid the fine amount. He has also fairly admitted that he had not sent any report?. However, he has stated that the man who had surrendered (PW2) before the Court had admitted the guilt . He would go one step further and depose



that he was advised by the learned Assistant Public Prosecutor to proceed with further investigation and to file the final report against the real person. In accordance with the advice given by the Assistant Public Prosecutor, PW 4 has further deposed that he had prepared the final report against Chandru and filed it before the Judicial Magistrate I, Coimbatore. Though he has further deposed that all these facts were disclosed before P.W. 16, the Investigating Officer/CBI, P.W.1 the sanctioning authority have miserably failed to consider all these lacuna for according sanction.

Appreciation of Evidence

125. EX.P3 is the letter dated back to 12.09.2006 and produced before the Special Court on 19.12.2008 i.e. after passing of two years. On a perusal of this letter it seems to be exculpatory in nature. It is also revealed that while Chandru was driving Pajero car bearing Registration No.TN 37AJ 3226 PW2 and his friends were sitting in the back seat. Only at that time, the Car was alleged to have hit against the minor girl Priyanka, daughter of PW8 Jayaraj, which resulted in causing of multiple injuries. It is also revealed that after the accident, Chandru and his friend were transferred to other car and after they left from that place PW2 had taken the Car to Perur Police Station and gave an intimation about the occurrence. The police people also came to the place of occurrence. PW2 says in this letter (Ex.P3) that he had not driven the car but Chandru alone had driven the car and caused the accident. Fourthly it is revealed that since Chandru was a minor and he was also not having any valid driving licence, on the request made by his owner, he had surrendered before the learned Judicial Magistrate.

126. Here one thing is to be clarified by the prosecution. i.e. about the information given to Perur Police Station about the occurrence. PW2 says that he had given the information to the Police Station at the earliest point of time. As contemplated under Section 154 of the Code of Criminal Procedure the information about an incident can also be made orally before the concerned Station House Officer and the Station House Officer, who in turn must register a case if any, cognizable offence is made out. From the letter Ex.P3 it is revealed that even though PW2 had informed the accident to Perur Police Station, the Station House Officer, who was present at that time had not evinced any interest in registering the case at the earliest point of time. Instead, the case on the file of the concerned Police Station was registered only after the delay of four hours based on the complaint lodged by PW8 Jayaraj, who is the father of the injured girl Priynaka. If the case was registered at the earliest point of time based on the oral complaint made by Rengaraj (PW2) the name of the driver would have been stated in the FIR.



127. Ex.P5 is the Statement of PW2 Rengaraj recorded by the learned Judicial Magistrate III Coimbatore for the second day i.e. on 07.11.2008 at 2.30 p.m. Even though the Statement of PW2 as contemplated under Section 306 of the Code of Criminal Procedure and other statements of the witnesses were recorded by the very same Judicial Magistrate, as required under Section 164 of the Code of Criminal Procedure, he was not at all examined as a prosecution witness which is a must.

128. At the beginning of the statement which was recorded by the learned Judicial Magistrate III, Coimbatore on 07.11.2013 (Ex.P5), PW2 has stated that he was informed by a man of his owner that on 12.03.2006 at about 2.30 p.m. when his owner's son Chandru was returning from Siruvani in his car an accident was taken place. Thereafter he (PW2) had brought the car to the Police Station. On seeing him, the Inspector of Police who was present there, had informed him that he had nothing to do with this accident and therefore he might go. He has also stated that since it was Sunday i.e. 07.11.2008, the man of his owner one Mr. Ganesan had asked him to go to Court on Tuesday. Therefore, he had gone to the Court on Tuesday and surrendered himself, as requested by his owner. It is also stated that since bail was not granted on that day, he was sent to prison. Only on the next day i.e. on Wednesday he was granted conditional bail, directing him to appear before the concerned Inspector of Police attached to Perur Police Station to sign daily. Accordingly, he had reported the Police Station for about 15 days daily. It is also revealed from his statement under Ex.P5 that after attending to the hearing for the third time, he was asked to pay a fine and accordingly he had paid a sum of Rs.1500/-.

129. PW4 in his cross-examination has fairly admitted that after surrendering before the Court and released on bail, PW2 was produced before him by PW9 Munusamy Head Constable, and as per the directions of Court, he had been signing before him in the note which was maintained for that purpose. Therefore, it is thus made clear that PW4 knew the fact pretty well that PW2 Rengaraj had surrendered before the Court and subsequently released on conditional bail and made to sign before him for about 15 days. Hence if at all any case is to be registered by CBI, it should have been registered against PW4 for suppressing or burking the material fact, and not against the appellant.

130 .Secondly, from the records available including the statement of S.Rengaraj, it is seen that the case in STC.No.2478 of 2006 was not allowed to go for trial. It is an accepted judicial process in a trial Court proceedings that the Investigating Officer would be examined at last, after the completion of examination of all the prosecution witnesses. As afore stated this case was not allowed to go



for trial, as PW2 himself had admitted the offence at the third time of hearing and subsequently he was convicted and sentenced to pay a fine of Rs.1500/-. But what PW4 would say in his cross examination is that after his transfer from Perur Police Station, he was summoned by the Judicial Magistrate I Coimbatore to give evidence in the accident case.. Only at that time, it was surprise for him to note that PW2 Rengaraj was standing in the accused box instead of Chandru. Immediately he had divulged this fact to the Assistant Public Prosecutor and even the Assistant Public Prosecutor had not taken any steps to file a memorandum or a report in respect of the alleged impersonation of PW2 Rengaraj to the concerned Magistrate. PW4 has further stated that he had informed the Assistant Public Prosecutor and for that he had replied to proceed further with the matter. PW4 has also deposed that he had reported to the Judicial Magistrate, but he did not know as to whether his statement was recorded by the learned Judicial Magistrate I or not.

131 .Ex.P8 is the case diary prepared by PW4. In this case diary, the name of the driver has been mentioned as Chandru. The date of the accident has also been mentioned as 12.03.2006. PW4 in this case diary has stated that he took up the investigation, gone to the place of occurrence, examined the witnesses who were present there, drawn the rough sketch in respect of the place of occurrence and prepared the observation mahazar. From his inspection of place of occurrence, investigation and examination of witnesses, he came to know that the driver of Pajero car bearing Registration No.TN 37 AJ 3226 was one Chandru. As it is seen from Ex.P8 case diary and Ex.P9 series viz., the statements of PW8 Jayaraj, PW14 Kumar, PW3 Gurusamy, this Court is able to understand from the statements of PW14 Kumar and PW3 Gurusamy that PW2 Rengaraj alone was driving the car at the time of occurrence. Particularly Kumar PW14 and PW3 Gurusamy have categorically stated in their respective statements recorded under Section 161(3) Cr.PC that Rengaraj alone was driving the car at the time of accident.

When such being the case how PW4 could have understood that Chandru had driven the car at the time of occurrence?

132. With reference to Ex.P9 series the statements of the witnesses recorded under Section 161 (3) of the Code of Criminal Procedure, PW4 has stated in his cross-examination that the statement of the witnesses viz, PW8 Jayaraj, PW14 Kumar, Priyanka , PW3 Gurusamy, Sampathkumar (not examined) and Subramaniam (not examined) were not prepared on his narration, and the names of the witnesses and their addresses were correct. It is specifically admitted by him in his cross-examination that excepting PW8 Jayaraj and his minor daughter Priyanka, Kumar PW14 and PW3 Gurusamy were the eye-witnesses to the occurrence. As afore stated Gurusamy(PW3)



and Kumar (PW14) in their respective statements have stated that Rengaraj alone was driving the vehicle at the time of accident.

133. It is surprise to note here that he being the Inspector of Police/Investigating officer in this case has stated that the car was produced before the Police Station on 16.03.2006 i.e. after four days, but he did not know as to who had brought the car to the Police Station.

134. Again with reference to Ex.P9 he would state that the signature found beneath of the statement of witnesses viz., PW8 Jayaraj, PW14 Kumar, Priyanka , PW3 Gurusamy, Sampathkumar and Subramaniam was not that of him. But this Court is of the firm opinion that he is the man who had signed beneath the statement of the witnesses, when comparing his signature with his admitted other signatures.

Ex.P10 is the observation mahazar. Both Ex.P10 observation mahazar and Ex.P17 are one and the same relating to the case in Crime No.75 of 2006.

135. With regard to Ex.P10 observation mahazar, PW4 has given an evasive answer in his cross -examination saying that Ex.P9 and Ex.P10 were not prepared in his presence. Again he would state that since days were gone, he was not able to remember as to whose hand writings were this. He has admitted in his cross-examination that Ex.P11 charge sheet was prepared by him, showing the name of the driver as Chandru and subsequently the charge sheet was sent to the learned Judicial Magistrate I Coimbatore. The charge sheet was prepared against Chandru under Sections 279 and 338 IPC. In this connection, he would state that the signatures found in the place of Inspector of Police was not that of him.

136. Ex.P11 is the case diary. In column No.3,, the name of the accused has been stated as Chandru and his age has been stated as ' 19'. It is to be reiterated that PW4 has admitted that he had prepared the charge sheet against Chandru under Sections 279 and 338 IPC and subsequently, it was produced before the Judicial Magistrate I, Coimbatore, and that the signature found in the place of the Inspector of Police was not that of him. The charge sheet seems to have been prepared in the name of PW2 Rengaraj on 28.04.2006. However, as afore stated he has admitted that the charge sheet was prepared in Crime No.75 of 2006 and produced before the learned Judicial Magistrate No.1, but on seeing the contents of the charge sheet this Court is able to find out the name of Rengaraj (PW2) in the place of the accused. The list of witnesses is also found to have been tagged along with the charge sheet.

137. PW5 Mr. Velliangiri was functioning as Head



point of time. Ex.P23 is the Xerox copy of the charge sheet concerned in Crime No.75 of 2006. He says that he had written the original of Ex.P.23. This document under Ex.P23 was marked subject to the objections of the defence side. In this charge sheet the name of the accused has been mentioned as Chandru, son of Venkatapathy. In this connection, P.W.5 has stated that he could not identify the hand writings of the Head Constables, who were working along with him at Perur Police Station. He has admitted that both in Ex.P8 and Ex.P11 viz., case diaries, dated 12.03.2006 and 28.04.2006 his signature was found place and that these documents were written by him and signed by PW4 Anbalagan. Virtually, in Ex.P23 charge sheet the age of the accused Chandru has not been stated.

138. PW7 Mr. A.Bramhagiri was working as Head Constable at Perur Police Station, Coimbatore from 2003-2007 and as such he was deputed to look after the Court works. Accordingly, till 10.07.2006 he had been looking after the Court works. Since he had met with a railway accident, he had lost of his one lower limbs and therefore, he was relieved from attending Court works, instead, the appellant was deputed. PW7 has admitted that on 12.03.2006 he had prepared the First Information Report relating to the case in Crime No.75 of 2006. But, it was signed by another Head Constable PW9 Munusamy. He has specifically stated that he could not identify the handwritings of the appellant Ayyamuthu. At the request made by the Additional Public Prosecutor he was treated as hostile witness.

139. As discussed already Ex.P.21 is the entry made in Ex.P20 viz., the particulars of the First Information Report in the case in Crime No.75 of 2006. He has denied the signature found place in Ex.P.21. He has fairly admitted that in Ex.P21 it is stated that Rengaraj (PW2) had on 21.03.2006 surrendered before the Judicial Magistrate I, Coimbatore. He has also fairly admitted that at the time of CBI enquiry, he told that one P.Vasudevalingam, Head Constable (HC-1602) had written Ex.P.15 (requisition for the inspection of the car), wherein it was first written as Rengaraj and subsequently it was struck off and re-written as Chandru but got it signed as P.Vasudevalingam. But, he did not know as to when it was written by the Head Constable P.Vasudevalingam.

140. On coming to the evidence of PW9 Mr. R.Munusamy, Head Constable he had given evidence on the line of the evidence of PW7 A.Bramhagiri. He has stated that the First Information Report relating to the case in Crime No.75 of 2006 was written by PW7 A.Bramhagiri and he had signed in it.

In so far as the hand writings found in Ex.P.18 charge sheet is concerned, he has stated that it appears that it might have been written by the appellant, but he could not recollect the memories at the time of giving evidence.



In so far as his evidence is concerned, this Court finds that he is not able to identify that the handwritings found place in Ex.P18. But the evidence of PW4 Anbalagan, Inspector of Police seems to be entirely contrary with the testimonies of PWs.5,7 and 9.

141. On coming to the evidence of PW12 Mr. N.Ravi, the Principal Scientific Officer in Central Forensic Laboratory, New Delhi, this Court finds that the learned Special Judge has committed a serious error in respect of his findings. In this connection, he has observed in his Judgment that the report given by PW.12 confirms the hand writings of the appellant.

142. It is significant to note here that the appellant's specimen signature as well as the specimen handwritings were not obtained in the presence of a Judicial Magistrate under a specific order. In order to dispel suspicion, as to its bona fides or to eliminate the possibility of fabrication of evidence, it is desirable to get the specimen signatures as well as the specimen handwritings from the accused before or under the order of a Judicial Magistrate.

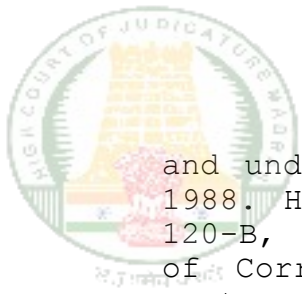
143. On coming to the instant case on hand, admittedly PW 16 Mr. R.Ravi, Inspector of Police CBI had not obtained the specimen signatures as well as the specimen handwritings of the appellant before or under the order of a Judicial Magistrate. Even PW16 Inspector of Police had not obtained any permission or any order from the Judicial Magistrate I Coimbatore or any other Judicial Magistrate to get the specimen signatures as well as the specimen handwritings of the appellant for sending the same to the Expert's opinion.

144. In this connection, this Court would like to point out that it is not desirable to impose conviction solely on the evidence of PW12 (expert) without corroborative evidence either direct or circumstantial.

145. As discussed in the body of this Judgment, there is no iota of evidence to connect the appellant in the alleged forgery or fabrication of the charge sheet. PW4 alone has stated that the appellant had forged the charge sheet in the name of Rengaraj, instead of Chandru and his evidence has not been corroborated with any other evidence. Similarly PW 12's expert's evidence has not been corroborated by any other independent witness.

Section 5 of the Identification of Prisoners Act, 1920 reads as under:

"Power of Magistrate to order a person to be measured or photographed.—If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898 (5 of 1898)† it is



and under Section 13(2) of the Prevention of Corruption Act, 1988. However, he has found him not guilty under Sections 120-B, 420 r/w 511 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988. Challenging his conviction and sentence recorded under Section 468, 471 IPC and 13(2) of the Prevention of Corruption Act, 1988, the appellant Ayyamuthu has preferred the Appeal in CrI.Appeal No.71 of 2015, whereas against the order of acquittal recorded in respect of the charges under Section 120-B, 420 r/w 511 IPC and under Section 13(1)(d) of the Prevention of Corruption Act, the complainant has preferred another Appeal in CrI.Appeal No.509 of 2016. Therefore, this Court is under obligation to see whether all the charges under Sections 120-B, 468, 471 and 420 r/w 511 IPC and under Section 13(2) of the Prevention of Corruption Act are proved against the appellant.

149. . This Court would like to say that totally the following five charges have been framed against the appellant:

- 1) Under Section 120-B of IPC (two counts);
- 2) Under Section 468 of IPC (three counts);
- 3) Under Section 471 of IPC (three counts);
- 4) Under Sections 420 r/w 511 of IPC (two counts); &
- 5) Under Section 13(2) r/w 13(1) of Prevention of Corruption Act, 1988.

Though the Special Court, while framing charges has specified the counts, as against each offence, while writing Judgment, no charge has been discussed distinctively in accordance with the count.

150. With reference to the Charge under Section 120-B IPC, the prosecution has alleged, that while the appellant N.Ayyamuthu was working as Head Constable (1469) at Perur Police Station, Coimbatore District during March, 2006, he had conspired together with Ranjith @ Chandru, son of Venkatapathy (A-2) and Mr.S.Rengaraj, son of late of Subbiah Gowder (A-3) at Coimbatore and at other places and in continuation of the said conspiracy, Ayyamuthu/appellant herein by abusing his official position as Head Constable, had prepared a false charge sheet showing S.Rengaraj (PW2), the approver as an accused saying that he had driven the vehicle bearing Registration No.TN-37 AJ 3226 in a rash and negligent manner and caused the accident near Madampatti Thanneerpandal. It is also alleged that in continuation of the said conspiracy, S.Rengaraj (PW2) though was not actually driving the said vehicle at the date and time of the accident, he was made to appear before the Judicial Magistrate I, Coimbatore and to admit the offence in order to help Ranjith @ Chandru (A2) who was not at all holding any valid driving licence, and to protect him from the legal proceedings. It is also alleged that the appellant Ayyamuthu along with the approver



154. Ex.P3 is the letter given by S.Rengaraj (PW2) to Damodaran (PW15), a private investigator of Oriental Insurance Company With reference to Ex.P3 letter PW2 in his cross examination has stated that as per the instructions given by his owner as well as by his Lawyer he had surrendered before the Judicial Magistrate I Coimbatore. He has further accepted that he had not stated anything about Ayyamuthu in Ex.P3. He would go one step further and stated in his cross examination that while giving the statement before the learned Magistrate, he had not stated anything about the appellant/Ayyamuthu.

155. In so far as the charge under Section 120B IPC is concerned the agreement between two or more persons is the gist of the offence. Further it needs the meeting of minds of the conspirators. In order to prove a criminal conspiracy, there must be a direct or circumstantial evidence to show that there was an agreement between two or more persons to commit the offence.

156. In the present case, neither direct nor circumstantial evidence is available to prove the offence of criminal conspiracy as against the appellant. It is to be noted that conspiracy from its very nature is generally hatched in secrecy. It is therefore extremely rare that direct evidence in proof of conspiracy can be forthcoming from absolutely disinterested quarters or from utter strangers, but like other offence criminal conspiracy can be proved by circumstantial evidence.

As afore stated nothing is available on record to connect the appellant to the offence of criminal conspiracy.

Further, Venkatapathy, who is the father of the second accused Chandru has not been examined as a witness in this case to prove the charge of conspiracy.

157.. The charge under Section 120B itself seems to be vague, as the ingredients of Section 212 (1) of Cr.PC are completely absent. Sub Section (1) of Section 212 of Cr.PC amplifies the proposition that the charge should be precise enough to give the accused reasonably sufficient notice of the case he has to meet. This requirement is, however, to be understood with reference to the circumstances of each case. Since PW2 S.Rengaraj (approver) has not stated anything about the conspiracy or about the involvement of the appellant, automatically the charge under Section 120B IPC goes out. No circumstantial evidence also is available to prove the charge of conspiracy.

158.. The second charge is under Section 468 IPC. The accusation revealed from charge No.2 is that the appellant had prepared the charge sheet fraudulently in Crime No.75 of 2006 on the file of Perur Police Station, Coimbatore and filed the same before the Judicial Magistrate I Coimbatore



knowing fully well that the charge sheet was already prepared by PW4 Thiru.Anbazhagan, Inspector of Police attached to Perur Police Station, Coimbatore in order to enable S.Rengaraj, PW2 (approver) to make a false confession before the Judicial Magistrate I, Coimbatore to help the girl Priynaka, daughter of Jayaraj PW8 to file a claim petition before the Motor Accident Tribunal.

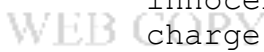
159. This Court would like to say that the charge itself is wholly misconceived because, for the above said accusation the charge under Section 468 IPC would not be attracted. If at all any charge is to be levelled, it may be under Section 466 of IPC. What Section 466 of IPC says is that whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. It exemplifies from Section 466 IPC that forging of any document purporting to be a record or proceeding of or in a Court attracts the gravity of the offence envisaged in Section 466 IPC.

160.. As it is alleged that the appellant had prepared a fraudulent charge sheet and produced before a Court of justice to project a wrong person as a real accused.

161. An offence under Section 466 IPC has the following essential ingredients:

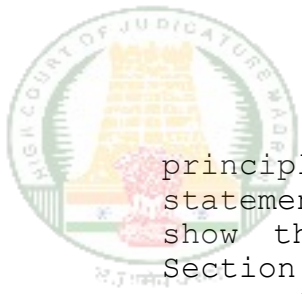
- i) that the accused forges a document (or an electronic record)
- ii) that such document (or an electronic record) , was purported to be
 - a) a record or proceeding of or in a Court of Justice, or
 - b) a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or
 - c) a certificate or document purported to be made by a public servant in his official capacity, as such or
 - f) an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or
 - h) a power of attorney,

162. To bring home an offence under Section 466 IPC, the prosecution is firstly, to prove all the ingredients necessary to prove an offence punishable under Section 465 IPC .Next the prosecution is to prove that a document forged answers any of the ingredients enumerated under Section 466, IPC A forged document



163. The defence case is that (i) the appellant is innocent and he did not commit any offence, as alleged in the charge sheet ; (ii) the CBI has filed the charge sheet without proper investigation; (iii) the Investigation Officer suppressed the truth and materials and filed the charge sheet; (iv) when the appellant was working in Perur Police Station, he was initially given the work of different duty and he was not attending the Court work; (v) On the date of the accident i.e. on 12.03.2006 it was the Head Constable Bramagiri, PW7 who was attending the Court work. (vi) at that time, the appellant had no knowledge about the accident. (vii) originally as per FIR, in the case in Crime No.75 of 2006, investigation was done by PW4 and he only had filed the charge sheet before the Judicial Magistrate, Coimbatore. (viii) the Head Constable Bramagiri PW7 had met with an accident on 10.07.2006 and he had lost one of his legs, because of which, he was not given Court work and subsequently, he was transferred to Kanyakumari Police Station in May, 2007. (ix) In the meantime, PW4 was transferred from Perur Police Station in July, 2006 and in his place one Vetriselvan Inspector of Police was appointed. (x) the appellant was given the Court duty, after the Head Constable Bramagiri sustained injuries from 11.07.2006.

165. Accordingly the appellant Ayyamuthu had produced the charge sheet and other papers before the Judicial Magistrate I, Coimbatore on 12.03.2006 in the morning and it was also taken on file as STC No.2478 of 2006. Thereafter PW2 Rengaraj had appeared before the Judicial Magistrate I Coimbatore, received the copies of the charge sheet and other papers and on questioning he had admitted the guilt and hence he was convicted and sentenced to pay Rs.750/- under Section 279 IPC and another sum of Rs.750/- under Section 338 IPC. The information in this connection was passed on to the Police Station by the appellant. Here, the Head Constable subramaniam was not examined as a witness by the prosecuting agency. The written statement submitted by the appellant before the learned Special Judge under Section 314 of Criminal Procedure was not disproved by the prosecution. No contrary evidence was also adduced by the prosecution. Therefore, this Court finds that the appellant has proved the case of defence and disproved the case of the prosecution, as the



principle of preponderance of probability is available in the statements of the appellant. These circumstances would go to show that the charge either under Section 466 or 468 or Section 471 IPC have not been brought home by the prosecution. Subsequently, the charge under Section 420 r/w 511 IPC also automatically goes out.

166. On coming to the charge under Section 13(1)(d) of the Prevention of Corruption Act, 1988 this Court would like to point out that Section 13 of the Act envisages 'criminal misconduct by a public servant. Sub Section (1) of Section 13 of the Act is consisting of five clauses viz., clauses (a), (b), (c) and (d) and (c). . Sub clause (d) of the Act contemplates that if a public servant is said to commit the offence of criminal misconduct

(d) if he, -

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

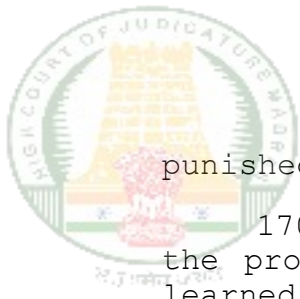
(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

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

167. These three clauses to clause (d) of sub-section (1) of Section 13 of the Act are not attracted in respect of the appellant as the appellant had not obtained for himself or for any other person any valuable thing or pecuniary advantage. Further, no evidence is available as against the appellant to substantiate the allegation that he had committed the offence of 'criminal misconduct' as a public servant.

168. If it is proved by the prosecuting agency that the accused had committed the offence enumerated under clauses (a), (b), (c) and (d) of Section 13(1) of the Act, then the penal clause viz., sub section (2) of Section 13 of the Act comes into play. Sub section (2) of Section 13 of the Act enacts that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

169. Here, since the prosecution has failed to substantiate the charges levelled against the appellant under Section 13(1)(d) of the Prevention of Corruption Act, certainly sub section (2) of Section 13 of the Act would not come into play to punish the appellant. Sections 13(1)(d) and 13(2) of the Act cannot be separated. They are inseparable. Unless and until the offence under Section 13(1)(d) of the Act is made out, the accused cannot be and shall not be



punished under Section 13(2) of the Act.

170. Here, without knowing the rudimentary principles of the provisions of Section 13(2) and 13(1)(d) of the Act, the learned Special Judge has proceeded to acquit the appellant under Section 13(1)(d) of the Act and subsequently proceeded to punish the appellant under Section 13(2) of the Act, which is against the settled principal of law.

171. Therefore, the findings given by the learned Special Judge as against the appellant herein is liable to be set aside in respect of the order of conviction under Section 468, 471 IPC and 13(2) of Prevention of Corruption Act, 1988. The order of acquittal recorded by the learned Special Judge under Section 120B, 420 r/w 511 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988 are liable to be confirmed.

172. In the result, the Appeal filed by the appellant in Criminal Appeal No.71 of 2015 is allowed and he is acquitted of the charges levelled against the appellant under Section Sections 468 & 471 IPC and Section 13(2) of the Prevention of Corruption Act, 1988 and the fine amount paid by the appellant shall be refunded. The bail bonds executed by and on behalf of the appellant are cancelled and the sureties who stood for and on behalf of the appellant are discharged. Consequently the Criminal Appeal No.509 of 2016 is dismissed, confirming the order of acquittal in respect of the charges under Section 120-B, 420 r/w 511 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The Special Judge for CBI cases/
Additional Sessions Judge,
Coimbatore

+2cc to Mr.A.Thiyagarajan, Advocate Sr.No.37847 & 37848
+1cc to Mr.K.Srinivasan, Special Public Prosecutor
for CBI Cases, High Court, Madras sR.No.38053

MR(CO)
sm:6.2.2018

Criminal Appeal Nos71 of 2015
& 509 of 2016