IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.09.2017

PRONOUNCED ON : 12.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Criminal Revision Case No.84 of 2015

1.Samsonnathan @ Samson Irudhayanathan
2.P.Sundar .. Petitioners

Vs

State represented by
Inspector of Police,
SPE/CBI/ACB/Chennai,
RC No.23(A) 2005. .. Respondent

Prayer:- Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to call for the records and set aside the judgment dated 10.03.2010 in C.C.No.2065 of 2007 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, chennai which was confirmed by judgment dated 05.01.2015 in C.A.No.41 of 2010 by the learned V Additional Sessions Judge, Chennai.

For Petitioners : Mr.S.Shanmugavelayuthan,
Senior Counsel
for Mr.T.Vijayaraghavan

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (CBI cases)

ORDER

This Criminal Revision is directed against the concurrent finding of the trial Court as well as the First Appellate Court holding the revision petitioners herein guilty of charge under Sections 120B, 420, 468 and 471 I.P.C.

2.The case of the prosecution is that, a complaint was received by the respondent Police from one Mr.Govindasamy alleging that certain L.I.C., premium notices franked at Bhuvaneshwar and delivered at Ambattur Post Office arose suspicion and doubt therefore, they were verified with the LIC Office at Chennai and found that those letters were handed over to M/s.Metro Corporate Services at Chennai who was dealing with bulk mails of various clients. On further verification, it came to light that those LIC Premium notices were not sent by Bhuvaneswar bulk mail office but, only at Chennai. The LIC Office, Chennai has entrusted those bulk mails to one Mr.Samson Nadhan of M/s.Metro Corporate Service. He in turn, has used the franking machine owned by M/s.Absolute Bulk Mails for sending the bulk mails. Despatch slips have been obtained from the Postal Bulk Mails section in Anna Salai Post Office, Chennai by bribing the staff of Postal Department.

3.Based on the said complaint given by Mr.Govindasamy, the respondent Police registered a case on 10.05.2005 for the alleged offences under Sections 120 B r/w 420, 255 & 256 I.P.C., and Section 13(2) r/w 13(1) of Prevention of Corruption Act, 1988. After completing investigation, the final report was filed against the petitioners herein for offence under Sections 120 B, 420, 468, 471 r/w 465 I.P.C.

4.Before the trial Court, the prosecution has examined 29 witnesses; marked 74 documents besides two material objects. On considering the evidence let in by the prosecution, the trial Court has found that A.1, the Proprietor of M/s.Metro Corporate Service has tampered the franking machine with connivance of Mr.N.K.Seshadri - Approver – P.W.18, a former employee of M/s.Kores India and affixed imprint through the franking machine as if the franking machine licence was given to M/s.Metro Corporate Services, Plot No.348, Okil Bagh, Bhuvaneshwar - 751 006. When the Post Master, B.M.G Bhuvaneshwar was enquired about the franking machine bearing licence No.O.R.6/0095/2003, they confirmed that the said licence was given to M/s.Metro Corporate Service having office at Plot No.348, Okil Bagh, Bhuvaneshwar - 751 006. However, M/s.Metro Corporate Services were not the bulk mailers for LIC. The suspicious mails which had the impression of Bhuvaneshwar are the mails of local city branch LIC and they were entrusted to M/s.Metro

Corporate Services, Arcot Road, Vadapalani, Chennai, for bulk mailing. The Invoice Bill submitted by the accused to LIC and the despatch slips submitted by them to prove the despatch indicates that the bulk mails handed over to the accused have been despatched for delivery through Anna Salai, Chennai Postal authorities and based on the despatch slips and invoice, LIC has paid Rs.3,12,314/- in total to the accused. Whereas, the corresponding amount was not paid to the postal department for loading the franking machine. This has occurred due to the tampering of franking machine carried out by the Approver – P.W.18 at the request of the accused.

5.The trial Court found that the money received by the accused from LIC has been periodically deposited in their accounts and withdrawn. The approver has demonstrated how the franking machine was tampered such a way, the franking machine does not show reading according to the amount franked. Instead, it would be static inspite of affixing stamps by franking. The deposition of P.W.1 to P.W.5 and 19 who were employees in the Postal Department have explained the manner in which the bulk mailing is done and how the franking machine is used after loading the franking machine with required amount on payment and same duly recorded in the passbook. The evidence of postal authorities who have spoken about the maintenance of pass book for franking machine and other procedures were accepted by the courts below to hold the accused guilty of charges framed.

6.The evidence let in by the prosecution unravels the franking machine which is marked as M.O.1 used by the accused for franking stamps on bulk mails given by the LIC, Chennai, was originally given to M/s.Absolute Bulk Mailers, Vadapalani, Chennai with licence. The owner of the said M/s.Absolute Bulk Mailers is one Mr.Somasundaram - P.W.25. He has sold the franking machine to A.2. The accused are not the licence holders of Postal Department for bulk mailing. Taking advantage of the licence given to Mr.Somasundaram and the franking machine purchased from him, they have used the dies of M/s.Metro Corporate Services, Bhuvaneshwar on the postal covers. The window ticket given to M/s.Absolute Bulk Mailers has been misused for having access to the post office and to get despatch slip in connivance with the staff of the Postal Department.

7.From the evidence, the trial Court has found that P.W.25 – Mr.Somasundaram, a retired staff of Postal Department had obtained licence from the Postal Department to run bulk mailing service in the name of M/s.Absolute Bulk Mailers. He has sold the franking machine and trade licence to the accused. A.1 who was running a bulk mail service in the name of M/s.Metro Corporate Service has got the bulk mail service contract from LIC, tampered the franking machine with the help of P.W.18 – Approver Mr.Seshadri had affixed franking stamps on the bulk mails given by the LIC using the window ticket of the M/s.Absolute Bulk Mailers. The payments received from the LIC and deposit in the banks were spoken by the Bank officials. P.W.16 and P.W.21, the employees under the accused have spoken about the deposit of money, withdrawal of money and handing over the same to the accused.

8.The trial Court after appreciating the entire evidence both oral as well as documentary has arrived at the conclusion that the mails entrusted to the accused by LIC has been promptly despatched to the respective addressees. So, as far as the LIC is concerned, they have paid the postal charges to the M/s.Absolute Bulk Mailers for the service they rendered. About Rs.5,04,598/- has been paid by LIC to M/s.Absolute Bulk Mailers and M/s.Metro Corporate Services towards the postal charges. However, in the account book and pass book maintained by the Postal Department, in respect of franking machine, given to the bulk mailers, the corresponding amount is not reflected. Ex.A.41, franking machine pass book for M/s.Absolute Bulk Mailers and coresponding despatch slips indicate that only

Rs.1,92,284/- has been paid to Postal Department for loading the franking machine. However, the LIC has paid Rs.5,04,598/- to M/s.Absolute Bulk Mailers. Therefore, the difference of Rs.3,12,314/- worth of stamp affixed on the mails of LIC had been delivered by the Postal Department. The said amount is not been credited to the postal department account due to the tampering of franking machine and thus, on a cumulative and objection analysis of the documents, as well as the oral evidence, the trial Court has arrived at the conclusion that the accused have conspired to cheat the postal department and in pursuant to that conspiracy, they have purchased the franking machine - M.O.1, from Mr.Somasundaram - P.W.25, tampered it with the help of P.W.18 – Approver, affixed the dies of M/s.Metro Corporate Services, Bhuvaneshwar and has despatched the postal articles worth more than Rs.5,04,598/- but paid only Rs.1,92,284/-. Having held so, relying upon Ex.A.41, Exs.A.7 to A.18, holding that the difference money received from LIC for bulk booking and the amount paid to the Postal Department is the amount cheated by way of tampering the franking machine in connivance with Approver – P.W.18.

9.The First Appellate Court after re-appreciating the evidence and the grounds of appeal raised has confirmed the trial Court judgment. The First Appellate Court Judge has reiterated the reasoning given by the trial Court and held that there is no material to interfere the trial Court judgment.

10.The learned counsel for the revision petitioners submitted that the evidence of Approver – P.W.18 ought not to have been relied upon by the Courts below who has spoken about the tampering of franking machine. The witnesses P.Ws.6 to 17, 20 and 22, who are all the officers of LIC had spoken about the entrustment of postal covers to M/s.Metro Corporate Services and categorically stated that they have no complaints regarding the non delivery of posts entrusted to M/s.Metro Corporate Services and they had paid for the service rendered through the vouchers and cheques and they are duly marked as Exs.P.42 to 58 and 65 to 75. As far as the deposits made in the bank, P.W.16, the Manager of SBI has identified the statement of accounts maintained by M/s.Absolute Bulk Mailers and M/s.Metro Corporate Services. These statement of accounts were marked as Exs.P.59 and P.60. The statement of accounts maintained by M/s.Metro Corporate Services at Indian Bank Nandanam Bank is spoken by P.W.21.

11.The learned counsel for the appellants submitted that whatever the service rendered as bulk mailing by M/s.Absolute Bulk Mailers and by M/s.Metro Corporate Services have been duly accounted and the difference as alleged by the prosecution are the postal articles sent by affixing the addisive postal stamps and not by franking. Hence, the additional postal stamps purchased from the counter is not reflected in the passbook maintained for loading the franking machine. When the witnesses have said that there are two franking machines, one which could be operated electronically and another by manually, the prosecution has chosen to mark only one franking machine and there is no explanation how the second franking machine came to be seized and from whom it was seized. Further, raising doubt regarding the veracity of the Approver evidence about tampering of the franking machine, it was contended that the courts below misdirected by the prosecution has convicted the appellants without any proved incriminating materials.

12.The learned counsel for the petitioners specifically pointing the re-enactment of tampering by the Approver before the Investigating Officer and the same being recorded by way of proceeding - Ex.P.62 is not a corroborative piece of evidence for the prosecution to rely upon. However, the trial Court has relied upon this proceedings which was neither been demonstrated before the Magistrate who has tendered pardon to the Approver nor before the Court which tried the case. Being so, on a very weak piece of approver evidence, the trial Court has convicted the accused and the First Appellate Court has also without applying its mind independently has confirmed the order of the trial Court.

13.Per contra, the learned Special Public Prosecutor (CBI cases) appearing for the respondent submitted that the owners of M/s.Metro Corporate Services, are not licence holders of any franking machine. They have purchased the same from P.W.25 – Mr.Somasundaram who was running M/s.Absolute Bulk Mailers. Making use of the franking machine and licence given to M/s.Absolute Bulk Mailers, these accused after tampering the franking machine with the help of the Approver – P.W.18, have franked the postal articles collected from LIC and posted at Bhuvaneshwar. The sequence of the said conspiracy has been proved through the Approver. The employee of LIC who have entrusted the bulk mails were examined and paid for the same is proved. The Bank officials who have credited the voucher and cheques issued by LIC in the name of M/s.Metro Corporate Services and M/s.Absolute Bulk Mailers have deposed about the realization of the cheques. The employees under the accused have spoken about the withdrawal of money and handing over the same to the accused. Thus, the claim of facts regarding cheating and forging well proved and accepted by both the Courts below.

14.The passbook given to the licence franking machine and the amount paid by the LIC for mailing their letters does not tally. In the light of the evidence given by P.W.18, the fraud committed on the

Postal Department is well established and accepted by the Courts below. In the absence of any perversity or illegality in the judgment of the trial Court as confirmed by the First Appellate Court, the High Court in exercise of the revisional power, need not interfere the well considered concurrent finding of the Courts below.

15.The charge against these petitioners is that they conspired to cheat the Postal Department and in pursuance of the conspiracy, they have tampered the franking machine with the help of the Approver. To substantiate the charge, the prosecution heavily rely upon the evidence of the Approver – P.W.18 and the evidence of officials of LIC, Postal Department and the Bank, so as to correlate the account of LIC which has paid to the accused for mailing their letters and money paid to the Postal Department for loading the franking machine. While the offence is alleged to be the money cheating by way of tampering the franking machine, the defence taken by the petitioners is that apart from franking the postal articles, they used to adopt the convention method of affixing addisive stamps.

16.The fact remains that the accused are not the licence holders of franking machine used for the subject transaction. It is owned by Mr.Somasundaram – P.W.25. He is the proprietor of M/s.Absolute

Bulk Mailers. In his evidence, he has stated that he has sold the franking machine to A.2. However, the licence still stand in the name of Mr.Somasundaram – P.W.25 and was not transferred to the petitioners. P.W.25, in his deposition, has stated that he sold the franking machine to one Mr.Sundar (A.2). He surrendered his licence for all practical purposes to the accused. It has been presumed that Mr.Somasundaram was privy to all the transaction and the window ticket - Ex.P.37 and renewal of licence - P.W.38 indicate that the licence was in vogue in the name of Mr.Somasundaram – P.W.25 till it was suspended through Ex.P.39 and cancelled through Ex.P.40.

17.As a fact of the matter, the accused were the persons in contract with LIC for bulk mailing though they were not licenced franking machine holders. The franking machine used for bulk mailing by the accused has been tampered and the same is admitted by the Approver - P.W.18. The Pass book - Ex.A.41 which has to reflect the actual payment to the Postal Department for loading the franking machine indicates lesser amount whereas, the amount paid by the LIC is about 3 lakhs over and above the transaction shown in the pass book - Ex.A.41. The tampering of franking machine alleged by the prosecution has been accepted by the Courts below, relying upon the evidence of P.W.18 and Ex.P.62. The franking machine marked as M.O.1 was found in the premises of M/s.Absolute Bulk Mailers at No.165, Arcot Road, Vadapalani and seized by the respondent Police whereas, the said franking machine has been used by M/s.Metro Corporate Services. This fact is not denied by the accused.

18.The accused/appellant herein are the persons who are running M/s.Metro Corporate Services. The payments were made both to M/s.Absolute Bulk Mailers as well as M/s.Metro Corporate Services through vouchers and cheques. Both of them have used only one franking machine and the licence is in the name of P.W.25 Mr.Somasundaram. The payments were deposited in SBI Avadi Branch in the accounts of M/s.Absolute Bulk Mailers as well as M/s.Metro Corporate Services. P.W.16 has deposed that these accounts were maintained by the petitioners herein. Therefore, making unlawful gain through forging and tampering the franking machine is found to be well proved.

19.The second contention of the prosecution is that franking machine was tampered with the help of P.W.18 and he has demonstrated before the Investigating Officer how, he has tampered the franking machine and the said demonstration has been recorded as a proceeding and marked as Ex.A.62.

20.P.W.1 – Mr.Govindasamy, the defacto complainant while in the witness box has deposed that there are two franking machines shown before him in the Court one is operated manually and the another electronically. P.W.18, the Approver claims that he was an employee in M/s.Kores India between 1994-2000 as service engineer thereby he is an expert in handling the franking machine. He in his evidence has identified the M.O.1 franking machine consist of three parts and it was the machine he tampered on the request of the accused.

21.The case of the prosecution is that despatch slip of the Postal Department based on which, the payment made were fabricated in connivance with the Postal Staffs. Unfortunately, none of the postal staffs who connived with these accused/petitioners are made as accused. Neither there is evidence to show the despatch slips are forged documents. In fact, the Postal Staffs who have been examined on behalf of the prosecution have positively deposed that the despatch slips are genuine and not forged. This will not exonerate the appellants, because unless and until there was any tampering in franking machine, there is no possibility of issuing despatch slips with franking seal. So, whatever despatched with franking stamp been paid based on the despatch slips issued by the postal authority. Therefore, the accused/petitioners are bound to explain the difference between the payment made by them and what is reflected in the passbook – Ex.41. The actual payment received from the LIC based on the despatch slips is higher than the payments made to the postal department.

22.As found by the Courts below, Rs.5,04,598/- has been paid by the LIC based on the despatch slip and the prosecution has proved that despatch slip has been issued by the Postal Department on the bulk mailing done through franking machine and the franking machine proved to be tampered with the help of P.W.18. The evidence of P.W.1 that two franking machines were found before the Court has been properly reconciled through the evidence of P.W.18 who has explained that the franking machine consisting of three parts and in fact, the trial Court who has seen the Material Object has referred about the deposition of P.W.1 and P.W.18 in respect of M.O.1 and observed that there is no two franking machines before the Court but only one consists of three parts.

23.In respect of the proceedings – Ex.P.62 which demonstrate how the tampering has been done by P.W.18 has also been videographed and the CD is marked as M.O.2. This endevour has been taken by the prosecution to establish before the Court how franking machine has been tampered without damaging the seal. If really, the defence want to demonstrate what is found in the proceedings Ex.P.62, is contra to what is recorded in the video M.O.1. They had the opportunity to do so which they have not done either before the trial Court or before the First Appellate Court. It is too late for them to say that the trial Court erred in relying upon Ex.P.62 for convicting them. Hence, this Court finds that there is no perversity in the finding of the trial Court or by the First Appellate Court which has confirmed the conviction of the petitioners.

24.In the light of overwhelming evidence against these petitioners, indicating tampering of franking machine in order to cause loss to the Postal Department and illegal gain for themselves based on forged document, this Court finds no error or perversity in the judgment of the trial Court.

25.In the result, the Criminal Revision is dismissed thereby confirming the concurrent judgments of the trial Court as well as the First Appellate Court.

12.09.2017

jbm

Index: No
Speaking Order/non speaking order

To

1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The V Additional Sessions Judge,
Chennai.

3.Inspector of Police,
SPE/CBI/ACB/Chennai,

4.The Public Prosecutor,
High Court, Madras.

G.JAYACHANDRAN.J.,

jbm

Pre Delivery Judgment made in
Crl.R.C.No.84 of 2015

12.09.2017