

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.11.2017

Pronounced on :28.11.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Criminal Appeal Nos.339 and 340 of 2008

R.Vinayagamurthy

.. Appellant in both
appeals

/versus/

The State rep.by
The Inspector of Police,
SPE/CBI/ACB/Chennai-6,
R.C.No.0049(A)/2000

.. Respondent in both
appeals

Crl.A.No.339 of 2008: Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of conviction of sentence imposed on him by the learned Additional Special Judge for CBI Cases at Chennai passed in C.C.No.77 of 2001 on 08.02.2008.

Crl.A.No.340 of 2008: Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of conviction of sentence imposed on him by the learned Additional Special Judge for CBI Cases at Chennai passed in C.C.No.76 of 2001 on 08.02.2008.

For Appellant	:Mr.G.Saravanan(both appeals)
For Respondent	:Mr.K.Srinivasan, Spl.PP for CBI Cases (both appeals)

JUDGMENT

These two criminal appeals are arising out of a common judgment passed by the trial Court in C.C.Nos.76 and 77 of 2001.

2. The appellant is one and the same in both the appeals. The nature of the allegation is also same in both the appeals. Since misappropriation runs between 1998 to 2000, for period of two years two cases had been registered against the appellant.

3. The charge against the appellant in C.C.No.76 of 2001, which is the subject matter of CrI.A.No.340 of 2008, is that the accused Vinayagamurthy being a public servant employed as Deputy Store Keeper (Samples) was in charge of receiving cash for selling of tender applications, Employees Sales, Test Charges etc., on behalf of the Integral Coach Factory (ICF), Perambur, Chennai between 23.04.1998 and 19.04.1999. The accused had collected a sum of Rs.6,22,383/- as Deputy Store Keeper (Samples). Whereas, he has remitted only Rs.5,98,820/-, as a result, shortage of Rs.23,563/- had been misappropriated by him and thereby committed an offence under Section 409 IPC and being a public

servant for misconduct and converted the money entrusted to him for his own use under Section 13(2) r/w 13(1)(c) of the Prevention of Corruption Act, 1988.

4. The trial Court in C.C.No.76 of 2001, after appreciating the evidence, has held that the accused, who is supposed to remit the collection immediately, had not done so on several occasion. He had remitted lesser than the amount, what he has collected and thereby, between 23.04.1998 and 19.04.1999, he had misappropriated a sum of Rs.23,563/- and convicted the accused Vinayagamurthy for offence under Section 13(2) r/w 13(1)(c) of the Prevention of Corruption Act, 1988 and sentenced him to undergo one year Rigorous Imprisonment and fine of Rs.25,000/- in default to payment of fine to undergo imprisonment for a period of three months. Against the said judgment of the trial Court, the appellant has preferred Crl.A.No.340 of 2008.

5. Similarly, in C.C.No.77 of 2001, during the period from 27.04.1999 to 18.04.2000, the accused was charged for misappropriation of Rs.1,74,397/-. During the said period, the accused was absent on

certain dates, as per the attendance register marked on behalf of the accused and a sum of Rs.38,740/-, out of the alleged remittance of Rs.10,14,269/-, was not collected by the accused and therefore, that amount has to be deducted as against the alleged short payment of Rs.1,74,397/-. After deducting the sum, the trial Court had held the accused guilty for misappropriating a sum of Rs.1,35,657/- from April 1999 to March 2000 and convicted the accused Vinayagamurthy for offence under Section 13(2) r/w 13(1)(c) of the Prevention of Corruption Act, 1988 and sentenced him to undergo two years Rigorous Imprisonment and fine of Rs.1,00,000/- in default to payment of fine to undergo imprisonment for a period of one year. Against the said judgment of the trial Court, the appellant has preferred CrI.A.No.339 of 2008.

6. The trial Court, taking note of the fact that the money misappropriated by the accused has been paid, has not imposed separate sentence for the offence under Section 409 of IPC, The appellant herein has challenged the judgment of conviction and sentence on the ground that there was no intention to misappropriate the money entrusted to the appellant. Even according to the evidence as appreciated by the trial

Court, apart from the appellant, there were other persons, who were in charge of collecting the cash for sale of Tender Applications, Employee Sales, Test Charges etc. Though they were named as accused in the First Information Report, the appellant alone was isolated and victimised in the final report. The fact that there was no locker, over load of work and compulsion to collect the cash beyond the time limit, resulted in shortage of payment. However, even as deposed by PW1 [Mr.Kutty Krishnan], there was excess remittance made by the appellant on certain dates, this clearly indicates that the appellant had no *mens rea* to appropriate the government money, whatever shortage is due to work pressure and lack of assistants. The trial Court has failed to consider that this fact and has erroneously convicted the appellant. Further more, the learned counsel appearing for the appellant submitted that the sentence imposed on the appellant is very harsh and in any event, it has to be re-considered.

7. The learned Special Public Prosecutor for CBI Cases appearing for the respondent submitted that it is a clear case of misappropriation by the appellant, who was entrusted with the responsibility of selling tender applications, test charges and other receipts on behalf of Integral Coach

Factory [ICF]. Every day collection has to be remitted to the Assistant Chief Cashier. Cash receipts issued by the accused person, the remittance voucher preferred by him and submitted to the Chief Cashier, did not tally for several days during the period from 23.04.1998 to 19.04.1999. The internal audit was conducted by PW1[Mr.Kutty Krishnan], Assistant Controller of Stores, ICF, Perambur and found that for the accounting year 1998 to 1999, there was short remittance of Rs.23,563/- and for the accounting year 1999-2000, there was short remittance of Rs.1,74,397/-.

8. To prove the case against the appellant, the prosecution has marked 2801 Exhibits. The trial Court, after considering the receipts, relied on by the prosecution, which are cash receipts issued by the accused, cash remittance voucher preferred by the accused for pay collection, found that out of the alleged amount of Rs.10,14,269/- to have been collected by the accused, during the financial year 1999-2000, the receipts were not issued by him for the tune of Rs.38,740/-. After deducting the same, the trial Court has rightly held that a sum of Rs.1,35,657/- has been misappropriated by the appellant during the financial year 1999-2000. Since the misappropriation is clearly established through documents and

the testimony of PW1 to PW5, who are the officials of Integral Coach Factory(ICF), there is no error in the judgment of the trial Court. The guilt of the appellant has been proved beyond doubt. Hence, this appeal is to be dismissed.

9. Point for consideration:-

Whether the trial Court erred in appreciation of evidence placed before it?

10. On perusal of the evidence let in by the prosecution, the testimony of the prosecution witnesses and the documentary evidence Exs.P1 to P2801 and the defence documents marked as Exs.D1 to D27, the trial Court has rightly appreciated the evidence let in by the prosecution as well as the defence. While daily collection, which reflected through cash receipts, is to be remitted the next day through Integral Coach Factory(IFC) cash remittance. However, cash receipt voucher and cash remittance are not tallied for several days. After comparing the receipts and remittance, the trial Court had identified the short remittance of Rs.23,563/- during the period from 23.04.1998 to 19.04.1999. In

Paragraph No.14 of the trial Court judgment, the trial Court has discussed each and every receipts and remittance and how the short remittance of Rs.23,563/- has been arrived at by the prosecution. Similarly, the trial Court has taken note of the defence Exhibits regarding collection made by other staff of Integral Coach Factory (ICF), when the accused was absent and has given due deduction for those collections, which were not remitted. Accordingly, the trial Court has found that the collections on 27.04.1999 to 05.07.1999, 06.07.1999 and 03.12.1999 to the extent of Rs.38,740/- was not collected by the accused person and therefore, this amount cannot be considered as misappropriated by the accused/appellant. Having deducted this amount, for rest of the money collected by the accused person during the period from 27.04.1999 to 18.04.2000, the short remittance of Rs.1,35,657/- is found to be misappropriated by the appellant.

11. This Court after going through the judgment of the trial Court, the submissions made by the appellant and the learned Special Public Prosecutor for CBI Cases appearing for the respondent, finds that there is no reason to interfere with the finding of the trial Court. It is made clear

that in the case of misappropriation by the appellant herein, the subsequent remittance of the shortage made mitigate the sentence, but cannot interfere with the finding of the conviction in both the cases.

12. In the result, **Criminal Appeal No.340 of 2008 is dismissed.**

The conviction and sentence imposed on the appellant in C.C.No.76 of 2001, dated 08.02.2008 is hereby confirmed.

13. In Criminal Appeal No.339 of 2008 is concerned, the learned counsel appearing for the appellant submitted that the appellant was unable to pay the fine imposed on him immediately after the judgment and therefore, he was imprisonment for nearly 6 months, before he could pay the fine amount. Therefore, considering the fact that the appellant has already remitted the alleged misappropriated amount and paid the fine of Rs.1,00,000/- and he has already undergone 6 months imprisonment, leniency may be shown in the sentence imposed.

14. Considering the said submission, this Court of the view that the period of sentence imposed on the appellant in C.C.No.77 of 2001 is

modified to the effect the appellant shall undergo Rigorous Imprisonment for a period of 1 year instead of two years. The period of imprisonment already undergone by the appellant, if any, is to be set off. Accordingly, **Criminal Appeal No.339 of 2008 is disposed of.**

28.11.2017

Index:Yes/No

Internet:Yes/No

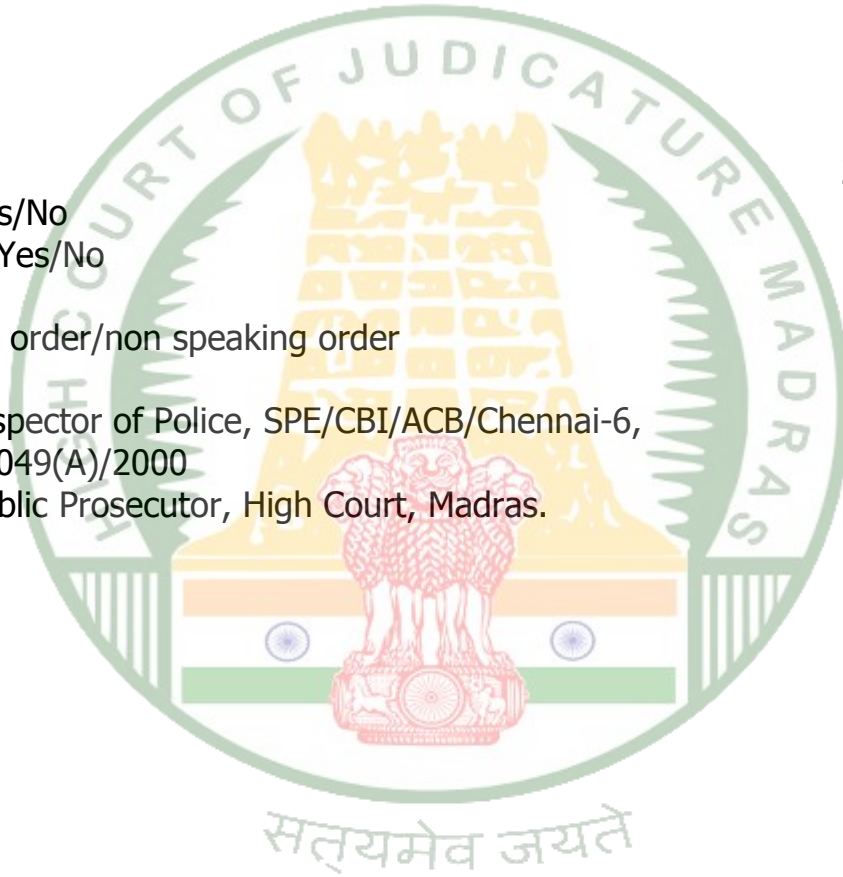
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Speaking order/non speaking order

To

1.The Inspector of Police, SPE/CBI/ACB/Chennai-6,
R.C.No.0049(A)/2000

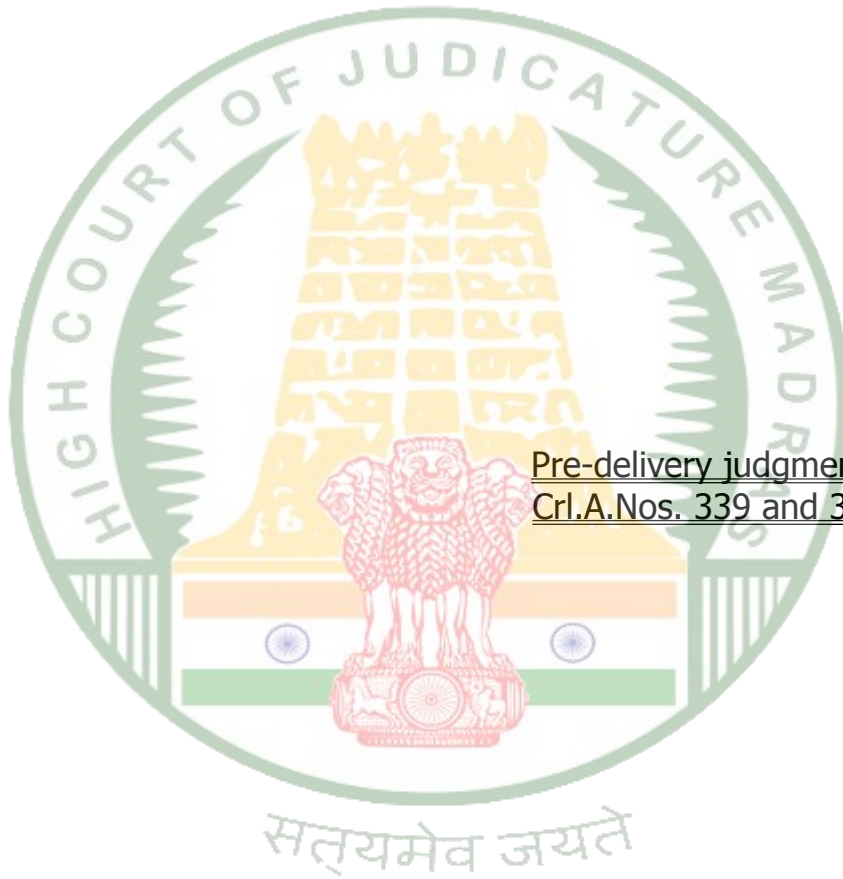
2.The Public Prosecutor, High Court, Madras.



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Dr.G.Jayachandran,J.

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Pre-delivery judgment made in
Crl.A.Nos. 339 and 340 of 2008

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