IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :01.09.2017

PRONOUNCED ON : 22.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.439, 387, 385, 386, 402, 451 & 388 of 2008

1. P.V.Jeganathan ... Appellant/A1 (in C.A.No.439 of 2008)

2. S.Paulraj ... Appellant/A6 (in C.A.No.387 of 2008)

3. Smt. Usha Selvam,
   Proprietor, M/s. Parimalan Fertilizers,
   1/14, State Bank Colony,
   Kancheepuram-631 503. ... Appellant/A7 (in C.A.No.385 of 2008)

4. M.Krishnamoorthy,
   Proprietor, Vijayakakshmi Agro Services,
   No.19-A, Anna Salai, Thiruvannamalai-600 606. ... Appellant/A9 (in C.A.No.386 of 2008)

5. K. Jayabarathi ... Appellant/A10 (in C.A.No.388 of 2008)

6. A.Ahmed Basha ... Appellant/A13 (in C.A.No.402 of 2008)

7. C.Somasundaram ... Appellant/A8 (in C.A.No.451 of 2008)

.. Vs ..

State represented by
The Inspector of Police,
Central Bureau of Investigation,
Special Police Establishment,
Anti Corruption Branch,
Shastri Bhavan, 3rd Floor,
Haddows Road,
Chennai - 600 006. .. Respondent (in all the Criminal Appeals)

Prayer in Criminal Appeal Nos.439, 387, 385, 386, 402, 451 & 388 of 2008: Criminal Appeals filed under Section 374 of Cr.P.C., to set aside the judgment passed against the Appellants/A1, A6, A7, A8, A9, A10 and A13 on 30.05.2008 in C.C.No.147 of 1997 on the file of the IX Additional Special Judge for CBI Cases at Chennai and acquit them from all the charges.

For Appellant	:	M/s.R.Rajasekar & P.Padmeshwari (in Crl.Appeal No.439 of 2008)
For Appellants	:	M/s.V.S.Venkatesh (in Crl.Appeal No.385 & 386 of 2008)
For Appellants	:	Mr.M.Purushothaman (in C.A.Nos.387 & 388 of 2008)
For Appellant	:	Mr.D.Bharatha Chakravarthy For M/s.Sai Bharath & Ilan, (in C.A.No.402/2008)
For Appellant	:	Mr.D.Selvam For M/s.V.Krishnakumar, (in C.A.No.451/2008)
For Respondent	:	Mr.K.Srinivasan Special Public Prosecutor for CBI Cases

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COMMON JUDGMENT

These appeals are preferred by the convicted accused arrayed as A1, A6, A7, A9 and A10 in C.C.No.147 of 1997 on the file of the Additional Special Judge for CBI Cases at Chennai.

2. The brief facts of the case is that M/s Rastriya Chemicals & Fertilisers (RCF) is a Government of India undertaking having office throughout the country. P.V.Jeganathan (A1) was the Marketing Manager of Tamil Nadu

Region during 1987 to 1990 in that Company. While P.V.Jeganathan (A1) discharging his duty as Marketing Manager conspired with the other accused, who are the authorized dealers in fertilisers under the RCF and in pursuant to the said conspiracy, fertilisers were supplied to the dealers over and above the Bank Guarantee. As quid pro quo for such excessive supply, the dealers have credited a total sum of Rs.6,74,395/- into the account of Anuradha Traders at Union Bank of India, College Road, Chennai. The said Anuradha Enterprises is a partnership concern owned by A2 and A3, who are none other than the wife and brother of A1.

3. In support of their case, the prosecution has examined 19 witnesses and had marked 102 exhibits through them. On behalf of the accused one witness and 56 documents were marked.

4. While the prosecution contended that the dealers were appointed as per the terms and conditions of contract entered between the RCF and the concerned dealers, and as per the terms of contract, the fertilisers will be supplied only on cash and carry basis and in case of credit sale it should be backed by bank guarantee. In any event the credit supply shall not exceed over and above the bank guarantee furnished by the dealers.

5. Whereas the first accused in his capacity as the Marketing Manager colluded with the dealers and had supplied goods manifold than the bank guarantee furnished by them. Thereby, huge outstanding to the Company has incurred. The field officers were orally instructed by A1 to deliver the fertilisers to the dealers based on blank deliver notes without proper invoice.

6. In support of the case the rules and regulations and circulars relating to the sale of fertilisers marked as Ex.P29, Ex.P30, Ex.P31 and Ex.P32 to show that fertilizers ought to be sold on cash and carry basis and in case of, credit it should be backed by bank guarantees. The Demand Draft drawn in favour of the Steel Authority of India by the Proprietor of Pasumai Enterprises arrayed as (A5) was handed over to P.V.Jeganathan (A1), who in turn gave it to his brother the third accused. He in turn paid the Demand Draft to Steel Authority of India and steel was supplied against the said Demand Draft to Anuradha Enterprises.

7. Similarly, five cheques each for Rs.50,000/- were drawn by one K.Bose, arrayed as (A11) and the cheques were encashed by Anuradha Enterprises. Another sum of Rs.1,24,395/- by way of money transfer by A.R.Kabeer, arrayed as (A4) was credited into the account of Anuradha

Enterprises. Pointing the statement of accounts showing overdue against each of the accused dealers and the above said payments credited into the account of Anuradha Enterprises, it were alleged that the payments were quid pro quo for the excessive credit supply made to the accused dealers.

8. The contention on behalf of the accused dealers before the Trial Court was that, though there was an agreement of cash and carry, due to slump in sale of fertilizers and huge stock been piled up, the manufacturer took a decision to enhance their sale by dumping stock to the dealers over and above the bank guarantee furnished by them and forced them to sell their products. To prove the said fact, one of the accused has examined himself and as DW1 also marked 56 documents which are related to the transaction between the dealers and RCF, complaint made in the criminal cases for dishonouring cheques and the civil suits for recovery of money against goods sold and delivered to show that it is purely a civil transaction where the contract provides for arbitration proceedings. In spite of that, due to some internal dispute among the officers of RCF, the criminal case has been initiated against the dealers besides civil suits, as if they conspired to cheat RCF in connivance with A1 to A3.

9. The Trial Court after considering the evidence let in by the

prosecution as well as the defence held that there was no quid pro quo between A2, A3 and the dealers arrayed as A4 to A15. Hence, acquitted A2 and A3. The explanation given by K.Bose (A11) that the cheques were issued to Anuradha Enterprises for purchase of Steel was accepted and the theory of prosecution that there was quid pro quo and pecuniary advantage for A1 by making excess supplied to the traders was disbelieved and rejected.

10. However, the trial court has held that A1, A6, A7, A9 and A10 guilty of offences under section 120 (b) r/w 13 (1) (d) r/w 13 (1) Prevention of Corruption Act since they have conspired to make pecuniary advantage by abusing the official position of A1.

11. As a result A1 found guilty for the offences under section 120 (b) r/w 17 (1) (b) r/w 13 (1) Prevention of Corruption Act and sentenced to under go one year imprisonment and to pay fine of Rs.5,00,000/-. For the offences under section 13 (2) r/w 13 (1) (b) he was sentenced to under go one year imprisonment and to pay fine of Rs.5,00,000/-. The accused A6, A7, A9 and A10 were found guilty of offence under section 120 (b) r/w 13 (1) (b) r/w 13 (2) of Prevention of Corruption Act and sentenced to under go one year Rigorous Imprisonment and to pay fine of Rs.10,00,000/-. In so far as remaining accused A2, A3, A5, A11, A12, A14 and A15 are concerned the Trial

Court has held that the prosecution has failed to prove their involvement in the conspiracy and therefore, acquitted them from all the charges. Since A4 died on 16.08.2005 pending Trial, the charges framed against him got abated.

12. P.V.Jeganathan (A1) is the appellant in Criminal Appeal No.439 of 2008. In his grounds of appeal he has contended that the ingredient of Prevention of Corruption Act, has not meted out by the prosecution to convict him. There was no charge of cheating or falsifying account or forgery against A1. He, as the Marketing Manager of the Rastriya Chemical Fertilizer, is supposed to oversee the activities of the Field Officers, who are directly in contact with the dealers. As per the indent placed by the dealers the Field Officers are responsible for the supply and recovery of money. As their Superior, he has the responsibility of supervising the over all sale and collection. Dealers are appointed by the Board of Company and A1 has no role in the appointment of dealers.

13. Regarding the circular and rules and regulations issued by the Company, more particularly, Ex.P30 which prescribes upper limit for credit sale should be proportionate to the bank guarantee, it is contended that the said restriction was never been followed due to flexibility and competition.

The said fact has been spoken by PW2, PW8 and PW9. The credit restriction was not a hard and fast rule. During that period, excess stock in fertilizers and deficit in demand, forced the manufacturer not to restrict credit supply within the Bank guarantee limit.

14. It has also pointed out by the counsel that stock life of fertilizer being limited and due to monsoon failure both in South India as well as in North India, during the relevant point of time there was less demand for fertilizers and other competitors like SPIC, FACT, Neiveli were in the field. Hence, a policy decision was taken to dump fertilizers to the dealers without reference to the bank guarantee furnished by them. This factual scenario is admitted by the witnesses for prosecution. Though there was some delay on the part of the dealers in payment, all the accused dealers have settled accounts and all still continuing their dealership with RCF.

15. It is contended by the counsels representing the dealers that the Balance Sheet for the year 1988-1989, 1989-1990 and 1990-1991 will clearly show that the company had never stick to the condition that supply should not exceed bank guarantee. It is always been the trade practice that the huge stocks were dumped to the dealers and they were forced to sell it since there was an excess stock and heavy competition from other private

manufacturers. RCF chemical fertilizers being a government company, the time of supply was never been appropriate to the demand. Somehow the traders were able to off loan huge stock beyond their capacity and tried to market the product. However, due to monsoon failure, there was some delay in payment which has prompted the manufacturer to file suits for recovery of money. To arm twist the dealers, the criminal complaint has been registered.

16. The learned counsel appearing for the appellants further submitted that when there is no proof for pecuniary benefit accrued to A1 by abusing his position and having exonerated A2 and A3 on the ground the dealing with Anuradha Enterprises has nothing to do with excess credit supply and acquitting other dealers who repaid the money subsequent to the criminal case, there is no justification or reason to hold the appellants guilty. In the absence of evidence to prove pecuniary advantage to the public servant by abuse of his official position, the charges framed against the appellants/accused fails and the trial court judgement has to be reversed.

17. The moot point, in this batch of appeals is that whether the prosecution has proved conspiracy between the appellants to abuse the

official position to make any pecuniary benefit. No doubt, in Ex.P30 there is a provision that sale of goods shall be on cash and carry basis and in case of credit supply the value of supply should not exceed the bank guarantee furnished by the dealers. However, during the cross-examination of PW2, he has admitted that goods were supplied to the dealers on credit basis and value of the goods supplied used to go upto four times the bank guarantee furnished by the dealers. This version is corroborated by PW8 and PW10.

18. While the company has taken a policy decision to flout the upper-limit of credit supply, for years together and continue to supply over and above the credit limit, all of a sudden, they cannot attribute motive for excess supply and fix responsibility exclusively against A1 the Marketing Manager. From the evidence let in by the prosecution, it appears that there are Officers Superior to A1 who were monitoring the flow of stock and aware of the fact that goods are supplied in credit to dealers over and above the bank guarantee furnished by the dealers for considerable length of time.

19. If the Company policy was not to supply goods in credit beyond bank guarantee they should have not permitted the said practice for years together. This indicates that the market factor has forced the company to supply goods on credit over and above of the bank guarantee furnished by

the traders. All of a sudden, they cannot fix the responsibility upon one Officer alleging criminal conspiracy to make pecuniary advantage. The ingredients of the offences alleged is not at all made out in this case. It is illustrated through the statement of accounts marked as Ex.P48 and Ex.P56 that the manufacture had never taken bank guarantee into consideration for the supply of goods to the traders and consistently for years together goods were supplied beyond the Bank Guarantee limit furnished by the traders.

20. The main ingredient for conspiracy is that there must be an agreement (i) to do an illegal act or an act which is not illegal by illegal means. The act of supply of goods to an authorised dealer is not an illegal act. The supply of goods over and above bank guarantee had been condoned by the manufactures and had been accepted to be the trade practice. Therefore, no criminal intention on the part of the appellants proved by the prosecution. The other limb of the acquisition that excessive supply was made by A1 for a quid pro quo and to cheat RCF has been disbelieved by the trial court and no appeal is preferred against the acquittal of those charges.

21. The prosecution has miserably failed to prove the conspiracy charges against the petitioner. The Trial Court has not considered the fact elucidated by the defence through cross-examination of the vital witnesses

such as PW2, PW8 and PW10, who have spoken about the prevailing trade practice of supplying goods on credit to the dealers over and above the bank guarantee furnished by them. Failure on the part of the prosecution to prove the accused had intention to do an act which is not illegal by illegal means or an illegal act, warrants the judgement of the trial court to be reversed.

22. For the above said reasons, the appeals are allowed. The appellant/accused are acquitted of all charges. Fine amount paid shall be refunded to the appellants and the bail bond shall stand discharged.

22.09.2017

Index : Yes / No

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To

1. The IX Additional Special Judge, CBI, Chennai.

2. The Inspector of Police, CBI, Special Police Establishment,
   Anti Corruption Branch, Shastri Bhavan, 3rd Floor,
   Haddows Road, Chennai - 600 006.

3. The Special Public Prosecutor for CBI Cases,
   High Court, Madras.

Dr.G.JAYACHANDRAN.J.,

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Pre-Delivery Common Judgment made in
Criminal Appeal Nos.439, 387, 385,
386, 402, 451 & 388 of 2008

22.09.2017