

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2017

Pronounced on : 05.09.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Crl.A.No.458 of 2012

B.Prasath

..Appellant

/versus/

State rep.by
The Inspector of Police,
Vigilance and Anti-corruption
Special Branch, Salem
Cuddalore Cr.No.18/AC/1990

..Respondent

Criminal Appeal is filed under Section 374 of the Criminal Procedure Code against the judgment dated 26.07.2012 made in Special Case No.7 of 1998 on the file of the learned Chief Judicial Magistrate(Special Judge), Villupuram, Villupuram District.

For Appellant :Mr.K.Sreerangan

For Respondent :Mr.R.Ravichandran, GA (Crl.Side)

JUDGMENT

The appellant, who is arrayed as A8 in S.C.No.7 of 1998 on the file of the Chief Judicial Magistrate Court, Special Judge, Villupuram, Villupuram District found guilty of offences **(1)** u/s 120(B)IPC and sentenced to undergo RI for 1 year; **(2)** u/s 167 r/w 109 of IPC and sentenced to undergo 1 year RI and imposed a fine of Rs.1000/- I/d to undergo SI for 2 months; **(3)** u/s 477(A) r/w 109 of IPC and sentenced to undergo RI for 7 years and imposed a fine of Rs.3,000/- I/d to undergo RI for 1 year; **(4)** u/s 409 r/w 109 of IPC and sentenced to undergo RI for 7 years and imposed a fine of Rs.3,000/- I/d to undergo RI for 1 year; **(5)** u/s 420 IPC and sentenced to undergo RI for 7 years and imposed a sum of Rs.3,000/- I/d to undergo 1 year RI; and **(6)** u/s 5(2) r/w 5(1)(c) and (d) of PC Act, 1947 and sentenced to undergo RI for 7 years and imposed a sum of Rs.3,000/- I/d to undergo RI for 1 year. Aggrieved by the said conviction and sentence, the present appeal is filed.

2.The brief facts of the case:-

Prior to 1985, the Panchayat Unions used to procure their stores requirements directly from the manufacturers and traders, which

became a source of corruption. Hence, instruction was issued to the all Panchayat Unions to purchase their stores requirements from the Co-operative Societies or Government or Quasi-Government Agencies listed in G.O.Ms.No.1459, Industries (SIC.1) Department, dated 14.12.1984. However, to circumvent the said Government order, the accused, who fall under three categories viz., the public servants the officers of Thiruvanninallu Panchayat Union (A1 to A5), the President and Secretary (A6 and A7) of Vandipalayam Co-operative Store, Cuddalore and the son and mother(A8 and A9) owners of the shop in the name and style of Gajalaxmi Store, have conspired during the relevant point of time to cheat the Panchayat Union fund meant for Rural Development and other Schemes. Pursuant to the said conspiracy, they agreed to do illegal act of cheating, breach of trust, fabrication of documents, falsification of account by inflating the price of materials procured from private agencies through Co-operative Stores and sharing the difference in the price so inflated. Accordingly, a voucher for a sum of Rs.97,705/- was raised by the Thiruvannainallur Panchayat Union as if the electrical materials were purchasing from Vandipalayam Co-operative Store. For the said purpose, 8th accused [Prasad] and 9th accused [Gajalaxmi] have prepared bills for the likesum with inflated

price and have received the consideration from the Vandipalayam Co-operative Store. The above said offence came to light, when an enquiry was conducted by the Registrar of Co-operative Society. While other Co-operative Stores have purchased the similar materials for a lesser price, the Vandipalayam Co-operative Store has purchased the materials at inflated rate and supplied to several Panchayat Unions. The Public servants of the Thiruvannainallur Panchayat Union and the President and Secretary of Vandipalayam Co-operative Store have shared the excess amount. 67 cases were registered by the Vigilance and Anti-Corruption Department in this regard and this is one such case.

3. To prove their case, the prosecution has examined 15 witnesses and 32 exhibits. PW1 [Praveen Kumar] the Then District Collector, who is the competent authority to grant sanction has spoken about the subjective satisfaction to prosecute the public servants [A1 to A5]. Since there was no direct evidence available for the prosecution, Mr. Govindan, the Special Officer of Vandipalayam Co-operative Store was granted pardon. He treated as approver and examined as PW10. He has spoken in detail about the conspiracy between the accused to cheat the Thiruvannainallur Panchayat Union fund by inflating the

prince of electrical gadgets purchased from A8 and A9 through the Vandipalayam Co-operative Store.

4. The trial Court, after considering the evidence of the approver who has been corroborated through documentary evidence and ocular evidence of PW12 and PW13 have given comparative price list of the products purchased by the Vandipalayam Co-operative Store from Gajalaxmi Steel Traders, has found A3, A4 and A8 guilty of the offence charged. Whereas A5 was acquitted for want of evidence and the rest of the accused A1, A2, A6, A7 and A9 died, pending the trial and hence, the charges against them were abated.

5. Learned counsel appearing for the appellant, apart from the questioning the probative value of the approver as well as other witnesses relied on by the trial Court for conviction, took up the plea that the specific case of the prosecution is that, Gajalaxmi Stores have supplied the materials with inflated price to the Society and the Society has supplied the same to the Panahcyat Union. The appellant, who is arrayed as A8, is not the proprietor of Gajalaxmi Store. He has been wrongly implicated in this case and only evidence against is the

evidence of PW4, who has deposed that he was accountant for Poopathi Steel Traders, Karunamoorthi Stores, Gajalaxmi Steel Traders and her sons Chakaravarthi, Prakash. He has identified the bills Ex.P4 stores of Gajalaxmi Steel Traders and he has prepared the bills at the instance of the shop owner. When there is evidence to show that A8 Prasad is the owner of the Gajalaxmi Steel Traders, even the prosecution case is that Gajalaxmi Steel Traders is a Proprietary concerned owned by his mother Gajalaxmi, the appellant cannot be mulcted with criminal liability.

6. The learned counsel appearing fro the appellant submitted that the allegation of the prosecution that a sum of Rs.52,335.50 was misappropriated by the accused, is not proved. The order of the learned Chief Judicial Magistrate granting pardon to the approver Govindan itself suffers infirmity and the tainted evidence of PW10 [Govindan] ought not to have relied on by the trial Court for rendering conviction.

7. The learned counsel appearing for the appellant specifically submitted that one of the pre-conditions for tendering pardon to

approver is that the approver should disclose all the facts within his knowledge both inculpatory and exculpatory, which is helpful to the prosecution to arrive at a right conclusion and fix the real accused guilty of the crime. When the approver claims that there was party to the conspiracy to inflate the price of the materials purchased and to share the difference at particular percentage among themselves, he has not disclosed how much money he got and how much money the other accused got in the said conspiracy. Though the prosecution has alleged that Rs.52,335.50 was misappropriated by all the accused cumulatively, it has erroneously relied on Ex.P23-comparative chart prepared by the Investigating Officer, which has no probative value and has not been tested through the witness competent to speak about the price shown in the comparative chart. PW7 [Chandrasekaran], PW8 [Amalraj] and PW14 [Chandrasekaran], who are all the officials attached to Commercial Tax Department, are not competent witnesses to speak about the price of the goods prevailing during the year 1984-1985. The price quotations collected by these witnesses on behalf of the prosecution cannot be a corroborative piece of evidence to hold that the electrical materials supplied to the Thiruvannainallur Panchayat Union at inflated price. The quotations received from the various Traders does

not disclose the date of manufacturing or manufacturer's name or its quality. Since there will be a price fluctuation based on the quality and the manufacturer, the comparison cannot be drawn.

8. In support of his submission, it is also submitted that though two of the shop owners namely, PW12 [Rajasekaran], PW13[Ganesan] were examined on behalf of the prosecution, even these two witnesses have not specified about the quality and brand of the products. An appropriate comparison of price can be done only among same product and not with similar product. The price of unequal product cannot be compared to conclude the price, which has been inflated to make unlawful gain. Further, the learned counsel submitted that 65 cases of similar in nature were registered by the respondent police and all the cases ended in acquittal and in few cases, the appeal was preferred by the State and the same was also dismissed. This is the only case, where the trial Court has convicted erroneously based on the approver evidence.

9. The learned Government Advocate (Crl.Side) appearing for the State submitted that it is not only the evidence of PW10 [Govindan] but

also the evidences of PW4[Sukumar], who has spoken about the preparation of Bills Ex.P4 series, which are dated 04.10.1985; PW8[Amalraj], who has spoken about the price quotations received from the Ganesan Electrical marked as Ex.P7 and PW13[Ganesan], who is the Proprietary of Ganesan Electrical, have identified the quotations given by him as Ex.P13, which will clearly show that the price of the electrical materials purchased from Gajalaxmi Store was inflated to make unlawful gain by the accused. Therefore, in the light of the corroboration adduced by the prosecution, which enhanced the evidence of PW10[Govindan] approver points the guilty of the accused, the trial Court has rightly convicted him since his guilty has been proved beyond reasonable doubt.

10. The learned Government Advocate (Crl.Side) further contended that though the bills were raised in the name of Gajalaxmi Steel Traders, the appellant is none other than the son of Proprietor of Gajalaxmi Steel Traders and he has been actively participated in the conspiracy and preparing the forged bills. PW4, in his evidence, has clearly deposed about the role of Gajalaxmi [A9] as well as her son in preparing the inflated bills in the name of Karunamoorthi Stores,

Poopathi Stores, Poopathi Steel Traders, Gajalaxmi Steel Traders. Therefore, in the scheme of conspiracy, the appellant had taken active role to cheat the Panchayat Union Fund. Hence, he cannot be exonerated. The trial Court had rightly held the conviction and sentence against him to undergo imprisonment, which requires no interference.

11. This Court, in the connected appeal preferred by one of the accused by name Selvaraj in Crl.A.No.461 of 2012, has held that the prosecution has proved the guilty of the accused not only through the evidence of approver [PW10-Govindan] but also through other evidence both document and oral. Apart from the approver, the other witnesses and documents prove the charge against that appellant, who as a public servant has misconducted himself to make unlawful gain.

12. Whereas the appellant herein is a private individual. A very crucial defence has been taken by the learned counsel appearing for the appellant that ingredient of the conspiracy or cheating or fabricating document are not available to convict this appellant. In this case, the learned counsel appearing for the appellant drew the attention of this

Court regarding the portion of the evidence given by the approver[PW10], who has spoken about the manner in which, the conspiracy was hatched by the accused.

13. On perusal of PW10-Govindan, this Court finds that PW10 has mentioned Muniappan[A1], Kothandapani[A2], Ramalingam[A3], Selvaraj[A4] and Gajalaxmi[A9] as persons, who conspired to cheat the Panchayat Union fund by fabricating the price of the store materials. He has not mentioned the present appellant [Prasanth] as one of the conspirator. As per the evidence of PW4 is concerned, he has spoken about his role in preparing the bill Ex-P4 and he has deposed about the relationship between Gajalaxmi the Proprietor of Gajalaxmi Steel Traders and the present appellant and he has not spoken anything incriminating against the present appellant in respect of bills marked as Ex.P4 raised in the name of Gajalaxmi Steel Traders.

14. Therefore, this Court finds that in the absence of any incriminating evidence proved beyond reasonable doubt the appellant cannot be convicted for the charges framed against him. Just because, he happened to be the son of Gajalaxmi, he cannot be convicted.

Therefore, the conviction and sentence imposed on the appellant is liable to be set aside.

15. Accordingly, the Criminal Appeal is allowed and conviction and sentence imposed on the appellant by the learned Chief Judicial Magistrate, Special Judge, Villupuram, Villupuram District in S.C.No.7 of 1998 dated 26.07.2012 are hereby set-aside. The appellant is acquitted of the charges levelled against him and he is directed to be set at liberty forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him.

05.09.2017

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Index:yes/no

Internet:yes/no

Speaking order/non-speaking order

To

1.The Chief Judicial Magistrate, Villupuram, Villupuram District.

2.The Public Prosecutor, High Court, Madras.

3.The Section Officer, Criminal Section, High Court, Madras.

Dr.G.Jayachandran,J.

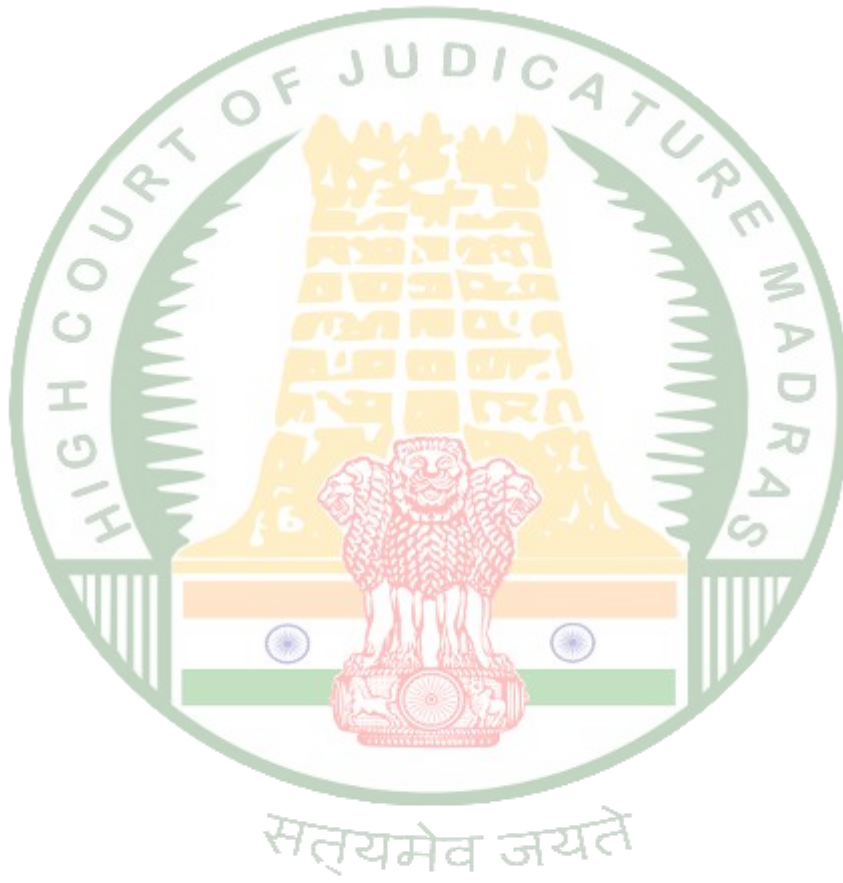
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Pre-delivery judgment made in
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