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.461 of 2012

1.N.Ramalingam(died pending appeal)

2.Selvaraj ..Appellants

/versus/

State rep.by
The Inspector of Police,
Vigilance and Anti-corruption
Special Cell, Salem
Cuddalore Police Station
(Crime No.18/AC/1990) ..Respondent

Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code against the judgment and conviction dated 26.07.2012 and made in Special Case No.7 of 1998 on the file of the Chief Judicial Magistrate/Special Judge, Villupuram, Villupuram District.

For Appellants :Mr.Muthumani Doraisami, SC
For Mr.Kandhan Duraisami for
2nd appellant

For Respondent :Mr.R.Ravichandran, GA(crl.side)

J U D G M E N T

The appellants are arrayed as A3 and A4 in S.C.No.7 of 1998 on the file of the Chief Judicial Magistrate Court, Special Judge, Villupuram, Villupuram District. Pending appeal, the first appellant namely, N.Ramalingam, died. The second appellant, who is arrayed as A4 found guilty of offences **(1)** u/s 120(B)IPC and sentenced to undergo RI for 1 year; **(2)** u/s 167 of IPC and sentenced him to undergo 1 year RI and imposed a fine of Rs.1000/- I/d undergo SI for 2 months; **(3)** u/s 477(a) 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 of IPC and sentenced him to under go 7 years RI and imposed a fine of Rs.3000/- I/d to undergo SI for 1 year; **(5)** u/s 420 of IPC and sentenced to undergo SI for 7 years and imposed a fine of Rs.3,000/- I/d to undergo RI for 1 year; and **(6)** u/s 5(2) r/w 5(1)(c) and (d) of PC Act, 1947 and sentenced to under SI 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 Gajalakshmi 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 [Gajalakshmi] have prepared bills for the likesum with inflated price and have received the consideration from the Vandipalayam Co-operative Store. The above said offence come 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. After filling the appeal, the 3rd accused/first appellant died and his Death Certificate has also been filed and the same was recorded.

5. Learned Senior Counsel appearing for the appellants submitted that except the evidence of approver, there is no materials to show that the appellants have committed the offence as alleged by the

prosecution. The trial Court ought to have looked for corroboration of approver evidence and it has relied upon the uncorroborated evidence of approver and found the appellants guilty.

6. The learned Senior Counsel for 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 Senior Counsel appearing for the appellants 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, has been inflated to make unlawful gain. Further, the learned Senior counsel submitted that 65 cases of similar 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, has identified the quotations given by him as Ex.P13, 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 them, since their guilty has been proved beyond reasonable doubt.

10. No doubt PW10 has not disclose the exact money received by him or the other accused. He has not even admitted any receipt of money. He has only spoken about the conspiracy of purchasing the product from Gajalaxmi Steel Traders. However, the evidence of PW12 and PW13 substantiate the case of the prosecution.

11. Section 133 of the Indian Evidence Act, 1872 speaks about the probative value of the approver evidence, which reads as under

> **133-Accomplice:-** An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

12. While referring Section 133 of the Indian Evidence Act, 1872 , it is necessary to make a reference to Section 114 illustration (b), which reads as under:

> **<u>114. Court may presume existence of certain facts:-</u>** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
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> **<u>Illustrations:</u>**
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> (b)That an accomplice is unworthy or credit, unless he is corroborated in material particulars.

13. A harmonious reading of these provisions of law of evidence is required, while appreciating the evidence of approver. Under Section 306 of the Criminal Procedure Code, while tendering pardon with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, one of the condition is that he should make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned.

14. In the light of the above legal provision, if one looks at the evidence of PW10 [Govindan], he has admitted that on the promise given by A1[Muniappan], A2[Kothandam], A3[Ramalingam], A4 [Selvaraj] and A9[Gajalaxmi], that the Thiruvannainallur Panchayat Union on purchase of its requirements directly from Gajalaxmi Steel Traders, they will offer 1% commission to the President and Secretary of the Co-operative Store; ½% commission to PW10 and 2 ½% commission to the Co-operative Store, he agreed to create documents as if Gajalaxmi Steel Traders supplied the materials to the Vandipalayam Co-operative Store and the Vandipalayam Co-operative Store in-turn sold the materials to the Thiruvannainallur Panchayat Union. The bills of Gajalaxmi Steel Store were marked as Ex.P4 series. The bills of the Vandipalayam Co-operative Store were marked as Ex.P8 series. The cash book of the Co-operative Store was marked as Ex.P9 and the entry of Rs.97,705/- found in it was marked as Ex.P10.

15. On a cumulative assessment of the evidence relied on by the prosecution, one could see that the enquiry report conducted at the instruction of the Registrar of the Co-operative Society, which is marked as Ex.P6 and the comparative chart prepared by the Investigating

Officer, which is marked as Ex.P23 indicate that, the price of the products purchased by the Thiruvannainallur Panchayat Union from the Vandipalayam Co-operative Store were higher than the prevailing market price. However, as pointed out by the learned Senior Counsel appearing for the appellants, the comparison is only in respect of the products but, the Brand and the quality are not mentioned in none of the documents.

16. It is a common knowledge and has also been elucidated from the evidence of prosecution witness that the price of any goods will depend upon the date of manufacturing and the manufacturer and also the price depend upon the quality. This lacuna may help the accused only to take the defence that the amount of Rs.52,335.50 alleged to have been misappropriated by these accused, may not be correc. But undoubtedly in the light of the evidence given by Ganesan[PW13], who is one of the Trader in the goods, which are subject matter of this case as well as Rajasekaran [PW12], who is the owner of the Raju Stores Hardwares and the author of Ex.P12, the trial court has safely concluded that the accused has involved in making unlawful gain by inflating the price of the products which they have

purchased for the Panchayat Union from the Panahcyat Union fund for which the President and Secretary of the Vandipalayam Co-operative Store conceived and abetted.

17. Yet another point, which clinchingly point the guilt of the accused is that the date on which the alleged bill and voucher being prepared. Ex.P10 the cash Register maintained by the Vandipalayam Co-operative Store is dated 21.07.1985. This cash register indicates that on 21.07.1985, the Co-operative Store has sold the materials worth of Rs.97,905 to the Thiruvannainallur Panchayat Union on credit basis. Ex.P2 is the bill for contingent charges prepared by the Thiruvannainallur Panchayat Union, which is dated 3.10.1985 wherein it is stated that costs of the spare part materials, electrical goods supplied by the Vandipalayam Co-operative Store, Cuddalore worth of Rs.97,705/-. It also indicated the sanction proceedings No.6772/85 is dated 25.09.1985 and the stock has been entered in the Stock Register page No.1087 whereas, the credit bill of Gajalaxmi Steel Traders for supplying materials worth of Rs.97,705/- to Vandipalayam Co-operative Store is dated 04.10.1985. So, on the face of the records itself, it could not be easily seen that A6[Munusamy] has created record in the cash

register maintained by the Co-operative Store as if the Stores have sold the goods on credit basis to the Thiruvannainallur Panchayat Union for Rs.97,705/- as early as on 21.07.1985. The bill for the said amount has been prepared by the Vandipalayam Co-operative Society only on 27.09.1985 which is marked as Ex.P8. This bill has been received by the Thiruvannainallur Panchayat Union on 03.10.1985 and the same is reflected in Ex.P2, whereas the actual supplier namely Gajalakshmi Store has raised the credit bill only on 04.10.1985 under Ex.P4 series. The sequence of date found in these exhibits clearly shows that the documents to show as if the Panchayat Union has placed order to the Co-operative Society and the Co-operative Society in turn has purchased from the third party and sold to Panchayat Union are forged. This procedure has been adopted by circumvent to embargo upon the Panchayat Union from purchasing the goods or materials directly from the third parties. Ex.P32 the abstract of G.O.Ms.No.1459, Industries (SIC 1) Department, dated 14.12.1984 has laid down the procedure to be followed for the purchase of requirements of stores by the Government Department/Statutory Boards/Corporations/Local Bodies etc., Institutional priority in regard to purchase of stores etc., and indicates that if the stores are not available with the existing institutional listed, the procurer has to go for tender process. It also mandates under said G.O that the products purchased on priority basis should bear the seals of the manufacturing units and not the products merely procured and supplied by these units. To circumvent all the above said embargo the accused have created documents as if the products were procured from the Co-operative Stores. However, Exs.P2, P4, P8 have exposed the modus operandi of the accused. PW10[Govindan] the approver has spoken about the reason for which they have floated the Government Order and the motive and reward for doing the illegal act.

18. Though the prosecution has failed to arrived at the exact loss incurred by the Panchayat Union due to criminality of the accused, however, the loss incurred by the Panchayat Union is well established through documentary and oral evidence. Therefore, the appellant who is the privy to the conspiracy and crime cannot be exonerated from the charges.

19. The grounds challenging the trial Court reasoning is not sustainable in the light of the over whelming evidence against the accused.

20. Therefore, the judgment of the trial Court does not warrant interference by this Court. However, while considering the sentence imposed upon the appellants, this Court is of the view that the leniency has to be shown to the appellants taking note of the period consumed for concluding the trial and appeal and also the age of the appellants. Hence, the sentence imposed on the appellants is modified as under:

Conviction for the offence under section	***Sentence imposed by the trial Court***	***Sentence modified by this Court***
120(B)IPC	to undergo RI for 1 year	to undergo RI for 1 year
167 IPC	to undergo RI for 1 year	to undergo RI for 1 year
477(a) IPC	to undergo RI for 7 years	to undergo RI for 1 year
409 IPC	to undergo RI for 7 years	Tp undergo RI for 1 year
420 IPC	to undergo SI for 7 years	to undergo SI for 1 year
5(2) r/w 5(1)(c) and (d) of PC Act, 1947	to undergo SI for 7 years	to undergo SI for 1 year

The substantive sentence shall run concurrently. No change in the fine imposed by the trial Court. Period of sentence already undergo shall be set off under Section 428 of Cr.P.C. The Criminal appeal is disposed of accordingly.

05.09.2017

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Index:yes
Internet:yes

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
Crl.A.No.461 of 2012

05.09.2017