IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.06.2017

Date of Verdict: 19.07.2017

CORAM:

THE HONOURABLE MR.**JUSTICE N. SATHISH KUMAR**

Criminal Appeal Nos.161 and 162 of 2016
and Crl.M.P.No.7385 of 2016 in Crl.A.No.161 of 2016

G. Venkatanarayanan : Appellant in Crl.A.No.161 of 2016/ Accused No.1

P.N. Murali : Appellant in Crl.A.No.162 of 2016/ Accused No.2

Vs.

State represented by the Inspector of Police CBI, ACB, Chennai : Respondent/Complainant in both the appeals

PRAYER: Criminal Appeals filed under Section 374 r/w 382 of the Code of Criminal Procedure, to set aside the Judgment in C.C.No.8 of 2014 passed by the learned Special Judge for CBI Cases, XIII Additional Special Court for CBI Cases, Chennai dated 19-02-2016 by allowing the appeals.

For Appellant : Mr.A. Ramesh
Senior Counsel,
for Mr.C.Arunkumar

For Respondents : Mr.K. Srinivasan
Special Public Prosecutor
for CBI cases.

COMMON JUDGMENT

These appeals are preferred by the appellants, who are 1st and 2nd accused respectively in C.C.No.8 of 2014 on the file of the learned XIII Additional Special Court for CBI Cases, Chennai, against the conviction recorded by the learned Special Judge for CBI cases as follows:

1st Accused

Sl. No.	Charge No.	Convicted under P.C. Act	Conviction	With fine	In default
1	4	u/s.7 u/s.13(1)(d) r/w 13(2)	One year R.I. One year R.I.	Rs. 5,000/- Rs. 5,000/-	3 months S.I. 3 months S.I.
2	13	u/s.7 u/s.13(1)(d) r/w 13(2)	Two years R.I. Two years R.I.	Rs.10,000/- Rs.10,000/-	3 months S.I. 3 months S.I.
			Total Fine	**Rs.30,000/-**	

2nd Accused

Sl. No.	Charge No.	Convicted under P.C. Act	Conviction	With fine	In default
1	6	u/s.7 u/s.13(1)(d) r/w 13(2)	2 years R.I. 2 years R.I.	Rs. 5,000/- Rs.5,000/-	3 months S.I. 3 months S.I.
2	7	u/s.7 u/s.13(1)(d) r/w 13(2)	2 years R.I. 2 years R.I.	Rs. 5,000/- Rs. 5,000/-	3 months S.I. 3 months S.I.
3	12	u/s.7 u/s.13(1)(d) r/w 13(2)	2 years R.I. 2 years R.I.	Rs. 5,000/- Rs. 5,000/-	3 months S.I. 3 months S.I.
			Total Fine	**Rs.30,000/-**	

The sentences were ordered to run concurrently and the detention period of the accused were ordered to set off u/s.428 of Cr.P.C.

2. Since both the appeals have arisen out of the same judgment, they are taken up together and disposed of by this common judgment.

3. Following is the factual backdrop of prosecution case in brief:

3.(a) P.W.38 the investigating Officer, CBI, ACB, Chennai, based on the reliable information received on 11.02.2013, conducted a surprise check at the office of the Bureau of Indian Standards, Chennai, along with his team and independent witnesses. Subsequent to the surprise check, a case in Cr.No.06/2013 was registered against the officials of the Bureau of Indian Standards and some of the manufacturers of packaged drinking water and the proprietors of Aqua Farms.

3.(b) P.W.36 Deputy Superintendent of Police, CBI, on 11.2.2013, on reliable information about the accused who were working in the Marks department of Bureau of Indian Standards (BIS), Taramani, Chennai, were demanding Rs.10,000/- each, from certain companies involved in the business of packaged drinking water, to renewal their licenses without conducting prior inspection and also there was some other sources with regard to other companies, P.W.36 arranged team of officials and conducted search in the Bureau of Indian Standards at Taramani and also seized liquid cash Rs.60,000/- from A1 and also seized 7 files pertaining to the renewal of packaged drinking water, from A2. Surprise Check proceedings is Ex.P.28. P.W.38 received the FIR registered on the information in Ex.P.57, conducted investigation and arrested the accused on 12.12.2013. Before the arrest, he also conducted search on A1's house and seized Rs.15,29,150/- and other documents including foreign liquor and also seized certain diaries and documents from A2's house. Search Mahazars are Exs.P.55, P.56 and P.58. P.W.37 also conducted search in Srinivasa Packaged Drinking Water Company, Adhanur, Siva Sindhu Hydro Products Company in Karaikudi, Sriram Water Products company in Madurai and S.R.Aqua Farm, Pudukottai and seized documents under Search Mahazars Exs.P.50, 51, 52, 53 respectively. The investigating officer examined the other witnesses.

3.(c) P.W.4 is Assistant Manager of Excel Water System Pvt. Ltd., who are the manufacturers of R.O. Plants and supply them to various companies. They also help their customer companies to get ISI licence for drinking packaged water, from Bureau of Indian Standards office. P.W.5 is also running a company in the name of Vijay Shree Aqua Product and selling drinking water. They purchase machineries from the Excel Water Pvt. Ltd.,. One Hemakumar and Gowrishankar belonging to Excel Water Pvt. Ltd., told them how to get the licence from the Bureau of Indian Standards. P.W.6 is Quality Manager of Akshaya Aqua Farms which is a sister concern of Excel Water Pvt. Ltd., typed a requisition letter to Bureau of Indian Standards, to issue licence to Vijay Shree Aqua Farm for the sanctioned quantities of packaged drinking water. P.W.7 is the President of Tamil Nadu Packaged Drinking Water Manufacturers Association. There are 960 members in the association. The association used to resolve lot of problems against Bureau of Indian Standards office. One such complaint was there against the Accused 1 and 2. P.W.8 is the owner of company by name Sri Amaravathi Waters. He also obtained licence from Bureau of Indian Standards. P.W.9 is running a purified water company in the name of Sinduja Water System. One Vinayagamoorthy from the Excel Water System helped him to get licence from the Bureau of Indian Standards office. P.W.10 General Manager of Excel Water System Pvt. Ltd., In their company one Gowrisankar and Hemakumar are working as Quality Manager and Deputy Manager respectively and A1 and A2 inspected their company.

3.(d) P.W.11 is working in the Southern Regional Laboratory as Head of Department. Accused 1 and 2 were worked under him for certain period. On 11.02.2013 CBI officers came to the Bureau of Indian Standards office and seized 13 documents. He has also signed in the proceedings Ex.P.28. Seized documents are Exs.P.29 to 36. P.W.12 is running a consultancy with regard to obtaining of licence from Bureau of Indian Standards office. P.W.13 is running a company known as Evergreen Technology and selling lab equipment and glassware. The accused used to visit R.K. Foods, Pudukottai and Kamala Foods. P.W.14 is also selling packaged drinking water from 2011. He has also obtained necessary licence from the local panchayat. 2nd accused inspected his company and instructed to make certain alterations. Thereafter, he gave licence. P.W.15 previously was running purified drinking water manufacturing company during 2012. He has also obtained I.S.I. Mark from Bureau of Indian Standards. At the time of starting his company, he purchased machineries from Shiv Suv. They have given advice about how to keep the buildings and how to place the machineries. They introduced one Thamarai selvan and told that he will help to get licence. On 22.2.2012 he received a letter from the Ground Water Authority of India. After that the 1st accused called him over phone and asked him whether he want licence or not. Thereafter A1 asked him to participate in the programme at Madurai regarding ISI mark. A1 also asked to come to Park Plaza Hotel, accordingly P.W.15 went there. A1 informed him that since there is a delay in the application, his application will be rejected. However, P.W.15 requested to come for inspection. Thereafter, P.W.15 spent a sum of Rs.20,000/- towards car, food and hotel expenses for the inspection by the accused 1 and 2. Thereafter, P.W.15 was called by A1 at Chennai, where A1 demanded Rs.50,000/-. P.W.15 gave only Rs.15,000/- and obtained letter. P.W.15 assured to pay the balance money after getting ISI number. Thereafter, P.W.15 also visited the accused along with a sum of Rs.25,000/-. However, the accused were not found in the office. Thereafter, he has paid a Demand Draft for a sum of Rs.70,000/- towards ISI licence.

3.(e) P.W.16 is running Sun Mineral Water Company from the year 2011. In the year 2012, A1 inspected her company and took samples. P.W.16 handed over samples and also Rs.10,000/- to him through her company driver. Thereafter, sample was sent to Bangalore. P.W.17 intended to start packaged drinking water business in the year 2012 and purchased machineries from Ahmedabad. Since he has no knowledge about obtaining licence, he contacted Gowrishankar, who filled up the application. Thereafter, A2 came along with Gowrishankar for inspection and demanded Rs.1,00,000/-. Since P.W.17 expressed his inability, he accepted to receive Rs.50,000/-, but P.W.17 has paid Rs.30,000/- to A2. For his return to Chennai A2 took his Innova Car. P.W.18 approached Thamarai Selvan for getting I.S.I. Mark. He applied through Thamarai Selvan. Thereafter, A2 visited his company, where Thamarai Selvan filled the application forms. P.W.19 is running Srinivasa Packaged Drinking Water. He contacted one Saravanan and paid to him Rs.1,49,000/- for getting licence. P.W.20 is working as Operation Manager in Hotel Apple Tree, Tirunelveli. CBI seized the documents in Ex.P.38. P.W.21 is the Sales and Marketing Manager in Royal Court Hotel and as per his evidence CBI officers seized the documents in Ex.P.39 with regard to the stay of the accused in that hotel. P.W.22 is the supplier of the lab materials to water plants. He also doing paper works for getting licence from Bureau of Indian Standards office and he has also done such work to 25 companies. He used to collect from Rs.25,000/- to Rs.40,000/- for such paper work. P.W.23 is working as Operation Manager in

Hotel Park Plaza, Madurai. CBI seized documents with regard to the stay of A1 and A2, which is Ex.P.40.

3.(f) P.W.24 is working as Dealing Officer in MDC 1 in Bureau of Indian Standards Office, Chennai. His work is, whenever he received the applications for licence of packaged drinking water he will scrutinize the applications and if any deficiency found in the application, after obtaining report from the lab, he will forward the application to the Group Leader. P.W.25 is Deputy Director Administration and Finance at the Bureau of Indian Standards office and his job is to prepare tour advance applications. He handed over the T.A. Bills of A1 and A2 along with enclosures to the CBI Officers. The T.A.Bills and enclosures is Ex.P.42. P.W.26 is working as Preventive Officer at Chennai Customs. In his presence CBI officials seized Exs.P.43 and 44 from the accused office. P.W.27 is running a Mineral Water manufacturing company in the name of Sai Aqua Products from 2011. During the year 2012, A2 visited his office and took samples also and demanded Rs.25,000/-. P.W.28 is running Venkateswara Mineral Water Company at Hosur. He arranged a car for A2, who came from Salem for Inspection. After Inspection A2 requested him to drop at Salem. P.W.29 is running Sowmya Packaged Drinking Water Manufacturing company. He has also obtained licence for one year. For renewing the licence, A2 demanded Rs.40,000/-. P.W.29 said that he has no money. Hence, A2 did not send the water sample to the lab. When P.W.29 approached him again, he received Rs.7,000/- from P.W.29 and sent the water sample to lab. P.W.30 is the proprietor of Sowmya Water Company. A2 inspected his water company and demanded Rs.25,000/- to give licence. He gave Rs.20,000/- for licence.

3.(g) P.W.31 is working as Lower Division Clerk in Bureau of Indian Standards. He has prepared Ex.P.33 letter dated 8.2.2013 addressed to Vijaya Sree Aqua Products. P.W.32 is working as Nodal officer in Vodofone Cellular Ltd. As required by CBI officers he sent the application, call details, name and address pertaining to the phone No.9176627370, used by A2, marked as Ex.P.45. P.W.33 is Sub-Divisional Engineer of BSNL. As required by CBI, he sent the call data records with respect to Cell phone Nos.9444111984 and 9444021643. He also sent the application forms along with enclosures of the above two cell numbers, which were allotted to one G. Srinivasan and Sudhagar. The documents are marked as Ex.P.46. P.W.34 is Scientist – F in the Central Marks Department II (Legal) Bureau of Indian Standards Head Quarters, New Delhi. When he was working at Faridabad branch, he inspected Sree Amaravathi Waters Villupuram, Sree Vinayaga Aqua Mineral Water and Sindhuja Water System and prepared inspection reports Exs.P.47, 48 and 49. P.W.35 is working as Scientist-D was also present during inspection by the CBI officials and signed in the above documents which are marked as Exs.P.50, 51 and 52.

3.(h) P.W.1 the sanctioning authority, accorded sanction to prosecute the accused 1 and 2. The sanction orders are Exs.P.1 and P.2. P.W.2 is working as Joint Director of Marks Department in Bureau of Indian Standards. He has spoken about the proceedings in dealing with the application for grant of ISI Mark. Ex.P.4 is entire Operating Manual for product certification. The list of allocation of work for the periods July 2009, June 2010, May 2011 and September 2012 pertaining to packaged drinking water licence is Ex.P.5. The organizational chart of Bureau of Indian Standards is Ex.P.6. The allocation of work of dealing officers with respect to hallmarking of gold for the period pertaining to September 2012 is marked as Ex.P.7. The manual for packaged water is Ex.P.8, the entire regulation is Ex.P.9, Entire Notification is Ex.P.10; P.W.2 handled the file pertaining to M/s. Shasa Enterprises bearing file No.CM/L/3314240 is Ex.P.11; file pertaining to M/s.Sun Mineral Water, Thirunelveli is Ex.P.12; files pertaining to M/s.Saumya water, Thiruvallur, and M/s. Sowmiya Packaged Drinking water, Cuddalore are Exs.P.13 and P.14. Similarly, he has dealt with the files pertaining to M/s.Sri

Jayalakshmi Aqua Foods, Thiruchirappalli; M/s SPL Food Products, Salem; M/s. Sai Aqua Products, and M/s Venkateswara Minerals which are Exs.P.15, P.16, P.17 and P.18, respectively.

3.(i) Similarly P.W.13 has spoken about the applications related to various companies which are marked as Exs.P.19, P.20, P.21 and P.22. After completion of investigation, P.W.38 has filed charge sheet on 11.4.2014 before the Court. The learned trial Court, after considering the materials on record, framed the following charges as against the accused as,

For A1 : u/s.120-B IPC r/w Sec.7, 13(2) and 13(1) (a), (b) & (d) of the Prevention of Corruption Act, 1988.

For A2: u/s.120-B IPC r/w Sec.7, 13(2) and 13(1)(a), (b) & (d) of the Prevention of Corruption Act, 1988.

4. In order to establish the case, the prosecution has

examined 38 witnesses and exhibited 67 documents. After the examination of prosecution witnesses, the accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances available in the evidence, for which they denied the complicity. On the side of the defence Ex.D1 to Ex.D8 were marked. No material object was filed. Out of 16 charges, the trial Court has found guilty of Accused 1 under two charges and for remaining charges he was acquitted. Similarly, Accused 2 found guilty under 3 charges, for other charges he was acquitted. The accused were convicted and sentenced to pay fine as stated above. Aggrieved over the said conviction, the accused have preferred separate appeals. Since these appeals have arisen out of one and the same judgment, the common judgment is being pronounced.

5. The learned counsel for the appellants submitted that charges 1,2,3 are interconnected to charge No.4. The trial Court has acquitted the accused from Charge Nos.1 to 3, but found

guilty under Charge No.4 only based on the evidence of P.W.14. The evidence of P.W.14 is total contrary to the charge No.4. Charge No.4 is a specific charge which is related to the official tour of A1 in the month of December 2012, who used the car of Shasha Enterprises, whereas the evidence of P.W.15 is otherwise and is totally not connected with the charge. P.W.14 has been treated as hostile. His evidence is totally contradicted. It is the contention of the learned counsel for the appellants, that only middle men who are able to get some lab report from the laboratories was an instrumental in lodging the complaint as against the accused officers who followed the strict rules and one Vinayagamoorthy was arraigned as an accused and was originally arrested as A3, but dropped by prosecution without any reason whatsoever. Absolutely, the evidence adduced by the prosecution is unreliable and highly interested and it is motivated against the accused.

6. Similarly, in Charge No.13, P.W.15 evidence was not

corroborated and the sole evidence of P.W.15 is unbelievable and improbable. The middlemen involved in the offence have not been trapped by the CBI. The investigation has not been properly done and the charge against the accused has not been proved beyond reasonable doubt. The affected persons have not preferred any complaint either to the police or before the BIS officials neither prior to the alleged commission of crime nor immediately thereafter. They have not spoken anything about the incident. Even their evidence did not mention any date, time and occurrence. The denomination of the alleged illegal gratification was neither given to the prosecution nor during the trial. Hence it is the contention of the learned counsel for the appellants that there is no alleged demand or acceptance and the entire case is motivated as against the honest officers and sanctioning authority and the prosecution acted mechanically without applying its mind. Hence he prayed for the acquittal of the accused.

7. The learned Special Public Prosecutor for CBI Cases

submitted that based on the material evidence available in the case, the trial court has convicted the accused and whether these evidence is sufficient to bring on the guilt of the accused, is a matter of appreciation by this Court.

8. In the light of the above submissions of both the learned counsels, now the point for consideration in these appeals is, "whether the prosecution has established the charges framed against the accused beyond all reasonable doubt?"

9. The trial Court has framed 16 charges against the accused. Out of these 16 charges, it has found A1 guilty under 4th charge and 13th charge and acquitted him from the remaining charges. Similarly, A2 was found guilty under Charge Nos. 6, 7 and 12 and acquitted from the remaining charges. The prosecution has not filed any appeal challenging the acquittal.

10. It is admitted by the prosecution that the investigation

proceeded on the basis of the reliable sources and information on the allegation that the accused were working as Scientist-E and Scientist-D in Marks Department, Chennai-1 [MDC-1] of Bureau of Indian Standards, Taramani, Chennai, entered into criminal conspiracy to habitually demand and accept illegal gratification from the manufacturers of packaged drinking water plants in the matter of processing and recommendations on the application for licence, renewal of licence, ISI marks, inspections, drawal of samples, issuing authorization letters for testing samples at lab and showing favour or disfavour to such manufacturers in connection thereon, as a motive or reward for the processing of such applications. P.Ws.4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 22, 27, 28 and 29 were examined by the prosecution to prove the alleged demand and acceptance of the money by A1 and A2 for processing the application to various drinking water manufacturers. P.Ws.20, 21, 23 have been examined by the prosecution to prove the stay of the accused in hotels at various places. A1 is found guilty under 4th and 13th Charges.

Charge No.4

> *"**Fourthly** That in pursuance of the above said criminal conspiracy, you G. Venkatanarayanan A1 while on official tour for the period from 6.12.2012 to 8.12.2012 accepted the car belonging to the said owner of the above plant for undertaking trips from Madurai to other stations beyond Madurai without paying any consideration therefor, as quid pro quo for showing undue favour to the manufacturer while conducting the inspection of the plant and thereby committed the offence punishable under Section 7 and Section 13(2) R.2 13(1)(d) of PC Act 1988 within my cognizance."*

11. On a careful perusal of the above charge, it is in fact interconnected with charge Nos.1, 2 and 3. The prosecution has relied on the evidence of P.W.14 Rajap Mohammed, the owner of Sastha Enterprises, Tirunelveli. P.W.14 during his examination has not spoken anything about the alleged use of car owned by him, by A1 during inspection. It is curious to note that P.W.14 was treated as hostile by the prosecution. In fact, even in the

chief examination, he could not even identify A1. Even in the cross examination by the prosecution nothing could be elicited. Absolutely, there is no evidence to prove the Charge No.4 against A1. Therefore, the learned trial Court's finding that charge No.4 has been established, seems to be without any basis whatsoever. The learned Special Public Prosecutor has also fairly conceded that there is no evidence to link the 4th charge with A1. It is also curious to note that the learned trial court relied upon the evidence of P.W.15 one Karthikeyan, owner of R.K. Foods, Pudukottai to base the conviction of A1. It is to be noted that A1 was charged for allegedly using the car belonging to the owner of Sastha Enterprises, P.W.14 for the period from 6.12.2012 to 8.12.2012, whereas P.W.15 is said to be the owner of R.K.Foods, in his evidence he has stated that he has processed the application through one Thamarai selvan. Thereafter, A1 called upon him and he went to the office of A1, who requested P.W.15 to participate in the programme in Pandian Hotel, Madurai, accordingly, he attended the programme. Thereafter, A1 requested him to come to Park Plaza Hotel in the afternoon. After three days A1 came for inspection and A1 was talking about the formalities. P.W.15 said that he has no money, however, he spent about Rs.4,500/- towards the rent of the car and another Rs.8000/-for food expenses. Thereafter A1 left the place. As P.W.15 has not received any letter from A1, he himself was under the belief that since he has not paid money, the letter was not given. So, he went to the office of A1, where A1 demanded Rs.50,000/-, however, he has paid only Rs.15,000/-. Thereafter, he again went to the office of A1 along with cash of Rs.25000/-. But the accused was not there. He has paid only licence fee and came back.

12. In his cross examination P.W.15 has stated that while paying the amount at Chennai, he borrowed amounts of Rs.5000/-, Rs.3,000/- and Rs.4,000/-, etc., from many of his Chennai friends. It is totally contradictory to his chief examination. Similarly, the chief examination of P.W.15 clearly

shows that there is no demand made by the accused, only he himself offered to pay the rent and other expenses to the tune of Rs.12,500/- on the date of alleged visit of A1. It is further to be noted that his evidence is no way connected with the specific charge No.4. Therefore, the learned trial Court relying upon the Ex.P.42 T.A. Bills for the period on 19.10.2012 and has come to the conclusion that A1 visited Madurai and other places at the relevant time. It is totally without appreciation of evidence. In fact, the charges relating to the period for the alleged offence is said to have been committed during the period from 6.12.2012 to 8.12.2012. The learned trial court taking into consideration of T.A. Bills Ex.P.42 and the evidence of P.W.3 that on 19.10.2012, A1 visited the office of P.W.15 and demanded amount is highly unbelievable and improbable. The evidence of P.W.3 shows that the inspection was carried on by G.Venkatanarayanan at P.W.15 office only on 19.10.2012 and not in the month of December. Therefore, relying upon the evidence which is no way connected to the charge and having imposed the conviction is not sustainable in law. Further, P.W.15's evidence create serious doubt about the demand and acceptance. Therefore, merely because of some evidence and general allegations against the officials in respect of certain delay in process of applications, the evidence not connected with the charge cannot be reliable to base the conviction, because the charge is entirely different from evidence. Therefore, the learned trial court's finding guilty of A1 under Charge No.4 is liable to be interfered with. The prosecution has not proved the above charge beyond all reasonable doubt. Merely because of the accused having visited certain places and stayed in hotel as per Ex.P.40 as evident by P.W.25, the guilt cannot be inferred in the nature of duties of the officials to make the inspections to the various companies. Therefore, merely because of staying in the hotel in the months of September, October, November and December 2012 as per the evidence of P.W.25, the charge cannot be presumed. Hence, this Court is of the view, that the trial court's finding guilty of A1 under Charge No.4 is not sustainable, the same has to be interfered with. The prosecution has not proved the Charge No.4 beyond all reasonable doubt.

Charge No.13

> *"**Thirteenthly** That in pursuance of the above said criminal conspiracy, on 19.10.2012 Shri G. Venkatanarayanan after conducting inspection in the plant of M/s. RK Foods, Pudukkottai, Tamil Nadu you Venkatanarayanan A-1 demanded illegal gratificatgion of Rs.50000/- from R.Karthikeyan, Managing Partner as motive or reward for recommending licence. That you Venkatanarayanan A1 had accepted bribe of Rs.8,500/- from R. Karthikeyan and left without issuing authorization letter for lab test. Subsequently, the authorisation letter for lab test was issued with antedate of 19.10.2012 by you A1 after R.Karthikeyan paid the bribe of Rs.15000/- to you Venkatanarayanan A-1 at your office in Chennai on 30.10.2012 and thereby committed the offence punishable under Section 7 and Section, 13(2) r/w 13(1)9d) of PC Act 1988 within my cognizance."*

13. With regard to the charge No.13, the specific charge

against the 1st accused is that, after conducting inspection in the plant of R.K. Foods on 19.10.2012, the 1st accused has demanded Rs.50,000/- from P.W.15 and A1 accepted Rs.8000/- from R.Karthikeyan and left without issuing authorization letter. Subsequently, the authorization letter for lab test was issued with antedate of 19.10.2012 by A1 after Karthikeyan paid the bribe amount of Rs.15,000/- at Bureau of Indian Standards office on 30.10.2013 and thereby committed the offence punishable under Section 7 and Section 13(2) r/w 13(1)(d) of PC Act, 1988. When P.W.15 evidence is carefully seen, as discussed above, it shows that in fact he has processed the application for getting the Mark through one Thamarai Selvan and he was waiting for inspection by the Bureau of Indian Standards office. When he has enquired about his application with A1, A1 asked him to come to Pandian Hotel, Madurai and participate in the programme. Thereafter, he went to the Park Plaza Hotel, A1 told that since there is a delay, his application will be rejected. However, on the request of P.W.15 he said that he will come for inspection after 3 days.

Thereafter, he came for inspection, at that time A1 talked about the formalities for which P.W.15 said that he has no money. But he has paid Rs.4,500/- towards car rent and another Rs.7500/- towards food and room expenses. Thereafter, thinking that since he has not paid the amount, the letter has not come from A1. So he went to A1's office with money and was waiting in the office when Al called him inside the room and demanded Rs.50000/-. However, he paid only Rs.15,000/- which was brought by P.W.15 for sending samples to the lab and said that he will pay the remaining amount of Rs.25,000/- after getting ISI number. The entire evidence does not show the demand of Rs.50,000/- by A1 at the time of inspection. Further, the evidence does not show the demand of any money. It also goes against the charge. His evidence is totally contradictory to the charge.

14. Further, P.W.15 evidence shows that since the amount has not been paid, the number has not come from A1, he himself went to the A1's office with money and paid the amount of

Rs.15,000/-, even though the accused demanded Rs.50,000/-. This is also contradictory to the charge. Whereas in the cross examination it is admitted that after the demand by the accused, he collected Rs.5,000/-, 4,000/-, 3,000/- from his various friends in Chennai and paid the same to A1. This evidence is also highly contradictory to the chief examination. In his chief examination P.W.15 has deposed that as if he went to the office of the accused with money and when A1 demanded, he paid only Rs.15,000/- which has been kept by him for sending the samples to the lab test. But in the cross examination he said that he collected the amount from various friends after demand. It has created serious doubt about his evidence. It is to be noted that absolutely there is no mention in the chief examination about when he met A1 in the office. P.W.15 is not a layman, he is a Chemical Engineer. But in his evidence, he has not spoken about time and date of such alleged occurrence took place. The entire evidence would clearly show that he has processed the application through one agent Thamarai Selvan, who has sent the samples to lab and obtained Lab Test reports which also not spoken by P.W.13 Thamarai Selvan in his evidence. Further, the cross examination of P.W.15 would clearly show that after inspection in his factory, he never seen A1 in the entire day.

15. The entire cross examination of P.W.15 shows that the lab reports from various labs were obtained through agencies only and the entire application of P.W.15 was processed by P.W.13. Whereas P.W.13 has not supported the evidence of P.W.15 about the demand and inspection made by A1. Even in his statement before the Magistrate under Section 164 Cr.P.C., he has not stated about the demand to pay the bribe amount. Similarly, in his statement before the Magistrate he has also not stated about the demand of accused-1. All these factors would clearly show that his evidence alone is not sufficient to rely upon the prosecution story. Admittedly, the prosecution has also arrested one Vinayagamoorthy and subsequently he was released on bail. He is an Agent. But while filing the charge sheet,

he was dropped by the prosecution with no explanation. The entire prosecution witnesses clearly indicate that the agents have played a major role in processing the applications and getting lab reports from various labs across the country. The possibility of implicating the accused by agencies cannot be ruled out. Hence, this Court is of the view that merely on the basis of P.W.15's evidence which is contrary to the charge No.13 as against A1, is also to fail, since the prosecution has not proved the same beyond all reasonable doubt.

16. With regard to A2, the trial court found him guilty under Charge Nos.6, 7 and 12.

Charge No.6

> "***Sixthly*** *That in pursuance of the above said criminal conspiracy, that you PN Murali A-2, inspected one M/s Saumya Water in Tiruvallur Taluk & dist. Tamil Nadu on 8.11.12 to verify the corrective measure taken by manufacturer and demanded and accepted illegal gratification of Rs.20000/- as motive*

or reward for issuing performance stisfactory report. Since the partners of the Plant were not getting licence from BIS office, even after repreated inspections, SRM Sudhakar, Partner of the above plaint was in a compelling situation and hence he was forced to accede to the demanded bribe of Rs.20000/- made by you PN Murali A-2. That you PN Murali A2 who accepted the same and issued the performance satisfactory report and thereafter the licence was granted to the plant based on the recommendation of you PN Murali A2 and G.Venkatanarayanan A1. As per BIS manual, under simplified procedure, licence should be considered within 30 days after the acceptance of application. However, you G. Venkatanarayanan A1 and you PN Murali A2 have failed to observe the prescribed time frame and thus, by abusing your official postion through corrupt or illegal means, thereby obtained pecuniary advantage of Rs.20000/- and thereby committed the offence punishable under Section 7 and Section, 13(2) r/w 13(1)(d) of PC Ac, 1988 within my cognizance."

17. To prove the sixth charge, the trial Court relied upon the evidence of P.W.30 to reach a conclusion against A2. P.W.30,

in his evidence, has stated that initially A2 inspected his plant and found certain discrepancies. Therefore, P.W.30 rectified the same and again applied for licence. A2 came for inspection and demanded Rs.25,000/-. However, P.W.30 paid Rs.20,000/-. Thereafter, licence has come. But his entire evidence does not show the date of alleged demand and acceptance of the money and also when his application was processed. His cross examination clearly indicated that one Arun has interacted in obtaining the licence and P.W.30 has paid the entire amount to him to get licence and even P.W.30 does not know which are the labs he sent samples. Only the agent Arun is aware of the same and he has also shown his ignorance about the order of Bureau of Indian Standards. Further, after obtaining licence he has leased out the plant to third parties. His evidence, that A2 demanded Rs.25,000/- and he has paid Rs.20,000/- cannot be reliable for the simple reason that the entire application was processed only by a middleman Arun. Therefore, when the entire work was entrusted to Arun including the amount for getting licence, paying the alleged amount of Rs.20,000/- to A2 is improbable and creates serious doubt. Therefore, the evidence of P.W.30 itself is not sufficient to prove the charge No.6 against 2nd accused. It is further to be noted that P.W.2 in fact tendered evidence, after reading his 161 Cr.P.C. Statement. His evidence cannot be given much importance, particularly his evidence is only to show that A2 inspected P.W.30's plant and no evidence with regard to demand and acceptance of money by A2, spoken by P.W.2. Therefore, in view of the discrepancies, the prosecution version is highly doubtful. Hence, above charge is not established beyond all reasonable doubt.

Charge No.7

*“**Seventhly** That in pursuance of the above said criminal conspiracy, on 07.12.2012 You PN Murali A2 had inspected the plant of M/s Sowmiya Packaged Drinking Water, Cuddalore, Tamilnadu, and verified the correctivew action taken by the plant and after inspection you PN Murali A2 demanded Rs.40000/- as bribe from T.Krishnamoorthy, Manager of the plant who is also the husband of the owner of plant and threatened to issue “stop marking” in the event of T. Krishnamoorthy, not paying the demanded bribe. That when the said manufacturer expressed his inability to pay bribe, you PN Murali A2 left the plant without signing on the sealed can and without issuing the authorization letter for lab test. That T. Krishnamoorthy then met you PN Murali A2 at your residence on 26.12.2012 at about 06.40 hours and paid Rs.7000/- and you PN Murali accepted the same as a motive or reward for issuing the authorisation letter for lab test and you affixed your signature on the can of water sample and also issued authorization letter for lab test, signed with the antedate of 07.12.2012. Thus you PN Murali A-2 who did not issue the authorization letter on the day of Inspection i.e., 7.12.2012, with the intention of extracting bribe from T.Krishnamoorthy*

as stated above, obtained pecuniary advantage for yourself through corrupt or illegal means by abusing official position and thereby committed the offence punishable under Section 7 and Section, 13(2) r/w 13(1)9d) of PC Act 1988 within my cognizance."

18. To prove this charge, learned trial Court relied upon the evidence of P.W.29 to find the guilt of the Accused. P.W.29 in his evidence has stated that he started packaged drinking water business in the year 2010 and obtained licence for one year. After that, to renew the licence he paid Rs.99,000/-. Since the licence has not come, he met A2. A2 informed him to come for inspection. Since he did not come, P.W.29 again met him and on the next day evening A2 came to his office and asked P.W.29 to give 20 litre water for sample and also demanded Rs.40,000/- since his higher officials are demanding. However, P.W.29 replied that he did not have such amount of money since he is a poor villager. Accused did not send the sample for lab test. After 3 days, A2 contacted P.W.29 over phone and asked about the money. P.W.29 told that he has only Rs.10,000/- for which A2

asked him to bring the money along with water sample. The next day, P.W.29 met A2, at that time A2 received Rs.7,000/-. Even after that the licence has not been renewed. Thereafter, some other officer renewed the licence. On a careful perusal of the entire evidence of P.W.29, it is clear that P.W.29 has obtained the licence only through agents and it is also clearly indicated that Bureau of Indian Standards officials made surprise inspection to P.W.29 company and issued stop marking order on 27.8.2012. In the said surprise inspection, many discrepancies were found. Further in his evidence it is also clearly indicated that only after reading the 161 statement he has deposed before the Court. Of course refreshing memory of the witness is one thing. But reading the 161 statement and to give evidence, creates some serious doubts, about P.W.29's version. The entire cross examination of P.W.29 has clearly indicated that P.W.29 has serious motive to implicate the accused. Further, absolutely there is no evidence as to the date of alleged demand made by the accused and alleged date of acceptance by the accused. P.W.2's evidence would also clearly show that issuance of stop marking orders in respect the plant owned by P.W.29 has motivated him to implicate the accused in the offence. Therefore, possibility of implicating the accused cannot be ruled out. Hence, this court hold that the above charge is also not established beyond all reasonable doubt.

Charge No.12

> *"**Twelvefthly** That in pursuance of the above said criminal conspiracy on 11.01.2013, you PN Murali A2 after inspecting the plaint of M/s Olympic Spring Water Company, Thanjavur Dist., demanded illegal gratification of Rs.50,000/- from M.S.Mohamed Ali, Partner of the Plant as motive or reward for commencing ISI licence and threatened not to recommend for issue of licence, if your demand wast not met. In order to save the plant from the huge investment loss, Shri M.S.Mohamed Ali was compelled to oblige the illegal demand made by you PN Murali A2, who accepted Rs.30,000/- in cash with advice to pay the remaining amount in due course. Further, you PN Murali, accepted the hospitality of using the car of*

M.S.Mohamed Ali for travelling back to Chennai from Trichy and thereby committed the offence punishable under Section 7 and Section, 13(2) r/w 13(1)9d) of PC Act 1988 within my cognizance."

19. With regard to charge No.12, P.W.17 has stated in his evidence that though A2 inspected his factory and demanded Rs.1,00,000/-, he reduced the amount to Rs.50,000/-. But P.W.17 has paid Rs.30,000/- in the month of May, and he has received the licence. But contrary to this evidence, in his cross examination P.W.17 has deposed that the licence and other aspects were originally obtained through brokers. He has also stated in his cross examination that one Vinayagamoorthy and Gowrishankar filled the application forms. Initially Vinayagamoorthy was cited as an accused (A3) in the FIR, subsequently CBI left out his name when filing the charge sheet, with no explanation. Though it is clearly evident from the cross examination of P.W.17 that at the time of inspection some of the people who were working in the plant were also present, none of them was examined. Gowri shankar and one person were also

present at the time of inspection. But they were also not examined. Further, P.W.17 in his cross examination has stated that A2 wanted his car for his return journey to Chennai. P.W.17 sent the car alongwith driver to drop A2 at Chennai. But the car driver, who allegedly drove the car was not examined by the prosecution.

20. Further, the evidence of P.W.17 reveals that his driver handed over the samples of water to two labs and obtained receipts from the labs concerned. From the lab receipts it is clear that one receipt dated 11.1.2013, the lab is situated at Berhampur, Orissa State and the other receipt dated 12.1.2013, it is seen that the lab is situated in Thane, Maharashtra State. In his evidence P.W.17 has further stated that as directed by A2, the water samples were handed over to the labs by his driver on the same day. On perusal of receipts it is clear that the persons who issued receipts at Thane and Berhampur are one and the same. This fact clearly shows that only middlemen and brokers played

vital role in getting sample report from the fictitious labs. Possibility of sending sample and reaching the same at Berhampur or Thane on the same day or next day is also highly improbable. This fact in fact give rise inference that these receipts and lab tests were manipulated only by the middlemen. It is further to be noted that the original letter-pad of P.W.17 company was in the possession of middlemen which also clearly indicates that all lab reports were prepared with the connivance of middlemen only, to obtain the licence. All these facts give inference that the false implication of officials who conduct the regular inspection and point out certain false implication by the middlemen cannot be ruled out. Therefore, merely on the basis of one witness who has strong motive, done the fraudulent act with the help of the middle men, the evidence of that witness is not believable. It is further to be noted that none of the owners who have allegedly paid the amount has whispered the same to anyone, not even made a complaint before the higher officials. This fact clearly indicated that believing their version is not safe to convict the accused. The prosecution has not proved the guilt of the accused in all the charges. A careful perusal of Investigating Officer's evidence shows that one Vinayagamoorthi who was originally arrested initially and ranked as A3 in the FIR has been left out in the charge sheet. Therefore, merely because of the files have been seized from the mineral water companies alone, is not conclusive proof for the alleged demand and acceptance of money. The prosecution has not proved the guilt of the accused beyond all reasonable doubt. Hence, this Court hold that, the trial Court’s judgment in convicting the accused is liable to be set aside.

21. One aspect is noted in the examination of the witnesses. The trial Court has allowed the prosecution to treat P.W.2 as hostile. Whenever, P.W.2 has not given answer in favour of the prosecution and after treating the witness hostile for a particular question and again chief examination was continued. In some of the questions, the trial court granted permission to the

prosecution to treat the witness as hostile for a particular question and thereafter allowed to continue the chief. This court is unable to appreciate the procedure adopted by the trial Court. It is to be noted that under Section 154 of Evidence Act, the Courts have discretion to grant permission to party who call the witness to put the question which might be put in cross-examination by the adverse party. It is also to be noted that discretion vested u/s 154 of Evidence Act is not mechanical one. Before exercising such discretion, there must be some element of doubt to infer that the witness is not speaking truth. Merely because some of the answers are not favorable to the prosecution, the power of the court cannot be used to declare the witness hostile to a particular question and again allow the prosecution to continue the chief examination. Hostile witnesses are those who have defeated the prosecution case by suppressing the truth. The purpose of declaring witness hostile and cross examination by the prosecution or party calling such witness is unearth the truth. Therefore, the discretion of the court to grant such permission cannot be mechanical merely at the request of either prosecutor or party. Only for the purpose of unearthing the truth or when the witness totally resiled to his own statement, there could be a permission to cross examine the witness. Once the witness is declared hostile and permission granted by the Court allowing the prosecution to continue the chief examination is not according to law. Once the witness is declared as hostile, even leading question can be put to witness in the cross examination. That be the position of law, for each and every questions, the witness cannot be declared as hostile. Once the witness was treated as hostile and permission was granted to cross examine the witness, neither the prosecution nor the party who called such witness be allowed to continue the chief examination again. Such procedure adopted by the trial court in this case is, not in accordance with law.

22. In view of the above discussion, this Court come to the conclusion that the conviction of trial Court under Charge Nos.4

and 13 against the 1st accused and Charge Nos.6, 7 and 12 against the 2nd accused are liable to be set aside and accordingly they are set aside. The point is answered accordingly.

23. In the result, the appeals are allowed. Consequently, connected M.P.is closed. The bail bond executed by the appellants/accused shall stand cancelled forthwith. The fine amount, if any, paid by the appellants/accused shall be refunded to them.

***19*.07.2017**

Index : Yes / No
Internet : Yes
Speaking order/Non-speaking order
Ggs
To

1. The Inspector of Police, CBI, ACB, Chennai
2. The Public Prosecutor, High Court, Madras.

N. SATHISH KUMAR,J.

Ggs

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Pre-delivery common Judgment in:

Crl. A.Nos.161 and 162 of 2016

19.07.2017