

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2017

PRONOUNCED ON : 06.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.36 of 2006

R.Balasubramanian

.. Appellant

Vs

State: rep. By
The Inspector of Police,
Special Police Establishment
Central Bureau of Investigation,
Anti-Corruption Branch,
3rd Floor, Shastri Bhavan,
Haddows Road, Nungambakkam,
Chennai – 600 006.
R.C.No.56(A)/2002

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 against the order of conviction and sentence passed by the learned Principal Special Judge for CBI cases, Chennai dated 23.12.2005 in C.C.No.53 of 2003.

For Appellant

: Mr.A.V.Somasundaram,
for M/s.Lakshmi Priya Association

For Respondent

: Mr.K.Srinivasan,
Special Public Prosecutor (CBI)

JUDGEMENT

Aggrieved by the conviction and sentence passed by the learned Principal Special Judge for CBI cases, Chennai, dated 23.12.2005, in C.C.No.53 of 2003, the appellant/accused is before this Court with this Criminal Appeal.

2. Brief facts, leading to this appeal, are as follows:-

The appellant/accused was an employee of Bharath Sanchar Nijam Limited (hereinafter referred to as the BSNL) holding the post of Sub Divisional Engineer. He is a public servant as per the provision of the Prevention of Corruption Act. Based on the complaint dated 14.11.2002, given by one Mr. Varadharajulu, the Proprietor of M/s. S.V. Travels, to the Superintendent of Police, Anti Corruption Branch, CBI, Chennai, alleging that the appellant/accused demanded him illegal gratification of Rs.3,000/- to certify the travel bills amounting to Rs.35,786/-. A case was registered and after following the necessary protocol for trap, the defacto complainant - Mr. Varadharajulu, accompanied by one Mr. Sadhasivam went to the Office of the appellant/accused and gave the tainted currency of Rs.3000/-, on the demand made by the accused. Thereafter, the money was recovered from the accused. The tainted currency were compared with the serial number recorded in the pre-trap

proceedings and after conducting phenolphthalein test, the accused was arrested and the case was registered for offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Sanction to prosecute was obtained from Mr.P.K.Chandra, the member (Services) Department of Tele Communication, New Delhi who is the competent authority to remove officers of the rank of Sub Divisional Engineer. Based on the final report, the trial Court, took cognizance and framed the following charges:-

"Charge No.1:

Firstly, that you A1 R.Balasubramanian working as Sub-Divisional Engineer, OSC – I, BSNL, Chennai on 14.11.2002 demanded and accepted an amount of Rs.3,000/- from Shri S.Varadarajulu, Proprietor of M/s.S.V.Travels, Chennai as gratification other than legal remuneration as a motive or reward for certifying the bills amounting to Rs.35,787/- and thereby you R.Balasubramanian committed an offence punishable u/s 7 of PC Act, 1988 and within my cognizance.

Charge No.2:

Secondly, that you A.1 R.Balasubramanian being a public servant employed during the period as stated in the first charge, by corrupt or illegal means or by otherwise abusing your official position as

such public servant obtained for yourself pecuniary advantage to the extent of Rs.3,000/- as stated in the previous charge from Shri.S.Varadarajulu and that you A1 thereby committed an offence specified u/s 13(1)(d) of P.C Act 1988 punishable U/s.13(2) of that act and within my cognizance."

3.Since, the accused/appellant pleaded not guilty, he was tried for the above charges. To prove the charges, on the side of the prosecution, 9 witnesses were examined and 64 exhibits were marked along with 5 material objects. As a defence, on the side of the accused/appellant, two witnesses were examined and 2 exhibits were marked as Exs.D.1 and D.2.

4.The trial Court, after appreciating the evidence let in by the prosecution has found the accused guilty under both the charges and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,500/- in default to undergo rigorous imprisonment for two months for the offence under Section 7 of the Prevention of Corruption Act and to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,500/- in default to undergo rigorous imprisonment for two months for the offence under Section 13(1)(d)

5.The case of the prosecution as unfolded through the witnesses is that the defacto complainant who is a Transport Contractor of the BSNL submitted bills for the month of May, June and July to a total sum of Rs.35,184/-. To certify the bills, the accused who was working as Sub Divisional Engineer, BSNL demanded an illegal gratification of Rs.3,000/- on 13.11.2002. Since, the defacto complainant was not inclined to give bribe, he has approached the Central Bureau of Investigation and gave complaint - Ex.P.53 dated 14.11.2002.

6.Based on the complaint, the respondent Police arranged for witnesses and conducted pre-trap proceedings and prepared the entrustment mahazar – Ex.P.54 in the presence of witnesses. The defacto complainant/P.W.2 along with P.W.3 went to the office of the appellant/accused. P.W.2 gave the tainted money to the appellant and came out. The trap laying officer along with witnesses went in and recovered the tainted money from the appellant/accused and duly prepared seizure mahazar – Ex.P.55.

7.P.W.2 - the defacto complainant and P.W.3 – Mr.Sagadevan, have spoken about the demand made by the accused/appellant. While P.W.1 has spoken about his subjective satisfaction to prosecute the accused/appellant, the trial Court has held the accused guilty of offences.

8.The explanation given by the accused/appellant that he received the money from P.W.2 not as an illegal gratification but as a reimbursement towards fuel expenses paid by him or the defence testimony witnesses D.W.1 and D.W.2 and their complaint about the bad service of M/s.S.V.Travels run by the defacto complainant were not found acceptable. Hence, the accused was found guilty of demand and acceptance of illegal gratification of Rs.3,000/- to certify the bills raised by the defacto complainant.

9.The learned counsel for the appellant placed his submission on three folds.

(a) First, the sanction for prosecution of the accused/appellant by P.W.1 bristles with infirmity and it is not a valid sanction. P.W.1 – Mr.P.K.Chanda who has granted sanction has not proved his competency to grant sanction. In the absence of evidence to show that he is the person competent to remove the accused/appellant who is in the rank of Sub Divisional Engineer from service, the sanction order – Ex.P.1 is liable to be held invalid and the trial is vitiated for want of valid sanction. Further, the sanction order is also not valid on the ground of admission made by P.W.1 that he has failed to see the service record of the accused/appellant and also for the failure of non mentioning the records perused by him to arrive at his subjective satisfaction to grant sanction.

(b) Secondly, explanation is given by the accused/appellant for the acceptance of the tainted amount of Rs.3,000/-. In the light of the evidence of D.W.1 and D.W.2 and the fact that complaints given by these two witnesses to their higher authorities about M/s.S.V.Travels owned by the defacto complainant was not rendering proper service, and the Drivers of the vehicle used to demand money from the passengers/officers of the BSNL to provide fuel, for their journey is a plausible explanation given by the accused/appellant for the receipt of money hence, no presumption under Section 20 of the Prevention of Corruption Act, can be drawn against the accused.

(c) The third limb of the submission made by the learned counsel for the appellant/accused is that the gravamen of the charges against the appellant are that he did not certify three bills and delayed the process expecting illegal gratification, but the prosecution has failed to prove when the bills were present and when it was sent to the appellant/accused for certification.

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10. In support of his submission, the learned counsel for the appellant placed reliance on the following passage of the Hon'ble Supreme Court rendered in the judgment **Mukhtiar Singh v. State of Punjab** (AIR 2017 SC 3382) wherein, it has been held as follows:-

"14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In *A. Subair vs. State of Kerala* (2009 (6) SCC 587), this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was expounded in *State of Kerala vs. C.P. Rao* (2011(6) SCC 450) that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

15. In *P. Satyanarayana Murthy* (AIR 2015 SC 3549), this Court took note of its verdict in *B. Jayaraj vs. State of A.P* (2014 (13) SCC 55) underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act.

It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand.

This Court thus in *P. Satyanarayana Murthy* (supra) on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these 6 (2014) 13 SCC 55 11 two sections of the Act. As a corollary, failure

of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder."

11. Yet another submission made by the learned counsel for the appellant is that the charges framed do not satisfy the statutory requirement as laid in Section 212 of the Code of Criminal Procedure. When the first charge is framed for Section 7 of the Prevention of Corruption Act alleging demand of illegal gratification. The said charge does not reveal the date and place of demand which is a mandatory requirement under Section 212 of the Code of Criminal Procedure.

12. Per contra, the learned Special Public Prosecutor (CBI cases) submitted that the sanction for prosecution granted by P.W.1, is a valid sanction and P.W.1 is the competent authority to grant sanction for prosecuting the officers of the rank of Sub Divisional Engineer. The order of sanction - Ex.P.1 and the evidence of P.W.1 clearly speak about the competency of the witnesses and application of mind before granting sanction.

13. In the light of the rival submissions, it is relevant to extract the Hon'ble Supreme Court judgment rendered in **Banarsi Dass v. State of Haryana** (2010 (4) SCC 450) which gives an insight to appreciate the factum of recovery money vis-a-vis presumption of receipt of illegal gratification:-

"25. Reliance on behalf of the appellant was placed upon the judgment of this Court in the case of C.M. Girish Babu (2009 (3) SCC 779) where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in para 18 and 20 of the judgment held as under :

"18. In Suraj Mal v. State (Delhi Admn.) [1979 (4) SCC 725] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence

to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

20. A three-Judge Bench in [M. Narsinga Rao v. State of A.P.](#)[2001 (1) SCC 691: SCC (Cri) 258] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24)

"24. ... we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. ([Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra](#) [2000 (8) SCC 571]). The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (Madhukar case, SCC p. 577, para 12) '12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word

"gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

13. In fact, the above principle is no way derivative but is a reiteration of the principle enunciated by this Court in *Suraj Mal* case (supra), where the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. Reference can also be made to the judgment of this Court in *Sita Ram v. State of Rajasthan* [1975 (2) SCC 227], where similar view was taken.

14. The case of C.M. Girish Babu (supra) was registered under the *Prevention of Corruption*

Act, 1988, Section 7 of which is in pari materia with Section 5 of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raises a rebuttable presumption where the public servant accepts gratification other than legal remuneration, which presumption is absent in the 1947 Act. Despite this, the Court followed the principle that mere recovery of tainted money divorced from the circumstances under which it is paid would not be sufficient to convict the accused despite presumption and, in fact, acquitted the accused in that case."

14.A perusal of Ex.P.1 – sanction order, disclose the gist of allegation. The date on which the accused/appellant joined the Department as Junior Engineer and his career progress as Sub Divisional Engineer on 10.07.1999. The narration of facts indicate that P.W.1 perused the documents such as the complaint, recovery mahazar and he has recorded his competency in the sanction order itself, besides Satisfaction about the *prima facie* case made out against the accused/appellant. The same has been reflected by way of testimony when he was examined as prosecution witness. Therefore, this Court finds that the sanction is the valid sanction and it cannot be questioned just because no relevant Government Order was placed before the Court to show the competency. Under Section 114 of the Indian Evidence Act, it has to be presumed that it is an

official duty discharged by the witness and he has expressly recorded his competency to accord sanction. If the fact is otherwise, it is for the person who pleads the contra, to prove the same. The trial Court is right in holding that mere suggesting to the witness that he is not a competent person to grant sanction is not sufficient to hold the sanction order a invalid one.

15.It is correct that charge as framed does not contain particulars as to time and place. The charge which has been extracted above neither the time nor the place of occurrence is mentioned in the charge framed. However, under Section 215 of the Code of Criminal Procedure, no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

16.In the case on hand, by letting defence evidence to justify the acceptance of tainted money of Rs.3,000/-, it is crystal clear that the accused/appellant has understood the nature of charge laid against him. He has effectively defended the case by cross examining the witnesses in depth and also, by let in positive defence evidence to justify the receipt of money from the defacto complainant.

17.The learned counsel for the accused/appellant could not place any material to show that due to the said error or omission mentioning the time and place of occurrence, the appellant/accused was mislead occasioning a failure of justice. Therefore, this part of the argument is not sustainable.

18.The third limb of argument, that the trial Court has failed to properly appreciate the explanation given by the accused/appellant, for the receipt of tainted money and the deposition of witnesses examined on his behalf and the marking of exhibits D.1 and D.2 were not properly appreciated carries merit for consideration.

19.While the specific case of the prosecution is that three bills of M/s.S.V.Travels presented for payment, the same have to be certified by the accused/appellant and delayed the process, then the date of presentation of these three bills, marked as Exs.10, 22 & 40 become relevant. It is elucidated through the examination of concerned witnesses that whenever the bills presented, it will carry the date seal of the Department. Surprisingly, the date of presentation of these three bills were not found in Exs.10,22 & 40. This has also been ascertained in the cross examination of P.W.4 and P.W.8.

20.It is also proved through the cross examination that there was no Clerk by name Ms.Vasantha working in the office of the accused. P.W.2 - the defacto complainant had deposed that the bills were presented to one Ms.Vasantha and he enquired her about the pendency of his bills and she replied that she has already forwarded the same to the higher officers. It is also the specific evidence of P.W.2 that when he enquired the higher officers, they informed him that they did not receive those bills.

21.P.W.2 is not certain when he presented those bills especially, Whether he presented those bills on the same day or different dates. He has deposed that he presented those bills on the same date but latter he retracted and said it was different dates. The learned counsel for the accused/appellant highlighted the demeanour of the witness and his immediate retraction. This gain significance because the three bills does not carry date seal to show when the same were received by the Department. Surprisingly, these three bills were alleged to have been recovered from the accused/appellant table drawer after the trap proceedings. It is also found from the endorsement made in these three bills that it were passed by the Divisional Engineer OFC – I BSNL, after certification is made by the accused.

22.From the deposition of P.W.4 – Mr.Shamsudeen, the Divisional Engineer, this Court finds that these three bills marked as Exs.10, 22 & 40 are the bills submitted by M/s.S.V.Travels for the month of May, June and July 2002. The bills were received by his office on 18.11.2002. The said witness has processed the bills on 22.11.2002 and sent to DGM office for payment on 22.11.2002.

23.As pointed out earlier, these bills carry endorsement certificate of the accused/appellant. Recovery Mahazar marked as Ex.P.54 indicates the following documents were found in the table drawer of the accused and the same were seized for the purpose of investigation.

"a.Carbon copy of M/s.S.V.Travels/Chennai – 18, bill No.Nil dated 03.06.2002 for Rs.10,322.95/-.

b.Carbon copy of M/s.S.V.Travels, bill No.71 dated 02.07.2002 for Rs.14,142.30/-.

c.Carbon copy of M/s.S.V.Travels, bill No.560 dated 06.08.2002 for Rs.11,322/- and

d.In complete Trip sheet for the month of 06/2002 for SV Travels prepared by Shri.R.Balasubramanian accused. The said papers mentioned above were seized for the purpose of investigation."

24. According to the deposition of P.W.8 – Ms. Manjula, the Assistant Senior Grade Officer, these three bills were presented to her on behalf of M/s. S.V. Travels, on a particular date, when the accused was on camp. She is not certain about the person who gave the bills to her. Thus, there is serious doubt in the prosecution case that these three bills presented by the defacto complainant was unduly delayed by the accused/appellant expecting speed money. This doubt gets strengthened on perusal of the evidence given by the defence witness namely Mr. G. Sivakumar – D.W.1 and Mr. M. Rajagopal – D.W.2 and their complaint marked as Ex.D.1 and Ex.D.2 which are prior to the trap proceedings.

25. According to D.W.1, the defacto complainant Travel Agency was not very regular in providing service to the BSNL Officers. They used to come late and vehicles were not provided with adequate petrol to travel long distance and the Drivers used to ask cash for the petrol from the Officers of the BSNL and they used to give money for petrol from the temporary advance so as to avoid discontinuance of work. He has also given a complaint, in this regard, as early as on 11.06.2002. The said complaint is marked as Ex.D.1. P.W.4 – Divisional Engineer to whom it has been addressed also admits in his evidence that he received this complaint marked as Ex.D.1.

26.Perusal of Ex.D.1, appears to be a complaint given by Mr.G.Sivakumar, Junior Telecom Officer addressed to the Divisional Engineer (plg) OFCI, Chennai. The subject is regarding service by M/s.S.V Travels, which narrates a specific incident happened on 10.06.2002 when M/s.S.V Travels, have not sent their vehicle at 8.00 am as per instruction but, sent belatedly at about 11.00 am for a trip to Virudhachalam to install NMS and due to the late arrival of the vehicle, the work could not be completed in time. In this letter, marked as Ex.D.1, D.W.1 has also sought to blacklist the tender of M/s.S.V. Travels.

27.D.W.2 – Mr.Rajagopal, Sub Divisional Engineer Officer – II, has also spoken about the deficiency of service rendered by the defacto complainant and the behaviour of the Drivers employed by M/s.S.V.Travels, demanding money for petrol after reaching the destination. Perusal of Ex.D.2, the complaint given by D.W.2 to the Divisional Engineer Officer II, we find that few incidents of deficiency in service and the conversation between the witnesses and one Mr.Kesavan son of the defacto complainant is narrated in the complaint which indicates that not all was well with the service provided by the defacto complainant and the officers of BSNL were dissatisfied and had registered their grievance by way of written complaint much prior to the incident.

28. In the light of the above fact, the case of the prosecution of demand and acceptance by the accused/appellant cannot be held to be proved to draw inference under Section 20 of the Prevention of Corruption Act. To put it in nutshell, the demand of bribe money as spoken by P.W.2 and P.W.3 indicates that the appellant/accused after receiving the tainted money has enquired P.W.2 when he will pay the balance amount and he has also expressed his need of Rs.25,000/- to meet out his son's computer education.

29. In so far as the demand and acceptance of bribe money by the accused/appellant, the defacto complainant (P.W.2) has deposed that when he went to office of the accused/appellant on 14.11.2002, at about 12.15 hours, the accused/appellant enquired him, 'Whether he has brought the money ?' For which, P.W.2 - the defacto complainant answered in affirmative and drew Rs.3,000/- from his pant pocket and gave it to the accused/appellant. After receiving the money, the accused enquired him, when he will give the balance money. He need about Rs.25,000/- to meet out his son's computer engineering course.

30. P.W.3 has stated that the accused/appellant asked the complainant, 'Whether he brought the money and how much money he had brought ?'. The defacto complainant told the

accused/appellant that he had brought Rs.3,000/- and gave it to the accused/appellant. On receiving the money, the accused counted the notes and kept it in his right side pant pocket. The accused told to P.W.2 that he wanted more money for his son's computer science course. At that time, the defacto complainant told that he could arrange only this sum of amount and the rest, he will pay later.

31.The conversation between the accused and the defacto complainant followed after the acceptance of tainted money by the accused/appellant cannot be ignored. This gains more significance in the light of allegation found in the complaint Ex.P.53. The complaint dated 14.11.2002, given by P.W.1 alleges that the defacto complainant met the accused 15 days ago and enquired about the pending bills. For which, the accused/appellant told him that he should come and meet him frequently. Accordingly, on 13.11.2002, (yesterday), he went to the office of the accused at No.16 Greams Road, OFC, Chennai and enquired about 3 bills for which, the accused/appellant demanded Rs.3,000/- as illegal gratification and if the money is not paid, he will not forward the bills for clearance and also demanded him to pay the money on 14.11.2002 at 12.00 noon. If the version as found in the complaint - Ex.P.53 is true, then, there is no necessity for the accused to demand more money after receiving the said Rs.3,000/-. This probablize the case of the

accused/appellant that the defacto complainant owe some money to the accused/appellant. He has partly paid Rs.3,000/- and had promised to pay the balance in future date and left the office. Under the pretext of paying money, he has given the tainted money to the accused/appellant and when he has asked him about the balance, he has given some evasive reply and left the place for the Police Team to do the rest.

32.The trap laying Officer has unfortunately fallen into trap laid by the defacto complainant who has schemed to wreck vengeance against the appellant/accused. This can be seen from the fact that the trap laying Officer Mr.S.Balasubramaniam who has examined himself as P.W.6 in his deposition, has stated that after receiving the complaint marked as Ex.P.53, he made secret verification through his source and the source reveal that the accused/appellant does not enjoy good reputation then he made arrangement for the presence of two independent witnesses for trap.

33.Whereas, P.W.4, the immediate superior of the accused/appellant has deposed in unequivocal term that he know the accused for 2 ½ years. He is a sincere and dedicated Officer and doing the commendable work in the installation work with the time limit, he has carried the installation entrusted to him. Ex.P.53 was

received at the Superintendent Office by the trap laying Officer at about 9.30 am. He has discreetly enquired about the defacto complainant through his source and arranged for witness. Mr.Sadasivam - P.W.3 is one of the witness arranged by the trap laying Officer. He has deposed that at about 10.00 am, on 14.11.2002, he received a call from his superior and told him to go and meet the trap laying Officer – P.W.6 for the purpose of secret investigation. So, from the prosecution evidence, P.W.2 has gone to the CBI Office at 9.30 am on 14.11.2002 with the complaint marked as Ex.P.53, the Superintendent CBI ACB, Chennai has received the complaint and asked the trap laying Officer – P.W.6 to take needful action on the complaint and thereafter, P.W.6 has made secrete verification through his source about the accused/appellant and found that he does not enjoy the good reputation and immediately contacted the superior officer of P.W.3 by 10.00 am. Thus, within less than 30 minutes, the trap laying Officer had enquired about the credential of the accused person and satisfied about the genuineness of the complaint given by P.W.2 and had acted upon it.

34.As pointed out earlier, neither in the complaint nor in the Exs.P.10, 22 & 40, nor through other evidences, the prosecution could able to establish the fact that the date on which the bills were presented. The prosecution is unable to explain when the

endorsement found in these documents indicating the accused/appellant had certified the bills for clearance. When there is a plausible explanation has been placed by the accused/appellant coupled with the evidence of D.W.1 and D.W.2 and the exhibits D.1 and D.2 which are much prior to the complaint marked as Ex.53, it is unfortunate that the trial Court has failed to appreciate these evidences in its proper perspective. Since, the trial Court has failed to give credence to the exhibits relied by the defence and given undue reliance upon the prosecution witnesses has led to miscarriage of justice leading to the conviction of the appellant. Hence, this Court holds that the trial Court judgment is liable to be set aside.

35. In the result, Criminal Appeal is allowed and the conviction and sentence imposed by the learned Principal Special Judge for CBI cases, Chennai dated 23.12.2005 in C.C.No.53 of 2003 are set aside. The appellant/accused is acquitted from the charges and he is set at liberty unless his presence is required in connection with any other case. The bail bond, if any executed by the appellant/accused shall stand canceled. Fine amount, if any, paid by the appellant shall be refunded to him.

06.09.2017

jbm

Index: Yes

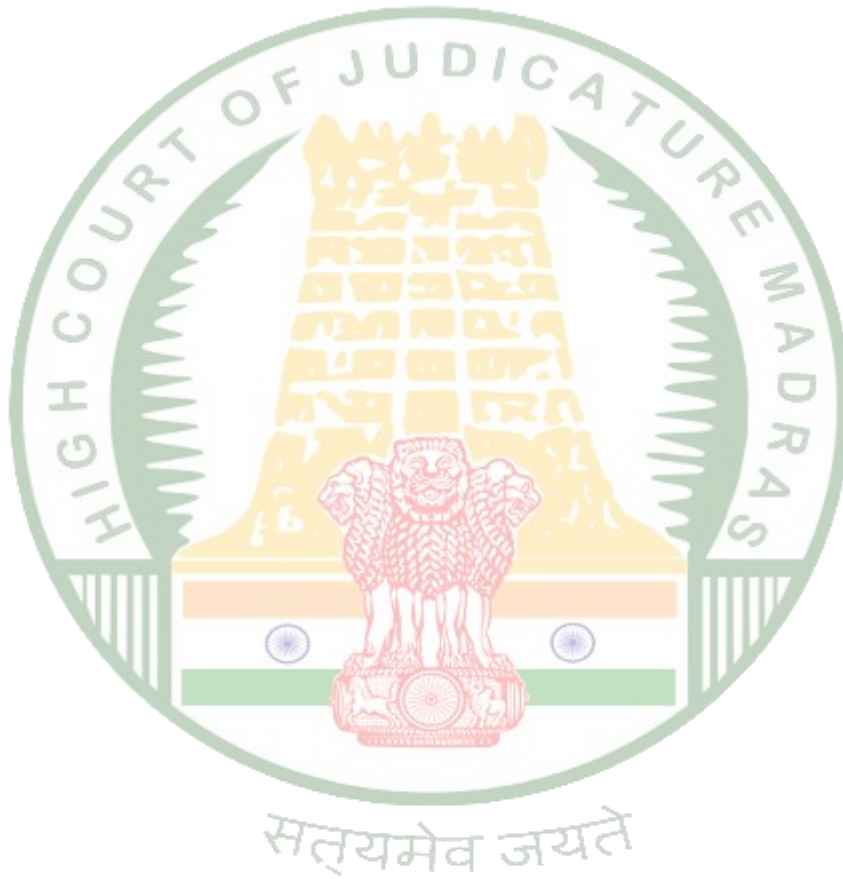
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Speaking Order/non speaking order

To

1.The Principal Special Judge for CBI cases,
Chennai.

2.The Special Public Prosecutor (CBI cases),
High Court, Madras.



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G.JAYACHANDRAN.J.,

jbm



Judgment made in
Crl.A.No.36 of 2006

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