IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A.No.1238 of 2004

The State rep.by
Inspector of Police,
CBI/ACB/Chennai. ...Appellant/Complainant

Vs.

1. A.N.Viswanathan
2. Narendrakumar Mohoot
3. N.Mani
4. R.Surendran
5. Anjay Prakash Mohoot ...Respondents/Accused 1 to 5

PRAYER: Criminal Appeal is filed under Section 378 Criminal Procedure Code, against the order of acquittal dated 31.12.2003, in C.C.No.13/97, passed by the Principal Special Judge for C.B.I. Cases, Chennai.

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

For R3-R4 : Mr.R.S.Anhamuthu
For R2-R5 : Mr.R.Rajarathinam

ORDER

The appeal against acquittal preferred by the state on the ground that the trial court has not properly appreciated the evidence placed by the prosecution more particularly the evidence of approver, thereby perversely held by the accused are not guilty.

2. The case of the prosecution as narrated by the investigation Officers namely PW.90 Mr.Thangavelu and PW.92 Mr.Somasekara Nayar is that on 14.03.1985, search was conducted at the residence and office premises of Mr. Narendrakumar Mohnot in the presence of independent witnesses with the assistance of Inspector of Police Mr.Vellaiyagiri. During search, certain

incriminating materials were seized which revealed that the Income Tax deducted at source had been refunded, based on forged document, to fictitious persons. In the course of the investigation, they found that Mr.J.Harakhchand Jain an employee under Mr. Narendrakumar Mohot, a Chartered Accountant specialised in Income Tax had played the pivotal role in the said crime at the instance of his employer.

3. It is case the of prosecution that upon confession given by Mr.J.Harakhchand Jain, from cloak room of Egmore Railway Station, they recovered Mo's.1 to 7 which are materials used for printing forged Income Tax certificates. The further case of the prosecution is that J.Harakhchand Jain at the instruction of Mr.Narendrakumar Mohnot used to visit race club at Bombay, Pune and Chennai, used to purchase winning tickets and TDS certificates by paying premium of 12% to 20% from the actual winner and thereafter prepare TDS certificates in fictitious names. The further case of the prosecution is that the cheques given for TDS will be deposited in fictitious name in various banks and the money used to be collected by Mr.Anjay Prakash Mohnot.

4. When these accused got information about search of one A.N.Viswanathan (A1), Income Tax Officer, they started screening the evidence used for Crime. Accordingly, some of the records and documents were disposed of, at river "Kuvam" and remaining incriminating materials were concealed in the clock room at Egmore Railway Station, which were later recovered based on the information of Harakhchand Jain. The further case of prosecution is that nearly 20 documents of Income Tax returns connected with fraudulent refund of TDS were secretly destroyed with the help of one Mr.A.Surendran. After completion of investigation, the prosecution has laid the charge sheet as against eight persons A.N.Viswanathan, S.Thirunavukkarasu, Narendra kumar Mohnot, N.Mani, AnjayPrakash Mohnot, A.Ramani, C.Krishnamurthy, A.Surendran. As far as Harakhchand Jain pardon was granted and taken as approver.

5. Based on the final report, the trial Court has taken pains to frame 138 charges for the offence of conspiracy, cheating, fabricating valuable security and using it as genuine to cheat, besides Section 5 (1) (d) of Prevention of Corruption Act, 1947 against the public servants.

6. Before conclusion of the Trial A2-Thirunavukarasu, A6-Ramani died and A7-Krishanmurthy absconded. So case against them was split up and numbered as C.C.No.14/97. The trial court, after appreciating the oral evidence, 524 Exhibits and seven material objects on behalf of prosecution and six exhibits on behalf of the defence, had come to conclusion that except the evidence of PW.2 approver, there is no substantial evidence to

implicate the accused persons for the alleged charge against them and in the absence of corroboration, relying upon the evidence of PW.2, who is a tainted witness, cannot be prudent to convict the accused. Aggrieved by the judgment of acquittal these appeal are filed by the State.

7. The learned Special Public Prosecutor appearing for the appellant took all pains to point the incriminating materials against these accused persons and tried to impress upon this Court by saying the factum of forged documents and encashment not disputed. So the charges are held to be proved by the prosecution. PW.2 has elaborately deposed, how forgery and fraudulent encashment of TDS done by him in connivance with other accused persons. Therefore when crime is committed in secrecy as a consequence of conspiracy, nothing more could be expected, except the version of the co-conspirator turned approver and the documentary evidence which indicates that the certificates were not genuine, but fabricated by the conspirators, arrayed as accused in this case.

8. The learned Special Public Prosecutor apart from PW.2 evidence also strongly relied upon, Exhibits P4, P5, P6, P7, P8 and P9 which are certificates of TDS alleged to have been issued in the fictitious name of T.R.Subramanian, T.Rajeasekar, R.Gopal, R.M.Swaminathan, B.Krishnakumar and K.Sebastian. The ocular evidence of PW.2 and the hand writing expert PW.90 and the opinion of the hand writing expert marked as Ex.P.502, Ex.P.503, Ex.P.504 to show that these documents were not genuinely prepared in the normal course of business, but forged by the approver on the instruction of his employer A2. Having proved the fact that these documents are forged and the persons who have forged are identified by PW.2, no further material evidence is required to hold the accused persons guilty. However, he has also fairly conceded that besides the evidence of PW.2, there is no evidence to link accused Mr.A.Surendran who is charged for theft of Income Tax records.

9. Heard the learned counsel appearing fo the appellant and the respondents. Perused the records exhibited and evidence of the witnesses and the judgment of the trial Court.

10. The case of this nature, no doubt, only circumstantial evidence will be available for investigating agency to prove the guilt of the accused persons. But, as far as this case is concerned though nearly 524 exhibits have been marked and 92 persons were examined, the crucial issue about the involvement of accused persons is not spoken to by anybody, except the approver. Apart from the inculpatory statement of approver, implicating the other accused, the evidence let in by prosecution lacks corrobaration and the other evidence does not correlate the accused persons and the crime to establish their

guilt. For example, while PW.2 says that some of the TDS certificates were filled up by the second accused, there must be some evidences to show that writing in those TDS certificates is that of the second accused. It appears that the prosecution has taken strain to collect specimen signatures of accused persons and sent the same for comparison to the hand writing experts and the opinion given by the hand-writing experts also indicates that they have compared the sample signatures with that of the questionable signatures and writings. However, there is no evidence to show that from whom the sample signatures were drawn and sent for comparison with the questionable signatures. When such a vital link is not available on record for the court to appreciate, the Trial court had no other go, but to acquit the persons. Likewise, there is a specific charge against A4 and A5, that bank accounts were opened in fictitious names by them and the forged TDS certificates were deposited in those bank accounts and withdrawn by these persons. To prove the same, prosecution relies only on the evidence of approver. This court is unable to find any other material that the TDS amount was refunded in fictitious name and encashed by A4 and A5 as spoken by PW.2. It is settled proposition of law that approver evidence cannot be taken on its face-value and his evidence has to be deeply tested. Strong corroboration is required and that collaborative evidence must also be independent and impecable one. In this case, court is unable to find any such corroborative or impecable evidence to implicate these accused in the crime, except the interest and tainted version of PW.2.

11. The learned Special Public Prosecutor submitted that based on the approver confession leading to the recovery of incriminating materials from cloak room of Egmore railway station in the presence of independent witness and the deposition of PW.87, will prove Mo's.1 to 6 are the materials which were used to prepare fraudulent certificates like the printing block, rubber stamp etc., and are clinching evidence to prove the fact of preparation of forged documents using those material objects. The manner in which TDS certificates were prepared is clearly deposed by PW.2. Recovery of Mo's 1 to 7, on the information given by PW.2, his confession statement recorded under Section 164 of Cr.P.C before the Magistrate, not merely points the needle of suspicion to the employer of PW.2 and his other associates but it indicates that except these accused, none other is responsible for such preparation of forged documents.

12. This Court could have accepted the above contention, of the Learned Public Prosecutor, if the prosecution had placed before the Trial Court evidence to show that PW.2 was employed under the accused person A2, at any point of time, and he was acting at the instance of A2. Unfortunately, there is no

material to show that PW.2 was employed under the second accused except self serving statement of PW.2 as an approver. Further more, though PW.2 has given his confession statement before magistrate and recorded under section 164 of Cr.P.C, it is brought to the notice of this court, by the learned Counsel appearing for the respondents that both PW.90 and PW.92, has spoken about the previous statement of PW.2 recorded by them under Section 161 Cr.P.C but that statement has not seen the light of the day, for the accused persons to contradict the previous statement. Insofar as statement of PW.2 recorded under Section 164 of Cr.P.C, it does not reveal much information except a broad implication of the other accused, what PW.2 has deposed before the Court, on oath, is exaggerate, embellished version and for the first time, he has spoken about several facts implicating himself and others which he has not disclosed before the Magistrate who recorded his confession statements. If the tainted evidence of PW.2 is kept aside, this court is unable to lay hand on any other evidence worthy to implicate the respondents. Hence, the trial court finding cannot be faulted as perverse.

13. In the result, this court finds no ground to interfere the judgment of the trial court. Accordingly, the Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bsm
To

1. The Principal Special Judge,
   for C.B.I. Cases, Chennai.

2. The Inspector of Police,
   CBI/ACB/Chennai.

+1cc to Mr.K.Srinivasan,Special Public Prosecutor, S.R.No.79977
+1cc to Mr.R.S.Anhamuthu, Advocate, S.R.No.79832
+1cc to Mr.R.Rajarathinam, Advocate, S.R.No.79978

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GP(CO)
CS/11/12/17