

BAIL SLIP

The Appellant/Petitioner Accused namely V.Deivasuga S/o. Velu was directed to be released on bail as per the order of this court dated 17.04.2014 made in Crl.M.P.1 of 2014 in Crl.A.217 of 2014 on the file of this court.

The Appellant/Petitioner Accused namely Manish Kanti Banik S/o.Mano Ranjen Banik was directed to be released on bail as per the order of this court dated 23.04.2014 made in Crl.M.P.1 of 2014 in Crl.A.235 of 2014 on the file of this court.

The Appellant/Petitioner Accused namely K.Chokkalingam, S/o.Late Kuppusamy was directed to be released on to bail as per the order of this court dated 29.04.2014 made in Crl.M.P.1 of 2014 in Crl.A.257 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.Nos.217, 235 & 257 of 2014

1.V.Deivasuga	... Appellant in Crl.A.No.217 of 2014
2.Manish Kanti Banik	... Appellant in Crl.A.No.235 of 2014
3.K.Chokkalingam	... Appellant in Crl.A.No.257 of 2014

सत्यमेव जयते
Vs.

State Represented by
The Inspector of Police
SPE/CBI/ACB
Chennai.

...Respondent in both Crl.A's

Common Prayer: Criminal Appeals filed under Section 374 of Criminal Procedure Code, to set aside the Judgment dated 09.04.2014 made in C.C.No.6 of 2008 on the file of the Learned XIV Additional Special Judge for CBI cases, City Civil Court, Chennai 600 001.

For Appellant
(in CrI.A.No.217/2014) : Mr.M.Venkataraman
Senior Counsel
for Mr.M.Palanivel

For Appellant
(in CrI.A.No.235/2014) : Mr.K.Suresh Babu

For Appellant
(in CrI.A.No.257/2014) : Mr.A.Nagarajan

For Respondent : Mr.K.Srinivasan
(in all CrI.A's) Special Public Prosecutor
(For CBI Cases)

COMMON JUDGMENT

These appeals are against the Judgment and conviction rendered by the Trial Court, by which the appellants A1 to A3 are found guilty for the offences punishable under Section 120 (B) IPC r/w Section 7 and r/w Section 13 (2) r/w Section 13 (1) (d) and r/w Section 12 of Prevention of Corruption Act 1988 beyond all reasonable doubt. A1 and A2 are found guilty for the substantive offences punishable under Section 7 and under Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act 1988 beyond all reasonable doubt. A3 is found guilty for the substantive offences punishable under Section 7 and 12 of IPC Act 1988.

2. The case of the prosecution is that A1- Deivasuga was working as Shed Examiner in "O" yard Import LCL, Chennai container terminal limited, Chennai Port Trust, A2-Shri Manish Kanthi Banik, was working as Shed Appraiser customs in "O" yard Import LCL, Chennai container terminal limited, Chennai Port Trust which A3-Chokalingam a Private Individual, unauthorisedly employed by customs officials who had entered into a criminal conspiracy to obtain illegal gratification from one H.M.Abdul Razak, employee of M/s.Hawwa Exims and in pursuance to the said criminal conspiracy A1 demanded illegal gratification of Rs.3,000/- from the complainant and instructed him to give the amount to A3. Since the employer of H.M.Abdul Razak namely Zakir Hussain was not inclined to give any bribe, complaint was given alleging the demand of illegal gratification by A1 and A2. Accordingly a trap was laid on 13.07.2007, when Abdul Razak met A1 and A2 at their office along with one Mohideen, they instructed A1 to give the money to A3, a Private Individual who was present nearby. Accordingly, the tainted money Rs.3,000/- was given to A3. Thereafter the trap laying officer had recovered the money from A3, compared it with the numbers found

in the entrustment mahazer and after completion of the other formalities and being satisfied that A3 received illegal gratification on behalf of A1 and A2, had proceeded further with investigation and filed final report against the three appellants.

3. The trial Court on perusal of the records submitted by the prosecution had framed charges under Section 120 (B) IPC r/w 7 and 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act r/w Section 12 of Prevention of Corruption Act against A1 to A3. As far as, A1 and A2 are concerned substantive charge for offences under Section 7 and 13 (2) r/w 13 (1) (d) were framed. Regarding A3 a Private Individual, for abating the public servant to obtain illegal gratification other than illegal remuneration, charge for offences under Section 12 of Prevention of Corruption Act was framed.

4. The prosecution, to prove the charges has examined 20 witnesses and had marked 44 exhibits and 9 material objects. On the side of the defence, 9 exhibits were marked besides examining one E.Jayakumar as Court witness. The Trial Court on appreciation of these witnesses found the accused guilty of all charges and sentenced A1 to A3 to undergo one year rigorous imprisonment and fine of Rs.1000/- in default three months simple imprisonment for offences under Section 120 (B) IPC r/w 7 and r/w 13 (2) 13 (1) (d) and r/w Section 12 of Prevention of Corruption Act. A1 and A2 were sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default three months simple imprisonment for the offences under Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act. A3 was sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo three months simple imprisonment for offences under Section 7 and 12 of Prevention of Corruption Act. The period of substantive sentences were ordered to run concurrently and the period already undergone by the accused were ordered to be set off.

5. The learned counsel appearing for the appellants, apart from raising several grounds, doubting the appreciation of evidence and the reasoning given by the trial Court for holding the appellants guilty of the crime attacked the prosecution case on the inconsistency and incredulity of the evidence given by the defacto complainant namely Abdul Razak-PW.1.

6. The complaint, marked as Ex.P.3 dated 13.07.2007, indicates that Auto spare parts was imported from China under

bill to entry dated 07.07.2007 by Zakir Hussain-PW.14, Proprietor of M/s.Hawwa Exims and PW.20, employee under Zakir Hussain-(PW.14) had gone to the custom house along with the bill of entry on 09.07.2007, he was accompanied by one Mohideen who was a co-employee. It is alleged in the complaint, on the day when he met A2, he asked him to come on the next day that is 10.07.2007. They went to custom house on 10.07.2007 at about 11.30 a.m. They gave the bill of entry and other related papers to A2 and A1. A1, examiner, who came to the place where the goods were kept and saw the goods and left. He did not turn back for a long time and therefore PW1 and Mohideen-PW18 went to the room of A1 and placed the papers on his table. On perusing the papers A1 told them that he is going to refer the matter to the probe for total examination and asked them 7 samples of all the 17 items of goods they have imported. When they negotiated within him to clear the goods without referring to any examination, he left the place informing them that he will get the permission of AO and come back at about 5.00 p.m. On that day when he call them, there was a discussion with examiner. The assessing officer A2 had said something in English which is also found in the complaint and thereafter A1 told PW.1 that they have to give Rs.3,000/- as illegal gratification to clear the goods after group examination on 11.07.2007.

7. Later the goods was assessed. Additional Custom Duty of Rs.62,385/- was levied and paid. Since it crossed 6.00 p.m. A1 called them and told since it is beyond 6.00 p.m. goods cannot be cleared on that day and asked to come on the next day.

8. When this matter was informed to their master Zakir Hussain that A1 and A2 are demanding bribe to clear the goods, he instructed them to meet the officers to clear the goods without insisting for any bribe and if they refused to clear the goods without bribe, then to lodge the complaint to the CBI.

9. While complaint which is marked as Ex.P.2 narrates the incident in the above said fashion, the deposition of PW1 before the Court is something different. According to PW1 there is no meeting of A1 and A2 on 12.07.2007. The alleged demand of bribe for a sum of Rs.3,000/- by A1 and A2 was on 09.07.2007 and 11.07.2007. The purpose of demand of illegal gratification was to clear the goods without referring the matter for group examination. However, from the evidence of PW1 and the other records it is seen that A1 has referred for group examination. The goods were examined by an officer by name Amresh on 11.07.2007 and custom duty of Rs.62,835/- was levied on the goods. It is also the case of the prosecution that on the same

day the custom duty was also paid. The additional custom duty was paid after group examination and only after the completion of examining the goods, and levy of additional duty, the complaint has been lodged on 13.07.2007. This itself indicates there is something not true in the version of the defacto-complainant.

10. Further, after the complaint, the trap has been laid and pre-trap mahazer has been prepared by the trap laying officer. The said entrustment mahazer marked as Ex.P.4 contains the proceedings conducted before proceeding to the scene of trap. In the entrustment mahazer it is specifically mentioned that the trap laying officer placed the tainted currency notes into the right side shirt pocket of Abdul Razak-PW-1. The trap laying officer had instructed him not to touch the same, unless the demand is raised by the accused persons. Where as PW1 had deposed before the Court that the traplaying officer has told him that A1 and A2 will not receive the money, they will instructed him to handover the money to somebody else, if they say so he should properly identify the person to whom they ask to handover the money and after giving the money, he should come out and give pre-arrange signal of wiping his face with a handkerchief.

11. The case of the prosecution further gets weakened by the fact that the money was not received by A1 and A2 but only by A3 who is not a public servant and who is unconnected with the affairs of the custom department and even according to PW.1 the tainted money was not given by him directly to Chokkalingam, but he has given the money to Mohideen who accompanied him and claimed to be the co-worker Zakir Hussain in P.W.14 firm.

12. PW.18-Mohideen who according to prosecution was present along with PW-2 at the time when he offered bribe to A1 and A2, PW.2 took out the tainted money and gave to PW.18 in turn to give it to A3-Chokkalingam. This witness PW.18 has turned hostile, he did not support the case of the prosecution about his presence at the time of trap or handing over the tainted money to Chokkalingam-A3.

13. Further according to the prosecution, the entire trap proceedings happened in the presence of another witness by name Dhanesh who was examined as PW.16. The evidence of Ex.P.16 does not disclose about the presence of Mohideen at that time.

14. From the perusal of the evidence of the PW.16 Dhanesh, we find that he has deposed in his chief examination that when PW1 offered Rs.3,000/- to A1, A1 in turn asked PW1 to handover the money to Chokkalingam (A3). A1 agreed to do so and at that juncture, A1 took the file to A2 table for signature. Further, he states that A1 also asked one Mohiteen-PW.18 that he should give Rs.1000/- more and at that juncture A1 gave the money to Mohideen, PW.18, under instruction to handover money to A3.

15. The embellishments and contradictions found in evidence of PWs.1,14 and 16 coupled with the evidence of the trap laying officer, who says on receipt of the pre agreed signal he entered the premises and enquired PW.1 and PW.16 what happened in A1 room for which they told him, both A1 and A2 together instructed PW.1 to give the money to A3. This is not the case of the witnesses alleged to have been present during the receipt of trap money.

16. The perusal of the evidence relied by the prosecution which proves only the recovery of tainted money from A3 a third party unconnected to the affairs of the customs department. There is no material evidence to show that A3 received that money with knowledge that it is an illegal gratification meant for A1 and A2. The prosecution has failed to prove either the demand or acceptance of any money from PW.1 which is meant for showing any favour to PW1 or to the company owned by PW.14. The contradiction found in the complaint and the evidence of defacto complainant, the hostility of PW.18- Mohideen, who is supposed to corroborate the evidence of PW.1, vitiate the case of prosecution cumulatively. Several loose ends in the case of the prosecution left unconnected renders the Judgment of the Trial Court liable to be set aside.

17. Accordingly, the Criminal Appeals in C.A.Nos.217, 235 & 257 of 2014 are allowed. The Judgment of the trial Court in C.C.No.6 of 2008 dated 09.04.2014 is set aside and the fine amount paid if any, ordered to be refunded.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The XIV Additional Special Judge for CBI cases,
City Civil Court, Chennai 600 001
2. The Inspector of Police
SPE/CBI/ACB, Chennai.
3. The Special Public Prosecutor, for CBI Cases,
High Court, Madras.
4. The Section Officer, Criminal Section,
High Court, Madras-104

+1cc to Mr.M.Palanivel, Advocate, S.R.No.13987

+1cc to Mr.K.R.Ramesh Kumar, Advocate, S.R.No.13900

+1cc to Mr.K.Suresh Babu, Advocate, S.R.No.13560

+1cc to Mr.K.Srinivasan, Special Public Prosecutor, S.R.No.13776

Crl.A.Nos.217, 235 & 257 of 2014

GMR (CO)
CS/14/03/18



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