

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Criminal Appeal No.101 of 2007

State: Represented by
The Deputy Superintendent of Police,
SPE/CBI/SIU-VIII/New Delhi : Appellant/Complainant

Vs.

1.Shrimati Shanta Devi
2.Shri Hamid Sultan
3.Shrimati Sumitra Seshadri
4.M/s.Ganesh Oil Company
Rep.by R.Krishnamurthi
5.Shri R.Krishnamurthi
6.Shri Mahendra Gupta
7.M/s.R.M.Subramania Chettiar
8.Shri S.P.Jaigopalan
9.Shri Shanmugam
10.Shri Premchandran
11.Shri V.Kandaswamy : Respondents/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the acquittal of the respondents by the learned Principal Special Judge for CBI Cases, Chennai, by Judgement dated 11.09.2006 in C.C.No.26 of 1998.

For Appellant : Mr.K. Srinivasan
Spl.P.P.for CBI cases.

For Respondents : Mr.M. Kumar for
Mr.G. Saravanan for R4 & R5

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JUDGMENT

The appeal is filed by CBI against the acquittal of the respondents/accused from the charges under Section 120-B r/w 420 IPC, Sec.5(2) r/w 5(1)(d) of P.C.Act 1947, Sec.13(2) r/w 13(1)(d) of P.C. Act 1988 and Sec.7 of Essential Commodities Act.

2. While admitting the appeal this Court ordered notice to

the respondents/accused. On 07.08.2018 the learned Special Public Prosecutor for CBI cases appellant reported this Court that except Respondent Nos.4,5 and 8 other Respondents notices could not be served as they have shifted their residences. Hence, this court has ordered to take private notice on the unserved respondents. Today also it is represented by the learned Special Public Prosecutor for CBI cases appearing for the appellant that private notices were sent to the Respondents 1 to 3, 6,7,9 to 11 and the service is awaited. In such circumstance this Court is proceeded to deliver the judgment.

3. The Respondents were implicated the offence under Section 120-B r/w 420 IPC, Sec.5(2) r/w 5(1)(d) of P.C.Act 1947, Sec.13 (2) r/w 13(1)(d) of P.C. Act 1988 and Sec.7 of Essential Commodities Act. The case of the prosecution is that the then Joint Commissioner Late C.S.Rajmohan Civil Supplies & Consumer Protection Dept., Govt. of Tamil Nadu, Chennai, during 1987-89 had entered into a criminal conspiracy with 21 Kerosene dealers viz. (1) Sri.S.T. Arasu, Triplicane, (2) M/s. Kavitha Enterprises (3) T.Loganathan Chetty (4) M.M.Agency Purasai & Anna Nagar (5) Supra Agencies (6) Sathya Narayana (7) Aruna (8) Raj Agencies (9) Bhagyalakshmi, Pallavaram (10) Bhagyalakshmi, Tambaram (11) Gnanavel (12) Velraj, (13) G.P.C., Perambur, (14) R.Neelagandan, Perambur (15) S.T.Arasu, Perambur, (16) Munuswamy Naidu (17) Chandra Agencies, Ambattur, (18) Chandra Agencies, Padi, (19) Neelaganda, Purasai, (20) Balaji, (21) Divyalakshmi and some unknown dealers and also some unknown officers of oil companies viz., IOCL, HPCL, BPCL, BPL in the matter of issue of Superior Kerosene Oil (hereinafter referred to as "SKO") by way of issuing bogus allotment orders and thereby enabled the dealers to uplift kerosene oil to an extent of 31,918 Kiloliters valued at Rs.6.60 crores approximately from the Oil Companies to which dealers were not entitled by issuing the bogus allotment orders. The said Joint Commissioner Late C.S.Rajmohan has cheated the Government of India by abuse of his official position by corrupt and illegal means by disposing the kerosenes without accounting for the sale in the respective records in contravention to the provisions of kerosene (Regulation of Trade Order 1973) and gain pecuniary benefits.

4. The Then Joint Commissioner Late C.S.Rajmohan has issued 55 additional allotment proceedings of SKO allocating additional quantity in favour of the 38 wholesale dealers of Madras City and the nearby areas. After the completion of investigation, charge sheet was filed by the Deputy Superintendent of Police, CBI, Delhi, and the same was taken on file as C.C.No.26 of 1998 and summons were issued to the respondents/accused. After entering appearance of the accused, copies of the documents relied on by the prosecution were furnished to them under

Section 207 Cr.P.C. In the meanwhile, accused Mr.C.S.Rajmohan, P.K. Ettycherian and G.Ramaduai had died and charges levelled against them have abated. Thereafter, on hearing the Public Prosecutor and the counsel for the accused and on perusal of the records, the trial court being satisfied the prima facie has been made out against the remaining accused and the charges were framed against them. The charges have been read over and explained to the accused. The accused persons have not pleaded guilty and claimed to be tried. Thereafter the prosecution has examined 40 witnesses and marked 508 exhibits were marked. On perusal of the evidence of witnesses and documents marked by the prosecution the learned trial Judge has come to the conclusion that the prosecution has failed to prove the case against the accused and acquitted all the accused.

5. Though initially 23 accused were implicated above said offence, after filing the charge sheet only 11 accused were faced the trial. A1 to A7 are the dealers and A8 to A11 are the transporters. Some of the persons who were shown as accused in the FIR are cited as witnesses. One M/s.M.M. Agencies shown as Accused No.5 in the FIR. The proprietor of M/s.M.M.Agencies was examined as P.W.22 in the case and one Mr.Sathya Narayana was shown as Accused No.7 in the FIR, he was examined as P.W.23. Similarly, one Mr.Munusamy Naidu shown as Accused No.17 in the FIR his son was examined as P.W.27.

6. Though the deceased C.S.Rajmohan was Deputy Commission of Civil Supplies during the relevant period i.e., 1987 to June 1988 and P.W.2 was the Commissioner of Civil Supplies and Consumer Protection Department, Government of Tamil Nadu from August 1985 to 21.1.1987 and P.W.6 was working as Joint Commissioner, CS & CP Dept. during June 1988 to February 1989. The lower court discussed the matter whether Mr.C.S. Rajmohan got the authority to pass orders regarding the additional allotment of SKO. On perusal of the evidence of P.W.2, in his evidence the then Joint Commissioner have equal powers in the matter of issue of allotment orders of SKO. Similarly, P.W.6 has stated that the powers of the Commissioner and Joint Commissioner under the Kerosene Control Order are one and the same. Other prosecution witnesses also made clear that late C.S.Rajmohan, Joint Commissioner has got the authority to pass orders regarding additional allotment orders of SKO to the dealers. Therefore, the lower court arrived at a conclusion there is no illegal for allotting the additional SKO to the dealers by the deceased C.S.Rajmohan.

7. In view of the additional allotment orders were passed by the late C.S.Rajmohan in collusion with the other dealers thereby they made huge loss to the oil companies and gained pecuniary benefits from the dealers. Further, the case of the

prosecution is that no entries were found in Ex.P.174 to 178 for despatching of Additional Allotment Order passed under Ex.P.24 to 27 and on perusal of the evidence of P.W.18 to 20 and from Ex.P.174 to 178, it is clear that Additional Allotment Orders given to the despatch section and the entries were not made in the Registers maintained by the despatch section. As per the statement of P.W.18 Additional Allotment Orders were not sent through despatch section and that is the reason why no entries were found in the despatch register. The said allotment orders were sent through Special Messenger, for which separate local delivery register maintained. However, the Lower Court found that the Additional Allotment Orders were sent through special Messenger and the same is reflected in the Local Delivery Register and the prosecution was not offered any explanation for not filing Local Delivery Register. Therefore, the prosecution has to prove that the Additional Allotment orders were passed by the late C.S.Rajmohan had not been despatched to the concerned person either by post or local delivery. Mere filing the despatch register maintained by the office of the Commissioner of Civil Supplies and Consumer Protection, will not alone serve the purpose. However, the practice of sending the Additional Allotment Orders through Special Messenger were admitted by P.W.18 to P.W.20 and the Register was not marked by establishing the innocence of the accused persons.

8. After elaborate discussion the court below arrived at a conclusion, though the allotment Orders were issued by the then Joint Commissioner, who was enjoying the power of the Commissioner, as per the evidence of P.W.2, the dealers are no way responsible for issuance of allotment orders and the accused/dealers cannot be liable for the issuance of allotment orders of SKO by the then Joint Commissioner Late C.S.Rajmohan. So in view of the above, the lower court further held that there is no pecuniary loss to the oil companies and the allotment order was passed by the then Joint Commissioner as per his power. Accordingly, the Lower Court arrived at a conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubts and all the accused were acquitted under Section 248(1) Cr.P.C.

9. Learned Additional Public Prosecutor appearing for the Appellant would submit that steps were taken to serve notice to the other accused person, however, except three accused, other accused could not be served, as most of the accused were non-traceable. Though several infirmities in the order of the Court below and the same was not properly considered. However, learned Public Prosecutor fairly conceded that there is no pecuniary loss to the Oil Companies through allotment orders.

10. In the above back ground it is relevant to refer the

decision of the Honourable Apex Court reported in Babu vs. State of Kerala [(2010) 9 Supreme Court Cases 189] in which the Honourable Apex Court while dealing the matter of criminal appeal against acquittal has laid down guidelines which are as follows:

"17. In State of Rajasthan v. Naresh @ Ram Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. "

11. The Appellate Court while dealing with the cases of appeal in which against acquittal has clearly held that unless the order of the trial court is perverse the Appellate Court cannot interfere in a routine manner with the judgment and order of acquittal by the Trial Court in a routine manner and the Appellate Court should bear the mind in presumption of innocence of the accused and further the trial court acquitted bolsters the presumption of his innocence and the interference in a routine manner is not permissible. In the present case though the official who allotted the order was passed away at the relevant point of time and all the persons arrayed as accused here are dealers. In view of the above I am not inclined to interfere the order of the trial Court. Accordingly this appeal is dismissed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

ggs

To

1.The Principal Special Judge for CBI Cases, Chennai

2.The Special Public Prosecutor, CBI Cases, High Court, Madras.

3.The Deputy Superintendent of Police,
SPE/CBI/SIU-VIII/New Delhi

+1cc to Mr.K.Srinivasan, Special public Prosecutor for CBI,
High Court, Madras SR.No.77967

CrI. A.No.101 of 2007

SS(CO)
GMY(22/01/2019)



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