IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.1317 of 2003

State by:
Inspector of Police,
Vigilance and Anti Corruption,
Salem. ... Appellant/Complainant

Versus

1.R.Chidambaram
2.D.Vinayagam
3.P.Prasath ... Respondents/Accused

Appeal filed under Section 378 of Cr.P.C. seeking to set aside the order of acquittal passed by the trial Court in Spl.C.C.No.1/96 on the file of the Spl.Judge/Addl. District Judge cum Chief Judicial Magistrate, Villupuram dated: 19.02.2003 and that the accused be convicted of the offence with which they were charged.

For Appellant : Mr.R.Ravichandran
Government Advocate

For Respondents : No Appearance (for RR1 & 2)

: Mr.Sai Krishna & Mr.Sai Bharat (for R3)

JUDGMENT

This appeal has been filed by the State against the order of acquittal passed by the trial Court in Spl.C.C.No.1/96 on the file of the Spl.Judge/Addl. District Judge cum Chief Judicial Magistrate, Villupuram dated 19.02.2003.

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2. The case of the prosecution are as follows :-

The accused 1 and 2 stood charged for the offences punishable under Sections 120 (b) read with 167, 477 (a), 420, 409 of the IPC, Section 5 (2) read with Section 5 (1) (c) (d) of The Prevention of Corruption Act, Section 109 of Indian Penal Code, Section 167, 477 (a), 109 read with 477 (a), 420, 409 of IPC, Section 5 (2) read with Section 5 (1) (c) (d) of Prevention

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of Corruption Act. The third accused stood charged for the offences punishable under Sections 120 (b) read wit 167, 477 (a), 420 and 409 of IPC, Section 5 (2) read with 5 (1) (c) (d) of The Prevention of Corruption Act and Section 109 read with 409, 109 read with Section 5 (2) and 5 (1) (c) (d) of The Prevention of Corruption Act.

3. The case of the prosecution is that the first accused was employed as Manager in Ulundurpet Panchayat Union between 1982-1983 and 1984-1985, the second accused was employed as Extension Officer from 13.08.1981 to 10.04.1985 and the third accused was the owner of a Provisional Store by name Boopathy Stores. According to the prosecution, the accused 1 to 3 have entered into a criminal conspiracy along with one Ramachandran (since deceased) and one Ramanajulu, Special Officer of Villupuram Cooperative Society to cause loss to the exchequer. In continuation of such criminal conspiracy, they have created false and fabricated documents to make it appear that certain electrical goods and electrical spare parts required for administering the Panchayat Union have been purchased from the Kancheepuram Cooperative Society, but the fact remains that such goods were purchased from the shop run by the third accused, inflated the purchase bills to the tune of Rs.66,750.35 and thereby caused a revenue loss of Rs.24,489.50 to the exchequer. This is the sum and substance of the charge against the accused.

4. It is pertinent to mention that one of the accused by name Ramanujulu, against whom charges were framed, has turned as an approver and it was also sanctioned by the learned Judicial Magistrate, Cuddalore, after complying with the formalities under Section 306 of the Code of Criminal Procedure. Accordingly, the said Ramanajulu was examined as PW1 and he supported the case of the prosecution.

5. Before the trial Court, on behalf of the prosecution, PW1 to 18 were examined and Exs. P1 to P41 were marked. On the side of the accused, no witness was examined, but Ex.D1, a letter dated 14.12.1984 issued by the Divisional Development Officer, Thirukovilur issuing guidelines to be followed by the respective Commissioners of the Panchayat was marked.

6. The trial Court, after analysing the oral and documentary evidence has concluded that except the evidence of PW1, the accused-turned-approver, there is no other evidence was made available by the prosecution to prove the guilt of the accused. The trial Court disbelieved the deposition of PW1 on the ground that he turned as an approver in 25 Criminal cases besides departmental actions have been initiated and pending against him. The trial Court specifically pointed out that A-1 to A-3, along with the deceased Ramachandran, the then Commissioner of

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Ulundurpet Panchayat Union, came to his office during the month of December 1984 and discussed about the modus operandi to swindle the amount of the Panchayat. However, when PW1 was examined by PW2 under Section 65 of the Cooperative Societies Act, he has produced a report under Ex.P39 in which he has not whispered anything about the so-called conspiracy among the accused. Therefore, the trial court concluded that only to escape from the criminal proceedings against him, PW1 has turned himself into an approver and there is no bonafides in it. The trial Court also pointed out the statement of PW1 in his cross-examination and pointed out that only on the basis of supply orders, the goods were purchased, which was also corroborated by PW2 in his deposition. The trial Court also by placing reliance on Ex.D1, letter dated 14.12.1984 concluded that even without calling for tenders, the respective Commissioners of the Panchayat Union are empowered to effect purchase of certain goods to run the administration of the Panchayat with their discretionary power. Therefore, the trial Court concluded that the charge against the accused 1 to 3 that they have embezzelled the funds of the Panchayat by abusing their official position, in collusion with each other, has not been proved beyond reasonable doubt and accordingly, acquitted the accused.

7. Mr. Ravi, learned Government Advocate submits that on behalf of prosecution 18 witnesses were examined as PW1 to 18. Though all the 18 witnesses are not necessary to prove the guilt against the accused, the deposition of PW1, 4, 5, 6, 7 are sufficient to proove the prosecution case. PW1, who was Special Officer of the Villupuram Co-operative society clearly deposed that in the year 1984 A-1, A-2 and Ramachandran (since deceased) met him in his office and proposed to set up A-3 shop owner to purchase the electrical items directly from him and in furtherance of such conspiracy, PW1, along with A-1 and A-2 and the deceased Ramachandran created bogus records as if the entire electrical items were purchased from the co-operative stores and accordingly induced PW1 for paying 1% Commission and 10% commission to the Co-operative societies and thereafter agreed to share 10% for himself and 5% to A1 another 5% to A2 and thereby A3 will be benefitted by selling the electrical items at exorbitant rates.

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8. Inorder to establish the prosecution case initially PW1 made as accused in the first information report, however, he turned as approver under Section 306 of CRPC and his statement was recorded under Section 164 CRPC before the learned Judicial Magistrate. As per the statement, the entire conspiracy came to light and the loss caused to the exchequer was assessd at Rs.24,489.50 by the investigating officer, Thus, the deposition of PW1 itself would prove the case against A-1 to A-3 beyond any

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reasonable doubt. Exs. P1 to P2, Ex. P14, P16 clearly shows that Ramachandran (since deceased), A1 and A2 created false records and paid exorbitant amount for purchase of electricals items to A-3, in other words, double the amount at which the electrical goods can be purchased in order to gain pecuniary benefits. Such deposition of PW1 is corroborated by PWs 4,5 and 6. PW4, is Additional Block Development Officer and he deposed that A1 requested him to send demand for purchasing electrical goods to the PW1 co-operative society, villupuram and accordingly he prepared a voucher and made a request to purchase electrical goods from the PW1 co-operative society. Such statement was also corroborated by PW5 and 6. When such evidence is available, the trial Court, without any basis has acquitted the accused and it calls for interference by this Court.

9. Though A1 and A2 have entered appearance through a counsel and their names are also printed, no one represented them. However, the learned counsel appearing for A3 would contend that A-3 has nothing to do with the offence as alleged by the prosecution. A-3 is the owner of a private electrical stores. PW1 and the Ramachandran approached the 3rd accused for purchasing electrical goods and accordingly he supplied electrical goods and whatever electrical goods supplied he collected money from the co-operative societies and the prosecution Exs. P2 , P3, P4 and P5 clearly reveals that the payment was made only through co-operative society and 3rd accused has not received single amount directly from the panchayat union, in excess. In view of the above, implicating the 3red respondent on the ground he colluded with A-1 and A-2 is unsustainable and the prosecution has not prooved the case beyond reasonable doubt.

10. In view of the submission of the learned counsel appearing for both sides, the core issue arise in the case (i) whether A1 and A2 conspired with Ramachandran (since deceased) and the third accused to purchase electrical goods through co-operative stores and whether they had taken active participation with regard to the purchase of electrical goods (ii) whether the third accused had taken active participation with regard to the selling of the electrical goods directly to the panchayat union and conspired with the other accused.

11. On perusal of entire records admittedly PW1, who is the Special Officer of the Villupuram co-operative society was projected as the main witness in the prosecution case. He deposed that then the Commissioner of panchayat union approached him in the year 1984 along with one Ramachandran (since deceased) A-1 and A-2 and induced him to co-operate for purchase of electrical items directly from the third accused and

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requested him to prepare bogus record as if entire electrical items are purchased or supplied by the co-operative societies. In furtherance of such conspiracy, the electrical goods were procured from the third accused and made it appear that it was purchased from the cooperative society. Though initally Ramachandran, then Special Officer was also included an accused in the first information report, during investigation, he passed away, thereby his name was deleted and final report was filed implicating the A1, A2. A-1 was the Manager of Ulundurpet Panchayat Union, A-2 was the Extension Officer of the said Panchayat Union. A-3 was the Owner of an electrical store. Even on perusal of PW1 evidence, it is clear that he has not directly implicated A1 and A2 and on close perusal and Exs.P2 to P5 it reveals, P2 that the bills were issued by Co-operative societies in favour of the Commissioner to the tune of Rs.66,750.35p and Ex. P3 and P4 are counterfoils filed for receipt of amount from the Block Development Officer. The amount indicated in Exs. P4 and P5 were issued in favour of A-3 by cheques.

12. Initially, the case was registered on 27.03.1990 against one Ramachandran, Block Developemnt Officer cum Panchayat Union Officer, Ulundurpet and others for the above said offences of criminal conspiracy by public servants, cheating, falsification of records and abatement of said offences committed by them in connection with the purchase of various items like electrical goods, hand pumps for the said Panchayat union during the period 1984 - 85. The articles were purchased from co-operative Society Villupuram, in which one Ramanujalu was the Special Officer of the Society during the relevant period. During local fund audit, it ws found that there were lot of malpractices done by the respective Panchayat Union Commissioner for purchasing electrical goods. At the relevant point of time, there was no elected representatives available in the respective panchayat union, therefore, the District Collector authorised the Commissioners to purchase the electrical articles directly from the Co-operative Society. However, the District Collector imposed a condition, if the Panchayat Union Commissioner want to purchase the electrical items from the private stores, they have to follow the procedure, if the value exceeds Rs.400/-. However, it is alleged that taking advantage of the situation, the Panchayat Union Commissioner purchased the electrical goods from the co-operative stores set up by the private parties with the connivance of the Special Officer of the Co-operative stores and officials thereby caused huge loss to the respective panchayat union. Accordingly the matter was reffered to the Director Vigilance and Anti Corruption for taking appropriate action. Thereafter, DVAC took investigation and implicatied the then Panchayat Union Commissioner and Ramanujam, Special Officer, Tamil Nadu Special Union Co-operative society. After

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investigation, the Special officer of the Tamil Nadu Co-operative Society recorded the confession statement of the persons said to have involved in the malpractice whereby bills were said to have been forged to make it as if goods worth Rs.66,750.35 was purchased, thereby a sum of Rs.24,489.50 was said to have been misappropriated. One of the statements was recorded from Ramanujulu, who said to have involved in the malpractice in connivance with the other accused. However, during trial, he turned as an approver and it was also accepted by the competent Court as contemplated udner Section 306 of Code of Criminal Procedure. On the basis of such statement of the said Ramanujam, the then Union Commissioner, A1 to A-3 were implicated for the above said offences.

13. It is true that if goods worth of Rs.400/- and above were purchased by Ramachandran (since deceased), A1 and A2 directly from A-3 then it becomes violative of the procedural manual, however, in the present case, the entire electrical items were purchased from the co-operative society and payments were made to the co-operative society and thereafter PW1 co-opeative society forwarded the amount to A-3 and no documents were produced before this Court implicating A1, A2 and A3 for the above said alleged loss of Rs.24,000/-. It is curious to note that Directorate of Vigilance and Anti Corruption filed a report stating that the goods were purchased for Rs.66,750.35 by creating false records whereby an amount of Rs.24,489.50 was included over and above the purchase value of the goods. In other words, the report indicated a loss of Rs.24,489.50/- to the exchequer and it was by way of inflating the bill and adding exorbitant amount over and above the original bill. Thus, the case of the prosecution is that if the goods were purchased through co-operative society, the difference of Rs.24,489.50 could have been saved. However, it was not proved that this difference amount of Rs.24,489.50 has been inflated by producing bogus bills. In any event, the records indicate that the goods were purchased only from the Cooperative Society, but what is alleged is that a sum of Rs.24,489.50 in the original bill is included and it was shared among the accused 1 to 3. However, to prove this specific assertion, there is no evidence made available.

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14. The prosecution mainly relied on the deposition of PW1, who, through his statement, implicated A-1 and A-2 and also Ramachandran (since deceased). The trial court disbelieved the deposition of PW1 as untrustworthy as the said Ramachandran has turned approver in several other such cases. In fact, he has admitted that in 25 other cases, he had turned approver. He also admitted that departmental proceedings are pending against him in several cases. Whether the deposition of such a person could be relied on to base a conviction against the accused 1 to

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3. The trial court, in the opinion of this Court, has rightly discarded the deposition of PW1 while acquitting the accused and it does not call for any interference by this Court. The trial Court, after elaborate discussion has concluded that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt.

15. Above all, it is well settled that an order of acquittal need not be interfered with by the Appellate Court unless it is shown that an order of acquittal was recorded by the Appellate Court by considering irrelevant material or without application of mind to the relevant materials. In fact, the Honourable Supreme Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Honourable Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

16. In the light of the above, I have no hesitation to arrive at a conclusion that the prosecution failed to establish the guilt of A-1 to A-3 beyond any reasonable doubt. Hence, I am inclined to confirm the Judgment of acquittal recorded by the trial court and accordingly the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Special Judge/Additional District Judge
cum Chief Judicial Magistrate, Villupuram.

2. The Inspector of Police,
Vigilance and Anti Corruption, Salem.

3. The Public Prosecutor,
High Court, Madra.

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4. The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to M/s.Sai & Bharath, Advocate Sr.No.78562

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