

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.No.559 of 2004

The State : by Inspector of Police,
Central Bureau of Investigation,
SPE/CBI/ACB/Chennai.

.. Appellant/Complainant

Vs.

1.Dhandapani

2.P.Selvaraj
2

.. Respondents/Accused 1 &

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the order of acquittal of the respondents by the IInd Additional Sessions Judge (CBI Cases) Coimbatore, in his order dated 30.09.2003 in C.C.7 of 1999.

For Appellant : Mr.K.Srinivasan

Special Public Prosecutor for CBI Cases

For Respondents: Mr.S.Ashok Kumar

for Mr.J.Ramesh, for R1

J U D G M E N T

This appeal is directed against the order of acquittal dated 30.09.2003 in C.C.No.7 of 1999 on the file of II Additional Sessions Judge (CBI Cases), Coimbatore.

2.There are three accused involved in this case. Since A2 absconded, the case against him was split up from C.C.No.7/99 and re-numbered as C.C.No.19/2003. After split up, A3 was arrayed as A2. During the pendency of this appeal, the second accused (P.Selvaraj) passed away. Hence, the appeal against the 2nd accused is abated. However, the first respondent is available.

3.The brief facts of the prosecution case are as follows:- (i) The first appellant is the owner of the jewellery shop at Kaveripattinam, along with Zakir Hussain (A3), a petty businessman of foreign goods at chennai. P.Selvaraj, (A2)

Telecom Technical Assistant in Telephone Exchange at Sholavandan Exchange, entered into a criminal conspiracy during August and September 1999 at Kaveripattinam and other places and in pursuance of the said conspiracy, with malicious intention to make ISD/STD calls without being metered and billed and to operate unauthorised ISD/STD booth, approached one Mr.A.Balasundaram, who is P.W.2, Junior Telecom Officer, attached to Kaveripattinam Telephone Exchange, Dharmapuri, and offered a bribe of Rs.10,000/- for permission to carry out modification in the computer system equipments to illegally operate STD/ISD facility without metering. On 19.09.1999, A2 (P.Selvaraj) made illegal technical modification in the equipments maintained at Kaveripattinam Telephone exchange and further ensuring that the STD/ISD calls from the two numbers provided to them were not metered and recorded, he gave the bribe amount of Rs.10,000/- to P.W.2. P.W.2, in order to nab A1 (Dhandapani), A2(Zakir Hussain) and A3(Selvaraj), as pre decided by the respondent investigating agency, accepted the money and immediately, they were caught by respondent investigating agency, thereby, all three accused were arrested under Sections 120B IPC r/w Section 12 of Prevention of Corruption Act and Section 25(c) of Indian Telegraph Act, 1885.

(ii)The copies of relevant documents were supplied to the accused persons under Section 207 Cr.P.C., and after framing charges under Section 209 Cr.P.C., the witnesses were examined, since the accused did not plead guilty and claimed to be tried. After a full fledged trial, it was held that the prosecution has not proved the case beyond reasonable doubt and thereby, acquitted the accused, against which the State has filed the present appeal before this Court.

(iii) Before the trial Court, the prosecution examined P.W.1 to P.W.18 as prosecution witnesses and marked Exs.P1 to P31. On behalf of the defence, no witnesses were examined, however, two documents were marked as Ex.D1 & D2. Upon consideration of both oral and documentary evidence, the trial Court held that genesis of the complaint is doubtful and accordingly acquitted the accused.

4.Heard, the learned counsel appearing for the appellant and learned counsel appearing for the first respondent/accused.

5.The learned Special Public Prosecutor appearing for the appellant would submit that though the prosecution examined P.W.1 to P.W.18, P.W.1 is the immediate officer of P.W.2, who collected all the information from day one and clearly deposed and narrated the entire events. P.W.2 also confirmed and

corroborated with the evidence of P.W.1., P.W.10 and P.W.11, who are the Technical Officers of the Sholavandan telephone exchange, have also confirmed that A2 was working in Sholavandan and he was an expert in tampering. At the relevant point of time, he was not in the office and he was on leave. Hence, all those evidence clearly implicate the accused and the trial Court also accepted the prosecution case in paragraphs 40, 41 and 42. Though the trial Court observed that the entire evidence has been held against the accused persons, doubting the complaint given by P.W.2 before CBI Officer, the trial Court acquitted the accused, hence the trial Court view, is perverse.

6.The learned Special Public Prosecutor further submitted that though the case was split up against A3 and tried separately in C.C.No.19/2003 by the II Additional District Judge, the learned Judge convicted the accused for four years and found him guilty of offence under Section 120B r/w 12 of Prevention of Corruption Act and 25(c) of Indian Telegraph Act, 1885 for two years and to pay a fine of Rs.1,000/- in default to undergo R.I. for a period of three months and he was also convicted under Section 25(c) of Indian Telegraph Act, sentenced to undergo one year and pay fine of Rs.500/- and in default to undergo one month R.I. Though the conviction of A3 is not relevant to the case, however, even a bare perusal of the impugned judgment clearly shows prior to paragraph 39 of the impugned judgment, the learned trial Judge arrived at a conclusion against the accused person, but in last paragraph had given benefit of doubt in favour of the respondents, which is unsustainable.

7.Per contra the learned counsel appearing for the first respondent submitted that the trial Court has rightly doubted the genesis of the complaint and given the benefit of doubt to the appellant. Hence, the order of acquittal rendered by the trial Court need not be interfered with by this Court.

8.On perusal of the records, it is seen that P.W.1 (Venkataraman) the Deputy General Manager, Telecom Department, Dharmapuri District, during the relevant point of time, had stated that P.W.2 on 23.01.1988 contacted him over phone and informed him that one person came to him and asked him to arrange illegal connection of STD calls without fixing the metre. However, P.W.1 had directed P.W.2 to give a written complaint and asked him to meet him in the evening. Accordingly, P.W.2 met P.W.1 and gave Ex.P1 written complaint. Thereafter, P.W.1 had given a letter to P.W.2 and also handed over micro tape recorder with two cassettes for recording the conversation between P.W.2 and the accused persons. The said conversation was duly recorded and micro cassettes were marked as Ex.MO3 and MO4.

9. The respondents herein met P.W.2 and informed him about a person from Madurai, who is an expert in modifying and tampering the equipment in exchange to make ISD calls without metre and also informed that such modifications having been done by him in exchanges like Kottapoatti, Anjatty, Guruparapalli and Namakkal. Immediately, thereafter, the said conversation was recorded by P.W.2 and handed over to P.W.1. Thereafter, P.W.1 has contacted his higher official at Salem and informed the above attempt for illegal tampering and also informed the Vigilance Wing of the Telecom Department. The higher official advised to nab the culprits. In order to nab the culprits, P.W.2 (Balasundaram) on 13.09.1999, contacted over phone and informed that the expert in modifying the equipment is coming from Madurai to Kaveripattinam to meet him. On 17.09.1999, the 1st respondent herein had brought the other person to P.W.2's residence and introduced the other person, who is none other than A3 (Zakir Hussain, who subsequently, absconded and was tried separately). The said Zakir Hussain, informed P.W.2 that a person named by Raja, from Madurai is an expert in the modification of the equipment and also assured to pay Rs.10,000/- immediately after carrying out the modification in the computer maintained by the Telephone Exchange, Kaveripattinam and he is ready to pay Rs.50,000/- every month either in lump sum or in installments, once in ten days. He also sought for two telephone connections with ISD facilities, in the premises at Second Cross Street, Anna Nagar, Kaveripattinam. The said conversation of Zakir Hussain and P.W.2 was also recorded in a micro cassette and the said micro cassette was also passed on to P.W.1. Immediately thereafter, P.W.1 conveyed the said message to higher officials. Thereafter, P.W.2 gave two telephone connections at the premises owned by the proprietor of Geetha Stores and Zakir Hussain. Thereafter, the said Zakir Hussain informed P.W.2. The second respondent herein from Madurai contacted him over phone on the same day. Accordingly, at about 3.30 p.m., P.W.2 received a telephone call from the second respondent, Technical Assistant, from Madurai, who is the friend of first respondent, giving certain command in the computer maintained by P.W.2. The second respondent further informed about his proposal to Kaveripattinam Telephone Exchange Office on 19.09.1999 at 8.00 p.m., to carry out the tampering of the equipments. Meanwhile, on 18.09.1999, the Vigilance Officer at Chennai, has contacted P.W.1 and informed that C.B.I., team will be coming to Kaveripattinam on 19.09.1999 and P.W.1 conveyed the same to P.W.2, to report before the Divisional Engineer (Administration) on 19.09.1999 morning. Accordingly, the C.B.I., team, assembled in Dharmapuri Divisional Engineer Office and the investigating officer was introduced by Srinivasan, who is the in-charge of Divisional

Engineer Office and explained the entire matter to C.B.I., Officers. Accordingly, P.W.2 gave a written complaint to C.B.I., Officer, and the same was marked subject to the objection. Thereafter, the C.B.I., team went to the Kaveripattinam exchange office and thereafter, all the officers assembled and conducted a search of the telephone exchange booth and confirmed there was no money in the equipment room and the concerned proceedings was recorded as Mahazar and same was marked as Ex.P5. At about 7.30 pm, the first respondent accused herein contacted P.W.2 and informed him that Raja has not arrived from Madurai and waiting for him. Again at 8.30 p.m., the first respondent contacted P.W.2 and informed him that Raja will reach Kaveripattinam soon, thereby at 9.05 p.m., the first respondent herein contacted P.W.2 over phone and informed the arrival of Raja. Thereafter, at 9.15 pm, the first, second respondent and Zakir Hussain came to Kaveripattinam telephone exchange and after introduction of P.W.3, second respondent and P.W.3 went to the equipments room. In the equipments room, the second respondent has inspected main frame and found, where the two way trunk cards are located. Then, the second respondent went to the main distribution room and inspected where the two way trunk cards are wired. After, inspecting again, he came to equipment room and found how many trunk group parts are in the computer. Thereafter, the second respondent tampered the equipments by damaging the T.G.P. Card. After tampering, Rs.10,000/- was handed over to P.W.2 and two phone numbers bearing 53458 and 53459 were tampered and he has informed that without rooting through equipment, the computer and metering, the call will get matured. Thereafter, he informed P.W.2 that on such removal, no one can deduct the illegal connection. Thereafter, the first respondent had took Rs.500/- currencies from his pant pocket, counted and confirmed that it contains Rs.10,000/- and gave to P.W.2 and P.W.3 was also present. Though, P.W.2 had no intention of receiving the money, as per arrangement made earlier with the CBI Officer, P.W.2 accepted the money and gave it to P.W.3 and asked him to check out whether Rs.10,000/- is in order and he confirmed. Thereafter, P.W.14 entered the room and interrogated all the accused persons and thereafter, arrested and remanded them to judicial custody. The statement of P.W.1 also confirmed by P.W.2 and P.W.3. P.W.3 who did all the prosecution witnesses. Though the trial Court discussed all the evidences, it acquitted the accused, on the ground that the complaint made by P.W.2 to CBI in writing is contrary to Ex.P4 F.I.R. Considering the contradictions in the evidene of P.W.2 and P.W.4, genesis of the complaint is doubtful and the prosecution witnesses have not deposed beyond reasonable doubt implicating the accused under Section 120B of IPC and 12 of Prevention of Corruption Act. Though evidence are available for implicating the accused under Section 120B and 12, however, genesis of the complaint is doubtful and the previous incident

was not deposed by the complainant and there was a dispute with regard to the complaint made by P.W.2 before investigating officer and alleged against the prosecution and granted benefit in favour of the accused person. Thereby, the lower Court acquitted the accused.

10.This Court perused the entire evidence, documents and the impugned judgment. As rightly pointed out by the learned Public Prosecutor, up to paragraph 39, the learned Sessions Judge had observed that the prosecution proved the case beyond reasonable doubt and accepted the prosecution case. Now the issue before this Court is whether complaint given by P.W.2 before CBI Officer is valid or not. Admittedly, P.W.2 is the main informant, since the accused initially contacted P.W.2 for illegal tampering. Immediately after contacting the accused person, P.W.2 conveyed the entire matter to the higher officials i.e., P.W.1 and one Srinivasan and as per the direction of the higher officials, the CBI team was formed. Interestingly, in the instant case it is seen that the higher official, Divisional Engineer of Telephone Exchange instructed P.W.2 to give a complaint to the Inspector of Police who is examined as P.W.14. Thereafter, P.W.14 received the complaint from P.W.2 and registered a case.

11.In my considered opinion, there is no illegality in the initial complaint by CBI officer and no other officer received and collected the information from the accused person and he is competent person to give the complaint. Hence, the finding of the lower Court with regard to the complaint made by P.W.2 is unsustainable and same is perverse. The P.W.2 is competent authority and his complaint Ex.P4 is perfectly valid one and no illegality in the prosecution for filing complaint by P.W.2.

12.Hence, this Court is inclined to allow the appeal. Accordingly, this appeal is allowed, setting aside the impugned judgment of the trial Court. However, considering the long pendency of the case and considering the age of the accused person, the first respondent/accused is convicted under Section 120B of IPC r/w Section 12 of Prevention of Corruption Act and sentenced to undergo minimum punishment of six months simple imprisonment with a fine of Rs.10,000/- in default to undergo one month simple imprisonment.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The IInd Additional Sessions Judge (CBI Cases)
Coimbatore.

2.The Inspector of Police,
Central Bureau of Investigation,
SPE/CBI/ACB/Chennai.

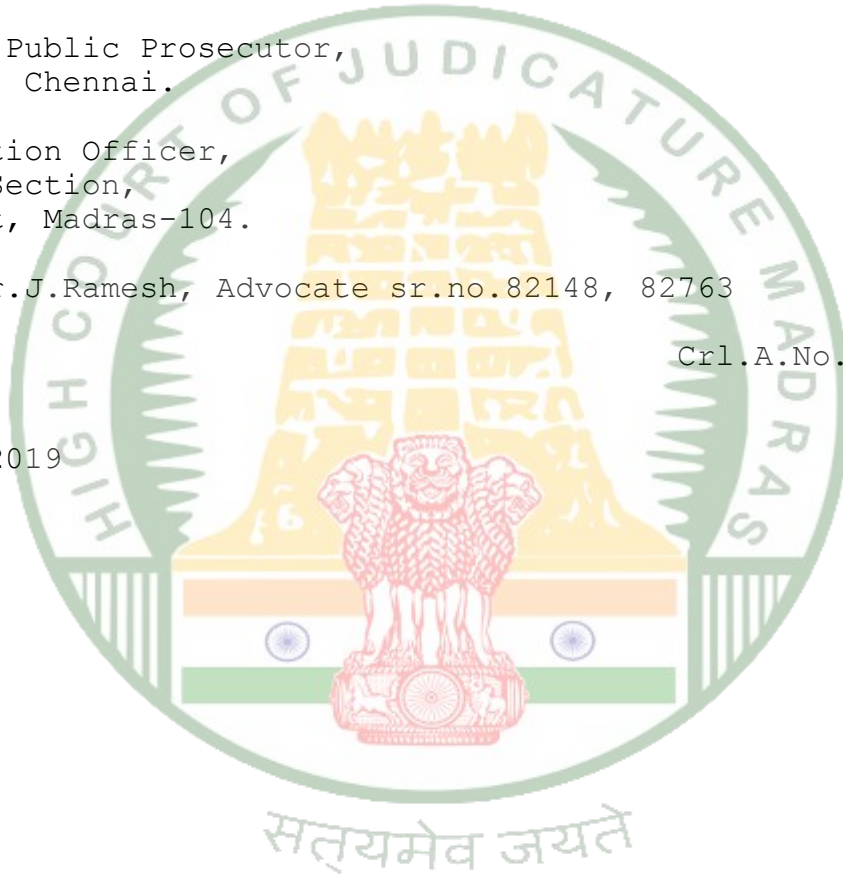
3.Special Public Prosecutor,
CBI Cases, Chennai.

4.The Section Officer,
Criminal Section,
High Court, Madras-104.

+2cc to Mr.J.Ramesh, Advocate sr.no.82148, 82763

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spd(co)
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