

Bail slip

1.Maria adaikalam Roselin

2.V.Bothi

The above said appellants/ Accused were directed to be learned on bail as per order of this Court dated 27.06.2011 made in CRl.MP.1/2011 in CRl.A.No.369/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2018
PRONOUNCED ON: 19.07.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.369 of 2011

1.Tmt.Maria Adaikalam Roselin
Medical Social Worker,
Govt.Stanley Hospital,
Chennai.

2.Thiru.V.Bothi
Driver, Aavin Milk Tanker Lorry,
(TN-22-W8911)
Tamil Nadu Milk Producers Co-operative
Federation, Nandhanam,
Chennai-600 035.

... Appellants 1 and 2

/versus/

State By:
Inspector of Police,
Vigilance and Anti-Corruption,
Chennai.
(Crime No.3/AC/2003/CC-II)

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code praying to set aside the judgment dated 15.06.2011 made in C.C.No.9 of 2006 on the file of the V Additional Special Judge, Chennai convicting the appellants/accused to undergo R.I for 2 years under Section 120 (b) IPC; to undergo each R.I for 7 years and to pay a fine of Rs.2,000/- each in default to undergo S.I for 1 year under Section 407 r/w 109 IPC to undergo each R.I for 5 years and to

pay a fine of Rs.2,000/- each in default to undergo S.I for 1 year under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act and to undergo each R.I for 5 years and to pay a fine of Rs.2,000/- each in default to undergo S.I for 1 year under Section 13(2) r/w 13(1)(a) of the Prevention of Corruption Act and the above sentences of imprisonment alone are run concurrently.

For Appellants : Mr.E.Martin Jayakumar

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

J U D G M E N T

The appellant herein is the first accused in C.C.No.9 of 2006 on the file of the V Additional Special Court, Chennai.

2. The criminal law was set in motion based on the written complaint given by Thiru.R.Jeyendra Xavier, District Inspection Team Officer at Chennai on 08.02.2003 to Mr.D.Mohan the Deputy Superintendent of Police, Vigilance and Anti-Corruption. According to the complaint, on 24.01.2003 during the inspection conducted at Government Stanley Medical College Hospital Kitchen, the joint inspection team found adulteration in milk. The appellant, who was the Medial Social Worker at Government Stanley Hospital, in connivance with the driver of the Aavin Milk tanker lorry bearing No.TN-22/W-8911 had adulterated the milk with water and it was found in the surprised check that about 60% and 35% water had been mixed in the two samples drawn from the milk kept in the hospital kitchen. Based on the complaint dated 08.02.2003, the First Information Report has been registered by Mr.R.Mohan, Deputy Superintendent of Police Mr.R.Valasarajan, Deputy Superintendent of Police took up the investigation from Mr.R.Mohan recorded statements of witnesses got report from King Institute Food Analyst. Later, as per instruction of Superintendent of Police, handed over the investigation to Mr.V.Sudhakar for further action.

3. On completion of investigation, Mr.V.Sudhakar, Inspector, Vigilance and Anti Corruption filed final report. The trial Court has framed four charges (i). Under Sections 120-B IPC as against both the accused for conspiracy to adulterate milk with water and to mis-appropriate the Government money (ii). Under Section 407 IPC as against A2 for diverting 153 litres of milk entrusted to him and being carrier of the milk tanker lorry, selling it to several third parties at the rate of Rs.14/- per litre and more particularly 30 litres of milk to

K.Nazar (iii). Under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and (iv). Under Section 13(2) r/w 13(1)(a) of the Prevention of Corruption Act, 1988 against both A1 and A2.

4. To prove the charges, on behalf of the prosecution 11 witnesses were examined. 12 exhibits and two material objects namely, Rs.1,050/- seized from the first accused and Rs.2,690/- seized from the second account were marked. No witness examined on the defence side. The trial Court on considering the evidence held that the prosecution has proved on 24.01.2003, the second accused/driver of the milk tanker lorry bearing Reg.No.TN 22/W-8911 was entrusted with direction to deliver 483 litres of milk at Government Stanley Medical College Hospital. But, he delivered only 330 litres of milk to the store section instead of 483 litres. To compensate the shortage, the first accused with the help of Kitchen Servant C.Chinniah, mixed four buckets of water in the milk. For the short supply of 153 litres of milk, A1 had received Rs.1,050/-. Later, 153 litres of milk was sold by the second accused to third parties. When he sold 30 litres of milk to one K.Nazar, owner of Brothers Tea Centre, Thiruvettriur High Road, Mint Chennai for Rs.420/-, he was caught. Therefore, the first accused for obtaining Rs.1050/- by selling 150 litres of Milk at the rate of Rs.7/- per litre to the second accused and for mixing water to compensate the shortage and found the second accused for selling 153 litres of milk privately at the rate of Rs.14/- per litre.

5. The trial Court having concluded A1 and A2 are guilty of charges and the prosecution has proved the guilt of the accused beyond reasonable doubt had punished them under Sections 120B, 407 r/w 109 IPC and also 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, and 13(2) r/w 13(1)(a) of the Prevention of Corruption Act, 1988. The period of sentence imposed upon them is as under:

Name of the accused	Convicted under Section by the Trial court	Sentence imposed by the trial Court
A1 and A2	Under Section 120B IPC	To undergo 2 years RI each
A1 and A2	Under Section 407 r/w 109 IPC	To undergo 7 years RI each and to pay a fine of Rs.2000/- in default to undergo one year SI

Name of the accused	Convicted under Section by the Trial court	Sentence imposed by the trial Court
A1 and A2	Under Section 13(1) (d) r/w 13(2) of PC Act, 1988	To undergo 5 years RI and to pay a fine of Rs.2000/- in default to undergo 1 year SI
A1 and A2	Under Section 13(2) r/w 13(1) (a) of PC Act, 1988	To undergo 5 years RI and to pay a fine of Rs.2000/- in default to undergo one year SI. The period of sentence ordered to run concurrently.

6. Aggrieved by the said judgment of conviction, both the accused have preferred the appeal. Pending appeal, the second accused [V.Bothi] died.

7. The judgment of the trial Court is challenged on the ground that the District Inspector Cell Officer, R.Jeyendra Xavier (PW-8) along with the Deputy Superintendent of Police of Vigilance and Anti Corruption Cell of the Vigilance and Anti Corruption Cell, R.Mohan had jointly conducted surprise check at Government Stanley Medical College Hospital, Chennai on 24.01.2003. However, the First Information Report has been registered only on 08.02.2003. Even according to the complaint, which has resulted in registration of First Information Report, the chemical analysis report had been received by them on 05.02.2003 itself. But, there is unexplained delay in registering the complaint which only indicates that the entire proceedings is false and fabricated one. There is no evidence let in by the prosecution regarding the total quantity of milk loaded in the tanker on the said date and the joint inspection team had not measured the entire quantity of milk delivered to Government Stanley Medical College Hospital on the date of inspection. Though the prosecution has contended that out of 483 litres of milk which is supposed to have been delivered to Stanley Hospital only 330 litres were supplied and the remaining 153 litres were sold to the third parties. Except the evidence of PW-4 who had alleged to have purchased 30 litres of Milk from A2, there is no other evidence let in by the prosecution to show how and where the remaining quantity of milk were sold. The non-examination of witnesses like (i) Mahendran, who according to the prosecution followed the milk tanker lorry after A2 delivered the milk at Stanley Medical College and (ii). Kalarani, Dietitian, Government Stanley Hospital, who was

admittedly overall incharge of the store and receipt of the milk, is fatal to the prosecution case and without examining these two witnesses the alleged conspiracy attributed to this appellant with the lorry driver A2 or the misconduct to obtain pecuniary advantage is left unproved.

8. The learned counsel appearing for the appellants would also submit that there was substantial delay in according the sanction to prosecute the accused. PW-1 Dr.M.Vasantha has admitted that her predecessors declined to accord sanction and therefore, she accorded sanction on perusing the records on 17.04.2006, which is more than three years after registration of the First Information report.

9. The learned counsel would further submit that PW-5 C.Chinnaiah, who according to the prosecution added four buckets of water to the milk at the instance of A1 to compensate short supply had turned hostile. The witnesses who were working in Government Stanley Medical College Hospital, had categorically deposed that it is the responsibility of Kalarani, Dietitian to check the quantity of the milk and distribute it to the patient according to their requirements. Though the investigation officer has recorded the statement of Kalarani, prosecution had not examined her as a witness fearing exposure of their improper investigation.

10. The learned counsel appearing for the appellant would further submitted that the recovery of M.O.1 and M.O.2 is highly doubtful, since after the alleged seizure of the money from A1 and A2, the same was not forwarded to the Magistrate immediately. Therefore, the learned counsel appearing for the appellant would submit that taking note of the 15 days delay in filing the First Information Report, 3 years delay in according sanction, hostile of the vital witness PW-5 (C.Chinniah), who had not supported the case of the prosecution regarding adulteration of the milk, failure to examine Mahendran to prove how the alleged excess milk of 153 litres was sold to the third parties and the inconsistency in the evidence of PW-4 (K.Nazar), coupled with the fact that A2 as the lorry driver of Aavin is authorised to sell milk, cumulatively go to show that the prosecution has miserably failed in proving the guilt of this appellant. However, the trial Court has erroneously slapped verdict of guilty.

11. Per contra, the learned Additional Public Prosecutor would submit that PW.8 [R.Jeyendra Xavier] and PW.9 [R.Mohan] the joint inspection team had cogently deposed that after unsustained complaints about milk adulteration in the Stanley hospital, he decided to conduct surprise inspection at Government Stanley Medical College Hospital. Accordingly, on

24.01.2003, a joint inspection was conducted. When they were keeping surveillance at the Stanley hospital at 08.40 a.m., A2 brought his tanker to the hospital and delivered the milk. Thereafter, he took the tanker lorry to the other places. The lorry was followed by Mehendran, Head Constable and the rest of the team members entered into kitchen of the hospital and tested the density of milk with lactometre they found, it is below the standard prescribed and highly diluted. Thereafter, they invited the experts from the Milk Federation Society. Meanwhile, the lorry driven by A2, after selling the milk to various people without authorisation came to Brother tea shop and sold 30 litres of milk to PW-4 [Nazar]. The evidence of PW-4 clearly shows that he used to purchase the milk from Aavin tanker and after collecting Rs.420/-, A2 supplied 30 litres of milk, which he had collected in two buckets. In the re-examination had clarified that he became a card-holder subsequently. Whereas on 24.01.2003, he was not a card-holder and he purchased the milk from A-2 on payment of cash.

12. It was submitted by the learned Additional Public Prosecutor that though PW-5 has turned hostile and did not support the case of the prosecution that he added four buckets of water to the milk as instructed by A1, the laboratory test report marked as Ex.P9 amply proves that the samples collected from the Government Stanley Hospital kitchen were diluted and does not satisfy the required standards. The analysis report clearly shows that while the sample collected from the Aavin tanker lorry bearing No.TN-22/W8911, contains 5% of fat and 8.1% of milk solid not fat, the samples collected from the containers kept in the hospital kitchen found to be deficient in total milk solid content due to adulteration. The approximate percentage of water added in these two samples were found to be 60% and 30% respectively. The first accused who was in-charge the milk supplied by Aavin on that day is responsible and answerable for the dilution of the milk supplied from the Aavin tanker lorry. Having failed to explain the dilution, the trial Court has rightly found her guilty as well as the deceased second accused lorry driver for conspiracy and for misappropriating the milk by falsifying the account, adding water to the milk and diverting the excess milk to the third parties unauthorisedly.

13. Points for consideration

"Whether the judgment of the trial Court bristles with infirmity against the weight of evidence and probability of the case."

14. The case of the prosecution is that, this appellant [Tmt.Maria Adaikalam Roselin], Medical Social Worker at Stanley

Government Medical Hospital conspired with Thiru V.Bothi [deceased], Driver and Sales Representative of Aavin Milk had conspired to commit breach of trust and in pursuant to the conspiracy instead of 485 litres of milk to be supplied for the hospital on 24.01.2003, the appellant only received 330 litres of milk and to compensate the shortage, added water with the help of Chinniya [PW.5] and received Rs.1050/- from V.Bothi [A2] (Rs.7/- per litres of milk) for 153 litres of milk which was undelivered. As far as, the case of the prosecution is that after short supply of 153 litres of milk paying Rs.1050/- to A1, the A2 [V.Bothi] sold it to third parties at the rate of Rs.14/- per litre. On such third party by name K.Nazar, owner of the Brothers' Tea Centre purchased 30 litres of milk from V.Bothi [A2] at the rate of Rs.14/- per litre and paid him Rs.420/-. The joint inspection team, inspected the kitchen of Stanley Medical Hospital found the milk supplied by Aavin has been adulterated with water. As a follow upon action, the team caught A2 [V.Bothi] red handed when he delivered 30 litres of milk to A4 and received Rs.420/-. The joint surprise check was conducted by R.Mohan [PW.9], Deputy Superintendent of Police, Vigilance and Anti Corruption, Tr.R.Jeyendra Xavier, District Inspection Cell Officer [PW.8], along with Dr.Mohanambal, Resident Medical Officer, Tr.M.E.M.Jayaraman and Tr.G.Ravichandran, Inspector of Police, Vigilance and Anti Corruption, Chennai. The joint inspection by District Inspection Cell and the Vigilance and Anti Corruption team was conducted on 24.01.2003. The samples were drawn with the help of officials of Milk Producers Federation and M.O.1 and M.O.2 were recovered on the same day. However the first information report has been given by one of the member of the inspection team [PW.8] to the another member of inspection team R.Mohan [PW.9] only on 08.02.2003. Though PW.8 [R.Jeyendran Xavier] the informant and PW.9 [Mohan] person who registered the information were party to the search team, the complaint Ex.P.8 along with inspection report [Ex.P.10] had come to light after two weeks of the inspection report F.I.R has been registered only on 08.02.2003. No reason for the delay in filing the inspection report is found in the prosecution records. In any case, there is no necessity for two weeks delay in lodging the complaint.

15. Yet another factor which has caused prejudice to the appellant herein is the delay in according sanction. The sanction to prosecute this appellant has been issued by PW.1 only on 17.04.2006. It is elicited during the cross examination that the predecessors of Dr.M.Vasanth [PW.1] decline to accord sanction. But there is no evidence to show that, he positively decline to accord sanction or failed to accord sanction and kept the file pending. However, whatever be the case, the inordinate delay in according sanction when there was no element for cause of delay is to be taken note.

16. The contention of the prosecution is that while remittance receipt was given for 483 litres actually only 330 litres was supplied, the balance was sold in black market at the cost of Rs.14/- per litre by A2. Further, the case of the prosecution case is that for 153 litres short supplied by A2, A1 received Rs.1050/- at the rate of R.7/- per litre. The team lead by A8 had not measured the entire quantity of milk found in the kitchen of Stanley Medical Hospital at the time of inspection. The samples drawn for lactometer test also does not appears to be the homogeneous samples after stirring up the entire quantity of milk found in the kitchen. The analysis report Ex.P.9 indicates that the samples 1 and 2 drawn from the kitchen constitutes;

Analysis Done	Sample No.1 Aavin Milk collected from Vessel No.I	Sample No.2 Aavin Milk collected from Vessel No.II
Milk Fat	2.0%	3.1%
Milk Solids-not-fat	3.4%	8.1%

(i). The Milk fat content and Milk Solids-not-fat content for Sample No.1 and 2 are mentioned above.

(ii). Samples Nos.1 and 2 are found to be deficient in Total Milk Solids content due to added water. The approximate percentage of added water in Sample No.1 and the Sample No.2 are found to be 60% and 35% respectively, calculated from the total solids content of Sample No.3.

17. R.Jeyendra Xavier [PW.8], Inspection Cell Officer, had deposed that when he undertook the inspection, milk was stored at a level less than the quarter of the capacity of the milk tank and further milk was stored in two silver buckets and two silver vessels (anda) up to the brim. ½ litre samples of milk from the vessels containing 30 litres marked as Sample No.1 and ½ litre samples of milk from the vessels containing 20 litres marked as Sample No.2 were collected. The analysis report for samples 1 and 2 which was collected from the kitchen indicates different results. From this one can undoubtedly concluded that the samples at the kitchen was not taken from homogeneous lot or stirred properly as such before drawing samples and the sent to analyst was not the representative samples of the entire lot. To cap it all, the case of the prosecution that water was added by C.Chinniah [PW.5] at the instance of A1 has not been proved. C.Chinniah [PW.5] had turned hostile and he has categorically said that the what was supplied by Aavin was kept as it is and no adulteration took

place at the kitchen. Also, Mr.Mahideran who followed the tanker lorry to witness how A-2 distributed the excess milk was not examined.

18. For the above said reason, this Court holds that the prosecution has failed to prove the case against this appellant beyond reasonable doubt. The trial Court had failed to consider the lacuna in the investigation in respect of the samples drawn and failure of the prosecution to prove whether adulteration took place in the kitchen at Stanley Medical Hospital or somewhere else.

19. In the result, the Criminal Appeal No.369 of 2011 is allowed. The judgment and sentence passed by the learned V Additional Special Judge, Chennai made in C.C.No.9 of 2006 dated 15.06.2011 is hereby set-aside. The bail bond executed if any, by the appellants shall stand cancelled. Fine amount paid if any, shall be refunded to the appellants.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Inspector of Police,
Vigilance and Anti-Corruption,
Chennai.
2. The Learned V Additional Special Court, Chennai
3. The Additional Public Prosecutor, High Court, Madras.
- 4.The Superintendent
Central prison puzhal Chennai
- 5.The Superintendent,
central prison women,
puzhal Chennai

+1cc to Mr.E.Martin Jayakumar, Advocate, S.R.No.48228

Crl.A.No.369 of 2011

KS(CO)
GSP(26/07/2018)