BAIL SLIP

That the Appellants/Accused namely 1)Kasinathan 2) P.Karmegam 3) S.Thirupathiraj 4) V.D.Perumal 5) E.Govindarajan were directed to be released on bail as per the order of this court dated 08.01.2008 and made in Crl.MP.no.1/2008 in Crl.A.No.11/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.04.2018	Pronounced on: 05.06.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.11 of 2008

1. Kasinathan
2. P.Karmegam
3. S.Thirupathiraj
4. V.D.Perumal
5. E.Govindarajan ...Appellants/Accused 1 to 5

/versus/

The State by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Kanchipuram. ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set-aside the conviction and sentenced imposed on the appellants in Special C.C.No.1 of 2004 on the file of Special Judge No-I/X Additional Sessions Judge, Chennai on 27.12.2007.

For Appellants : Mr.V.Krishnamoorthy

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

J U D G M E N T

This Criminal Appeal is preferred against the judgment of the Special Court No.I/ X Additional Session Judge, Chennai in Special C.C.No.1/2004 by A1 to A5 who were found guilty of offences under Section 120-B r/w 420 IPC and Section 420 IPC.

As far as, Thiru.N.Kasinathan [A1] being a public servant also found guilty of offences under Section 409 IPC, 167 IPC, 477-A IPC, 13(2) r/w 13 (1) (c) & (d) of Prevention of Corruption Act for abating the public servant to the above said offences. For abetting A1 to commit the above offences. A2 to A5 were found guilty under Section 109 r/w 409 IPC, 109 r/w 167 IPC, 109 r/w 477-A IPC and 109 r/w 13(2) r/w 13(1)(c)&(d) of Prevention of Corruption Act 1988.

Gist of the prosecution case

2. Thiru.N.Kasinathan [A1], Joint Director of Collegiate Education [Finance] in the Office of Commissionate of Collegiate Education colluded with A5 [E.Govindarajan] a private individual to purchase Lab Equipment's and Chemicals to the Colleges in Tamil Nadu in contravention to the guidelines and procedures laid down by the G.O.M.s.No.708 and to obtain wrongful gain. In pursuant to the said conspiracy, supply orders were issued to three Co-operative Societies run by Karmegam [A2], Thirupathiraj [A3] and V.D.Perumal [A4]. Without receiving lab equipment’s and chemicals, records were falsely created by N.Kasinathan [A1] as if goods were received on 29.03.1995 and 30.03.1995 and false entries were made in the stock register. 23 vouchers for total sum of Rs.56,36,187/- were prepared and handed over to N.Kasinathan [A1] by way of demand drafts. The money was encashed by A2 to A4 for the articles not supplied. Subsequently, substandard quality of lab materials were supplied to the Colleges which were either not required or in excess. To facilitate such crime, A1 [N.Kasinathan] has mislead the higher authorities to adopt centralized purchase system for supply of chemicals and lab equipment’s to Government Colleges in the State. Thus, committed breach of trust, cheating, falsification of accounts and misconduct of a public servant.

3. The specific case of the prosecution is that A1 [N.Kasinathan] induced Thiru.R.Satapathy, I.A.S., Commissioner of Collegiate Education to deviate from normal decentralized purchase procedure initiated proposal on 23.03.1994 to adopt centralized purchase scheme for purchase of lab equipment's and chemicals for the year 1994 to 1995 to the Government Colleges. The proposal was accepted by the Government and the G.O.M.S.No.28 [EST] dated 10.01.1995 was issued in deviation to the earlier G.O.M.s.No.708 dated 22.08.1994 which imposed a ban for purchase of goods from Co-operative Societies run by Khadi and Village Industries Board which are not manufactures of the said goods. After issuance of G.O.M.s.No.28[EST] dated 10.01.1995, A1 [N.Kasinathan] being the Joint Director in Commissionate of Collegiate Education had placed orders for lab equipment’s and chemicals to the three societies namely Villupuram Multi-purpose Cottage Industrial and Co-operative

Industries, Sri.Jeyavalli Women Multipurpose Industrial and Co-operative Society, Dindugal and Tiruvannamalai Annamalayar Iron and Wooden Articles Producers Multi-purpose Workers Industrial Co-operative Society. These three societies were either non-existence or defunct. None of the societies were manufactures of lab equipment's or chemicals. While so, limited tender quotations were invited from five societies on 13.02.1995. From out of them Villupuram Co-operative Society, Dindigul Co-operative Society and Tiruvannamalai Annamalaiyar Co-operative Society were short listed for supplying lab equipment's and chemicals. The purchase order was placed with these societies on 01.03.1995. All the orders were collected by A-5 as the representatives of these societies. 90% of the advance payment was made to the Co-operative Societies contrary to G.O.M.S.No.708 dated 10.01.1995 which prohibits advance payment for the suppliers. After effecting payment, records were created as if these three societies supplied materials on 29.03.1995 and 30.03.1995. Stock registers were prepared as if goods were received in good condition. In fact, goods were supplied subsequently to the respective colleges directly from the suppliers. It was also found that the societies has not supplied goods worth the money received by them. based on the reliable information, First Information report was registered by the respondent police on 14.10.1996 against Tr.R.Satapathy, I.A.S., [Former Commissioner of Collegiate Education], A1 [Kasinathan], Joint Director of Collegiate Education [Finance], Commissioner of Collegiate Education, Special Officer of Tiruvannamalai Co-operative Society, Dindigul Co-operative Society and Villupuram Co-operative Society.

4. On completion of investigation, final report was filed against A1 [N.Kasinathan] Joint Director in Commissioner of Collegiate Education, Karmegam [A2], President of Tiruvanamalai Society, S.Thirupathyraj [A3] President of Dindugal Co-operative Society, V.D.Perumal [A4] Special Officer, Villupuram Co-operative Society and E.Govindarajan [A5] a private individual who coordinated in collusion with A1 [M.Kasinathan] to receive payment and supply material in the name of the three Co-operative Societies.

5. The investigation revealed that Tr.R.Satapathy, I.A.S., was misled by A1 [M.Kasinathan] hence, he was not prosecuted since no animus or overt act in the crime found against him.

6. Based on the materials placed by the prosecution, the trial Court has framed 10 charges and tried the accused. To prove the charges prosecution had examined 254 witnesses. Marked 1054 Exhibits and 2 material Objects. In defence 12 Exhibits were marked.

7. The Trial Court found A1 to A5 not guilty for offence under Section 120 r/w 409, 167, 477-A IPC r/w 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act and acquitted them. However found them guilty for the other charges and convicted them as under;

(i) A1 to A5 convicted for the offence under Section 120(B) r/w 420 IPC and sentenced to undergo One year Rigorous Imprisonment and to pay a fine of Rs.5,000/- each in default to undergo R.I for 3 months.

(ii) A1 convicted for the offence under Section 409 IPC and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo three months R.I.

(iii) A2 to A5 convicted for the offence under Section 109 r/w 409 IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- each in default to undergo three months R.I.

(iv) A1 to A5 convicted for the offence under Section 420 IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- each in default to undergo three months R.I.

(v) A1 convicted for the offence under Section 167 IPC and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months R.I.

(vi) A1 convicted for the offence under Section 477-A IPC and sentenced to undergo two year Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo three months R.I.

(vii) A2 to A5 convicted for the offence under Section 109 r/w 167 IPC and sentenced to undergo one year Rigorous and no fine is imposed.

(viii) A2 and A5 convicted for the offence under Section 109 r/w 477-A IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/-each in default to undergo three months R.I.

(ix) A1 convicted for the offence under Section 13(2) r/w 13 (1)(c) &(d) of Prevention of Corruption Act, 1988 and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.15,000/- in default to undergo three months R.I.

(x) A2 to A5 convicted for the offence under Section 109 IPC r/w 13(2) r/w 13(1)(c)&(d) of Prevention of Corruption Act, 1988 and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- each in default to undergo three months R.I

8. Aggrieved by the conviction and sentence all the five accused have jointly preferred Criminal Appeal No.11 of 2008. Pending appeal A1 and A2 died. Memo has been filed by the Inspector of Police, Vigilance and Anti-Corruption, Kanchipuram on 26.03.2018 reporting that A1 [Kasinathan] was died on 11.08.2009 and A2 [Karmegam] died on 14.02.2010. The death certificates of these two accused/appellant enclosed along with the memo. Hence, Criminal Appeal filed by them is abated as far as these two appellants.

9. The learned counsel appearing for the appellants would submit that the charges against these accused persons as framed are contrary to the prosecution evidence. The charge against the appellants is that they have cheated the Government to a tune of Rs.56,36,187/- by falsifying the accounts indicating as if the lab equipment's and chemicals were not at all supplied to the Government Colleges, but they received payment without any supply. However the evidence and documents produced by the prosecution discloses that the materials worth Rs.45 lakhs were supplied by three societies and the societies wrote to the Directorate of Collegiate Education about the balance stock available with them and had sought for the instructions from the authorities. While the evidence of the prosecution itself proves that supply of goods started from end of March and continued for three months, the alleging charge none supply of goods worth about Rs.56 lakhs is unsustainable.

10. PW's.41 to 44 are the Principals of the respective colleges have deposed about the supply of materials. The prosecution witnesses admit that goods were stored at Quait-e-Millath Arts College and later delivered to respective Government Colleges. The evidence adduced by the prosecution goes to show that the orders placed by the Directorate of College Education based on the proposals from the respective Colleges and were duly executed by the respective societies. The invoices and delivery notes would fortify the fact that the goods were supplied and received by respective colleges in good condition and duly acknowledged by them.

11. PW.234 [Tmt.T.S.Gowri], Principal of Quait-e-Millath Arts and Science College had deposed that at the request of A1 [M.Kasinathan] the Joint Director [Finance], she provided a class room in her college to store the lab equipment's and she has also deposed that she saw goods were stocked in that room and A1 [M.Kasinathan] had the possession of the key. The lab materials was stored in her college for one week and thereafter it was taken away. Therefore, the charge of falsification of accounts for cheating the Government for Rs.56,36,187/- is totally baseless.

12. The learned counsel for the appellant would submit that, it is an admitted fact that the money paid in advance was paid to these societies since, the fund allotted would get lapsed by 31st March. In order to avoid the said eventually the money was paid in advance to these societies. At no point of time, there was any criminal intention on the part of the accused persons to cheat the Government. Merely because the money was paid in advance will not satisfy the necessary ingredient to charge a person for cheating. The Office notes will clearly prove the intention of the department to make advance payment was to avoid fund getting lapsed for non-utilization within the financial year. The letter written by the respective societies intimating the balance amount held by them after supply of goods also positively proves that they had no intention of mis-appropriating the money paid in advance to them for the supply of goods. Further, it is also submitted by the learned counsel for the appellant that though the demand draft was taken by the department on 07.04.1995 and given to the societies, they did not encashed the same immediately.

13. The learned counsel appearing for the appellants would also submit that the purchase order was issued by Sarpathi I.A.S who was shown as an accused in the FIR, but in the final report the prosecution has dropped his name. Whereas, A1 [M.Kasinathan] who was only the Joint Director, has held guilty for violating the G.O.M.s.No.708 which was only recommendative in nature. Even if there is any violation, only the Commissioner of Collegiate Education is liable for such violation and not the Joint Director who was subordinate to the Commissioner. While the goods worth more than Rs.45 lakhs admittedly been supplied by these three societies, there cannot be charge for cheating the Government to a tune of Rs.56,36,187/-, without taking note of worth for the goods supplied. Though, the prosecution alleges that the goods supplied by these societies were substandard in quality, the same was not proved. No report or complaint given by the respective colleges immediately on supply of the materials. The trial Court has failed to consider these facts properly. Therefore the judgment is liable to be set aside.

14. Per contra, the learned Additional Public Prosecutor would submit that till 1994 the Principal of respective Government Colleges were authorized to purchase lab equipment's and chemicals as per their requirements and they were authorized to spend upto Rs.10,000/- for each academic year towards the purchase of lab equipment and materials. While so, one Palanisamy, the Commissioner of Collegiate Education had sent a proposal to the Government for centralized purchase of lab materials and chemicals which was accepted by the Government. As a result, G.O.M.S.No.28 [EST] was issued on 10.01.1995. The

earlier G.O.M.s.No.1195 dated 23.07.1997 is marked as Ex.P.1 and Government order for admitting centralized purchase is marked as Ex.P.2. As per the Ex.P.2, the proposal to purchase lab equipment's and chemicals through open tender was send by PW.1. Wherein, she has specifically mentioned that the conditions stipulated in G.O.M.S.No.708 should be followed while placing order. G.O.M.S.No.708 which is marked as Ex.P.6 specifically prohibits advance payment to the suppliers. Whereas in this case, A1 [Kasinathan] made advance payment to these three societies before supply of goods in contravention to G.O.M.S.No.708. The reasoning for such advance payment, that the fund allotted should be spend before the end of the financial year is not justifiable. Defying the ban imposed under G.O.M.s.No.708 is illegal. The proposal for such an advance payment had emanated from A1 [N.Kasinathan] though the Commissioner Tr.R.Satapathy, I.A.S., has accepted the proposal, non prosecuted Tr.R.Satapathy, I.A.S., will not exonerated the A1 [N.Kasinathan] who is main perpetrator of the crime.

15. PW.1 [Tmt.K.Vimala] had in her testimony, explained the procedure, mandated through the Government Orders and how A1 has misled the Commissioner for making advance payment in violation of Government order. PW.1 [Tmt.K.Vimala] has also spoken about the complaints received from the respective colleges about the defective supply of goods by these societies. Therefore, the contention of the appellants that they supplied goods as per the requirement and specification is not correct. The complaint of substandard / defective materials are established by the prosecution through its witnesses and documents.

16. In this regard, the learned Additional Public Prosecutor would point out from the deposition of PW.1 [Tmt.K.Vimala] about the complaints received from the respective Colleges and the notes prepared by PW.1 [Tmt.K.Vimala] to call for explanation from the suppliers regarding defective supplies. It is also pointed out by the learned Additional Public Prosecutor that the notes prepared by PW.1 [Tmt.K.Vimala] and signed by PW.2 [Tmt.Gajalakshmi], Superintendent was placed before A1 [N.Kasinathan] for orders. He instead of permitting the Office to despatch the letter seeking explanation from the supplier had made a note that the matter has to be discussed. Thereafter the notes was altered to the effect that these societies should rectify the defects and supply proper goods by 05.12.1995. Ex.P.47 and Ex.P.48 are the respective notes prepared by the Office regarding defective goods supplied by the societies.

17. The learned Additional Public Prosecutor would submit that the intervention of A1 [M.Kasinathan] without proceeding against the society which has supplied inferior quality and

defective material however making full payment even before the supply of goods and creating false entries in the stock registrar establishes the case of the prosecution against the accused persons. The Trial Court has rightly considered the evidence which speaks volume about the criminality of the appellants.

18. Further, it is contended for the Additional Public Prosecutor that the search of the A2 residence and recovery of M.O.1 and M.O.2; Rubber Stamp and Records of Thiruvanmalai Co-operative Society establishes the nexus between him and other accused persons. The search of E.Govindarajan [A5] residence and recovery of incriminating material from his residence proves that the M/s.Surya Enterprises is a Company floated by A5. These three societies which are alleged to have supplied lab materials to the Colleges were literally operating from the premises of A5 [E.Govindarajan] at Chennai. The typewriters font and the letters emanated in the name of three societies on comparison found to be prepared from the same typewriter found in the premises of A5 [E.Govindarajan].

19. Ex.P.1037, the letter of District Collector, Dindugal proves that on physical verification by the DRO, it is found that there is no society by name Sri.Jeyavallai Women Multi-purpose Industrial Co-operative Society at Door No.21-A, Muniyappan Kovil Street, Nagal Nagar Dindigul. The letter from Tiruvanamalai Collector marked as Ex.P.1038 goes to show that the Tiruvanmalai Annamaliyar Iron and Wooden Article Cooperative Society is functioning is a small rented premises with 53 members and not capable of manufacturing of supplying commodities worth Rs.10 lakhs in one stretch.

20. Referring PW.1 [K.Vimala], PW.4 [S.Bakthavatchalam], PW.7 [C.T.Ramalingam], PW.19 [A.Mohammed Yaseen], PW.24 [M.Anthonydoss], PW.27 [P.Balathandaytham], PW.37 [K.Premkumar] and PW.234 [T.S.Gowri] the learned Additional Public Prosecutor would submit that the three societies which never involved in manufacturing of chemicals or lab equipment’s, have created the invoices to accommodate the transactions. In fact, M/s. Surya Enterprises had purchased materials from the manufactures and had supplied goods through these three societies. Money in advance was paid to these three societies contrary to Government order and in course of the transactions these societies had failed to supply the materials as per the requirement of the college within the time stipulated. This has caused great in-connivances to the students who took up the examination during the academic year.

21. PW.238 [E.Mohan], PW.240 [C.S.N.Raju], PW.241 [M.Shankar] and PW.242 [L.Gopal] were working under A5 [E.Govindarajan]. They all have spoken about the preparation of

documents in the name of various Societies and collection of letters from the Collegiate Education on behalf of A5 [E.Govindarajan]. The evidence of PW.243 [T.S.Jayaraman] who is the actual supplier of the lab materials to M/s.Surya Agencies had deposed that he supplied lab equipments to Dindugul Jayavalli Co-operative Societies worth Rs.1,69,670.85 under two invoices through Karmegam and received money from Karmegam [A2] after supplying the goods to the said society.

22. The Trial Court after considering the evidence both document and oral had arrived at a right conclusion about the conspiracy between the accused persons, falsification of accounts, cheating and breach of trust. A1 [N.Kasinathan] being a public servant in connivance with the other accused had made the Government to pay Rs.56,36,187/- whereas, admittedly the goods worth Rs.45 lakhs alone was supplied and money being paid in excess without supply. Therefore, these appellants are responsible and liable to be convicted for abetting A1. Since, the Trial Court had come to the right conclusion; the appeal is liable to be dismissed.

Points for consideration

"Whether the judgment of the Trial Court needs any interference?"

23. The sum and substance of the prosecution is that, while making centralized purchase following the preferential purchase system and without adopting tender process, advance payment of Rs.56,36,187/- lakhs had been paid to three societies namely Villupuram Multipurpose Cottage Industries and Co-operative Industries, Sri.Jeyavalli Women Multipurpose Industrial and Co-operative Society, Dindugal and Tiruvanmalai Annamalaiyar Iron and Wooden Article Producers Multipurpose Workers Industrial Co-operative Society, in violation of Government order in G.O.M.S.No.708

24. The extract of AG's Auditor report which is marked as Ex.P.1039 indicates that the following payment has been made to these three societies;

Sl.No.	Name of the Societies	Amount Sanctioned
1.	Thiruvannamalai Annamalaiyar Iron and Wooden Articles Producers, Multi-purpose Workers Industrial Co-operative Society No.KV 1/2 91 Thiruvannamalai	Rs.12,97,854/- Rs.2,35,844/-
2.	Villupuram Multi purpose Cottage Industrial Co-operative Society Limited No.KV 1/26, Villupuram.	Rs.6,17,546/- Rs.12,96,289/-

Sl.No.	Name of the Societies	Amount Sanctioned
3.	Sri Jeyavalli Woman Multi Purpose Industrial Co-operative Society Dindigul.	Rs.8,02,211/- Rs. 13,86,443/-
	Total	Rs.56,36,187/-

25. While the Villupuram Co-operative Society has received a total sum of Rs.19,13,835/-; material worth only Rs.18,64,719/- had been supplied; balance amount of Rs.29,116/- had been held by the Villupuram Co-operative society and the same is admitted, vide the letter dated 18.06.1996. A Similar letter on very same day has also been written by Sri.Jeyavalli Women Multi-purpose Industrial Co-operative Society Dindigul admitting that they have received Rs.20,88,654/- for supply of materials whereas they have supplied materials to a tune of Rs.19,17,567/- and balance Rs.1,71,087/- is with them. As far as, Tiruvannamalai Co-operative Society is concerned they have also written a letter on the very same day that out of Rs.15,33,698/- received by them, they have supplied only Rs.12,87,390/- and balance sum of Rs.2,46,308/- is with them. All these letters which form part of Ex.P.66 series are identical and typed in the same typewriting machine and bears same date (i.e) 18.06.1996.

26. The AG's Audit report which is referred above indicates that material worth Rs.1,14,897/- were not intended by the Colleges however, supplied by these societies. Though, these three societies through their letter dated 18.06.1996 had informed the Directorate of Collegiate Education that certain amount of goods are yet to be supplied, despite receipt of money in advance, the sum mentioned in the letters are not correct. Ex.P.1044 would indicate that the Dindugal Co-operative Society has totally supplied material worth Rs.17,64,849/- only; Villupuram Co-operative Society has supplied material worth Rs.15,21,663/- only; Tiruvannamalai Co-operative Society has supplied material worth Rs.11,95,774/- only. In total as against the payment of Rs.56,36,187/- goods worth Rs.45,82,286/- only been supplied. Therefore, though the charge against these accused is for entire sum of Rs.56,36,187/- what is now been proved by the prosecution is that material worth Rs.45,82,286/- had been supplied and balance goods worth about Rs.10 lakhs not supplied. Therefore, even assuming that considering exigency, the advance payment was made contrarily to the G.O.M.S.No.708 with bonafide intention, the supply of materials not intended worth around Rs.1,04,000/- and for non-supply of materials for more than Rs.9 lakhs is purely due to the malafide action of A1 [N.Kasinathan] committed in connivance and assistance of A2 to A5.

27. From the evidence of PW.1 [Tmt.Vimala], we could find when there was defective supply by the societies, the Superintendent in Department of Collegiate Education had placed an Official note to the Joint Director Mr.N.Kasinathan [A1] to call for explanation from the societies. Whereas, A1 [N.Kasinathan] has modified the note to the effect that the society should supply the goods by 05.12.1995 instead of calling for explanation.

28. The evidence of PW.243 [T.S.Jayaraman] proves that he is the owner of the Scientific Equipment's Company and he supplied material worth Rs.1,69,670.85 to Dindigul Sri.Jeyavalli Co-operative Society. A2 [Karmegam] had placed intend for the said supply and the payment was made by A2 [Karmegam].

29. PW.244 [A.Palanivelu] who was employee under A5 [E.Govindarajan] had deposed that A2 [Karmegam] used to visit A5 [E.Govindarajan] at his Office at Door No.19, 5th Cross Road, Lake Area, Numgabakkam.

30. PW.245 [V.Ramasamy] had deposed that he was dealer in Laboratory Industrial and Chemicals. He know A4 [V.D.Perumal] who placed order for supply of chemicals and accordingly, he supplied chemicals to Thiruvannamalai Co-operative Society for total sum of Rs.8,43,770/- and he has also supplied chemicals to Villupuram Multi-purpose Co-operative Society. The payment for Tiruvannamalai Society was made by Karmegam [A2] and payment for Villupuram Society was made by V.D.Permual [A4].

31. PW.246 [V.S.Rajagopalan], Managing Director of M/s. Balaji Scientific and Private Limited had deposed that at the request of A2 [P.Karmegam] he had supplied the lab equipment's to Thiruvanamalai Co-operative Society and Villupuram Co-operative Society. A2 [P.Karmegam] who was the president of Thiruvanamalai Co-operative Society had placed the order for total sum of Rs.5,25,559.68/- and for sum of Rs.3,60,337.55/- for Villupuram Co-operative Society. P.Karmegam [A2] has settled the bill through cheque and cash.

32. The invoice which are marked as Ex.P's.1045 to 1053 shows that substantial worth of materials were supplied only in the month of July 1995 and not before that. The total supply of goods from the invoice would been seen that it is only Rs.45,82,286/- as against total amount of Rs.56,36,187/- received. A2 [Karmegam] had floated M/s.Surya Enterprises showing him as proprietor and the address of A5 as the place of business. The defence document Ex.D.12 would show that this firm got itself registered before the Commercial Tax Department only on 19.05.1995.

33. The invoices raised by the actual suppliers namely M/s.Laboratory and Industrial Chemicals, M/s.Balaji Scientific Work Private Limited, M/s. Scientific Equipment's Company would reveal, though these firms raised Bills in the names of

respective Co-operative Societies namely Sri.Jeyavalli Women Multipurpose Co-operative Society Dindugal, Villupuram Multipurpose Industrial Cooperative Society, the invoices refers the name of M/s.Surya Enterprises. Invoices are raised in the account of M/s.Surya Enterprises and supplied to respective societies. The address of M/s.Surya Enterprises is that of A5 [E.Govindarajan] and A2 [Karmegam] has given the statement that he has floated the company by name M/s.Surya Enterprises which was registered before the Commercial Tax Department only in the month of May 1995 and supplied materials to the Directorate of College Education through the three societies.

34. A2 [Karmegam], President of Tiruvanamalai Cooperative Societies, A3 [Thirupathyraj] Special Officer of Dindugal Co-operative Society and A4 [V.D.Perumal] President of Villupuram Industrial Co-operative Society had abetted A1 [N.Kasinathan] to commit breach of trust and misconduct for violating G.O.M.S.No.708 by receiving payment in advance. These societies had failed to supply the materials which was intended. Further, the material supplied were found of the substandard quality.

35. Thus, from ocular evidence as well as the documents filed by the prosecution particularly Ex.P.17 draft letter found in note file Ex.P.5 for approval for payment of bills even before supply, reveals the intention of the accused A1 to make the payment of money in advance to the three societies even before supply of materials. The invoice Ex.P.21 to Ex.P.44 proved to have been created before the supply of materials by the actual dealers and manufactures. In fact the materials were supplied by the manufactures under Ex.P.1045 to Ex.P.1053 between 07.07.1995 to 24.07.1995 through M/s.Surya Enterprises which came into existence only in the month of May 1995 clinches the issue against the appellants that payments were made in advance based on fabricated invoices, thereafter materials were supplied by M/s.Surya Enterprises which was a shell firm came into existence in the month of May 1995. The materials so supplied were not for the total value received by the societies and also were found defective or substandard.

36. The expert opinion regarding the typewriter font in the communications alleged to have been emanated from these three societies is deposed by PW.251. The report which is marked as Ex.P.86 lends support to the prosecution case that right from submitting the quotations for the material supplied in the name of these three societies till the letters intimating short supply of materials were all emanated from the Facit typewriter found in the premises of A5 [E.Govindarajan] created in connivance with other accused and not from the respective societies located at Tiruvanamalai, Villupuram and Dindugal. It is also relevant to refer PW.240 [E.S.N.Raju] who had deposed that he know A5 [Govindarajan], A2 [Karmegam]. He worked under A5 for commission basis. A5 [Govindarajan] was carrying on

business at lake area, Numgabakkam and used to given him some assignment and pay commission for the same. He has identified his signatures in Ex.P.5 (file pages 1 to 220) at page No.105 which is the letter sent to the Directorate of Collegiate Education in the name of Dindugal Sri Jeyavalli Co-operative Society. The letter sent in the name of Tiruvanamalai Co-operative Society at page No.129 and the invoices in the name of Dindugal Co-operative Society at page Nos.137, 139, 155, 157, 159, 161, 163 and 165. He has signed these documents found in Ex.P.5 as per the instruction of A2 [Karmegam], A3 [S.Thirupathiraj] and A5 [E.Govindarajan]. He has also admits that the letters sent in the name of these three societies which forms part of file Ex.P.5 (pages 1 to 220) at page Nos.13, 93, 95 and 96 were all signed by him at the instance of A2 [Karmegam], A3 [S.Thirupathiraj], A4 [V.D.Perumal] and A5 [E.Govindarajan].

37. Thus, the prosecution has proved to the core that the entire transaction for the supply of lab materials to the colleges were not done in the normal course with bonafide intention but it had been done with an oblique motive to cheat the Government. No doubt, these accused persons alone may not be responsible for the same and there may be somebody else also at the higher level who had permitted the centralized purchase scheme deviating from open tender to preferential purchase method and also deviating the mandate imposed on the G.O.M.S.No.708 but that will not exonerate these accused who have explicitly involved in the conspiracy of cheating the Government. By making advance payment to the societies which are not involved in any manufacturing or trade of lab equipment’s in the normal course, wrongful loss has occurred to the Government.

38. A2 to A4 had lend their respective societies name as if they have purchased materials from the real manufactures or dealers namely M/s. Balaji Scientific Works Private Limited, M/s.Laboratory Industrial and Chemicals, M/s. Scientific Equipment’s Company Trichy and supplied to the Directorate of Collegiate Education. Evidence of prosecution proves that A2 to A4 knowingly and actively had participated in the creation and fabrication of documents, which had mainly emanated from A5 premises, but in the name of the respective societies. The documents so fabricated were used as genuine as if these societies were called for quotation and in response they independently quoted the price. Goods were procured and supplied under invoices dated 29.03.1995 and 30.03.1995 as if they procured materials directly from manufactures or dealers though in fact goods were procured only during the month of July 1995.

39. The defence documents itself proves that the manufactures or dealers had supplied materials only in the account of M/s. Surya Enterprises to the three societies.

Though, the order for supply was placed to these three societies in the month of March 1995 and invoices show materials supplied by end of March 1995. M/s. Surya Enterprises was registered before the Commercial Tax Department only in the month of May 1995. The materials were purchased by M/s. Surya Enterprises in the name of the societies and had been supplied to the Colleges only during the month of July 1995. However, records have been created as if the entire materials were supplied before 31st March 1995. The falsification of accounts and falsification of records had been done at the instance of A1 [N.Kasinathan].

40. In respect of report from the Colleges about the supply of defective materials and materials not intended, A1 has not taken appropriate action but tried to cover up the breach. Thus, A1 to A5 had conspired with each other to dishonestly misappropriate the funds allotted by the Government and had falsified the stock register causing financial loss to the Government. Therefore, this Court finds no error in the judgment of the trial Court which needs any interference either on the finding or with regard to the sentence.

41. In the result, the Criminal Appeal No.11 of 2008 is dismissed. The Judgment of conviction and sentence passed by learned Special Judge No-I/X Additional Sessions Judge, Chennai in Special C.C.No.1 of 2004 dated 27.12.2007 is hereby confirmed. The trial Court is directed to secure the appellants/accused to undergo the remaining period of sentence. The appellants are directed to surrender before the trial Court on or before 04.07.2018. Failing which, warrant shall be executed and secure them to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Special Judge No-I/X Additional Sessions Judge, Chennai.

2. The Deputy Superintendent of Police, Vigilance and Anti-Corruption,
Kanchipuram.

3. The Additional Public Prosecutor,
High Court, Madras.

+1 cc to M/s.Krishnamoorthy Advocate sr 34687

Criminal Appeal No.11 of 2008

aa11/06/2018