Bail Slip

Crl.A.No.536 of 2010

The Appellant herein/Accused-1, in Crl.A.536/10 Viz, M.H. Ansari, S/o. Khaja Muzafffer was directed to released on bail as per order of this court dated 16.09.2010 made in Crl.MP.1 of 2010 in Crl.A. No.536/10.

Crl.A.No.537 of 2010

The Appellant herein/Accused-2, in Crl.A.537/10 Viz., B. Selvamani, S/o. M. Balu, was directed to released on bail as per order of this court dated 16/09/2010 made in Crl.MP.No.1 of 2010 in Crl.A. NO.537/10.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.04.2018	Pronounced on: 24.04.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos.536 & 537 of 2010

M.H.Ansari ...Appellant/Accused-1 in Crl.A.536/10

B.Selvamani ...Appellant/Accused-2 in Crl.A.537/10

/versus/

The State by
The Deputy Superintendent of Police,
SPE/CBI/ACB/Chennai. ...Respondent/Complainant in both the cases.

PRAYER: Criminal Appeal are filed under Section 374 (2) of Cr.P.C r/w 27 of Prevention of Corruption Act, to set aside the sentence and conviction passed by the learned Principal Special Judge for CBI Cases, Chennai 600 104 and made in C.C.No.29 of 2004 by Judgment dated 13.08.2010.

For Appellant : Mr. M.Venkataraman Sr.Counsel for Mrs. Gita Asokan in Crl.A.No.536 of 2010

For Appellant : Mr.Ganesh Rajan in Crl.A.No.537 of 2010

For Respondent : Mr. K.Srinivasan,
Special Public Prosecutor (CBI)

J U D G M E N T

These two Criminal Appeals are directed against the sentence and conviction passed by the learned Principal Special Judge for CBI Cases, Chennai in C.C.No.29 of 2004 dated 13.08.2010 is preferred by the accused persons.

2. Brief facts of the case is that M/s.Hawwa Exims, a firm in Exporters and Importers of goods, imported Cell Phone Accessories from China, during the month of December 2003. When the consignment reached the Port of Chennai, the appellant herein who was the Appraiser at customs house, Chennai alleged to have demanded Rs.10,000/- as bribe for clearing the goods from Mohideen Sahib, the Manager of M/s.Hawwa Exims. The complaint in this regard, against the appellant was lodged at C.B.I Office on 11.12.2003 by Mohideen Sahib on the instruction of his employer Mr.Zahir Hussain.

3. Based on the complaint, case was registered and the trap was arranged. On 11.12.2003 at about 4.15 pm, the defacto complainant Mohideen Sahib [PW.8] along with PW.2 [Sridharan] went to Customs House and met the accused. PW.8 gave Rs.5,000/- to A2 [Selvamani] as per the instruction of A1 [M.H.Ansari]. The tainted currency of Rs.5,000/- was later recovered by the trap team from A2 [Selvamani].

4. After completion of the investigation, final report against A1 [M.H.Ansari] and A2 [Selvamani] were filed and taken cognizance by the Trial Court for offences under Section 34 IPC r/w 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against A1 and A2. For demand of Rs.10,000/- on 11.12.2003 at 11.30 am from Mohideen Sahib [PW.8] receiving Rs.5,000/- as advance through A2 [Selvamani], at 4.15pm on 11.12.2003 as motive for clearing consignment, which is punishable under Section 7 of Prevention of Corruption Act, 1988 and for abusing his official position to obtain pecuniary advantage by corrupt or illegal means punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 as against A-1 [M.H.Ansari].

5. To prove the charges, the prosecution has examined 10 witnesses and 24 documents were marked as prosecution Exhibits. On the side of the defence 2 witnesses were examined and 5 Exhibits were marked. The trap money, sample solutions collected from the hand wash of A1 and A2 and the sample solution collected during the demonstration of pre-trap proceedings were marked as material objects M.O.1 to M.O.7.

6. The Trial Court after considering the evidence let in by the prosecution and evidence in defence found A1 and A2 guilty of offences under Section 34 IPC r/w Section 7 and 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I for one year each and also to pay a fine of Rs.2,500/- each in default to undergo R.I for 2 months each.

[i] A1 is convicted under Section 7 of Prevention of Corruption Act and sentenced to undergo R.I for one year and also to pay a fine of Rs.2,500/- in default to undergo R.I for 2 months and convicted under Section 13(2) r/w 13(1)(d) of P.C Act, 1988 and sentenced to undergo R.I for 2 years and also to pay a fine of Rs.5,000/- in default to undergo R.I for 3 months. The sentence of imprisonment imposed on the accused ordered to run concurrently.

7. Aggrieved by the conviction and sentence, A1 [M.H.Ansari] has preferred Crl.A.No.536 of 2010. A2 [B.Selvamani] has preferred Crl.A.No.537 of 2010.

Gist of the prosecution case

8. Zahir Hussan is the Proprietor of M/s.Hawwa Exims, [Exports and Imports], at Egmore, Chennai. Mohideen Sahib [PW.8], Manager was in-charge of clearing the goods from customs house. According to PW.8, on 10.12.2003, he went to customs house at Rajaji Salai to clear Bill for import of mobile phone covers and spare parts from China. When he met the Appraising Officer M.H.Ansari [appellant herein] at about 11.30 hours, the appraising Officer after perusing the bill of entry marked as Ex.P.11 and invoice marked as Ex.P.12 told that the goods are undervalued. When PW.8 [Mohideen Sahib] informed the accused that they have cleared similarly goods for the same value earlier, the accused directed him to bring those documents for comparison. Therefore, on 11.12.2003 at 11.30am, he again went to Customs House and met the accused along with the documents related to the previous import and shown it to the accused. After verifying the previous invoices and comparing with the present invoice, the accused demanded Rs.10,000/- to clear the goods. So, PW.8 informed his employer Jahir Hussain about the demand of bribe by the accused. His employer told not to give bribe, but to give complaint to C.B.I Police. Hence, he went to Shastri Bhavan, Nungambakkam, C.B.I Office and met the Superintendent of Police [Vishwanathan]. When Superintendent of Police directed him to give his complaint in writing, he prepared Ex.P.9 complaint and gave it to Superintendent of Police [Vishwanathan]. The Superintendent of Police took him to the room of Nanda Kumar Nair [PW.3] Deputy Superintendent of Police, gave the complaint to PW.3 and instructed him to take action on the complaint. At 2.15 pm, NandaKumar Nair, Deputy Superintendent of Police [PW.3] called him to his room. Sridharan and Nagarajan the witnesses arranged by the Trap laying Officer NandaKumar Nair [PW.9], for the trap proceedings,

were introduced to him. Rs.5000/- currencies [5x1000] was smeared with phenolphthalein and tested with sodium carbonate solution in the presence of witnesses Sridharan [PW.2] and Nagarajan [not examined]. The pre-trap proceedings conducted in respect of the entrustment of Rs.5,000/- to PW.8 was prepared and same is Ex.P.3. Thereafter, PW.8 along with the trap team and PW.3 went to Shastri Bhavan, Nungambakkam and reached at 4.00 pm.

9. At about 4.15pm at Shastri Bhavan, PW.8 [Mohideen Sabih] and Sridharan [PW.2] went to the cabin of the accused M.H.Ansari [A1]. A1 was discussing with two persons, so PW.2 and PW.8 were waiting outside the accused cabin. After those two persons left the cabin of A1 [M.H.Ansari]. PW.8 [Mohideen Sahib] and PW.2 [L.Sridharan] went to the cabin of A1. After getting the bill of entry numbers of the previous import, the accused demanded Rs.10,000/-. When PW.8 told the accused that he is having only Rs.5,000/-., A1 called his Assistant Selvamani [A2] and gestured PW.8 [Mohideen Sabih] to give the money to Selvamani [A2] and enquired PW.8 when will he give the balance amount. PW.8 ensured that he will give the balance amount on the next day or on the ensuing Monday. Meanwhile, he gave to A2 [Selvamani] the tainted money of Rs.5,000/-. A-2 received it in his right hand. After counting it, he kept it in his left side pant pocket. Thereafter, PW.8 come out from the room of A1 [M.H.Ansari] and gave the pre-arranged signal to the C.B.I trap team. On arrival of the trap team PW.2 and PW.8 told the TLO what transpired in the cabin of A-1. Then PW.9 enquired A2 [Selvamani] who told him to receive the money. A2 [Selvamani] said it was M.H.Ansari [A1] who told him to receive the money. Thereafter, the right hand and left hand of the 1st accused was dipped in the colourless sodium carbonate solution. There was no change in the colour. The sample was collected in two different bottles which are marked as M.O.3 and M.O.4. Then A2 [Selvamani] was asked to dipped his left and right hand fingers separately in the sodium carbonate solution, which turned into pink colour. The sample solutions were collected separately and marked as M.O.5 and M.O.6. Thereafter, the currency from A2 [Selvamani] was seized and the numbers found in the currency were compared with the numbers found in the entrustment mahazar (Ex.P.3) prepared at C.B.I Office earlier in the day. Except one for other four notes, numbers found tallied. The currencies recovered from A2 [Selvamani] is marked as M.O.2. For the recovery of the money and other proceedings a mahazar was prepared, which is marked as Ex.P.4.

10. PW.8 [Mohideen Sahib] has also spoken about the Micro Chip Recorder given to him by the C.B.I team, to record the conversation between PW.8 [Mohideen Sahib] and A1 during the trap. The Micro Chip Recorder is marked as M.O.7. The transcript of the conversation recorded in Ex.P.24.

11. In support of PW.8 [Mohideen Sahib] (testimony), PW.2 [L.Sridharan] the accompanying witnesses has deposed that on 11.12.2003 at about 1.00pm his Manager called him and instructed to him to go to the Office of C.B.I at Shastri Bhavan and to meet Mr.NandaKumar Nair, Deputy Superintendent of Police. He reached the C.B.I Office at 2.00p.m and met NandaKumar Nair [PW.3]. He was explained by PW-3 the purpose for calling him to C.B.I Office. He was given with the copy of the complaint given by PW.8. For the complaint he came to know that A1 [M.H.Ansari] had demanded Rs.10,000/- as bribe from Mohideen Sahib [PW.8] for clearing the bill of entry for import of goods. After witnessing, the pre-trap demonstration regarding the phenolphthalein test, the trap laying officer PW.3 kept the tainted currencies of Rs.5,000/- [5 notes of Rs.1000/- demonstration] was kept in the left side shirt pocket of Mohideen Sahib [PW.8]. As instructed by PW.3, he went along with PW.8 [Mohideen Sahib] to Room No.11 in the 1st floor of the Customs House at Rajaji Salai which is the cabin of M.H.Ansari [A1]. After two persons who were discussing with the A1 [M.H.Ansari] left the cabin of A1, he and PW.8 went inside the Cabin. A1 received file from Mohideen Sahib [PW.8] and perused it. A1 [M.H.Ansari] asked PW.8 [Mohideen Sahib] to note down the previous bill of entry particulars in the file. Accordingly, PW.8 [Mohideen Sahib] wrote the particulars in the file. Thereafter, A1 asked PW.8 whether he has brought the money demanded. PW.8 told that he has brought Rs.5,000/-. then, A1 called his Assistant Selvamani [A2] and gesture PW.8 to hand over the money to A2 [Selvamani]. When the accused enquired about the balance amount of Rs.5,000/-, PW.8 [Mohideen Sabih] said that he will give the balance either on the next day or on the ensuring Monday. A1 again gesture PW.8 [Mohideen Sahib] to give the money to A2 [Selvamani]. Accordingly, PW.8 gave Rs.5,000/- to A2. Thereafter, he and PW.8 left the cabin of the accused to give pre-arrange signal to the awaiting Trap Laying team. The Trap Laying Team entered the cabin of A1 [M.H.Ansari] and made an enquiry with A1 whether he demanded and accepted any bribe money from PW.8. A1 [M.H.Ansari] denied such demand thereafter, he was asked to identify his Assistant Selvamani [A2]. On identification, the trap laying team enquired [A2] and after conducting phenolphthalein test in both his hands, the tainted money of Rs.5,000/- was recovered from A-2.

12. PW.1 [B.S.V.Murthy] has spoken about the sanction for prosecuting A1. The order according sanction is marked as Ex.P.1.

13. PW.3 [NandaKumar Nair] who has led the trap team has deposed that as directed by the Superintendent of Police he registered the complaint of Mohideen Sahib. He then verified the veracity of the complaint and decided to lay trap to catch A1, when he demand and accept bribe from the complainant. Accordingly, after registering the complaint which is marked as Ex.P.9, he demonstrated the significance of the phenolphthalein

test to the witnesses. Thereafter, the trap team following PW.8 and PW.2 went to the customs house. On receiving the pre-arranged signal from PW.8 at about 4.20pm, he and his team entered the cabin of the accused [A1]. PW.3 has also deposed about the recovery of tainted money from A2 [Selvamani], the preparation of rough sketch Ex.p.10 phenolphthalein test and the collection of samples from hand wash of A1 and A2.

14. PW.10 [V.Ashok Kumar] who investigated the case has deposed that the investigation was transferred to him on 13.12.2003. He after examining the witnesses, obtaining chemical analysis report and sanction to prosecute filed the final report.

15. PW.9 [Nandagopal] who has furnished the lab report Ex.P.21. Regarding the chemical analysis of the hand wash solution. He has deposed that the phenolphthalein and sodium carbonate solution were deducted in item No.1, 4 and 5. They are the sample collected during the pre trap demonstration and sample collected from the right hand wash and left hand wash of A2.

16. PW.4 [K.Kesavan] has spoken about the procedure adopted while assessing the goods imported and how it is cleared by the Department of Customs Ex.P.11 to Ex.P.17 are the documents relating to the subject import made by M/s.Hawwa Exims Exporters and Importers. He from the records had deposed that, assessor Ansari [A-1] had scrutinized the bill of entry and made a note that "Pl. put up the documents pertaining to previous clearance" which is in Computer print. Below the noting previous bill of entry numbers and dates are written in pen.

17. PW.5 [Sundar Rajan] has spoken about the clearance of the goods covered under Ex.P.11 subsequent to the trap proceedings. PW.6 [Nagarajau] and PW.7 [Saravanan] are the other officials who were working in the Customs House during the relevant point of time and they have deposed their role in processing the bill of entries. The prosecution has treated them hostile and disowned these two witness.

18. The learned Counsels for the appellant in Crl.A.Nos. 536 and in Crl.A.No.537 of 2010 would submit that the case of the prosecution on the very face it bristles with severe infirmity and the evidence of the defacto complainant PW.8 does not carry any merit of trust worthiness. It is pointed out by the learned counsels for the appellant that PW.8 was preventively detained in the COFEPOSA Act for misdeclaration of the goods. To create terror in the mind of custom officials, he had come out with an imaginary allegation of demand of illegal gratification to clear his goods. The prosecution without verifying the credentials of the complaint and the complainant had fallen prey to the evil design of PW.8 and his employer Zahir Hussain.

19. The case of the defacto complainant is that the accused/appellants demanded Rs.10,000/- on 11.12.2003 when he met for the second time along with the previous bill cleared by the customs Department. According to the defacto complainant, he first met the accused at Custom House on 10.12.2003 at 11.30 a.m and discussed with A-1 regarding clearing the bill of entry which is marked as Ex.P.11. Whereas, the check list for the bill of entry was presented only at 13.23 hours on 10.12.2003. The defacto complainant PW.8 has thereafter signed the check list and had presented the bill of entry and other related documents. Ex.D.4 which contains bill of entry movement particulars in respect of the bill of entry No.563701 dated 10.12.2003 proves that A1 had seen the file for the first time only at 16.55pm. The delay in forwarding the case properties to the Court is very fatal to the prosecution. However, the trial Court has held that it will not affect the case of the prosecution.

20. The visitors register book maintained in the customs house ought to have been marked by the prosecution, to prove that PW.8 visited the customs house on 10.12.2003 and on 11.12.2003. The entries in the visitor's book will falsify the case of the prosecution, particularly PW.8 alleged visit to the customs house on the said dates and said time. The property seized under Ex.P.4 was forwarded to the Court after delay of 13 days on 24.12.2003. The Trap Laying Officer had forwarded the case properties after he had hand over the investigation to PW.10 as early as 13.12.2003.

21. The evidence of PW.2 [L.Sridharan] the accompanying witness and PW.8 [Mohideen Sahib] the defacto complainant, materially contradict each other in respect of the events occurred during the alleged trap proceedings. More particularly, the conversation found in Ex.P.24 alleged to have been taken placed between the accused/appellant and the defacto complainant not spoken by any other witness except the IO.

22. The Trial Court ought to have given due consideration for the defence witnesses and the defence Exhibits which will show that M/s. Hawwa Exims Exporters and Importers are violators of the Customs Act and habit of giving false complaints against Officials to threaten. While PW.2 [L.Sridharan] would say that when the trap team entered the cabin of A1. A2 [Selvamani] was counting the money given by Mohideen Sahib [PW.8] and same was recovered from his hand. Whereas, Mohideen Sahib [PW.8] would say that A1 [M.H.Ansari] told him to give the money to A2. Accordingly, he gave the money smeared with phenolphthalein to A2 [Selvamani]. A2 received the money in his right hand, counted it and kept it in the left side pant pocket.

23. In the cross examination of Mohideen Sahib [PW.8] he had deposed that A2 [Selvamani] pant was subjected to phenolphthalein test. The other witnesses namely PW.2

[L.Sridharan] and PW.3 [Nandakumar Nair] does not corroborate the version of the defacto complainant in this regard. PW.2 would only say that he did not remember whether the pant and shirt of 2nd accused was subjected to phenolphthalein test.

24. For all the above said reasons, the learned counsels for the appellant would pray for allowing the appeal and set-aside the judgment of the Trial Court.

25. Per Contra, the learned Special Public Prosecutor would submit that the prosecution has clearly proved that the recovery of tainted money Rs.5,000/- from A2 on the day of trap. The chemical analysis report and the factum of the seizure of tainted money which tallies with the numbers already noted in the entrustment mahazar prepared at C.B.I Office would go to show that the money received by A2 [Selvamani] on instruction of A1 [M.H.Ansari] is nothing but illegal gratification demanded and received for clearing the goods covered under bill of entry which is marked as Ex.P.11.

26. The Trial Court only after due consideration of the evidence placed before it, had held that 1st accused had demanded illegal gratification for clearing the bills of M/s. Hawwa Exims Export and Import and received Rs.5,000/- through his Assistant A2 [Selvamani]. The investigation discloses that A2 a private person engaged by A1 [M.H.Ansari] to assist him. He had received the tainted money on the direction of A1 [M.H.Ansari] and when A-2 was caught red handed, he had admitted to the Trap Laying Officer that he received the money on the instruction of A1 [M.H.Ansari]. The presence of A2 [Selvamani] in the cabin of A1 [M.H.Ansari] is not disputed. Recovery of tainted money from A2 is also not denied or disputed.

27. In such circumstances, there is nothing wrong in the finding of the Trial Court holding A1 and A2 guilty of receiving illegal gratification. A1 as a public servant and A2 as a person abating public servants to receive illegal gratification are guilty of offence punishable under Section 34 IPC and section 7 and 13(1)(d) of Prevention of Corruption Act. Hence sought for dismissal of the appeals.

Point for consideration

> Whether there is any infirmity in the appreciation of evidence by the Trial Court, which warrants interference in his findings?

28. The genesis of the prosecution case is the complaint which is marked as Ex.P.9 alleged to have been given by PW.8 on 11.12.2003. The reading of the Ex.P.9 complaint would reveal that on 10.12.2003 the defacto complainant Mohideen Sahib, Manager of M/s.Hawwa Exims Exports and Imports, Egmore, Chennai,

had filed Bill of entry for 12 items of materials pertaining to mobile phone accessories along with invoice No.1381911 dated 28.10.2003 which is marked as Ex.P.12. He has filed the invoice, bill of lading, delivery order and other documents at the servicing counter of Customs House on 10.12.2003. It is stated in the complaint that the accused/appellant M.H.Ansari, Assessing Officer asked him to file the documents of the previous clearance and given the query note on 10.12.2003. Again, when he visited the customs house on 11.12.2003 at 11.30 am and met M.H.Ansari [A1] with the documents of previous clearance, he demanded Rs.10,000/- to be paid or else he would be penalised. He was not prepared to pay bribe to M.H.Ansari [A1], so, action has been taken against him.

29. Based on the said complaint NandaKumar Nair [PW.3], Deputy Superintendent of Police, CBI/ACB/Chennai, had registered the First Information Report in RC.No.2003 A0055 dated 11.12.2003 at 2.00pm. As per the First Information Report marked as Ex.P.8, information has been received at C.B.I Office on 11.12.2003 at 2.00pm. The entrustment mahazar marked as Ex.P.3 has been prepared at Shastri Bhavan, 3rd floor, C.B.I Office on 11.12.2003 at 2.15pm in the presence of defacto complainant, independent witnesses and the Trap laying team. Five numbers of Thousand Rupees notes were smeared with phenolphthalein power and entrusted to PW.8 [Mohideen Sahib]. The currency numbers finds place in the entrustment mahazar Ex.P.8. The currency numbers of item 2 and 3 in Ex.P.8 are one and the same. PW.3 [Nandakumar Nair] has given an explanation about this error. The seizure mahazar marked as Ex.P.4 would indicate that the currency number of one [Rs.1000/-] note has been omitted to be recorded in the entrustment mahazar and one currency number is repeated twice. Such an omission crept inadvertently does not carry any adverse effect on the prosecution case. The other four currency numbers tally with the money recovered from A2 [Selvamani] and found in recovery mahazar marked as Ex.P.4.

30. The learned counsel appearing for the appellants pointing out the contradictions found in the documents and the oral evidence let in by the prosecution, would submit that the lapse on the prosecution for not explaining how and when the demand of Rs.10,000/- was reduced to Rs.5,000/- and from where A2 [Selvamani] was brought in are fatal to the prosecution. While Ex.P.9 complaint does not say anything about reduction of demand amount from Rs.10,000/- to Rs.5,000/- and the entrustment mahazar which is marked as Ex.P.3 also does not indicate, how the demand for Rs.10,000/- reduced to Rs.5000/-, the reason for trap with Rs.5,000/- not explained by the Trap Laying Officer. Further the prosecution witnesses have not spoken anything about how A2 came to the scene of trap. The prosecution witnesses who were supposed to say, A-2 was engaged by Custom Officers privately to be a help-hand, did not say so, therefore they were treated as hostile witness.

31. PW.8 [Mohideen Sahib] in his evidence has stated that when he met A1 [M.H.Ansari] on 11.12.2003 at 11.30 hrs, he demanded Rs.10,000/- as bribe to clear 12 items of goods shown in the invoice. When PW.8[Mohideen Sahib] informed it to his employer, he instructed him to lodged a complaint. Accordingly, he went to C.B.I Office and lodged the complaint. When the Trap laying Officer asked whether he has brought bribe money demanded for trap proceedings, he said, he have only Rs.5,000/-. There is no explanation from PW.3 [NandaKumar Nair] while the demand was for Rs.10,000/-, why he decided to proceed with Rs.5,000/-. Further, when PW.8 [Mohideen Sahib] has categorically deposed that after the demand of bribe by the accused on 11.12.2003 at 11.30am, he contacted his employer Zahir Hussain and as per his instruction, he lodged the complaint before C.B.I. Office, the prosecution has not chosen to examine the said Zahir Hussain to confirm and corroborate this fact.

32. PW.2 [L.Sridharan], Manager of Indian Overseas Bank, has deposed that while he was working as Assistant Manager, Mount Road Branch, his Manager called him at 1.00pm on 11.12.2003 and instructed him to go to C.B.I Office at Shastri Bhavan to met NandaKumar Nair, Deputy Superintendent of Police, to be witness in some proceedings. Accordingly, he reached C.B.I at about 2.00pm. However, PW.8 [Mohideen Sahib] had deposed that on 11.12.2003 at about 1.15 pm, he went C.B.I Office, Shastri Bhavan and met Vishwanathan, Superintendent of Police. Thereafter, Vishwanathan, Superintendent of Police, took him to the cabin of NandaKumar Nair, Deputy Superintendent of Police and instructed Nandakumar Nair to take action upon his complaint and First Information Report registered at 2.00p.m.

33. Thereafter, at 2.15pm, Deputy Superintendent of Police had called him to his cabin. PW.8 saw six or seven persons in the cabin and they were introduced to him. One among them was Sridharan PW.2. When the defacto complainant himself had reached the C.B.I Office only at 1.15 pm on 11.12.2003 and given the complaint to PW.3 at 2.00pm, it is unexplained by the prosecution, how Sridharan [PW.2] was informed by his Manager at 1.00pm to go to Shastri Bhavan and to met NandaKumar Nair [PW.3] to be witness in a case anticipating the complaint from PW.3.

34. Yet another glaring contradiction in the prosecution case is that, according to PW.8 [Mohideen Sahib] he met the accused on 10.12.2013 knowing that the appraising Officer has raised some query about the details found in the bill of entry and the invoice. The file containing the query is marked as Ex.P.2. Perusal of the file contents indicates that after check list generated at 13.23pm the importer [PW.8] had signed the check list for Bill of entry and submitted to the service centre. Only thereafter, the file has been allotted to A-1. On allotment of the file pertaining to the bill of entry No.563701 dated 10.12.2003, the appellant had made a remark that "Pl. put up the documents pertaining to previous clearance".

35. PW.4 [Kesavan], Deputy Commissioner, Customs Department, Chennai in his evidence had pointed out the typed portion are entered by the first accused and the details of previous bills of entry (1). No.530508 dated 11.09.2003, (2). 530521 dated 11.09.2003 and (3). 530520 dated 11.09.2003 are written in pen. He has also deposed that the writings in pen should not have been done. If at all there is any doubt in the details furnished by the importer, the assessor should raise the query only through online.

36. Regarding the pen writings found in check list, PW.8 has deposed that when he met the accused on 11.12.2003 at about 4.20pm, the accused asked him to write the previous bills number in the file. So he wrote the previous bills number and gave it to A-1. Thus, it is clear from the evidence of PW.4 and PW.8 that nothing should be written in hand in the file. All the query and the information obtained for the queries should be fed in the EDI System. What is written in the 1st sheet of Ex.P.2 file is in the hand writing of PW.8 and not by the accused.

37. Further perusal of the file which is marked as Ex.P.2, it could be seen that the bill of entry presented by M/s.Hawwa Exims Import and Export was on 10.12.2003 after generation of the check list at 13.23 hours. While so, the deposition of PW.8 that on 10.12.2003 at about 11.00am a person from the service centre told him to meet the accused regarding the bill of entry which was not even presented and allotted to A-1 cannot be true. This view is further fortified through the evidence of DW.1 [Vijayakumar CPIO (Imports) custom house Chennai, who had deposed that A-1 had perused the concern Bill of Entry on 10.12.2003 at 16.55hrs and existed as 17.05hrs as per Ex.D.4.

38. To add further, from the evidence of PW.4 [Kesavan] it appears that the accused joined the customs house on transfer only on 10.12.2003 and before that he was in port trust. This fact is also stated by the accused A1 [M.H.Ansari] himself in the questioning under Section 313 Cr.P.C. He has also probabilised the case of motive against him in his answer for incrementing evidence against him, by saying that he was posted as Appraising Officer in the Customs House only on 10.12.2003. In the EDI system, he found the bill of entry regarding M/s.Hawwa Exims was fake and goods were undervalued. So, he raised a query against previous bill to verify the antecedent. To cover up the mistake, false complaint was given against him by the importer.

39. On a cumulative assessment of the evidence and the lacuna pointed by the accused, this Court finds that the defacto complainant himself has gone to C.B.I Office only at 1.15 pm and had first meet the Superintendent of Police [Viswanathan] to Appraise the complaint orally. Thereafter, at his instruction he prepared a written complaint and gave the complaint to PW.3

NandaKumar Nair through Viswanathan, Superintendent of Police. The First Information Report has been registered at 2.00PM after verifying the veracity of the complaint and the reputation of the accused persons. Whereas, PW.2 was alerted and directed by his Manager to be a witness in C.B.I case on 11.12.2003 at 1.00 PM itself. Thus even before the defacto complainant reached CBI Office and receipt of the complainant and registering the FIR, the witness has been summoned to C.B.I. If the version of PW.8 and PW.2 is to be taken read together, even before complainant reached the C.B.I Office with intention to give a complaint, PW.2 has been instructed by his Superior to go to C.B.I Office at Shastri Bhavan. This will go to show either the prosecution has decided to lay trap even before receipt of complaint or the first information report about demand of bribe is concealed.

40. According to the prosecution, Zahir Hussain is the Proprietor of M/s.Hawwa Exims and PW.8 [Mohideen Sahib] is an employer under him. PW.8, admits he gave the complaint only on the instruction of Zahir Hussain. It is an admitted fact by the investigation Officer PW.10 [V.Ashok Kumar] that he did not record the statement of Zahir Hussain. Non Examination of Zahir Hussain gains significances in the light of the evidence of DW.2 [C.Rajan] and the Ex.D.1 marked on behalf of the defence. These material reveals that Zahir Hussain the owner of M/s.Hawwa Exims was habitual violator of Customs Act by importing goods by mis-declaration and also undervalue the same. He had an habit of threatening Custom Officials with ulterior motive to tarnish and intimate the custom Officers.

41. To sum up, the file kept in the Customs House, Chennai and marked as Ex.P.2 proves the invoice submitted by PW.8 was received at the service centre on 10.12.2003 at 13.23 hours and fed in the EMI system. [Check list which form part of the file marked as Ex.P.2]. The papers were scrutinized by A1 through online at 17.05 hrs on the same day [Bill of entry movement register-Ex.D.4] A-1 had raised query, "Pl. put up documents pertaining to previous clearances".

42. PW.8, in the cross examination admits he is conversant with the procedure involved in clearing goods at custom house. He had deposed that, as soon as the Form for clearance is presented at service centre, check list will be generated and after confirming whether all the particulars and documents mentioned in the check list are provided, then the Bill of entry with unique number will be assigned. So, it is clearly established by the defence that the check list and bill of entry were generated on 10.12.2003 only after 12.23 hours and only after compliance of requirement mentioned in the check list, the file gets transferred online to the Appraiser nominated for his appraisal.

43. The appraiser is chosen at random. Only after assigning the appraiser, the concern file is forwarded to him. From Ex.D.4, and from the testimony of DW.1 we find that it is at 16.55 PM the bill of entry No.563701 is scrutinized by A1 and not before that. Therefore, the allegation of PW.8 that on 10.12.2003 he was asked to meet A1 by some one at Service Centre and he met A1 at 11.30 hrs proved to be a false. Regarding the alleged second meeting with A1 on 11.12.2003 at 11.30 hrs, PW.8 had deposed that he went to custom house with particulars regarding previous import of 5 articles. On perusing it, A1 [M.H.Ansari] demanded Rs.10,000/- and told him the money should be given by evening. He immediately contacted his employer [Zahir Hussain] and informed him about the demand of illegal gratification by A1. In the cross examination PW.8 admits that on 10.12.2003 at 11.30 am when he went to custom house, he signed the visitor's book. However, the I.O admits he has not verified the visitor book kept in the Customs House.

44. It is alleged that the conversation between A1 [M.H.Ansari] and PW.8 [Mohideen Sabih] during trap was recorded and transcripted in the presence of witnesses. The Transcription is marked as Ex.P.24 through PW.10 [Ashok Kumar] the I.O in this Case. Except PW.10 [Ashok Kumar] no other prosecution witnesses speaks about the transcription of the conversation recorded in Micro Chip marked as M.O.7.

45. According to PW.10[Ashok Kumar], Ex.P.24 was prepared at C.B.I Office, IT centre on 16.03.2004, in the presence of witnesses L.Shridharan [PW.2], Nagarajan [not examined] and defacto complainant [PW.8]. The Court Ex.C.1 is the petition of PW.10 [Ashok Kumar] dated 27.01.2004, filed before the Principal Special Judge for CBI Cases, Chennai. In this petition, PW.10 [Ashok Kumar] has stated that,"I am the present Investigating Office of the above said case. The trap Lying Officer, Deputy Superintendent of Police, Shri.Nandakumar Nair has deposited all the relevant documents/Material Objects in this case on 24.12.2003, vide invoice containing 18 items. It is humbly prayed that item No:-13 (a sealed packet marked as "F" containing the micro chip) and item No:-18 (one file pertaining to Bill of Entry No:-563701 dated 10.12.2003 of M/s.Hawwa Exims) as per the said invoice may kindly be ordered to be handed over to me for the purpose of investigation."

46. This document would show that, though the trap laying Office, Nandakumar Nair [PW.3] had handed over the investigation to PW.10 on 13.12.2003 itself, the properties and documents mentioned in the invoice were retained by him till he deposited them in the Court on 24.12.2003. The micro chip marked as M.O.7 and the file marked as Ex.P.2 were returned back to PW.10 on his petition dated 27.01.2004 marked as Ex.C.1. The delay in forwarding material objects and records, retaining items 1 to 18 found in the invoice by the Trap Laying Office PW.3 even after transfer of investigation to PW.8, the suspicion surrounding the

alleged recording of the conversation and transcription of it, the motive attributed to Zahir Hussain the owner of M/s.Ewwa Exims all put together causes doubt about the truthfulness of the prosecution case about the alleged demand, acceptance and recovery, contrarily probabilises the defence version.

47. For the above said reasons, this Court holds that the trial Court had omitted to consider the facts placed before it in a holistic manner. Hence, the judgment impugned is liable to be set aside.

48. In the result, the Criminal Appeals Nos.536 of 2010 and 537 of 2010 are allowed. The judgment of conviction and sentence passed by Learned Principal Special Judge for C.B.I Cases, in C.C.No.29 of 2004 dated 13.08.2010 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. The appellants are set at liberty forthwith unless their presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

bsm
To

1. The learned Principal Special Judge [CBI],
Chennai 600 104.

2. The The Deputy Superintendent of Police,
SPE/CBI/ACB/Chennai.

3. The Special Public Prosecutor, (CBI)
High Court, Madras.

+ 4 ccs to M/s. Gita Asokan, Advocate Sr.30544
+ 1 cc to Mr.K. Srinivasan, Advocate Sr.30301

RSI(CO)
EU(28/04/2018)