

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2017

DELIVERED ON : 06.02.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal Nos. 456 and 458 of 2007

Criminal Appeal No.456 of 2007:-

P.Dasarathan ... Appellant/Accused No.3

Vs.

Inspector of Police,  
SPE/CBI/ACB/Chennai  
(R.C.No.M.A.1/2002/A/0013) ... Respondent/Complainant

Criminal Appeal No.458 of 2007:-

1.K. Ramanujam

2.V.Vijayan

3.V. Lakshmanan ... Appellant/Accused 1, 2 & 4

Vs.

State  
Rep. by Inspector of Police,  
CBI/ACB  
Chennai  
(R.C.No.M.A.1/2002/A/0013) ... Respondent/Complainant

Prayer in CrI.A.No.456/2007:- Criminal Appeal filed against the judgment passed by the Additional District Judge, Special Court for CBI Cases, Coimbatore, dated 18.05.2007 in Calendar Case No.15/2003.

Prayer in CrI.A.No.458/2007:- Criminal Appeal filed against the judgment passed by the Additional District Judge, Special Court for CBI Cases, Coimbatore, dated 18.05.2007 in Calendar Case No.15/2003.

For Appellant in Crl.A.No.456/2007 : Mr. K.R.Shankaran  
for M/s.Parivalal

For Appellant s in Crl.A.No.458/2007: Mr. S. Ashok Kumar  
Senior Counsel  
for Mr. C.D. Johnson

For Respondent in both Crl.As : Mr. Baskaran,  
Public Prosecutor for CBI cases

#### COMMON JUDGMENT

The above Criminal Appeals have been directed against the conviction and sentence passed by II Principals District Judge, Special Judge (CBI cases) Coimbatore, dated 18-05-2007 in Calendar Case No.15/2003.

2. The Appellant in the above said Criminal Appeal Nos.456 was A3 and the Appellant in Criminal Appeal No.458 of 2007 are Accused 1, 2 and 4 in Calendar Case No.15 of 2003. The crux of the case of the prosecution is that A-1 to A-4 who were employees of Indian Railways entered into a criminal conspiracy during 1995 to 2002 at Erode, Bangalore, Chennai, Palghat and other places, induced unemployed youths and received money from them promising job in Railways as Class IV employees. In pursuance to the said conspiracy, A-1 to A-4 dishonestly induced 24 persons to deliver a total sum of Rs.6,54,500/- and thereby made pecuniary advantage of the corresponding sum by corrupt and illegal means abusing their official position as public servant.

3. The appellants/accused 1 to 4 were alleged to have committed offences punishable under Sections 120-B IPC r/w.420 IPC and Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter called as "P.C. Act") and 420 IPC and 13(2) r/w.13(d)(d) of PC Act. Copies of documents were furnished to the accused u/s.207 Cr.P.C., and after hearing both sides and perusal of charge sheet, connected records and statements filed along with charge sheet, as many as 17 charges were framed against the accused. Since the accused pleaded not guilty, trial was conducted. On the side of the Prosecution, P.Ws.1 to 41 were examined, Exhibits P.1 to P.73 were marked. On the side of accused, Ex.D.1 to D.4 was marked.

4. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused 1 to 4 guilty and convicted them as under:-

| Accused No. & Name | Conviction                                                                                                                                                                               | Sentence                                                                                                                                                                                                                                                                                                                  |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A-1 Ramanujam      | U/s.120-B<br>r/w.420 IPC<br>and 13(2)<br>r/w.13(1) (d)<br>of PC Act.<br>u/s.420 IPC<br>(totally 3<br>counts)<br><br>u/s.13(2)<br>r/w.13(1) (d) of<br>PC Act<br>(totally 3<br>counts)     | R.I. For 2 years and pay a<br>fine of Rs.1000/- i/d. To<br>undergo 3 months R.I.<br><br>R.I., for 4 years and to pay a<br>fine of Rs.1000/- for each<br>count i/d, to undergo R.I. For<br>3 months.<br><br>R.I., for 2 years and pay a<br>fine of Rs.1000/- for each<br>count in default to undergo<br>R.I. For 3 months. |
| A-2 Vijayan        | U/s.120-B<br>r/w.420 IPC<br>and 13(2)<br>r/w.13(1) (d)<br>of PC Act.<br>u/s.420 IPC<br>(totally 4<br>counts)<br><br>u/s.13(2)<br>r/w.13(1) (d) of<br>PC Act<br>(totally 4<br>counts)     | R.I. For 2 years and pay a<br>fine of Rs.1000/- i/d. To<br>undergo 3 months R.I.<br><br>R.I., for 4 years and to pay a<br>fine of Rs.1000/- for each<br>count i/d, to undergo R.I. For<br>3 months.<br><br>R.I., for 2 years and pay a<br>fine of Rs.1000/- for each<br>count in default to undergo<br>R.I. For 3 months. |
| A-3 Dasarathan     | U/s.120-B<br>r/w.420 IPC<br>and 13(2)<br>r/w.13(1) (d)<br>of PC Act.<br><br>u/s.420 IPC<br>(totally 8<br>counts)<br><br>u/s.13(2)<br>r/w.13(1) (d) of<br>PC Act<br>(totally 8<br>counts) | R.I. For 2 years and pay a<br>fine of Rs.1000/- i/d. To<br>undergo 3 months R.I.<br><br>R.I., for 4 years and to pay a<br>fine of Rs.1000/- for each<br>count i/d, to undergo R.I. For<br>3 months.<br><br>R.I., for 2 years and pay a<br>fine of Rs.1000/- for each<br>count in default to undergo<br>R.I. For 3 months. |

| Accused No. & Name | Conviction                                                           | Sentence                                                                                              |
|--------------------|----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| A-4 Lakshmanan     | U/s.120-B<br>r/w.420 IPC<br>and 13(2)<br>r/w.13(1) (d)<br>of PC Act. | R.I. For 2 years and pay a fine of Rs.1000/- i/d. To undergo 3 months R.I.                            |
|                    | u/s.420 IPC<br>(totally 8<br>counts)                                 | R.I., for 4 years and to pay a fine of Rs.1000/- for each count i/d, to undergo R.I. For 3 months.    |
|                    | u/s.13(2)<br>r/w.13(1) (d) of<br>PC Act<br>(totally 8<br>counts)     | R.I., for 2 years and pay a fine of Rs.1000/- for each count in default to undergo R.I. For 3 months. |

The substantial sentence imposed on the accused shall run concurrently.

5.1. Aggrieved over the said findings of the Trial Court, the accused have preferred these appeals seeking to set aside the impugned judgment, which is under challenge. The learned Counsel appearing for the appellants/accused submits that P.W.14 in his chief examination has stated that he gave a total sum of Rs.42,000/- to A-3 in four installments of Rs.10,000/-, Rs.2,000/-, Rs.10,000/- and Rs.20,000/-, however, he has not given any specific dates on which the said amounts was given by him and there is no proof for having given the said amounts. Further, the learned Counsel also submits that P.W.14 has not preferred any complaint to Vigilance and Anti Corruption Cell of the Railways or CBI against A-3. Further P.W.14 has stated in his evidence that he borrowed money from his sister Vasanthi, but, the said Vasanthi was not examined by the prosecution. The learned Counsel also stated that there is no corroborative piece of evidence to support P.W.14 contention.

5.2. P.W.16 in his chief examination has stated that he paid totally Rs.58,500/- to A-3, but in the cross deposed that the said amount was paid in installments of Rs.15,000/- at two times, totalling Rs.30,000/- and then Rs.20,000/-, then Rs.2,500/-. The learned counsel submits that the installments stated by him, if added comes to Rs.52,500/- only and therefore the evidence of P.W.16 is not only contradictory to the charge but also self contradictory to his own evidence in chief examination. Further P.W.16 in his evidence stated that he gave a complaint to CBI and further stated that he is unable to recall the date on which he lodged the complaint and is not having the copy of the complaint. P.W.16 also stated that the complaint was reduced into writing by the CBI as narrated by P.W.19 Arumugam and also stated that he has not signed in the complaint. The learned counsel further submits

that the said complaint is not before the court. Thus, it is submitted that P.W.16 has not given any specific dates about payment of money and he has no proof for making such payments. Likewise, P.W.27-K. Jagadeesan, in his evidence has stated that he had paid Rs.5000/- on 12.05.2000 and another sum of Rs.25,000/-, totally Rs.30,000/- to A-3. However, in Charge No.3, the amount received by A-3 from P.W.27 is shown as Rs.5,000/-. Further, P.W.27 has not sent any notice or preferred any complaint against A-3 and there is no proof for having paid the money. There is also no proof for his claim that he borrowed the said amount and repaid with interest. Further there is no corroborative evidence to establish the claim of P.W.27 that he paid Rs.25,000/- to A-3 being that he secured the job for him.

5.3. P.W.33-M. Farook, in his chief examination has stated that he paid Rs.20,000/- to A-3 and gave his conduct certificate Ex.P.45 series to A-3. He also stated that he lodged written complaint to CBI. However, in his cross examination, P.W.33 firstly stated that he gave complaint on 07.06.2000 and then he says he gave complaint on 07.06.2001. P.W.33 also admits that he does not have any receipt for lodging the complaint. P.W.33 also stated in his evidence that his father paid Rs.15,000/- to A-3 and he paid Rs.5,000/- to A-3 in the year 2000. However, the Investigating Officer has admitted that during the investigation, P.W.33 has not stated to him that his father paid Rs.15,000/- and he paid Rs.5,000/- to A-3. Pointing it out, the learned counsel for the accused contends that for the first time in Court, only P.W.33 has stated as above and there is no corroborative evidence in support of claim of P.W.33.

5.4. The learned counsel for the appellants/accused also submits that Charge Nos.5 and 13 are one and the same but giving rise to different offences, namely, 420 IPC and Section 13(2) r/w. 13(1)(d) of PC Act, 1988 and submitted that as such said charges and the conviction thereof are not sustainable. The learned counsel also invited the attention of this court to the evidence of P.W.28, P.W.29, P.W.30, P.W.25, P.W.31, P.W.18 and submitted that there is material discrepancy with regard to the demand and the sum paid by them and also contrary to the charge and therefore, Charge No.5 and 13 framed against A-3 is unsustainable.

6. The learned counsel for the appellants/accused also attacked the impugned judgment by stating that Ex.P.1 Sanction order given by P.W.1 to P.W.4 is not a valid sanction since P.W.1 to P.W.4 are not the appointing authority and as such not the competent person to accord sanction to prosecute and therefore, the proceeding and subsequent conviction based upon illegal sanction is unsustainable. It is further stated that as per Rule 215 of the Railways Establishment Code Vol.I, the General Manager of concerned Zone is the competent authority to appoint Group 'C' Post of employees. Therefore, the

sanction which was not accorded by the appointing person and in the absence of any delegation of powers to the present sanctioning authority i.e., P.W.1 to P.W.4 they are not competent to accord sanction to prosecute the appellants and therefore, the conviction based upon such invalid sanction order is liable to be set aside. The learned counsel for the appellants/accused also submitted that the trial court itself had its own doubt regarding the validity of Ex.P1, Ex.P3, Ex.P5 and Ex.P6 sanction to prosecute the accused and because of that doubt only, the trial court suo moto reopened the case and recalled the witness P.W. 1 to P.W. 4 and examined them further regarding their power to accord sanction to prosecute the accused. Thus, the accused/appellant seeks to set aside the order of conviction, on the preliminary ground that as there is no valid sanction to prosecute the accused and as such the entire case has to fail. He further contended that even on merit, in view of the delay in filing of the First Information Report and also in view of the contradiction in the evidence of prosecution witness the charge levelled against the accused is unsustainable and the conviction imposed by the Trial Court is liable to be set aside.

7. On the other hand, the learned Special Public Prosecutor appearing for the Prosecution/CBI supported the impugned judgment and the order of conviction passed by the trial court, contending that the recovery of tainted currency notes, coupled with the evidence of Prosecution Witnesses is sufficient to sustain conviction. The learned Special Public Prosecutor appearing for the CBI cases also submitted that the explanation offered by the accused was highly improbable and unbelievable. As far as the contention of invalid sanction raised by the appellants, the learned Special Public Prosecutor contended that the trial court after taking note of the oral and documentary evidence produced by the prosecution held that the power was legally delegated to the sanctioning authority and the sanction accorded by P.W.1 to P.W.4 even if defective, the same cannot be treated as invalid one. The learned Special Public Prosecutor further contended that in the absence of any error, omission or irregularity in the grant of sanction to prosecute the accused, the conclusion of the trial court cannot be reversed unless and until it is established that due to the same, failure of justice has resulted causing injustice to the accused.

8. I have heard the rival submissions and perused the materials available on record. The primary contention of the accused is that no proper sanction was obtained as per law to prosecute them and they are prejudiced on the ground. In the case on hand, the learned counsel appearing for the accused/appellants contended that sanction to prosecute the accused was given by P.Ws.1 to 4 under Exs.P1, Ex.P3, Ex.P5 and Ex.P6, but the said persons P.Ws.1 to 4 are not the competent persons to accord sanction and as such the sanction

accorded by them to prosecute the accused 1 to 4 is not valid sanction. The contention of the appellants/accused is that the accused are employed in Indian Railways as Group-C staff members and as per Rule 215 of the Railways Establishment Code Volume-I, the General Manager of the concerned Railway Zone alone is competent authority to appoint the persons to Group-C post and as P.Ws.1 to 4 are persons employed below the rank of General Manager and no materials being placed to show that any delegation of power to the said persons P.Ws.1 to 4 to appoint or take disciplinary action against the Group-C Officers, the act of P.W.1 to P.W.4 according sanction to prosecute as per Exs.P1, P3,P5 and Ex.P6 is not proper and the sanction accorded by them is invalid. In the judgment under challenge, the trial court has observed as follows:-

"For want of clarification regarding the sanctions accorded to prosecute the accused who are public servants, this Court suo-moto recalled the sanctioning authorities namely, P.W.1 to P.W.4 and the documents produced by them were marked as Exs.C1 to C4."

The Indian Railway Establishment Volume-I is produced as Ex.D4 by the defence side and as per that the General Manager or Officers in the lower rank to whom power is delegated is the competent authority to appoint Group-C and D employees. P.Ws.1 to 4 admittedly is not in the rank of the General Manager and they were working under the General Manager. The learned counsel appearing for the appellants/accused contended that in the absence of any proper delegation of power to P.Ws.1 to 4, the sanction accorded by them is without jurisdiction and it should be treated as nullity. In support of the same, he relied upon the ruling reported in 2006 (0) Supreme Court (SC) 765 in STATE INSPECTOR OF POLICE, VISAKHAPATNAM Vs. SURYA SANKARAM KURRI, wherein it has held as follows:-

"21. It is true that only on the basis of the illegal investigation a proceeding may not be quashed unless miscarriage of justice is shown, but, in this case, as we have noticed hereinbefore, the respondent had suffered miscarriage of justice as the investigation made by P.W.41 was not fair.

23. The purported delegation of power had never seen the light of the day. No reliance thereupon could have been placed to arrive at a finding that the said witness was authorized to accord sanction. The learned Special Judge did not apply his mind to these aspects of the matter at all.

25. In State of Karnataka through CBI vs. C. Nagarajaswamy [(2005) 8 SCC 370], it was held :

"Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage."

26. When a sanction is granted by a person not authorized in law, the same being without jurisdiction, would be a nullity."

He also relied upon the ruling reported in 1968 (0) Supreme (SC) 91 in SAILENDRANATH BOSE Vs. THE STATE OF BIHAR, wherein it has held as follows:-

"12. P.W.1 deposed that appellant was a Class III Officer and that he could have been appointed or dismissed by the Deputy Agent Personnel who is subordinate to him. Therefore, he (P.W.1) was competent to grant previous sanction under S6(1) of the Prevention of Corruption Act. P.W.1's assertion that the appellant could have been removed from his office either by the Deputy Agent Personnel or by himself was challenged in his cross-examination. The trial court as well as the High Court relied on the oral evidence of P.W.1 in coming to the conclusion that the sanction granted is valid. In our opinion those courts erred in relying on oral evidence in deciding the validity of the sanction granted. Hence, we asked the learned counsel for the respondent to satisfy us with reference to the rules on the subject that P.W.1 was competent to remove the appellant from his office. For this purpose we granted him several adjournments. Though our attention has now been invited to some rules, those rules do not establish that P.W.1 was competent to grant the sanction in question.

14. As per R.134 of the Indian Railway Establishment Code, published in 1959, authorities competent to make first appointment to non-gazetted posts in the Indian Railways are the General Manager, the Chief Administrative Officer or lower authority to whom he may delegate power.

There is no evidence to show that this power has been delegated to the heads of the department. No provision in the Indian Railway Establishment Code, 1956 prescribing the authorities competent to remove from office a Class III officer was brought to our notice. But the prefatory note to Vol.I of the Code says, "The revised Chapter XY II and revised Appendices I and XII will be printed later for inclusion in this edition. Till such times these are printed, the rules and provisions contained in Chapter XVII and Appendices IV and XVIII in the 1951 Edition (Reprint) as amended from time to time shall continue to apply."

15. In 1961 few rules relating to discipline and appeal of railway servants other than employed in the railway protection force have been published. Rule 1701 says, "Without prejudice to the provisions of any law, for the time being in force, relating to the conduct of Government servants or to the rules made under Section 47(e) of the Indian Railways Act, 1890 (9 of 1890), the conduct of railway servants shall be governed by the rules contained in Appendix VIII". Our attention has not been invited to any rules made under SS.47(e) of the Indian Railways Act, 1890 or any other statutory rules. Hence we are proceeding on the basis that the aforementioned R.1701 governs the present case. Rule 1705 says that the authorities who are competent to place a railway servant under suspension and to impose penalties on him are specified in the Schedules I, II and III appended to the Rules. Rule 1707 sets out the various punishments that may be imposed on a railway servant, which includes removal from service as well as dismissal from service. Schedule I deals with railway servants employed in the Railway Boards Office the Research, Design and Standard Organisation, the Railway Staff College, Baroda, the Advanced Permanent Way Training School, Poona, the Railway Service Commission, the Railway Rates Tribunal, the Railway Liaison Office and all other railway offices which are not enumerated above Schedule I does not apply to the case of railway servants

employed in the zonal railway. As regards them, provision is made in Schedule II. From that Schedule, it is seen that though a Head of the Department can impose on them the punishment of removal from service, compulsory retirement or dismissal from service. Those punishments as seen from the Schedule can be imposed on them only by the appointing authority or any other high authority. P.W.1 is not shown to be the appointing authority. On the material before us, it is not possible to come to the conclusion that P.W.1 was competent to grant sanction u/s 6(1) of the Prevention of Corruption Act."

9. In the case on hand, the persons who accorded the sanction namely, P.W.1, V. Somasundaram was working as Chief Engineer/Track Procurement (HoD), P.W.2 S. Mohan was working as Additional Divisional Railway Manager (ADRM), Palaghat, P.W.3 M. Amarendra was working as Senior Divisional Mechanical Engineer and P.W.4 A.R.Tupe was working as Senior Divisional Mechanical Engineer at Palaghat. Admittedly, the Accused 1 to 4 were employees of Group-C Cadre. The first accused was working as Junior Engineer at Drawing Branch. The second accused was working as Senior Clerk in Personnel Branch. The third accused was working as Fitter and the fourth accused was working as Diesel Assistant Driver in Palaghat Division. Initially, the concerned rule of delegation of power was not produced. The learned Trial Court Judge, subsequently for the purpose of clarification, suo motu recalled and examined P.Ws.1 to 4 and during their further examination, Ex.C-1 Attested Copy of letter of Southern Railway, Ex.C2 Attested copy of Classification of Services, Ex.C3 Attested copy of letter of Southern Railway and Ex.C4 Establishment matters Book Rules of Part-II were marked. It is evident from Ex.C4, that the delegation of power was accorded during 2004 and the said Ex.C4 is not referred to in the Exs.P1, P3, P5 and Ex.P6 sanction order which was given in the year 2003 itself. As per Section 19(c) P.C.Act, sanction to prosecute should be accorded by the authority, who is competent to remove the public servant from service. In the case on hand, as per the relevant rules in the Railway Servants' (Disciplinary and Appeal) Rules, 1968, the competent authority to take action against staff of Group-C and D is the appointing authority who is General Manager of the Railways. It is evident from Ex.C4 that delegation of powers was effected in respect of establishment matters only. As per the Rules 215 of the Indian Railway Establishment Code, the General Manager or any other lower rank officer to whom power was delegated will be the appointing authority for Group-C post. Pursuant to the said rule, the General Manager has delegated such power to three categories of officers. As per the contents of Ex.C4 as well as other documentary and oral evidence available, P.Ws.1 to 4

are officers belonging to 3 categories mentioned in the Schedule of Ex.C4. The said delegation of power in Ex.C4 was published in July 2004, whereas Exs.P1, P3, P5 and Ex.P6 and Ex.P5 sanction was accorded in 2003 itself.

10. On the other hand, it is the contention of the prosecution that while the General Manager is the appointing authority as per the delegation given in Ex.C4, P.Ws.1 to 4 has the power of appointing and removing the staffs of Group-C and D of the Railways. Accepting the said contention of the prosecution, the Trial Court stated that even though the date of delegation is not mentioned in Ex.C4, the official who deposed as P.Ws.1 to 4 have stated in their oral evidence that when they accorded sanction to prosecute the accused herein, they had the power of appointment by way of delegation. Further, the Trial Court observed that in the preamble of Ex.C4 itself, it is stated that the same is an updated version of delegation of powers made from time to time in the Railway Establishment as well as non-establishment matters. It is, therefore, clear that Ex.C4 was issued in July 2004 whereby the delegation of power was granted, but no material is placed before the Court to show that there was any such delegation of power prior to 2004, particularly during 2003 when P.Ws.1 to 4 accorded sanction. The trial court observed that the oral evidence of P.Ws.1 to 4 have clearly proved that they have power when they accorded sanction. In his evidence, the P.W.1 stated that he has not mentioned about his source of power in sanction and Ex.C4 is published only in July 2004. P.W.1 further stated that there are documents available to show that power was delegated to him to accord sanction on the date when he gave sanction to prosecute the first accused. Admittedly, nothing is mentioned in the sanction order, as to how and when the power was delegated to P.W.1. Similarly, the other persons who deposed as P.Ws.2 to 4 also have not produced any materials to show that there was delegation of power giving competency to them to accord sanction during 2003.

11. In a case of this nature, it is the duty of the prosecution to establish that the valid sanction was accorded by the sanctioning authority. Further, no Court can take cognizance of offence punishable under P.C. Act, unless and until proper sanction order to prosecute the public servants/accused was obtained and produced by the prosecuting agency. Thus, grant of proper sanction order by the competent authority is a *sin-qua-non* for taking cognizance of the offence.

12. In the case on hand, as rightly pointed out by the learned Counsel for the Accused, it is only because the trial Court entertained doubt regarding the validity of sanction accorded by P.Ws.1 to 4, they were suo motu recalled and Exs.C1 to C4 were marked. As stated earlier, the said rules delegating power to P.Ws.1 to 4 was issued only during July

2004 and no material is placed before the Court to show that the said delegation was in force even prior to 2004. Even though said rules were stated to be in existence, even prior to July, 2003 the same has not been produced by the prosecution, but only the oral evidence of P.Ws.1 to 4 is available before the Court. It is, therefore, clear that only because no such Rule was in force, prior to 2004 no documentary evidence is produced to show that the delegation of power was in existence even prior to 2004. The learned Counsel appearing for the Appellants/Accused also contended that P.Ws.1 to 4 being public functionary and if they are in possession of relevant documents, a statutory obligation is cast upon them to produce those documents before the trial Court and if they failed to do so adverse inference has to be drawn against them.

13. Further, the accused relied upon the Ruling reported in 2009 (9) SCC 504 in P.A. MOHANDOSS Vs. STATE OF KERALA, in support of their contention. In the said Ruling, it has held as follows:-

"The date on which the sanction was given, the authority concerned had no jurisdiction and therefore, the sanction accorded by the said authority was without jurisdiction."

Likewise, in 2006 (10) SCC 447 in K.DOVASSIA Vs. STATE OF KERALA, the appellant was acquitted of the charges on the ground that the Secretary (Vigilance) who accorded sanction was not authorized to grant sanction. Thus, the learned Counsel for the Appellant/Accused contends that for want of proper sanction, the case has to fail. Thus the accused seeks to allow the appeal and to set aside order of conviction passed by the Trial Court.

14. Thus pointing it out, the learned Counsel appearing for the Appellants/Accused contended that the failure on the part of prosecution to obtain proper order of sanction before initiating the case is fatal and the appeal has to be allowed on that ground itself. It is also contended that even in the appeal stage, the accused are entitled to raise the said issue. In support of his contention, the learned counsel appearing for the Appellants relied upon the ruling reported in 2005 (8) SCC 370 in STATE OF KARNATAKA Vs. NAGARAJASWAMY, wherein it has held as follows:-

"Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But, even if cognizance of the offence is taken erroneously and the

same comes to the Court's notice at a later stage, a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate Court."

Thus, it is clear that the Accused/Appellants are entitled to raise the issue of lack of proper sanction even before the Appellate Court for the first time.

15. In the instant case, as necessary documents to prove the delegation of power to P.Ws.1 to 4 prior to 2004 are not filed and no reference has been made in Ex.P1 to P4 sanction order given by P.Ws.1 to 4 about delegation of power to them except for the assertion of P.Ws.1 to 4 in their oral evidence that they enjoyed those powers even while granting sanction, this Court is of the view that the prosecution has failed to prove the fact of P.Ws.1 to 4 being competent persons to accord sanction during 2003 to prosecute the accused herein.

16. It is apparent and clear from the above said discussion that in the case on hand even though P.Ws.1 to 4 orally claimed that they have proper authority to accord sanction during 2003 itself, no material except Exs.C1 to C4 is placed before this Court to substantiate the same. Further Exs.C1 to C4, documents does not disclose any such delegation of power to P.W.1 to P.W.4 to accord sanction to Prosecute the accused during, 2003. Therefore, as rightly pointed out by the learned Counsel appearing for the Appellants/Accused, it is clear that the prosecution has not established the fact of P.Ws.1 to 4 being conferred with powers to appoint or to take punitive action against the Group-C employees of the Railways and as such the sanction orders Ex.P1, P3, P5 and P6 issued by them to prosecute the accused herein is not valid. In such circumstances, it is clear that the case of the prosecution suffers for want of proper sanction to prosecute the Accused 1 to 4 and the same is fatal to their case.

17. Now, let me consider the other aspects of this case. The entire case is the off-shoot of the complaint lodged by one Ravi, alleging that Ramanujam and Lakshmanan who are the Appellants 1 & 3 in Criminal Appeal No.458 of 2007 have falsely represented and assured that they would make arrangement for appointment to the said Ravi in the Southern Railway and demanded Rs.25,000/-towards bribe amount. Since the said Ravi was not willing to pay the bribe amount, he lodged complaint to the Superintendent of Police, CBI, Shastri Bhavan, Chennai, and on the basis of complaint, a trap was laid and the said Ramanujam and Lakshmanan were arrested by the said police. The same was published in the daily newspaper viz. Dhina Thanthi, dated 06-04-2004. After knowing the arrest of the above Accused, the present complaint was lodged by three persons viz.(1) R. Umashankar, (2) K.Sridhar and (3) A.Natarajan on 29-04-20012, as against (1) K.Ramanujam,

(2) V. Vijayan,  
(3) P.Dasarathan and (4) V. Lakshmanan who are the Appellants in both the appeals. On the basis of the same complaint, a case was registered by the Respondent in R.C.No.13(A)/2002 of CBI, SPE/SCB/CBI, Chennai. After investigation, final report was also laid as against the Accused 1 to 4. The learned II Additional District & Sessions Judge/Special Judge for CBI case, Coimbatore, framed 17 charges as against the Accused Nos.1 to 4. After trial, the learned Judge found the accused guilty, sentenced and convicted them as stated above.

18. The learned counsel appearing for the appellants also pointed out that the earlier case filed against the same accused on the complaint by one Ravi in C.C.No.14 of 2003 ended in conviction after trial and against the same, the accused preferred Criminal Appeal No.457 of 2007 before this Court and the said appeal was allowed setting aside the conviction and sentence imposed on the accused who are the accused in the present case also, as per Judgment dated 05.03.2012. Pointing it out, the learned counsel appearing for the appellants/accused contended that the earlier case in C.C.No.14 of 2003 has ended acquittal and the present case being only an off-shoot of the said case in C.C.No.14 of 2003 and in such circumstances, the present case has no foundation as the same is lodged on the similar grounds and therefore sought to set aside the impugned judgment of the trial court convicting the accused herein.

19. As per the complaint, the actual offence was committed by the Accused in the year 1994, but the complaint was lodged only on 29-04-2002, that is nearly 8 years after the alleged occurrence took place. However, there is no satisfactory explanation given by the prosecution for the abnormal delay of 8 years in lodging the complaint and the reasons narrated by the prosecution witnesses for the delay are not acceptable one. Thus, the enormous delay in lodging the complaint give raise to suspicion.

20. The Complainants Umashankar, Sridhar and Natarajan were examined as PW5, PW6 and PW7. As per the prosecution, all the three persons paid bribe amount through one P.Ramesh who is the PW8. However, the said Ramesh/PW8 is not corroborating the evidence of the Complainants. The complainant P.W.5 Umasankar stated in his Chief Examination that during April, 1998 his relative P.W.8 Ramesh told him that he will secure job for P.W.5 in the Indian Railways with the help of one Lakshmanan(A4). Subsequently, P.W.8 Ramesh brought the fourth accused Lakshmanan to the house of P.W.5 Umashankar and the said Lakshmanan(A4) informed P.W.5 that Rs.30,000/- will have to be spent to secure the Group-D job. As P.W.5 expressed his inability to pay the amount in one instalment, he was informed by fourth accused Lakshmanan that a sum of Rs.10,000/- be paid as first installment and Rs.20,000/- can be paid subsequently as second instalment. P.W.5 agreed to the

same, in the presence of P.W.8 Ramesh and three months later he went to the Railway Diesel shed in Erode along with Ramesh as well as his father, uncle Sridharan, relative Natarajan and paid Rs.10,000/- to the fourth accused Lakshmanan. Subsequently, P.W.8 Ramesh took P.W.5, his father and above said relatives to Chennai and all of them met the fourth accused Lakshmanan in the Central Station at Chennai. Thereafter, all of them were taken to the house of one Varadharajan(P.W.35) at Kolathur and they were asked to wait in the house of said Varadharajan. There, P.W.5 paid the balance amount to the fourth accused Lakshmanan and P.W.8 Ramesh. Subsequently, as P.W.5 did not get any appointment order, he lodged Ex.P9 complaint with the CBI Officials. However, P.W.8 Ramesh did not say anything about introducing P.W.5 Umashankar to the fourth accused Lakshmanan and taking him to Chennai as alleged by P.W.5. Further, P.W.8 categorically stated in his cross examination that P.W.5 Umashankar, P.W.6 Natarajan and P.W.7 Sridharan are his relatives and he never told them that he will secure job in the Railways for them. P.W.8 also stated that the said three persons did not come to Chennai with him. P.W.8 further stated that he gave Rs.10,000/- to the fourth accused Lakshmanan who was employed in Railways to secure job for his brother Gopal. According to P.W.8, the said sum of Rs.10,000/- was given to the fourth accused Lakshmanan in Chennai only. P.W.8 further stated that he did not mention the same during the enquiry before the CBI Police. He further stated that he did not mention anything about the payment of Rs.20,000/- during CBI enquiry. P.W.8 also stated that during enquiry by CBI, he told that he did not receive any amount from P.W.5, P.W.6 and P.W.7, promising them to secure job. Thus, the contention of P.W.5, P.W.6 and P.W.7 about their meeting with fourth accused Lakshmanan and paying the amount in the presence of P.W.8 Ramesh is contradicted by the evidence of P.W.8 himself.

21. Further, P.W.5 Umashankar himself in his cross examination stated that he does not remember the date on which Ramesh and Lakshmanan met him and demanded money for securing job. P.W.5 stated that he used to note down the important particulars in diary and has written down about the meeting with the fourth accused Lakshmanan, P.W.8 Ramensh and other details. However, the said diary is not produced before the Court. P.W.5 admitted that the details of payment of Rs.10,000/- to the fourth accused Lakshmanan is mentioned in the diary, but he has not handed over the same to the police. Assuming that P.W.5 has paid the amount and noted down the same in his diary, he would have produced the same during investigation. Having failed to do so, there is no explanation for not producing the said diary. Further, there is variation in the evidence of P.W.5 as to how much amount was given by P.W.5 and in the presence of whom the same was paid to which accused.

22. Likewise, P.W.6 Natarajan stated that during April,1998 for securing Railway Job he paid Rs.30,000/- to the fourth accused Lakshmanan as illegal gratification and job application was given to him by Ramesh. He stated that along with P.W.5, P.W.7 and P.W.8, he went to Chennai and met the fourth accused Lakshmanan in the Chennai Central Station and on demand, the fourth accused Lakshmanan received Rs.20,000/- as first installment from him. P.W.6 also stated that they went to the house of P.W.35 Varadharajan in Kolathur and he promised to get them job. Since, P.W.6 did not get any appointment order, he kept on enquiring, the fourth accused Lakshmanan, but to no avail. Subsequently, in 2002, after coming to know about the arrest of the fourth accused Lakshmanan, he along with P.W.5 and P.W.7 lodged Ex.P9 complaint with CBI. However, P.W.6 Natarajan in his cross examination stated that in Ex.P9 they have stated that the application for job was submitted by them in the year,1994. He further stated that he attended the interview in 1998. P.W.6 Natarajan stated that he did not give the amount to P.W.8 Ramesh, subsequently deposed that the amount was given through P.W.8 Ramesh. It is admitted by P.W.6 that in Ex.P9 complaint, it is stated that after counting the amount as Rs.55,000/-, the fourth accused Lakshmanan handed over the same to Varadharajan. P.W.6 also stated that he has not met the fourth accused Lakshmanan, when Ramesh told about the job opportunity to him. Further, P.W.6 Natarajan told that the contents of Ex.P9 complaint was typed by P.W.5 Umashankar and his father in Anthiyur and he was not present while the same was typed. Similarly, P.W.7 Sridharan stated that during April,1998, the fourth accused Lakshmanan was introduced to him by P.W.8 Ramesh and both promised to secure job in the Railways, if Rs.30,000/- was paid to the fourth accused Lakshmanan. He promised to make the payment at two installments and paid Rs.25,000/- to P.W.8 Ramesh after two or three months. The said amount was given to the fourth accused Lakshmanan by P.W.8 Ramesh subsequently. P.W.7 Sridharan stated that he went along with P.W.5 and P.W.6 to the Office of the Lakshmanan at Erode and paid the first installment. Subsequently, he paid the balance amount of Rs.5,000/- to the fourth accused Lakshmanan in the Erode Railway Station. Thereafter, P.W.5, P.W.6, P.W.7 along with P.W.8 and the fourth accused Lakshmanan came to Chennai and met Varadharajan in his house at Kolathur. P.W.8 stated that in the house where, they met Varadharajan, P.W.8 collected Rs.5,000/- from P.W.7, Rs.20,000/- from P.W.5, Rs.10,000/- from P.W.6 and handed over the same to the fourth accused Lakshmanan. The said amount was paid to Varadharajan by the fourth accused Lakshmanan. They promised to get the job within two or three months, but, they failed to do so. Subsequently, P.W.7 Sridharan saw in the Tamil Daily, Daily Thanthi dated 26.04.2002, news item regarding the arrest of these accused. He enquired Ramesh, who in turn asked P.W.7 to go and meet the accused directly. However, as stated earlier, P.W.8 Ramesh has denied taking P.W.5, P.W.6, and P.W.7 to

Chennai to meet Varadharajan and receiving any amount from them promising to secure any job. The said variation in the evidence as stated above is not explained properly by the prosecution. As such the contradictions about the place, date as well as the amount paid and also failure to produce the diary maintained by P.W.5 is fatal to the case of the prosecution.

23. Likewise, P.W.28 Vadivel stated that his uncle Sunderraj was employed in the Railway and his co-worker was third accused Dhasaradhan. He was informed by his uncle Sunderraj that to secure job in the Railways. P.W.28 and his brother Sakthivel has to pay Rs.50,000/- each to the said Dhasaradhan. Accordingly, during April,2001, P.W.28 gave Rs.47,500/- to the third accused Dhasaradhan in his uncle's house at Jolarpet. Thereafter, remaining amount of Rs.2,500/- was paid within a week in the presence of his uncle and his wife. Subsequently, as he did not receive any appointment order, P.W.28 enquired the third accused Dhasaradhan, but there was no proper reply from him. However, P.W.28 in his cross examination stated that neither himself nor his brother Sakthivel gave any amount to Dhasaradhan directly. The amount was given to his uncle Sunderraj and he only handed over to the said Dhasaradhan in their presence. It is clear from the evidence of P.W.28 that there is no direct dealing between himself and A-3. It is only the uncle of P.W.28 who has informed about the money to be paid to A-3. Thus there is no direct demand made by A-3 to P.W.28. Further, there is no evidence available on record about the capacity of the P.W.28 to pay the said amount.

24. Likewise, P.W.29, Om Sakthivel stated that he was informed by third accused Dhasaradhan for securing job in the Railways, Rs.50,000/- is to be paid for P.W.28 Vadivel and a sum of Rs.35,000/- to be paid for securing job for P.W.29 Om Sakthivel. According to P.W.29, Rs.50,000/- was paid to Dhasaradhan during,2001 in his uncle Sunderraj house. In his chief itself P.W.29 contradicted himself by saying that after receiving the amount from his uncle, he went to Jolarpet Railway Junction and paid the amount to Dhasaradhan, who was present there. While, P.W.29 stated earlier that in the presence of his uncle and parents, a sum of Rs.50,000/- was paid to the third accused Dhasaradhan in his uncle house, subsequently, he stated that the amount was paid in the Railway Station to the third accused Dhasaradhan in the presence of the first accused Ramanujam and the second accused Vijayan. Even in his Chief Examination itself, P.W.29 has given two different versions about the payment of amount to the accused. Further, P.W.28 stated that the accused asked for Rs.50,000/- each for securing Railway job to P.W.28 and P.W.29. However, in contrast, P.W.29 stated that only Rs.35,000/- was demanded for securing him a job, where Rs.50,000/- was sought for given job to his brother P.W.28. It is apparent from the above that there is contradiction not

only about the place of payment, but also the amount sought for and paid. Thus, the evidence of P.W.28 and P.W.29 does not inspire confidence and thus there is no clear cut proof of demand being made by the third accused Dhasaradhan as alleged by the prosecution.

25. The uncle of P.W.28 and P.W.29 who deposed as P.W.30 stated in his evidence that he promised his co-worker Dhasaradhan during, 2001 to pay Rs.50,000/- each for P.W.28 and P.W.29 to secure them job in the Railways. P.W.30 has stated that the said amount was paid in two installments Rs.47,000/- and Rs.2,500/- in his house at Jolarpet. According to him, the third accused Dhasaradhan promised to secure job within 45 days and if not assure to refund the amount. P.W.30 stated that he only informed P.W.28 and P.W.29 it they paid Rs.50,000/- each, he will secure them job in the Railways. It is pointed out by the learned defence counsel that during police enquiry P.W.30 has stated that Rs.35,000/- was paid to Dhasaradhan and Ramanujam in his house only. P.W.30 also stated that the third accused Dhasaradhan has executed loan bond for the amount received by him, but he has not taken any action against Dhasaradhan for recovery of the amount. Thus, P.W.30 evidence is contrary to the version given by P.W.28 and P.W.29. It is clear from the above said evidence that there is no direct demand for money made by the accused with the complainants. In such circumstances, it is contended by the learned counsel appearing for the appellants that unless and until, the prosecution proves that there is a demand and acceptance of the illegal gratification by the accused, the claim of the prosecution has to fail.

26. Admittedly, in the case on hand there is no acceptable evidence to prove the fact of demand and acceptance of illegal gratification by the accused herein. As stated above, P.W.5, P.W.6 and P.W.7 as well as P.W.28 and P.W.29 evidence does not establish the factum of demand and acceptance of illegal gratification by the accused herein. Further, as stated above, there is contradiction in the evidence of P.W.5, P.W.6, P.W.7 and P.W.8 about the amount paid as well as the place of payment and people present during that time. Likewise, there is contradiction among the evidence of P.W.28, P.W.29 with that of P.W.30. It is also pointed out that the oral evidence of the above said witness is in contra to the statement given by them before respondents/investigating agencies.

27. The learned counsel appearing for the appellants/accused also pointed out that the other witnesses examined by the prosecution to prove the demand and acceptance of bribe by the accused deposed as P.W.2 to P.W.12, P.W.19, P.W.22 to P.W.27, P.W.31 to P.W.33 and P.W.39 and their

evidence is not corroborated by other available evidence. The oral evidence of the said witnesses is in contra to the statement given by them to the respondent/ investigating agency. It is therefore clear that the prosecution has not been able to prove the factum of demand and acceptance of illegal gratification by the accused herein.

28. Further, the said Varadharajan who was examined as P.W.35 did not support the prosecution. He did not say anything specifically about the meeting between P.W.5, P.W.6, P.W.7, P.W.8 and the fourth accused Lakshmanan. The learned counsel appearing for the appellants/accused pointed out that the prosecution neither made him an accused nor treated him hostile. He also pointed out that P.W.41, the Inspector of Police gave an explanation that the 4<sup>th</sup> accused enacted a drama and if that is to be accepted then the evidence of P.W.5, P.W.6, P.W.7 and P.W.8 is also to be treated as not true as they are alleged to have gone with the 4<sup>th</sup> accused to meet P.W.35 in his house at Chennai. The Inspector of Police who deposed as P.W.41 stated that Ex.P9 complaint is the starting point of investigation and he examined the fourth accused Lakshmanan regarding Ex.P10. However, P.W.41 stated that there is some allegation against the said Varadharajan in Ex.P9 complaint and there is no eye witness available regarding the amount received by P.W.35 Varadharajan. P.W.41 also stated that even though in Ex.P9, it is mentioned that Rs.50,000/- was paid to Varadharajan, but during investigation, the witness denied it. It is also admitted that nothing is mentioned in Ex.P11 to Ex.P13 about the second accused Vijayan and fourth accused Lakshmanan. He also admitted that during his investigation, no document regarding the dates of payment made by various persons to the accused was collected. P.W.41 also stated that the specimen writing and signature of the fourth accused Lakshmanan was not obtained for comparing with Ex.P10 allegedly written by him. Thus, the learned counsel appearing for the appellants/accused contends that the prosecution has not established the allegation against the accused in any probable manner.

29. Considering the above facts and the discussion made in the foregoing paragraphs, I am of the considered opinion that the defence version cannot be said to be wholly improbable and unacceptable and all the circumstances put together, it would only lead to an irresistible conclusion that those circumstances are compatible with the innocence of the Appellants. Therefore, the impugned judgment of the Trial Court calls for interference by this Court and both the appeals are liable to be allowed.

30. In the result, both the Criminal Appeals are allowed. The conviction and sentence imposed on the

appellants/accused in C.C.No.15 of 2003 by the learned II Additional District Judge, Special Court for CBI Cases, Coimbatore, dated 18.05.2007 is set aside and the appellants/accused are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts, if any, paid by them are ordered to be refunded forthwith.

rrg/n

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The I Additional District Judge CUM  
Special Court for CBI Cases, Coimbatore.
- 2.The Inspector of Police,  
CBI/ACB Chennai.
- 3.The Public Prosecutor,  
High Court, Madras -104.
- 4.The Superintendent, Central Prison,  
Coimbatore

+lcc to Mr.K.Srinivasan, Advocate Sr.No.9655

+lcc to Mr.C.D.Johnson, Advocate Sr.No.8780

SJ(CO)

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Criminal Appeal Nos. 456 and 458 of  
2007

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