

Bail Slip

The Accused namely Selvaraj, S/o. Sivalingam, was released on bail Vide order of this Hon'ble Court in CrI.MP.No.1/2012 in CrI.A.No.460/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2018
PRONOUNCED ON : 26.06.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.460 of 2012

Selvaraj .. Appellant/Accused(A4)

/versus/

State rep.by

The Inspector of Police,
Vigilance and Anti Corruption,
Special Cell-Salem,
Cuddalore Police Station,
(Crime No.18/AC/1990)

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code against the judgment and conviction dated 26.07.2012 and made in Special Case No.4 of 1998 on the file of the Chief Judicial Magistrate/Special Judge Court, Villupuram, Villupuram District and pray to set aside the same.

For Appellant :Mr. Duraisami, Sr.C. for
Mr.Kandhan Duraisamy

For Respondent :Mr.K.Prabakar, APP

J U D G M E N T

This appeal is directed against the judgment passed in Spl.C.C.No.4 of 1998 on the file of the Chief Judicial Magistrate/Special Judge Court, Villupuram, Villupuram District dated 26.07.2012 convicting the appellant for the offences under Sections 120(b), 167, 477A, 420, 409 of Indian Penal Code and Section 5(2) r/w 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act, 1947. The trial Court had imposed sentence between 1 year and 7 years for the offences proved and ordered the period of sentence to run concurrently.

2. Brief facts of the case is that during 1986 at Tiruvannainallur, Villupuram, Cuddalore and other places of South Arcot District Thiru.S.Muniappan(deceased), Block Development Officer-cum-Panchayat Union Commissioner, Thiru.Kothandapani(deceased), Manager, Thiru.N.Ramalingam, Accountant, Thiru.M.S.Palaniappan, Junior Assistant and Thiru.Thiyagarajan, Junior Assistant of Thiruvannainallur Panchayat Union along with the others entered into a criminal conspiracy to commit and abet each other in the commission of offences of cheating, criminal breach of trust, falsification of account in respect of purchase of electrical items for Thiruvannainallur Panchayat Union. Pursuant to the said criminal conspiracy, street light accessories for the Thiruvannainallur Panchayat Union were purchased at an inflated rate for Rs.17,240.50 from Nalli Enterprises represented by Thiru.Ponnuvel Gounder. Though Nalli Enterprises directly supplied the goods, records were created as if the materials were supplied by the Kandamangalam Agro Engineering and Service Co-operative Centre Limited so as to avoid open tender procedure. The difference in cost was shared between the approver R.Radhakrishnan [P.W.2], Regional Manager and the staff of Thiruvannainallur Panchayat Union. Records were fabricated to appear as if the transactions were genuine. The day book and Registers were manipulated. False entries were made in the records maintained by Thiruvannainallur Panchayat Union as well as the Kandamangalam Agro Engineering and Service Co-operative Centre Limited. The prosecution on registering the First Information Report (Ex.P23) on 28.03.1990 had completed the investigation and filed final report against Thiru.S.Muniappan, Thiru.D.Kothandapani(deceased); Thiru.N.Ramalingam; Thiru.S.Selvaraj and Thiru.L.P.Ponnuvel (deceased). The trial Court, considering the materials placed by the prosecution and taking note of the fact that Thiru.D.Kothandapani and Thiru.L.P.Ponnuvel by the time died, tried the remaining accused for the offence under Sections 120 (b), 167, 477A, 420, 406IPC and Section 5(2) r/w 5(1)(c) and 5 (1)(d) of the Prevention of Corruption Act, 1947 and Section 109 of Indian Penal Code besides specific offences mentioned in the conspiracy charge.

3. To prove the case, the prosecution has examined 15 witnesses. 45 Exhibits were marked in support of the prosecution. A1[Thiru.S.Muniappan], A2 [Thiru.D.Kothandapani] and A5 [Thiru.L.P.Ponnuvel] died pending trial and therefore, the case against them was recorded as abated.

4. As far as, A3[Thiru.N.Ramalingam] is concerned, the trial Court has held him not guilty. A4[Thiru.Selvaraj] Clerk of Thiruvannainallur Panchayat Union office was found guilty and sentenced to undergo i) one year Rigorous Imprisonment for the offence under Sections 120(b); ii) one year Rigorous Imprisonment for the offence under Section 167 and to pay a fine of Rs.1,000/- in default, to undergo 2 months Simple

Imprisonment iii) for the offence under Section 447A to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year Rigorous Imprisonment; iv) for the offence under Section 420 IPC to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-; v) for the offence under Section 409 IPC to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year Rigorous Imprisonment and vi) to undergo 7 years Rigorous Imprisonment for the offence under Section 5(2) r/w 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act, 1947 and to pay a fine of Rs.1,000/- in default to undergo one year Rigorous Imprisonment. The period of sentence was ordered to run concurrently.

5. Aggrieved by the said conviction and sentence, the present appeal is preferred on the ground that the finding of the trial Court is totally unsustainable and perverse. The Court below had failed to see that there is no details regarding the articles purchased by the Thiruvannainallur Panchayat Union and the price paid for the articles was over and above the market price. The comparative chart relied on by the prosecution for the price difference is not an authenticated document. Ex.P30 is not substantiated by the relevant materials by examining the competent witness who could speak about the content.

6. It is contended that the statement of the approver (PW-2) is wholly unreliable. The manner in which he was granted pardon and the alleged confession statement of the approver bristles with force and misrepresentation. Besides, in the alleged confession statement of the approver and his deposition, there is no incriminating materials against this appellant to show that he as a Clerk of the Thiruvannainallur Panchayat Union participated in the alleged conspiracy with other accused to procure electrical materials from Nalli Enterprises through the Kandamangalam Agro Engineering & Service Co-operative Centre Limited. As a dutiful public servant this appellant had made relevant entries in the stock book for the materials received as per the invoice and he had prepared cheques for payment of the materials received. For discharging his official duty in good faith he cannot be held guilty. There is no evidence to show that the appellant participated in the decision to procure electrical materials from Private Agency through the Kandamangalam Agro Engineering & Service Co-operative Centre Limited. There is no evidence to show that he along with other accused decided to inflate the price of the electrical materials or there is no evidence to show that he had shared a particular amount from the inflated price. Even according to the prosecution goods were received as shown in the invoice. For the entire invoice amount of Rs.17,247.50, the cheques were issued to the Society and in turn, the Society has paid Thiru.Ponnuvel Gounder (deceased) owner of Nalli Enterprises. Merely because the goods were directly delivered by Nalli

Enterprises to the Panchayat Union to avoid transport charges will not mulch the appellant with criminal liability as charged.

7. The trial Court, without proper appreciation of the evidence placed before the prosecution had erroneously acquitted A3 [Thiru.N.Ramalingam], who has taken the decision to procure the materials through Kandamangalam Agro Engineering & Service Co-operative Centre Limited but held his subordinate, the appellant herein guilty. The trial Court ought to have extended the same benefit to the appellant herein, who was subordinate to A3 [Thiru.N.Ramalingam]. Having failed to do so, the trial Court judgment bristles with infirmity and disparity. Hence, liable to be reversed.

8. The learned Additional Public Prosecutor representing the State would submit that rampant fraud and misappropriation of fund in the South Arcot District came to the notice of the Vigilance and Anti Corruption Wing, which led to registration of First Information Report dated 28.03.1990. Apart from this case, there were few more cases wherein the investigation was able to find that taking advantage of the concession and exemption given to the Co-operative Society, which enabled the Society to supply materials which they were not manufacturers, but can procure from manufacturers and be supplied to Panchayat Union, the accused persons, who were holding the posts of Block Development Officer, Junior Assistant, Clerk and Manager, entered into the conspiracy to make undue pecuniary advantage by abusing of their official position, contacted one Thiru.R.Radha krishnan, Regional Manager of Kandamangalam Agro Engineering & Service Co-operative Society Limited along with Thiru.L.P.Ponnuvel Gounder, owner of Nalli Enterprises, promised him to give 1% commission for accommodating the purchase of street light electrical appliances from Nalli Enterprises through his Society. Tempted by the commission offered to him personally and to the Society as profit margin money which is about 8% to 10%. the said Radhakrishnan agreed to create records and fabricate the accounts as if the Society has purchased materials from Nalli Enterprises and inturn supplied to the Panchayat Union.

9. While doing so, to obtain undue pecuniary advantage the price of the materials so purchased from Nalli Enterprises had been inflated almost double and the society had raised the bill for the fabricated amount. After collecting the money from the Panchayat Union as per the inflated invoice, portion of the money had been paid and the remaining had been shared between the accused persons. This appellant who was working as a Clerk in the Panchayat Union, had met the approver along with the other accused during the month of September 1985 and he had received the inflated invoice dated 16.09.1985 from the Kandamangalam Agro Engineering & Service Co-operative Centre Limited and made entry in the register marked as Ex.P19 and he has also prepared the cheques for payment of money to the Society for the materials supplied. The learned Additional

Public Prosecutor would contend that the evidence of approver and the evidence of PW-3, who has identified the signature and writings in Ex.P19 is suffice to hold guilty and the trial Court has rightly held him guilty and there is no ground to interfere with the trial Court judgment.

10. Point for consideration:

Whether the evidence relied on by the prosecution is sufficient to hold that the appellant guilty of conspiracy and fabrication of accounts, cheating etc. as held by the trial Court?

11. The entire perusal of the prosecution evidence, the main incriminating evidence against the appellant herein is the evidence of approver [PW-2], who had deposed that during the month of September 1985 when he was in his office, Thiru.L.P.Ponnuvel (A5) (deceased), owner of Nalli Enterprises along with Thiru.S.Muniappan (A1) (deceased), Thiruvannainallu Panchayat Union Commissioner, Thiru.Selvaraj (A4), the appellant herein Clerk and Thiru.Kothandapani (A2) (deceased), Manager came and spoke about the purchase of electrical materials directly from Nalli Enterprises for which the Society should accommodate by issuing invoice as if the goods were supplied by the Society. They told the value of the goods will be inflated and from out of the difference amount he will be paid 1% commission. The society will be making a profit of about 8% to 10%. He has made a statement that the persons, who met him had told him that the excess amount will be shared between them, who are A-1 Thiru.S.Muniappan (deceased), A-2 Thiru.Kothandapani (deceased), A-4 Thiru.Selvaraj (Appellant/accused) and A-5 Thiru.L.P.Ponnuvel (deceased).

12. The other incriminating material against the appellant is the deposition of PW-3 who was Assistant in Tiruvannainallur Panchayat Union at the relevant point of time had identified the hand writing and signature of the accused in Ex.P19. The examination of Ex.P19 would go to show that it is the bill for contingent charges wherein the supply of electrical materials by Kandamangalam Agro Engineering and Service Co-operative Centre worth of Rs.17,247.50 is recorded. This bill for contingent charge has been signed by the Commissioner (A1). By mere preparation of this bill, the criminal intention could not be presumed against the appellant herein. It is the signatory of the bill, who had applied his mind and allowed the payment by affixing the seal and signature. Even otherwise unless and until there is material evidence to show that this appellant was part of decision making to procure materials for higher price and to share the difference, he cannot be held guilty merely based on the sole evidence of the approver. The evidence of PW-2

approver that during the month of September 1985, the accused along with others came and spoke to him about the detail of conspiracy to procure the materials at inflated price is highly doubtful. In the absence of corroboration, this portion of the approver evidence cannot be taken as a gospel truth against the appellant.

13. Apart from these two incriminating materials discussed above this Court finds no other evidence, which could strongly substantiate the case of the prosecution that the appellant herein as a Clerk in the Panchayat Union office joined hand with the higher officials and participated in the conspiracy as alleged. Though the conspiracy mostly hatched in secrecy, the outcome of the crime done pursuant to the conspiracy may lead to infer the conspiracy. In this case, the alleged crime of inflated price for procuring the materials itself has not been satisfactorily proved in the manner known. A mere comparative chart marked as Ex.P30 is not sufficient that the goods supplied to the Panchayat Union were valued high. Even if it is so, the role of this appellant in the said crime has not been established.

14. In the above said circumstances, this Court finds that the contention of the learned Senior counsel appearing for the appellant is sustainable and the order of the trial Court needs interference.

15. In the result, this Criminal Appeal is allowed. The judgment of conviction and sentence imposed on the appellant dated 26.07.2012 made in Special Case No.4 of 1998 on the file of the Chief Judicial Magistrate/Special Judge Court, Villupuram, Villupuram District is hereby set aside. Fine amount if any paid by the appellant herein shall be refunded to him. Bail bond if any executed by the appellant shall be cancelled.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Chief Judicial Magistrate/Special Judge Court,
Villupuram District.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Special Cell-Salem, Cuddalore Police Station.

3.The Public Prosecutor, High Court, Madras.

4. The Inspector of Police Vigilance
& Anti Corruption, Vellupuram.

5. The Superintendent, Central Prison, Cuddalore.

6. The District Collector, Villupuram District.

7. The Director General of Police, Chennai.

8. The Judicial Magistrate No.I, Ulundurpet.

9. The Additional District Judge -
Cum-Chief Judicial Magistrate, Villupuram.

10. The Chief Judicial Magistrate, Cuddalore.

+ 2 ccs to M/s. Muthumani Doraisamy, Advocate Sr.40310

Crl.A.No.460 of 2012

NRI (CO)
EU(05/07/2018)

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