

BAIL SLIP

The Appellant/1st Accused namely T.L.Vedachalam S/o.Loganathan was ordered to be released on bail by order of this court dated 17/08/2012 and made in MP.No.1/12 in CA.No.496/2012.

The Appellant/Accused No.2 namely M.Malyadri S/o.M.Chinamalakandiah was ordered to be released on bail by order of this court dated 24.08.2012 and made in MP.No.1 of 2012 in Crl.A.No.521/2012.

The Appellant /Accused NO.3 namely Lalla.V.Nehru, S/o.Lakshmana Rao was ordered to be released on bail by order of this court dated 24.08.2012 and made in Crl.MP.No.1 pf 2012 in Crl.A.No.522/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.03.2018

Pronounced on: 27.03.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos.496, 521 & 522 of 2012

T.L.Vedachalam

...Appellant/1st Accused

M.Malyadri

...Appellant/2nd Accused

Lella.V.Nehru

...Appellant/3rd Accused

/versus/

State by

The Inspector of Police,
SPE/CBI/ACB/Chennai.

... Respondent/Complainant
in all the cases

PRAYER in Crl.A.No.496 of 2012: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, against the judgment dated 31.07.2012 passed by learned XIV Additional Sessions Judge/Special Judge for CBI cases, Chennai in C.C.No.23 of 2004 convicting him, sentencing him to undergo Rigorous Imprisonment for one year for the alleged offences u/s 120-B, 420, 468 r/w 471 of IPC and u/s 13(2) r/w 13(i)(d) of Prevention of Corruption Act [4 counts] and imposing fine of Rs.500/- each in default to undergo three months S.I [4 counts].

PRAYER in Crl.A.No.521 & 522 of 2012: Criminal Appeal are filed under Section 374(2) of Criminal Procedure Code, against the conviction and sentence passed by the learned XIV Additional Special Judge for C.B.I Cases, Chennai by his judgment dated 31.07.2012 and made in C.C.No.23 of 2004, convicting the appellant/accused-herein to under go 1 year Rigorous Imprisonment under Sections 120-B, 420, 468, 468 r/w 471 of I.P.C [1 count] and imposed a fine of Rs.500/- each, in default to undergo Rigorous Imprisonment for 3 months. [Total fine of Rs.2,000] and the sentence to run concurrently.

For Appellant : Mr.A.Thamizharasan
in Crl.A.No.496 of 2012

For Appellant : Mr.J.Srinivasan,
in Crl.A.No.521 & 522 of 2012

For Respondent : Mr.K.Srinivasan
in all the appeals Special Public Prosecutor

COMMON JUDGMENT

These Criminal Appeals are directed against the judgment in C.C.No.23 of 2004 dated 31.07.2012 rendered by the learned XIV Additional Special Judge for C.B.I cases holding A1 to A3 guilty of offences under Section 120-B, 420, 468 and 468 r/w 471 of I.P.C and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act,1988.

2. Based on reliable information, the First Information report was registered on 30.04.2002 that during the year 2000, the 1st accused T.L.Vedachalam while working as Assistant Manager, United India Insurance Company Ltd., [UIIC]., Division XI, Chennai, had entered into criminal conspiracy at Chennai, Vijayawada and other places with A2 [Shri M.Malyadri], a lorry Operator and A3 [Shri Lella V.Nehru] an Insurance Surveyor, operating at Vijayawada and others. In pursuance to the criminal conspiracy, A1 [Shri T.L.Vedachalam] knowing fully well that the fake Motor Accident Claims was preferred by A2 [M.Malyadri] in respect of his vehicle bearing registration number.A.P.16-W-7972, dishonestly and fraudulently processed the claim and sanctioned a sum of Rs.91,500/-. To support the fake claim, false and forged spot survey report dated 30.07.2000 in the name of K.K.K.Chand produced by the claimant Malyadri [A2]. Final survey report dated 07.08.2000, re-inspection report in the name of one Ramesh dated 18.08.2000 along with false automobile bills were prepared by Lella V.Nehru [A-3]. Thus UIIC Limited Division XI, Chennai had incurred wrongful loss of Rs.91,500/- and A1 to A3 had obtained corresponding pecuniary advantage. The

investigation on the above allegations was conducted by Inspector of Police, C.B.I and final report filed before Principal Special Court for CBI cases, Chennai.

3. The Trial Court based on the material records filed by the prosecution framed charges for conspiracy, cheating, forgery and using forged document as genuine for offences under Section 120-B, 420, 468 r/w 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

4. The prosecution to prove the charges examined 31 witnesses and marked 59 documents. No witness examined nor document marked on the defence side.

5. The Trial Court has held the prosecution has proved the case beyond doubt and held them guilty and sentenced as under.

(i). The appellant/Accused A1 [T.L.Vedachalam] sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.500/-each for offence under Section 120-B, 420, 468 r/w 471 of I.P.C and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, in default to undergo three months Simple Imprisonment.

(ii). The appellant/Accused A2 [M.Malayadri] sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.500/- each for offence under Section 120-B, 420, 468, 468 r/w 471 of I.P.C, in default to undergo three months Simple Imprisonment.

(iii). The Appellant /Accused A3 [Lella. V.Nehru] sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.500/- each for offence under Section 120-B, 420, 468, 468 r/w 471 of I.P.C, in default to undergo three months Simple Imprisonment.

6. Aggrieved by the judgment, separate appeals are filed by each accused.

[i]. The appellant in C.A.No.496 of 2012 is T.L.Vedachalam (A-1 before the trial court in C.C.No.23 of 2004).

[ii]. The appellant in C.A. 54 of 2012 is M. Malayadri (A-2 before the trial court in C.C.No.23 of 2004).

[iii]. The appellant in C.A. 522 of 2012 is Lella V. Nehru (A-3 before the trial court in C.C.No.23 of 2004).

Facts leading to these appeals:

7. The case of the prosecution as spoken by its witnesses is that, Appellant in CrI.A.496 of 2012 Mr.T.L. Vedachalam was the Assistant Manager, United India Insurance Company, Division Office XI, Chennai 34 during the year 2000. Thiru M.N.Ramakrishnan (PW-21) submitted a report Ex P-36 dated 18.03.2002 regarding the performance of Division Office XI, Motor Department, Chennai mentioning the details of repeated accident of a group of vehicles raising doubt due to the frequency of occurrence. The report also pointed out the spot inspection report, final inspection report, re-inspection report submitted by different surveyors overlap in dates. The bills produced for spare parts not inter corroborative. It is observed in the report that the final survey report filed by Lella V.Nehru suggesting replacement of major assemblies and accommodative items, which are deteriorating in normal conditions. The re-inspection survey reports in the name of K.K.K.Chand were found to be false and forged. Subsequent to the report of PW-21, CBI has taken up investigation suo-motu based on reliable information and had registered FIR on 30.04.2002.

8. PW-4 Sundararaman, Divisional Manager and PW-18 Thiru.E.Rajagopalan Dy.Manager, Regional Office had deposed about the standard operation procedure whenever claim made in respect of insured vehicle involve in road accident. According to them, immediately after accident, the owner or the driver of the vehicle will intimate the accident to the office where they have paid the premium or to any nearest branch of the company. The Insurance Company will depute a surveyor to do spot survey. He will go to the accident spot and identify the vehicle by its registration number, engine number, chases number. After comparing it with the details found in the policy and R.C, photographs of the damaged vehicle will be taken and annexed to the spot survey report. The claimant will get estimation from the workshop for the repair and replacement of spares and will submit it to the office. The final surveyor will inspect the vehicle and check with the mechanic and finalise the quantum of liability to be bear by the insurance company. After completion of the repair work, insurer should intimate the same to the insurance company. On receipt of the information, company will sent re-inspection surveyor, to visit the garage and ascertain whether repair work has been carried out and vehicle has restored back to pre accident condition.

9. In respect of accident claim of damages for the vehicle No.AP-16-W-7972, PW-19 Tmt.Usha Narayanan, Assistant in the Divisional Office No. XI, Chennai during the relevant period had prepared the damage claim note for the accident took place on 29.07.2000 and placed before A-1 for approval. No spot inspection was conducted for this vehicle and this fact is spoken by PW-15 Thiru.Balaiah, Divisional Manager, UIIC, Vijayawada. However Ex P-12 a spot survey report dated 30.7.2000 in the name of K.K.K.Chand was relied by the accused in support of their claim. This fact is spoken by P.Babu Rao PW-6. When K.K.K.Chand was enquired about the spot survey report issued in his name, he has disowned that report during the internal enquiry conducted by PW-21. Before the court K.K.K.Chand examined as PW-10. He has deposed that, he did not conduct any survey during the month of November 1998 and Ex P-12 is not given by him. He did not submit P-12 to the insurance company.

10. PW-9, V.V.Satyanarayanan, Manager of Sri.Bhaskar Automobiles had deposed that the invoice bearing No.598/A dated 07.08.2000 in the name of M.Malyadri (A-2) was not issued by his company. The market price of the Rear Axle Housing was around Rs. 40,000/- at the relevant point of time, whereas in the invoice shown to him, the price is inflated and shown as Rs. 88,697/-.

11. PW-20, Shri. K.V.V.N. V.Prasad, Inspector of Police attached to Traffic Police Station, Vijayawada had identified the traffic challan dated 29.07.2000 Ex P-35 compounding the traffic offence. He had deposed that the vehicle bearing registration No.AP-16-W-7972 driven rash and negligently by its driver hit a rock and got damaged on the right side of the body.

12. While the damage to the vehicle was very minor, without spot survey and final survey, A-3 has given false survey report and also forged report in the name of K.K.K.Chand. The vouchers accompanied for payment of charges and bills for spare parts were found to be bogus, hence the trial court held the appellants guilty of charges and convicted them as above.

13. Grounds of appeal:

The appellant in CrI.A.No.496 of 2012 Mr.T.L.Vedachalam [A1], Assistant Manager, UIIC permitted the claimant would submit that the sanction to prosecute bristle with malafide and

biased. PW.1 who has accorded sanction is the person who has conducted departmental review of excess claim. Therefore his sanction order which is marked as Ex.P.1 lacks sanctity. The sanction order does not bear the date and was produced before the Court only when PW.1 was examined in Chief on 16.11.2005. In the list of witnesses filed along with final report the prosecution has not cited PW.1 as witness to be examined on behalf of the plaintiff. Later, to fill up the lacuna the sanction order was antedated and produced before the Court and witness was summoned under Section 311 of Cr.P.C, after taking cognizance of the case which is per se illegal.

14. PW.1 having made review and submitted adverse report cannot, accorded sanction to prosecute since it amounts to person judging his own cause. PW.19 is the official who has processed the claim petition. It is her duty to verify the genuineness of the survey reports and re-investigation report. Having failed to do so, if at all there was any false or fake claim made by any policy holder, PW.19 who had scrutinized the relevant documents ought to have brought it to the notice to the Superior officers. She having failed to do so and if at all any dishonesty is found in allowing the claim PW.19 should have been arrayed as an accused and not as witness. Contrary to the case of the prosecution, the evidence of the prosecution proves the accident and damage sustained by the vehicle. Though PW.10 [K.K.K.Chand] had disowned the reinvestigation report marked as Ex.P.12. He admits the receipt of remuneration for giving that report. Therefore, his evidence cannot be relied upon as genuine. The claim by A2 [Malyadri] was made during the period of policy in force. Based on the report of panel surveyors and the accompanying bills. PW.19 had processed the claim petition and based on her notes the appellant had permitted the claim. The claim amount was not paid to the vehicle owner, A-2 but to the financier who has advanced loan for purchase of the vehicle and the vehicle being hypothecated to the financier under the Hire purchase scheme. The claim petition being prepared PW.19 and approved by PW.29, Manager of UIIC., Regional Office, the role of the appellant is minimal and he ought to have been acquitted by the Trial Court.

15. The Appellant in CrI.A.No.54 of 2012 [Malyadri] would submit that as a lorry owner and vehicle being covered under valid insurance policy, he has duly intimated the accident and after due survey of the accident, as well as the damage sustained by the vehicle, survey reports were filed and the damage was compensated to him based on re-investigation report. PW.20 had spoken about the accident and traffic challan issued for the said accident. He had registered the First Information

Report and spoken about the driver who was on the wheels at the time of accident. It is purely based on wrong hypothesis that excess claim has been made by the appellant, the prosecution has proceeded against the appellant. The trial Court has erroneously accepted the said contention of the prosecution without material corroboration.

16. The Court below has convicted the appellant without considering the evidence of PW.22 and who had deposed that the lorry involved in the accident was brought to his carriage. He has replaced the spare parts to rectify the defect and he received the service charges and value for the spare parts replaced by him.

17. The appellant in Crl.A.No.522 of 2012 [Lella.V.Nehru] would contended that is an approved surveyor of the insurance company he has conducted final survey after confirming spot survey was done. Based on report given by S.Sambasiva Rao in respect of spot survey, the damage to vehicle was assess by him. He as licensed surveyor given his report as per his assessment and there is no dishonest intention or fraudulent intention on his part in giving the said report.

18. The evidence of PW.20 Inspector of Police who registered the First Information Report regarding accident and the evidence of PW.10 that he received Rs.12,000/- as service charge and the opinion of the hand writing expert Mr.Ravi examined as PW.36, will prove no criminal dishonest in the entire transaction. The Trial Court ought to have been taken note of the fact that the prosecution case is not prove. Since evidences were not properly appreciated by the Trial Court, the judgment of the Trial Court is liable to be set-aside.

19. Per Contra, the learned Special Public Prosecutor would submit that the prosecution has proved that the accident alleged to have been taken place on 29.07.2000 and the spot survey conducted and the report dated 30.07.2000, the final survey report of A3 [Lella.V.Nehru] dated 07.08.2000 are false reports and proved to be forged one. As far as re-inspection report submitted by K.K.K.Chand, the automobile bills relied for the claim is not only proved to be fake but also the value of the spares parts were proved to be highly inflated which clearly proves dishonest and fraudulent intention of the accused persons. Since the documentary evidence and ocular evidence let in by the prosecution clearly establish the guilt of the accused, the Trial Court has rightly held them guilty.

Therefore, there is no scope to interfere with the judgment of the Trial Court.

20. Points for Consideration

Whether the evidence relied by the prosecution proves the charge against the accused beyond reasonable doubt?

21. From the evidence of the prosecution, we find that the investigation has commenced based on the internal enquiry note conducted by the insurance company. When multiple claims from the same vehicle owner was frequently received by the insurance company, the Loss Minimization Department of UIIC., had thought fit to conduct detail analysis and report. In the said enquiry several claims were found to be based on improper documentation.

PW.21 and his team after detailed analysis had submitted their report which is marked as Ex.P's.36, 37 and 38. As far as, this case is concerned, the accident of the vehicle bearing No.AP-16-W-7972 on 29.07.2000 it is seen through the prosecution witness it is not a fake document. The Trial Court has accepted the evidence of PW.10 K.K.K.Chand that he did not given the report which is marked as Ex.P.12. However, PW.10 admits, the receipt of remuneration of Rs.12,000/- for the said report. The explanation given by him for the money which he received is no consistent. The trial Court has not taken proper note of this inconsistency. In this regard, the submission of the appellant in Crl.A.No.496 of 2012 [T.L.Vedachalam], Assistant Manager is to be taken note into consideration. He being the Senior Officer in the branch only junior to Mr.Balasubramanian, Manager. Like any other claim note, the subject claim petition has also passed through him. The final approval is made by Mr.Balasubramanian, the note were prepared by Ms.Usha Narayanan PW.19. The person who is sitting in his office cannot be excepted to doubt the genuineness of the bills or the value found in the bills regarding accident alleged to have occurred in a far off place. The person who scrutinize the bill namely PW.19 should have show more diligence.

22. Having failed to do so, the evidence of PW.9 who has stated the market price of the spare parts without any supporting document and the evidence of PW.10 K.K.K.Chand who had claimed remuneration for his report but denies the genuineness of the said report and he does not inspire confidences with this piece of evidence. The appellant cannot be

held guilty for conspiracy, forgery or cheating based on these evidence which is uncorroborative and doubtful.

23. It is also to be taken note that A3 [Lella.V.Nehru] license private surveyor for the insurance company, had submitted written statement under Section 313 of Cr.P.C, wherein he has said that it is at the request of the insurance company, he had conducted the final survey of the lorry bearing registration No.A.P-16-W-7972 which met with an accident and kept in the mechanical shop of M/s.Lakshmi Ganesh Mechanical Works, J.A.Nagar, Vijayawada. The final survey report was submitted by him on 07.08.2000, he had no knowledge about the re-inspection report issued in the name of K.K.K.Chand.

24. The exculpatory statement of K.K.K.Chand after receiving remuneration for re-inspection report is highly unreliable. On the assessment of evidence let in by the prosecution, this court is bound to extend the benefit of doubt to the appellants for following reasons;

- (i). The ownership of the vehicle is not disputed.
- (ii). The accident occurred on 29.07.2000 is not false.
- (iii). The repair done to the vehicle for the damage sustained is found true.
- (iv). The genuineness of the bills and the sport survey and re-inspection report are disputed. Whereas the person who denies his report is not a reliable witness since he had received remuneration and he had knowledge of the said remittance.

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25. For the above said reasons, these Criminal Appeals Nos.496, 521 & 522 of 2012 are allowed. The judgment of conviction and sentence passed by learned XIV Additional Special Judge for C.B.I Cases, Chennai, in C.C.No.23 of 2004 dated 31.07.2012 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 II)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Inspector of Police,
SPE/CBI/ACB/Chennai.
2. The learned XIV Additional Sessions Judge/Special Judge [CBI],
Chennai.
3. The Special Public Prosecutor,
High Court, Madras.
4. The Inspector of Police
ACB/CBI/Chennai
- 5.The Direcotr General of police
Mylapore Chennai-4

copy to
The Section Officer
Criminal Section
High Court, madras-104

+2 ccs to Mr.A.Thamizharan Advocate sr 23239

+1 cc to Mr.K.Srinivasan Special PP CBI Cases sr 23613

Criminal Appeal Nos.496, 521 & 522 of 2012

aa12/04/2018