

Bail Slip

The Appellants/Accused 6,5 and 1 namely P.Mohana Subramanian, P.Arumugam, B.Subramanian, were directed to be released on bail vide order dated

4/10/2012 made in Crl.MP.No.1/13 in Crl.A.649/12

14/3/13 made in Crl.MP.NO.1/13 in Crl.A.591/12

and 21/9/2012 made in Crl.MP.No.1/12 in Crl.A.610/12 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :21.11.2017

Pronounced on :03.01.2018

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.Nos.649, 591 and 610 of 2012

P.Mohana Subramanian .. Appellant/Accused-6 in
Crl.A.No.649 of 2012

P.Arumugam .. Appellant/Accused-5 in
Crl.A.No.591 of 2012

B.Subramanian .. Appellant/Accused-1 in
Crl.A.No.610 of 2012

/versus/

State rep.by
The Inspector of Police,
SPE/CBI/ACB
Shastri Bhavan,
Haddows Road, Chennai-6. .. Respondent/Complainant in
Crl.A.No.649 of 2012

State rep.by
The Inspector of Police,
SPE/CBI/ACB, Chennai
(R.C.No.19(A) of 2007) .. Respondent in
Crl.A.No.591 of 2012

The State rep.by
The Inspector of Police,
C.B.I/A.C.B
Chennai. .. Respondent in
Crl.A.No.610 of 2012

Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the judgment dated 24.08.2012 passed by the learned XIV Additional Sessions and Special Judge, CBI Cases, Chennai-104 in C.C.No.30 of 2009 and consequently to allow this appeal.

For Appellant :Mr.N.R.Elango, Sr.C. For
Mr.Jerald C.Tennyson in
CrlA.No.649 of 2012

Mr.K.Duraisamy, Sr.C. For
Mr.Kandhan Duraisamy in
Crl.A.No.591 of 2012

Mr.V.Krishnakumar in
Crl.A.No.610 of 2012

For Respondent :Mr.K.Srinivasan
Spl.P.P. For CBI Cases
in all cases.

COMMON JUDGMENT

These three appeals are preferred against the judgment of the trial Court convicting the appellants for the offence under Section 120B r/w 420 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Out of 6 accused, 3 accused, who are the Central Public Works Department (in short "CPWD") contractors, were imposed sentence of imprisonment till raising of Court (ITRC) for the offence under Section 120B r/w 420 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The other three accused, who are public servants under the department of CPWD were convicted and sentenced to undergo 6 months RI each and imposed fine of Rs.10,000/- each in default to undergo 3 months SI.

2. Brief facts leading to the above appeals:

A1 [Mr.B.Subramaniam], Executive Engineer, CPWD, Chennai Central Division-V, K.K.Nagar, Chennai, during the period from 12.04.2004 to 04.05.2007 along with the private contractors, namely, K.Mannar, V.K.Rajendran, V.K.Nedunchezhiyan[A2 to A4], all are brothers and P.Arumugam[A5] and P.Mohana Subramaniam [A6], Assistant Engineers [Planning] entered into the criminal conspiracy to cheat CPWD in the matter of awarding external painting works of CPWD Quarters, awarded external painting work to A2 to A4, without publishing the tender notice to the other Sub-Divisions /Divisions, based on the rates quoted by the contractors, spilt up the work into 7 parts and awarded the same for higher rate increasing the quantity of painting work than the quantity shown in the estimate cost put to tender.

3. A1 [B.Subramaniam], Executive Engineer has accorded technical sanction and A5 and A6 had prepared detailed tender estimate and agreements in favour of A2 to A4. Thus, the CPWD had incurred loss of Rs.24,56,420/- due to awarding external painting works of the CPWD Quarters, which was not required within 2 years of its earlier work.

4. The substance of the allegation against the accused persons was that A1 [Mr.B.Subramaniam] Executive Engineer, A5 [Mr.P.Arumugam] Assistant Engineer(Planning) and A6[Mr.P.Mohana Subramaniam], Assistant Engineer (Planning) had shown favouritism to the contractors A2, A3 and A4, awarded painting work of the CPWD Quarters, K.K.Nagar, during the year 2005 and prepared annual maintenance programme, wherein external painting works of CPWD Quarters Block No. 7 to 12 was awarded to V.K.Rajendiran for Rs.2,49,635/-; external painting work for block Nos.13 to 18 was awarded to V.K.Mannar for Rs.2,49,335/-; External painting work for block Nos.19 to 23 and 26 was awarded to V.K.Nedunchezhiyan for Rs.2,47,135/-; external painting work for block Nos.24,25 and 33 was awarded to P.Arumugam for Rs.2,53,139/- and external painting work for block Nos.27,28 and 29 was awarded to K.Mannar for Rs.2,49,580/- and external painting work for block Nos.30 and 31 was awarded to V.K.Neduchezhian for Rs.2,47,135/-.

5. According to the prosecution, these seven works should have been given as a single work under single agreement as it was done earlier besides type-II Quarters external painting works for the blocks has to be carried out once in four years only. While the painting works of these blocks was done only in the year 2003, the next painting work was due only after 2006. Whereas to make out a wrongful gain, external painting work was awarded to A2 to A4, pursuant to conspiracy between these accused and while awarding the contract to avoid the mandate of Tender Transparency Act, the work was spilt up into 7 contracts so that without press publicity, the tender was floated as if the work estimation cost is below Rs.2,00,000/-. In fact, the cost of the work has been inflated subsequently to the award of the contract and the contractors A2 to A4 were paid more than Rs.2,00,000/-, while Regulation permits the Executive Engineer to spilt up the work only if there is an administrative or financial exigency with concurrence of the Superintending Engineer. In the absence of any such exigency, split up procedure should not be adopted.

6. In the present case, there was neither administrative exigency nor approval of Superintending Engineer was obtained before splitting the single work into 7 contractors. Therefore, for awarding contract, violating the regulations and entrusting the painting work which was not due, the accused were charged

for the offence under Section 120B r/w 420 IPC and 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 and under Section 420 IPC for cheating the CPWD to the tune of Rs.24,56,420/- and A1, A5 and A6 being public servants were charged for the offence punishable under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

7. The trial Court, after framing the charges as above, held all the accused guilty of the charges for the following sentences:-

Rank of the accused	Conviction under Section	Imposed Sentence by the trial Court
A1 to A6 and A1, A5 and A6	u/s 120 (B) IPC	Undergo 6 months RI each
A2 to A4	u/s 120 (B) IPC	Undergo minimum punishment of ITRC and to pay a fine of Rs.10,000/- each in default to undergo SI for 3 months
A1 to A6 and A1, A5 and A6	u/s 420 IPC	To undergo 6 months RI and to pay a fine of Rs.1000/- each in default to undergo 3 months each
A2 to A4	u/s 420 IPC	To undergo minimum punishment of ITRC and to pay fine of Rs.10,000/- each in default to undergo SI for 3 months
A1, A5 and A6 and A1	u/s 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988	To undergo 2 years RI and to pay a fine of Rs.1,000/- in default 3 months RI

Rank of the accused	Conviction under Section	Imposed Sentence by the trial Court
A5 and A6	u/s 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988	To undergo 1 year each and to pay fine of Rs.1000/- each in default to undergo SI for 3 months. (Total amount of Rs.66,000/-)
The above sentences are ordered to be run concurrently.		

8. Submissions made by the appellants:-

Accorded to the first accused/appellant in CrI.A.No.610 of 2012, the trial Court has misdirected itself in coming to a conclusion that the Government has incurred loss of Rs.24,56,240/- which is the total value of the work awarded to A2 to A4 under 7 agreements. The trial Court has failed to note the fact that pursuant to the contract, the external painting work of the CPWD quarters Type-II had been carried out and it is not the case of the prosecution that without executing the painting work, a sum of Rs.24,56,240/- had been paid to A2 to A4. Thus, with the basic misdirection and improper understanding of the facts, the trial Court has erroneously found them guilty. When the evidence of PW-19[Mr.P.P.Srinivasan] and Ex.P86 indicates that external painting work can be done once in two years, the trial Court has erroneously arrived at conclusion that painting work to be done once in five years. This conclusion is contrary to the facts placed before the Court. PW-19[Mr.P.P.Srinivasan], who is the Superintending Engineer and Superior officer had been periodically intimated about the contract awarded and work carried out, but he has pleaded ignorance in spite of files marked to him and put to his knowledge.

9. The facts elucidated through cross examination of PW-18 [Mr.M.Thangamuthu] and PW-19 [Mr.P.P.Srinivasan] had not been taken note by the trial Court. When the single contract was awarded to G.Kamalakaran previously, he could not complete the work within the time and therefore, he was penalised for not completing the contract within the time limit. The administrative exigency has prompted the appellant in CrI.A.No.610 of 2012, who is the Executive Engineer and empowered to spilt up the work. In case of administrative exigency though this fact was elucidated during the cross examination of the prosecution witnesses, the trial Court had not given due weightage for this explanation put forth by the

defence for splitting up the work. The annual maintenance work programme for the CPWD quarters work came into effect from 2005-2006 and the official memorandum of DG(W), CPWD dated 21.12.2005 of budget has been taken note by him for projecting the requirement of budget as maintenance estimate for Chennai Central Division in the beginning of financial year 2005.

10. Accordingly, a sum of Rs.98,90,000/- was allotted for maintenance work. Since the residential block of CPWD quarters Type II required maintenance of external painting work due to heavy rain in Chennai during the month of December 2004, he had carried out the external painting under maintenance work. The maintenance norms fixed by the CPWD works Manual 2003 permits external painting of residential buildings once in 2 years. The earlier painting work was done with colour washing during 2002-2003. Re-painting work was due to be carried out during the year 2005-2006. The approver witness PW-20 [Mr.Raja Venkatraman] was asked to prepare estimation and accordingly, he prepared estimation on 02.08.2005 marked as Ex.P-17. The relevant detailed estimates are Exs.P11 to P17. Pursuant to this, tender schedule was issued, which is marked as Ex.P-10. The estimates were duly processed before calling for tenders. It is incorrect to say that no publicity was given for tenders. Contrarily wide publicity as per the Rule laid down in CPWD Manual 2003 was made by displaying the tender notification in the office Notice Board and copies were sent to CCD-II, III and IV and other division including hoisting in the website. Therefore, the allegation of violating tender publication is false. The trial Court has also failed to consider that pursuant to the publicity, 8 contractors participated in the tender and they have also examined as witnesses by the prosecution. Therefore, the finding of the trial Court that in order to cause loss to the State, A1 has violated the tender normal, is in correct.

11. It is also contended by the appellants that the Superintending Engineer, who is fully aware of the fact, has been periodically informed about the progress of the work and after completion of the work, measurement books were recorded and bills were prepared for the work done and payment was also made as per the work and rate fixed by tender. The Executive Engineer is the competent authority to award the work up to Rs.15,00,000/- when there is no violation in the Rules or procedures as laid in CPWD Works Manual 2003, the prosecution has laid charge sheet on surmise and conjunctures and unfortunately, the trial Court has not properly appreciated the evidence. The standard measurement book(Standard Measurement Book), which was prepared in the year 1972 is not updated in terms with the modern technology tools available in the market and requirement for construction and maintenance of building. As per the standard measurement book, only white washing with one

or more coat, colour washing with one or more washes, synthetic emulsion paint with one or more coat are mentioned. Whereas acrylic emulsion paint with two or more coat does not exist and the reference to standard measurement book to accuse that high rates awarded for the work to paint externally with acrylic emulsion paint is imprudent.

12. The 5th and 6th accused, who are the Assistant Engineers (Planning) submitted that PW-20 [Mr.Raja Venkatraman] approver has implicated A1[Mr.B.Subramaniam] for preparing spilt estimate in the place of single estimate for Type-II quarters. In the said decision or preparation of spilt estimate, they have no role. The specific duty of these appellants is only to check the calculation of the estimate and forwarding the same to the Executive Engineer (A1) for perusal. When they have no role or part in preparation and approval of the estimates, it is highly inconceivable to hold them guilty, for the charge of conspiracy and cheating. Though PW-2 [Mr.Sachdev] has deposed that single estimate was spilt up into 6 separate work, as per the order of the Executive Engineer[A1] and the Assistant Engineer [A6], it is unbelievable to accept the said version, since PW-20 [Mr.Raja Venkatraman] is no way bound to take the instruction of A6 [Mr.P.Mohana Subramaniam]. The explanation put forth during Section 313 Cr.P.C., questioning has not been properly appreciated by the trial Court and if the trial Court had gone into the explanation, it would have not arrived at the erroneous conclusion.

13. In addition to the above submission, the appellant/6th accused in Crl.A.No.649 of 2012 has also submitted that there is no evidence to implicate him in the crime, even the approver is not implicated him. While so, for carrying out the instruction of the Executive Engineer, who is his Superior in rank, he could not be fixed with any criminal liability. In his official capacity, he had no role in preparation or approval of the estimate. When he had no role in the decision making or in preparation or approval of the estimation, holding him for the alleged conspiracy, cheating and misconduct is highly unjustifiable.

14. The learned counsel appearing for the appellants, apart from raising factual grounds, while attacking the trial Court judgment, also took a plea that the approver PW-20[Mr.Raja Venkatraman] is not a trust worthy witness and he does not confirm the test of the approver. The evidence of PW-20 [Mr.Raja Venkatraman] is that he was asked to prepare single estimate by A1, A5, and A6, later told him to prepare 7 spilt estimates and thereafter, he prepared 7 spilt estimates but, retained the single estimate in his possession itself beyond any comprehension or probability. The statement of the approver

that he always retained a set of document for his personal record and he has produced the single estimate prepared by him to CBI is contrary to code of conduct. That apart, when the statute empowers the Executive Engineer[A1] to spilt up the work, in case of administrative exigency or financial necessity and the reason for splitting up the work, in view of default committed by the earlier contractor, who was awarded single contract, ought to have been taken note by the trial Court.

15. Further, the Superintending Engineer (SC), who had been supervising the work all along cannot turn a nelson eye that he had not permitted the Executive Engineer[A1] to spilt up the work and carry out the work. Above all, when the standard measurement took had no provision or reference regarding rate for acrylic emulsion paint, reference to that for imputing criminality against the appellants for paying excess money to the contractor does not appeal to reason when the tenders had been widely published and apart from these successful contractors, 3 more contractors participated in the tender is proof of wide publication. Therefore, no motive could be attributed on that ground.

16. Per contra, the learned Special Public Prosecutor for CBI Cases submitted that the case of the prosecution is that pursuant to the conspiracy to make unlawful gain for the public servants[A1, A5 and A6] and the contractors, the first accused [Executive Engineer] by abusing his power as Executive Engineer, had pre-maturely called for tender to carry out the external painting work of the CPWD Quarters at K.K.Nagar, Chennai. When such a requirement is not called for inviting tender, even without annual budget allocation for the said work, per se, discloses the intention to deceive the exchequer. In pursuant to the said criminal conspiracy to favour the chosen few contractors, instead of carrying out the said work as a single contract, by abusing his power[A1] had instructed PW-20 [Mr.Raja Venkatraman]/approver to spilt up the work into 6 contracts, so that, each contract will come below Rs.2,00,000/- and wide publicity for the said tender need not be given. Accordingly, PW-20[Mr.Raja Venkataraman] had re-worked the estimation by splitting up into 7 contracts as per the instruction given by A1 and A6. This fact has been proved by the prosecution through the ocular evidence of the approver [Mr.Raja venkatraman] examined as PW-20 and the estimation prepared by him. Both the single estimate prepared by him and kept in his position and 7 spilt up estimation, pursuant to which contract was awarded to A2 to A4 and payment were made to them as per Exs.P36 to 41.

17. Further, he submits that from the evidence of the approver[PW-20], it is proved by the prosecution that as per the

first and final bill in respect of 7 works, the quantity of work executed in respect of finishing walls with acrylic smooth emulsion paint two or more coat is very high compared to the quantity shown in the detailed estimate 270 sq.mts. more than the quantity mentioned in the detailed estimate has been recorded in the measurement book and contractors were paid for that. Thus, through the measurement book Ex.P-29 and the bills paid to the contractors compare to the estimation prepared for all the 7 works clearly indicate that over payment has been made to the contractors, in violation of tender norms and the Manual of the CPWD. Having proved the fact through the relevant exhibits, the trial Court has rightly arrived at the conclusion of holding the accused guilty and sentenced them, accorded to their decree of crime and therefore, there is no necessity to interfere with the well considered judgment of the trial Court.

18. The learned Special Public Prosecutor (CBI cases) appearing for the respondent, after pointing out the incriminating materials against the appellants found in the deposition of PW-5[Mr.V.Revathi], PW-18[Mr.M.Thangamuthu], PW-19 [Mr.P.P.Srinivasan], PW-20[Mr.Raja Venkatrman] and PW-21 [Mr.H.Kumar Iyer] submitted that even if the evidence of PW-20 [Mr.Raja Venkatraman] is not taken note and discarded as untrust worthy for no inculpatory statement given by him, the other evidence is suffice to hold the appellants guilty of the offence, since the reason for improper publication is not justifiable and payment made to the contractors over and above the estimation and increasing the quantity of work, without any reason put together proves that with an intention to cheat the government, the appellants have conspired together right from the inception of preparing estimation till the payment to the contractors who have been arrayed as A2 to A4. Comparing the original agreements between the contractors, which were marked as Ex.P18 to P23 with the estimates which were marked as Exs.P11 to P17 and the final bill made to the contractors, without any doubt will show that, the excessive payment had been made to the contractors for the work, which did not necessiate.

19. Point for determination:

1. Whether the work awarded to A2 to A4, pursuant to the instruction of A1, by splitting up the contractors is out come of any criminal conspiracy or due to power exercised by A1, in view of administrative exigency and in consonance with the Tender Regulation?

20. To determine the above point, the following query has to be answered:

1.Whether external painting work of Type II quarters at K.K.Nagar warranted during the year 2005-2006, if yes, whether there is any

reasonable cause for splitting up the contractual work?

2. Whether the tender process adopted by A1 is in violation of regulation and whether by doing so, there was any loss sustained by the Government?

21. The investigating officer, who was examined as PW-24 [Mr.Raghukumar] had deposed that he has collected documents relating to CPWD maintenance norms, which is marked as Ex.P123 wherein the frequency of application of finishing items showing that intervening period of painting is 3 years and from the agreement marked as Ex.P125, the external and internal painting to Block 7 to 24 of GPRI Quarters at K.K.Nagar was done during the month of May 2003. Ex.125 containing original agreements regarding external painting of 513 quarters was completed during the year 2003.

22. PW-19 [Mr.P.P.Srinivasan], in his chief examination, has stated that painting work for 513 numbers of Type II GRPA quarters at K.K.Nagar, Chennai has been previously completed during 2003. As per the CPWD Maintenance Manual, painting works are to be executed once in every five years and the previous work has been completed in the year 2003 so the work is due only during the ensuing year 2008. This part of his deposition is totally contrary to the evidence let in by PW-24 [Mr.Raghukumar] and also contrary to the CPWD Maintenance Manual. The version of PW-19 [Mr.P.P.Srinivasan], in his chief examination, has been disproved during his cross examination wherein, he admits that according to Ex.P86, the Central Public Works Department maintenance manual, washing and colour washing can be done to the residential building every 2 years. Likewise, dry distemper can be given every 2 years. Plaster paint, Synthetic enamel paint, oil bound distemper, acrylic paint, acrylic distemper can be done every 3 years. External surface with water proofing cement paint can be done every 3 years. It is also elucidated through the witnesses that the standard measurement book of the year 1972 does not specify acrylic emulsion paint and it is a new type of work.

23. From the above said testimony and Section 164 statement of the approver and his deposition before this Court reveals the following fact:-

For the external painting works of GPRA quarters, K.K.Nagar for 23 blocks Plot No.7 to 31 and 33 single estimate was initially prepared for an amount of Rs.16,71,800/- and handed over to A6 [Assistant Engineer] by PW-20 [Mr.Raja Venkatraman]. Later, PW-20 [Mr.Raja Venkatraman] was instructed to split up the single estimate which prepared earlier into six estimates. Accordingly, the same has been by prepared by PW-20.

24. As far as, Block 34 to 42 under the Annual Maintenance Programme for the year 2005-2006, external painting work was proposed. Later, after completing the said work, the contract was given for Block 7 to 31 and 33 with anti-emulsion exterior paint two or more coats. While annual maintenance programme for block 34 to 42 alone was proposed, the additional painting works for block 7 to 31 and 33 was taken up though the previous work was completed only in May 2003 and it was not due for the year 2005-2006. Ex.P89 is the budget allotment for the year 2005-2006 under maintenance of housing. A total sum of Rs.130 lakhs has been allotted for ordinary repair in respect of CCD-I, CCD-V and ACD.

25. The subject matter pertains to CCD-V. The date for contract work to execute external painting work ACE in respect of 513 numbers of Type-II GPRA quarters has been issued on 18.01.2006 and the tender has been opened on 20.01.2006 as per Ex.P61. From the evidence let in by the prosecution and as admitted by PW-19[Mr.P.P.Srinivasan], in his cross examination, for residential building external painting work shall be done every 3 years with acrylic paint and acrylic distemper. It is elucidated during cross examination of the Superintending Engineer Mr.M.Thangamuthu, [PW-18] and Mr.P.V.Srinivasan [PW-19] that external painting of Type-II Quarters Block 34 to 42 only was envisaged for the financial year 2005-2006 under the Annual Maintenance Programme and not the other Blocks viz., Block 7 to 31 and 33 was not included since the external painting of these quarters were already done during 2004-2005.

26. The evidence of the Superintending Engineer[PW-18], who is the Superior in hierarchy, under whom the accused are subordinates, has deposed in his cross examination that since he was looking after the planning design and administration, the accused persons were under the direct supervision of Mr.P.P.Srinivasan [PW-19] and they were answerable to him and he admits that he has no direct knowledge of transaction and the Executive Engineer has got the power up to Rs.10 lakhs regarding the acceptance of publication with or without any negotiation. He also admits that during 1972, when the standard measurement book was released acrylic smooth paint was not in use and Emulsion external painting work, the painting in acrylic smooth emulsion is done depending on the weather condition and locality and he was not aware that during that period, there was rain. PW-19, who is the Superintending Engineer Chennai has Director Control on the work executed by the Executive Engineer and over all maintenance and construction work coming under Chennai Central Circle II, CPWD. He has deposed that based on the norms, the maintenance estimation will be projected at the beginning of the financial year in the form of annual maintenance programme

or annual auction plan by the Executive Engineer Division headed by Superintending Engineer and will be forwarded to the Superintending Engineer for sanction of estimation. If any work is not envisaged in the annual programme of work for the concerned financial year and the same is to be undertaken, then the approval of the Superintending Engineer has to be obtained before undertaking the said work. In case, the said work is undertaken without approval of the Superintending Engineer, the ratification or ex post facto approval of Superintending Engineer concerned has to be obtained.

27. On perusing Ex.P89, he has deposed that for the year 2005-2006, the external painting works Type-II quarters, Block 7 to 31 and 33 are not envisaged. Though in the chief examination, he has stated that painting work for 513 numbers of type II quarters got completed during May 2005 and it is due for painting only in the year 2008, however, after perusing Ex.P86 and in the cross examination, he admits that if it is residential building with distemper, it requires white wash or colour wash every 2 years and if it is plastic paint etc., it can be done every 3 years.

28. He admits that the tender awarded to A2 to A4 by splitting up the contract was marked to him as superintending Engineer. What has been established by the accused through cross examination of these witnesses is that 513 number of quarters in block 7 to 31 and 33 was earlier carried out in the month of 2003 and by allotting the work by splitting the tender in favour of A2 to A4, the external painting with acrylic emulsion two coat had been carried on during the month of April 2006 and as per Exs.34, 35, 36,37,38,39 and 40, the payment for the said work has also been paid to the contractors. The first accused as Executive Engineer had suggested to the witnesses that due to weather condition and rain in the month of November 2005, necessity arose to carry out the external painting work to withstand the weather condition, so it had been opted to carry out the external painting work with acrylic emulsion paint.

29. PW-19 who is the Superintending Engineer and the person, who is in charge of maintenance, admits that external surface water proof cement paint or acrylic paint can be done every 3 years and periodically he had been informed about the contract and progress in the painting work. While so, he cannot claim ignorance of the work carry out by the first accused, Executive Engineer. Therefore, the first query, whether external painting warranted in the year 2006, the answer would be from the material placed and discussed above external painting of the said building, is warranted. It cannot be ruled out that due to heavy rain and other climatic condition after the end of 2nd year, external painting work is not warranted. Therefore,

though A1[Executive Engineer] had not got prior approval of the Superintending Engineer and the Superintending Engineer himself admits that in case of maintenance work undertaken due to exigency, it can be ratified by according ex-postfacto approval. The variations or deviations from the coat without any culpability, the first accused[Executive Engineer] cannot be prosecuted for exercising his discretion, within the permissible limit.

30. As far as the splitting up of the work, a strong suggestion has been put forth by the A1[Executive Engineer] that a similar work given to a single contractor earlier was failed and he could not complete the work within the time stipulated. Hence, he has exercised his discretion and for administrative convenience, he has split up the work and got it completed in time.

31. PW-19, in his deposition, after referring Section 15.4.1 the CPWD Works Manual 2003, has stated that 'splitting of works for the purpose of inviting tenders should not be resorted to, however, due to administrative convenience and expediency, the works may be spilt up and tenders may be invited separately for the spilt up portions, as per the powers delegated'. He also admits that as per the CPWD Works Manual 2003, the power of the Executive Engineer for splitting of the work is up to Rs.6lakhs, which has been enhanced to Rs.10 lakhs with effect from 30.12.2005 as mentioned in the CPWD Works Manual 2007.

32. In the above said circumstances, the accused have put forth acceptable reasons for taking the external painting work of the quarters immediately after expiry of 2 years and also for exercising his discretion to spilt up the work contract. Unless and until a strong evidence to show that to enrich himself or any other person, he has indulged in awarding the painting work, mere omission or commission by exercising in discharge his official function can at the most attract the departmental proceeding but not criminal prosecution. When the prosecution is not able to prove that for any pecuniary advantage for himself or any other person, the first accused along with the other accused has taken up the maintenance work, the charges against them in this regard is unsustainable.

33. More particularly, in this case, the prosecution has contended that by awarding external painting works on higher rate to A2 to A4, a loss of Rs.24,56,420/- is incurred. The first and final bill settled in favour of A2 to A4 itself, totally works out to Rs.24,56,000/-. It is not the case that the bill was paid, without any work carry out. Admittedly, measurement book indicates that the painting works was done as found in the measurement book and also admitted by the evidence

including the approver[PW-20] whose evidence the prosecution relies to establish their case. While so, what is the actual rate paid by them. There is no evidence to show that the work indicated in the measurement book is not the actual work carried out. When there is no evidence to contradict the entries found in the measurement book, just because the Executive Engineer has exercised his discretion to carry out the maintenance of the residential building by painting the external of the building with acrylic emulsion, which could withstand the weather vagrancy. It cannot be construed as a conspiracy to cheat the CPWD and to make pecuniary advantage over it.

34. In almost the identical facts, the Hon'ble Supreme Court has held in C.Chenga Reddy and others v. State of Andhra Pradesh reported in CDJ 1996 SC 1567 in para 17 and 22, which reads as under:

"17. One other circumstance which has been relied upon by the prosecution against the appellants is that jungle clearance work is only maintenance work, but, it had been allegedly allotted on nomination basis to the selected contractor, without recording any reasons for considering the work to be of an urgent nature. This circumstance, however, in our opinion, by Itself cannot be construed to be an incriminating circumstance consistent only with the hypothesis of the guilt of the appellants. The evidence on the record shows that jungle clearance work was taken up on urgent :basis as maintenance of the canal, to avoid breaches during the rainy season on account of the directions issued by the Superintending Engineer and the Chief Engineer in that behalf besides for clearing the jeep track.

22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet. non of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the

hypothesis of the guilt of the appellant and wholly incompatible with their innocence. In *Abdulla Mohammed Pagarkar v. State (Union Territory of Goa, Daman and Diu)*, [1980] 3 SCC 110, under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the concerned officials and contractors, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper. That because of the actions of the appellants in breach of codal provisions, instructions and procedural safeguards, the State may have suffered financially, particularly by allotment of work on nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them."

35. In view of the above discussion, this Court finds that the prosecution has not proved that the maintenance work carried out by the Executive Engineer through the contractors A2 to A4 is illegal or unwarranted. The prosecution could not establish that splitting of contract to complete the work within the stipulated time is done with mala fide intention. Further, the prosecution has failed to place before the Court that by carrying out the painting works soon after expiry of two years and through spilt up the contract, the Executive Engineer and other officials had obtained pecuniary advantage or any valuable thing by abusing their official position or the contract work carried out is without any public interest. When none of the ingredients as stated in Section 13(1) of the Prevention of Corruption Act, 1988 is established, the judgment of the trial Court convicting the appellants 1 to 5 and 6 is liable to be set aside.

36. In the result, the judgment dated 24.08.2012 passed by the learned XIV Additional Sessions and Special Judge, CBI Cases, Chennai-104 in C.C.No.30 of 2009 is set aside and these

Criminal Appeals are allowed. Fine amount if any paid by the appellants shall be refunded to them. Bail bond if any executed by them is cancelled. They are at liberty unless their persons are required in connection with any other case.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police, SPE/CBI/ACB Shastri Bhavan, Haddows Road, Chennai-6.
- 2.The Special Public Prosecutor for CBI Cases, High Court, Madras.
- 3.The XIV Additional Special Judge, for CBI Cases, Chennai.
- 4.The Section Officer, Criminal Section, High court, Madras.

+2cc to M/s.Muthumani Doraisami, Advocate Sr.NO.478
+1cc to M/s.Jeralled C.Jennyson, Advocate Sr.No.523
+1cc to M/s.K.Srinivasan, Special Public Prosecutor for CBI, SR.No.744
+1cc to Mr.A.B.Ashok, Advocate Sr.No.481
+2cc to Mr.A.B.Ashok, Advocate Sr.No.481 dt.24.1.2018

RSI(CO)
sm:23.1.2018

judgment made in
Crl.A.Nos.649, 591 and 610 of 2012

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