

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 02.03.2017

Judgment Pronounced On : 05.01.2018

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

Crl.O.P.No.24667 of 2016  
in Crl.A.SR.27700 of 2016

State, Rep. By  
DSP, CBI, ACB, Chennai

... Appellant/Complainant

Vs.

1.P.Narasimhan  
2.V.Balachandran  
3.B.Rafi

Managing Partner  
representing M/s.ARM Engineering Company

4.M/s.ARM Engineering Company,  
Partnership Firm  
Rep. By B.Rafi  
Managing Partner  
40/39, 14<sup>th</sup> Cross Street, Chennai-28.

.... Respondents

PRAYER IN CRL.O.P.No.24667 of 2016: Petition filed seeking to grant Special Leave u/s.378 of Cr.P.C., to file appeal against the acquittal in C.C.No.44/2009 dated 30.10.2015 on the file of IX Additional Special Judge for CBI Cases, Chennai.

Prayer in Crl.A.SR.27700 of 2016:- Criminal Appeal filed u/s.378 Cr.P.C., 1973, seeking to set aside the impugned order dated 30.10.2015 acquitting the accused persons in C.C.No.44/2009 (Case No.RC 59(A) 2007 of CBI, ACB, Chennai) passed by the IX Additional Special Judge for CBI Cases, Chennai.

For Appellant : Mr.K.Srinivasan,  
Special Public Prosecutor, CBI.

For Respondents : Mr.M.Nirmal Kumar for R1  
Mr.A.S.Balaji for R2.  
R3-Died  
R4-Death certificate enclosed in Notice paper

## COMMON ORDER

The Criminal Original Petition has been filed seeking to grant Special Leave to file the above Criminal Appeal SR.27700 of 2016. The said Criminal Appeal has been preferred by the appellant/complainant-CBI, challenging the judgment of acquittal passed against the respondents/accused by judgment dated 30.10.2015 in C.C.No.44/2009 by the IX Additional Special Judge for CBI Cases, Chennai.

2. With the consent of both parties, this court heard the main Criminal Appeal itself on merits along with the petition to grant Special Leave for filing the Criminal Appeal.

3. The case of the Prosecution is that during 2003-2004, 1<sup>st</sup> accused-P.Narasimhan was working as Joint General Manager, HVF, Avadi and he was dealing with purchase of Plant and Machineries, repairing and reconditioning of various machineries pertaining to HVF Avadi. At the same point of time, A2-V.Balachandran, was working as Works Manager in the said factory. A3-B.Rafi was Managing Partner of A-4 -M/s.ARM Engineering Company and they were dealing with supply of various machineries to HVF Avadi, during 2003-2004. According to the Prosecution, the Public Servants A-1 and A-2 colluded with the private accused A-3 and A-4/Company represented by A-3, fraudulently and dishonestly inserted discount entries at page No.3 of the price bids of A-4 company in tender files bearing No.R.449 and R.454 in order to make A-4 company as L1 in the Tender Committee proceedings and award the work of reconditioning of furnaces, by which, the said accused company gained a pecuniary advantage of Rs.21,59,739/-. In the said Tender Process, five authorised companies participated and submitted their quotation of commercial bid. The next lowest bidder in the Tender process is M/s.THEMOCHEM FURNACES LTD., Gujarat. In the above tender, price bid was opened on 20.01.2004 by one Tmt.M.Dhanalakshmi, Supervisor, Tender opening staff, in the presence of Mr.Balachandran, Orderly Officer (A-2) and Mr.Bixit, Tender Opening Officer. Immediately after opening the price bid, spot Comparative Statement (CST) was made by the said Tmt.Dhanalakshmi. Thereafter, the same was handed over to one Mr.P.Narasimhan, Joint General Manager (A-1).

4. During the period of one week after 20-01-2004, A-1 Narasimhan along with A-3, who was representing the A-4 firm, fraudulently and dishonestly inserted discount entries at Page No.3 of the Price Bids of A-4, M/s.ARM Engineering Company, Chennai, in Tender Files R 449 & 454 with the connivance of A-2 Balachandran who authenticated the said fraudulent inserted

entry in R454 knowing fully well that the said discount entries were not available in the Spot Comparative Statement and thus committed forgery on the said price bids, thereby giving the benefit of the forged discount entries to project the A-4 firm as L-1 (Lowest Bidder). The said forged price bids were used by A-3 and A-1 as genuine one to project the said firm as L-1 in the Tender Purchase Committee Proceedings and awarded the work of reconditioning the furnaces to A-4 M/s.ARM Engineering Company and paid for the said work in files R449 & R454 respectively. But for the said forged entries, A-4 would have remained L-2 in both cases of R-449 and R454 and the A-4 would not have gained the pecuniary advantage of Rs.21,59,739/- for each work in the Tender R449 and R454. Thus, A-1 to A-4 committed offences punishable u/s.120B r/w.420, 460, 468 r/w.471, 477A IPC and Section 13(2) r/w.13(1)(d) Prevention of Corruption Act, 1988 (hereinafter called as "P.C.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, charges were framed against A-1 to A-4 u/s.120-B r/w.420 IPC, 468 r/w.471 IPC, 477-A IPC and Section 13(2) r/w.13(1)(d) of P.C.Act,1988; against Accused No.1, u/s.468 r/w.471, 477A IPC and u/s.13(2) r/w.13(1)(d) of PC Act, 1988; against A-2, u/s.13(2) r/w.13(1)(d) of PC Act, 1988, against A-3 & A-4, u/s.420 IPC. Since the accused pleaded not guilty, trial was conducted.

5. On the side of the Prosecution, P.W.1 to 24 were examined. Ex.P.1 to P.122 were marked. On the side of the accused, D.W.1 to D.W.3 were examined and Ex.D.1 to D.3 were marked. After hearing the arguments on both sides and upon perusing the relevant evidence available on record, the trial court found that A-1 to A-4 are not guilty and all the accused were acquitted of all the charges levelled against them. Challenging the same, the present Criminal Appeal is preferred by the Prosecuting Agency/CBI.

6. The learned counsel for the appellant/Prosecution submits that in respect of the tenders, A-4 did not offer any discount in his commercial bid R449 & R454. The learned Judge failed to appreciate that P.W.6 Dhanalakshmi prepared the Spot Comparative Statement on 20.01.2004. The price components as mentioned in price bids of A-4 in the tenders R449 & R454 were material cost of Rs.22,50,000/- and Labour cost Rs.75,000/- for both tenders. The spot Comparative Statements prepared by P.W.6 Dhanalakshmi were signed by A-2 and another Y.M.Bixit as Orderly Officer and Tender Opening Officer respectively. The learned Judge failed to appreciate that there was no entry for any document in the spot Comparative Statement, which was authenticated and signed by A-2 and the said Y.M.Bixit. Thus, as per the prices authenticated in the spot Comparative Statements by A-2, A-4

firm ARM Engineering would have become L-2. The learned Judge failed to appreciate that in the price bids of A-4 company in File No.449 and R454 Page No.3, discount entries were found to be with different font/ink and printer style and the said page was inserted at a later stage, as admitted by the defence. The learned Judge failed to appreciate that in the price bid of A-4 company in file No.R454, at Page No.3 of the price bid, which contained discount element, there were two signatures of A-2, one above the discount entry and one below the said discount entry, as against the guidelines, which clearly state that there should be one signature at the bottom of the bid after encircling the entire entries. The learned Judge failed to appreciate that only by taking into consideration the said discount entries in R-449 and R-454, A-4 firm has become L-1 in the said tenders. If the said discount entries were not there, A-4 firm would have stood as L2 in both the tenders. The learned Judge failed to appreciate that brief in respect of both the cases were got prepared and signed by A-1 for the perusal of the Tender Purchase Committee members. In the said brief, the different printer style/font in respect of Page No.3 of the price bid of A-4 Company was not brought out by A-1, for perusal of Tender purchase committee members while convening TPC meeting at Factory Level I. The learned Judge failed to appreciate the proven fact that A-1 also suppressed in the said brief, the fact about the non availability of the said discount entries in spot comparative statement in both the cases. The learned Judge failed to appreciate that the commercial comparative statements for both the tenders R-449 and R-454 were also got prepared by A-1 and signed by him, wherein, he had given weightage to the said discount entries and by doing so, projected A-4 company as L-1. The learned Judge failed to appreciate that the Tender Purchase Committee met on 06-02-2004 and based on the brief and commercial comparative statement prepared and signed by A-1, recommended A-4 company at Rs.21,89,739/- as the lowest quoted bidder. The learned Judge failed to appreciate that it is the admitted case of the defense that the 3<sup>rd</sup> page of the Tender Form R 449 and R454 have been changed. It is also admitted that first two pages and 4<sup>th</sup> page have been taken in last printer, but page No.3 of both the tenders had been taken in inkjet. The learned Judge misled herself in analyzing the evidence of P.W.6, who categorically stated that the discount portion in the tender was not available at the time of opening the tenders. The same was strengthened by P.W.5 and P.W.7. Further, it is stated that the learned Judge failed to appreciate the oral and documentary evidence in right perspective and not even discussed the corroborative portion of the prosecution witnesses. Hence, the learned prosecutor prays to set aside the judgment of trial Court and to convict the accused by holding them guilty of all the charges levelled against them.

7. The learned counsel for the 1<sup>st</sup> respondent submits that it is the definite case of the Prosecution and admitted by the investigating officer that the 4<sup>th</sup> respondent being the successful tenderer in R449 & R454, HVF, Avadi, stood to gain by Rs.1,10,181/- and no loss occurred and therefore, there is no wrongful loss or wrongful gain to the respondents. Further it is submitted that the witnesses from HVF have admitted and categorically answered that spot Comparative Statement is not the final authority and as per the guidelines of procurement of plant and machinery of HVF (Ex.P.5), any particulars which have been left over could be included while preparing the commercial Comparative Statement and the Respondents have brought on record the same only. How in all the price bids of the tenderers, P.W.6 have omitted and failed to record all the particulars in the spot CST as could be seen from the Exhibits. The prosecution right from the inception had proceeded with the case on the basis of mistakes committed by P.W.6 in recording the entire particulars. The 2<sup>nd</sup> respondent also emphasized the defence taken out by the 1<sup>st</sup> respondent in elaborate manner. Therefore, both the 1<sup>st</sup> and 2<sup>nd</sup> respondent counsel seeks dismissal of the appeal, by confirming the Trial Court judgment.

8. On a perusal of the records and after hearing both sides arguments, it is found that the prosecution strongly contended that A-1 and A-3 fraudulently and dishonestly inserted several wrong entries at Page No.3 of the price bids of ARM Engineering Company (A-4) in tender files R 449 and 454 with the connivance of A-2 Balachandran who authenticated the fraudulent and inserted entries in R454 knowing fully well that the said discount entries were not available in spot Comparative Statements and thus committed forgery on the said price bids. Therefore, the case of the prosecution is that the discount entries were inserted after one week from the date of opening the price bid dated 20-01-2004. As per the evidence of P.W.23 Tmt.Vasantha Sundari, Assistant Director, Regional Forensic Science Laboratory, the entire Page No.3 of price bids in R454 and R449 in Ex.P.16 and Ex.P.17 were made by Inkjet process and the printed matters in other paper in Exs.P.16 and P.17 were made by laser printing process. Therefore, it is clear that the claim of discount element was inserted fraudulently at latter stage is not established.

9.1. The Prosecution also relied on P.W.6 Tmt.M.Dhanalakshmi's evidence to prove that A1 with the connivance of A2 and A3 inserted the discount element in order to get unlawful gain to A4 Company but PW.6 was categorical in stating as follows in her cross examination:-

"... in the spot CST, the components ST, Labour cost and taxes will be entered. In R454, in the spot CST of ARM Engineering, material cost

and labour charges have been entered. If terms and conditions are mentioned in the quotation, the same will be entered in the spot CST. Terms and Conditions are found in the Quotation of ARM Engineering in R-454. But I have not entered the terms and conditions in spot CST in respect of ARM Engineering. I have not added the terms and conditions in the spot CST's in R449, R448, R451 and R447. In R447, I have not added the terms and conditions in spot CST in respect of Therelak Engineers. I have also not noted CST 4% extra in the above spot CST. If any item is left out to be added in the spot CST, the same will be included in the commercial CST by the person who prepares the commercial CST. "

The above evidence would clearly prove that the said P.W.6 Dhanalakshmi has not done her job properly. The root cause of the entire case is based on the statement of P.W.6, but her evidence itself shows that she is having the habit of preparing the commercial comparative statement by way of omitting material aspects found in the price bid. Therefore, the statement of P.W.6, as if the discount entry was not found in the price bids, Ex.P.16 & P.17, at the time of preparing spot Comparative Statement, cannot be relied upon.

9.2. Likewise P.W.8 Thiru Y.M.Bixit deposed evidence during cross examination as under:-

"...some elements found in the price bids may not be reflected in the spot CST; In some elements are found below my signature, it cannot be construed that the said elements are not available in the price bids at the time of opening; in Ex.P.23, below the labour charges, I have not signed and I signed in the material cost. The above price elements are found in the spot CST. Further, he deposed that I cannot say that since I have not signed the terms and conditions, it will not find in the final CST. "

Therefore, on the evidence given by P.W.6 and P.W.8, who are the Tender opening staff and Officer, would clearly reveal that the spot Comparative Statement is not a full-fledged document. In the said spot Comparative Statement, omissions could have occurred at times and the same will be rectified during the preparation of regular Comparative Statement. In the case on hand, the regular Comparative Statement available on record would clearly prove that the discount entries of A-4 ARM Engineering firm is found. There is no direct evidence to prove that A-1 inserted the discount entry in the commercial bid of A-4. The evidences of P.W.6 and P.W.7 are contradictory to the evidence of other witnesses. Further, the Prosecution failed to prove when the discount entry was made in Page No.3 of the

Commercial bid of A-4 in the file of R449 and R454. Considering all those facts, the trial court has come to the correct conclusion that the charges levelled against the accused is not proved by the prosecutor. In view of the above said discussion, I find that there is no material to interfere with the findings of the trial court. Further, it is also pointed out that grounds raised by the appellant are not suffice to set aside the trial court judgment.

10. It is also pointed out that if two views are possible, unless there was error apparent, the trial court finding of acquittal should not be interfered with. The Hon'ble Supreme Court, in V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga 2016 CrI.L.J.2589 : AIR 2016 SC 2045 : (2016) 12 SCC 150 : LNIND 2016 SC 178 has held that if the evaluation of the evidence and the findings recorded by the trial court does not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible.

11. In view of the above said discussion and in the light of the above dictum of the Hon'ble Supreme Court, this court finds no reason to interfere with the conclusion arrived at by the trial court and the appeal has to fail. Accordingly, the Criminal Appeal SR is rejected. In view of the rejection of main Criminal Appeal, no purpose will be served in entertaining the Special Leave Petition, since the main Criminal Appeal itself lacks merit. Accordingly, Criminal Appeal and Special Leave Petitions are dismissed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The IX Additional Special Judge for CBI Cases, Chennai.

2. The DSP, CBI, ACB, Chennai

3.The Public Prosecutor,  
High Court, Madras.

+2cc to Mr.M.Nirmal Kumar, Advocate, S.R.No.802

+1cc to Mr.A.S.Balaji, Advocate, S.R.No.999

CrI.O.P.No.24667 of 2016  
in CrI.A.SR.27700 of 2016.

SPD(CO)

GSP(04/12/2018)