Bail slip in Crl.A(MD).180 OF 2013

The Appellant/Accused No.3 namely K.Murugesan, S/o. R.Gurumani was released on bail by this Hon'ble Court made in MP (MD).1/2013 dated 20.06.2013.

Bail slip in Crl.A(MD).185 OF 2013

The Appellant/Accused No.5 namely S.Ramanujam, was released on bail by this Hon'ble Court made in MP(MD).1/2013 dated 21.06.2013.

Bail slip in Crl.A(MD).186 OF 2013

The Appellant/Accused No.7 namely Arumugam S/o.Madasamy was released on bail by this Hon'ble Court made in MP(MD).1/2013 dated 21.06.2013.

Bail slip in Crl.A(MD).188 OF 2013

The Appellant/Accused No.6 namely Sankara Narayanan S/o.Nagalingam, was released on bail by this Hon'ble Court made in MP(MD).1/2013 dated 25.06.2013.

Bail slip in Crl.A(MD).197 OF 2013

The Appellant/Accused No.4 namely Veluchamy S/o. Muthaiah, was released on bail by this Hon'ble Court made in MP(MD).1/2013 dated 26.06.2013.

Bail slip in Crl.A(MD).199 OF 2013

The Appellant/Accused No.1 namely G.Sundararajan S/o.Ganesan, was released on bail by this Hon'ble Court made in MP (MD).1/2013 dated 02.07.2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.02.2019

PRONOUNCED ON : 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)Nos.180,185,186,188, 197 and 199 of 2013

K.MURUGESAN
S/O. R.GURUMANI, 24/83,M.V.ANNAMALAI CHETTIRAR STREET,
ARUPPUKOTTAI, VIRUDHUNAGAR DISTRICT.

... Appellant/Accused No.3 in CRL.A(MD).180 OF 2013

S.RAMANUJAM, PG TEACHER,
GOVT. HIGHER SECONDARY SCHOOL,
NENMENIPATTI, VIRUDHUNAGAR DIST,
FORMERLY PG TEACHER IN SOWDAMIBIGA
HIGHER SECONDARY SCHOOL, ALLAMPATTY,
VIRUDHUNAGAR DIST

... Appellant/A5 in CRL A(MD). 185/ 2013

ARUMUGAM S/O.MADASAMY,
JEEVA STREET, ERANIAL, NEYYOOR PO,
KANYAKUMARI DIST,
... Appellant/A7 in CRL A(MD). 186/ 2013

SANKARA NARAYANAN S/O.NAGALINGAM,
65/30 KARIYAM VELLAIAN CHETTIAR STREET,
CHOKALINGAPURAM, ARUPPUKKOTTAI,
VIRUDHUNAGAR DIST
... Appellant/A6 in CRL A(MD). 188/ 2013

VELUCHAMY S/O.MUTHAIAH,
47, KOONANKULAM, WEST SIDE SOUTH STREET,
SRIVILLIPUTHUR, VIRUDHUNAGAR DIST
... Appellant/A4 in CRL A(MD). 197/ 2013

G.SUNDARARAJAN S/O.GANESAN,
EX-PRESIDENT, EDUCATIONAL COMMITTEE,
SOUDAMBIKA HIGHER SECONDARY SCHOOL,
ALLAMPATTI, VIRUDHUNAGAR
... Appellant/A1 in CRL A(MD). 199/ 2013

- Vs. -

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
PREVENTION OF ANTI CORRUPTION DEPARTMENT,
VIRUDHUNAGAR.
(CRIME NO.4 OF 2007)
... Respondent/Complainant in CRL.A(MD).180 OF 2013

THE INSPECTOR OF POLICE
VIGILANCE AND ANTI CORRUPTION,
VIRUDHUNAGAR, CR.NO.4/2007
... Respondent/Complainant in CRL A(MD). 185, 186 & 197/ 2013

THE INSPECTOR OF POLICE
VIGILANCE AND ANTI CORRUPTION UNIT,
VIRUDHUNAGAR, CR.NO.4/2007
... Respondent/Complainant in CRL A(MD). 188/ 2013

THE INSPECTOR OF POLICE
PREVENTION OF ANTI CORRUPTION
AND VIGILANCE DEPARTMENT,
VIRUDHUNAGAR, CR.NO.4/2007
... Respondent/Complainant in CRL A(MD). 199/ 2013

Prayer in CRL.A(MD).180 OF 2013:

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to call for the records pertaining to the Special Case No.112 of 2011 on the file of the Special Judge for Anti Corruption Cases under the Prevention of Corruption Act, Madurai, dated 06.06.2013 and set aside the same.

Prayer in CRL.A.(MD)No.185 of 2013:

Criminal Appeal is filed Under Section 374(2) of Cr.P.C. praying to setaside the conviction and sentence passed by the Special Judge for Prevention of Corruption Act case, madurai in Spl case No.112/11 on 06.06.2013 and acquit the appellant.

Prayer in CRL.A. (MD)No.186 of 2013:

Criminal Appeal is filed Under Section 374(2) of Cr.P.C. praying to call for the records in spl case No.112/11 dated 06.06.2013 on the file of the Special Court for vigilance and Anti Corruption Cases, Madurai and setaside the same.

Prayer in CRL.A. (MD)No.188 of 2013:

Criminal Appeal is filed Under Section 374(2) of Cr.P.C. praying to call for the records pertaining to the spl case No.112/11 on the file of the Special Judge for prevention of Corruption Act cases, Madurai, dated 06.06.2013 and setaside the same and allow this Criminal Appeal.

Prayer in CRL.A. (MD)No.197 of 2013:

Criminal Appeal is filed Under Section 374(2) of Cr.P.C. praying to call for the records relating to the Judgment dated 06.06.2013 made in Spl Case No.112/11 on the file of the Special Court for Prevention of Corruption Act cases, Madurai and setaside the conviction and sentence imposed against the Appellant/Accused and allow the appeal by acquitting the accused.

Prayer in CRL.A. (MD)No.199 of 2013:

Criminal Appeal is filed Under Section 374(2) of Cr.P.C. praying to call for the records pertaining to the in spl case No.112/11 on the file of the Special Judge for Anti Corruption Cases Under prevention of Corruption Act, Madurai, dated 06.06.2013.

For Appellant : Mr.M.Karunanithi
(in Crl.A(MD)No.180 of 2013)

For Appellant : Mr.N.Vijayarajan
(in Crl.A(MD)No.185 of 2013)

For Appellant : Mr.Kumaresan
(in Crl.A(MD)No.186 of 2013) for Mr.C.Mayilvahana Rajendran

For Appellant (in Crl.A.(MD)Nos.188 and 197 of 2013) : Mr.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates

For Appellant (in Crl.A(MD)No.199 of 2013) : Mr.Ravindran Senior Counsel for Mr.A.Sivaji

For Respondent (in all appeals) : Mr.K.K.Ramakrishnan Additional Public Prosecutor

COMMON JUDGMENT

All the appeals are arising out of common judgment dated 06.06.2013, made in Special Case No.112 of 2011, on the file of the learned Special Judge for Prevention of Anti Corruption Cases, Madurai, and therefore, they are clubbed together, heard and disposed of by this common judgment.

2.The appellants in these appeals are accused in S.C.No.112 of 2011, on the file of the learned Special Judge for Prevention of Anti Corruption Cases, Madurai. Their ranking, charges framed against them and conviction and sentence imposed on them are detailed as below:-

Crl.A.(MD) Nos.	Accused Ranking	Charge u/s.	Finding/ Conviction	Sentence
180, 185, 186, 188, 197 & 199/ 2013	A3, A5, A7, A6, A4 & A1	120-B IPC	Guilty	2 years S.I. & Rs.1000 fine, i/d. 6 months S.I.
180, 185, 186, 188, 197 & 199/ 2013	A3, A5, A7, A6, A4 & A1	467 IPC	Guilty	2 years S.I. & Rs.1000 fine, i/d. 6 months S.I.
180, 185, 186, 188, 197 & 199/ 2013	A3, A5, A7, A6, A4 & A1	468 IPC	Guilty	1 year S.I. & Rs.1000 fine, i/d. 3 months S.I.
180, 185, 186, 188, 197 & 199/ 2013	A3, A5, A7, A6, A4 & A1	471 IPC	Guilty	2 years S.I. & Rs.1000 fine, i/d. 6 months S.I.
180, 185, 186, 188, 197 & 199/ 2013	A3, A5, A7, A6, A4 & A1	420 IPC	Guilty	1 year S.I. & Rs.1000 fine, i/d. 3 months S.I.

180, 185, 186, 188 & 197/ 2013	A3, A5, A7, A6 & A4	13(1)(c) & (d) r/w. 13 (2) of the P.C. Act	Guilty	1 year S.I. & Rs.1000 fine, i/d. 3 months S.I.

3.For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

4.It is submitted by the learned Additional Public Prosecutor that the second accused died during pendency of the trial. It is further submitted by him that the fourth accused died during the pendency of the appeal and therefore, the charge against him stand abated.

5.The brief facts of the prosecution case is as follows:-

During 14.06.1994 to 31.05.2002, the first and second accused were the President and Secretary of Sowdambiga Higher Secondary Educational School Group, Allampatti, Virudhunagar, wherein the third accused was the Headmaster. The fourth accused was the District Educational Officer and the fifth accused was P.G. Assistant [Chemistry] in the said School. The sixth accused was the Superintendent in the Office of Virudhunagar District Educational Office and the seventh accused was the Personal Assistant to the District Educational Officer. All the above accused conspired together, prepared false attendance register and bills with an intention to misappropriate the Government money and also misappropriated the same. Hence, P.W.24, Investigating Officer, *suo motu* took up the case, conducted investigation and registered the First Information Report (Ex.P.36) in Crime No. 4 of 2007 for the offences under Section 120-B, 109, 420, 467, 468, 471 IPC and Section 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988. P.W.24 also secured the documents, which are marked as Ex.P. 37 to Ex.P.41. Thereafter, he conducted further investigation and secured other documents and finally, filed the final report before the trial Court against the accused.

6.After receipt of the final report, the trial Court framed the charges against the accused persons, which are as follows:-

The first and second accused were the President and Secretary of Sowdambiga Higher Secondary Educational School Group, Allampatti, Virudhunagar, and the third accused is the Headmaster of the said School and the fourth accused was the then Headmaster of Thiruthangal S.R.Government Higher Secondary School and in-charge of the Virudhunagar District Educational Officer from August 2004 to May 2005 and the fifth accused was employed as P.G. Assistant in the said School from 14.06.1994 to 31.05.2002. The sixth accused was Superintendent of the District Educational Office, Virudhunagar, from 10.07.2002 to 30.04.2007 and the seventh accused is the Personal Assistant to District Educational Officer and the Accused 3 to 7 are the public servants defined under Section 2(c) of the Prevention of Corruption Act, 1988. The above accused persons conspired together and fabricated attendance register, bills, as the fifth accused was working in the said School and misappropriated the Government Exchequer. Since all the accused denied their charges and pleaded not guilty, they were tried for the offences as stated supra.

7.To buttress the prosecution case, the prosecution examined P.W.1 to P.W.24 and marked Ex.P.1 to Ex.P.59. In order to disprove the case of the prosecution, the accused did not examine any witness, however, marked Ex.D.1 to Ex.D.3.

8.On consideration of both oral and documentary evidence, the trial Court, vide judgment dated 06.06.2013, has convicted the accused for the offences as stated above.

9.Against the said judgment, the accused have filed present appeals.

10.Mr.Ravindran, learned Senior Counsel appearing for the first accused would submit that the first accused is the Chairman of Allampatti Sowdambiga Group of Institutions and the third accused is the Headmaster, ex-officio member in the said School Committee and as per the decision of the School Committee, he signed in the decision and appointed the fifth accused in the place of one Gnanasambandam and he did not commit any offence as alleged by the prosecution. Initially, the said School was an aided School and subsequently, was upgraded to Higher Secondary School on condition that the school has to run with self-finance for three years and allotted the first accused to appoint eight teachers in the said School on condition that the salary should be paid by the Management. Accordingly, one Gnanasambandam was appointed as Chemistry Teacher in the said School. Since Gnanasambandam is the junior of one Swarnambal, who was examined as PW.3, aggrieved by the said seniority, filed a suit before the Sub-Court, Srivilliputhur, restraining the school authorities from regularizing five teachers and to appoint her as P.G. Teacher and the same was transferred to Sub-Court, Virudhunagar, as O.S.No.116 of 1996, wherein the same was dismissed for default with an observation that P.W.3 herein was regularly appointed on 30.11.2001. Since the appointment of Gnanasambandam was delayed, he left from the School on April, 1994. Thereafter, the fifth accused was appointed temporarily as P.G. Assistant from 14.06.1994 onwards. After 2002, the fifth accused got appointment in the Government School and left from the said School and he did not commit any offence as alleged by the prosecution.

11.P.Ws.5, 6, 8, 20 and 22 have clearly deposed regarding the appointment of the fifth accused in the place of Gnanasambandam and during the period of occurrence, the fifth accused was actually employed in a private company and during the relevant point of time, he was not working in the said School and the same was proved by P.W.7 and P.W.21, as they were employed in Private Companies and they clearly deposed that the fifth accused worked in the said

Company as part-time employee during night hours. The proposal for approval of the appointment of fifth accused in the School was duly forwarded by the educational authority *viz.*, P.W.16 and they have processed the proposal and the same was sanctioned by the 6th and 7th accused, in which, the first accused being the Chairman of the School Committee, have no role to play. Even excess bill amount paid in favour of the fifth accused was repaid and the alleged loss of exchequer amount of Rs.6,53,553/- (Rupees Six Lakhs Fifty Three Thousand Five Hundred and Fifty Three Only) was returned to the Government. Hence, there is no loss to the Government. The date of occurrence is 14.06.1994 to 31.05.2002. However, the First Information Report was registered on 08.06.2007 *i.e.,* after a delay of five years from the incident and there is no proper explanation from the Law Enforcing Agency in filing the First Information Report belatedly and there is no specific charge framed for the offence committed by the first accused.

12.The learned Senior Counsel appearing for the first accused would further submit that the charge is not specific to each and every accused and the charge is bald, accordingly, the learned Senior Counsel prayed for allowing the appeal.

13.Mr.M.Karunanidhi, learned counsel appearing for the third accused, would submit that the fifth accused was appointed as per the proposal of the Secretary to the District Educational Officer, Virudhunagar District, under Ex.P.13 Order dated 13.10.2004. As ordered by the Superior Officer in the District, the District Educational Officer approved the post, following the same, the Headmaster acted in sending the salary bills of the Teacher. The act of the Headmaster in forwarding the bills in compliance of the orders of Superior Officer can never be called as an offence. If he had not forwarded the bills of the Teacher, it could have been termed as insubordination and he has no such power also. Hence, there is no case against the third accused.

14.The learned counsel would further submit that as per Ex.P.13, the fourth accused / District Educational Officer, by order dated 27.10.2004, approved the appointment of the fifth accused under Ex.P.49. As per the approval of the fourth accused, the bills were prepared. Hence, the allegation levelled against the third accused is unsustainable one.

15.The learned counsel appearing for the third accused would further submit that the third accused is a public servant and therefore, prosecution can be laid only after getting a valid sanction from the competent authority under Law. To prosecute against the third accused, P.W.19 granted sanction order under Ex.P.31, which is not valid. P.W.19 is not the competent authority to accord sanction and in an earlier occasion, P.W.19 rejected the request as per Ex.D.3, dated 16.06.2008. P.W.19 without going through the materials on record, simply signed the same. P.W.19, in his evidence, clearly stated that he could not understand

English, but the sanction order is in English language. Hence, the alleged sanction order to prosecute the third accused is not in accordance with law. Hence, the learned counsel prayed for acquittal of the third accused.

16.In support of his contentions, the learned counsel for the third accused relied upon the decisions rendered in, (i) ***Jagdish Prasad Sharma Vs. The State*** reported in ***1996 Crl.L.J. 4424,*** (ii) ***State of Himachal Pradesh Vs. Nishant Sareen*** reported in ***AIR 2011 SC 404,*** (iii) ***Ravikumar Vs. State*** reported in ***2012(2) MWN (Cr.) 141,*** and (iv) an unreported judgment of the Delhi High Court rendered in the case of ***State Vs. Mukesh Kumar Singh and another*** in Crl.Rev.P.No.462 of 2017.

17.Mr.Ajmal Khan, learned Senior Counsel appearing for accused 4 and 6 would submit that d uring the pendency of the appeal, the fourth accused died and therefore, the charge against him would abate. Insofar as the sixth accused is concerned, the learned Senior Counsel would submit that the sixth accused, while he was working as Superintendent of District Educational Office, Virudhunagar, the fourth accused is the District Educational Officer, Virudhunagar District. They had not involved in any malpractices and misappropriation as alleged by the prosecution. They have been unnecessarily implicated in this case by the Law Enforcing Agency. The learned Special Judge, Madurai, without appreciating the facts, erroneously convicted the accused 4 and 6. In fact, the sixth accused had joined as Superintendent in the District Educational Office, Virudhunagar, only on 17.07.2002. The deceased/A4 was working as Headmaster in the Government Higher Secondary School, Thiruthangal, Virudhunagar District and he was ordered to hold Additional Charge of the District Educational Officer, Virudhunagar, during the period of August 2004 to May 2005 under Ex.P.5. During the relevant period, P.W.10, P.W.11 and P.W.16 were responsible persons for the alleged misappropriation and malpractices. The sixth accused is the Superintendent in the Office and his duty is just to put up the note based on the documents submitted by Accused 1 to 3 through P.W.10 and P.W.11 and he did not take any independent decision. However, in the present case, the fourth accused, who is in-charge of the District Educational Officer, Virudhunagar, has approved the salary bill as per the proposal sent by Accused 1 to 3. As such, the sixth accused is not responsible for the same. P.W.10, who was working as an Assistant in District Educational Officer's Office, Virudhunagar, has stated in the official note Ex.P.15 that he recommended to approve the appointment and issue grant, since the candidate possessed requisite educational qualification.

18.Further, P.W.16, then District Educational Officer, had sent a proposal regarding the appointment of the fifth accused in his proceedings dated 25.10.2002. On receiving the above said proposal, P.W.15, the then Chief Educational Officer, had passed the order in his proceedings dated 13.10.2004 under Ex.P.13.

P.W.16, after perusal of the entire documents, had recommended for appointment of the fifth accused, thereby, Accused 4 and 6 granted approval for sanction of the said amount. During the cross-examination, P.W.24 clearly stated that there is no misappropriation of the amount of Rs.49,835/- and Rs.6,53,553/- on 28.02.2007 and 28.06.2007 respectively, and no amount was paid as bribe to any of the Officers in the District Educational Officer's Office. Accused 4 and 6 had legally discharged their duties, after receiving the documents from P.W.16 and his subordinate P.W.10 and P.W.11, in accordance with law. On perusal of the above documents, it clearly shows that the Accused 4 and 6 have not committed any offence as alleged by the prosecution.

19.The learned Senior Counsel further submitted that the trial Court convicted the Accused 4 and 6 under Section 120-B IPC and there is no material to implicate them under Section 120-B IPC. Section 120-A IPC makes clear that the ingredients of the criminal conspiracy are that there should be an agreement between the two persons, who are alleged to conspire and the said agreement should be for doing of all illegal acts or for doing, by illegal means, an act which by itself may not be illegal. In the instant case, 24 witnesses have been examined and none of the witnesses made any specific reference to the role of Accused 4 and 6 with regard to the conspiracy. Hence, the learned Senior Counsel prayed for acquittal.

20.In support of his contentions, the learned Senior Counsel relied upon the decisions rendered in, (i) ***Dadasaheb Bapusaheb Naik Vs. State of Maharastra*** reported in ***1982 Crl.L.J. 856,*** (ii) ***Hari Ram Vs. State of Himachal Pradesh,*** reported in ***1982 Crl.L.J. 294,*** and (iii) ***Mohan Singh Vs. State of Bihar*** reported in ***(2011) 9 SCC 272.***

21.Mr.N.Vijayarajan, learned counsel for the fifth accused would submit that admittedly, the fifth accused served as P.G. Teacher in the place of Gnanasambandham from 14.06.1994 to 31.05.1995. Thereafter, he served in a Private Company from 25.12.1995 to 31.08.1996. P.W.22, in his evidence, clearly stated that the fifth accused was continuously working in the said School. In fact, P.W.6 Gnanasambandham has served in the School for one week from 25.11.1995 and thereafter, he served from 07.06.1994 to 31.12.1994 in Seva Sangam Girls Higher Secondary School, Trichy, and he joined in J.J.College of Engineering, Trichy, from 31.12.1994 to 06.01.1999. Thereafter, he got appointment in Government School under Ex.P.7 dated 30.12.1998.

22.The learned counsel appearing for the fifth accused would further submit that the allegation with regard to fabrication of attendance register, and the pay bill prepared based on the attendance register, cannot be termed as forged documents and there is no evidence to show that the accused has committed the offences under Sections 467 and 468 IPC for the purpose of cheating and using of the forged documents as genuine. In fact, the School Committee has issued appointment orders to the fifth accused during the relevant period and the fifth accused was not aware that the appointment orders were not issued in accordance with law. The prosecution has also not adduced any evidence contrary to the facts. Since the appointment orders were not issued in accordance with law that itself does not constitute an offence to implicate the fifth accused in the aforesaid crime, there is no involvement of the fifth accused being P.G. Assistant and during his tenure, he has given 100% result in the said School. The evidence of P.W.2 shows that there was no illegality in the appointment of the fifth accused and he also stated that the action taken for approval of the appointment of the fifth accused was proper. A perusal of Section 13(1)(d) of Prevention of Corruption Act, 1988, would make it clear that mere acceptance of money by a public servant would not constitute the offence defined in that Section and it is for the prosecution to establish the charge for the offence under that Section and the same should be proved in the manner known to law.

23.In this case, no such evidence is adduced by the prosecution against the fifth accused. In fact, the fifth accused left the School on 31.05.2002 and he joined in a Government School from 03.06.2002 and thereafter, he did not meet any of the accused in this case. During the alleged period of occurrence, he went to the School only to receive the salary arrears of Rs.6,53,553/-. The School Management paid him salary of Rs.600/- to Rs.1000/- per month for about 8 years. Hence, the fifth accused gave Rs.5,00,000/- to the Management. When P.W.12 issued orders to repay the salary, the Management returned it and the fifth accused repaid the entire salary amount and filed appeal in accordance with law. Therefore, there is no loss to the Government exchequer. Hence, the learned counsel prayed for acquittal of the fifth accused.

24.Mr.Kumaresan, learned counsel for the 7th accused would submit that the 7th accused joined as Personal Assistant to the District Educational Officer only on 01.03.2004. After receiving a letter dated 13.10.2004, he requested P.W.10 to put up original file pertaining to the appointment of the fifth accused with the permission of the District Educational Officer, Virudhunagar / fourth accused. On 20.10.2004, the original file was put up by the Section Clerk [P.W.10] before the 7th accused through the Superintendent / 6th accused. The 7th accused verified the original file with District Educational Officer / fourth accused and asked the sixth accused and P.W.10 Section Clerk to take action as per letter dated 13.10.2004 given by P.W.15, approval of the appointment of the fifth accused. Thereafter, on 25.10.2004, the Section Clerk P.W.10 put up the file with all particulars before the sixth accused. After verifying the file, the sixth accused put up the file before the 7th accused. Thereafter, the 7th accused verified the office note put up by the 6th accused and submitted to the fourth accused for the approval of appointment of the fifth accused, since the condition imposed by P.W.15 Chief Educational Officer, have been complied with. After the approval of the appointment of the fifth accused and after getting letter from the Headmaster / third accused, seeking arrears of bill of the fifth accused, the arrears of salary have been granted. The sixth accused prepared notes only based on the order of the Superior Officer. Hence, the allegation levelled against the 7th accused is unsustainable one. P.W.10, P.W.16 and P.W.24's evidence make it clear that the prosecution witnesses recommended for appointment of the fifth accused and they did not find any irregularity or illegality. Hence, based on the notes prepared by the prosecution witnesses and other Superior Officer, the 7th accused approved the appointment of the fifth accused as per the directions of the fourth accused. Accordingly, the learned counsel prayed for acquittal of the seventh accused.

25.The learned Additional Public Prosecutor appearing for the State in all these appeals would submit that admittedly, the procedure contemplated under the Tamil Nadu Recognised Private Schools (Regulation) Act, with regard to the appointment of teachers is not followed in the present case. Though the Government sanctioned 8 posts on condition that the salary should be paid by the management, 5 posts were sanctioned including the Chemistry Teacher, wherein the fifth accused claimed to be appointed after one Gnanasambandam. Initially, one Gnanasambandam - P.W.6 was appointed as P.G. Assistant [Chemistry]. Thereafter, the School Committee consisting accused 1 to 3 recommended for appointment of approval of the fifth accused on the ground that P.W.6 has not worked in the said School, deserted from the School and got appointment in the Government School. However, the claim was made only after 2002 and prior to 2002, the School Committee did not take any action to get approval of the fifth accused in the said School. It is very clear to note that the fifth accused did not continuously work in the School right from 1994 to 2002. The evidence of P.W.7 and P.W.21 clearly proves that at the relevant point of time, the fifth accused worked in a Private Company as part-time employee. However, the fifth accused was not worked in the said School continuously and when the person is not working in the particular School, claiming aid from the Government is illegal and the School Committee, in collusion with the officials misappropriated the Government funds to the tune of Rs.6,53,553/-. Though the amount was returned back to the Government, it does not wipe out the crime committed by the accused persons. In the present case, the third accused has duel role and he prepared false Attendance Register and bill along with the Accused 1 and 2 and the same was submitted before the educational authorities in collusion with the Accused 4, 6 and 7 in order to favour the fifth accused. While the Accused 1 to 3 are the School Committee Members, the Accused 4, 6 and 7 are educational authorities. The fourth accused is in-charge of District Educational Officer and the Accused 6 and 7 also assumed office immediately and they colluded and sanctioned the Government fund in favour of the 5th accused.

26.Repudiating the arguments of the learned Senior Counsel for the first accused, the learned Additional Public Prosecutor for the State would submit that mere vagueness in charge will not vitiate the entire prosecution and there is no prejudice caused to the accused due to vagueness of charges. However, the charge framed against the accused persons is that they conspired together and fabricated attendance register, bills, as if the fifth accused was working in the said School and misappropriated the Government Exchequer.

27.Repudiating the arguments of the learned Senior Counsel for the 6th accused, the learned Additional Public Prosecutor for the State would further submit that in the above cases, conspiracy could not be proved by circumstantial evidence. Here, the Accused 1 to 3 had created bogus records, subsequently, prepared attendance register and bills and the officials also put-up notes, without prior permission for appointment and there was direct evidence available in respect of conspiracy between the Accused 1 to 3 and the Accused 4, 6 and 7 in favour of the fifth accused and thus, there is not only circumstantial evidence, but also direct evidence to implicate the accused in respect of the conspiracy and preparing bogus records to grab the Government exchequer. The prosecution has clearly established their case beyond all reasonable doubts and therefore, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeals.

28.In support of his contentions, the learned Additional Public Prosecutor relied upon the decisions of the Hon'ble Supreme Court of India rendered in, (i) ***R.K.Dalmia and others Vs. The Delhi Administration*** reported in ***AIR 1962 Supreme Court 1821*** and (ii) ***N.V.Subba Rao Vs. State through Inspector of Police, CBI / SPE, Visakhapatnam, Andhra Pradesh*** reported in ***(2013) 2 SCC 162.***

29.In the light of the above submissions, now, it has to be analyzed that:-

(i) Whether the prosecution established its case that the accused persons conspired together and misappropriated the Government funds or not?;

(ii) Whether the fifth accused proved his employment in the School from 1994 to 2002 and whether he is entitled for any benefits for having worked in the said School during the period from 1994 to 2002 or not?; and

(iii) Whether the sanction of the prosecution in respect of the third accused by P.W.19 is valid or not and whether sufficient material was placed before him while according sanction or not?

30.Now, it has to be analyzed whether the appointment of the fifth accused is in accordance with the provisions of law or not. In the present case, admittedly, the case of the accused in all these appeals as well as the prosecution is that the said School initially was aided by the Government and subsequently, was upgraded to Higher Secondary School on condition that the School has to run with self- finance for three years and allotted the first accused to appoint eight teachers in the said School on condition that the salary should be paid by the Management. Chapter-IV - Section 15 of the Tamil Nadu Recognised Private Schools (Regulation) Act deals with constitution of School Committee, consisting the Headmaster of the said private school and the senior-most teachers employed in the private school. The terms and conditions of service of teachers and other persons employed in private schools is covered by Chapter-V - Section 20 of the Act envisages appointment of teachers and other employees in private schools. Corresponding provision is available in the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and Rules 12 and 15 of the said Rule envisage the constitution of school committee and the qualifications, conditions of service of teachers and other persons and the said Rule prescribes the school committee of every private school shall enter into an agreement with the Teacher or other person in Form VII-A or VII-B, if the appointment is for a period exceeding three months and the school committee of every private school shall enter into an agreement with the person appointed as Junior Grade Teacher in Form VII-C.

31.It is also necessary for the School Committee to obtain prior permission for appointment of teachers from the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary School, Teachers' Training Institutions, setting out the reasons for such appointment. Sanction of the post is one aspect and appointment of teacher is another aspect. Merely, because of the post sanction, does not mean that the appointment was approved by the authority. In the present case, the Educational Authorities sanctioned 5 posts under Ex.P.5. However, no appointment was ordered in favour of Ramanujam / fifth accused and without any appointment, the fifth accused worked as a Teacher right from 1994 to 2002.

32.A perusal of Ex.P.5, dated 18.11.1995, shows that the educational authority accorded sanction in respect of one G.Murugesan, P.G. Assistant [Maths], M.Ganesan P.G. Assistant [English], S.Sakthivel, P.G. Assistant [Commerce], G.Palanisamy, P.G. Assistant [Zoology] and M.Gnanasambandam, P.G. Assistant [Chemistry] (P.W.6). Thereafter, as per Ex.P.6, P.W.6 resigned his post due to the pendency of the case instituted by P.W.3 against him as well as the School Committee with regard to the seniority. Thereafter, on 31.12.1998, P.W.6 was appointed as P.G. Assistant [Chemistry] in Government Boys Higher Secondary School, Pothakudi, Thiruvarur District. While that being so, Ramanujam / fifth accused was appointed in the place of Gnanasambandam. The School Committee, Seva Sangam Girls Higher Secondary School and J.J.College of Engineering and Technology also issued service certificate in favour of P.W.6 under Exs.P.8, P.9 and P.10.

Thereafter, through Ex.P.11, the School Committee decided to remove P.W.6 from the School, as P.W.6 did not regularly come to the School from 07.06.1994 and the same was intimated to Virudhunagar District Chief Educational Officer. The School Committee ratified the removal of P.W.6 and appointed the fifth accused permanently in the place of P.W.6, by passing a resolution dated 26.11.2001, in which, the first accused is presided over the School Committee, signed by the members, including the Secretary and the Headmaster/A3 and their names are found in Serial Nos.1 and 7 respectively. Thereafter, P.W.16 and P.W.15 recommended for permanent absorption of the fifth accused in the said post through Exs.P.12 and P.13.

33.Though a file was created, there was a series of correspondence in between the School Committee and the District Educational Officer and the entire correspondence work right from 2002 onwards, is marked as Ex.P.15. The last date of correspondence is 08.10.2002 and thereafter, there is no movement in the file. However, P.W.10 taken-up the file and sent it for approval of higher officials. On 13.10.2004, the Chief Educational Officer, Virudhunagar, in his proceedings, has stated that since the appointment was made prior to 13.11.1995, there is no need to get permission from the Employment Exchange, however, for accepting the appointment of the fifth accused, after verifying his educational qualifications, the District Educational Officer has to take right decision. Based on the above said letter, the fourth accused / Headmaster / In-charge of District Educational Officer, by proceedings dated 27.10.2004, accorded sanction for appointment of the fifth accused, fixing scale of pay, in which, the Accused 6 and 7 prepared notes and made recommendations to the District Educational Officer for ratifying the appointment of the fifth accused and claiming pay from the Government for the period of 14.06.1994 to 31.05.1995, thereafter, the third accused / Headmaster of the said School sent a letter to the District Educational Officer (In-charge) / fourth accused on 14.11.2004 including pay bill for the fifth accused for the period from 14.06.1994 to 31.05.1995 and in the claim bill, the fourth accused had signed and dishonestly sanctioned the bill in favour of the fifth accused.

34.A perusal of the above proceedings makes it clear that without prior permission from the Educational Authorities and without any proper proof with regard to the appointment of the fifth accused, the Accused 4, 6 and 7 colluded together and ratified the appointment of the fifth accused and immediately, thereafter, the third accused prepared the pay bill and sent it to the fourth accused for approval and misappropriated an amount of Rs.6,53,553/-, which is clearly established before this Court.

35.In the present case, Accused 4, 6 and 7 were accorded sanction by P.W.4 and P.W.2, however, in respect of the third accused, sanction was accorded only by the Secretary of the School

Committee.

36.In the light of the above, now it is necessary to discuss the decision relied upon by the learned Senior Counsel appearing for the 6th accused in,

(i) ***Dadasaheb Bapusaheb Naik Vs. State of Maharastra*** reported in ***1982 Crl.L.J. 856,*** wherein at Paragraphs 15 and 16, it has been held as follows:-

> ''15. Admittedly, this is a case wherein the prosecution rests entirely on circumstantial evidence for proving the alleged criminal conspiracy between accused Nos. 1, 2 and 4 to cheat the Zilla Parishad and/or the Panchayat Samiti. Parner by preparing false accounts. It appears that the investigating agency thought that the circumstances referred to above were sufficient enough to establish a clinching case of conspiracy without any direct evidence. In cases of conspiracy, though it is true that direct evidence other than that furnished by an approver is not generally available, it cannot be disputed that in those cases of conspiracy in which the prosecution relies only on circumstantial evidence to establish a criminal agreement between the accused persons to commit an alleged offence, it is necessary for the prosecution to prove and establish such circumstances as would lead to the only conclusion of existence of a criminal conspiracy. If there are circumstances compatible with innocence of the accused persons, the prosecution cannot succeed on the basis of such circumstantial evidence.
>
> 16. There are cases of criminal conspiracy in which evidence adduced by the prosecution for proving criminal conspiracy is the same as evidence for establishing the offence which is alleged to be the object of the criminal conspiracy. I feel that in such cases if the prosecution is not able to establish its case so far as the main offence constituting the object of criminal conspiracy is concerned, it will be extremely unsafe to find the accused persons guilty of abetment of the said offence with the aid of S. 120-B, I.P.C. unless by unimpeachable evidence, circumstances incompatible with the non-existence of criminal conspiracy are established by the prosecution.''

(ii) ***Hari Ram Vs. State of Himachal Pradesh,*** reported in ***1982 Crl.L.J. 294,*** wherein at Paragraph 12, it has been held as follows:-

> ''12.Similarly there is no evidence whatever to support the charge under Section 120-B, IPC

against the accused. With respect to this charge we have only to say that the criminal conspiracy as defined in Section 120-A, IPC is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The gist of this offence is, therefore, the agreement. Direct proof of the conspiracy is of course seldom available. In a case of conspiracy when there is no direct evidence as in the instant case, inferences from the proved facts and circumstances to a large extent form the basis of the Court's conclusion. In dealing with such cases based on circumstantial evidence, however, an inference of guilt need only be drawn when the circumstances are such as to be incapable of being reasonably explained on any other hypothesis than the guilt of the accused. The only circumstance as appears against the accused and as already stated is that his thumb impression is found to exist on the actual payee's receipt which is found to be forged. This circumstance stands explained by the accused. The explanation offered by the accused is quite reasonable. In the absence of any other circumstantial evidence, it is not possible to infer from this circumstance alone that the accused had entered into any conspiracy with Pratap Singh. It may be remarked that keeping in view the positions which the accused and Pratap Singh were holding in the office of the Board, it looks quite unnatural and unconvincing that Pratap Singh would have reposed any confidence in the accused with respect to his evil design. The more reasonable view appears to be that Pratap Singh would not take the accused into confidence especially when he could have obtained the thumb mark of any labourer or other person on the receipts which he intended to forge and it was not necessary for him to hire the services of the accused for that purpose. In the circumstances there is no case made out for interfering with the order of acquittal recorded by the learned Sessions Judge in respect of the charge under Section 120-B, IPC.''

(iii) ***Mohan Singh Vs. State of Bihar*** reported in ***(2011) 9 SCC 272,*** wherein at Paragraphs 36 to 39, it has been held as follows:-

''36.The next decision on which reliance was placed by the learned counsel for the appellant was rendered in the case of Saju v. State of Kerala reported in (2001) 1 SCC 378. In Saju (supra) this Court explained the principles of Section 10 of the Evidence Act, as follows:-

"F. Evidence Act, 1872 - Section 10 -

Condition for applicability of Act or action of one of the accused cannot be used as evidence against the other. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other."

If we apply the aforesaid principles to the facts of the present case it is clear that there is enough evidence to furnish reasonable ground to believe that both the appellant and Laxmi Singh had conspired together for committing the offence. Therefore, the principles of this case do not help the appellant.

37.The learned counsel for the appellant also relied upon the decision of this Court in Yogesh v. State of Maharashtra reported in (2008) 10 SCC 394. In paragraph 25 at page 402 of the Report this Court laid down the following principles:-

"25.Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement."

In view of the aforesaid principles, this Court finds that no assistance can be drawn from the aforesaid decision to the case of the appellant in this case.

38.Reliance was also placed on the decision of this Court in S. Arul Raja v. State of Tamil Nadu reported in (2010) 8 SCC 233. In that case, this Court held that mere circumstantial evidence to prove the involvement of the accused is not sufficient to meet the requirements of criminal conspiracy and meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence. In the instant case, as discussed above, substantive evidence was placed to prove the meeting of minds between the appellant and Laxmi Singh about the murder of the victim. In evidence which has been noted hereinabove in the earlier part of the judgment it clearly shows that there is substantial piece of evidence to prove criminal conspiracy.

39.Reliance was also placed by the learned counsel for the appellant on the decision of this Court in Mohd. Khalid v. State of West Bengal reported in (2002) 7 SCC 334. In that case, this Court held that offence of conspiracy can be proved by either direct or circumstantial evidence. In paragraph 24 at page 354 of the Report the following observations have been made:-

> "24.Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence." ''

37.A perusal of the decisions relied upon by the learned Senior Counsel appearing for the Accused 4 and 6, with regard to conspiracy, makes it clear that where direct evidence is not available and the prosecution relies only on circumstantial evidence to establish a criminal agreement between the accused persons to commit an alleged offence, it shall establish the same by way of direct evidence. Further, in most of the cases, the evidence adduced by the prosecution for proving criminal conspiracy is the same as evidence for establishing the offence, which is alleged to be the object of the criminal conspiracy. In such cases, if the prosecution is not able to establish the case so far as the main offence constituting the object of criminal conspiracy is concerned, it will be extremely unsafe to find the accused persons guilty of abetment of the said offence with the aid of Section 120-B IPC, unless by unimpeachable evidence, circumstances incompatible with the non-existence of criminal conspiracy are established by the prosecution. In the present case, admittedly, there is no proof to show that the fifth accused had worked during the years 1994 to 2002 and the School Committee passed a resolution in the year 2001, wherein a claim was made before the Government for claiming pay in respect of the fifth accused for the period from 1994 to 2002 and the fourth accused - Headmaster, while In-charge of District Educational Officer, accorded sanction of ratification of appointment of the fifth accused and the same was processed by the Accused 6 and 7 and sanctioned the bill in favour of the fifth accused, based on the notes submitted by the third accused.

38.In the present case, as evident from Ex.P.6, M.Gnanasambandam, P.G. Assistant [Chemistry] (P.W.6) resigned his post and left the School on 23.02.1996 itself. However, the School Committee passed a resolution only on 26.11.2001 appointing the fifth accused and recommended for permanent absorption of the fifth accused in the said post and no documents were produced before this Court with regard to appointment of the fifth accused with prior permission from the Educational Authorities. Only in the year 2001, the School Committee passed a resolution and thereafter, the action of the School Committee consisting of A1 to A3 instigating the Educational Authorities *viz.,* A4, A6 and A7 to sanction the post and salary by producing bogus bills as if the fifth accused was working in the said School from 1994 onwards. They conspired together by creating bills and got it sanctioned through A4, A6 and A7 and A5 also did not produce any valid appointment order from 1994 to 2001 *i.e.*, prior to the resolution. Further, it is relevant to mention that A4 was working as Headmaster and was given In-charge of District Educational Officer and he sanctioned and approved the said appointment. In the absence of any valid appointment order with regard to prior permission, this Court has no hesitation to arrive at a conclusion that the accused persons conspired together and misappropriated the Government funds. Further, the fifth accused has not proved his employment in the said School and therefore, he is not entitled to any benefits during the relevant period. Accordingly, Issue Nos.1 and 2 are answered against the accused.

39.With regard to sanction of prosecution in respect of the third accused is concerned, P.W.19 - Secretary of the School Committee has no authority to accord sanction. There was an allegation that P.W.19 did not know English and the prosecuting agency prepared sanction order, in which, P.W.19 signed. The third accused has duel role in respect of official duty as Headmaster and another School Committee Member of the said School, in which, he is the authority to take a decision with regard to the appointment of the fifth accused, thereafter, he prepared bill and sent it for approval and presented them, claiming the amount in favour of the fifth accused, and same was also not disputed.

40.In any event, it is also relevant to mention that P.W.19, the then Secretary of the School Committee, initially refused to grant sanction order in favour of the third accused. Though the sanction order was sent in English, he replied in Tamil and there is no proper explanation as to how he understand English and he clearly deposed that he did not know English. Further, he accorded sanction and subsequently, turned hostile. However, on a perusal of the evidence of P.W.19, it is seen that he admitted that Vigilance Department sent model sanction order along with relevant papers and thereafter, he put his signature in Ex.P.31.

41.At this juncture, it is relevant to discuss the decisions relied upon by the learned counsel for the third accused, rendered in,

(i) ***Jagdish Prasad Sharma Vs. The State,*** reported in ***1996 Crl.L.J. 4424,*** wherein at Paragraphs 5 and 6, it has been held as follows:-

''5.The order refusing the sanction having been passed on entire material available on record and the appointing authority having been satisfied that no prima case was made out, what made him to change his view, particularly when no fresh material was placed on record, can be nothing but erroneous impression. Such review or going back on earlier order is fraught with danger. It is destructive of certainty and finality. It may leave room open for influence and pressure. Since the earlier order was passed in this case after careful consideration of material on record, no fresh material was collected by new new Investigating Officer as is apparent from his report. He also relied on the material collected by Mr. Prithvi Raj Bhatia but added that income to be that of the petitioner which Mr. Bhatia after verification held not to be the individual income of the petitioner. By doing so, he reappraised the material without any basis. In this view of the matter, I am in agreement with the contention of Mr. P. R. Thakur that the Sanctioning Authority was precluded from recalling the earlier order of declining the sanction and or passing fresh order on the same material based on erroneous impression.

6.So far as the delay aspect of the case is concerned, I have already indicated the facts that the investigation started in 1977. Preliminary investigation started in earlier 1978 to ascertain the assets disproportionate to the known source of income of the petitioner. The check period was fixed from 1-1-1968 to 31-12-1977. This investigation went on for nearly nine years. It was only in 1986 that the sanction was accorded and in 1987 challan was filed in the Court. Thus it took almost 10 years to the case to reach this Court. From 1987 till date the charge has not been framed. Mr. P. R. Thakur stated that what to talk of charge it is case where even till date all documents have not been supplied and that too for no fault of the petitioner. Petitioner in the meantime got retired from service on 31st December, 1986. The challan was filed subsequent thereto. All his dues have been withheld because of this criminal case. Petitioner has been running from pillar to post to get justice. He filed this petition because he wanted the documents so that case could proceed expeditiously. But also knocking the door of this Court also did not help him. Unfortunate for him, in this Court also it has taken six years to at least express his anguish. Now directing the respondent to supply the documents and frame the charge would be an order in futility because as Mr. P. R. Thakur rightly contended that when two of the petitioner's material witnesses have already expired, many more may not survive that long. Moreover, it is not sure how much time prosecution will take to examine 61 witnesses. It would be a mockery of law to ask the petitioner now to face this trial after 18 years. I am supported in my this view by the observation of Supreme Court in the case of Santosh De V. Archna Guha, AIR 1994 SC 1229 : 1994 Cri LJ 1975 Supreme Court opined in that case that when the prosecution remains pending for number of years and no a single witness has been examined and the delay is not attributable to the accused, in such an eventuality proceedings should be quashed. In that case, prosecution kept pending for 14 years. There the petitioner was a public servant alleged to have possessed disproportionate assets. Considering the delay, the Apex Court opined that when the charge was framed after lapse of about 9 years from the date of committal of case to the Sessions Court and delay was on account of fault of the prosecution that by itself defeat the right of the accused to speedy trial and infringes his right under Article 21 of the Constitution. Therefore, proceedings were ordered to be quashed. To the same effect are the observations of the Apex Court in the case of State of Andhra Pradesh V. P.V. Pavithran, AIR 1990 SC 1266 : (1990 Cri LJ 1306), where it has been observed that when there is lull in the investigation for very long spell causing inordinate delay and the prosecution having not filed report as contemplated under Section 173 Cr.P.C. for a long period the further proceedings are liable to be quashed. The right of accused for speedy investigation and trial in a criminal case is protected under Article 21 of the Constitution. To the same effect are the observations of the Supreme Court in the case of Biswanath Prasad Singh V. State of Bihar, 1994 Cr. 1 L.J. 242 : (1993 AIR SCW 3631), where it has been observed that calling the petitioner' to enter upon defence after 16 years bound to cause him prejudice. Therefore, prosecution was ordered to be quashed. Punjab and Haryana High Court in the case of Raj Kumar Chopra V" State of Punjab, 1990 (2) C. C. Cases 93 (P & H) also quashed the FIR because of the delay of 12 years in investigation and trial. The delay was held to be violative of constitutional guarantee of speedy trial as contemplated under Article 21 of the

Constitution, particularly when this delay was not attributed to the accused. This court also in the case Cri. M. (M) 399/90 decoded on 9th August, 1990 held that delay is fatal to a criminal trial. In the present case alleged amassing of wealth disproportionate to his known source of income pertains to the period from 1-1-1968 to 31-12-1977. We are now in 1996, almost 18 years have elapsed and till date charge has not been framed and even documents have not been supplied. The facts reveal that this inordinate delay was on account of fault of the prosecution and not attribute to the petitioner. Even when the petitioner approached his Court no stay was granted in his favour. Still the trial of the case did not proceed. It remained where it was in 1990. With this pace expeditious trial is not possible. For no fault or act of the petitioner, either the investigation was delayed or trial got delayed. There has been no progress of the trial. There is also no explanation of delay by the prosecution. To my mind, this infringed the right of the petitioner guaranteed under Article 21 of the Constitution of India. Even if as the counsel for the State contended that it is a serious criminal offence, yet we cannot be oblivious of the fact that almost more than 18 years have elapsed from the date of the alleged occurrence. Still petitioner is not sure what is happening in this case. In view of these circumstances, I am of the considered view that the petitioner having been deprived of speedy trial does not deserve facing the trial any further. Hence, the proceedings pending in the Court of Special Judge in FIR No. 2/79 are liable to be quashed. Order accordingly.''

(ii) ***State of Himachal Pradesh Vs. Nishant Sareen***, reported in ***AIR 2011 SC 404,*** wherein at Paragraphs 12 and 13, it has been held as follows:-

''12.It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

13. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.''

(iii) ***Ravikumar Vs. State,*** reported in ***2012(2) MWN (Cr.) 141,*** wherein at Paragraph 16, it has been held as follows:-

''16.With regard to the next contention, it is to be decided that whether any fresh material is required or not when a Competent Authority had already declined to grant sanction and subsequently it is reviewed and sanction is accorded by a superior authority to the Competent Officer. Of course, it was admitted by the learned Special Public Prosecutor for CBI that if subsequently the sanction was accorded by the same officer, fresh materials are required. In this case, it is an admitted fact that no fresh materials were placed before the Chief Commissioner of Income Tax, who is a superior authority to the Commissioner of Income Tax (Competent Authority). Of course, the Commissioner of Income Tax while declining to grant sanction, he had gone deep into the facts of the case. The charge against the Public Servant was that he was in possession of disproportionate assets to the known sources of income. In such case, the explanation given by Public Servant in an important and relevant material for consideration. Even the Investigating Officer must first try to satisfy himself with the explanation given by the Accused and only when he is not satisfied with the investigation, he has to file a final report against the Accused. While so, it cannot be said that it is improper for the Sanctioning Authority to go into those explanation given by the Accused. It is observed by the Competent Authority that the Second Accused is the wife of the First Accused who is also a Doctor has disclosed her income from private practice under the head professional income in her R.O.I, year after year and the same cannot be ignored while determining the disproportionate assets. The Competent Authority had observed in his ultimate paragraph as follows:

> "60. Thus, in the light of all the facts and catena of judicial pronouncements as mentioned above, it can safely be concluded that the prosecution has failed to make out a convincing case of disproportionate assets against the Accused and could not adduce sufficient evidence to prove the charge alleged against the Accused. Ipso facto prosecution did not even discharge the initial burden of raising the presumption of disproportionate assets against the Accused and hence, in the considered opinion of the undersigned, no disproportionate assets case is *prima facie* made out against the official. Even for the sake of argument, if it is presumed that such presumption has been raised, even then, the details and submissions made by the Accused clearly show that Accused has satisfactorily accounted for the alleged disproportionate assets belonging to his wife. In the circumstances, I am unable to grant sanction to the prosecution under Section 19(l)(c) of Prevention of Corruption Act to prosecute the Government servant concerned under Section 13(2) read with 13(l)(e) of the Prevention of Corruption Act and Section 109 IPC." ''

(iv) An unreported judgment of the Delhi High Court, rendered in the case of ***State Vs. Mukesh Kumar Singh and another [Crl.Rev.P.No.462 of 2017, decided on 03.04.2018],*** wherein at Paragraphs 68, 70, 71 and 133, it has been held as follows:-

> ''68.Since the case also involves offences under the general criminal law, particularly with reference to the penal clauses contained in Section 384 IPC (extortion) and Section 389 IPC (putting

person in fear of accusation of offences, in order to commit extortion), the conditions requisite for initiation of such proceedings against such public servants as mandated by the general criminal procedure also needs to be borne in mind and, for this purpose, it is necessary to take note of the provision contained in Section 197 Cr.P.C. which, to the extent relevant, reads thus:-

> "197. Prosecution of Judges and public servants.
>
> (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:
>
> (emphasis supplied)''

70.The prime contention urged by A1 is that the fresh sanction for prosecution under Section 19 of POC Act (Ex.PW-1/A) is vitiated since it was granted under compulsion, crucial material having been withheld, material of import showing "frame-up" having been excluded, inadmissible evidence being the foundation and there being no proper application of mind. It is also his contention that the prosecution for offences under the general law (i.e., IPC offences) in the present case is also impermissible, there being no sanction under Section 197 Cr.P.C. The State, on the other hand, argues that the Special Judge has taken an appropriate view in the absence of sanction under Section 197 Cr.P.C., the acts statedly committed constituting IPC offences being such as cannot be said to have been committed "in discharge of official duty". It is also the argument of the State that the Special Judge by the impugned order has taken a correct approach on the issue of validity of sanction under Section 19 of POC Act, it being inadvisable for the court to interdict at this stage. In response, A1's case is that he having raised the issue of invalidity of sanction under Section 19 of POC Act at the threshold, the evidence on this issue having been adduced by the prosecution, he is within his rights to seek intervention by the court to put an end to criminal proceedings which are wholly unauthorized and illegal for want of proper and valid sanction, it not being a case merely of "error, omission or irregularity" but of invalidity and want of sanction which would occasion or result in "failure of justice", if the prosecution is permitted to continue and, therefore, the question requires to be determined at this very stage.

Judicial view on validity of Sanction

71.In Yusofalli Mulla Noorbhoy v. King, 1949 SCC OnLine PC 20: AIR 1949 PC 264, the Privy Council ruled that prosecution launched without a valid sanction is a nullity observing that a court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law. In R.S. Nayak vs. A.R. Antulay, (1984) 2 SCC 183, a Constitution Bench of five Hon'ble Judges of the Supreme Court held that "trial without a sanction renders the proceedings ab initio void. But the terminus a quo for a valid sanction is the time when the court is called upon to take cognizance of the offence. ... "the existence of a valid sanction" being prerequisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servants", the court "called upon to take cognizance of such offences," being bound to "enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant.". It has, however, also been consistent view of the courts that protection available under the statutory provisions rendering grant of sanction to prosecute a public servant - a condition precedent to the institution of the prosecution - is not absolute.

133. For the foregoing reasons, this court finds the fresh sanction under Section 19 of POC Act to be vitiated rendering the proceedings in the criminal case based thereupon impermissible. In the given facts and circumstances, this court also holds that the prosecution of A1, A2 or A3 for offences under the general criminal law (IPC offences) is also impermissible, there being no sanction under Section 197 Cr. PC. Further, this court concludes

that no case of charge is made out on the available material to put A1, A2 or A3 on trial on the reports under Section 173 Cr. PC presented in the case of ACB.''

42.A perusal of the decisions relied upon by the learned counsel for the third accused makes it clear that when the sanction order was refused on an earlier occasion and subsequently, if it is found that there is any fresh material collected by the Investigating Agency, the same should be placed before the sanctioning authority for re-consideration. However, in the present case, earlier request of sanction order was refused by the Secretary and subsequently, without any material, sanction order was obtained based on the model sanction order, which is unsustainable.

43.The said argument is liable to be rejected on the ground that the third accused is the member of School Committee and initially, P.W.19 Secretary of the School Committee refused to grant sanction order in favour of the third accused, however, subsequently, the Vigilance Department sent a model form and other records for sanction of prosecution and P.W.19 signed in the sanction order. Hence, the decisions relied upon by the learned counsel for the third accused are not applicable to the present case.

44.In view of the above, I do not find any error in the sanction obtained from the School Committee by the Director of Vigilance and Anti Corruption Department. Even without sanction order, the third accused is responsible for the illegal act of presenting the bogus bills. Accordingly, Issue No.3 is answered against A3.

45.In view of the above discussion as to evidence and exhibits namely, Exs.P.5 to P.16, this Court is of the view that the prosecution has clearly established the conspiracy in between the accused persons and it is properly explained by way of positive evidence.

46.Learned counsel for the appellants in Crl.A.(MD)Nos.180, 185, 186, 188 and 199 of 2013 / A3, A5, A7, A6 and A1 submitted that this Court may show some indulgence on the sentence imposed on A3, A5, A7, A6 and A1 by the Trial Court, as they are old age persons and now suffering from age related ailments.

47.Considering the age of the appellants in Crl.A.(MD) Nos.180, 185, 186, 188 and 199 of 2013 / A3, A5, A7, A6 and A1 and age related ailments as submitted by their counsel, during the course of arguments, this Court, while confirming the conviction, reduces the sentence imposed on them as follows:-

Appellant	Conviction imposed u/s.	Sentence imposed	Sentence reduced to
Crl.A.(MD) Nos.180, 185, 186, 188 and 199 of 2013 / A3, A5, A7, A6 and A1	120-B IPC	two years simple imprisonment and pay fine of Rs.1,000/-, in default, six months simple imprisonment.	one year simple imprisonment. Fine and default sentence are confirmed.
Crl.A.(MD) Nos.180, 185, 186, 188 and 199 of 2013 / A3, A5, A7, A6 and A1	467 IPC	two years simple imprisonment and pay fine of Rs.1,000/-, in default, six months simple imprisonment.	one year simple imprisonment. Fine and default sentence are confirmed.
Crl.A.(MD) Nos.180, 185, 186, 188 and 199 of 2013 /A3, A5, A7, A6 and A1	471 IPC	two years simple imprisonment and pay fine of Rs.1,000/-, in default, six months simple imprisonment.	one year simple imprisonment. Fine and default sentence are confirmed.
Crl.A.(MD) Nos.180, 185, 186, 188 and 199 of 2013 / A3, A5, A7, A6 and A1	468 IPC	one year simple imprisonment and pay fine of Rs.1,000/-, in default, three months simple imprisonment.	Confirmed
Crl.A.(MD) Nos.180, 185, 186, 188 and 199 of 2013 / A3, A5, A7, A6 and A1	420 IPC	one year simple imprisonment and pay fine of Rs.1,000/-, in default, three months simple imprisonment.	Confirmed
Crl.A.(MD) Nos.180, 185, 186 and 188 of 2013 / A3, A5, A7 and A6	13(1)(c) and (d) r/w. 13(2) of the Prevention of Corruption Act	one year simple imprisonment and pay fine of Rs.1,000/-, in default, three months simple imprisonment.	Confirmed

All the sentences are ordered to run concurrently. The period of incarceration already undergone by the appellants/accused shall be given set off under Section 428 Cr.P.C. The appellants are directed to surrender before the Trial Court within a period of six weeks from the date of receipt of a copy of this judgment. The bail bond, if any, executed by them stands cancelled.

48.In the result, Crl.A.(MD)Nos.180, 185, 186, 188 and 199 of 2013 are partly allowed. Since it is reported that A4 / Appellant in Crl.A.(MD)No.197 of 2013 is dead, Crl.A.(MD)No.197 of 2013 is dismissed as abated.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

Myr

To

1.The Special Judge for Anti corruption cases under
the Prevention of Corruption Act,
Madurai.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Virudhunagar.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

5. The Chief Judicial Magistrate,
Srivilliputhur.

+1CC TO MR.N.VIJAYARAJAN, Advocate Sr. No.53176
+1CC TO MR.M.KARUNANITHI, Advocate Sr. No.53723
+1CC TO M/s.AJMAL ASSO., Advocate Sr. No.53511
+1CC TO MR.A.SIVAJI, Advocate Sr. No. 53174

Pre-Delivery Common Judgment made in
CRL.A.(MD)Nos.180,185,
186,188, 197 and 199 of 2013
11.03.2019

TR (11.04.2019) 29P 11C