IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.02.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 162 OF 2010

The State rep. by
The Dy. Superintendent of Police
Vigilance & Anti-Corruption
Head Quarters, Chennai - 600 016. .. Appellant/Complaintant
(Crime No.1/AC/99/HQ.1)

- Vs -

1. T.Ratnapandian
2. C.Gandhimathi .. Respondents

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the judgment dated 03.02.09, passed by the learned VI Addl. Judge, City Civil Court, Chennai, made in C.C. No.12/2002.

For Appellant : Mr. C.Iyyapparaj, APP

For Respondents: Mr. R.Shanmugasundaram, SC, for
Mr. V.Krishnakumar

JUDGMENT

The respondents herein were arrayed as A-1 and A-2, in C.C. No.12/2002 on the file of the VI Addl. Judge, City Civil Court, Chennai, and they were 13 (2) r/w 13 (1) (e) and 109 r/w 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act (for short 'the PC Act'), and after trial, as the prosecution did not prove the charges, the accused were acquitted of the aforesaid charges. Aggrieved by the said acquittal, the present appeal has been preferred by the appellant/State.

2. Shorn of unnecessary details, the brief facts could be summarised as hereunder :-

A-1 is a public servant; A-2 is the wife of A-1. At the relevant point of time, A-1 was working as Superintendent in Tamil Nadu Cements Corporation Ltd. From 1.1.92 and A-2 was working as Typist in the Office of the Director of School Education from 8.3.99. It is the case of the prosecution that A-1 while functioning as a public servant in various capacities, during the period 1.1.90 to 12.1.99, had acquired assets, disproportionate to his known sources of income, in his name and in the name of A-1, viz., his wife to the tune of Rs.18,43,172/-

and since he could not satisfactorily explain the acquisition of the assets, he was charged for the offence u/s 13 (2) r/w 13 (1) (e) of the PC Act and A-2 was charged as abettor to the said acquisition with the aid of Section 190 IPC.

3. A search of the premises of A-1 was conducted by the officials of Vigilance and Anti-Corruption and during the said search, incriminating documents relating to acquisition of movable and immovable properties and other documents were seized. Detailed inventory of the articles so seized were tabulated. Therefore, prosecution under the relevant provisions of the PC Act was initiated against A-1 and A-2 after obtaining necessary sanction from the competent authorities. Criminal machinery was set in motion which culminated in the filing of the charge sheet against the accused.

4. The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed charges under the provisions of the Indian Penal Code as well as under the provisions of the Prevention of Corruption Act. When questioned, the accused pleaded not guilty.

5. To prove the case, the prosecution examined P.W.s 1 to 61 and marked Exs.P-1 to P-30. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. On the side of the accused, D.W.s 1 and 2 were examined, but no documents were marked. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, acquitted all the accused/respondents herein. Aggrieved by the said acquittal recorded by the trial court, the appellant has filed the present appeal.

6. Mr.Iyyapparaj, learned Addl. Public Prosecutor appearing for the appellant submitted that the finding of the trial Judge that the sanction order, Ex.P-3 given by P.W.2, is ill-motivated and, therefore, no reliance can be placed upon the same is unsustainable. It is the submission of the learned Addl. Public Prosecutor that P.W.2 has given sanction only insofar as A-1 is concerned. It is the further submission of the learned Addl. Public Prosecutor that P.W.2 is the competent authority to accord sanction in respect of A-1 and, on the materials placed before him, P.W.2, satisfying himself that a prima facie case has been made out against A-1, has accorded the sanction and, therefore, the finding recorded by the trial court on this aspect deserves to be interfered with.

7. Similarly, the sanction accorded by P.W.1, the competent authority insofar as A-2 is concerned is also based on materials. It is therefore submitted by the learned Addl. Public Prosecutor that the respective sanctioning authorities, based on the materials available on record, have satisfied

themselves and have accorded the sanction.

8. It is the further contention of the learned Addl. Public Prosecutor that though P.W.s 30, 43, 44, 46, 47, 48, 49 and 52 have spoken about construction contract business having been done by A-2 during the check period, however, no documentary evidence have been placed by A-2 to rebut the presumption and, therefore, in the absence of any acceptable evidence in the form of income tax filing, periodical accounts, etc., the finding recorded by the trial court that the assets calculated by the appellant as disproportionate to the known source of income of the accused cannot be accepted is per se incorrect. It is the submission of the learned Addl. Public Prosecutor that a duty is cast upon the accused to prove that the income is not disproportionate by adducing necessary evidence and in the absence of the same, mere contending that A-2 was doing real estate/contracting business would not be sufficient to rebut the presumption that the income was not disproportionate as claimed by the appellant.

9. It is the further contention of the learned Addl. Public Prosecutor that the weightage given to the evidence of P.W.s 19 and 21, who are related to the accused, is per se impermissible, more so, when it is the duty of the accused to rebut the presumption under the PC Act and the evidence counter to the documents cannot be the basis of arriving at a conclusion that the income of the accused was not disproportionate to their known sources.

10. It is the submission of the learned Addl. Public Prosecutor that the income of the accused were far lesser than their expenditure, however, the income, had culminated into assets, disproportionate to their known sources, which places the accused in the position of explaining the said acquisition by way of necessary evidence and in the absence of the accused explaining the source of income, the finding recorded by the trial court, which is against the documentary evidence, is liable to be interfered with.

11. The finding of the trial court that the agricultural and rental income, as spoken to by the prosecution witnesses, who are related to the accused, run counter to the evidence of the revenue officials and, in such a scenario, the trial court ought to have relied on the official witnesses in fixing the income through agricultural and rental sources and not on the basis of the evidence of related witnesses, which is highly erroneous.

12. In fine, it is the submission of the learned Special Public Prosecutor that the trial court has not appreciated the evidence on record in proper perspective, more especially with regard to the rebuttable presumption provided under the PC Act and has erroneously acquitted the respondents herein, which

requires interference at the hands of this Court.

13. Per contra, Mr.Shanmugasundaram, learned senior counsel appearing for the accused/respondents herein submitted that the sanction order, Exs.P-1 and P-3, issued by P.W.s 1 and 2 clearly exhibits total non-application of mind to the materials while according sanction. It is the submission of the learned senior counsel that even a cursory look at the sanction orders would reveal the non-application of mind of the competent authorities, which vitiates the prosecution. It is the submission of the learned senior counsel that once the sanction orders are held unsustainable, the whole fabric of the prosecution case is shredded to pieces and no reliance can be placed on any of the evidence to sustain thee case.

14. It is the further submission of the learned senior counsel that even according to the prosecution, A-2 had joined the public service only on 8.3.99. The check-in period, according to the prosecution is from 1.1.90 to 12.1.99. Effectively, A-2 was not a public servant during the check period and, therefore, the sanction order issued for the prosecution of A-2 displays total non-application of mind. It is the submission of the learned senior counsel that even if A-2 is roped in as abettor, however, a composite charge has been framed against both the accused, which is impermissible.

15. It is the submission of the learned senior counsel for the accused that the assets have not been shown individually against the accused, but shown collectively. It is the duty of the prosecution to assess the assets against the accused individually, as A-2, prior to her joining public service, was doing real estate work/contracting and was earning well and due to slump in real estate business/contracting, had abandoned the same and joined the public service. Therefore, her earnings before her joining public service cannot be taken to be income at the hands of both the accused to rope them within the ambit of the Prevention of Corruption Act. In this regard, learned senior counsel relied upon the admission of the Investigating Officer, P.W.61, who has categorically deposed that A-2 was into building contracting business.

16. In fine, it is the submission of the learned senior counsel for the respondents that the prosecution not being able to show any perversity and illegality in the order passed by the trial court and further the materials available on record as also the sanction orders, not favouring the prosecution, the order of acquittal passed by the trial court deserves to be sustained.

17. In reply, learned Addl. Public Prosecutor submitted that though A-2 was in the services of the Director of School Education even prior to 8.3.99. A-2 had been working in the office of the Director of School Education from 16.9.98 and,

therefore, she is deemed to be a public servant for all purposes, however, she was absorbed in the regular establishment only on 8.3.99 and, therefore, the sanction of prosecution accorded to A-2 is just and proper.

18. This Court paid its careful attention to the submissions advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence to which this Court's attention was drawn and also the calculation of disproportionate assets.

19. In dealing with matters, where the acquittal rendered by the court below is put to test, it is trite that unless the order of the court below suffers from the vice of perversity, the High Court ought not to interfere with the said order. In Shailendra Pratap & Anr. - Vs - State of U.P. (2003 (1) SCC 761), the Supreme Court has categorically held that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

> "8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

20. Yet again, in Ram Kumar - Vs - State of Haryana (1995 Supp. (1) SCC 248), the Hon'ble Supreme Court has once again highlighted the need for the High Court to give proper weight and consideration to the view of the court below and has further held that if the view taken by the court below is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-

> "15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers

of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. ......"

21. The Hon'ble Apex Court, in V.Sejappa – Vs – State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150) reiterating the principles to be followed in an appeal against acquittal, as has been laid down in a catena of judgments, held as under :-

"22. If the evaluation of the evidence and the findings recorded by the trial court do 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. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In State v. K.Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41] , this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T.Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In Muralidhar v. State of Karnataka [Muralidhar v. State of Karnataka, (2014) 5 SCC

730 : (2014) 2 SCC (Cri) 690] , this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

> "12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225], Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656], Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426], Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481], M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], Khem Karan [Khem Karanv.State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639], Bishan Singh [Bishan Singhv.State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305], Tota Singh [Tota Singhv.State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736], Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C.Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K.Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goav.Sanjay Thakran,

(2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

22. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence and the materials on record to see whether the conclusions recorded by the court below for acquitting the

accused/respondent herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the appellate court are such which could not have been possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

23. Even at the very outset, this Court is constrained to state that the charge framed against both the accused/respondents herein itself is bad and is totally unsustainable. The charge framed against the respondents herein is u/s 109 r/w 13 (2) r/w 13 (1) (e) of the PC Act. This Court is at a loss to understand as to how the above charge against the respondents herein would be maintainable. Neither the prosecution was vigilant enough to find that the charge is bad nor the court below, which framed the charge had applied its mind to the factual matrix while framing the charge, which makes the charge impermissible in the eye of law.

24. The case revolves on two fold contentions. Firstly, the sanction orders reveal non-application of mind on the part of the sanctioning authorities; secondly the assets have been cumulatively shown and have not been bifurcated under the heads of A-1 and A-2.

25. Seven statements have been drawn by the prosecution, the gist of which is shown below :-

Statement - I	Assets to the credit of A-1 & A-2 at the beginning of the check period (i.e., 01.01.1990)	Rs.2,50,226/=
Statement - II	Asset to the credit of A-1 & A-2 at the end of the check period (i.e., 12.01.1999)	Rs.25,41,962.50
Statement - III	Income of A-1 & A-2 during the check period	Rs.11,97,269.53
Statement - IV	Expenditure of A-1 and his family members during the check period	Rs.7,48,705.03
Statement - V	Statement I - Statement II (Assets acquired during the check period)	Rs.22,91,736.50
Statement - VI	Statement III - Statement IV (Likely savings during the check period)	Rs.4,48,564.50
Statement VII	Disproportionate Assets during the check period	Rs.18,43,172.00

26. While Statement-I shows the assets to the credit of A-1

& A-2 at the beginning of the check period, i.e., 1.1.90, Statement-II shows the assets to the credit of A-1 and A-2 at the end of the check period, i.e., 12.1.99. To put that precisely, the assets to the credit of both A-1 and A-2 during the check period has been calculated. However, it is not to be lost sight of that though A-2 could be deemed to be a public servant, however, the evidence of P.W.1 reveals that she had joined the office of the Director of School Education only on 16.9.98 and was later absorbed in the regular establishment on 8.3.99 and, therefore, the period insofar as her culpability could only be deemed to be from 16.9.98 and not before.

27. Statement-III reveals the income of A-1 and A-2 during the check period, while Statement-IV reveals the expenditure of A-1 and his family members during the check period. Statement-V relates to the assets acquired by the accused during the check period, which is valued at Rs.22,91,763.50 and Statement-VI reveals the likely savings during the check period, valued at Rs.4,48,564.50. Thus, the prosecution, in Statement-VII, has quantified the disproportionate assets during the check period at Rs.18,43,172/=.

28. While the check period insofar as A-1 would be 1.1.90 to 12.1.99, however, insofar as A-2 is concerned, at best, the check period could be taken as 16.9.98 to 12.1.99. In such a case, it was incumbent on the prosecution to have framed different charges under the various provisions of law against A-1 and A-2 separately, but a composite charge u/s 109 r/w 13 (2) r/w 13 (1) (e) of the PC Act, does not augur well with this Court. The prosecution is bound to give break-up figures relating to the disproportionate assets at the hands of each of the respondents and in the absence of the same, the disproportionate assets quantified by the prosecution cannot be sustained.

29. The above view of this Court gains more weight on account of the deposition of P.W.61 in cross examination, where P.W.1 has categorically deposed that A-2 was into building contracting business prior to her employment at the office of the Director of School Education. It is the case of A-2 that she was earning well in the real estate/contracting business and had been carrying on the said business for more than 10 years from which she had purchased a bulk of the properties, standing in her name. However due to the slackening of the real estate/contracting business, she had switched over to employment. Though it is the stand of the prosecution that no documentary evidence to support the said rebuttal of A-2 has been placed on record by A-2, however, it is to be pointed out that the charge having not been properly laid by the prosecution against each of the accused, the rebuttal of A-2 cannot be brushed aside, as it is only incumbent upon A-2 to raise a rebuttable presumption and it is not necessary for A-2 to prove the same. However, that is not the case with the prosecution.

Once the rebuttable presumption is raised by A-2, it is incumbent on the prosecution to prove that the same is not correct by letting in evidence, which the prosecution has miserably failed to do. Though a contention is raised on behalf of the prosecution that no income tax returns or other periodical statements have been filed by A-2 with regard to her business income, however, this Court, in this trial, is not concerned with the lacunae of A-2 in not filing return or filing periodical statements, which is not an issue, which can be gone into by this Court.

30. The other contention raised by the learned Addl. Public Prosecutor relates to the evidence of P.W.s 19 and 21, who are the brother and sister of A-1. It is the evidence of P.W.19, the brother of A-1 that insofar as the agricultural activities, since A-1 was employed at Chennai, the agricultural activities were carried on by P.W.19. P.W.19 has spoken about the agricultural operations and the earnings out of it, which according to the prosecution are on the higher side and not in tune with the officials of the revenue department, however, for reasons best known, P.W.19, in this regard, has not been treated hostile by the prosecution and cross examined. In such a scenario, the prosecution is bound by the deposition of P.W.19 and it is not open to the prosecution to try to squirm out of the situation by stating that the evidence of P.W.19 should not be taken into consideration for the purpose of quantifying the income of A-1, as the same is against the evidence of the other official witnesses, viz., related to the revenue department.

31. Likewise, the evidence of P.W.21, the sister of the A-1 reveals that she has given a portion of the land, allotted to her share, to A-1 as a gift for which she has not taken any amount from A-1. She has further stated in her evidence in chief that the said arrangement was registered by way of a transfer deed in favour of A-1, as P.W.21 was a spinster. It is the contention of the prosecution that the evidence of P.W.21 should be eschewed for the simple reason that she is trying to shield A-1 from being proceeded with in this case, however, it should not be lost sight of that unlike P.W.19, P.W.21 has also not been treated as hostile by the prosecution and in such view of the matter, the prosecution is bound by the statement of P.W.21.

32. P.W.24 is the sister of A-2 has deposed that A-2 had given money, which she had received at the time of her marriage, and the said money was utilised by P.W.24 for the purpose of purchasing lands in the name of A-2. The said testimony aids the case of the respondents herein to the extent that certain properties were purchased by A-2 from out of her funds before she became a public servant and such of those properties cannot be taken into account as income for the purpose of arriving at the disproportionate assets. The prosecution had not taken any steps to declare P.W.24 also as hostile. In the wake of the

prosecution keeping silent to the detrimental evidence adduced by witnesses, which were projected to aid the prosecution case, it cannot be gainsaid that the income quantified by the prosecution as disproportionate assets at the hands of the accused are above the known sources of income of the accused.

33. From the above depositions and the materials available on record, it is crystal clear that not only the materials stand out against the case projected by the prosecution, but equally the evidence of the witnesses, though related, run counter to the prosecution case and no steps have been taken by the prosecution to treat them as hostile, but the charge framed against the accused also cannot be sustained.

34. To crown the fallacy in the prosecution case is the sanction accorded by P.W.s 1 and 2 for prosecuting A-2 and A-1. A perusal of the sanction orders, Exs.P-1 and P-3 along with the enclosures of assets, viz., Exs.P-2 and P-4 not only reveal total non-application of mind on the part of the sanctioning authorities in according sanction, but the sanction orders are mirror images of each other. The sanctioning authority seems to have been totally unaware of the procedure for granting sanction, but also ignorant of the materials on which reliance should be placed while arriving at a subjective satisfaction as to the culpability of the public servant in the said offence. The sanctioning authorities have relied upon the materials of the other accused in the crime, viz., A-1's details being imported in the sanction order of A-2 and A-2's details being imported in the sanction order of A-1 and have arrived at a satisfaction, which does not relate to the particular accused for whom sanction is to be accorded, but by placing reliance on the other accused to arrive at a satisfaction for according sanction of prosecution to the concerned accused, for whom the said authority is competent to accord sanction.

35. Further, the annexures enclosed with the sanction orders are copies and one can be superimposed on the other. In fine, it is to be stated that the sanction orders are bereft of particulars concerning the particular accused based on which the sanction is accorded and it is composite sanction issued by the authorities, which is not approved by law.

36. The Supreme Court in State of Punjab v. Mohd. Iqbal Bhatti (2009 (17) SCC 92), relating to the validity of an order of sanction, held as under :-

> "7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application

of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the superior courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. (See MansukhlalVithaldas Chauhan v. State of Gujarat [(1997) 7 SCC 622 : 1997 SCC (L&S) 1784 : 1997 SCC (Cri) 1120] .) The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority. [See State v. Dr. R.C. Anand [(2004) 4 SCC 615 : 2004 SCC (Cri) 1380]."
(Emphasis Supplied)

37. From the above position of law, which is is well settled, the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. The materials available on record, to which this Court had adverted to above, clearly reveal the total non-application of mind on the part of the authority to the materials available on record and also taking into consideration materials, which are extraneous and not germane to the passing of the said order clearly renders the sanction orders per se unsustainable and the prosecution based on the above sanction orders does not have any legs to stand, as those sanction orders are non-est in law.

38. From the above position, as it emerges from the materials available on record, it is unequivocally clear that not only on the materials have the prosecution failed in its duty to establish its case, but the start of the prosecution, viz., the sanction orders itself are hit by the ratio laid down by the Hon'ble Apex Court as revealing callous attitude in considering materials and according sanction and, therefore, the present appeals do not stand the test of legal scrutiny.

39. To sum up, the Apex Court, in the recent decision in Shailendra Rajdev Pasvan - Vs - State of Gujarat (2019 SCC OnLine SC 1616) has reiterated the ratio consistently laid down that unless the acquittal is vitiated by manifest illegality or such a conclusion could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore,

liable to be characterized as perverse, proper weight should be given to the presumption of innocence in favour of the accused. Therefore, on an overall conspectus of the materials available on record, both oral and documentary, this Court is led to the irrefutable conclusion that the acquittal of the respondents herein ordered by the court below is based on just and reasonable findings and there being no materials available on record to dislodge the said findings, this Court is left with no other alternative, but to dismiss the appeal.

40. For the reasons aforesaid, this Court does not find any reason to differ from the findings recorded by the court below to acquit the respondents herein and, accordingly, the present appeal is dismissed confirming the order of acquittal recorded by the learned VI Addl. Judge, City Civil Court, Chennai, made in C.C. No.12/2002.

Sd/-
Assistant Registrar(AD-I MDU))

//True copy//

Sub Assistant Registrar

GLN

To
1) The VI Addl. Judge
City Civil Court, Chennai.

2) The Public Prosecutor
High Court, Madras.

3) The Dy. Superintendent of Police
Vigilance & Anti-Corruption
Head Quarters, Chennai - 600 016.
(Crime No.1/AC/99/HQ.1)

+1cc to Mr.V.Krishnakumar, Advocate SR.No.13195

CRL. A. NO. 162 OF 2010

RV(CO)
GMY(17/06/2020)