



BAIL SLIP

The Petitioners/ Accused Viz A1-Tr.R.Raja, M/Aged 51, S/o M.K.Rangasamy, A2-Tr.P.Ramalingam M/Aged 50, S/o Palaniyappan, A3-Tr.A.Manickam M/Aged 46, S/o. Annamalai were released on bail as per order of this Court dated 09/12/2014 in M.P.No.1 of 2014 in CRL.A.No.635 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2022

PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.A.No.635 of 2014

1.Tr.R.Raja
2.Tr.P.Ramalingam
3.Tr.A.Manickam

... Appellants

Vs.

State Represented by
Inspector of Police,
Vigilance & Anti-Corruption, Salem,
Crime No.6/AC/97

...Respondent

Prayer:- Criminal Appeal is filed under Section 374 (2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed in judgment dated 24.11.2014 made in Spl.C.C.No.10 of 2014 on the file of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem, by allowing this Criminal Appeal.

For Appellants : Mr.Anandhamurthy for 1st appellant.
Mr.K.M.Subramanian for 2nd appellant.
Mr.D.R.Arun Kumar for 3rd appellant.

For Respondent : Mr.E.Raj Thilak
GA(Crl side)
Madras High Court.

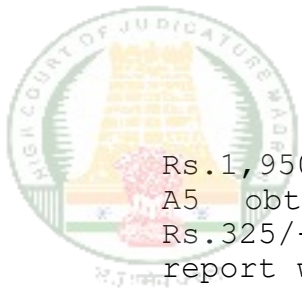


JUDGMENT

This Criminal Appeal is filed challenging the judgment in Spl.C.C.No.10 of 2014 on the file of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem.

2.Respondent filed final report against the petitioners who are accused 2 to 4 and other accused for the offence under Section 120 B I.P.C. r/w. 167, 409, 477 (A) and 109 of the I.P.C. r/w. Section 13 (2) r/w. 13 (1) (c) and (d) r/w. Section 12 of the Prevention of Corruption Act, 1988.

3.The gist of the final report is that first accused M.Ramalingam was working as warden in Tamil Nadu Civil Supplies Corporation Godown, Seelanayakanpatti, Salem, during 1996-1997. Second accused Raja and third accused P.Ramalingam were working as wardens for Government College students hostel at Sooramangalam and Government students hostel at Kollapati respectively. Fourth accused Manikam was working as warden in students hostel at Elampillai and Jarikondalampatti. Fifth accused Jesumari was working as matron for Government Girls Hostel at Rajaram Nagar, Salem. R.Kannayan, approver and witness, the aforesaid accused are public servants as defined under Section 2 (c) of the Prevention of Corruption Act. Government of Tamil Nadu is running free hostels for schools/college students belong to Backward, Most Backward and Adhidraavidar communities separately. The warden/matron of these hostels has to send rice indent to the concerned officers once in a month. The officials of Tamil Nadu Civil Supplies Corporation Godown has to supply rice to the hostels as required in the indent. On reliable information about some malpractices in the supply of rice, a surprise check was conducted by the officers of the District Inspection Cell, Salem, in coordination with officials of Salem, Vigilance and Anti-Corruption detachment on 21.02.1997. During the surprise inspection, it was detected that 26 rice bags were returned by the wardens after receiving Rs.325/- per bag, from approver Kannayan, as per instructions of accused M.Ramalingam. M.Ramalingam provided Rs.10,000/- for the said purpose. The accused as parties to the criminal conspiracy, agreed to commit and helped one another in the commission of offence. Created incorrect official records, committed criminal breach of trust, falsification of records and criminal misconduct. It resulted in monetary loss to the Government. A1 was entrusted with dominion over the rice bags which were supplied to the hostels. A2 to A5 entrusted with dominion over the 26 bags of rice which were intended for their hostels. In pursuance of the criminal conspiracy, A2 to A5 made false entries in the stock registers as if the said 26 rice bags were received by them. By corrupt and illegal means A2 obtained



Rs.1,950/-, A3 obtained Rs.1,625/-, A4 obtained Rs.3,900/- and A5 obtained Rs.975/- as pecuniary advantage by receiving Rs.325/- per bag by returning the 26 rice bags. Thus, the final report was filed against the accused for the offences aforesaid.

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4. On the basis of the final report, the trial Court framed the following charges against the accused A1 to A5.

- i) A1 to A5 - Section 120 B I.P.C.
- ii) A2 to A5 - Section 167 I.P.C.
- iii) A1 - Section 167 r/w. 109 I.P.C.
- iv) A1 - Section 409 I.P.C.
- v) A2 to A5 - Section 409 I.P.C.
- vi) A1 - Section 409 r/w. 109 I.P.C.
- vii) A2 and A5 - Section 477 (A) I.P.C.
- viii) A1 - Section 477 (A) I.P.C.
- ix) A2 to A5 - Section 13 (2) r/w. 13 (1) (c) (d) of the Prevention of Corruption Act, 1988.
- x) A1 - Section 13 (2) r/w. 13 (1) (c) (d) r/w. Section 12 of the Prevention of Corruption Act, 1988.

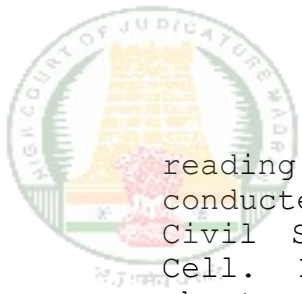
5. Accused denied the charges and demanded a trial.

6. During the course of trial, prosecution examined PW1 to PW22 witnesses and marked Ex.P1 to Ex.P63 documents and MO1 to MO5. No oral and documentary evidence was produced by the accused.

7. The case of the prosecution as seen from the evidence of prosecution witnesses, in brief, is as follows:

P.W.19 was working as head clerk in the department of Backward and Minority Community office during 1998. There were 7 hostels for Backward Community students, 21 hostels for Most Backward Community students under the jurisdiction of Salem District, Backward and Minority Community Department. Students staying from 4th standard till school final would be admitted in the hostels. A sum of Rs.180/- per school student and Rs.250/- per college student were given during 1996-1997. Half kilogram rice, per student, was supplied to the hostel. Warden was permitted to buy other commodities and vegetables for cooking from the open market. He would collect indent from the hostel wardens and send to Tamil Nadu Civil Supplies Corporation. After receiving the bill for the rice, it would be sent in the form of demand draft to their godown.

8. P.W.4 was working as Tashildar in Inspection Cell of District Collector's Office, Salem from 01.02.1997 to 31.05.1997. P.W.6 was working as Assistant during the relevant time in the office of District Inspection Cell, Salem. The



reading of their evidence shows that a surprise inspection was conducted at about 12.30 P.M. On 21.02.1997 at Seelanayakanpatti Civil Supplies Corporation Godown by the District Inspection Cell. It was found during the inspection that, there was shortage of 1 ½ kg of sugar, excess of 23 kg of rice. The lorry bearing No.TN490502 was about to start to Kicchipalayam and Kalarampatti with essential commodities for the purpose of distribution. On inspection, it was found there was a shortage of 26 ½ kg of rice. Lorry bearing No.TNF2282 with 93 bags of rice was sent to supply rice to the Government hostels. Information was sent to return the lorry. Another lorry sent to Ercaud was also asked to be returned. On inspection in the lorry bearing No.TNF2282, it was found there were 65 rice bags. 39 rice bags meant for Attayampatti and Konamaduvu had not been distributed for the reason that the lorry was asked to be returned mid way. The enquiry revealed that 4 rice bags supplied to Jarikondalampatti were returned for the consideration at Rs.325/- per rice bag. Similarly, 6 rice bags meant for Suramangalam Boys Hostel were returned after receiving consideration of Rs.325/- per rice bag. 5 rice bags meant for S.Kollapatti were returned on receiving consideration of Rs.325/- per rice bag, 3 rice bags meant for Rajaram Nagar Ladies Hostel were returned for the same consideration, 8 rice bags meant for Elampillai Hostel were returned on payment of Rs.325/- per bag. Driver Anguraj and Helper Kannayan informed that accused Ramalingam paid Rs.10,000/- for the returned rice bags. It was also informed that accused Ramalingam would sell the returned rice bag at Rs.400/- per rice bag. Rs.75/- would be divided among driver Anguraj, Helper Kannayan and persons working in turn duty.

9.P.W.2 recorded Ex.P7 to Ex.P12 statements of Rajakannu, Anguraj, Palanisamy, Raja, Saravanan and Raja respectively. He also prepared Ex.P14 Mufasal. On the same date, inspection was conducted at Jaarikondalampati, Suramangalam, Rajaram nagar and Elampillai hostels. During the course of inspection, the concerned registers were verified and it was found that proper entries were not made in the registers. There were discrepancy with regard to the entries made and the actual stock available. There was a shortage of 464 kg of rice in Jarikondalampati hostel, 520 kg of rice in Suramangalam hostel, 205 kg of rice in Sarkarkollapati hostel, 1139 kg of rice in Elampillai hostel. The proceedings is Ex.P30. Jarikondalampati hostel warden Manickam, admitted receiving Rs.3900/- for the rice bags and returned the amount. Sarkarkollapati hostel warden Ramalingam admitted receiving the amount and returned Rs.1675/-. The amounts were recovered and the amounts are MO1 series to MO5 series. The 26 seized rice bags were kept in the godown. P.W.8 was a driver and P.W.9 was loadman of the lorry bearing No.TNF2282. It is seen from their evidence that on 21.02.1997,



they started the distribution of 93 rice bags to the aforesaid hostels and delivered some rice bags. P.W.16 conducted enquiry on the allegations made against the Jayaraman, Kannayan and Ramalingam. P.W.3 Kannayan, an accused and an approver has not supported the case of the prosecution and therefore, he was treated as hostile witness. When cross-examined by the prosecution, he admitted giving statement to the police as found in the statement. P.W.20 registered first information report in this case and conducted preliminary enquiry. Further investigation was conducted by P.W.21. P.W.22 concluded the investigation, filed final report against the accused.

10. On considering the oral and documentary evidence, the trial Court found accused 2 to 4 guilty of offence under Section 409, 167 I.P.C and Section 13 (2) r/w. 13 (1) (c) and (d) of the Prevention of Corruption Act. A2 to A4 were found not guilty for the offences under Section 120 B, 477 A I.P.C. Accused 1 and 5 were found not guilty of offences under Section 120 B, 167 r/w 109, 409 and 477 A r/w. 109 I.P.C. and under Section 13 (2) r/w. 13 (1) (c) and (d) r/w. Section 12 of the Prevention of Corruption Act, 1988. The trial Court sentenced accused 2 to 4 to undergo simple imprisonment for six months each and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 3 months each for the offence under Section 409 I.P.C and they were sentenced to undergo simple imprisonment for 1 year each and pay a fine of Rs.2000/- each in default to undergo simple imprisonment for 3 months each for the offence under Section 167 I.P.C. It is further ordered that accused 2 to 4 to undergo simple imprisonment for one year each and to pay fine of Rs.2000/- each in default to undergo simple imprisonment for a period of 3 month each for the offence under Section 13 (2) r/w. 13 (1) (c) and (d) of the Prevention of Corruption Act, 1988. Challenging the conviction and sentence, accused A2 to A4 filed this appeal.

11. The learned counsel for the appellants submitted that the prosecution case was built on the evidence of P.W.3. P.W.3 turned an approver and was examined as witness. However, he did not support the case of the prosecution and therefore, entire case of the prosecution collapsed like pack of cards falling on the ground. The case of the prosecution is that P.W.3 alleged to have received money from first accused and paid to other accused. No other witness was examined by the prosecution to corroborate the evidence of P.W.3 in this regard. As stated already, P.W.3 has not supported this aspect of the prosecution case. There was a delay of six months in registering the case. The investigation launched on the basis of P.W.4 is not sustainable for the reason that P.W.4 over stepped and disobeyed the directions contained in G.O.Ms.No.3392 dated 27.10.1995. There is no order by the Superintendent of Police for



investigation by Inspector of Police and therefore the investigation is illegal. It is seen from the evidence of the witnesses that 26 bags of rice were returned for the reason that they were unsuitable for consumption. When the charge under Section 120 B is not proved and two accused were acquitted, convicting and sentencing the appellants is illegal. When the main accused A1 is acquitted, the conviction of other accused, who are wardens, especially, when the approver has not supported the case of the prosecution is improper and illegal. Therefore, learned counsel for appellants submitted that the conviction of the appellants who are A2 to A4, is not based on any legal evidence and thus he prayed for setting aside the conviction and sentence imposed against them.

12. In response, learned Additional Public Prosecutor submitted that the claim made by the appellants that rice was a poor quality and therefore rice bags were returned is a new story projected in the appeal. It was not raised before the trial Court. The prosecution has proved through the oral and documentary evidence about the receipt of money by the accused in lieu of cash consideration for returning rice bags, falsification of accounts and thus trial Court has rightly convicted and sentenced the appellants. Thus, he prayed for confirming the judgment and dismissal of this appeal.

13. Considered rival submissions and perused the records.

14. Points for consideration,

i) Whether the submission of the learned counsel appearing for the appellants that, in view of acquittal of A1 and A5 and also acquittal of other accused from the charges under Section 120 B, 477 A I.P.C., the conviction imposed against the appellants/accused 2 to 4 for the offence under Section 409 and 167 I.P.C. and Section 13 (2) r/w. 13 (1) (c) and (d) of the Prevention of Corruption Act, 1988, cannot be sustained, is correct?

ii) Whether the judgment of the trial Court is liable to be set aside for the aforesaid grounds raised by the learned counsel for the appellants?

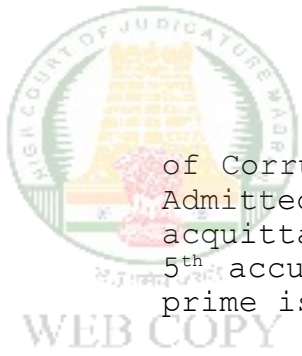
15. There are 5 accused in this case. Appellants are A2 to A4. The allegations against the accused in this case is that A2 to A5 as warden/matron in charge of their respective hostel, returned some bags of rice meant for the consumption of the students staying in the hostel, in lieu of cash consideration offered by the 1st accused, but had shown in the records that entire consignment was received. This modus operandi had been continuing for sometime and the first accused is the one, who is the person responsible for taking back the rice bag meant for



the consumption of hostel students and selling it in open market at a profit. The main ground on which the appellants, who are accused 2 to 4 canvasses this appeal is that when the main accused namely, first accused M.Ramalingam was found not guilty of the charges framed against him, especially, for the charges under Section 120 B, 167 r/w. 109, 409, 409 r/w. 109, 477 A, 477 A r/w. 109 I.P.C and under Section 13 (2) r/w. 13 (1) (c) and (d) r/w. Section 12 of the Prevention of Corruption Act, 1988, conviction of the appellants for the offences under Section 167, 409 I.P.C and under Section 13 (2) r/w. 13 (1) (c) and (d) of the Prevention of Corruption Act, 1988, cannot be illegally sustained.

16.It is also submitted by the learned counsel for appellants that there is absolutely no evidence for establishing the criminal conspiracy among the accused. When the charge of criminal conspiracy is not established, when the charge that first accused had given money to P.W.3 for distribution among hostel wardens, who returned the rice bags was held not proved by the trial Court, the conviction recorded against the appellants and sentence imposed for the aforesaid charges is not correct. Star witness in this case is P.W.3 Kannayan who was an accused in this case, but turned as an approver. He failed to support the case of the prosecution.

17.It is true that the trial Court found that none of the charges framed against the first accused was proved by the prosecution and thus acquitted him of all the charges. The charge against the 5th accused under Section 120 B, 167, 409, 477 (A) I.P.C. and Section 13 (2) r/w. 13 (1) (c) and (d) of the Prevention of Corruption Act, 1988, were held as proved, but the trial Court acquitted the 5th accused on the ground that the prosecution failed to obtain sanction for prosecuting the 5th accused and therefore, the prosecution launched against the 5th accused is vitiated for the lack of sanction. To arrive this decision, the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem, relied on the judgment reported in 1994 CrI.L.J. 545 T.S.Ramaswamy Vs. The State of Tamil Nadu for the proposition that when an order of suspension is passed against a public servant, that means that such public servant is in service and that his services are temporarily suspended and hence no retirement could take place. In case, the suspension order is not modified, or revoked such public servant shall be deemed to be in continuous service even beyond his date of superannuation. Though A5 was suspended prior to the date of superannuation, relying on the above said judgment, the trial Court found that the 5th accused was deemed to be in continuous service even beyond the date of superannuation and therefore, prosecution launched without sanction as required under Section 19 (1) (c) of the Prevention



of Corruption Act is vitiated and thus acquitted the 5th accused. Admittedly, the State has not preferred any appeal against the acquittal of 1st and 5th accused. Whether the acquittal of 1st and 5th accused would directly impact the outcome of this appeal is prime issue involved in this appeal.

18.The reading of the judgment of the trial Court shows that the first accused was acquitted mainly on the ground of disbelieving the evidence of P.W.3, as an approver witness. As per the information report, P.W.3 is the second accused in this case. He was working as helper in Tamil Nadu Civil Supplies Corporation Godown, Seelanayakanpati, and the first accused M.Ramalingam, was the Superintendent of Tamil Nadu Civil Supplies Corporation Godown, Seelanayakanpati. The case of the prosecution is that P.W.3 was working as Assistant in dispatch section and he was entrusted with a job of delivering rice bags to noon meal centers at Government hostels from Tamil Nadu Civil Supplies Corporation Godown, Seelanayakanpati, through lorry. The Government hostel wardens would receive only the rice bags required by them and return the balance rice bags meant for the supply to the particular hostels, in lieu of cash consideration. First accused would provide him with necessary cash. A rice bag containing 100 kg of rice is valued at Rs.325/-. The hostel wardens would receive Rs.325/- and return some rice bags. But, acknowledge that they received the entire consignment of rice bags requested by them. The rice bags, so returned would again brought back to godown and handed over to the first accused. First accused would pay Rs.400/- per rice bags. After giving Rs.325/- to the hostel wardens, the balance Rs.75/- would be divided among the helper who accompanied lorry, like, P.W.3, lorry driver and the loadman at the following dates. Rs.10/- per rice bag to lorry driver, at Rs.10/- per bag to loadman and Rs.45/- to the helper. On the date of inspection 3 rice bags out of 8 rice bags, 6 bags out of 20 bags, 5 bags out of 8 bags, 8 bags out of 8 bags and 4 bags out of 10 bags, total 26 bags were returned by wardens of 1)Government Ladies Hostel, Salem, 2) Government College Hostel, Salem, 3)Government School Hostel, Kollapatti, 4)Government School Hostel, Elampillai, 5)Government School Hostel, Jaarikondalampati respectively. The amounts were received by the respective hostel wardens. The first accused paid Rs.10,000/-. After disbursing the amounts to the hostel wardens, balance Rs.1645/- was recovered from P.W.3.

19.P.W.3 gave a statement on the aforesaid lines to P.W.4 who was the Tahsildar of Inspection Cell, which conducted inspection at Tamil Nadu Civil Supplies Corporation Godown, Seelanayakanpati on 21.02.1997 and then in the hostels aforesaid. This statement was marked as Ex.P3. Subsequently, P.W.3 came forward to give confessional statement and on the basis of the requisition given by the respondent police, his



confessional statement was recorded by P.W.18, the learned Judicial Magistrate No.II, Salem. His confessional statement is marked as Ex.P4. Ex.P5 is the proceedings relating to tender of pardon proceedings conducted before the learned 1st Additional Sessions Judge/Chief Judicial Magistrate and Special Judge, Salem. After following necessary procedure learned 1st Additional Sessions Judge/Chief Judicial Magistrate and Special Judge, Salem, granted pardon to P.W.3 on the condition that he should give evidence reflecting the facts given in his confessional statement. Accordingly, P.W.3 who was originally arraigned as second accused, was removed from the list of the accused and was examined as the prosecution witness number three. However, during the course of giving evidence in the Court, P.W.3 has not supported the case of the prosecution and therefore, he was treated as hostile witness.

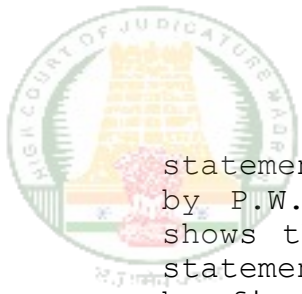
20.The learned trial Judge relying on the judgment reported in 2011 (4) MLJ (Crl) 746 (SC) Bhagawan Das Vs. State (NCT) of Delhi, the evidence of P.W.3 cannot be relied for the purpose of drawing a conclusion in favour of the prosecution that 93 bags of rice were dispatched from TNCSC godown on 21.02.1997 to various Government Hostels and also for the purpose of return of rice bags by accused 2 to 5. Trial Court found that accused 2 to 5 returned 6 bags, 5 bags, 12 bags and 3 bags respectively for one reason or other. It was also recorded that as per Ex.P.59 to Ex.P.62 Distribution and Acknowledgment Memos, accused 2 to 5 have subscribed their signatures for receiving the quantity of rice mentioned in the memos. It was concluded by the trial Court that the prosecution proved that accused 2 to 5 returned the rice bags truly with an intention to derive pecuniary advantage unlawfully. When it comes to the charge against the first accused that he entrusted Rs.10,000/- to P.W.3 for making payment to accused 2 to 5, the trial Court found that P.W.7 the loadman, P.W.8 the driver of the lorry have not supported the case of the prosecution with regard to the alleged payments made. There are five assistants employed in the TNCSC Godown, Seelanayakanpati. Other assistants employed in TNCSC godown during the relevant period were not examined as witnesses by investigating officer. P.W.5 the Assistant Manager employed in TNCSC godown, during the course of his cross-examination stated that first accused came to TNCSC godown at 9.00 A.M. On 21.02.1997 and left the godown at 10.00.A.M. and he admitted that he signed Ex.P.15 issue memo and not the first accused. The entries in Ex.P.28 Movement Register dated 21.02.1997 establish the fact that first accused left TNCSC godown 10.00 A.M. and returned only by 12.15 P.M. Therefore, the trial Court reached the conclusion that the entrustment of Rs.10,000/- by the first accused to P.W.3 on 21.02.1997, for paying to accused 2 to 5 was improbable. With regard to the Ex.P4 confessional statement of P.W.3, it found that some of the details which were not given in



Ex.P.3 were given in Ex.P.4 and Ex.P4 confessional statement contains several minute details such as dates, amounts and it is difficult to comprehend that these details were furnished by P.W.3 voluntarily and from out of his memory. There is also a delay in recording Ex.P.4 confessional statement. For these reasons, the trial Court found that tutoring P.W.3 by the police for giving Ex.P4 confessional statement cannot be ruled out. It also found that the confessional statement of P.W.3 was obtained for the reason that there was lack of evidence against the first accused and that now P.W.3 retracted his confessional statement, it cannot be put into service by the prosecution to prove the charges against the first accused. In this view of the matter, the trial Court found that the Ex.P4 confessional statement of P.W.3 cannot be used by the prosecution and in view of the fact that P.W.3 turned hostile, his evidence is not useful to the case of prosecution. In the absence of P.W.3's evidence supporting the case of prosecution, Ex.P4 confessional statement, it was found that charges against the first accused, are not proved.

21.As already stated, it appears that there is no appeal filed against the acquittal of A1 and A5. However, learned Additional Public Prosecutor submitted that merely because A1 and A5 were acquitted, ipso facto, will not result in automatic acquittal of other accused. Though appeal is not filed against the acquittal of A1, it is submitted by the learned counsel for the appellants that though P.W.3 turned hostile, the entire reading of evidence, especially the cross-examination done on behalf of the state, shows that he had admitted giving the contents of the statement in Ex.P4 confessional statement. Even if a witness has turned hostile, both the prosecution and defence can take advantage of the evidence given by a hostile witness. When read as a whole, P.W.4's evidence shows that he only supported the case of the prosecution and gave his account of the role of each and every accused. That apart, there are independent evidence available in the form of statements given by the accused/appellants in this appeal. The evidence of P.W.4, P.W.6 and P.W.20, recovery of money from the accused manipulation of records had been proved by the production of relevant records, supported by oral evidence. Therefore, the learned Additional Public Prosecutor submitted that merely because A1 and A5 were acquitted and no appeal was preferred against their acquittal, appellants cannot pray for acquittal as a matter of right. There are ample evidence available against the appellants for making willful and wrong entries in the document, committed criminal breach of trust and obtaining illegal pecuniary advantage at the cost of the students and Government exchequer.

22.The consideration of the materials especially Ex.P3



statement given by P.W.3 and Ex.P4 confessional statement given by P.W.3 to P.W.18, learned Judicial Magistrate No-II, Salem, shows that there are certain improvements in Ex.P4 confessional statement from Ex.P.3 statement as to the illegalities committed by first accused and other accused in this case, not only on 21.02.1997, but even during previous occasions. It is seen from Ex.P4 proceedings that the confessional statement of Ex.P4 was recorded after giving sufficient warning and time for reflection. P.W.3 was sufficiently warned that if he gives confessional statement, that would be used against him. The learned Judicial Magistrate No.II, Salem found from the enquiry conducted before recording the confessional statement of P.W.3 that he was voluntarily giving the confessional statement and then recorded his confessional statement. Ex.P4 confessional statement of P.W.3 narrates events that had taken place from June 1996 when P.W.3 joined in TNCSC godown, Seelanayakanpatti. He specifically stated that first accused informed him about the return of some rice bags by hostel wardens of Government Hostels on receiving Rs.325/- per bag, distribution of Rs.75/- among the helper, lorry driver and loadman, etc. Ramalingam, handing over Rs.5000/- on 23.10.1996 when rice bags were sent for distribution and again payment of Rs.10,000/- on 21.02.1997. It is his statement that the hostel warden of Jarikondalampatti, Salem Government Girls Hostel returned 3 bags out of 8 bags after receiving Rs.975/-; Similarly, the Salem Government college hostel warden Raja, returned 6 rice bags after receiving Rs.1950/-; warden P.Ramalingam of Government Student Hostel, S.Kollapatti returned 5 rice bags after receiving Rs.1205/-; Government Student Hostel, Elampillai warden Manickam who is in charge of Jarikondalampatti Government Student Hostel returned 4 bags after receiving Rs.1300/-. He also gave statement of recovery of Rs.1645/- from him. As already indicated P.W.3's confessional statement was recorded after giving sufficient warnings, sufficient time for reflection as to whether he really wanted to give confessional statement and after finding that P.W.3 was prepared to give confessional statement voluntarily. More importantly, it was informed to P.W.3 that the confessional statement may be used against him. After his voluntary confessional statement, tender of pardon proceedings were initiated and he was granted pardon, subject to the condition that he should give evidence supporting the case of the prosecution as given by him in his confessional statement.

23.As rightly pointed out by the learned counsel for the appellants that P.W.3 has not supported the case of the prosecution and he was treated as hostile. However, during the course of his evidence in chief examination, he admitted working as a record assistant in TNCSC godown from 22.06.1996. He was entrusted the job of delivering the commodities to the noon meal centers by the first accused on turn basis. It is his evidence



that on 21.02.1997, 93 patch of rice were taken in lorry bearing No.TNF2282 and he delivered 8 bags of rice to Government Girls Hostels, Salem, 14 bags of rice to Suramangalam Student hostel, 6 bags were returned by Suramangalam Hostel with a request for change. Therefore, he took return of six bags. Then he delivered 8 bags at Pallapati and 10 bags at Elampillai. 4 bags were returned for change. 8 bags had to be delivered at Elampillai. But, he did not go there. Meanwhile Atayampati police apprehended him and found 65 bags of rice in the lorry. First accused did not give any money nor did he receive money. He also admitted that Ex.P3 statement was given by him and he gave statement before the Judicial Magistrate. He was granted pardon by the Chief Judicial Magistrate, Salem. His confessional statement is Ex.P.4. Though, he partly supported the case of the prosecution, he did not support the case of the prosecution with regard to payment of Rs.10,000/- by first accused for giving to the hostel wardens, in lieu of returned rice bags, payment of money to the hostel wardens, who returned rice bags etc. Therefore, he was treated as hostile witness by the prosecution and cross-examined.

24.During the course of cross-examination, the learned Public Prosecutor who appeared for the respondent before the trial Court had extensively cross-examined P.W.3 on the basis of his confessional statement. On the portions relating to payment of Rs.325/- per rice bag to the hostel wardens for the return of rice bags, division of Rs.75/- among the helper, lorry driver and loadman, Rs.5000/- given by the first accused on 23.10.1996 and Rs.10,000/- given by the first accused on 21.02.1997, the return of rice bags by the hostel wardens mentioned above, the payment of Rs.325/- per rice bag to the hostel wardens and seizure of Rs.1645/- from him. In fact, during the course of the cross-examination, he had admitted whatever the contents of his statement found in Ex.P4, when cross examined by the accused he stated that he gave the confessional statement out of compulsion by the Inspection Cell officers and the respondent police. From his evidence, it is clear that he supported only the case of the prosecution during the course of his evidence in chief examination and cross-examination by the prosecution. The only thing he said during the cross-examination by the accused is that he was forced to give Ex.P4 statement by the Inspection Cell officials and police. This particular evidence, in the considered view of this Court, cannot be accepted for the reason that the confessional statement was recorded after informing him the consequence of giving a confessional statement and after knowing that he was voluntarily giving the confessional statement. First day proceedings was recorded on 11.11.1998. After giving sufficient time for reflection, Ex.P4 confessional statement was recorded on 13.11.1998.



25. When tender of proceedings was conducted, he was again questioned about whether he gave the confessional statement voluntarily. P.W.3 admitted that he gave Ex.P4 confessional statement voluntarily. He also informed about the consequences of giving the confessional statement. He was again granted time for reflection on 15.09.1999. The second day proceeding was conducted on 17.09.1999. P.W.3 informed that he was willing to give evidence as a prosecution witness about the facts which are true to his knowledge. Only then he was granted pardon. Thus, it is clear that P.W.3 was given sufficient warning before giving Ex.P4 statement and before tendering him pardon. He was also appraised of the consequence of giving confessional statement that it may be used against him. Still he wanted to give confessional statement. Satisfied that he was giving confessional statement voluntarily, his confessional statement was recorded. Therefore, the evidence given by P.W.3 now, that he was threatened by Inspection Cell officials and police officials to give Ex.P4 confessional statement cannot be accepted.

26. P.W.3 is not a stranger. He is a person working in Tamil Nadu Civil Supplies Corporation Godown and he knows nature of the work being carried out in Tamil Nadu Civil Supplies Corporation Godown. He is in know of the things as to what had happened, therefore, he elaborated in Ex.P4 confessional statement than what he had stated in Ex.P3 statement. It is not illegal. Therefore, suspecting voluntariness of his confessional statement because of the fact that Ex.P4 confessional statement contained minute details than what was stated by him in Ex.P3 statement and there was a possibility of tutoring, cannot, in the absence of any evidence to support this theory be accepted. Therefore, this Court is of the considered view that acquitting the first accused disbelieving the confessional statement of P.W.3, believing the evidence of P.W.5 and on the basis of omission to examine other assistants is not correct. As a co-employee, P.W.5 has every reason to give evidence in support of 1st accused. This Court is of the considered view that first accused was acquitted for unmerited reasons by the trial Court. However, in view of the fact that there is no appeal filed against the acquittal of the first accused, this Court does not want to comment anything more on his acquittal, except to record that acquittal of the first accused would no way automatically entail the appellants/accused the order of acquittal. It is unfortunate that the learned Additional Public Prosecutor before the trial Court has not taken any steps for trying P.W.3 under Section 308 of Criminal Procedure Code.

27. Coming to the evidence available against these appellants, the trial Court rightly found that they had returned some rice bags in lieu of cash consideration, but entered in the



records that the total consignment meant for their respective hostels were received. Ex.P.10 is the statement of accused Raja, Ex.P.31 is the statement of accused Manickam, Ex.P.32 is the statement of accused P.Ramalingam. These statements were recorded by P.W.4 who was leading the inspection team on 21.02.1997. P.W.4 is not a police officer and therefore, a statement given to him is an admissible in evidence. The gist of Ex.P.10 statement of Raja is that when he was working as the warden of Government College Students Hostel, he requested for supply of 20 bags rice each containing 100 kg, on 21.02.1997 P.W.3 brought the rice. Since he required only 14 bags of rice, he received 14 bags and returned 6 bags of rice after receiving Rs.1950/- at the rate of Rs.325/- per rice bag. He also returned Rs.1950/-. In E.P31 statement of accused Manickam, he stated that he raised indent for 8 rice bags for Elampillai hostel, 10 rice bags for Jaarikondalampati hostel. He returned all the 8 bags meant for Elampillai Hostel and 4 bags meant for Jaarikondalampati hostel and in lieu of that he received Rs.3900/- at Rs.325/- per bag. Then, he returned this amount. Accused Ramalingam, in Ex.P32 statement, stated that on 21.02.1997, out of 8 bags supplied to Sarkarkollapati Government students hostel, he returned 5 bags after receiving Rs.1625/- at Rs.325/- per bag. The statements of these witnesses clearly prove that they raised indent for certain number of rice bags, but when the bags are supplied as per their indent, they returned certain bags after receiving payment. It is certainly against the interest of the students and also the Government and in the process, the accused made illegal pecuniary gain to themselves. Ex.P10, P31 and P32 statements of these accused are fortified by evidence of P.W.4 and P.W.6. Both the witnesses have clearly stated about role played by the accused in this case.

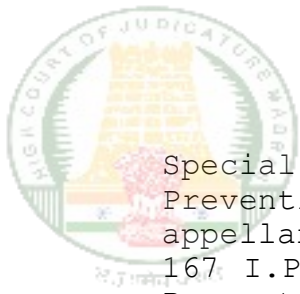
28.It is seen from the evidence of P.W.4 that he recovered a sum of Rs.1645/- from P.W.3 which was a reminder of Rs.10,000/- after paying for 26 rice bags at Rs.325/- per bag. Then on 21.02.1997 at about 4.30 P.M an inspection was conducted at Jarikondalampati Hostel. Warden Manickam was not available. Stock register and attendant register were available with the warden. Stock available in the hostel was taken note of at 7.00 P.M. on the same day. Suramangalam boys hostel was inspected. Warden Raja was present. He accepted return of six rice bags and receiving Rs.325/- per rice bag and handed over the amount and it was recovered in Ex.P.17 mahazar. Sarkarkollapati Hostel warden Ramalingam was not there and he had taken the stock register and attendant register with him. The stock available was recorded. Then, at abaout 10.00 A.M. On 22.02.1997, Ladies Hostel at Rajaram nagar was inspected. Warden Jesumary was available and she handed over the cash received for 3 rice bags. At about 5.00 P.M. on the same date Elampillai Hostel was



inspected. Hostel warden Manickam was available. He has not produced the stock register and attendant register and told that they were incomplete. The proceedings of the inspection committed was marked as Ex.P.13, Ex.P.18, Ex.P.20, Ex.P.21 and Ex.P.22. The stock registers of Government boys hostel, Elampillai, Government College Boys Hostel, Salem, Government Girls Hostel, Salem Government Boys Hostel, Jarikondalampati, Government Boys Hostel, Sarkarkondalampaty are marked as Ex.P.23 to Ex.P.27. It is found from the registers that there was a shortage of 465 Kg of rice at Jaarikondalampati hostel, 520 Kg of rice at Suramangalam hostel, 205 Kg of rice at Sarkarkollapati hostel. Rice stock at Rajaram Hostel was shown as 1310 Kg, at Elampillai Hostel 995 Kg, it was found that there was a shortage of 1139 Kg. The relevant proceedings is Ex.P30. In Elampillai Hostel, a shortage of 1139 Kg of rice was found as per Ex.P56 proceedings. P.W.4 recorded Ex.P10 statement of second accused, Ex.P31 statement of 4th accused and Ex.P32 statement of 3rd accused and also recovered the money handed over by them. Sum of Rs.1950/- produced by second accused Raja is MO2(Series), sum of Rs.3900/- recovered from 4th accused is MO4 (Series) and sum of Rs.1675/- recovered from 3rd accused is MO5 (Series). Though P.W.4 had given extensive evidence on the inspection and recovery of rice and cash, the accused were not able to succeed in creating dent/doubt in the evidence of P.W.4. P.W.4 has nothing personal or enmity against the accused. It is not necessary for him to give false evidence or fabricate false evidence against the accused. His evidence is ably supported by evidence of P.W.6 and P.W.20. P.W.7, the lorry driver stated about taking 93 rice bags for delivery and then coming back with 60 rice bags. P.W.9 the loadman stated about taking 93 rice bags for delivery and then returning with 65 bags of rice. It can be gathered from their evidence that some of the rice bags meant for being supplied to the hostels were returned along with other undelivered rice bags.

29.Combined reading of the evidence of these witnesses clearly proved the case of the prosecution that the accused had with an intention to gain illegal pecuniary advantage, returned rice bags meant for the consumption of the hostel students in lieu of cash consideration, made wrong entries in the stock registers as if they received the entire consignment of rice bags and thus committed the offences punishable under Sections 409, 167 I.P.C and under Section 13 (2) r/w. 13 (1) (c) (d) of the Prevention of Corruption Act, 1988 and thus convicted and appropriately sentenced. This Court finds no reason to interfere with the judgment of the trial Court and thus the judgment of the trial Court is confirmed and this appeal is dismissed.

30.In the result, this Court confirms the judgment dated 24.11.2014 in Spl.C.C.No.10 of 2014 on the file of the learned



Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem, in convicting the appellants/accused 2 to 4 for the offences under Section 409, 167 I.P.C. and under Section 13 (2) r/w. 13 (1) (c) (d) of the Prevention of Corruption Act, 1988 and sentencing thereunder. Criminal Appeal in Crl.A.No.635 of 2014 is dismissed. Trial Court is directed to take appropriate steps to send the appellants to prison to undergo remaining part of the sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem.
2. State Represented by
Inspector of Police,
Vigilance & Anti-Corruption, Salem,
Crime No.6/AC/97.
3. The Public Prosecutor
High Court of Madras.
4. COPY TO
The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.D.R.Arun Kumar , Advocate, S.R.No.31807
+1cc to Mr.K.M.Subramanian, Advocate, S.R.No.31819
+1cc to Mr.V.Ramamurthy, Advocate, S.R.No.31730

CRL.A.No.635 of 2014

SKM(CO)
CT 10/06/2022