IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	03.02.2023
Pronounced on	:	09.06.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.208 of 2010

V.Manoharan .... Appellant

Vs.

State rep. by
Inspector of Police
SPE/CBI/ACB/Chennai
(R.C.No.12/A/2000) ... Respondent

Prayer: Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, against the conviction and sentence made in C.C.No.18 of 2003 by the Court of IX Additional Special Judge for CBI Cases/IX Additional City Civil Court, Chennai, by Judgment dated 18.03.2010.

For Appellant : Mr.K.Chandrasekaran

For Respondent : Mr.R.Sudev Kumar
Special Public Prosecutor for CBI Cases

JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction and sentence, dated 18.03.2010 imposed on the appellant in C.C.No.18 of 2003 by the learned IX Additional Special Judge for CBI Cases/IX Additional City Civil Court, Chennai.

2. The respondent/Police registered a case in R.C.No.12(A)/2000 against the appellant and 3 others for the offences under Sections 120-B read with 420 IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and after investigation, the respondent/Police laid charge sheet for the offences under Sections 120-B read with 420 IPC, 468, 468 read with 471 IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, before the IX Special Judge for CBI Cases/IX Additional City Civil Court, Chennai. The learned Special Judge took the charge sheet on file in C.C.No.18 of 2003 and after completing all formalities, framed charges against A1 to A4 for the offences under Sections 120-B read with 420, 468, 468 read with 471 IPC and Sections 13(2) read with 13(1)(d) of the Prevention of

Corruption Act, 1988.

3. After framing of charges and completing all formalities, in order to substantiate the above said charges during trial, on the side of the prosecution, totally 30 witnesses were examined as P.W.1 to P.W.30 and 109 documents were marked as Ex.P.1 to Ex.P.109. However, no material object was exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses, which were put before the accused persons by questioning them under Section 313 Cr.P.C. The accused persons denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was let in. However, 1 document was marked as Ex.D.1.

5. On conclusion of trial, after hearing the arguments advanced on either side and considering the materials, the trial Court did not find A3 and A4 guilty and thereby, acquitted them from all the charges. However,

the trial Court found A1 and A2 guilty of the offences under Sections 120-B read with 420 IPC and Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The trial Court convicted and sentenced A1 to undergo one year rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo Rigorous Imprisonment for a further period of three months for the offence under Section 120-B IPC and also convicted and sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo Rigorous Imprisonment for a further period of three months for the offence under Section 420 IPC and further, A1 was also convicted and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.5,000/- in default, to undergo Rigorous Imprisonment for a further period of three months for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Further, the trial Court convicted A2 for the offences under Sections 120-B read with 420 IPC and Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced A2 to undergo one year rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo Rigorous Imprisonment for a further period of three months; A2 was also convicted for the offence under Section 420 IPC and sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo Rigorous Imprisonment for a further period of three months and A2 was acquitted from other charges. Both the sentences imposed on A1 and A2 were ordered to run concurrently and the period of sentence which was already undergone by A1 and A2 were ordered to be set off under Section 428 Cr.P.C.

6. Aggrieved by the said Judgment of conviction and sentence, the 1st accused has filed the present appeal before this Court.

7. The case of the prosecution is that the appellant (A1) was working as an Upper Division Clerk in Company Circle, Income Tax Department, Chennai, the 2nd accused was an Income Tax consultant and they entered into a criminal conspiracy during the period 1998-1999 to cheat the Income Tax Department by submitting false Income Tax refunds and claimed the same. In pursuance of the same, the 2nd accused

fraudulently filed Income Tax Returns in the name of fictitious persons/companies namely S.Arumugam, M/s. Polar Constructions Pvt. Ltd. and M/s.Vikram Transport Pvt. Ltd. and got processed the same with the help of the appellant/A1 and encashed the amount by opening a fictitious Bank Account at Sangli Bank, Chennai, with the help of A3 and A4 and received the proceeds of the same through ABN Amro Bank, as Narayanan and thereby, cheated the Income Tax Department to the tune of Rs.3,58,604/-. The appellant's job is to file the Income Tax Returns before the Assessing Officer, which is the responsibility of an Upper Division Clerk. At the relevant point of time, the appellant was working as Upper Division Clerk to write the correct address and refund orders/despatches. The 2nd accused is the Income Tax practitioner and Advocate. Apart from the Income Tax practice, he was also engaged in other activities such as encashing, accommodation cheques for commission through his genuine and bogus Bank Accounts, exchanging high denomination currencies, trading in shares and sub-brokering in shares, etc. The 3rd accused was working as Cashier in Sangli Bank, West Mambalam, Chennai during the period 1998-1999. The 4th accused was working as Clerk in Sangli Bank, West Mambalam, Chennai, during the relevant period. The Diretorate of Investigation, Income Tax Department conducted investigation and made a search in the residential and business premises of the 2nd accused. The Deputy Director of Income Tax Department examined the witnesses and recorded their statements and also collected relevant documents from the concerned Banks pertaining to bogus accounts used for encashing the refund orders. During investigation, it was found that 5 bogus Income Tax Returns were filed in the fictitious names, out of which, for 3 bogus Accounts, namely S.Arumugam (Rs.63,800/-), M/s.Polar Constructions (Rs.1,89,709/-) and M/s.Vikram Transports Pvt. Ltd. (Rs.1,05,095/-) , the refunds have been issued and out of the said 3 bogus accounts, two accounts, viz., M/s.Polar Constructions and M/s.Vikram Transports Pvt. Ltd. comes under the appellant's Company Circle, in which the appellant was working as Upper Division Clerk. The refunds were not issued for the rest of the two accounts, namely K.Venkatesan and V.Rajagopal. After completion of investigation, the charge sheet was filed and the case was taken on file by the trial Court. On completion of trial, the trial Court found A1 and A2 guilty and convicted and sentenced them as stated above, however, the trial Court acquitted A3 and A4 from all the charges. Challenging the said Judgment of conviction and sentence, the 1st accused alone has filed the present appeal before this Court.

8. The learned counsel for the appellant submitted that the allegation as per the charge is that the appellant who is arrayed as A1, while working as Upper Division Clerk in the Company Circle, Income Tax Department, Chennai, conspired with the other accused to cheat the Income Tax Department in respect of the refund orders, which were submitted in fictitious persons/Company names and thereby, caused loss to the Income Tax Department. The main allegation is that by submitting false refund orders in the name of fictitious persons/Companies, the appellant, along with other accused, encashed the amount from the Income Tax Department. The specific allegation against the appellant as per the charge is that during the period 1998-1999, he had assessed the refund orders of the following assessee, viz. S.Arumugam, M/s.Polar Construction Pvt. Ltd., M/s.Vikram Transports Pvt. Ltd., K.Venkatesan,

and V.Rajagopal and out of 5 refund orders, the refund orders of the assessees K. Venkatesan and V.Rajagopal were not processed. Hence, no charges were framed against the accused in respect of those two refund orders. As far as the refund of tax of the assessee S.Arumugam is concerned, though in the charge sheet it was alleged that the appellant had prepared it, but during the course of trial, it was established that it was not related to the appellant's Income Tax Circle and it is pertaining to other Circle. The trial Court also accepted the contention of the appellant and acquitted him of the said charges. As far as M/s.Polar Constructions Pvt. Ltd. and M/s.Vikram Transports Pvt. Ltd are concerned, the role of the appellant was that, after completing the refund calculation, to put up the file to the higher officials for approval and the said procedure was admitted by P.W.7 who was the Deputy Commissioner in the Company Circe-II and P.W.24 who is the Supervisor, Company Circle-II. He further submitted that the file had gone to various officials after initial calculation by the appellant and after proper verifications and approval, the refund orders for Rs.1,89,709/- and Rs.1,05,095/- were issued to M/s.Polar Constructions Pvt. Ltd. and

M/s.Vikram Transports Pvt. Ltd., respectively and there is no illegality with regard to preparation of refund orders and calculations are concerned. The only allegation against the appellant based on the evidence of the witnesses is that he had changed the “to address” of the assessees in the refund intimation in both M/s.Polar Constructions Pvt. Ltd. and M/s.Vikram Transports Pvt. Ltd., and later it was found that the addresses written by the appellant on the refund intimations are bogus. Because of this change of address, the refund intimations were received by some other persons other than the addressees mentioned in the refund intimation. The prosecution alleges that because of the appellant’s alteration or inclusion of new address, the refund orders were received by someone else other than the assessees. Now the question is as to whether the appellant had any criminal intention in writing the new addresses on the refund intimation slips or it is also one of the routine procedures in the Income Tax Department. Whether the refund intimation would have been sent to the correct assessees mentioned in the assessment orders if the new addresses were not written by the appellant. As already stated, the main case of the prosecution is that the refund claims were made falsely with the Income Tax Department by using fictitious persons/Company names. Therefore, even if the appellant did not make any correction in the refund intimation addresses, it would reach only the wrong hands, since the claim itself was found to be a false claim. So the change of addresses written by the appellant is of no consequence in commission of the offences. Therefore the allegation that because of the appellant's inclusion of new address, the above two refund orders were received by some other persons other than the addressees mentioned in the file, is not acceptable. He further submitted that it is not the case of the prosecution that if the appellant did not change the address on the intimation slips, they would have reached the proper persons. So, the appellant has got no intention or motive to include the new address so as to benefit someone. There is no link between the appellant and the other accused in this case, either documentary or oral. Therefore, in the absence of the same, there is no material to presume that the appellant had conspired with the other accused and committed the crime. It is the consistent stand of the appellant even before the trial Court that a request letter was received by him regarding the change of address and hence, he had included the same in the intimation slip and advised the despatch clerk accordingly. If he has got any motivation, he would not have included the new address in the original intimation slip as well as in the carbon copy of the same to be retained in the office file. So he has acted genuinely discharging his duties. Though the witnesses, P.Ws.7, 15, 24 have spoken against the appellant about his involvement, except these 3 witnesses, none of the witnesses have spoken about the role of the appellant. Further, P.Ws.12, 16, 26, 29 and 30 have spoken about the bogus addresses of the two companies, namely M/s.Polar Constructions Pvt. Ltd. and M/s.Vikram Transports Pvt. Ltd. But the above said evidence is not sufficient to connect the appellant with the other accused and there is no material to show that the appellant conspired with the other accused and caused loss to the Income Tax Department. The trial Court failed to appreciate the evidence and erroneously convicted the appellant as stated above. Except for the fact that the appellant gave slip to P.W.15 for sending the intimation letter to the change of address, he has not committed any offence. As already stated, even if the appellant did not make any correction in the refund intimation address, it would reach only the wrong hand, since the claim itself is bogus one. Therefore, the Judgment of conviction and sentence passed by the trial Court is perverse and the same are liable to be interfered.

9. The learned Special Public Prosecutor for CBI Cases submitted that A2 had opened a fictitious account with the connivance of the appellant and they have made false claims, which caused loss to the Income Tax Department. The fraudulent refund amount was received by A1 to A4 in 3 instances. In the first instance, the TDS refund application made in the name of S.Arumugam for Rs.63,800/-, was put up by the appellant and the appellant changed the address of the assessee while despatching the refund order to the assessee. The appellant fully knowing well that it is a fictitious account, in order to facilitate the 2nd accused, gave the changed address to P.W.15, who is the Dispatching Clerk. The evidence of P.W.1 proved the case of the prosecution and the involvement of the 2nd accused in this case who was an Auditor and staying with P.W.4. Further, the evidence of P.W.23 shows that the refund issued in the name of S.Arumugam was encashed through Sangli Bank, West Mambalam, Chennai. Though the account of the said Arumugam

was not within the jurisdiction of the appellant, the prosecution was able to prove the 2nd incident that it is the fraudulent refund obtained in the matter of M/s.Vimram Transports Pvt. Ltd. for the assessment year 1998-1999. The Income Tax Return was put up by the appellant and the file was perused by P.W.7 who was working as Deputy Commissioner in the Company Circe-II(I), Income Tax Department during the relevant period of time with the remarks that “Head Clerk Please Check the Returns calculated on the working sheet”. The appellant only collected the refund amount as Rs.1,05,095/-. P.W.24, Head Clerk made the observation that “checked, the refund due Rs.1,05,095, refund exceeds Rs.1 lakh and hence, this file may be sent to the Deputy Commissioner for counter signature." Then the appellant put up the file with a note dated 23.08.1999 for the said refund for the signature of the Deputy Commissioner/P.W.7 who signed on the said note on the same day. Again, the appellant put up the file before the Joint Commissioner for approval as the refund amount exceeds Rs.1 lakh. The Joint Commissioner also approved the said refund, vide memo dated 25.08.1999. Accordingly, the refund order No.026347 dated 26.08.1999 for Rs.1,05,095/- was signed by P.W.7. This file also contained an undelivered TDS certificate of one R.V.Shastri, Senior Manager (Finance), Ministry of Surface Transport, New Delhi and during the investigation, it came to light that there was no such official in the Surface Transport Ministry and the TDS certificate is bogus one and that M/s.Vikram Transport Pvt. Ltd. was not an existing firm. In order to prove the same, P.W.6, P.W.8 and P.W.11 have clearly deposed that there is no post as Senior Manager (Finance) in the Finance Wing of the Ministry of Surface Transport, New Delhi and so, the person was working as Senior Manager (Finance) in the Finance wing of Ministry of Surface and Transport in the name of R.V.Sasthri from 1996 onwards. The appellant, in the order sheet, had unauthorisedly written the address of the assessee as No. G.M.Street, Ellis Road, Chennai-2, which is the address of the 2nd accused and it varies from the address mentioned in the TDS application. The address where the refund orders were dispatched, is the address of M/s.Casio Air Tavels and the wife of A2 who is one of the Director of the said Casio Air Travels and the said premises is owned by the wife of A2 and that A2 is the Auditor of the said Travels. The involvement of the appellant and A2 in the 2nd instance was proved through the evidence of P.Ws.6 to 11, 15 and 23 to 27. The evidence of P.W.7 categorically proves the involvement of the appellant and the fraudulent filing of Income Tax Returns. Ex.P.29 is the intimation which was given to P.W.15/Despatch Clerk, for despatch of the same to the new address. Therefore, the prosecution proved the involvement of the appellant in the case of M/s.Vikram Transports Pvt. Ltd. As far as the refund order regarding M/s.Polar Constructions Pvt. Ltd. is concerned, the said company claimed refund of Rs.1,62,145/- and interest calculated as Rs.27,564/- totalling Rs.1,89,709/- for the assessment year 1998-1999. The Return was processed by the Assessing Officer, Company Circle II (1), Chennai and the refund of Rs.1,89,709/- was issued on 26.08.1999. In this claim, bogus TDS certificate purported to have been issued by the Airports Authority of India, International Airport Division, International Air Cargo Complex, Chennai Airport, Chennai, was enclosed. He further submitted that M/s. Polar Constructions Pvt. Ltd is a fictitious Company and a non-existing bogus company and the TDS certificate alleged to have been issued by the Airport Authority of India is also a bogus. The tax deductions account is also bogus. The prosecution also elicited these transactions by examining P.Ws.7, 12, 15 to 17, 22 to 25 and 27. The evidence of P.W.7 proves the involvement of the appellant in filing and processing the Income Tax Returns in the name of M/s.Polar Constructions Pvt. Ltd. The evidence of P.W. 12 proved the non-existing M/s.Vikram Transports Pvt. Ltd., and M/s.Polar Constructions Pvt. Ltd. in the address mentioned in the intimation letter. The evidence of P.W.15 reveals the involvement of the appellant in despatching the refund order to the changed address. The evidence of P.W.24 is corroborated by the evidence of P.W.15. The evidence of P.W.16 also proved the non-existing M/s.Vikram Transports. Pvt. Ltd. and M/s.Polar Constructions Pvt. Ltd. The evidence of P.W.17 proved that the TDS certificates under Ex.P.31 to Ex.P.37 are bogus. The evidence of P.W.17 is corroborated by the evidence of P.W.22. The evidence of P.W.17 and P.W.22 established that the TDS certificates enclosed under Ex.P.16, Income Tax Return file of M/s.Polar Constructions Pvt. Ltd., were forged for the purpose of using the same as genuine for obtaining the refund of Income Tax. The evidence of P.W.23

proved the encashment of proceeds of refund orders and the evidence of P.W.23 is corroborated by the evidence of P.W.25. The evidence of P.W.25 proves the involvement of the 2nd accused in opening the account in the name of one S.Narayanan who is a fictitious person. P.W.27/Expert has deposed that, after comparing the specimen writing/signature of the appellant in Ex.P.91, with the questioned documents, he submitted Ex.P.102/opinion which clearly proved that the address written in the intimation slip /Ex.P.29 and Ex.P.30 are that of the handwriting of the appellant. The 2nd accused is responsible for writing the red encircled questioned writing. Therefore, from the above said evidence, the prosecution proved the role played by the appellant with the connivance of the 2nd accused that in order to facilitate the 2nd accused for extraneous consideration, the appellant has conspired with the other accused and committed the charged offences. The trial Court rightly convicted the appellant as stated above and there is no perversity in the appreciation of evidence by the trial Court. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

10. Heard the learned counsel for the appellant and the learned Special Public Prosecutor for CBI Cases and perused the materials available on record.

11. In this case, 4 persons were arrayed as accused, out of which, two persons viz., A3 and A4 were acquitted of all the charges by the trial Court and the other two accused, viz. A1 and A2 were convicted and sentenced as stated above. Aggrieved by the said Judgment of conviction and sentence, the appellant who is arrayed as A1, has filed the present appeal before this Court.

12. As already stated, the specific case of the prosecution is that the appellant, while working as an Upper Division Clerk in Company Circle, Income Tax Department, Chennai, entered into criminal conspiracy with the other accused to cheat the Income Tax Department in respect of refund orders which were submitted in the fictitious persons/Company names and thereby caused loss to the Income Tax Department.

13. In order to substantiate the charges framed against the accused,

totally 30 witnesses were examined as P.W.1 to P.W.30 and 109 documents were marked as Ex.P.1 to Ex.P.109. Out of the 30 witnesses, P.W.7, P.W.15 and P.W.24 are relevant for the appellant, likewise, P.W.12, P.W.16, P.W.26, P.W.29 and P.W.30 have spoken about bogus addresses of the two companies viz. M/s.Polar Constructions Pvt. Ltd. and M/s.Vikram Transports Pvt. Ltd.

14. Since the appellant is a public servant, P.W.2 who is the competent authority, has issued sanction for prosecuting the appellant. He has clearly deposed that the sanction order was granted under Section 19 of the Prevention of Corruption Act under Ex.P.12 dated 08.01.2003. He is the competent authority for taking disciplinary action against A1 and he has got power for removal of a public servant from service. Before according sanction, he perused the entire materials placed before him, applied his mind and granted sanction order. Based on the sanction order, the prosecution proceeded with the case.

15. P.W.1 who was the Income Tax Officer during the relevant period, has clearly stated that she conducted a search and recovered

certain documents and she assessed the refund orders for the assessment year 1998-1999 and found 5 assessees were fictitious and therefore, action was initiated.

16. P.W.7 who is the Deputy Commissioner in the Company Circe-II(I), Income Tax Department, during the relevant period of time, has deposed that the Return application submitted by M/s.Vikram Transports Pvt. Ltd. for the assessment year 1998-1999, claiming a refund of Rs.89,825/-, was put up by the appellant. She calculated the refund amount as Rs.1,05,095/- including interest of Rs.15,270/-. Since the refund amount was more than Rs.1 lakh, she forwarded the same to the Joint Commissioner and the Joint Commissioner approved the said memorandum dated 25.08.1989 under Ex.P.14. Accordingly, she issued refund order for Rs.1,05,095/-. Further, the Income Tax Return filed by M/s.Polar Constructions Pvt. Ltd. claiming refund of Rs.1,62,145/- was processed by the appellant and it was put up before her on 22.07.1999. Initially, the interest was calculated as Rs.19,168/- by the appellant, whereas while the Head Clerk checked the same, the interest was calculated at Rs.27,565/- and it was forwarded to the Joint

Commissioner. On receipt of the file, the Joint Commissioner approved the refund of Rs.1,89,709/- under Ex.P.16 on 25.08.1999 by a memorandum signed by him. Based on that, P.W.7 issued refund order No.026345 dated 26.08.1999 for Rs.1,89,709/-. After issuing refund orders, she came to know that there was fraudulent encashment in the above said case. Immediately, she checked up the intimation sent to the assessees and found different addresses on the top of the intimation slips. Immediately, she issued a memo to the appellant asking him to explain as to on what basis and on whose authority, he changed the addresses in the intimation sent to the assessees, for which, the appellant replied that the intimations were sent to the said addressees on the instructions given by the assessees only and the appellant also undertook to produce the said instructions given by the assessees to him. Thereafter. she issued another memo, but the appellant failed to produce the said instructions as already undertaken by him. On receipt of the memo, the appellant requested for grant of one week to produce the same. Even thereafter, the appellant did not produce the same. Hence, she issued another memo to the appellant but having received the same, the appellant failed to reply. When P.W.7

asked P.W.15 who was working as Despatch Clerk during the relevant period as to how she despatched the refund intimations to the different addresses, she replied that the appellant requested her to send the intimations to the said addresses. Both the intimations pertaining to the above said 2 refund orders were sent to different addresses other than the addresses mentioned in the refund orders. The said addresses were written by the appellant on the said intimation slips Ex.P.29 and Ex.P.30.

17. Therefore, the evidence of P.W.7 and P.W.15 clearly shows that the appellant is the one who gave intimations slips Ex.P.29 and P.30 and instructed P.W.15 to send the refund orders to the addresses which are not mentioned in the refund file. When P.W.7 enquired the appellant, though the appellant stated that, as per the instructions of the assessees only, he sent it and undertaken to produce the instructions, but he did not produce the same. Therefore, the intention of the appellant is very clear and without any authority, he has given different addresses to P.W.15. Further, a perusal of Ex.P.29 and Ex.P.30 intimation slips clearly shows that the addresses mentioned in the intimation letter are different from the addresses mentioned in the file. Therefore, the evidence of P.W.7 and

P.W.15 shows that the change of address was written by the appellant in his own handwriting. Hence, the involvement of the appellant in presenting the file in the name of M/s.Polar Constructions Pvt. Ltd. and M/s. Vikram Transports Pvt. Ltd., is proved.

18. As per the evidence of P.W.16, no company in the name of M/s. Polar Constructions Pvt. Ltd. or M/s.Vikram Transport Pvt. Ltd. was functioning in the address given in the Return or in the intimation letter.

19. Ex.P.31 to Ex.P.37 are the TDS certificates said to have been issued by one Madanagopalan in the Airport Finance Department, Chennai. But the evidence of P.W.17 who was the Deputy General Manager and Additional General Manager Finance in the Anna International Airport, Chennai, clearly shows that Ex.P.31 to Ex.P.37 were not issued by their office and they are bogus and that there was no such person by name Madanagopalan in the Airport Finance Department and also there was no such post of General Manager (Finance) in the Airport Finance Department, Chennai. Further, he has deposed that there

was no such contract with Polar Constructions Pvt. Ltd. engaged in Airport Authority of India at the relevant time.

20. Further, the evidence of P.W.23 who is the Chief Manager in Sangli Bank Ltd, West Mambalam, Chennai, shows that as per Ex.P.39/ledger, two cheques were cleared for Rs.1,05,095/- and Rs.1,89,709/- as mentioned in Ex.P.29 and Ex.P.30 and they were deposited in the Current A/c.No.599. Further, Ex.P.40 and Ex.P.41 are the pay-in-slips for said deposits and the amounts were subsequently, realised.

21. Further, from the evidence of P.W.2/sanctioning authority, P.W.7/Deputy Commissioner, Company Circle-II (I), I.T. Department, Chennai, P.W.15/Despatch Clerk, P.W.24/Supervisor and also P.W.27/Expert, clearly show that the handwriting found in Ex.P.29 and Ex.P.30 is that of the appellant.

22. Therefore, under these circumstances, the prosecution proved the involvement of the appellant in this case. Thus, the trial Court rightly

appreciated the oral and documentary evidence to hold that the appellant, knowing fully well that the addresses are bogus, without any authority, gave instructions to P.W.15 to send the refund orders to the wrong address in order to facilitate the 2nd accused. Therefore, as a public servant, the appellant has entered into criminal conspiracy with the 2nd accused and committed the charged offences.

23. It is settled proposition of law that as far as conspiracy is concerned, the same need not be expressed one. From the conduct of the party, it can be gathered from the oral and documentary evidence.

24. This Court also perused the evidence of P.Ws.2, 7, 15, 24 and 25. Apart from that, from the evidence of P.Ws.12, 16, 26, 29 and 30, the prosecution proved that the above said two companies, namely M/s.Polar Constructions Pvt. Ltd. and M/s.Vikram Transports Pvt. Ltd. were not existing and they were bogus companies.

25. Under the above circumstances and also from the above said

oral and documentary evidence, the prosecution has proved that the appellant has committed the charged offences. The trial Court rightly appreciated the evidence and convicted and sentenced the appellant.

26. This Court being an appellate Court, has to necessarily re-appreciate the entire evidence and if the Court finds that the appreciation of evidence by the trial Court is perverse, then the appellate Court can interfere with the Judgment of the trial Court, whereas in this case, while independently perusing the entire materials, this Court finds that the appellant has committed the charged offences.

27. This Court finds that the trial Court has rightly appreciated the evidence and convicted and sentenced the appellant as stated above. The trial Court has imposed only a minimum sentence for the above said offences. Therefore, there is no merit in the appeal and there is no mitigating circumstances to interfere with the Judgment of the trial Court to reduce the sentence.

28. Accordingly, this Criminal Appeal is dismissed. The trial Court is directed to secure the appellant to undergo the remaining period of sentence, if any.

09.06.2023

ksa-2
Index:Yes/No
Speaking Order/Non Speaking
Neutral Citation Case : Yes/No

To

1. The IX Additional Special Judge for CBI Cases/IX Additional City Civil Court, Chennai.

2. Inspector of Police
   SPE/CBI/ACB/Chennai

3. The Special Public Prosecutor, CBI Cases, High Court, Madras

4. The Section Officer, Criminal Section, High Court, Madras.

P.VELMURUGAN, J

ksa-2

Pre-Delivery Judgment in

Criminal Appeal No.208 of 2010

09.06.2023