IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2023	Pronounced on: 21.09.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.536 & 537 of 2013

Crl.A.No.536 of 2013

Hashim Shamshuddin ... Appellant/Accused No.2

/versus/

State represented by:
The Inspector of Police,
CBI, ACB, Chennai ... Respondent/Complainant

Crl.A.No.537 of 2013

1.B.S.Masure
2.J.Shanmugam ... Appellant/Accused No.3 & 4

/versus/

State represented by:
The Inspector of Police,
CBI, ACB, Chennai ... Respondent/Complainant

Prayer: Criminal Appeals have been filed under Section 374 of the Code of Criminal Procedure, 1973, pleased to set aside the order passed by the XIII Additional Judge for CBI Cases, City Civil Court, Chennai, in C.C.No.10 of 2007, dated 31.07.2013.

For Appellants (both cases) : Mr.S.Senthilnathan

For Respondent (both cases) : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (CBI)

COMMON JUDGMENT

On the basis of source information, CBI, ACB, Chennai registered a case in RC.No.MA1 2006 A 0004 on 30.01.2006 against A1 Mariappan (retired) Junior Works Manager (Mechanical Maintenance), Engine Factory, Avadi, Chennai and A2, Hashim Shamshuddin representative of M/s.Trisure Enterprises, Chennai, under Sections 120 B r/w.420 IPC and Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988.

2. In the course of investigation involvement of other accused came to light. B.S.Masure [A3], Joint General Manager (M & S) Engine Factory, Avadi and J.Shanmugam [A4], Assistant Foreman (Technical & Mechanical Maintenance), Engine Factory, Avadi. Including them as accused the final report was filed before the Principal Special Judge for CBI cases, Chennai. The trial Court on considering the material placed, framed the following charges:

> "*Firstly, that you A1 to A4 were party to a criminal conspiracy hatched at Chennai during the year 2004, to cheat the Engine Factory (Ministry of Defence, Govt. of*

India), Avadi, Chennai, in the matter of procurement of Mather & Platt make Pumps for use in Paharapur Cooling Tower in the Engine Test House. Engine Factory, Avadi, Chennai to wit in pursuance to the criminal conspiracy, you Al to A4, by misusing or otherwise abusing your official position as Public Servants, processed and recommended proposal for purchase of pumps of M/s Mather & Platt make together with motors viz (1) one number of Mather & Platt make centrifugal pump - Ilorizontal split casing (Model No.100/150 GST, capacity 120 CU Met. per hour, Head 100 meters, size 6"/4" with suitable coupling and 55 KV Electric Motor and (2) two numbers of Mather & Platt make centrifugal pump (Horizontal Back Pull out- Model 100/065-TISCO ET ISO 15, capacity 100 CU. Met. per hour, Head 25 Meters, size 4" x 3" with suitable coupling and 18.5 KW Electric Motor for use in Paharapur Cooling Tower in the Engine Test House, Engine Factory, Avadi, Chennai from M/s Trisure Enterprises, Chennai represented by you A2 in your capacity as Managing Partner knowing fully well that M/s Trisure Enterprises, Chennai is not an authorised Dealer of the said Mather and Platt make pumps, who had submitted a fake and forged letter dated 17.4.2004 to the General Manager, Engine Factory, Avadi, Chennai purported to have been issued by M/s Mather & Platt Pumps Ltd. showing as if M/s Trisure Chennai has been authorised to supply their pumps to the Engine Factory, Avadi, Chennai knowing or having reasons to believe that *the same was forged one and you A2 representing M/s Trisure Enterprises, dishonestly and fraudulently, supplied Mather & Platt make pumps at an exorbitant rates, which were in fact purchased by you A2 at a much lower price from M/s Siddharth Electricals, Chennai, an authorised dealer of M/s Mather & Platt Pumps, who are the actual authorised dealers of M/s Mather & Platt Pumps Ltd and in fact M/s Siddharth Electricals had submitted the quotation for the above said items at a lower price as early as on 29.1.2004 which fact was within the knowledge of you A1, A3 & A4 and in fact you A1 had submitted the proposal of M/s Siddharth Electricals and you A3 had recommended the same and you A3 fraudulently and dishonestly kept the said tender in abeyance without specifying any reason and when the said tender is kept in abeyance, you A1, A3 & A4 issued a fresh Purchase Order in favour of M/s Trisure Enterprises, represented by you A2 for which you A2 had supplied the above 2 items to the Engine Factory, Avadi, Chennal, by purchasing same from the above said Siddharth Electricals as stated above for a total cost of Rs.1,19,923/- and Rs.80,800/- respectively, for the above said two items inclusive of all taxes and that being the situation, you A2 had submitted two bills one for Rs.6,35,054/- in respect of item No.l and Rs.3,22,668/- for item No.2 which was paid by Engine Factory, Avadi, Chennai by way of cheque No.361821 dated 3.8.2004 there by resulted in wrongful loss of Rs.7,56,711/- to the Engine Factory, Avadi,* *Chennai and corresponding wrongful gain to you A2 M/s Trisure Enterprises and thereby you A1 to A4 committed offences, punishable u/s 120B r/w 420, 468 t/w 471 IPC and Section 13(2) r/w 13(1)(d) of P.C.Act 1988 and within my cognizance.*

Secondly, in the course of the same transaction and in pursuance of the conspiracy during the time and place mentioned in the first charge you A2 being the representative of M/s Trisure Enterprises, Chennai, fraudulently, used as genuine a certain document to wit submitted a fake and forged letter dated 17.4.2004 addressed to the General Manager, Engine Factory, Avadi, Chennai, purportedly issued by M/s Mather & Platt Pumps Ltd., authorising M/s Trisure Enterprises, Chennai to supply their pumps to the Engine Factory, Avadi, Chennai, knowingly for having reasons to believe at that time you used the same to be a forged one and in fact no such letter was issued by M/s Mather & Platts Pumps Ltd. and M/s Trisure Enterprises, Chennai is not an authorised dealer of Mather & Platt Pumps Ltd at any point of time and you A2 thereby committed an offence punishable u/s 468 r/w 471 IPC and within my cognizance.

Thirdly, that you Al to A4 in the course of the same transaction and in pursuance of the conspiracy during the time and place mentioned in the first Charge cheated

Ministry of Defence, Government of India, in particular Engine Factory. Avadi, Chennai by dishonestly inducing them to deliver a sum of Rs.7.56.711/- to you A2, on the property of the said Engine Factory, Avadi, Chenai and that you Al to A4 thereby committed an offence punishable 420 IPC and within my cognizance.

Fourthly, that you A1, A3 & A4 in the course of the said transaction and in pursuance of the conspiracy during the period and place mentioned in the first charge by corrupt or illegal means or by otherwise abusing your position as Public Servant obtained for you A1 to A4 valuable thing or pecuniary advantage in the matter of preparing, recommending and awarding the Purchase Order to you A2 and there by you A1, A3 and A4 committed an offence punishable u/s 13(2) r/w 13(1)(d) of P.C. Act 1988 and within my cognizance."

3. To prove the charges, the prosecution examined 24 witnesses, 96 exhibits were marked. On the side of the defence, examined 3 witnesses and 5 Exhibits were marked.

4. The sum and substance of the prosecution case is that accused 1 to 4 had entered into a criminal conspiracy to make pecuniary advantage dishonestly in the matter of procurement of Mather & Platt make Centrifugal

Pumps for use in Paharapur cooling tower in the Engine Test House, Engine Factory, Avadi, Chennai. In pursuant to the criminal conspiracy, Mariappan [A1] submitted procurement requisition dated 07.04.2004, which was prepared by Shanmugam [A4]. The requisition was recommended by B.S.Masure [A3] for approval of the General Manager. Followed by this procurement requisition, A1 submitted proprietary article certificate mentioning M/s.Trisure Enterprises is authorised dealer for Mather & Platt make Centrifugal Pumps and same was recommended for approval by B.S.Masure [A3].

5. In fact M/s.Siddharth Electricals, Chennai, was the authorized dealer for Mather & Platt make Centrifugal Pumps. However, knowing fully well, M/s.Trisure Enterprises is not the authorised dealer the forged proprietary article certificate issued by [A1] Mariappan, recommended by [A3] B.S.Masure.

6. The quotation given by M/s. Trisure Enterprises though abnormally high for supply of Mather & Platt make Centrifugal Pumps, the purchase order was issued in favour of M/s.Trisure Enterprises, on the strength of fake and fabricated letter dated 17.04.2004 purportedly issued by M/s.Mather & Platt Pumps Limited authorising M/s.Trisure Enterprises, Chennai to supply their pumps to Engine Factory, Avadi. After getting purchase order, M/s.Trisure Enterprises purchased Mather & Platt make Centrifugal Pumps together with Crompton Greaves motors from M/s.Siddarth Electricals for a lower price and sold it for higher price to Engine Factory, Avadi. Resulting in loss of Rs.7,56,711/-. To facilitate this purchase for an inflated price from M/s.Trisure Enterprises, which is not an authorised dealer of Mather & Platt make Centrifugal Pumps, earlier order placed with M/s.Siddharth Electricals was kept in abeyance.

7. The trial Court recorded its satisfaction about the case of the prosecution and held that the pumps purchased from [A2] M/s.Trisure Enterprises was with intend to defraud the Government and thereby Government of India incurred loss. A3 and A4 had misused their official position and shown favour to A2 owned company in respect of procuring the pumps. The trial Court held the accused 1 to 4 guilty and sentenced them to undergo punishment as under:-

Accused	***Offence under Section***	***Conviction and Sentence imposed by the trial Court***
A1, A3 & A4	120-B of I.P.C	To undergo six months R.I each
	420 of I.P.C	To undergo one year R.I and to pay fine of Rs.1,000/- in default to undergo three months S.I
	13(2) r/w 13(1)(d) of P.C. Act	To undergo one year R.I and to pay fine of Rs.1,000/-, in default to undergo three months S.I.
2	120-B of I.P.C	To undergo six months S.I and to pay fine of Rs.2,000/- each, in default to undergo three months S.I
	468 r/w.471 of I.P.C	To undergo One year R.I and to pay fine of Rs.1,000/- each, in default to undergo three months S.I.
	420 of I.P.C	To undergo One year R.I and to pay fine of Rs.1,000/- each, in default to undergo three months S.I.

8. Being aggrieved, Crl.A.No.538 of 2013 filed by Mariappan [A1], Crl.A.No.536 of 2013 filed by Hashim Shamshuddin [A2] and Crl.A.No.537 of 2013 filed by B.S.Masure [A3] and Shanmugam [A4]. Pending appeal Mariappan died and his appeal is dismissed as abated on 28.03.2022.

9. The learned counsel appearing for the remaining appellants/Accused 2 to 4 submitted that the entire case of the prosecution based on improper understanding of the facts and material procured. PW.2 R.S.Venkatesh, the proprietor of M/s.Siddharth Electricals had explained the facts without any embellishment. Since he did not support the case of the prosecution, he was treated hostile. The evidence of PW.2 *per se* will falsify the case of the prosecution in all aspects.

10. The learned counsel for the appellants submitted that M/s.Siddharth Electricals, which is an authorized dealer of Mather & Platt make Centrifugal Pumps, participated in the earlier tender for the supply of Mather & Platt make Centrifugal Pumps to Engine Factory, Avadi. The tender notification is Ex.P2. In response to the tender notification, M/s.Siddharth Electricals sends its quotation dated 29.01.2004. The said quotation is Ex.P3. The price of Rs.63,000/- per unit for the pump model 100/125 GST & Rs.16,000/- per unit for the pump model ET ISO 15 was quoted. Engine Factory, issued the purchase order on 18.06.2004. This tender was kept in abeyance. Later Engine Factory had purchased the motor and pumps they required from M/s.Trisure Enterprises. For M/s.Trisure Enterprises, M/s.Siddharth Electricals supplied the motors and pumps. In turn, M/s.Trisure Enterprises as its sub dealer sold to Engine Factory, Avadi.

11. The learned counsel for the appellants contended that the part payment made to M/s.Siddharth Electricals by M/s.Trisure Enterprises been taken as the entire consideration for 3 motors and 3 pumps. The quotation given by M/s.Siddharth Electricals for 100/125 GST pumps was kept in abeyance, since the technicians at Engine Factory felt that much higher power pump is required to cater their need. The requirement of higher power pump was decided by the user department and according to their need, the higher power pump was purchased along with motors from M/s.Trisure Enterprises. It is incorrect to say that M/s.Trisure Enterprises is not authorized dealer of Mather & Platt make Centrifugal Pumps. PW.2, the authorized agent of Mather & Platt make Centrifugal Pumps for Chennai was M/s.Siddarth Electricals. M/s.Trisure Enterprises is its sub agent and there is no bar for a sub agent to participate in the tender. Comparing the price quoted by M/s.Siddharth Electricals for a model 100/125 GST to that of the model 100/150 pump coupled with Crompton Greaves motor 18.5 kilowatts, the prosecution has come to an erroneous conclusion that Rs.2 lakhs worth motor and pump purchased by A1, A2 to A4 for Rs.7,56,711/-.

12. The learned counsel appearing for the appellants reading through the evidence of PW.2 and his cross examination as well as the corresponding documents such as Ex.P9, Ex.P24 and Ex.P25 pleaded that these documents would clearly show that value shown in Ex.P9 is not the value of entire material supplied by M/s.Siddharth Electricals to M/s.Trisure Enterprises, but it is a proforma invoice for which advance of Rs.2,00,723.25 received and acknowledged. Ex.P.24 and Ex.P25 is the contractors bill copy for the supply of pump and motor. The trial Court erred in comparing Ex.P9 which is only receipt for an advance without any detail of supply, with that of Ex.P24 and Ex.P25 to jump to an erroneous conclusion that in the said supply, Government has incurred loss.

13. The learned counsel for the appellants further submitted that Ex.P24 is the bill in respect of Centrifugal pumps model 100/150 GST capacity 120 CU MET/HR Head 100 Meter with suitable coupling and electric motor rating G 55 KW 6"/4" Mather & Platt make Centrifugal Pumps inclusive of all tax, the price was fixed as Rs.6,35,054/-. Ex.P25 is in respect of Centrifugal pump Horizontal Back pull out pump model 100/65 ET ISO 15 capacity 100 CU MET/HR Head 25 meter with suitable coupling and electric motor rating 18.5 KW size 4"/3" make Mather & Platt, the invoice inclusive of all tax price was fixed as Rs.3,22,667/- Whereas the tender submitted by M/s.Siddharth Electricals for supply of Mather & Platt make Centrifugal Pumps model 100/125 GST and Mather & Platt make Centrifugal Pumps model 100/65-200 T ISO.

14. The learned counsel appearing for the appellants/accused by comparing these documents submitted that the rate quoted for the pump alone of lesser capacity ought not to have compared with the rate of the pump of higher capacity along with motor.

15. The learned Special Public Prosecutor appearing for CBI submitted that the appellants had not assigned any reason for keeping the earlier tender in abeyance. The earlier tender which was submitted by the authorized dealer of Mather & Platt make Centrifugal Pumps, after issuing the purchase order stopped without reason and no reason has been assigned for purchasing the motor and pump from an unauthorized person. Ex.P10, which has been relied by the appellants to justify placing order with M/s.Trisure Enterprises is not a valid authorisation. The letter from M/s.Siddharth Electricals appointing M/s.Trisure Enterprises as agent to supply 100/150 GST for Engine Factory, Avadi is a limited authorisation valid only till 30.04.2004, for the purpose of dealing with Engine Factory in respect of supply of 100/150 GST pumpset. Ex.P.10 is not Authorisation from Mather and Platt. The reason for appointing M/s.Trisure Enterprises for this purpose of supplying the material through M/s.Trisure Enterprises was to inflate the price and to get the pecuniary advantage of the difference. The price of one set of pump 100/150

Mather & Platt make Centrifugal Pumps along with motor rating 55 KW is only Rs.2,65,010/- as per Ex.P11. Whereas one number of pump 100/150 GST capacity along with electrical motor rating 55 KW sold to Engine factory for Rs.5,95,000/- and 2 numbers of 100/65 T ISO capacity pump with motor rating 18.5 KW rate sold for Rs.1,52,000/- each as against its real price of Rs.80,800/-

16. Ex.P5 invoice of M/s.Siddharth Electricals raised in the name of M/s.Trisure Enterprises for one unit of Crompton Greaves motors 55 KW/75 HP with 4 pole with Mather & Platt make Centrifugal Pumps HSC pump 100/150 with coupling is price inclusive of all tax is only Rs.1,19,923/-, whereas the same is sold for Rs.5,95,000/-. The price mentioned in Ex.P11 is without discount and it being the quotation. On actual purchase, the cost was only Rs.1,19,923/-. similarly the Centrifugal pump of 100/65 with motor of 18.5 KW as per Ex.P6, M/s.Siddharth Electricals has sold to M/s.Trisure Enterprises for a sum of Rs.80,800/- inclusive of tax whereas same was sold for Rs.1,52,000/- to Engine Factory, Avadi. This inflated price according to the learned Special Public Prosecutor for CBI found to be abuse of position by the accused persons to favour private party to obtain pecuniary advantage.

17. Heard the learned counsel appearing for the appellants and the learned Special Public Prosecutor for CBI.

18. The allegations against the accused persons is three fold, first for keeping the tender floated earlier in abeyance, second, purchasing motor and pump from M/s.Trisure Enterprises for higher price, third, fabricating document to show as if M/s.Trisure Enterprises is the authorized dealer of Mather & Platt make Centrifugal Pumps. The appellants though by comparing Ex.P5, Ex.P6, Ex.P9, Ex.P24 and Ex.P25 try to impress upon this Court that there is no price inflation and uneven material been compared to prejudice the Court the said argument does not carry any merit, since the very same product which was supplied to Engine Factory by M/s.Trisure Enterprises is quoted in Ex.P5 and Ex.P6 for a very less price. M/s.Trisure Enterprises has purchased the material only from the M/s.Siddharth Electricals. If there is reasonable margin for the price, one cannot find any fault of the discretion of the purchase committee which has decided to go for higher efficiency motor and pump and for that reason leaving the earlier tender in abeyance but the price paid is unreasonable and the authorized dealer to avoid excess pricing had chosen the way to give an authorisation letter [Ex.P10] to M/s.Trisure Enterprises to deal with Engine Factory in respect of supply of pump 100/150 GST. It is not an authorisation letter given by M/s.Mather & Platt for its make Centrifugal Pumps. It is some internal arrangement between M/s.Siddharth Electricals and M/s.Trisure Enterprises to facilitate the trade. When PW.2 was called to give evidence, he has turned hostile to protect his business interest. No doubt, the presumptive loss of Rs.7,56,711/- in the charge is wrong and high but the pump 100/150 GST with motor 55 KW purchased for the price of Rs.1,19,923/- by A-2 is sold for Rs.5,95,000/- to Engine Factory. Similarly motor of 100/65 with motor 18.5 KW purchased for Rs.80,800/- is sold for Rs.1,55,000/- to the Engine Factory, Avadi. A1, A3 and A4 had facilitated this supply ignoring the market price this cannot be simply ignored as normal trade profit.

19. For the said reason, this Court finds no infirmity in the findings of the trial Court convicting the second accused for the guilty of offence under Sections 120 B r/w.420 IPC and 468 r/w.471 IPC and Section 13(2) r/w.13(1)(d) of P.C.Act. The appellants [A3 & A4] guilty of offence under Section 120(b) and 420 of I.P.C besides offence under Section 13(2) r/w.13(1)(d) of P.C.Act for being the public servants and conducting themselves dishonestly to cause pecuniary loss to the Engine Factory, Avadi.

20. As a result, these ***Criminal Appeal Nos.536 of 2013 and 537 of 2013 are dismissed.*** The trial Court conviction and sentence is confirmed. Time to surrender is 30 days from today, failing which the trial Court is directed to secure the appellant/accused and commit them to prison to undergo the remaining period of sentence. The period of sentence already undergone by the accused shall be set off under Section 428 of Cr.P.C.

21.09.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/Non-speaking order

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Copy to:-

1. The XIII Additional Judge for CBI Cases, City Civil Court, Chennai.

2. The The Inspector of Police,
CBI, ACB, Chennai.

3. The Special Public Prosecutor (CBI), High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN,J.

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Pre-Delivery common judgment made in
Crl.A.Nos.536 & 537 of 2013

21.09.2023