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Crl.A.Nos.229, 233, 249 and 258 of 2014
and Crl.A.No.1 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :08.11.2023

Pronounced on :28.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.Nos.229, 233, 249 and 258 of 2014
and Crl.A.No.1 of 2015

Crl.A.No.229 of 2014:

T.Bharathi

.. Appellant/Accused-5

/versus/

State by:

The Deputy Superintendent of Police,
SPE/CBI/ACB,
Chennai.

(R.C.No.29(A)/97)

.. Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to call for records set aside the judgment dated 17.04.2014 rendered by IX Additional Special Judge for CBI Cases in C.C.No.25 of 2001 and acquit the appellant from the above case.

For Appellant	:Mr.R.Rajarathnam, Senior Counsel for Mr.C.Sundaresan
For Respondent	:Mr.K.Srinivasan, Spl.P.P. for CBI



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Crl.A.No.233 of 2014:

1.T.M.Selvaganapathy
Son of T.Muthusamy
Male Aged about 54 years,
Former Minister of Local Administration and
Rural Development Government of Tamil Nadu

2.J.T.Acharyalu(died)
Son of J.Rangadas
Male aged about 71 years,
Former Special Commissioner and Secretary
to Government, Rural Development Department,
Government of Tamil Nadu.
(Second appellant died as per order dated
09.10.2023 in Crl.A.Nos.229, 233, 249,258
of 2014 and 1 of 2015)

.. Appellants/Accused-1 & 2

/versus/

State represented by
The Deputy Superintendent of Police,
SPE/CBI/ACB,
Chennai.

.. Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed against the appellants/accused 1 and 2 in the judgment dated 17/04/2014 made in C.C.No.25 of 2001 on the file of the IX Additional Special Judge for CBI Cases, Chennai 104 and allow this Criminal Appeal.

For Appellants	:Mr.V.Karthick, Senior Counsel for Mr.D.Sankar
For Respondent	:Mr.K.Srinivasan, Spl.P.P. For CBI



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Crl.A.No.249 of 2014:

M.Krishnamurthy

.. Appellant/Accused No.4

/versus/

State Rep. by:

The Inspector of Police,

SPE/CBI/ACB,

Chennai.

Crime No.R.C.No.29(A)/1997

.. Respondent/Complainant

Criminal Appeal has been filed under Sections 374(2) and 382 of Cr.P.C., to admit the appeal, call for the records from the learned Trial Court, hear the counsel for the Appellant/Accused No.4 and set aside the conviction and sentence passed on the appellant/accused No.4 in C.C.No.25 of 2001 by the Hon'ble IX Additional Special Judge for CBI Cases, Chennai and honourably acquit the appellant/accused No.4.

For Appellant :Mr.A.V.Somasundaram, Senior Counsel for
M/s Lakshmipriya Asso.

For Respondent :Mr.K.Srinivasan,
Spl.P.P. For CBI

Crl.A.No.258 of 2014:

M.Satyamurthy

..Appellant/Accused No.3

/versus/



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State Rep. by:

The Deputy Superintendent of Police,
SPE/CBI/ACB,
Chennai.

Crime No.R.C.No.29(A)/97

.. Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to call for the records in C.C.No.25 of 2001 from the Court of IX Additional Special Judge for CBI Cases, Madras set aside the same and acquit the appellant of all charges.

For Appellant	:Mr.K.Ravi Anantha Padmanabhan, Senior Counsel for Mr.K.Magesh
For Respondent	:Mr.K.Srinivasan, Spl.P.P. For CBI

Crl.A.No.1 of 2015:

State represented by
Inspector of Police,
CBI, ACB, Chennai.

..Appellant/Complainant

/versus/

1.ShriT.M.Selvaganapathy(A-1)
2.J.T.Acharyalu, IAS, (A-2)
3.Shri.M.Sathiyamurthy, IAS, (A-3)
4.Shri.M.Krishnamurthy(A-4)
5.Shri.T.Bharathi(A-5)

.. Respondent/Accused



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Criminal Appeal has been filed under Section 378 of Cr.P.C., to set aside the finding that A1 to A5 are not guilty of the offence under Section 120-B r/w 420 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 in the judgment dated 17.04.2014 pronounced by the learned IX Additional Special Judge for CBI Cases, Chennai in C.C.No.25 of 2001.

For Appellant	:Mr.K.Srinivasan, Spl.P.P. For CBI
For Respondents	:Mr.V.Karthick, Senior Counsel for Mr.D.Sankar for R1 and R2 Mr.K.Ravi Anantha Padmanabhan Senior Counsel for Mr.K.Magesh for R3 Mr.A.V.Soma Sundaram, Senior Counsel for M/s Lakshmi Priya Asso. For R4 Mr.Rajarathinam, Senior Counsel for Mr.C.Sundaresan for R5

COMMON JUDGMENT

The batch of Criminal Appeals, which is under consideration, are all directed against the judgment dated 17th April, 2014 passed in C.C.No:25 of 2001 on the file of IX Additional Special Court For CBI Cases , Chennai.



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(2) in the said case, (1) T.M.Selvaganapathy, a public servant, who was the Minister for Local Administration and Rural Development during the period 1995-1996; (2) J.T.Acharyalu, I.A.S., a public servant functioning as Special Commissioner and Secretary to Government, Rural Development during the period 1995-1996; (3) M.Sathyamurthy, IAS, a public servant functioning as Director of Rural Development Department, Government of Tamil Nadu; (4) M.Krishnamurthy, a public servant functioning as Project Officer, District Rural Development Agency (DRDA) Nagapattinam District; and (5) T.Bharathi, a private individual Proprietor of Om Muruga Cement Articles were charged for offence of conspiracy along with Arokiyaraj (deceased) to cause wrongful loss to the Government to a tune of Rs.23 lakhs and corresponding wrongful gain for themselves in connection with erection of cremation sheds for Adi Dravida Community at Nagapattinam District under Jawahar Rozhar Yojana (JRY) Scheme(in short “JRY Scheme”) .

(3) The specific charges framed against each of the accused and tried by the Court are as below:-

Firstly that you A-1 T.Selvaganapathy was functioning as Minister of Local Administration and Rural Development, Government of Tamil Nadu during 1995-96. You A-2 Shri



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J.T.Acharyalu, IAS, was functioning as Special Commissioner and Secretary to Government, Rural Development Department, Government of Tamilnadu during 1995-96, you A-3 Shri M.Sathyamurthy, IAS, was functioning as Director of Rural Development Department, Government of Tamil Nadu during 1995-96, You A-4 M.Krishnamurthy was functioning as Project Officer, District Rural Development Agency, Nagapattinam during 1995-96, the deceased A.Arokiaraj functioning as Special Officer, Karungulam Carpentry and Blacksmithy workers Industrial Co-operative Society Ltd, Karungulam Manaparai Taluk, Trichy District during 1995-96 and You A-5 Shri T.Bharathi is the Proprietor of Om Muruga Cement Articles, Red Hills, Chennai, entered into a criminal conspiracy between 1995-96 at Chennai, Trichy, Nagapattinam, Red Hills and other places in Tamilnadu to commit criminal misconduct and to cheat the Government of India and Government of Tamil Nadu in the matter of construction/erection of cremation sheds under Jawahar Rozhar Yojana shortly called as JRY. which was not an identified item of work under RY by using JRY funds and in pursuance of the said conspiracy. You A-3 Shri M.Sathyamurthy Initiated a proposal on 21/6/95 for the construction/sanction of cremation sheds under JRY scheme at an exorbitant rate of Rs.30,000/- per shed which was far above the actual cost of construction and also against PWD Engineers estimate of Rs.18,321/- per shed; You A-2 J.T.Acharyalu accepted the said proposal on 28-6-95 and included the names of seven societies for executing the said work against the guidelines of Jawahar Rozhar Yojana (RY) viz., to utilize the service of the locals and procurement of the materials from local and also included the clause for payment of 50% advance in total violation of GO MS No.708 dated 22/8/94 and in pursuance of the conspiracy You A-2 Shri J.T.Acharyalu forwarded the proposal dated 28/6/95 directly to you A-I Shri T.M.Selvaganapathy without routing the same through Finance Department; and in pursuance of the conspiracy You A-1 Shri T.M.Selvaganapathy approved the proposal on the same day i.e. 28/6/95 knowing fully well that the construction of cremation sheds was not an identified item under Jawahar Rozhar Yojana (JRY) Scheme and such work should not be entrusted to Co-operative societies on the other hand it should be entrusted to local people and that payment of advance to the societies was prohibited by the Government of Tamilnadu; and in pursuance of the conspiracy. You A-4 Shri M.Krishnamurthy Project Officer, issued work order in favour of Karungulam Carpentry and



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Blacksmithy Workers Industrial Co-operative Society Lad, Karungulam, Manaparai Taluk, Trichy knowing fully well that the erection/construction of cremation sheds in Nagapattinam District would be done by you A-5 T.Bharathi in the name of the said society and recommended payment of 50% advance suppressing the fact that no bank guarantee was produced and issued D.D. in favour of the society and further made payment of 40% to A-5 T.Bharathi without the knowledge of the Collector and in pursuance of the conspiracy, the deceased A.Arokiaraj. Special Office of the said society facilitated as if the work was carried out by the society and under the pretext of the society facilitated you A-5 T.Bharathi in the encashment of the D.Ds and signed blank cheques and issued to you A-5 T.Barathi for encashment and in pursuance of the conspiracy You A-5 Shri T.Bharathi who was not even a member of the said society executed the work of erection/construction of cremation sheds in the name of the said society in a substandard manner and not in conformity with the specifications through the sub contractors. Thereby you A-1 Shri T.M.Selvaganapathy. You A-2 Shri J.T.Acharyalu, you A-3 Shri M.Sathyamurthy and You A-4 Shri M.Krishnamurthy abused or misused you official position or by illegal means in collusion with the deceased Arokiaraj and you A-5 Shri T.Bharathi had caused wrongful loss to the Government to the extent of Rs.23 lakhs and caused wrongful gain to yourselves and thereby you A-1 to A-5 committed an offence punishable U/s 120-B IPC r/w 420 IPC and Sec.13(2) r/w 13(1) (d) of PC Act, 1988, and within my cognizance.

Secondly, that you A-1 shri T.M.Selvaganapathy, you A-2 Shri J.T.Acharyalu, you A-3 Shri M.Sathyamurthy and You A4 Shri M.Krishnamurthy, being public servants as stated in the above charge and in pursuance of the said criminal conspiracy and in the course of the same transaction as mentioned in charge No.1 during the period mentioned above by corrupt or illegal means abusing your official position as public servants obtained pecuniary advantage in favour of A-5 T.Bharathi to the extent of Rs.23,00,000/- and thereby you A-1 to A-4 committed an offence specified in Sec.13(1)(d) of PC Act, 1988 punishable U/s 13(2) r/w 13(1)(d) of PC Act 1988 and within my cognizance,

Thirdly, that on 8-8-95 you A-5 T.Bharathi in pursuance of the said conspiracy and in the course of the same transaction detailed in the first charge, obtained orders for construction of 100 Nos, of Cremation sheds in Nagapattinam District and also



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on the same day obtained a sum of Rs.29.70 lakhs by way of cheque and converted into four Demand Drafts for that amount from SBI, Nagapattinam in the name of Karungulam Co-operative Society, being the advance for the construction /erection of 100Nos. Of cremation sheds and the said four demand drafts were deposited in the newly opened Current a/c No.445 of Canara Bank of Karanodai branch by the deceased Arokiaraj and the same were withdrawn by way of cheques prepared by Smt.Anitha, Shri Ashok, S.Lakshmi employees of Bharathi (A-5) signed by the deceased Arokiaraj) and on 15/12/95 you A-5 Bharathi obtained a cheque for Rs.11.72.630/- of SBI, Nagapattinam from You A-4 Krishnamurthy for payment of another advance of 40% cost without the knowledge and permission of Collector and the said amount was converted DD and deposited in C.alc 445 of Canara Bank of Karanodai branch and encashed by you A-3 Bharathi by way of cheques signed by the deceased Aroliraj and the said cheques were prepared by the above said employees of you A-5 Bharathi but the actual cost of construction of sheds was Rs.17,58,908/- only as against the estimated cost of Rs.30 lakhs and the cremation sheds were estimated by PWD Engineers at Rs. 18,321//per shed (out of 100 sheds ordered only 97 sheds were constructed out of which one in dilapidated condition and further the construction was also not in conformity with the specification given in the type design and as such the sheds were of no utility value) and the total amount spent in this respect was a loss to Government of India and Govt. of Tamilnadu and thereby you A-5 T.Bharathi cheated the Government of India and Govt. of Tamil Naduto the tune of Rs.23,00,000/- and you A-5 thereby committed an offence punishable U/s 420 IPC and within my cognizance

(4) In the course of trial, 71 witnesses (PW-1 to PW-71) , 333 Exhibits (Ex. P-1 to Ex.P333) and 38 material objects (M.O.1 to M.O.38) were marked on the side of the prosecution. In defence, 18 exhibits (Ex.D-1 to Ex.D-18) were marked. The witness warrant to one E.Mark (PW-20) and witness summon to



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one Dhandapani (PW-31) were marked as Court documents Ex.C-1 and Ex.C-

2.

(5) After appreciation of evidence, the trial Court held, the prosecution has established its case by adducing reliable and satisfactory evidence beyond any reasonable doubt that the accused have committed the offences of criminal misconduct and cheating. Hence, A-1 to A-4 were held guilty of offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and were sentenced to undergo 2 years RI with fine of Rs.25,000/- each, in default 4 months RI each. A-5 was held guilty of offence punishable under Section 420 IPC and sentenced to undergo 2 years RI with fine of Rs.25,000/- in default 4 months RI. In so far as the charge of conspiracy, the trial Court held them not guilty and acquitted.

(6) While appeals against conviction filed by the accused, as against acquittal of charge under Section 120-B of IPC, the State through CBI had preferred appeal.

(7) T.M.Selvaganapathy:(A-1) and J.T.Acharyalu(A-2) are appellants



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in C.A.No.233 of 2014. In the course of hearing, A-2 reported dead and the same recorded.

M.Sathyamurthy (A-3) is the appellant in C.A.No.258/2014.

M.Krishnamurthy(A-4) is the appellant in C.A.No.249/2014.

T.Bharathi(A-5) is the appellant in C.A.No.229/2014.

The State appeal against acquittal is C.A.No.1/2015.

(8) The prosecution case as unfurled through its witnesses :-

The High Level Committee in its third meeting held on 12/05/1995, resolved to provide cremation sheds with pathway by the end of 1995 for Adi Dravider villages in the State. In the said meeting, the Minister for Finance Mr.S.D.Somasundaram, the Minister for Local Administration, Mr.Selvaganapathi (A-1) the Minister for Adi Dravidar Welfare, Mr.M.Anadan, the Chairman TAHDCO, Mr.Arunachalam, Secretaries and Joint Secretaries to various Departments in the Government attended. The decision taken in the meeting was reduced into writing. Thereafter, on 20/05/1995, in the Review Meeting held by Thiru.J.T.Acharyalu (A-2) with the Project Officers and Officials of Rural Development Department, the project officers were instructed by A-2 and A-3 to carry on the work of constructing cremation sheds in their



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jurisdiction using JRY Scheme fund.

(9) Thereafter, M.Sathyamoorthy, IAS (A-3) the then Director of Rural Development through his letter dated 21/06/1995 mooted the proposal for creating a community asset by providing cremation-cum-waiting shed by stating that burning ghat is absolutely a community asset, so, the programme can be taken up under Jawahar Rozgar Yojna (JRY)/Jawahar Vellai Vaippu Tittam (JVVT). A model type design with abstract estimation of Rs.30,000/- was enclosed along with his proposal. This proposal (Ex.P-50) was addressed to A-2. On receipt of the said proposal sent by A-3 along with type design and cost estimation, the Special Commissioner, Mr.Acharyulu(A2) IAS, prepared and circulated a note file on 28/06/1995. The said note was approved by A-1 on the same day and the decision was communicated back to A-3 by A-2 vide, his letter dated 28/06/1995 marked as Ex.P-76.

(10) A-2 through the letter Ex.P-76 and its Annexure, informed A-3 that the Government after examining the proposal had decided to include the programme of constructing cremation shed for Adi Dravida's in the Action Plan of JVVT (Jawahar Vellai Vaippu Thittam) for the year 1995-96 along with



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other programmes. The type design sent along with the proposal of A-3 and estimated cost of each cremation-cum-waiting shed at Rs.30,000/- also approved by the Government. The Government decision to take up 5 cremation-cum-waiting sheds in each block during 1995-96 and earmark necessary funds in the action plan was informed to A-3 for further course of action.

(11) This letter of A-2 also indicated that the Government had considered to give the erection work of the cremation-cum-waiting shed to the Industrial Co-operatives coming under the control of Khadi and Village Industries Board. In the annexure to the said letter Ex.P76 of A-2, a list of societies for the purpose of construction of cremation shed with the respective districts allotted to each of the Society also indicated. Further, A-2 had instructed A-3 that taking into consideration the difficulty expressed by those societies to mobilise adequate working capital advance payment of 50% may be considered provided the Society offers adequate bank guarantee. In the said Annexure, the districts in the State were divided into 7 groups consisting of three districts each. For each group of districts, Institution to which the work has to be allotted also mentioned. As far as Nagapattinam District concern, the work was suggested to be entrusted to Karungulam Carpentry and Blacksmithy



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Workers Industrial Co-operative Society Limited.

(12) During the course of investigation, from the residence of PW-55, draft estimation for the modified drawing of cremation shed recovered and same is marked as Ex.P-289. A draft letter dated 27/06/1995 approved and corrected by A-3, but not despatched was marked as Ex.P-53 was also recovered and same is identified by PW-7. The un-despatched letter of A-3 marked as Ex.P-53 suggest to restore earlier system of advancing 50% to the societies, in order to enable them to supply the materials quickly and punctually. Whereas, Ex.P-13, the G.O.Ms.No:708, Finance Department, dated 22/08/1994 had completely scrapped with immediate effect the system of advance payments to Khadi Industrial Co-operatives and Industrial Co-operatives by the Government departments/undertaking etc. So, to get over the ban of giving advance, A-3 in his draft letter intentionally scored off the reference about G.O.Ms.No.708 and inserted the earlier G.O.Ms.No.122, dated 17/03/1993 in his draft letter Ex.P-53 and the corrected letter Ex.P-54 dated 28/06/1995 was despatched.

(13) The Special Officer of Karungulam Co-operative Society Arokiyaraj (in the final report, Arokiyaraj was arrayed as A-5. Due to his



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demise before framing of charges, his name was deleted) had engaged T.Bharathi as middleman who outsourced the work to Sub-Contractors. The said T.Bharathi(A-5), not a member of the Karungulam Co-operative Society had gone to the office of District Rural Development Agency Office at Nagapattinam and met Krishnamurthy, DRDA (A-4). A-5 T.Bharathi had handed over the letter dated 04/08/1995 signed by Arokiyaraj seeking advance payment of 50% without furnishing bank guarantee. On persuasion of A-4, Swaminathan [PW-10] had prepared note to the Collector to release 50% advance without mentioning about non furnishing of Bank Guarantee. Based on the said note, the District Collector on 08/08/1995 passed orders entrusting the work of constructing 100 cremation sheds in Nagapattinam District at the costs of Rs.30,000/- each to Karungulam Co-operative Society. On the same day, a sum of Rs.29,70,000/- was drawn from the SBI, Nagapattinam Branch and a demand draft for Rs.29.70 lakhs was purchased in favour of Karungulam Co-operative Society, which includes 50% advance of Rs.15 lakhs for cremation shed construction and balance for the work of erecting “Name Boards”.

(14) The letters Ex.P-58 and Ex.P-59 and Ex.P-60 in the letter pad of Karungulam Society addressed to the Chief Executive Officer, DRD, were



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prepared at the instance of A-5 in the blank letter pad signed by Arockiaraj. The hand writing expert, on comparison of writings, opined that the letter Ex.P-58 was written by one Anitha, employee under A-5.

(15) The demand draft was presented by T.Bharathi [A-5] in the newly opened current account in the name of the Karungulam Society opened at Canara Bank, Karanodai. The new account was opened with the intention of facilitating A-5, who is a resident of Chennai to handle the cash of the Society registered at Tiruchy. According to Palanivel [PW-59], the Assistant Director of KVIB, the new account was opened without his knowledge or permission. Ex.P-99, Ex.P-100 and Ex.P-101, which are movement registers and attendance registers maintained in Karungulam Society indicates that, the Special Officer was not even present at Chennai, when the account was opened or D.D/cheques presented.

(16) On 15/12/1995, A-4 had released further sum of Rs.8 lakhs without intimation or approval of the District Collector, while the construction of the cremation sheds were under way. The DD for this amount also encashed



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through Canara Bank, Karanodai Branch and withdrawn. The hand writing expert on comparison of writings, opined that most of the cheques drawn by Karunkulam Co-operative Societies were written by Anitha, Ashok and Lakshmi, who are all employees under T.Bharathi A-5. The signed blank cheques given by Arockiaraj (deceased) the Special Officer of the Society to A-5 were used for withdrawal of money from the newly opened Current Account at Karanodai branch of Canara Bank.

(17) Though on record, the work was entrusted to Karungulam Co-operative Society. In fact, Bharathi acted as middleman and got the work executed by a Sub-Contractor M/s JJ Engineering, Salem represented by J.Chandran and J.Thangaraj. In the course of investigation, the cremation sheds constructed under the Scheme was evaluated by PWD Engineers and the cost of sheds were estimated between Rs.16,100/- (Ex.P-107) to Rs.21,879/- (Ex.P-236). The average cost estimation of 97 sheds constructed arrived as Rs.18,321/- each. It was also noted by the Inspection Team out of 97 sheds, one found in dilapidated condition. The construction was not in conformity with the specification and design. As it was not to the specification, the sheds were not put to use and the entire money spend on this project was a loss to the



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Government.

(18) The primary object of JRY/JVVT as per its Manual Ex.P-9 is to generate additional gainful employment for the unemployed and under employed persons both men and women, in the rural areas. The secondary object is to create sustainable employment by strengthening the rural economy, employment infrastructure, creation of community and social assets, creation of assets in favour of rural poor particularly, the SC and ST community for their direct and continuing benefits and improvement in the overall quality of life in the rural areas. The Fund for the works under this scheme is to be shared by the Central Government and the State Government at the ratio of 80: 20.

(19) The Central Government through its Ministry of Rural Development in its letter dated 25/03/1994 had given broad guidelines to the State Government how to execute the work under the JRY Scheme. The said letter is marked as Ex.P-74. In this letter, the Central Government has emphasised that the work to be executed employing local residents without engaging any contractor or middlemen so that the full benefit of wages reach the worker. Further, it also directed the States that the decision making as well as



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implementation in respect of the works to be decentralised and placed at the hands of the Panchayat Raj Institutions at the relevant levels. The unfair practise of engaging contractor unofficially to execute the work under JRY and work taken up to suit the middlemen instead of the community, to be put an end.

(20) In violation of the JRY manual and the guidelines, A-1, A-2 and A-3 in furtherance to the conspiracy to obtain wrongful gain had decided to utilise the fund under JRY which is not meant for constructing cremation shed for Adi-dravidar. That apart, in violation of the guidelines, the work was entrusted to co-operative society instead of engaging local man power. Further, contrary to the guidelines, the Karungulam Co-operative Society registered at Tiruchy was given contract to execute the work at Nagapattinam District and the said society had engaged middleman and sub-contractor.

(21) The decision in Ex.P-76 communicated to A-3 by A-2 vide letter dated 28/06/1995 held to be invalid by the trial Court for the following reasons:-



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(1) Neither in the High Level Committee held on 12/05/1995 nor in the proposal of A-3 dated 21/06/1995, there is no reference about entrusting the work to Co-operative Societies in general or to any specific society. However, A-1 as Minister LA & RD and A-2 as Special Commissioner for Rural Development had identified these societies from the list of societies forwarded by A-3 for the purpose of supplying “Name Boards” under Jawahar Rojgar Yojana (JRY) also known as Jawahar VellaiVaippu Thittam (JVVT) in Tamil.

(2) In G.O.Ms.No: 708 dated 22/08/1994, advance payment to institutes under KVIB banned. Despite the ban, in the case of Karungulam Co-op Society advance was made and to release 50% advance, the GO Ms 708 was ignored and brought on record in the process for releasing.

(3) Though the proposal had financial implications, it was not routed through Finance Department.

(4) In order to give direct employment to unemployed rural people, JRY scheme was conceived. It prohibits engaging contractor/middlemen/sub-contracts in execution of the works. While the manual and guidelines issued in this regard is clear, contrary to that A-1 to A-3 at Secretariat level decided to entrust the work to Society registered out side the District concern.



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(22) As a result of the above gross violation, A-4 initially released advance payment of 50% ie Rs.15,00,000/- and during the course of executing the work released Rs.8,00,000/- at the instance of A-5. The deceased Special officer of the Society allowed A-5 Proprietor of M/s Om Muruga Cement Articles, Red Hills, Chennai to execute the work. As per his convenience and A-5, had engaged a Sub Contractor by name M/s JJ Engineering, Salem. He had used his men to withdraw the money from the bank account opened at Karanodai, Chennai for his convenience. During the inspection, the team were able to identify only 97 cremation sheds. One of it was in dilapidated condition. The valuation reports of the PWD Engineers indicate the constructions were not as per specification approved. They were of sub-standard quality unfit for utilisation.

(23) The trial Court, based on the evidence held, though the prosecution has failed to prove the link between the accused for conspiracy, however, the charge of misconduct by the public servants A-1 to A-4 is proved. Also, the charge of cheating by A-5 proved.



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(24) Submissions of the Counsels:-

The learned counsels for the accused/appellants, argued that the registration of criminal case was the outcome of the order passed in a Public Interest litigation, by the Hon'ble High Court. Based on the order passed by the High Court, CBI took up investigation regarding irregularities in executing the cremation sheds at 18 Districts. In 16 districts, the CBI filed Referred Charge Sheet and closed the cases. In respect of Madurai District and Nagapattinam District, final report filed and cognizance was taken. The case C.C.No.2/1999 on the file of Special Court for CBI cases at Madurai, tried for the alleged irregularities in construction of cremation sheds in Madurai District, ended in acquittal. CBI had not preferred any appeal. On the same facts and documents, the Special Court for CBI Cases at Chennai, had found the public servants guilty of misconduct and the private person A-5 guilty of cheating.

(25) They also submitted that, for the same set of facts, in other cases the sanctioning authority declined to grant sanction to prosecute by assigning reasons. Strangely, those reasons were not taken into consideration by PW-1,



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while according sanction to prosecute A-2 and A-3. Attributing political vendetta for this vagaries, the learned counsels contented that in rest of the 17 cases arising from same set of facts, which also germane from the policy decision of the Government, as reflected in the circulation file marked as Ex.P-2, the prosecution did not sustain. While so, the conviction in this case also cannot sustain.

(26) Further, it was also submitted that the trial Court has rightly held that there was no meeting of mind between the accused to convict them for conspiracy. Therefore, when there was no proof for sharing criminal intent to obtain wrongful gain to themselves or wrongful loss to the Government, the implementation of the collective decision taken by the Ministers and Secretaries in the High Level Committee can at the most be termed as unwise decision, but not a decision with any criminal intention.

(27) The learned Special Public Prosecutor for the CBI/the appellant in Crl.A.No.01 of 2015 and the respondent in rest of the appeals submitted that the trial Court erred in acquitting the accused persons from the charge of conspiracy, inspite of the prosecution established the chain and the links.



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Having rightly held that the public servants A1 to A4 have committed the offence of misconduct and caused wrongful loss to the Government by allowing A5 to make wrongful gain by violating the JRY Manual of the Central Government, which has contributed 80% for the Scheme and G.O.Ms.No.708 of the State Government which has contributed 20% for the Scheme, the trial court failed to appreciate the fact that cheating by A5 was possible only because of meeting of mind between the accused during the High Level Committee Meeting held on 12.05.1995 and thereafter.

(28) To buttress his argument, the learned Special Public Prosecutor rely on para 23 and 24 of the judgment of the Hon'ble Supreme Court in

Ajay Agarwarl v. Union of India(UOI) and Ors. reported in [AIR 1993 SC 1637], which is extracted below:-

23.Archbold in *Criminal Pleadings, Evidence and Practice*, 42nd edition (1985), Chapter 23, in paras 28-32 at p. 2281, Wright on *Conspiracies and Agreements* at pages 73-74, Smith on *Crimes* at page 239 and Russel on *Crime*, 12th edition, page 613, stated that conspiracy is a continuing offence and liable to prosecution at the place of making the agreement and also in the country where the acts are committed.

24.Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by



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one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or technics to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration of a single conspiracy, its parts bound together as links in a chain, is the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers; and the retailers knew that the middlemen must buy of importers of someone or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes together in a single conspiracy. It is not material that a rim is found only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes; so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the first instance. Take for instance that three persons hatched a conspiracy in country *A* to kill *D* in country *B* with explosive



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substance. As far as conspiracy is concerned, it is complete in country *A*. One of them pursuant thereto carried the explosive substance and hands it over to third one in the country *B* who implants at a place where *D* frequents and got exploded with remote control. *D* may be killed or escape or may be diffused. The conspiracy continues till it is executed in country *B* or frustrated. Therefore, it is a continuing act and all are liable for conspiracy in country *B* though first two are liable to murder with aid of Section 120-B and the last one is liable under Section 302 or 307IPC, as the case may be. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of *autrefois convict* or *acquitt* would extend to such offences. The comity of nations are duty-bound to apprehend the conspirators as soon as they set their feet on the country's territorial limits and nip the offence in the bud.

(29) Vibhuti Thakur v. Central Bureau of Investigation reported in 2021/DHC/3391, paras 17 to 19 read as below:-

“17. Conspiracy is generally hatched in secrecy and it is difficult to prove the same, if not impossible, by obtaining direct evidence. Conspiracy is mostly proven by circumstantial evidence, i.e. by taking into account the cumulative facts of the circumstances indicating the guilt of the accused rather than adopting an approach by isolating the role played by each accused (See State (NCT of Delhi) v. Shivcharan Bansal, MANU/SC/1678/2019 : (2020) 2 SCC 290).



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18. As early as 1959, the Supreme Court in *Badri Rai & ANR. v. State of Bihar*, MANU/SC/0047/1958 : 1959 SCR 1141, had observed as under:

"5 A conspiracy is hatched in secrecy, and executed in darkness. Naturally, therefore, it is not feasible for the prosecution to connect each isolated act or statement of one accused with the acts or statements of the others, unless there is a common bond linking all of them together. Ordinarily, specially in a criminal case, one person cannot be made responsible for the acts or statements of another. It is only when there is evidence of a concerted action in furtherance of a common intention to commit a crime, that the law has introduced this rule of common responsibility, on the principle that everyone concerned in a conspiracy, is acting as the agent of the rest of them. As soon as the court has reasonable grounds to believe that there is identity of interest or community of purpose between a number of persons, any act done, or any statement of declaration made, by any one of the co-conspirators, if the act or the declaration has any relation to the object of the conspiracy "

19. It has been often stated in various judgments that conspiracy is like a moving train where conspirators can get in and get out at any stage, and it's not necessary or essential that all the parties should have been present from start to finish and take part in each and every act of the other conspirators. Therefore, the Petitioner's contention that being a private person, they are not privy to the mechanisms involved in the bidding process, and thus should not be charged, cannot be countenanced."

(30) Regarding the appeal against conviction, the learned counsel for



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CBI submitted that the trial Court has recorded how each of the accused had with criminal intention dishonestly decided to utilise the JRY fund for constructing cremation shed for Adi-dravida people engaging outsiders instead of local people. The fund was allowed to be utilised for carrying on the work engaging contractor and sub-contractors. The substandard quality of the construction far below the estimation/fund allocation proved through the opinion of experts. These dishonest act was accomplished by the accused persons because of the meeting of mind.

(31) Per contra, on the side of the accused A1, the learned Senior Counsel appearing for A1(former Minister) submitted that,

(1)Investigation was taken up by CBI in respect of the very same project of construction of cremation sheds in 18 Districts. In 16 Districts, CBI did not proceed with prosecution.

(2)In respect of implementing this very project in Tirunelveli District, sanction to prosecute the Project Officer Nanda Kishore was refused by the State Government. (Ex.D-13). It is interesting to note that sanction was refused in respect of Shri Nand Kishore on 25.05.2000 where the very same works had been entrusted to the very same Society for Tirunelveli District. While fact being so, on the very same set of facts, when the very same work was entrusted



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to the very same society, in respect of Nagapattinam District, sanction was granted by PW-1 on 08.11.2000. It is therefore clear that the Government had a change of heart after about 6 months.

(3)When the very same project of construction of cremation sheds for Adi Dravidars was taken up under the JRY Scheme during the previous year, i.e., 1994-95, at Madurai, no evidence was found of any offence and the accused were acquitted.

(4) During the previous year 1994-95, many Districts had implemented this very project of cremation sheds under JRY Scheme. During the previous year also, the estimate for the project was Rs.30,000 per shed and an advance of 50% was paid to the Industrial Co-op Societies (under the control of KVIB) that had carried out the works. (Ex D3)

(5)During 1994-95, another project of installing name boards was also implemented in various Districts under JRY Scheme. Advance of 50% was paid to the Co-operative Societies that were entrusted with the work. There is a Circular of DRD dated 25.10.1994 whereby the List of Societies to which the work was to be entrusted was furnished and advance of 50% was also provided for.

(6)For the year 1995-96(present case), the very same Societies to whom the name board works were entrusted were given the work of erecting cremation sheds. A-2 included the same list of societies in his Note that was put up for the approval of A-1. (Ex P6)



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(7)The list of works illustrated in the JRY manual was not exhaustive and was only illustrative. All rural works which result in creation of durable productive community assets can be taken under the Yojana. An illustrative list of works that can be taken up under the Yojana was given as Annexure-III to the Manual.

(8)Except signing the Note for Circulation Ex.P-6 on 28.06.2023, there is no other participation by the Minister A-1 in this entire transaction.

(9)To rope in the Minister A-1, the prosecution spun the theory of conspiracy, and that has rightly been rejected by the Trial Court. The following crucial aspects borne out of the record speak volumes about the desperate attempt to somehow implicate the Minister A-1: (i) The Note for Circulation was signed by A-1 on 28.06.1995. Consequent to the in-principle approval of the policy/proposal placed by A-2 (Secretary to the Government), the project proposal was circulated to the officers of the Districts by A-2 vide his letter dated 28.06.1995. Thereafter, implementation of the project, entrustment of the work, supervision of execution, etc were in the domain of the officers at the field/Block level

(ii)The pointed allegation is that A-1 was also part of the conspiracy to cause wrongful pecuniary advantage to A-5 Bharathi.

(iii)While the only role of A-1 was signing the Note on



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28.06.1995, A-5 Bharathi comes into the picture for the first time on 08.08.1995.

(iv) In an attempt to somehow link A-1 to A-5, the prosecution had put it in the mouth of PW-55 K.R.Murugesan in his Sec. 161 Statement that A-3 had told him that A-5 was very close to A-1. PW-55 did not state this in his evidence before the Court. Treating him as hostile, the Public Prosecutor put it to him in cross examination, and that was stoutly denied by the witness. Except this failed attempt by the prosecution, there is no material whatsoever to connect A-1 to A-5 in any manner.

(v) It is significant to note that the Investigating Officer PW-71, in his examination-in-chief has asserted that while he recorded the statements of all other witnesses, only the statement of PW-55 Murugesan was recorded by another officer by name Kathiresan.

(vi) Mr. Kathiresan has not been examined in this case, while all the other officers who had participated in the investigation have been examined.

(vii) The IO, has stated that DSP Kathiresan has lost his memory and he has not been examined.

(viii) Unfairness and the partisan nature of investigation with a view to nail A-1 is apparent on the face of the record.

(32) Learned counsel for A3 submitted that A3 was the then Director of Rural Development. The learned counsel for A-3 beside oral submission also filed written submission which reads as below:-



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(i)Based on PIL, initially, the Division Bench of our High Court directed CBI to investigate only for Madurai District. Thereafter, a learned single judge of the high court directed the agency to investigate all over the State of Tamilnadu. As regards all other districts except Madurai and Nagapattinam, CBI filed referred charge sheets and closed the cases. The charge sheets were filed only before the Spl.Courts in Madurai and Nagapattinam. After a full-fledged trial, all the accused were honourably acquitted of all similar charges vide Ex. D 3 in C.C. No. 2/1998. No further appeal has been preferred by CBI as against the Madurai court judgement. Though on same facts, it is unfortunate that the accused have been convicted as regards the Nagapattinam district vide C.C. 25 of 2001 on the file of IX Addl. Spl. Judge for CBI Cases, Madras.

(ii)Admittedly, the total amount released was Rs.29 lakhs. Out of which, Rs. 6 lakhs was appropriated towards Information Boards [" Thagaval Palagai "] and the balance of Rs. 23 lakhs towards Cremation-cum-Waiting Sheds (CCWS). This is not disputed by the prosecution. After registration of the FIR, the inspecting officials, after nearly four years of installation, confirmed on inspection that Rs.17 lakhs had been deployed in CCWS work, without taking into account pilferage by locals, deterioration due to vagaries of weather and so on. Thus, it becomes clear that the funds so released had been fully utilised towards the Project. Due to wrong calculation and valuation of materials, the difference appears to be just Rs.6 lakhs. Therefore, it is not a case of non-utilization or diversion of funds released for Public Welfare.



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(iii)A-2 on 18.06.1995 sent the Letter No.23724/CSS/95-1 stating that "Government hereby direct that the construction of CCWS may be included in the Action Plan for JVVT for 1995-1996 along with other Programmes". Further, A-2 also mentioned the names of Industrial Co-operatives, including the name of Karungulam Carpentry Industrial Co-operative Society, in the annexure sent along with Ex-P54 Government letter. The controversial 50% advance amount was directed by the Government to consider on production of the Bank Guarantee. As the Project had to be completed within 6 months, A-2 also recommended for making advance payment, quoting valid reasons, and it was approved by A-1 himself. Thus, it can be seen that A3/Appellant did not have any role to play in it. Besides, the role of A3/Appellant ended with forwarding the Ex-P5D Proposal together with the Approved Sketch and Design prepared by P.W.55.

It is an admitted fact that this appellant did not send and despatch Ex-P53 draft letter. It is needless to say that an unsent letter is of no legal significance. In the eye of law, it cannot be acted upon. Ex-P53 is dated 27/06/1995. P.W.7 initialled on Ex.P53 stating "not despatched" on 28/06/1995". So, atleast until 28/6/95, it was not sent and no body had any access to this letter. But, on the same day on 28/06/1995, A2 himself sent the Government letter dated 28/06/1995 to A3 stating that Government decided to bring the above scheme under JVVT; that 50% advance payment should be considered as Industrial Societies could not mobilize their capital to do the job within short time. Also, along with Ex.P.54 Government letter dated 28/06/1995, A2 enclosed an annexure containing the list of 7



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Societies, out of whom SI.no.5 was the Karungkulam Industrial Co-operative Society vide HC-505 Vol-II and the cremation shed work was allotted to each and every society covering two or three districts. The circumstances mentioned in G. O.Ms.No.708 do not apply to this case. Thus, it becomes clear that the Government itself opted for payment of advance amount and the work was to be executed by all 7 Societies in different Districts. It is not that Karungkulam Society alone was allotted the work of CCWS for the entire State of Tamilnadu.

(v)Ex-D17, which is the confidential letter addressed by the then Chief Secretary Mr. P.Shankar to DOPT, New Delhi denying sanction for prosecution by CBI against District Collector and Project Director under the PC Act, concerning Dindigul District. Similarly, Ex-D16 addressed to DIG, CBI by Miss. Lakshmi Pranesh, the then Chief Secretary to Government of Tamil Nadu would also show why and how sanction for prosecution was denied in the matter of CCWS work, concerning Villuppuram District. Ex-D15 concerning Tirunelveli District would also highlight why sanction was not given to prosecute by CBI.

(vi)The narration of events written in Ex-D16 & D17 would amply prove that there was no conspiracy; that there was no misutilization of funds; that no Industrial Society was selected as a favour by A2 or by Project Officers; that the work was executed in all good faith and towards compliance of the mandate laid down by the High Level Committee Meeting held on 12/05/1995 vide Ex-P11. Thus, it becomes clear that the entire work was executed in good faith and as per the normal procedure.



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The learned counsel submitted that A-3 did not play any role, nor was in charge of, disbursing any amount or advance to the co-operative societies or to A-5. He was not the field officer to release the payment. Under the JRY / JVVT Scheme, the project amounts were directly credited to the District Level DRD Agencies and it was not routed through A-3 or his office. At no point of time, did A-3 ever touch any amount payable to the societies. This itself will prove that A-3 role ended by forwarding exhibit P-50 proposal to the Government. The name of A-3 appears to have been mentioned only at the project officer level when payments had to be made.

(33) The Learned Counsel for A-4, the Project Officer cum CEO submitted that, prior sanction under Section 197(1)(b) of Cr.P.C., not obtained in this case to prosecute A4, a public servant under Section 120B IPC r/w 420 of IPC. Disbursement of fund to Karangulam Society for executing the work is the act in discharge of official duty. Though the appellant was acquitted for the offences under Section 120B r/w 420 of IPC, the failure to get sanction indicates the malafide intention of the respondent to prosecute A4. It is the defence of A4 that he disbursed the money in two instalments based on the



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order passed by the Government in letter dated 28.06.1995(Ex.P54) and the order of the District Collector PW-9. The Appellant/A-4 (Project Officer) discharged his official duties only in obedience to the direction and orders issued by his Superior officer. The contentions put forth by the Appellant cannot be negated for the reason that PW.9- Bhaskaran was not Cross examined by the Defence Counsel as mentioned by the Learned Trial Judge who failed to look into the answers rendered by the Appellant/A4 in his 313(1)(b) Cr.P.C questioning.

(34) Learned counsel for the fifth accused, private individual referring the testimony of witnesses and the documents relied by the prosecution submitted the following written submissions:

“1. Absolutely there is no iota of evidence produced by the prosecution to connect the 5th accused, T.Bharathi with the other public servants A1 to A4.

2. A5 is the supplier of cement material articles and he did not own any firm/concern by name Om Muruga cement materials work at Chennai. Prosecution did not produce any document to prove the allegation that T.Bharathi was the proprietor of Om Muruga cement materials work.

3. In the absence of any evidence to connect T.Bharathi with the other public servants, prosecution cannot allege that there was a conspiracy among the accused to abuse their official position in order to help T Bharathi to get pecuniary advantage and thereby the erection of cremation sheds all over Tamilnadu was brought under Jawhar Rozgar Yojna (JRY) Jawahar Velai vaipu Thittam (JVVVT).



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4.The erection of cremation sheds was a policy decision of the Government and A5 (Bharathi) has nothing to do with the scheme.

5. On 4.8.1995 vide letter dated 04.08.1985 (Ex.P-58) the special officer has sought 50% advance. It is alleged that it was in the handwriting of one Anitha who has not been examined. There is no evidence that the said Anitha was an employee of said T.Bharathi.

6. It is alleged that T.Bharathi along with Anitha came to Nagapattinam on 7.8.95 at 11 pm and stayed in TN Tourism Development Hotel till 3 pm on 8.8.95 and met the DRDA Nagapattinam (A4) in his office and got the 50% advance payment demand drafts in favor of Karungulam society. In order to prove this, Ex P 267 and Ex P 265 were marked through PW 45 waiter in that Hotel at that point of time.

However,

(i) Waiter (PW-45) was not the competent witness to prove the contents in Ex.P-267 and Ex.P-265

(ii)The competent witnesses are one Sudhakar and Rajeswari, the receptionists at that time. They were not examined even though their names and place of working was mentioned by PW 45 to CBI

(iii)PW 45 did not identify T.Bharathi

(iv)The alleged signature of T.Bhart in Ex P 267and Ex P 265 was not proved as per the handwriting expert (PW60) in his report Ex P 304 and in his evidence. However it is stated that the handwriting of Anitha was proved by Expert opinion. Anitha was not examined.

(v)It is alleged that movement register of Karungulam society would prove that on 7.8.1995 and 8.8.95, the special officer was not in Nagapattinam.

(vi) No witness speaks about the meeting of T.Bharathi with A4 on 8.8.95 at Nagapattinam DRDA office. DRDA staff were the best persons to speak about the alleged meeting of T.Bharathi with A4 at Nagapattinam. None of them were examined to prove the alleged meeting of T.Bharathi with A4.

16. Prosecution alleged that T.Bharathi has done the erection of cremation sheds through sub contractors namely Mark (PW20) Balan, Chandran, Venkatesan. Mark (PW20) not



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supporting the prosecution case and others were not even examined.

20. Nowhere, it is alleged and proved that Bharathi A5 has done the work of erection of cremation sheds on behalf of the Karungulam Society.

22. The valuation reports and the evidence of the Engineers would prove that even after 3 years from the date of erection of cremation shed the 96 cremation sheds were in existence and were in using condition and all the shed were used without any complaints from the local people who have used the cremation sheds.

25. In the absence of any evidence, T.Bharathi A5 is not liable to be convicted for any offence and the trial court erroneously convicted A5 for the offence U/s 420 IPC on mere assumptions and presumptions only.”

(35) Heard the learned counsels and perused the evidence available on record. The arguments and the written submissions made by the learned counsels for the accused/appellants and the arguments of the Special Public Prosecutor for CBI taken up for consideration to test the sustainability of the trial Court judgement of conviction and the sentence.

(36) A-1 Selvaganapathy was the Minister for Local Administration and Rural Development, Government of Tamil Nadu during 1995-96. A2 Acharyalu was functioning as Special Commissioner and Secretary to Government, Rural Development Department, Government of Tamilnadu during 1995-96. A3 Krishnamurthy was functioning as Project Officer, District Rural Development



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Agency (DRDA), Nagapattinam during 1995-96. The deceased Arokiaraj originally ranked as A5 was functioning as Special Officer, Karungulam Carpentry and Blacksmithy Workers Industrial Co-Operative Society Limited, Karungulam, Trichy during 1995-96 and A5 Bharathi ranked originally as A6 is the Proprietor of Om Muruga Cement Articles, Chennai.

(37) A High Level Monitoring Committee meeting for providing basic amenities to Adi Dravidar habitations was held on 12.5.95 under the leadership of S.D.Somasundaram and A1 attended the meeting in which resolution No.3 Ex.P11 was passed to construct cremation sheds with pathway amenities for Adi Dravida Habitations before the end of 1995 and it is stated therein that Department of Rural Development and Adhi Dravida and Tribal Welfare has to look after this work. The High Power Committee decisions dated 12.5.95 is Ex.P.75 (7 sheets). There was nothing stated in this resolution about Jawahar Rozgar Yojana (JRY) Scheme or Jawahar Velai Vaippu Thittam (JVVT).

(38) The prosecution case as found from the evidence consists of two parts. First part relates to the decision at Ministry level to construct cremation sheds utilising the fund under JRY Scheme, which they are not supposed to do



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as per the JRY Manual (Ex.P-9). Engaging Co-operative Societies to execute the work contrary to the guidelines of Union of India Guidelines (Ex.P-10) and payment of 50% without Bank guarantee contrary to G.O.Ms.No.708 dated 22/08/1994. (Ex.P-13). The note for circulation is Ex.P-8. The entire note file is marked as Ex.P-2. The relevant communications in the note file is marked separately.

(39) The second part is in respect of execution of work through a middleman and the substandard construction making the entire construction useless. The evidence of officers at DRDA office at Nagapattinam, Bank officials, bank statement of account maintained by Karungulam Co-op Society at Canara Bank Karanodai, the vouchers and cheques for deposit and withdrawal of the fund given for cremation sheds construction, the valuation reports of PWD engineers who inspected the spot along with CBI officials and other revenue officials are relied to substantiate the second part of allegation.

(40) The genesis for considering the project of constructing cremation sheds in Nagapattinam District during the year 1994-1995 emanated from Ex.P-11, the decision of the High Level Committee Meeting held on



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12/05/1995. This High Level Committee Meeting for discussing the basic facilities for Adi-Dravida Community was headed by the Finance Minister. A-1 was one among the participants. Totally, 7 agendas were discussed and minutes were recorded. Cremation ground and acquisition of land for approach the road was one of the agenda came up for discussion in that meeting. The Finance Minister, after raising certain queries regarding number of cremation grounds available and number of cremation grounds required, availability of land and stage of acquisition had instructed to complete the project by end of the year 1995. Then, the Rural Department, through its Deputy Secretary had sought for the progress report on link roads and pathway to burial grounds from the Director of Rural Development vide, his letter dated 25/05/1995 Ex.P-48. From the evidence, this Court finds that before sending the proposal for preparing “note for circulation”, the proposal sent by A-3 to the Government along with sketch and abstract estimation is Ex.P-50, dated 21/06/1995.

(41) Then, A-3 the DRD had instructed PW-7 to prepare a draft letter marked as Ex.P-53. In this draft letter, while referring purchase preference and payment of advance to KVIB, the controversial G.O.Ms.No.708 is mentioned in typed formate, but manually scored off. A-3 had in his own hand scored



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G.O.Ms.No.708 and written G.O.Ms.No.122/H, HT & Khadi Department dated 17/08/1995. This draft letter was not sent, but the prosecution rely upon this unsent letter to emphasis that A-3 deliberately screened the G.O, which prohibits payment of advance to the Societies.

(42) The reason for the prosecution to allege that A-1 to A-5 conspired to make unlawful gain is the content of the note for circulation prepared by A-2 as the Secretary of Rural Development and countersigned by A-1 as the Minister of Rural Development. In the note for circulation, A-3 was advised to include the scheme in the Action Plan under JVVT for 1995-1996. It is contended that without necessary earlier discussion or input, in the note for circulation, there is an advice to A-3 (DRD) to obtain materials, required for the cremation-cum-waiting shed from the Industrial Co-operatives under Khadi and Village Industries Board (KVIB). It also states that A-3 had identified the societies and sent such list in the proposal relating to name board. The societies and allocation of districts also enclosed for the approval of the Minister. The approval of the Minister also sought to make 50% advance payment to the identified Industrial Co-operatives, provided they furnish adequate Bank Guarantee. Ex.P-54, the letter of A-2 dated 28/06/1995 addressed to A-3 with



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enclosures mentioning 5 names of Societies to which the work order to be given with approving the cost estimation of Rs.30,000/- per shed and for payment of 50% advance with adequate bank guarantee are the incriminating circumstances and evidence against A- 2 and A-3. While these two accused had made way for payment of 50% advance, contrary to the G.O.Ms.No.708 dated 22/08/1994 marked as Ex.P-13. At the project officer level, the pre-requisite to furnish adequate bank guarantee for advancing 50% was given a go by and advance money disbursed to the Society, without getting bank guarantee.

(43) The learned counsels for the accused/appellants submit that, following the same procedure and communications from the Government, in 18 Districts, the project of constructing cremation sheds was undertaken. The Karungulam Carpentry and Blacksmithy Workers Industrial Co-operative Society was awarded work in 3 Districts, which includes Nagapattinam District. There was no complaint from the beneficiary (or) from the Government (or) from any other quarters alleging deviation of fund (or) misappropriation of fund (or) sub-standard construction of the cremation sheds. The investigation by CBI in respect of all the 18 District done, pursuant to the direction of the High Court in a Public Interest Litigation. Except Madurai District and Nagapattinam



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District, CBI had filed referred charge sheet. Regarding 16 other Districts, the prosecution dropped further action. Against that decision, no protest petition was filed. The closure of those complaints had attained its logical end. In so far as Madurai and Nagapattinam District, final reports were filed and the accused were tried in C.C.No.2/1998 and C.C.No.25/2001 respectively. As far as C.C.No:2/1998 on the file of CBI Court, Madurai, the case which ended in acquittal of all the accused, State Represented by CBI did not file further appeal. Hence, the said judgment dated 04/01/2011 had reached the finality. In respect of C.C.No: 25/2001 on the file of Special Court for CBI cases at Chennai (IX Additional Sessions Judge), the judgment of conviction rendered on 17/04/2014.

(44) These facts become relevant for deciding the appeal, as mentioned earlier the genesis for all these cases is the decision of the High Level Committee dated 12/05/1995 (Ex.P-11) a collective decision of the Ministers of three departments, viz: Finance, Rural Development and Adi Dravida Welfare along with the Secretaries of the respective departments. While in respect of other Districts there was conscious conclusion that there is no conspiracy or abuse of official position amounting to misconduct by the public servants. In this case alone, the public servants A-1 and A-4 are found guilty of offence



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punishable under Section 13(1)(e) of Prevention of Corruption Act, 1988.

(45) The trial Court has considered this point and rejected. The reasons for rejection is stated in paragraphs 31 of the judgment.

(46) The JRY Manual states that the works taken under the programme by the village panchayat should be preferable selected out of the list given in Annexure III based on felt needs of the people and the priorities indicated through the Village Assemble Meetings. In the Annexure III, 16 items of work mentioned, but the list is only illustrative and not exhaustive. In the instant case, the decision to use the JRY fund did not emanate from the Village Assemble Meeting but at the Secretariat Level and not based on any need expressed by the Panchayat, however, followed by the decision taken, at the High Level Meeting dated 12/05/1995 participated by A-1, proposal had emanated from A-3 and accepted by A-2 to use JRY fund for the construction of cremation sheds throughout the State. The circulation note prepared by A-2 for this purpose is counter signed by A-1. Thus, under the head of creating community and social assets, JRY fund has been utilised for the work of constructing cremation sheds for Adi-dravida. The minutes of the High Level Meeting dated 12/05/1995 is



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silent about any prior demand from the respective panchayat for construction of cremation sheds. But, this cannot be a reason to suspect the decision to construct cremation sheds for Adi-dravida is taken with any malafide intention or an abuse of authority. In the course of implementing the Scheme, the public servants A-1 to A-3 had thought fit that the cremation shed scheme is a work creating asset to the panchayat so it can be carried out utilizing the fund allotted for JRY Scheme.

(47) The other conditions are: the Funds for providing infrastructure support must be in the ratio of 60:40 between wages and material component and the work should not be done engaging middlemen or contractor or sub-contractor. In the case of constructing cremation sheds in Nagapattinam District. Obviously the work was entrusted to the Co-operative Society identified by A-3 and approved by A-1 and A-2. According to the prosecution, the said society had not carried the work engaging local labourers, but entrusted the work to T.Bharathi(A-5). It is alleged that the Special Officer of the Society Mr.Arockiaraj [who was arrayed as A-5 but on his demise, pending trial charge got abated on 30/01/2004 and the same recorded by the trial Court in its judgement paragraph (4)]. Pursuant to conspiracy with other accused allowed



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T.Bharathi (re-arraigned as A-5 after the abatement of charges against Arockiaraj) a person close to A-1, had the control over the project including utilization of the fund allotted for the purpose.

(48) The contention of the defence is that A-5 is not a middleman but proprietor of M/s Om Muruga, Cement Articles at Redhills, Chennai, which supplied construction materials for the Society and received money from the Society through cheques issued from the account maintained by the Society at Canara Banak, Karanodai. The evidence for prosecution that A-5 facilitated the Society to open account at a Bank in Karonodai and engaged his employees to write bank challans and cheques is proved by the forensic experts and the other witnesses. Those facts are not at all material evidence to prove that the construction of cremation sheds was done by A-5 on behalf of the society.

(49) The prosecution evidence undoubtedly had proved that A-5 had played a pivotal role in opening the Bank Account in the name of Karungulam Co-operative Society at Karanodai Branch of Canara Bank using the letter of the deceased Arockiaraj and the letter communications on behalf of the Karungulam Co-operative Society with the bank were prepared by A-5 through



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his staff Anitha and others. These evidence provides a strong suspicion about handling of fund of the Society by third party, who is a stranger to the society. Yet, they are not a proof to hold that on behalf of the Karungulam Society, A-5 executed the work using his men and material. The records maintained at the Karungulam Society and at the DRDA office indicate that the work was done by the society and supervised by the Additional Block Development Officer (in short “ABDO”) and Union Engineers of the jurisdiction periodically and maintaining the report.

(50) A-4 had sanctioned payment of Rs.15,00,000/- to the Karungulam Society on condition that the work to be executed under the direct supervision of the ABDO. The Union Engineers should ensure the specification quality of the work. The certification of completion of work in all aspects should be signed by the Union Engineer and the ABDO concern (Ex.P-275). The District Collector has approved both the points in the note with side noting as “number of sheds, society identified and advance to society”.



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(51) The trial Court has overlooked to consider certain portions of the deposition of prosecution witnesses and the defence documents. Firstly, the District Collector is the Ex-office Chairman for the projects executed under JRY/JVVT. Mr.Arulmohzi, IAS, (PW-8) served as District Collector of Nagapattinam, during the period, when the work of construction of cremation sheds in that district was carried. He had taken charge as Collector Nagapattinam on 11/12/1995. The advance of Rs.8 lakhs paid to Karungulam Co-operative Society, based on the proceedings dated 15/12/1995 forwarded by A-4 the Project Officer, DRDA. In the chief examination, PW-8 had stated, the file relating to construction of cremation sheds in his district was not brought to his knowledge till CBI enquired him. His predecessor Mr.R.Bhaskaran, IAS (PW-9) the District Collector of Nagapattinam served between 1994-1995- had identified Ex.P-56 as the file maintained at Collector's office pertaining to the construction of cremation sheds in that District. He admits that he cleared the file on 07/08/1995, which also contained Ex.P-58, a letter from the Karungulam Co-operative Society to pay 50% advance to carry out the construction of cremation sheds. This witness had further stated that at the level of Government, the decision to release 50% advance with Bank Guarantee was taken and communicated. However, A-4 had unilaterally taken decision to



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release 50% advance to Karunkulam Co-operative Society without obtaining Bank Guarantee, despite he underscored in the note the condition of receiving Bank Guarantee. Swaminathan (PW-10) the then Superintendent, DRDA Nagapattinam, had deposed that the first advance payment of Rs.15 lakhs was paid for the material supplied and cost of installation on 08/08/1995 and the second instalment of Rs.8 lakhs on 15/12/1995. In between these two payments, the Rural Development Department had issued a G.O.Ms.No.174, dated 15/09/1995 wherein the District collectors were permitted to release 50% advance, without insisting bank guarantee to the societies, since the societies are run by artisans. Though this GO is not directly relates to the construction of cremation sheds, but it relates to the scheme undertaken under JRY/JVVT. The logic and reasoning to relax the condition to get Bank Guarantee also applies to the case in hand.

(52) That is the reason, when the sanction to prosecute sought in similar cases in other 16 districts, the same been negative. Ex.D-13 and Ex.D-14 the letters from the Government of Tamilnadu through the Public Department addressed to the Secretary, Personnel, Public Grievances & Pension Department, Government of India, indicate that to the query raised by the



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Central Government which had provided 80% finance for JRY projects, the Tamilnadu Government had explained that the list of 16 works in the Annexure are not exhaustive. The Cremation shed work was taken under JRY/JVVT as they were identified as work of social and community nature and the State Government opines, no action is called for. This explanation accepted by the Central Government and further action has been taken for misutilisation of the JRY Fund.

(53) Regarding the value of the work carried out in the Nagapattinam District, it is to be noted that, the earlier inspections by the DRDA officers and PWD is in tune with the estimation. The valuations relied by the prosecution admittedly done after 3 years of the construction. The depreciation, wear and tear due to efflux of time was not duly taken into account by the valuers, who had assessed the value at the behest of CBI. Further, it is also to be taken note that, there is specific evidence as admission by the prosecution witnesses that most of the sheds constructed were in use and continue to be in use. Witnesses including the Investigating Officer had deposed that there were sign and evidence for the cremations sheds been in use. So, it may not be appropriate to hold that the entire Rs.23 lakhs given to the Karungulam Society is loss to the



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State and unlawful gain to the accused. The prosecution case itself is that the aggregate value of the structure at the time of inspection (after 3 years of its construction) is Rs.17,58,224/-. Whiles, the charge that the accused persons had caused wrongful loss to the state to the tune of Rs.23 lakhs is apparently incorrect.

(54) It is pertinent to note that the Chief Secretary to the Tamilnadu Government on 26/06/2003, declined to grant sanction to prosecute the A-1 to A-3 for the identical work executed in Villupuram District. The letter declining to grant sanction is marked as Ex.D-14. Similarly for the identical work in Dindigul District also, the then Chief Secretary vide his letter dated 03/05/2002 declined to grant sanction and the same is marked as Ex D-18. Both these two districts and other 16 districts, the cremation shed scheme implemented only through JVVT fund and all emanated from the High Level Committee Meeting and the proposal of A-3 and the order issued by A-2.

(55) The grounds of reason for declining sanction to prosecute for the public servant of other districts equally applies to A-2 to A-4 in Nagapattinam District. However, PW-1 has accorded the sanction to prosecute the public



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servants on 08/11/2000 and same is marked as Ex.P-1. On comparing Ex.P-1 with Ex.D-14 and Ex.D-18, the sanction to prosecute the appellants/Accused, Ex P-1 reveals lack of fair appreciation of facts. The reading of Ex.D-14 and Ex.D-17 gives a clear picture why the sanction for prosecuting the public servant declined.

(56) The officer, who granted sanction and the officers, who declined the sanctions are all Senior IAS officers of the rank of Chief Secretary. Two of them, in their opinion expressed that this is not a fit case for prosecuting. The third one has accorded sanction for prosecute. The reasons for declining sanctions are summed up in their proceedings as below:-

After careful consideration of the material available before the Government and the circumstances of the case, the State Government has summarized its conclusions as follows:-

(i) The construction of cremation sheds is a long felt community need. There is no bar for taking up construction of cremation sheds Under JRY. The items included in the JRY manual are not exhaustive;

(ii) Entrustment of the work to the industrial co-operative societies is permissible under G.O.Ms.No.708, Finance (BPE) Department, dated 22-8-1994. The Collector/DRDA cannot therefore be said to have acted with any malafide intention in entrusting the work to the societies;



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(iii) Payment of advance to the societies was permitted in various orders of the State Government. Any payment over and above the prescribed limit has to be considered only as an administrative lapse and will not amount to an act of a criminal offence;

(iv) The District Collector and the Project Officer, DRDA cannot be held responsible for any sub-standard execution as the actual execution and supervision are the responsibilities of the subordinate officials at the field level.

10. The State Government is satisfied that the actions of the Collector, Project Officer and other officials in the District and of Tvl.T.M.Selvaganapathy, J.T.Acharulu, I.A.S, and M.Sathiyamoorthy, I.A.S., at the Government do not constitute any criminal offence and that they need not be subjected to any criminal action. The State Government is further satisfied that there is no sufficient material to warrant the prosecution of the then Minister Thiru.T.M. Selvaganapathy, the I.A.S. Officer including the then Collector, the Project Officer and other individuals cited by the CBI under both 197 of Cr.P.C and 19 of P.C. Act. The State Government has therefore decided to decline the request of CBI, for sanction of prosecution under 197 Cr.P.C., for the offence under IPC Sections against the accused concerned in the above cases.”

(57) It is also relevant to note, PW-1-the sanctioning authority in this case in the cross examination had admitted that the JRY manual and guidelines are only illustrative and not exhaustive. He also admit that he was not aware of



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the order passed by his predecessors decline sanction to prosecute for similar work carried in other districts. He also admits that for each and every work carried under JRY, the prior sanction from the Central Government is not required. He was not able to recollect, whether the CBI placed before him the reports submitted by the BDO's and DRDA. Therefore, there is every reason to believe that the CBI before seeking sanction for prosecute A-1 to A-3 had not placed all the materials relevant for the sanctioning authority to apply his mind and arrive at an independent and fair decision regarding grant of sanction.

(58) The fallacy in the trial Court judgment has occurred by giving a narrow interpretation of the JRY Manual and by holding construction of cremation sheds for Adi-dravida is not a community assets. The trial Court has not taken into consideration, that the prosecution witnesses are not sure that the work was done by outsiders alone. Engaging local labour force admitted by few witnesses. The allegation of outsourcing the work belied by the suppliers of material, who were paid from the bank account of the Karungulam Society. The trial Court treated them as hostile witnesses and declined to accept their evidence. The photographs marked at M.O-1 to M.O-38 relates to the cremation



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sheds constructed by the Karungulam Society across the Nagapattinam District.

97 sheds, out of 100 sheds were identified. They were photographed and valuation ascertained. Therefore, this cannot be taken as a case of non-utilization of the fund given to Karungulam Society. The allegation is that the sheds were of substandard quality and unfit for use. Thus, the entire money given to the Society is a wrongful loss to the Government. However, the prosecution witnesses admit that the cremation sheds were utilised by the villagers.

(59) Misconduct of a public servant will attract prosecution under Section 13(1)(d) of PC Act, 1988, if he while holding the office (a) by corrupt or illegal means (b) or by abusing his position, obtains himself or for any other person any valuable thing or pecuniary advantage.

(60) After perusing the evidence, this Court finds against A1-to A4 the charge of misconduct of the public servants with corrupt intention or illegal means or abuse of position is not made out. The decision to construct cremation sheds for Adi-dravida people using JRY Fund cannot be faulted just because the



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said work not specifically mentioned in the JRY instruction manual. No one on earth can say it is not a asset with utility to the community for which it was meant. Therefore, whatever defect noted later in execution of the work can only be attributed to the persons, who executed the work but not the persons who took decision to construct cremation sheds for Adi-dravida people using JRY/JVVT funds.

(61) Even the case of the prosecution is not the fund siphoned by the accused persons without any execution of the work. The evidence relied by the prosecution as well as the defence prove the fact without any contradictionn that out of 100 sheds, 97 sheds constructed through the Karungulam Co-operative society. The prosecution witnesses were able to establish only the fact that A-5 had supplied materials for construction and no evidence to prove A-5 constructed the sheds though the sub-contractors. The alleged loss to the State or gain to A-5 thus not proved. At the most, the prosecutioncl through its witnesses only able to show that deviation to the JRY manual in respect of engaging a society outside the jurisdiction to execute the work instead of engaging local man power and deviating the ban imposed in G.O. Ms.No. 708 by paying 50% advance without bank guarantee.



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(62) In the instant case, deviation by the accused persons is proved, *mens rea* to act dishonestly for consideration is absent. Contrarily positive evidence that in previous years as well as during the same year ie 1995-96, the Societies were paid advance without bank guarantee and the same has been condoned by the Government. This fact leads to the concluding that if any deviation to G.O.Ms.No.708, it will at the most attract departmental proceedings but not criminal prosecution.

(63) This Court finds no evidence to indicate, A-1 to A-4 as public servants by some means had abused their official position to obtain any pecuniary advantage to themselves or to any other person. There is also no evidence that A-5 received money to execute the work and he engaged sub-contractor to do the work. All that the prosecution witnesses could say only about the proximity of A-5 with the deceased accused Arockiaraj who was the special officer of Karungulam Society. Though the prosecution has projected that the work was given to the named subcontractors by the Society in their resolution dated 23/12/1995, those sub-contractors Balan, Chandran,



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VENKATESAN AND PAULRAJ WERE NOT EXAMINED. E.MARK EXAMINED AS PW-20 IS THE only person termed as Sub-Contractor. He runs a business under the name Hunter Trading Corp. He was paid Rs.4,90,000/- for supply of materials to the society through cheque Ex.P-36. Except proof of payment for supply of material no other evidence incriminating the accused could be culled out from PW.20 evidence.

(64) The payment made to A-5 for supply of material to the Karungulam Society cannot be termed as a wrongful gain to him obtained dishonestly. The disbursement of various amount from the Karungulamal to the Society bank account are for supply of materials to the society. The photographs relied by the prosecution proves existence of at least 96 cremation sheds. The witnesses from the respective village had candidly admit that the shed was put to use by the community.

(65) For the allegation that the sheds were of substandard quality, the evidence relied by the prosecution does not show, how it is substandard. The evidence only indicates that the construction value is far less than the estimated value and there are deviation from the approved sketch. The assessment made



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after 3 years of its construction may be not accurate and cannot be a basis to hold, the State has incurred wrongful loss of entire money allotted for construction of the cremation sheds. When there is no proof for misconduct and wrongful loss to the State, the allegation of conspiracy has to fall automatically.

(66) For all the above said reasons, **the Criminal Appeals in Crl.A.Nos.229, 233, 249 and 258 of 2014 are allowed. Crl.A.No.1/2015 is dismissed.**

(67) As a result, the judgement of conviction is set aside. The order of acquittal from the charge under Section 120B of IPC is confirmed. The fine amount paid if any shall be refunded back to the accused. Bail bond executed if any shall stand discharged.

28.11.2023

Index:yes
Internet:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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To:



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1.IX Additional Special Judge for CBI Cases, Chennai.

2.The Deputy Superintendent of Police,SPE/CBI/ACB,
Chennai.

3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.

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delivery Common Judgment made in
Crl.A.Nos.229, 233, 249 and 258 of 2014



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