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Crl.A.No.50 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2026

PRONOUNCED ON : 29.06.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.50 of 2024

1.Shri.R.Sekar, M/60,
S/o.Late S.Raju,
B4, 66, Vanthiyan Apartments,
Brindavan Street, West Mambalam,
Chennai – 600 033.

2.Shri.K.Anwar Hussain, M/59,
S/o.M.Kader Meeran,
AP-118, 4th Street,
Anna Nagar, West Extension,
Chennai – 600 101.

... Appellants

Vs.

State Represented by
The Central Bureau of Investigation,
Additional Superintendent of Police,
Anti-Corruption Branch,
Chennai.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed on the appellants by the Principal Sessions Judge for CBI Cases/VIII Additional City Civil Court, Chennai in C.C.No.36 of 2011 by a judgment dated 21.12.2023 by allowing this appeal.



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For Appellants : Mr.V.S.Venkatesh

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases

JUDGMENT

Challenging the impugned judgment dated 21.12.2023 in C.C.No.36 of 2011 passed by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai (trial Court), this Criminal Appeal is filed by the appellants/A1 & A2.

2.In this case, totally 15 accused faced trial for offence under Sections 7, 8 & 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 24(1)(g) of Emigration Act, 1983 and 51 charges framed against the accused. During trial, A3 & A4 died and the trial proceeded against 13 accused. On completion of ful-fledged trial, the trial Court acquitted A3 to A15 but convicted the appellants/A1 & A2. The conviction and sentence passed against the appellants/A1 & A2 are as follows:

Rank of the Accused	Charge	Conviction and Sentence
A1 & A2	Charge No.1	To undergo Rigorous Imprisonment for four years each and to pay a fine of Rs.1,000/- each in default to undergo Simple Imprisonment for six months each for offence under Sections 120-B IPC and Section 13(2) r/w 13(1)(d) of Prevention of

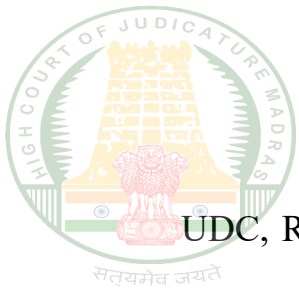


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		Corruption Act, 1988.
A1	Charge Nos.2, 4, 6, 8, 10, 16 & 18	To undergo Rigorous Imprisonment for four years each count and to pay a fine of Rs.1,000/- each count in default to undergo Simple Imprisonment for six months each count for offence under Section 7 of Prevention of Corruption Act, 1988.
A1	Charge Nos.3, 5, 7, 9, 11, 17 & 19	To undergo Rigorous Imprisonment for four years each count and to pay a fine of Rs.1,000/- each count in default to undergo Simple Imprisonment for six months each count for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.
A2	Charge No.50	To undergo Rigorous Imprisonment for four years and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for six months for offence under Section 8 of Prevention of Corruption Act, 1988.
A2	Charge No.51	To undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for six months for offence under Section 24(1) (g) of Emigration Act, 1983.
All the sentences were ordered to run concurrently		

3.Gist of the case is as follows:

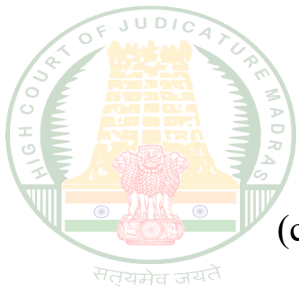
(a)The 1st appellant, who posted as Protector of Emigrants & Director, Office of Protector of Emigrants (POE), Ashok Nagar, Chennai during the period from January 2007 to July 2009, entered into a criminal conspiracy with his subordinate officials viz., S.K.Jeeva, the then POE-II, PW12/Salil Deep Sachan, Assistant, Janak Raj, UDC, M.Urangan, UDC, Ramachander Mahto,



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UDC, R.Jayaseelan, UDC, Dinesh Basra, LDC, Dhanasekar, Peon along with private persons/Recruiting Agents (RAs) viz., K.Anwar Hussain/A2, K.Saleem Khan of M/s.Classic Tours and Travels and K.Aurangazeep of M/s.Taj Tours & Travels and abused their respective official positions by collecting bribes in the form of speed money and obtaining valuable things without consideration from various Recruiting Agents for the issuance of Emigration Clearance to clients of the respective Recruiting Agents. Ashwani Kumar, POE-II, Suraj Sharma, UDC, and Sanjay Kumar, UDC, subsequently joined the said conspiracy.

(b)The Superintendent of Police, CBI received source information that the 1st appellant, the then Protector of Emigrants, Chennai along with the 2nd appellant, a Recruiting Agent approaching PW11/D.Ravindra Babu/Approver-I of West Mambalam on 20.07.2009 with ill-gotten cash of Rs.13 lakhs, arranging college admission for A1's son S.Madhu, in an Engineering College of Anna University. Based on the source information, surprise check conducted in the Office of PW11 at Door No.5/21, Ellaiamman Kovil Street, West Mambalam, Chennai by CBI officers viz., G.Kalaiman/PW74 and N.M.Mahesh Kumar/PW75, Inspectors in presence of independent witnesses viz., PW10/T.Gnana Sathish, Senior Ticket Examiner, Head Quarters Flying Squad, CMM Office, Southern Railway, Chennai.



(c) During surprise check, both appellants and PW11 caught red handed

when appellants handing over ill-gotten cash of Rs.13 lakhs to PW11/Approver-I. The CBI Officials seized the ill-gotten money, recovered from the possession of PW11 who kept it in a yellow plastic cover. The cover contained 13 bunches of Rs.1,000/- denominations, totalling Rs.13 lakhs along with one bunch of Xerox copies containing coding sheet for admission of B.E/B.Tech, application form No.271101 in the name of A1's son S.Madhu with T.C., mark sheets etc. From the 1st appellant, a jute bag containing the file of National Academy of Customs Excise and Narcotic, Bangalore, seized. The Mahazar Proceedings (Ex.P21) drawn on 20.07.2009.

(d) The surprise check further revealed that A2 was the custodian of ill-gotten funds of A1 and other officials of POE. A2 used to handover the ill-gotten money to A1 and to other POE officials as and when they required and also meets out their expenses. On 20.07.2009, Rs.13 lakhs brought by A2 for college admission of A1's son. Earlier, on 22.05.2009, Rs.5 lakhs paid to PW11/Approver-I as advance and corresponding entries reflected in the handwritten slips (Ex.P25 series) recovered and seized from A2. Out of Rs.5 lakhs, Rs.2 lakhs handed over to PW80/B.S.Perumal, who runs Gayathri Computer Consultancy inside the campus of Madras Institute of Technology



(MIT), a close associate to Vice Chancellor of Anna University and balance

Rs.3 lakhs found in possession of PW11/Approver-I.

(e)A2 and his brother A3/Saleem Khan running Recruiting Agency in the name of M/s.Classic Tours and Travels, New No.5, Old No.1, 4th Street, Dr.Subbarayan Nagar, Kodambakkam, Chennai and A2 ever since A1 joined as POE in December 2006 at Chennai was collecting bribe money for A1. On 20.07.2009, between 16.15 hours and 20.30 hours, CBI Officials lead by R.Ravi/Inspector, conducted search in M/s.Classic Tours and Travels in the presence of PW72, Chief Vigilance Inspector, Southern Railway, at that time, notebooks, registers, handwritten slips (Exs.P144 to P155) showing accounts of ill-gotten amount collected for A1 and for other officials of POE, all seized. The search list marked as Ex.P143. A2 used to maintain the account for the speed money collected from the Recruiting Agents for A1. Further, A4/Aurangazeeb of M/s.Taj Tours and Travels also engaged by A1 to collect speed money. Thus, the Recruiting Agents were split into two group and A2 and A4 nominated for collecting and keeping speed money in safe custody.

(f)Simultaneously, on 20.07.2009 between 16.30 hours and 20.00 hours, search conducted in the house of A2 at No.AP 118, New No.12, 4th Street,



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Anna Nagar, West Extension, Chennai by K.Raja/Inspector in presence of two independent witnesses viz., D.Venkateshwara Rao & V.P.Ramesh, Officials of Southern Railway and Glory Stella Bai, Women Police Constable and the housemaid Pappathy. During search, A2 found in possession of cash of Rs.61.71 lakhs in his house and two bank locker keys of Central Bank of India, Aminjikai Branch. The cash and the bank locker keys seized and the search list marked as Ex.P199.

(g)On the next day on 21.07.2009 at 10.00 hours, K.Raja/Inspector and M.Raja/Inspector went to Central Bank of India, Aminjikai to open the bank lockers maintained in the name of A2 and A2's wife. The CBI Officials opened the bank lockers in the presence of G.Raghothaman, Senior Manager/Bank Manager, S.Seetha Mony, Assistant Manager of Central Bank of India, Aminjikai Branch and G.Jagadeesan, Jewel Appraiser, Central Bank of India, Kilpauk and in the presence of A2 and A2's wife and the cash of Rs.55.98 lakhs (Rs.29,97,500/- and Rs.26,00,500/-) and gold jewels seized. The inventory report marked as Ex.P173.

(h)Further, an amount of Rs.60 lakhs of A1, which was handed over by A2 to PW12/Approver-II, Managing Director of M/s.Fourways Tours and



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Travels, Anna Salai, Thousand Lights, Chennai for safe custody through one Srinivasan @ Seenu, a Custom Clearing Agent, recovered and seized in presence of PW10, Senior Ticket Examiner, Southern Railway, Chennai. In this regards, Ex.P22 marked.

(i)PW11/D.Ravindra Babu and PW12/K.K.Kumar both are accused in RC MA1 2009 A 0038 and later turned as Approvers. The documents seized from M/s.Classic Tours and Travels, Kodambakkam, Chennai shows collection of bribe amount in the form of speed money for A1 and other accused/POE officials. The accounts/notebooks maintained shows various expenditure made by A2 for A1 and for other accused/POE officials, which includes for telephone bill payments, hired vehicle expenses, petrol expenses, computer expenses, film ticket expenses, money orders sent, train tickets expenses, gold purchases etc. The bribe amount collected for each POE officials handed over by A2. As regards A1, the speed money was kept by A2 himself in his custody and he was maintaining account in this regard. Recruiting Agents around 10 to 15 maintained by A4 who also used to collect the speed money. The slips seized from A2 shows that out of the cash collected from various candidates and service/travel agents regularly, an amount of Rs.1.86 Crores for A1 was with A2 as on 14.04.2009. A2 was spending amounts for A1 on various dates



and noted the same in his own handwriting, seized by CBI. A2 maintained a code for the officers for A1 R.Sekar, POE as “S” and used to round off the Alphabet S. PW20, employee of M/s.Classic Tours and Travels, a nephew of A2 & A3 used to maintain the accounts for POE Officials, Chennai in the form of Registers/notebooks. S.Mohaideen Ismail confirmed the illegal payments in the form of cash, kind etc., paid to POE officials and identified the code words used for R.Sekar and other POE officials and confirmed the payments to Laptop, Sony handycam & Mobile phones, Modular Kitchen, House Renovation, Vehicles hired, Train tickets, Air tickets, arrayed facilities for A1 to entertain his Boss viz., Late. G.Pande, former Protector General of Emigrants and paying for the pleasure trip to north-east made by A1 during April-May 2009, purchase of gold coins, gold biscuits and kept in bank locker and payments made by PW13, confirmed during investigation.

(j)PW81/Investigating Officer examined the witnesses, recorded their statements, collected all documents, obtained sanction for prosecution and filed charge sheet before the trial Court. During trial, on the side of the prosecution, PW1 to PW81 examined and Exs.P1 to P199 marked and MO1 produced. On the side of the defence, DW1 & DW2 examined and Exs.D1 to D31 marked. The trial Court marked Ex.C1. On conclusion of trial, the trial

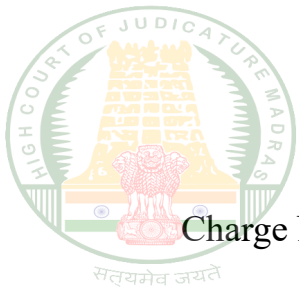


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Court acquitted A3 to A15 but convicted the appellants/A1 & A2 as stated above.

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(k)In this case, FIR (Ex.P172) came to be registered on 20.07.2009 at about 15.30 hours in RC MA1 2009 A 0038 arraying three persons as accused viz., A1, A2 and A3/PW11. On conclusion of investigation, charge sheet filed on 06.07.2011. In the charge sheet, 15 persons arrayed as accused. A1 & A5 to A15 are all public servants viz., officials of Protection of Emigration. A2 & A3 are Partners of M/s.Classic Tours and Travels and A4 is from M/s.Taj Tours and Travels. Two more cases filed against the appellants in C.C.No.34 of 2011 and C.C.No.10 of 2011. In C.C.No.34 of 2011, the 1st appellant herein is A1, A3 herein is A2, A5 along with Mohammed Ismail, Syed Hussain and Loured Jayaseelan, totally six accused charged and tried for offence under Sections 120-B, 420, 463, 468 r/w 471 and 193 IPC and Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 24(1)(c)(g) of Emigration Act, 1983. After ful-fledged trial, the trial Court by judgment dated 28.09.2017 acquitted all the accused from that case and prosecution not filed any appeal. The case in C.C.No.10 of 2011 is a disproportionate case and in the present case (C.C.No.36 of 2011), totally 51 charges framed. As against A1, Charge Nos.1 to 19 and as against A2, Charge Nos.50 & 51 and as against A5 to A15,



Charge Nos.20 to 49 and the Charge No.1 is an omni bus charge.

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4.The submissions of the learned counsel for the appellants are as follows:

(a)Learned counsel for the appellants submitted that in this case, FIR (Ex.P172) in RC MA1 2009 A 0038 registered by PW81/Ashok Kumar, Deputy Superintendent of Police on 20.07.2009 at 15.30 hours for offence under Section 120-B IPC and Sections 7, 8 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The type of information received was oral and Column-3(c) of FIR (Ex.P172) is left blank confirming that there was no General Diary entry made. The FIR (Ex.P172) registered based on source information. But there is nothing to show the nature of source information, who received the reliable information and who ordered or authorized surprise check to be conducted in PW11's/Approver-I Office.

(b)He further submitted that Mahazar Proceedings (Ex.P21) prepared before registration of FIR (Ex.P172) and the word surprise check not found in Ex.P21. Preparing Ex.P21 without registration of FIR and General Diary is against the dictum of the Hon'ble Apex Court and this Court. In the information sheet appended to FIR (Ex.P172), a brief description given



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referring to Mahazar Proceedings (Ex.P21) conducted by PW74/G.Kalaimani and PW75/N.M.Mahesh Kumar, Inspectors of CBI. In this case, both PW74 and PW75 not authorized or directed by the Superintendent of Police, CBI to conduct surprise check, no written order produced. PW81/Investigating Officer confirms that he went to the scene of occurrence i.e., Office of PW11 at Door No.5/21, Ellaiamman Kovil Street, West Mambalam, Chennai and was present along with the team when PW11/Approver-I was enquired and seizure proceedings in progress. However, PW81 explained that he participated in the surprise check for about 10 to 15 minutes and thereafter left the place after giving instructions to PW74 and PW75. This fact is not in dispute. Having participated and registered FIR (Ex.P172), thereafter PW81 conducted investigation. Thus, the manner in which the investigation commenced, proceeded, conducted and final report filed is against the law and procedure and great prejudice caused to the appellants.

(c)He further submitted that the foundational fact of this case is highly doubtful. PW75/Inspector, CBI, confirms that he was called by Superintendent of Police, CBI to his chamber, at that time, PW74/Inspector, CBI was sitting in his room, and the Superintendent of Police directed PW75 to be in aid of PW74 for the surprise check. PW74 admits that he requested



PW75 to fetch independent witness for the surprise check. PW75 immediately

called Southern Railway, Vigilance and PW10/Gnana Sathish, Senior Ticket

Examiner deputed to act as independent witness for the surprise check.

Thereafter, PW10, PW74, and PW75 went to the office of PW11/Approver-I,

Founder Trustee of Andhra Pradesh Parents and Students Welfare Trust at

Door No. 5/21, Ellaiamman Kovil Street, West Mambalam, Chennai. In this

case, contradictions in the time and manner, how all three went to the office of

PW11 and enquiry conducted. In the Mahazar Proceedings (Ex.P21), it is

mentioned that three more persons found waiting outside the office of

PW11/Approver-I, they are G.Jagan Mohan Reddy, A.Srinivasan, and

S.D.Ahmed. None of three either cited or examined as witnesses and not

signed in Ex.P21. PW75 confirmed that PW74 after collecting money and

documents from the office of PW11, left to CBI office, and thereafter, PW75

took PW11, A1 and A2 along with him to CBI office. In this case, the place,

time and manner in which the Mahazar Proceedings (Ex.P21) prepared, and

who prepared the Mahazar doubtful. PW74 and PW75 stated that Ex.P21

prepared in the office of PW11 at Door No.5/21, Ellaiamman Kovil Street,

West Mambalam, Chennai. PW11 confirms that there is no computer or

printer in his office and that Ex.P21 not prepared in his office, prepared in the

office of CBI. Thus, the origination and foundational facts of the case become



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highly doubtful.

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(d)He further submitted that A1 and A2 were shown arrest at 08.40 p.m. and 09.00 p.m. respectively, and thereafter interrogated by PW81/Investigating Officer. A1 gave disclosure statement (Ex.P23), based on which, Ex.P21 prepared. PW81 took A1 to the office of PW13, Assistant Manager (Marketing), Make My Trip, and to the office of PW12/Approver-II, M/s.Fourways Tours and Travels, Thousands Light, Chennai where the cash of Rs.60 lakhs which was handed over by one Srinivasan @ Seenu, Customs House Agent, a friend of A1, seized on 21.07.2009. PW12/Approver-II stated that on the compulsion of A1, the amount of Rs.60 lakhs kept in a safe place in his office. On 20.07.2009, the office of A2 searched, where the cash of Rs.61.71 lakhs and two bank locker keys for the lockers held in the Central Bank of India, Aminjikai Branch, seized in presence of two independent witnesses viz., D.Venkateshwara Rao & V.P.Ramesh, Officials of Southern Railway and Glory Stella Bai, Women Police Constable and housemaid Pappathy. On the next day on 21.07.2009, A2 and his wife were taken to Central Bank of India, Aminjikai Branch. In the presence of G.Raghothaman, Senior Manager/Bank Manager, Central Bank of India, Aminjikai Branch, S.Geetha Mony, Assistant Manager, Central Bank of



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India, G.Jagadeesan, Jewel Appraiser, Central Bank of India, Kilpauk Branch,

Rs.55.98 lakhs and gold jewels seized from the lockers. A2 admits that these amounts are speed money collected from the various Recruiting Agents, as per filing of applications to the Emigration Office over a period of time, the speed money collected on behalf of A1 and other POE officials posted in the office of Protection of Emigrants namely A5 to A15. As regards A5 to A15, the amounts handed over to them. But as regards A1, the amount kept by A2 in safe place who used to meet out the expenses of A2 and handover the cash to A1 as and when requested. Thus, the speed money collected from the Recruiting Agents held by A2 seized in this case. This is how the case proceeds against the appellants.

(e)He further submitted that in this case, summoning of PW10/Senior Ticket Examiner, was not as per procedure and rules. PW10 confirms his superior officer directed him to contact PW75/Inspector, CBI, and follow directions. PW75 admits that his parent department is Southern Railway and that he is deputed to CBI. In this case, PW10 is a 'yes' and obliging witness to CBI. The independence and neutrality of PW10 questionable. Added to it, the evidence of PW10 is in contradictions with the evidence of PW11, PW74, and PW75. PW11 stated that he received Rs.5 lakhs from A2 for getting admission



in Anna University under the Industrial Quota for A1's son and that he gave

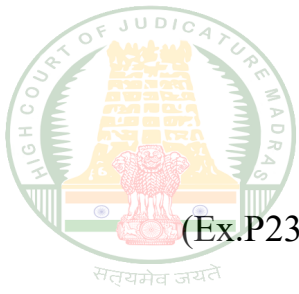
Rs.2 lakhs to PW80/B.S.Perumal, who is a close associate of Anna University Vice Chancellore and can get discretionary Industrial Quota seat. It is to be seen that PW80 examined as PW9 in C.C.No.10 of 2011 when he gives a different version. Further PW11 claims he retained Rs.3 lakhs with him and on the date of seizure Rs.7 lakhs seized. PW11 claims that he is the Founder Trustee of Andhra Pradesh Parents and Students Welfare Trust, but he failed to produce any iota of material to show that he is the Founder Trustee and he was doing consultancy service for getting seats in Anna University. In this background, non-examination of the three independent persons (G.Jagan Mohan Reddy, A.Srinivasan, and S.D.Ahmed), who waited on the date of the surprise check, gains importance.

(f)PW11 further stated that he handed over Rs.13 lakhs to PW74 taken out from table drawer, which was handed over to him by A2. In this case, no Observation Mahazar prepared to show the physical features of the room, the availability of table and how money kept in the drawer. In the Mahazar Proceedings (Ex.P21), no details found. Though PW74 stated that PW11/Approver-I, counted Rs.13 lakhs and handed it over, but PW11 does not state anything with regard to counting of currency notes. PW11 admits that



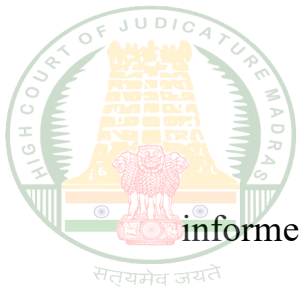
CBI took all steps and sponsored him to give confession statement to turn as Approver in this case. It is seen that 164 Cr.P.C. statement of PW11 (Ex.P28) and the proceedings of Tender of Pardon under Section 309 Cr.P.C. (Ex.P30) both in Tamil. PW11 admits that he is not conversant with Tamil and does not know to read or write Tamil. In such circumstances, examination of the Magistrate who recorded Ex.P28 and accorded Ex.P29 becomes imperative. Whether PW11/Approver-I, was willing or compelled or forced to give statements and his statement becomes doubtful. More so when, PW11 is a witness in connected cases where he gave contradictory statements. Thus, the evidence of PW11 becomes highly doubtful and shrouded with mystery. Hence, the surprise check is a stage-managed one.

(g)He further submitted that PW12/Managing Director of M/s.Fourways Tours and Travels is the another Approver in this case. PW12 projected to implicate the appellants, that A1 during April 2009 called him and enquired with regard to purchase of a property for his sister and A1 informed that one Srinivasan @ Seenu will handover Rs.60 lakhs cash to keep safely. Initially, PW12 shown some resistance, but later on compulsion and fearing that his business will get affected, he received the amount from Srinivasan @ Seenu and kept in his office safely. This fact disclosed in disclosure statement



(Ex.P23) recorded on 21.07.2009 at about 10.00 a.m. which was signed by A1 and PW10. Based on the disclosure statement (Ex.P23), PW81/Investigating Officer took A1 and conducted search in the office of PW12. Though PW12 claims that he was arrested in this case, later let out on bail by CBI after he executing sureties, but no materials produced. It is pertinent to note that PW12/Approver-II also examined as PW10 in C.C.No.10 of 2011 and examined as PW22 in C.C.No.34 of 2011. In both cases, PW12/Approver-II gives contradictory statements. PW11/Approver-I in this case examined as PW8 in C.C.No.10 of 2011 and examined as PW2 in C.C.No.34 of 2011.

(h)PW12 in his evidence in C.C.No.10 of 2011 deposed that A2 came a day before *i.e.*, on 20.07.2009 between 04.00 p.m. and 05.00 p.m. and A2 identified PW12 to the Investigating Officer and PW12 enquired with regard to handing over of Rs.60 lakhs by Srinivasan @ Seenu on the instructions of A1, confirmed by PW34 and PW50 in C.C.No.34 of 2011. Further, PW32/S.Natarajan in C.C.No.34 of 2011 confirms on instructions of superior officer on 19.07.2009, he went to CBI Office and on 20.07.2009 at 09.30 a.m. went along with one Sridharan, a Railway Department official to the office of PW12 *viz.*, M/s.Fourways Travels and Tours Private Limited, Thousand Lights at 11.00 a.m. on 20.07.2009 where search conducted and CBI officers



informed the purpose of visit, but no document recovered or cash found during the search proceedings. Even as on 20.07.2009 at 09.30 a.m. the fact of PW12 holding the cash of Rs.60 lakhs received from Srinivasan @ Seenu is a disclosed fact, hence, proving the fact Ex.P22 is a created document and Ex.P22 has no relevance. Hence, the recovery and seizure of Rs.60 lakhs in this case invoking Section 27 of Indian Evidence Act justifying recovery under Ex.P22 is nothing but to implicate the appellants in this case.

(i)He further submitted that, in this case, PW12 was not shown as an accused, and no alteration report including him as an accused produced. Where PW12 is shown as accused, no materials produced except showing in Column '2' in the final report. PW12 admitted that, at the instance of CBI, he gave statement under Section 164 Cr.P.C. (Ex.P33), and thereafter, tender of pardon proceedings initiated (Ex.P34). Hence, the entire proceedings taking PW12 as Approver-II is bad in law, and he cannot be considered as Approver. In view of the above, the examination of Magistrate who recorded Ex.P33 and Ex.P34 becomes imperative and gains significance. In this case, all seizure reports marked through PW81/Investigating Officer. Thus, Exs.P21, P22, and P23 are got-up documents. Further, in Ex.P24, PW12 is shown as the known person to whom the arrest of A1 and A2 informed. Thus, foundational fact of



the case becomes doubtful. Further Exs.P21, P22, P23, P24, and P25, all to be eschewed and discarded. Once the foundational fact of the case is demolished, the entire structure of the prosecution case naturally fall.

(j)He further submitted that in this case, charge sheet filed by one Harikumar, Additional Superintendent of Police though listed as LW121, he was not examined as witness. The prosecution filed a petition under Section 311 Cr.P.C. to examine witnesses not shown in the charge sheet as additional witnesses namely PW77, PW78 and PW79 to mark Exs.P67 to P180. The examination of witnesses and marking of documents not admissible in the absence of any petition filed under Section 173(8) Cr.P.C or memo disclosing, further investigation conducted, after filing of charge sheet. PW77, who carried out the business in the name of M/s.Marverick Fitness Studio Private Limited, stated about receipt memo issued by LW30, D.Murugan, Administrative Manager of M/s.Marverick Fitness and the receipt memo for payment marked as Ex.P168. PW77 admits that he was not aware of the transaction found in Exs.P167 & P168 and all are photostat copies. In this case, LW30 despite shown as listed witness, not examined. Likewise, PW78/General Manager of Hotel Le Royal Meridian, Chennai unable to give any details with regard to transactions found in Ex.P161 to 163. He admits



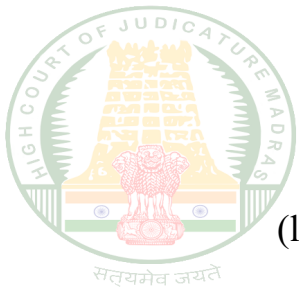
that one Patrick Gopinath, Assistant Security Officer though he was shown as listed witness LW66, he was not examined and dispensed with. Likewise, PW79/Manager, Sony Centre, Chennai admits that one Rajesh Kumar, his predecessor forwarded the invoice (Ex.P169) in the name of A.Mohideen and A.Mani. Though one M.Udayakumar, Sales Executive, Sony Center, Chennai listed as LW29, he was not examined. PW79 admits that he does not know the transactions mentioned in Exs.P169 to P170.

(k)Learned counsel for the appellant further submitted that PW16, R.K.Jha, Protector of Emigration-I from 08.08.2005 to 06.06.2006 confirms that in the office, POE all procedures followed and no complaint from any Recruiting Agents about any delay or demand of speed money by A2 on behalf of A1 or from any one received. In this case, the Inspectors of CBI viz., LW97/Lavakumar, LW98/Subramani, LW99/Ravi, LW100/Krishnamoorthy, LW101/Sathiyamoorthy and LW104/Prakash, who are all part of the investigation team, not examined as witnesses. Further, no statement recorded from LW95 to LW121. One Madhusoothanan, Inspector of Police, CBI, who recorded the statement of PW65/Veeramanikandan and LW29/Udayakumar, not examined, hence, denied the opportunity to bring on record the contradictions. In such circumstances, the evidence of the hostile witness



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cannot be taken into consideration. Likewise, M.Raja, Inspector of Police, CBI, who examined LW28/M/s.Casio Air Travels and PW37/Selvaraj and PW39/A.Hasal Ali, not examined as witness and no contradictions of LW28, PW37 & PW39 put to M.Raja, Inspector of Police, CBI. LW99/Ravi, Inspector of CBI, who recorded the statement of PW69/A.Johnson, M/s.JRA Travels Service, turned hostile. N.R.Nair is the Inspector of Police recorded the statement of Shajagan, Recruiting Agent of M/s.Worldwide Tour Centre. Mr.K.Kumaresan is the Inspector of Police, ACB examined and recorded the statement of PW71/R.Kutralanathan, Recruiting Agent viz., M/s.Time Travels and Tours turned hostile. Mr.Purushothaman is the Inspector of Police examined and recorded the statement of PW62/Sudha. V.K.Raghukumar is the Assistant Superintendent of Police, CBI conducted search in the Office of PW12/M/s.Fourways Tours and Travels in connection with RC MA1 2009 A 0038 and seized several vital document neither cited nor examined as witness. V.K.Raghukumar conducted search in the Office of PW12/M/s.Fourways Tours and Travels, is spoken by S.Natarajan, which is confirmed by Ex.D24. For withholding the witness and evidence by the prosecution, adverse inference to be taken.



(l)He further submitted that out of 81 witnesses examined by the prosecution, 30 witnesses not supported the case of the prosecution, declared hostile and they are primarily Recruiting Agents viz., PW20, PW30 to PW42, PW44, PW47, PW52 to PW58, PW62, PW65 to PW71. Out of 121 witnesses cited in the charge sheet, the prosecution not examined 37 witnesses viz., LW10, LW16 to LW20, LW27 to LW30, LW37, LW38, LW40, LW42, LW48, LW58, LW59, LW62, LW66, LW69, LW73, LW79, LW80, LW82, LW86, LW91, LW94, LW95, LW97 to LW104, LW118 to LW121. He further submitted that, for the purpose of invoking and proving the case under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988, the prosecution is bound to prove the demand for speed money, its acceptance, and recovery. All these three factors are sine qua non and must be proved independently. Recoveries dehors the demand and acceptance would not be sufficient to convict the appellant. In this case, all the recoveries are tainted. Even assuming, on demurrer, that the recovery is proved, in the absence of proof of demand and acceptance, the charges cannot be held to have been proved.

(m)He further submitted that the sanction for prosecution (Ex.P1) to prosecute A1 was accorded by PW1. PW1 confirmed that he only



authenticated Ex.P1 and stated that only the note file and corresponding file would throw some light on the independent application of mind by the sanctioning authority. In this case, PW1 neither produced the note file nor the corresponding file to show what persuaded sanctioning authority to accord sanction, and he was unable to offer any explanation except that he authenticated Ex.P1. On a perusal of the sanction order (Ex.P1), nowhere there is any reference even to the FIR, list of witnesses, or documents annexed to the charge sheet, hence, the sanction (Ex.P1) is bad in law. Similarly, the sanction (Ex.P6) accorded by PW3 to prosecute A2 under the Emigration Act, 1983, is also improper. It is not in dispute that, for M/s.Classic Tours and Travels, A3 is the Proprietor, who obtained licence, and the same admitted by the witnesses and the sanctioning authority. In such circumstances, in the absence of production of the alleged partnership deed (Ex.P185), through the relevant witness but marking through PW81/Investigating Officer, cannot be taken as Ex.P185 proved as per law. Since there is no reference to this partnership deed in Ex.P6, the sanction accorded by PW3 through Ex.P6 to prosecute A2 is bad in law.

(n)He further submitted that, in this case, 48 documents marked as exhibits and most of the documents are either photocopies or electronically

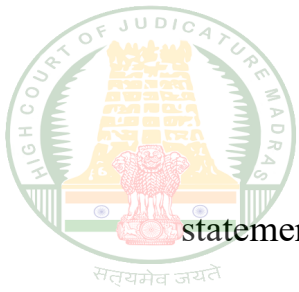


generated documents and not with 65B Certificate of the Indian Evidence Act.

These documents objected, but marked subject to the objection that their relevancy can be decided at the time of final hearing. But in the judgment, there is no reference to the objections raised and for what reason taken in evidence. He further submitted that production of account books is not sufficient, and the prosecution is bound to prove the handwritten slips (Exs.P25, P26, P143 to P155, and P185 to P198) in the manner known to law. In view of the above, these documents are not admissible in evidence under Section 34 of the Indian Evidence Act. Mere identification of signatures would not prove the contents of the documents.

(o)As regards Charge No.1 against A1, learned counsel submitted that Charge No.1 is an omnibus charge, includes accused A5 to A15, all of them acquitted in the case. Admittedly, no appeal filed against their acquittal. In view of the same, the omnibus charge based on conspiracy gets snapped, and by no stretch of reasoning, Charge No.1 said to be proved.

(p)With regard to Charge Nos.2 to 5 against A1, learned counsel referring to the earlier submissions, submitted that the charges are based on the surprise check conducted on 20.07.2009. The finding of the trial Court that the



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statement of PW11/Approver-I is corroborated by the evidence of

PW80/B.S.Perumal, who produced Rs.2 lakhs a part amount of Rs.5 lakhs paid during May 2009, is highly doubtful. PW80 stated that, on 20.07.2009, he was at City Centre and, at that time, PW11 called him and enquired his whereabouts, and PW80 was interrogated by PW75. PW11, went to City Centre to meet PW80, and from there PW80 was taken to the CBI Office. In the meanwhile, PW80's claims that he arranged for Rs.2 lakhs to be brought from his house is highly doubtful. Neither PW11/Approver-I nor PW75 stated that they went to City Centre from West Mambalam and thereafter to CBI Office. PW11/Approver-I gives exaggerated and contradictory statements, as could be seen from the Mahazar Proceedings (Ex.P21) drawn on 20.07.2009. PW11 examined as PW8 in C.C.No.10 of 2011 on 09.12.2011, and also gave statement before the Enforcement Directorate on 04.09.2013, which marked as Exs.D27 and D20 respectively. There are material contradictions regarding the receipt of Rs.5 lakhs during May 2009, from whom it was received and receipt of Rs.13 lakhs on 20.07.2009. Further there were contradictions regarding A1's son's engineering seat application under Industrial Quota. PW11 confirmed that, as on 20.07.2009, there was no application submitted by A1's son under the Industrial Quota, and that A1's son submitted a regular application based on the marks secured by him. Added to it, a call letter dated



20.07.2009 for counselling for A1's son marked as Ex.D22, and he got engineering seat on 31.07.2009 in Meenakshi Engineering College under reservation and on merit. Further, PW11 gave contradictory statements regarding the sum of Rs.7 lakhs seized from his office. Before the Enforcement Directorate, PW11 claimed that money belonged to him. Likewise, there are contradictions in the statement of PW80/B.S. Perumal regarding A1's son's Industrial Quota application. PW80 examined as PW9 in C.C.No.10 of 2011 and as PW4 in C.C.No.24 of 2016.

(q)As regards Charge Nos.6 to 9 against A1, learned counsel submitted that on 20.07.2009, a sum of Rs.61.71 lakhs in cash and two bank locker keys of Central Bank of India, Aminjikarai, seized from the house of A2. One K.Raja, Inspector conducted the search along with two independent witnesses namely Venkateshwara Rao and V.P.Ramesh in the presence of Glory Stella Bai, Woman Police Constable and Pappathy, Housemaid, as detailed in the listed documents LD57 and LD75. The search list marked as Ex.P199. However, in this case, none of the above examined as witnesses. Added to it, no authorization produced to show that K.Raja, Inspector, authorized to conduct the search of A2's house. On the next day, i.e., 21.07.2009, the lockers maintained by A2 and his wife at the Central Bank of India,



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Aminjikai Branch, Chennai opened and a sum of Rs.55,98,000/- found and seized in the presence of G.Raghothaman, Senior Manager/Bank Manager, Central Bank of India, Aminjikai Branch; S.Geetha Mony, Assistant Manager, Central Bank of India; G.Jagadeesan, Jewel Appraiser, Central Bank of India, Kilpauk Branch; A2 and the wife of A2. The wife of A2 explained that the said amount given by her father after the sale of a property, and that A2 had derived income from real estate business. The total seized amount of Rs.1,17,79,000/- was claimed by Nasreen Banu (wife of A2) and A2 in C.C.No.10 of 2011, and Ex.D26 marked in proof of the same.

(r)In C.C.No.10 of 2011, the trial Court convicted A2, holding that the above said amounts seized from the residence and lockers of A2 were in his possession. Challenging the same, Crl.A.No.498 of 2021 filed before this Court is pending. With regard to the amount seized from A2's residence and lockers, proceedings under PMLA initiated in C.C.No.24 of 2016, and the Provisional Order of Attachment set aside. Further, the witnesses to the locker proceedings (Ex.P173) not examined and Ex.P173 marked through PW81/Investigating Officer. In this case, though it was projected that A2 used to collect bribe amounts from the Recruiting Agents, none of them (PW31 to PW41 and PW68 to PW71) supported the case of the prosecution, and all



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confirmed that no speed money collected by A2 on behalf of A1. PW16, POE

confirmed there was no complaint from anyone and the Office of Emigration

functioned as per procedure. Further, PW20, PW42, PW44, PW65, PW66,

and PW67 were employees of Recruiting Agents duly authorized by the

Government of India, and all of them deposed that they did not know A2. The

partnership deed dated 18.07.2000 (Ex.P185), marked through

PW81/Investigating Officer, cannot be considered in evidence.

PW6/D.Jaishankar, POE, deposed that A3 was the Proprietor of M/s.Classic

Tours and Travels and if any change in the constitution of the firm, only after

closure of the earlier proprietorship concern license, a new partnership firm be

created. In this case, as per the departmental records, M/s.Classic Tours and

Travels, as reflected in Ex.P185 series, is a proprietorship firm, and further, the

licence for the recruiting firm was valid from 20.07.1997 to 26.09.2011. In

this case, the prosecution failed to prove that A2 had any dealings with the

POE officials or he filed documents for emigration clearance. Even in the

charge sheet, A2 shown as private individual in Column No.I on the first page,

whereas in Column No.III he described as an Agent for Emigration. He

further submitted that in C.C.No.34 of 2011 for similar and identical charges,

case proceeded against 1st appellant herein/A1, K. Saleem Khan, Recruiting

Agent/A2; A.K. Mohamed Ismail, Recruiting Agent/A3; Syed Hussain



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Mohideen, Recruiting Agent/A4; Ashwin Kumar, POE/A5; and R. Lourdu

Jayaseelam @ R.L. Jayaseelan/A6 on the allegation that they obtained illegal gratification from emigrants. The trial Court acquitted all of them by judgment dated 28.09.2017 (Ex.D7). No appeal filed by the respondent.

(s)As regards Charge Nos.10 and 11, learned counsel submitted that the specific allegation is that A1 handed over Rs.60 lakhs to A2, who in turn handed it to PW12, Managing Director of M/s.Fourways Tours and Travels, through one Srinivasan @ Seenu for safe custody. For reasons best known to the prosecution, not examined Srinivasan @ Seenu as witness in this case. But he was examined as PW11 in C.C.No.10 of 2011, wherein he deposed confirming not handing over of Rs.60 lakhs to PW12. To substantiate the same, the deposition of Srinivasan @ Seenu in C.C.No.10 of 2011 marked as Ex.D28.

(t)He further submitted that M/s.Fourways Tours and Travels searched by CBI team headed by V.K.Raghukumar on the forenoon of 20.07.2009 in connection with C.C.No.34 of 2011. To substantiate the same, Ex.D2 marked. PW12's office also visited by another CBI team headed by PW81/Investigating Officer in the present case (C.C.No.36 of 2011) on the evening of 20.07.2009.



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The team headed by V.K.Raghukumar, Inspector, prepared a NIL Mahazar after the search conducted on 20.07.2009. V.K.Raghukumar, Inspector, deposited these facts in C.C.No.34 of 2011, and the same marked as Ex.D30. This fact also confirmed by S.Natarajan, a member of the search team, and Ex.D24, the deposition of S.Natarajan in C.C.No.34 of 2011, marked.

(u)PW81, the Investigating Officer, though he visited the office of PW12 on 20.07.2009, he is silent regarding enquiry made with PW12 on that day. Thereafter, it is projected through Ex.P22 (proceedings initiated under Section 27 of the Indian Evidence Act) that, on the very next day, i.e., 21.07.2009, search conducted by PW81/Investigating Officer and PW74/Inspector in the presence of PW10/Senior Ticket Examiner and a sum of Rs.60 lakhs seized.

(v)PW12, who examined as PW10 in C.C.No.10 of 2011 and as PW22 in C.C.No.34 of 2011, confirmed that, prior to the search conducted by PW81 on 21.07.2009, earlier search conducted by V.K.Raghukumar on 20.07.2009, during the search, nothing found or seized. In this case, the house of A1's sister searched in Tirunelveli during July 2009, but nothing found or seized during the search, and she was not even examined as a witness in this case. As



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submitted earlier, none of the Recruiting Agents stated anything that payment of speed money demanded and collected by A2 for A1. Further, the prosecution failed to produce even a single piece of paper or material to show that any transaction carried out by A2 in POE Office. Thus, the contention of PW12 that the sum of Rs.60 lakhs handed over by Srinivasan @ Seenu at the instance of A2 on behalf of A1, not proved. Consequently, Charge Nos.10 and 11 fail.

(w)As regards Charge Nos.16 and 17 relating to acceptance of illegal gratification in the form of speed money and payment of Rs.5 lakhs towards a pleasure trip, wherein PW12 arranged a trip to Darjeeling for A1's family and the family of A1's friend V.Kannadasan, and A2 paid Rs.5 lakhs to PW12, learned counsel submitted that the trial Court found that Exs.P31 and P32 corroborated the fact that the family members of A1 and the family members of A1's friend, V.Kannadasan, enjoyed a North India pleasure trip from 25.04.2009 to 03.05.2009. In this regard, PW12/M/s.Fourways Tours and Travels made a payment of Rs.4,31,997/-, which was credited to the account of M/s.Make My Trip India Private Limited. During the surprise check proceedings, PW75 recovered the booking and payment details from M/s.Make My Trip India Private Limited relating to A1. He further submitted



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that, in this case, V.Kannadasan, Deputy Commissioner of Customs (Retired),

examined as DW2, deposed that he and his family undertook the North East tour with A1 and his family, and that he paid a sum of Rs.2,60,000/- in two instalments by way of cash towards the tour expenses. He further stated that he faced disproportionate assets case in C.C.No.4 of 2013 before the learned XII Additional Special Judge for CBI Cases, Chennai, in which an amount of Rs.1,27,570/- shown as expenditure. DW2 explained that the trial Court, by judgment dated 26.04.2018, acquitted him of all charges. To substantiate the same, Ex.P31 marked. Further, LW104/Prakash Pradhan, Investigating Officer who conducted this part of the investigation at Darjeeling, collected only photocopies (Exs.P103, P105, P106, P122, and P130), and he was not examined in this case. PW43 marked Ex.P103, and PW48 marked Exs.P104 to P106. PW13/Prakasham, Assistant Manager (Marketing), Make My Trip, through whom Ex.P36, the copy of tickets, and Ex.P37, the booking payment history, marked. PW14/Manager, Corporation Bank, Whites Road Branch, who examined as PW79 in C.C.No.10 of 2011, stated that the bank account details of PW12 showed receipt of money from M/s.Make My Trip India Private Limited. This indicates that M/s.Fourways Tours and Travels was arranging tours through M/s.Make My Trip India Private Limited and they maintained a running account. Ex.P31 is the payment history dated



28.07.2009, and it is seen that certain payments made even prior to that date.

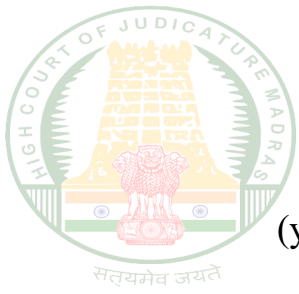
Further, Ex.P32 is only a carbon copy of the cash/cheque receipt book and is therefore inadmissible. From Ex.P32, there is no mention of either A1 or V.Kannadasan/DW2. The Email ID column and Mobile ID column purposefully inserted in the booking payment history dated 05.08.2009, whereas the said columns left blank in the payment history dated 28.07.2009 produced by PW12. This shows that the booking payment history was fabricated to implicate A1 in this case. Thus, according to the learned counsel, it is clear that the documents produced by PW12 are doctored.

(x)As regards the Charge No.50 against A2, learned counsel submitted A2, A3, and A4 tried for the commission of offences under Section 8 of the Prevention of Corruption Act, 1988. Since A3 and A4 died during the pendency of the proceedings, the charges against them abated. The prosecution unable to establish, either through oral or documentary evidence, that A2 was a service agent/recruiting agent for emigration or that he was running a recruiting agency in the name of M/s.Classic Tours and Travels in the capacity of a partner. The allegation against A2 was that the POE officials, viz., A1 and A5 to A15, received illegal gratification, as reflected in Exs.P143 to P157, P186 to P188, and P191 to P198, are marked through PW72, a



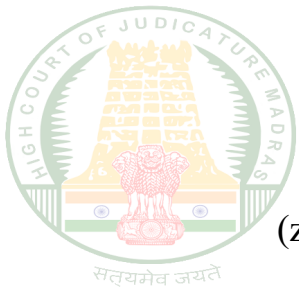
witness to the search proceedings. PW72/Chief Vigilance Officer, Southern

Railway, confirmed that he accompanied R.Ravi/Inspector on 20.07.2009 and along with him, he went to M/s.Classic Tours and Travels, Kodambakkam, where search conducted and Exs.P143 to P155 seized. Thereafter, on 25.07.2009, PW72 again went to CBI Office to assist another operation. At that time, he met Mahesh Kumar, Inspector, and accompanied him to the residence of PW69/Veeramanikandan, employee of M/s.Classic Tours and Travels, from where Exs.P156 and P157 seized. On verifying Ex.P143, PW72 confirmed that the authorization for conducting the search issued to PW81 and not to R.Ravi, and that there was no document produced to show that R.Ravi authorized to conduct the search operation. PW72 admits that there is no document to show that he was directed by his superior officer to act as a search witness. Further, PW20 and PW65 not supported the case of the prosecution, and their statements confirmed that they were obliging witnesses who appeared whenever called by the CBI, even without any authorization or summons. Thus, PW72 is a stock witness. In view of the above infirmities in the investigation and absence of independent evidence to prove the demand, acceptance, or recovery of illegal gratification through a third party, the ingredients required to attract Section 8 of the Prevention of Corruption Act, 1988 not established. Accordingly, the Charge No.50 is not proved.



(y)As regards Charge No.51 against A2, the learned counsel submitted

that the allegation against A2 and his brother A4 is that they were demanding and collecting speed money from the Recruiting Agents. However, in this case, none of the Recruiting Agents (PW31 to PW41 and PW67 to PW71) stated that they had paid any speed money. Added to this, except for PW12/Approver-II, who as stated earlier is a tainted witness, there is no evidence to support the allegation. His statement stands against the evidence of 15 witnesses, all of whom confirmed that no speed money paid and all work in the emigration office processed without delay. PW15 and PW16, who were Protectors of Emigrants, confirmed that there was no delay in processing applications in their office. They further stated that all applications required to be made online, and therefore, there was no reason for any demand or speed money on behalf of A1 through A2. In view of the absence of evidence to establish demand, acceptance of illegal gratification, the ingredients required to constitute the offence under Section 24(1)(g) of the Emigration Act, 1983, not satisfied, hence, the Charge No.51 is not proved. With regard to Charge Nos.12 & 13, Charge Nos.14 & 15 and Charge Nos.18 & 19, the appellants were acquitted.



(z)He further submitted that the sanction (Exp6) accorded by PW3 to prosecute A2 is not proper. PW3 confirmed that the licence of M/s.Classic Tours and Travels stands in the name of its Proprietor, A3, who is no more. Further, the partnership deed (Ex.P185 series) marked through PW81/Investigating Officer, and no independent witnesses examined to confirm the seizure of the document, particularly the unregistered partnership deed dated 18.07.2000. Mere marking of the document would not prove a document, no person conversant with the documents examined to speak the contents of document Ex.P185. In this case, no such evidence available. He further submitted that having acquitted A5 to A15 of all charges, which were also connected with the charges against A2, the trial Court ought to have acquitted A2 as well. He further submitted that the trial Court gave undue importance and influenced the seizure of money from A2's residence and bank lockers, which, according to A2, was his hard-earned money derived from real estate business and his in-laws gifted money to purchase a property and A2 gave explanation which was accepted by CBI. The same not proved in the manner known to law. Further, the preliminary attachment made under PMLA was set aside finding that A2 accounted for the money and establish that it was untainted. Further, in this case, the foundational facts relating to the recording of mahazars and disclosure statements, based on which recoveries under



Exs.P21 to P24 effected, are all fabricated documents and are unsustainable in the eye of law. In support of his submissions, learned counsel for the appellants relied on the following decisions:

(i)Placed reliance on the decision of the Hon'ble Apex Court in the case of “*State Inspector of Police v. Surya Sankaram Karri* reported in (2006) 7 *SCC 172*” for the point that issuance of oral directions is not contemplated under the Act, the concept is unknown in administrative law. But in this case, the oral directions not followed by a written order.

(ii)Further placed reliance on the decisions of “*Charansingh v. The State of Maharashtra* reported in (2021) 5 *SCC 469*” and *Superintendent of Police, C.B.I & Others v. Tapan Kr.Singh* reported in *CDJ 2003 SC 471* for the point that GD entries recording the information by informant disclosing commission of cognizable offence can be treated as FIR. In this case, no such entry produced.

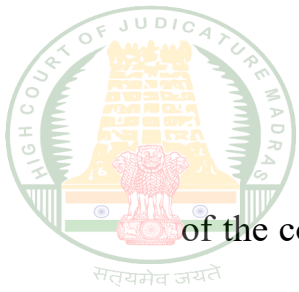
(iii)Further placed reliance on the decision in *Pulukuri Kottayya v. King-Emperor* reported in 1946 *SCC OnLine PC 47* for the point that with regard to Section 27 of Indian Evidence Act, its true construction is that it permits the proof of that part of a statement of an accused person in the



custody of the Police which has resulted in the discovery of a relevant facts, and of any other part of the statement which connects, or tends to connect the fact discovered with the offence charged. In building up that proposition, firstly “the fact” means the things, the material object, discovered and nothing else. Next, “relates” means “has reference to” and “distinctly” means nothing more than “plainly” or “clearly”. In this case, no discovery of any relevant fact.

(iv)Placed reliance on the decision of the Hon’ble Apex Court in ***Madhu v. State of Kerala*** reported in ***(2012) 2 SCC 399*** for the point that the ration behind Section 27 of Indian Evidence Act is that the facts in question would have remained unknown but for the disclosure of the same by the accused. If any fresh facts have been discovered on the basis of the confessional statement made by the accused, the same would be relevant. If not, confessional statement cannot be proved against the accused to the detriment of the accused.

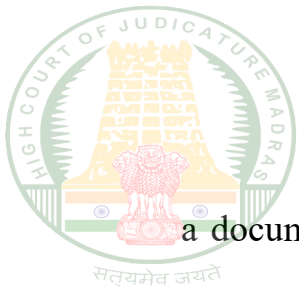
(v)Placed reliance on the decisions in ***Hari Charan Kumi & Another v. State of Bihar*** reported in ***CDJ 1964 SC 042*** and ***Kalp Nath Rai v. State (through CBI)*** reported in ***CDJ 1997 SC 208*** for the point that the confession



of the co-accused cannot be treated as substantial evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion.

(vi)Placed reliance on the decisions in the cases of *Prabhu v. State of Uttar Pradesh* reported in *AIR 1963 SC 1113* and *Aghnoo Nagesia v. State of Bihar* reported in *AIR 1966 SC 119* wherein *Pulukuri Kottaya* case (cited supra) reconfirmed by the Hon'ble Apex Court for the principle that Section 27 of Indian Evidence Act provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

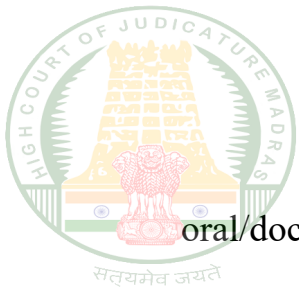
(vii)Placed reliance on the decision of the Hon'ble Apex Court in *Life Insurance Corporation of India and another v. Ram Pal Singh Bisen* reported in *(2010) 4 SCC 491* for the point that merely filing and exhibiting of a document in Court does not amount to proof of its contents and admission of



a document in Court may amount to admission of content but not their truth and document not having been produced and marked through the concerned person as required under the Evidence Act, cannot be relied upon by Court. In this case, majority of the documents have been marked through the Investigating Officer not by the person, conversant or dealt with the documents.

(viii)Placed reliance on the decisions in the cases of *Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)* reported in (2023) 18 SCC 251 and *N.Vijayakumar v. State of Tamil Nadu* reported in *CDJ 2021 SC 069* wherein the Hon'ble Apex Court referring to various decisions held that the presumption permissible to be drawn under Section 20 of the Act is concerned, proof of acceptance of illegal gratification can follow only if there is a proof of demand. The presumption under Section 20 is that the true basic facts, demand and acceptance of gratification be proved to attract the presumption under Section 20 of the Act.

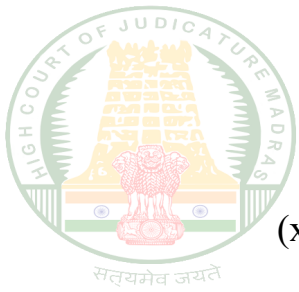
(ix)Placed reliance on the decision of the Hon'ble Apex Court in the case of *Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)* reported in *CDJ 2022 SC 1368* for the point that in the absence of the complainant (direct/primary,



oral/document evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution. In this case, there is no such negative evidence against the appellant. On other hand, PW15, PW16 & PW67 gave a positive evidence that the Protector of Emigration Office was functioning and disposing the applications in normal course without any delay.

(x)Placed reliance on the decision in ***Central Bureau of Investigation v. V.C.Shukla & Others*** reported in ***CDJ 1998 SC 438*** for the point that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Further loose sheets cannot be termed as books of accounts and it is inadmissible under Section 34 of Indian Evidence Act.

(xi)Placed reliance on the decision in ***Common Cause (A Registered Society) & Others v. Union of India & Others*** reported in ***CDJ 2017 SC 056*** the Hon'ble Apex Court referring to various decisions held that note books or books within the meaning of Section 34 but not the loose sheet of papers and it has to be proved with independent evidence.



(xii) Placed reliance on the decision in the case of ***Jagtar Singh v. State of Punjab*** reported in **(2023) 19 SCC 498** wherein the Hon'ble Apex Court following the decision in ***Neeraj Dutta v. State (NCT of Delhi)*** reported in **(2023) 4 SCC 731** reiterated the principle that demand, recovery both must be proved for conviction under Section 13(1)(d) of Prevention of Corruption Act.

(xiii) Placed reliance on the decision of the Hon'ble Apex Court in ***State through Inspector of Police, A.P. v. K.Narasimhachary*** reported in **(2005) 8 SCC 364** for the point that valid sanction can be proved by the sanctioning authority in two ways (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction; or (2) by adducing evidence aliunde to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. In this case, the original order of sanction not produced.

(xiv) Placed reliance on the decision in ***H.N.Rishbud and Inder Singh v. State of Delhi*** reported in **(1954) 2 SCC 934** wherein the Hon'ble Apex Court held invoking Section 165 Cr.P.C. by an officer incharge of a Police Station can conduct search and seizure. If a subordinate officer is deputed, then the reasons to be recorded in writing. The Police officer making an



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investigation is enjoined to enter his proceedings in his diary from day to day as per Section 197 Cr.P.C. and further send a copy of entries to the Magistrate concerned under Section 167 Cr.P.C. In this case, no authorisation was given for search and seizure by PW74 & PW75 and PW81 not submitted any details of authorisation.

(xv)Placed reliance on the decision of the Hon'ble Aepx Court in ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in ***(1984) 4 SCC 116*** for the point that the infirmity in the prosecution case cannot be cured by the use of additional links in circumstantial evidence.

(xvi)Placed reliance on the decision of the Hon'ble Aepx Court in ***Parveen @ Sonu v. State of Haryana*** reported in ***2021 SCC OnLine SC 1184*** for the point that when the person is in Police custody the confession made by him even to a third person that is other than a Police officer shall also become inadmissible.

(xvii)Placed reliance on the decision of the Hon'ble Aepx Court in ***K.R.Purushothaman v. State of Kerala*** reported in ***(2005) 12 SCC 631*** for the point that to attract the provision of Sections 13(1)(d) to prove the facts, it has



to be shown that the accused had obtained, for himself or for any other person, any valuable thing or pecuniary advantage.

5.The submissions of learned Special Public Prosecutor for CBI Cases for the respondent are as follows:

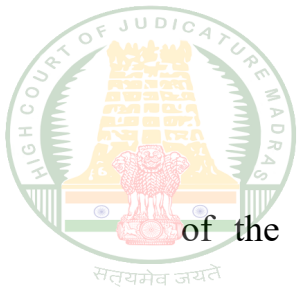
(a)In this case, PW81/Investigating Officer conducted a surprise check, registered FIR in RC MA1 2009 A 0038 (Ex.P172), conducted the investigation and filed charge sheet against A1 to A15 for offences under Sections 120-B IPC read with Sections 7, 8, 11, 12, and 13(2) read with 13(1)d) of the Prevention of Corruption Act, 1988, and Sections 24(1)(c) and (g) of the Emigration Act, 1983. In this case, A1 and A5 to A15 public servants employed in the Office of the Protector of Emigration. A2 to A4 private individuals. A2 and A3 are brothers and partners of M/s.Classic Tours and Travels, New No.5, Old No.1, 4th Street, Dr. Subbarayan Nagar, Kodambakkam. A4 proprietor of M/s. Taj Tours and Travels. On 20.07.2009, on receiving secret information, the Superintendent of Police, CBI, directed PW75 & PW75 to conduct surprise check on the information that A1 and A2 were meeting PW11/Approver-I in connection with the payment for A1's son admission in Anna University under the Industrial Quota and approaching PW11, Founder Trustee of the Andhra Pradesh Parents and Students Welfare



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Trust, situated at Door No.5/21, Ellaiamman Kovil Street, West Mambalam, Chennai. The Superintendent of Police directed PW75 to assist PW74.

Thereafter, PW74 requested PW75 to secure independent witness. PW10, a Senior Ticket Examiner from Southern Railway, deputed to be independent witness for the search. PW74, PW75, and PW10, along with Head Constable R.Manoharan (not examined), went to the office of PW11 at about 10.30 a.m., where they waited for 10 to 15 minutes, and overhearing the conversation. Thereafter, they entered the room and questioned A1 and A2 sitting there and speaking with PW11. Other than A1, A2, and PW11, three others, namely G.Jagan Mohan Reddy, A.Srinivasan, and S.D.Ahmed, present in the office of PW11. On enquiry, PW11 confirmed that A1 and A2 came for securing engineering seat under the Industrial Quota and produced Rs.13 lakhs from the table drawer, handed over by A1 and A2. PW11 handed over four handwritten slips (Exs.P25 and P26). Apart from this, PW11 admitted that, on 20.05.2009, he received Rs.5 lakhs in advance, out of which Rs.2 lakhs handed over to PW80/B.S.Perumal, a close associate of Anna University Vice Chancellor running a Xerox shop in the National Institute of Technology. PW11 further stated that he retained the balance amount of Rs.3 lakhs along with Rs.4 lakhs already with him, and the entire amount of Rs.7 lakhs seized. PW74/Inspector seized the cash, the certificates of A1's son, and a jute bag containing the file



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of the National Academy of Customs, Excise and Narcotics, Bangalore.

During search, PW81/Investigating Officer came to the Office of PW11, remained there for some time, and later left. PW74/Inspector took the cash and seized articles to the CBI Office, while PW75 took PW11/Approver-I, A1, and A2 to the CBI Office and produced them before PW81/Investigating Officer, who interrogated them. Thereafter, the mahazar proceedings (Ex.P21) prepared for seizure made in the office of PW11, and PW81/Investigating Officer registered FIR (Ex.P172).

(b)He further submitted that on the same day on 20.07.2009 between 16.15 hours and 20.30 hours, a search conducted by Ravi, Inspector of CBI, S.Subramanian, Inspector and N.Lavakumar, Inspector along with independent witness PW72, Chief Vigilance Officer in the office of PW12/M/s.Classic Tours and Travels in presence of PW20, employee of M/s.Classic Tours and Travels and seized certain documents (Exs.P144 to P155) and cash of Rs.3.65 lakhs. The search list marked as Ex.P143.

(c)On the same day on 20.07.2009 between 16.30 hours and 20.00 hours, a search conducted in the residence of A2 by K.Raja/Inspector of CBI along with two persons namely Venkateshwara Rao and V.P.Ramesh in the



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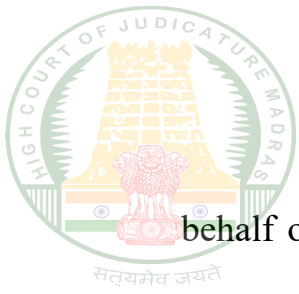
presence of A2, wife of A2, Glory Stella Bai, Women Police Constable and Pappathy, a Housemaid. During search, cash of Rs.61.71 lakhs and two bank locker keys of Central Bank of India, Aminjikarai Branch, seized. The search list marked as Ex.P199. On the next day on 21.07.2009 at 10.00 a.m, K.Raja/Inspector and M.Raja/Inspector along with A2 and his wife went to Central Bank of India, Aminjikarai Branch and opened bank lockers in the presence of G.Raghothaman, Senior Manager/Bank Manager, Central Bank of India, Aminjikarai Branch, S.Geetha Mony, Assistant Manager, Central Bank of India, G.Jagadeesan, Jewel Appraiser, Central Bank of India, Kilpauk Branch. From the lockers, jewels and cash of Rs.55.98 lakhs seized. The Inventory Report marked as Ex.P173.

(d)He further submitted that during interrogation, A1 gave disclosure statement (Ex.P23), based on which, PW74, PW75, PW81, PW10/Independent witness along with A1 went to the Office of PW12/M/s.Fourways Tours and Travels, Thousand Lights, Chennai on 21.07.2009 at 12.10 hours and seized cash of Rs.60 lakhs produced by PW12 who confirmed that on the instructions of A1, A2 handed over Rs.60 lakhs to PW12 through Srinivasan @ Seenu and this amount is an illegal gratification collected from the recruiting agents. The arrest memo of the appellants marked as Ex.P24 and four handwritten slips



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marked as Exs.P25 & P26. PW10 is the seizure witness for all these documents (Exs.P21 to P26). During investigation, PW11 taken as Approver-I, his 164 Cr.P.C statement recorded (Ex.P28) and tender of pardon proceedings under Section 309 Cr.P.C (Ex.P30) accorded. Likewise, PW12 was also taken as Approver, his 164 Cr.P.C statement recorded (Ex.P33) and tender of pardon proceedings under Section 309 Cr.P.C (Ex.P34) recorded. Thereafter, PW81/Investigating Officer conducted a detailed investigation and found that A1, the then Protector of Emigrants and Director of Protector of Emigrants during the period between January 2000 and July 2009, entered into criminal conspiracy with his subordinate officials, namely A5 to A15, and private persons A2 to A4, and collected bribe amounts in the form of speed money for granting emigrant clearance by abusing their official positions and obtaining valuable things without consideration from various recruiting agents. The investigation further revealed that A1 nominated A2 and A3 of M/s.Classic Tours and Travels and A4 of M/s.Taj Tours and Travels to act as collecting agents for collecting illegal gratification from other recruiting agents for the issuance of emigrant clearance for their respective candidates in the form of speed money. Further, A2 acted as the custodian of the ill-gotten money, retained the same in his possession, and settled various expenditures of the officials of the POE. He also kept the illegal gratification received on



behalf of A1 in his custody and spent the same as per the instructions of A1 and the officials of the POE.

(e)He further submitted that A1 obtained illegal gratification amounting to Rs.61.71 lakhs by abusing his official position for the issuance of emigrant certificates to candidates recommended by recruiting agencies through A2, and the said amount kept in the office of A2. A1 also retained illegal gratification amounting to Rs.55.98 lakhs received from recruiting agents in lockers maintained in the names of A2 and his wife at the Central Bank of India, Aminjikarai Branch. Further, during the month of April 2009, A2, acting on the instructions of A1, collected a sum of Rs.60 lakhs and handed it over to Srinivasan @ Seenu, who in turn handed over the same to PW12/Approver-II for safe custody at his office for the purpose of purchasing a flat for A1's sister.

(f)The investigation further revealed that payment for A1, sony handycam purchased for Rs.64,690/- in the name of A.Mani and laptop purchased for Rs.39,990/- in the name of A.Mohideen, all paid by A2. The invoices Exs.P167 & P170 and Exs.P47 & P48 marked. Further, A1 purchased modular kitchen for Rs.2,32,430/- from M/s.Dynamic Marketing Anna Nagar, Chennai in the name of his second son Ceebee. Further, A2 paid a sum of Rs.5



lakhs to PW12/Classic Tours and Travels towards the expenses for the tour of

A1 and his family members with V.Kannadasan/DW2 and his family members, which was booked through Make My Trip for their room bookings at Gangtok, Dandum in Sikkim, and Darjeeling during the period from 25.04.2009 to 03.05.2009. Added to, all expenses incurred by A1 towards telephone charges, hired vehicles, petrol, computer expenses, film ticket expenses, money orders, and train tickets, all recorded in the notebooks namely *Super Deluxe Book*, *Deluxe Notebook*, and the files of M/s.Classic Tours and Travels maintained during the years 2007, 2008, and 2009, wherein the receipts, payments, and expenditures incurred for A1 are recorded in short form as “S.R.” / “Yessa” / “Y” / “S”.

(g)The investigation further revealed that A5 abused his official position and got pecuniary advantage in the form of home rent which was credited into A5’s house owner M.Narendra Reddy and his wife Jothi Reddy to Dena Bank, Mount Road Branch from 06.11.2007 to 04.06.2009. Further the payments for telephone bill, vehicle expenses, flight/train tickets were all paid by A5 through Domestic Hawala. These particulars are recorded in Super Deluxe Book, Deluxe Notebook, file of M/s.Classic Tours and Travels for the period 2007, 2008 and 2009 wherein receipt payments and expenditures incurred for



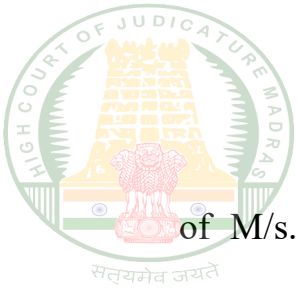
A5 mentioned in short form as “Aswin” / “(A)” / (ASH)”.

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(h)As regards A6, he received pecuniary advantage in the form of Paramount Airways Flight Ticket John Peterson, son of A6 for the travel from Chennai to Madurai on 27.06.2009 and also received speed money, valuable things include landline and mobile telephone bill payments, train tickets, money deposited in bank accounts on various dates, insurance premium payments which were mentioned in details as per the note books viz., Super Deluxe Book, Deluxe Notebook maintained in M/s.Classic Tours and Travels for the period 2007, 2008 and 2009. A6 is mentioned in short form as “Jayaseelan” / “Jai”. Likewise, A7 obtained illegal gratification and got pecuniary advantage in the form of speed money of Rs.1.8 lakhs in June 2009 as per slip recovered from A2.

(i)(a)Further A8 obtained illegal gratification and obtained pecuniary advantage in the form of train tickets etc., which mentioned in the notebooks of M/s.Classic Tours and Travels during the period 2008 and 2009 wherein the payments, expenditures incurred for A8 mentioned in short form as “Suraj”.

(b)A9 also obtained speed money for expenditure towards train tickets, bike expenses, computer, mobile recharge which were mentioned in notebooks



of M/s.Classic Tours and Travels and A9 is mentioned in short form as “Dinesh” and A9 received a sum of Rs.1.8 lakhs in June 2009 as per slips recovered from A2.

(c)As regards A10, he also obtained pecuniary advantage in the form of speed money for expenditure towards train tickets, bike expenses, computer, mobile recharge etc., which were mentioned in the notebooks of M/s.Classic Tours and Travels during the period 2007 to 2009 and A10 mentioned in short from as “Dhanasekar” and also “Dhana”.

(d)As regards A11, payments made for his expenses and he referred in short form as “Jeeva”, “J”.

(e)As regards A12, payments made to him and he referred in short form as “Saleel”.

(f)As regards A13, payments made to him recorded in the notebooks and in short form he referred as “Janak”.

(g)As regards A14, payments made for him recorded in notebooks and his name mentioned in short form as “Urangan”.

(h)As regards A15, his expenditure towards, bus, train ticket, bike insurance, DD, IOC, gift etc., are mentioned in notebook and he referred in



short form as “Ramachander”.

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(j)The investigation further revealed that during the years 2007 to 2009, A2, in the name of M/s.Classic Tours and Travels, along with his brother A3 and A4 of M/s.Raj Tours and Travels, received illegal gratification for processing and issuing emigration clearance to candidates sponsored by various recruiting agents. Initially, they collected excess amount of Rs.500 per passport up to March 2009, thereafter, the amount increased to Rs.2,000/- for Malaysia and Rs.1,000/- for Gulf countries as illegal gratification for obtaining Emigration Clearance Certificates. During the surprise check, ten notebooks containing these details seized from the office of M/s.Classic Tours and Travels. During the investigation, the CBI seized ill-gotten money amounting to Rs.2,03,94,900/- from the possession of the accused persons. A sum of Rs.13 lakhs recovered from the possession of A1 while handing over the amount to PW11; Rs.55.98 lakhs seized from the residence of A2; Rs.61.71 lakhs seized during the inventory proceedings; and Rs.60 lakhs seized from PW12/Approver-II. He further submitted that previous sanction orders under the Prevention of Corruption Act obtained in respect of A1 and A5 to A15 from the respective competent authorities, and under the Emigration Act, 1983 in respect of A2 to A4. Thereafter, charge sheet filed before the trial Court listing



LW1 to LW127 along with the relevant documents. During the trial, on the side of the prosecution, PW1 to PW81 examined, Exs.P1 to P199 marked, and MO1 produced. On the side of the defence, DW1 and DW2 examined, Exs.D1 to D31 marked, and the trial Court marked Ex.C1.

(k)Learned Special Public Prosecutor further submitted that the sanctioning authorities, after considering the documents and statements of witnesses recorded during the investigation, applied their minds before granting sanction. He relied upon the judgment of the Hon'ble Apex Court in ***Nanjappa v. State of Karnataka*** reported in ***AIR 2015 SC 3060***, with regard to the broad principles governing sanction. Further, in the present case, the sanction orders reflect that all available materials placed before the sanctioning authorities and that sanction was granted only thereafter. He also placed reliance on the decisions of the Hon'ble Apex Court in ***R. Sundararajan v. State by DSP, SPE, CBI, Chennai*** reported in ***(2006) 12 SCC 749***, and ***State of Maharashtra through Central Bureau of Investigation v. Mahesh G. Jain*** reported in ***(2013) 8 SCC 119***, wherein it was held that it is incumbent upon the prosecution to prove that a valid sanction had been granted by the competent sanctioning authority. In the present case, there is no dispute regarding the competence of the sanctioning authorities. Further, the sanction



orders explicitly disclose that the authorities had perused the materials placed before them and thereafter granted sanction. The sanctioning authorities examined as witnesses in this case as PW1 to PW9. Insofar as A1 is concerned, sanction under the Prevention of Corruption Act, 1988 accorded by PW1 and marked through Ex.P1. In respect of A2, sanction under the Emigration Act, 1983, accorded by PW3 and marked through Ex.P6. He further relied upon the decision of the Hon'ble Apex Court in ***Prakash Singh Badal and another v. State of Punjab and others*** reported in ***AIR 2007 SC 1274***.

(1)He further submitted that the partnership deed (Ex.P185 series) dated 18.07.2000 between A2 and A3 confirms that A2 is Partner of M/s.Classic Tours and Travels. In the Mahazar Proceedings (Ex.P21), the proceedings with regard to seizure of ill-gotten money and overtact of A1 and A2 with PW11/Approver-I, all recorded and PW10, independent witness confirmed the same. The FIR (Ex.P172) is based on the surprise check (Ex.P21). Further, PW74 and PW75/Inspectors of CBI and PW10, PW11/Approver-I and PW80/B.S.Perumal all confirmed the recovery made on 20.07.2009 at the first instance. As regards the second instance, PW12 confirms the recovery of speed money. On recording of disclosure statement (Ex.P23), the office of



PW12 identified and from there, a huge sum of Rs.60 lakhs ill-gotten money

recovered and seized. He further submitted PW72 is an independent witness

who went along with CBI Team during the search to the office of A2

M/s.Classic Tours and Travels, where several documents seized (Exs.P144 to

P155) and search list marked as Ex.P143 and thereafter again he went along

with CBI on 25.07.2009 and the search conducted in the house of PW65, an

employee of A2. The search list is Ex.P156 and notebook seized marked as

Ex.P157. These seized documents forwarded to PW76/handwriting expert.

The specimen signatures of A2, A5, A7, A8, A9, A13, PW20, PW65, and one

John Peterson and Parvathy obtained, and the admitted documents collected

from the Office of the Protector of Emigrants also submitted to PW76.

PW76/Handwriting Expert examined these documents and submitted his report

(Ex.P166), confirming the signatures and writings of the accused, including

PW20 and PW65. Thus, the amounts collected from various recruiting agents

over a period accumulated and kept in the custody of A2 and PW13. The

handwritten slips further confirmed that payments were made for the expenses

of the accused in this case. He further submitted that A2 paid expenses of A1.

PW23 and PW51 from Prince Jewellers confirmed receipt of payments. PW22

and PW25 from Tanishq Jewellers confirmed receipt of amounts from A2.

PW21, PW45, PW46, PW50, PW60, and PW61 confirmed that A2 made



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payments for air-conditioner service, electrical repair works, plumbing works, security services, purchase of bathroom fittings, modular kitchen expenses, and payments to Hotel Le Méridien and Sony Centre.

(m)He further submitted that the payment to SRM Institute made on the instructions of A1. PW17, PW18 and PW19 from SRM Institute confirmed the same. The witnesses from M/s.Express Travels and M/s.Best Travels, namely PW26, PW27 and PW29 confirmed availment of car facilities and the receipt of payments from A2. He further submitted that although the Recruiting Agents, namely PW30 to PW42, PW44, PW69, PW70 and PW71, not supported the prosecution case, dehors their evidence, the other materials on record clearly establish that A2 acted as an agent and collected speed money from Recruiting Agents, accumulated the same, and expended for A1, and retaining a portion of the amounts collected.

(n)He further referred to the decision of the Hon'ble Apex Court in ***Som Prakash v. State of Delhi*** reported in ***AIR 1974 SC 989***, for the principle that the evidence of police officials cannot be discarded merely on the ground that they are police personnel. He also relied on the decision of the Karnataka High Court in ***Sri Girishchandra and another v. The State by Lokayuktha***



Police, Yadgir reported in **ILR 2013 KAR 983**, wherein it had held that

whether registration of an FIR should precede the investigation, or whether an FIR could be registered in the midst of the investigative process, would depend on the facts and circumstances of each case. As regards the present case, it is submitted that the Superintendent of Police immediately called and directed PW74 and PW75 to take steps for conducting a surprise check. Without losing time, PW74 and PW75, along with PW10, rushed to the office of PW11, where the accused arrested and a sum of Rs.13 lakhs seized. Any delay would have enabled the accused to escape, hence, the non-mentioning of the Crime Number in Ex.P21, would not dilute the evidentiary value of the document.

(o)He further submitted that two of the accused turned approvers, namely PW11 and PW12. Their statements under Section 164 Cr.P.C. recorded and marked as Exs.P28 and P33. Based on these statements, tender of pardon granted to them (Exs.P30 and P35), and thereafter they examined as witnesses. The Approvers confirmed their earlier statements and spoken about the overtact of the accused. Their evidence is corroborated by other witnesses and the materials collected during investigation. Considering all these aspects, the trial Court rightly convicted the appellants. As regards A5 to A15, finding the accused gave explanations and the overtact against them not proved



beyond reasonable doubt, acquitted A5 to A15. The judgment of the trial Court is well-reasoned and supported by evidence and materials. Hence, the appeal deserves to be dismissed.

6.This Court considered the rival submissions and perused the materials available on record.

7.In this case, out of 81 witnesses examined by the prosecution, the primary witnesses are PW10, witness to the surprise check; PW11 and PW12, the Approvers; PW74 and PW75 Inspectors of CBI and PW81 the Investigating Officer.

8.The case proceeds based on the source information received by the Superintendent of Police, CBI on 20.07.2009, who called PW74 to his chamber and informed A1, the then Protector of Emigration along with his associate A2, a Service Agent for Emigration, both meeting PW11 for A1's son admission in Engineering College under Industrial Quota paying huge amount in lakhs acquired as illegal gratification collected regularly from various Recruiting Agents and kept with A2. The Superintendent of Police also called PW75/Inspector, CBI to his chamber, to assist PW74. PW74 requested PW75



to fetch a witness and PW75 called the Office of Southern Railway and

PW10/Senior Ticket Examiner was deputed to be a witness, follow the instructions of PW75/Inspector, CBI. All the three viz., PW74, PW75 and PW10 along with Manoharan, Head Constable (Not Examined) proceeded to the Office of PW11 at Door No.5/21, Ellaiamman Kovil Street, West Mambalam, Chennai and enquired PW11 who informed he is the Founder Trustee of Andhra Pradesh Parents and Students Welfare Trust, arranging admission for various courses in Engineering College by collecting huge amount to be given as capitation fee. PW11 identified A1 and A2 present in his office seeking college admission for A1's son under Industrial Quota in Anna University. PW11 produced Rs.13 lakhs given by A2 from the table drawer. When PW11 was further enquired, he informed that on 20.05.2009, Rs.5 lakhs received in advance, and he retained Rs.3 lakhs and Rs.2 lakhs handed over to PW80/B.S.Perumal who runs Gayathri Computer Consultancy inside the campus of Madras Institute of Technology (MIT). who can get seat under Industrial Quota in Anna University. PW11 also handed over another Rs.4 lakhs available with him to PW74. A2 produced four handwritten slips containing details of money transaction to PW74 (Exs.P25 & P26). PW74/Inspector seized a jute file of National Academy of Customs, Excise & Narcotic, Bangalore containing original mark sheets, certificates, photos of



A1's son. PW74 collected the cash and seized materials and left to CBI Office. PW75 took A1, A2 and PW11 to CBI Office. The case originates from the Mahazar Proceedings (Ex.P21).

9.Now the point to be considered is that when and where and by whom the Mahazar Proceedings (Ex.P21) prepared. PW10 states Mahazar Proceedings (Ex.P21) not prepared in the scene of occurrence, i.e., the office of PW11 at Door No.5/21, Ellaiaimman Kovil Street, West Mambalam, Chennai. PW75's evidence is that PW74 prepared Mahazar Proceedings (Ex.P21), which is a computer typed, print out taken from the computer system in PW11's office. But PW11/Approver-I confirms neither computer nor printer available in his office. Thus, the Mahazar Proceedings (Ex.P21) prepared in the Office of the CBI and not prepared in the place mentioned and recorded. It is confirmed by PW74 and the other mahazar witnesses in Ex.P21 that there is no reference of any crime number or General Diary reference. The surprise check initiated and commenced without recording the source information and without any order from a superior officer.

10.The search and seizure not reported to the Court immediately after the search. The explanation given by the trial Court in this regard is that, since



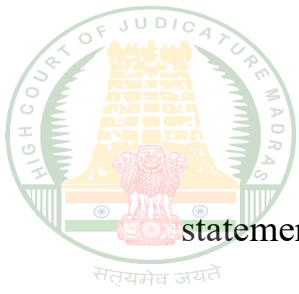
the Investigating Officer was immediately proceeding to PW11's office, recording FIR or the information would have resulted in loss of time, and there was possibility of the accused fleeing; hence, non-recording of the particulars and details of the information is acceptable, is not proper. In this case, the Superintendent of Police when he was in CBI office, he called PW74 and PW75 and gave instructions. It is not the case that the information received by the Superintendent of Police while he was on a move or some other duty or at a faraway place. Thus, the requirement is that the information ought to be recorded in the General Diary or FIR should have been registered. The requirement under the law is that subjective satisfaction to be recorded prior to the search. In this case, there is nothing to show that there was any such subjective satisfaction prior to the search.

11.As per Section 102 Cr.P.C., any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances creating suspicion of the commission of any offence. Prior to conducting a search, when there is information and reason to believe that any person is in possession of property related to a crime, the reasons for such belief must be recorded in writing. In this case, this basic condition not followed. PW81/Investigating Officer confirmed that in the FIR (Ex.P172),



there is no reference to the information received, that is when it was received, or the nature of such information. Thus, out of the blue, the Mahazar Proceedings (Ex.P21) prepared in this case. Hence, Ex.P21 becomes suspicious and doubtful.

12.It is to be seen that handwritten slips (Exs.P25 series) handed over by A2 in the office of PW11, and later, at the time of arrest of A2, further handed over 2 handwritten slips (Ex.P26 series) in the CBI office. In this case, the arrest of A1 and A2 took place in the CBI office at 08:45 p.m. and 09:00 p.m. on 20.07.2009, as recorded in the arrest memo (Ex.P24). In Exs.P25 and P26, there is no acknowledgement or signature of any of the accused, and there is no mention of where Exs.P25 & P26 received, from whom and at what time it was received. Ex.P23 is the disclosure statement of A1 given while he was in custody in the CBI office. On perusal of Ex.P23, it is seen that it was signed at the bottom by R.Sekar/A1 and PW10, Gnana Sathish. How it partakes the character of a confession and disclosure under Section 27 of the Indian Evidence Act is not known. Admittedly, Ex.P23 not recorded by any police officer or in presence of any police official. Though FIR Number RC MA1 2009 A 0038 shown at the top of Ex.P23, there is nothing more. Hence, in the strict sense, it cannot be a disclosure statement. Pursuant to the disclosure



statement (Ex.P23), the recovery proceedings under Section 27 of the Indian Evidence Act, namely Ex.P22, recorded and Rs.60 lakhs shown as recovery from PW12/Approver-II, Managing Director of M/s.Fourways Travels and Tours Private Limited on 21.07.2009. Thus, documents Exs.P21 to P26 are all shrouded with mystery. The entire case thereafter takes off based on these documents. Hence, the foundational facts shaky and doubtful.

13.It is seen that PW10 travels with CBI from 20.07.2009 at 10.00 hours till 21.07.2009 at 13.40 hours. PW10 admits that he neither served with any summon, nor his superior officer issued any written order directing him to appear before CBI and act as a witness. PW75/Inspector admits that his parent department is Southern Railway and he called PW10, who also from Southern Railway. Hence, the independent character of PW10 becomes questionable. In this case, PW10, PW74, and PW75 admit that on 20.07.2009 between 10.30 a.m. and 02.15 p.m., search and seizure conducted in the Office of PW11 and also confirm that PW81/Investigating Officer came to PW11's office present there, and thereafter gave instructions to PW74 and PW75 before leaving the place. Thus, even prior to the registration of the FIR, PW81/Investigating Officer present, participated in the search proceedings. PW81 is the person who registered the FIR (Ex.P172) on the direction of the Superintendent of

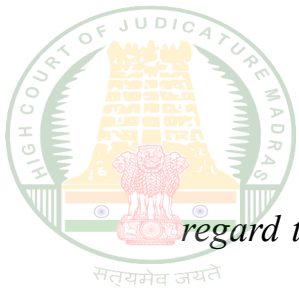


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Police, as seen from the endorsement in Ex.P21. PW81 took up investigation, made ready the charge sheet except obtaining sanction thereafter. One Hariharan, the succeeding officer, obtained sanction for prosecution and filed the charge sheet before the trial Court. It is PW81 who conducted the entire investigation. In this background, considering Exs.P22 & P23, it is clear it has no semblance of any disclosure to any Police officer.

14.In Exs.P21 and P22, it is recorded as though A1 disclosed the fact and his complicity and involvement in the crime. As per Section 27 of the Indian Evidence Act, recordings against A1 in Exs.P21 & P22 cannot be considered as evidence except to the limited extent of identification and recovery. In this case, facts already known. However, CBI recorded as though they amounted to admission by A1 regarding handing over of Rs.13 lakhs, as per Ex.P21 and the handing over of Rs.60 lakhs by PW12 in Ex.P22, is not proper. The consistent view, from the Privy Council till date, as held by the Hon'ble Apex Court, is that the fact in issue under Section 27 of the Indian Evidence Act is only the recovery and nothing more.

15.The Privy Council in the case of ***Pulukuri Kotayya and Others v. King-Emperor*** reported in ***1946 SCC OnLine PC 47*** observed that “With



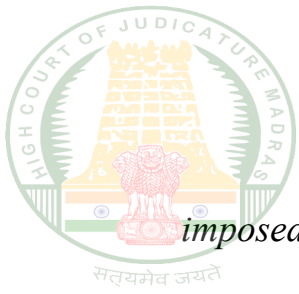
regard to s. 27 of the Evidence Act, its true construction is that it permits the proof of that part of a statement of an accused person in the custody of the police which has resulted in the discovery of a relevant fact, and of any other part of the statement which connects, or tends to connect, the fact discovered with the offence charged. In building up that proposition it is submitted, first, that “the fact” means the thing, the material object, discovered, and nothing else. Next, “relates” means “has reference to,” and “distinctly” means nothing more than “plainly” or “clearly.” If these three definitions are right the conclusion should be drawn that any statement referring to a thing, whether it be a statement as to whose it is, or how it came to be found, or by whom and in what manner it has been used.

Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and there upon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded



thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw for the Crown, has argued that in such a case the “fact discovered” is the physical object produced, and that any information which relates distinctly to that object can be proved. On this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity, would all be admissible. If this be the effect of s. 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody.

The second question, which involves the construction of s. 27 of the Indian Evidence Act, will now be considered. That section and the two preceding sections, with which it must be read, are in these terms. [His Lordship read ss. 25, 26 and 27 of the Evidence Act and continued :] Section 27, which is not artistically worded, provides an exception to the prohibition

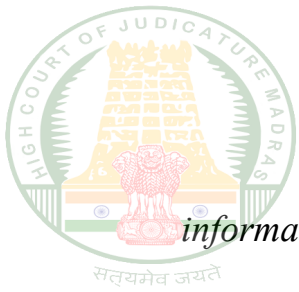


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would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to s. 26, added by s. 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the



informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A.”, these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”. This case has been followed till date.

16.In the case of ***Pakala Narayana Swami v. The King-Emperor*** reported in ***1939 SCC OnLine PC 1*** the Privy Council decided the question of admissibility of a statement made by the accused person to a Police officer during investigation recording under Section 162 Cr.P.C. and held as follows:

“It is now necessary to discuss the question whether the alleged statement of the accused to the police before arrest was protected by s. 162 of the Code of Criminal Procedure, which provides (sub-s. 1): “No statement made by any person to a police officer in the course of an investigation under this Chapter shall if reduced into writing be signed by the person making it : nor shall any such statement or any record thereof whether in a policy diary or otherwise or any part of such statement or record be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such trial was made.”

This section which in its amended form was substituted for the original section by s. 34 of the Code of Criminal



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Procedure Amendment Act, 1923, has been the subject of repeated decisions in the High Courts of India and has given rise to a distinct cleavage of opinion. The majority of the High Courts have held that it has no application to a statement made by a person who at the time it is tendered in evidence is an accused person : the minority have held that there is no such limitation. Their Lordships have been referred to at least twelve reported cases, all of which with others they have considered. The representative opinions on either side may be taken to be Azimuddy v. Emperor ³⁵ in a judgment of the then Rankin J. admitting such a statement against the accused and In re Syamo Maha Patro³⁶ in a judgment of Reilly J. sitting in a Full Bench of the High Court of Madras rejecting the statement. The present Board have had the advantage of the presence of Sir George Rankin in giving a full consideration to all the reported decisions : and they have come to the conclusion that the words of the section lead to the conclusion that the statement is not admissible even when made by the person ultimately accused.”

17. In this case, by any means, Ex.P23 is not a disclosure statement. Thus, the bedrock of the entire case became fragile and shaky. The respondent tried to weave a case against the appellants by projecting that, after A1 was posted as POE in the year 2007, there was regular demand of Rs.500/- as speed money for each passport, thereafter raised to Rs.2,000/- for Malaysia and Rs.1,000/- for Gulf countries for emigration clearance, collected from the



recruiting agents and A2 and A4 appointed as agents to collect speed money from recruiting agents, and A2 and A4 regularly collecting speed money from the year 2007 to 2009 and A2 retained the amount on behalf of A1. It is to be seen that, in this case, all recruiting agents examined as PW30 to PW44 and PW69, PW70, and PW71 all not supported the case of the prosecution. None of the recruiting agents stated they paid speed money to A2 for A1 for the issuance of emigration clearance. The entire case of the prosecution revolves around speed money collected from the recruiting agents which accumulated over a period of time and used for the expenses of A1 and other officials of POE, and the balance amount retained by A2 seized. It is to be seen PW15 and PW16, POE categorically stated, no violation in procedure and process of Emigration clearance and no complaint of any delay by anyone made. Further, during the relevant period, online application introduced, all records collected, verified by CBI, found everything in order.

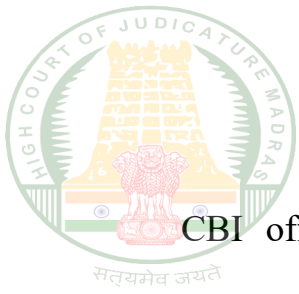
18.In this case, material contradictions found in the evidence of PW10, PW11, PW12, PW74, PW75, PW80 and PW81. Though PW11 arrested along with A1 and A2, later came out on bail. PW11 at the time of enquiry on 20.07.2009 handed over Rs.13 lakhs taken out from his table drawer to PW74/Inspector and Rs.3 lakhs retained out of Rs.5 lakhs which he earlier



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collected on 20.05.2019 and his other money of Rs.4 lakhs, all highly doubtful.

PW11/Approver claims that he is the Founder Trustee of Andhra Pradesh Parents and Students Welfare Trust at Door No.5/21, Ellaiamman Kovil Street, West Mambalam, Chennai. But no material produced to show that any such organization is in existence. On the date of seizure in the office of PW11, apart from A1 & A2, three more persons viz., G.Jagan Mohan Reddy, A.Srinivasan, and S.D.Ahmed present, recorded in the Mahazar Proceedings (Ex.P21), three came to the Office of PW11 to get engineering seat. But none of them examined as witnesses, no statement recorded. Added to it, Jute File, yellow cover bag with Rs.13 lakhs cash and application, certificates, all handed over to PW74. But except the cash, none of the other materials produced. After the search in the Office of PW11, PW74 left the place along with cash and seized material and thereafter, PW75 took A1, A2, PW10 and PW11 to the Office of CBI. PW11 states that out of advance amount of Rs.5 lakhs, which he received on 20.05.2009, he handed over Rs.2 lakhs to PW80/B.S.Perumal, who runs Gayathri Computer Consultancy inside the campus of Madras Institute of Technology (MIT), Chrompet, claims himself a close associate to Vice Chancellor of Anna University. On the same day i.e., on 20.05.2009, PW80 immediately called by PW11 during search and PW80 informed that he was in City Centre and PW80 was asked to wait there. The



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CBI officials and PW11 went to City Centre where PW80/B.S.Perumal identified and he was taken to CBI Office. In the meantime, PW80 made arrangement to bring Rs.2 lakhs kept in his house at Chrompet and handed over to CBI. This part of going to City Centre, identify PW80, taking him to CBI Office, not spoken by PW10, PW11 and PW75, but PW80 states that CBI Officials came to City Centre and he was taken to CBI Office.

19.It is to be seen that PW11 and PW80 admit that on 20.07.2009, there was no application filed for Madhu, son of A1 seeking Industrial Quota seat, the fee Industrial Quota is Rs.15 lakhs, to be paid by demand draft by the sponsoring company, is confirmed by PW73/Senior Superintendent, Anna University. PW73 states this procedure and 3% of seats reserved under Industrial Quota. He further confirms the application for Industrial Quota seat has to be accompanied with the sponsorship letter from the industry and Rs.15 lakhs amount to be paid by the Sponsoring Company along with undertaking affidavit. Thus, as on 27.05.2009, there was no application under Industrial Quota.

20.Ex.P159 is the application form of A1's son Madhu who obtained 4989 Rank with cutoff mark of 153 and on 31.07.2009, the seat allotted and he



paid Rs.1,000/- as per Ex.P160. It is pertinent to see even on 20.07.2009, the call letter (Intimation of Councelling) for engineering seat received by A1's son Madhu which marked as Ex.D22. Thus, A1 hunting for a seat under Industrial Quota for his son and handing over Rs.13 lakhs, is far-fetched, imaginary, a theory propounded but without any material. The admitted position is that as on 20.07.2009, no application made under industrial quota.

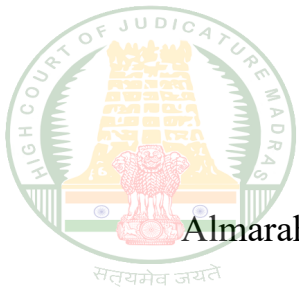
21.The officials of CBI headed by R.Ravi, Inspector of Police (Not Examined), N.Lavakumar/Inspector (Not Examined), S.Subramanian/Inspector (Note Examined) on 20.07.2009 at 20.30 hours went to the Office of A2 viz., M/s.Classic Tours and Travels, conducted search in the presence of PW72 and PW20 Mohammed Ismail employee of M/s.Classic Tours and Travels and seized note books and files (Exs.P144 to P155) including cash of Rs.3.65 lakhs and the search list marked as Ex.P143. None of CBI Inspectors, who conducted search viz., R.Ravi, Inspector of Police, N.Lavakumar, Inspector, S.Subramanian, Inspectors of CBI examined as witnesses. The seized documents viz., Exs.P143 to P157 marked through PW72, an independent witness, Junior Vigilance Inspector, Southern Railway. PW72 on 25.07.2009 again went to the Office of CBI and this time accompanied PW75/Inspector, S.Latha/Women Police Constable and R.Krishnamoorthy/Sub Inspector at



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02.00 p.m. for search and seizure in the house of PW65/Veeramanikandan, an employee of M/s.Classic Tours and Travels. Similarly, S.Latha/Women Police Constable and R.Krishnamoorthy/Sub Inspector and one Indthumathi not examined as witnesses. The search list Ex.P156 and two notepad slips Ex.P157 marked through PW72. It is a common fact that a person who is working in Vigilance Department have regular meetings and interaction with CBI and take advice and act as per their direction. In this case, PW72 from Southern Railway, Vigilance Department, appears without any authorization or summons be already with CBI through and through for two days. Hence, he cannot be considered as independent witness. The conduct of PW72 does not qualify him as independent witness. The Investigating Officer/PW81 unable to give any explanation or produce any material to show how PW72 called as witness.

22.It is to be seen that on 20.07.2009 at about 04.30 p.m. K.Raja/Inspector in the presence of Venkateshwara Rao and V.P.Ramesh again from Southern Railways conducted search between 16.30 hours and 20.00 hours in the house of A2, at that time, two bank locker keys of A2 and his wife of Central Bank of India, Aminjikarai Branch seized. In the house of A2, Indian currency to the tune of Rs.58,21,000/- from the second bedroom



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Almarah and Indian currency to the tune of Rs.3,50,000/- from the first

bedroom Almarah seized (in total Rs.61,71,000/-) and the search list marked as

Ex.P199. None of the witnesses to the search witnesses viz., Glory Stella Bai,

Police Constable, Housemaid Pappathy and A2's wife and independent

witnesses viz., Venkateshwara Rao and V.P.Ramesh examined in this case to

confirm the search and seizure. In the search list (Ex.P199), it is recorded that

A2, wife of A1 spoken to her husband over phone who was under CBI custody.

After search of A2's house, on the next day, CBI officials went to Central Bank

of India, Aminjekarai Branch and opened two lockers and seized gold jewels

and cash of Rs.29,97,500/- and Rs.26,05,000/- in total Rs.55.98 lakhs. This

search conducted in the presence of G.Raghothaman, Senior Manager/Bank

Manager, Central Bank of India, Aminjekarai Branch, S.Geetha Mony,

Assistant Manager, Central Bank of India, G.Jagadeesan, Jewel Appraiser,

Central Bank of India, Kilpauk Branch, A2 and wife of A2. The officials of

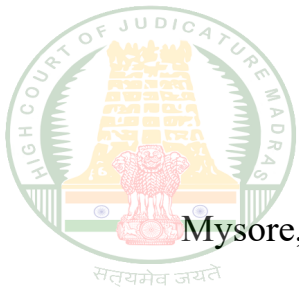
CBI who conducted search and the independent witnesses and bank officials

not examined as witnesses. The search list Ex.P173 marked through

PW81/Investigating Officer.

23.In this case, the evidence of PW11 is that A1 was referred to him by

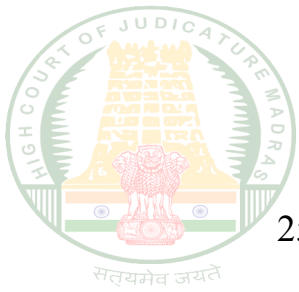
one Jayachandran, Deputy Commissioner of Customs and Central Excise



Mysore, but Jayachandran not examined as witness in this case.

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24. In the present case, PW11/Approver-I hails from the State of Andhra Pradesh and admits he does not know to read or write in Tamil. PW11's statement under Section 164 Cr.P.C. (Ex.P28) recorded in Tamil, and he signed the same without understanding its true contents. Though it is stated that the contents explained to him, there is nothing to show it was explained and he understood the same. In view of the above, examination of the Magistrate who recorded the statement under Section 164 Cr.P.C. (Ex.P28) and the Magistrate who granted tender of pardon under Section 306 Cr.P.C. (Ex.P30), which is also recorded in Tamil, assumes importance and examination of Magistrate is imperative. To prove the fact that the statement made was voluntary and knowing the consequences deponent gave voluntary confession and he accepted to be a witness/Approver. It is seen that PW11 informed the Magistrate that he cannot read and write Tamil but can understand it, but no such note found. PW11/Approver-I not volunteered to be a witness. Hence, his evidence as an Approver becomes tainted and requires independent corroboration by other material evidence.

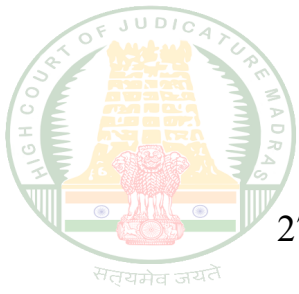


25.The second Approver PW12 examined as PW10 in C.C.No.10 of 2011, deposed that CBI officials, namely PW74, PW75, PW81 and PW10, along with A1, came and seized a sum of Rs.60 lakhs on 21.07.2009. He confirms that on 20.07.2009 CBI officials namely V.K.Raghukumar, Inspector (Not Examined), and PW32/S.Natarajan along with A2 came to PW12's office and search conducted. On the same day evening hours, a second search made in PW12's Office. PW81/Investigating Officer conducted a search in the office of PW12 on 21.07.2009, at that time, PW12 informed to PW81 that one Srinivasan @ Seenu gave Rs.60 lakhs as per the instructions of A1. But no recovery made during earlier two searches conducted on 20.07.2009 in the office of PW12. However, on the next day, the CBI officials came along with A1 and seized Rs.60 lakhs, and Ex.P22 marked in this regard.

26.It is seen that PW32/S.Natarajan deposed that he is the Chief Manager, State Bank of India, Vigilance Department, and on 19.07.2009 his superior instructed him to report to the CBI to be part of the search team. On 20.07.2009 at about 09.30 a.m., he along with one Sridhar from the Railway Department reported to the CBI office. They proceeded with the search team to the office of PW12, M/s.Fourways Travels and Tours Limited, situated at New No.294, Old No.64, Anna Salai, Thousand Lights, Chennai, at about



11.00 a.m. The purpose for search informed to them, and after conducting the search, nothing found and recovered, the search completed without any recovery. It is clear that, even on 19.07.2009, the CBI contemplated search and seizure in this case. PW32/S.Natarajan from the State Bank of India and one Sridhar from Southern Railway directed to be present before the CBI for the search and seizure on 20.07.2009 at 09.30 a.m. On 20.07.2009, PW32 went to the office of PW12, M/s.Fourways Tours and Travels, where search conducted at about 11.00 a.m., but nothing seized. On the same day, in the evening, PW81 again took A2 to the office of PW12, M/s.Fourways Tours and Travels. On both occasions, there was neither any seizure nor any disclosure by PW12 with regard to the sum of Rs.60 lakhs. But it is projected that on 21.07.2009, when A1 was taken to the office of PW12, an amount of Rs.60 lakhs seized. In this background, the evidence of PW74 and PW75 that they were called by the Superintendent of Police, CBI, on 20.07.2009, and the Superintendent of Police informed them that A1 and A2 were present in the office of PW11 for securing a college seat and for handing over Rs.13 lakhs, based on which a surprise check, search, and seizure conducted, appears doubtful and tainted, and cannot be projected as though it was a chance recovery. Hence, the entire search and seizure exercise, both in the offices of PW11 and PW12, is nothing but a colourable exercise.



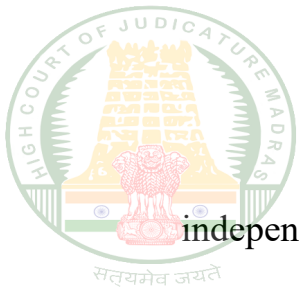
27.PW12 stated that three passports submitted by him for emigration clearance to Kuwait, which were returned on the ground that only three companies authorized by the Government of Kuwait, hence, he collected and returned passports to the respective applicants. He further reconfirmed that emigration clearance normally granted on the same day, and if for any reason it could not be done on the same day, reasons will be communicated. He also confirmed that for emigration clearance to Kuwait, only M/s.New Way Travels, M/s.Classic Tours and Travels, and M/s.Aero Travels were authorized and given attestation by the Indian Embassy. PW12 examined as PW22 in C.C.No.34 of 2011. In that case, not mentioned about Rs.60 lakhs held by him at the instance of A1.

28.In the present case, the said Srinivasan @ Seenu (Not Examined), a Customs Forwarding Agent, is not an imaginary person, he was examined as witness in C.C.No.10 of 2011. In the charge sheet, Column II, PW12 shown as an accused, PW12 is not a named accused in FIR, further there is nothing to show when PW12 was arrayed as accused in the present case. PW12 not arrested in this case at any point of time, but shown as accused in column-II. In his evidence in C.C.No.10 of 2011, PW12 deposed that he was arrested and later released on bail on executing sureties, but no details, in the present case,



no records to show he was arrayed as accused. Later taken as Approver. In the

present case, the bottle green-coloured airbag containing Rs.60 lakhs not seized and produced. Thus, PW12 appears to be a person of dubious character and opportunistic witness. Hence, the search and seizure made from PW12 office, is highly doubtful. The evidence of PW12 needs careful scrutiny and requires independent corroboration. As discussed above, the evidence of the two approvers, PW11 and PW12 cannot be taken on face value and requires material corroboration, and such corroboration, is to come from the evidence of the recruiting agents. In the present case, all the recruiting agents, namely PW31 to PW41 and PW68 to PW71 turned hostile and not whispered anything about any demand of speed money by A2 and A4 for A1, is further fortified by the evidence of PW15 and PW16. Thus, in this case, there is no demand or acceptance, which is the *sine qua non* to be followed and coupled with recovery. By any stretch of imagination the money which said to have seized in this case is not a speed money as projected and collected by A2 for A1 and retained by A2 is beyond any comprehension. Now considering the evidence of PW11 and PW12 on the facts of the case along with the guidelines and decisions of the Hon'ble Apex Court. Thus, the entire case revolves around the evidence of the Approvers PW11 & PW12. From the above discussion, the evidence of the Approvers PW11 and PW12 are untrustworthy and without



independent corroboration. Ordinarily, the combined effect of Sections 133 and 114 of the Indian Evidence Act is that a conviction can be based on the uncorroborated testimony of the approver. However, as a rule of prudence, it is unsafe to place reliance on the uncorroborated testimony of the approver. Section 114, Illustration (b), incorporates a rule of prudence to which the Court should have due regard.

29. In the case of ***Mohd. Husain Umar Kochra v. K.S. Dalipsinghji and another*** reported in ***AIR 1980 SC 1871*** the Hon'ble Apex Court held that an accomplice shall be a competent witness against an accused person and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. In paragraph No.21, it is observed as follows:

“21. On the merits, we find that the two courts have recorded concurrent findings of fact. Normally this Court does not re-appraise the evidence unless the findings are perverse or are vitiated by any error of law or there is a grave miscarriage of justice. The courts below accepted the testimony of the accomplice Yusuf Merchant. Section 133 of the Evidence Act says:

“An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.”



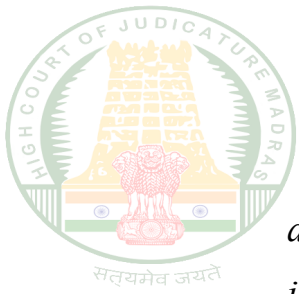
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*Illustration (b) to Section 114 says that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. The combined effect of Sections 133 and 114, Illustration (b) is that though a conviction based upon accomplice evidence is legal the Court will not accept such evidence unless it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from an independent source. One accomplice cannot corroborate another, see *Bhiva Doulu Patil v. State of Maharashtra* [1962 SCC OnLine SC 133: (1963) 3 SCR 830] and *R. v. Baskerville* [(1916) 2 KB 658]. In this light we shall examine the case of each appellant separately.”*

In the present case, there is no corroboration.

30. In the case of ***Ram Narain v. State of Rajasthan*** reported in (1973) 3 **SCC 805**, the Hon’ble Apex Court observed a note of warning cautioning the Court in considering the approver’s evidence and in paragraph No.8 held as follows:

“Section 133, Indian Evidence Act, which falls in Chapter IX dealing generally with witnesses, expressly provides that an

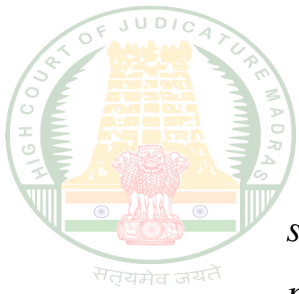


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accomplice is a competent witness and the conviction is not illegal merely because it proceeds on uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this section has to be read along with illustration (b) of Section 114 which falls in Chapter VII dealing with Burden of Proof. Section 114 empowers the court to presume the existence of certain facts and the illustration elucidate what the court may presume and make clear by means of examples as to what facts the court shall have regard in considering whether or not the maxims illustrated apply to a given case before it. Illustration (b) in express terms says that an accomplice is unworthy of credit unless he is corroborated in material particulars: two examples are also given to further explain this subject. The statute thus permits the conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the rules of prudence embodied in illustration (b) of Section 114 strikes a note of warning cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. This rule of caution is traceable to the fact that an accomplice witness from the very nature of his position is a suspect. This rule is guided by long human experience and has become a rule of prudence of general application. The court therefore, consider it prudent to look for corroboration in material particulars for sustaining the conviction of an accused person. An approver who is admittedly guilty of the crime is an accomplice who has betrayed his associates and has apparently

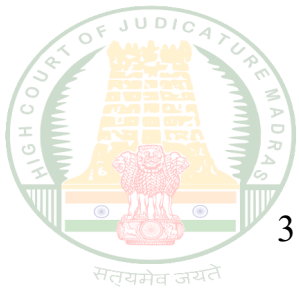


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sought pardon for saving his own skin. In other words he has purchased complete immunity for his prosecution at the expense of his associates by agreeing to give evidence against them for the prosecution. He is, therefore, presumed not to be a man of high character or a fair witness. His pardon being conditional, to please the prosecution he may well weave some false detail into the true details of the prosecution story and may also falsely involve some innocent person. There is thus a real danger of his telling a story true in general outline but containing some untruth which he can easily work into the story. It is for this reason that the courts as a matter of prudence and caution anxiously look for some corroboration to satisfy their conscience that the approver's testimony which is clearly admissible is also worthy of belief credit. One can of course visualise an accomplice who is genuinely repentant for the commission of his crime and truly desires to make a clean breast of the whole affair by way of penitence. But even in such cases the court has to judicially determine the extent to which his uncorroborated testimony can be considered as trustworthy by looking to the other relevant material and the attending circumstances on the basis of which the accused can be safely convicted. The rule which seems to emerge from the foregoing discussion and judicial decisions is that the necessity of corroboration as a matter of prudence except when it is safe to dispense with such corroboration must be dearly present to the mind of the judge.”



31. In the case of ***Chonampara Chellappan v. State of Kerala*** reported in (1979) 4 SCC 312, the Hon'ble Apex Court held that the law is well settled that the Court looks with some amount of suspicion on the evidence of an accomplice witness which is tainted evidence and even Section 133 of the Evidence Act clearly provides that the evidence of an accomplice witness should not be accepted unless corroborated. Further the Hon'ble Apex Court referred to various decisions in the paragraph Nos.5, 6 & 7 which is as follows:

“5. In the case of Piara Singh v. State of Punjab [(1969) 1 SCC 379 : (1969) 3 SCR 236, 242, 243] this Court observed as follows: (SCC p. 384, para 7)

“An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious taint in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. . . . It is well-settled that the appreciation of approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all the witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration.”

6. This view was reiterated by this Court in the case of Mohel Hussain Umar Kochra v. K.S. Dalipsinghji [(1969) 3 SCC 429 : 1970 SCC (Cri) 99 : (1970) 1 SCR 130, 142] where



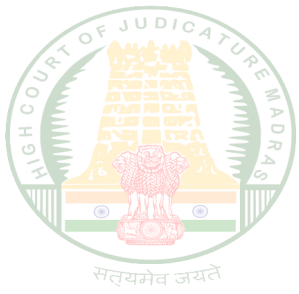
Bachawat, J., speaking for the Court observed as follows: (SCC p. 438, para 21)

“The combined effect of Sections 133 and 114 illustration (b) is that though a conviction based upon accomplice evidence is legal the Court will not accept such evidence unless it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from an independent source. One accomplice cannot corroborate another.”

7. Similar view was expressed by the Court of Appeal in the case of King v. Baskerville [(1916) 2 KB 658] where the following observations were made:

“We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.... The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime.”

Baskerville case [(1916) 2 KB 658] referred to above has been followed by this Court in a number of cases.”



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The authoritative pronouncement and decision is that the Approver evidence needs corroboration which is lacking in this case.

32. In the case of *K.Hashim v. State of T.N.* reported in (2005) 1 SCC 237 the Hon'ble Apex Court had given four conditions to rely upon the evidence of the Approver which is as follows:

“38. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says:

“Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case; it would be merely confirmatory of other and independent testimony.” (Baskerville case [(1916) 2 KB 658 : (1916-17) All ER Rep 38 (CA)] , All ER p. 42 B-C)

39. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.

40. Secondly, the independent evidence must not only



make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identification must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

“A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all.... It would not at all tend to show that the party-accused participated in it.”

41.Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

42.Fourthly, the corroboration need not be direct evidence



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that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.

Were it otherwise, “many crimes which are usually committed between accomplices in secret, such as incest, offences with females” (or unnatural offences) “could never be brought to justice”. (See M.O. Shamsudhin v. State of Kerala [(1995) 3 SCC 351 : 1995 SCC (Cri) 509] .)”

33. In this case, the evidence of PW11 and PW12 is highly doubtful. PW11 was arrested in this case and he was granted bail and he admits that it was at the instance of CBI, he gave 164 statement and thereafter, he was taken as Approver. As stated above, he does not know to read or write Tamil, but his 164 statement both recorded in Tamil and the tender of pardon proceedings in Tamil. PW12 was not a named accused and not arrested in this case, but shown in column-II in the charge sheet without any reference. There is no materials to show who sponsored PW12 to give 164 Cr.P.C. statement to take him as Approver. PW12 is a time server and opportunist. In this case, the evidence of PW11 and PW12 both Approvers doubtful. Though the evidence of Approvers is sufficient, but on the facts of the present case, their evidence is highly doubtful, necessarily needs corroboration. In this case, there is no independent corroboration materials available and there can be no corroboration between the Approvers. In such circumstances, the prosecution



ought to have proved the case with other independent materials. In this backdrop, on considering the evidence of PW11 and PW12, the two approvers, the corroborative evidence must consist of independent evidence which connects or tends to connect the accused with the crime charged. Further the evidence of the Approvers confirm introducing of new facts weaving around the prosecution story is very much there, hence, the evidence of approvers by itself is not sufficient for sustaining conviction.

34.As regards the other overtact against the appellants for payments made by A2 for A1 for a tour to North-East India, including Darjeeling and Gangtok, it is stated that A2 paid Rs.5 lakhs for the tour expenses. In this regard, PW13, Assistant Manager of MakeMyTrip, examined and tickets marked as Ex.P36. PW43 of M/s.May Fair Hotels and Resorts also examined, through him, Ex.P103 marked. PW48 of M/s.Hotel Mount Pandim, West Sikkim, examined and Exs.P104 to P106 marked. PW59, Chief Accountant of M/s.Hotel Royal Plaza, examined. PW63, General Manager of M/s.Tibet Tours and Travels, examined and Ex.P130 marked. From the evidence of PW14, Manager of Corporation Bank, Whites Road Branch, Chennai, it is seen that the amounts transferred to the account of MakeMyTrip, who paid to the concerned hotels and travel agencies. In the present case, A1, his family



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members, A1's friend Kannadasan/DW2, and Kannadasan's family members, eight persons in total, toured from 25.04.2009 to 03.05.2009, A1 availed earned leave. The entire Rs.5 lakhs is attributed to A1. DW2/V.Kannadasan, Deputy Commissioner, Central Excise, Mysore, against whom a disproportionate assets case was registered in C.C.No.4 of 2013 before the learned XII Additional Special Judge for CBI Cases, Chennai. His travel expenses shown as expenditure. In C.C.No.4 of 2013, DW2 herein gave explanation that in the expenditure column, this tour expenditure as regards his family included, DW2 was acquitted in that case.

35.From the receipts and bank statements, it is seen that MakeMyTrip and M/s.Fourways Tours and Travels having running account, and the transactions cannot be correlated with one to one transaction. Hence, it cannot be conclusively established that it was A2 who payed for A1. There are other transactions between M/s.Classic Tours and Travels and M/s.Fourways Tours and Travels.

36.The evidence of PW23, Cashier of Prince Jewellery is that as per Ex.P51, one A.Mani purchased jewels under Invoice No.65358 dated 14.02.2009. PW51, Sales Executive of Prince Jewellery, confirmed the same



and marked Exs.P108 and P110. From these documents, there is nothing to

connect the appellants with the said transactions. As regards the purchase of jewels from Tanishq Jewellers, PW22, Assistant Manager (Accounts) of Titan Industries, was examined, through whom Ex.P49, a sales invoice containing the customer loyalty ID credited to one A.Raja, was marked. PW25, Salesman at Tanishq Jewellers, was examined, through whom Ex.P57 (advance receipt), Ex.P58 (customer order), Ex.P59 (invoice), Ex.P60 (debit note), Ex.P61 (tax invoice), Ex.P62 (loyalty identity card), and another invoice, Ex.P63, were marked. PW25 confirmed that Ex.P41 bears the date 13.01.2009 and that, in the said sales transaction, there was no reference either to one A.Raja or to the appellants. He further clarified that there was no marking such as “Y”, “YY”, or “YYY” in the said documents.

37.It is seen that PW21 of Dynamic Marketing, Anna Nagar, examined and deposed that one Reshma issued a receipt in favour of Mr.Ceebee (Second son of A1) pertaining to Flat No.44, Old No.66, Brindavan Street, West Mambalam. He further confirmed that Reshma was the designer of the modular kitchen and that the receipts issued by her and signed by one Mohammed Rafiq. However, from the receipts marked as Exs.P47 and P48, there is nothing connecting the appellants to the said transactions. PW45,



S.Kannan, from M/s.Alps Air Conditioner Service, examined and no document marked through him. PW46 is from M/s.Renuka Electricals. PW47 is a plumber. PW60 is from M/s.Metals and Malleables Bathroom Fittings, through whom, Exs.P123 to P128 marked. These documents do not have any relevance insofar as A1 is concerned. Likewise, PW61, Ajas Thahir, from M/s.Thahir Hardwares, through whom Ex.P129 cash bill marked, does not connect the appellants with the alleged transactions. PW50 Manager of M/s.P.M.Enterprises Security Service, a security agency, posted security guards for the emigration office, and he stated that M/s.Classic Tours and Travels paid the monthly charges to them. Similarly, the travel agents and employees of M/s.Express Travels, namely PW26 and PW27, and PW29 from M/s.Best Travels, were examined to show that M/s.Classic Tours and Travels had booked cars through them. There is nothing to conclusively hold that the expense is for A1 and payments received from A2 is for A1.

38.PW17, PW18, and PW19 are officials of SRM Institute, examined to speak about Hemant Kumar Mishra, the sister's son of Mr.Panda, and to establish that the admission fee, course fee, and hostel fees for Hemant Kumar Mishra paid by A2 at the instance of A1. None of these witnesses stated anything implicating A1 or A2, nor did they produce any receipts in support of



the payments. PW19 confirmed that the hostel fees paid through the bank.

Though prosecution attempted to project payments for services availed and purchases made on the instructions of A1, but there is no trail to confirm the payments made. The prosecution further attempted to rely upon Exs.P144 to P155 and Ex.P157 to contend that payments made to the service providers recorded therein. In the present case, Exs.P145 to P155 collected during the search conducted at M/s.Classic Tours and Travels, and the said documents produced by PW20. Ex.P157 seized from the residence of PW65. However, both PW20 and PW65 not supported the prosecution case. It is also pertinent to note that PW72 is the witness for the search and seizure conducted both on 20.07.2009 and 25.07.2009. PW72 admits he is a regular witness for the CBI, hence, PW72 cannot be treated as an independent witness. PW52, Health Inspector examined to show that he is the friend of A1 and his travel and monthly expenses paid by A2 for A1. But PW52 not supported the case of the prosecution. Thus, from the above, it cannot be conclusively held against the appellants.

39.In this case, the documents seized (Exs.P25, P26, P144 to P155, and P157) sent for forensic examination, and PW76, the Handwriting Expert, examined these documents and gave report (Ex.P166). From the report and



the evidence of PW76, it is seen that PW76 admitted that he gave his report (Ex.P166), with reasons 1 to 10 pertaining to the documents received by him.

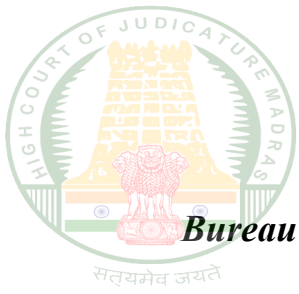
He further admits he gave opinion for ten persons. He also admits that, by removing the alphabetical and numerical particulars from the paragraphs, the reason and opinions are replicas and identical, to all ten persons. He further admitted that his report contained no reference to any variance. The Handwriting Expert's report should not only record similarities but also dissimilarities and variations, then only the report is complete and can be considered. In the present case, the admitted position is that there were no dissimilarities and variation mentioned in Ex.P166. The trial Court considered Ex.P166 in Paragraph 7 in respect of PW65, Paragraph 8 in respect of PW20, and Paragraph 9 in respect of A2. From the opinion, it is seen that he examined Exs.P25, P26, P144 to P155, and P157. Exs.P25 and P26 are loose sheets produced by A2.

40.With regard to the similarity in the handwriting of A2, PW20, and PW65 in Exs.P144 to P155 and P157, these are notebooks said to be maintained in the office of M/s.Classic Tours and Travels. PW20 and PW65 are hostile witnesses. In this case, the seizure and search are highly doubtful, on examining these registers and the questioned writings, no conclusive held



the payments made by A2 at the instance of A1. The payments made to service providers, such as for travel arrangements, hiring of cars, supply of modular kitchens, bathroom fittings, and purchase of gold jewels and other valuables, not conclusively proved by any of the witnesses to hold payments received from A1 or A2. It is to be seen A2 is a partner in M/s.Classic Tours and Travels a running business establishment. Apart from obtaining emigration clearance, it engaged in ticketing, travel business, and organizing tours and availed the services from others and made payments in the ordinary course of business. Hence, these transactions cannot now be interpreted as expenses incurred exclusively for A1. Thus, the inference drawn by the trial Court on the basis of the handwriting evidence is neither proper nor sustainable.

41. With regard to loose sheets, namely Exs.P25 and P26, the receipts of payments, it is projected as though they were amounts received from various recruiting agents, none of the recruiting agents (PW31 to PW41 and PW68 to PW71) stated that any speed money paid. On the contrary, their specific evidence is that no one paid any speed money either to A2 or A4, and none of them stated that A1 instructed A2 to A4 to obtain such speed money from the recruiting agents, except PW12, an emigrant agent. In the case of *Central*



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Bureau of Investigation v. V.C.Shukla & Others reported in ***CDJ 1998 SC***

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438 the Hon'ble Apex Court held that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Further loose sheets cannot be termed as books of accounts and it is inadmissible under Section 34 of Indian Evidence Act.

42.It is clear that PW12, an opportunistic witness gives exaggerated and contradictory statements at every stage of the trial. As stated earlier, PW12 in his evidence in C.C.No.10 of 2011 not whispered anything regarding any demand or payment of speed money. On the other hand, PW12 admits he is not an approved agent of the Indian Embassy in Kuwait and only three were approved agents, one of them is M/s.Classic Tours and Travels. He further admitted that he used to process his clients' applications through M/s.Classic Tours and Travels and other approved agents. Hence, PW12 is a tainted witness, without any corroboration, necessarily to be rejected.

43.In this case, apart from A1, some of the accused public servants employed in Emigration Office faced cases under the disproportionate assets got acquitted which are marked as defence exhibits viz., Exs.D5, D7, D11 and



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44. In the present case, PW1 accorded sanction (Ex.P1) under Section 19(1) (a) of Prevention of Corruption Act, 1988, to prosecute A1. PW1 admits that he signed since he is an authenticated signatory. In such circumstances, production of original file with not sheet and correspondence sheet gains significance which would show how the file processed through various authorities before the competent authority. The note and correspondence sheet alone would reveal whether there had been proper and independent application of mind. In this case, original file not brought and shown to PW1 to answer referring to note sheet and correspondence sheet. Further, on perusal of the sanction order (Ex.P1), it reveals that there is no reference to the FIR Crime Number, the witnesses examined, their statements and reference to the documents collected during investigation, more particularly reference to the statements of the two approvers who are the anchor witnesses according to the prosecution. Thus, the sanction order does not demonstrate that sanctioning authority considered all relevant materials independently before according sanction. In the case of *State (Anti-Corruption Branch), Govt. of NCT of Delhi and another v. Dr.R.C.Anand and Another* reported in (2004) 4 SCC 615 held that the order of sanction must ex facie disclose that the sanctioning



authority had considered the evidence and other materials placed before it. In this case, PW1 admits that he has not produced the note and correspondence sheet and only on perusal of the same, he would be in a position to confirm the satisfaction arrived prior to issuance of the sanction order (Ex.P1).

45.As regards A2, Ex.P6 is the sanction order accorded by PW3 under Section 27 of the Emigration Act, 1983. A perusal of Ex.P6 shows that the sanction was accorded to one Kanwar Hussain, a private person and K.Aurangazeeb, Proprietor of M/s.Taj Tours and Travels. Admittedly, A2 is a private individual and not a recruiting agent within the meaning of Section 10 of the Emigration Act, 1983. Further, the proprietor of M/s.Classic Tours and Travels is A3 and not A2. Hence, A2 cannot be proceeded against under the provisions of the Emigration Act, 1983. Though the prosecution attempted to contend that A2 was a partner in M/s.Classic Tours and Travels and thereby will come within the ambit of the Emigration Act referring to Ex.P185 partnership deed, such contention cannot be accepted for the reason that the partnership deed (Ex.P185) produced by the Investigating Officer/PW81. Merely marking of document is not sufficient, it has to be proved in the manner known to law. According to A2, Ex.P185 was only an internal arrangement document and not relevant to emigration activities. Moreover,



the sanction order (Ex.P6) does not specify the nature of the violations under Sections 24(1)(c) and (g) of the Emigration Act, 1983 and not disclosed the acts constituting such violations. The sanction order is therefore bereft of material particulars. In view of the above, the sanction accorded against A2 under Ex.P6 is not valid.

46.It is not out of place to mention that, in this case, A5 to A15 tried by the trial Court along with A1 and A2 on almost similar charges. As regards A5 to A15, the trial Court disbelieved the prosecution case on the ground that the references to them in Exs.P25, P26, P144 to P155, and P157, as well as the evidence of the Handwriting Expert/PW76, not conclusively proved their involvement, hence, they were acquitted. But the trial Court convicts the appellants on the same set of facts, evidence and materials, is not sustainable.

47.In view of the above, the prosecution case suffers from serious infirmities, including illegality and irregularity in the conduct of the surprise check, non-recording of the source information in General Diary; non-registration of FIR cast serious doubt on foundational documents viz., Ex.P21 to P26, based on which the entire case anchors and proceeds thereon; improper reliance on Section 27 of the Indian Evidence Act; independence of witnesses



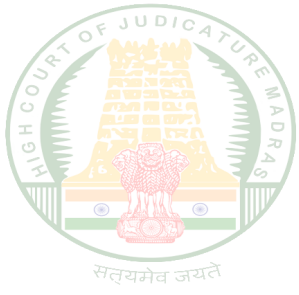
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questionable; involvement of the Investigating Officer/PW81 in the investigation even before registration of FIR; material contradictions between prosecution witnesses; failure to prove demand and acceptance of illegal gratification; non-examination of material witnesses; uncorroborated approver evidence, unreliable handwriting expert opinion; absence of evidence from recruiting agents and POE officials regarding payment of speed money; defective sanction for prosecution, and inconsistent appreciation of the same set of evidence by the trial Court in acquitting A5 to A15 while convicting A1 and A2, rendering the findings against A1 and A2 unsustainable.

48.In the result, this Criminal Appeal is allowed and the impugned judgment dated 21.12.2023 in C.C.No.36 of 2011 passed by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai (trial Court) is set aside. The appellants are acquitted from all the charges. Fine amount if any paid shall be refunded. Bail bond if any executed shall stand cancelled.

29.06.2026

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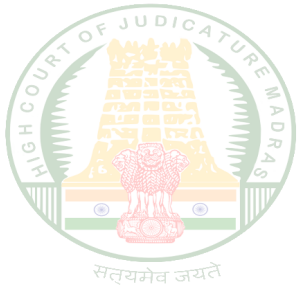


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To

- 1.The VIII Additional City Civil Court,
Chennai.
- 2.The Central Bureau of Investigation,
Additional Superintendent of Police,
Anti-Corruption Branch,
Chennai.
- 3.The Special Public Prosecutor for CBI Cases,
Madras High Court.



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CrI.A.No.50 of 2024

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
CrI.A.No.50 of 2024

29.06.2026