

CrI.A.No.443 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 30.08.2023

Pronounced on: 22.09.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.A.No.443 of 2013

Major General A.K.Gupta,
S/o.Mohanlal,
J 405 Som Vihar,
New Delhi-110022.

... Appellant/1st Accused

/versus/

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

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973, pleaded to to call for the records of the case in C.C.No.5 of 2000 on the file of the XIV Additional Court for CBI Cases, City Civil Court, Chennai and set aside the judgment of conviction and sentence imposed on the appellant by order dated 29.05.2013.

For Appellant : Mr.S.Ashok Kumar, Senior Counsel,
for Mr.A.Sasidharan.

For Respondents : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (CBI)



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J U D G M E N T

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Col.Mandanna M.M. while serving as Colonel Administrator of Andhra Pradesh, Tamil Nadu, Karnataka, Kerala and Goa Area [ATNKK & GA] Corps., gave a written complaint on behalf of ATNKK & GA on 05.11.1990 to the Deputy Inspector General, CBI, Chennai alleging that Major General A.K.Gupta (Retired) while in service as Major General, Army Service Corps., Southern Command was responsible for logistic support during 'Operation Pawan' of Indian Peace Keeping Force (IPKF) troops in Srilanka. Taking advantage of his position, he violated prescribed procedures, rules and regulations in the transportation of procurement of supply/ration items favouring certain firms which resulted in heavy loss to the State.

2. The above violation by Major General A.K.Gupta was investigated by a Court of Enquiry. Based on the findings of the Court of Enquiry, disciplinary action was initiated and the officer was sent to face General Court Martial. On the way to Ahmadnagar in the train with escort, Maj.General A.K.Gupta escaped from the custody on 09th June 1990. Later, he was found at Delhi by the Andhra Police on 29th October, 1990. Due to his escape from the custody, the time to complete the Court martial proceedings lapsed and the case



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become time barred to be tried by the Army Authorities. Hence, she requested

WEB the CBI for investigation and further action.

3. The complaint appended with annexure contain brief high lights of the case. Mr.K.Ragothaman, Deputy Superintendent of Police, ACB/CBI, Madras registered the complaint in Crime No.RC 60/A/90 for offences punishable under sections 120 B r/w 420, 468, 471 IPC and 13(1)(d) r/w 13(2) of PC Act, 1988 against 5 persons namely:-

- 1) Major.General A.K.Gupta (retired), Army Service Corps, Southern Command, Pune.
- 2) M/s.Vickey Enterprises, 5/12, Mount Poonamalle Road, Nandambakkam, Madras-600 089.
- 3) M/s.Testo Chemicals, Vengu Chetti Street, P.B.No.521, Park Town, Madras-600 003.
- 4) M/s.Universal Agencies, 24/1, Azizmullick, 3rd Street, 1000 lights, Madras and
- 5) M/s.Coasta & Company Pvt Ltd. Margoa, Goa.

4. The pointed allegations as found in the brief high lights of the case was regarding the procurement of essentials for the IPKF troops fighting war in Srilanka by resorting to local purchase, which is permissible only during unforeseen circumstances with sanction/approval/direction of the appropriate



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authorities as contained in the rules and regulations. When the IPKF Troops

WEB COPY were at Srilanka, the Station Commander and the General Officer Commanding

were stationed at Madras and the Army Commander as well as Major General,

Army Service Corps from Pune were present at Madras to take spot decision.

When stock of supply items fell below the required quantity, local purchase has

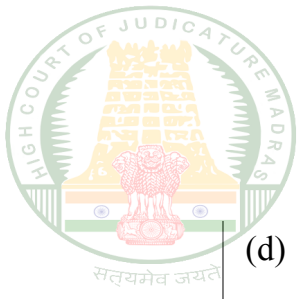
been carried out. With obvious intention to favour certain firms, deviating the

procedures, procurements were made at higher rates which results in loss to the

State and undue gain to certain suppliers.

5. The details of item/supply; the quantity purchased; cost and the firm which supplied were as below:-

<i>Ser. No.</i>	<i>Item</i>	<i>Qty.Purchased</i>	<i>Cost involved</i>	<i>Firm</i>
(a)	Tea	40.768 tonnes	12 Lakhs	M/s Vickey Enterprises, 5/12,Mount Poonamalle Road, Nandambakkam, Madras-600 089.
(b)	Cresoli liquid Black	19.85 kilo litres	2.7 lakhs	M/s Testo Chemicals, Vengu Chetti Street, P.B.No.521, Park Town, Madras-600 003
(c)	Milk Tinned	53.477 tonnes	15.35 lakhs	M/s.Universal Agencies, 24/1, Azizmullick, 3 rd Street, 1000 lights, Madras



(d)	Meat Tinned	83.063 tonnes	61.2 lakhs	M/s Coasta & Company Pvt Ltd. Margoa, Goa
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6. The following malpractice under six heads were noticed and investigation in this regard was sought to be made by CBI.

“A. The requirements were in most of the cases inflated and purchases were made from one firm after obtaining quotations from same three firms who are associated or owned by close relatives.

B. The stock position and distribution were not planned and controlled.

C. The transactions were split willfully to keep the sanctioning power to Major General Army Service Corps to avoid going to higher authorities.

D. He has used the name of Armu Cdr to ward off Director General of Supply and Transport of Army Headquarters.

E. Non standard items which are invariably sample tested at Composite Food Laboratory have not been done knowing fully well the requirement which resulted in purchase of sub standard items.

F. He did not exercise control over the supply by local purchase of items from firms”

7. The investigation on the above complaint which was registered by



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CBI on 10/12/1990, got completed after 10 years and Final Report filed by Mr.

WEB COPY K.Hari Om Prasath on 11/12/2001 against three persons. 1)Maj.General A.K.Gupta, 2).Lt. Col S.S.Kedian and 3).M/s Coasta & Co., For offences punishable under Section 120 B r/w 420 and Section 5(2) r/w Section 5(1) of PC Act, 1947. The final report was restricted only in respect of dishonest purchase of Meat Tinned Kheema locally from M/s.Coasta & Company Pvt, Limited Margoa, Goa to a tune of Rs 61,19,544.23p inspite of Head Quarters Instruction to stop all local purchase from 03/02/1988. The substances of the three charges framed by the trial court on 18th day of February 2003 is extracted below:-

“Firstly, that you Major Genl. A.K.Gupta, Lt. Col. S.S.Kaidan and Sri Rock Francisco Ioda Coasta Azarda of M/s. Coasta & Company entered into Criminal Conspiracy during the period October 1987 to February 1998 at Madras and other places to cheat the Government of India in respect of giving orders for supply of Meat Tinned Kheema from M/s. Coasta and Company and you Major Genl. A.K. Gupta and Lt. Col. S. S.Kaidan to abuse your possession as public servants and to cause the pecuniary advantage to M/s Coasta & Company by fraudulently and dishonestly to a tune of Rs.61,19,541.23p and in pursuance of the said criminal conspiracy you Mr.Gupta knowing fully well that they were sufficient



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stocks of Meat Tinned Kheema for the troops in Srilanka issued oral orders to Sri. S.S.Kaidan on 04.02.88 to go for local purchase with M/s Coasta and Company in spite of the Army Head Quarters instructions to stop all local purchases dated 03.02.88 and you Sri S. S.Kaidan on 4.2.88 and 6.2.98 instructed M/s Coasta & Company to supply the Meat to Madras and Bombay in spite of the availability of 3 Mts. of Meat Tinned Kheema at Bombay and placed orders for supply of additional supply of 5 Mts. which was not required by them. The company prepared false records of supply of Meat Tinned Kheema without supplying the meat on the specific days and by the above said acts you Sri. A.K.Gupta and S.S.Kaidan entered into criminal conspiracy with the company and you A1 to A3 have committed the commission of an offence punishable U/s 120-B IPC and within my cognizance.

Secondly, that you A3 Sri.Rock Francisco Ioda Coasta Azarda representative of M/s Coasta and Company cheated in pursuance of criminal conspiracy in a time and manner mentioned in the earlier charge cheated the Govt. of India to a tune of Rs.61,19,541.23p by manipulating the documents with the connivance of S/Sri A.K.Gupta and S.S.Kaidan by creating false documents as if you supplied the materials on 5.11.85 itself and thereby you A3 committed an offence U/s 420 IPC and with in my cognizance.



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Thirdly, that you A.K.Gupta and S. S.Kaidan while functioning as Major Genl. Army Supply Corps, Southern Command and Major at Supply Department, Army Supply Corps at Margao respectively during 1987 abused or misused your official position as public servants or by illegal means and committed criminal misconduct by favouring M/s. Coasta and Company to obtain pecuniary advantage to a tune of Rs.61,19,541.23p in the manner alleged in the earlier charges and thereby A1 and A2 committed an offence punishable U/s 5(2) r/w 5(1)(d) of PC Act, 1947.”

8. The trial got completed on 06/05/2013. After appreciating the oral testimony of 19 prosecution witnesses and 322 documents as prosecution exhibits and 9 documents as defence exhibits, the trial court rendered its judgment on 29/05/2013. It concluded that the accused 1 to 3 are guilty and sentenced them as below:-

“Charge 1: **U/s. 120 B IPC** : A1 and A2 are convicted and sentenced to undergo 6 months R.I each and A3 is convicted to pay fine of Rs.30,000/- in default to undergo S.I for 3 months.

Charge 2: **U/s.420 IPC** : A3 convicted and to pay fine of Rs.31,000/- in default to undergo S.I for 3



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months.

Charge 3: U/s.5(2) r/w 5(1)(d) of P.C.Act, 1947 : A1 and A2 are convicted and sentenced to undergo 2 years R.I and to pay fine of Rs.1,000/- in default to undergo S.I for 3 months and A2 is convicted and sentenced to undergo 1 year R.I and to pay fine Rs.1,000/- in default to undergo S.I for 3 months.”

9. Being aggrieved, A-1 filed Crl.A.No.443/2013 and A-2 filed Crl.A.No.442/2013. By the time when the appeals came up for final hearing, the second accused Col S.S.Kedian died and his appeal was dismissed as abated.

10. This Court is left with Crl.A.No.443/2013 to decide whether the trial Court judgment survives the test of prudence and fair appreciation of evidence.

11. The Learned Senior Counsel for the appellant Major.General A.K.Gupta submitted that the evidence of PW.2 is clear in respect of procedure for procurement of Meat Tinned Kheema locally at the time of extraordinary



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situations. The procurement of Meat Tinned Kheema from A-3 firm was done

in accordance with the procedure taking into consideration the sudden increase of requirement for the IPKF troops in Srilanka, who were sent there to keep peace among the insurgents and the ruling dispensation of that Country. Unfortunately, IPKF troops were attacked and they were forced to face a warlike situation. To ensure the supply chain, as regulation permits for local purchase, spot decision was taken by the committee members consisting of Army Officials of Higher Rank. Those who are competent to speak about the decision taken to procure Tinned Meat locally from A-3, either not included in the list of witnesses or not examined in the Court. The prosecution omitted to examine these witnesses only to suppress the true facts and to mislead the Court. Further, the prosecution failed to produce the documents called by the defence under Section 91 Cr.P.C yet the trial Court failed to take adverse inference about it.

12. PW-8 had deposed that when it was decided to purchase Tinned Meat from M/s.Coasta Company for Rs.68/- to Rs.70/- per kg, that was the lowest tender price quoted. The entire supply was made by M/s.Coasta Company, meaning there was no short supply or inflated price as alleged by the



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prosecution. This witness has also denied certain portion of his previous

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statement recorded by CBI under Section 161 Cr.P.C., which is a proof of embellishments and falsity in the investigation of CBI. That apart this witness has also deposed that Major General Nirmal Shonthi was the general officer commanding of Srilanka Army Maintenance Area (AMA) located in Madras and he was the ultimate authority with regard to maintaining supplies for logistical support for troops. Specifically he was empowered to make local purchases and other inter depot transfer. Till his retirement, there was no complaint or irregularities in respect of purchase made from M/s.Coasta Company. PW-8 testimony remains unassailed and the complete reading of his evidence clearly disproved the case of the prosecution against this appellant/accused-1.

13. The learned senior counsel for the appellant submitted that PW-17 the first Investigating Officer admits that, he did not complete the investigation and before he could complete the investigation, he got retired. Whereas his successor PW-18 admits that he did not conduct any further investigation and he merely filed the final report. Therefore, based on incomplete investigation and without examining the key witnesses like Major General Nirmal Shonthi



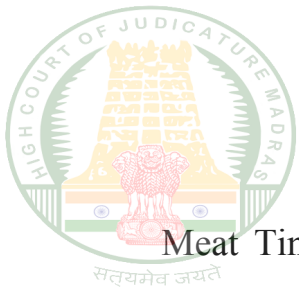
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(LW 23), Brigadier A.K.Malhothra who had controlled the overall supply in

his area. The truncated final report filed to prejudice this appellant.

14. The two consignments dated 04/02/1988 and 06/02/1988 received after 03/02/1988 were pursuant to the orders placed prior to the instruction which banned local purchase. The supplies were not antedated and prosecution has not placed any evidence to prove this allegation. Ex D-2 marked through PW-10 and the evidence of PW-10 records the fact that, purchase from M/s.Coasta Company have been almost completed and they are ready for despatch by Government Transport vehicle.

15. Per contra, the Learned Special Public prosecutor for CBI, submitted that, A1 Major Gen. A.K.Gupta while functioning as Major General, Army supply Corps, (ASC), Southern Commandant and A2 Major S.S.Kadian, Officer Commanding at Supply Depot, Army Supply Corps at Margoa and A3 M/s.Coasta & Company, Aquem-Alto, Margoa, which is a private limited Company engaged in manufacturing of Cannade Meat, Fish and Fruits together entered into a Criminal conspiracy, during the period October 1987 to February 1988 to cheat Government of India in respect of giving orders for supply of



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Meat Tinned Kheema. The production slips, gate passes and invoices of A3

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M/s. Coasta & Company show that M/s.Coasta & company started their production of meat tinned only on 06.11.1987 and supplied the first consignment on 11.11.1987. The Invoices dating from 05.11.87 show that A3 M/s.Coasta & Company was preparing false records of supply of Meat Tinned Kheema whereas on those dates they did not supply Meat Tinned Kheema. The supply Depot, Margoa did not received the delivery of Meat Tinned Kheema on the same day of issue of supply order to A3 M/s.Coasta & Company from 05.11.1987 to 08.12.1987. The local purchase was stopped after 28.01.88 and stock ledger of supply Depot, Madras shows that there had been sufficient stock of Meat Tinned Kheema for the troops in Sri Lanka. In spite of the sizeable stock available, A1 had issued oral order to A2 on 04.02.88 to go for local purchase and to buy whatever quantity available with A3 M/s.Coasta & Company, issued one truck load each to supply depot at Bombay and Madras respectively.

16. The malafide acts of A1 with an intention to favour A3 company even after instructing All Commands to stop local purchase. Ex.P.308 signal message was received by Supply Transport Branch on 03.02.88 which was seen



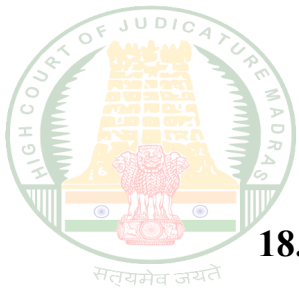
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by A1 on the same day. A3 company intended to contact over phone and

WEB COPY dispose the large quantity of Meat Tinned Kheema was available with them.

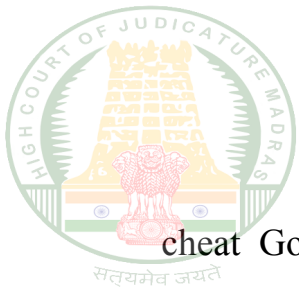
The signals No.Q/6122 and 6124 dated 04.02.88 and 05.02.88 respectively and D.O Letter dated 21.03.1988 of Brigadiar. Thiagarajan, M&G Area establish that Supply Depot, Bombay required only 3 MT of Meat Tinned Kheema, but A1 Major Gen.A.K.Gupta had sent additional quantity of 5 MTs to supply depot, Bombay which was not required by them. The first delivery of consignment was on 11.11.87 as per the Gate pass register. But supply depot, Margoa prepared documents as if, they received Meat Tinned Kheema, from 06.11.87 for three days. No supply was made till his departure and he did not initiate any action against the Officer Commanding, Supply Depot for not collecting the materials after supply orders were placed. By the above acts, Major Gen. A.K.Gupta connived with A3 M/s.Coasta & Company and Major S.S.Kadian, Officer Commanding and favoured A3 M/s Coasta & Company to the extent of not insisting delivery of materials on the same day the supply orders had been placed.

17. Heard the Learned Senior Counsel for the appellant and the Learned Special Public Prosecutor for respondent/CB.I. Records perused.



18. This appellant along with few other Senior Army Officials and private individuals, who purported to have supplied essentials for the Indian Army to cater the requirement of IPKF troops stationed at Srilanka in connection with 'Operation Pawan' during the year 1987 were subjected to Court Martial trial. It appears from the records that this appellant while transit to Ahmednagar for trial before Court Martial, escaped and later secured and arrested. By the time, the statutory time limit to initiate and complete the trial by the Court Martial expired and complaint before Court Martial become time barred. Hence, on the instruction of the Higher Authorities, complaint dated 05/11/1990 (Ex.P-312) with an appendix classified as confidential lodged by Col.Mr.Mandanna (PW-17). The Dy.SP of CBI Mr.Ragothaman, who registered F.I.R (Ex.P-313) based on the above complaint and the appendix, had mentioned 4 different items of supply in which undue gain alleged. Those 4 items, the value and its suppliers are already mentioned in the earlier part of this judgment at Paragraph No.5

19. After investigation, the final report filed only in respect of the 4th item, namely Meat Tinned. The charge framed is A-1 along with A-2 and the Supplier A-3 entered into criminal conspiracy during Oct'1987 to Feb'1988 to



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cheat Government of India in respect of giving orders for supply of Meat

WEB COPY Tinned Kheema from M/s.Coasta and Company. A-1 and A-2 caused pecuniary advantage to M/s.Coasta and Company to a tune of Rs.61,19,541.23 fraudulently. Secondly, in spite of Army Head Quarters instruction dated 03/02/1988 not to make any local purchase, A-2 gave oral instruction to purchase meat tinned from M/s.Coasta and Company on 04/02/1988 and 06/02/1988. A-1 to A-3 created false documents as if materials were supplied on 05/11/1985 (sic 1987) itself.

20. The defence put forth by the appellant is that, the local purchase in case of exigencies is permissible and in this case only after approval of the committee, the local purchase of Meat Tinned Kheema from M/s.Coasta and Company Private Limited, who quoted the least price was made. In support of this submission the minutes of panel of officers for local purchase of tinned items and recommendation thereof which form part Ex.P-3 file which contains the records in the Court martial proceedings relied. The examination of the minutes dated 20/11/1987, it is obviously clear that, the decision to go for local purchase of Meat Tinned Kheema from Coasta Foods, Cochin at the rate of Rs.68/- per kg was taken by the committee consisting of Brig. A.K.Malhotra,



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Brig N.K.Kapur and DCDA Smt.Ranjana Sivasankar as representative of CDA.

WEB COPY All these three officers have signed in the minutes. The prosecution has failed to examine these officers to speak about the decision. Further, P.W-6 Mr.Brig. P.S.Gill after referring to Ex.P-198, the signal No: Q 6033 dated 3rd November 1987, sanction for supply of 20 tonnes of Meat Tinned Kheema to Margoa from Supply Depot Madras was issued and same was instructed to be carried out by local purchase and transported by hired vehicle.

21. This witness from the records had explained the supply and delivery of Meat Tinned Kheema on various dates continued till 06/02/1988. He had identified Ex.D-1 letter as purchase order issued by Col.Surendirasingh. He admits that, the purchase of the items are top secret and movement of troops, movement of food items, supply etc., are all top secret of the Army. From the above evidence, it is clear that, the decision to go for local purchase was not an unilateral action of A-1 or A-2, it was collective decision. The regulation of Army does not prohibits local purchase and the Meat Tinned Kheema purchased from A-3 was during the peak of IPKF action at Srilanka. When the regulation permits upto 15 days stock, local purchase can be done in case of urgency, the prosecution has not placed any material to show that the



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purchase of Meat Tinned Kheema from M/s.Coasta and Company was in excess

and was not required for IPKF. The trial Court has only referred the stock position in the supply depot at India and not the requirement of the troops in Srilanka for which the purchase was made.

22. The next point for consideration is that whether the allegation that the price paid is excessive and whether there was short supply of Meat Tinned Kheema. In this regard, this Court finds the witnesses from Army had invariable admitted that there was no short supply and supply made under these invoices were fully utilised and no complaint on quality or quantity. While so, the only other point which requires consideration is whether there was any violation of the signal dated 03/02/1988 which has instructed the Army commandants to stop local purchase. The prosecution has relied upon invoices of M/s.Coasta and Company dated 04/02/1988 (For Rs.49,3521.10) and invoice dated 06/02/1988 (for Rs.10,93,435.20) which form part of Ex.P.321. In this regard, there is an explanation from the side of the defence by way of remark found in the file marked as Ex.D-2 which reads, the purchases have almost completed and also despatched by Government vehicle. The signal sent from the AC requesting to communicate any change in purchase policy well in



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advance to avoid such communications become infructuous, also gains significance in the circumstances of the case.

23. PW-8 Lt.General Depinder Singh, who was assigned with the task of conduct 'Operation Pawan' and also to ensure the requirement of the IPKF soldiers in terms of clothing and food reach them in time, had deposed that the IPKF troops sent to prevent LTTE and the Srilankan army from fighting each other later IPKF was dragged into the fight by LTTE which forced the Indian Army to raise the number of troops and consequential increase in supply requirement. He had also deposed that most of the decisions were taken orally to keep confidentiality and secrecy.

24. Therefore, this Court is of the view that, with truncated material and without scrutinising the materials placed in entirety, the Investigating Officer had filed the final report and had heavily relied upon the evidence of P.W-18 and P.W-19, who were the Investigating Officers in this case.

25. The trial Court had held the appellant and other two accused guilty without giving reason why the evidence of prosecution been ignored when the witnesses admit that, the Meat Tinned Kheema were supplied and the price



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offered by M/s.Coasta and Company was the least. Since there was some

discrepancies in the date of supply and the gate pass of M/s.Coasta and Company, the trial Court has inferred that to circumvent the withdrawal of permission to make local purchase, the documents were antedated. It is only a suspicion on presumption but not proved beyond doubt. The evidence for prosecution from Army side categorically admits that, some of the decisions are taken orally and cannot be revealed. Those decisions are not part of the file and unfortunately, the decisions and communications which find in the file also not been taken into consideration in entirety.

26. The conduct of the appellant, who fled from custody when he was taken to Ahmednagar to face Court martial has weighed the mind of the Court. The suspicion based on subsequent conduct and acceptance of the prosecution version without material to corroborate, warrants to interfere the decision of the trial Court.

27. Even assuming that, the complaint from the higher officials of Indian Army have some substance to prosecute this appellant, those substance based on suspicion has not crystallized into evidence to prove the charges



beyond doubt. For arguments sake even if the evidence is sufficient, taking note

WEB COPY of the fact there is no loss to the Government since the material been supplied and utilized. The violation of purchase regulations if construed to be corrupt practice, the said corrupt practice should have led to pecuniary advantage for the public servant or for any person to whom the public servant is interested with. In this case, it is admitted and proved that the rate quoted by A3 was the least price and therefore, there cannot be any presumption of loss to the State or wrongful gain to the supplier.

28. Unlike Section 7 and 13(1) of P.C.Act 1988, proviso to Section 5(2) of P.C.Act, 1947 gives discretion to the Court to record reason and impose sentence less than the minimum sentence prescribed. In this case taking note of the fact that the enormous delay in completing the investigation and the trial and taking into note of the long service rendered by the appellant for the nation and his present age and health condition provide reason not to impose the minimum sentence prescribed.

29. Cumulatively on appreciation of evidence, this Court arrive at conclusion that the prosecution has failed to prove the charges beyond doubt. Therefore, benefit of doubt extended to the appellant.



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30. Accordingly, the ***Criminal Appeal is allowed.*** The judgment of the trial Court rendered in C.C.No.5 of 2000 on the file of the XIII Additional Court for CBI Cases, City Civil Court, Chennai dated 29/05/2013 is hereby set aside. Fine amount paid if any to be refunded to the appellant. The bail bond shall stand cancel.

22.09.2023

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

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Copy to:-

1. The XIV Additional Court for CBI Cases, City Civil Court, Chennai
2. The Inspector of Police,
SPE/CBI/ACB,
Chennai.
3. The Special Public Prosecutor (CBI), High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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Pre-Delivery judgment made in
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22.09.2023