(2008) 07 MAD CK 0002

Madras High Court

Case No: Criminal A. No. 1330 of 2002

A.S. Subramanian		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: July 31, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 433
- Penal Code, 1860 (IPC) - Section 120(B), 409, 420, 432, 433
- Prevention of Corruption Act, 1947 - Section 13(1), 13(2), 131(1), 20, 7

Citation: (2009) CriLJ 239 : (2008) 2 LW(Cri) 1049

Hon'ble Judges: T. Sudanthiram, J

Bench: Single Bench

Advocate: K. Srinivasan, for the Appellant; N. Kumanan, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

T. Sudanthiram, J.
The appellant herein who is the first accused in Special Case No. 1 of 1998, on the file of the Chief Judicial Magistrate,

Chenglepet, stands convicted under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced to undergo six months

rigorous imprisonment and to pay a fine of Rs. 1000/- in default to undergo two months rigorous imprisonment for the offence u/s 7 of the

Prevention of Corruption Act and also sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs. 1000/- in default to undergo

two months rigorous imprisonment for the offence u/s 13(2) r/w 131(1)(d) and the sentences of imprisonment are to run concurrently. Aggrieved

by the said conviction and sentence, the appellant has preferred this appeal.

2. The case of the prosecution, in brief, is that P.W.2, Neelamegam was the Deputy Manager of ""Futura Polymers Ltd.,"" at No. 1-A, Kamarajar

Salai, Chinnasekadu, Madras-68, P.W.4, Ramakrishnan was the General Manager of the Company and P.W.5 was the Managing Director of the

said company. The company is within the jurisdiction of Chinnasekadu Town Panchayat. The company had applied for issuance of dangerous and

offensive trade license. Ex.P.29 is the application, Ex.P.2 is the covering letter. The first accused/appellant herein called for certain documents

through letters dated 13-12-1994,20-3-1995,28-6-1995,26-9-1995 and 5-10-1995, Exs.P.4 to P.8 and the company also replied to those

letters. Ex.P. 10 is the reply dated 30-1-1995 given by P.W.4. In the letter dated 13-5-1995, a cheque for Rs. 33,890/- was also sent to the

Panchayat Union as informed through letter Ex.P.7 by the first accused. As no receipt was received for the payment through cheque till

01.11.1995, P.W.2 went to the Office of the first accused on 30.10.1995 and enquired him about the license. At that time, the second accused

was also present by the side of the first accused. Then the first accused saying that he had to issue the license, demanded a sum of Rs. 10,000/- as

bribe. He also directed P.W.2 to meet him on 17.05.1995. P.W.2 has not informed this to anyone in the company. On 27.05.1995 P.W.2 again

received the telephone call from the first accused and as such, he went and met the first accused at about 4.00p.m., in his office. The second

accused was also with him. The first accused questioned P.W.2 as to why he did not come with the amount on 17.05.1995. Then P.W.2 replied

that the company was not in the habit of giving bribe and as the accused was insisting him, he would inform the matter to the company Manager

and also informed the accused that he would meet him on 31.12.1995. P.W.2 also informed this matter to P.W.4 and P.W.5, but P.W.2 was

asked to meet the first accused and to insist for the license without paying the bribe amount. On 31.10.1995, P.W.2 went and met the first

accused and informed that the company was not in a position to pay the bribe amount. Then the first accused told him that on the next day at about

2.00 p.m, he would visit his office and also would bring the receipt for the payment which has already been made. P.W.2 also told him that, if

bribe amount is not paid to him, he would delay the issuance of license and therefore asked him to keep ready the amount, in turn P.W.2 informed

this to P.W.4 and P.W.5. P.W.2 was instructed to give a complaint to the Vigilance and Anti Corruption Cell. P.W.2 was also allowed to draw

the money of Rs. 10,000/- from the accounts department. P.W.2 went to the Vigilance office at about 5.15 p.m and handed over the written

complaint Ex.P.15 to the Deputy Superintendent of Police. On the direction of the Deputy Superintendent of Police, P.W. 11, Inspector of Police

received the complaint and registered the case in Crime No. l of 1995 and prepared the First Information Report Ex.P.38. P.W.2 was instructed

to come on the next day at 9.30 a.m. P.W. 11 also arranged for the mahazar witness. On 01.11.1998 at about 9.30 a.m. P.W.2, P.W.3 Kandan

and another Lakshmanan all appeared before the Vigilance officer. P.W.2 was introduced to the witnesses and they were explained about the

phenolphthalein test. P.W.2 was instructed to pay M.O.I series currency notes only on demand by the accused. He was also informed to give a

signal by mopping his face with the handker-chief. An entrustment mahazar mentioning all the details was prepared under Ex.P. 16. Then the trap

laying party proceeded from the Vigilance office and reached the company office at about 12.45 p.m. P.Ws.2 and 3, the accompanying witnesses

went inside the company''s office. P.W.2 instructed P.W.3 to sit in the chair in front of the computer which was in the opposite direction to the seat

of the accused. At about 1.30 p.m. both the accused 1 and 2, entered into the office of P.W.2. They were also holding the file and bill book. The

first accused asked P.W.2 whether the bribe amount of Rs. 10,000/- is ready. P.W.2 made request to reduce the amount from Rupees 10,000/-

to Rs. 8,000/-, but the first accused refused. P.W.2 requested him to give the receipt for the payment which has been already made and the

accused particularly asked whether the amount was ready. The first accused directed the second accused to give the receipt. Ex.P. 17 series are

the receipts given to P.W.2 and the acknowledgment was also received. Then P.W.2 enquired about the license. He also handed over the amount

M.O.I currency notes to the first accused. The first accused after counting the money, kept it under the file which he had brought. P.W.2 came out

of the office and gave the pre-arranged signal by mopping his face. P.W. 11 rushed into the office and the accused were identified by P.W.2.

Sodium carbonate solution was prepared and the first accused was asked to dip his fingers in the two glass tumblers and the solution in which the

right hand was dipped turned into more pink colour and the solution in which the left hand was dipped turned into pink colour slightly. Then the first

accused was asked to handed over the money and he took the money from the file and hand over to P.W.2 Inspector. The numbers in the

currency notes were compared. Then P.W. 11 followed the formalities and seized the articles and other documents. Then he prepared the

recovery mahazar Ex.P.42, and also arrested the accused at about 3.00 p.m. P.W. 12, Inspector of Police, vigilance and anti-corruption took up

the investigation on 10.11.1995 and examined the witnesses. In the month of September, as he was transferred from the post, the investigation was

continued by the Deputy Superintendent of Police, P.W. 13 and from P.W.1 sanctioning authority obtained sanction order Ex.P.1 and on

completing the investigation he laid the final report on 06.03.1998.

3. The prosecution has examined 13 witnesses, marked 48 exhibits and produced 3 material objects.

4. When the accused were questioned u/s 313 Cr.P.C with regard to the incriminating circumstances available against them, they denied their

complicity. The accused have not chosen to examine any defence witness. During the cross examination, the defence side has marked Exs.D1 to

D4. The first accused had stated in his evidence that he had sent notice to the company for the unauthorised construction and he also

recommended the proposal to the M.M.D.A for the demolition of construction and he was delegated the powers for demolition. As there was a

motive, the case has been foisted against him. The second accused has stated that he used to accompany the officers and collect the taxes and only

in that manner, he had accompanied the first accused.

5. Mr. K. Srinivasan, learned Counsel for the appellant/first accused submitted that the case of the defence is that the accused never demanded

money and he had not received any money from P.W. 2; and it was only P.W.2 who had planted the money in the file without the knowledge of

the accused. The documents marked by the accused Ex.D1 to D4 would clearly establish that the company had the motive and had all the grudge

against the accused and as such they have conspired and implicated the accused falsely. The learned Counsel for the appellant further submitted

that there was no reason for the accused to demand money, since already the process had been completed and issuance of license was not in the

hands of the accused and Exs.P.33, P.34, P.35, P.44 and P.45 would show that on 19.10.1995 itself the accused informed M.M.D.A and also

requested them to accord approval and it was also intimated duly to the Manager of the company. If the demand for the payment before

18.10.1995 is true, the accused would not have sent letter on 19.05.1995 and as such his subsequent demand on 27.10.1995 and 30.05.1995 is

also false. The learned Counsel for the appellant further submitted that when there is a strong motive for the company as per Exs.D1 to D4 against

the accused, the version of the accused that money was planted by P.W.2 in the file without the knowledge of the accused should be accepted.

The learned Counsel for the appellant also relied on the answer given by P.W. 3 mahazar witness who had stated that after P.W. 11 and P.W. 10

went into the room, the accused was asked to take the money and handed over to the Inspector and thereafter only the accused was asked to dip

his fingers in the sodium carbonate solution; and vehemently contended that that the phenolphthalein test though proved positive, does not help the

prosecution case. On the other hand, the answer given by P.W.3 strengthens the version of the accused that the money was planted. He further

submitted that the accused need not prove his case beyond doubt, but if an explanation given which is acceptable on probabilities, then it should

not be rejected.

6. The learned Counsel for the appellant also relied on the decision of the Honourable Supreme Court reported in T. Subramanian Vs. State of

Tamil Nadu, , observed in paras 12 and 16 as follows:

12. ...If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted....

16. The High Court did not consider the explanation offered by the appellant for the receipt of the money nor the previous enmity harboured by

P.W.I, P.W.2 and P.W.6 towards the appellant. Nor did it hold that the decision of the trial court was erroneous or perverse.

7. Mr. N. Kumanan, learned Government Advocate submitted that it is a specific case of P.W.2 that the company was not in the habit of giving

bribe and even in the documents filed by the accused in Ex.D.4, the company had already made the allegation about the demand of bribe by

accused. Though the accused had sent letters on 19.10.1995, he had not issued receipts for the payment made through cheque and P.W.2 also

stated that the accused threatened him by saying the process of issuing license should be delayed and it is also mentioned in Ex.P.15 complaint,

that if the accused not paid, he would spoil the whole issue.

8. The learned Government Advocate further submitted that there is no reason for the accused officially to visit the office of P.W.2 but it was only

for the purpose of receiving the bribe amount. The version of the accused that the accused was invited to the office to explain to the Managing

Director about the delay in giving license is highly improbable. The learned Government Advocate further submitted that the evidence of P.W.3

that the accused was asked to take the currency notes and handed over it to the police officer even prior to conducting of the phenolphthalein test

is not correct and the evidence of P.W. 11 as per the recovery mahazar in which P.W.3 also signed, the money was handed over by the accused

to the police officer only after phenolphthalein test: was conducted.

9. The learned Counsel for the appellant by abundant caution, made submission that the accused is aged about 70 years and had heart surgery and

in the event of confirming conviction prayed that the rigorous imprisonment may be converted as simple imprisonment thereby enabling the accused

to approach the State Government under Sub-clause (d) of Section 433 Cr.P.C for commutation of imprisonment to a fine. He further submitted

that the accused is prepared to pay any additional fine and sought for a recommendation from this Court to the State Government. The learned

Counsel also submitted that there are some precedents and placed reliance on the decision of this Honourable High Court reported in 2007 L.W.

(Crl.) 123 (S.P. Meriappan v. State of Tamil Nadu) and also the unreported judgment of this Court in Crl.A. No. 545 of 1999 dated 26.06.2007.

10. The learned Government Advocate submitted that an accused under the Prevention of Corruption Act cannot be released under the Probation

of Offenders Act and as such, the person convicted under the Prevention of Corruption Act does not deserve for any recommendation for

remission or commutation of sentence. The learned Government Advocate also produced the copy of the Government Orders wherein the

prisoners were released on premature (sic). Even as per those orders, the prisoners sentenced under the Prevention of Corruption Act were not

considered for premature release. He relied on G.O.Ms. No. 1762, Home (Prisons. VI) Department dated 20.07.1987 and G.O.Ms. No. 164

Home (Prisons IV) Department, dated 02.02.1996.

11. This Court considered the submissions made by both parties, the evidence of witnesses and other records.

12. This Court considered the submission made by both parties and perused the evidence of witnesses and other records. According to P.W.2

decoy witness, a demand for a sum of Rs. 10,000/- as bribe was made by the first accused on 13.10.1995, 27.10.1995 and 31.10.1995. Though

it is contended by the defence that there is no corroboration for the earlier demand made by the accused and there was no necessity for the

accused to demand the amount as already necessary formalities as far as the first accused is concerned have been carried out; it is a specific case

of P.W.2 that if the amount is not paid, the issuance of license would be delayed. In Ex.P. 15 complaint given by P.W.2, it is mentioned that the

accused reiterated his demand for Rs. 10,000/- and when P.W.2 requested him to give up the demand, first accused refused to give up the

demand, and stood firm that it should be paid to him on 01.11.1995 at about 2.00p.m., positively or else he would spoil the whole issue. P.W.2

also mentioned in Ex.P. 15 that it is not known whether the accused himself would issue the license or simply forwarded the same to the

authorities. Though it is the case of the accused that on 19.10.1995 itself the accused had forwarded the letter to the authorities for giving approval

for the proposal sent by the company; in Ex.P.44, the letter forwarded to the Manager of the company, it is not clearly mentioned that a letter has

been forwarded by the accused to the authorities for approval and for no objection. At the end of letter, it is mentioned as follows:

Once again we will call in short time with your proposal forwarded (and) recommended, to concern authorities on request to accord installation

and running licence as early as possible.

It appears from this that the accused wanted the company authorities to meet again. Therefore, it cannot be said that the accused was not having

any more connection with the proposal.

13. It is the case of the defence that the accused has been responsible for levying the property tax of Rs. 6 lakhs for Indian Organic Chemicals

Company of which the complainant company was a part of it. From Rs. l lakh to Rs. 6 lakhs it was increased and further the complainants

company had commenced the construction even before getting license and the accused had taken steps for the demolition of the construction and

further the license fee of Rs. 2050/- for the Indian Organic Chemicals Limited was raised to Rs. 2 lakhs and writ petitions were filed by the Indian

Organic Chemicals Limited against the Executive Officer of the Panchayat which are marked in the documents as Exs.D1 to D4. The Indian

Organic Chemicals Limited was having dispute with the Chinnakadu Panchayat. In fact on 14.02.1995, the tax in respect of the buildings have

been enhanced and the communication has been sent by the accused to the Indian Organic Chemicals Limited. W.P. No. 574 of 1995 was filed

praying for interim injunction restraining the Panchayat from taking action on the notice dated 14.02.1995. W.P. No. 10378 of 1995 has also been

filed seeking direction to the Executive Officer, Chinnasekadu to forward the drawings and plans submitted by the company to MMDA. The effort

taken by the defence to show that the company was very much affected by the Executive Officer of the Chinnasekadu Panchayat is appreciable.

whereas at the same time, in the affidavit filed in W.P. No. 10378 of 1995, in paragraph 10, it is mentioned that the Executive Officer of Panchayat

Union, was making very many unlawful demands. In such circumstances, though there has been a friction between the company and the Executive

Officer, the demand for the bribe amount by the accused cannot be ruled out.

14. On the date of trap, it was only the accused who had visited the office of P.W.2. If the accused had been knowing already about the allegation

made against him in writ petition which was filed in the month of August, 1995, he would have strongly objected to him and he would not have

visited the office of P.W.2. The present explanation of the appellant/first accused that only in order to explain about the delay in granting license to

the authorities of the company, is highly improbable. It was the duty of P.W.4 to convey the message to his superiors. This Court feels that the

explanation by the first accused for going to the office of P.W.2 is unacceptable.

15. The first accused had denied about the receipt of the amount itself. Even in a case of denial of the receipt of amount by the accused, if the

prosecution establishes by evidence the fact of payment of amount and accused receiving it, then the presumption u/s 20 of the Act should be

drawn. Only if the accused accepts about the receipt of the amount, but rebuts the presumption by his explanation for receipt of the amount, then

the court has to see whether the explanation given by accused is probable and acceptable. This is a case wherein the accused had stated that the

money was planted in the file. The version of the accused that the money planted in the file is not supported by any material. On the other hand, the

case of the prosecution that money was given to the accused and it was received by accused. Therefore Section 20 of the Prevention of

Corruption Act comes into effect and the presumption is to be drawn.

16. The only flaw that appears in the prosecution case is the evidence of P.W.3 that the accused was asked to take the currency notes even before

the phenolphthalein test was conducted. In view of the evidence of P.W.2 and P.W. 11 and recovery mahazar Ex.P.24 that part of evidence by

P.W.3 does not seem to be correct. Such evidence was given by P.W.3 only in a negligent manner. In the re-examination, his attention has not

been drawn to the recovery mahazar. Still P.W.3 who is an independent witness had clearly spoken about P.W.2 handing over the bribe amount

to the first accused and the first accused receiving it and keeping underneath the file.

17. For the reasons stated above, this Court holds that the prosecution has proved its case beyond reasonable doubt that the accused demanded

the bribe amount and accepted it.

18. With regard to the sentence, the accused is already sentenced only to a minimum period of one year imprisonment. With regard to the request

made by the learned Counsel for the appellant, to convert the rigorous imprisonment to simple imprisonment and for a direction to the State

Government to invoke Section 433(b) of Cr.P.C., this Court is reluctant to make such recommendation in this case.

19. In the decision reported in 2007 1 L.W.(Crl.) 124 (S.P. Meiappan v. State of Tamil Nadu), it has been held as follows:

15. However, Mr. S. Ashok Kumar, learned Senior Counsel would submit that the accused has paid the entire amount as admitted by the

prosecution and thus there is no loss to the Bank. The Bank has not lodged any complaint. But on some information, the CBI itself has registered a

case and prosecuted the accused which ended in conviction. At the time of conviction the accused was 64 years of age and now he is 72 years old

and according to the learned Senior Counsel his movements are restricted and he is not able to move freely without the assistance of his close

relatives and would submit that if he is sent to jail he will not survive. Therefore, the learned senior counsel would submit the following judgments of

the Honourable Supreme Court.

16. In N. Sukumaran Nair v. Food Inspector, Mavelikara reported in 1997 SCC (Cri) 608, it has been held as follows:

3.The offence took place in the year 1984. The appellant has been awarded six months simple imprisonment and has also been ordered to pay a

fine of Rs. 1000/- Under Clause (d) of Section 433 of the Code of Criminal Procedure, ""the appropriate Government"" is empowered to commute

the sentence of simple imprisonment for fine. We think that this would be an appropriate case for commutation of sentence where almost a decade

has gone by. We, therefore, direct the appellant to deposit in the trial court a sum of Rs. 6000/- as fine in commutation of the sentence of six

months simple imprisonment within a period of six weeks from today and intimate to the appropriate Government that such fine has been

deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate orders under Clause (d) of Section 433

of the Code of Criminal Procedure.

17. In Badri Prasad v. State of M.P. reported in 1996 SCC (Cri.) 79, their Lordships have taken the similar view, which is as follows:

2. There is some scope, however, towards the sentence because this Court granted in 1989 leave and the appellant is on bail. We would rather

now scale down the sentence of six months RI to three months simple imprisonment, which sustaining the fine of Rs. 1000 as awarded by the

Courts below. Subject to this modification in the sentence, the appeal otherwise fails. This has been made to enable the appellant to approach the

State Government under Sub-clause (d) of Section 433 for conversion of simple imprisonment of fine. Since the adulteration was only by adding a

colouring agent in the chillies powder and that was possibly done to please the customer''s eye, we recommend that the State Government release

the appellant on the charging of Rs. 2000/- as fine and that an appropriate order be passed by the State Government to that effect within a period

of three months. The appellant shall deposit in the trial court under two heads the fine imposed by the Court i.e., Rs. 1000/- as also the alterable

fine of Rs. 2000/- within a period of three weeks from today and apprise the State Government of his having discharging his obligation. On his

doing so the appellant need not be arrested.

18. Considering the age of the accused, the fact that he has already repaid the amount and the misappropriation was only temporary in nature and

also the fact that the said offence took place in the year 1990, I am inclined to modify the sentence. As far as conviction u/s 409 IPC and 13(1)(c)

of the Prevention of Corruption Act, 1988 are concerned, the sentence of two years rigorous imprisonment imposed for each offence is modified

as one year simple imprisonment under both the Sections and the first accused is directed to pay an additional fine of Rs. 25,000/- to be deposited

before the Special Court for CBI cases, Coimbatore. This is to enable the appellant/ accused to approach the State Government under Sub-clause

(d) of Section 433 Cr.P.C, for conversion of simple imprisonment to fine. Since there is no loss to the Bank and no complaint has been preferred

by the Bank in this regard, I recommend that the State Government release the appellant on the charging of Rs. 3000/- as fine and that an

appropriate order be passed by the State Government to that effect within a period of three months. The appellant shall deposit in the trial court

under two heads the fine imposed by the Trial Court i.e., Rs. 1000/- and the additional fine of Rs. 25,000/- imposed by this Court as also the

alterable fine of Rs. 3000/- within a period of three weeks from today and apprise the State Government of his having discharged his obligation.

On his doing so, the appellant need not undergo the sentence of imprisonment.

Otherwise, he shall undergo the modified sentence as stated earlier.

20. Similarly in Crl.A. No. 545 of 1999 dated 26.06.2007, His Lordship Justice A.C. Arumuga Perumal Adityan, passed an order as follows:

20. Under such circumstances, considering the age of the accused and the fact that he has already repaid the entire amount of ill gotten money and

also the fact that the accused had undergone by-pass surgery even in the year 1990, I am inclined to modify the sentence alone as indicated above.

As far as the conviction of the trial Court is concerned the same is confirmed, but the sentence alone is modified as follows:

As far as the sentence under Sections 120(B) r/w 420, 467, 468, 471 r/w 465 IPC is concerned the sentence of one year rigorous imprisonment

is modified to that of one year simple imprisonment and u/s 420 IPC and u/s 13(2) r/w 13(l)(d) of the Prevention of Corruption Act, 1988, is

concerned the sentence of two years RI for each offence is modified to that of one year SI each. The appellant/A1 is further directed to pay an

additional fine of Rs. 25,000/- to be deposited before the Principal Sessions Court for CBI Cases, Chennai, to enable the appellant/A1 to

approach the State Government under Sub-section 3 of Section 432 of Cr.P.C, for conversion of simple imprisonment to fine. Since there is no

loss to the bank and no complaint has been preferred by the bank in this case, it is further charging fine of Rs. 3000/- and to pass an appropriate

order to that effect within a period of three months from this date. The appellant shall deposit the additional fine of Rs. 25,000/- imposed by this

Court and also three weeks from today and appraise the State Government to dispose of this application. On doing so, the appellant need not

undergo the sentence of imprisonment, otherwise he shall undergo the modified sentence as stated earlier. With this direction Crl.A. No. 545 of

1999 preferred by the appellant/A1 stands disposed of.

21. Section 433(d) of Cr.P.C reads as follows:

433. Power to commute sentence:- The appropriate Government may, without the consent of the person sentenced, commute:

(a) ...

(b) ...

(c) ...

(d) a sentence of simple imprisonment, for fine.

Commutation of simple imprisonment u/s 433(d), Cr.P.Code:- When High Court imposed sentence of six months simple imprisonment and a fine

of Rs. 1000 for an offence under the Prevention of Food Adulteration Act, 1954, the Supreme Court having found that the offence was committed

long ago, i.e., in 1984, held that it would be an appropriate case for commutation of sentence of simple imprisonment u/s 433(d), Cr.P.C when

almost a decade had passed. The Supreme Court directed the appellant to deposit in trial Court Rs. 6,000/- as fine in commutation of

imprisonment and to move the State Government for commutation of the sentence of imprisonment- vide- N. Sukumaran Nair Vs. Food

Inspector, Mavelikara, . Similarly, in another decision when adulteration consisted of addition of colouring matter to chilli powder, the Supreme

Court reduced the sentence of 6 months rigorous imprisonment to simple imprisonment for three months and a fine of Rs. 1000 so that the

appellant could move the State Government for commutation of sentence of simple imprisonment to fine u/s 433(d), Cr.P. Code and directed the

State Government to impose further fine of Rs. 2000 in lieu of sentence over and above the fine of Rs. 1000 as already imposed and release the

appellant- vide BADRI PRASAD V. STATE OF MP .

22. It is true that the Honourable Supreme Court in some of the cases wherein the accused had been sentenced to simple imprisonment, directed

him to pay some fine amount and then recommended to the State Government to pass appropriate orders under Clause(d) of Section 433 Cr.P.C.

This Honourable High Court also has followed the same method.

23. As far as this Court is concerned, it is felt that the power to commute sentence u/s 433 Cr.P.C is purely vested with the appropriate

Government. While so, u/s 433(d) for converting sentence of simple imprisonment and fine, the quantum of fine amount should be fixed only by the

appropriate Government. Of course, the Honourable Supreme Court with the plenary power may fix the quantum and direct the appropriate

Government to consider the case u/s 433 Cr.P.C. Though the High Court also may have the inherent power, whether such a recommendation

could be made after fixing the quantum of the fine amount for an accused convicted under the Prevention of Corruption Act? Even the Probation of

Offenders Act is not applicable for the person convicted under the Prevention of Corruption Act. As per the copy of the Government Orders

produced, G.O. Ms. No. 1762, Home (Prisons VI) Department, dated 20.07.1987 and G.O.Ms. No. 164 Home(Prison-IV) Department dated

02.02.1996, the premature release of the prisoners was made applicable not for the prisoners sentenced under the Prevention of Corruption Act,

Immoral Traffic Rules, Drugs Act and Prevention of Food Adulteration Act. In the said circumstances, this Court feels that it is not proper for the

Court to recommend for commutation of sentence to a prisoner under the Prevention of Corruption Act. At the same time, it is made clear that it is

only for the Government to decide whether to commute the sentence on the prisoner u/s 433 Cr.P.C, or not.

24. With the above observation, though this Court is not fixing the amount of fine and not recommending to the Government to invoke Section 433

Cr.P.C, the sentence of imprisonment imposed on the accused is altered from rigorous imprisonment to simple imprisonment. Now it is purely a

matter between the accused and the Government u/s 433 Cr.P.C.

25. In the result, the conviction of the accused is confirmed and the period of imprisonment is also confirmed. But the rigorous imprisonment is

converted as simple imprisonment.

26. Only with the above modification, the appeal is dismissed.