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Selvaraju and Others Vs State

Criminal Appeal No''s. 253, 254, 287, 298 and 313 of 2000 in Spl. C.C. No. 1 of 1997 and Criminal Appeal No. 381 of 2000 in Spl. C.C. No. 2 of 2000

Court: Madras High Court

Date of Decision: Aug. 24, 2009

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 197(1), 197(5), 313#Penal Code, 1860 (IPC) â€" Section 109, 120B, 409, 420#Prevention of Corruption Act, 1988 â€" Section 13(1), 13(2)

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: V. Gopinath for R.M. Kannappa Rajendran, in C.A. No. 298/2000, Nirmal Kumar, in C.A. No. 381 and 313 of 2000, V. Raja Mohan, in C.A. No. 253/2000, Sakthivel Murguan, in C.A. No. 254/2000 and Senthil Kumar, in C.A. No. 287/2000, for the Appellant; P. Kumaresan, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

M. Jeyapaul, J.
There were totally seven accused, who originally faced the trial in Special C.C. No. 1 of 1997. The 7th accused A.A.

Joseph was acquitted of all the charges framed against him. Though evidence was recorded in common and arguments were also heard in

common, the case against the second accused R.N. Jayaprakash was split up at the time when the judgment of conviction was recorded as against

A1 E. Madhusudanan, A3 R. Narasimmalu, A4 Selvaraju, A5 Aravind Kumar R. Shah and A6 P. Muthusamy and Special C.C. No. 2 of 2000

was assigned but, later on the learned XI Additional Judge, having relied upon the very same evidence recorded earlier as against all the accused,

recorded conviction as against A2 in Special C.C. No. 2 of 2000.

2. The first accused E.Madhusudanan was convicted for offence u/s 120B read with 409 and 420 of the Indian Penal Code and Section 13(2)

read with Section 13(1)(d) of the Prevention of Corruption Act and was sentenced to undergo one year rigorous imprisonment and pay a fine of

Rs. 5000/- in default to undergo three months rigorous imprisonment, convicted u/s 409 read with Section 109 of the Indian Penal Code and was

sentenced to one year rigorous imprisonment and pay a fine of Rs. 5000/- in default to undergo three months rigorous imprisonment, convicted for

offence u/s 420 read with Section 109 of the Indian Penal Code and was sentenced to undergo one year rigorous imprisonment and pay a fine of

Rs. 5000/- in default to undergo three months rigorous imprisonment and convicted u/s 13(2) read with Section 13(1)(d) of the Prevention of

Corruption Act and was sentenced to undergo two years rigorous imprisonment and pay a fine of Rs. 5000/- in default to undergo six months

rigorous imprisonment.

3. The third accused R. Narasimmalu was convicted for offence u/s 120(b) read with Section 409, 420 of the Indian Penal Code and Section

13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and sentenced to undergo one year rigorous imprisonment and pay a fine of

Rs. 5000/- in default to undergo three months rigorous imprisonment, convicted u/s 409 of the Indian Penal Code and was sentenced to undergo

one year rigorous imprisonment and pay a fine of Rs. 5000/- in default to undergo three months rigorous imprisonment, convicted u/s 420 read

with Section 109 of the Indian Penal Code and sentenced to undergo one year rigorous imprisonment and pay a fine of Rs. 5000/- in default to

undergo three months rigorous imprisonment and convicted u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and

sentenced to undergo two years rigorous imprisonment and pay a fine of Rs. 5000/- in default to undergo six months rigorous imprisonment.

4. The fourth and fifth accused were convicted u/s 120 read with Section 409, 420 of the Indian Penal Code and Section 13(2) read with Section

13(1)(d) of the Prevention of Corruption Act and were sentenced to undergo two years rigorous imprisonment each and pay a fine of Rs.

10,000/- each in default to undergo six months rigorous imprisonment each, convicted u/s 409 read with Section 109 of the Indian Penal Code

and were sentenced to undergo rigorous imprisonment each and pay a fine of Rs. 10,000/- each in default to undergo six months rigorous

imprisonment each and convicted u/s 420 of the Indian Penal Code and were sentenced to undergo four years rigorous imprisonment each and

pay a fine of Rs. 1,00,000/- each in default to undergo one year rigorous imprisonment each. In the event of payment of fine amount by the fourth

and fifth accused, a compensation of Rs. 50,000/- each was ordered to be paid to PW61, PW68 and PW72.

5. The sixth accused was convicted u/s 120(b) read with Section 409, 420 of the Indian Penal Code and Section 13(2) read with Section 13(1)

(d) of the Prevention of Corruption Act and was sentenced to undergo one year rigorous imprisonment and pay a fine of Rs. 2500/- in default to

undergo three months rigorous imprisonment, convicted u/s 409 read with Section 109 of the Indian Penal Code and was sentenced to undergo

one year rigorous imprisonment and pay a fine of Rs. 2500/- in default to undergo three months rigorous imprisonment and convicted u/s 420 of

the Indian Penal Code and was sentenced to undergo one year rigorous imprisonment and pay a fine of Rs. 2500/- in default to undergo three

months rigorous imprisonment.

6. On the side of the prosecution P.Ws.1 to 80 were examined and Exs.P1 to 135 were marked. On the side of the defence, no witness was

examined, but, Exs.D1 to D25 were marked.

7. The brief case of the prosecution reads as follows:

A1 was the then Handloom Minister. During the year 1991, the Government proposed to distribute free dhoties and sarees to the downtrodden

people in the State of Tamilnadu on the eve of Pongal Festival 1992. In order to fulfil the order, the Government transferred rupees 12.58 crores

to the Tamilnadu Textile Croporation Limited for the purpose of procuring and distributing sarees and dhoties. The Government also specified

certain conditions for the purpose of procurement by tender process and also payment of money to the selected tenderers by getting Bank

Guarantee. Based on these procedures, the Textile Corporation processed the tenders submitted by twenty one firms. Out of the twenty one firms,

six firms were selected and were called for enquiry. By that time, A4 representing on behalf of two firms gave a letter stating his inadequate

position to supply the goods and also requested to distribute the orders for supply of clothes proposed to be placed with them to the other three

firms viz., Balaji Agencies, Cotton Yarn Textiles and Rajaram Apparels. The above mentioned three firms entered into an agreement with the

Textile Corporation on 18.12.1991. The Balaji Agencies was represented by A4''s mother. Cotton Yarn Textiles was represented by A4''s wife

and Rajaram Apparels was represented by A4. All the three firms opened bank accounts in the Lakshmi Vilas Bank, Coimbatore. All the three

firms were introduced for opening bank account by A4 at the behest of A5 who was the long standing customer of the Lakshmi Vilas Bank,

Coimbatore. Thereafter, A4 and A5 looked after the tender process and A6 who was the then Manager of A5 company also looked after the

bank affairs.

8. After entering into the agreement on 18.12.1991, in which it was specifically stated that Bank Guarantee had to be given, the three firms were

individually informed of the necessity to give Bank Guarantee for drawing first instalment advance amount of 25% from the Textile Corporation by

letter dated 23.12.1991. Whereas, all the three firms gave a letter on 24.12.1991 expressing their inability to give Bank Guarantee and insisted for

release of the first 25% advance amount without any security.

9. At this point, A1 and A2 intervened and directed the officials to release the first 25% advance amount without any security. But, the officials of

the Government and the Textile Corporation raised their objections pointing out the orders of the Government insisting for getting security for the

release of advance amount. A1 and A2 pressurized, forced and threatened the Government Officials to release the first 25% advance amount

without any security.

10. On the intervention of A1 and A2, the Balaji Agencies received the cheque for the first 25% advance amount from the department concerned

without giving the stipulated security. Thereafter, the other firms were also provided with the first 25% advance amount without furnishing security.

11. The three firms supplied dhoties and sarees on their own to various destinations as directed. But, the sarees and dhoties supplied did not have

the length and breadth as per the specification. Number of Tahsildars and other officials complained to the Government regarding the supply of

inferior quality sarees and dhoties. Inspite of the objections raised by the officials of the department, A1 and A2 insisted them to release the second

25% advance amount to the three firms. Though it was specifically brought to the knowledge of A1 regarding the inferior quality and poor supply

for the amount already released, A1 personally visited Coimbatore on 9.1.1992 and threatened the officials to release the remaining amounts.

12. The first accused, having been not satisfied with the progress in disbursement of amount to the firms, put a note to the then Chief Secretary for

transferring the Official who was in-charge for the disbursement of the advance amount. Only on the instigation of A1 and A2, A3 was appointed

as Managing Director of Tamilnadu Textile Corporation in the place of Mr. Kanagaraj, PW2. After assumption of office by A3, the amounts were

disbursed on instruction by A1 and A2 without any hitch. But, inferior quality goods were supplied. After A3 assumed office, A4 and A5 procured

sarees meant to be distributed for the poor people in at the State of West Bengal with the seal of West Bengal Government thereon. A4 and A5

clandestinely distributed them in the State of Tamilnadu.

13. During the short supply of materials, the respective Collectorate staff were made to enquire the existence of the firms. But, to the shock and

surprise, there were no such firms in the said address given in the tender forms. On verification with the commercial Department, it came to light

that the firms were not registered and no tax was also paid by them.

14. Thus, A1 and A3 by using their official position, procured sarees at a lesser rate viz., 50% of the rate fixed by the Government from various

places including West Bengal through A4 and A5 and distributed the same to the people of Tamilnadu on the eve of the Pongal Festival 1992. A2

who is the nephew of A1 coordinated with A3, A4 and A5. A6 played a vital role in maintaining the Bank Accounts and preparing bogus bills

from the shops of Textile Dealers who were actually selling textiles.

15. In view of the above, A1 to A6 entered into a criminal conspiracy and A1 and A2 selected the firms of A4, A5 recommended for opening

bank accounts with the help of A6 and thus A1 to A6 conspired to cheat the Government of Tamilnadu by floating three fictitious firms, opened the

Bank accounts with false address and procured very poor and inferior quality sarees and dhoties and misappropriated the Government fund.

16. Learned Senior Counsel appearing for the first accused and the learned Counsel appearing for the other accused would vehemently submit that

it was only the Government which selected the tenderers. The accused have nothing to do with the selection of the tenderers. Exs.P14 to P16

agreements were executed between the tenderers who supplied dhoties and sarees for free distribution and the Tamil Nadu Textile Corporation

(TNTC). Though the first accused recommended for the transfer of PW2, it was only the Chief Minister, who ultimately took the decision as per

the evidence of the Chief Secretary, who was examined before the court and ultimately, A3 who had got sufficient experience in Handlooms and

Textiles, was appointed in his place. The transfer of PW2 was recommended only to promote the efficiency and also to complete the work at a

lightning speed. PW2 himself had admitted that he had gone on medical leave on account of his ill-health. Mr. Muneer Hoda examined as PW75

was wantonly deleted from the criminal prosecution though he was implicated originally in the FIR. The prosecution failed to establish that the levy

of penalty shall be approved by the Finance Department. If at all, A1 was inclined to favour the suppliers, he would not have imposed penalty and

blacklisted the suppliers. It is further submitted that the sanction in fact preceded the note prepared by PW40 to the effect that it was a fit case for

sanction. Mr. Devaraj, who signed on behalf of the Governor of Tamil Nadu in the order of sanction was not examined before this Court to speak

about the mind of the sanctioning authority. On account of the external pressure, sanction was hurriedly obtained and therefore, the sanction is

vitiated. No reason has been assigned by the learned Sessions Judge to split up the case as against A2 at the time of pronouncing the judgment as

against the other accused. The new incumbent pronounced the judgment only based on the very same materials which were available at the time

when the case of A2 was split up by his predecessor. The suppliers were not associated for checking up the quality and the alleged shortfall of

supplies made by three firms. The defective dhoties and sarees with lesser quality were not produced before the court as material objects. The test

check up was not done as per the instructions flowed from the Government. No mahazar was prepared for the seizure of the defective dhoties and

sarees. One Mr. R.S. Manian, who allegedly gave a complaint alleging lack of quality of dhoties and sarees supplied free of cost by the

Government was not examined. The evidence of Pws.1 and 2 that A1 warned PW2 with serious consequences if advance was not made to the

suppliers and also conveyed his displeasure through A2 is found to be contradictory with each other. No witness spoke to the aforesaid

unbecoming act of A1 and A2. A5 had no connection with the supply transaction. A6 after all worked under A5. The Government imposed a

condition to furnish security for 25% of advance being disbursed by the Government to the suppliers only after the agreements, Exs.P14 to P16

were entered into between the suppliers and the TNTC. Therefore, there is no valid reason for insisting bank guarantee for 25% advance as a

condition precedent for releasing the advance the suppliers were entitled to as per the agreement. Therefore, the learned Senior Counsel and other

counsel for accused/appellants would submit that they are entitled to acquittal.

17. Learned Special Public Prosecutor appearing for the State would submit that the over enthusiasm exhibited by A1 and A2 in releasing the

advance to A4 despite the direction of the Government to insist for bank guarantee for the advance and their role in shifting PW2 and bringing in

A3 in his place would go to show that there was a criminal conspiracy to cause loss to the Government. A1 and A2 knowing full well that there

was no firm floated by A4 was in existence, selected three firms which were fictitious in nature. A5 and A6 knowing full well that the firms were

fictitious in nature, recommended and opened bank account in Laxmi Vilas Bank, Coimbatore in the name of those three firms. A1 to A6 had

common agreement to cheat the Government and thus they had effectively conspired and committed the offence of cheating and misappropriation.

A1 used his official position as a public servant and Ministership of the Department for transmitting the object of criminal conspiracy. A2 is none

other than the nephew of A1. A3 was specifically posted in the place of PW2 for the purpose of releasing the amount of advance as instructed by

A1 and A2. A4 to A6 prepared and supplied materials and received the cheques from the Government. The Government instruction to insist for

bank guarantee for releasing the advance payment was totally ignored by the accused. The anger of A1 was reflected in the transfer of PW2 and

substitution in his place by A3. A6 Muthusamy presented seven forged cheques as genuine to Laxmi Vilas Bank Uppilipalayam Branch and got the

amounts released. There are voluminous evidence on record to show that the fourth accused, through fictitious firms, having hatched conspiracy

with other accused, supplied only third rate dhoties and sarees to the Government for free distribution and thereby all the accused caused heavy

loss to the Government. Therefore, he would submit that there is no warrant for disturbing the well considered and well merited judgment of the

Trial Court.

18. Conspiracy consist in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means. The essence of the

offence of conspiracy is the fact of combination of agreement. It is not enough that two or more persons pursued the same unlawful object at the

same time or in the same place. It is very much necessary to show a meeting of minds that is to say a consensus to achieve an unlawful purpose,

but, it is not necessary that each conspirator should have in communication with each other.

19. Conspiracy is hatched in secrecy. Therefore, it may not be possible to establish a conspiracy by direct evidence. The facts and circumstances

surrounding the role of each and every accused should provide an inference to conclude the existence of conspiracy and its avowed object.

20. Let us now take up the charges framed as against A1 E.Madhusudhanan. It is found that there is no direct evidence let in by the prosecution to

establish that A1 to A6 conspired together and committed the offence u/s 120B of the Indian Penal Code . The prosecution mainly banks on the

circumstantial evidence to prove the charge of conspiracy. The court will have to find whether the circumstances projected by the prosecution

inspire confidence to convict the accused u/s 120B of the Indian Penal Code .

21. As far as the first accused is concerned, there is virtually no evidence to show that he was in any way involved in selecting the suppliers which

process was embarked upon by the Committee constituted for the said purpose. PW2 Kanagaraj, Managing Director of TNTC, Coimbatore and

PW3 D.Chandrasekar, Joint Director, Handlooms, Chennai have categorically spoken to the fact that the suppliers were selected by the

committee consisting of PW2, PW3 and one Subbiah. It appears that the tenders received from the intending suppliers were tabulated as found

from Ex.P11 and despatched to PW75 Mr. Muneer Hoda, Director of Handloom and Textiles, Chennai. Orders were placed to the suppliers who

quoted the lowest prices. Therefore, as far as the selection of suppliers are concerned, there is dearth of evidence that the first accused had played

any pivotal role.

22. On a perusal of the proceedings under Ex.P120 dated 11.12.1991, it is seen that the proposal to clinch the deal with the successful tenderers

were sent to the Chief Minister by the Secretary specifically listing the names of successful tenderers. Ex.P120 also would establish that the

successful tenderers were selected by the orders of the Chief Minister of Tamil Nadu. The Chief Minister also was pleased to approve the draft

agreement proposed to be entered into with the successful tenderers and release of 50% of the total cost of the procurement amounting to rupees

12.50 crores in advance. The above facts and circumstances would go to show that the very selection of the tenderers, the terms of the agreement

and the advance proposed to be released were approved by the Chief Minister and A1 had played no role in the matter. Nothing has been

produced before this Court to show even distantly that A1 was part of the selection process and fixation of terms of the agreement.

23. Ex.P58 is the proceedings emanated from the Secretary to Government to the Director of Handloom and Textiles, Kuralagam. The aforesaid

proceedings would reveal that the original deadline viz., 31.1.1992 fixed for the supply of dhoties and sarees was extended upto 31.3.1992 by the

Secretary to Government.

24. The Handloom Ministry submitted a proposal as found from Ex.P74 dated 23.3.1992 suggesting cancellation of the tenders in view of the

unsatisfactory performance of the private suppliers within the extended time limit fixed for implementation of the scheme for distribution of free

dhoties and sarees and placement of orders to Co-optex for supplying the remaining unsupplied quantity of dhoties and sarees. It is also found that

the Chief Minister, based on the proceedings, Ex.P74, approved the said proposal on 7.8.1992. If at all the first accused hatched a conspiracy to

loot the Government Exchequer in order to benefit the suppliers, his Ministry would not have come out with the proposal to cancel the tenders and

place orders to Co-optex for supplying the remaining unsupplied quantity.

25. The Tamil Nadu Textile Corporation, Coimbatore had entered into an agreement for supply of dhoties and sarees with the suppliers. It is only

the TNTC which was expected to take action as per the terms of the agreement if it came to its notice any violation of any of the terms and

conditions of the agreement.

26. The evidence of PW1, PW2 and PW56 is relied upon by the prosecution in order to prove the charge as against the first accused. PW1, PW2

and PW56 have come out with a version that the first accused forced them to pay advance cost of procurement of dhoties and sarees to the

suppliers. Exs.P14 to P16 are the agreements entered into between the Tamil Nadu Textile Corporation, Coimbatore represented by its Managing

Director and the suppliers viz., M/s. Raja Ram Apparel, M/s. Balaji Agencies and M/s. Cotton Yarn Textiles. Clauses 4, 5 and 7 of the said

agreement are found to be relevant. Clause 4 would read that the supplier shall complete the supply before 31.12.1991. Delay in supply of goods

if any will attract penalty of Rs. 5/- per dhoti and Rs. 8/- per saree per day. The supplier also shall deposit one percent of the value of the contract

with Tamil Nadu Textile Corporation. The Tamil Nadu Textile Corporation, Coimbatore is bound to pay advance amount equivalent to 25% of the

value of the contract to the supplier at the time of placing firm order and the same shall be adjusted in one lumpsum, the moment the bills are

presented after the entire supply of ordered quantity is over. Though the agreement does not bear the date, it is found that the suppliers have put

their signature with the date 18.12.1991. The aforesaid terms and conditions would disclose that the suppliers are entitled to get 25% of the value

of the orders, but, surprisingly, the Finance Department was pleased to issue the communication dated 21.12.1991 under Ex.P54 to the Managing

Director of TNTC through the Director of Handloom and Textiles that before releasing any amount to the suppliers, the Corporation should ensure

that there was adequate security for the payments. No payment should be made unless TNTC was sure that the fund was secured and should take

full responsibility for the releases. The tenderers might be requested to produce bank guarantee before giving any advance payment to them. The

Managing Director of TNTC was requested to scrupulously follow the said instruction issued by the Government through Finance Department

before making any advance payment to the suppliers.

27. Firstly, it is found that the said communication issued by the Finance Department dated 21.12.1991 marked as Ex.P54 cannot overrule the

terms and conditions entered into between TNTC and the suppliers on 18.12.1991 under Exs.P14 to P16. The suppliers are entitled to seek for

release of advance of the value of the orders placed with them as per the terms of the agreement under Exs.P14 to P16. The communication sent

by the Finance Department to the TNTC will not restrain the suppliers who are governed only by the terms and conditions found in the contract.

28. PW1, the Finance Controller had insisted that the suppliers should produce bank guarantee before disbursement of advance payment of 25%.

He has made it clear that no advance payment would be made unless the bank guarantee is furnished by the suppliers. In the above background of

the case, it is alleged that the the first accused contacted PW1 over phone and informed him that 25% advance payment should be made to

Selvaraju A4 but, PW1 had reiterated saying that the Finance Department had insisted that the bank guarantee should be given towards the

payment of advance of 25%. The allegation is that the first accused posed a question to PW1 as to whether the orders of the Finance Department

would prevail over the orders of ""Amma"". The serious allegation is that the first accused threatened PW1 with dire consequences if the instruction

flowed from him was not adhered to. But, PW1 informed the first accused that if any telex message was received from PW75, Director of

Handloom and Textiles, he was prepared to release the amount.

29. PW2, the Managing Director of TNTC would depose that he was called by the first accused over phone and asked to give advance to the

three suppliers. A1 informed PW2 that if the advance was not paid, the suppliers might not be in a position to make supplies before Pongal festival.

PW2 brought to the notice of A1 that the Finance Department had issued a direction to obtain security. But, at the same time, A4 expressed his

inability to give bank guarantee for the 25% advance sought for by him. PW2 further communicated to the first accused that problem would arise if

bank guarantee as directed by the Finance Department was not given by the suppliers. The first accused informed PW2 that he would talk to

PW75 Mr. Muneer Hoda.

30. PW56, the Manager (Marketing) would depose before the court that on 26.12.1991, A6 Muthusamy sought for 25% advance after giving

bank guarantee for 1%. But, PW56 referred the matter to PW1 who informed him that 25% advance could not be released unless bank guarantee

for 25% was given. After some time, PW1 came and informed PW56 that the Handloom Minister contacted him over phone and asked him as to

why he has not released the advance payment. PW1 further informed PW56 that he had replied to the Handloom Minister that no advance amount

could be paid without bank guarantee as stipulated by the Finance Department.

31. It is pertinent to note that PW1 had admitted that he was not familiar with the voice of the Minister as he never spoke to him earlier. It is his

firm assertion that it was only the telephone operator who connected him to the call made by the Minister. Never had he stated before the

investigating officer that he was connected to the Minister through the telephone operator. He had also not stated before the investigating officer

that he informed PW2 about the telephone call he received from the Minister. On 30.12.1991, he happened to meet PW75 the Director of

Handloom and Textiles at Chennai, but, for reasons best known, he had not informed PW75 his boss about such telephone conversation made by

the Minister to him. Surprisingly, he never disclosed the interaction he had with the Minister to anyone till he was examined by the investigating

officer on 9.11.1996.

32. PW2 Mr. Kanagaraj, Managing Director of Tamil Nadu Textile Corporation, Coimbatore would depose that PW1 connected telephone call

of the Minister to him through telephone intercom, saying that the Minister was on the line. But, PW1 did not disclose that he transmitted the call

received from the Minister to PW2. PW56, on his part, would depose that PW1 informed him about the telephonic conversation he had with A1.

But, PW1 is very silent about such a disclosure to PW56 regarding the telephonic conversation he had with the Minister. PW1, PW2 and PW56

had met PW75 the Director of Handloom and Textiles at Chennai. PW75 was not briefed of any such threatening call made by the Minister to

PW1. One would expect that PW1 and PW2 being the subordinates of PW75 would have definitely informed PW75 about such a shocking

conversation, more especially when the discussion centered around the payment of advance to the suppliers. PW2 has given up, during trial, his

original stand before the investigating officer that he was directly contacted by the Minister. It is his deposition that it was only PW1, who called

him over intercom and gave connection to the Minister. PW2 has further deposed before the court that the Minister did not express his desire to

talk to anybody else in the office after the conversation with him was over. But, the investigating officer, PW80 would state that PW2 disclosed to

him during investigation that the Minister, after conversing with PW2 wanted to talk to PW1 and PW1 was asked to attend the call of the Minister.

PW2 has come out with a quite contradictory version before the court as to the manner in which the call was attended by him and PW1. It is not

the stand of PW1 during the course of trial that PW2 called him after attending a call from the Minister and asked him to talk to the Minister. On

the other hand, he would depose that he spoke to him directly. The aforesaid inconsistent, self-contradictory and inter-inconsistent stand would go

to cast a cloud on the case of the prosecution that A1 contacted PW1 over phone and threatened him to make advance payment to the suppliers.

Even during the course of trial, PW2 has not come out with a version that he was threatened by the Minister.

33. On a careful scrutiny of the evidence of PW1 N.K. Srinivasan, Finance Controller, Tamil Nadu Textile Corporation, PW2, Mr. Kanagaraj,

Managing Director, Tamil Nadu Textile Corporation, Coimbatore, PW9 Mr. M.A.Perumal Raja, PW56 Mr. Govindaraj, Marketing Manager,

Tamil Nadu Textile Corporation and PW62 Mr. P. Shankar, Secretary, Handloom Department, it is found that 25% advance amount was

released to the suppliers only with the approval and sanction of PW75, the Director, Handloom and Textiles. PW1 himself would admit that as per

the agreement entered into between TNTC and the suppliers, 25% advance amount had to be made against one percent earnest money deposit or

equivalent bank guarantee given by the suppliers. The said terms of the agreement were accepted by the Government. The direction under Ex.P54

to go in for security for the payment of advance amount to the suppliers was issued subsequent to the agreement entered into between the parties.

It appears, the suppliers insisted for 25% advance amount on furnishing 1% EMD or bank guarantee. But, PW1, had insisted that bank guarantee

should be furnished for releasing the advance amount. PW1 and PW2 had contacted PW75 over phone. He asked them to release the advance

amount without insisting for bank guarantee. He also promised them that he would take earnest steps to withdraw the directions issued by the

Government under Ex.P54. PW1 has categorically deposed that only on the instruction of PW75, the advance amount of 25% was released. The

proceedings dated 13.1.1992 marked as Ex.D5 would clearly show that PW1 had made an endorsement on the note prepared by PW9 that only

as per the instruction of the Director of Handloom and Textiles, PW75, the advance amount was released. PW2 also has subscribed his initial as

Managing Director just below the above endorsement. It is not the version of PW75 that he was influenced by A1 for releasing the amount. PW1,

PW2 and PW9 have released the advance amount only as per the direction of their superior, PW75. It is quite clear that A1 had not influenced the

decision taken by PW75 and the execution of the directions of PW75 by PW1, PW2 and PW9.

34. In the proceedings dated 18.12.1991 marked as Ex.D7 issued by PW2, it is stated that the advance amount could be released on getting 1%

earnest money deposit or bank guarantee for the equal amount from the suppliers. In the letter, Ex.D9 dated 28.12.1991 written by PW2 to

PW75, he has clearly stated that he contacted PW75 over phone and the latter instructed him to act as per the agreement and make payment of

advance after inspecting the goods supplied. PW2 would also admit that after consulting the Director, PW75, it was decided to release 25%

advance amount and the advance amount was, in fact, released. It is admitted by PW2 that advance amount was paid to three suppliers as per the

proceedings, Ex.P111 dated 10.1.1992 after getting approval of PW75. It is also admitted that about six crores of rupees were disbursed as

advance after thorough discussion in the Board Meeting. In the letter, Ex.D12 dated 30.12.1991 written by PW2, there is a reference as to the

discussion about the release of advance to the suppliers with PW75, Director of Handloom and Textiles, Chennai on 30.12.1991 in the presence

of PW56, Manager (Marketing). PW2 and PW75 were aware of the inconsistency existed between the agreements, Exs.P14 to 16 and the

proceedings, Ex.P54 issued by the Finance Department. They did not venture to go in for a fresh agreement, instead they decided to release 25%

of the advance as per the agreement in existence with the fond hope that the direction issued by the Finance Department would be revised. PW2

has categorically stated that he released the advance amount to the suppliers not out of the pressure given by the Minister but on the basis of the

directions issued by PW75.

35. PW19 is a Dummy Official letter written by PW2 to PW75 Mr. Muneer Hoda. It is not an out and out official communication where he is not

supposed to articulate certain outward pressures he allegedly received. The Dummy Official letter is a communication between one to one. PW2

would categorically admit that he has not stated anything about the request made by the first accused on 9.1.1992 to pay advance to the suppliers

in the said Dummy Official letter, Ex.P19. On a perusal of Ex.P19, it is found that there is no reference as to the request emanated from first

accused for making payment of advance to the suppliers. It is his admission that he himself released the advance amount to the tune of Rs. 12.50

crores as on 13.1.1991 before ever he proceeded on medical leave. PW80, the investigating official in this case also would state that the

investigation would disclose that PW2 in fact released the advance amount to the tune of 12.50 crores as on 10.2.1992 when PW2 actually

proceeded on medical leave.

36. PW56 Mr. Govindaraj, Manager (Marketing) TNTC, Coiimbatore would dislcose that he in fact contacted PW75 over phone on 26.2.1991

and asked him to release 25% advance to Balaji Agencies. His further version is that PW75, having assured that he would prevail upon the

authorities who issued the order, Ex.P54 to raise the same, directed PW56 to release the advance amount. Therefore, PW56 released Rs.

1,96,12,000/- to Balaji Agencies as advance as per the advice of PW75 and PW1. PW1, PW2 and PW56 had met PW75 at Chennai on

30.12.1991. PW75 informed them that the scheme of the Chief Minister should not suffer on account of non-payment of advance. Therefore, it

was his advice that the advance amount sought for by the suppliers should be immediately released. It is found that PW2 contacted Perumal Raja,

PW9 over phone and asked him to release Rs. 2,18,19,000/- to each of the firms viz., Raja Ram Apparels and Cotton Yarn Textiles being 25%

advance payable to them. Again, there was payment of 25% advance on 13.1.1992 to those three suppliers. Had PW75 not given clearance for

release of the advance amount, those top officials would not have released the advance. It is found that PW2 was the Managing Director of TNTC

at the time of payment of advance. The alleged pressure emanated from A1 was totally ignored by those top officials. They had acted only on the

advice of PW75 who wanted to see that the scheme floated by the Chief Minister was not defeated.

37. PW75 has categorically stated that the very distribution of dhoties and sarees was an important scheme floated by the Government and the

Government wanted to implement the scheme within a short span of time. Therefore, he wanted to take follow up action immediately. He would

further depose that the Government of Tamilnadu allotted 12.5 crores to TNTC which was 50% of the said scheme as it found that delay in

making payment of advance would derail the implementation of the scheme within the prescribed time. As per the version of PW75, PW2 placed

an agenda regarding the payment of 25% advance to the suppliers before the Board Meeting that was held on 31.12.1991. He would also admit

that no order from the Secretary to Government for releasing the advance was necessary and the TNTC being the party to the contract was at

liberty to decide the issue regarding payment of advance to the suppliers.

38. The pressure with threatening tone alleged to have been mounted by the first accused gets vaporised in the face of the aforesaid admissions

made by the witnesses during the course of trial in the background of the contemporaneous records produced and the attending circumstances

emerged therefrom. It is quite clear that the top officials had taken the decision in order to save the pivotal scheme floated by the Government even

ignoring the writ flowed from the Finance Department which would not have binding force on the suppliers who were not parties to such a writ and

were bound only by the terms of the agreements, Exs.P14 to P16 entered into between themselves and TNTC, Coimbatore. In fine, it is found that

the release of advance payment to all the three suppliers was done by PW1 and PW2 and other officials only on the considered advice of PW75,

Mr. Muneer Hoda.

39. It is alleged by the prosecution that PW2 was transferred and A3 was substituted in his place by A1 to suit his convenience. PW49 was the

Chief Secretary at the relevant point of time of transfer of PW2 and posting of A3 in his place. The Chief Secretary has deposed before the court

that only in order to meet the efficiency in Handloom and Textiles Department, A1 made recommendations for approval. It is found that A1"s

recommendation was placed before the Chief Minister and it was only the Chief Minister who passed an order transferring PW2 from TNTC and

posting A3 in his place. The Chief Minister was the competent authority for effecting such transfers, the Chief Secretary has deposed before the

court. The Chief Minister is not bound to accept all the recommendations of the Minister. The Chief Minister has every authority to accept or

reject the recommendations of the Minister depending upon the merit of the plea for transfer.

40. It is in evidence that A3 was working in Melur Co-operative Spinning Mills prior to his transfer and PW2 was the Commissioner of

Corporation prior to his transfer to TNTC. It is convincingly contended by the defence that A3 had adequate experience in Textiles compared to

PW2. In the estimation of the top officials, the scheme for free distribution of dhoties and sarees was an important one and the Government was

bent upon implementing the same within a short while .A1 did not deny that he recommended the transfer of PW2, but, it is found that the ultimate

decision of transfer was taken by the Chief Minister. An advance of rupees 12.5 crores was released to the suppliers and only goods worth rupees

three crores alone were supplied by the suppliers during the tenure of PW2 as Managing Director, TNTC as per the investigation done by PW80.

No wonder, the Government had felt the necessity to post a more competent person who had extensive experience in the Textile field to overcome

the stumbling blocks in the execution of the scheme at a fast pace. It is also the admission of PW2 that he went on medical leave as he was really

unwell in the month of January 1992. He had been on leave for 2-1/2 months right from 10.2.1992. Therefore, it appears, the Government took a

decision to transfer PW2 and substitute A3 in his place. No ill-will or motive can be attributed to A1 for the recommendation he made for

replacement of PW2.

41. It is alleged that the first accused had imposed penalty of just Rs. 50,000/- to each of the three suppliers though it attracted more penalty. The

agreement was between TNTC and the suppliers. The TNTC had to implement the terms of the agreement entered into between TNTC and the

suppliers. Even as per the terms of the agreement, if there is any breach of the conditions found in the agreement, it was only the TNTC who

should take action as against the suppliers. A1 in his capacity as Minister had no role to play with respect thereto.

42. Mr. Ragupathy, the Chief Secretary, had strongly recommended in para 7(c) of the proceedings, Ex.P74 that penalty provision need not be

enforced as orders for supply of the balance materials were cancelled. The said proceedings were approved by the Financial Secretary and the

Chief Minister. Based on the said proceedings, the orders placed with the suppliers stood cancelled on 7.8.1992. The cancellation of the orders

placed to the suppliers was informed to PW75 only on 10.8.1992. PW75 placed a note which was approved by PW65 to the effect that penalty

might be levied for unsupplied sarees numbering 5.476 lakhs and 19.797 dhoties as on 7.8.1992. It is found that the parties had already supplied

the goods for the value of the advance made to them as on the cancellation of the order on 7.8.1992. Therefore, the question of imposing penalty

for the unsupplied portion of the sarees and dhoties would not arise. But, it is found that A1, after having discussed with PW65 and PW75,

thought it fit to levy penalty on the suppliers as they had not completed the scheme within the time frame fixed and he also ventured to blacklist

those suppliers so that they would not get any orders in future from the Government.

43. PW65 would admit that PW75 discussed the matter with the Minister (A1) and the file was sent to him on 20.12.1992. PW65 would now

claim that the word ""Secretary"" was found struck off when the file was sent to him. It is his affirmative stand that the matter was not at all discussed

with him. But, quite surprisingly, when he was examined by the investigating official with respect to the deletion of the word ""Secretary"" in the

Circulation Note, Ex.P74 he did not choose to inform the police about the same. He had also not enquired in the office as to why the word

Secretary"" was struck off in the circulation note, ex.P74. He never ventured to find out who actually struck off that word. Having found that the

word ""Secretary"" was deleted in the Circulation Note, Ex.P74, he now conveniently deposes that he was not discussed with respect to the

Circulation Note, Ex.P74. The file had come down to him on 21.12.1992 with the orders passed by the Minister (A1). It has been clearly stated

therein that the penalty of Rs. 50,000/- may be imposed on each of the parties. The above facts and circumstances would indicate that the word

Secretary"" was not originally struck off when PW65 was examined by the police during the course of investigation.

44. PW80, the investigating officer in this case also would conveniently say that he failed to examine PW65 with reference to the deletion of the

word ""Secretary"" from the Circulation Note, Ex.P74. The duty cast upon the investigating officer to find who actually struck off the word

Secretary"" from the Circulation Note was not discharged by him. In the above factual scenario, the court cannot ignore the fact that PW75 Mr.

Muneer Hoda was dropped from the array of the accused at the time when the charge sheet was laid by PW80. PW75 also, on his part, would

depose before the court that he having come to know that he was impleaded as one of the accused in this case, gave statement before the learned

Judicial Magistrate in order to save himself from the complicity in this case.

45. It is the definite evidence of PW65 that he wanted the file to be circulated to the Minister for Finance since the proposal involved levy of

penalty of Rs. 50,000/-, but, the first accused made a note that such a necessity for circulation to the Minister of Finance did not arise as no

expenditure on the part of the Government was involved. PW65 would state that necessary instructions as to how files should be dealt with are

found in the Government of Tamilnadu Business Rules and Secretariat Instructions. He has not referred to the rule as per which the file should be

marked to the Finance Department. He would also admit that he could not recollect if there was any such rule.

46. PW80, the investigating officer in this case has simply made some oral enquries as to how the files should be dealt with at the Secretariat.

PW30 and PW31, who were examined by PW80 with respect thereto have not spoken to anything about the procedure adopted by the

Secretariat while marking files to various Departments. No instructions concerning movement of the files at the Secretariat was produced before

the court.

47. The only objection raised by PW65 was that the file was not circulated to the Finance Department. When such an objection was overruled by

the Minister, he would depose that he had no other say except accepting the same. It is his admitted position that if any mistake was committed in

adhering to certain procedures, it is his duty to point out the same. Even if a Minister commits any mistake, he is duty bound to point it out. But, the

evidence on record would indicate that he had not objected to the orders passed by the Minister(A1) that there was no necessity to mark the file

to the Finance Department. It is further found that PW65 had also not objected to the quantum of penalty that was fixed by the Minister. The

above facts and circumstances would indicate that the token penalty was imposed on the defaulting suppliers only after interaction with PW65 and

PW75.

48. The said file was received by A1 on 30.3.1992. The file relating to Ex.P74 was sent to the Chief Minister on 16.4.1992 after A1 made a note

having entered into a discussion with the Department of Handlooms and Textiles. It is found that the file was held up in the office of the Chief

Minister for more than three months and the file was cleared only on 7.8.1992. PW65 received the file on 10.8.1992 and brought to the notice of

A1 on 25.8.1992. The file received by the first accused was sent back to PW65 on 25.8.1992 and the same was held up in his office till

20.10.1992. A1 received the file on 20.10.1992 and the orders were passed by A1 as stated above. Therefore, it could be seen that there is no

delay on the part of A1 in dealing with the file Ex.P74. The prosecution failed to establish that A1 violated any procedure, norms or Government

instructions and thereby committed criminal breach of trust to cause loss to the funds of the Tamil Nadu Textile Corporation.

49. Coming to the sanction accorded by the Government of Tamilnadu to prosecute A1 u/s 197(5)(b) of the Code of Criminal Procedure, it is

found that request for such sanction had emanated from the Additional Director General of Police (Crimes). It is submitted by the learned Counsel

appearing for the appellant that the sanction order Ex.P66 is vitiated.

50. But, the learned Special Public Prosecutor would contend that sanction was properly accorded by the Governor of Tamilnadu to prosecute the

first accused. To speak about the sanction accorded by the Governor of Tamilnadu to prosecute A1, an Assistant Secretary, General

(Confidential), Secretariat one Mr. R. Mahadevan was examined as PW40. Firstly, he was not examined by the police. The sanction order,

Ex.P66 was admittedly signed by one M. Devaraj by order and in the name of Governor of Tamilnadu. The prosecution has not chosen to

examine the said Devaraj. PW40 would simply state that he only sent the proposal for sanction. He was not aware as to who actually submitted

the papers before the Governor of Tamilnadu for obtaining sanction for prosecution as against A1. He did not know as to how many witnesses

were examined by the investigating agency and how many statements and witnesses were sent to the Governor of Tamilnadu for obtaining sanction.

He would candidly admit that he did not know all those particulars.

51. PW40 would state that all the records relating to this case were despatched to the Governor of Tamilnadu on 30.1.1997 and the sanction

order was passed and the file was returned on the very same day to the Secretariat. The original sanction order accorded by the Governor of

Tamilnadu was not produced before the court. The sanction order, Ex.P66 also do not reflect that the statements of witnesses and the materials

seized and recovered were perused before ever sanction was accorded. More importantly, sanction order did not indicate under what

circumstances PW75 Muneer Hoda was exonerated from the prosecution. There is no dispute to the fact that voluminous materials were collected

by the investigating agency in this matter. It is humanely impossible to thoroughly peruse the entire material documents before ever according

sanction in a day.

52. In this case, it is found that the file was sent to the Governor of Tamilnadu with a pre-conceived opinion that it is a fit case to accord sanction.

Even if the Minister ceased to be the Minister, sanction for prosecution is mandatory u/s 197(1) of the Code of Criminal Procedure. In view of the

above facts and circumstances, the court comes to the decision without any hesitation that the sanction for prosecution is vitiated.

53. Therefore, it is held that charges of conspiracy, criminal breach of trust, cheating, criminal misconduct by abusing his official position as public

servant, abetment to commit criminal breach of trust and receipt of pecuniary advantage framed as against A1 stood not proved by the

prosecution.

54. Let us now deal with the charges framed as against the second accused R.N. ayaprakash. It is alleged that the second accused R.N.

Jayaprakash threatened Mr. V. Kanagaraj, PW2 saying that A1 was very unhappy with him and asked him to proceed on leave. He also informed

him that the first accused intended to post one Narasimmalu in the place of Mr. V. Kanagaraj as Managing Director of TNTC as he was not

amenable to him.

55. It is found that all the accused stood trial, but, quite unfortunately, the judgment against all the accused except A2 was pronounced on

16.3.2000 and the case against the second accused was split up in though he was present to receive the verdict. The case against the absconding

accused would normally be split up. In case, one of the accused chooses not to co-operate with the trial of the case and wantonly disrupts the trial

proceedings, the court may think in terms of splitting up his case for the sake of convenience as the other accused who are in incarceration shall not

suffer on account of the pendency of trial. But, in this case, no reason was assigned by the Trial Judge as to why the case as against this appellant,

who fully co-operated with the other accused for the ongoing trial was split up not during the course of recording evidence but at the time when the

judgment was pronounced. It is also not the case where the court thought it fit to give opportunity to the prosecution as against the second accused

to address a particular issue relating to him and therefore, it chose to split up the case as against the said accused. It is found that the new

incumbent Judge chose to pronounce the judgment as against the second accused whose case was split up on the basis of the very same materials

already recorded in the presence of all the accused including the second accused. At any rate at this distance of time, the above said improper

procedure adhered to by the Trial Court is ignored by this Court as no prejudice was caused to the appellant/second accused in pronouncing the

judgment later in point of time after splitting up the case as against him on the very same materials.

56. PW2, during the course of chief examination, deposed as follows:

When I was in the office, I received a phone call from one J.P. i.e., Jayaprakash after a lapse of one week from the date of the D.O. Letter,

Ex.P19 written by him. Jayaprakash introduced himself over phone that he was a relative of the Minister. He stated that the Minister was very

angry with him as I expressed my inability to make payment of advance. Therefore, the Minister wants me to go on leave and the Minister wants to

appoint one Narasimmalu in my place.

57. During the course of cross-examination, PW2 has come out with the following version:

I do not remember the purchase of sarees and dhoties worth rupees eighteen crores through TNTC in the year 1992. I disbursed advance

payments on 26.12.1991, 21.12.1991 and 13.1.1992. A sum of rupees twelve crores was released by way of advance by me. I do not remember

whether the total advance amount received by TNTC from the Government upto 31.1.1992 was Rs. 12.5 crores. It is correct to state that I

disbursed to the suppliers the entire sum of Rs. 12.5 crores received upto 31.1.1992. I do not remember that I applied for medical leave on

20.1.1992. I do not have any acquaintance with the second accused when I went to the Minister''s residence. I have seen the second accused. A2

has spoken to me only once on telephone. I am not acquainted with the voice of A2 on telephone as A2 spoke to me on telephone only on that

occasion. He has spoken to me in person. When A2 spoke to me on phone, I told him that I had already applied for medical leave.

58. The above version of PW2 would disclose that he had no occasion earlier to converse with him over phone. A2 has stoutly denied such

conversation embarked upon by him with PW2. The Trial Court has returned a judgment of conviction as against the second accused solely based

on the unacquainted telephonic voice of A2 allegedly heard by PW2. The records relating to the receipt of telephone message in the voice of PW2

was not produced by the prosecuting agency. Nothing is on record to establish, when there is a denial from A2, that he did make telephone call to

PW2. In the above circumstances, it is totally unsafe to rely upon the uncorroborated testimony of PW2 that he received a message from A2 as to

the displeasure expressed by A1 and the proposal to transfer him and appoint one Narasimmalu in his place.

59. In the chief examination, PW2 has categorically stated that he informed A2 that he had already applied for medical leave. PW17 P.Wintzer

Singh, Section Officer, General (Special-A) Department, Secretariat, Chennai has spoken to the fact that PW2 applied for medical leave as per

the application, Ex.P46 dated 20.1.1992. PW2 had already released the entire advance to the tune of Rs. 12.5 crores on 26.12.1991,

31.12.1991 and 13.1.1992 as evidenced by Exs.D5 and D11. It is relevant to refer to the evidence of PW2 that even at the time when the second

accused contacted him over phone, he informed him that he had already applied medical leave. Therefore, the said telephonic call had emanated

from A2 to PW2 after the application for medical leave was submitted by PW2 on 20.1.1992. The admitted position is that the entire advance

amount of Rs. 12.5 crores was already released by PW2 to the suppliers even before he applied for medical leave on 20.1.1992 and therefore, no

threatening call would have emanated from A2 on the ground that PW2 failed to release the advance amount to the suppliers. Therefore, the

version of PW2 with regard to the threatening call emanated from A1 and A2 is found to be shaky.

60. Of course, it is a well settled position of law that conviction can very well be based on a sole testimony of a solitary witness. The court must be

satisfied that implicit reliance can be placed on the testimony of such a solitary witness and his testimony is totally free from any blemish. In such

circumstances, without scouting for corroboration, the court can base its conviction on the testimony of a solitary witness. It is totally unsafe to

convict the second accused solely based on the uncorroborated testimony of PW2 who has come out with such an inconsistent stand. The Trial

Court has failed to appreciate that the evidence of PW2 is not free from the cloud of suspicion. The prosecution also has failed to bring on record

the materials to cumulatively form a chain of circumstances to clamp the accused with the charge of conspiracy. The theory of conspiracy

projected by the prosecution cannot even be imagined as against the second accused. Solely based on such a truncated version of PW2 as against

the second accused, it is highly unsafe to decide that such a phone call was made by the second accused to PW2. The nature and content of the

call spoken to by PW2 was completely demolished by the second accused. The alleged telephone call made by the second accused cannot be

held to be adequate to convict A2 with the commission of crime alleged against him.

61. Surprisingly, the Trial Court made a comment that even during the questioning u/s 313 of the Code of Criminal Procedure, the second accused

has not chosen to deny the telephonic conversation he had with PW2. On a perusal of the answers given by A2, when he was questioned u/s 313

of the Code of Criminal Procedure, it is seen that he has categorically denied the case of the prosecution that he had telephonic conversation with

PW2.

62. The Trial Court, as rightly pointed out that the learned Counsel appearing for the second accused, failed to appreciate the question put to the

second accused u/s 313 of the Code of Criminal Procedure and the answer given by him. In view of the above facts and circumstances, it is held

that none of the charges framed as against the second accused stood established by the prosecution beyond reasonable doubt.

63. Coming to the charge framed as against the third accused R.Narasimmalu, the then Managing Director of TNTC, it is alleged that he failed to

adhere to the procedures and Government instructions while purchasing sarees and dhotes for free distribution during Pongal Season of the year

1992 and thereby he committed criminal breach of trust. It is alleged that he cheated the Tamil Nadu Textile Corporation/Government of

Tamilnadu by accepting the supply of sub-standard and lesser specification sarees and dhoties. The further allegation is that he also cheated the

Tamil Nadu Textile Corporation/Government of Tamilnadu by dishonestly inducing the Government to part with huge funds to the said Corporation

for supply of sub-standard and lesser specification sarees.

64. It is on record that the scheme for free supply of sarees and dhoties was mooted in the month of November 1991 and the scheme got

sanctioned by issuance of G.O. No. 292 dated 27.11.1991 (Ex.P72). G.O. No. 304 dated 15.12.1991 (Ex.P73) was issued by the Government

of Tamilnadu for supply of 30 lakhs dhoties and 40 lakhs sarees by way of procurement of tenders. The proposals of the Director of Handlooms

and Textiles were examined and accepted by the Government of Tamilnadu. As per the letter dated 15.12.1991 (Ex.P110), the Secretary to

Government directed the Managing Director of TNTC, Coimbatore and the Director of Handlooms and Textiles, Madras to adhere to certain

procedures while releasing the advance amount to the suppliers. Under Ex.P3 dated 24.12.1991, the allotment of the quantity of supplies to be

made was communicated to the tenderers. Six tenderers were originally selected on the basis of the samples and rates given by each of the

tenderers, it is admitted by PW62 Secretary, Handooms and Textiles, Department. PW62 had sent a circulation note, Ex.P120 alongwith the draft

agreement to be entered into with the suppliers by TNTC. Ex.P120 had received the approval of the Chief Minister which would go to establish

that the Chief Minister approved the successful tenderers, the draft agreement and the payment of 50% which comes to Rs. 12.50 crores as

advance payment to the suppliers. The above circulation note was approved by PW62 the Secretary, Handloom and Textiles Department, A2

Minister for Handlooms, Finance Secretary and the Chief Minister. PW75 Director, Handlooms and Textiles was in charge of overseeing the

aforesaid scheme. The TNTC was asked to enter into agreement with the suppliers and disburse payment for the supplies made. The forms of

agreement, Exs.P14 to P16 were sent by the Government with a direction to the TNTC to enter into an agreement with the private suppliers.

PW75, the Director, Handlooms and Textiles directed TNTC to enter into agreement and give advance to them and also make payments for the

supplies made. The Managing Director and staff of TNTC have entered into agreements with the suppliers, made advances and payments to the

suppliers.

65. The scheme was approved by the Government of Tamilnadu. The file concerned was seen and approved by the Finance Secretary. The draft

agreement was also seen by him. Clause 7 of the agreements, Exs.P14 to P16 contemplates payment of advance amount equivalent to 25% of the

value of the contract to the suppliers. The aforesaid clause found in the agreement does not stipulate that the advance amount shall be disbursed

only after obtaining proper security therefor. TNTC was bound to give legal effect to the terms of agreements, Exs.P14 to P16 entered into by it

with the private suppliers. As rightly pointed out by the learned Counsel appearing for the appellants, the prosecution has proceeded on a wrong

footing that the instruction flowed from the Finance Department to insist for security for the advance payment was not adhered to by the accused,

throwing to wind the aforesaid Clause 7 found in those agreements to disburse the advance amount equivalent to 25% of the value of the contract.

66. Exs.P14 to P16 were entered into between TNTC and the private suppliers on 18.12.1991. But, Ex.P54, the communication emanated from

the Finance Department was issued only on 21.12.1991. The internal communication Ex.P54 within the Department will not have overruling effect

on Clause 7 found in Exs.P14 to P16. If at all TNTC could pursue the private suppliers to enter into a fresh agreement or additional agreement

pursuant to the communication, Ex.P54 issued by the Finance Department and a clause was introduced to make payments of advances only on

furnishing proper security therefor, then the prosecution has a case. Release of advance amount in terms of the agreement entered into between the

parties, ignoring the subsequent internal communication issued under Ex.P54 will not make out any criminal offence.

67. The discrepancy between the lawful agreement entered into between the parties and the communication, Ex.P54 issued by the Finance

Department were brought to the notice of PW75 Mr. Muneer Hoda, Director, Handlooms and Textiles by PW1, PW2 and PW56. They were

assured by PW75 that he would take up the matter with the Finance Department and would see to it that suitable modifications were made to the

communication under Ex.P54 issued by the Government. It is also found that a threadbare discussion was held with respect to the aforesaid issue

in the TNTC Board Meeting that was held on 31.12.1991. Therefore, no irregularity in making payment of advance as per the terms of the

agreement could be complained of by the Government.

68. PW2 Mr. Kanagaraj was the Managing Director, TNTC Coimbatore till 9.2.1992. The scheme was conceptualized, tenders were finalised,

tenderers were identified, advance amount was received by TNTC from the Government, the tenderers commenced supplies of dhoties and sarees

and advance payments were released on 26.12.1991, 31.12.1991 and 13.1.1992 to the tenderers only during the tenure of PW2 Mr. Kanagaraj.

The third accused R.Narasimmalu succeeded PW2 as Managing Director, TNTC only on 10.2.1992.

69. The third accused had received supplies of dhoties and sarees for the value of rupees nine crores for the advance payment already released by

PW2. He had also received further supplies of the materials worth about rupees six crores. Ignoring the aforesaid facts and circumstances, it is

found that, the prosecution has come out with a case that an advance payment of rupees 1.22 crores was made to Balaji Agencies in excess to

payment already made. Separate agreements had been entered into by all the three firms. The three firms had been accepted as independent

entities by TNTC. They had submitted separate bills towards their individual accounts. It is true that an advance amount of Rs. 3,92,24,000/- was

paid to Balaji Agencies, but, as on 20.3.1992, Balaji Agencies had already supplied goods worth Rs. 5,14,30,980/-. Thus the payment of rupees

1.22 crores by A3 to Balaji Agencies was for the supply they have made over and above the advance amount already paid to them by PW2. In

fact, A3 had settled the bills of Balaji Agencies after adjusting the advance amount already paid by PW2 to the said Agency. The letter, Ex.P30

dated 23.9.1992 shot off by A3 to M/s. Cotton Yarn Textiles and Company and M/s. Raj Apparel would establish that A3 had called upon those

firms to make supplies without any further delay before 31.3.1992 as the amounts received by them as advance were pending with them.

70. It is contended that A3 chose to release further amount to the suppliers inspite of the contra direction issued by PW75 under Ex.P130. On a

careful perusal of Ex.P130, it is found that it was only an office note found in the files of Director of Handlooms, Chennai addressed to the

Superintendent, "H" Section of the same office and not an official letter. There is nothing on record to show that Ex.P130 was communicated to

the third accused while he was functioning as Managing Director of Tamil Nadu Textile Corporation, Coimbatore. Therefore, the allegation that the

third accused chose to ignore the communication, Ex.P130 sent by PW75 and released advance payment does not have a leg to stand upon.

71. It is further alleged that the letters, Exs.D14 to D20 written by PW75, Director of Handlooms and Textiles between April 1992 and August

1992 to the third accused would go to show that PW75 had in fact directed the third accused to make supplies of sarees and dhoties various

Colectorates. Those letters were written by PW75 subsequent to 4.5.1992, the alleged date of communication sent by PW75 to stop release of

further advance. On the contrary, Exs.D19 and D20 would demonstrate that PW75 had been instructing the third accused to continue supply of

sarees and dhoties upto 2.8.1992 and 4.8.1992 respectively. M/s. Cotton Yarn Textiles and M/s. Balaji Agencies had completed the supplies for

the amount of advance released to them and they had no balance of supply to be made. In fact, Cotton Yarn Textiles supplied goods worth Rs.

11,86,492.80 over and above the advance amount and Balaji Agencies had also supplied goods worth Rs. 40,148/- over and above the advance

amount released to them. The third accused had strictly adhered to the stipulation found under Clause 7 of Exs.P14 to P16 in releasing 25% of

advance to the suppliers.

72. The other allegation as against the third accused is that he paid godown rent, insurance fees and transport charges for a sum of Rs. 1,70,000/-

for the sarees seized on 25.7.1992 from Raja Ram Apparels and kept in store. It is found that PW75 had instructed the third accused under

Ex.D1 to seize the goods from Raja Ram Apparels equivalent to the amount of advance pending with them. The said instruction had been issued

by PW75 about 12 days prior to the cancellation of the orders which is confirmed by PW56 Govindarajan, Manager, TNTC. He would further

depose that the said seizure of goods was insisted in order to avoid laying of civil suit for recovery of the advance amount which would be a time

consuming process. The fact remains that TNTC had no godown facilities. Therefore, A3 had to hire a place to keep the seized goods worth Rs.

60 lakhs and take insurance coverage for the said goods kept in a third party place in order to safeguard the property of Tamil Nadu Textile

Corporation. The goods had to be necessarily transported to the respective Taluk Offices for distribution to the beneficiaries. Even in case of

transportation of the goods by the suppliers, TNTC had borne the transport charges. In view of the above, the allegation that the third accused

incurred unnecessary expenditure towards payment of godown rent, insurance fees and transport charges does not survive legal scrutiny.

73. It is on record that 1,70,000 sarees were segregated as they were found to be as per specifications and were sent for distribution to the

beneficiaries. PW7 Thiagarajan, Assistant attached to TNTC would admit that 18,400 sarees which were not upto the specification were returned

to M/s. Raja Ram Apparels. No evidence is forthcoming from the side of the prosecution to establish that 1,70,000 sarees measured only 4.5

metres. Further, PW8 V. Gurusamy, Assistant, Sales Section, TNTC, Coimbatore and PW9 M.A. Perumal Raja in their evidence have admitted

that receiving acknowledgment and making payment for the supply of sarees and dhoties directly despatched by the suppliers to the Taluk Offices

and received by the revenue officials were the duties of TNTC.

74. As per the instruction found in Ex.P120 issued by PW62, Secretary, Handlooms Department, as soon as the supplies were made, samples

would be drawn from different lots for test checking and the tenderers might depute their representatives for verification alongwith the

representatives of the Director of Handlooms and Textiles/Collectorate in this behalf at the time of test checking. In the circulars, Exs.D24 and

D25 issued by PW75, the Circle Assistant Directors were requested to depute their Junior Technical Assistant/Senior Technical Assistant to the

Collectorate and check the quality with respect to the specifications already communicated in respect of Handloom goods produced by Power

Loom Co-operative Societies. In the aforesaid communication, TNTC was not instructed to inspect the goods, may be on account of huge volume

of inspection work involved in the said process and the shortage of officials with TNTC.

75. P.Ws.5, 11, 15, 16, 18, 19, 20, 24, 27, 29, 43 and 58 had gone for inspection to various Taluk Offices and having inspected the supplies

made by the suppliers, submitted their report, Exs.P22, 23, 37, 41, 43, 47, 48 51, 71 and 133. The fact remains that none of the reports was sent

to the TNTC nor was any copy thereof marked to TNTC. Exs.D19 to D22 would establish that the third accused instructed the suppliers to take

back the goods which were found defective and arrange to replace the same, the moment it was brought to the notice of the third accused by

PW75 about certain complaints of supply of defective goods. The above facts and circumstances would clinchingly show that the third accused

had no role to play in the matter of inspection of the alleged inferior quality goods supplied by the private suppliers. PW5 Rajendran would depose

that he seized two defective sarees under Ex.P22. Quite unfortunately, those two defective sarees were not produced before the court.

76. The third accused had acted all along only under the guidance and instruction of PW75. On 20.12.1992, a letter was sent by the Government

to levy a penalty of Rs. 50,000/- on each of the three private suppliers. The third accused had carried out the Government instruction found therein

diligently. There is no terms and conditions found in Exs.P14 to P16 to forfeit the earnest money deposit made by the private suppliers. The

Government also vide letter dated 20.12.1992, had not instructed the third accused to forfeit the earnest money deposit made by the private

suppliers. PW34 Mr. K.Velayutham, Managing Director, TNTC, who succeeded the third accused, would admit the aforesaid position.

77. TNTC had paid a sum of Rs. 18,24,34,718/- to the private suppliers and received dhoties and sarees for the said amount. The payments had

been disbursed only in accordance with the instructions flowed from PW75 under Exs.D23 and D24.

78. It is found that A3 had served as an Administrative Officer in Madurai District Co-operative Spinning Mill at Melur. In order to implement a

huge scheme floated by the Government within a short span of time, he had been appointed as Managing Director, TNTC replacing PW2. He

cannot be found fault for such a shuffle. He was not involved in finalising the tenders and identifying the tenderers.

79. The third accused had taken over charge from PW2 as Managing Director, TNTC on 10.2.1992 when the scheme was in the process of

implementation and about 70% of the advance amount was already released. It appears that the third accused made earnest efforts and procured

sarees and dhoties from the suppliers for the advance amount already released to them within a short span of about six months. He had also levied

penalty for the shortfall of supplies. No irregularity in procurement and distribution of sarees and dhoties during the tenure of A3 was established

by the prosecution. The conspiracy theory slapped on the third accused lacks foundation.

80. Though there is an allegation that wrongful loss was caused to the Tamil Nadu Textile Corporation/Government of Tamilnadu on account of the

conduct of A3, there is virtually no evidence whatsoever adduced by the prosecution to establish the said loss. P.Ws.1, 2, 6, 7, 8, 9, 34, 56 and

75 were directly involved in the implementation of the said scheme. None of them has referred to the loss caused to the Government. No

documentary evidence also was produced to establish the pecuniary loss to the TNTC/Government of Tamilnadu. Nor was any evidence adduced

to establish that A3 got pecuniary advantage in the implementation of the said scheme. In view of the above, the court finds that the prosecution

has failed to establish any of the charges framed against the third accused Narasimmalu.

81. Now let us take up the case of the prosecution as against the fourth accused R. Selvaraju. The allegation is that he caused loss to the

TNTC/Government of Tamilnadu. He, with the connivance of A1 and A3 cheated the Tamil Nadu Textile Corporation a sum of Rs. 41,99,517/-.

A4 alongwith the other accused got himself enriched at the cost of the TNTC/Government of Tamilnadu. The core allegation is that with the

intention to cheat the Government causing loss thereby, the fourth accused alongwith other accused, supplied clothes with lesser quality and also

with lesser measurement.

82. There is virtually no evidence to rope in the accused for the offence of criminal conspiracy allegedly hatched by him alongwith other accused.

That the dhoties and sarees supplied by the fourth accused Selvaraju were inferior in quality and lesser in measurement was the core charge as

against the fourth accused. The prosecution chose to examine P.Ws.5, 11, 14, 15, 16, 18, 19, 20, 21, 27, 29, 33, 43, 52 and 58 to speak about

the inferior quality of the dhoties and sarees supplied by the fourth accused.

83. PW11 N.Karnan, Assistant Director, Handlooms Department, Erode had submitted a report Ex.P22 dated 8.3.1992 to PW75, Director of

Handlooms and Textiles. He was said to have produced two sarees which were found defective in quality from Lalgudi Taluk. There is no

explanation from the prosecution as to what happened to those two sarees alleged to have been seized and produced by PW2 during the course of

inspection. Those two sarees should have been produced as M.Os to decide whether those sarees were of inferior quality and were lesser in

measurement. The non production of those two sarees allegedly seized by PW11 goes to the root of the case of the prosecution.

84. As per Ex.P110, as soon as supplies were made, the samples shall be drawn from different lots for test check and the representative of the

tenderer shall be associated for verification of the samples alongwith the representatives of the Director of Handlooms and Textiles/Collector

authorised in that behalf at the time of test check. PW11 has simply submitted a report to PW75. The copy of the report was not sent to the fourth

accused. There is nothing on record to show that the defective dhoties and sarees were inspected by PW4 in the presence of the representative of

the fourth accused as contemplated under Ex.P110.

85. PW14 S. Suriyanarayanan, Senior Assistant, K4 Section, Collectorate, Erode has spoken to the defective sarees with lesser measurements.

The fact remains that those defective sarees were taken back by the private suppliers under Ex.D6 and the value of those sarees were deducted in

the account of the suppliers.

86. PW15 S. Muthu Raman, Senior Assistant, K4 Section, Collectorate, Erode spoke about non distribution of sarees received from Balaji

Agencies and the report sent by him by telex to the Joint Commissioner of Land Revenue, Chennai, but, it is found that the report reflecting the

details of discrepancies noted down therein submitted by him was not produced before the court. PW15 cannot speak orally about the report

submitted by him without the production of the report before the court.

87. PW16 D. Padmanabhan, Tahsildar attached to Bhavani has deposed that the inferior quality sarees supplied by Balaji Agencies were taken

back and the price of those sarees were deducted from their account as per Ex.D6.

88. As per the evidence of PW18 K. Raman, Junior Assistant, Taluk Office, Namakkal that a person by name R.S. Manian gave a complaint

about the inferior quality sarees supplied by the Firms. Firstly, the said R.S. Manian was not examined on the side of the prosecution to establish

the distribution of defective sarees. PW18 admits that R.S. Manian had not specifically stated as to from whom the said inferior quality sarees were

received. PW16 would come out with a revelation that he did not see those defective sarees while submitting the report. Admittedly, he had not

got any special training to determine the inferior quality of dhoties. Therefore, much importance cannot be attached to the evidence of PW18.

89. PW19 P. Venkatesan, Tahsildar, Paramathi Velore has requested PW18 to submit a report after enquiry on the complaint given by R.S.

Manian. During the course of cross-examination, he would admit that no other person except the said R.S. Manian lodged any complaint about

supply of inferior quality sarees or dhoties. PW19 could not say on what basis he jumped to a conclusion that the sarees supplied were inferior in

quality. Further, the clothes said to have been distributed to the said Manian were not produced before this Court.

90. PW20 C. Mathiazhagan was working as Village Administrative Officer. He distributed the clothes of inferior quality to the poor people of

Pandamangalam village, he deposes before the court. During the course of cross examination, he would admit that it was not possible for him to

say on what basis he arrived at a conclusion that those clothes were of inferior quality. He was also not aware as to how many clothes were of

inferior quality. It is his version that the people who got supply of clothes free of cost did not also complain of any defect in the dhoties and sarees

received by them. Therefore, the evidence of PW20 does not in any way support the case of the prosecution.

91. PW21 S. Selvam was working as Technical Assistant-Senior Grade (Handloom). He would depose that a clothe with measurement of 3x3

inches was sent to him and he submitted a report, Ex.P49 after examining the said clothe with respect to its quality. There is no material on record

to establish that the sample clothe with the measurement of 3x3 inches was drawn from the clothes distributed to the poor. Therefore, his evidence

is not sufficient to prove the charge as against the accused that he supplied inferior quality and lesser in measurement clothes.

92. PW5 was instructed by PW75 to take the measurement of the clothes. According to PW5, he checked the said clothes and found the the seal

of one Janatha Clothes of West Bengal. He measured ten sarees in the said pracel and found that those sarees were with a length of 4.45 to 4.65

metres. It is his evidence that he checked the dhoties and found that they were good quality products. Unfortunately, he had not preserved those

dhoties and sarees with inferior quality supplied to the poor.

93. As per Ex.P110, the representative of the supplier should also have been associated during the course of checking the sarees and dhoties, but,

no one has spoken about the association of the representatives of the private suppliers while checking the defective sarees and dhoties supplied by

them.

94. PW27 A. Bharathidasan, the Tahsildar, Erode Taluk would state that about 200 sarees with inferior quality were supplied, but, they were

received back as per Ex.D6 by the suppliers and necessary deduction of the price was made in the account of the respective suppliers. Therefore,

no criminal liability can be fastened on A4 based on the evidence of PW27.

95. PW29 D.Calledwel, Assistant Director, Handlooms, North Arcot would depose that he proceeded to the office at North Arcot along with

PW28 and having measured the length of the sarees, he found that those sarees were with the length ranging from 4.60 metres to 4.75 metres. It is

his admission that he did not take notes with respect to the number of sarees checked by him and the number of sarees which were found defective

in measurement. No written report was also prepared by him. It appears that he had not chosen to disclose to anybody till the police officer

enquired him on 18.11.1997 about the defective measurement in the sarees supplied. He would also admit that no representative of the supplier

was present at the time of test checking done by him. There is no evidence to establish that those defective sarees and dhoties were supplied only

by the fourth accused Selvaraju. Therefore, the evidence of PW29 is of no avail for the prosecution.

96. PW33 S. Krishnamurthy, Senior Assistant attached to Nagapattinam District Collectorate has stated that there was an allotment of 4,03,000

sarees and 4,04,000 dhoties for Nagapattinam District. Out of the said allotment, 2,65,563 sarees and 8600 dhoties were procured from Rajaram

Apparels. It was informed to PW75 Director of Handlooms and Textiles that 2,05,000 sarees were with lesser length and with inferior quality.

During the course of cross examination, he would admit that he had no personal knowledge about the measurement and quality of the materials. He

was also not aware that those sarees were supplied only by Rajaram Apparels. In such circumstances, his evidence also cannot be banked upon

by the prosecution to prove the charge as against A4.

97. PW43, D.Raju, Assistant Director, Handlooms and Textiles has spoken about the defective measurement in the supply of clothes. It is his

evidence that he went to the Taluk Office in Pasumpon District and drew sample sarees and dhoties and inspected the same. He deposes that the

length of the saree was 4.05 metres and the breadth of the saree was 44. inches. During the course of cross examination, he would state that

45,277 sarees arrived at the Taluk Office in bundles, but, he was not aware as to how many bundles arrived there. He did not also know as to

how many bundles were checked and how many samples were drawn from the bundles. He would also admit that neither the supplier nor his

representative was present at the time of his inspection. He had not kept the defective sarees separately and seized them under the cover of

mahazar immediately after the inspection was completed by him. He was also not aware as to how many sarees were defective in measurement

and quality. It is not possible to come to a decision that the sarees sent to the Taluk Office, Pasumpon District were supplied only by the fourth

accused and some of the sarees supplied by him were defective in measurement and quality.

98. An attempt was made on the side of the prosecution through PW76 Prathap Mokashi that short length sarees and dhotes were procured from

West Bengal and supplied to TNTC. But, PW76 Prathap Mokashi would emphatically state that the sarees supplied by him through the fourth

accused Selvaraju measured 5 metres. PW5 has supported the defence set up by A4 Selvaraju that the sarees supplied by him were with proper

measurement. There is no embargo under the agreements Exs.P14 to P16 to purchase materials from West Bengal Co-operative Society.

99. PW51 M. Jayadev Sha, Production Manager of Bengal Handloom Development Corporation, in his evidence states that he sold sarees to

Mokashi Associates, Mumbai. He do not whispher anything about the supply of sarees either to the fourth accused or to all those firms.

100. PW59 A.S. Kuramani was the accountant of Shanthi Textiles and S.K. Textiles. He never spoke about the procurement of defective

measurement and defective quality sarees and dhoties from Balaji Agencies and two other firms. In Exs.P78 to P82, which were allegedly

prepared by him, there is no reference as to the measurement and the signature of the purchaser. The invoice does not disclose the length and

width of the materials supplied. There is also no proof for the payment of amount by A4 and his firms.

101. PW60 S. Venkatachalam was the accountant of P.M.Textiles and Kosalai Textiles firms. Never has he spoken about the sale of short length

sarees and dhoties to the fourth accused. On a careful scrutiny of the documents, Exs.P90 to P93, it is found that there is no reference to the

measurement therein.

102. PW61 Thangavelu was the proprietor of Shanthi Textiles. He has not spoken anything about the supply of short measurement dhoties and

sarees by Shanthi Textiles. The measurements have been specifically referred to in the bills given by Shanthi Textiles.

103. PW68 Ganesan of Swarnambigai Textiles, of course, has deposed about the short length sarees supplied by him. But, he had not specifically

referred to the short measurement in Exs.P85 to P87. The signature of the purchaser was not available therein and there is also no proof for

payment of the amount. PW68 would depose that only 31,000 sarees were supplied with a length of 4.60 metres. He supplied sarees worth Rs.

14,00,000/- to Balaji Agencies, Rajaram Apparels and received only 12,00,000/-. But, during the cross examination, he would admit that there

was no proof for the supply orders placed by both the firms. There was also no document to establish the receipt of the said amount of Rs.

12,00,000/- from those two firms. He also had not handed over any document to the investigating official. The version of PW68 that he made bulk

supply of sarees worth Rs. 14,00,000/- and received only a sum of Rs. 12,00,000/- without back up documents is found to be totally

unbelievable. There is also no evidence to establish that those sarees alleged to have been procured by Balaji Agencies and Rajaram Apparels

were supplied only to TNTC. PW68 feigned ignorance of the end utility of those sarees and dhoties allegedly procured by those two firms.

104. PW71 Shanmugam, Proprietor of M.P.S. Textiles did not refer to the defective measurement of the sarees and dhoties supplied by him.

PW73 Kuppusamy speaks about sale of sarees during the year 1996. We are concerned with the transaction of the year 1991-92. Further, he

was not aware of the measurements of the dhoties and sarees supplied by him and the persons to whom the clothes were supplied.

105. PW76 Prathap Mokashi in his evidence has clearly stated that the fourth accused placed orders for supply of 5 metre length sarees and he

also sold the sarees with the said measurement to A4 as per his demand.

106. The above discussion embarked upon by the court would go to show that there was no sufficient material or evidence to establish that short

length dhoties and sarees were procured by A4 and his firms and supplied to TNTC. Further, the sample dhoties and sarees drawn from the bulk

supplies made by the private suppliers were not inspected by the authorities in the presence of the private suppliers or their representatives. The

authorities concerned cannot level serious charge of supply of defective measurement and quality sarees and dhoties without associating the private

supplier or their representatives during the course of inspection quite in conformity with the terms under Ex.P110 issued by PW62, Secretary,

Handlooms Department. Therefore, the charge as against the fourth accused that defective measurement and quality sarees and dhoties were

supplied by the fourth accused and his firms stand not established.

107. The next serious charge is that a Firm by name Balaji Agency was a fake one inasmuch as the said Firm did not function at door No. 172

Mettupalayam Road, Coimbatore. It is also alleged that a Firm by name Cotton Yarn Textiles was not functioning at No. 1245, Mettupalayam

Road, Coimbatore. The fourth accused Selvaraju admits that he was supervising those two firms viz., Balaji Agencies and Cotton Yarn Agencies.

PW12 Sebastian, Assistant attached to K4 Section, Collectorate, Erode would depose that he proceeded to door No. 172, Mettupalayam Road,

Coimbatore on 4.1.1992 but, to his surprise, he found that no company by name Balaji Agency was found over there. But, during the course of

cross examination, he would state that PW14 Surinarayanan, Senior Assistant, K4 Section, Collectorate, Erode instructed him to go over to the

said address to request expeditious supply of the dhoties and sarees to Periyar District as per the orders placed with them. He would state that

there were tall buildings. He found two persons over there operating telephone in the verandah of the said building. They informed him on enquiry

that there were no such Balaji Agencies in the said building. He did not enquire as to their identity. He did not obtain anything in writing from to

vouch safe his visit to the said premises. He was also not aware of the details of offices functioning in the said tall building.

108. PW14 in his evidence would state that PW12 gave a report to him that Balaji Agencies was not functioning at Mettupalayam Road,

Coimbatore after paying a visit to the said place. PW14 had no personal knowledge about the existence or otherwise of Balaji Agencies at

Mettupalayam Road. He contradicts himself and states further that there was no written report received from PW12. PW12 had not visited any of

the offices located in the tall building to enquire about the location of Balaji Agencies. Therefore, based on the evidence of PW12 and PW14, the

court cannot jump to a conclusion that a roving enquiry was conducted to establish that there was no firm located at Mettupalayam Road in the

name and style of Balaji Agencies.

109. PW22 P.L. Karuppiah, Deputy Commercial Tax Officer, Coimbatore would state that Balaji Agency and Cotton Yarn Textiles were not

registered under the Commercial Tax Act. Non registration of those two firms under the Commercial Tax Act may invite action under the said Act.

But, non-registration would not decide the issue as to whether those firms were in existence at the relevant point of time.

110. PW23 A. Senthamarai, Village Administrative Officer, would state that he informed the Additional Superintendent who investigated the case

that Balaji Agencies was not functioning at 581 Mettupalayam Road and Cotton Yarn Mills was not functioning at 1245 Mettupalayam Road,

Coimbatore. During the course of cross examination, he would admit that he made an enquiry with the people living nearby during the year 1996.

He could not say as to whom he had in fact enquired about the office of those two firms functioned in the year 1991-92. The transaction is said to

have taken place during 1991-92 but, the enquiry was embarked upon by PW23 in the year 1996. It is quite probable that the firms functioning at

door No. 581 and 1245 would have vacated those premises.

111. PW67 R. Ayyasamy owner of the shop bearing No. 585 Mettupalayam Road would state that no Firm by name Balaji Agency was

functioning in the said address. In the chief examination he has stated that he let out the said building to one Palanisamy and Palanisamy was not

doing any business in the said premises as a over bridge was under construction behind the said road. The fourth accused Selvaraju is the sin-in-

law of the said Palanisamy. PW67 would admit that the said Palanisamy had paid rent till 1994-95. PW80, the investigating officer in this case

would candidly admit in his evidence that door No. 1245 and 1246 were available at Mettupalayam Road and both of those buildings belonged to

the family of fourth accused Selvaraju. If those two firms were not in existence, they could not have distributed about 38,00,000 sarees and

7,00,000 dhoties to all Taluk Offices in the State of Tamilnadu. It is not the case of the fourth accused that all the three firms manufactured the

sarees and dhoties in their premises and supplied them to the Government. It is the admitted case that they procured clothes from outside and

distributed to the Government. Therefore, a small office room for the Firms is sufficient to transact the voluminous business of procurement and

supply of clothes to the Government. Cheques were admittedly given on behalf of those two firms and they were encashed by remitting them in

bank. Therefore, the court finds that the prosecution has miserably failed to establish that those two firms were fictitious firms.

112. The next allegation as against A4 is that A7 Joseph had put signature in the cheques issued on behalf of Balaji Agencies and on behalf of

Cotton Yarn Textiles. The signature of one Kaliammal was obtained and sent for examination by the handwriting expert. Her signature did not tally

with the signature found in the cheques. Kaliammal was not examined before the court to speak to the fact that her sample signature was obtained

by the investigating agency. Therefore, there is a lack of proof that the signature of the mother of A4 by name Kaliammal was obtained by the

investigating officer for the purpose of comparison by the handwriting expert.

113. PW41 Sundarrajan and PW42 Dharmaraj would state that they got the signature of A7 Joseph, but, both of them depose that they do not

know who the said Joseph was. PW41 would depose that he was present at the time of obtaining the signature of Kaliammal by the investigating

official. It is his version that he was not aware as to who the Kaliammal was. In the above facts and circumstances, the non examination of

Kaliammal before the court deals a deathblow to the case of the prosecution that the signature of Kaliammal was forged by A7 Joseph. To top it

all, the Trial Court was pleased to acquit A7 Joseph, but, no appeal was preferred by the State as against the order of acquittal recorded by the

Trial Court. Inasmuch as the Trial Court has completely disbelieved the version of the prosecution that A7 forged the signature of Kaliammal, the

charge as against A4 that cheques were encashed in the name of Kaliammal by floating a fictitious firm also falls to the ground.

114. PW34 Velayutham, who was working as Managing Director in the rank of District Revenue Officer, would state that Balaji Agencies got

back several thousands of sarees which were found defective during the year 1992. If at all there was no such Firm, such a large number of sarees

would not have been received back by the Firm during the year 1992. He would also admit that the Firm of the fourth accused paid a sum of Rs.

50,000/- as fine levied by the Government for the delayed supplies of sarees and dhoties. The delay in making supply as per the orders placed

with the firms of the fourth accused led to imposition of fine of Rs. 50,000/- and the said amount was also paid by the Firm of the fourth accused.

Therefore, the charges as against the fourth accused Selvaraju were not established beyond reasonable doubt.

115. Now let us take up the charge against the fifth accused Arvind Kumar R. Shah. PW10 G.Neelakandan, Officer, Lakshmi Vilas Bank,

Coimbatore was examined with the fond hope of establishing the charges as against the fifth accused. PW10 would state that the fifth accused

wanted to open one current account. Such a request was made by the fifth accused to PW10 over phone. PW10 has not spoken to the fact that

A5 specifically wanted Lakshmi Vilas Bank, Coimbatore to open a current account for three firms. PW10 would clearly admit that accounts in the

name of the three firms were opened only on the introduction of A6 and that the signature of A6 was found in the introduction form for opening of

current account for the three firms. PW10 would depose that 95% of the cheques relating to those three firms were filled only by A6. The

prosecution has not produced even a single cheque filled by A6.

116. It is the version of PW10 that the fifth accused wanted Lakshmi Vilas Bank, Coimbatore to accommodate the three firms for obtaining some

bank security. At the same time, he would admit that bank guarantees were given on the basis of cash balance maintained by the respective firms.

PW10 would further state that the firms transacted their accounts to the tune rupees 18 crores through their current accounts. No complaint from

any source as to the said transaction of business with the said bank was reported. When actually A6 had put his signature in the introduction form

for opening account in the name of the three firms on the basis of the alleged oral communication emanated from A5, A5 cannot be fixed with any

criminal liability.

117. Not even a single witness has deposed about the association of A5 during the course of procurement and supply of the sarees and dhoties to

the Government. Nothing is there on record to establish that he contacted anyone even over phone relating to the procurement and supply of the

clothes to the Government. P.Ws.1, 2, 4, 13 and 75 are all official witnesses who do not have any personal knowledge about the involvement of

the fifth accused in the business contract clinched by the fourth accused with the Government.

118. PW1 M.K. Srinivasan, Manager, TNTC would state that PW2 Kanagaraj, Managing Director, TNTC and PW4 S.Ramachandran, Joint

Director, Handloom and Textiles met A4 and A5 in the house of the latter and requested them to expedite the supply of sarees and dhoties as per

the orders placed. This is projected to show that the fifth accused was in the company of the fourth accused. The above version spoken to by

PW1 had been passed on by PW2 as per the evidence of PW1. Therefore, the aforesaid deposition of PW1 is found to be a hearsay version. To

top it all, PW1 never whispered anything about the presence of A5 in the company of A4 in his house. He also had not spoken to the fact that he

visited the house of A5. He also did not say that he passed on such an information to PW1. Therefore, the evidence of PW1, apart from the fact

that it was hearsay, is found to be totally unreliable.

119. PW13 Balakrishnan, Deputy Director, Handlooms and Textiles comes out with a new story that PW2 and himself went to the house of A5

on 6.1.1992 and met A4 and A5 over there. He had not enquired anything about the supply of materials. He did not know where the house of the

appellant was situated. He was really a stranger to the transaction as per his own showing. He would state that as PW2 and PW4 visited the house

of A5, he also accompanied them. He had not informed anybody about such a visit till he was examined by the police sleuth on 21.3.1996. It is

very important to note at this juncture that PW2 did not state that he made a visit to the house of A5 alongwith PW4 or PW13. PW4 also has not

stated that PW13 accompanied him. The evidence of PW13 is also found not believable.

120. PW4 Ramachandran, Joint Director, Handlooms did not depose that he ever visited the house of A5. His positive evidence is that he was

taken by PW2 to the office of A4 and A5 and not to the house of A5. PW2 has not corroborated such a version of PW4. PW4 speaks about the

submission of report on 7.1.1992. But, the prosecution has not pressed into service the said report submitted by PW4 for the reasons best known.

121. PW4 S.Ramachandran would further state that after interacting with A4 and A5 for about 45 minutes and also after perusing various

documents, letters, copies of demand drafts, etc., he was fully satisfied that A4 and A5 had taken all necessary steps to purchase the materials for

supply in terms of the orders placed. Even assuming for the sake of argument that A5 associated with A4 in procurement of clothes and supply of

the same to the Government, no mala fides or dishonest intention could be attributed to A5 to cheat the Government. It is a settled position of law

that criminal intention to cheat must be present to constitute an offence of cheating at the very beginning itself. Therefore, the evidence of PW1,

PW2, PW4 and PW14 failed to connect the fifth accused with any of the charges levelled as against him.

122. PW75 Mr. Muneer Hoda, Director of Handlooms and Textiles speaks before the court on the basis of some reports alleged to have been

received by him. He banks on the report of PW2 dated 9.1.1992 marked as Ex.P19. The report would reflect that PW2 had discussion with the

suppliers at their office. There is no reference as to his meeting with the fifth accused. There is nothing to indicate that he made a visit to the house

of the fifth accused. PW2 did not say that he made a visit to the house of A5. There is no material to clamp the fifth accused with the charge of

forgery. Not even a single witness speaks to the pecuniary advantage, the fifth accused obtained. No one refers to his association with anyone of

the accused to obtain pecuniary advantage.

123. Even assuming for the sake of argument that A5 did recommend for opening current accounts for three firms, such an act of A5 would not

amount to a criminal act. The money credited to the account of the three firms were dealt with by the responsible persons of that Firm. There is

absolutely nothing on record even to infer distantly that the fifth accused got pecuniary advantage out of the operation of those three firms with the

bank. The court cannot lose sight of the fact that the 7th accused, who allegedly forged the signature of the mother of the fourth accused was

acquitted of all the charges. In the above facts and circumstances, the court finds that the prosecution has not made out any case as against the fifth

accused. All the charges framed as against the fifth accused stand not established.

124. Let us now take up the charge as against the 6th accused P.Muthusamy. The 6th accused was slapped with the charge that he conspired

alongwith other accused for doing certain illegal acts for supply of sarees and dhoties with defective measurement and quality, commission of

criminal breach of trust against TNTC/Government of Tamilnadu and obtention of pecuniary advantage.

125. There is not even an iota of evidence to show that the sixth accused had any connection with the purchase and supply of sarees and dhoties

to TNTC. There is no material to show that he ever facilitated the commission of criminal breach of trust on the funds of TNTC. No one has

spoken about his association with A1 and A2. There is virtually no material to indicate even by inference that he was one of the conspirators.

There is nothing on record to show that A6 was in any way connected with A1, A2, A3 and A5 and that he did any act aiding A4 to commit the

offence of criminal breach of trust. Therefore, the said charge falls to the ground.

126. The 6th accused was charged with the offence of cheating punishable u/s 420 of the Indian Penal Code. The essence of the charge is that the

6th accused alongwith A4 and A5 dishonestly induced TNTC to pay a total sum of Rs. 46,99,517 to the three firms of A4 in respect of the supply

of sub-standard and lesser specification sarees and dhoties. No witness has spoken to the nexus between A6 and TNTC. No one has referred in

their evidence the connection of A6 with the supply of sarees and dhoties for free distribution to the poor people. In the absence of any evidence

or material rope in A6 to indicate even distantly that he made any representation or inducement either directly or indirectly to the TNTC in order to

deliver any money to the firms of the fourth accused, the charge of cheating slapped on the sixth accused does not stand legal scrutiny.

127. The further charge as against the sixth accused is that he cheated Lakshmi Vilas Bank, Uppilapalayam Branch, Coimbatore by dishonestly

inducing the said bank by producing seven forged cheques alleged to have been given by A7 to deliver a total sum of Rs. 2,61,98,069.50. The

prosecution is bound to establish that the said seven cheques were forged by seventh accused and produced by sixth accused in the bank and that

the sixth accused, having had knowledge about the forgery committed by A7 knowingly presented those forged cheques in the bank and thereby

he dishonestly induced the bank to deliver the aforesaid sum of money.

128. The evidence of handwriting expert, PW55 is the only material available on record to show that A7 forged the signature of Kaliammal. No

bank official or any other witness speak about the forgery committed by A7 while visiting the bank for encashing the cheque.

129. Kaliammal, whose signature is alleged to have been forged in the seven cheques, was not examined in the court though she was cited as one

of the prosecution witnesses. The said Kaliammal never complained to the police about the alleged forgery. Nor was any material produced before

the court to show that, at any point of time, she ever complained of forgery committed by A7 to any of the authorities. To top it all, the Trial Court

had acquitted A7 from the charge of forgery and the State had not preferred any appeal as against the order of acquittal recorded by the Trial

Court against A7. Therefore, the charge of forgery levelled against A6 is not made out.

130. PW35 V. Ramachandran, who was the Manager of Lakshmi Vilas Bank Limited, Uppilipalayam Branch, Coimbatore speaks to the handing

over to the police the challans submitted for obtaining demand drafts alongwith seven cheques which are said to be forged. But, quite unfortunately,

those challans submitted for obtaining demand drafts were not produced by the prosecution. He would also depose that he handed over another

23 cheques to the investigating agency. Some of those cheques pertain to the account of Kaliammal. A comparison of the signature in those

cheques would definitely throw some light on the aforesaid contentious issue with respect to the allegation of forgery.

131. The defence took steps to summon certain documents from the bank relating to the three out of seven cheques and the same were marked as

Exs.D2 to D4. Those three cheques were drawn in favour of ""Yourselves"". PW54 the bank official admits, on a perusal of Exs.D2 to D4, that

demand drafts had been obtained by the Firm concerned by using those three cheques. It has been demonstrated by the defence that no forgery

was committed with regard to those three cheques and the money was utilised only by the account holder.

132. PW36, the bank official, who passed two of the disputed cheques viz., Exs.P63 and P64, would categorically state that Kaliammal,

Proprietrix of Balaji Agencies signed Exs.P63 and P64. It is his further evidence that he did not notice any difference in the signature of Kaliammal

when he passed those two cheques. PW38, another bank official, who passed the cheque, Ex.P65 would state that Kaliammal had signed the

cheque. He had not noticed any variation in the signature of Kaliammal while passing the said cheque.

133. The defence has established with the aforesaid cogent and acceptable evidence that Exs.P63 to P65, the cheques issued by Kaliammal were

not forged and that the proceeds of those cheques were utilised only by the account holder. But, quite unfortunately, the expert, PW55 would state

that those cheques were also forged. As far as other four cheques are concerned, the prosecution failed to examine any bank official to speak

about the passing of those cheques. We are left with only the uncorroborated testimony of the handwriting expert to show that the cheques were

forged.

134. The court will have to find whether the opinion evidence of PW55 could be safely relied upon to base a conviction on A6. The expert

evidence was contradicted by the documents Exs.D2 to D4 and by the oral testimony of PW36, PW38 and PW54 in connection with the three

cheques, Exs.P63 to P65. No other material is there to corroborate the handwriting experts except Exs.P34, P35, P36 and P108. The court will

have to bear in mind that his evidence is only opinion evidence. To top it all, Kaliammal was not examined to speak about the forgery and also to

speak about the sample signatures alleged to have been collected from her. In the absence of Kaliammal, no one can assertively say that the

sample signature was obtained by the investigating agency. Therefore, the opinion evidence of PW55 stands rejected.

135. The next question that arises for consideration is whether the sixth accused produced those seven cheques to Lakshmi Vilas Bank Limited,

Uppilipalayam Branch, Coimbatore. PW36 would state that Muthusamy produced the cheques Exs.P63 and P64 in the bank. PW37, the bank

official would depose that Muthusamy received cash for those two cheques. Similarly, PW38, another bank official would state that Muthusamy

produced the cheque, Ex.P65 in the bank and got money. It is important to note that those witnesses, who were examined on 30.6.1999, failed to

identify as to whether A6 P.Muthusamy, who was present in the court, presented those cheques and encashed the same. Despite the fact that A6

was present in the court, those witnesses had not identified him in the court.

136. There is absolutely no evidence to establish as to who actually presented the cheques, Exs.P34, P35, P36 and P108 in the bank and who

actually encashed the same. Even assuming for the sake of argument that A6 in fact presented those three cheques, Exs.P63, P64 and P65, no

criminal liability can be fastened on A6 for the charge of forgery, as the principal charge of forgery as against A7 could not be established by the

prosecution and as a result of which, A7 got acquitted. There is also no material to show that A6 had knowledge of such forgery and presented it

with mala fide intention to cheat the bank. Therefore, looking at any angle, the court finds that the above charge does not bring home guilt to the

accused.

137. PW10, the Branch Manager of Lakshmi Vilas Bank, Uppilipalayam Branch would say that A6 signed in introductory column found in the

account opening form of all the three firms. A6 admits that he in fact signed in the introductory column of the account opening forms of the three

firms. Mere introduction of a customer to the bank does not fasten any criminal liability on the introducer. A6 has admitted during the course of

proceedings u/s 313 of the Code of Criminal Procedure that he used to deposit the cheques signed by A4 through one Ramasamy and

Sivaprakasam and help them in getting demand drafts.

138. PW51, the Production Manager of West Bengal Handloom and Power Loom Development Corporation would depose that sarees were

sold by the said Corporation to TNTC through Mokashi Associates and Pratap Mokashi, PW76 and one Muthusamy took delivery of the signed

challans. PW51 was examined before the Trial Court on 13.8.1999. The appellant was present in the court on that day. But, PW51 could not

identify A6. Further, his evidence was not supported by Pratap Mokashi, PW76. The disputed signature in the delivery challans were also not sent

for comparison by the expert. Therefore, the evidence of PW76 cannot be given much credence. PW56, the Marketing Manager of TNTC would

state that on 26.12.1991, Muthusamy came on behalf of Balaji Agencies in a car and he accompanied him to Tiruppur and Erode. He deposes

that he informed PW75 that Aravind Kumar Sha and Muthusamy looked into the supply and Muthusamy paid one percent security deposit by way

of cheque and asked for 25% advance on behalf of two firms on 26.12.1991 and 27.12.1991. It is his further version that PW2 Kanagaraj

informed Muthusamy that he would talk to PW75 Director of Handloom and Textiles with respect to the request for payment of 25% advance.

But, in the cross examination, PW56 would admit that he did not have any direct knowledge about the role of the sixth accused in the firms floated

by A4. He would also admit that it was only PW2, the Managing Director who told him that Muthusamy came in a car. PW2 Mr. Kanagaraj did

not support the version of PW56. PW56 could not identify A6 on 26.8.1999 when he was examined, even though A6 was present in court on that

day. PW61, the owner of Shanthi Textiles and S.K.Textiles would depose that Muthusamy handed over the demand drafts to him for the supply of

sarees. A6 vehemently denied the aforesaid version of PW61. It is found that PW61 had not identified A6 when he was examined before the Trial

Court on 3.9.1991 inspite of the fact that A6 was present in court on that day.

139. In view of the above, the court finds that the charges framed as against the sixth accused also were not established by the prosecution.

140. The prosecution could not establish beyond reasonable doubt the charges levelled against A1 to A6. The materials produced on the side of

the defence throw a grave doubt on the charges against A1 to A6. The Trial Court has misdirected itself and has come to a wrong decision that A1

to A6 committed offences charged against them. Therefore, the verdict of the Trial Court is liable to be upset and set aside.

141. In view of the above, the judgment of conviction recorded by the Trial Court as against A1 to A6 and the sentence imposed on them stand

set aside. A1 to A6 are acquitted of all the charges framed as against them and they are set at liberty. The bail bond executed by them shall stand

annulled. Fine amount, if any, paid by them shall be returned to them. Consequently, the appeals stand allowed.