

## D. Paramasivam Vs State by Inspector of Police, SPE CBI EDW

**Court:** Madras High Court

**Date of Decision:** April 3, 2007

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 207

Penal Code, 1860 (IPC) â€” Section 120B, 34, 420, 466, 467

Prevention of Corruption Act, 1947 â€” Section 5(1), 5(2)

**Hon'ble Judges:** A.C. Arumugaperumal Adityan, J

**Bench:** Single Bench

**Advocate:** S. Jayakumari, Amicus Curiae, for the Appellant; N. Chandrasekaran, Special Public Prosecutor, for the Respondent

**Final Decision:** Allowed

### Judgement

A.C. Arumugaperumal Adityan, J.

This appeal has been preferred against A16 in S.C.C. No. 7 of 1978 on the file of the Additional

Special Judge/1st Additional Sessions Judge-cum-chief Judicial Magistrate, Coimbatore.

2. The charges levelled against A16 are u/s 120B IPC r/w Sections 466, 467, 468, 471 and 420 IPC and also r/w Sections 5(2) and 5(1)(d) of

the Prevention of Corruption Act 1947.

3. The short facts of the prosecution case relevant for the purpose of deciding this appeal are as follows:

Along with this accused, 17 other accused have been charged under the above provision of law. The investigation was done by SPE/CBI/ROW

,Chennai alleging that during 1973-75 all the accused have entered into a criminal conspiracy for circulating fake TP.1 permits and by transporting

non-duty paid tobacco under fake T.P.1 permits direct to the consignee and by producing fake T.P.1. permits obtained genuine T.P.1 permits for

sending non-duty paid tobacco and in pursuance of the criminal conspiracy A1 to A18 committed various offences and caused pecuniary loss to

the Government of India to the tune of Rs. 12,00,000/-. The charge sheet was filed against all the accused on 21.7.1978 u/s 120B r/w 420, 466,

467, 468, 471 IPC and Section 5(1) and 5(1)(d) of Prevention of Corruption Act.

3a) After furnishing copies u/s 207 Cr.P.C. on his appearance on summons, the learned trial Judge has framed charges as indicated above and

when questioned the accused pleaded not guilty.

4. A16 is an Inspector of Central Excise Department, Chettipalayam at the relevant point of time. Charge Nos. 301 and 302 are concerned with

A16. According to the prosecution, A16 who was then functioning as Inspector of Central Excise, Chettipalayam had recommended the issue of

L2 licence in respect of fictitious premises at Door No. 149, Sugunapuram in the name of P.W.127 (before the trial Court, he has been examined

two times as P.W.127 and P.W.145. P.W.127 would depose that A16 had signed in the various applications for obtaining L2 licence at the

instance of A1 and A7 and that he never carried on a tobacco business in door No. 149, Sugunapuram, the premises to which L2 licence was

recommended by A16. A16 was convicted on the ground that as a Public Servant, if he would have exercised prudence and vigilance at the time

of recommending the issuance of L2 licence in respect of door No. 149 Sugunapuram, he would have prevented L2 licence being issued in

respect of fictitious premises. Apart from P.W.127, there is no other witness examined on the side of the prosecution to prove the guilt of A16

u/s 420 IPC r/w 34 IPC and u/s 5(2) r/w 5(1)(d) of Prevention of Corruption Act 1947.

5. Mrs. S. Jayalakshmi, the learned Amicus Curiae appearing for A16 would contend that except the allegation that A16 while issuing L2 licence

without care and caution had recommended the same in respect of a fictitious premises at door No. 149, Sugunapuram, there is no other allegation

against A16. Under such circumstances, the charge levelled against A16 would not have been stated to be proved.

6. The learned Special Public Prosecutor for CBI Cases would also bring to the notice of this Court a dictum of the Apex Court in M. Narayanan

Nambiar Vs. State of Kerala, wherein the relevant observation applicable to the present facts of the case runs as follows:

No doubt all penal statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain

meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a "casus omissus", that the

thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right

to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and

within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common sense meaning of the language

used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly

not be found or made in the same language in any other instrument.

In our view this passage, if we may say so, restates the rule of construction of a penal provision from a correct perspective. As we will presently

show the case of the appellant on the facts found clearly falls not only within the words of Clause (d) but also within its spirit. Indeed if his argument

be accepted not only we will be doing violence to the language but also to the spirit of the enactment. First taking the phraseology used in the

clause, the case of a public servant causing wrongful loss to the Government by benefitting a third party squarely falls within it. Let us look at the

clause ""by otherwise abusing the position of a public servant"", for the argument mainly turns upon the said clause. The phraseology is very

comprehensive. It covers acts done ""otherwise"" than by corrupt or illegal means by an officer abusing his position. The gist of the offence under this

clause is, that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary

advantage. ""Abuse"" means mis-use ie., using his position for something for which it is not intended. That abuse may be by corrupt or illegal means

or otherwise than those means. The word ""otherwise"" has wide connotation and if no limitation is placed on it, the words ""corrupt", "illegal" and

""otherwise"" mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some

limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the

clause, that is to say, something savouring of dishonest act on his part. The contention of the learned Counsel that if the clause is widely construed

even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the

intention of the Legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word ""otherwise""

with the words ""corrupt or illegal means"" , and the dishonestly implicit in the word ""abuse"" indicate the necessity for a dishonest intention on his part

to bring him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the

word ""obtains"" be sought in aid to limit the express words of the section. ""obtain"" means acquire or get. If a corrupt officer by the said means

obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage; but it is said that in

Clauses (a) and (c) the same word is used and in the context of those clauses it can only mean getting from a third party other than the Government

and therefore the same meaning must be given to the said word in Clause (d) ""obtains"" in Clauses (a) and (b) in the context of those provisions may

mean taking a bribe from a third party, but there is no reason why the same meaning shall be given to that word used in a different context when

that word is comprehensive enough to fit in the scheme of that provision.

If we applies the principle laid down in the above said dictum A16 cannot be held guilty either u/s 420 r/w 34 IPC or u/s 5(2) and 5(1)(d) of the

Prevention of Corruption Act 1947. It cannot be said that he had mens rea at the time of recommending for the issue of L2 licence.If he would

have been taken some care and caution then he would have avoided issuing L2 licence in respect of fictitious premises in door No.

149,sugunapuram, for which lapse , I am of the opinion that he is liable only for a departmental action and not to be penalised under the above

provisions of law. Under such circumstances, I hold that the charge levelled against A16 cannot stated to be proved beyond any reasonable doubt.

7. In the result, Crl.A. No. 296 of 1996 is allowed and conviction and sentence imposed on A16 in S.C.C. No. 7 of 1978 on the file of the

Additional Special Judge/1st Additional Sesssions Judge-cum- Chief Judicial Magistrate ,Coimbatore is set aside and A16 is set at liberty. Fine

amount, if any paid, by A16 shall be refunded to him. The bail bond executed by A16 shall stand cancelled.

8. Mrs. S. Jayalakshmi, learned Counsel was appointed as Amicus Curiae. This Court records the appreciation of the valuable service rendered

by Amicus Curiae. Her remuneration is fixed as Rs. 3,000/-(Ruees Three thousand )Only to be paid by the Tamil Nadu State Legal Services

Authority.