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Court : Chennai

Decided On : Feb-05-1991

Reported in : 1992CriLJ661

Judge : Janarthanam, J.

Appeal No. : Crl. Appeal No. 759 of 1986

Appellant : Rajeswar, (Accused)

Respondent : State

Advocate for Def. : Accused and Mr. A.S. Chakravarthy, Government Adv. (Crl. side)

Advocate for Pet/Ap. : Mr. K.S. Ramachandran, Adv.

Judgement :

1. The appellant is accused in S.T.C. No. 16 of 1986 on the file of the Special Judge (Under E.C. Act), Madurai.

2. The accused was convicted and sentenced to rigorous imprisonment for three months and a fine of Rs. 100/- in default to rigorous imprisonment for one month for the offence under S. 7(1)(a)(i) of the Essential Commodities Act, 1955 (for short 'the Act') for refraction or violation of each of the provisions as adumbrated under Clauses 3(1) and (2) of the Tamil Nadu Essential Commodities (Display of

Stocks and Prices and Maintenance of Accounts) Order, 1977 (for short 'the Order'). The appellant is stated to have remitted the fine amount.

3. Accused is the proprietor of a provision store under the name and style of 'NEW WELCOME STORE' at No. 22/4 Main Road, Anna Nagar, Madurai. On 18-12-1986 between 16-30 and 17-30 hours, P.W. 3, the Sub-Inspector of Police, Civil Supplies C.I.D. Madurai inspected that shop along with other police personnel. At that time, accused was transacting the business. There was stock of baby food, tea packets, electric bulbs, chillies, pulses, rice, wheat, toilet soaps, detergent soaps etc. But accused did not display the stock or a list of prices showing the cost price and sale price of the same. Further there was no bill book, stock register etc. No licence or registration certificate was also obtained for running that shop. No accounts were maintained for the day-to-day transaction. Accused did not give satisfactory explanation for not keeping the same. P.W. 3 prepared an attakshi, Exhibit P. 4 in the presence of P.W. 1, whose signature is Exhibit P.W. 1.

4. He returned to the police station and registered a case in Crime No. 9/86 against accused for alleged offences under Section 7(1)(a)(ii) of the Act for violation of the provisions of Clauses 3(1) and (2) and 5(1) of the Order. Exhibit P. 5 is the printed FIR. The Inspector of Police verified the investigation done by P.W. 3, applied for sanction of the District Collector, Madurai for prosecution under the original of Exhibit P. 2 office copy of letter and obtained sanction order Exhibit P. 3. After completing the formalities of the investigation, the Inspector of Police laid a report under S. 173(2) Cri.P.C. for the aforesaid which was taken on file in the aforesaid Summary Trial Case.

5. Learned Special Judge, on consideration of the materials placed before him, found accused guilty, convicted and sentenced him as stated above, giving rise to the present appeal. However, accused was found not guilty of the violation under Clause 5(j) of the Order.

6. Learned Counsel Mr. K. S. Pamachandran appearing for the appellant would submit that the mahazar witness P.W. 1 turned hostile wholesale to the prosecution, the testimony of P.W. 3, Sub-Inspector of Police, Civil Supplies CID, madurai alone is not sufficient and adequate enough to fasten or mulct criminal

liability upon accused, inasmuch as P.W. 3 performed the dual role of the 'first informant' as well as the 'Investigating Officer' and this sort of infirmity is bound to reflect on the credibility of the prosecution case and in support of such a submission, implicit reliance is place upon the decision in Singaravelu v. State, 1985 MLW336.

7. Mr. A. S. Chakravarthy, Government Advocate appearing for the State would repel such a submission and further state that a learned Judge of this Court, who decided the case reported in 1985 MLW336, subsequently revised his opinion in Criminal Appeal No. 403 of 1983 (unreported) and therefore it is that the earlier view taken by him is of no consequence. He would further state that learned Judge, while revising his earlier opinion, correctly applied the ratio of the decision rendered by the apex of the Judicial Administration of this country in Bhagwan Singh v. The State of Rajasthan, : 1976 CriLJ713 and in this view of the matter, he would say that the submission of learned Counsel for the appellant cannot at all hold water.

8. The question involved appears to be rather so moot and knotty, which requires to be decided by delving deep into the matter by referring to certain provisions of the Code of Criminal Procedure and the Order, apart from considering the question in the light of the submissions of either Counsel.

9. There is no provision in the Code of Criminal Procedure defining either 'first information' or 'first information report'. What all the Code contains is the definition of a 'complaint' under Section 2(d) and it runs as under :-

'2. Definitions - In this Code, unless the context otherwise requires.

(d) 'complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation :- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to

be the complainant.'

As per the definition, a 'complaint' means after all 'an allegation'. Such an allegation may be 'oral' or 'in writing' to a Magistrate. It is to be done with a view to his taking action under this Code. It is not necessary that such allegation discloses the name of the person, who happened to commit the offence. What is required is that an offence had been committed. It specifically states that such a complaint does not include 'a police report'. The Explanation appended therein points out that the report submitted by a police officer regarding the commission of a non-cognizable offence by way of fiction of law is to be deemed as a complaint and the police officer by whom such a report is made is by the same fiction to be regarded as the complainant. In respect of commission of a cognizable offence, after due investigation, a report is filed under Section 173(2), Cr.P.C.

10. It is also pertinent to note at this juncture the definition of 'investigation' under Section 2(h) of the Code and according to this definition, 'investigation' includes all the proceedings under that Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorised by a Magistrate in this behalf.

11. It is of signal importance to note that a mandate is cast under Section 154 Cr.P.C. to reduce into writing an information relating to a cognizable offence by a Station House Officer and he is empowered to investigate upon the receipt of such information under Section 156 Cr.P.C. Section 157 of the Code provides for investigation otherwise than in accordance with the receipt of information under Section 154. The Station House Officer is required to send a report to a Magistrate empowered to take cognizance, upon receipt of an information under Section 154 Cr.P.C. or otherwise as had been provided for under Section 157. In either case, after the completion of the investigation, he can submit a report under Section 173 Cr.P.C. As such, there is a mandate cast on the Station House Officer to investigate the case where he receives information under Section 154 or otherwise. In such state of affair, it cannot be stated that the officer in charge of a police station, who records the first information cannot at all investigate a case. If it is the intention of the Code that such an Officer should not at all investigate the

case, it could have been expressly stated so; but instead what has been stated is he had been empowered to take investigation.

12. As already indicated, though the phraseologies 'first informant' as well as 'first information' were not defined in the Code, yet the word 'information' had been used in various provisions of the Code. For instance, the word 'information' is specifically referred to in Section 154 of Cr.P.C. The word 'first' is not at all used preceding the word 'information'. The 'information' referred to in Section 154 is usually referred to as the 'first information', despite significant omission and absence of the word 'first' preceding the word 'information'. The phraseology 'first information' incorporated legally and judicially recognised is the basis upon which investigation would be and ordinarily is commenced by the police under Chapter XII of the Code. The information contemplated is in the nature of a complaint or accusation, or at least information of a crime with the object of setting the law in motion. In every trial, it is of very great importance that it should be known to the judicial officer before whom the case is ultimately tried, what were the facts given out immediately after the occurrence and on what materials the investigation commenced. The significance of the 'first information' is traceable to the notorious tendency to improve upon the original statement of facts to strengthen the case as it proceeds and sometimes to add to the persons originally named as the offenders and in this view of the matter it is of great importance to know what was said at first.

13. No doubt the first information cannot at all be used as a substantive piece of evidence and it may be used only for the purpose of corroboration under Section 157 of the Indian Evidence Act by the prosecution or for contradiction by the defence under Section 145 or for the purpose of impeaching the credit of the witnesses under Section 155(3) of the Indian Evidence Act. The importance of such an information can very well be understood in the light of the provisions, as adumbrated under Section 162, Cr.P.C. Since the first information swings the wheel of law into motion and investigation is commenced, any statement recorded during the course of investigation will fall within the purview of Section 162 of the Cr.P.C. and such a statement is inadmissible in evidence and that apart, the same can be utilised as a previous statement either for the purpose of corroboration or

for contradicting the maker thereof. If any statement is recorded previous to the commencement of the investigation, such statement cannot fall within the ambit and purview of Section 162 of the Cr.P.C. and the net result, in such a situation, will be that such a statement is practically admissible in evidence. It is also to be understood that all information, given first in point of time to the Station House Officer, cannot at all be considered, as the first information setting the wheels of law in motion. It is only such of those informations, which are authentic, in the sense of the source being specifically traceable and that apart, such information is relatable to the commission of a cognizable offence, leave alone whether the offender is known or not known, can alone be termed as the 'first information'.

14. In this context, the word 'relating' used in Section 154 of the Cr.P.C. is pregnant with significance and of paramount importance. The word 'relating' indicates that there need not be satisfactory proof that a crime had been committed. It would be enough if the information is suggestive of a reasonable suspicion that a cognizable offence has been committed. This sort of a view is further strengthened by the phraseology 'has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate' in Section 157, Cr.P.C. To sum up, if there is an information given first in point of time to a Station House Officer from an authentic source relating to the commission of a cognizable offence or suggestive of a reasonable suspicion that a cognizable offence has been committed, then the investigation can commence on the registration of a case on such information and such an information, for all practical purposes, be 'first information'.

15. In the backdrop of what should be construed as the 'first information', learned Government Advocate before venturing to make the submission on the main ground of attack as stated above, would resort to make a subsidiary submission that the 'first information' marked as Exhibit p. 5 in this case can, by no stretch of imagination, on the facts and circumstances of the case, be stated to be the 'first information' in the eye of law and if at all it can be given the status of a statement recorded during the course of investigation falling within the purview of Section 162 of the Cr.P.C. He would further submit that the first information in the case on hand cannot be anyone other than a 'reliable information' stated to have been

received by P.W. 3, Sub-Inspector of Police, Civil Supplies CID at the earliest point of time before even he proceeded to make inspection of the premises of the said shop and that should be construed as the 'first information'. No doubt, such an information had not been duly recorded by him. The fact that such an information was not reduced into writing, will not at all make any difference, inasmuch as that in subsequently dealing with the information so furnished, the police officer concerned, namely, P.W. 3 failed to do what the Code directed him to do, will not in any way change the character of that information. In this view of the matter, he would contend that P.W. 3 could not at all be construed to be the first informant, who happened to investigate the case and on verifying the investigation done by him, the Inspector of Police filed a final report under Section 173(2), Cr.P.C. subsequently and once such a conclusion is reached, the so-called dictum laid down by a learned judge of this Court in 1985 Mad Law Weekly (Crl.) page 336 that the complainant himself should not be the investigating officer and in any event it is an infirmity which is bound to reflect on the credibility of the prosecution case, thereby giving the benefit of doubt to accused, cannot at all be applied to the facts of the case, leave alone the tenability or otherwise of such a proposition, on the face of the decision of the apex of the judicial administration of this country, as referred to above. He was rather anxious in making such a submission that he should not be mistaken that he was agreeing with the proposition so laid in the aforesaid decision by a learned Judge of this Court.

16. In such a situation it becomes so moot a point to decide as to whether 'reliable information' stated to have been received by P.W. 3, which has been specifically referred to in Exhibit P. 5 is the 'first information' of the case. The answer to such a question, according to me, on the facts and circumstances of the case, cannot be anyone else other than an emphatic 'no'. The reason is rather obvious. I am not finding fault that such an information was not at all reduced into writing. In the eye of law, the first information can be either 'oral' or be reduced 'into writing'. That information being oral cannot at all make any difference. But what is significantly absent is the authentic source of information. Nothing had been indicated by P.W. 3 while recording Exhibit P. 5 the source from which he got the information. For the sake of emphasis, it may be stated, for the 'information (to fall under the grave of 'first information', the test to be passed relates to the test of its authenticity. In

other words, the information must be capable of being traced to be a specific individual, who would take the responsibility for the same, so that, should the information subsequently turn out to be false, the informant could be proceeded against. In this view of the matter, 'reliable information' stated to have been received by P.W. 3, though related to prospect of suspicion of commission of a cognizable offence, may not be termed as the 'first information' as it lacks its authentic source.

17. In order to highlight this aspect of the matter, an useful reference may be made to the decision in Gursami Naidu v. Guruswamy Naidu, : AIR1951 Mad812 . In that case, 'one G went to the police station and told the S.I. and the C.I. that his cousin (also G) had been shot and that he had been brought to the hospital. The S.I. did not take down this statement of G. in writing; he merely made an entry of it in the General Diary and proceeded to the hospital with the C.I. to see the injured man. The Sub-Magistrate, who was brought by the S.I., on the suggestion of the doctor, recorded a dying declaration from the injured man in the presence of the S.I. and the C.I. Half an hour later, the S.I. recorded another statement from the injured man. The police investigated the case and taking the view that it was false, prosecuted the injured under S. 211, I.P.C. In this case under S. 211, I.P.C., the injured man's statement to the S.I. in the hospital was treated as the F.I.R. and marked, obviously as the basis of the charge under S. 211, I.P.C. In revision, it is contended that the Courts below were in error in treating the injured man's statement to the 'S.I., as the F.I.R. in the case, that the real F.I.R. in the case was the unrecorded statement of G at the police station, that the injured man's statement to the S.I. fell within the mischief of S. 162, Cr.P.C. and was not therefore available to the prosecution to be used against the injured man in the case against him under S. 211, I.P.C. as a false charge preferred by him within the meaning of this latter section. There is considerable force in the contention. The fact, that G did not say at the station who the offenders were or give any inkling about them, is not a circumstance, which alters the character of that information. In quite a large number of cases the complainant does not know the names of the offenders. If A lays information that his house has been burgled the previous night, that would certainly be information relating to the commission of a cognizable offence within the meaning of S. 154, Cr.P.C., notwithstanding that the

complainant is unable to say who the offenders were or even what all articles he has lost. It is suggested that G the informant, made himself scarce, after giving the information. The inability or the failure of the station house officer to reduce to writing the information does not take away from it its character as a report relating to the commission of a cognizable offence. It is also suggested that in the information there was no indication as to whether the injured man was voluntarily shot or it was an accident. Whether an alleged offence is the result of an accident or the voluntary act of some one else are circumstances which can be properly ascertained only during the actual 'investigation. An enquiry the object of which is to discover whether the information is true or false is really the starting point of an investigation. Mere gossip or rumour or hearsay would not fall within the scope of S. 154, Cr.P.C. because it is really not 'information' at all. Gossip and rumour are not statements relating to a crime; they are statements about statements relating to a crime; they involve no assertion about the crime and have no shape or form. But if someone goes to a police station and definitely tells the officer in charge that a cognizable offence has been committed and that statement is made with a view to inducing the police officer to enquire into the matter, there can be no reason to refuse to call it 'information' within the meaning of S. 154, Cr.P.C. That in subsequently dealing with the information so furnished the police officers concerned failed to do what the Code directed to do, will not in any way change the character of that information. Whether a particular information amounts to an F.I.R. or not is essentially a question of fact and in the present case the matter is plain. The statement of the injured person to the S.I. on the basis of which he was convicted was doubtlessly a statement under S. 162, Cr.P.C. and therefore not available to be used against him. The revision petition is allowed.'

18. Let me now embark upon a discussion of the rival submissions hinging upon the question as to whether the first informant and the investigating officer cannot at all be one and the same individual and in such a situation whether such an infirmity is bound to reflect on the credibility of the case of the prosecution. Learned counsel for the appellant, as already stated, placed implicit reliance on the decision reported in 1985 MLW 336. In that case, a person was accused of an offence under Section 75 of the Madras City Police Act. The occurrence having happened in the very presence of the Sub-Inspector of Police, he happened to lay

the first information report and investigated the case himself and filed a final report under Section 173(2), Cr.P.C. It is in that context, learned Judge observed that the complainant himself could not be an investigating officer and in any event it is an infirmity which is bound to reflect on the credibility of the prosecution case, consequence of which was that the benefit of doubt has to be given to accused. As adverted to earlier, learned Government Advocate would draw my attention to the very same learned Judge revising his opinion subsequently in Criminal Appeal No. 403 of 1983 dated 22-10-19986 (unreported) after making reference to the decision of the Supreme Court reported in : 1976 CriLJ713 .

19. In order to appreciate the dictum laid down by the Supreme Court, it is but necessary to state the foundational facts of the case. The incident giving rise to the prosecution against the appellant took place within an area in the State of Rajasthan lying within a 10 mile belt along the border of that State adjoining the State of Uttar Pradesh. There was at the material time in force, Rajasthan Foodgrains (Restrictions on Border Movements) Order, 1959 which imposed a ban on transport of foodgrains to any place within the area of this 10 mile belt from any place outside that area except under and in accordance with a permit issued by the State Government or by any officer authorised by the Government in this behalf. This order was issued under Section 3 of the Essential Commodities Act, 1955, and any contravention of this provision was punishable under Section 7 of that Act. The prosecution case was that on the night between 13th and 14th November, 1966, Head Constable Ram Singh and four other police constables, viz., Kishan Singh, Fateh Singh, Hiralal and Sunder Singh, all attached to police station Sewar, were on patrolling duty in the area of the 10 mile belt with a view to preventing smuggling of grains from Rajasthan to Uttar Pradesh. They were at a place about 5 or 6 furlongs away from the border on the way leading from Village Bilothi in Rajasthan to Village Nagla Khobi in Uttar Pradesh when at about 5 a.m. in the morning of 14th November, 1966 they noticed that a cart driven by two buffaloes was coming from the side of Bilothis and proceeding in the direction of Nagla Khoobi. The cart was loaded with 6 bags of gram weighing about 14 to 15 maunds. One Ram Raj was driving the cart while the appellant was sitting in the cart on the bags of gram. Head Constable Ram Singh and his companions stopped the cart and checked it and on finding that it carried six bags of gram,

Head Constable Ram Singh asked the appellant to produce the permit for transport but the appellant could not produce any such permit. The appellant entreated Head Constable Ram Singh to let him go and offered to pay him a bribe of Rs. 40 or R. 50 Head Constable Ram Singh refused to accept the bribe whereupon the appellant took out a bundle of currency notes of Rs. 510/- from the 'Antan' of his dhoti and offered them to Head Constable Ram Singh a bribe. Head Constable Ram Singh declined to accept the bribe offered by the appellant and seized the currency notes of 510 under a seizure memo Ext. P-1 in the presence of the other four police constables. He also seized the six bags of gram found on the cart under a seizure memo Ex. P. 2 and arrested the appellant as well as Ram Raj was driving the cart. He then prepared a report Ex. P. 4 and sent it to the police station. Sewar with police constable Hiralal. The six bags of gram which were seized under a seizure memo, Ex. P. 2 were then taken to the police station and weighed there and their weight was noted down under a memo Ex. P. 3 Head Constable Ram Singh also lodged a First Information Report Ex. P-5 at the police station in which he showed himself as the informant or complainant and the appellant and Ram Raj were shown to have committed an offence under Section 161, of the I.P.C. for offering Rs. 510 as bribe to him. Head Constable Ram Singh thereafter investigated the case, but it appears that sometime in the beginning of April, 1967, it came to his notice that he was not authorised to do so and the thereupon forwarded the papers to the Deputy Superintendent of Police on 4th April, 1967. The Deputy Superintendent of Police then reinvestigated the case and ultimately filed the charge-sheet against the appellant and Ram Raj under Section 165-A of the Indian Penal Code in the Court of the Special Judge, Bharatpur. The prosecution examined in proof of its case the Head Constable and other police constables who deposed substantially in favour of the prosecution. Believing the testimony of the prosecution witnesses, learned Special Judge, who tried the case, convicted the accused under Section 165-A, IPC and sentenced him to suffer rigorous imprisonment for four months and to pay a fine of Rs. 100/- or in default of payment of fine to suffer further imprisonment for 15 days. The accused further agitated the matter by preference of an appeal before the High Court of Rajasthan. The High Court however agreed with the view taken by the Special Judge and dismissed the appeal. He further agitated the matter before the Supreme Court

with the Special Leave of that Court. Their Lordships of the Supreme Court while considering the Criminal Appeal with Special Leave obtained expressed their views in 1976 Cri LJ 5 (at pages 715 and 716), which are as follows :-

'Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial Court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial Court and the High Court and that has resulted in serious miscarriage of justice calling for interference from the Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial Court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation In fact, Head Constable Ram Singh, being an officer below the rank of deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the First Information Report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case.'

20. From the foundational facts in the Supreme Court case, it is rather crystal clear that the Head Constable was himself the person to whom the bribe was alleged to have been offered and who lodged the first information report as an informant or complainant and in such a context, their Lordships observed that is an infirmity, which is bound to reflect on the credibility of the prosecution case. The Head Constable, first informant, in the context of the situation of the case, is rather a person aggrieved and the facts that such an aggrieved person registered the case and further investigated the matter cannot be stated to be free from suffering the

taint of any bias or prejudice against the person proceeded against by him. It is only in such a context, such an observation had been made by their Lordships of the Supreme Court.

21. Pertinent it is to note at this juncture that an information relating to the commission of a cognizable offence may be given by a person aggrieved or by anyone inclusive of a Station House Officer acquainted with the facts and circumstances of the case. If a cognizable offence is committed on the very face of a Station House Officer, there is no legal prohibition for him to act as the first informant and lay the information setting the wheels of law in motion and himself take up the further investigation of the case.

22. At this juncture, an useful reference may be made to certain provisions of the Order. Clause 2(c) of the Order defines 'Competent Officer' and the definition is a means definition. It is couched in the following terms :

''Competent officer' means any officer of the Revenue or Civil Supplies Department not below the rank of Checking Inspector in the City of Madras and Dy. Tahsildars, elsewhere any Officer of the Police Department not below the rank of Sub-Inspector or any officer of the commercial Taxes Department not below the rank of Assistant Commercial Tax Officer.'

23. Clause 8 deals with the power of entry, seizure, search etc., by any competent officer and it is in the following terms :

'8. Power of entry, seizure, search etc. - (1) If any competent officer has reason to believe that any contravention of this Order, has been committed or is being committed or is about to be committed such officer may -

(a) inspect any book, account of (or) other document or any stock of essential commodity in the possession or under the control of any person;

(b) seize any such account or other documents;

(c) stop and search any person, boat, motor or any vehicle or receptacle used or intended to be used for the movement of the essential commodity.

(d) enter and search any premises or place; and

(e) seize the stock of any essential commodity in respect of which the competent officer has reason to believe that any provision of this order has been, is being or about to be contravened, along with the packages, coverings or receptacles in which such essential commodity is found or the animals, vehicles, vessels boats or other conveyance used in carrying such essential commodity and thereafter take or authorise the taking of all measures necessary for securing the production of the packages, coverings, receptacles, animals, vehicles, vessels, boats or other conveyance so seized in a Court and for their safe custody pending such production;

Provided that the Officer conducting the seizure shall give a receipt for what is seized immediately after the seizure is effected;

Provided further that no competent officer shall seize stocks of any essential commodity without obtaining the prior concurrence of the authorised officer.

(2) The competent officer or any officer authorised under sub-clause (1) may requisition the services of any Police Officer or of any other officer in the lawful exercise of any power vesting in him under this clause and it shall be the duty of every officer requisitioned to comply with such requisition.

3. Subject to the provisions of sub-clause (1) the provisions of Section 100 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), relating to searches and seizure shall, so far as may (be), apply to searches and seizures under this clause.'

24. On the face of such salient provisions as adumbrated in the Order as well as in the Code of Criminal Procedure, there is no prohibition for a Police Officer like P.W. 3 in the cadre of the Sub-Inspector of Police to lay first information and investigate the case himself and file a final report under Section 173(2), Cr.P.C. However, the Inspector of Police in this case has filed a final report under Section 173(2), Cr.P.C. P.W. 3 or the Inspector of Police on the facts and circumstances of the case, cannot at all be construed to be a person really aggrieved as the Head

Constable in the Supreme Court case to whom offer of bribe had been made. P.W. 3, being a public servant, acted in accordance with law in inspecting the premises of the shop, making inspection of any book, account or other document or any stock of essential commodity of the shop and registering the case and investigating the same. The Inspector of Police, after verifying the investigation, filed a final report. In such state of affairs, it cannot be stated that the investigation of the case by P.W. 3, who happens to be the first informant, is bound to affect the credibility of the prosecution case.

25. No doubt true it is that barring the testimony of P.W. 3 as respects the inspection and preparation of attakshi, there is practically no evidence emerging from any independent quarter whatever, as the lone independent witness, P.W. 1 cited by the prosecution turned hostile wholesale. The evidence of P.W. 3 cannot at all the brushed aside merely on the ground of his being a police officer. His evidence has to be sifted, scanned and analysed as the testimony of any other witness and in the process of such scanning if it transpires that his evidence is suffering from certain infirmities and inherent improbabilities and material contradictions, then it is legitimately open to the Court not to attach so much of evidentiary value to his testimony and throw the case of the prosecution lock, stock and barrel and acquit the accused by giving him the benefit of reasonable doubt. It is also to be remembered that it is not necessary for the proof of any case, any particular number of witnesses is necessary. Section 134 of the Indian Evidence Act prescribes that no particular number of witnesses shall in any case be required for the proof of any fact this section recognises the golden rule that what is required is only the quality of evidence and not the quantity. Even a solitary testimony of a witness without suffering from any of the infirmities, as indicated above, is enough to prove the case of the prosecution for the purpose of mulcting or fastening criminal liability upon a person accused of an offence.

26. In the backdrop of the principles as stated above, the evidence of P.W. 3, if approached, not suffering from any of the infirmities. Despite surging waves of questions hurled during the course of cross-examination, he appeared to have stood as a solid rock without his testimony as respects the inspection being detracted to any extent whatever thereby lifting the credibility of the case of the

prosecution.

27. In view of what has been stated above, it cannot be stated that the conviction and sentence of the appellant, as had been done by the Court below, are not sustainable in law.

28. Learned counsel for the appellant, at this juncture, would intrude and submit that the appellant may be given the benevolence of either one of the two G.Os., namely (1) G.O.Ms. No. 180, Home (Prisons-IV) Dept., dated 18-1-1989, and (2) G.O.Ms. No. 781, Home (PR-C) Dept. dated 11-4-1990, thereby his undergoing the ordeal of surrendering before the authorities concerned and seeking remission to which course, learned Government Advocate has no objection. The substantive sentence is therefore ordered to be remitted.

29. In the result, the appeal fails and the same is dismissed. The conviction and sentence are confirmed. However, for the reasons stated above, the appellant need not undergo the ordeal of surrendering before the authorities concerned and pray for remission of the substantive sentence.

30. Appeal dismissed.

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