(1967) 08 MAD CK 0055

In the Madras High Court

Public Prosecutor APPELLANT

Vs

P.C. Raju and Others RESPONDENT

Date of Decision : 30-08-1967

Acts Referred:
Imports and Exports (Control) Act, 1947 — Section 5
Penal Code, 1860 (IPC) — Section 467

Citation : (1968) CriLJ 1378 : (1968) 1 MLJ 274

Hon'ble Judges : Alagiriswami, J

Bench : Single Bench

Judgement

Alagiriswami, J.—The Coimbatore Central Co. operative Stores was issued a permit in 1957 by the Joint Chief Controller of Imports and Exports, Madras, for the export of 520 tons of Chillies to Ceylon. The purchaser in Ceylon was the Co-operative Wholesale Establishment. The Board of Directors of the Coimbatore Central Co-operative Stores allotted this quantity of Section 20 tons at follows:

Pollachi Co-operative Sales Society 200 tons Udamalpet Cooperative Sales Society 200 tons Dharapuram Co-operative Sales Society 50 tons Coimbatore Co-operative Marketing Society 20 tons Gobi Co-operative Sales Society 50 tons ___________ 520 tons

As against the 400 tons allotted to the Pollachi Co-operative Sales Society and Udamalpet Co- operative Sales Society, it is found that they exported only 3581 bags (40 bags are equal to a ton). The Dharapuram Co-operative Sales Society is said so have exported 3628 bags. The Coimbatore Co-operative Marketing Society 520 bags, the Gobi Co-operative Sales Society 3210 bags, and the Karamadai Sales Society, to which no allotment was made at all, is said to have supplied 5702 bags. The contract with the Ceylon Cooperative Wholesale Establishment was for supply at the rate of Rs. 115 per cwt. The various affiliated sales societies were to supply to the Coimbatore Central Co-operative Stores at Rs. 98 per cwt. The Coimbatore Central Co-operative Stores was to purchase these chillies only from the various affiliated co-operative sales societies. These societies were themselves to purchase only the chillies produced by their members, who were actually growing the chillies. This is the effect of two circulars issued by the Registrar of Co-operative Societies, Madras marked as Ex. P. 450 and P. 451. Clauses 3, 4, 5, 6 and 7 (wrongly numbered as 5 and 6) and Clause 18 at pages 408 and 409 of the printed papers are as follows:

3. The entire quantity for export shall be obtained by the District Marketing Society or the Central stores from the primary marketing societies and not from individuals or from other co-operative organisations.

4. The District Supply and Marketing society or the Central Stores should obtain an undertaking from the primary marketing societies agreeing to supply only the produce actually grown by the members of the affiliated societies.

5. In case the quantity so procured falls short of the quota allotted to them, only each quantity should be supplied for export and the balance be surrendered to the District Marketing Societies or Central stores. On no account the primary societies should resort to purchase from merchants or non-members or even producers living outside the area of operations of the societies. If any portion of the allotment is surrendered the District Marketing society or Central Stores may re-allot it to some other primary marketing societies they may require additional allotment.

6. For the purpose of verification of the fact that the produce for export has been procured from the members each primary marketing society should maintain a register for each commodity, containing fall particulars of the names of members, extent of the land cultivated, whether the lands are their own or taken on lease, and the estimated yield. When the produce is actually procured from or delivered by a member, an entry should also be made in the register showing the quantity actually received in the society and the date of receipt....

7. In this business the District Supply and Marketing Societies and Central Stores will act only as agents of the primary marketing Societies and is eligible for a commission of 5 per cent on the net sale proceeds. The entire sale proceeds less all incidental charges and the commission will be passed on to the primary marketing societies which supplied the produce and the primary marketing societies will in their turn, pass on the profits in the export trade to the producers after appropriating a commission of 10 per cent on the net profits....

13. Any infringement of the conditions indicated above and any misuse of the quota or permits for export by the primary and District Marketing societies will lead to the cancellation of the allotment of quota or permit issued. Such Societies will not be allotted any quota there, after.

Each Society (both primary marketing and District marketing societies, while applying for allotment to quota of export permit should give an undertaking that it will abide by the conditions now stipulated by the Registrar and those that may be imposed from time to time....

2. The prosecution case was that the market price at about this time was Ra. 80 per bag and that the accused as a result of conspiracy between them made it very difficult for the Pollachi Cooperative Sales Society and Udamalpet Co-operative Sales Society to supply their allotted quotas and this was done by P.W. 1, the approver, who had been appointed as what was called the Selecting Agent or his men by rejecting the produce offered by the Udamalpet Co-operative Sales society, and the Pollachi Co-operative sales society. The prosecution case also was that P.W. 1 and his men purchased chilies in the open market at Dindigul and accused 3 and his men purchased chillies at Rajapalayam that in the beginning they used to send it to the various places in Coimbatore District and had it sent from those places to Tuticorin in order to make it appear that the chillies came from the respective societies in Coimbatore District, that later finding this rather inconvenient, sent their purchases directly to Tuticorin, that the difference between the market price of Rs. 80 per cwt. and Rs. 98 per cwt. which had to be paid to the Societies, was to be divided among the various conspirators and that this arrangement was in contravention of the circular of the Registrar of Co-operative Societies and condition No. 7 of the Export permit issued to the Central Co. operative Stores. P.W. 1 and accused 8 are said to have purchased 6719 bags and 12030 bags respectively and this open market purchases by P.W. 1 and accused 3 were sent to Tuticorin and it was made to appear in the account of the respective sales societies and the Cooperative Central stores as though they had been procured by the respective societies from their grower members and had been exported by them.

3. On these facts 12 persons were tried by the learned Additional Sessions Judge, Coimbatore. The first accused was the Manager of the Coimbatore Central Co-operative stores; accused 2 was the Secretary of the Coimbatore Central Co-operative Stores; accused 3 was a merchant dealing in onions and chillies at Mathucai; accused 4 was the secretary of the Dharapuram primary gales Society; accused 5 was the secretary of Coimbatore Primary Marketing Society at Sulur; accused 6 was the clerk of the Sulur society; accused 7 was President and accused 8 was the clerk of the Karamadai Primary sales society; accused 9, 10 and 11 were respectively the Vive-President. Secretary and clerk of the Gobichettipalayam Primary Co-operative Sales Society, accused 12 was the power of attorney agent of K.M. Mohideen and Company, shipping find forwarding agents at Tuticorin. Of the alleged conspirators, P.W. 1 and P.W. 2, who was a clerk of the Central Stores, turned approvers. One Venkatadasari who was the clerk of the Dharapuram primary Sales society died before the trial. 61 Charges were framed in the case. It is unnecessary to set out at length the various charges against the various accused. Accused 6, 3 and 11 were acquitted by the learned Additional Sessions Judge. The rest were convicted under various charges and they have all preferred appeals to this Court. Daring the pendency of the appeal, the 4th accused, who is one of the appellants in Crl. App. 452 of 1965 died. Accused 1 to 5, accused 7, 9, 10 and 12 were found guilty on charge 2 u/s 5 of Import and Export (Control) act of 1947; accused 1 and 2 were found

guilty under charge 5 of offences u/s 477A, Penal Code. Accused 4, 5, 7, 9, 10 and 12 were found guilty under charge 6 of offences under Sections 109 and 477A, Penal Code. Accused 1 and 7 were found guilty under charges 11, 13, 15, 17, 19, 21, 28 and 25 under Sections 467 and 471. Penal Code. Accused 1 and 7 were also found guilty on charges 19, 14, 16, 18, 20, 22, 24 and 26 under Sections 467 and 471, Penal Code. The seventh accused was found guilty on charge 59 of an offence u/s 199 lead with Section 193, Penal Code. Accused 9 was similarly found guilty on charge 61. There are eight appeals before this Court. The State has also filed revision petition for enhancement of sentences on the various accused.

4. The most important matter that should be mentioned at the outset is the fact that all the accused have been acquitted of the charge of conspiracy. In view of that fact, it would not be necessary to refer to the evidence regarding conspiracy in this case, though in the discussion relating to the other charges it would be necessary to refer to some of the evidence, which would be relevant in respect of those charges as well as the charge of conspiracy. It is not even necessary to discuss elaborately the evidence with regard to many of the other charges as I will indicate later.

5. The main charge for consideration would now be charge 2. That charge reads as follows:

That you accused 1 to 12 between 20.3. 1957 and 9.4.1958, at Coimbatore, Dharapuram, Sulur, Karamadai, Gobichettipalayam, Dindigul, Madurai, Rajapalayam and Tuticorin in pursuance of the aforesaid conspiracy contravened Clause 3 of the Export (Control) Order, 1962, by exporting 520 tons dried chillies from Tuticorin to Caylon, contrary to restrictions imposed by the Madras State of Government and the officer under the control and in violation of the Condition 7 of the Export Trade Licence, D/- 22.4.1957, granted by the Joint Chief Controller of Exports and Imports, Madras, in favour of the Central Co-operative Stores, Coimbatore, and thereby committed an offence punishable u/s 5 of the Imports and Exports Control Act, 1947, and within my cognisance.

6. There is little doubt, as I shall show presently that a large part of the chillies exported to Ceylon was not the produce of the grower members of the various sales societies in Coimbatore District but were purchased in Dindigul and Rajapalayam by P.W. 1 and accused 3. This part of the case is amply supported by evidence. Though the learned Additional Sessions Judge has discussed this matter elaborately with reference to the oral and documentary evidence in this point, I shall refer to the evidence in brief.

His Lordship discussed the evidence and proceeded.

7. I have referred only to some pieces of evidence and not exhaustively on this point. These amply bear out the conclusion of the learned Additional Sessions Judge that the major part of the chillies which were exported to Gay Ion, were not the produce of the grower members of the various sales societies in

Coimbatore District but were purchased in Dindigul and Rajapalayam by P.W. 1 and accused 3 and exported to Ceylon, as though they were the produce of the grower members of the various sales societies is Coimbatore District. I am completely satisfied with the conclusions arrived at by the learned Additional Sessions Judge, on this point. There seems to be little doubt that the various accused, taking advantage of their positions, have used P.W. 1 and accused 3 for purchases of chillies in Dindigul and Rajapalayam and they have made it, appear as though they were the produce of the grower members of the various sales societies in Coimbatore District. That they should have made considerable sums of money by this process is also obvious. Their profits would probably have been considerably higher and the fraud perpetrated by them might not have come to light, but for the fact that the Ceylon Co-operative Wholesale Establishment made a cut in the amount to be paid for the chillies exported to Ceylon and this resulted in diminishing the amount available for distribution among the various persons concerned; P.W. 1 being particularly hit hard. But even, so, the question remains whether any offence has been committed by the accused which is punish-able under law.

8. Section 5 of the Imports and Exports (Control) act of 1947 reads as follows:

5. Penalty: If any person contravenes, or attempts to contravene, or abets a contravention of, any order made or deemed to have been made under this act or any condition of a licence granted under any such order, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, 1878 (8 of 1878), as applied by Sub-section (3), be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. Provided that in the absence of special and adequate reasons the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than sis months.

9. The words ''or any condition of a licence granted under any such order'' were inserted in the section by an amendment, which was not in force when the offences under consideration in this case are said to Have been committed. If the accused; were otherwise punishable, the fact that the words above mentioned were not part of Section 5, at the time the offences under consideration are said to have been committed, would not make any difference and the accused would still be punishable. That is the effect of the decision in AIR 1968 SO 1470 which approved of the view of the Bombay High Court in the decision in State v. Abdul Aziz AIR 1962 Bom 248, in preference to the view of the Calcutta High Court in C.T.A. Pillai Vs. H.P. Lohia and Another, . Section 3 of the act is the section, which gave power to the Central Government to prohibit, restrict or otherwise control the import and the export of goods of any specified description into or from India. In pursuance of the powers conferred by Section 3 of the act, the Export (Control) Order has been promulgated. Clause 5 of the Exports (Control) Order reads thus:

5(1) A licence granted under this order may contain such conditions not inconsistent with the act or this order, as the licensing authority may deem fit.

(2) It shall be deemed to be a condition of every licence?(a) that the licence shall not, except with the permission in writing of the licensing authority or any person authorised by it in this behalf, transfer the licence; (b) that the goods for tee export of which the licence is granted shall be the property of the licensee at the time of the export.

(3) The licence shall comply with all the conditions imposed or deemed to be imposed under this clause.

10. The licence granted in this case marked as Ex. P. 14, contains among other clauses, the following two clauses:

7. This licence does not exempt the exporter from any restrictions imposed by State Government or any of the officers under their control.

8. Any special conditions.

11. Clause 8 of the Export Control Order, 1962 reads as follows:

3. Restriction on export of certain goods - Save as otherwise provided in this Order, no person shall export any goods of the description specified...except under and in accordance with a licence granted by the Central Government or by any officer specified in Schedule II.

12. In this case the export is under a licence granted by an officer specified in Sen. II. So, the farther question is whether the export is in accordance with the licence so granted. The prosecution case is that the conditions in the Circular of the Registrar of Co-operative Societies already referred to and marked as Ex. P. 450 and 451 are restrictions imposed by an officer under the Control of the State Government under Clause 7 or Clause 6 of the conditions of the licence. Clause 8 is really intended to cover special conditions, which may be inserted in the licence itself and as no special condition has been inserted in the licence itself, Clause 8 may be left out of account. Nor does the licence contain any conditions of the kind the Registrar sought to impose. So, the question is whether the condition No. 7 enables the Registrar of Cooperative Societies to issue instructions of the kind contained in Ex. P. 450 and 451 and those instructions have the force of law and can be deemed to be conditions imposed by the licence itself, so that it could be said that the accused in this case by contravening the instructions issued by the Registrar of Co-operative Societies, would be deemed to have contravened Clause 3 of the Exports (Control) Order, 1962. Now Clause 7 of the licence does not say that the licence will also be subject to such conditions as may be imposed by the State Governments or any of the officers under their control. Neither the Imports and Exports (Control) Act, 1947 nor the Exports (Control) Order, 1962, enables the State Governments or any of the officers under their control to impose any restrictions. Restrictions of the kind which the Registrar of Comparative Societies has purported to impose cannot be brought in by means of a condition contained in the licence, even, if the licence contained a

specific provision enabling the State Government or any of the officers under their control to impose such restrictions. If it is intended to confer on the Registrar of Co-operative Societies, powers to issue the instructions which he had issued, and to make such instructions have the force of law, it would be necessary that the act itself or at least the Export Control Order should confer such power. On the other hand, even if the Imports and Exports (Control) act or the Exports (Control) Order were to confer such power, it should confer the power either on the State Government or any officers specified by the State Government. It should also specify the powers which the State Government or the officers under their control might exercise. If the contention on behalf of the prosecution is to be accepted, it means that the State Government can impose any restrictions they please. The power cannot be conferred on an unspecified class of officers of the State Government, nor could it be conferred in respect of matters not specified so as to make them of the widest amplitude. That would be akin to conferring an unrestricted legislative power, on the State Governments or the officers under their control. Even powers of delegated legislation under statutes should be restricted to specified matters or enable rules to be made only to carry out the purposes of the act. Under condition 7 of the licence, as contended for by the prosecution, the State Government or any of the officers under their control can exercise any power and impose any restrictions they choose. The officers of the State Governments so exercising the powers need not necessarily be officers specified by the State Governments or authorised by them nor need the powers be confined to the purposes of the Imports and Exports (Control) act. The purpose of the Imports and Exports (Control) act as far as export is concerned would only be either to permit or prohibit the export of certain specified goods. That those goods should be the product of the Co-operative Societies or the produce of the grower members of the Co-operative Societies is outside the scope of the Import and Export (Control) Act. Therefore, the restrictions of the kind, which the Registrar of Co-operative Societies Bought to impose cannot be imposed even by the licensing authority under the Export Control Order; much less can it be done by the Registrar of Co-operative Societies. The intention behind the policy of the Government of India to make the profits arising out of export available only to actual producers may be a good one. It might probably be effected by giving export permit to producers themselves. Bat if it is sought to achieve that object, by conferring powers on all and sundry officers or in respect of all conceivable matters, that would be a delegation of naked arbitrary powers, which would not be valid in law. A power of delegation to be valid, should be to the State Government or any of the officers authorised by them either by an order in writing or by a notification in the Gazette to exercise powers specifically mentioned in the delegation. This would be necessary to prevent any public servant, who so chooses from arrogating to himself any power he pleases. It would, thus, be obvious that condition 7 of the licence does not enable either the State Government or the Registrar of Co-operative Societies to impose any conditions purported to be imposed under Ex. P. 450 and 451, The prosecution was not able to show me any other law under which the Registrar of Co-operative Societies could exercise the powers which he has purported to exercise under Ex. P. 450 and 451.

13. In fact, the condition 7 of the licence seems to contemplate not the conferment of any power either on the State Government or the officers under their control; it seems to contemplate a power, which the State Governments or the officers under their control might exercise under any other law. For instance, it may be possible for the State Government or the officers under their control in exercise of the relevant powers under the Essential Commodities act to prohibit the export of chillies from Coimbatore District. Condition 7 of the licence means that if such a restriction is imposed, the fact that the licence has been granted does not mean that the licence holder on contravene these restrictions. It means that if he does be, he would be liable to be punished under the Essential Commodities Act and that he will not be exempted from the provisions of the act. It follows that the restrictions imposed by the Registrar of Co-operative Societies had no legal sanction behind it and therefore, any contravention of those restrictions would not be an offense punishable under either the Imports and Exports (Control) act, 1947 or any other law. It may be that as the Registrar himself pointed out in his circular such a contravention might entail cancellation of the licence and the licences society may also not be allowed any quota thereafter. It may be that the Registrar may have power to take departmental action against the Co-operative Societies or the office-bearers thereof under the Go-operative Societies act or any other act. Suffice it for the purpose of this case to say that the contravention of the instructions issued in Ex. P. 450 and 451 would not be a contravention of any law which would make the person so contravening liable to be punished either under Imports and Exports (Control) Act, 1947 or any other law. It follows, therefore, that the conviction of the appellants on charge 2 under the Imports and Exports (Control) act 1947 cannot be sustained and their appeal will have to be allowed in respect of that charge.

14. We shall now deal with charges 5 and 6. Charge 5 is against accused 1 and 2 u/s 477-A, Penal Code for falsification of accounts. Charge 6 is against accused 8 to 12 u/s 477A, read with Section 109, Penal Code, for abetment of falsification of accounts. Charge 5 relates to the falsification of accounts of the Coimbatore Central Co-operative stores. Charge 7 is against accused 4 for falsification of accounts of Dharapuram Co-operative Sales Society. Charge 8 is again31 accused 5 for falsification of accounts of the Coimbatore Marketing Society at Sulur. Charge 9 is against ace used 7 and 9 for falsification of accounts of the Karamadai sales society and charge 10 is against accused 9, 10 and 11 for falsification of accounts of the Gobi Co-operative Sales Society. All the accused were acquitted of the charges 7, 3, 9 and 10, So we are left only with the charge 5 which relates to the falsification of accounts of the Coimbatore Central Co-operative Stores and charge 6 against the various office bearers of the four primary societies mentioned above for abetment of the falsification of accounts of the Coimbatore Central Co-operative Stores. The main evidence is that of P.W. 2, who himself is an approver.

After discussing the evidence. His Lordship proceeded.

* * * * 15. I do not think, therefore, that there is any question of falsification of accounts of the Coimbatore Central Co-operative Stores. It follows therefore that accused 1 and 2 are not guilty of the offences with which they are charged under charge 5 and consequently, the other accused are cot guilty of abetting those offences. The whole of the prosecution case rests upon the basis that there has been a contravention of the Imports and Exports Control Act 1947, and the Exports (Control) Order as well as the conditions of the licence. That the various accused have brought into existence various documents, in order to show that the chillies which were exported, were the produce of the members of the primary societies and that they were exported from their respective headquarters of the primary societies is, the whole of the charge in respect of falsification of accounts as well as the preparation of the other documents. Once it is held that there has been no contravention of the provisions of either Imports and Exports Control Act 1947 or the Exports (Control) Order, or any of the conditions of the licence, the accused could not be held to be guilty of charges of falsification of accounts.

16. What I have said immediately above applies also to charges 59 and 61. I am dealing with them even at this stage because the observations which I have made, apply to these charges also. Charge 59 is against accused 7 u/s 199 read with Section 193, Penal Code, and charge No. 61 is against accused 9 under the same sections of the Penal Code. Section 199 reads as follows:

199. Whoever, in any declaration made or subscribed by him, which declaration any court of justice or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

17. And Section 193 reads as follows:

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either decoration for a term which may extend to 7 years, and shall also be liable to fine.

18. Section 193 cannot obviously apply because there is no case of fabrication of false evidence for the purpose of being used in any stage of a judicial proceeding. Section 199 cannot also apply here because these are not declarations which any court of justice or any public servant or other person is bound or authorised by law to receive as evidence of any fact. Charge 59 is in respect of Ex. P. 87. This is signed by accused 7 in his capacity as President of Karamadai Sales society. It reads as follows:

We hereby declare that the quantity of 62 tons and 6 cwts of dried red chillies supplied to Coimbatore Central Cooperative Stores, Ltd., by us for export is the produce of our members grown in their fields as detailed below.

19. The details of supply of 8 members in-eludes supply by accused 7 and his two brothers. The evidence in this case, which, in the view that I take of the law it is not necessary elaborately to go into, establishes that the alleged procurement from 8 members as detailed in Ex. P. 87, could not be true. But specifically P.W. 66''s evidence establishes that Section Nos. 137, 151 and 152 could not have been cultivated with chillies in faslis 1365 and 1366, as shown by the a dangles. Therefore, at least in respect of the alleged supply by accused 7 of 960 bags, the entry in the export book Ex. P. 1313 could not be true. Therefore, we can take it as established that accused 7 made the declaration knowing it to be false declaration.

20. The declaration involved in charge No. 61 is Ex. P. 1234 signed by accused 9 in respect of supply of 418 maunds of chillies from the self-cultivation in survey field 91-A and 92-B in the Tillage of Veerapandi. P.W. 73 has given evidence with reference to the entries in the adangals that these survey fields had been acquired in 1950 for extension of town and during the period under consideration houses were in existence on those fields. The corresponding entry in the export book Ex. P. 2047 had been marked as Ex. P. 1312. The only explanation accused 9 could give was that he had given those survey numbers from memory, but that in fact he had supplied chillies grown by him in his own lands. Even so, his declaration that the chillies were raised in survey field 91-A and 92-B is false.

21. Now in spite of the fact that these two declarations are false, I do not think that accused 7 and 9 could be held to be guilty of Offence u/s 199, Penal Code, because the declarations made by them were not declarations which any court of justice, or any public servant or other person is bound or authorised by law to receive as evidence of any fact. It is true that P.W. 2 had given evidence that on a particular date, he had been told by the Customs officer that he had received complaints that the chillies that ware exported under the licence Ex. P. 11 were not the produce of the grower members of the various primary societies; but had been bought elsewhere and that he had explained the matter to him and that therefore, subsequently the various declaration forms were got up in respect of the arrivals in Tuticorin on 7th, 8th and 9th May 1957. But his evidence also is that none of these declaration forms were actually produced before any officer. Thai apart the customs authorities are not concerned with the question, whether the chillies that were exported were chillies grown by the grower members of the various primary societies. They are only concerned with the question, whether there was an export licence permitting the export of chillies. They are not concerned as to who produces those chillies. It cannot be said even that they were interested in finding out that the chillies that were exported were actually the property of the licences as provided for under Clause 5(b) of the Export Control Order. That is really a matter for the authorities, who had issued the

licence and even foe deciding whether the chillies were the property of the Coimbatore Central Co-operative Stores which was the licensee and which was exporting the chillies, it was not necessary to have declaration forms like Ex. P. 87 and P. 1234, nor was any public servant or other person bound or authorised by law to receive these declaration forms as evidence of any fact. As I have already held that the instructions issued by the Registrar of Co-operative Societies under Ex. P. 450 and P. 451 had no legal sanction, there is no question of any public servant or other person being authorised by law to receive these declarations as evidence of any fact. It follows therefore that the charges 59 and 61 cannot be sustained and accused 7 and 9 are entitled to be acquitted under these charges.

22. The next set of charges are charges 11, 13, 15, 17, 19, 21, 23 and 25 against accused 1, 7 and 12, for forgery of a valuable security u/s 467, Indian Penal Code, and charges 12, 14, 16, 18, 20, 22, 24 and 26 under Sections 467 and 471. Indian Penal Code, against accused 1, 2, 7 and 12 for using forged documents as genuine. In respect of these charges, accused 1 and 7 alone have been found guilty and accused 2 as well as accused 12 have been acquitted. Alt these charges are related to the dispatches from the Karamadai Sales Society. Charge 11, is in respect of P. 59, charge 13 is in respect of Ex. P. 83, charge 15 is in respect of Ex. P. 81. Charge 17 is in respect of Ex. P. 61, charge 19 is in respect of P. 68, Charge 21 is in respect of Ex. P. 70, Charge 23 is in respect of Ex. P. 67, Charge 23 is in respect of Ex. P. 45. With regard to the charge 17, it is established than MDY 966, by which 217 bags of chillies are supposed to have been sent on 7th May 1957 is a fiat car and not a lorry. In respect of the charge 11, which is in respect of Ex. P. 59, it has been found that MDF 1897 by which 250 bags of chillies are alleged to have been sent on 7th May 1957 is really a Fargo passenger bus. There is in addition the fact that the white katchat Ex. P. 140 in relation to this charge-mentions the number as MDU 1494. The substituted voucher Ex. P. 186 shows the number as MDU 1394 and only the voucher which is said to have been forged shows the number as MDF 1397. In view of this confusion charge 11 may be left out of account as also charge 17. Though there is a confusion about the charges 11 and 17 on the ground that they refer to a. Fargo passenger bus and a fiat oar respectively, there is no doubt that the bags of chillies which were alleged to have been sent by those motor vehicles did reach Tuticorin. It is not now possible to say how exactly this confusion arose. We may, therefore, confine ourselves to the other 6 charges, namely, charges 13, 15, 19, 21, 23 and 25. Charge 13 is in respect of Ex. P. 83. The white katchat in respect of it is Ex. P. 68 and the substituted voucher is Ex. P. 197. I shall explain what the white katchat and the substituted vouchers are a little later. Charge 15 is in respect of Ex. P. 81 and the white katchat and the substituted vouchers in relation thereto are Ex. P. 135 and 190 respectively, charge 19 is in respect of Ex. P. 63 and the white katchat and the substituted vouchers are Ex. P. 192 and P. 136. Charge 21 is in respect of Ex. P. 79 and the white katchat and substituted voucher are Ex. P. 169 and P. 189 respectively. The

white katchat and the substituted vouchers, in respect of charge 28, are Ex. P. 174 and 194 respectively. The white katchat and the substituted vouchers in respect of charge 25 are Ex. P. 172 and 199 respectively. How these documents came into existence are spoken to by P.W. 2, P.W. 4 and P.W. 7. The chillies that arrived in Tuticorin on 7th, 8th and 9th May 1957 were accompanied by mere white katchat which were brought by the various lorry drivers mentioning the number of bags sent by that lorry and the amount of lorry hire, that had to be paid. As already mentioned P.W. 2 had to give explanation to the customs audacities for the rumours which they had heard that the chillies that were exported were not the produce of the grower members of the various primary societies in Coimbatore District, but had been purchased elsewhere. He, therefore, felt the need for some lorry advice letters. Therefore, he made use of the letter paper with the heading of the Coimbatore Central Co-operative Stores which were with him and brought into existence what are called the substituted vouchers. These are the substituted vouchers which I have already referred to. The white katchats brought by the lorry drivers, I have already referred to as white katchats and they are so referred to in the judgment of the learned Additional Sessions Judge. The charge of for gery is in respect of the acquaintance found on the reverse of Ex. P. 59, P. 88, P. 81, P. 61, P. 63, P. 79, P. 67 and P. 45, respectively under charges 11, 13, 15, 17, 19, 21, 23 and 25. The charge of forgery in which necessarily the element of payment of money is involved, is sought to be made out by reference to the amounts mentioned in these documents. Whereas the white katchats and substituted vouchers referred to a smaller amount, the documents which were prepared in Coimbatore on the 10th May 1957 refer to a higher figure. Under charge 11 both the white katchat as well as the substituted vouchers mention a sum of Ra. 100 whereas the documents prepared in Coimbatore on 10th May 1957 shows a sum of Rs. 156-25. Under charge 13 the figures are Rs. 81.04. Rs. 01.04, Rs. 140 respectively; under charge 15 Rs. 80, Rs. 80 and Rs. 125/- respectively; under charge 19 they are Rs. 80, Rs. 80 and Rs. 135 respect lively. Under charge 23, Rs. 8l.04, Rs. 81.04 and Rs. 125 respectively, under charge 25 Rs. 81-04, Rs. 81-04 and Ra. 130 respectively. The evidence in regard to the preparation of the documents at Coimbatore is that of P.W. 1, P.W. 7 and of course P.W. 1 himself. The prosecution case is that the lorry hire that was actually paid to the various lorry drivers is mentioned in the white katchat and the substituted vouchers, but that in the documents prepared at Coimbatore on 10th May 1957, the higher figure was mentioned that it was intended that K.M. Mohideen Co., was to pay the amounts mentioned in the white katchat, but to claim a higher figure from the Coimbatore Cooperative Central stores and that the difference. was to go to accused 1. Except P. 775, which has been prepared by P.W. 2 shows the difference between the amount actually paid to the various lorry drivers as lorry hire by the K.M. Mohideen and Co., and what was actually claim, ed from the Coimbatore Central Co-operative stores was about Rs. 800. This Ex. P. 775 also contains the lorry numbers to which reference has been made already. Though these letters which were prepared in Coimbatore on 10th May 1957, contained the signatures of accused 7, and. on the reverse acquaintances by various persons, who are supposed to have received the amounts mentioned therein, evidence has been let in of witnesses who were connected with those lorries to the effect that the persons who have signed on the reverse of these documents are either persons not known to them, or the signatures are not those of their lorry drivers or cleaners. It is on this basis that the charge of forgery rests. But apart from the other discrepancies, as to whether these documents could have been prepared in Coimbatore on 10th May 1957, as for instance as to how the substituted vouchers and the katchats sent by P.W. 2 through P.W. 5, would have found their way into the hands of P.W. I and the discrepancy in the evidence of P.W. 4 which the learned Additional Sessions Judge has referred to, there is no direct evidence as to who exactly forged the signatures in the acquittance on the reverse of these documents. Nobody has given evidence as to who signed them. It has not been sent to the handwriting expert to show that aocused 7 could have signed them. Indeed the learned Additional Sessions Judge only proceeds on the basis that either accused 1 or accused 7 should have signed them. (See para. 165, page 105 of the learned Additional Sessions Judge''s judgment). All that he says is that though there is no direct evidence implicating either accused 1 or accused 7 as the persons who made the fictitious stamped acquaintance the circumstantial evidence is so clinching and so pointing that the only and irresistible conclusion possible is that it was accused 1 and accused 7, who were responsible for this false document. In the absence of any satisfactory evidence, whether accused 1 or 7 was responsible for making the fictitious stamped acquaintance, both of them could not certainly be convicted. I fail to understand how the learned Sessions Judge having tightly referred to the decision in In re Riasat Ali ILR (1881) Cal 353, that ''making'' means signing found both accused 1 and 7 guilty without deciding who among them signed the acquaintances on the reverse of these documents.

23. This apart, there is no evidence to show that this enhanced sum mentioned in these documents was actually paid by the Coimbatore Central Co-operative Stores, In the bill submitted by the K.M. Mohideen and Co., Ex. P. 1470, there is a reference to the lorry hire paid by K.M. Mohideen and Co., for the various arrivals from Karamadai Co-operative Marketing Society, The debit entries relating to the arrivals of 7th and 8th May 1957 mentioned the higher figures which are found in the documents which are said to have been prepared in Coimbatore on 10th May 1957. This, of course, shows that K.M. Mohideen and Co., have claimed the higher figure whereas they should have paid as shown by the white katchat and the substituted vouchers only the lower figure. But there is no evidence to show this higher figure was actually paid. Ex. P. 1474 contains a sum of Rs. 3717?25 which included the higher figure found in the documents said to have been prepared in Coimbatore on 10.5.1957. But including this sum of Rs. 3,717.25 the total comes to Rs. 70,429?65 a sum of Rs. 35,000 has been paid and the balance due is shown as Rs. 35,427?65. There is no evidence that the whole of this sum of Rs. 35,427?65 was actually paid to K.M. Mohideen and

Co. If there is such evidence, it could be said that it has been proved that Ex. P. 88, P. 81, P. 63, P. 69, P. 67 and P. 45 which are said to have been prepared at Coimbatore on 10.5.1957 were used foe the purpose of getting a higher amount than what was actually paid. But there is no clinching evidence on this point. The accused concerned with these charges, that is accused 1 and 7 are therefore entitled to the benefit of doubt on the question of the making of the documents being the valuable securities. The result is all the appellants are entitled to be acquitted of all the charges on which they have been convicted. It follows therefore that the revision filed by the State has to be dismissed.

24. Those appeals are therefore allowed, the convictions of the appellants are set aside and they are acquitted. Their bouds will be cancelled.

25. The evidence in this case is very voluminous. As many as 158 persons were examined by the prosecution. Two witnesses were examined as court witnesses, 2515 exhibits were marked on the side of the prosecution and 231 exhibits on behalf of the accused and two exhibits by the court. This voluminous evidence has been very carefully analysed by the learned Additional Sessions Judge. His conclusions on the facts have been sound. Where he has gone wrong is only as regards the legal consequences that flow from the proved facts. In view of my conclusions on the questions of law that arise in this case, I have not considered it necessary to go in greater detail into the evidence, both oral and documentary, in this case, except in so far as they are necessary to illustrate the conclusions. But otherwise, I generally agree with the conclusion on the facts arrived at by the learned Additional Sessions Judge. I have refrained from referring to the evidence oral and documentary in greater detail only because. I do not want to load the judgment with unnecessary material. On the proved facts, themselves, the accused cannot be said to be guilty of any of the offences with which they are charged.

26. Before parting with these cases, I would like to mention that much time, labour and money would have been saved, if only some one had applied his mind seriously to the legal consequences that flow from the facts of these cases. As I hare held, even on the fasts proved, no offence has been committed. If this had been considered even at the beginning, much of the time, expenses, and labour oould have been saved. I have only to say that nobody need waste any sympathy on the accused.

