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Crl.A.No. 355 OF 2000  
ITEM No.104 Court No. 7

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Crl.A. No.355/2000

DuraisamiAppellant.

VERSUS

State of Tamil Nadu

Respondent.

( with office report)

Date : 05/10/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Petitioner (s) Mr. Sukumaran, Sr. Adv.  
Ms. Promila Thananjayan, Adv.  
Mr. S. Thananjayan, Adv.  
Mr. M.A. Chinnasamy, Adv.

For Respondent (s) Mr. Abhay Kumar, Adv. for  
Mr. Subramonium Prasad, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Mr. Sukumaran, learned senior counsel for the appellant started at 2.05 p.m. and concluded at 2.50 p.m. Thereafter Mr. Abhay Kumar, learned counsel for the State started and concluded at 3.10 p.m.

The appeal is allowed in terms of the signed order.

(R.K. DHAWAN)(ASHA JOSHI)  
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.355 OF 2000

DuraisamiAppellant.

VERSUS

State of Tamil Nadu

Respondent.

O R D E R

The appellant was an Assistant Executive Engineer in the Public Works Department at Kangeyam, Periyar District in Tamil Nadu. During the relevant period the appellant was in charge of releasing of water from the LBP Dam at Bhavani Sagar project at Chennanamalai Division. The cultivators of that area had grievance that the accused was not releasing sufficient water for irrigation purpose and PW-1 M. Govindsamy alleged that the appellant had demanded Rs.1500/- as bribe for releasing water to the cultivators. He made a complaint and a trap was laid on 16.3.1988. PW-1 gave Rs.500/- to the appellant and the police party who were waiting thereby effected recovery of the alleged tainted amount from the appellant and a case was registered against him. The appellant admitted the receipt of Rs.500/- from PW-1 but he contended that he had sold Indira Vikas Patras to PW-1 on 1-12-1987 and for which he had not paid the money and the amount which was paid on 16-3-1988 was the value of

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those Indira Vikas Patras. The appellant produced Exhibit P-16 communication sent by him to his immediate superior. The trial court accepted the explanation of the appellant and acquitted him of all the charges framed against him. Aggrieved by the same, the State preferred an appeal before the High Court and the learned Single Judge set aside the acquittal and found the appellant guilty under Section 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947 and Section 161 IPC and sentenced him to undergo imprisonment till the rising of the Court and to pay a fine of Rs.5,000/-, in default to undergo R.I. for one year. The finding of the learned Single Judge is challenged before us.

We heard learned counsel for the appellant and counsel for the respondent-State.

The learned Single Judge reversed the acquittal passed by the Special Judge, firstly, for the reason that the appellant did not give a statement at the time of his arrest that the money he had received was towards the value of two Indira Vikas Patras sold by him to PW-1 and secondly, PW-2 who was allegedly present at the time of sale of Indira Vikas Patras did not depose that the appellant had been selling these Indira Vikas Patras on credit. It is important to note that the appellant relied on Exhibit P-16 communication sent by him to the office of the Executive

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Engineer. In the Exhibit P-16 dated 1.12.1987 he stated that the Indira Vikas Patras were sold to PW-1 and the numbers of two Indira Vikas Patras were also mentioned. It is also mentioned in the letter that out of Rs.5,000/- he could collect only Rs.4,500/- and the balance would be paid later. According to the appellant Rs.500/- received on 16.3.1988 was towards the value of two Indira Vikas Patras given by him. Exhibit P-16 probabalize the version given by the appellant. He also examined DW-1 and DW-2 to support his case. The statement given by DW-2 was to the effect that the appellant did not say to Govindasamy that Indira Vikas Patras sold on credit. DW-2 stated that Indira Vikas Patras were sold to him and also was aware that PW-1 did not pay any consideration for the same. What was the understanding of the appellant and PW-1 was probably not known to DW-2. We do not think that the learned Single Judge was justified in rejecting the evidence of DW-2. Once the Exhibit P-16 was found to be true and genuine document, the case set up by the defence has to be accepted and in that view of the matter we do not think that the learned Single Judge was justified in reversing the acquittal passed by the Special Judge.

We set aside the conviction and sentence of the appellant of the offence punishable under Section 161 IPC

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and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. The appeal is allowed. The fine, if paid, shall be refunded to the appellant.

.....J  
(K.G. BALAKRISHNAN)

.....J  
(DR. A.R. LAKSHMANAN)

NEW DELHI ;  
OCTOBER 05, 2004.