

V. RAJARAM

A

v.

STATE REPRESENTED BY THE
INSPECTOR OF POLICE CBI/SCB

(Criminal Appeal Nos.1765-1766 of 2019)

B

NOVEMBER 26, 2019

[R. BANUMATHI AND A.S. BOPANNA, JJ.]

Penal Code, 1860: ss.217 and 221 – Prosecution case was that a group of persons (Accused no.1 to 16) armed with dandas (sticks) and iron rods trespassed into the newspaper office and vandalized it and set it on fire – Three employees of the newspaper office got stuck in the engulfing fire and lost their life – A1 to A16 were charged under IPC, Explosive Substances Act and Tamil Nadu Property (Prevention of Damage and Loss) Act – Appellant-accused No.17 who was the then jurisdictional Deputy Superintendent of Police was charged for offence under ss.217 and 221 – Case against the appellant was that he did not take action to prevent the crime and intentionally disobeyed the directions of law and allowed the accused to escape from the place of occurrence – Trial court acquitted the appellant on the ground that on the date of occurrence, appellant was not the superior officer present at the place of occurrence and that PW-30-Additional Superintendent of Police was the superior officer and the bandobust was arranged under the head of PW-30 – State’s appeal against acquittal – High Court reversed the acquittal of 9 out of 16 main accused – High Court also reversed the acquittal of appellant and convicted him under charged offences – On appeal, held: The evidence on record clearly showed that the bandobust at the Newspaper office was posted under the control of PW-30 and the appellant was acting under the direction of PW-30 – Evidence on record further made it clear that the appellant and other police personnel used force to chase away the agitators – Evidence of PW-2-News Editor and PW-3-Chief Operating Officer of Newspaper office was to the effect that appellant immediately responded to them that action would be taken at once and that he had not received any order from his superiors which showed that there was no lack of diligence on his part – In

C

D

E

F

G

H

A *his evidence, PW-30 did not state anything about the appellant having disobeyed his orders – s.217 is attracted when there is disobedience of the direction of law with intention to save the accused – In a tense situation where there is law and order problem, normally a superior gives out instructions on how to handle a situation and the subordinates are expected to carry them out –*

B *Responsibility for the actions lies with the superior – In the instant case, there was nothing to show that the appellant disobeyed the orders of PW-30 who was the officer placed In-charge of the bandobust nor there was any lack of diligence and inaction on the part of the appellant to sustain his conviction – On the contrary,*

C *there is clear evidence to show that the appellant and other police personnel used mild force against the miscreants and thus, chased them away to prevent any further untoward incident – As regards conviction under s.221, one of the essential ingredients is the intentional omission to apprehend a person or intentionally aiding such person to escape – PW-29-Superintendent of Police and PW-30 who were present on the spot issued directions and accordingly, the appellant acted – After the occurrence was over, PW-29 directed the appellant to search for the accused – Accordingly, the appellant went in search of the accused and arrested accused No.1 to 4 on various dates – There is no evidence that appellant intentionally*

D *omitted to apprehend the accused on the spot – The view of trial court that ingredients of ss.217 and 221 were not made out was plausible one – High Court ought not to have substituted its views with the conclusion of the trial court – Conviction of the appellant not sustainable.*

F **Allowing the appeals, the Court**

HELD: 1. Ex.-P82 is the bandobust duty list as ordered by PW-29-Superintendent of Police. As per Ex.-P82, police officials were present at the place of occurrence for bandobust and PW-30-Additional Superintendent of Police, a superior officer of the

G **appellant, is mentioned at serial No.1. PW-1-Sub-Inspector of Police stated that on the date of occurrence, bandobust was under the leadership of PW-30 who came to the place of occurrence with striking force and they chased the agitators along with the appellant. SI-PW-1 stated that about ten persons of Madurai**

H

Armed Reserve Police Force came in a single vehicle and that the appellant had asked that the vehicle to be parked away safely and asked the police force that they should be scattered sparsely without standing together at one place. In his chief examination, PW-1 has also stated that all of them along with the appellant and other police personnel had used force on the agitators and they chased away the agitators. PW-1 also stated that the appellant was informing about the development in the place of occurrence then and there through wireless to PW-29, Superintendent of Police. As per Ex.-P82 and from the evidence of PW-1, it is seen that thus the appellant was not the senior most officer present at the scene of occurrence to issue directions; PW-30 was the higher officer present there who was to issue directions and the appellant was to act under the direction and guidance of PW-30. [Para 24] [992-B-F, H; 993-A]

2. PW-2 was working as News Editor of Dinakaran Newspaper in Madurai. In his examination-in-chief, he deposed that he informed about the attack to PW-3, Chief Operating Officer (COO) of Dinakaran in Chennai and PW-3 requested the police to give security and stop the attacks. PW-3 deposed that PW-2 told him that more and more people were entering inside the office and that PW-2 gave him the telephone number of the appellant who was standing outside the office and that he (PW-3) immediately called the appellant over phone and the appellant told him that the police were on their way and that action would be taken immediately. The evidence of PWs 2 and 3 showed that the appellant immediately responded to them by stating that action would be taken at once and that he has not received any order from his superiors. The evidence of PWs 2 and 3 shows that the appellant was taking action and there was no lack of diligence on his part. [Paras 25, 26] [993-B, F-G; 994-B]

3. The evidence of PW-29 and Ex.-P82 clearly show that PW-30 was the officer In-charge of the security *bandobust*. The appellant, who was the Deputy Superintendent of Police at the relevant time was under the supervision and control of PW-30. In his evidence, PW-30 has not stated anything about the appellant having disobeyed his orders. In order to attract the

H

A ingredients of Section 217 IPC, there should have been disobedience of the direction of law with intention to save the accused. In a tense situation where there is law and order problem, normally a superior gives out instructions on how to handle a situation and the subordinates are expected to carry them out. If each subordinate police officer start taking actions on his own without order from the superior officer, it would lead to chaos and confusion. Responsibility for the actions lies with the superior: in the present case, PW-30-Additional Superintendent of Police. There is nothing on record to show that the appellant disobeyed the orders of PW-30 who was the officer placed In-charge of the bandobust nor there was any lack of diligence and inaction on the part of the appellant to sustain the conviction of the appellant under Sections 217 IPC and 221 IPC. [Paras 30, 31] [995-G-H; 996-A-D]

4. Insofar as the conviction under Section 221 IPC is concerned, one of the essential ingredients of Section 221 IPC is the intentional omission to apprehend a person or intentionally aiding such person to escape. PW-29-Superintendent of Police and PW-30-Additional Superintendent of Police who were present on the spot issued directions and accordingly, the appellant acted. After the occurrence was over, PW-29 directed the appellant to search for the accused. Accordingly, the appellant went in search of the accused and arrested accused No.1 on 15.05.2007; accused No.2 on 16.05.2007 and accused Nos.3 and 4 on 10.05.2007. There is no evidence to show that the appellant intentionally omitted to apprehend the accused on the spot to sustain the conviction under Section 221 IPC.[Para 33] [996-G-H; 997-A-B]

5. When the trial court has recorded the finding that the ingredients of Sections 217 IPC and 221 IPC are not made out which is a plausible view, the High Court could not have substituted its views with the conclusion of the trial court. So far as the appellant is concerned, the prosecution has not proved his guilt and the conviction of the appellant cannot be sustained. The High Court was not right in reversing the order of acquittal passed by the trial court. [Para 34] [997-C-D]

Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1 : [2010] 4 SCR 103; *Anvar P.V.*

V. RAJARAM v. STATE REPRESENTED BY THE INSPECTOR OF POLICE CBI/SCB 981

v. P.K. Basheer and Others (2014) 10 SCC 473 : [2014] 11 SCR 399 ; Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 ; Sonu alias Amar v. State of Haryana (2017) 8 SCC 570 : [2017] 8 SCR 151 – referred to. A

Case Law Reference B

[2010] 4 SCR 103	referred to	Para 9	
[2014] 11 SCR 399	referred to	Para 17	
(2018) 2 SCC 801	referred to	Para 17	
[2017] 8 SCR 151	referred to	Para 18	C

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos.1765-1766 of 2019

From the Judgment and Orders dated 21.03.2019 & 25.03.2019 of the Madurai Bench of Madras High Court in Crl.A. (MD) No. 274 of 2011 D

B. Balaji (for V. Giri, Sr. Adv.), S. Arun Prakash, M. Mani Kandan, R. Sudhakaran, M. A. Arunesh, Ankur Prakash, Advs. for the Appellant.

Ms. Sonia Mathur, Sr. Adv., Rajesh K. Singh, Mukul Singh, Ms. Sadapurna Mukherjee, Sushil Kumar Dubey, Ms. Divya Nair, Anuj Aggarwal, Puneet Pathak, Arvind Kumar Sharma, Advs. for the Respondent. E

The Judgment of the Court was delivered by
R. BANUMATHI, J. F

1. Leave granted.

2. These appeals arise out of the judgment and order dated 21.03.2019 and 25.03.2019 passed by the High Court of Madras at Madurai Bench in Crl.A. (MD) No.274 of 2011 in and by which the High Court set aside the order of acquittal passed by the Principal Sessions Judge, Madurai in Sessions Case No.3 of 2009 and convicted the appellant-accused No.17 under Sections 217 IPC and 221 IPC and sentenced him to undergo rigorous imprisonment for one year and four years respectively. G

H

A 3. Brief facts which led to filing of these appeals are as under:-

On 09.05.2007, the newspaper Dinakaran carried public opinion results regarding the political heir of the then Chief Minister M. Karunanidhi which suggested that Mr. M.K. Stalin had greater public approval as the political successor of M. Karunanidhi than his elder brother M.K. Alagiri. Protests were staged against the newspaper by the supporters of M.K. Alagiri before the Dinakaran office. Around 10:00 a.m., about fifty persons led by Saravanan, Ex-Secy, Volunteer Wing of DMK came to the office of Dinakaran Newspaper in vehicles and started causing damage to the glass panes of the office and they also started breaking the glass doors with wooden logs. PW-30-Selvaraj-the then Additional Superintendent of Police and the appellant along with police personnel came to the spot. Under the command, the police present there including the appellant used force against the agitators and chased them away. Again, the said Saravanan came with a group of people with soda bottles and started pelting the same at the office of Dinakaran Newspaper. The appellant and other police personnel used force and chased them away. At 11:45 a.m., the supporters gathered before the office of Dinakaran Newspaper. A group of persons (accused Nos.1 to 16) led by V.P. Pandi, S/o Ponnusamy @ Attack Pandi, came to the office of the Dinakaran Daily in a white colour Tata Sumo car armed with *dandas* (sticks) and iron rods. They trespassed into the office and set fire to two wheelers parked inside the compound, near the security office. Thereafter, they vandalised the Dinakaran premises and proceeded to set on fire the reception area. The private security guards on duty were no match to resist the mischief and criminal acts of the miscreants. Three employees of Dinakaran Newspaper-Vinoth Kumar (Deceased No.1), Gopinath (Deceased No.2) and Muthuramalingam, security guard, (Deceased No.3) got stuck in the engulfing fire and have lost their lives in the said incident. On getting information, M. Balasubramanian, Fire Station Officer (PW-50) along with a team of fire service personnel and fire engines went to Dinakaran office at 12 noon and took efforts to douse the fire.

G 4. On the basis of complaint made by SI-Aladiyan (PW-1), on 09.05.2007, FIR was registered in Othakadai Police Station in Cr. No.226 of 2007 at 01:00 p.m. under Sections 147, 148, 449, 436, 302, 307, 332 and 120B IPC, under Sections 4 and 5 of the Explosive Substances Act

H

and under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act against accused No.1-V.P. Pandi @ Attack Pandi and others. Lakshmanan, Inspector of Police (PW-70) had taken up the initial investigation and sent the bodies of deceased persons for post-mortem. Dr. G. Natarajan (PW-63) who conducted the autopsy opined that the cause of death of all the deceased is suffocation associated with head injuries. PW-70 prepared the observation mahazar (Ex.-P181) and Rough sketch (Ex.-P219). PW-70-Investigating Officer seized the material objects-broken glass pieces and burnt two wheelers and other material objects from the scene of occurrence and proceeded with the investigation. Investigation of the case was transferred to the CBI as per notification No.SC/2816-2/2007 dated 10.05.2007 under Section 6 of Delhi Special Police Establishment Act, 1946 issued by the Government of Tamil Nadu and also notification No.228/25/2007 AVD II under Section 5 of Delhi Special Police Establishment Act. In pursuance of these notifications, on 18.05.2007, Cr.No.226 of 2007 of Othakadai Police Station was transferred to CBI and re-registered as R.C.6/S/2007/CBI/SCB/Chennai by CBI and taken up for investigation. On completion of investigation, charge sheet was filed on 06.08.2007 against seventeen accused persons. A1 to A16 were charge-sheeted for the offences punishable under Sections 147, 148, 449, 302 read with Section 149 IPC, 436 read with Section 149 IPC and under Sections 4 and 5 of the Explosive Substances Act and under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act. The appellant-accused No.17 who was the then jurisdictional Deputy Superintendent of Police was charge-sheeted for the offences punishable under Sections 217 IPC and 221 IPC.

5. Accused Nos.1 to 16 were charged under Sections 147, 148, 449, 302 read with Section 149 IPC, 436 read with Section 149 IPC and under Sections 4 and 5 of the Explosive Substances Act and under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act. The appellant-accused No.17 was charged for the offences punishable under Sections 217 IPC and 221 IPC.

6. On being questioned, the appellant denied the charges and pleaded not guilty. Upon consideration of evidence, the trial court acquitted the appellant by holding that the evidence adduced against the appellant is not sufficient to prove the charges under Sections 217 IPC and 221

A
B
C
D
E
F
G
H

- A IPC. The trial court noted the submission of the counsel for the appellant that on the date of occurrence, appellant was not the superior officer present at the place of occurrence and that PW-30-Additional Superintendent of Police was the superior officer and the *bandobust* was arranged under the head of PW-30. The trial court held that the prosecution has not proved that the appellant-accused No.17 intentionally disobeyed the directions of law and intentionally allowed the accused to escape from the place of occurrence. Insofar as the sanction for prosecution, the trial court held that the Principal Secretary who issued the sanction order, was not examined and that the examination of Balakrishnan, Deputy Secretary (PW-67) is not sufficient to prove the satisfaction of the Principal Secretary who signed the sanction order-Ex.-P212.

7. In the appeal preferred by CBI, the High Court reversed the acquittal and convicted 9 out of 16 main accused under Sections 147, 148, 449, 302 read with Section 149 IPC, 436 read with Section 149 IPC, under Sections 4 and 5 of the Explosive Substances Act and under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act. The High Court also reversed the acquittal of the appellant-accused No.17 and convicted him under Sections 217 IPC and 221 IPC and sentenced him to undergo rigorous imprisonment for one year and four years respectively. The High Court held that it has been clearly established through the evidence of T.S. Anbu, Superintendent of Police (PW-29) that the police pickets, which were posted for protecting the Dinakaran office, were headed by Selvaraj (PW-30) and assisted by the appellant-accused-Rajaram, Deputy Superintendent of Police. The High Court held that from the photographs and video footage, it was noticed that the appellant was seen going along with accused No.1 and that the appellant did not take any action to prevent the crime and to apprehend the criminals. The High Court further held that failure of the CBI to prosecute Additional Superintendent of Police Selvaraj (PW-30) cannot absolve the appellant from criminal liability. Observing that the trial court erred in ignoring the evidence of PW-77-Goutham Roy, Senior Scientific Officer, Central Forensic Science Laboratory and in discarding the photographs and videographs, the High Court allowed the appeal preferred by CBI and reversed the acquittal of the appellant and convicted and sentenced him to undergo imprisonment as aforesaid. The revision preferred by one Poongodi, mother of Vinoth Kumar (Deceased No.1) was closed. The

appellant was questioned on sentence in CrI. A. (MD) No.274 of 2011 i.e. criminal appeal preferred by the CBI. The sentence of imprisonment was imposed on the appellant in CrI.A. (MD) No.274 of 2011. A

8. Mr. V. Giri, learned Senior counsel for the appellant contended that the High Court has failed to consider that since the Senior Police Officers viz. Superintendent of Police (PW-29) and Additional Superintendent of Police (PW-30) were regulating the police *bandobust* and giving directions, the appellant cannot be held liable for not preventing the crime committed by the accused. It was further contended that the High Court has committed error in relying upon the Compact Discs without there being any certification as required under Section 65-B of the Indian Evidence Act to prove the same. Learned Senior counsel further submitted that PW-27-Annal-Photographer of Nakkeeran Bi-weekly Magazine who is said to have taken video and the photographs and PW-28-Oliraja-News-reporter of said Nakkeeran Bi-weekly magazine, have turned hostile and have not supported the case of prosecution and this has not been kept in view by the High Court. The learned Senior counsel contended that the High Court erred in reversing the order of acquittal of the appellant and the High Court did not keep in view the well settled principle that generally, order of acquittal shall not be interfered with unless there is erroneous appreciation of evidence and the judgment of the trial court is perverse. B C D E

9. Per contra, Ms. Sonia Mathur, learned Senior counsel appearing on behalf of the respondent-CBI has supported the judgment of the High Court and submitted that at the relevant point of time when the offence was committed, the appellant was In-charge of the *bandobust* duty from 09:30 a.m. at the Dinakaran Newspaper Building and the appellant deliberately did not take any action in preventing the mischief and the criminal acts of the accused. Drawing our attention to the ingredients of Sections 217 IPC and 221 IPC, the learned Senior counsel for the respondent-CBI has submitted that the appellant who was In-charge of the *bandobust* could have easily prevented the attack and the arson and arrested the accused "Attack Pandi" and other accused when they went about committing the offence. Learned Senior counsel further submitted that M.O.45-CD and photographs and six Compact Discs (M.Os.49 to 54) were sent to Central Forensic Science Laboratory (CFSL), New Delhi and the evidence of PW-77-Senior Scientific Officer of CFSL proves that the photographs and videos in the CD's are not tampered F G H

- A with and while so, the trial court erred in discarding the opinion given by the Expert. It was submitted that the High Court rightly relied upon M.O.45-CD and other material objects-Compact Discs and the evidence of Expert-PW-77 and the High Court rightly held that there was no tampering of the Compact Discs and the video CD's in establishing the role of the accused person and the failure of the appellant in his lawful duty. Placing reliance upon *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*(2010) 6 SCC 1, learned Senior counsel submitted that in an appeal against acquittal, the High Court has the power to review the entire evidence and come to its own conclusion and reverse the order of acquittal and the paramount consideration is to prevent the miscarriage of justice. It was submitted that the High Court has rightly reversed the acquittal and convicted the appellant and the learned Senior counsel prayed for dismissal of the appeal.

10. We have carefully considered the above contentions and perused the impugned judgment, evidence and other materials on record.
- D The point falling for consideration is whether the judgment of the trial court qua the appellant was perverse and whether there were substantial grounds for the High Court to reverse the order of acquittal of the appellant recorded by the trial court and convict the appellant for the offences punishable under Sections 217 IPC and 221 IPC.

- E 11. Appellant was the then jurisdictional Deputy Superintendent of Police. The appellant was arrayed as accused No.17 and was charged for the offences punishable under Sections 217 IPC and 221 IPC alleging that the appellant who was on *bandobust* duty, did not take effective steps to prevent the crime and to apprehend the criminals on the spot and thus, alleged to have acted in aid of the accused. The allegation against the appellant (who was the Deputy Superintendent of Police, Oomachikulam Sub-Division at the relevant point of time) is that despite being present at the time of incident in Dinakaran office and despite having a team of thirty-nine police personnel with two rifles, fifty live rounds and other arms and accessories, apart from accessories like helmet, shields, *lathis*, etc. posted for *bandobust* duty at Dinakaran newspaper premises, he did not take effective steps to prevent the crime. Further allegation against the appellant is that he deliberately refrained from issuing orders to thirty-nine police personnel present at the spot to prevent the incident and no step was taken to apprehend the miscreants, rather the appellant intentionally omitted to apprehend the miscreants

H

despite the fact that they committed various cognizable offences in his presence and alleged to have intentionally aided them in escaping from the place of occurrence. A

12. PW-2-A. Muthupandiyan, News Editor of Dinakaran Newspaper in Madurai has stated that on 09.05.2007, Dinakaran Newspaper has published an opinion poll regarding the political heir of M. Karunanidhi as to “Who is the political heir of Karunanidhi?”, which created furore. PW-2 has stated that in the morning of 09.05.2007, a huge group of people came to Dinakaran Newspaper office and attacked and damaged the office building and that he started evacuating the women staff to safety and also tried to protect the computers and other important items inside the office. PW-2 has also stated that Dinakaran office was set fire and that he called the fire service immediately and also complained to the Othakkadai Police Station and asked the police to give protection to their employees and the office. PW-2 has stated that he has also informed about this attack to PW-3-R.M.R. Ramesh, Chief Operating Officer of Dinakaran in Chennai. PW-2 has further stated that since the police did not take any action for giving protection, he obtained the mobile number of the appellant standing outside and asked PW-3 to talk to the appellant. PW-2 further stated that PW-3-Chief Operating Officer has spoken to the appellant and that he does not know what they had talked and later, PW-3 has spoken to another DSP, Kalifullah Khan. B C D E

13. PW-3-R.M.R. Ramesh who has been working as Chief Operating Officer of Dinakaran Newspaper, Head office at Chennai has stated that PW-2-Muthupandiyan had called him at 09:00 a.m. on 09.05.2007 and informed him about the attack on Dinakaran Newspaper office. PW-3 has also stated that on being informed by PW-2, he spoke to the appellant who was standing outside the office and the appellant told him that their police group was on their way and the action would be taken immediately. PW-3 further stated that since he was informed that more people started entering their office, he again called the appellant and requested him to take action at once. PW-3 further stated that the appellant informed him that he has not yet received any order from his superiors and that PW-3 obtained the number of another DSP, Kalifullah Khan and he spoke to the said DSP who told PW-3 that he would supply more police personnel to bolster up security since more people were inside. PW-3 further stated that by that time it was 11:00 a.m. and he was informed by PW-2 that the entire reception was in flames and that F G H

A he asked PW-2 to ensure protection of the employees and the machines. PW-3 also stated that by 01:00 p.m., PW-2 called him and told him that the entire office building was engulfed in flames and that two employees have lost their lives by the billowing smoke cloud and that he informed the Chairman, Dinakaran and immediately, they went to Madurai by flight.

B

Submissions regarding M.O.45-CD, photographs and the Compact Discs (M.Os. 49 to 54)

14. CBI collected M.O.45-CD containing thirty-one photographs which are said to have been taken by PW-27-Annal who has been then working as the Photographer of Nakkeeran Bi-weekly Magazine. M.Os. 49 to 54-Compact Discs are said to have been handed over to CBI by PW-2-Muthupandiyan, News Editor of Dinakaran Office. The Investigating Officer has stated that six Compact Discs-M.Os. 49 to 54 were handed over to him by PW-2; but PW-2 denied handing over of M.Os. 49 to 54. As seen from the evidence of PW-77, Senior Scientific Officer of CFSL, Compact Discs-M.Os.49 to 54 and M.O.45 were sent to the Laboratory. In his report, PW-77 gave his opinion that “original photographs and videographs look strong in resolution”. In his evidence, PW-77 has stated that none of the photographs are tampered and all the photographs and videographs are original because of its strong resolution.

E

15. PW-28-Olirajan has been working as the Madurai News-reporter of Nakkeeran Bi-weekly Magazine and PW-27-Annal has been working as the Photographer of Nakkeeran Bi-weekly Magazine. Case of the prosecution is that PWs 27 and 28 have covered the incident that happened in Dinakaran office on 09.05.2007 and they have reported the news to their Magazine and sent the photos to their Chennai Head Office. PWs 27 and 28 have denied going to the spot and covering the incident. PW-27 has stated that on 09.05.2007, he was suffering from stomach pain and that he went to the Dinakaran office only at 02:00 p.m. and saw some demonstration and protest going on. PW-27 has thus, only stated about the demonstration that were going on in Dinakaran office at 02:00 pm and that he took the photos of it and sent the same to the Head Office. Likewise, PW-28 who was then working as the News-reporter in Nakkeeran Bi-weekly Magazine has stated that at the time of occurrence, he did not go to the place of occurrence and he did not collect any news. But PWs 27 and 28 have thus, turned hostile and have not supported the case of prosecution.

H

16. PW-75-Nakkeeran Gopal is the Editor and Publisher of Nakkeeran Bi-weekly Magazine. In his evidence, PW-75 has stated that PWs 27 and 28 are the persons collecting news for the Bi-weekly Magazine in Madurai and they used to send the news and photos to their Head Office. PW-75 has stated that at the time of CBI enquiry, as per the request of Investigating Officer (CBI), he has handed over M.O.45-CD to the Investigating Officer. PW-75 has also stated that in M.O.45-CD, thirty-one photographs were recorded. PW-26-Kamaraj, Joint Editor in Nakkeeran Magazine at Chennai had also stated about PWs 27 and 28 having been engaged by their Magazine in Madurai and that they used to collect news and photos and send it to their Head Office. PWs 26 and 75 have stated about the receipt of news and photographs of the occurrence that took place in Dinakaran office and the photographs and news published in their Magazine; but PWs 26 and 75 have admitted that they have not taken the photographs and they do not know personally about the news or the photographs taken.

17. Mr. V. Giri, learned Senior counsel for the appellant has raised objection regarding M.O.45-CD and six Compact Discs (M.Os.49 to 54) and that the same are not admissible. Learned Senior counsel contended that M.O.45 and M.Os.49 to 54 are not primary evidence and the same should have been proved in accordance with Section 65-B of the Indian Evidence Act. Reliance was placed upon *Anvar P.V. v. P.K. Basheer and Others* (2014) 10 SCC 473 to contend that electronic evidence, by way of secondary evidence, shall not be admitted in evidence unless the requirements under Section 65-B of the Evidence Act are satisfied. Learned Senior counsel has also drawn our attention to *Shafhi Mohammad v. State of Himachal Pradesh* (2018) 2 SCC 801 and submitted that in *Shafhi Mohammad*, after referring to *Anwar* case, two Judges Bench has distinguished the decision and in para (29) of the judgment, it was observed that the requirement of a certificate under Section 65-B(4) of the Evidence Act is not always mandatory. Learned Senior counsel further submitted that the decision in *Shafhi Mohammad* however, has been referred to a larger Bench on 26.07.2019 in C.A Nos.20825-20826 of 2017.

18. Learned Senior counsel for the respondent-CBI has submitted that the evidence of PW-77, Senior Scientific Officer of CFSL establishes the truthfulness of the videographs and the photographs and that in his evidence, PW-77 made it clear that the photographs, M.O.45-CD and

- A the Compact Discs-M.Os.49 to 54 were original and that they were not tampered with. Placing reliance upon *Sonu alias Amar v. State of Haryana* (2017) 8 SCC 570, learned Senior counsel submitted that under Section 65-B of the Indian Evidence Act, at the time of admitting the material objects, the accused did not take any objection before the trial court with regard to the requirement of Section 65-B(4) certification.
- B It was submitted that any objection regarding the admission of documents/material objects should be taken at the stage of trial and at the time of marking of documents as an exhibit and not later.

19. Placing reliance upon *Shafhi Mohammad* case, learned Senior counsel submitted that a piece of evidence/material objects should not be kept out of Court's consideration on the ground that certificate under Section 65-B(4) is unavailable because, the ultimate objective of a criminal prosecution is to arrive at the truth. Learned Senior counsel therefore, submitted that though the certification under Section 65-B(4) is not available, by considering the evidence of PW-77-Senior Scientific Officer of CFSL, the Compact Discs were rightly taken into consideration by the High Court to prove the criminal acts of the accused and the act of the appellant in not acting diligently.
- C
- D

20. For reversing the order of acquittal of the appellant, the High Court referred to M.O.45-CD, photographs and M.Os.49 to 54. M.O.45-CD, photographs and the news published in Nakkeeran Magazine and other evidence were relied upon by the prosecution. As pointed out earlier, PW-2, News Editor of Dinakaran office has denied handing over of six Compact Discs-M.Os. 49 to 54 to the Investigating Officer. The Investigating Officer in his evidence has stated that PW-2 has handed over six Compact Discs-M.Os. 49 to 54. The High Court referred to the report of PW-77, Senior Scientific Officer of CFSL and held that the evidence of PW-77 shows that the photos and the videos have not been doctored. Referring to M.O.45-CD and other material objects-Compact Discs, the High Court observed that the trial court erred in brushing aside the video footage and the photos contained in the Compact Discs on a presumptuous ground that the same could have been doctored and that the said approach of the trial court is perverse. On such findings, the High Court reversed the acquittal of all the accused and also the acquittal of the appellant-accused No.17. Since the appeals against other accused convicted under Section 302 IPC are admitted and pending before the Supreme Court, we do not propose to go into the merits of the
- E
- F
- G
- H

contentions regarding M.O.45-CD, photographs and other Compact Discs-M.Os.49 to 54. Lest, it might affect the interest of the parties in other criminal appeals which are pending before in the Supreme Court. We therefore, consciously refrain from expressing our views on the contentions regarding M.O.45-CD and other Compact Discs (MOs.49 to 54) and the photographs and other electronic evidence relied upon by the prosecution and the news published in Nakkeeran Bi-weekly Magazine.

A

B

21. The appellant has been convicted for the offences punishable under Sections 217 IPC and 221 IPC. At the relevant time, the appellant was the Deputy Superintendent of Police of the jurisdictional Division. The allegation against the appellant is that he disobeyed the laws with intention to save the accused from legal punishment and also intentionally allowed the accused to escape from the place of occurrence and therefore, he is charged for the offences punishable under Sections 217 IPC and 221 IPC. In the light of the oral evidence adduced, it is to be seen whether the prosecution has proved the charges against the appellant under Sections 217 IPC and 221 IPC and whether the High Court was right in reversing the order of acquittal of the appellant.

C

D

22. Section 217 IPC deals with disobedience on the part of public servants in respect of official duty. To prove the charges under Section 217 IPC, the following ingredients must be proved:-

E

(i) there must be an intentional disobedience of law by a public servant; and

(ii) such disobedience must be with intention to save, or knowledge that he will thereby (a) save a person from legal punishment; or (b) save any property from forfeiture or charge to which it is liable by law.

F

Section 221 IPC deals with omission to apprehend the offenders or suffering the escape of the offenders. To prove the charges under Section 221 IPC, the prosecution must prove:-

G

(i) that the accused is a public servant;

(ii) that the person in question had been charged with an offence; or that such person was liable to be apprehended for an offence;

(iii) that the accused was legally bound to apprehend such person for the same;

H

A (iv) that he omitted to apprehend; that he did so intentionally.

23. In the light of the oral evidence adduced by the prosecution, it is to be seen whether the High Court was right in holding that the appellant could have easily prevented the incident and the arson and arrested the accused “Attack Pandi” and his group when they went about committing the cognizable offences.

24. Ex.-P82 is the *bandobust* duty list as ordered by PW-29-T.S. Anbu, Superintendent of Police. As per Ex.-P82, police officials were present in the place of occurrence for *bandobust* and PW-30-Selvaraj-Additional Superintendent of Police, a superior officer of the appellant, is mentioned at serial No.1. PW-1-Sub-Inspector of Police has stated that on the date of occurrence, *bandobust* was under the leadership of PW-30-Selvaraj, Additional Superintendent of Police who came to the place of occurrence with striking force and they chased the agitators along with the appellant. PW-1 has also stated that police personnel were divided into seven groups and were directed to be on *bandobust* duty on seven points. SI-PW-1 has stated that about ten persons of Madurai Armed Reserve Police Force came in a single vehicle and that the appellant had asked that the vehicle to be parked away safely and asked the police force that they should be scattered sparsely without standing together at one place. In his chief examination, PW-1 has also stated that all of them along with the appellant and other police personnel had used force on the agitators and they chased away the agitators. PW-1 also stated that the appellant was informing about the development in the place of occurrence then and there through wireless to PW-29, Superintendent of Police. In his cross-examination on behalf of the appellant, PW-1-SI-Aladiyan has stated as under:-

F “The security was organized on that day under the charge of Mr. Selvaraj, the Additional Superintendent.....The DSP was standing near his vehicle to relay the developments happening there to the S.P. through wireless communication.....To state that our vehicles were parked at a distance so as not to create traffic jam is correct. To state that on that day the police security services were well executed is correct”.

As per Ex.-P82 and from the evidence of PW-1, it is seen that thus the appellant was not the senior most officer present at the scene of occurrence to issue directions; PW-30-Additional Superintendent of

H

Police was the higher officer present there who was to issue directions and the appellant was to act under the direction and guidance of PW-30-Additional Superintendent of Police. A

25. PW-2-Muthupandiyan has been working as News Editor of Dinakaran Newspaper in Madurai. In his examination-in-chief, PW-2 has deposed that he has informed about the attack to PW-3-R.M.R. Ramesh, Chief Operating Officer (COO) of Dinakaran in Chennai and PW-3 has requested the police to give security and stop the attacks. In his chief-examination, PW-2 has stated as under:- B

“Even when asking the police for giving protection, they did not take any action standing witness to the incident. Therefore, I had gathered the mobile phone number of the DSP Mr. Rajaram standing out and asked our COO to talk to him. DSP Mr. Rajaram is the 17th accused in this case. Our COO has talked to the DSP Mr. Rajaram on his phone. I do not know what they had talked. Later, COO has talked to another DSP Mr. Kalifullah Khan too”. C D

In his cross-examination on behalf of the appellant, PW-2 has stated that he requested the appellant Rajaram to take action. PW-2 was treated hostile by the prosecution. In his cross-examination from the prosecution side, PW-2 denied having told the police that when he asked the appellant to take action, the appellant-Rajaram told him that *“he could not take any action and there is no such necessity to do so.....”*. E

26. PW-3-R.M.R. Ramesh, Chief Operating Officer of Dinakaran has deposed that PW-2-Muthupandiyan told him that more and more people are entering inside the office and that PW-2 gave him the telephone number of the appellant who was standing outside the office and that he (PW-3) immediately called the appellant over phone and the appellant told him that the police were on their way and that action would be taken immediately. PW-3-Chief Operating Officer of Dinakaran office has further stated that since more people started entering the office, he called the appellant again and requested him to take action at once. According to PW-3, the appellant replied as under:- F G

“.....he has not received any order yet from his superiors. I requested him to provide the telephone number of his immediate higher authority. He gave me the telephone number of DSP H

A *Mr. Kalifulla Khan. I called up DSP Mr. Kalifulla Khan and he told me that he would supply more police personnel to bolster up security since more people were inside. By that time, it was 11.00 a.m.....”.*

B From the evidence of PWs 2 and 3, it is seen that the appellant immediately responded to them by stating that action would be taken at once and that he has not received any order from his superiors. The evidence of PWs 2 and 3 shows that the appellant was taking action and there was no lack of diligence on his part.

C 27. PW-29-T.S. Anbu, then Superintendent of Police (Rural) of Madurai District has stated about the issuance of order (Ex.-P82) for providing security to Dinakaran office. In his evidence, PW-29 has stated that he has deputed a total of 41 persons comprising of PW-30-Selvaraj, Additional Superintendent of Police, the appellant-DSP, Inspectors, Sub-Inspectors and the Police Constables. In his cross-examination on behalf of the appellant, PW-29 has stated as under:-

D *“As per P.W. Ex.82, the higher official dispatched for giving security and protection was S.P. Selvaraj. If any such officer wants to leave that place assigned to him, he has to get my permission. Mr. Selvaraj who was assigned to this duty did not get any such permission from me. If he did not get my permission that will mean that he was doing his duty assigned to him. The higher authority of that security group is responsible for that group.....”.*

E

F From the evidence of PW-29 and Ex.-P82, it is clear that PW-30 was the higher officer placed as In-charge of the security.

G 28. In his evidence, PW-30-Selvaraj, Additional Superintendent of Police has stated that about 35 police personnel along with the appellant were engaged in *bandobust* duty and at about 11:18 a.m. since there was no further law and order problem, he went to the High Court and at about 11:40 a.m., he noticed the smoke coming out from Dinakaran office and immediately, he rushed to the place of occurrence. PW-30 further stated that he enquired the appellant about the measures taken to put off the fire and that the appellant informed that fire brigade had already been informed. As pointed out earlier, in his cross-examination, as per the evidence of PW-29-Superintendent of Police and Ex.-P82, the higher official dispatched for giving security and protection was PW-30-Additional

H

Superintendent of Police. When there was agitation near Dinakaran office, it is not known as to why PW-30 left for the High Court. Having been deputed to be on duty near Dinakaran office, if PW-30 wanted to leave the place of duty assigned to him, he ought to have taken the permission from his superior officer. Nothing has come on record that PW-30 has taken any such permission from PW-29 for going to the High Court. In cross-examination, PW-29-Superintendent of Police has stated that PW-30 did not get permission from him to leave the place and go to the High Court.

29. As held by the trial court, Ex.-P82 and the evidence of PW-29-Superintendent of Police would show that the *bandobust* at the Dinakaran office was posted under the control of PW-30 and the appellant was acting under the direction of PW-30. The trial court has rightly pointed out that PW-30-Additional Superintendent of Police is shown at serial No.1 in Ex.-P82 and what kind of action to be taken is to be decided by the superior officer. From the evidence, it is brought on record that the appellant and other police personnel have used force and chased away the agitators. The High Court found that though the appellant was present at the place of occurrence, the accused committed the offence in his presence and he has not apprehended the accused. As discussed earlier, from the evidence it has come on record that the police on *bandobust* including the appellant have chased the agitators. From the evidence of PW-1-Sub-Inspector of Police, it is seen that the appellant and the other police officers have taken action and also used force in chasing away the agitators. Further from the evidence of PW-2-News Editor of Dinakaran office and PW-3-Chief Operating Officer of Dinakaran office, it is seen that the appellant immediately responded to them by stating that he has not received any order from his superiors and that action would be taken immediately. The evidence of PWs 2 and 3 shows that there was no lack of diligence on the part of the appellant.

30. The evidence of PW-29 and Ex.-P82 clearly show that PW-30-Additional Superintendent of Police was the officer In-charge of the security *bandobust*. The appellant, who was the Deputy Superintendent of Police at the relevant time was under the supervision and control of PW-30. In his evidence, PW-30 has not stated anything about the appellant having disobeyed his orders. In order to attract the ingredients of Section 217 IPC, there should have been disobedience of the direction of law with intention to save the accused. The prosecution has not adduced

- A any evidence to show that the appellant-accused has disobeyed the direction of law or the direction of the superior officer-PW-30 or acted with the intention of saving the accused.

31. While it may be true that at the time of incident near Dinakaran office i.e. on 09.05.2007 between 11-12:00 a.m., the situation became worse, at the same time, it has come on record that the police were taking action to chase the agitators. In the light of such evidence, it cannot be said that there was inaction or negligence on the part of the appellant. In a tense situation where there is law and order problem, normally a superior gives out instructions on how to handle a situation and the subordinates are expected to carry them out. If each subordinate police officer start taking actions on his own without order from the superior officer, it would lead to chaos and confusion. Responsibility for the actions lies with the superior: in the present case, PW-30-Additional Superintendent of Police. There is nothing on record to show that the appellant disobeyed the orders of PW-30 who was the officer placed In-charge of the *bandobust* nor there was any lack of diligence and inaction on the part of the appellant to sustain the conviction of the appellant under Sections 217 IPC and 221 IPC.

32. As pointed out earlier, one of the essential ingredients to make out the offence under Section 217 IPC is that the public servant should have disobeyed any directions of law with the intention to save any person from legal punishment. In the present case, there is no evidence to show that the appellant has disobeyed the directions of any law. On the contrary, there is clear evidence to show that the appellant, PW-1-Sub-Inspector of Police and other police personnel have used mild force against the miscreants and thus, chased them away to prevent any further untoward incident. Absolutely, there is no evidence to show that the appellant did not obey the command of PW-30 or PW-29-Superintendent of Police who were present on the spot for issuing directions and commands. There is no evidence to prove that the appellant omitted to do any act to sustain the conviction under Section 217 IPC.

33. Insofar as the conviction under Section 221 IPC is concerned, one of the essential ingredients of Section 221 IPC is the intentional omission to apprehend a person or intentionally aiding such person to escape. PW-29-Superintendent of Police and PW-30-Additional Superintendent of Police who were present on the spot issued directions and accordingly, the appellant acted. After the occurrence was over,

PW-29 directed the appellant to search for the accused. Accordingly, the appellant went in search of the accused and arrested accused No.1 (V.P. Pandi @ Attack Pandi) on 15.05.2007; accused No.2 (M. Thiruchelvam) on 16.05.2007 and accused Nos.3 and 4 (Prabhu @ Arockiyaprabu and M. Saravanamuthu) on 10.05.2007. There is no evidence to show that the appellant intentionally omitted to apprehend the accused on the spot to sustain the conviction under Section 221 IPC.

34. Upon appreciation of evidence and considering the ingredients of Sections 217 IPC and 221 IPC, the trial court acquitted the appellant. When the trial court has recorded the finding that the ingredients of Sections 217 IPC and 221 IPC are not made out which is a plausible view, the High Court could not have substituted its views with the conclusion of the trial court. So far as the appellant is concerned, the prosecution has not proved his guilt and the conviction of the appellant cannot be sustained. In our considered view, the High Court was not right in reversing the order of acquittal passed by the trial court and the impugned judgment qua the appellant is not sustainable and the appellant is acquitted.

35. Mr. B. Balaji, learned counsel appearing on behalf of the appellant has submitted that because of the criminal case, the appellant has not been paid the pension and other retiral benefits and prayed for appropriate directions. Since the conviction of the appellant is set aside and he is acquitted of the charges, the appellant is at liberty to work out his remedy in accordance with law. The concerned authorities shall take note of the acquittal of the appellant.

36. The appellant was charged for the offences punishable under Sections 217 IPC and 221 IPC alleging that he disobeyed the laws with intention to save the accused and that he was not diligent in apprehending the accused. Upon consideration of oral evidence adduced by the prosecution, we have held that the charges against the appellant under Sections 217 IPC and 221 IPC are not proved and the conviction of the appellant has been set aside and the appellant is acquitted. The appellant is not in any way involved in the main occurrence. The very charge against the appellant for which he was tried is different and distinct from the charge for which the other accused were tried. Hence, the instant appeal was heard separately. The other accused who have been convicted under Section 302 IPC and other offences have preferred appeals and those appeals are pending before the Supreme Court. The appeals

- A preferred by the other accused shall be considered on their own merits and the findings in these appeals shall not have a bearing one way or the other in those appeals.

37. In the result, the impugned judgment and order dated 21.03.2019 and 25.03.2019 passed by the High Court of Madras at Madurai Bench in CrI.A. (MD) No.274 of 2011 convicting the appellant-accused No.17 under Sections 217 IPC and 221 IPC are set aside and these appeals are allowed and the appellant is acquitted of the aforesaid charges.

Devika Gujral

Appeals allowed.