

Crl.A.(MD).No.218 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	20.12.2023
Pronounced on	:	18.04.2024 & 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.218 of 2017

State of Tamil Nadu

rep.by,

The Public Prosecutor,

High Court, Madras-600 104.

(V & AC Pudukkottai

Crime No.08 of 2000)

... Appellant/Complainant

Vs.

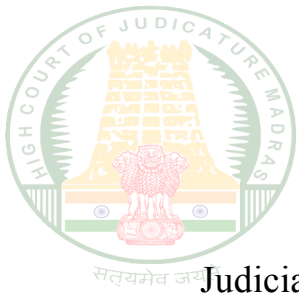
1. Kamalam

2. Sundarakkannu

... Respondents /Accused [A-1 & A-2]

Prayer : This Criminal Appeal is filed under Section 378(1) (b) of Cr.P.C.

to allow the appeal, set aside the Judgment of acquittal of the respondents/accused [A-1 & A-2] passed by the Special Judge/Chief



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Judicial Magistrate, Pudukottai in Special C.C.No.07 of 2001, dated 29.09.2016, convict and sentence the Respondents/Accused [A-1 & A-2] on the charges framed against them.

For Appellant : Mr.T.Senthil Kumar,
Additional Public Prosecutor

For Respondents : Mr.G.Karuppasamy Pandian
for Mr.S.Jayakumar for R1

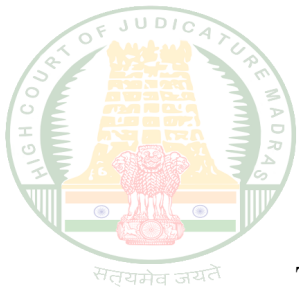
: Mr.C.Arul Vadivel @ Sekar,
Senior Counsel for
M/s.C.Arul Vadivel @ Sekar Associates
for R2

JUDGMENT

The prosecution preferred this appeal against the judgment of acquittal passed by the Special Judge/Chief Judicial Magistrate, Pudukottai in Special C.C.No.07 of 2001, dated 29.09.2016, wherein, both the respondents were not found guilty under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Anti-Corruption Act, 1998 and were acquitted.

2.The Brief facts necessary for the disposal of this appeal, are as

follows:



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The first accused officer/ 1st respondent was working as the Revenue Inspector, Mazhaiyur Firka, Alangudi Taluk, Pudukkottai District. The second accused officer/ 2nd respondent was working as the Office Assistant, Mazhaiyur Firka, Alangudi Taluk, Pudukkottai District. Both of them are public servants. On 04.09.2000, P.W.2/Sundar approached A1 and submitted an application to transfer the patta in his name for the land comprised in Survey No.145/3A, 145/3D, 145/3C, situated at Melavattam, Vanakkangadu Village, Alangudi Taluk, Pudukkottai District. A1 did not take any steps to transfer the patta in the name of P.W.2. Again on 08.12.2000, P.W.2 approached A1 in her office. At that time, she was not available. But, A2 was present and he demanded Rs.1,000/- as bribe for processing the request of P.W.2 to transfer patta. P.W.2 replied that he has not brought money and hence, A2 asked him to meet A1 on 11.12.2000. On 11.12.2000, when he met A1 she demanded Rs.1,000/- as bribe to transfer the patta. Further, on 13.12.2000, she reiterated the earlier demand and reduced the amount from Rs.1,000/- to Rs.500/-. On 15.12.2000, she met P.W.2 and asked him to bring the bribe amount and meet her in Thasildar office, Alangudi, at 06.30 p.m. P.W.2 was not willing to give bribe amount. Hence, he made a complaint before



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Mr.Masilamani, then DSP/deceased, (Trap Laying Officer) Vigilance and Anti Corruption Wing, Pudukkottai. Upon receipt of the complaint, the said DSP/deceased registered a case in Crime No.8 of 2000 for the offence under Section 7 of the Prevention of Corruption Act. Thereafter, the said DSP/deceased called two official witnesses namely, P.W. 3/Chinnakaruppan and P.W.4/Krishnan. The said official witnesses read the FIR and affirmed the contents of the FIR. After the formalities, the said DSP/deceased demonstrated the Phenolphthalein Test to P.W.2 in the presence of the official witnesses namely P.W.3 and P.W.4 and smeared phenolphthalein powder over the five currency notes in the denomination of Rs.100/- brought by P.W.2 and noted the serial numbers in the mahazar and put the same in the pocket of P.W.2. Thereafter, the said DSP/deceased prepared the entrustment mahazar under Ex.P.6. The said DSP/deceased specifically instructed P.W.2 and P.W.3, to meet A1 and A2 and if A1 and A2 demanded the bribe amount, P.W.2 was directed to give bribe amount and was asked to give signal. P.W.3 was asked to accompany P.W.2 and instructed him to observe the transaction.

2.1.Subsequently, the said DSP/deceased (Trap Laying Officer) and

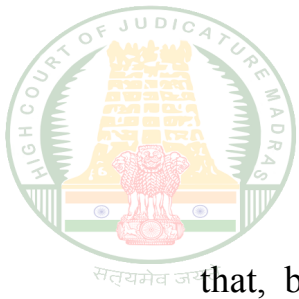


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the team reached the office of A1 and A2. When P.W.2 approached A1, she asked him to wait outside the office. After that, A2 verified with P.W. 2 whether he had brought money. P.W.2 stated that he had brought the money and after that, she asked him to wait there and she instructed him to hand over the money to A2 namely the respondent No.2. Thereafter, A2 came and received the bribe amount and put the same in his “*shirt pocket*”. Then, P.W.2 gave the signal and the said DSP/deceased and other officials witnesses went inside the office and P.W.2 identified A1 and A2 and also disclosed that A2 received the said amount. Thereafter, P.W.2 was asked to go out of the office. The said DSP/deceased conducted the test in the hands of A2 and the hand wash of A2 turned pink. A2 stated that he had not demanded any amount from P.W.2 and he received it as per the direction of A1.

2.2.According to the Trap Laying Officer, A2 admitted that he received the bribe amount of Rs.500/- from P.W.2 and kept the same in his shirt pocket. Hence, he conducted test in the pocket of the shirt. The said solution also turned pink. Consequently, he recovered the amount and verified the number of currency notes with the entrustment mahazar. After

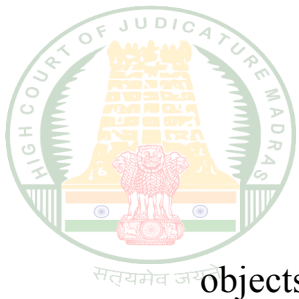


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that, both the accused were arrested. The said DSP/deceased made a search in the house of both the accused and Ex.P.9 and Ex.P.10 Search Mahazars were prepared and observation mahazar under Ex.P.8 and rough sketch under Ex.P.24 were also prepared. Thereafter, the investigation was entrusted with P.W.12 and he conducted the investigation by collecting all the materials and also examined the witnesses and obtained sanction. After completion of the investigation, P.W.12 filed a final report before the Special Judge/Chief Judicial Magistrate, Pudukottai, under Sections 7, 12, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The learned Special Judge, after taking the final report on file in Special C.C.No.07 of 2001, issued summons to the respondents and on their appearance, furnished the copies of documents under Section 207 of Cr.P.C., and thereafter, framed the charges against both the accused under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and questioned the accused. The accused denied the charges and pleaded not guilty and they stood for trial.

3.To prove the case, the prosecution examined P.W.1 to P.W.12 and exhibited 29 documents as Ex.P.1 to Ex.P.29 and produced 5 material



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objects as M.O.1 to M.O.5. Then, both the accused were questioned under Section 313 Cr.P.C., proceedings by putting the incriminating evidence against them. They denied the same as false and thereafter, the case was posted for defence evidence. The accused neither produced any documents nor examined any witness on their side.

4.The learned trial Judge, on considering the evidence of witnesses, acquitted A1 and A2 of the offences under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Anti-Corruption Act, 1998. Aggrieved over the same, the prosecution preferred this appeal.

5.The learned Additional Public prosecutor appearing on behalf of the State/ appellant submitted that P.W.2 clearly deposed that the demand was made by A1 and A2 to transfer the patta in his name. The learned trial Judge had not considered the said deposition holding that there was no corroborative evidence. The above said approach is against law as laid down by the Honourable Supreme Court. In this case, there is no doubt over the deposition of P.W.2. Apart from that, the deposition of P.W.3 and P.W.4 clearly proved that the demand was made by A1. The prosecution

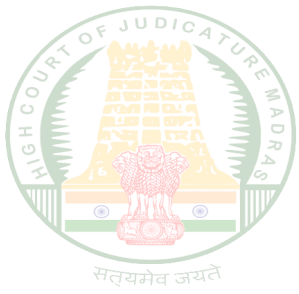


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prepared seizure mahazar and recovered the documents relating to the transfer of Patta. The above said mahazar and recovered documents are strong pieces of evidences to prove the demand. P.W.3 was examined after number of years and he failed to recollect the fact of reiteration of demand by A2 and hence, to that extent, he was treated hostile. The above said fact cannot be taken as a material to disbelieve his evidence in entirety. P.W.2 clearly deposed about the receipt of money by A2 and reiteration of demand made by A1 on the date of trap. In the said circumstance, the prosecution clearly proved that demand was made by A1.

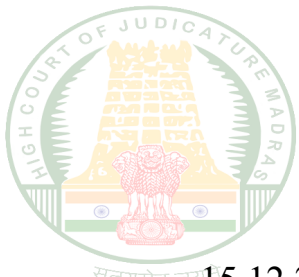
5.1.The learned Additional Public Prosecutor further submitted that as per the direction of A1, A2 received the amount, and hence, the concept of constructive receipt comes into play and he relied the Judgement of the Honourable Supreme Court reported in **2015 12 SCC 348, 2010 11 SCC 575, 1995 3 SCC 351**. Applying the principle laid down in the above judgement, it is clear that A2 received the amount on behalf of A1 with knowledge and the said amount is bribe. Therefore, the learned trial Judge without appreciating the evidence as per the object of the prevention of corruption Act, erroneously acquitted the accused.



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5.2.He further submitted that the evidence of Thasildhar also shows that A1 received the application of P.W.2 to transfer the patta in his name and she had demanded money. The learned Additional Public Prosecutor further submitted that the prosecution clearly proved the charge in all angle without giving room for suspicion. From the evidence, it is clear that A1 and A2 demanded and accepted the amount for transfer of patta in the name of P.W.2. A1 claimed that at the time of the alleged demand, she was not available and to prove the stand of alibi she relied on Ex.P18. But Ex.P.18 is not specific that she was not present on the date of demand in the office. Therefore, the evidence of P.W.2 clearly shows that the demand was made on 11.12.2000 and 13.12.2000. But, the learned trial Judge has not accepted the same without any valid reason. Even if it is taken that the demand on 11.12.2000 and 13.12.2000 were not proved, the reiteration of demand by A1 on 15.12.2000 is clearly proved by the evidence of P.W.2. The said evidence of P.W.2 was not challenged during the course of the cross examination. Therefore, unchallenged portion of the demand made by A1 on 15.12.2000, is to be considered. Law requires that there was a demand and there should be proof of demand. The proof of demand on



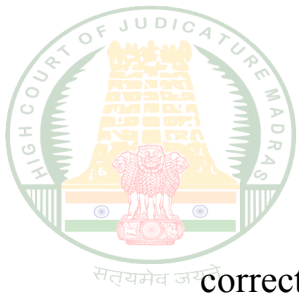
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15.12.2000 is clear through record and the same was not challenged in the cross examination.

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5.3.The learned Additional Public Prosecutor submitted that the learned Judge committed error in not properly appreciating the evidence. Hence, the improper application of mind itself shows perversity and the same requires interference in the acquittal judgment passed by the learned trial Judge. He also submitted that the prosecution proved demand and acceptance as per requirement of the Act and hence, the only view available is that the accused demanded and accepted the amount and no other possible view is available. Therefore, he seeks for setting aside the acquittal judgment.

6.The learned counsel appearing on behalf of the first respondent submitted that right from the beginning, she specifically pleaded that she never demanded. On the date of demand on 11.12.2000 and 13.12.2000, she was engaged on some other duty. The same is revealed from the prosecution document itself under Ex.P.18. Therefore, the case of P.W.2 that he met A1 in her office is false. Therefore, the learned trial judge



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correctly applied the principle and held that demand on 11.12.2000 and 13.12.2000 had not been proved and hence, without proof of demand, the conviction and sentence passed under Section under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Anti-Corruption Act, 1998 is not maintainable.

6.1. The learned counsel appearing on behalf for the first respondent submitted that there are number of contradictions and improvements in the testimony of P.W.2 and hence, the learned trial Judge correctly disbelieved the evidence of P.W.2. The learned trial Judge correctly held that without corroboration of the evidence of P.W.2, the case of the prosecution cannot be taken as proved. He further submitted that the bribe amount was recovered from A2 only and from A1, there was no recovery. Hence, there was no evidence to convict A1 under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Anti-Corruption Act, 1998. The learned trial judge correctly appreciated the evidence and the absence of the evidence to prove the demand and material contradiction relating to the demand and other aspects, and acquitted the accused. The learned trial judge also gave a finding that two sets of evidence are available. Therefore , the said



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finding need not be interfered by exercising the power in appeal against the acquittal. He also relied on the following judgments of the Honourable Supreme Court:-

6.1. (i) *N.Vijayakumar Vs. State of Tamil Nadu* reported in (2021) 1 MLJ (Crl) 517 (SC).

6.1. (ii) *Soundarajan Vs. State* reported in 2023 CRI. L. J. 2123: AIR online 2023 SC 300.

It is specifically argued that the case does not come under the above guidelines issued by the Honourable Supreme Court to interfere with order of acquittal.

7.The learned Senior Counsel appearing on behalf of the second respondent/A2 reiterated the submission of the learned counsel on behalf of A1 and specifically submitted that the receipt of the bribe amount is not proved in accordance with law. The Trap Laying Officer died during the course of the trial. Hence, there is no corroboration for evidence of P.W.2. The learned trial Judge correctly appreciated the evidence and specifically held that the demand was not proved. The acceptance of



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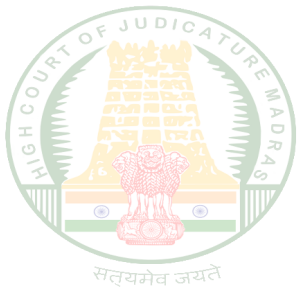
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amount is also not proved in accordance with law. The learned Senior Counsel submitted that even if recovery is taken as proved, the mere recovery of the amount is not a ground to convict the appellant under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Anti-Corruption Act, 1988. In this case, the complainant has come up with a false case on account of the refusal to grant patta. In the said circumstances, the trial Judge took a view and considered the deposition of the witnesses and acquitted the respondents on the basis of the material contradictions and omissions. This case does not come under the exceptional circumstances to interfere with the appeal against acquittal. Therefore, there are two sets of evidence and hence, the benefit of doubt is to be given to the second respondent. Hence, he seeks for dismissal of the appeal.

8.This Court considered the rival submission and also perused the records and the precedents relied upon by them.

9. The learned trial Judge has framed the following questions :

- 1) whether both the accused were public servants as defined u/s. 2(c) of P.C. Act 1988 during the period of occurrence of this case?



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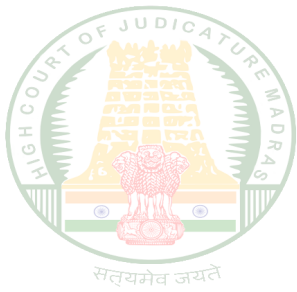
- 2) whether the sanction for initiating prosecution is valid in the eye of law?
- 3) whether the first demand of bribe of Rs.1,000/- and subsequently reduced to Rs.500/- by the first accused has been proved?
- 4) whether the first demand of bribe of Rs.1,000/- by the second accused has been proved?
- 5) whether the second demand of both the accused, during the trap proceedings has been proved by the prosecution?
- 6) whether the acceptance of bribe amount of Rs.500/- has been proved by the prosecution?
- 7) whether presumption can be raised in this case u/s. 20 of the Prevention of Anti-Corruption Act 1988?
- 8) whether the non observation of Rule 47 affected the case of prosecution?

10. He has answered the question Nos.1, 2 and 8 against the respondents.

11. He has answered the question Nos.3, 4, 5, 6 and 7 in favour of the accused/respondents and acquitted them.

12. He has also recorded the finding on the following two aspects :

- (i) P.W.2/defacto Complainant had got a strong



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motive to implicate the respondents in this case for not obliging his demand of patta as per claim and hence his testimony cannot be acted upon without some independent corroborative evidence.

(ii) before the trap on 19.12.2000, the first accused processed the application and the same was ripe for the issuance of patta and hence it can not be said that the accused had received the money by abusing the official position.

12(a). The learned trial Judge in paragraph Nos.23 to 35 has made a discussion and also has held that the first demand allegedly made by the first accused on 11.12.2000 and 13.12.2000, has not been proved by the prosecution beyond reasonable doubt.

12(b). the learned trial Judge has made a detailed discussion in paragraph Nos. 40 to 44 and also has held that the prosecution miserably failed to prove the second demand made by both the accused, during the trap proceedings on 19.12.2000.

13. Finally, in paragraph No. 56 the learned trial Judge has concluded that in the absence of proof of first demand, which was



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allegedly made by A1 and in view of P.W.3 turning hostile with regard to the material particulars resulting in lack of proof of second demand, the presumption under Section 20 of the Prevention of Corruption Act, can not be invoked and as a sequel, both the accused persons were entitled to benefit of doubt and in result both the accused/respondents were not found guilty.

14. With this prelude, this Court enters into the discussion on the following heading by framing the following questions:

14.1. whether the judgment of the acquittal passed by the learned trial Judge is liable to be interfered with?.

14.2. whether the evidence adduced by the prosecution is sufficient to find the respondents guilty herein under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988?.

15. Discussion on the finding of the learned trial Judge on the proof of demand:

According to the learned trial Judge, the second accused made a

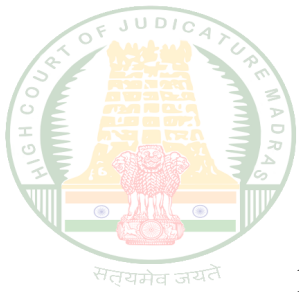


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demand on 08.12.2000. The first accused has reiterated the demand on 11.12.2000 and 13.12.2000. According to the prosecution, the first accused has demanded bribe of Rs.1000/- from the defacto complainant in the presence of his nephew, namely, Panneer Selvam, to give patta to P.W. 2/defacto complainant on 11.12.2000. Subsequently, the same demand was also made on 13.12.2000 and reduced to Rs.500/-. According to the learned trial Judge, the prosecution produced Ex.P.28, diary of the first accused to show that she was on duty on the said dates. In the said Ex.P. 28, following details are found: -

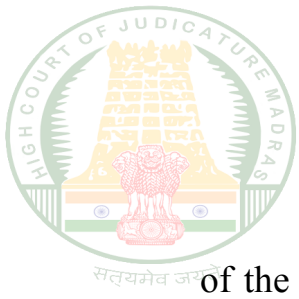
நாள்	முகாம் சென்ற இடம்	முகாமின் நோக்கம்
08.12.2000	வெட்டன்விருதி, சூரக்காடு, கடுக்காக்காடு, செட்டியவிருதி, முள்ளங்குறிச்சி.	வாக்காளர் பட்டியலில் பெயர் சேர்த்தல் தொடர்பாக பெறப்பட்ட மனுக்கள் மீது விசாரணை மேற்கொள்ளப்பட்டது.
11.12.2000	மாங்கோட்டை	வாக்காளர் பட்டியலில் புதிய பெயர் சேர்த்தல் தொடர்பாக படிவம் 6, 7, 8ல் பெறப்பட்ட மனுக்கள் மீது விசாரணை மேற்கொள்ளப்பட்டது.
13.12.2000	மழையூர் (முற்பகல்) கருப்பட்டிப்பட்டி (பிற்பகல்)	தலைமையிடம் அலுவலகப் பணி கவனிக்கப்பட்டது. பயிர் மேலாய்வு பணி மேற்கொள்ளப்பட்டது.



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15.1. On the basis of the same, the first accused took a plea that she was not available on 11.12.2000 and 13.12.2000, on the account of her engagement on some other duties, namely, verification of the voter list at some other villages other than the place of the office, during which time, P.W.2 is said to have met her and she demanded the bribe amount to give patta. The same was *prima facie* established through the contents of the above Ex.P.28. She also pleaded the same during the proceedings under Section 313 Cr.P.C., questioning. The learned trial Judge accepted the said plea of the first accused and has held that the prosecution has failed to prove the demand. The learned trial Judge to strengthen the said finding, also relied on the admission of P.W.12, namely, investigating officer that he has not conducted any investigation relating to the availability of A1 in the said villages and verify the truthfulness of her statement. The Learned trial Judge has also held that in view of above lapse on the part of the investigating agency and without any corroborating evidence to support testimony of P.W.2 about his meeting A1 on 11.12.2000 and 13.12.2000, the demand can not be accepted. The learned trial Judge has held that the prosecution has miserably failed to prove the demand on the part of A1 and in the absence of recovery from her, the presumption under Section 20



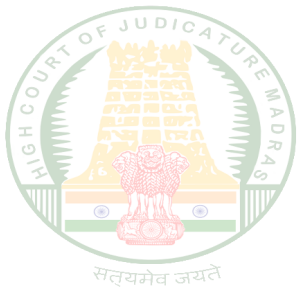
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of the Prevention of Corruption Act, 1988 cannot operate against her and therefore she is not guilty.

16. To appreciate the said finding of the learned trial Judge, this Court is duty bound to narrate the following events as emanated from the prosecution case:-

16.1. The first accused, namely, Tmt.Kamalam, was working as a Revenue Inspector of "Mazhaiyur Firka" and her assistant was A2, namely, Thiru.C.Sundarakannu. P.W. 2 /Sundar presented a petition dated 04.09.2000, to the Tahsildar, Alangudi/P.W.10 to give patta to his land situated in the Servey No.145/3A, 145/3B, 145/3C of the revenue village Vanakkan Kadu and the same was forwarded to the office of A1 situated at Mazhaiyur. P.W.2 approached A1 before 27.09.2000. A1 replied that said application has been misplaced and asked him to give another application on 27.09.2000 and he again met P.W.10/Tahsildar in his office and another application was given under Ex.P.2. On the basis of Ex.P.2, A1 assured to visit the land and make physical verification. But, she did not come. Therefore, P.W.2 has once again approached A1 in the Alangudi Tahsildar Office



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on 8.12.2000. At the time, A2 made the demand of Rs.1000/-.

16.2. Thereafter P.W.2 and his brother-in-law Panneer Selvam went to the Alangudi Tahsildar Office and met A1. She has instructed to give Rs.1000/- to recommend to give patta to P.W. 2. P.W.2 explained his entitlement to get patta on the basis of Civil Court decree and other relevant document but she insisted to pay Rs.1000/-. Therefore, he again met A1 in Alangudi office on 13.12.2000 and expressed his difficulties in spending huge amount to get patta by making frequent visit from his place situated at Thiruvarur district and then A1 reduced the amount from Rs.1000/- to Rs.500/-. On 15.12.2000, A1 went to the village of the P.W.2 and obtained the statement from the P.W.2 under Ex.P.3 and insisted to bring the amount on Monday ie., 18.12.2000. P.W.2 without intending to give bribe made a complaint to the Vigilance Department.

17. From the above narration of the events, as cogently deposed by the P.W.2, it is clear that A1 made demand on 11.12.2000, 13.12.2000 and

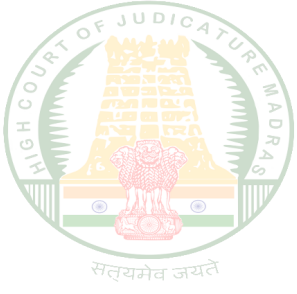


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15.12.2000. The requirement of law to convict the accused officer under Section 7 r/w. 13(2) r/w.13(1)(d) of the Act, is acceptance of bribe amount with prior demand.

18. P.W.2 clearly deposed that A1 met him in his village on 15.12.2000 and she also inspected the property and obtained the statement under Ex.P.3 and made demand of bribe. The said evidence of the P.W.2 has not been subjected to cross examination. In the said circumstance, the demand made on 15.12.2000 is clearly proved beyond reasonable doubt on the basis of the oral testimony of P.W.2 and recovery of Ex.P.3 from the custody of the A1 on date of the trap held on 19.12.2000. The learned trial Judge has not considered this material circumstance and has given a finding that demand was not proved. The learned trial Judge has only discussed about the demand made on 11.12.2000 and 13.12.2000. But he has not specifically addressed the above said demand made on 15.12.2000 and the same is clinching and corroborated with Ex.P.3 and other evidence. The meeting of A1 with P.W.2 on 15.12.2000 is also admitted by A1 during the proceedings under Section 313 Cr.P.C., questioning also. The question No.8 is as follows:



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கேள்வி 8. அ.சா.2 திரு சுந்தர் மேலும் தன் சாட்சியத்தில் 15.12.2000 அன்று சாட்சி வாணக்கன்காட்டில் இருந்த போது 1ஆம் எதிரியான நீர் அந்த ஊருக்கு வந்து அவரிடம் வாக்குமூலம் எழுதி வாங்கிக் கொண்டதாகவும் அதில் அவர் கையெழுத்து போட்டதாகவும் அந்த வாக்குமூலம் அ.சா.ஆ.3 என்றும், திங்கட்கிழமை பணம் கொண்டு வந்து கொடுக்குமாறும் அப்போது தான் பட்டா மாற்றி கொடுக்க முடியும் என்று 1ஆம் எதிரியான நீர் சொன்னீர் என்றும் சாட்சியம் அளிக்க கேட்டீரே நீர் கூறும் முகாந்திரம் என்ன?

பதில். வாக்குமூலம் வாங்கியது உண்டு. பணம் ஏதும் கேட்கவில்லை.

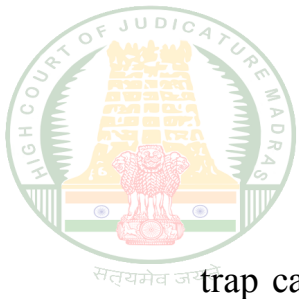
19. From the above evidence demand made on 15.12.2000, is clearly proved beyond reasonable doubt. The learned trial Judge, committed error in not discussing the above demand made by A1. The learned trial Judge only considered the demand made on 11.12.2000 and 13.11.2000. The learned trial Judge disbelieved the evidence of P.W.2 with respect to demand on 11.12.2000 on the ground that there was no



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corroborating evidence. It is the further finding of the learned trial Judge, that the demand on 13.12.2000 was also not proved as there is no corroborating evidence on the account of the death of defacto complainant's brother-in-law Panneer Selvam, pending trial. The learned trial Judge has held that the evidence of P.W.2 is like an accomplice and hence, without any material corroboration, the evidence has to be disbelieved. The said finding is against the appreciation of evidence given by a trap witness. From the ratio laid down by the Hon'ble Constitution Bench of the Supreme Court in the case of ***State of Bihar v. Basawan Singh*** reported in ***AIR 1958 SC 500***, the ratio laid down by the Hon'ble Three Member Bench of the Supreme Court in the case of ***Bhanuprasad Hariprasad Dave v. State of Gujarat***, reported in ***AIR 1968 SC 1323***, the ratio laid down by the Hon'ble Supreme Court in the case of ***Prakash Chand v. State (Delhi Admn.)***, reported in ***(1979) 3 SCC 90***, it can be seen that the Court can convict the accused solely on the basis of the evidence of the trap witness "without any corroboration". The Hon'ble Constitution Bench of the Supreme Court in ***AIR 1958 SC 500*** clearly laid down the law that the trap witness cannot be treated as accomplice and the principle applicable to the appreciation of the accomplice is not applicable to the



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trap case to appreciate the evidence of trap witness and the testimony of the trap witness has to be appreciated with the principle guided by the Supreme Court. The relevant portion of the judgment in the case of ***State of Bihar v. Basawan Singh***, reported in AIR 1958 SC 500 is as follows:

<i>Paragraph No.10</i>	<i>Paragraph No.15</i>	<i>Paragraph No.16</i>
<i>... It is wrong, however, to deduce from that decision any universal or inflexible Rule that the evidence of the witnesses of the raiding party must be discarded, unless independent corroboration is available...</i>	<i>...For the aforesaid reasons, we think that the learned Judge of the High Court did not correctly appreciate the effect of the decision in Rao Shiv Bahadur Singh case [(1954) SCR 1098 : AIR 1954 SC 322] and he was in error in thinking that that decision laid down any inflexible Rule that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration..</i>	<i>....independent corroboration does not mean that every detail of what the witnesses of the raiding party have said must be corroborated by independent witnesses....</i> <i>...corroboration need not be direct evidence that the accused committed the crime; it is sufficient even though it is merely circumstantial evidence of his connection with the crime...</i>

From the above law laid down by the Hon'ble Supreme Court, the finding of the learned trial Judge that P.W.2 is to be treated as accomplice and the same required “material corroboration” is not correct and in the considered opinion of this Court, the learned trial Judge has committed a basic error in appreciating the evidence of P.W.2.

20. Apart from that in this case, the demand made on 15.12.2000 is

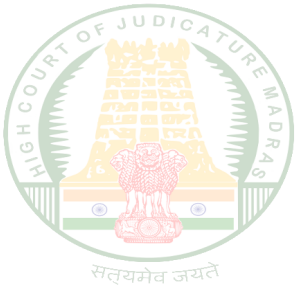


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clearly proved through the evidence of P.W.2 and the other material circumstances, that A1 visited the land of P.W.2 and obtained the statement and also admitted the said meeting and preparation of Ex.P3. Further, the file relating to the patta transfer after the completion of the field visit was not transmitted to the Jurisdictional Tahsildar and the same was clearly spoken by P.W.7, P.W.6 and P.W.10. Apart from that, the said file was recovered from A1 on the date of the trap held on 19.12.2000. From the above, it is clear that the demand was proved through the evidence of P.W. 2 and the other material circumstances established by the prosecution beyond reasonable doubt without any other possible view. *It is not necessary to prove the sequence of demands right from beginning. The law requires only acceptance followed by the demand.* In this case, on the basis of the demand on 15.12.2000, on the date of the trap, the meeting of A1 with P.W.2 and the reiteration of demand and the direction issued by A1 to A2 to receive the bribe amount, were clearly proved through the following evidence of various witnesses.

P.W.2 : நான் உள்ளே போனதும், எ1 கமலம், பணத்தை எ2 கந்தரக்கண்ணுவிடம் கொடுக்கச்சொன்னார்.



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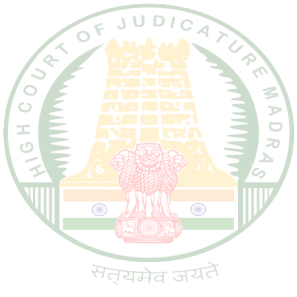
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P.W.3 : போலீஸ்விசாரணையின் போதும், இந்நீதிமன்றத்தில் சாட்சியமளிக்கும் போது முதல்விசாரணையின் போதும், நானும் சாட்சி சுந்தரும், 1வது எதிரியின் அறைக்குள்ளே போனோம் என்றும், அப்போது 1வது எதிரி, சாட்சி சுந்தரிடம், அந்தப் பணத்தை 2வது எதிரியிடம் கொடுக்கச் சொன்னார் என்றும் சொல்லியுள்ளேன். அது தான் உண்மை.

21. P.W.4 independent official witness, P.W.10/Tahsildar and P.W. 12 clearly deposed about the post trap proceedings in a cogent manner without any infirmity. Their specific evidence is that A2 disclosed that he received bribe amount and took the said amount from his shirt pocket and handed over the same to the trap laying officer after the positive result of the phenolphthalein test. The immediate conduct of A2 at the time of recovery that he received the amount on the direction of A1 is material circumstance under Section 8 of the Indian Evidence Act to corroborate the version of P.W.2 that A2 received the amount on the direction of A1.

22. Apart from that, it is the specific case of P.W.2 that he met A2 in his office on 08.12.2000. A2 made a demand and the relevant portion of the evidence of P.W.2 is as follows:

8.12.2000ம் அன்று நான் ஆலங்குடி



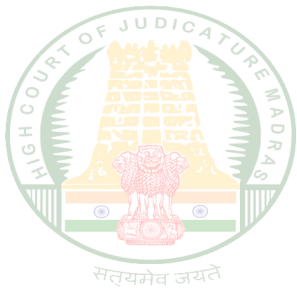
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வட்டாட்சியர் அலுவலகத்திற்கு சென்றேன். அங்கு எ1 கமலம் இல்லை. அங்கு வருவாய் ஆய்வாளரின் உதவியாளர்/ஆஜர் எதிரி எ2 சுந்தரக்கண்ணு இருந்தார். எ2 சுந்தரக்கண்ணு, என்னிடம், “ஏன் அலைகிறீர்கள் அந்த அம்மா ரூ.1000/- ம் கேட்கிறார்கள், பணம் கொடுத்தால் வேலை முடிந்துவிடும்” என்று சொன்னார். அதற்கு எ2 சுந்தரக்கண்ணுவிடம், என்னிடம் பணம் இல்லை சும்மா செய்து கொடுங்கள் என்று சொன்னேன். அதற்கு எ2 சுந்தரக்கண்ணு, “திங்கட்கிழமை அம்மா வருவார்கள் அவர்களிடம் நேரில் கேட்டுக்கொள்ளுங்கள்” என்று சொன்னார்.

23. As per the finding of the learned trial Judge, A2's plea that he was not present on 08.12.2000, is not correct. Therefore, the presence of A2 and the meeting with P.W.2 and his demand is clearly proved. The same was further strengthened from the subsequent receipt of the bribe amount from A2 on the date of the trap held on 19.12.2000. There was no explanation for the positive result of the phenolphthalein test ie., change of colour, in both hands and the dress of A2. The said non-explanation by the accused No.2, as to why the colour changed in his hands clearly shows that he has accepted the money as per Vigilance Manual Rule 46(1) which reads as follows:



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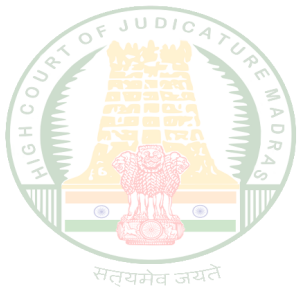
46. Phenolphthalein Test:

(1) Before recovering the tainted money or other articles in the course of trap proceedings, what is known as “phenolphthalein Test” should invariably be conducted the fingers of both hands of the Accused Officer and on the other items such as his shirt/shirt pocket, dhoti, etc., with which the notes/articles are known to have come into connect. It will be a corroborative piece of evidence to establish the acceptance of tainted money by the Accused Officer.”

24. If the colour changed in the hands of the accused officer, the presumption is that he handled the tainted currency. This is another corroborative piece of evidence, to hold that A1 and A2 made a demand and A1 directed A2 to receive the bribe amount and A2 received the same. The said sequence of the receipt of the bribe amount by A2 on the direction of A1 clearly comes under the concept of constructive receipt as propounded by the Hon'ble Supreme Court in the following cases:

24.1. D. Velayutham v. State, (2015) 12 SCC 348 at page 357

“15. Though this Court has stressed the

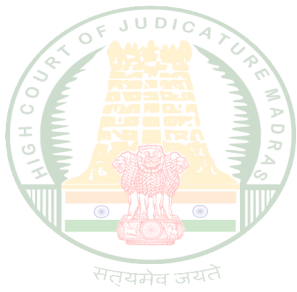


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*need and significance of phenolphthalein as a trap device in corruption cases, so as to allay doubts about the actual receiving of bribes by accused persons, there may be cases where there are multiple demanders in a common or conjoint bribe demand, and for whatsoever reason, only one receives the sum on their behalf, and is entrapped in consequence. Depending on strength of the remainder of evidence, in these cases, constructive receipt by co-accused persons is open to establishment by the prosecution, in order that those who intermediately obtain bribes be latched with equal culpability as their co-accused and entrapped receivers. This will, of course, discount those cases where the trap is successful only against one and not the other official, the latter having refused to accept the bribe tendered. In this case, the trap would have clearly failed against such an official, and there could be no question of the application of constructive receipt. **If the receipt and handling of bribe money by Accused 2 so convincingly and inexorably points towards his custodianship of part of the same bribe amount on behalf of his superior officer, namely Accused 1, then Accused 1 cannot rely on mere non-handling/non-receipt of the bribe***



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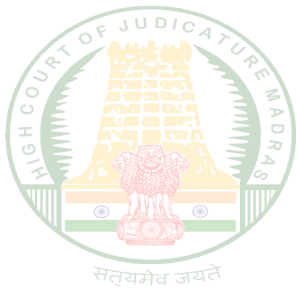
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money, as his path to exculpation. This Court's construal of anti-corruption cases is sensitive even to these byzantine methods of bribe-taking, and where an evader escapes a trap, constructive receipt has to be an alternate means of fastening criminal culpability.

Emphasis supplied

24.2. Further, in the case of *Billa Nagul Sharief v. State of A.P.*, (2010) 11 SCC 575

19. The contention that grievance can be remedied by the superior officer in the hierarchy of the system of the department concerned, if accepted, perhaps there shall be no case in which the demand for bribe can be made. The feeling of a common man that when the work is enshrined to different persons bribe is demanded by one of them, when all are invariably in collusion, cannot be lost sight of. If senior officers ensure that the works of the citizens are done without payment of bribe, junior officers and employees may abandon the demand and this country would not have prominently figured as one of the most corrupt nations of the world, as it is widely accepted that the corruption flows from the top. Here the de facto complainant was entitled to have the composite licence



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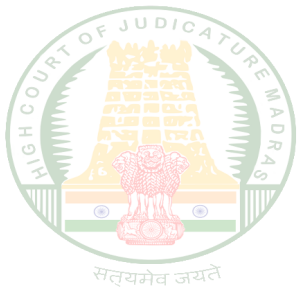


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but he was not willing to pay the bribe demanded, accordingly he had approached the Anti-Corruption Bureau and we do not find anything unnatural in the conduct of the de facto complainant.

From the above, it is clear that A1 and A2 made a demand and A2 received the bribe amount on the direction of A1. Hence, all the ingredients of Section 7 r/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 are proved beyond reasonable doubt without any other possible view.

25. The learned trial Judge without reading the entire evidence of P.W.2, only picked the evidence of P.W.2 relating to the date of demand i.e., 11.12.2000 and 13.12.2000 and without taking into consideration the demand made on 15.12.2000 committed error of law in holding that the first and second demand were not proved. The learned trial Judge ought to have read the entire evidence of P.W.2. He has no right to omit part of the evidence relating to the demand made on 15.12.2000. There should be a holistic reading and segmented/selective reading cannot be accepted. The same has been underscored by the Hon'ble Supreme Court while appreciating the evidence, in the following judgments:



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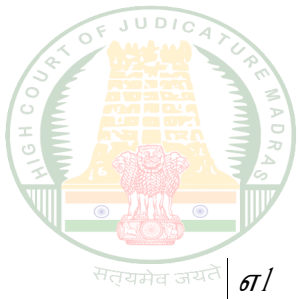
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<i>Mustak Alias Kanio Ahmed Shaikh Vs. State of Gujarat</i> reported in (2020) 7 SCC 237	<i>Rakesh and another Vs.State of Uttar Pradesh and another</i> reported in (2021) 7 SCC 188
34. With the greatest of respect, the evidence of the witnesses have to be read as a whole. Words and sentences cannot be truncated and read in isolation	14. One is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too to the question asked by the defence in the cross examination cannot be considered stand alone.

26. On reading the entire sequence of events, the prosecution has clearly proved the demand made on 15.12.2000 and the consequential acceptance of the bribe amount on 19.12.2000.

27. The failure on the part of the investigating officer to investigate the presence of A1 in the place other than her office as mentioned in Ex.P28, is not a ground to disbelieve the evidence of P.W.2. It is well settled principle that the conviction is maintainable on the basis of the available evidence, in spite of the lapse on the part of the investigating agency.

<i>P.W.2 evidence about the demand made on 11.12.2000</i>	<i>P.W.2 evidence about the demand made on 13.12.2000</i>
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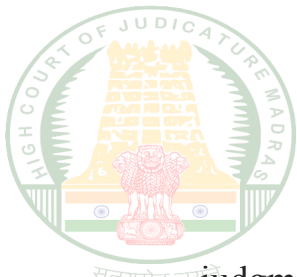
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எ/ கமலம் முதன் முதலாக என்னிடம் 11.12.2000ம் தேதியன்று மாலை 4 மணிக்கு பணம் கேட்டார்.	13.12.2000 ம் அன்று மதியத்திற்கு பிறகு இரண்டாவது முறையாக எ/ கமலம் என்னிடம் பணம் கேட்டார்.
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28. In view of the above evidence of P.W.2 that he met the accused in the evening hours and as there is no clear timing mentioned in Ex.P.28 about her presence in the deputed place, it is duty of A1 to prove her case of alibi that she was not present at the time of the meeting of P.W.2 in accordance with the Section 106 of the Indian Act. The same was not proved by A1 and she simply relied the document Ex.P28, which was used by the investigating agency to show that she was working in the place. Therefore, the learned trial Judge committed error in holding that the evidence of P.W.2 about the demand made by A1 on 11.12.2000 and 13.12.2000 is not believable one.

29. Even if the evidence of P.W.2, relating to the demand of bribe amount by A1 on 11.12.2000 and 13.12.2000, is not corroborated by other evidence, the same is not a ground to discard the evidence of demand made by A1 on 15.12.2000 that is corroborated by Ex.P3 and other relevant evidence as discussed above. This view is fortified by the



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judgment of the Hon'ble Supreme Court in the case of **Gangadhar Behera**
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v. State of Orissa, reported in **(2002) 8 SCC 381** is as follows:

15. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end.

30. The acceptance of the bribe amount was clearly proved through the following evidence of P.W.2 and the evidence of P.W.3 :

P.W.2	P.W.3
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எ2 சுந்தரக்கண்ணு, எங்களை வெளியில் வராண்டாவிற்கு அழைத்து வந்தார். நான் ரூ.500/-ஐ, எ2 சுந்தரக்கண்ணுவிடம் கொடுத்தேன். அவர் பணத்தை வாங்கி சட்டைப்பைக்குள் வைத்துக்கொண்டார். பட்டா வாங்கிப்போகலாம் என்று நான் கொஞ்ச நேரம் காத்திருந்தேன். அன்று செவ்வாய்கிழமையாக இருந்ததால் மறுநாள் வாங்கிக்கொள்கிறேன் என்று நான் சொன்னேன்.	சுந்தரக்கண்ணு அந்தப் பணத்தை வாங்கி தனது சட்டைப்பையில் வைத்துக் கொண்டார். சுந்தரக்கண்ணு உள்ளே போய் திரும்ப வந்து இன்றைக்கு பட்டா வாங்கிக் கொள்கிறீர்களா என்று கேட்டார். அதற்கு சுந்தர் இன்று செவ்வாய்கிழமை, நான் புதன்கிழமை வாங்கிக் கொள்கிறேன் என்று சொன்னார். சுந்தரக்கண்ணு சரி என்று உள்ளே போய்விட்டார்.
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Even though P.W.3 has been treated hostile, his evidence relating to the above handing over of the bribe amount to A2 on the direction of A1 is not challenged. The amount was recovered from A2 by the deceased/trap laying officer, in the presence of P.W.4, P.W.9 and P.W.10. P.W.4, who is the independent official witness clearly deposed about the recovery of the bribe amount from the shirt pocket of A2. P.W.9 and P.W.10 are the Superiors of A1 and A2 and they also clearly deposed about the recovery of the said bribe amount. The contemporaneous document, namely, recovery mahazar/Ex.P7 prepared by the deceased/trap laying officer with an attestation of the above independent witnesses P.W.4, P.W.9 and P.W.10 also clearly established the said recovery. Therefore, the evasive finding of the learned trial judge that the acceptance is not proved and mere proof of the receipt of the amount is not enough to prove the charged offence, in



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the considered opinion of this Court is perverse.

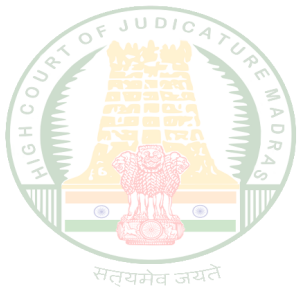
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31. In view of the above discussion, it is held that the prosecution clearly proved the demand and acceptance, the learned trial Judge failed to invoke the presumption under Section 20 of the Prevention of Corruption Act, 1988.

32. The learned trial Judge failed to consider the ratio laid down by the Hon'ble Supreme Court in appreciating the turn coat stand of the evidence of P.W.3, during the course of the cross examination conducted after a long time from the date of the chief examination and has committed error in not holding that the prosecution has proved the demand and acceptance. In this aspect, it is relevant to cull out the principles laid down by the Hon'ble Supreme Court relating to the hostility during the cross examination in the following judgments:

32.1. In the case of *Vinod Kumar v. State of Punjab*, reported in **(2015) 3 SCC 220 at page 244**

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication



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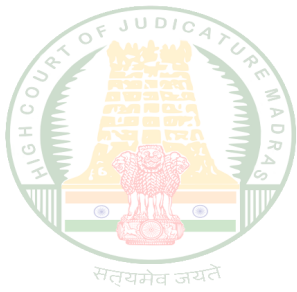


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from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the re-examination.

32.2.The Hon'ble Division Bench of this Court, in the case of Dharmaraj v. Inspector of Police, reported in 2015 SCC OnLine Mad 5021 has held as follows:

21. The learned Additional Public Prosecutor has befittingly drawn the attention of the Court to the decision in Akil alias Javed v. State (NCT of Delhi) reported in (2013) 3 SCC (Cri) 63, wherein the Hon'ble Apex Court has had an occasion to deal with similar factual situation and ultimately held that in a criminal proceeding if a witness has been cross-examined after a long interval from the date of chief examination and circumstances are



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available for the purpose of believing that he or she might have been won over by other side, such evidence can be disregarded/eschewed.

22.In the instant case, as pointed out earlier, P.W.8 has been examined in full on 15.02.2008. Only for the purpose of dismantling the evidence given by P.W.8, on 15.02.2008, an abortive attempt has been made on the side of the appellant/accused to recall P.W.8 and accordingly he has been recalled and further cross-examined on 23.08.2008. On 23.08.2008, P.W.8 has slightly given a different version to the effect that he found M.Os.1 and 2 around the neck of the deceased. As per the dictum given by the Hon'ble Apex Court, the said portion of evidence can easily be disregarded/eschewed.

33. In the present case, the reiteration of demand on the date of the trap was also deposed by P.W.3 during chief examination. Even though he was declared hostile on some other aspects, his evidence during chief examination cannot be eschewed as per the dictum of **2016 13 SCC 366**. The trap was conducted on 19.12.2000 and he retired from service on 30.06.2002. The chief examination of P.W.3 was commenced on 23.09.2005 and completed on 28.07.2006. The cross examination was conducted on 18.07.2007. He also stated that he deposed before the Court

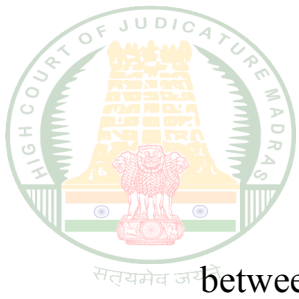


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from his memory. He also stated that he never saw A1. He also admitted the signature in the document in the Tahsildhar Office. He also deposed that P.W.2 identified A1 to him. From the above version in the cross examination, the prosecution declared him as hostile to some extent. Thereafter, further cross examination was conducted. He also deposed that he correctly deposed during the course of the chief examination. He also affirmed the statement made in the chief examination. In the further cross examination, he stated that he deposed on the basis of his memory. In the circumstances, on reading the entire evidence of P.W.3 it is clear that he supported the prosecution case in all aspects. In the said circumstances, even though he was declared hostile on some other aspects, his testimony about A1's reiteration of the demand on the date of the trap was never challenged.

34. The Hon'ble Supreme Court in the case of ***Kishan Chand Mangal v. State of Rajasthan***, reported in (1982) 3 SCC 466 at page 477 has taken inferential deduction of the demand from the events that had taken place on the date of the trap i.e., from the conversation that took place between the accused and the complainant. This Court for better appreciation, compares the nature of the conversation that took place



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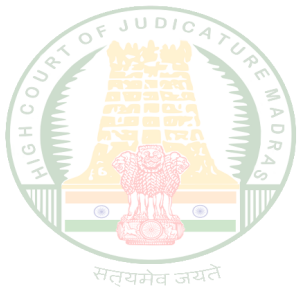
between the accused officer and the complainant as per the reported case of the Hon'ble Supreme Court and the present case to draw the presumption that the demand has been proved by the prosecution in this case beyond reasonable doubt:

<i>Kishan Chand Mangal v. State of Rajasthan</i> , reported in (1982) 3 SCC 466 at page 477	In the present case
--	----------------------------



11. It was next contended that once Rajendra Dutt is not available for evidence there is no evidence as to the demand of bribe on November 20, 1974, and it is not open to the court to spell out the demand from the contents of Ex. P-12. It is undoubtedly true that Rajendra Dutt was dead before the commencement of trial. It is equally true that the FIR lodged by him on November 22, 1974, cannot be used as substantive evidence nor the contents of the report can be said to furnish testimony against the appellant. Such an FIR would not be covered by any of the clauses of Sections 32 and 33 of the Evidence Act and would not be admissible as substantive evidence. The question still remains whether there is any evidence of demand of bribe on November 20, 1974, in this case. A fact may be proved either by direct testimony or by circumstantial evidence. If appellant did not visit the factory of Rajendra Dutt on November 20, 1974, and made no overtures demanding the bribe, on what rational hypothesis can one explain the visit of Rajendra Dutt to the office of Dy SP, ACD on November 22, 1974; his producing currency notes worth Rs 150; a superior officer like the Dy SP, ACD, making all arrangements for the trap and the raiding party going to the house of the accused on November 22, 1974. The visit of Rajendra Dutt soon followed by the raiding party at the house of the accused on November 22, 1974, is admitted. Coupled with this, the fact that Keshar Mal, PW 2 in his evidence stated that after Rajendra Dutt entered the room in which appellant was sitting, Rajendra Dutt on entering the room asked the appellant, 'Hullo, how do you do?' He further stated that the appellant replied, 'I am sick and suffering from cold'. He deposed that thereafter the appellant asked, *'Have you brought the money', whereupon complainant Rajendra Dutt replied, 'Yes, I have brought the money'. He further stated that thereafter Rajendra Dutt took out the amount of currency notes from his diary and gave the same to the appellant who took the amount and kept it under the pillow on the cot. If there was no prior demand the subsequent events remain unexplained as also the demand as deposed to by PW 2 Keshar Mal.* But Mr Anthony urged that this part of the evidence of Keshar Mal cannot be accepted because he has not stated this fact in his statement recorded in the course of investigation. Simultaneously it was pointed out that the other motbir Ram Babu is totally silent in his evidence about this conversation between the appellant and the complainant. Undoubtedly, the omission in the police statement of Keshar Mal and non-mentioning all these facts by the co-motbir would raise some doubt in the mind of the court about this conversation but as pointed out earlier there are tell-tale circumstances which do indicate that there must have been a demand and, therefore, these circumstances as hereinbefore set out will render support to the statement of Keshar Mal that the demand at the time of visit of Rajendra Dutt must be pursuant to earlier demand by the appellant. Therefore, it is not proper to say that there is no evidence of the demand of bribe as on November 20, 1974.

நானும், சாட்சி சின்னக்கருப்பனும், வட்டாட்சியர் அலுவலகத்திற்கு சென்றோம். மற்றவர்கள் மறைந்து இருந்தார்கள். அப்போது எ! கமலம், தாசில்தாருடன் பேசிக் கொண்டிருந்தார். என்னைப்பார்த்ததும், எ! கமலம் வெளியில் வந்தார். பணம் ரெடியாக இருக்கிறதா என்று கேட்டார். பணம் ரெடியாக இருக்கிறது என்று நான் சொன்னேன். என்னை வெளியில் இருக்கச்சொல்லிவிட்டு அவர் உள்ளே சென்றுவிட்டார். அதற்குப்பிறகு எ2 சுந்தரக்கண்ணு வெளியில் வந்தார். என்ன என்று கேட்டார். பணம் கொண்டு வந்திருக்கிறேன் என்று சொன்னேன். எ! கமலத்தை கேட்டுவிட்டு வருகிறேன் என்று உள்ளே போனார். ரொம்பநேரமாக அவர் வரவில்லை. நானும், சாட்சி சின்னக்கருப்பனும், தாலுகா அலுவலகத்திற்குள் சென்றோம். அங்கு எ! கமலம், வாக்காளர் அட்டை சரிபார்த்துக் கொண்டிருந்தார். நான் உள்ளே போனதும், எ! கமலம், பணத்தை எ2 சுந்தரக்கண்ணுவிடம் கொடுக்கச்சொன்னார்.



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35. From the above, it is clear that the demand was proved through the unimpeachable oral evidence of P.W.2 and the following corroborative circumstances established against the accused to infer the demand, which is consistent with the guilt of the accused and inconsistent with his innocence:

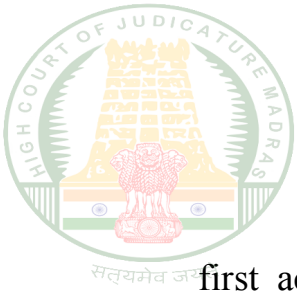
(i)unusual meeting of the accused officer with P.W.2 in the land of P.W.2 and obtaining the statement Ex.P.3.

(ii)Recovery of the tainted money from the shirt pocket of the second accused.

(iii)Immediately after the trap, the trap laying officer recovered the documents relating to P.W.2's patta transfer from the custody of A1.

(iv)The accused officer has taken the plea of *alibi* and she has not adduced any evidence to prove the same.

36.The learned trial Judge in para No.46 held that there was no abuse of official possession on the part of the accused namely the accused/respondents herein. It is stated that both the respondents have no authority to process the application. Before the trap on 19.12.2000, the



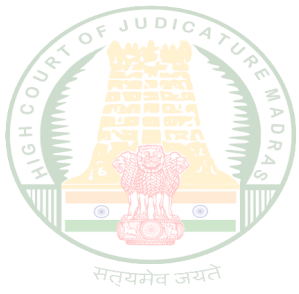
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first accused has processed the application and the same was ripe for issuance of patta. Therefore, it cannot said that the accused has received the money by abusing their official position. The said finding is erroneous for the following reasoning:

37. From the documents annexed with the file relating to the transfer of patta and the evidence of P.W.9, it is clear that P.W.9/ the Zonal Deputy Thasildhar, Alangudi, received the patta transfer application from P.W.2 on 27.09.2000 and he forwarded to A1's office on 04.09.2000 to get the report and recommendation. A1 visited the land of P.W.2 only on 15.12.2000 and obtained the statement under Ex.P3. Even as per the finding, A1 processed the application earlier to 19.12.2000. In the event of the completion of the duty, it is the duty of A1 to forward the file to P.W.9. But, *she retained the file and the same was recovered from her custody.* Apart from that, it is the clear evidence of P.W.2 and P.W.3 that after receipt of the bribe amount, A2 informed P.W.2 to get the patta and the relevant material portion of the evidence of P.W.3 is as follows:

கந்தராக்கண்ணு உள்ளே போய் திரும்ப வந்து இன்றைக்கு
பட்டா வாங்கிக் கொள்கிறீர்களா என்று கேட்டார்.



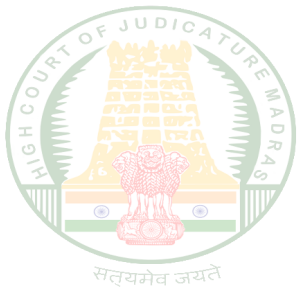
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38. From the above circumstances, it is clear that A1 and A2 have been retaining the file with the intention of receiving the bribe amount from P.W.2., which emanated from the circumstances established by the prosecution. The said file relating to the transfer of patta of P.W.2, was also recovered from A1. It is not the case of the either of the respondents that they had not dealt the application of P.W.2. The presence of the respondents in the office and the record prepared by the deceased/Trap Laying Officer namely the recovery mahazar/Ex.P.7, is also clearly deposited by P.Ws.2, 3. P.W.10/Thasildhar, Alangudi deposited that A1 and A2 were present in the office on the date of the trap and arrest was made in his presence and recovery mahazar was also prepared. A2 also stated during the course of the enquiry by the deceased/Trap Laying Officer, that A1 asked him to receive the amount from P.W.2.

39. The Hon'ble Supreme Court has held that the conviction as against the accused officer is maintainable, even if he is not the authority, when the accused officer made a demand and accepted the bribe amount. It is relevant to extract 7(e) of the Prevention of Corruption Act 1988:

(a) Where a public servant induces a person



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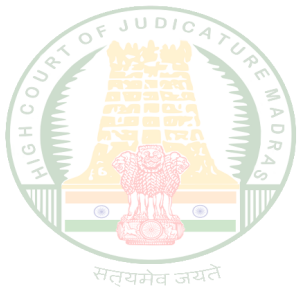
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erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed as offence under this Section.

40. From the reading of above Section, it is not necessary that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage, to constitute the offence under Section 7 and 13(2) of the Prevention of Corruption Act. The same is fortified by the following judgments of the Hon'ble Supreme Court:

40.1. In the case of ***Bhanuprasad Hariprasad Dave v. State of Gujarat***, reported in AIR 1968 SC 1323:

“8.... To establish the offence under Section 161 of the Indian Penal Code all that prosecution had to establish was that the appellants were public servants and that they had obtained illegal gratification for showing or forbearing to show, in the exercise of their official functions, favour or disfavour to Ramanlal. The question whether there was any offence which the first appellant



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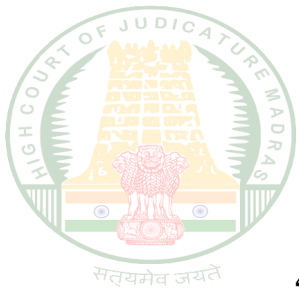
could have investigated or not is irrelevant for that purpose. If he had used his official position to extract illegal gratification the requirements of the law is satisfied.

40.2. The Constitution Bench of the Hon'ble Supreme Court in ***Dhaneshwar Narain Saxena v. Delhi Admn.***, reported in AIR 1962 SC 195 has held as follows:

“4..... it is not necessary, that the public servant in question, while misconducting himself, should have done so in the discharge of his duty.....

..... It is also erroneous to hold that the essence of an offence under Section 5(2), read with Section 5(1)(d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.”

41. Therefore, by applying the above principle to the facts of this case, this Court opines that the said finding of the learned trial Judge that the accused has no role to pass the order of transfer of patta is erroneous.



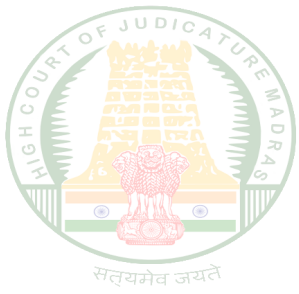
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42. The learned trial Judge found that from the evidence of P.W.2, that he had some wordy altercation relating to the delay in processing of the patta with the respondents and hence, he had motive to falsely implicate. The said approach is basically wrong and also against the judgment of the Honourable Supreme Court. The Public approach the vigilance department with grievance over the act of the public servants in discharging their duty and only upon their demand of the bribe, they get annoyed and make the complaint before the Vigilance department. Therefore, the Honourable Supreme Court has repeatedly held that even though motive is available, that is not a ground to disbelieve the testimony of the defacto complainant and trap witness/official witness when their evidence is cogent without any infirmities about the demand and acceptance made by the appellant.

42.1. The relevant portion of the judgment in *State of U.P. v. Zakaullah*, reported in (1998) 1 SCC 557 is as follows:

6. The complainant's evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is fraught with



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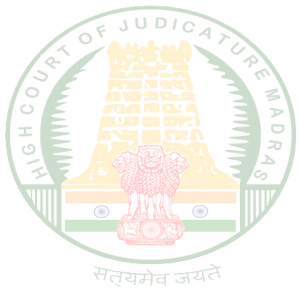


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the consequence that no bribe-giver can get away from such a stigma in any graft case. No doubt PW 5 would have been aggrieved by the conduct of the respondent. The very fact that he lodged a complaint with the Anti-Corruption Bureau is reflective of his grievance. Such a handicap in his evidence may require the Court to scrutinise it with greater care, but it does not call for outright rejection of his evidence at the threshold. A pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences.

42.2. Similar view was also taken by the Honourable Supreme Court in the case of ***State of U.P. v. G.K. Ghosh***, reported in ***(1984) 1 SCC 254 at page 262 Paragraph 10, 14***

10. It is now time to deal with the criticism urged as a matter of course in the context of the police officer leading the raiding party — namely that he is an interested witness. This is true, but only to an extent — a very limited extent. He is interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government officer making a demand for illegal gratification, is protected and the role of his department in the protection of such citizens is



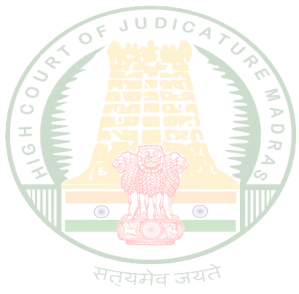
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vindicated. Perhaps it can be contended that he is interested in the success of the trap so that his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government servant, would resort to perjury and concoct evidence in order to rope in an innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to expect the police officer to go to the length of concocting a false seizure memo for prosecuting and humiliating him merely in order to save the face of the complainant, thereby compromising his own conscience.

14. So also it is not possible to believe that all the police officers had from the beginning conspired to rope in the respondent by hook or crook and had carried with them the half complete form which was acquired in a fortuitous manner to the consulting room in order to prepare the fictitious Farad at the time of the raid. It is not possible to believe that nothing had transpired at the raid, and yet, an imagined account of the occurrence and the seizure was incorporated in the Farad with a view to falsely implicate the respondent. The explanation of the respondent as to why the police officers should have falsely implicated the respondent



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is also not convincing.

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42.3. In the case of ***Mukut Bihari v. State of Rajasthan***, reported in (2012) 11 SCC 642

10. The courts below considered the facts properly and appreciated the evidence in correct perspective and then reached the conclusion that the charges stood fully proved against the appellants. “The explanation furnished by the appellants that they had falsely been enroped due to enmity could not be proved for the reason that no evidence could be brought on record indicating any previous enmity between the complainant and the appellants nor was any evidence available to show that the complainant was not satisfied with the treatment given to his father and he could act with some oblique motive in order to falsely implicate the appellants. Thus, under the garb of donation, he had offered the tainted money to the appellants and got them arrested.

43. In this case, the application submitted by P.W.2 to transfer the patta in his name was pending before A1 from 04.09.2000 onwards. P.W.2 has frequently, approached A1 and A2 and they have continuously demanded the bribe amount. After the trap proceedings only, P.W.2 is said to have got patta. Till the date of the trap, the file was in the custody of A1 and A2. Therefore, he made the complaint. Hence, it cannot be treated as the



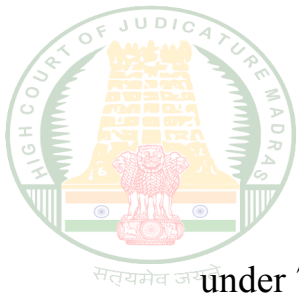
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motive, but, it amounts to the first step to initiate the legal action against the said officers. Therefore, this Court rejects motive theory when the demand and acceptance of bribe amount are clearly proved through evidence.

44. When the available evidence amply proved, the demand, acceptance, the segregation of the evidence by the learned trial Judge to suit the convenience by looking every contradiction with Jaundiced EYE resulted in miscarriage of justice which led to the unmerited acquittal. The learned trial Judge ought to have convicted the accused. In the said circumstances, this Court exercises the power under Section 374 Cr.P.C to interfere with the unmerited acquittal passed by the learned trial Judge.

45. In all aspect, the prosecution clearly proved the case of the demand and acceptance. Further there was no explanation on side of accused for the positive result of the phenolphthalein test on his hand and shirt pocket and recovery of tainted currency. In the said circumstances, this Court has no hesitation to hold that the prosecution proved the case of demand and acceptance of the illegal gratification beyond reasonable doubt. Therefore the accused are liable to be convicted for the offence



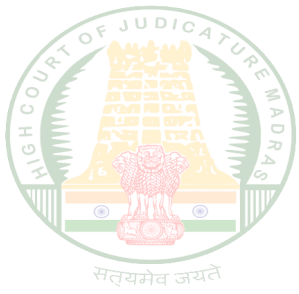
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under 7,13(1)(d) of the Act.

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46. The learned trial Judge erroneously acquitted the accused, when the available evidence leans towards the only possible view of conviction under the above section. The learned trial Judge stated that there were lot of loopholes in the case of the prosecution. The loopholes assumed by the learned trial Judge is not at all a matter to be considered in these type of cases, more particularly, when the examination of witnesses took place after number of years from the date of occurrence. It is the duty of the Criminal Court to plug the said immaterial loopholes to ensure the criminal justice system is vibrant as held by the Hon'ble Supreme Court in the case of ***Dinubhai Boghabhai Solanki v. State of Gujarat***, reported in ***(2018) 11 SCC 129 at page 154:***

36.That apart, it is in the larger interest of the society that actual perpetrator of the crime gets convicted and is suitably punished. Those persons who have committed the crime, if allowed to go unpunished, this also leads to weakening of the criminal justice system and the society starts losing faith therein. Therefore, the first part of the celebrated dictum “ten criminals may go



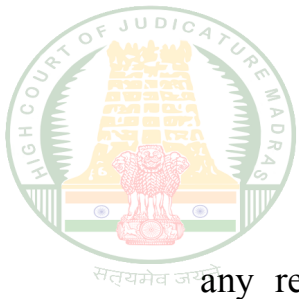
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*unpunished but one innocent should not be convicted” has not to be taken routinely. No doubt, latter part of the aforesaid phrase i.e. “innocent person should not be convicted” remains still valid. However, that does not mean that in the process “ten persons may go unpunished” and law becomes a mute spectator to this scenario, showing its helplessness. In order to ensure that criminal justice system is vibrant and effective, perpetrators of the crime should not go unpunished and **all efforts are to be made to plug the loopholes which may give rise to the aforesaid situation.***

47. The learned trial Judge on the basis of the irrelevant consideration rejected the evidence of P.W.2, P.W.3 and committed error in not considering the evidence of P.W.4, P.W.9 and P.W.10 and the contemporaneous record, namely, recovery mahazar prepared in the presence of the officials of the A1's office. The recovery mahazar contains the entire material facts to constitute the offence. The evidence of P.W.2, P.W.3, P.W.4, P.W.7, P.W.8 and P.W.9 are cogent and trustworthy to prove the demand and acceptance and recovery and the only view emanates from their evidence is that the prosecution proved the charged offence beyond



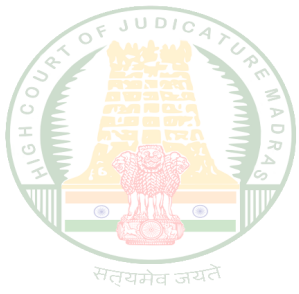
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any reasonable doubt i.e., Respondents have demanded and accepted Rs.500/- as illegal gratification and hence, the view taken by the learned trial Judge is not a “possible view”. Further, as the finding of the learned trial judge is perverse in all aspects, this Court finds “substantial and compelling reasons” to interfere with the impugned acquittal Judgement. This Court, in view of the above discussion finds that the impugned judgment of the trial Court is perverse and there is every substantial and compelling reason to interfere with the order of the learned trial Judge. Therefore, this Court has jurisdiction to appreciate the evidence, for which there is no legal impediment. Further, the Hon'ble Supreme Court has also held in the case of the appeal against acquittal, this Court has jurisdiction to appreciate the evidence.

48. Earlier the “Hon'ble Constitution Bench of the Supreme Court”, in the case of *M.G. Agarwal v. State of Maharashtra*, reported in **1962 SCC OnLine SC 22** has held the same in the following paragraph:

16....But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own



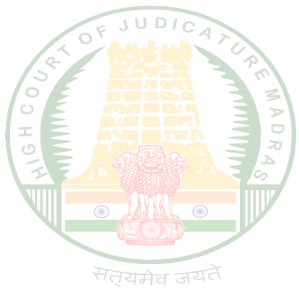
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conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused.-----

17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, “the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons” : vide Surajpal Singh v. State [1951 SCC 1207 : (1952) SCR 193 at p. 201] . Similarly in Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : (1953) SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in



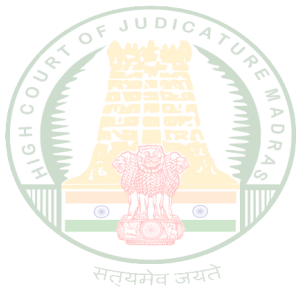
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appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse.

48.1. In the case of K. Gopal Reddy v. State of A.P., reported in (1979) 1 SCC 355 : at page 359



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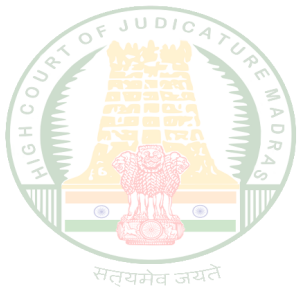


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9. *The principles are now well settled. At one time it was thought that an order of acquittal could be set aside for “substantial and compelling reasons” only and Courts used to launch on a search to discover those “substantial and compelling reasons”. However, the “formulae” of “substantial and compelling reasons”, “good and sufficiently cogent reasons” and “strong reasons” and the search for them were abandoned as a result of the pronouncement of this Court in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715 :*

48.2. In the case of *K. Ramakrishnan Unnithan v. State of Kerala*, reported in (1999) 3 SCC 309 at page 314

5. *The plenitude of power available to the court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction. But however the court will not interfere solely because a different plausible view may arise on the evidence. In a case of murder, if the reasons given by the trial court for discarding the testimony of the eyewitnesses are not sound, then there should be no hesitation on the part of the High Court in interfering with an order of acquittal. If the judgment of the trial Judge was absolutely perverse, legally erroneous and based on wrong testimony, it*



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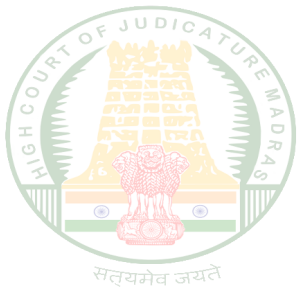


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would be proper for the High Court to interfere and reverse an order of acquittal.

49. In the totality of the circumstances, the learned trial Judge magnified every minute irrelevant fact and made mountain out of a molehill and acquitted the respondent which resulted in miscarriage of justice. In similar circumstances, the Hon'ble Supreme Court, in the case of **State of Maharashtra v. Narsingrao Gangaram Pimple**, reported in **(1984) 1 SCC 446 at page 463** dealing the appeal against acquittal has held as follows:

36. .. It seems to us that the approach made by the learned Judge towards the prosecution has not been independent but one with a tainted eye and an innate prejudice. It is manifest that if one wears a pair of pale glasses, everything which he sees would appear to him to be pale. In fact, the learned Judge appears to have been so much prejudiced against the prosecution that he magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence. This is the very antithesis of a correct judicial approach to the evidence of witnesses in a trap case. Indeed, if such a harsh touchstone is prescribed to



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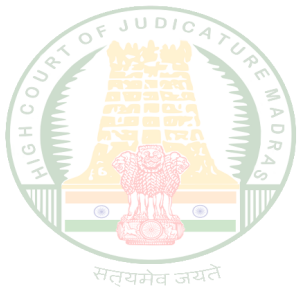
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prove a case it will be difficult for the prosecution to establish any case at all.

50. The learned trial Judge allowed himself to be beset with fanciful doubts and rejected the creditworthy evidence of independent trap witness for slender reasons and has misguided himself by chasing the bare possibilities of doubt and exalting them into sufficiently militating factors justifying acquittal. Therefore, there is an obligation on the part of this Court to interfere with the impugned order of the Court below, in the interest of justice, lest the administration of justice be brought to ridicule and the same was emphasized by the Hon'ble Supreme Court in the following cases:

18. In Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus : (SCC p. 799, para 6)

“6. ... The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable



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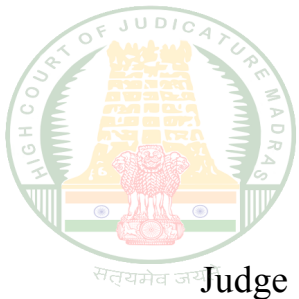
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doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community.”

In State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : (SCC pp. 285-86, para 23) the Hon'ble Supreme Court has held as follows:

“23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy... Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures.”

51. It is well settled that it is not every doubt, but only a reasonable doubt of which benefit is to be given to the accused. The function of the criminal Court is to find out the truth and it is not a correct approach to pick up the minor lapse of an investigation, irrelevant omission and minor contradiction to acquit the accused when the ring of the truth is undisturbed from the cogent and trustworthy evidence of P.W.2 and a portion of the evidence of P.W.3 about the demand and acceptance of the bribe amount of Rs.500/- by the respondents. Therefore, the learned trial



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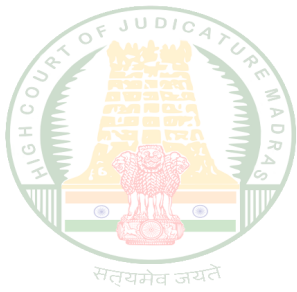
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Judge has not properly addressed the issue of “reasonable doubt”. The cherished principles of golden thread of proof of reasonable doubt which runs through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubts. The same has been emphasized by the Hon'ble Supreme Court in the following cases:

51.1. In the case of *Suresh Chandra Jana v. State of W.B.*, reported in (2017) 16 SCC 466 at page 476

16.. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is—whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt i.e. the doubt which a rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism.

51.2. In the case of *Rajesh Dhiman v. State of H.P.*, reported in (2020) 10 SCC 740 at page 749



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15... Reasonable doubt does not mean that proof be so clear that no possibility of error exists...

51.3. In the case of *Bhim Singh Rup Singh Vs. State of Maharashtra* reported in 1974 3 SCC 762

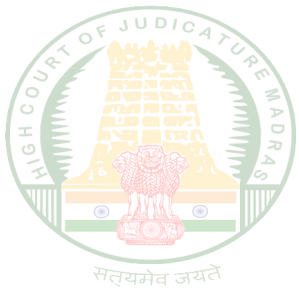
“A reasonable doubt”, it has been remarked, “does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons

51.4. In *State of U.P. Vs. Anil Singh* reported in (1988) Supp SCC 686 the Hon'ble Supreme Court has held as follow:

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

51.5. In the case of *Inder Singh v. State (Delhi Admn.)* reported in [(1978) 4 SCC 161 the Hon'ble Supreme Court has held as follows:

A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon



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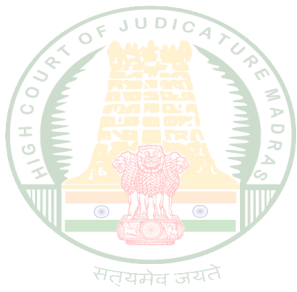
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reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.

51.6. The Hon'ble Supreme Court on various occasions cautioned the Courts not to extend the arms of the rule of benefit of doubt to render unmerited acquittals by nurturing fanciful doubts or lingering suspicions causing miscarriage of justice. It is not only the duty of the Court to acquit an innocent, it is also the paramount duty of the Court to see that a guilty man does not escape and hence extension of arms of the rule of benefit of doubt in the present case, cannot be appreciated. The relevant precedents in this aspect is as follows:

The lord Viscount Simon in Stirland v. Director of Public Prosecution (1944) 2 All ER 13 (HL)] held as follows:

“[A] Judge does not preside over a criminal trial merely to see that no innocent man is punished. A



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Judge also presides to see that a guilty man does not escape. ... Both are public duties....”

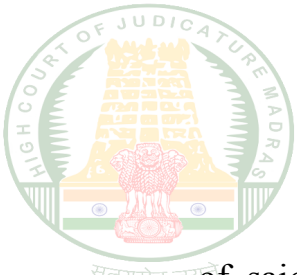
51.7. In the case of *Gurbachan Singh Vs. Satpal Singh* reported in 1990 (1) SCC 445 the Hon'ble Supreme Court has held as follows:

17.... Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law....

51.8. In the case of *Sadhu Saran Singh v. State of U.P.*, reported in (2016) 4 SCC 357 at page 365

20. ...we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent.

Therefore, this Court is inclined to interfere with the judgment of acquittal. P.W.2, is a villager. He has obtained Court decree. On the basis



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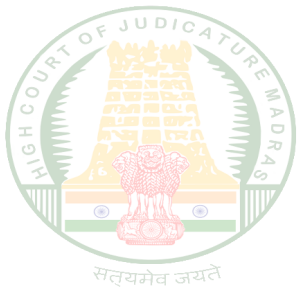
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of said Court decree, he has submitted the application to the Revenue Department to change the patta in his name. The same was forwarded to the table of A1, A2 was her Assistant. They had been keeping the file continuously from 25.09.2000 onwards and have demanded bribe amount.

எ/ கமலம், 1000/-ம் ரூபாய் பணம் கொண்டு
வந்திருக்கிறீர்களா என்று கேட்டார். அதற்கு நான்
நீதிமன்றத்திற்கு அழைத்தே நிறைய
செலவாகிவிட்டது, நான் திருவாரூர்
மாவட்டத்திலிருந்து வந்திருக்கிறேன் என்று என்
கஷ்டங்களை சொல்லி கெஞ்சி கேட்டேன். அதற்கு
பிறகு எ/ கமலம், முதலில் ரூ.500/- கொடுங்கள்
என்று கேட்டார். அதற்கு நான் இப்போது
பணம் இல்லை என்று நான் சொன்னேன். ஊரில்
போய் தான் பணம் ஏற்பாடு செய்ய வேண்டும்
என்று சொன்னேன். அதற்கு எ/ கமலம்,
திங்கட்கிழமை வாருங்கள் என்று சொன்னார்.

P.W.2 developed pain in foot because of continuous visit to office.
Therefore, he made complaint and had undergone all hardship as painfully
observed by the Hon'ble Supreme Court in paragraph No. 9 of the
following case ;

51.9.State of U.P. v. G.K. Ghosh, reported in (1984) 1 SCC 254 at
page 261

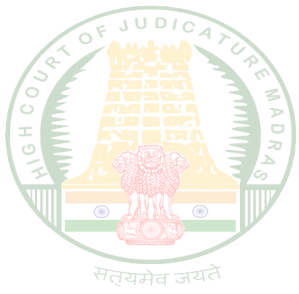


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9. *By and large a citizen is somewhat reluctant, rather than anxious, to complain to the Vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government/servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities and sign several statements. He has to accompany the officers and participants of the raiding party and play the main role. All the while he has to remain away from his job, work, or avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of the trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government officer, has to face all these hazards. And if the explanation offered by the Accused is accepted by the court, he has to face the humiliation of being considered as a person who tried to falsely implicate a Government servant, not to speak of facing the wrath of the Government servants of the department concerned, in his future dealings with the department.*



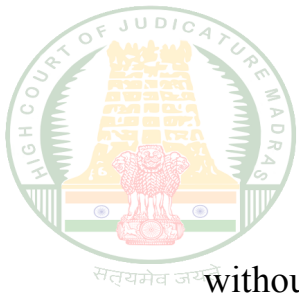
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No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. Of course, it cannot be gainsaid that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-bye to the rules, the official refuses to yield.

52. In this largest democratic country, officers find out the way to indulge in corruption in the discharge of their duty either by acting contrary to the guidelines or deviating the guidelines. The spectrum of mode of corruption spreads in various angles and dimensions. If one angle is closed, another angle sprouts. Therefore, the Hon'ble Supreme Court in the case of corruption always took a different stand against what is applicable to the ordinary penal provisions. The learned trial Judge



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without adherence to the above principle, erroneously acquitted the respondents inspite of the cogent and corroborating evidence of P.W.2, unchallenged testimony of P.W.3, P.W.4, P.W.7, P.W.8 and P.W.9. Upon the appreciation of the above evidence, this Court finds no other view except to convict the respondents for the offence under sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. Therefore, the respondents are liable to convict for the offence under sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

53. Accordingly, this Criminal Appeal stands allowed, by setting aside the judgment passed by the learned Special Judge and Chief Judicial Magistrate, Pudukkottai in Spl.C.C.No.7 of 2001 dated 29.09.2016 convicting the accused for the offence under section 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

54. List this case on 25.04.2024 for appearance of the respondents for questioning on the sentence to be imposed.

.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
vsg



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55. As per the direction of this Court, dated 18.04.2024, all the accused appeared before this Court. When the accused were questioned under Section 235 (2) of Cr.P.C., about the sentence of imprisonment to be passed, they have pleaded as follows:

<i>Sl. Nos.</i>	<i>Accused Name</i>	<i>Answers of the Accused</i>
1	Kamalam	நான் எனது பெற்றோருக்கு ஒரே மகள். எனக்கு ஒரு Special Child இருக்கிறாள். எனது கணவர் தவறிவிட்ட காரணத்தால் எனது மகளையும் எனது தாயையும் நான் தான் பார்த்துக் கொண்டு இருந்தேன். தற்போது எனது தாயும் இறந்து விட்டார். இந்நிலையில் எனது மகளை நான் மட்டும் பார்த்து வருகிறேன். கடந்த 24 வருடங்களாக இந்த வழக்கிற்காக நான் மிகுந்த சிரமத்திற்கு ஆளானேன். எனது மகளுக்கு அடிக்கடி வலிப்பு வரும்.



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2	Sundarakannu	நான் குற்றவாளி இல்லை. எனக்கு மனைவி மக்கள் இருக்கிறார்கள். அவர்களை நான் தான் காப்பாற்ற வேண்டும். தற்போது சாப்பிடுவதற்கு வழி இல்லாமல் இருக்கிறேன். கடந்த 24 வருடங்களாக இந்த வழக்கின் காரணமாக நான் மிகுந்த மன உளைச்சலுக்கு ஆளானேன். இதனால் எனக்கு பல வியாதிகளும் வந்தது. எனக்கு சர்க்கரை நோய் மற்றும் பக்கவாதம் உள்ளது. ஆகவே எனது குடும்ப குழந்தை மற்றும் உடல்நிலையை கருத்தில் கொண்டு மிகவும் குறைந்த பட்ச தண்டனையை அளிக்குமாறு மிகவும் தாழ்மையுடன் கேட்டுக் கொள்கிறேன்.
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56. Considering the present age of the respondents, ie., 67 and 70 years respectively and considering that the occurrence had taken place in the year 2000 and acquittal judgment was passed in the year 2016, this Court is inclined to impose the following minimum sentence of imprisonment with fine and all the substantive sentences of imprisonments are to run concurrently. The period already undergone by the accused is



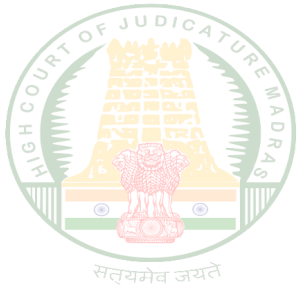
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ordered to be set off under Section 428 of Cr.P.C.,

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<i>Sl. No.</i>	<i>Under Sections</i>	<i>Accused Nos.</i>	<i>Sentence of imprisonment</i>	<i>Fine amount</i>	<i>Default sentence</i>
1	7 of the Prevention of Corruption Act 1988	A1 and A2	One year rigorous imprisonment	Rs.5,000/-	Three months of simple imprisonment
2	13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988	A1 and A2	One year rigorous imprisonment	Rs.5,000/-	Three months of Simple Imprisonment

57. After passing the sentence of imprisonment, the learned counsel for the respondent sought for an interim suspension of the sentence of imprisonment. Considering the age and the fact that the judgment of the trial Court was passed in the year 2016 and the same has been reversed by this Court by this judgment and also considering the request of the respondents to give sufficient time to prefer appeal, this Court is inclined to suspend the sentence of imprisonment up to 31.07.2024. The respondents are directed to surrender before the trial Court on 01.08.2024.



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58. List this case on 01.08.2024, for reporting compliance.

.04.2024

NCC :Yes/No

Index :Yes/No

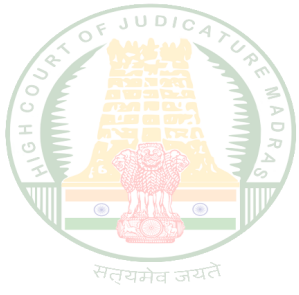
Internet :Yes/No

sbn

Note:Issue Order Copy on 22.05.2024.

To

1. The Special Judge/Chief Judicial Magistrate,
Pudukottai.
2. The Public Prosecutor,
High Court, Madras-600 104.
(V & AC Pudukkottai).
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

vsg/sbn

Pre-delivery order made in
CRL.A(MD).No.218 of 2017

18.04.2024
&
25.04.2024