

Bail Slip

The Petitioner/Sole Accused namely K.A. Pachaiappan, S/o annamalai was directed to be released on bail as per the order of this court dated 17.10.2014 and made in Crl.M.P. No 1/14 in Crl.A. No 527/14 on the file of this court.

Bail slip

The Petitioner/Sole Accused namely R.K.R. Rajasekar, S/o S.R. Kalyanasundaram was directed to be released on bail as per the order of this court dated 17.10.2014 and made in Crl.M.P. No 1/14 in Crl.A. No 532/14 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 22.02.2017

Judgment Pronounced On : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

Crl.A.No.527 of 2014
and
Crl.A.No.532 of 2014

CRL.A.NO.527 OF 2014

K.A.Pachaiyappan

... Appellant/Accused No 2

Vs.

State rep. by
The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Chennai.

(Crime No.04/AC/2009/CC-IV)

... Respondent/Complainant

CRL. APPEAL NO.532 OF 2014

R.K.R.Rajasekar

... Appellant/Accused No 1

Vs.

State rep. by
The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Chennai.

(Crime No.04/AC/2009/CC-IV)

...Respondent/Complainant

PRAYER IN CRL. APPEAL NO.527 OF 2014 :Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 30.09.2014 passed by the learned Special Judge for the case under Prevention of Corruption Act, Chennai in C.C.No.108 of 2011 (Old C.C.No.28 of 2010).

PRAYER IN CRL. APPEAL NO.532 OF 2014:Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 30.09.2014 passed by the learned Special Judge for the case under Prevention of Corruption Act, Chennai in C.C.No.108 of 2011 (Old C.C.No.28 of 2010).

For Appellants : Mr.K.Suresh Babu
(In Crl.A.No.527 of 2014)
& Mrs. M. Sheela
Mr.Shanmugasundaram,
Senior Counsel for
Mr.K.Srinivasan
(In Crl.A.No.532 of 2014)

For Respondent : Mr.E.Raja
Additional Public Prosecutor

COMMON JUDGMENT

These Criminal appeals are filed against the judgment dated 30.09.2014 made in C.C.No.108 of 2011 (Old C.C.No.28/2010) passed by Special Judge for the cases under Prevention of Corruption Act, Chennai, in and by which, A-1 and A-2 were convicted and sentenced to undergo imprisonment for two years each and to pay a fine of Rs.5,000/- in default, to undergo imprisonment for four months and for offence under Section 13(2) r/w.13(1)(d) of P.C.Act, sentenced to undergo imprisonment for two years each and to pay a fine of Rs.5000/- in default, to undergo imprisonment for four months.

2. The case of the prosecution is as follows:-

2.1. The complainant Gunamani is doing contract business in the name and style of "M/s.Sri Kaligambal Builders". His elder brother's wife Tmt.Dhanalakshmi is a member in M/s.Pearl Engineers Construction Cooperative Society Ltd., and she is carrying on contract work through the said society. The members of the said society were entrusted with construction, repair and other works by P.W.D. Department. The said society had an agreement with PWD Department for two contract works viz., (1) Rehabilitation of Heritage P.W.D.Chepauk Building for an agreement value of Rs.79,29,144/- and (2) Rehabilitation of Heritage Old Engineering College Building at Chepauk for an agreement value of Rs.63,07,258/-. The said work was entrusted

to P.W.5 Dhanalakshmi as per the Tender process of the above said society. When Dhanalakshmi was carrying over the work due to the difficulties faced by her, she authorised P.W.3 Gunamani to assist her in the said works and sent Ex.P.3 letter to that effect. At that point of time, the 2nd accused Pachaiyappan was the Junior Engineer, Chepauk Section and the 1st accused R.K.R.Rajasekar was the Assistant Executive Engineer, South East Sub-Division, Public Works Department. In the course of work done by Dhanalakshmi, in respect of the above said works, payments was made by way of cheque by P.W.D., officials in respect of the said work in Work No.1, which was completed and for the same, a cheque for a sum of Rs.1,21,812/- was made ready and P.W.5 Dhanalakshmi was informed of that. In order to collect the said cheque, P.W.3 went to the 2nd accused office on 12.04.2009 and met the Superintendent and he asked P.W.3 Gunamani to bring his sister-in-law Dhanalakshmi (P.W.5) to sign in the cheque memo. Accordingly on the next day, P.W.3 took his sister-in-law P.W.5 to the Office of Assistant Executive Engineer, P.W.D, Chepauk, Chennai; there, P.W.5 Dhanalakshmi signed in the cheque memo. When P.W.3 asked about the cheque, he was informed that the cheque is with the first accused Rajasekar and the Superintendent asked P.W.3 to collect the cheque from the 1st accused. Accordingly, when P.W.3 went to the Chambers of A-1 and asked about the cheque, immediately, A-1 handed over the cheque dated 26.03.2009 for Rs.1,21,812/- to P.W.3. A copy of the said cheque is marked as Ex.P6. After handing over the cheque, the 1st accused demanded a sum of Rs.6,000/- as bribe amount for the said cheque. Since P.W.3 was not having money in his hand, he promised the 1st accused that he will come back on friday evening ie., on 17.04.2009 with money. Since P.W.3 was not interested in making payment of Rs.6,000/- as bribe, he went to the Office of the Vigilance at Nandhanam around 12.00 noon and lodged Ex.P4 complaint with P.W.9 Ali Basha, who was then working as DSP in the respondent Police office.

2.2. On receiving the complaint, P.W.9, DSP made discreet enquiry and then registered a case in Crime No.04/AC/2009/CC-IV for the offence under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and the said first information report is Ex.P.21. Thereafter, P.W.9 gave requisition to the Chief Engineer, Tamil Nadu Housing Board to provide two official witnesses and accordingly by 2.00 p.m., on the same day, P.W.4 Jagadeesan and P.W.11 Vadivel came over to the office of the respondent police. Then, P.W.9 introduced the official witnesses to P.W.3/complainant and explained them about the trap proceedings. He also gave the Ex.P.4 complaint to them and asked them to go through it. Then, he collected Rs.6,000/- from the complainant/P.W.3 and applied the phenolphthalein powder on the same. He explained the phenolphthalein test procedure to the witnesses and asked P.W.4 Jagadeesan to accompany P.W.3 to the office of the accused to witness the

occurrence as official witness. P.W.9 also prepared entrustment mahazar and the same is Ex.P5, wherein, P.W.4, P.W.11 and P.W.3/complainant signed. Then P.W.9 along with members of the Trap Team proceeded to the office of the accused herein. The trap amount was put in a white cover and after applying phenolphthalein powder on the cover containing the amount put it in the shirt pocket of P.W.3 and he was instructed to handover the amount to the 1st accused if he demanded it. Further P.W.3 was instructed to come out of the office of the accused and to give signal by switching his wrist from left hand to the Right hand if the accused received the amount. After making necessary arrangement, P.W.9 along with P.Ws.3, 4 and 11 and other trap team members left the respondent office by 3.35 p.m. and reached the office of the accused, in Kamaraj Salai by 4.30 p.m., After reaching the office of the accused P.W.9 along with the trap team stayed outside the said office of the first accused, while P.W.3 and shadow witness P.W.4 Jagadeesan went inside the office of the accused. Subsequently, by 4.45 p.m., they came out and informed that the first accused has gone out. Thereafter trap team waited outside the office of the first accused and at 6.10 p.m., P.W.3 informed P.W.9 DSP of Police that the first accused has returned. Then P.W.9 again asked P.Ws.3 and 4 to go inside and meet the accused. Thereafter, P.W.3 returned back in short while and informed P.W.9 that the first accused directed him to hand over the amount to the second accused. On enquiry, P.W.3 came to know that the Assistant Engineer/second accused Pachaiappan was in the room of Assistant Engineer, Triplicane Room. P.W.9 instructed P.Ws.3 and 4 to act as per the instruction of the first accused Rajasekar and they went to meet the second accused. P.W.9 stayed outside the office of Assistant Engineer, Triplicane Division and by 6.25 p.m., P.Ws.3 and 4 came out of the said room and P.W.3 gave the pre-arranged signal and after enquiring about the occurrence inside, P.W.9 went inside and took the second accused Pachaiappan to the room of the office of the first accused and there P.W.1 introduced himself and other witnesses to both the accused. Thereafter, P.W.9 conducted phenolphthalein test by dipping the hands of the second accused Pachaiappan and the solution changed into pink colour. The samples of the solution was put into 2 bottles and the same was labelled wherein A-2 and witnesses signed. The said 2 bottles are marked as M.O.2 and 3. Thereafter, P.W.9 asked P.Ws.4 and 11 to count the money kept on the table by the second accused and both of them told the total sum was Rs.6,000/-. The said amount and the white cover was seized by P.W.9 and it is marked as M.O.1 series. P.W.9 also secured the cheque, memo register Ex.P15 from the Superintendent Office. Both the accused were arrested by 8.00 p.m., and P.W.9 prepared Ex.P.7 Entrustment Mahazar about the trap proceedings, wherein, the official trap witnesses P.Ws.4, 11 and P.W.9 himself signed. P.W.3 and P.W.4 corroborated P.W.9 about the above said happenings in the office of A-1. P.W.9 also stated that he

collected Ex.P.15 Cheque Memo Register from the office of A-1 and arrested both the accused at 20.00 hours. Rough sketch of the occurrence spot prepared by him is Ex.P.22. P.W.9 also searched the house of A-1 from 8.35 to 9.00 p.m., and the house of A-2 from 9.25 p.m., to 9.45 p.m., and the search memo for the said two house search are marked as Ex.P.23 and 24. Thereafter, both the accused were sent to judicial custody and the seized materials were sent to the Court as per Ex.P.25 (Form-95). Thereafter, P.W.9 handed over the investigation to the Deputy Superintendent of Police P.W.10.

2.6. P.W.10, Tmt. Saraswathi who was then working as DSP in the respondent office took up further investigation and examined the complainant and other witnesses and recorded their statements and after recording the statement of witnesses and collecting the documents, she sought for permission to prosecute the accused and accordingly obtained Ex.P1 Sanction Order from P.W.1 Ramasundaram to prosecute the first accused and obtained Ex.P2 sanction order from P.W.2 Jayaraman to prosecute the second accused and on completion of investigation, filed the charge sheet against the accused under Section 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 on 30.08.2010.

3. Based on the above materials, the trial Court framed charges under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Since the accused denied the charges, they were put on trial. The prosecution examined P.W.1 to P.W.11 and produced Exs.P1 to P-25 and M.Os.1 to 3, to substantiate the charges. The incriminating evidence found in the prosecution side was put to the accused under Section 313 Cr.P.C., and they denied the same as contrary to the facts and pleaded that they have been falsely implicated in the case. The accused did not examine any witness on their side, but marked Exs.D1 to D15. The trial Court, after considering all the materials placed before it, found the accused guilty, convicted and sentenced them to undergo imprisonment for two years and to pay a fine of Rs.5,000/- each, in default to undergo an imprisonment for four months for offence under Section 7 of Prevention of Corruption Act and also convicted and sentenced them to undergo an imprisonment for two years and also to pay a fine of Rs.5000/- each, in default to undergo an imprisonment for four months for offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Aggrieved by the said verdict of the trial court, the accused have come forward with these criminal appeals challenging the judgment of conviction and sentence as stated above.

4. The learned counsel appearing for the appellants/accused submitted that the prosecution has failed to establish the guilt beyond reasonable doubt regarding the demand and acceptance of

illegal gratification by the accused and hence the Court below is not correct in holding the accused guilty of the offence. The learned counsel appearing for the appellants further contended that in the absence of material to prove the demand or request from the Public servant for pecuniary advantage, the offence under Section 13(1)(d) cannot be held to be established. He also pointed out that mere recovery of tainted money by itself cannot prove the charges of the prosecution against the accused. In the absence of any evidence to prove the demand of bribe and the accused voluntarily accepted the amount, it cannot be said to be an offence as alleged by the prosecution. It is also pointed out by the appellant that the procedure adopted in the trap proceedings is not proper. The scene of occurrence and the place of recovery were not explained properly by the prosecution. It is also pointed out that the cheque mentioned in the complaint was cleared on 16.04.2009 itself and the complaint is preferred only on 17.04.2009 and that itself will disprove the claim of the prosecution. The learned counsel appearing for the appellants contended that the trial Court failed to appreciate the evidence placed before it properly and the conclusion arrived by it is not correct and the same is liable to be set aside. Hence, the appellants seeks to entertain the appeal and set aside the judgment of the trial Court.

5. On the other hand, refuting the contention of the learned counsel appearing for the appellants, the learned Additional Public Prosecutor submitted that the demand and acceptance of bribe amount by the accused is clearly established by the evidence of P.Ws.3, 4 and 11. The accused acted in collusion and obtained illegal gratification from the complainant. The learned Additional Public Prosecutor also pointed out that the Chemical analysis test also established the fact of recovery of tainted money from the second accused. According to him, the evidence let in by the prosecution is cogent, clear and complete in every aspect and the same is sufficient to prove the guilt of the accused. Thus, it is contended by the prosecution that the entire oral and documentary evidence has been correctly appreciated by the trial Court which has rightly come to the conclusion that the prosecution has proved the guilt of the accused and as such the judgment of the trial Court is in order and no interference is warranted. Hence, the learned Additional Public Prosecutor seeks dismissal of both the appeals.

6. I have heard the rival submissions and perused the entire materials available on record.

7. According to the Prosecution, A-1 who was working as Assistant Executive Engineer P.W.D., demanded Rs.6000/- from P.W.3/complainant Gunamani for issuing cheque worth Rs.1,21,810/- on 13.04.2009, in connection with the work completed by P.W.5 Dhanalakshmi in respect of Sub Work No.1

Rehabilitation of heritage of P.W.D., Chepauk Building at Chepauk, Chennai-5. It is alleged that the accused demanded the said sum of Rs.6000/- as illegal gratification for issuing the cheque in connection with the work of P.W.5. Since P.W.3 was not willing to pay the bribe amount as sought for by A-1, preferred Ex.P.4 complaint with P.W.9 the then DSP of respondent Police. On the basis of the said complaint, trap proceedings was initiated and after following the procedure, the appellants/accused were arrested and on completion of the investigation, charge sheet has been levelled against the appellants/accused herein.

8.1. The prosecution case rests upon the evidence of P.W.3, P.W.4 and P.W.11, viz., the complainant and the official witnesses during the trap proceedings, As per the case of the prosecution, the demand for illegal gratification was made on 13.04.2009 when Ex.P.6 cheque was issued and again on 17.04.2009 when the trap proceedings was conducted. The complainant/P.W.3 stated in his evidence that his sister-in-law P.W.5 was allotted 3 works as per tender and due to difficulty in looking after the same, she gave authorisation letter Ex.P.3 to him to attend the said contract works on her behalf. Accordingly, he was looking after the said works entrusted by his sister-in-law Dhanalakshmi. He further states that in respect of rehabilitation of heritage PWD Chepauk building 95% of the work completed and out of the tender amount of Rs.63,34,657.50, they have received Rs.50 lakhs from PWD and in respect of rehabilitation of Heritage old Engineering College Building, they have completed 80% of the work and received Rs.20 lakhs from PWD. Further, P.W.3 also stated that in respect of 3rd work relating to relaying pavement and other building works in PWD compound at Chepauk, the entire work was completed and he was informed that the cheque for a sum of Rs.1,21,812/- has been passed. Thus to collect the cheque, he went to the Office of the 1st accused on 12.04.2009 and met the Superintendent and he wanted P.W.5 Dhanalakshmi to come and sign the cheque memo; hence P.W.3 took P.W.5 Dhanalakshmi to the office of A-1 on the next day viz., 13.04.2009 and she signed in the cheque memo register and left the office. P.W.3 was informed that the cheque was with the 1st accused and accordingly, he went to the room of A-1 and asked about the cheque. Immediately, the 1st accused handed over the cheque for a sum of Rs.1,21,812/-. A copy of the cheque was marked as Ex.P.6. Then A-1 asked for 5% of the amount as commission and demanded P.W.3 to pay Rs.6000/- immediately to which P.W.3 replied that he is not having that much of amount and that he will come back with the amount on 17.04.2009. Then as he was not willing to pay the amount, he lodged Ex.P.4 complaint on 17.04.2009 at 12 noon. Thus as per the evidence of P.W.3, on 13.04.2009, the cheque was handed over to him by A-1 and demand for Rs.6000/- was made only thereafter. Thus it is clear that, no demand was made prior to the alleged

handing over of cheque by A-1.

8.2. P.W.5 Dhanalakshmi sister-in-law of complainant P.W.3 in her evidence stated that she is a member of M/s.M/s.Pearl Engineers Construction Cooperative Society Ltd., and she is carrying on the contract work through her brother-in-law P.W.3 Gunamani. She also stated that she has given authorisation letter Ex.P.3 to her brother-in-law to look after the contract works taken by her firm. She also produced Ex.P.8 Membership Application dated 24.12.2004 to show that she is a member of the above said society. According to her, during March 2008, she was allotted Rehabilitation work of old Chepauk building of PWD Engineering Building. She stated that delay occurred in completing the said works and she received a letter from the department to complete the work on time. She was given time extension till 12.01.2009 and the entire work was completed before that date. She also stated that she was given work of rehabilitation of heritage PWD Chepauk building and rehabilitation of Heritage old Engineering College Building and the materials relating to the same are marked as Ex.P.10 to Ex.p.12. P.W.5 also stated that she completed the said work in March 2009 and came to know that the cheque for Rs.1,21,812/- in connection with that work is ready. Accordingly, she went to PWD office at 10.30 a.m., on 13.04.2009 and signed in the cheque register before the Superintendent of A.E. The said signature in Ex.P.11, cheque memo register is marked as Ex.P.9. Thereafter, she was informed that the cheque is with A-1. Hence, she asked P.W.3 to collect the cheque and left the place. At the same time, she also stated that A-1 has demanded 5% of that cheque amount as illegal gratification for himself. She stated that cheque for Rs.1,21,812/- was received by her on 13.04.2009 and the same was adjusted with M/s..Pearl Engineers Construction Cooperative Society Ltd., and the receipt for the same is Ex.P.13.; out of the said amount, Rs.1,16,575/- was given to her and the voucher for same is Ex.P.13. Since she was not willing to pay the bribe amount as sought for by A-1, her brother-in-law P.W.3 Gunamani lodged the complaint with respondent Police. It is therefore clear that P.W.5 did not meet the accused herein on 13.04.2009. Therefore except for the evidence of P.W.3's complaint, there is no other witness to speak about pre trap demand of illegal gratification by the accused. In such circumstances, it is to be seen whether there is any other corroboration to the interested testimony of P.W.3 complainant herein. In appreciating the oral evidence of P.w.3 it is to be considered as to whether the said witness is a truthful witness and his deposition can be relied upon.

9. The argument advanced on the side of the appellants is that this is a case where the accused has been sought to be implicated in a totally false case and there is no material on record to prove the demand and acceptance of bribe amount by the accused herein. As rightly pointed out by the learned counsel

for the accused, the legal point is well settled that unless the demand of illegal gratification is proved, mere recovery of tainted money is not sufficient to convict the accused when the substantive evidence produced in the case is not reliable unless there is evidence to prove the payment of bribe and to show that the money was taken knowingly and intentionally as illegal gratification to do some favour to concerned person.

10. In the case on hand, as stated above, the only person who has spoken about pre trap demand of bribe by the 1st accused is P.W.3. He has stated in his evidence that on 13.04.2009, when he went to the Office of A-1 bribe of Rs.6000/- was sought for by the 1st accused. However in his cross examination, P.W.3 stated categorically that he met the 1st accused in connection with this case occurrence for the first time on 17.04.2009 only. He further stated that in respect of the work done under the third agreement relating to the Rehabilitation of Heritage P.W.D Chepauk Building payment was made at one time only.

11. As stated earlier, on 13.04.2009, immediately on entering room of A-1, Ex.P.6/Cheque was handed over to P.W.3. The original of Ex.P.6 cheque is stated to have been issued on 13.04.2009 to P.W.3. The said cheque was dated 26.03.2009. P.W.3 in his evidence stated that the said cheque relates to the 3rd tender work in the name of P.W.5 Dhanalakshmi and the work relates to relaying of pavement in PWD Campus at Chepauk. It is also admitted by P.W.3 in his cross examination that payment relating to the said work was made at one time only. He further stated that the cheque dated 26.03.2009 was not received by him before 17.04.2009, but it was received by Dhanalakshmi herself. In such circumstances, the evidence of P.W.3 does not inspire confidence and hence the claim that demand was made by A-1 appears to be doubtful.

12. It is the contention of the prosecution that on 17.04.2009 at 12.30 p.m., the complainant P.W.3 lodged Ex.P.3 complaint and on that basis, the case was registered as per Ex.P.21 (FIR). Thereafter trap proceedings was conducted and A-1 and A-2 were arrested by P.W.9 at the completion of trap proceedings. The complainant P.W.3 in his evidence stated that on 17.04.2009, he went to the office of the accused at about 3.35 p.m., with P.W.4 Jagadeesan and as they went inside the office they were told that A-1 is not present and he has gone out. Both of them came out and waited after informing P.W.9 DSP and at 6.10 p.m., P.W.3 came to know that A-1 has returned to his office. Then P.W.3 and 4 went inside and on seeing P.W.3, A-1 asked him as to whether he has brought the amount, then as P.W.3 replied in affirmative, A-1 asked how much amount, to which, P.W.3 replied Rs.6000/-. Then A-1 asked the complainant P.W.3 to handover the amount to A-2 stating that he will collect the same later. After that P.W.3 came out of office and he

informed P.W.9 about the happening and then went to the office of A-2. On seeing him, A-2 enquired P.W.3 as to why he came there, P.W.3 replied that A-1 asked him to handover the cover and gave it to A-2. On receiving the cover with his right hand, A-2 took out amount, counted it and put it in the cover itself and kept it in the drawer. The said amount is produced as M.O.1. Thereafter A-2 enquired P.W.3 about his share of amount, to which P.W.3 replied that he will come on the next day. Thus P.W.3 has stated about the alleged demand made by A-1 and A-2 on the trap proceeding day. However, the shadow witness who accompanied complainant and deposed as P.W.4 did not present himself for cross examination since he has passed away. In his chief examination, P.W.4 stated that he accompanied P.W.3 complainant to the office of the accused and reached there by 4.30 pm., but A-1 was not in his seat. They came out and informed P.W.9 about it and they waited till 6.30 p.m. Then P.W.3 informed them about arrival of A-1 and thereafter as per direction of P.W.9, they went inside the office of A-1 and on seeing them, A-1 asked P.W.4 to stay outside, but he stood near the entrance and listened to the discussion. According to him, P.W.3 told A-1 that he has brought money to collect the cheque; immediately A-1 Rajasekar asked P.W.3 to handover the amount to A-2. P.W.4 stated that thereafter, P.W.3 himself went to the office of A-2 on the backside and on seeing them A-2 asked P.W.3 as to what is the matter; to which P.W.3 replied that A-1 has sought for amount and as per his direction, he is giving it to him. Then, A-2 received the amount in his right hand, took out the amount from the cover, counted it and kept it back in the cover itself. Thereafter P.W.3 was asked by A-2 about his share, to which P.W.3 replied that he will meet him later. However, as stated above P.W.4 could not be cross examined due to his death and the appellants contend that his evidence cannot be looked into.

13. P.W.10 Investigating Officer of the case in her evidence stated that during her enquiry, P.W.3 did not state that A-1 demanded bribe amount on the trap proceeding day. It is therefore clear that the evidence of P.W.3 before the court is an improvement on the statement given by him before P.W.10. Further the trap witness P.W.4 has stated nothing about any demand being made by A-1 on the trap proceeding day. He has only stated that on entering A-1's room, P.W.3 stated that he has come with amount to collect the cheque. Nothing is mentioned specifically by P.W.4 about the 1st accused making any demand. Further P.W.4 has not stated anything about meeting P.W.9 and thereafter proceeding to A-2's room. Therefore, the evidence of P.W.4 about meeting at A-1 in his room, is contrary to what is stated by P.W.3. Further P.W.4 admittedly was outside the room of A-1 when the alleged demand was made by him. The learned counsel for the appellants/accused contended that even

if P.W.4 was standing outside the office of A-1, he could not have listened or heard what had taken place inside the room, because of the flush door provided to A-1's office. Further the defence was not able to cross examine P.W.4 due to his demise. In such circumstances, the evidence of P.W.4 is of no use to prove the factum of demand made by A-1 on the trap proceeding day. P.W.6 Agoram who was then working as Superintendent in A-1's office in his evidence stated that A-1's room was provided with Air Conditioner and flush door fitted with automatic door closer provision in the room. P.W.6 in his cross examination, after the photo being shown to him, stated that only the visitor sitting opposite to A-1 will be visible from outside and A-1 cannot be seen by the person standing outside. It is therefore clear from the above said admission of P.W.6 that the shadow witness P.W.4 could not have seen or listened to what A-1 told P.W.3 in his room on the occurrence day. Further the other trap witness P.W.11 Vadivel has clearly stated that he was instructed by P.W.9 to enter the accused office only after receiving prearranged signal from P.W.3. Therefore, his evidence about the occurrence prior to his entry to the office of A-1 is only hearsay and is of no use to prove the fact of demand by A-1 on the occurrence day. Further it is pointed out that in the statement given to the Police P.W.3, 4 and 11 have not stated anything about demand of bribe made by A-1 on the day of trap. In such circumstances, it is clear that the evidence of P.W.3 alone is not sufficient to prove the fact of demand of bribe by the 1st accused on the trap proceeding day.

14. In the complaint as well as evidence produced by the prosecution, there is no clear cut material to show that the demand was made by A-2 on the day of trap proceedings. Nothing is stated by P.W.3 about meeting A-2 prior to the date of trap proceedings. P.W.5 has stated in her evidence that the 2nd accused never demanded bribe amount from her. In the chief examination of P.W.3, nothing is mentioned about meeting A-2 or demand of bribe made by him on the date of trap proceedings. P.W.3 stated that as instructed by A-1, he went and handed over the cover containing Rs.6000/- to A-2 in his office. P.W.3 in his chief examination has stated as follows:-

“நான் சாட்சி ஜெகதீசனுடன் 2வது எதிரி பச்சையப்பன் இருக்கும் அலுவலக அறைக்குச் சென்று அவரைப் பார்த்தபோது அவர் என்ன குணமணி என்று என்னை கேட்க அவரிடம் முதல் எதிரி உங்களைப் பார்த்து இந்தக் கவரை உங்களிடம் கொடுக்கச் சொன்னதாக கூறி அந்தக் கவரை 2வது எதிரியிடம் கொடுத்தேன். அவர் அந்தக் கவரை வலது கையால் வாங்கி உள்ளே இருந்த பணத்தை வெளியே எடுத்து இரு கைகளால் எண்ணி கவரில் வைத்து மேசை டிராயரில் வைத்தார். வெள்ளைக் கவருடன் சேர்ந்த 6 ஆயிரம் ரூபாய் நோட்கள் மொத்தம் ரூ.6000/- இதுதான் அவை சா.பொ.1 வரிசை ஆகும். பணத்தை வாங்கிக்கொண்ட 2வது எதிரி எனக்குண்டான பணம் எங்கே என்று கேட்டார். நான் நாளை வருகிறேன் என்று சொல்லிவிட்டு நாங்கள் வெளியே வந்து எனக்கு அறிவறுத்தியபடி இடது கையில் கட்டிய வாட்சை கழற்றி வலது கையில் கட்டி சைகை செய்தேன்.”

It is evident from P.W.3 statement that on his entry into A-2's room, he was asked by A-2 as to what is the matter. In reply,

P.W.3 replied that A-1 asked him to handover the cover and gave the cover with Rs.6000/- to A-2 and on receiving it, A-2 is alleged to have asked P.W.3 about money to be given to him. Nothing is stated by P.W.3 as to whether A-2 knew the reason or purpose for which Rs.6000/- was given to him and in such circumstances, the claim of P.W.3 that A-2 asked about the amount due to him does not inspire confidence. Further P.W.5 has categorically stated in her evidence that even before 17.04.2009, she has received the cheque relating to this case occurrence. P.W.5 also admitted that the power to issue cheque vests with the Executive Engineer and when Ex.P.6 cheque was issued, all the work has been completed by then. Similarly P.W.4 also stated that when they met 2nd accused; he asked P.W.3 as to what is the matter to which P.W.3 replied that A-1 has asked for money and he is giving the same to A-2 as directed by A-1. P.W.4 stated that the cover containing the amount was received by A-2 and after counting the same, A-2 asked P.W.3 about the money to be paid to him to which, P.W.2 replied that he will come back again and left the place. P.W.4 also stated that after the same trap team entered and when questioned, A-2 denied seeking any amount from P.W.3. Further P.W.11, the other trap witness, in his chief examination stated that on enquiry, A-1 denied that he ever asked P.W.3 to hand over the money to A-2. Pointing it out, the learned counsel for the accused contended that if the allegation of A-1 demanding bribe amount is true, he would not have directed P.W.3 to hand over the same to A-2, instead of receiving it and the same is against the normal tendency of human being who wants to receive illegal gratification. In the light of the above said discussion and in the absence of any acceptable corroborative evidence to substantiate the evidence of P.W.3/complainant, it is clear that the prosecution has not established the fact of demand of illegal gratification by the accused herein as alleged by them.

15. As per the evidence of P.W.9 Trap Laying Officer as well as P.Ws.3, 4 and 11, M.O.1 series amount of Rs.6000/- was recovered from the office table of A-2. Admittedly, A-1 has not received the amount from P.W.3. There is nothing on record to show that A-1 accepted the amount from P.W.3 or any other person. As stated above, the case of the prosecution is that A-1 directed the complainant P.W.3 to hand over the amount to A-2. Further A-1 has endorsed in the arrest memo Ex.D.15 that he has not received any bribe amount, but one contractor approached, but he refused and the same is admitted by P.W.9 the Trap Laying Officer in his evidence. Further the trap witness P.W.11 in his chief examination stated that after the trap team entered the room of A-2, as per instruction of P.W.9, they took the white colour cover from the table of A-2 and went to A-1's room. Thus the learned counsel for the accused contended that the trap amount was neither recovered from A-1 or A-2, but only from the Table and that itself would go to show that no acceptance of

bribe amount by the accused herein. In the light of the above said discussion, it is clear that the prosecution has failed to prove the fact of acceptance of bribe amount by the accused herein. Pointing it out, the learned counsel for the accused contended that in the absence of material to prove the demand and acceptance of bribe amount by the accused, even if any amount has been recovered from the accused that is not sufficient to prove the guilt of the accused under Section 7 and 13(2) read with 13(1)(d) of P.C.Act, 1988. In support of the same, he relied upon the Ruling reported in (2015) 10 SCC 152 [P.Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another], wherein, it is held as follows:-

"22. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere

recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder. "

Similarly, the learned counsel for the accused contended that unless and until acceptance and admission of illegal gratification is proved presumption under Section 20 of the PC Act cannot be drawn. In support of the same, the learned counsel for the appellants relied upon the decision of the Apex Court reported in (2014) 13 SCC 55 [B.Jayaraj Vs. State of Andhra Pradesh], wherein, it is held as follows:-

"9. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.
"

The learned counsel for the appellants/accused further contended that in the present case, the cheque relating to the sub work completed by P.W.5 was already issued even prior to the date of trap proceedings and the same has been admitted by P.W.3 and P.W.5 and as no work remained to be completed, in the absence of any material to prove demand of bribe by the accused, the claim of the prosecution is not sustainable and benefit of doubt should go to the accused herein. In support of the same, he relied upon the Ruling reported in (2012) 13 SCC 552 [Rakesh Kapoor Vs. State of Himachal Pradesh]. Similarly he relied upon the Ruling reported in (2009) 3 SCC 779 [C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala], wherein it is held as follows:-

"18. In Suraj Mal Vs. State (Delhi Admn.), this Court took the view that (at SCC p.727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be

bribe."

Following the above said Ruling, it is clear that unless and until admission and acceptance of illegal gratification is proved, mere recovery of tainted money from the accused is not sufficient to prove the guilt of the accused. In the case on hand also, as stated above, there is nothing on record to prove the demand and acceptance of illegal gratification by the accused herein.

16. As per the evidence of P.W.3, P.W.4, P.W.11 and P.W.9 Trap Laying Officer, after the trap team entered the Office of A-2, P.W.3 and 4 introduced P.W.9 Trap Laying Officer to A-2 and after enquiring him, P.W.9 took A-2 to the office of A-1 and after introducing themselves to A-1, he prepared sodium carbonate solution and asked A-2 to dip his fingers. On A-2 doing of the same, colour of the solution changed into pink and then P.W.9 asked about the bribe amount and thereafter, the amount lying on the table of A-2 was taken by P.W.9 and he asked both P.W.4 and P.W.11 to count the same. The Mahazar prepared on the completion of the said proceedings is Ex.P.7. Pointing it out, the learned counsel for the accused contended that this is in violation of guideline laid down in Vigilance Manual and the trap team is bound to conduct the phenolphthalein test immediately on entry into the accused room and the procedure adopted by P.W.9 as stated above is improper and trap proceedings has been done in reverse manner. The prosecution witnesses P.W.9 and P.W.10 stated that the reason for doing so is lack of facility in A-2's room. Refuting the same, the learned counsel for the appellant/A-2 contended that A-2 accused being a Gazetted Officer, his room was having Bathroom facility and the space was sufficient enough to conduct phenolphthalein test and the procedure adopted by P.W.9 will falsify this claim.

17. Further it is pointed out that the place of occurrence is also not clearly proved. The Investigatin Officer of the case P.W.10 stated that sketch showing the office of the accused was prepared by P.W.9 Trap Laying Office. P.W.9 in his evidence stated that he prepared Ex.P.22 Rough sketch of the occurrence spot but he has not mentioned about the place of recovery of trap amount and presence of witnesses and Trap Laying Officer in it. P.W.9 also admitted that the trap witnesses have not signed in it. It is further stated by him that the office room of Junior Engineer, Triplicane, was not mentioned in it. Pointing it out, the learned counsel for the accused contended that the scene of occurrence and place of Recovery of bribe amount is not proved by the prosecution beyond reasonable doubt.

P.W.3 in his evidence stated that during trap proceedings A-2 was in the room situated behind A-1's room, but P.W.4 has stated as follows:-

“குணமணியும் நானும் ருநுநு அறைக்கு பின்புறம் உள்ள 2வது எதிரி துரு அறைக்கு சென்றோம். துரு அங்கு அமர்ந்திருந்தார்.”

However, it is pointed out that in Ex.P.22, scene of occurrence viz., AE Triplicane room was shown as situated near Chief Engineer Office and not behind A-1's room. Further A-2's room is not marked in Ex.P.22. Thus it is pointed out by the learned counsel for the appellants that the scene of occurrence was not proved beyond reasonable doubt.

18. The learned counsel for the appellants/accused also pointed out that in the complaint given by P.W.3, it is stated that the initial demand of bribe was made on 13.04.2009 when P.W.3 met the 1st accused in his office, but the complaint Ex.P.4 was lodged only on 17.04.2009 at 12.00 noon. Pointing it out the learned counsel for the appellants/ accused contended that the delay of 5 days in lodging the complaint is not explained and the same is fatal to the prosecution case. In support of that, he relied upon the Ruling reported in CDJ 2015 MHC 2220 [Krishnan Anbu and Another Versus Inspector of Police, Chennai] He also relied upon the Ruling reported in 2012(3)MWN (Cr.)380 [P.Palraj Vs. State, rep; by Inspector of Police, Vigilance and Anti-corruption Wing, Thoothukudi], wherein it is stated as follows:-

"The next decision relied on by the learned counsel for the appellant is reported in 2012(1)MWN (Cr.) 448, R.Venkatraj Vs. State Rep. By Inspector of Police. It is appropriate to incorporate paragraph 10 of the said decision.

"Even though P.W.1 decided that no bribe should be given for getting the certificate on 25.01.2000, he made the complaint only on 30.01.2000 after 6 days. In the complaint there is no explanation for the said delay. But in the evidence, he says that he was waiting for 2 or 3 days but he would not secure the money, however, he did not want to get the certificate after paying the illegal gratification. The absence of explanation for delay in lodging the complaint is fatal to the prosecution as to the evidence."

19. In the light of the above said Rulings and considering the facts of the case, as already stated, the cheque relating to which bribe is alleged to have been demanded was received on 13.04.2009 itself and the same was encashed by P.W.5 and the amount was received by her on 16.04.2009 as evidenced by Ex.P.14 voucher, nothing remained to be done by the Accused, when the alleged demand was made by them. Further P.W.6 has stated in his evidence that on the day of trap, not a single payment was pending with A-1 and no cheque was pending in the office of A-1 in respect of P.W.5 nor the complainant P.W.3. It is also pointed out that A-1 assumed office of the concerned AEE on 28.08.2008 and after that, issued the cheques for the works completed by P.W.5 and the same is produced as Ex.D.8 series.

Further the cheque relating to the present case, for the sum of Rs.1,21,812/- dated 26.03.2009 was signed by A-1 and issued by P.W.6 Superintendent. The same was credited to the account of M/s.Pearl Engineering Society and thereafter to P.W.5 on 16.04.2009 much prior to the trap date. It is also pointed out that no material is placed to show that any demand for bribe was made by A-1 in respect of those cheques signed by him having a total value of Rs.40.53 lakhs. Thus, the learned counsel for the appellants/accused contended that there is no scope for the accused to make any demand of illegal gratification subsequent to the issuance of the cheque on 13.04.2009 itself. In such circumstances, as rightly contended by the learned counsel for the appellants/accused, inordinate delay of 5 days in preferring the complaint is fatal to the case of the prosecution.

20. The learned counsel for the appellants/accused contended that the trap proceedings was not conducted properly and the failure of the Trap Laying Officer to record the statement of accused immediately after arrest is fatal to the prosecution case. It is pointed out that as per Rule 47 of Vigilance Manual, it is incumbent on the part of the Officer to record the statement of the accused immediately after his arrest. In support of the same, he relied upon Ruling reported in 2012 (2) MWN (Cr.) 380 [P.Palraj Vs. State, rep. By Inspector of Police, Vigilance and Anticorruption Wing, Thoothukudi], wherein, it is stated as follows:-

"13. It is the bounden duty of the Trap Laying Officer to examine the accused immediately after the arrest at the place of trap and failure in following the Rule would vitiate the procedures. P.W.7, the Trap Laying Officer did not examine the appellant after the arrest as to his explanation for the possession of money. The tainted money was not recovered from the possession of the appellant, but from P.W.5. "

The learned counsel also relied upon Ruling reported in 2012(1) MWN (Cr.) 448 [R.Venkatraj Vs. State, Rep. By Inspector of Police, Vigilance and Anti corruption Wing, Virudhunagar District], wherein, it is stated that the Trap Laying Officer is bound to record the statement of the accused immediately on his arrest. It is therefore clear that it is mandatory for the Trap Laying Officer to record the statement of the accused immediately after the arrest. However, in the case on hand, P.W.9 Trap Laying Officer admitted in his cross examination as follows:-

"இந்த வழக்கில் பணத்தை கைப்பற்றிய பிறகு 2 எதிரிகளிடமிருந்து வாக்குமூலம் பெற்று பதிவு செய்யவில்லை."

Thus, following the above said Ruling, it is clear that the failure of P.W.9 to follow the procedure laid down in Rule 49 of DVAC Manual, is fatal to the prosecution case.

21. Similarly, the learned counsel for the accused contended that as per Rule 47 of DVAC Manual, scene of occurrence showing the relative position of the witnesses and other members of Trap Laying party besides place of recovery of tainted money is to be shown. In the present case, as stated earlier P.W.9 admitted in his cross examination that he did not mention in Ex.P.22 the place of recovery of tainted money and the presence of accused and other members of Trap Party. This violation also according to the learned counsel for the appellants/accused will nullify the case of the prosecution. The said contention is to be accepted.

22. The learned counsel for the accused also contended that there is inordinate delay of 8 months in according sanction to prosecute the accused by the sanctioning authority and the delay is not explained by the prosecution and in such circumstances, following the Rulings stated above, the said lacunae is fatal to the prosecution case. Further it is also pointed out that P.W.1 who sanctioned the prosecution of A-1 has deposed that he has accorded sanction only after 8 months from date of receipt of Requisition and in the file, endorsement has been made by the Additional Public Prosecutor on 04.12.2009 that sanction to prosecute can be accorded. Relying upon the said admission of P.W.1, the learned counsel for the appellants/accused contended that P.W.1 has not properly appreciated the material placed before him before according sanction. Further it is also contended that the long delay of 8 months has not been explained properly and the same will nullify the sanction. Similarly P.W.2 who accorded sanction to prosecute the 2nd accused stated that file seeking sanction order was received as per Letter dated 06.11.2009 and he accorded sanction on 25.7.2010. It is therefore clear that P.W.2 also accorded sanction after several months after receiving Requisition. No explanation has been given by P.W.2 for such long delay in giving sanction order. The learned counsel for the appellants/accused further pointed out that Investigating Agency has not verified the credentials of A-1 and the motive for filing of the complaint by P.W.3 properly. A-1 in the statement filed by him during 313 Cr.P.C., enquiry has clearly stated that he had a very good record and the complaint lodged against him earlier was closed after enquiry and the complainant herein has made a false complaint to victimize him. The Sanction Authority P.W.1 in his evidence admitted that as per G.O.No.D.385 dated 19.08.2009, the complaint against A-1 for possessing disproportionate wealth beyond his income was closed as unproved and he has not mentioned about the said G.O.335 in his sanction order-Ex.P.1. Similarly it is also pointed out that subsequent to filing of this case, the complainant herein lodged another complaint against A-1 herein and the same has been subsequently closed and the departmental proceeding also dropped and the same will show

the intention of complainant/P.W.3 to lodge false complaint against A-1 to victimize him.

23. It is further pointed out that due to action initiated by A-1, a sum of Rs.50 lakhs was saved to the Public Works Department (P.W.D), and if A-1 has not taken action, P.W.5 would have benefited with that amount and that is the reason for lodging the false complaint against the accused herein. Thus, the accused contends P.W.5 was having grudge against the accused and that is reason why P.W.5 has lodged several complaints falsely against the Accused herein. The said contention appears to be just and acceptable. Further as pointed out in the earlier paragraphs, the prosecution failed to explain the fact of acceptance and demand of bribe amount by the accused and the Trap Laying Officer has not followed the guidelines of the vigilance manual and failed to record the statement of accused immediately after arrest and also has not prepared site plan with necessary details. The place of occurrence and recovery of money is also not clearly established. There is inordinate delay of several months in according sanction to prosecute the accused by the concerned sanctioning authority. Further there is inordinate delay of 5 days in lodging complaint and also prosecution has failed to produce any independent evidence to prove the fact of demand and acceptance of bribe amount. In such circumstances, the claim of the accused that the offence alleged against them is not proved beyond reasonable doubt, is to be accepted and the conclusion arrived at by the trial court and the reasons stated for the same are not proper. Hence the same is liable to be set aside. In such circumstances, the appeal is to be entertained and the point is answered accordingly.

24. In the result, the criminal appeals are allowed. The conviction and sentence passed in C.C.No.108 of 2011 passed by Special Judge, [Special Court for the cases under Prevention of Corruption Act at Chennai] dated 30.09.2014 are set aside. The appellants/accused are acquitted. Bail bond, if any executed by them shall stand cancelled. Fine amount, if any paid by them is ordered to be refunded forthwith.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

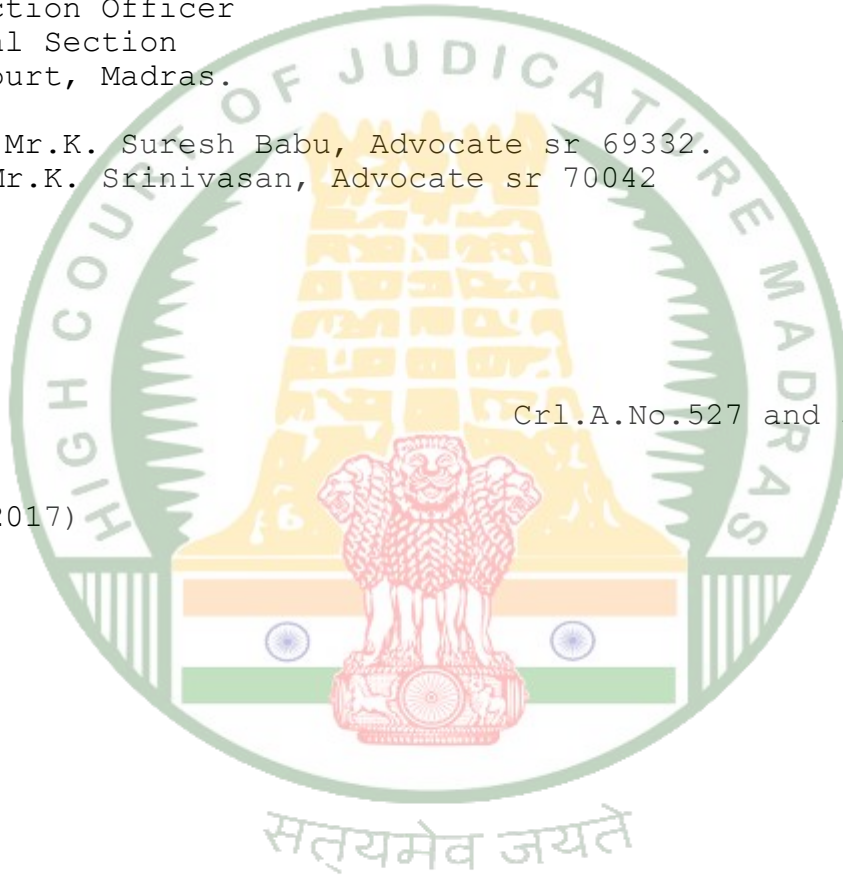
nvsri

To

1. The Special Judge/Special Court for the cases under Prevention of Corruption Act at Chennai.
 2. The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Chennai. (Crime No.04/AC/2009/CC-IV)
 3. The Public Prosecutor,
High Court, Madras.
 4. The Section Officer
Criminal Section
High Court, Madras.
- +3 Ccs to Mr.K. Suresh Babu, Advocate sr 69332.
+1 CC to Mr.K. Srinivasan, Advocate sr 70042

Crl.A.No.527 and 532 of 2014

SKV(CO)
SP(06/11/2017)



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