

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 08.11.2016	Date of pronouncing Judgment 08.12.2017
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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.132 of 2010

State represented by
The Inspector of Police
Vigilance & Anti-Corruption
City II Detachment
Chennai
(Crime No.6/AC/2004/CC-II) ... Appellant

Versus

R.Gunasekaran ... Respondent

Appeal filed under Section 378 Cr.P.C. against the Judgment of acquittal passed by the learned III Additional Special Judge Incharge II Additional Special Judge, Chennai, in C.C.No.29 of 2006 dated 13.11.2009.

For Appellant : Mr.P.Govindarajan
Additional Public Prosecutor

For Respondent : Mr.P.Wilson
Senior Counsel
for
Mr.T.K.S.Gandhi

Judgment

The State has filed the appeal against the judgment of acquittal passed by the learned III Additional Special Judge Incharge II Additional Special Judge, Chennai, in C.C.No.29 of 2006 dated 13.11.2009.

2. The case of the prosecution / appellant is that PW.6 has entrusted PW.1 - defacto complainant to safeguard his house at No.3, K.S.Colony, Beach Road, Besant Nagar, Chennai; In the month of June 2004, the electricity consumption charge (bimonthly) was noted in the EB Tariff Card as that of the

preceding amount ie., Rs.20,993/-, as door was found locked; Since the actual units consumed during the period upto 20.04.2004 was 619 units only, a letter was addressed to the Assistant Executive Engineer stating the facts and requested to revise the bill as per the units actually consumed; In this connection, on 06.07.2004 and on 08.07.2004, when the defacto complainant met Mr.Gunasekaran (accused herein), then Revenue Supervisor, he demanded Rs.500/- (Rupees five hundred only) for himself from the defacto complainant, for collecting the actual amount ie., Rs.1,900/- towards the actual units consumed as per the meter reading and received the same on 09.07.2004 at 12.45 p.m. at his office; hence, the accused appears to have committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and also the accused herein has misused his job and received bribe and thereby, committed an offence punishable under Sections 13(2) r/w.13(1) of the Prevention of Corruption Act, 1988.

3. In order to prove the case of the prosecution, before the trial Court on the side of the prosecution, P.Ws.1 to 8 were examined, Exs.P1 to P11 and M.Os.1 to 3 have been marked. On the side of the defence, neither oral nor documentary evidence was adduced.

4. Having considered all the evidences, the Trial Court has come to the conclusion that the prosecution has not proved its case beyond reasonable doubt and accordingly, acquitted the respondent / accused herein.

5. Aggrieved against the order of acquittal passed by the trial Court, the present Appeal has been filed by the State on the ground that the trial Court has not appreciated the evidence of prosecution witnesses in proper perspective and not drawing presumption under Section 20(1) of the Prevention of Corruption Act, 1988. Though the trial Court has appreciated the evidence of P.Ws.1 to 3 rightly and accepted the fact that the accused received Rs.2,400/- from the defacto complainant in two bundles (Rs.1,900/- towards actual EB consumption charges and Rs.500/- as demanded by the accused) and its recovery from the table cupboard of the accused, but wrongly came to the conclusion that Rs.500/- received by the accused was not bribe amount; there is no explanation on the part of the accused for the receipt of additional amount of Rs.500/- from the complainant and no reason whatsoever was assigned by the trial Court in its judgment for the receipt of the additional amount of Rs.500/- from the accused; and hence, the judgment of the trial Court is liable to be set aside and the accused has to be convicted and sentenced.

6. The learned Additional Public Prosecutor appearing for

the State / appellant would submit that when the defacto complainant (PW.1) gone to E.B. Office for paying consumption charges, the accused demanded Rs.20,933/- as consumption charges (bimonthly) for June 2004, in view of the endorsement made by the TNEB Official as 'door locked' and also Rs.20,933/- being the previous month amount; and when the defacto complainant questioned, the accused demanded Rs.500/- to set right the aforesaid matter. PW.1-Decoy witness and PW.2 - Shadow witness have spoken about the demand and acceptance. PW.5- Trap laying Officer has spoken about the recovery. The prosecution has proved the case against the accused beyond reasonable doubt. But the learned trial Judge failed to consider the oral and documentary evidence and acquitted the case.

7. The learned Additional Public Prosecutor appearing for the appellant would further submit that the trial Judge failed to consider the fact that on 09.07.2004, the defacto complainant went to E.B office, where the accused was working and met him. Even though, the accused stated that he received only Rs.1,900/- and denied the receipt of Rs.500/-, the defacto complainant (PW.1) has deposed that he gave Rs.1,900/- to the accused and when the accused asked further what about for him, then only he gave Rs.500/- to the accused. PW.2 corroborated the same. Trap-laying officer (PW.5) stated that Rs.2,400/- was recovered only from the accused and Rs.1,900/- was remitted for consumption charges. Under these circumstances, the learned Additional Public Prosecutor would submit that the acquittal order passed by the learned trial Judge is liable to be set aside and prayed for allowing the appeal.

8. The learned counsel for the respondent /accused would submit that this is a very peculiar case. PW.1, who has no connection with the vacant unoccupied house, excepting as a Security Agent. His security guard Nagarajan, who is expected to be in the house of PW.6, was not available in the house, when one Shenbagavalli of TNEB came for noting meter reading on 16.06.2004 and therefore, she noted down in the green card that the "house is door locked" and noted the previous bimonthly meter reading amount of Rs.20,933/-. Fearing that the house owner PW.6 will take him in to task and cancel his security agency, PW.1 went to the office of the accused on 05.07.2004 and met the accused and demanded to rectify, but the accused refused to do so, and therefore, PW.1, who turned inimical towards the accused, picked up quarrel and abused all the staffs of TNEB as well as the accused, who has informed that the defacto complainant has to pay Rs.20,933/- as per April 2004 bill amount. PW.1 shouted that if his house owner was asked to pay Rs.20,933/-, his house owner will take steps to cancel the contract given to him. Therefore, PW.1 has taken drastic steps to take revenge due to the quarrel he had on 05.07.2004 with the

accused, who refused to entertain him and asked him to bring the owner of house, and also to achieve his object by not paying Rs.20,933/- as bill, knowing fully well that the fault was with the security man. Further, without disclosing the visit of EB official and subsequent entry made thereon as 'door locked' to PW.6, PW.1 in order to achieve his object has taken all steps including fabricating a document under Ex.P4 without the knowledge of PW.6. The available materials will clearly reveal that PW.1 has gone to the extent of fabricating the signature of PW.6 to prepare Ex.P4 to safeguard himself, besides to wreck vengeance, had come out with a false story to involve police and arrest accused.

9. Further, learned counsel for the respondent would submit that the accused is only a Revenue Supervisor and his duties have been spoken by one Ramasamy, who was not deliberately examined by the prosecution. Going to the site and taking reading are not the duties of the accused. One of the duties of the accused is to collect the current consumption charges. In Ex.P1, it was mentioned as if on 08.07.2004 the accused personally went to the house of PW.6 at No.3, Beach Road, K.S.Colony, Besant Nagar and had taken the reading of 621 units. The above statement is false and there is no oral and documentary evidence to prove this. Moreover, PW.3 - Assistant Junior Engineer himself has stated that he visited the house and took reading on 07.07.2004. PW.7 - Murugesan, Superintendent Engineer and PW.3 - Vijayan have clearly stated about the functions of the accused.

10. Further the learned counsel appearing for the respondent / accused would submit that PW.1 - Senthil Kumar, in one way misrepresented the police to harass the accused, to achieve his object. The police officers are also not aware of anything with regard to PW.1 and his ingenious, wild and cunning act to fabricate Ex.P4 and get things done and simultaneously, put the accused in deep trouble. It is clear that nobody knows about the alleged Rs.1,900/- was ever brought by PW.1. There is no truth that PW.1 has carried Rs.1,900/- apart from Rs.500/- along with him and the same is a staged drama enacted by the prosecution, after coming to know that there was some fishy things involved in this case. The amount of Rs.1,900/- only was recovered and the alleged trap money of Rs.500/- was never recovered from the accused.

11. Further, the learned counsel for the respondent would submit that PW.1 has not stated exactly where from he has taken this Rs.1,900/- and tariff card. When PW.6 has not stated that he gave Rs.2,400/-, one cannot imagine on the said day PW.1 brought Rs.2400/- with him. But here in their evidences, PW.2 and PW.5 have tried to change the prosecution case, as if

Rs.1900/- plus tariff card were taken from his pant pocket and Rs.500/- was taken from shirt pocket. This diametrically contrary evidence will throw a doubt upon the prosecution case. The recovery of Rs.2,400/- is false and not proved by the prosecution.

12. Further, the learned counsel for the respondent would submit that PW.1 without the permission of PW.6 has planned to trap this accused. As per the prosecution, Ex.P4 - letter was given by PW.6 to J.E., on 06.07.2014. But PW.6 has clearly stated that the signatures found in Ex.P4 are not his signatures and somebody else has signed and it cannot be believed. He is a responsible officer and the Department requested him to sail along with them and in order to go smoothly, he has deposed that the contents of the documents are true, but in the cross examination, he has not at all stated anything about this case. He is very much reluctant, while he was in the box.

13. The learned counsel for the respondent would further submit that there are glaring infirmities and discrepancies in the case and statutory presumption cannot be raised against the accused and the burden is still on the shoulder of the prosecution alone and they have not shifted the burden to the accused to let in probable evidence and on that score also, the presumption cannot be raised because the prosecution has not proved the case prima facie. The presumption comes, only when prima facie evidence is made. However, in the case on hand, there are lot of discrepancies with regard to Rs.1,900/- or Rs.2,400/- carried by PW.1 and further PW.1 has not identified in Ex.P2 or Ex.P3. It is settled proposition that the prosecution has to prove its case beyond reasonable doubt against the accused, more particularly, the demand, acceptance and recovery. But in this case, the prosecution has not proved the main ingredients of demand, acceptance and recovery. Therefore, the prosecution has not proved its case beyond reasonable doubt and therefore, the respondent is entitled for acquittal. The learned counsel would further submit that trial Court has considered all the aspects and accordingly, come to the conclusion that the prosecution has not proved its case beyond reasonable doubt and acquitted the respondent and there is no infirmity or illegality in the judgment of the trial Court and therefore, the appeal is liable to be dismissed.

14. The learned counsel for the respondent relied on the following decisions in support of his case:-

- (i) (2015) 10 SCC 230 (Selvaraj ..vs.. State of Karnataka)
- (ii) 2006 - 1 - LW (Crl.) 179 (Abuthagir @ Thagir and others ..vs.. State represented by the Inspector of Police, Podanur Police Station, Coimbatore District)
- (iii) 1991 Crl.L.J. 2442 (Panchanan Rout ..vs.. State

of Orissa)

(iv) 1992 (1) Crimes 488 : 1993 (2) CCR 1524 (Ajitkumar Somnath Pandya ..vs.. State of Gujarat)

(v) (2006) 13 SCC 305 (V.Venkata Subbarao ..vs.. State represented by Inspector of Police, Andhra Pradesh)

(vi) 1988 CrL.L.J. 756 (Anand Sarup ..vs.. The State).

15. Heard the learned Additional Public Prosecutor appearing for the appellant / State and the learned counsel appearing on behalf of the respondent / accused and also perused the documents available on record. Considered the rival submissions made by the learned counsel on both sides.

16. Since this Court, being the first appellate Court, is fact finding Court and therefore, it is necessary to re-appreciate the relevant oral and documentary evidence let in before the trial Court.

17. It is not in dispute that PW.1 is a security agent; PW.6 has entrusted PW.1 to safeguard his house at No.3, K.S.Colony, Beach Road, Besant Nagar, Chennai; On 16.06.2014, when TNEB officials came for taking reading for the said house, PW.1's security guard was not available in the house; hence, the electricity consumption charge (bimonthly) for that period was noted in the EB Tariff Card as that of the preceding (bimonthly) amount ie., Rs.20,993/-, with an endorsement door was found locked; As the actual units consumed during the period upto 20.04.2004 was 619 units only, a letter was addressed to the Assistant Executive Engineer stating the facts and requested to revise the bill as per the units actually consumed.

18. The learned Additional Public Prosecutor appearing for the prosecution would submit that pursuant to the same, on 06.07.2004 and on 08.07.2004, the defacto complainant (PW.1) met Mr.Gunasekaran, Revenue Supervisor (accused herein), who demanded Rs.500/- for himself, to rectify and for collecting the actual amount ie., Rs.1,900/- towards the actual units consumed as per meter reading. But PW.1 was not willing to give the bribe and therefore, prepared a complaint Ex.P1 before the Deputy General of Police, Vigilance and Anti-Corruption, Chennai.

19. PW.5 registered the First Information Report in Crime No.6/AC/2004/CC-II and then, arranged for trap and on 09.07.2014, he asked PW.1 to bring the amount and they demonstrated pre-trap procedures, then on the same day, the trap team along with PW.1 - decoy witness and PW.2 - shadow witness went to the office of the accused and where, PW.1 gave Rs.1900/-. It is the specific case of the prosecution that the

accused demanded bribe and accepted the money. PW.1/defacto complainant has deposed that after receipt of Rs.1,900/- the accused asked PW.1 as “அவர் எண்ணி பார்த்து விட்டு தான் கேட்ட ரூ.500/- ஐ கொண்டு வரவில்லையா என்று கேட்டார்.”. Thereafter, PW.1 took Rs.500/- from his pocket and gave it to the accused. The accused received the bribe amount of Rs.500/- and kept the same with E.B tariff card inside the drawer. PW.2 in his evidence deposed that on that day, he accompanied with PW.1 to the office where the accused was working, first PW.1 gave Rs.1900/- to the accused, after counting the money the accused asked PW.1 as “what about the money which I (accused) asked”, then PW.1 took Rs.500/- from his shirt pocket and gave it to the accused and the accused received the same and after counting it kept in the table drawer with E.B card. So PW.2 corroborated the evidence of PW.1 that after demanding money from PW.1, then only PW.1 gave Rs.500/- to the accused. PW.5 in his evidence deposed that PW.1 came out of the office and gave signal by folding his full hand shirt and then the trap team entered into the office and searched the accused and asked the accused to give the amount and the accused took the money (Rs.2400/-) and the E.B tariff card from the drawer and immediately, he (PW.5) remitted Rs.1900/- for consumption charges and then, he prepared Mahazar and done phenolphthalein test and when the accused dipped his both right and left hands in the Sodium Carbonate Solution, the colour of the solution turned into pink. Then he handed over the investigation to PW.8. PW.2 corroborated the same. The Investigating Officer (PW.8) investigated the matter and filed charge sheet.

20. The learned counsel for the respondent would submit that there is no proof to show that PW.1 gave Rs.2,400/- and further there is no evidence to show that PW.1 gave Rs.1,900/- first and then Rs.500/-. Further, the main contention raised by the counsel for the respondent is that the phenolphthalein test was conducted only for recovery of Rs.500/- and if at all, all the money kept together, the entire Rs.2,400/- ought to have been tested in the phenolphthalein test, but they have not done so, but phenolphthalein test has been done only with Rs.500/- and not with Rs.2400/- and hence, it is clear that they have not recovered Rs.500/- from the accused.

21. In this regard, it is pertinent to refer the evidences of PW.1, PW.2, PW.3, PW.5, Ex.P1 and the Written Statement filed by the accused under Section 243(1) Cr.P.C., during 313 Cr.P.C. questions. From the evidences of PW.1 and PW.2, it is very clear that first they gave Rs.1900/- to the accused and the same was also admitted by the accused in the Written Statement filed by him under Section 243(1) Cr.P.C., during questioning under Section 313 Cr.P.C. Therefore, now he cannot deny that

Rs.1900/- was not given by the defacto complainant. In the said written statement filed by the accused it is stated that "On 05.07.2004 Senthilkumar (PW.1) came to the office and shouted the E.B Office and the staff by using filthy language and picked up quarrel with the accused. Again On 09.07.2004, Senthilkumar came and tendered apology for the quarrel he had with the accused and told that he withdrew the complaint given before the J.E. and as he had some urgent work, he requested the accused to remit Rs.1900/- for consumption charges and he will come and collect the receipt two days later". On perusal of the written statement given by the accused under Section 243 (1) Cr.P.C. it is clear that there was a strain situation between the accused and PW.1 - Senthilkumar, three days prior to the occurrence. Under such circumstances, it is not clear how the accused accepted Rs.1,900/- from PW.1 and kept the same in his drawer. In case, if the accused states that the amount paid is Rs.2400/-, he had not counted the money, immediately PW5 came and collected the same, it can be accepted to some extent. But, the accused told that PW.1 paid Rs.1900/- and left immediately. This stand cannot be accepted.

22. Further, soon after getting signal from the defacto complainant, the trap laying team entered into the office and recovered the money from the accused. Once the defacto complainant (PW.1) came and hand over Rs.1900/- to the accused, it is the burden on the accused to explain how Rs.500/- came to his table. The initial burden of proof is discharged by the prosecution by proving the same after demonstration through phenolphthalein test, which was not specifically denied by the accused in his written statement filed before the Court during the proceedings under Section 313 Cr.P.C. When the accused himself admitted that he received Rs.1,900/- from PW.1 for consumption charge, it is for him to explain how Rs.500/- came to his table. Further PW.2 and PW.3 have clearly stated that Rs.2,400/- were recovered from the accused. PW.3 has deposed that PW.5 after receiving the money gave Rs.1900/- to him for remitting the amount in the service connection account and asked bill. Once demand is proved presumption under Section 20 would come into play. In this case, as already stated demand, acceptance and recovery were proved. It is the duty of the accused to prove how the recovered amount of Rs.500/- came to his possession. In these circumstances, this Court is of the view that through the evidences of PW.1, PW.2 and the trap laying officer and also the recovery mahazar witness, the prosecution has proved that the accused has demanded and accepted the bribe. Recovery has also been proved by the prosecution.

23. Further, the other things in this case ie., Ex.P4

letter not given by PW.6, there was an apprehension that the owner will cancel the contract etc., will not be given much importance to decide in this case. When the prosecution is able to prove that the accused has demanded and accepted money and subsequently by trap proceedings, the amount was recovered from the accused, and particularly when the accused has admitted the facts that on the occurrence day, PW.1 came to the office of the accused and gave the money, it is upto the accused to discharge his burden. But the accused has not explained as to how the additional amount of Rs.500/- came to his table, when he received only Rs.1900/- from PW.1 as consumption charges. Hence, in the said circumstances, this Court is of the view that the prosecution has established its case beyond reasonable doubt. The trial Judge has miserably failed to consider the written statement given by the accused during 313 Cr.P.C. questions, has come to the conclusion that the prosecution has not proved that the defacto complainant has given Rs.1900/- to the accused. The trial Court has given much importance to, how the defacto complainant brought Rs.1900/- and even the trap laying officer also has not stated that a sum of Rs.1900/- has been recovered. The accused himself has admitted in the written statement given during the proceedings under Section 313 Cr.P.C. that on the day of occurrence, the defacto complainant came and handed over Rs.1900/-. The prosecution witnesses also have clearly stated that first PW.1 gave Rs.1900/- to the accused and further after his demand, he gave a sum of Rs.500/-. Entrusted Mahazar and Recovery Mahazar have stated that Rs.500/- was recovered only from the accused. Recovery Mahazar witness also corroborated the same. The accused stated that Rs.2400/- was not recovered, but only Rs.1900/- was recovered. In such circumstances, it is upto the accused to account for Rs.500/- that PW.1 has given only Rs.1900/- and not Rs.2400/-. But, he has not examined any witnesses and he has not entered into the box. It is settled proposition that the accused need not come to the box and state, but at the same time, when initial burden has been discharged by the prosecution, the accused has to explain, in the manner known to law, how the sum of Rs.500/- came to him. Evidences of P.Ws.1 and 2 proved that PW.1 gave the money. Evidences of P.Ws.5 and 6 and phenolphthalein test report proved that Rs.500/- was recovered from the accused. Hence, there is infirmity in the acquittal order passed by the trial Court, which warrants interference by this Court.

24. There is no quarrel with the propositions laid down in the decisions referred by the learned counsel for the respondent/accused. The facts and circumstances involved in those cases are not identical to the facts of the present case and the facts and circumstances of the present case are entirely different from those cases. Therefore, the decisions relied on

by the learned counsel for the respondent are not applicable to the present case.

25. In the result, the Criminal Appeal is allowed and the acquittal order passed by the learned III Additional Special Judge Incharge II Additional Special Judge, Chennai, in C.C.No.29 of 2006 dated 13.11.2009 is set aside. However, before recording sentence, the accused has to be heard. Therefore, for question of sentence, the accused is directed to appear on 08.12.2017.

26. In compliance with the order of this Court dated 04.12.2017, the respondent/accused appeared before this Court and he has been questioned the sentence to be imposed on him. The respondent/accused stated that he is aged about 66years, his wife was under medical supervision and his father is aged about 92years, during the course of trial he was under the custody for 28days. The respondent/accused is kept under suspension and he was not permitted to retire from service after attaining the age of superannuation. After completion of the appeal proceedings only, the Department will conclude the departmental proceedings, under such circumstances, he prays leniency of the Court to award lessor punishment.

27. Considering the representation made by the respondent/accused and the mitigating circumstances viz., his age, treatment undergoing by his wife and the age old parents and in order to meet the ends of justice, the accused/respondent is convicted and sentence for a period of six months rigorous imprisonment and fine of Rs.500/- for the offence under Section 7 of PC Act and six months rigorous imprisonment and fine of Rs.500/- for the offence under Section 13(2) r/w.13(1)(d) of the PC Act, in default to pay the fine amount, the respondent/accused is further directed to undergo simple imprisonment for further period of two months respectively. Both the sentence of imprisonment to run concurrently.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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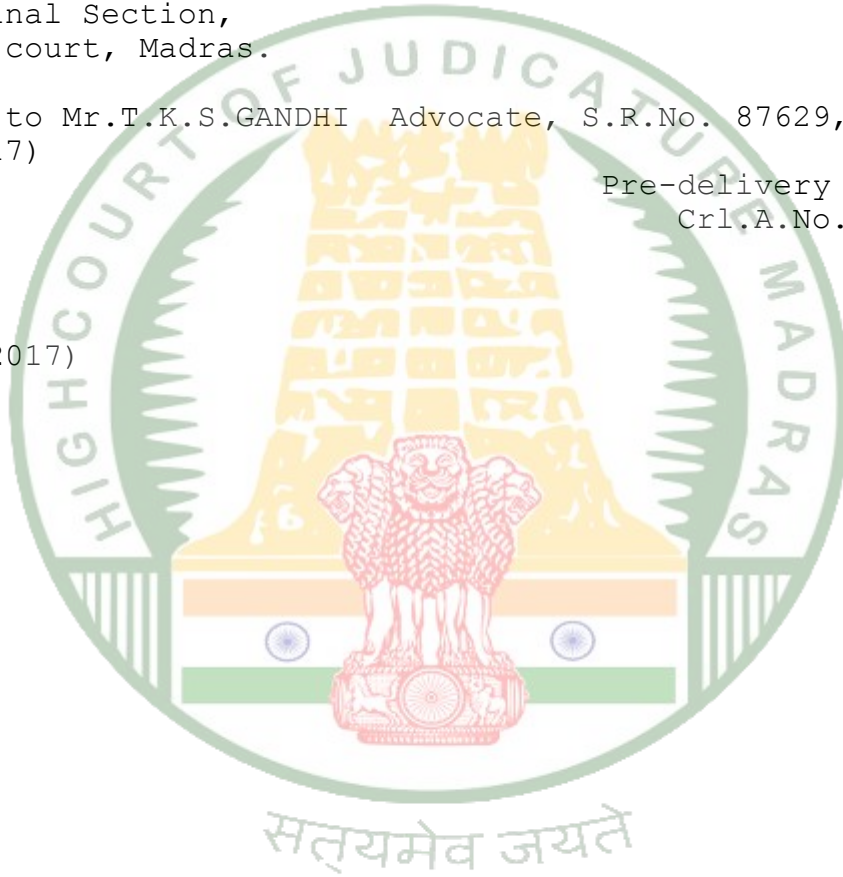
To

1. The III Additional Special Judge
Incharge II Additional Special Judge,
Chennai.
2. The Public Prosecutor,
High Court, Chennai.
3. The Section officer,
Criminal Section,
High court, Madras.

+2cc to Mr.T.K.S.GANDHI Advocate, S.R.No. 87629, 87628
(11/12/2017)

Pre-delivery Judgment in
Crl.A.No.132 of 2010

RJ(CO)
TR(08/12/2017)



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