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Bail Slip

S.Ranganathan, Male aged about 48 years, is released on bail vide Court order dated 11.06.2014 in MP(MD) 1 to 1 of 2014 in Crl.A(MD)150 to 161 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)Nos.150 to 161 of 2014

S.Ranganathan ... Appellant /Accused in all appeals

Vs.

State represented by its
Inspector of Police,
Vigilance and Anti Corruption,
Dindigul.
...Respondent/Respondent in all appeals

COMMON Prayer: Criminal Appeals filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to judgment, dated 20.12.2013 passed by the Special Court for Corruption cases, Madurai in Spl.C.Nos.156 to 159 and 161 to 168 of 2011 and set aside the same.

[Prayer in Crl.A(MD)No.153 of 2014 was amended vide order dated 26.06.2014 in MP(MD)No.2 of 2014.]

For Appellant : Mr.T.Antony Arul Raj
For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor
in all appeals

COMMON JUDGMENT

These appeals are directed against the common judgment, dated 20.12.2013 passed in Special Case Nos.156 to 159 and 161 to 168 of 2011, on the file Special Court for trial of cases under Prevention of Corruption Act Cases, Madurai.

2.Since all these appeals are arising out of one and the same judgment, they are taken up together for hearing and disposed of by way of this common judgment.

3.The appeals are arising out of the conviction and sentence imposed by the Special Court for trial of cases under Prevention of Corruption Act Cases, Madurai. By order, dated 20.12.2013, the trial Court found the appellant guilty, convicted and sentenced them as follows:

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Appellant/ Accused	Section of Law	Sentence of Imprisonment
S.Renganathan	409 IPC (12 counts)	Three years rigorous imprisonment, fine Rs.2,000/-, in default six months simple imprisonment
	477A IPC (12 counts)	Two years Rigorous imprisonment, fine Rs.1,000/-, in default three months simple imprisonment
	467 IPC (3 counts)	Three years Rigorous imprisonment, fine Rs.2,000/-, in default six months simple imprisonment
	471 IPC (3 counts)	One years Rigorous imprisonment
	13(2) r/w 13(1)(c) of PC Act (12 counts)	Two years Rigorous imprisonment, fine Rs.2,000/-, in default three months simple imprisonment

The above said sentences are ordered to run concurrently. However, the appellant was acquitted in Spl.C.Nos.160 and 169 of 2011 as the prosecution has not proved its case.

4.The case of the prosecution is that the appellant / accused officer was working as the Khadi Assistant Grade-II/Manager of Dindigul Khadi and Village Industries Godown from 13.03.1993 to 31.03.2000. During the above period, the appellant had committed several illegalities in violation of his duties and responsibilities by making false entries in the stock register, falsification of the inter transfer invoice in various period. On coming to know about the said illegalities, an enquiry was conducted by constituting three members committee by PW6 Kanakadass, then Assistant Director of Khadi, Dindigul consisting of PW2 and two others. The said committee after conducting enquiry, found that the accused had involved in certain illegalities and irregularities and thereby caused a huge loss to the Khadi Board and the Committee's report is marked as ExP.117. Subsequently, a complaint was lodged against the appellant and a case in Crime No.13 of 2003 was registered against the appellant under Sections 409, 467, 471, 477A of IPC and under Section 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988 on the file of the respondent Police. After investigation the respondent Police filed 14 final reports as against the appellant, since the misappropriation and falsification of records relates to several years and the final reports were taken

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on file by the learned Special Judge, Special Court for trial of cases under Prevention of Corruption Act Cases, Madurai, in Spl.C.C.Nos.156 of 2011 to 169 of 2011.

5.During the trial on the side of the prosecution 9 witnesses were examined and 118 exhibits were marked. After completion of the prosecution side evidence, the incriminating circumstances were put before the appellant under Section 313 CrPC and the same was denied as false. On the side of the appellant no witness was examined, but two documents were marked as Ex.D1 and Ex.D2.

6.The trial Court, in conclusion of the trial, found the appellant guilty, convicted and sentenced as stated supra. As against the conviction and sentence, the appellant has preferred the present appeals. As against the acquittal of the appellant in Spl.C.Nos.160 and 169 of 2011, no appeal was preferred by the State.

7.Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

8.1.The learned Counsel for the appellant submitted that the trial Court has failed to note that only one First Information Report has been registered in Crime No.13 of 2013 as against this appellant for the offence under Sections 409, 467, 471 and 477A IPC and Sections 13(2) read with Section 13(1)(c)of Prevention of Corruption Act. However, 14 final reports where filed. Therefore, according to him there cannot be more than one final report in a crime number.

8.2.The trial Court has failed to consider the duties and responsibilities of the appellant in imposing the conviction. The appellant was working as an Assistant Grade-II, Manager in Khadi and Village Industries, Dindigul District during the period from 13.04.1993 to 31.03.2000. The case of the prosecution case is that during the relevant point of time the appellant has manipulated the documents and forged the signature of others and thereby caused a loss to the Khadi Board to the tune of Rs.9,10,852.90/- and it is not the case of the prosecution that the appellant has misappropriated the funds of the Board. Therefore, the charges levelled against the appellant under Sections 409, 461 and 477A IPC of the Indian Penal Code and the offence under the Prevention of Corruption Act are not made out in this case.

8.3.The main allegations of the prosecution is that the appellant has forged the signature of PWs5, 6 and 7 in the invoice. According to the evidence of the expert, the signatures found in the invoices do not match. But the prosecution has not produced any documents to show that the appellant has forged the signature of other officials. Merely because the signatures found in the invoices

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differ, it cannot be said that the appellant has forged the signature. In the absence of any documentary evidence, the trial Court ought not to have convicted the appellant under Sections 465, 467, 468 and 471 IPC.

8.4.He further submitted the prosecution witness has only denied the signatures found in the invoice as that of him. Therefore, the trial Court convicted the appellant. The denial of the signature of some the official, cannot be a ground for convicting the appellant. Further there are no materials to attract the offence under Sections 465, 467, 468 and 471 IPC. Moreover, the prosecution witnesses did not support the prosecution case under Section 409 IPC.

8.5.The learned Counsel for the appellant further submitted that the case of the prosecution is that the appellant has caused loss to the tune of Rs.9,10,825.90/- to the Board. The basic ingredients of entrustment of the property to attract the offence under Sections 13(2) and 13(1)(c) of the Prevention of Corruption Act are not made out in these cases and as such, the appellant cannot be convicted under the provisions of the PC Act also.

8.6.The learned Counsel for the appellant submitted that the occurrence has occurred between the years 1993 and 2000. It is the admitted case of the prosecution that during the period, every month periodical inspection was done and no irregularities or illegalities were found in the inspection and there was no audit objection. Now the authorities have come with the allegations that the appellant has committed the illegalities after a period of seven years.

8.7.The learned trial Judge ought to have noted that only one sanction was obtained, when 14 final reports were filed. Non-obtaining sanction order for each final report is fatal to the case of the prosecution. Therefore, on this ground also these appeals deserve to be allowed by setting aside the judgment of the trial Court.

9.1.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor submitted that the appellant was working as the Assistant Grade II/ Manager of Dindigul Khadi and Village Industries Godown from the year 13.03.1993 to 31.03.2000. The appellant is the full in charge of the Godown. Being the Manager, he should make an entry in the stock register about the receipt of particular items of textiles, whenever any finished textile goods are received by him, he should distribute the finished textile goods through the various Khadi, Sub Centres through the inter transfer invoices prepared in quadruplicate. From this he should send invoice Nos.1 and 3 to the corresponding Sub Centre with particulars of the goods transmitted and retain invoice Nos.2 and 4. After receipt of the goods by the Sub Centre Manager, after due verification, the petitione is duty

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bound to receive the invoice No.3 with acknowledgement of receipt of goods from the Sub Centre Manager and affix the same in the godown stock register. After receipt of the Sub Centre acknowledgement of goods receipts, he should make entry in the general ledger for the perusal and verification of the Assistant Director of the Khadi Industries.

9.2.The appellant has involved in illegalities and irregularities in violation of the above said duties and responsibilities by making false entry in the stock registers, falsification of the inter transfer invoices during the above said period. An enquiry was conducted by constituting three members committee by PW6 Kanakadass, then Assistant Director of Khadi, Dindigul consisting of PW2 and two others. The said committee after conducting enquiry, found that the accused had involved in certain illegalities and irregularities and thereby caused a huge loss to the Khadi Board and the Committee's report is marked as ExP.117. After investigation the respondent Police filed 14 final reports as against the appellants, since the misappropriation and falsification of records relates to several years.

9.3. The learned Additional Public Prosecutor further submits that in the criminal appeals in Crl.A(MD)Nos.150, 152, 153, 154, 156 of 2014, the appellant has committed misappropriation of Rs.1,04,897/- between 01.10.1994 and 01.11.1994 by making false entry in the stock register as if through 3 inter invoice, he transmitted goods to three Sub Centre, which were not actually sent to the Sub Centres. In the stock registers of the Sub Centres, there are no corresponding entries of the receipt of the goods by the Sub Centres. The acknowledgements or endorsements of the Sub Centres are also absent in the inter transfer invoices. Further the inter transfer invoices with receipt of the goods were not annexed in the godown registers of the appellant.

9.4.The learned Additional Public Prosecutor further submitted that the General registers did not contain the endorsements about the transfer of the goods from the godown to the Sub Centres.

9.5.The appellant has created Invoice Nos. 168441, 168452, 168499 [ExPs.10, 20 and 28 respectively], to the tune of Rs.1,04,897/-, as if, the goods were sent to different Sub Centres. Even though the signature of the appellant was absent in the above inter transfer invoices, the appellant was the custodian of the goods mentioned in the stock register and those invoices and he alone is responsible for the said goods.

9.6.The learned Additional Public Prosecutor further submitted that as per the Khadi Board Regulations, the appellant has to sell the goods only through the Sub Centres and he has no

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authority to sell the goods directly to the customers. He further submitted that the prosecution need not prove the actual mode of misappropriation and once entrustment of or dominion over the property is established, then it would be for the accused to explain as to how the property was dealt with.

9.7.In this case, the appellant is the custodian of the documents, ExPs.4, 5, 9, 3, 11, 12 and 23 and he is responsible for the entry and dispatch of the goods and without dispatch no entry ought to have been made in the above documents.

9.8.The evidence of the PW2 and PW5 and the absence of the corresponding endorsement in ExPs.14, 15 stock register as well as inter transfer invoice, the absence of the corresponding entry in the general ledgers of the Assistant Director of the Khadi Board, Dindigul about the transmission of the goods, the absence of the above receipts of the goods by the Sub Centre Manager in the inter transfer invoices, the absence of the entry in the general ledger regarding the transfer of the goods as stated in the stock registers of the appellant godown maintained by the appellant, would go to show that the accused committed the offence of misappropriation.

9.9.Insofar as the criminal appeals Crl.A(MD)Nos.157,159,161 of 2014 are concerned, the learned Additional Public Prosecutor submitted that the appellant has committed misappropriation to the tune of Rs.1,17,450/- by forging the signatures of PW3 Rajendran, Malini and Sornam Assistants, in the back side of the ExPs.76 and 77 inter transfer invoice, as if they acknowledged the receipt of the goods mentioned in the ExPs.76 and 77.

9.10. The prosecution through the report of the Hand Writing Expert PW4, M.Kasi in ExPs. 115 and 116 has proved that the signature found in ExP76 and ExP77 inter transfer invoices are not their signatures and the same tallied with the handwriting of the appellant. Therefore, the prosecution has proved its case in these appeals also that the appellant by forged signature misappropriated the amount to the tune of Rs.1,17,450/-. In support of his argument, the learned Additional Public Prosecutor mainly relied on the Handwriting Experts Opinion [Ex.P116].

9.11.Insofar as the criminal appeals in Crl.A(MD) Nos.151,155,158 and 160 2014 are concerned, the learned Additional Public Prosecutor submitted that the appellant has committed misappropriation to the tune of Rs.14,181.00 by making false entries of reduction of goods in ExPs.13 and 14 [Stock Registers]. The appellant is the custodian of the above stock registers and he is only responsible for making false entries.

9.12.The learned Additional Public Prosecutor in support of his contention, relied on the decision of the Hon'ble Supreme Court

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in 2000 (I) LW (Cri) 133, wherein the Hon'ble Supreme Court has held as follows:

> *" To bring home a charge under Section 409 what is necessary to be proved is that the accused is a public servant and in such a capacity he was entrusted with the property is question or dominion over it and that he committed criminal breach of trust in respect of it. The necessary elements constituted in the office must be strictly proved by the prosecution. It is true that the prosecution need not prove the actual mode of misappropriation and once entrustment of or dominion over the property is established, then it would be for the accused to explain as to how the property was dealt with.*

Therefore, the learned Additional Public Prosecutor submitted that the prosecution has proved its case beyond reasonable doubt and the trial Court has also rightly found the appellant guilty and convicted and sentenced him stated supra and therefore, prayed for dismissal of these appeals.

10.This Court has paid its best attention and anxious consideration to the rival submissions made on either side and also perused the materials placed on record.

11.It is admitted that during the alleged period the appellant was the Grade II Assistant and the Manager of the Khadi Godown and one Kanakadas was the Assistant Director and one Kulandaisami was the Supervisor and Kanagaraj was the Chief Administrative Officer of the Board. This fact has not been denied by the appellant.

12.Admittedly the appellant was working as Khadi Assistant Grade-II cum Manager of the Dindigul Khadi Industries Godwon from 13.03.1993 to 31.03.2000. The case of the prosecution is that during the said period the appellant by forging the signature of others and creating false documents have misappropriated and caused loss to the tune of Rs.9,10,852.90.

13.PW1 is the then Chief Administrative Officer of the Tamil Nadu Khadi Industries Boards and he has deposed that he has accorded sanction for prosecuting the appellant for the commission of offence relating to misappropriation. PW2 the then Assistant Director at Dindigul Khadi Board has deposed about the duties and responsibilities of the appellant and others.

14.The appellant has been found guilty under Sections 409, 467, 471, 477A of IPC and under Sections 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988 and sentenced as stated supra.

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15.Insofar as the charge under Section 471 of IPC [3 counts] is concerned, the evidence of PW2 Kulandhaisami shows that when the appellant was working as the Manager of the Godwon from the year 1993 to 2000, the documents, namely, ExPs.76 series, 89 series, 93 series and 98 series were under the custody of the appellant and he has maintained them. A perusal of the said documents shows that entries are made in ExPs.76 series, 89 series, 93 series and 98 series as if the goods are sent to the Kujiliyamparai Sub Centre, but the entries made in ExPs.76 series, 89 series, 93 series and 98 series, do not reflect in the register Ex.P78 General Ledger maintained in the Assistant Director Office and in ExPs.79, 86, 90 and 91 Stock Registers of the Kujiliyamparai Sub Centre. There are some corrections and deletions in the entries made in ExPs.88, 92 and 94 invoice registers maintained by the appellant. Therefore, all would go to show that the appellant has created ExPs.76 series, 89 series, 93 series and 98 series, as if they are genuine one.

16.The Hon'ble Supreme Court in ***Ramsankar Lal Vs State Of U.P(1971) 3 SCC***, has held that using a document as genuine when the document is not known to be a forged document is a gravamen of the offence Under Section 471 IPC and it is not material whether the original sale deed was forged and then it's copy was used as genuine or whether the copy used was a false document. The accused person when knew that what they were using as genuine was forged document and they use it for dishonest or fraudulent purpose, they are guilt under Section 471 IPC. Further in ***Ramautar Missir Vs Rajindra Singh, (1961) 2 Cri.L.J. 139*** held that the essential ingredients of Section 471 IPC are fraudulent or dishonest use of a document as genuine and knowledge or reasonable believe on the part of the person using the document that it is a forged one.

17.In this case, the appellant, without sending goods to the Sub Centres, has created false records in ExPs.76 series, 89 series, 93 series and 96 series, as if the goods were sent by him and projected those documents as genuine. The appellant knew that what he was using as genuine was a forged documents for the dishonest and fraudulent purpose and therefore, the ingredients under Section 471 IPC attracted and the trial Court has rightly found the appellant guilty under Section 471 IPC. This court finds no reason to interfere with the findings of the trial court.

18.With regard to the offence Section 477 A IPC (14 Counts) is concerned, it alleged that the appellant has misappropriated to the tune of Rs.83,018.35/- by making entries in the stock register and handed over it to his successor. The evidence of PW2 Kulandaisami reveals that in the proceedings of the Chief Administrative Officer, Chennai in Na.Ka.No.1107/C2(3)/2000, dated 11.02.2000 it is stated the shortage of the goods to the tune of Rs.83,018/- and the memo issued in this regard is marked as ExP.104.

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The trial Court has held that the relevant exhibits, namely, stock register, individual register and the invoices prove that the appellant by making false entries had shown reduction of the stock and the same do not reflect in the stock registers and in the general ledger of the Sub Centers and the office of the Assistant Director.

19.The Hon'ble Supreme Court in ***Harman Singh Vs Delhi Administration, 1976 Crl.L.J.913(SC)*** held that to bring home an offence under Section 477A IPC the prosecution has to establish that at the relevant point time the accused a clerk, officer or servant and that acting in that capacity he destroyed, altered, mutilated or falsifies any book, paper, writing, valuable security or account which belonged to or is in possession of his employer or has been received by him for and on behalf of this employer etc., that he did so with intend to defraud. Except in Spl.C.Nos.160 and 169 of 2011, in all other case the appellant is found guilty.

20.In this case, the appellant while serving as the Manger of the Godown, he has made false entries in the stock register and other records, namely, ExPs.10, 20, and 28 and thereby committed the offence under Section 477A IPC and the trial Court has also appreciated the evidence properly and found the appellant guilty. Therefore, there is no reason to interfere with the findings of the trial court.

21.With regard to the offence under Section 409 IPC [14 counts] is concerned, the ingredients must be proved to attract this Section are i) the factum of entrustment and ii) the factum of misappropriation of the entrusted articles.

22.A perusal of the records reveals that admittedly the appellant was the custodian of the goods maintained in the Godown and the registers. Though it is argued by the learned Counsel for the appellant there are no materials to show that the appellant has misappropriated the money and utilised for his personal use, it is seen from records [Ex.P98,96,97,101,104] there were reduction in goods and the entries are made as if the goods were sent to the sub centres, without actually sending the goods to the them. In this regard, the evidence of PW2 Kulandhaisami also corroborates the same that the appellant really had not sent the goods, but created documents as if the goods were sent to the sub centres. A perusal of ExP104 reveals that a loss to the tune of Rs.83,018.35 has been caused to the Khadi Board and the appellant alone is responsible for causing such loss. But the appellant has not submitted any explanation in this regard to the Board. Further during 313 CrPC examination also the appellant was silent and did not explain how the loss has occurred during his period and as such the appellant has failed to prove that he is not liable for such a loss. Therefore, in the absence of any explanation from the appellant, he

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is alone responsible for the loss and therefore, he has committed the offence under Section 409 IPC. Except in Spl.C.Nos.160 and 169 of 2011, in all other case the appellant is found guilty.

23.Insofar as the offence under Section 13(2) r/w 13(1)(C) of the Prevention of Corruption Act, 1998 is concerned, admittedly, the appellant is a public servant, as per Section 2(C) of the Prevention of Corruption Act, which reads as follows:

> " *any person, who is the President, Secretary or other office bearer of a registered co-operative society engaged in agriculture, industry trade or banking receiving or having received any financial aid from the Central Government or State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government Company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).*

24.The trial Court has held that since the offence under Section 409 IPC criminal breach of trust by a public servant is proved, the offence under Sections 13(2) r/w 13(1)(C) of the Prevention of Corruption Act, 1998 need not be discussed separately and the ingredients to attract the offence under Section 409 IPC can also be applied to attract the offence under Sections 13(2) r/w 13(1)(C) of the Prevention of Corruption Act, 1998. Except in Spl.C.Nos.160 and 169 of 2011, in all other case the appellant is found guilty.

25.A perusal of the records, reveals that the trial Court has rightly appreciated the evidence and found the appellant guilty and sentenced him as stated supra. Therefore, this Court is not inclined to interfere with the reasoned judgment of the trial Court.

26.However, the learned Counsel appearing for the appellant submitted that the occurrence has taken place in between the years 1993 and 2000, the FIR was registered on 20.10.2003, the conviction was rendered by the trial Court on 20.12.2013 and the appellant was in prison for nearly nine months. Now the appellant is around 70 years of old and he is suffering from paralysis and he is not in a position to move without the help of others and therefore, prayed for modification of the sentence.

27.This Court considering the present scenario that the age of the appellant is 70 and he is suffering from paralysis, this court modifies the sentences alone, as follows.

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Section of Law	Sentence of Imprisonment awarded by trial Court	Sentence of Imprisonment awarded by this Court
409 IPC (12 counts)	Three years rigorous imprisonment, fine Rs.2,000/-, in default six months simple imprisonment	One year rigorous imprisonment, fine Rs.2,000/-, in default to under six months simple imprisonment
477A IPC (12 counts)	Two years Rigorous imprisonment, fine Rs.1,000/-, in default three months simple imprisonment	One year Rigorous imprisonment, fine Rs.1,000/-, in default three months simple imprisonment
467 IPC (3 counts)	Three years Rigorous imprisonment, fine Rs.2,000/-, in default six months simple imprisonment	One years Rigorous imprisonment, fine Rs.2,000/-, in default six months simple imprisonment
471 IPC (3 counts)	One year Rigorous imprisonment	one year Rigorous imprisonment
13(2) r/w 13(1) (c) of PC Act (12 counts)	Two years Rigorous imprisonment, fine Rs.2,000/-, in default three months simple imprisonment	One year Rigorous imprisonment, fine Rs.2,000/-, in default three months simple imprisonment

28.The trial Court is directed to secure the appellant to undergo the remaining period of sentence and the bail bonds if any shall stand cancelled. The above sentences shall run concurrently.

29.In the result the criminal appeals in Crl.A(MD)Nos.150 to 161 of 2014 are partly allowed and the judgment dated 20.12.2013 passed in Spl.CC..Nos.156 to 159 and 161 to 168 of 2011, on the file the Special Court for trial of cases under Prevention of Corruption Act, Madurai, is modified to the extent indicated above and the rest of the judgment stands confirmed. Consequently, connected miscellaneous petitions if any shall stand closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Special Court for trial of cases
under Prevention of Corruption Act
Madurai.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Dindigul.

3. The Superintendent, Central Prison, Madurai.

4.The Additional Pubic Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5.The Record Keeper (2 Copies),
Criminal Section,
Madurai Bench of Madras,
Madurai.

+1. CC to M/S.T.Antony Arul Raj Advocate SR.No.102115

Crl.A(MD)Nos.150 to 161 of 2014
27.11.2019

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