

**BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT**

Reserved on	Pronounced on
17.03.2020	01.06.2020

WEB COPY

CORAM**THE HONOURABLE MR. JUSTICE M.DHANDAPANI****CRL. A. (MD) NO.183 OF 2014**

State of Tamil Nadu
rep. By The Public Prosecutor
High Court
Chennai.

.. Appellant

- Vs -

A.Mathiyalagan

.. Respondent

Criminal Appeal filed U/s 378 of the Criminal Procedure Code, against the Judgment and decree, dated 28.02.2014, passed in Special Case No.161 of 2011, by the learned Special Judge for Prevention of Corruption Act Cases, Tiruchirappalli.

For Appellant : Mr.K.K.Ramakrishnan, APP
For Respondent : Mr.R.Shanmugasundaram, SC, for
Mr.A.Thiruvadikumar

JUDGMENT

The accused/respondent herein was charged and tried before the learned Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, Tiruchirappalli, in Spl. C. No.161/2011 for the offences u/s 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act (for short 'PC Act') and the trial court, vide judgment dated 28.02.2014, acquitted the accused/respondent herein holding that the prosecution has not proved the charges framed against the respondent herein/accused. Aggrieved by the acquittal of the accused, the present appeal has been preferred by the appellant/State.

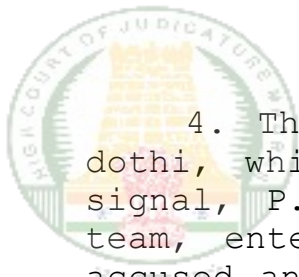
2. The brief facts, necessary for the disposal of this appeal are stated as hereunder :-

P.W.1 is a resident of Narasimmapuram and he applied for passport before the Passport Office, Thanjavur on 29.7.09, which was forwarded for verification to the Inspector of Police, Kabisthalam Police Station. Subsequent to the same, on 12.08.2009 at about 11.00 a.m. P.W.1 met the accused officer at Kabisthalam Police station and P.W.1 was asked to bring his photo and family



card. Accordingly, on the very same day, at about 9.00 p.m., P.W.1 met the accused with the required documents, and after verifying the same, the accused demanded Rs.300/- as illegal gratification for processing the approval for grant of no objection certificate. Pursuant to the said demand, the accused received the documents as well as a sum of Rs.50/- and also obtained the signature of P.W.1. The accused asked P.W.1 to pay the balance sum of Rs.250/- as condition for granting the necessary approval towards processing the passport application. Thereafter, on 19.08.2009 at about 9.30 a.m., P.W.1 along with his friend, P.W.12, met the accused at Kabisthalam Police Station and again the accused reiterated his earlier demand. As P.W.1 was not willing to pay the amount and accede to the guiles of the accused in demanding illegal gratification for performing his official duties and, therefore, P.W.1 approached P.W.13, the officer attached with the Vigilance & Anti-Corruption Department and gave a complaint, Ex.P-2. After recording the statement from P.W.1, P.W.13 registered a case in Cr. No.8 of 2009 for the offences stated above. P.W.13, thereafter, requested the assistance of official witnesses and, accordingly, P.W.2 the Junior Engineer, attached with the office of the Electricity Board and one other person, viz., Sivanesan, Assistant, employed in the office of the Tamil Nadu Housing Board, appeared before P.W.13. P.W.2 and the said Sivanesan were provided with the copy of the complaint given by P.W.1, which was read over by them and they ascertained the truth and veracity of the same from P.W.1, who was also present at the office of P.W.13 at that time. In furtherance to the same, P.W.1 produced five numbers of Rs.50/- notes, which was counted by Sivanesan. P.W.2 and Sivanesan were allowed to interact with P.W.1 for ascertaining the details. P.W.13 after explaining the details of the trap operation to all the persons gathered in his office, proceeded to coat the five numbers of fifty rupee notes with the chemical Phenolphthalein, after noting the numbers on the currency notes. After coating the currencies with Phenolphthalein and experimenting as to its proper functioning, P.W.13, along with P.W.1, the defacto complainant, P.W.2 and other members of his team, proceeded to Kabisthalam Police Station, where the accused officer was working. P.W.13, instructed P.W.2 to watch the unfolding of the sequence of events that are to take place on P.W.1 handing over the amount to the accused.

3. P.W.1, accompanied by P.W.2, entered the police station and proceeded to meet the accused and P.W.1 gave the currencies coated with Phenolphthalein to the accused, and the accused instructed him to place the said currency notes on his table, which was complied with by P.W.1, whereinafter, the accused officer took his cell phone and placed the same over the currency notes placed by P.W.1.



4. Thereafter, P.W.1 came out of the office and folded his dothi, which was the prearranged singal and on seeing the said signal, P.W.13 along with the other members of the trap laying team, entered the office of accused where P.W.1 identified the accused and, thereafter left the place. P.W.13 then proceeded to enquire the accused. P.W.13 prepared a solution of Sodium Bi-Carbonate in two bottles and dipped both the hands of the accused and the solution turned pink. The bottles were sealed and numbered and marked as M.Os.2 and 3. The chemical coated currencies of fifty rupee denomination, numbering five in number, M.O.1 series, was recovered from the rexine bag, M.O.4, which was with the accused. P.W.13, thereafter, compared the serial numbers on the fifty rupee notes, with the list already prepared by him. P.W.13 also prepared the observation mahazar, Ex.P-9, in the presence of P.W.6 and the other witnesses and a copy of the observation mahazar, Ex.P-9 was given to the accused, which was duly received by the accused without any demur. The accused was arrested and brought to the office of the Vigilance & Anti-Corruption at Trichirappalli. On reaching his office, P.W.13, prepared the other mahazar, Ex.P-10.

5. P.W.14, the Inspector of Police, Vigilance and Anti Corruption, taking up investigation of the case, examined witnesses and sent the material objects for chemical analysis and the same were analyzed by P.W.10, Scientific Officer of Forensic Science Laboratory, who issued Ex.P-25, chemical analysis report. On completion of investigation, P.W.14 filed the final report against the accused charging him for the offences supra.

6. The accused/respondent herein was furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed charges u/s 7 & 13 (2) r/w 13 (1) (d) of the PC Act against the accused/respondent herein. When questioned, the accused pleaded not guilty.

7. To prove the case, the prosecution examined P.W.s 1 to 14, marked Exs.P-1 to P-32 and M.O.s 1 and 5. When the accused was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same as false and stated that the observation mahazar, Ex.P-9 was not prepared at the time of the occurrence. However, neither oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, held that the prosecution has not proved the case and held that there are material discrepancies in the evidence of the witnesses and, accordingly, acquitted the accused/respondent herein. As stated above, aggrieved by the said acquittal, the appellant/State has preferred the present appeal.

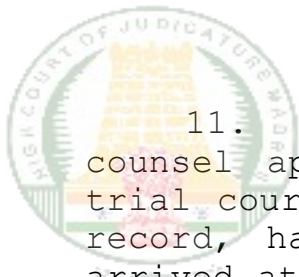


8. Mr.K.K.Ramakrishnan, learned Addl. Public Prosecutor appearing for the appellant submitted that the trial court has, on flimsy grounds, acquitted the accused/respondent herein without appreciating the materials available on record. It is the submission of the learned Addl. Public Prosecutor that minor discrepancies in the evidence of the witnesses, more especially, P.W.s 1 and 2, in no way is detrimental to the case of the prosecution, as the major part of the testimony of P.W.s 1 and 2 is in unison. It is the submission of the learned Addl. Public Prosecutor that unless the discrepancies in the evidence of P.Ws 1 and 2 strike at the root of the prosecution theory, the conclusion of the trial court that the evidence of P.W.s 1 and 2 do not corroborate each other deserves to be rejected. It is the further submission of the learned Addl. Public Prosecutor that the evidence of P.W.s 1 and 2 corroborate each other on all material particulars and minor contradiction/discrepancies in their evidence would not suffice to reject their evidence in toto.

9. It is the further submission of the learned Addl. Public Prosecutor that the testimonies of P.W.s 1 and 2 having been corroborated in all material particulars and Ex.P-9, mahazar, coupled with the evidence of P.W.6 relating to the recovery of the money and all the other attendant circumstances unerringly point to the guilt of the accused for having received the tainted money, the prosecution has clinchingly proved the act of the accused in demanding and accepting the money illegally for performing his official duty, which fact has been clearly spoken to by P.W.2 and this fact has not been properly appreciated by the trial court which has erroneously acquitted the accused, and the same requires to be interfered with.

10. In fine, it is the categorical submission of the learned Addl. Public Prosecutor that the prosecution, through cogent and convincing testimony has proved the culpability of the accused in the commission of the offence and there being no rebuttal on the part of the accused to dislodge the presumption, the finding recorded by the trial court to acquit the accused is wholly unsustainable and, therefore, the acquittal recorded by the trial court deserves to be set aside. In support of his contentions, the learned Addl. Public Prosecutor placed reliance on the following decisions :-

- i) *Prakash Chand - Vs - State (Delhi Administration) (1997 (3) SCC 90);*
- ii) *The State of Gujarat - Vs - Navinbhai Chandrakant Joshi (2018 (9) SCC 242);*
- iii) *State of U.P. - VS Zakaullah (1998 (1) SCC 557)*



11. Per contra, Mr.R.Shanmughasundaram, learned senior counsel appearing for the accused/respondent submitted that the trial court, on proper appreciation of the materials available on record, has recorded the acquittal and unless the said finding arrived at by the trial court is shown to be illegal and perverse, the appellate court ought not to interfere with the said order of acquittal.

12. It is the submission of the learned senior counsel that the act of the defacto complainant/P.W.1 is the off-shoot of the action taken by the accused against him in a murder case, in which P.W.1 was shown as an accused and, therefore, to wreak vengeance, the case of illegal demand of gratification had been foisted upon the accused.

13. It is the further submission of the learned senior counsel that trap had taken place at about 7.30 p.m. and, at that point of time, the other constables were present in the station. It is the further submission of the learned senior counsel that at the time of recovery of the amount, which is alleged to have been received by the accused from P.W.1, there was outage of electricity. It is the further submission of the learned senior counsel that in the backdrop of outage of electricity, placing reliance on the testimonies of P.W.s 1, 2 and 6 would be wholly prejudicial to the accused, as they would not have been in a position to observe the act of the trap laying party in the recovery of the money as also the dipping of the hands of the accused in the chemical solution.

14. It is the further submission of the learned senior counsel that even according to the prosecution, P.W.1 had placed the money on the table over which the accused is alleged to have placed his cell phone, however, for reasons best known to the prosecution, the cell phone, which is an important piece of evidence, has not been recovered. It is the further submission of the learned senior counsel that no evidence as to how the money, which was said to have been placed on the table, ultimately found its way into the rexine bag, from which it was recovered, has been adduced by the prosecution, though it is the claim of the prosecution that the bait currency was recovered from the rexine bag and in the absence of the connecting link, the case of the prosecution that the accused had received the money as illegal gratification does not merit acceptance. Mere recovery of the tainted money would not suffice to fasten the crime on the accused in the absence of substantive and corroborative evidence. According to the learned senior counsel, it is incumbent on the prosecution to prove that the money was handled by the accused and in the absence of the same, recovering the money from a rexine bag without corroboration of the accused receiving the money falls



very much short of proving the complicity of the accused in the commission of the offence.

15. It is the further submission of the learned senior counsel for the accused that in corruption cases, it has been laid down by the Hon'ble Apex Court in a catena of decisions that the factum of demand and acceptance has to be proved to bring home the charge against the accused. Acceptance of money cannot stand alone without there being demand and equally vice versa. In this regard, it is the contention of the learned senior counsel that only to settle scores with the accused with regard to the earlier murder case against him, the defacto complainant had implicated the accused in the crime.

16. It is the further submission of the learned senior counsel that the deposition of the witnesses clearly reveal that there was failure of power at the time of recovery of the tainted money and enquiring the accused and also preparing the observation mahazar, Ex.P-9. Therefore, it was incumbent on the prosecution to have examined the personnel from the electricity department to prove the period of outage of power and the non-examination of any official with regard to the period of power outage, the whole prosecution fabric with regard to the recovery of the money from the rexine bag and the solution turning pink are prone to serious doubt and it very much affects the substratum of the prosecution case.

17. It is the further submission of the learned senior counsel that though the trap was conducted on 19.08.09 and the materials recovered were sent for expert opinion on 27.8.09 and the report of P.W.10, the Scientific Officer was obtained on 07.09.2009, however, there is an inordinate delay in granting sanction for prosecution, which delay, having not been explained, clearly vitiates the prosecution.

18. In fine, it is the submission of the learned senior counsel that the court below, on proper appreciation of the materials available before it and finding that the evidence of the witnesses do not corroborate each other and that the documentary evidence also falls much short of furthering the prosecution case, has thought it fit to acquit the accused and, therefore, this Court, sitting in appeal, in the absence of any illegality or perversity being brought to its notice in the judgment of the trial court, should be very circumspect in interfering with the well considered finding recorded by the trial court and, therefore, prays for dismissal of the present appeal. In support of his contentions, the learned senior counsel for the accused placed reliance upon the following decisions :-



- i) *M.K.Harahsn -Vs - State of Kerala (1996 (11) SCC 720)*;
ii) *R.Venkatesan - Vs - State (1980 CRI. L. J. 41)*;
iii) *Mahendra Lal Das - Vs - State of Bihar (2002 (1) SCC 149)*

19. This Court paid its undivided attention to the submissions advanced by the learned Addl. Public Prosecutor appearing for the appellant and the learned senior counsel appearing for the respondent/accused and also perused the materials available on record as also the decisions relied on by the learned counsel for the parties.

20. In dealing with matters, where the acquittal rendered by the court below is put to test, it is trite that unless the order of the court below suffers from the vice of perversity, the High Court ought not to interfere with the said order. In ***Shailendra Pratap & Anr. - Vs - State of U.P. (2003 (1) SCC 761)***, the Supreme Court has categorically held that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

21. Yet again, in ***Ram Kumar - Vs - State of Haryana (1995 Supp. (1) SCC 248)***, the Hon'ble Supreme Court once again highlighted the need for the High Court to give proper weight and consideration to the view of the court below and has further held that if the view taken by the court below is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-



"15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

22. The Hon'ble Apex Court, in **V.Sejappa - Vs - State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150)** reiterating the principles to be followed in an appeal against acquittal, as has been laid down in a catena of judgments, held as under :-

"22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In *State v. K.Narasimhachary* [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC 443], this Court reiterated the well-settled



principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in *T. Subramanian v. State of T.N.* [*T. Subramanian v. State of T.N.*, (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In *Muralidhar v. State of Karnataka* [*Muralidhar v. State of Karnataka*, (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690], this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu* [*Tulsiram Kanu v. State*, AIR 1954 SC 1 : 1954 Cri LJ 225], *Madan Mohan Singh* [*Madan Mohan Singh v. State of U.P.*, AIR 1954 SC 637 : 1954 Cri LJ 1656], *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807 : 1955 Cri LJ 1653], *Aher Raja Khima* [*Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217 : 1956 Cri LJ 426], *Balbir Singh* [*Balbir Singh v. State of Punjab*, AIR 1957 SC 216 : 1957 Cri LJ 481], *M.G. Agarwal* [*M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], *Noor Khan* [*Noor Khan v. State of Rajasthan*, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], *Khedu Mohton* [*Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], *Shivaji Sahabrao Bobade* [*Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], *Lekha Yadav* [*Lekha Yadav v. State of Bihar*, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], *Khem Karan* [*Khem Karan v. State of U.P.*, (1974) 4 SCC 603 : 1974 SCC (Cri) 639], *Bishan Singh* [*Bishan Singh v. State of Punjab*, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], *Umedbhai Jadavbhai* [*Umedbhai Jadavbhai v. State of Gujarat*, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], *K. Gopal Reddy* [*K. Gopal Reddy v. State of A.P.*, (1979) 1 SCC 355 : 1979 SCC (Cri) 305], *Tota Singh* [*Tota Singh v. State of Punjab*, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], *Ram Kumar* [*Ram Kumar v. State of Haryana*, 1995 Supp (1) SCC 248 :



WEB COPY

1995 SCC (Cri) 355], Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736], Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C.Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K.Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goav.Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and



(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

23. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence, both oral and documentary, available on record to see whether the conclusions recorded by the court below for acquitting the accused/respondent herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the appellate court are such which could not have been possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

24. The points that arise for consideration in the present case are :-

- i) Whether the evidence of P.Ws.1 and 2 corroborate each other;
- ii) Whether the prosecution has established the demand and acceptance of the bribe amount by the accused through cogent testimony;
- iii) Whether the delay in obtaining the sanction vitiates the prosecution;
- iv) What is the evidentiary value that could be attached to the answers given by the accused to the questions posed u/s 313 Cr.P.C.

25. Though the above four issues arise for consideration, however, as all the issues are intrinsically intertwined, all the issues are being dealt with compositely as under.

26. The case revolves around three crucial witnesses, viz., P.W.s 1, 2 and 6. P.W.1 is the defacto complainant; P.W.2 is the official/trap witness and P.W.6 is the Sub Inspector of Police of Kabisthalam Police Station. Subsequent to the application of P.W.1 for passport, verification was caused through the office of the Superintendent of Police, Thanjavur, which was forwarded to Kabisthalam Police Station, the details of which have been spoken to by P.W.3. There is no quarrel with regard to the evidence of P.W.3. So also is the evidence of P.W.5, who was working in the Collector's Office, Thanjavur, who has spoken about the application made by P.W.1.



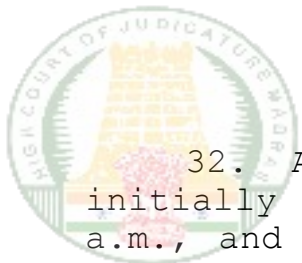
27. P.W.6 was working as Sub Inspector of Police, Kabisthalam Police Station, at the relevant point of time, where the accused was working as constable. P.W.6 has spoken about the allotment of work to the accused in the station, which is that of a Writer. P.W.6 has further deposed that the verification in relation to the identity of P.W.1 was done by the accused vide his endorsement of approval on 17.08.2009, in which no objection certificate was approved for the purpose of P.W.1 acquiring a passport. The recovery mahazar, Ex.P-9, under which the money was recovered, was attested by P.W.6.

28. P.W.8 was the Inspector of Police at Kabisthalam Police Station at the relevant point of time and he has deposed that the tainted money was recovered from the brown colour rexine bag, which belonged to the accused.

29. The main ground of attack on the prosecution case centres upon the hostility exhibited by P.W.12, who is said to be the friend of P.W.1 and who had accompanied P.W.1 to the police station on 19.08.2009. It is the substratum of the defence case that the demand, as alleged by the prosecution, was made on 19.8.09 in the presence of P.W.12 and the moment P.W.12 failed to support the case of the prosecution, the main ingredient of demand fails and, therefore, the further acceptance of money, even if it is proved, cannot be the basis for convicting the accused.

30. True it is that demand and acceptance of money is *sine qua non* for constituting an offence u/s 7 and 13 (1) (d) of the PC Act and the prosecution has to prove the demand and acceptance, both of which are essential ingredients to prove the charge of corruption and failure to prove even one, the other part would not have a leg to stand. P.W.12, who is said to have accompanied P.W.1 on 19.8.09, when the accused is alleged to have demanded money, had turned hostile. P.W.12 was the main witness to speak about the demand made by the accused for illegal gratification, thereby corroborating the version of P.W.1. But the hostility of P.W.12 has put the shackles on the prosecution case with regard to the demand of money as illegal gratification by the accused. However, even the turning of P.W.12 hostile would not be detrimental to the prosecution, if the prosecution, through other cogent and convincing testimony proves the alleged demand and acceptance of illegal gratification and in such a scenario, the hostility exhibited by P.W.12 would not be a deterrent to the prosecution case.

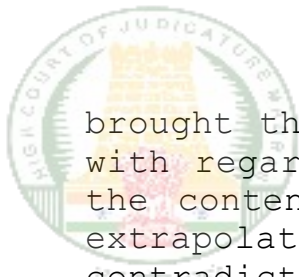
31. In this regard, the crucial witnesses to the next phase of acceptance of money is P.W.1, the defacto complainant and P.W.2, the shadow/official witness.



32. A perusal of the deposition of P.W.1 reveals that initially he met the respondent/accused on 12.08.2009 at 11.00 a.m., and the accused asked him to bring the necessary documents for verification. Accordingly, at about 9.00 p.m. on 12.8.09, P.W.1, along with his friend, P.W.12, appeared before the accused with the necessary documents, which were collected by the accused and the accused, thereafter, demanded a sum of Rs.300/- as illegal gratification for processing the verification papers of P.W.1 of which a sum of Rs.50/- was initially paid to the accused. Thereafter, P.W.1 appeared before the accused at about 11.00 a.m. on 19.8.09 on which day as well, the accused demanded the balance sum of Rs.250/-. Since P.W.1 was not inclined to pay the illegal gratification as demanded by the accused, he approached P.W.13 on the same day at 12.00 noon and lodged the complaint, Ex.P-1 pursuant to which the formalities for conducting the trap were proceeded with. P.W.13 requisitioned the services of P.W.2 and one Sivanesan for the purpose of proceeding with the trap to catch the accused and, accordingly, P.W.13, along with P.W.1, P.W.2 and other members proceeded to Kabisthalam Police Station. P.W.1 has deposed in detail about the happenings from the time P.W.s 1 and 2 met the accused, where the accused officer demanded illegal gratification. P.W.1 has further deposed that he gave the chemical coated money to the accused, who asked P.W.1 to place it on his table and, thereafter, the accused placed his cellphone over the money. Thereafter, P.W.1 came out and gave the pre-arranged signal, which led the trap laying team to enter the police station premises and enquire the accused. From the above evidence of P.W.1 it is clear that initially the accused had not received the money with his hands, but had asked him to place the money on the table.

33. A perusal of the evidence of P.W.2, who was a shadow witness to the entire occurrence, has, in sum and substance, corroborated the version spoken to by P.W.1 on all material particulars. However, it is the contention of the learned senior counsel for the accused that there is a contradiction between the evidence of P.W.s 1 and 2, in that, while it is the deposition of P.W.1 that on meeting the accused, the accused asked P.W.1 as to whether he has brought the money, however, P.W.2 has deposed that the accused enquired P.W.1 as to what purpose he has come. This, according to the learned senior counsel clearly demonstrates that there was no demand for money made by the accused.

34. Though, at first blush, such a contention seems attractive, a holistic reading of the evidence of P.W.2 amply makes it clear that while the accused initially asked P.W.1 as to what purpose he has come for which P.W.1 replied that he has come for the purpose of his passport verification, P.W.2 has further deposed that thereafter the accused enquired whether he has



brought the money. Though an answer has been elicited from P.W.2 with regard to the demand of money by the accused, however, it is the contention of the learned senior counsel that it is only an extrapolation to suit the needs of the prosecution and the above contradiction strikes at the root of the prosecution case.

WEB COPY

35. The Hon'ble Apex Court, in the case of **State of H.P. - Vs- Lekh Raj (2000 (1) SCC 247)**, relating to discrepancies in the evidence of the witnesses, has held as under :-

"7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in **Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243]** held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In **Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676]** this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in **State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593]** held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like.



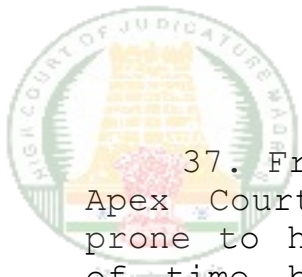
Material discrepancies are those which are not normal and not expected of a normal person."

(Emphasis Supplied)

36. In **Rohtash Kumar - Vs - State of Haryana (2013 (14) SCC 434)**, the Hon'ble Supreme Court had laid down the proposition in the appreciation of evidence of witnesses with regard to the discrepancies in their evidence and in this regard, held as under :-

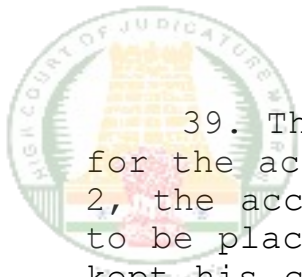
"24. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant, details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48], State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] and Vijay v. State of M.P. [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639])"

(Emphasis Supplied)



37. From the above proposition of law laid down by the Hon'ble Apex Court, it is clear that contradictions/discrepancies are prone to happen in the testimony of the witnesses due to passage of time between the occurrence proper and the date of their examination in court and in such circumstances, it is left to the wisdom of the court to analyse their evidence as a whole to cull out the truth or otherwise in their deposition and appreciate the same in proper perspective to arrive at a substantive opinion as to whether such contradiction/discrepancies affect the substratum of the prosecution case.

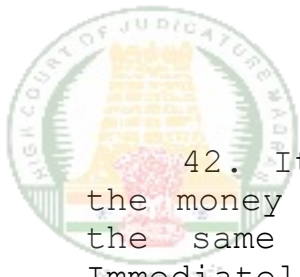
38. True it is that there are contradictions in the evidence of P.W.s 1 and 2, as pointed out by the learned senior counsel for the accused. However, it is to be pointed out that such contradictions are prone to occur in the evidence of witnesses, as such evidence is given in court after a considerable gap of time. Human memory is not infallible to remember even the faintest detail and narrate the same in a cogent, clear and also in a sequential manner. The gap between the occurrence and the time when the witnesses are examined in court definitely would definitely lead to certain embellishments in the testimonies of the witnesses, where they contradict each other. Mere contradictions, if they are minor in nature, would not be a ground to throw out their evidence in toto to the benefit of the accused, as such an act would only entail in the prosecution case being rejected in all cases, as the witnesses in all the cases are prone to commit certain errors. The weightage of those errors need to be taken into consideration with reference to either accepting or rejecting their evidence. In the case on hand, on a careful analysis of the testimonies of P.W.s 1 and 2, it is evident that there are certain contradictions, but, nevertheless, a conjoint reading of the testimonies of P.W.s 1 and 2 make it amply clear that they have spoken in unison about the happenings when P.W.1 met the accused at the time of the trap proceedings. The contradictions in their evidence, at best, could only be termed as minor contradictions and the said contradictions, in no way, shakes the substratum of the prosecution case. It is also further to be pointed out that P.W.2 is an independent witness, and further it is not the case of the defence either that he has any axe to grind against the accused or to fall in line with the prosecution/investigating agency. In the above backdrop, this Court is of the considered view that the hostility exhibited by P.W.12, in no way, is detrimental to the prosecution case, as through other cogent and convincing evidence, viz., the evidence of P.W.2, the prosecution has proved the necessary ingredient of demand and acceptance of illegal gratification by the accused.



39. The next contention advanced by the learned senior counsel for the accused is that even as per the testimonies of P.W.s 1 and 2, the accused did not receive the money, but had asked the money to be placed on the table on which the accused is alleged to have kept his cellphone. It is further submitted that the recovery of the money was made from a rexine bag kept in the police station. In this background, it is contended by the learned senior counsel for the accused that neither the cellphone was recovered, which is a crucial piece of evidence, nor the prosecution has placed any evidence to show as to how the money, which was placed by P.W.1 on the table of the accused found its way into a rexine bag kept at the police station. The sequence of events to show that the accused had handled the money having not been proved, it would be wholly unsafe to accept the testimonies of the witnesses as to finding the chemical in the hands of the accused, which turned the solution pink and, thereby, to reverse the acquittal.

40. As already stated, the testimonies of P.W.s 1 and 2 reveal that on demand being made by the accused, P.W.1 gave the money to the accused, but the accused asked P.W.1 to place the same on the table over which the accused is alleged to have kept the cellphone. As rightly contended by the learned senior counsel for the accused, the trap laying officer ought to have seized the cellphone said to have been placed over the currency placed on the table by P.W.1, which the trap laying officer had failed to do. But, non-seizure of the cellphone alone cannot be the ground to doubt the prosecution version and throw it overboard as the said non-seizure of the cellphone could only be termed as an investigative lacunae. Subsequent to P.W.1 placing the money on the table, P.W.1 left the scene and gave the pre-arranged signal, which prompted the trap laying team to enter the police station to enquire the accused.

41. On P.W.13 entering the police station and enquiring the accused, Sodium Bi-Carbonate solution was prepared in which the accused was asked to dip his hands and on so doing, the solution turned pink. The evidence further reveals that on further enquiry, the accused produced the rexine bag from which the currencies were seized, and the serial numbers of the currencies tallied with the list already prepared by the investigating officer. Though it is the contention of the learned senior counsel for the accused that the prosecution has not placed any evidence to show as to how the currencies found its way into the rexine bag, which creates a doubt in the prosecution case, however, it is to be pointed out that P.W.8, who was the Inspector of Police of Kabistharam Police Station at the relevant point of time has categorically deposed that the tainted money was recovered from the brown colour rexine bag, which belonged to the

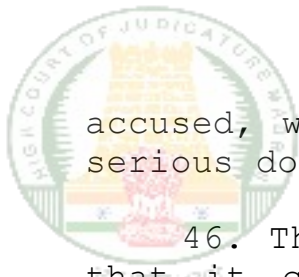


42. It is to be remembered that the accused did not receive the money with his hands from P.W.1, but had asked him to place the same on his table over which he placed his cellphone. Immediately on P.W.13 entering the station and enquiring the accused, solution of Sodium Bi-Carbonate was prepared in which the hands of the accused were dipped and the solution turned pink and only thereafter the rexine bag, in which the currencies were placed, was seized. In the overall sequence of events as narrated above, it is amply evident that though P.W.s 1 and 2 did not depose that the accused touched the money with his hands, however, before the currencies could be recovered, a testing of the hands of the accused resulted in the Sodium Bi-Carbonate solution turning pink, which only reveals that the said chemical coated currencies were handled by the accused, which only leads this Court to the undisputable inference that the said illegal money received from P.W.1 was placed by the accused in the rexine bag, which resulted in his hands getting coated with the chemical substance that was coated on the currencies. Further, it is not the case of the defence that the hands of the accused were dipped in the Sodium Bi-Carbonate solution after recovery of the rexine bag. Further, it is the evidence of P.W.8 that the rexine bag, which was recovered from the police station and which contained the currency notes was that of the accused. In such a scenario, it was for the accused to rebut the presumption by leading in evidence or showing materials from the evidence adduced by the prosecution in support of his innocence.

43. The Hon'ble Supreme Court, in the case of **State of Gujarat - Vs - Navinbhai Chandrakant Joshi (2018 (9) SCC 242)** had occasion to consider the scope and ambit of the presumption available u/s 20 of the PC Act vis-a-vis the offence u/s 7 of the PC Act and in that context, observed as under :-

*"So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities. In **C.M. Girish Babu v. C.B.I. Cochin**, High Court of Kerala (2009) 3 SCC 779, this Court held as under:-*

"21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accuse charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence....."



accused, who had placed the money in the rexine bag, is prone to serious doubt.

46. This Court, in the preceding paragraphs, has already held that it could only have been the accused, who had placed the currencies in the rexine bag and further the accused has not rebutted the presumption by placing any materials. Therefore, by no means, it could be submitted that the currencies found its way into the rexine bag without the knowledge of the accused.

47. The submission of the learned senior counsel that power outage at the relevant point of time when the bag was recovered has to be held against the prosecution in the absence of examination of personnel from the electricity department, does not merit acceptance for the simple reason that P.W.6 has categorically deposed that Ex.P-9, mahazar was under preparation and only at that time, the power supply went out, but with the aid of a torch light, the balance mahazar was prepared. It is further evident from the deposition of the witnesses that the recovery mahazar proceedings was prepared in the presence of the accused and he was provided with a copy of the same on the same day, i.e., 19.08.09 and he received the same without any demur or objection. Curiously, the accused has raised a plea about the recovery mahazar preparation only when he was questioned u/s 313 Cr.P.C.

48. The Supreme Court had occasion to consider the evidentiary value of the statement of the accused u/s 313 Cr.P.C. in the case of **Edmund S. Lyngdoh - Vs - State of Meghalaya, (2016 (15) SCC 572)**, wherein the Hon'ble Apex Court held thus :-

"21. Where the accused gives evasive answers in his cross-examination under Section 313 CrPC, an adverse inference can be drawn against him. But such inference cannot be a substitute for the evidence which the prosecution must adduce to bring home the offence of the accused. The statement under Section 313 CrPC is not evidence. In **Bishnu Prasad Sinha v. State of Assam [Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467 : (2008) 1 SCC (Cri) 766]**, this Court held that conviction of the accused cannot be based merely on his statement recorded under Section 313 CrPC which cannot be regarded as evidence. It is only the stand or version of the accused by way of explanation explaining the incriminating evidence/circumstances appearing against him. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to other evidence led by the prosecution. The statements made under



Section 313 CrPC must be considered not in isolation but in conjunction with the other prosecution evidence."

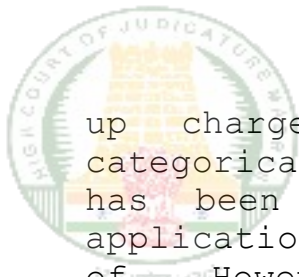
(Emphasis supplied)

49. From the above ratio laid down by the Supreme Court, it is amply clear that though the statement of the accused with regard to the questioning u/s 313 of Cr.P.C. is not substantive evidence that could be used against him in isolation to arrive at the culpability of the accused, however, the same can be taken aid of to lend credence to the other evidence let in by the prosecution. It is therefore clear that there is no embargo on the Court to look into the answers given by the accused to the questions posed by the Court u/s 313 Cr.P.C. for the purpose of seeing whether it lends support to the evidence of prosecution witnesses in order to find out the culpability of the accused.

50. A conjoint reading of the testimonies of the witnesses coupled with the answers of the accused during his questioning u/s 313 Cr.P.C., leads this Court to the inevitable conclusion that the answers given by the accused u/s 313 Cr.P.C., as a form of defence, is only for the purpose of squirming out from the clutches of the corruption law, which has entwined him and in such circumstances, placing reliance on his answers to the questions u/s 313 Cr.P.C. to grant the benefit of the accused would be nothing but putting the cart before the horse to destabilise the prosecution, and as laid down by the Hon'ble Supreme Court in Navinbhai's case (*supra*), the consideration of the answers by the accused in isolation cannot be made, but should only be in conjunction with the evidence placed by the prosecution. Therefore, there being no defence on the side of the accused, the accused cannot take the aid of the answers given by him during questioning u/s 313 Cr.P.C., to destabilise the prosecution case. On considering the evidence in conjunction with the answers of the accused u/s 313 Cr.P.C., this Court is led to the inevitable conclusion that the said answer is only a feeble attempt which cannot be considered in isolation to the benefit of the accused and, therefore, the above contention deserves to be rejected.

51. Learned senior counsel for the accused vehemently submitted that the grudge of P.W.1 against the accused for roping him in a murder charge has led to the fastening of a corruption charge against the accused and, therefore, the whole evidence of P.W.1 deserves to be thrown out at the threshold itself, as the same is not trustworthy.

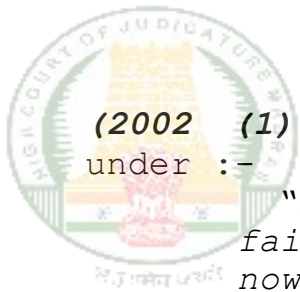
52. Pausing here for a moment, the case of the defence is that P.W.1 had a grudge with regard to the earlier case of murder ~~raised against~~ him by the accused, which has led to this trumped



up charge against the accused. The evidence of P.W.6 categorically reveals that as early as on 17.8.09, no objection has been recorded in the file pertaining to the passport application of P.W.1, however, which aspect P.W.1 was not aware of. However, on 19.8.09, when P.W.1 once again approached the accused, the accused has reiterated his demand without mentioning about the approval of no objection earlier granted. Had the accused been so straightforward, as projected by the defence, the accused ought to have stated about the approval granted. However, that is not the case. Further, it is to be pointed out that it is not the case of the defence that approval was already granted by the accused giving no objection, but the said fact has been elicited only in the deposition of P.W.6. Therefore, all along, it was not the case of the defence that approval was already granted and, therefore, there was no necessity for the accused to demand any illegal gratification. Further, if the stand of the defence is to be accepted that the grudge of P.W.1 against the accused was the cause for the present trumped up charge, this Court is at a loss to understand as to how a no objection was granted in favour of P.W.1, by the accused considering the antecedent of P.W.1, in a case of murder, that too recorded by the very same accused. The defence cannot blow hot and cold over the same as the act of the accused itself speaks volumes as to the veracity of the testimony of P.W.1 and, therefore, this Court rejects the contention advanced above.

53. Further, in the case on hand, it is to be pointed out that the criminal machinery was set in motion further to apprehending the accused in a trap proceeding in which P.W.1, the defacto complainant and P.W.2, the trap/independent witness have spoken in unison and have corroborated each other on all material particulars. The duty of P.W.13, the Trap Laying Officer is only for the limited purpose of catching the wrong doer and the role of the defacto complainant is also very limited. The character/conduct and the antecedent of the defacto complainant is not in issue before this Court as he is not an accused and in the trap case; the evidence before the court alone matters in arriving at a subjective satisfaction as to whether the prosecution has proved the case or not. The Court is entrusted with the task of scrutinising the evidence available on record with care and caution so as to arrive at a just and reasonable finding as to the culpability of the accused in the crime.

54. Vehement contention was advanced by the learned senior counsel with regard to delay in granting sanction for prosecution and, therefore, the delay vitiates the prosecution. In this regard, learned senior counsel placed reliance on the decision of the Hon'ble Apex Court in **Mahendra Lal Das - Vs - State of Bihar**



(2002 (1) SCC 149), wherein the Hon'ble Apex Court held as under :-

"In this case, the prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant-accused of possessing disproportionate wealth of about Rs.50,600/-. The authorities of the respondent State also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and an exercise in futility."

55. A perusal of the materials available on record reveal that admittedly the case was registered by the Law Enforcing Agency on 19.08.09 and after obtaining the necessary scientific opinion, the papers were forwarded to the sanctioning authority. The sanctioning authority, on receipt of the request, has granted sanction for prosecution within a period of three months. It is not the case of the defence that the sanctioning authority has not applied its mind to the materials placed or that the requisite materials have not been placed before the sanctioning authority. The case of the defence is that there is delay in according sanction which vitiates the prosecution. A perusal of the materials available on record reveal that the whole investigation including grant of sanction has fructified within a period of 1 ½ years from the date of the occurrence. The above period of 1 ½ years, by no stretch, could be deemed to be a delay so exorbitant so as to vitiate the entire prosecution. The decision relied on by the learned senior counsel cannot be pressed into service in the present case for the simple reason that in the above case, there was an inordinate delay of of 13 years in granting the sanction for prosecution of the appellant therein and the said decision would in no way be applicable to the facts of the present case, as in the case on hand, the whole investigation including sanction of prosecution had happened within a period of 1 ½ years, which is fully justiciable.

56. The charge framed against the accused is under the Prevention of Corruption Act and once the prosecution has discharged its initial burden to show the act of the accused, the weight shifts on the accused to rebut the presumption. However, in the case on hand, except for stating that the case against him is a foisted one, no presumptive material has been placed before the Court to infer that the accused has, in fact, rebutted the presumption, by adducing necessary evidence. It is to be stated that the accused has not placed even an iota of rebuttal, worth consideration, to draw a presumption, in favour of the accused, which transfers the burden back to the prosecution. In the absence of the accused rebutting the fact by presumptive



herein/accused and he is convicted of the charges framed u/s 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act. The respondent herein/accused is accordingly sentenced to undergo simple imprisonment for a period of one year for each of the offence and the accused is directed to pay a composite fine of Rs.5,000/-. The sentences are directed to run concurrently. The respondent herein/accused is entitled for set off u/s 428 Cr.P.C. The respondent herein/accused is directed to surrender before the learned Special Judge for Prevention of Corruption Act Cases, Tiruchirappalli, within a period of twenty weeks to serve the sentence imposed upon him, failing which the trial court shall take appropriate steps to secure the presence of the accused to undergo the sentence imposed upon him.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rj2/GLN

To

1.The Special Judge for Prevention of Corruption Act Cases,
Tiruchirappalli.

2. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

3.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-13016[F] dated
02/06/2020)

**Pre-Delivery Judgment in
CRL. A. (MD). NO. 183 OF 2014
Pronounced on
01.06.2020**

AL(CO)

TR(08.06.2020)25P 6C

<https://hcservices.ecourts.gov.in/hcservices/>