



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.02.2020
PRONOUNCED ON : 28.08.2020

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THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CrL.A(MD)No.191 of 2014

State represented by:
The Public Prosecutor,
High Court, Madras.
(V & AC., Virudhunagar
Crime No.07/2007).

... Appellant/Complainant

Vs.

1.G.Pugazhenth
2.R.Rajendran

... Respondents/Accused 1 & 2

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., praying to allow the appeal, and to set aside the judgment passed in Special Case No.103 of 2011, dated 04.04.2014 by the Special Court for the trial of Cases under the Prevention of Corruption Act, Madurai and convict the respondents/accused A1 & A2 as charged.

For Appellant : Mr.M.Chandrasekaran,
Additional Public Prosecutor
For Respondents : Mr.V.Gopinath, Senior Counsel for
Mr.P.Andiraj

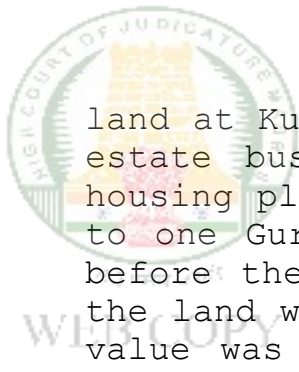
JUDGMENT

The appeal arises out of the judgment of acquittal rendered by the learned Special Judge, Special Court for trial of Prevention of Corruption Act Cases, Madurai in Special C.C.No.103 of 2011 dated 04.04.2014.

2.The appellant filed charge sheet against the 1st respondent for offence under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and against the 2nd respondent for offence under Sections 7, 12 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. The trial Court on conclusion of trial, acquitted the respondents from the above charges by Judgment dated 04.04.2014 in Special C.C.No.103 of 2011.

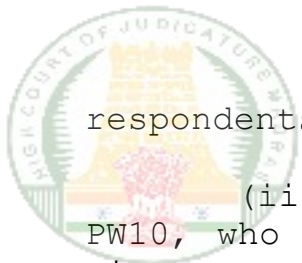
3.The brief facts of the case are as follows:-

(i) DW3 - Subburaj, defacto complainant purchased 83 cents of



land at Kunnur village in survey Nos.910/A and 910/B. PW3, a real estate business man created a layout in the said land into 42 housing plots. Out of which, he sold plot No.12 measuring 3 cents to one Gurunathan, executed a sale deed [Ex.P4] and presented it before the Sub Registrar Office, Kunnur for registration. Since the land was converted from agricultural land to housing plot, the value was not fixed, the document was kept pending and the same was forwarded to District Registrar Office, Virudhunagar for fixation of value of land. PW3 approached the 1st respondent/the District Registrar, Virudhunagar for fixing the value of the land. On 20.09.2007, the 1st respondent inspected the land, prepared a report, but the documents were kept pending. PW3 on 29.10.2007 met the 1st respondent, at that time, the 1st respondent demanded Rs.12,000/- for further processing the file and fixing the guideline value. On 31.01.2007, again PW3 met the 1st respondent at about 11.00 a.m., requested to reduce the demand. Thereafter, the demand was reduced to Rs.5,000/-. PW3 not willing to pay the bribe amount, approached PW8/TLO and lodged a complaint [Ex.P5] on 31.10.2007 at about 13.00 hours.

(ii)PW8 on verification of the credentials of the complaint, enlisted the official accompanying witness PW4 and one Krishnakumar. PW4 and the said Krishnakumar was introduced to PW3. The nature of complaint [Ex.P5] was explained and FIR [Ex.P22] was shown to them. Thereafter, the procedures of trap and importance of phenolphthalein test was explained, the same were recorded in Entrustment Mahazar [Ex.P7] at about 03.30 p.m. PW8/TLO along with trap team had gone to the District Registrar Office, Virudhunagar by 05.00 p.m. PW2 and PW3 entered the office at about 05.20 p.m., to meet the 1st respondent. PW8 and other trap team were keeping watch from nearby place. After few minutes, PW3 came out, gave pre-arranged signal at 05.40 p.m. PW8 along with trap team entered the office. PW8 enquired PW3 and PW4 about the happenings. PW3 stated that when they met the 1st respondent, he asked PW4 to call the 2nd respondent, who was on the other side of the building. The 2nd respondent brought the file [Ex.P8], 1st respondent demanded Rs.5,000/- from PW3. When he attempted to hand over the bribe amount of Rs.5,000/- to the 1st respondent, he directed the same to be handed over to the 2nd respondent. The 2nd respondent received the bribe amount kept it the file [Ex.P8]. The 1st respondent informed that file would be processed soon. PW3 and PW4 identified the respondents. PW3 left the office and in the presence of PW4 and other official witness Krishnakumar, the 2nd respondent was enquired and phenolphthalein test was conducted on the hands of the 2nd respondent, which turned positive. Thereafter, the trap amount MO3 was recovered, the respondents were arrested and required files and registers were seized and the proceedings were recorded in Ex.P12, Recovery Mahazar at about 06.00 pm. Following the arrest of the



respondents, their houses were searched.

(iii) On the next day, the investigation was handed over to PW10, who conducted major part of the investigation, examined the witnesses, recorded their statements and collected Forensic Report [Ex.P21]. On his transfer, PW11 took up the investigation, examined PW1 and PW2 obtained sanction orders [Exs.P1 & P2] and filed the charge sheet in this case on 28.01.2009.

(iv) During trial, the prosecution examined PW1 to PW11, marked documents Ex.P1 to Ex.P27 and material objects MO1 to MO3. On the side of the defence, no witness was examined and no document was marked. The learned trial Judge on conclusion of trial found the appellant not proved the case against the respondents beyond reasonable doubt and acquitted the respondents from the above case, against which the present appeal is filed by the appellant.

4. The submissions of the learned Additional Public Prosecutor are as follows:-

(i) The learned Additional Public Prosecutor submitted that the trial Court failed to appreciate the evidences of PW3, PW4 and PW8 and as well the documents produced in its proper perspective. Further, the trial Court failed to consider the statutory presumption under Section 20 of the Prevention of Corruption Act, 1988, wherein once the prosecution proves the demand, acceptance and recovery, it is for the accused to discharge the burden by producing evidence and by preponderance of probability to dislodge the statutory presumption. In this case, the respondents neither produced any witness, nor marked any documents and by cross examination of witnesses had failed to put forth their defence. The trial Court found PW3 had not supported the case of the prosecution and completely ignored his evidence and not considered the fact that PW3 admitting about lodging of complaint [Ex.P5] and his signature [Ex.P6] in Ex.P5. In the complaint [Ex.P5], the details of demand of bribe, more particularly the demand made prior to the trap on 29.10.2007 and 31.10.2007 are clearly mentioned. During the trap, PW3 admitted he going to the District Registration Office along with PW4, meeting the respondents, enquiring about the pendency of file [Ex.P8]. Except for the manner in which the trap money was handled, in all other aspects the evidence of PW3 is in conformity with the case of the prosecution.

(ii) PW4, the official witness clearly stated about the demand, acceptance and recovery of trap amount. In this case, PW8 recorded the demand, acceptance and recovery of trap in Recovery Mahazar [Ex.P12]. From the evidence of PW4 and PW8/TLO, it is seen that the prosecution had proved the case against the



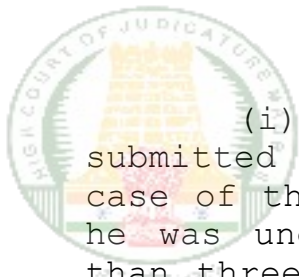
respondents beyond reasonable doubt. The Forensic Report [Ex.P21] is in conformity to the case of the prosecution. PW4 is an independent witness and he has got no axe to grind against the respondents. The trial Court failed to consider the fact the 2nd respondent did not deny the receipt of bribe amount [M03]. Had the 2nd respondent gave any explanation, the same would have found place in the Recovery Mahazar [Ex.P12]. Further, when PW3 attempted to hand over the bribe money to the 1st respondent, the 1st respondent instructed PW3 to hand over to the 2nd respondent. Hence, the trap money was recovered from the 2nd respondent. The phenolphthalein test conducted on the hands of the 2nd respondent, turned positive. In view of the same, the presumption under Section 20 of the Prevention of Corruption Act, comes to play. The respondents failed to dislodge the presumption in any manner. Thus the trial Court without considering these aspects, on minor contradictions had given, benefit of doubt to the respondents. These minor contradiction no way affect the case of the prosecution when the main ingredients of commission of offence are established and proved through the evidence of PW3, PW4 and PW8.

(iii) In this case PW5, the Record Clerk clearly spoken about the file [Ex.P8] dealt by the 2nd respondent. The procedure for fixing the guidelines is spoken by PW6. From the evidence of these two witnesses, who worked in the District Registrar Office along with the respondents, clearly proved 2nd respondent dealing the file [Ex.P8] and the 1st respondent site inspection on 20.09.2007. Thus, the respondents dealing the file [Ex.P8] is proved. Further to it, the handing over of bribe money and recovery of the same are proved by the prosecution by producing cogent, reliable evidence, which the trial Court failed to consider in its proper perspective. Hence, the respondents are to be convicted by setting aside the judgment of acquittal. In support of the his contentions the following citations were relied:-

- State of U.P. Versus Dr.G.K.Ghosh reported in (1984) 1 SCC 254.
- M.Narsinga Rao Versus State of A.P reported in (2001) SCC 691.
- Krishna Ram Versus State of Rajasthan reported in (2009) 11 SCC 708.
- Mukhtiar Singh Versus State of Punjab reported in MANU/SC/0731/2016.
- Guruviah Versus the State represented by the Inspector of Police in Criminal Appeal No.1209 of 2019 (arising out of S.L.P.(CrI).No.1658 of 2019).

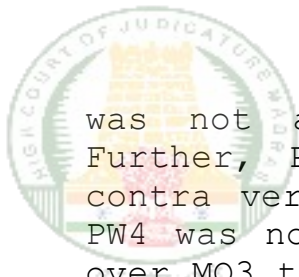
5.The submissions of the learned senior counsel for the respondents are as follows:-

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



(i)The learned senior counsel for the respondents/accused submitted that in this case PW3 is the decoy, not supported the case of the prosecution. In his evidence, he clearly stated that he was under assumption that file [Ex.P8] was pending for more than three months, the reason for delay is only for the purpose of bribe and hence, he lodged a complaint [Ex.P5]. Further PW3 as regards handing over of bribe money stated that when he attempted to hand over the bribe money of Rs.5,000/- to the 1st respondent, the 1st respondent refused to receive the same. There is no whisper about any demand made by the respondents. The 2nd respondent was present there along with the file [Ex.P8]. PW3 dropped the bribe amount in the file and came out and gave the signal from the first floor Verandah. Since PW3 was treated hostile, the demand made prior to the complaint [Ex.P5] is not corroborated by any witnesses. PW3 not stated any demand made during the trap by the respondents. There was no demand from the respondents and the trap money was dropped by PW3 on his own accord in the file [Ex.P8]. The file [Ex.P8] was seized and no phenolphthalein test was conducted on the file, to prove the fact that the trap money was kept in the file. In Recovery Mahazar [Ex.P12], it is mentioned that the trap money [MO3] was recovered from [Ex.P8] file. Now the only witness is PW4.

(ii)The evidence of PW4 is not cogent, he gives a contradictory version, his presence during the entrustment proceedings and recovery proceedings are highly doubtful. In the Entrustment Mahazar [Ex.P7], it is recorded that during demonstration, the Head Constable Chandrasekarn smeared phenolphthalein powder, conducted the demonstration on the direction of PW8/TLO, MO3. PW4 in his evidence stated that the phenolphthalein powder was smeared on MO3 currency notes by Krishnakumar, the other official witness. Further, PW4 stated that PW8/TLO instructed PW3 to hand over the bribe amount to any of the accused namely A1 and A2. The complaint [Ex.P5] is only against the 1st respondent and in FIR [Ex.P22], 1st respondent's name alone is shown as accused and there is no mention of 2nd respondent's. The fact being so, the instruction of handing over the bribe money to any of the respondents is not possible. PW4 gives a false version in support of the case of the prosecution. PW4 admitted that there was no demand made by the 1st respondent when PW3 and PW4 met the 1st respondent with regard to pendency of file [Ex.P8]. The 2nd respondent called by PW4 on the instruction of the 1st respondent. Thereafter, the 1st respondent instructed the 2nd respondent to complete the procedure of the file. Thereafter, the 2nd respondent had gone back to his seat/work table which is opposite to the the 1st respondent's room. PW4 further stated that a cover containing MO3 was with PW3 and PW3 was talking and walking with the 2nd respondent and handed over the cover and what transpired between PW3 and the 2nd respondent, PW4



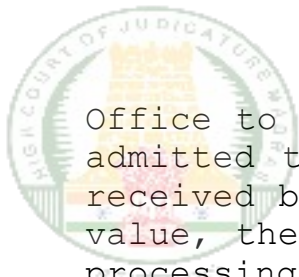
was not aware, since he was not near the audible distance. Further, PW4 witnessed PW3 handing the cover containing MO3, a contra version is made by PW4 would probabalize the defence that PW4 was not present there and he cannot be a witness for handing over MO3 to the 2nd respondent.

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(iii)The other contention is that PW3 had given pre-arranged signal from the first floor Verandah, confirmed by PW4. The evidence of PW8/TLO is that PW3 and PW4 came out of the office to the portico in the ground floor, from there PW3 had given pre-arranged signal. PW5, the Record Clerk spoke about the topography stated that portico is in the ground floor and the office room of the respondents is at first floor. In the Recovery Mahazar [Ex.P12], it is mentioned that from portico PW8 and other trap team members received the signal. The evidence of PW4 and PW8 contradict to each other. PW4 evidence is without any corroboration and his evidence does not inspire confidence. The trial Court had rightly held that the evidence of PW4 cannot be acted upon.

(iv)In this case, the evidence of PW8 is in contradiction with the evidence of PW3 and PW4. PW4 stated that pre-arranged signal was from the first floor Verandah. On the other hand, PW8 stated that signal was received from portico. Further, PW8 stated that the trap money [MO3] was seized from the 2nd respondent's seat which is contra to the recordings made in [Ex.P12] Recovery Mahazar. In Ex.P12, it is mentioned that the recovery proceedings took place in the office room of the 1st respondent. The trap money was recovered from the 2nd respondent seat, the recovery proceedings cannot be from the 1st respondent's room. Further, it is admitted by PW4 and PW8 the presence of other officials in the office when the trap proceedings was conducted and while 2nd respondent was questioned. None of the witnesses present in the scene of occurrence were examined as witness in this case to prove the trap. The file [Ex.P8] was not subjected to phenolphthalein test. The manner in which Ex.P12 is prepared becomes highly doubtful. Further, in Ex.P12, there is no mention that on the instruction of the 1st respondent, the 2nd respondent received MO3. Thus there are vital contradiction in the evidence of PW4 and PW8 with regard to the place of receiving the pre-arranged signal, recovery of MO3 and seizure of files and records. Non examination of the available witnesses from the scene of occurrence is fatal to the case of the prosecution.

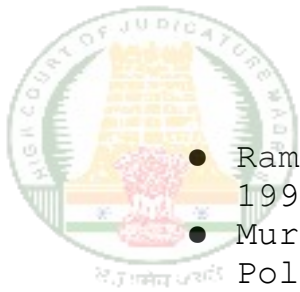
(v)When the search was conducted in the house of the respondents, no incriminating materials was found. PW10, the Investigating Officer stated that there is mention in the file [Ex.P8] to get the guideline value from the Sub Registrar Office, Kunnur, there are communication sent by the District Registrar



Office to the Sub Registrar Office seeking guideline value. It is admitted that till the date of trap, the guideline value was not received by the District Office. It is admitted without guideline value, the present value cannot be fixed. Hence, for the delay in processing the file [Ex.P8], the respondents are not the reason. The 1st respondent in this case visited the site, prepared inspection report on 20.09.2007. The appellant failed to understand the procedure in fixing the guideline value. The Sub Registrar before whom the documents are submitted, if he is not satisfied with the value of the property, he has to forward the document to the District Registrar, who is to conduct site inspection, prepare the report and with his recommendation forward it to the Deputy Inspector General of Registration. It is the Deputy General Inspector of Registration who is to fix the guideline value. In this case, the District Registrar/1st respondent had conducted inspection and for non receipt of guideline value from SRO, Kunnor, the file could not be forwarded to the Deputy General Inspector of Registration. Without ascertaining these aspects, the appellant laid a trap and to somehow make the trap success, implicated the respondents in this case. Further, PW3 admitted that on a wrong notion he had given a complaint which he later realized as seen from his evidence.

(vi) During the trap proceedings, the respondents gave detailed explanation which is admitted by PW10, but the same is withheld and not produced in this case. Hence, the adverse inference under Section 114(g) of the Indian Evidence Act, has to be drawn. Further, PW10 admitted that on considering the case in totality, he recommended for departmental action before the Commissioner of Disciplinary Proceedings and not for criminal prosecution. The investigating officer found the complaint of PW3 a motivated one. PW11, the subsequent investigating officer filed the charge sheet. The trial Court on considering all these aspects, by a detailed judgment acquitted the respondents and there is no perversity or illegality in the judgment which calls for interference.

(vii) The learned senior counsel emphasized the point that while dealing a case of appeal against acquittal, presumption of innocence is to be available, which is the fundamental principle of criminal jurisprudence. Further the respondents having secured his acquittal, the presumption of innocence is further reinforced, reaffirmed and strengthened by the trial Court. The learned senior further emphasized the principle "if two reasonable conclusion are possible on the basis of the evidence on records, the appellate Court should not disturb the finding of acquittal recorded by the trial Court". To buttress his contentions, the following citations are relied:-

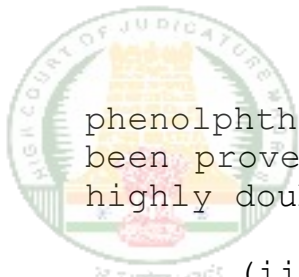


- Ramesh Babulal Doshi Versus State of Gujarat reported in 1996 Crl.L.J.2867.
- Murugesan and others Versus State through Inspector of Police reported in (2013) 1 SCC (Cri) 69.
- T.Subramanian Versus State of Tamil Nadu reported in (2006) 1 SCC (Cri) 401.
- C.Sukumaran Versus State of Kerala reported in 2015 Crl.L.J.1715.
- N.Sunkanna Versus State of Andhra Pradesh reported in 2015 Crl.L.J.4927.
- Krishnan Chander Versus State of Delhi reported in 2016 Crl.L.J.1079.

6.This Court considered the rival submissions and perused the materials available on record.

(i)It is seen that PW3 had not supported the case of the prosecution and there is no evidence to prove the prior demand made on 29.10.2007 and the demand made during the trap on 31.01.2007 at about 11.00 a.m. PW3 admitted that the delay of three months occurred from the date of submitting the file [Ex.P8] to the Sub Registrar Office, Kunnoor for registration. When he approached the District Registrar Office after site inspection, he was informed that the file [Ex.P8] has to be forwarded to the Deputy Inspector General of Registration, Madurai for fixation of guideline value. According to PW3, the delay is only for the purpose of demand of bribe, hence he lodged the complaint [Ex.P5] to the appellant. Later, he realized his wrong notion.

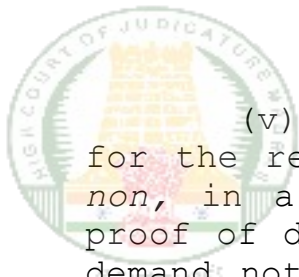
(ii)The evidence of PW4, the accompanying official witness is contradictory on vital aspects. With regard to Entrustment proceedings, PW4 stated that the phenolphthalein powder smeared on MO3 by Krishnakumar, the other official witness. In the Entrustment Mahazar [Ex.P7] it is recorded otherwise. The prosecution did not take any steps to clarify this aspect by examining the said Krishnakumar. Likewise with regard to handing over of bribe amount [MO3] to the 2nd respondent, PW4 stated that the cover containing MO3 was handed over by PW3 which was kept in the file [Ex.P8]. This aspect is a vital contradiction. Further, PW4 admitted that there was no demand made by the 1st respondent when he and PW3 initially met him. PW4 on instruction of the 1st respondent, called the 2nd respondent from his seat to the 1st respondent office room, where the 2nd respondent received the cash and kept it in the file [Ex.P8]. In the Recovery Mahazar [Ex.P12], it is recorded as though the 2nd respondent received the money, counted the same and kept it in the file [Ex.P8]. PW3's evidence is that MO3 was dropped in the file [Ex.P8]. It is pertinent to note that the file [Ex.P8] was not subjected to



phenolphthalein test. Hence, the *sine quo non* of demand has not been proved in this case as well the receipt and recovery becomes highly doubtful.

(iii)As regards the pre-arranged signal, PW4 stated that PW3 and PW4 came out from the office of the 1st respondent and gave the pre-arranged signal from the Verandah in the first floor. PW8 recorded in the Recovery Mahazar [Ex.P12] that PW3 and PW4 came out from the office and from the portico in ground floor, pre-arranged signal was given. Likewise with regard to the recovery of MO3, there is anomaly with regard to where and when MO3 was seized. PW8 stated Mo3 was seized from the 2nd respondent's table. The recovery of MO3 has been made in the office room of the 1st respondent as recorded in Ex.P12. PW5, the Record Clerk from the District Registration Office stated that there are 21 steps from the ground floor to reach first floor and the portico is at the ground floor. PW6, the Joint Sub Registrar stated about the procedure in fixation of guideline value in case of doubt. PW6 further confirmed that for fixation of guideline value the original guideline value has to be submitted by the Sub Registrar Office. In this case, the Sub Registrar Office had not submitted the guideline value despite requisition made by the District Registration Office. In view of the same, the recommendation for fixing the guideline value could not be made and the could not be forwarded to the Director General of Registration, Madurai. It is to be seen that, no witness have been examined from the Sub Registrar Office, Kunnoor. Further, the explanation offered by the respondents during the trap were not considered and the same were withheld by the prosecution.

(iv)The citations relied upon by the learned Additional Public Prosecutor on the preposition that even if the trap witnesses turn hostile and the circumstantial evidence is consistent with the guilt of the accused and not consistent with his innocence, there would be no difficulty in considering the case of the prosecution. The other aspect is that the circumstance preceding and succeeding to searching for the tainted money are relevant and useful to draw the presumption that the accused willingly received the currency notes. Further once the demand and voluntary acceptance of illegal gratification, knowing it to be bribe are proved by evidence, then conviction must follow. The accused in this case failed to offer plausible explanation immediately after recovery of the bribe amount. The material on records leads to a sole and inescapable conclusion of guilt of the accused, the judgment of acquittal calls for interference by the appellate court. On the evidence and materials, this Court finds that the citations relied upon by the appellant is not applicable to the present case.



(v)The citations relied upon by the learned senior counsel for the respondent for the prepositions. The demand is *sine quo non*, in a case of trap, mere recovery of tainted money without proof of demand will not constitute an offence. In this case the demand not proved. The explanation of the respondents have been withheld, the Appellate Court should not interfere with the acquittal of the lower Court. The presumption of innocence reinforced, reaffirmed and strengthened, once acquitted by the trial Court. Further while deciding judgment of acquittal the appellant Court is required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. In this case, it is found there is no error or manifest wrong to disturb the judgment of acquittal.

7.The trial Court on analysis of the evidence and materials had given a well reasoned judgment of acquittal, which needs no interference. In the result, the appeal is dismissed, confirming the judgment of acquittal rendered by the learned Special Judge, Special Court for trial of Prevention of Corruption Act Cases, Madurai in Special C.C.No.103 of 2011 dated 04.04.2014.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Special Judge, Special Court for trial of Prevention of Corruption
Act Cases, Madurai.

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

JUDGMENT IN

CrI.A(MD)No.191 of 2014
28.08.2020

db(CO)

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