



**BAIL SLIP**

The Appellant/Accused viz., Senthil S/o.Jayaraman, was released on bail as per order of this Court dated 23.09.2016 made in MP(MD) No.1 of 2015 in Crl A(MD)No.262 of 2015.

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

**DATED : 28.09.2020**

**CORAM:**

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**Crl.A.(MD)No.262 of 2015**

Senthil

...Appellant

Vs.

State by The Inspector of Police,  
A.K.Chathiram Police Station,  
A.K.Chathiram,  
Sirkazhi Taluk,  
Nagappattinam District.

...Respondent

**PRAYER :** The Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in C.C.No.60 of 2009 on the file of the Additional District and Sessions Judge cum Special Court for EC Act cases, Thanjavur and set aside the judgment dated 23.12.2010.

For Appellant : Mr.T.A.Ebenezer

For Respondent : Mr.A.Robinson  
Government Advocate (Crl. Side)

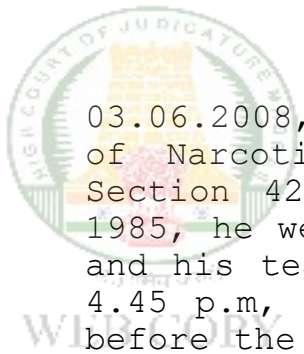
**J U D G M E N T**

The appellant / sole accused in C.C.No.60 of 2009, on the file of the learned Additional District and Sessions Judge, Special Court for EC Act cases, Thanjavur, has filed this Criminal Appeal. He was arrested on 03.06.2008 on the ground that he was in possession of 600 gms. Diazepam, charged for the offence punishable under Sections 8(c) read with 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985. In conclusion of the Trial, the learned Additional District and Sessions Judge, Special Court for EC Act cases, Thanjavur, by his judgment, dated 23.12.2010, found him guilty, convicted and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/- in default, to undergo Simple Imprisonment for six months. As against the order of the Trial Court, the appellant has preferred this appeal.

2.The brief facts of the prosecution case, in a nut-shell are as follows:

2.1.The Sub-Inspector of Police [P.W.2], A.K.Chathiram Police Station, Sirkazhi Taluk, Nagappattinam District, on

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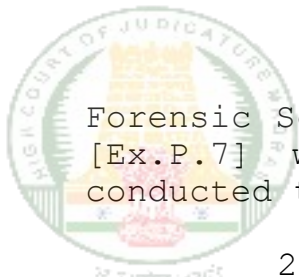
03.06.2008, received a secret information of illegal transportation of Narcotic substances. After informing the Superiors, as per Section 42(2) of Narcotic Drugs and Psychotropic Substances Act, 1985, he went to Pudur Madha Kadai along with the Constable [P.W.1] and his team. They identified the accused on 03.06.2008, at about 4.45 p.m, and informed the accused about his right to be examined before the learned Judicial Magistrate by a notice in [Ex.P.1]. But the accused did not insist for the same and agreed for the inspection by P.W.1 and P.W.2 themselves. On search, they found 600 gms of diazepam powder in a polythene bag and the same was recovered by the Sub-Inspector of Police [P.W.2] from this appellant under a Seizure Mahazar [Ex.P.2] in the presence of the Head Constable, Nagarajan [P.W.1] and one Aruldoss, Head Constable of A.K. Police Station.

2.2.P.W.2 has also drawn two samples of 5 gms each in a separate cover, sealed the contraband, arrested the accused and returned to the Police Station and registered a case in Crime No.290 of 2008 of A.K. Chathiram Police Station, as against this appellant for the offence punishable under Sections 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, on 03.06.2008 at 7.00 p.m. The printed First Information Report is marked as Ex.P.6. He also produced the contraband along with the accused before the learned Judicial Magistrate on 03.06.2008, but, the same was returned by the learned Judicial Magistrate with an endorsement to reproduce the same with exact weight. Thereafter, it was re-submitted on 18.06.2008.

2.3.The Inspector of Police, Thiru Venkatesan [P.W.4] took the investigation in this case, made a request for Chemical Analysis and the samples were also sent for Chemical Analysis by the learned Judicial Magistrate, Sirkali, vide his letter No.768 of 2008, dated 30.06.2008. The Forensic expert [P.W.3] examined the samples and found that the samples received is diazepam and reported that it is a Psychotropic Substance under Narcotic Drugs and Psychotropic Substances Act, vide his Analysis Report No.191 of 2008, dated 21.07.2008. The Investigation Officer, after collecting the Forensic report and after examining the witnesses, filed a final report as against this appellant on 04.07.2008 for the offence punishable under Section 8(c) read with 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985.

2.4.The learned Additional District and Sessions Judge cum Special Court for EC Act cases, Thanjavur, took up the case for trial in C.C.No.60 of 2009 and during the trial, four witnesses were examined on the side of the prosecution and eight exhibits were marked, besides three material objects.

2.5.P.W.2 and P.W.1 are the Sub-Inspector of Police and the Head Constable of A.K.Chathiram Police Station, respectively, who conducted the search and recovery from the appellant. P.W.3 is the



Forensic Science expert and through him the Forensic Science report [Ex.P.7] was marked. P.W.4 is the Inspector of Police, who conducted the further investigation and filed the final report.

2.6.After the prosecution evidence was closed, the incriminating materials from the prosecution side were put to the accused under Section 313 Cr.P.C. But the appellant / accused denied the same. Though he stated that there are witnesses on his side, the appellant / accused neither examined any witness nor marked any documents to establish his defence. In conclusion of the trial, the Trial Court found him guilty, convicted and sentenced as stated supra. Aggrieved over the same, the appellant has preferred the instant appeal.

3.Heard Mr.T.A.Ebenezer, learned counsel appearing for the appellant and Mr.A.Robinson, learned Government Advocate (Criminal side) appearing for the respondent.

4.Mr.T.A.Ebenezer, learned Counsel for the appellant submits that the charge itself is defective and the quantity of diazepam said to have been in possession of the appellant is not mentioned in the charge and kept as blank. He further submits that the quantity of the contraband is neither mentioned in the final report filed by P.W.4 nor in the charge framed against the appellant and therefore, on these defective charges, the conviction on the appellant by the Trial Court cannot be sustained.

5.He further submits that though this appellant was arrested on 03.06.2008 and the contraband was also recovered from him, it was produced only on 04.06.2008 without referring to the weight of the contraband and therefore, the learned Judicial Magistrate returned the contraband with an endorsement to submit the same with proper measurement. But the same was resubmitted only on 18.06.2008, after 15 days and there is no evidence as to in whose custody this contraband was kept during the intervening period. The Investigation Officer, when specifically asked about the safe custody of the contraband between 06.06.2008 and 18.06.2008, replied in a negative way, that he is not aware of the same. The Chemical examination is only after 18.06.2008 and therefore, no reliance can be placed on the prosecution case, in view of the discrepancies on the possession of the contraband between 06.06.2008 and 18.06.2008. He further submits that for the recovery made on 03.06.2008, a request for chemical analysis was made only on 30.06.2008 and therefore, the delay in this process would establish that these diazepam powder which is easily available from the medical shop, was procured in the open market and a false case was foisted as against this appellant.

6.The learned counsel appearing for the appellant has also pointed out that there is no independent witness in this case for recovery. According to the prosecution, they



arrested the appellant / accused, near the bus stand at Pudur Madha Kadai on 03.06.2008 at 4.45 p.m. Even though it was recovered from a busy place in a day light, no independent witness was examined on the side of the prosecution to establish the recovery of the contraband. Both P.W.1 and P.W.2 are the Official Witnesses and in the absence of any independent witness for the arrest and recovery, though the possibility of independent witness would be available at the time of occurrence, the non-examination of an independent witness is fatal to the case of the prosecution.

7.He also pointed out the contradictions with regard to the quantity of contraband as stated in Ex.P.2, Ex.P.7 and Ex.P.8. In Mahazar [Ex.P.2], in Form - 91 [Ex.P.7], the quantity of diazepam powder recovered from this appellant was shown as 600 gms. Though the Form - 91 [Ex.P.7] was returned by the learned Judicial Magistrate, Sirkali, with a direction to produce the same with proper weight on 06.06.2008, it was resubmitted only on 18.06.2008. In the report of the Forensic Science Department - Ex.P.8, the weight of the contraband seized shown as the remaining contraband after examination is shown as 6.900 gms and therefore, there are contradictory materials with regard to the quantity of the contraband seized and produced before the Court and the endorsement of the learned Judicial Magistrate, while returning the contraband and the delay in resubmitting the same would throw doubt on the case of the prosecution. Moreover, the diazepam powder is commonly available in medical shop. He further submits that the statutory requirements under Section 42(2), 50 and 57 of Narcotic Drugs and Psychotropic Substances Act, 1985, has not been complied with in this case and therefore, the learned counsel sought for the indulgence of this Court to extend the benefit of doubt in favour of the appellant.

8.Per contra, the learned Government Advocate submits that all the statutory requirements as per Sections 42(2), 50 and 57 were complied with and in Ex.P.1, the right of the appellant for examination before the learned Judicial Magistrate has been duly intimated and he also signed the same and permitted for the search by the respondent themselves. He further submits that the contraband was recovered from the polythene bag of the accused and the accused along with the seized contraband were produced before the concerned Judicial Magistrate on 04.06.2008 and at the time, there was no request from this appellant / accused, as contended under Section 52(A)(2) of Narcotic Drugs and Psychotropic Substances Act, 1985, to measure the contraband, based on the suspicion over the quantity of the contraband. Even at the time of questioning under Section 313 Cr.P.C, he did not raise any doubt with regard to the quantity of contraband seized and produced before the Court.

9.P.W.1 and P.W.2 in their evidence, have clearly stated that 600 gms of diazepam powder was recovered from the accused on the day of occurrence and the same is noted in the Recovery

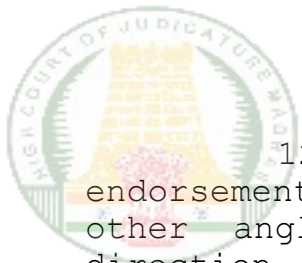


Mahazar-Ex.P.2. The contraband seized was also produced before the concerned Judicial Magistrate, Sirkali on 04.06.2008 along with the accused without any delay. But, however, the learned Judicial Magistrate returned the same only on 06.06.2008 with a direction to produce it with proper weight. The learned Government Advocate by referring the Form - 91 marked as Ex.P.7, in which, the contraband was produced before the Court, submits that the weight of the contraband diazepam is specifically mentioned as 590 gms. Along with this contraband, the contraband taken in two samples approximately 5 gms diazepam, in total 25 gms in a separate pocket for Chemical examination is also filed and therefore, in the Form - 91 [Ex.P.7] filed on 04.07.2008 itself, the weight of the contraband has been specifically mentioned. But despite the same, the learned Judicial Magistrate returned the same on 06.06.2008 with a direction to produce it with proper weight.

10.He would further submit that though there is a delay of 11 days in resubmitting the Form-91 [Ex.P.7] before the learned Judicial Magistrate, as per the available evidence the seal was intact and therefore, no adverse inference can be drawn in this case. Prior to 2012, there is no specific direction to the Police as to the keeping of the contraband, pending trial. Only in the year 2012, the Hon'ble Supreme Court issued a direction, directing all the States to establish separate malcana for the custody of the contraband and for disposal of seized Narcotic Drugs and Psychotropic Substances. This occurrence was taken place in the year 2008 and in the absence of any specific guidelines, the contraband kept in the Police Station with proper seal cannot be taken as a ground to disbelieve the case of the prosecution. The irresponsible answer of the Investigation Officer [P.W.4], who was examined after 2-1/2 years from the date of occurrence cannot be a ground as against the prosecution / respondent and in this regard, the learned Government Advocate made a submission that when the seal is intact, the appellant cannot take any advantage on the delay in resubmitting the contraband. In this regard, the learned Government Advocate has relied the following judgments:

- 1. 2015 (6) SCC 222 [Mohanlal Vs. State of Rajasthan]; and**
- 2. 2008 (8) SCC 557 [Hardip Singh Vs. State of Punjab]**

11.He further submits that the Scientific expert [P.W.3] has also confirmed in his report as well as in his evidence that the seals were intact, but there was no cross examination in this regard with P.W.3 and the quantity of the recovered materials as 600 gms. is also stated by P.W.1 and P.W.2. The appellant who failed to contradict this statement of P.W.1 to P.W.3, during the cross examination, cannot take this ground in the appeal without raising any objection to the witness on the quantity recovered and produced. In this regard, he relied upon the judgment of the Hon'ble Supreme Court reported in **2013 (14) SCC - 420 [Gian Chand and others Vs. State of Haryana]**.



12.The learned Government Advocate also interpreted the endorsement of the learned Judicial Magistrate as looking from the other angle "சரியான எடையுடன் தாக்கல் செய்யவும்" meant that only direction to produce the weight mentioned in the form 95, dated 4.6.2008 with same weight at the time of the further proceedings. This was to be considered, in the absence of any specification of the Learned Judicial Magistrate, that he measured the contraband and prepared the list of inventory as required under section 52 (A) of NDPS Act. If the Learned Judicial Magistrate found lesser quantity, by exercising power u/s 52(A) of NDPS Act, then the investigation officer is duty bound to explain the difference of the weight of the contraband. So the above word did not understand that the entire contraband was lesser in quantity i.e. below commercial quantity.

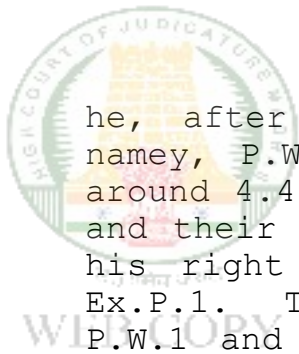
13.With regard to the fact that there was no compliance of section 42 of NDPS Act i.e. secret information was not reduced in writing and not informed to the immediate superior, the learned Government Advocate states that in Ex.P.3, it is clearly stated that the information of the case registered by P.W.1, was submitted before the Higher Officer / Investigation Officer [P.W.4] and he has accorded permission (Page No.18 typed set). The said document has reached the court at an earlier point of time i.e. on 04.06.2008. Hence the said argument of the Counsel for the Appellant was not correct.

14.For non-mentioning of the quantity of contraband in the charges framed against the accused, the learned Government Advocate submits that the charge was framed against the appellant / accused under Section 8(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 that he was in possession of commercial quantity and the accused has also made a lengthy cross examination of the witness understanding the charge for commercial quantity. While so, it cannot be a ground for the appellant.

15.Insofar as the non-examination of the independent witness and for not obtaining attestation from the independent witness in the recovery mahazar, the learned Government Advocate relied the judgment of the Hon'ble Supreme Court in the case of **Surinder Kumar vs. State of Punjab (2020 2 SCC 563)**. Therefore, the learned Government Advocate submits that the case has been proved by the prosecution beyond any reasonable doubt and there is no reason to interfere with the orders of the Trial Court.

16.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

17.On 03.06.2008, the Sub-Inspector of Police [P.W.2] received a secret information about the movement of contraband and  
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he, after informing the Higher Officials, along with his team, namey, P.W.1 and other Police Officers went to Pudur Madha Kadai around 4.45 p.m., intercepted the accused, explained their identity and their intention to search him. The accused was informed about his right to search before the concerned Judicial Magistrate in Ex.P.1. The accused has also signed the same. He also permitted P.W.1 and P.W.2 to search. P.W.2 recovered 600 gms of diazepam powder from the appellant / accused under seizure Mahazar [Ex.P.2] in the presence of P.W.1 and another Constable.

18.The learned counsel for the appellant has raised a serious doubt on the case of the prosecution that in the case of such nature and when the seizure was also made near a bus stand in a day light, the police ought to have recovered the contraband in the presence of an independent witness and the non-examination of independent witness is fatal to the case of the prosecution.

19.The learned Government Advocate, in this regard has relied upon catena of judgments, wherein, the Hon'ble Apex Court has held as follows :

**i) In 2007 (6) SCC - 410 :[Ravindran @ John Vs. Superintendent of Customs]**

"Learned Counsel for the appellant argued that the two independent witnesses in whose presence he had been searched were not examined at the trial. Reliance was placed on an observation contained in paragraph 28 of the report in (2004) 12 SCC 201 State of West Bengal and Others. v. Babu Chakraborty. In the instant case it is not disputed that two independent witnesses were associated when the search was conducted. The search was, therefore, conducted in accordance with law. But it is argued that failure to examine the two witnesses is fatal to the case of the prosecution. In our view, this is not the correct legal position. Even where independent evidence is not examined in the course of the trial the effect is that the evidence of the official witnesses may be approached with suspicion and the Court may insist on corroboration of their evidence.

**ii) In State (Govt. of NCT of Delhi) v. Sunil MANU/SC/0735/2000 : (2001) 1 SCC 652 :**

"We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-



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independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence **when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case.** If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions

iii) In **Baldev Singh vs. State of Haryana**) (2015) 17SCC554: MANU/SC/1268/2015:

"10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.

11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction



can be based on the testimony of police officials in *Girja Prasad (dead) by L.Rs. v. State of M.P.* MANU/SC/7862/2007 : AIR 2007 SCW 5589 : (2007) 7 SCC 625, it was held as under:

[24] In our judgment, the above proposition does not lay down correct law on the point. It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

[25] It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in the leading case of *Aher Raja Khima v. State of Saurashtra* MANU/SC/0040/1955 : AIR 1956 SC 217, Venkatarama Ayyar, J. stated:

The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.

(Emphasis supplied)

[26] In *Tahir v. State (Delhi)* MANU/SC/0089/1996 : (1996) 3 SCC 338, dealing with a similar question, Dr. A.S. Anand, J. (as His Lordship then was) stated: Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of



conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

In this case, the evidence of P.W.1 and P.W.2 is cogent and inspires confidence and there is no reason to disbelieve their evidence.

20. With regard to statutory violation pointed out by the learned Government Advocate, it is mentioned in Ex.P.3 that the information received was recorded by P.W.1 and also informed to the Higher Officer / Investigation Officer [P.W.4] and this document Ex.P.3 is also produced before the Court on 04.06.2008. The Inspector of Police [P.W.4], the immediate superior Officer of P.W.2, has also received the information on 03.06.2008 itself and commenced the investigation and therefore, there is no violation of any statutory provision as projected by the learned Counsel for the appellant.

21. The contraband recovered was produced along with the appellant / accused before the concerned Judicial Magistrate on 04.06.2008 in Form - 91 [Ex.P.7]. The learned Judicial Magistrate returned the same on 06.06.2008 with an endorsement to reproduce the same with proper weight. As pointed out by the learned Government Advocate, the weight of the contraband has very much been mentioned in the Form-91 marked as Ex.P.7, in which, the contraband has been produced before the concerned Judicial Magistrate Court. The learned Judicial Magistrate returned the contraband only after two days with an endorsement to reproduce the same with proper weight and it was resubmitted only on 18.06.2008 and therefore, there is a delay of 11 days in reproducing the same. The learned Government Advocate submits that this endorsement of the learned Judicial Magistrate denotes that the sample has to be resubmitted with the same weight, during the further proceedings, as has been mentioned in Form-95.

22. In the said endorsement of the learned Judicial Magistrate in the Form-91, he did not mention that any measurement was taken in his presence and it is found that a lesser quantity than mentioned in Form-91 was produced and for producing the exact quantity as mentioned in the Form-91, it was returned. In the absence of any such recording by the learned Judicial Magistrate that he has measured the contraband and it was lesser and therefore, it was returned, it cannot be inferred that a lesser quantity of contraband was also produced before the concerned Judicial Magistrate Court.

23. As rightly pointed out by the learned Government Advocate, P.W.1 and P.W.2 in their evidence have clearly stated that 600 gms. of contraband namely, diazepam powder was recovered and a proper seal was affixed and the seal remains intact upto examination conducted by the Forensic expert [P.W.3]. The Forensic



expert [P.W.3] in his evidence as well as in his report [Ex.P.8], has clearly stated that this contraband tested was received from the Judicial Magistrate Court with proper seal and therefore, there is no reason to disbelieve the case of the prosecution.

24.The evidence of the Forensic expert [P.W.3] and his report [Ex.P.8] reveals that the contraband seized is diazepam, a psychotropic substance under Narcotic Drugs and Psychotropic Substances Act, 1985. Though the learned counsel for the Appellant raised a plea that this diazepam is commonly available in all the medical shops, it cannot be sold without any valid prescription. Therefore, there is no reason to interfere with the order of the Trial Court.

25.In the light of the above discussion,

- the appeal is dismissed;
- the judgment of the learned Additional District and Sessions Judge cum Special Court for EC Act cases, Thanjavur dated 23.12.2010 made in C.C.No.60 of 2009 is hereby confirmed;
- the trial Court is directed to secure the appellant/accused and confine him to prison to undergo the remaining period of sentence;
- Bail bonds, if any executed by the accused, shall stand terminated.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

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**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

- 1.The Additional District and Sessions Judge cum Special Court for EC Act cases, Thanjavur
- 2.The Chief Judicial Magistrate, Nagapattinam District.
- 3.The Judicial Magistrate, Sirkazhi.



4. The Inspector of Police,  
A.K.Chathiram Police Station,  
A.K.Chathiram,  
Sirkazhi Taluk,  
Nagappattinam District.

5. The Superintendent, Central Prison, Trichy

6. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Copy to

The Section Officer (Records)  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+1 CC to M/s.T.A. EBENEZER, Advocate ( SR-18296[F] dated  
29/09/2020 )

**Crl.A. (MD)No.262 of 2015**

**28.09.2020**

kmv (CO)

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