

Crl.M.P.Nos.12199 & 12271 of 2022
in Crl.A.No.862 & 869 of 2022

RMT.TEEKAA RAMAN, J.

Criminal Appeals in Crl.A.Nos.869 and 862 of 2022 have been filed by the Accused 1 and 2 respectively, as against the judgment of conviction and sentence imposed by the learned Chief Judicial Magistrate/Special Judge, Thiruvarur in Spl.C.C.No.4/2015 dated 14.07.2022.

2. The case of the prosecution is as follows:

(i) On 13.07.2013 between 01.00pm and 06.00pm, at Thiruvarur Taluk Office, the 1st accused R.Ravichandran, Revenue Inspector and 2nd accused K.Ashok Kumar, Village Administrative Officer demanded Rs.50,000/- as bribe from one S.H.Shajahan for themselves as gratification other than legal remuneration, as a motive or reward, for doing their official act, for handing over the four vehicle keys without taking action under Mines and Minerals Act.

ii) In pursuance of the aforesaid demands, on 15.07.2013 between 16.00 hours and 16.10 hours at the Complainant's Udhayam Marketing Shop, South Main Street in Thiruvarur in Thiruvarur District, the 1st accused R.Ravichandran reiterated their demand and obtained Rs.50,000/- from the

complainant S.H.Shajahan, for themselves as illegal gratification other than legal remuneration, as a motive or reward, for handing over the four vehicle keys without taking action, which was seized by the accused on 13.07.2013. Therefore, both the accused committed the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. During the trial, on the side of the prosecution, 14 witnesses were examined as PW1 to PW14 and 18 documents were marked as Ex.P1 to Ex.P18. On the side of the defence, 3 witnesses were examined as DW1 to DW3 and 2 documents were examined as Ex.D1 and Ex.D2.

4. Based upon the oral and documentary evidence adduced before the trial Court, the trial Court has held that the charge under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, proved and convicted both the accused and sentenced them as follows:

Offence	Sentence
7 of PCA	A1 and A2 are sentenced to undergo SI for three years and to pay fine of Rs.1,000/- each, in default to undergo SI for three months.
13(2) r/w 13(1)(d) of PCA	A1 and A2 are sentenced to undergo SI for two years and to pay fine of Rs.1,000/- each, in default to undergo SI for two months.

Hence the appeals. Pending appeals, the appellants/accused 1 and 2 have filed

Criminal Miscellaneous Petitions in Crl.M.P.Nos.12271 & 12199 of 2022 respectively, seeking suspension of sentence.

5. Heard the learned counsel for the petitioners/appellants/accused.

6. The main contention raised in both the appeals is that PW2-defacto complainant was not cross examined by the accused and could not be cross examined since he is dead and hence, the valuable right of cross examination has been lost and the next contention is non observance of Rule 47 of DVAC Manual. The third and final contention is that the suggestive case of the defence was not considered in the perspective.

7.The learned Government Advocate (Crl.Side) was heard.

8. The PW2-defacto complainant was examined. An opportunity to cross examine has also been given. However, the accused have not chosen to cross examine him. After some time they filed an application for recall for cross examination. By that time, the PW2-defacto complainant was reported dead. In this case, the trial Court has rightly relied upon the decision of this Court in

Dr.Sunder Vs. State of Tamil Nadu, Rep. By The Inspector of Police, K-4 Anna Nagar Police Station, Chennai, reported in 2019 (3) LW 758, and rightly came to the conclusion that when sufficient opportunity was given for the cross examination, the same is admissible at the time it was recorded and cannot become inadmissible or cannot be scrapped by reason of his subsequent death.

9. The next point which was urged by the learned counsel for the petitioners/appellant/accused is non observance of Rule 47 of the DVAC Manual. The law is no longer *res integra*. It has been settled as early as on 2014 in K.Selvaraj and Others Vs. State and accordingly, the learned Chief Judicial Magistrate was right in rejecting the said contention.

10. After going through the documents filed by the defence side DW1, DW2 and DW3, it appears that a clear finding has been rendered by the trial Court that the accused have failed to probabalise their case.

11. In view of the matter, I am not inclined to suspend the sentence imposed upon the petitioners/appellants/accused and accordingly, **the Criminal Miscellaneous Petitions are dismissed for the present.** The

petitioners/accused are at liberty to move Suspension of Sentence in future on change of circumstances. The opinion expressed by me in the above paragraph are only limited for the purpose of disposal of the Criminal Miscellaneous Petitions.

11.08.2022

ars

Internet:Yes

*Crl.M.P.Nos.12199 & 12271 of 2022
in Crl.A.Nos.862 & 869 of 2022*

RMT.TEEKAA RAMAN,J.,

ars

**Crl.M.P.Nos.12199 & 12271 of 2022
in Crl.A.No.862 & 869 of 2022**

(1/2)

11.08.2022