



Bail Slip

The Appellant/Accused namely 1)K.Jeyakumar, S/o.Karuppiyah, 2)N.Rajagopal, S/o.Nattuchamy were releases on bail as per order of this court dated 28.03.2016 and 29.03.2016 and made in Crl.MP(MD) No.2633 of 2016 in Crl.A(MD) No.98 of 2016 and Crl.MP(MD) No.2689 of 2016 in Crl.A(MD) No.101 of 2016 on the file of this court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 12.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)Nos.98 and 101 of 2016

K.Jeyakumar : Appellant in
Crl.A(MD)No.98 of 2016/A2

N.Rajagopal : Appellant in
Crl.A(MD)No.101 of 2016/A1

Vs.

State rep. by
The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Sivagangai.
(Crime No.1 of 2010) : Respondent/Complainant
(in Crl.A(MD)No.98 of 2016)

The State Government represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Sivagangai.
Crime No.1 of 2010 : Respondent/Complainant
(in Crl.A(MD)No.101 of 2016)

Common Prayer: Criminal Appeals have filed under 374(2) of the Criminal Procedure Code to set aside the Judgment and Conviction passed by the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai, in in Spl.C.No.52 of 2014, dated 10.03.2016.

For Appellant : Mr.K.Sundara vel
(in Crl.A(MD)No.98 of 2016)
For Appellant : Mr.Prabhu Rajadurai
(in Crl.A(MD)No.101 of 2016)
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
(in both appeals)



COMMON JUDGMENT

Since the point to be decided both the appeals is one and the same, both the appeals were heard together and common judgment is pronounced.

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2. These Criminal Appeals are preferred against the judgment of conviction and sentenced passed by the Special Court for Trial of Cases under the Prevention of Corruption Act, Sivagangai, in Special Case No.52 of 2014, respectively. By which, A1 & A2 were sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for a period of 6 months for the offence under Section 7 of the Prevention of Corruption Act, 1988, and to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default, to undergo Rigorous Imprisonment for a period of 6 months for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, and the sentences were ordered to run concurrently. The total fine amount was paid by the appellants.

3. The case of the prosecution:-

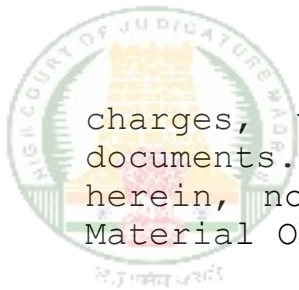
(i) P.W.2 lodged a complaint with the first respondent stating that the appellants, who were working as Head Constable and Constable in the Puluthipatti Police Station, Thiruppathur Taluk, Sivagangai, demanded a sum of Rs.500/- for the purpose of sending verification report to the Regional Passport Office, Madurai. In pursuance of the complaint lodged by him, a case was registered in Crime No.1 of 2010 by the first respondent and trap was laid and these appellants accepted the bribe amount of Rs.500/-. Based upon that, investigation was undertaken and a final report was also filed before the Special Court for Trial of Cases under the Prevention of Corruption Act, Sivagangai, which took cognizance in Special Case and framed the following charges against the accused.

4. Charge against the accused person:-

(i) The first charge is that the appellants demanded a sum of Rs.500/- as bribe amount for the purpose of sending verification report and accepted the same on 0601.2010 at about 08.00 p.m. Thereby, they committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

(ii) The second charge is that by demanding and accepting Rs.500/- as bribe amount, they have committed criminal misconduct and thereby, they are liable to punish for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

5. After framing the above said charges, the appellants were questioned and they denied the charges. For proving the above said



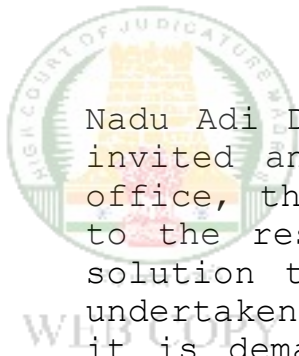
charges, the prosecution examined 17 witnesses and marked 43 documents. On the side of the accused namely, the appellants herein, no witness was examine and no document was marked and 3 Material Objects were exhibited by the prosecution.

6.The facts of the prosecution as narrated through the prosecution witness is briefly stated as follows:-

P.W.1 by name P.Anbarasu is a resident of Thiruppathur Taluk, Sivagangai District. During the occurrence period, the first accused was working as Head Constable and the second accused as Constable in the Pulithipatti Police Station, Thiruppathur Taluk, Sivagangai District. P.W.1 has applied for passport before the Regional Passport Office, Madurai. An enquiry was made in the last week of December 2009. On enquiry, the Passport Office, Madurai, has informed him that the application was forwarded to the concerned Police Station for verification. So, on that ground, on 31.12.2009, he contacted the Police Station, Puluthipatti, enquired about the application. They replied him that no such application was received. Later on 02.01.2010, they informed him that the passport application has been forwarded to them for verification. So, P.W.1 has visited the Police Station on the same day, at about 10.00 a.m. At that time, the first accused N.Rajagopal, who was working as Head Constable was present. P.W.1 made an enquiry with regard to the application. He told him that he must produce Nativity Certificate from the concerned Village Administrative Officer and Conduct Certificate from two persons and photo. Further, they demanded Rs.500/- as bribe. Another person (2nd Accused) namely, K.Jeyakumar, was also present and he also told him that he must bring a sum of Rs.500/-.

7.On the same day, at about 05.00 p.m, he again visited the Puluthipatti Police Station and produced the documents that were required by the first accused. He again demanded Rs.500/- as bribe and at that time, P.W.1 told him that he was not having any money. The first accused told him that verification report can be submitted only after paying Rs.500/-. The second accused also repeated the very same. He told him that he was not arranging money and after preparing money, he would come back.

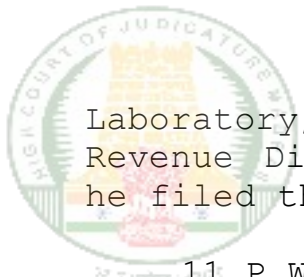
8.On 05.01.2010, again, the first accused contacted him through phone and enquired about the amount. He informed him that he will come next day. On 06.01.2010, he lodged a complaint with the Vigilance and Anti Corruption Department, Sivagangai, namely the respondent herein. It is marked as Ex.P.1. Later, the respondent invited the witnesses for complying the formalities for preparation of trap. At his request, P.W.1 one Anbumani, who was working as Junior Assistant, Tamilnadu Civil Supplies Corporation, and one Sekar P.W.2, who was working as Junior Assistant, Tamil



Nadu Adi Dravidar Housing & development Corporation (Tahdco) were invited and they visited the office at about 06.05 p.m. In the office, they made a preparation for trap. He handed over Rs.500/- to the respondent and the further process of sodium bicarbonate solution test was also undertaken. Further proceedings have been undertaken and he was advised to give the above said money, when it is demanded by A1 in his office and he was also directed to give signal, when that amount is received by A1. For that purpose, Mahazar has been prepared.

9. In pursuance of the above said trap arrangements, he along with P.W.2 and P.W.3, went to the office of A1 at 08.00 p.m. At that time, A1 demanded bribe amount of Rs.500/-. The currency notes of Rs.500/- were handed by him to A2 as per the instruction of A1. He counted the money and put the same on the table. As per the instruction, he made a signal to the police team for arrival.

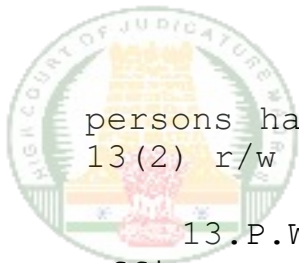
10. MO.1 series is the currency note, which was demanded by A1. When P.W.14 was working as Inspector in the Vigilance and Anti Corruption Department, on 06.01.2010, he received a complaint from P.W.1 and registered a case in Crime No.1 of 2010 under Section 7 of the Prevention Corruption Act and prepared the FIR, which was sent to the concerned Magistrate Court. As stated by P.W.1, he informed P.W.2-another person to assist for trap lying. He also instructed P.W.1 and P.W.2 and other witnesses go to the office of A1, the police team was hiding nearby the office. As instructed P.W.1, went to the office of A1. When he entered into the Police Station, the first accused was sitting in the verandah by wearing civil dress. He asked him whether he had brought Rs.500/-. He instructed the second accused to receive the money and affix the photo of P.W.1 in the verification form. He made a signal and after getting the above said signal, they went inside the office of A1 at about 08.05 p.m. P.W.1 identified the accused persons. He prepared sodium bicarbonate solution. He also instructed A2 to dip his right hand finger with the mixture, which was prepared, it turned purple, he collected the same in a bottle and sealed it. He was directed to dip the left hand finger. The sodium bicarbonate solution turned purple and that was also collected in glass bottle and sealed. On enquiry, A1 has informed that they did not receive any money from P.W.1 and the second accused told him that P.W.1 voluntarily gave that money to them. On further enquiry, A2 also handed over the currency notes from the wooden rack. The number of currency notes were compared with the mahazar, which was prepared at the time of preparation of the trap process and found same tallied. After completing the formalities and on further process, he recovered the documents from the office, for which also, recovery mahazar was also prepared. Further, investigation was undertaken. He recorded the statement of the witnesses and documents from the Forensic and Scientific



Laboratory, Chennai, and after obtaining proper sanction from the Revenue Divisional Officer and after completing the formalities, he filed the final report.

11.P.W.1 was further narrates the events. According to him, when he entered into the Police Station, the first accused was sitting in the verandah by wearing civil dress. He asked him whether he brought Rs.500/- and instructed the second accused to receive money and affix the photo of P.W.1 in the verification form. On that ground, the second accused demanded him to brought money and he hand over the money to the second accused and he counted the same and put it on the table. Thereafter, he obtained the signature of P.W.1 in the Register. Other came out of the Police Station as instructed earlier. He made a hand signal. Upon which, the Police Team entered into the Police Station.

12.P.W.14 narrates the further events. When the Police Team, entered the Police Station, the first accused was found seated in the verandah in civil dress. P.W.1 identified the accused Nos.1 & 2. He asked P.W.1 and other witnesses to go out of the Police Station and further process were undertaken as per law. At that time, the Sub-Inspector of Police came to the Police Station, they prepared the Sodium bicarbonate mixture and asked the second accused to dip his right finger and it turned pink. He collected the sample and labelled the same. Another solution was preferred in which, the second accused was required to dip his left finger. It turned pink colour and collected the sample and labeled the same. On enquiry, they stated that they did not receive any money from P.W.1 and the second accused told him that P.W.1 voluntarily gave the money. At the direction of A1, he took the money from the wooden rack. He compared the note number with that of the note mentioned in the mahazar that was prepared at the time of trap laying. During that course, it was found to be tallied. Later, he arrested the accused persons at about 10.00 a.m. Who also recovered currency note offered as bribe, also recovered the passport verification application from the police station along with the documents. He also prepared Rough Sketch. Other formalities were completed. He also made a search upon the house of the second accused and the place of staying of first accused nothing incriminating were found out. Further investigation was undertaken by P.W.16, who is the then Deputy Superintendent of Police. Recorded the statements of the witnesses. He submitted the records and as well as the samples of chemical analysis. After completing the formalities of investigation, further investigation was also undertaken by P.W.17. He received the sanction order. Again, he enquired the witnesses, who have been examined by his predecessors. Since very same statements were given that was not recorded by him. On 03.02.2011, after completing the investigation, final report was filed stating that the accused



persons have committed the offence punishable under Section 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

13.P.W.2 is a shadow witness, who attended the vigilance office, took part in the pre-trap arrangements and other formalities as stated by P.W.1 and the trap laying officer. He corroborated P.W.1 to some extent regarding the proceedings.

14.P.W.4 was known person to P.W.1 and he issued the conduct certificate. So, also P.W.5. Which were marked as Ex.P.9 & Ex.P.10.

15.P.W.6 was working as Village Administrative Officer of Piranpatti and also Settikurichy, which belongs to Puluthipatti, during the relevant time. He issued nativity certificate to P.W.1, which was marked as Ex.P.6.

16.P.W.7 was the Officer, who forwarded the passport application (Ex.P.4) of P.W.1 to Ulagampatti Police Station for verification on 30.12.2009. They received the report on 08.01.2010. It was forwarded to the Regional Passport Office on 19.01.2010.

17.P.W.9 was working as Head Constable, Puluthipatti Police Station during the relevant period. He received the passport verification request along with two other forms.

18.P.W.10, who was working as Sub-Inspector of Police, during the relevant period in Puluthipatti Police Station and he spoken about the role and the duty assigned to the first and second accused and he visited the police station after raid was undertaken.

19.P.W.11 was working as a Inspector of Police in Ulagampatti Police Station and Puluthipatti Police Station was under his control.

20.P.W.12, who was working as Junior Assistant in Chief Judicial Magistrate, Sivagangai, spoken about the sending of the samples to the Forensic and Scientific Laboratory, Chennai, for chemical analysis.

21.P.W.13, who was working in Regional Forensic and Scientific Laboratory, Chennai, spoken about the analysis and as well as the report (Ex.P.29) that was submitted by him.

22. With the examination of witnesses on the side of the prosecution is over and further that two were put on Section 313 Cr.P.C. questioning. They denied the allegation that has been made



against them, during the course of evidence. On their side, no witness was examined and no document was marked.

23.After the examination of the witnesses and after hearing the learned Additional Public Prosecutor as well as the defence, the trial Court recorded the findings of the condition and imposed the sentence as noted above.

24.Challenging the conviction and sentence, separate appeals have been preferred by the appellants.

25.Heard both sides.

26.It is a case of demand of bribe for making verification report to the Regional Passport Office, Madurai, to process the passport application that was made by P.W.1.

27.It is not denied that during the relevant time the accused No.1 and 2 were working as Head constable and as well as the Police Constable in Puluthipatti Police Station.

28.Let us straightaway go to the evidence of P.W.1.

29.P.W.1 is very clear in evidence to the effect that specific demand of bribe was made by the first accused on 02.01.2010. Which was also repeated by the second accused, on 02.01.2010, P.W.1 was not aware the name of the second accused. Later, it came to his knowledge and thereafter only, he is referring him with name. On the same day, at about 05.00 p.m, after arranging the document that was sought to be produced, again, visited the Police Station. At that time also, demand was made by both the accused. So, he went back to his home.

30.According to him, on 05.01.2010, the first accused contacted him through phone and enquired about the bribe money and he promised him to visit the Police Station in the evening. P.W.1 was not intended to give bribe to the accused person. He lodged a complaint on 06.01.2010. As narrated in the preamble portion. Further, pre-trap and trap proceedings were undertaken. This evidence is corroborated by P.W.2 mentioned above. He is the shadow witness. P.W.3 was another witness, who accompanied the Police team at the time of trap. He also corroborated the evidence of P.W.1 and P.W.2 as well as the Trap Laying Officer namely, P.W.14.

31.Now, the learned counsel for the appellants wants to assail the judgment on very many grounds. They filed a additional ground and apart from that filed written submissions.



32.First argument, which was jointly undertaken by the appellants is that the demand itself is not properly proved by the prosecution since there are contradiction in the evidence of P.W.1 and P.W.2. According to him, it is highly unthinkable that the police people contacted P.W.1 stating that they received verification form and also demanded bribe through phone on 05.01.2010. But, the call data were not recovered. If really, there was any such phone calls, the Investigating Officer ought to have seized the call details and verified the same. But, that was not undertaken.

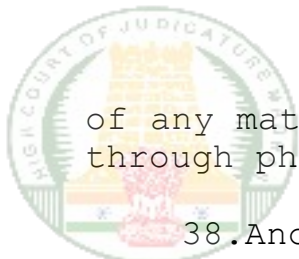
33.He would further submit that contra to the facts mentioned in the complaint by P.W.1 that the accused persons informed him to produce Conduct Certificates, Photo, Nativity Certificate, on 02.01.2010 itself, he was informed to bring the documents. But, it is stated by him in the complaint that after receiving the phone call, on 02.01.2010, he went to the Police Station in the evening. But, in the evidence, he stated that he visited the Police Station at about 10.00 a.m. Only at that time, he was told about the documents to be produced and they demanded bribe.

34.It is further stated by him that on the same day itself, he received all the documents and handed over the same in the evening at 05.00 p.m. So, according to him, this itself creates doubt and if really as stated by him in the complaint, he visited the Police Station only at 05.00 p.m on 02.01.2010. the demand of bribe at 10.00 a.m on 02.01.2010 as stated by him in the evidence falls to the ground. So, according to him, this is a material contradiction.

35.No doubt. It is a contradiction between the content of the complaint and the evidence.

36.Now, the question which arises for consideration is that whether because of this contradiction, the demand of bribe is unbelievable one. If we disbelieve the evidence of P.W.1 with regard to the demand of bribe on 02.01.2022, subsequent events must be taken into account.

37.We can ignore the occurrence said to have taken place on 02.01.2010 for a while. Again, it is a evidence of P.W.1, demand was made on 05.01.2010 by the first accused through telephone only. At this juncture, as mentioned earlier, call details of the phone were not recovered. So, according to the appellants, this demand is also not corroborated by proper documents. Since call details were not collected, the evidence of P.W.1 is to be disbelieved on this sole ground. Probably this might have been a mistake on the part of the Investigating Officer. In the absence



of any materials with regard to the demand of bribe on 05.01.2010, through phone call, the oral evidence has to be rejected.

38. Another contention raised by the learned counsel for the appellants is that if really P.W.1 visited the Police Station at 05.00 p.m, on 02.01.2010, allegation that when he visited the Police Station, he was told to bring documents is not correct because on that date itself, he received the documents and certificates from the concerned persons as narrated above. So, according to the appellants, serious doubt arises with regard to his visit on 02.01.2010 itself and demand of bribe.

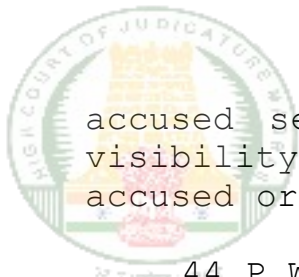
39. The number of visits to the Police Station must be given importance in view of the fact that the specific case of prosecution that previous demand was made on 02.01.2010. So, I find material contradictions and find force in the arguments.

40. In view of the above said findings, the prosecution has failed to prove that the accused person demanded bribe on 02.01.2010.

41. Another fact that brought to the notice of the Court during the course of argument as well as in the written statement is that the documents sought to be furnished were returned back to P.W.1. When he informed the accused that he has not brought money. So, according to the appellants, when P.W.1 visiting the vigilance and anticorruption Department, the documents were very well available with him. But, nowhere in the mahazar or the other events, the availability of documents were spoken. Even, the first respondent verified all those documents, but there is no whisper about the documents. How those documents recovered from the custody of the accused was not properly explained. We will deal about this point in the later part of the judgment.

42. Now, coming to the acceptance. We have evidence of P.W.1 and P.W.2 that on 06.01.2010, during the trap, the first accused demanded whether he has brought Rs.500/-. Similarly, the second accused also enquired whether he brought money. At that time, he handed over the same to the second accused.

43. At this juncture, the learned counsel for the appellants would submit that the accused Nos. 1 & 2 seats were not adjacent to each other. For that purpose, he would rely upon the rough sketch. According to him, there was a verandah. After that, there was a room. So, even as per the sketch, the first accused seat was in the Verandah portion, whereas, the second accused was sitting inside the hall near the Record Room. Absolutely, there is no possibility for P.W.2 to witness the demand or acceptance of money. Because A1 seat was on the eastern corner and the second



accused seat was inside the veranda. Absolutely, there was no visibility from the entrance portion either to the seat of second accused or to the seat of the first accused.

44.P.W.2 stating that he did not go inside the Police Station, he was about to stay in the entrance itself and what transpired between the accused and P.W.1 was not in his hearing and vision. To that extent, he was treated as hostile by the prosecution.

45.But, however, the learned counsel for the appellants would submit that P.W.1 has stated that both were seated close to each other. Only at the instruction, second accused, received money after demand. But, no doubt as mentioned earlier the seat is not adjacent. But, that need not be taken into account, for the simple reason that the money was received by the second accused and put the same in the wooden rack, which was available next to his seat. No doubt, there is some contradiction with regard to the place where the money was found.

46.P.W.3 stated that when they entered the Police Station, the money was found lying in the floor. At the request of the Police Officer, the second accused took the money and handed over the same. These points were urged by the learned counsel for the appellants to say that absolutely there is no proof of acceptance of money. Simply because, the money was found lying in the table or in the floor, no presumption can be drawn that the money was accepted by the accused.

47.For that purpose, he would rely upon the judgement that **P.Paulraj Vs State 2012(3)MWN (Cr.)380**. Here, the evidence of P.W.1, on this aspect, is very clear that after receiving the money, the second accused counted the same and put the same in the table. Phenolphthalein test also proved positive insofar as the second accused is concerned.

48.The learned counsel for the appellants would submit that when the money was taken by the second accused from the floor which was smeared with the phenolphthalein powder naturally, Sodium bicarbonate solution would have turned pink. So according to him, no importance can be attached to it. No doubt, that the Trap Laying Officer should not have asked the second accused to take the money and hand over the same. But, that will not spoil the case of the prosecution. The evidence of P.W.3 to the effect that the sodium bicarbonate solution test was undertaken even before asking the second accused to pick and hand over the money. Absolutely, there is no material contradiction in the evidence of P.W.1 and Trap Laying Officer with regard to the further development and procedure.



49.The arguments there is every possibility of P.W.1 to have planted the currency note either on table or beneath the records in the wooden rack or in the floor cannot be ruled out; because the money was not recovered from the hands of the second accused or the first accused; It was lying on the floor. So, according to him, when such being the possible view, which is infavour the of accused, must be taken into account.

50.For that purpose, he would rely upon the judgment of **Panalal Damodar Rathi Vs. State of Maharashtra (1979) 4 Supreme Court Cases 526** to sustain his argument and would rely upon the portion of the cross-examination of P.W.1, wherein he has stated that P.W.1 was in the Police Station for about 50 minutes. So, according to him, there is every possibility planting the money because he was inimical towards the police.

51.According to him, P.W.1 was not happy with the appellant for having delayed the sending of verification report. Only on that ground, he planted the money. But, absolutely, this course of evidence is nothing but a wrong statement because P.W.2 stated that P.W.1 was present or stayed in the Police Station for about 5 minutes. The Trap Laying Officer (P.W.14) stating that P.W.1 and P.W.2 entered the Police Station at about 08.00 p.m and at about 08.05 p.m, they came out of and made a signal. It is seen that it is a wrong statement of P.W.1 and that need not be given any importance.

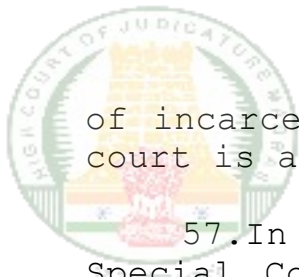
52.Now, coming to the recovery of documents from the accused as stated above it creates doubt over the demand.

53.In view of the above said findings the prosecution has filed to prove the demand of bribe amount on 02.01.2010 and on the date of trap Naturally, the offence under Section 3(1)(d) may not be attracted. So, the criminal misconduct, which alleged against these petitioners also stands not proved.

54.But, however, offence under Section 7 of prevention of Corruption Act, has been established beyond doubt in view of the above findings.

55.Accordingly, the conviction and sentence under Section 13 (2) of Prevention of Corruption Act, is liable to be set aside and accordingly set aside.

56.But, however, considering the oldness of the matter and the facts and circumstances of the case money involved, in my considered view that the imprisonment of three years, imposed upon the appellants/A1 and A2 can be reduced to **six months of rigorous imprisonment** from 3 years under Section 7 of the Act. The period



of incarceration during the investigation as ordered by the trial court is also set off and the fine amount is sustained.

57. In the result, the judgment of conviction passed by the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai, in Spl.C.C.No.52 of 2014, is modified to the above extend and the appeals are **partly allowed**. The conviction imposed on the appellants under Section 7 of the Act, is sustained. Insofar as the sentence is concerned, it is modified to six months of rigorous imprisonment as stated above.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dss

To :

1. The Special Judge for Vigilance and Anti-corruption Cases, Sivagangai.
2. The Deputy Superintendent of Police, Vigilance and Anti-corruption Cases, Sivagangai.
3. The Inspector of Police, Vigilance and Anti-Corruption, Sivagangai.
4. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Copy to :

The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M. KARTHIKEYA VENKITACHALAPATHY, Advocate (SR-18703 [F] dated 13/04/2022)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-18529[F] dated 13/04/2022)

Crl.A(MD)Nos.98 and 101 of 2016

12.04.2022