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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2023

PRONOUNCED ON: 06.12.2023

Coram

The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

Criminal Appeal No.360 of 2016

G.Arunagiri ... Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Chennai.
Crime No.06/AC/2008/CCI ... Respondent/accused

Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of conviction made in C.C.No.76 of 2011 (Old No.10/2009) dated 29.04.2016 on the file of Special Court for the cases under Prevention of Corruption Act at Chennai.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.C.E.Pratap,
Government Advocate (Criminal side)

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JUDGMENT

The present Criminal Appeal has been filed by the sole accused in C.C.No.76 of 2011 (Old No.10/2009), challenging the judgment of conviction and sentence dated 29.4.2016 rendered by the Special Judge for the cases under Prevention of Corruption Act at Chennai.

2. The sentence imposed upon the appellant is as under:-

Under Section	Sentence
7 of Prevention of Corruption Act, 1988	one year of rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.
13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	two years of rigorous imprisonment and a fine of Rs.1000/-, in default, to undergo three months simple imprisonment.

3.**Prosecution's version:**

3.1.The appellant/accused viz.,Arunagiri was working as Surveyor-IV at Egmore-Nungambakkam Taluk Office till 27.03.2008 and is a Public Servant under Section 2(c) of Prevention of Corruption Act, 1988. On 24.01.2008, the defacto complainant viz.,Sai Venugopal gave an application to Egmore-Nungambakkam Taluk Office requesting a sketch for his plot in R.S.No.1243 (part) and the details and extent of the other land owners in the

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said Survey numbers, so as to enable him to get C.M.D.A., approval for constructing a building at his plot.

3.2. Thereafter, on 25.03.2008, the appellant/accused had inspected the site and obtained the signature of the defacto complainant on the backside of the application without date and asked the defacto complainant to meet him at his office at 6.00 pm, on the same day. When the defacto complainant met the accused at 6.00 pm., at his office along with his Manager, the accused had demanded Rs.10,000/- to process the file and further informed that the expenses for preparing the sketch and the travelling expenses to go to C.M.D.A., office may be around Rs.30,000/-. On 25.03.2008 around 7.30p.m., the defacto complainant again met the accused and the accused reiterated his earlier demand of Rs.10,000/- to initiate proceedings. The defacto complainant was not willing to pay the amount as bribe, thereby he has lodged a complaint on 27.03.2008 at 10.30.am to the Deputy Superintendent of Police, Vigilance and Anti-corruption, Chennai City–I Chennai-28. On receipt of the complaint, he had forwarded the same to the Inspector of Police (P.W.12) and registered a case in Crime No.6/2008 against the accused under Section 7 of Prevention of Corruption

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Act, 1988.

3.3. Based on the complaint, a trap was laid and the accused was caught red handed while receiving the bribe and he was arrested and thereafter, after completion of the investigation, the respondent had filed the Final Report against the accused before the Principal Sessions Judge, Chennai, on 28.07.2009 and the same was taken on file and made over to IV Additional Sessions Court, Chennai.

3.4. On issuance of summon, the accused appeared before the Principal Sessions Judge on 20.10.2009 and his counsel had filed memo of appearance. Copies were furnished to the accused, in due compliance of Section 207 Cr.P.C.

3.5. After hearing both sides, charges were framed against the accused for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The accused denied the charges and sought to be tried.

3.6. On the side of the prosecution, P.Ws.1 to P.W.13 were examined and Exs.P1 to P17 and M.Os.1 to M.O.3 were marked.

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3.7. Based on the incriminating materials, when the accused was questioned under Section 313 Cr.P.C., the accused pleaded not guilty. However, he has not examined any defence witness and marked any documents.

3.8. The trial Court, after hearing the arguments of prosecution as well as the defence, found the accused guilty and sentenced him to undergo imprisonment and pay the fine as stated above. Challenging the judgment of conviction and sentence imposed by the trial Court, the present Criminal Appeal has been filed.

4.1 Assailing the impugned judgment of conviction rendered by the trial Court, Mr.T.Muruganantham, learned counsel appearing for the appellant/accused, had raised following grounds.

(i) The trial Court had erred in convicting the appellant by not properly considering and appreciating the evidence on record.

(ii) As per prosecution, the defacto complainant is stated to have given the complaint to the Inspector of Police as well as Deputy Superintendent of Police and that the complaint given to the

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Deputy Superintendent of police was acted upon and the other complaint given to the Inspector of Police was burked by the respondent, thereby creating a doubt with regard to the prosecution case.

(iii) As per evidence of P.W.2 in his complaint, he has stated that a pretrap demand was made by the accused in the presence of his Manager one Kandasamy, who had accompanied him to meet the accused at his office, but the prosecution has not chosen to examine him as a witness to establish the pretrap demand and thereby, the non examination of said Kandasamy, creates dent of the prosecution case.

(iv) The duty of the appellant/accused is only to survey the property and give a report and other part of the work as claimed by the defacto complainant-P.W.2 does not fall within the purview of the work assigned to the appellant and in such circumstances, the alleged demand stated to have been made by the appellant for doing that work becomes doubtful.

(v) Even as per the prosecution, the tainted notes were found only on the chair of the appellant/accused which probabilises the

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defence of the appellant that the amount was planted by P.W.2-defacto complainant while he was away from his seat;

(vi) Further, the demand was not properly proved by the prosecution and when the demand has not been properly proved, the trial Court had wrongly convicted the accused based on mere recovery; and

(vii) the trial Court had failed to note that the sanction accorded to prosecute the appellant/accused is not in accordance with law.

4.2. The learned counsel for the appellant/accused would ultimately contend that the prosecution has not proved its case by laying cogent and convincing evidence and taking into consideration the over all cumulative evidence of the witnesses and the attending circumstances, the impugned judgment of conviction and sentence is not sustainable and therefore, the appellant is entitled for acquittal.

4.3. The learned counsel would also submit that the appellant/accused has rendered unblemished service and on his conviction, he has been removed from service and that as on date, he is aged about 72 years, suffering from various ailments and that he had undergone Cataract and

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Glaucoma surgeries and he has also totally lost his vision on his right eye. By producing Medical Reports on the ailments of the appellant, the learned counsel for the appellant/accused would submit that the appellant/accused is not able to perform even his routine works and thereby, the mitigating circumstances may also be taken into account.

5.1 Per contra, Mr.C.E.Pratap, learned Government Advocate (Criminal side) appearing for the respondent, would submit that the respondent had proved its case beyond reasonable doubt by examining witnesses and marking documents and material objects and thereby, the trial Court finding that the appellant/accused had committed the offence, had found him guilty and rightly convicted him.

5.2. The learned Government Advocate had drawn the attention of this Court to the deposition of P.W.1-Ramakrishnan, who was working as

Assistant Director, Survey Department, Survey and Land Records, Chennai-1, who had deposed that he being satisfied with the documents placed before him and finding that there is criminal misconduct, had accorded sanction

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under Section 19(1)(C) of Prevention of Corruption Act, 1988 to prosecute the case, and had submitted that P.W.1 had been examined as witness and the Sanction Order dated 20.03.2009 was marked as Ex.A1, the appellant/accused had not chosen to cross-examine him and that the sanction accorded is within the purview of law.

5.3. The learned Government Advocate (Criminal side) would further submit the evidence of P.Ws.2 and P.W.3 are cogent and consistent with regard to the demand. P.W.2-defacto complainant in his evidence categorically deposed that Rs.10,000/- was demanded by the accused initially to process his application and the said fact was established by P.W.2 through his complaint also, which was marked as Ex.P2 and thereby, the non examination of the Manager is immaterial and it does not vitiate the case of the prosecution. Further P.W.2 has deposed that the appellant/accused had received the tainted money and kept it on the seat below his thigh. The receipt of money by the appellant/accused is proved by phenolphthalein test conducted on his fingers. The learned Government Advocate had also taken this Court through the evidence of P.W.3, the accompanying witness with the evidence of P.W.2 in respect of demand and

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acceptance of tainted money by the accused and also recovery of the tainted money produced by the accused which was kept under his thighs on the chair under Ex.P.6-Seizure Mahazar, which also establishes the same.

5.4. He would further submit that the oral evidence of P.W.3, official witness, P.W.12-Trap Laying Officer, PW11, Chemical Analyst and the documentary evidence viz., Ex.P13, Chemical Analysis Report cogently establish the recovery of tainted money from the accused and thereby the prosecution has clearly proved the demand, acceptance and recovery of tainted money from the accused. When the demand and acceptance by the appellant has been proved, the burden of proof automatically shifts on the accused as per Section 20 of the Prevention of Corruption Act, however, the accused has not discharged the burden by letting in any evidence in rebuttal by way of defence to prove his case.

5.5. The learned Government Advocate (Criminal Side), as regards the demand of Rs.30,000/- mentioned in the First Information Report is concerned, would submit that the said demand was made by the appellant/accused for preparation of FMB sketch and the expenses to go to

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CMDA and thereby, there is no discrepancy in the evidence of P.W.2/defacto complainant and the said fact was also mentioned in Ex.P14-First Information Report and thereby, he would seek for dismissal of the criminal appeal.

6. Heard Mr.T.Muruganantham, learned counsel appearing for the appellant/accused and Mr.C.E.Pratap, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

7. What has to be seen is (i) whether the prosecution has proved its case beyond reasonable doubt and (ii) whether the trial court is right in appreciating the evidence on record and finding the accused guilty and convicting him.

8. The evidence of the prosecution as culled out from the records would show that P.W.1, viz.,Ramakrishnan, Assistant Director, Survey Department, Survey and Land Records, Chennai-1, on 27.03.2008 on perusing the documents received from Vigilance and Anti Corruption

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Department, being satisfied that there is a criminal misconduct, had accorded sanction under Section 19(1)(C) of Prevention of Corruption Act, 1988, to prosecute the case and the said sanction order dated 20.03.2009 is marked as Ex.A1.

9. P.W.2-Sai Venugopal, the defacto complainant was residing at Pudupet and had given an application dated 24.01.2008 to the Tahsildar, Egmore-Nungambakkam Taluk Office, requesting Rough Sketch for his plot in R.S. No.1243 (part) and the details and extent of the other land owners in the said survey number so as to enable him to get CMDA approval for constructing a building at his plot. On 25.03.2008, the appellant/accused had come to the defacto complainant's house with the application and had inspected the site and asked him to sign in the application without mentioning the date and instructed the defacto complainant to meet him at his office on the same day at 6.00 pm. When the defacto complainant met the accused as instructed by him at 6.00 pm., at his office along with his Manager(Kandasamy), the appellant/accused had demanded Rs.10,000/- to process the file and had further intimated that the expenses for preparing sketch and the travelling expenses to go to C.M.D.A., office may be around

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Rs.30,000/-. Further, on 25.03.2008 around 7.30 p.m., when P.W.2/defacto complainant had again met the accused, he had reiterated his earlier demand of Rs.10,000/- to initiate the proceedings. Since the defacto complainant was not willing to pay the bribe amount, he has lodged a complaint(Ex.P2) on 27.03.2008 at 10.30.am to the Deputy Superintendent of Police, Vigilance and Anti Corruption.

10. On receipt of Ex.P2-complaint, the Deputy Superintendent of Police, Vigilance and Anti Corruption, had forwarded the same to the Inspector of Police (P.W.12), who is the Trap Laying Officer, had registered a case in Crime No.6/2008 against the accused under Section 7 of the Prevention of Corruption Act, 1988. The printed First Information Report is Ex.P.14. Thereafter, P.W.12-Trap Laying Officer had given a requisition to the Inspector General of Registration under Ex.P.15 and had arranged for two official witnesses namely Tr.Kannan(P.W.3) and Tr.Punithavel. When the official witnesses had attended the office, P.W.12 had introduced P.W.2-defacto complainant to them and handed over the complaint and First Information Report to the official witnesses to make them get acquainted with the facts of the case. Thereafter, P.W.2 had handed over the bribe

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money of Rs.10,000/- (Rs.1000 x 10) to the official witness Tr.Punithavel and asked him to count and note down the serial numbers of the said currency notes. Subsequently, Sodium Carbonate solution was prepared in two glass tumblers and the official witness Tr.Punithavel was directed to dip the fingers of both his hands in the Sodium Carbonate solution. The solution did not change the colour. Thereafter, the currency notes were smeared with phenolphthalein powder and the official witness Tr.Punithavel was again asked to count the currency notes and the official witness Tr.Punithavel was directed to dip the fingers of both the hands in the glass tumblers and the Sodium Carbonate solution, after the wash, has turned pink. The Chemical test was demonstrated to the official witnesses and the defacto complainant and the importance of the above test and the scheme of the trap proceedings was explained to P.W.2, P.W.3 and other official witness and the tainted money was handed over to P.W.2-defacto complainant with an instruction to hand over the same to the accused only on demand. He was further instructed to give signal by combing his hair once tainted money was accepted by the accused. The official witness viz.,P.W.3-Kannan was asked to accompany the defacto complainant and observe the conversations between P.W.2-defacto complainant and the

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appellant/accused. Ex.P4-Entrustment Mahazar was prepared by P.W.12 in the presence of the P.W.2, P.W.3 and yet another official witness and after finalization of the scheme for trap, P.W.2 was asked to contact the accused over phone. The appellant/accused had informed that he was going for inspection with R.D.O., and he had instructed P.W.2-defacto complainant to meet him at 6.00 pm., at his office.

11. P.W.12-Trap Laying Officer along with P.W.2-defacto complainant and P.W.3-Kannan, the official witness and the other official witness(not examined) proceeded to Egmore–Nungambakkam Taluk Office around 5.00pm., and reached the said office around 5.45p.m. P.W.2-defacto complainant and P.W.3-official witness met the accused at 6.00 pm., at his office. The accused went inside the Tahsildar room alleging that he was called by Tahsildar and returned within a short span of time and enquired whether he had brought the money demanded by him. P.W.2 had handed over the tainted amount of Rs.10,000/- (M.O.1) to the appellant/accused and had requested him to complete the work at the earliest. The accused had accepted the same and kept the amount under his left thigh in the chair in which he was sitting. P.W.3-shadow witness had

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also witnessed the happenings. P.W.2 along with P.W.3 had come out of the office and gave the pre-arranged signal. P.W.12-Trap Laying Officer along with police party and official witnesses went to the spot and enquired the defacto complainant about the happenings. P.W.2-defacto complainant identified the accused. Thereafter, P.W.12-Trap Laying Officer introduced himself to the accused and after preparing the Sodium Carbonate Solution in M.O.2 and M.O.3, conducted phenolphthalein test on both the hands of the accused and the same proved positive. Thereafter, the appellant/accused produced the tainted money received from the defacto complainant which was kept under his left thigh on his chair and the same was recovered. P.W.12 Trap Laying Officer asked P.W.3 to verify the serial numbers of currency notes recovered from the accused with serial numbers in Ex.P4-Entrustment Mahazar and they were found to be tallied and confirmed by P.W.3. Thereafter, P.W.12 enquired the accused about the application of P.W.2 and he had produced the application along with enclosures and recovered the

same. P.W.12 had also recovered the attendance sheet for the month of March, 2008 and thereafter, prepared Ex.P5-Seizure Mahazar in the

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presence of official witnesses. P.W.12 had arrested the accused and released him on bail.

12. Thereafter, P.W.12 had prepared a rough sketch under Ex.P.17 and proceeded to the house of the accused after advance intimation to the court and search was made in the presence of official witnesses and wife of the accused and had prepared Ex.P8-search report. As per Ex.P8, nothing was recovered in the house search. P.W.12, later handed over the case records to P.W.13 for further investigation. On receipt of the same, P.W.13 had obtained the photo copy of Distribution Register, Patta Name Transfer Register and Petition Distribution Register under Exs.P.9, Ex.P.10, and Ex.P.11 certified by the Tahsildar and the solution bottles collected during the trap, M.O.2 and M.O.3 were sent for chemical analysis through court. P.W.13, after receiving Ex.P13-Chemical Analysis Report confirming the handling of the money by the accused, had examined the witnesses and recorded their statements and after obtaining Ex.P1-sanction order from P.W.1, had laid charge sheet against the accused under Sections 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act 1988.

13. The defence projected by the appellant/accused is that he had not

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demanded and accepted the bribe amount from P.W.2 and that P.W.2, who had met the accused at his office on 27.03.2008, had placed the tainted money in his chair when he had gone to meet the Tahsildar and later, falsely implicated him in this case. Of course, though the presumption is raised under Section 20 of Prevention of Corruption Act, 1988, a bounden duty is cast on the prosecution to prove that the appellant/accused had demanded and accepted the illegal gratification in this case.

14. Though the learned counsel for the appellant had raised a ground that the duty of the appellant is only to survey the property and give a report and the other part of the work as claimed by P.W.2, does not fall within the ambit and purview of the appellant, it is the case of the prosecution that on 24.01.2008, P.W.2 had given an application for obtaining a sketch for his plot in R.S. No.1243 (part) so as to enable him to get an approval from C.M.D.A., for constructing a building in his plot. The file containing the application of P.W.2 had been marked as Ex.P.6. P.W.4-Deputy Tahsildar and P.W.6-Record Clerk of Egmore-Nungambakkam Taluk Office have deposed about the receipt of application under Ex.P6 from P.W.2. The same had been entered in Ex.P.9- Distribution Register and Ex.P10-Patta Transfer

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Register. The endorsement of P.W.4 in Ex.P.6 establishes that the same was forwarded for enquiry on 29.01.2008 itself. P.W.5-Head Surveyor had deposed that Ex.P.6 was received in their section on 04.02.2008 and it was received by the accused on the next day(05.02.2008) and it had also reflected as per the endorsement in Ex.P-11-Petition Distribution register. With regard to this, the appellant/accused when questioned under Section 313(1)(b) of Cr.P.C., had admitted to the evidence of P.W.4, P.W.5 and P.W.6 as true**.** The above facts established that Ex.P.6 was received by the accused on 05.02.2008 and the same was pending with the appellant/accused for enquiry and the appellant/accused had not submitted a report till the date of trap proceedings. Therefore, the ground raised by the appellant that the work as claimed by P.W.2 does not fall within the purview of the appellant is unsustainable.

15.The other contention raised by the learned counsel for the appellant is that the prosecution had not properly proved the demand and recovery. In this connection the evidence of P.W.2 is vital and he had

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deposed that on 25.03.2008, the accused had inspected his plot and obtained his signature at the back side of his application and instructed him not to mention the date and had asked him to meet the accused on the same day at his office. P.W.2 had met the accused on 25.03.2008 and the accused had demanded Rs.10,000/- to process his application. When P.W.2 had met the accused on the next day i.e.,on 26.03.2008 and the accused had reiterated his earlier demand. P.W.2 had also deposed about the lodging of complaint-Ex.P.2 and preparation of Entrustment Mahazar-Ex.P.4. He had further deposed that he had contacted the accused over phone and the accused had asked him to meet at 6.00 p.m., and that he had met the accused along with P.W.3, where the accused once again reiterated his earlier demand and accepted the tainted amount of Rs.10,000/-(M.O.1) in the presence of P.W.3. The evidence of P.W.2 is corroborated by the evidence of P.W.3-shadow witness, which proves the demand and acceptance of bribe money by the appellant/accused and this Court is of the opinion that the prosecution has proved the demand and acceptance beyond reasonable doubt.

16. In respect of recovery, P.W.3-official witness had clearly deposed that the tainted money was recovered from the accused and the same was

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also corroborated by the evidence of P.W.12-Trap Laying Officer and the recovery of tainted money-M.O.1 and the serial numbers of the currency notes tallied with the serial numbers mentioned in Ex.P.4-Entrustment Mahazar. The Phenolphthalein test conducted on both the hands of the accused in M.O.2 and M.O.3 also turned positive as evidenced by Ex.P.13-Chemical analysis report. Though a stray suggestion was made to P.W.2 that the money was kept in his chair, it was clearly denied by P.W.2 and the appellant/accused had not let in any evidence to substantiate the stand taken by him. Further, P.W.2 during his cross-examination had confirmed that the accused demanded and received the tainted money. On analysing the above oral and documentary evidence, this Court is of the opinion that the prosecution has clearly proved the demand, acceptance and recovery of tainted money from the accused.

17. It is contended by the learned counsel for the appellant that two complaints were given and one complaint was burked by the prosecution. It is seen that in the cross-examination of P.W.2, he had categorically deposed that he had given the complaint to the Deputy Superintendent of Police at the office of the Vigilance and Anti Corruption. A perusal of Ex.P2 shows

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that the complaint has been received by the Deputy Superintendent of Police and it had been forwarded to P.W.12-Inspector of Police, who is the Trap Laying Officer, for registering and investigating the case, thereby, the contention of the accused cannot be countenanced.

18. An analysis of the evidence on the whole leaves no doubt as to the prosecution having established the demand and acceptance of bribe amount by the accused and recovery of the same from the accused and thereby, this Court is of the view that the prosecution had proved its case beyond reasonable doubt and the learned trial Judge had, after carefully appreciating the evidence on record, rightly found that the appellant/accused is guilty of the offences alleged. This Court does not find any valid ground to interfere with the judgment of conviction and sentence. However, it is submitted by the learned counsel for the appellant that the appellant was suspended after his arrest during the year 2008 and later, dismissed from service and now he had attained the age of 72 years and apart from suffering various ailments, he had also lost his vision on his right eye. By producing medical reports with regard to the ailments of the appellant/accused, the learned counsel would crave indulgence of this court on the ground of

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sympathy.

19. Considering the mitigating circumstances viz., the offence had had been committed on 27.03.2008, prior to the Amendment of the provision of the Prevention of Corruption Act, 1988 in the year 2014, the old age of the appellant/accused and the ailments suffered by him, this Court is inclined to modify and reduce the sentence of imprisonment alone imposed by the trial Court to some extent.

20. In the result, this appeal is allowed in part to the limited extent of modifying and reducing the sentence of imprisonment alone imposed by the trial Court and thereby, while confirming the conviction made by the trial Court against the appellant/accused for the offences under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, the sentence of rigorous imprisonment for one year imposed on the appellant/accused for the offence under **Section 7 of Prevention of Corruption Act, 1988 is modified to one year simple imprisonment** and the sentence of rigorous imprisonment of two years imposed on the appellant/accused for the offence under **Section 13(2) read with 13(1)(d) is**

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modified and reduced to a period of one year simple imprisonment. The sentence of fine imposed by the trial Court, with the default sentence thereon, is maintained. The sentences shall run concurrently. The period of imprisonment suffered so far, if any, shall be set off under Section 428 of Cr.P.C. The trial Court shall take necessary steps to secure the appellant/accused to undergo the remaining period of sentence.

21. With the above modification, the Criminal Appeal is allowed in part.

06.12.2023.

Index:Yes/No
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<u>Note to Office</u> :

1. **Registry is directed to return the original documents, if any, to the trial Court.**
2. **Registry is directed to issue Judgment copy forthwith.**

To

1.The Special Judge for the cases under
Prevention of Corruption Act, Chennai.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Chennai.

3.The Additional Public Prosecutor,
High Court, Chennai.

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A.D.JAGADISH CHANDIRA,J.

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Pre-delivery Judgment in
Criminal Appeal No.360 of 2016

06**.12.2023**

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