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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/02/2023

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.A(MD)No.285 of 2017

State represented by
The Public Prosecutor,
High Court, Madras-104,
(V & Ac, Tirunelveli
crime No.03/2004)

: Appellant/Complainant

Vs.

J.Devaraj

: Respondent/Accused

Prayer: Criminal Appeal filed under section 378(i) of the Criminal Procedure Code, to set aside the judgment of acquittal passed in Special Case No.12 of 2014, dated 31/05/2016 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For Respondent : Mr.M.Ajmal Khan
Senior counsel
for Mr.S.Saravana Kumar

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

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This criminal appeal has been preferred against the judgment of acquittal passed in Special Case No.12 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act cases, Tirunelveli.

2.The case of the prosecution in brief:-

PW2 was doing contract works and listed contractor in Alangulam Town Panchayat, Tirunelveli District. On 25/08/2003, work order was issued to him for construction of mini tank from Indira Nagar to Asarimar Street and extension of pipe line. The contract is worth about Rs.4,00,000/-. On 07/01/2004, he received Rs.1,17,000/- as part payment. Within 10 days, he started doing the pipe line work. He requested the Panchayat to supply pipes in the month of February. He was informed to remit Rs.7,000/- towards the difference between the cost of the open market price and the cost of the supply of pipe line supplier by the Panchayat Union. He was also informed that the difference amount will be deducted in the bill. So he requested them not to deduct the same in the bill,



instead he will pay the same in cash. He was advised to remit the amount. He consulted the issue with his friends. They advised him to lodge a complaint with the Vigilance Department. So on 23/03/2004, he went to the Vigilance Department office and lodged a complaint.

3. Further event is spoken by PW13, the Inspector of Police, who was working in the Vigilance Department during the relevant time. He received the complaint from PW2, on 23/03/2004 and registered a case in Crime No.3 of 2004 for the offence punishable under section 7 of the Prevention of Corruption Act. He submitted the original FIR to the concerned court and the copies to the higher officials. As per the procedure, he requested the Government to depute two responsible officials for the purpose of assisting him in the pre-trap arrangement and trap. In pursuance of the above said request, one Kesava Perumal and Sakthivel contacted the Vigilance Department. He introduced the witnesses to PW2 and has undertaken demo with sodium carbonate solution and informed the witnesses about the importance of the sodium carbonate solution demo. During that period, PW2 handed over the amount of Rs.3,000/- which was demanded by the accused



as bribe amount. He prepared mahazar by noting down the currency note numbers. He applied the phenolphthalein powder in the above said currency notes and advised the witnesses to follow the instructions. He prepared the mahazar in respect of the above said pre-trap and trap events. He handed over the above said money to PW2 to give it to the accused. if demanded.

4.In pursuance of the above said pre-trap, all the witnesses were started from the office at about 12.00 hours and they reached the office of the accused at about 01.00 pm. He advised PW2 and other witnesses to go inside the office of the accused and act as per his instructions and the other police officials were hiding nearby a place.

5.In pursuance of the above said advise, PW2 and PW3 went inside the office of the accused at about 01.10 pm.

6.The further event is spoken by PW2. He would say that PW3 was standing out side the office; He only went inside the office and informed the accused that he has



brought the difference of the cost of the pipe as demanded. He gave Rs.3,000/- stating that the balance will be paid later. The accused received the above said money and put it in the table. He came out of the office and made a signal. On receiving the signal, the police team went inside the office of the accused.

7.The further event is spoken by PW13. He along with the police team, went inside the office of the accused, the accused was identified by PW2. On the instructions of PW13, PW3 undertaken further process and prepared the sodium carbonate solution and subjected the accused to dip the hands in the solution; Further separate sodium carbonate solution was prepared. The left hand of the accused was subjected to dip in the solution; Both solutions were turned pink. Later, an enquiry was made on the accused about the above said bribe amount. The accused handed over Rs.3000/- to PW13 and he compared the currency notes, that were mentioned in the mahazar. Both tallied. For that purpose also, a mahahzar has been prepared, in which all the witnesses were signed. He recovered the relevant documents from the office of the accused. He conducted search in the house



of the accused, but no incriminating document has been collected or seized. At about 5.50 pm, the accused was arrested and remanded to custody.

8.The further event is spoken by PW14. He took up further investigation and on 24/03/2004, recorded the statement of the witnesses, sent the material objects for chemical examination and recovered the relevant documents from the concerned office and submitted a draft final report to his higher officials and after obtaining sanction order, PW14 filed the above said final report.

9.PW3 is the shadow witness and he corroborated the evidence of PW2 and PW13 in respect of pre-trap, trap, recovery, arrest etc., facts.

10.PW4 was working as Junior Assistant in Alangulam Town Panchayat. She has spoken about the work order, that was issued to PW2 and about the notice, that was issued to PW2 to pay the difference of costs of the pipes. When enquired PW2, he told her that he will pay the above said difference of costs. She has also spoken about the disbursement of Rs.1,17,200/- to PW2, on 07/01/2004.



11.PW5 was working as Panchayat Chairman in Alangulam Town Panchayat. She has spoken about the resolution passed in the Council meeting and the work order that was issued to PW2.

12.PW6 has spoken about the work order, that was issued to PW2 and with regard to the estimate action of the above said work. He has also stated that there is a condition that the pipes for the above said work must be supplied by the Department.

13.PW7 was the Supervisor, who supervised the contract work undertaken by PW2. He prepared a bill of Rs.1,20,000/- for the work done by PW2.

14.PW8 was the Assistant Director of Panchayat Union. He was working in Tirunelveli District from 2000 to 2005. He has spoken about the procedure to be adopted by the Department, while issuing the work order and also stated that if the goods are supplied by the Department, then at the time of issuing the bill, the above said costs of the items must be deducted.



15.PW9 has spoken about the condition in the work order.

16.PW10 has spoken about the sale and other items to the Alangulam Town Panchayat.

17.PW11 is not a material witness, since he only sent the material objects for chemical examination.

18.PW12 was the Scientific Assistant, who examined the material objects that were sent through the court and has sent a report.

19.With these, the prosecution side evidence was over and the accused subjected to section 313 Cr.P.C questioning. On the side of the accused, three witnesses were examined.

20.DW1 has produced the official memorandum in Na.Ka.No.6656/2005/A5, dated 30/09/2010, as per the direction of this court. He has stated that the charge memo, that was issued against the accused was closed as not proved. By order, dated 30/09/2010, the above said charge memo was issued to him for not maintained proper diary.



21.DW2 was *suo motu* examined for the purpose of proving that two vehicles have been seized for illegal sand mining activities and the release of the vehicles as per the order of the RDO, Tenkasi.

22.DW3 has also spoken about the seizure of the above said two vehicles for illegal sand mining activities and release of the vehicles after remittance of the fine amount.

23.With these the defence side evidence was over.

24.At the conclusion of the trial process, the trial court acquitted the accused from the charge levelled against him.

25.Challenging the above said acquittal, this criminal appeal has been preferred by the State.

26.Heard both sides.

27.It is a case of acquittal.



28.The learned counsel appearing for the respondent/accused would draw the attention of this court with regard to the principles that have been laid down in various judgements with reference to the above said issue.

29.Now let us have a re-look into the principles, that have been laid down in the following decisions:-

(1)Chandrappa and others Vs.
State of Karnataka [(2007)2 SCC (Cri)
325;

(2)Animireddy Venkata Ramana
and others Vs. Public Prosecutor, High
Court of Andhra Pradesh [(2008)5 SCC
368];

(3)State by Inspector of
Police, Vigilance and Anti-Corruption,
Salem Vs. R.Duraisamy [(2011)3 MLJ
(Cr1) 473]; and

(4)Chinnam Kameswar Rao and
others. Vs. State of Andhra Pradesh
represented by Home Secretary [(2013)12
SCC 689).



30. We need not trouble these judgements by extensively extracting all the judgments.

31. Let me reproduce only the relevant para in the case of Chandrappa and others Vs. State of Karnataka (2007)2 SCC (Cri) 325, which has been uniformly relied upon and followed in subsequent cases also.

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons',



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'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not



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disturb the finding of acquittal recorded by the trial court.

32.Per contra, the learned Additional Public Prosecutor would rely upon the following judgments:-

1.State represented by, the Deputy Superintendent of Police, Vs. P.Subramanian (2018 SCC OnLine Mad 6853;

2.Periyaswamy Vs. Inspector, Vigilance and Anti-Corruption, Tiruchirapalli (1999 Cri.LJ 2944);

3.Pon.Sakthivel/Nagarajan Vs. State by the Deputy Superintendent of Police, Vigilance & Anticorruption, Trichi (CDJ 1999 MHC 1190);

4.S.P.Chidambaram (Former Executive Engineer, Public Works Department Vs. State represented by the Deputy Superintendent of Police, Vigilance and Anti Corruption (2018 SCC OnLine Mad 4614); and

5.S.P.Tamilarasan Vs. State rep. by the Inspector of Police, vigilance & Anti Corruption, Cuddalore (Crl.A No.580 of 2013, dated 30/08/2017).



and would submit that when there is misreading of the evidence by the trial court, this court is well within its power to re-appreciate the evidence and come to the just and reasonable conclusion.

33.No doubt that it is a case of acquittal. There is double presumption in favour of the accused. But at the same time, when the judgment has been rendered by the trial court by misreading of the evidence, then the appellate court is well within its power to revise the judgement of acquittal.

34.With these principles in mind, let us go to the evidence on record.

35.PW2 is the contractor doing contract work for the Municipal Town Panchayat. It is not a dispute. He has stated in his evidence that he undertook the work by laying the water pipeline and mini water tank, on the basis of the work order passed by the respondent herein. He received an order, on 04/07/2003. After 10 days of an order he started laying pipe line. Here the problem arose.



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36. Now the procedure that was adopted by the Panchayat Union office is spoken by PW8, who was the Director of Town Panchayat, Government of Tamil Nadu. According to him, the contractor must remit 1% of the estimate amount. The above said deposit amount will be returned to him, after the completion of work. If there is any deficiency or other issues or if anything to be paid by the contractor, that will be deducted in the final settlement. He would also refer the Public Works Account code in para 246 and 247 over the above said point. He would say that as per the above said account code, there is specific instruction to the effect that the above said amount must be deducted at the time of final settlement. But that was not uniformly followed by the office. He would also say that there is no specific instruction as that not to receive money in cash from the contractor, the above said difference of amount; But usually, the amount will be deducted at the time of final settlement.

37. But he would also admit that when he was working as Executive Officer at Kayalpattinam, Thoothukudi District, one contractor paid the difference of amount by cash.



38. Reading of his evidence shows that usually, the difference of amount, that got to be paid by the contractor has to be adjusted at the time of final settlement. But in practise, the above said amount is received in cash also and remitted to the Government Account.

39. So in the light of the above said evidence and explanation with regard to the procedure, now let us go back to the evidence of PW2. According to him, he made a request to supply PVC and GI pipes for carrying out the work and at that time, he was required to pay Rs.7,000/-, which is the difference of market price. At the same time, he would say that the above said difference amount will be adjusted at the time of final settlement. But he was willing to pay the amount in cash. So on the basis of his request, the pipes were delivered to him by paying the amount. But in the later portion, he disowned his own complaint and earlier statement given to the Investigating officer.

40. Now let us go to the evidence of PW14 with regard to the complaint/allegations. He would say that as



per the complaint and the statement made by PW2, the accused demanded Rs.3,000/- as bribe for supplying the pipe. On that basis only, he gave the complaint.

41.Now let me go back to the evidence of PW2.

42.As mentioned earlier, he disowned the complaint and other events. With regard to the demand, he would say that no such demand was made by the accused. But however, he made a complaint as if demand made was by him. With regard to the trap event also, he would say that he informed the accused about the cash that he will pay Rs.3,000/- part payment towards the difference for the supply of pipes. He handed over Rs.3,000/- towards difference of part payment. He was turned hostile with regard to the demand as well as the acceptance. He would say that the above said payment was made only with regard to the difference of cost of the pipes.

43.By pointing out this, the learned counsel appearing for the respondent/accused would submit that this is the probable defence, that was taken by him before the trial court, which was also accepted. In the light of the evidence of PW8, the defence is fortified.



44. But the learned Additional Public Prosecutor would submit that during the pre-trap and trap events, PW2 actively participated and gave a clear statement and he has been black listed because of the above said complaint. Now he is turning around supporting the case of the accused since he has been included in the contractors list subsequently. So according to him, his evidence should not be taken into account for disbelieving the evidence of PW3. He would also give the sequence of events with regard to the payment of the amount.

45. In the light of the above said development, we can discard the evidence of PW2 as not worthy of any credit. On the basis of the complaint given by him, the demand alleged to have been made by the respondent before the trap arrangement, need not be given any importance.

46. PW3 is the shadow witness and he would say that as per the instructions given by PW13 along with PW2, he went to the office of the accused on the day of trap I.e., 23/03/2004 at about 01.10 pm. The respondent enquired PW2 as to whether he brought the money as demanded by him. PW2 gave the money, it was received by



the respondent and he put the same in his table. At that time, he told that pipe will be supplied to PW2. So after that, when signal was made by PW2, PW13 along with the team entered into the office and further event has taken place.

47.By relying upon the evidence of PW3, the learned Additional Public Prosecutor would submit that what was given by PW2 is only the bribe amount and it cannot be taken as part payment of the difference of the amount. No Government will accept the part payment of difference amount. The evidence of PW3 falsifies the defence version and the evidence of PW2.

48.In the light of the above said it is clear that if the circumstantial evidence supports the case of the prosecution, then that can be relied.

49.By pointing out this only, the learned Additional Public Prosecutor would submit that the circumstantial evidence in the form PW3's evidence may be taken into account.



50. Now whether the above said amount is a part of the difference of the costs or bribe is the only point to be decided.

51. Now let us go to the other circumstances. PW4 would say that on 25/08/2003, the work order was issued, and directed to pay the difference amount by notice, dated 23/02/2004. On 22/03/2004, PW2 made a request to supply of PVC pipe. PW4 would say that on that date, at about 5.00 pm, PW2 demanded the supply of PVC pipes and he asked him to remit the difference of amount; The respondent ordered to deliver the pipe; He received the acknowledgement from PW2. PW2 permitted to take the pipes by hiring a van; But till 06.30 pm, he did not return; On the next day, he came to the office; At that time also, he asked him to remit the amount; At that time, he told that he will pay the amount to the respondent in the afternoon; When enquiry was made by her, he replied that the amount was paid to the respondent, on 23/03/2004. So PW4 failed to support the case of the prosecution. She has stated that on a particular day of trap in the morning, PW2 informed her that he will pay the amount to the accused directly and



in the noon, he contacted and told her that he paid the money to the accused. She was treated hostile after cross examination was over by the accused. According to the prosecution, this particular statement was not made by her before the Investigating Officer. According to PW14, such a statement was not made at that time of investigation by her. So we can discard her evidence for the time being, since she has not stated anything like that before the Investigating officer at the first instance. But some other things have brought on record during the course of cross examination. Some five days prior to the event of trap, PW2 came to the office and made objection for having given the plan approval for her sister Selvi, who stated to be the sister-in-law. But in the mahazar, letter, dated 23/04/2003, she put her signature. But he would say that it was obtained, when he visited the vigilance office. So we need not concentrate much upon the letter, dated 23/04/2003.

52. Now let us go to the evidence of PW14 on the previous motive. He would say during the cross examination that a particular incident that took place, on 08/03/2004 with regard to the sanction of the plan



approval to one Selvi was not brought to his notice. So how this importance of motive missed the notice of the Investigating Officer is not known.

53. Another motive was also suggested to PW14 with regard to the defective work undertaken by PW2. But this particular complaint with regard to the defective work order was not also properly enquired.

54. So from the above said fact, it is seen that PW2 was inimical towards the accused for more than one reasons. Even at that time of arrest and enquiry, it is admitted by PW14 that such a statement with regard to the previous motive was given by the accused.

55. In the light of the above said evidence, let us go to the statement and the explanation offered by the accused at that time of section 313 Cr.P.C questioning. He has stated that over the official duty, there was enmity between himself and PW2. The defence has examined, three witnesses to prove the fact that PW2 was involved in illegal sand mining activity, over which penalty was imposed upon him. But, this motive is relied in this



case is not known. Now whatever it may be, this motive is very remote.

56. Now let us go to the another aspect. In Ex.P2 complaint, PW2 has stated that on 22.03.2004, he approached the accused requesting the supply of PVC and GI pipes; On that day itself, the accused made the allotment order and the signatures were also obtained in the registers; When he demanded delivery, the accused demanded Rs.3,000/- as bribe amount. Since, he was not willing to pay the bribe amount, he lodged a complaint, on 23/03/2004.

57. Now PW2 says that on 23/04/2004, he went to the Vigilance office and lodged a complaint. Probably this is the mistake on his part. But actually, the complaint was lodged on 23/03/2004. Whether there was any possibility for making the allotment order in the absence of payment of the balance amount is the next point, which arises for consideration.

58. During February 2004, demand was made for the payment of the balance amount, which is evident from



Ex.P9. A request was made by PW2 on 20/02/2004. Again, on 22/03/2004, he made a request to supply the pipe. In that request, the accused has ordered that delivery can be effected and acknowledgement must be obtained. In pursuance of the above said order, the signature was also obtained in the delivery register. With regard to the payment of difference of amount, no order has been passed by the accused. No undertaking was also given by PW2 that the above said difference amount will be paid by him, either in cash or it can be adjusted at the time of final settlement. But this appears to be also not correct on record. Because reading of Ex.P9 shows that during the contract period, PW2 has accepted to purchase the pipe at his own costs and that was also approved by the Municipal Council; The difference of costs of the pipe will be adjusted in the bill. He was required to give the reply within three days. Some insertion is also made in the document by striking out a particular portion.

59.Let me extract the relevant portion in vernacular:-



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எனவே இப்பொருள் குறித்து இந்நோட்டு
கிடைக்க பெற்ற 3(மூன்று) தினங்களுக்குள்
எழுத்து மூலம் செ.அ க்கு தெரிவிக்க இதன்
மூலம் தெரிவிக்கப்படுகிறது தவறும்பட்சத்தில் ...

60.First it has been written as show cause notice, then it has been struck off and some other sentences were inserted as if PW2 may be informed that difference of amount will be settled in the bill. The writing also appears to be different. Dates also appears to be changed. But the signature of the respondent is available.

61.As mentioned earlier, PW4 has disowned the letter, dated 24/03/2004. So how the above said document of show cause notice was converted as intimation for adjusting the amount is not explained by the prosecution, even the accused during the course of trial, has not taken this into account. This important thing remained unexplained. This is the basic document for the prosecution to show that the difference of amount was demanded. So when the basic document found to be incorrect, no proper explanation has been offered by the prosecution on this aspect.



62. Now let us go to the calculation of the difference of the amount. Absolutely, there is no evidence on record. In the complaint, it has been stated that PVC pipes are to be supplied by the Panchayat Union. But this is not correct for the reasons stated above. Nowhere in the complaint, it has been stated that he has to pay the difference of the costs of the PVC pipes. On that point, the matter was again posted for clarification. The learned counsel appearing for the appellant has produced the calculation sheet on the basis of the stock register, the cost of the pipe in the open market and the price fixed by the department. But as mentioned earlier, this was not put to the Investigating officer during the course of cross examination. Even though, figures have been correctly arrived, how this fact missed the notice of the trial court and the parties is not clear.

63. Now whatever it may be, from the calculation, it is seen that Rs.7,380/- was difference of costs and that got to be paid by PW2. But the learned Additional Public Prosecutor would submit that this difference itself is a clear after thought, since no Government will



accept a portion of the cost to be paid. No doubt this is also does not answer original reasoning.

64.In the light of the above said facts and circumstances of the case, no doubt there are two opinions, one can be taken into account to the effect that it is only a bribe amount the accused received the money from PW2. Another view is that the above said amount is only a portion of the difference amount, as stated above by PW2.

65.The learned Additional Public Prosecutor would submit that after a long gap only, PW2 was recalled and at that time, he turned hostile. During that period, he was black listed. On the promise of taking him again in the panel of the contractors, he turned hostile; This itself shows the character of PW2 that he will go to any extent possible to secure his personal interest. In such circumstances, I am of the considered view that PW2 is not a reliable person.

66.Now coming back to the evidence of PW3 with regard to the trap, as mentioned earlier, he would say



67. But during the chief examination, he has stated that he went along with PW2 inside the room of the accused and at that time, the accused enquired about him, PW2 said that he is a plumber and later, the accused demanded the above said money.

68. In view of the above said contradiction with regard to the entering into the room of the accused along with PW3, I am of the considered view that with regard to the demand alleged to have been made by the accused on the date of the trap itself, his evidence should not be relied upon. So whether the demand on the date of the trap itself is doubtful and even though, it is not convening, but the trial court has given a judgment of acquittal. But on the factual aspect, it may not be proper on the part of this court to record a contra view supplanting the view of the trial court. As stated above in the judgment reported in the case of **Chandrappa and others vs. State of Karnataka [(2007)2 SCC (Cri) 325]**, the scope of interference by the appellate court has been reiterated by following the previous judgment.



69.The learned counsel appearing for the respondent would rely upon para 42(5) of the above said judgment, wherein it has been stated that when two reasonable conclusions are possible, the appellate court has no right to disturb the finding.

70.Per contra, the learned Additional Public Prosecutor would submit that even if we takes the case of the respondent on its face value, accepting the money from the public is sufficient. He would rely upon the judgments mentioned supra in para 32.

71.So far the criminal cases are concerned, no two cases will have similar or same facts. So the precedent, so far as the criminal cases are concerned, will have little impact. Only general principle can be taken into account. Not the factual circumstances and if taken and draw any inference, it will cause to total miscarriage of justice. So the factual circumstances, in the opinion of this court, should not be taken into account at all. But as stated above, the general principles always binding and must be followed.



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72. In the **Periyasamy's** case, a broad principle has been laid to the effect that even accepting the flag day contribution by the Government official will amount to receiving or accepting the bribe. But, I am afraid that if such a broad proposition can be made and uniformly followed, in all cases ignoring the factual circumstances of the case. Here comes facts are entirely different footing. Here basic and foundational facts with regard to the liability of payment of the difference of costs of the materials supplied, is available. So upon the foundational facts only the defence theory has been projected. So this cannot be ignored while entertaining an appeal, since two views are possible. Unless one, it is stated to be perverse without any evidence, this court cannot accept the judgment. But here, the trial court has relied upon the foundational facts and took up the view and that was the possible view. So this court cannot supplant the above said view.

73. For all the reasons stated above, this court is of the considered view that the judgment of acquittal passed by the trial court requires no interference by this court.



74. In the result, this criminal appeal is
dismissed.

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23/02/2023

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Internet:Yes/No
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To,

1. The Special Court for
Trial of cases under Prevention of
Corruption Act,
Tirunelveli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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Cr1.A(MD)No.285 of 2017

23/02/2023