



Crl.A(MD)No.96 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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and

Crl.M.P(MD)No.2602 of 2017

A.G.Srinivasan

... Appellant/Sole Accused

Vs.

The State rep by,
The Inspector of Police,
Vigilance and Anticorruption Wing,
Thanjavur,
Thanjavur District.
(Crime No.5/2005).

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records in Special Case No.51 of 2014 on the file of the learned Special Judge cum Chief Judicial Magistrate, Thanjavur at Kumbakonam, Thanjavur District and to set aside the judgment dated 14.03.2017 and acquit the appellant.



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For Appellant : Mr.R.Anand
for Mr.N.Subramani

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in Special Case No.51 of 2014 on the file of the learned Special Judge-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam, Thanjavur District. The learned Special Judge by judgment dated 14.03.2017, convicted the appellant for the offence under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and sentenced him to undergo 2 years Rigorous Imprisonment and to pay fine of Rs.2,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 7 of the Prevention of Corruption Act and to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. Challenging the same, the appellant filed this appeal.



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2. The case of the prosecution is that P.W2 is the former Office Assistant in the Special Grade Village Panchayat, Swamimalai. He was transferred to the Thiruvaiyaru Town Panchayat on 07.12.2004. After his transfer, his PF account was not transferred to the transferred place, namely, Thiruvaiyaru Town Panchayat. Therefore, he approached the appellant who was working as Field Assistant of the said Swamimalai Special Grade Village Panchayat on 24.03.2005 and requested to transfer the PF amount, for which, the appellant demanded Rs.1,500/- as bribe and reduced to Rs.1,000/-. Hence, PW.2 gave the complaint to the respondent police on 06.04.2005. On receipt of the complaint, the trap laying officer P.W10 received the complaint Ex.P2 from P.W2 and registered the case in Crime No.5 of 2005 under Section 7 of the Prevention of Corruption Act, 1988 and the FIR is Ex.P15 and laid the trap. The appellant was entrapped upon receipt of the said bribe amount of Rs.1,000/- and was arrested and thereafter, P.W.11 continued the investigation and filed a final report. P.W11 continued the investigation by collecting the evidence and examining number of witnesses and filed the final report, after getting the sanction from the sanctioning authority. The same was taken on file by the learned Special Judge in Special



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C.C.No.51 of 2014. The learned trial Judge, after serving copies under Section 207 Cr.P.C framed necessary charges. After framing necessary charges, he questioned the appellant under Section 229 Cr.P.C. The appellant pleaded not guilty and stood for trial.

3. During the course of trial, the prosecution examined the prosecution witnesses, ie., P.W1 to P.W11 and marked Ex.P1 to Ex.P25 and produced Material Objects 1 to 5. On considering the above evidence of the prosecution, the learned trial Judge examined the accused under Section 313 Cr.P.C by putting the incriminating circumstances available against him. The accused denied the same and he has not examined any witness for defence but marked one document, viz., Ex.D1-phone bill of P.W2.

4. The learned trial Judge, after considering the above evidence and the records produced by the prosecution as well as the defence and the material objects, passed the conviction against the appellant under Section 7 r/w 13(1)(d) of the Prevention of Corruption Act and also imposed sentence of imprisonment as stated in the first paragraph.



Challenging the same, the appellant preferred this appeal.

5. The learned counsel for the appellant submitted that the appellant has no role in respect of the claim made by P.W2 regarding the transfer of PF account. He was not even entrusted with that duty. He is only a Field Assistant and he is no way connected with the preparation of the claim to transfer the PF account to the transferred place, namely, Thiruvaiyaru Town Panchayat. The learned counsel further submitted that the alleged demand made by P.W2 on various dates is false and only it is made with an intention to take vengeance against him on the score that previously, he had some dispute with the appellant during his service in the Swamimalai Special Grade Village Panchayat.

6. The learned counsel for the appellant further submitted that the substratum of the prosecution case is that P.W2 made a request to transfer the PF account. In this regard, for transferring the PF account, there was no application pending before the appellant's office and the said work of transferring the PF account of P.W2 was not entrusted to P.W4 or any officer of the Panchayat including the appellant. Hence, the appellant was



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no way connected with the transfer of the PF account of PW.2 and therefore, the demand of bribe amount to transfer the same is false.

7. It is the specific case of P.W2 that he approached the appellant earlier on 24.03.2005 to make the request. But, the complaint was lodged only on 06.04.2005, that too, without any explanation for the delay. The delay in preferring the complaint itself shows that it is motivated one and no truth in the version of the complaint.

8. The learned counsel for the appellant further submitted that the conduct of P.W2 before and after his transfer is not good and he filed this complaint with *mala fide* intention. Further, it is the specific case of the appellant that P.W2 borrowed money from him to the tune of Rs.1,500/- and he received the said amount only as repayment of the debt amount. Hence, his explanation is furnished at the first instance and the same was also incorporated in the recovery mahazar. For that reason, the investigating officer ought to have conducted the investigation in the said aspect. But, the investigating officer has not conducted any investigation. As a consequence, fair investigation was not conducted. Ex.P5 is



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material document allegedly to be recovered on the date of occurrence.

To prove the contention that the said document, Ex.P5 was written by the accused after receipt of bribe amount, no evidence was adduced by the prosecution, ie., to prove the allegation of the prosecution that Ex.P5 was written by the appellant handwriting expert's opinion is essential one. They only examined PW.5 and PW.6 to speak about the handwriting of the appellant and the same was not sufficient to convict the appellant. The same was further strengthened by the absence of the corresponding entry in the PF ledger. Therefore, there is a doubt over the existence of Ex.P5 and hence, the prosecution failed to prove in all aspects and the same was not properly considered by the learned trial Judge. The learned trial Judge, on considering the mere receipt of the amount drawn the presumption under Section 20 of the Prevention of Corruption Act, without proof of demand to pass the conviction and sentence. Hence, he prays this Court to allow the appeal by setting aside the conviction and sentence passed by the trial Court.

9. Per contra, the learned Additional Public Prosecutor submitted that according to P.W4, the accused officer was entrusted the work of



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preparation of transfer the PF amount and other dues. Hence, the submission made by the learned counsel for the appellant that he has no role in the preparation of transfer the PF account is not correct. Ex.P5 is clearly proved through the evidence of P.W3-independent official witness, who stated that after the receipt of money, the appellant calculated the PF amount and also the remaining arrears of the salary as per the pay commission report. The same was corroborated by P.W5-the co-employee of the accused officer, who specifically stated that the entries of Ex.P5 are the handwritings of the accused officer. Therefore, the prosecution proved the said fact that Ex.P5 was written by the accused officer after receipt of the bribe amount. Hence, Ex.P5 is proved in accordance with law.

10. It is the defence of the appellant that he received the amount as a repayment of the debt amount from P.W2. In that circumstances, he must establish the defence and not the investigating officer to conduct the investigation in order to prove his defence. The contention of P.W2 is concerned, even after transfer of an employee, as per the procedure, within 15 days from the date of transfer, the PF account should be



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transferred to the transferred place and the same was not done. It is the specific case of P.W2 that the appellant repeatedly asked to meet him from 24.03.2005 onwards. It is the specific case of the defacto complainant that he approached the appellant and also the appellant demanded Rs.1,500/- to attend the claim of P.W2. On 05.04.2005, P.W2 informed the same to P.W4. Hence, it is the case where the demand of the accused officer was informed in time to P.W4 and he also deposed before the Court about the demand made by the accused officer. Hence, it is a case, where demand is clearly established and there is no circumstances to disbelieve the version of the defacto complainant as alleged by the appellant. The delay in preferring the complaint is concerned, the accused officer consistently demanded money from 24.03.2005 and finally on 05.04.2005. The complainant also approached the Executive Officer. He directed the complainant to approach the accused officer and hence without any delay, he made the complaint and hence, the delay is explained as above narrated.

11. It is the case of the appellant that he received money as repayment of the hand loan received by P.W2. In the said circumstances,



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it is for the appellant to prove the defence. For proving the defence, no evidence was produced. Apart from that in the search made in the appellant's house, there was no evidence about the issuance of hand loan to P.W2. Hence, the prosecution clearly established the case and the learned trial Judge rightly came to the conclusion that the prosecution proved the case beyond reasonable doubt.

12. This Court has considered the rival submissions made by both parties and perused the records and also the precedents relied upon by them.

13. Following questions arise for consideration of this appeal:

(i) Whether the prosecution proved the guilt of offence under Section 7 and 13 (1)(d) of the Prevention of Corruption Act 1988 as held by the learned trial Judge?

(ii) Whether the defence of the appellant that he received the bribe amount as a repayment of loan has been proved to the extent of preponderance of probabilities?



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14. It is the admitted case that P.W2 was erstwhile worker in the Swamimalai Special Grade Village Panchayat. He was transferred to Thiruvaiyaru Town Panchayat on 29.11.2004. Thereafter, his PF amount was not transferred to Thiruvaiyaru Panchayat. Hence, he approached the accused officer/appellant. He demanded Rs.1,500/- as a bribe to transfer the PF account and he continuously made the demand on 14.02.2005, 02.04.2005, 03.04.2005 and 04.04.2005 in person as well as through telephone. On 05.04.2005, P.W2 met P.W4-the Executive Officer of the Swamimalai Special Grade Village Panchayat and disclosed the above demand made by the appellant for transferring the PF account. P.W4 stated that he was in-charge officer and he advised him to approach the appellant. Therefore, he approached the appellant on 05.04.2005, again, the appellant reiterated the demand and reduced the demand from Rs. 1,500/- to Rs.1,000/- and he asked to pay the amount on 06.04.2005 at 02.00 p.m. Hence, PW.2 gave the complaint to the respondent police on 06.04.2005. On receipt of the complaint, the trap laying officer P.W10 received the complaint Ex.P2 from P.W2 and registered the case in Crime No.5 of 2005 under Section 7 of the Prevention of Corruption Act, 1988 and the FIR is Ex.P15.



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15. Thereafter, he called the official witnesses, namely, P.W3 and P.W5 and demonstrated the significance of the phenolphthalein test to P.W2 and prepared the entrustment mahazar with the currency brought by the P.W2. After preparation of the entrustment mahazar, P.W10 instructed P.W2 to approach the appellant and to meet him in his office. Further, he advised P.W2 to give the tainted money to the appellant, if he demanded the bribe amount and also advised him to give signal immediately after receipt of the bribe amount by the appellant. P.W3 was advised to observe the transaction going to happen between P.W2 and the accused officer/appellant. After that, the trap team under the leadership of P.W10 dropped P.W2 and P.W3 at some distance away from the office of the accused.

16. When P.W2 and P.W3 visited the office, the District Collector was conducting the regular Inspection and hence, P.W10 instructed them to meet the appellant after completion of the Inspection. Hence, after completion of inspection, P.W2 and P.W3 entered into the office of the appellant at 3.30 p.m, and both of them approached the appellant. The



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appellant reiterated the demand and received the bribe amount of Rs.1,000/- in the presence of P.W3. Thereafter, P.W2 gave signal to P.W10. On receipt of the signal, P.W10 went to the office of the accused and conducted the phenolphthalein test in the hands of the accused officer, which turned into pink colour. On ascertaining the handling of the bribe amount, P.W10 questioned the appellant with regard to the receipt of the bribe amount. The accused officer accepted the receipt of the amount and explained that he received the amount from P.W2 as the repayment of the debt amount and not satisfied with the explanation given by the appellant, PW.10 completed the trap proceedings by preparing the mahazar and also recovered various documents and arrested the appellant and also conducted the house search in the accused house and found no incriminating materials and hence, he sent the documents to the concerned Court by altering the FIR into Section 7 r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

17. Proof of demand:

From the above sequence of events, P.W.2 deposed that the appellant demanded the bribe amount on various dates. He also informed



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the above demand of bribe amount to P.W.4. P.W.4 also corroborated the same and he specifically deposed that P.W.2 informed about the demand of bribe by the appellant. P.W.2 and P.W.3 clearly deposed about the appellant reiterating the demand on the date of the trap and receiving the same. In this aspect, the evidence of P.W.2, P.W.3 and P.W.4 are cogent and trustworthy. There is no reason to disbelieve their version. Apart from that Ex.P5 was prepared by the appellant after receipt of the bribe amount which was corroborated by the evidence of P.W.3 and P.W.2. Further PW3 clearly deposed about the appellant reiterated the bribe amount and received the same and thereafter, wrote Ex.P5. The handwriting of the appellant in the Ex.P5 was identified by the co-employee P.W.5. As per the Evidence Act, it is not necessary to prove the handwriting of the particular person only through the opinion of the handwriting expert. As per Section 47 of the Evidence Act, it can be proved through the person who has acquaintance with the handwriting of the said person. Hence, in this case, the prosecution correctly examined PW.5, who has acquaintance with the handwriting of the appellant and the appellant never disputed the same either through the cross-examination of PW.5 or in his explanation under Section 313 Cr.P.C.



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Apart from that P.W3-independent official witness also deposed that the appellant wrote the contents of Ex.P5 after the receipt of bribe amount and the same was corroborated with the evidence of PW.5 who identified the handwriting of the appellant. Hence, the recovery of Ex.P5 from the custody of the appellant is the material circumstances to prove the demand. In all above aspect, the prosecution proved the demand.

18. Proof of acceptance:

As narrated above, the receipt of bribe amount has been proved through the evidence of P.W.2, P.W.3, P.W.4 and P.W.10. The entire recovery proceedings also not disputed by the appellant. He accepted the receipt of the amount and hence, the prosecution proved the acceptance of the amount.

19. The defence of the appellant:

In this case, the prosecution proved the demand and the acceptance as foundational facts to draw the presumption under Section 20 of the Prevention of Corruption Act as held by the Hon'ble Constitution Bench in the case of *Neeraj Dutta Vs. State Government of NCT of Delhi*)



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reported in **2023 4 SCC 731**. But the appellant took the defence that he received the amount as a repayment of loan. To prove the said transaction, the appellant never examined anybody and also he had not produced any evidence to infer that the accused received Rs.1000/- as a repayment of debt amount. The investigating agency also made the house search after the trap. In the house, no material was seized relating to the payment of the said loan like promissory note etc. Mere plea is not evidence and hence, the appellant never established his defence that he received the amount as a repayment of loan. Therefore, the defence of the accused has not been proved and the learned trial Judge correctly drew the presumption under Section 20 of the Prevention of Corruption Act and convicted the appellant.

20. Appellant Plea that he has no role in preparation of PF account and transfer of the plea of the said account:

Insofar as the contention of the appellant that without application to transfer the PF account, the case of the P.W2 has to be disbelieved is concerned, according to the learned Additional Public Prosecutor, there was no necessity to make any application to transfer the PF account,



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because within 15 days automatically the PF account has to be transferred to the transferred place for which he relied Ex.P10. P.W4 also stated that it would be transferred within 15 days. Hence, the defense of the appellant that no application was received and hence the evidence of P.W2 has to be disbelieved, is not accepted. As per the documents as well as the evidence of P.W4, it is the duty of the concerned officer to transfer the account to the transferred place.

20.1 Insofar as the contention of the learned counsel for the appellant that he has no role in the preparation of accounts and transfer of the account is concerned, it is the specific evidence of P.W4 that the appellant was entrusted with such duty on the day and also he prepared Ex.P5 after receipt of the bribe amount. In the said circumstances, it is clear from the evidence of P.W4 that the appellant was holding the charge on the occurrence date.

20.2 Even otherwise, it is not necessary, to constitute the offence under Section 7 and 13(2) of the Prevention of Corruption Act, the public servant must do something in connection with his own duty and



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thereby obtain any valuable thing or pecuniary advantage. The Hon'ble Supreme Court has held as follows in the following judgments:

20.3. *Bhanuprasad Hariprasad Dave v. State of Gujarat*, reported in AIR 1968 SC 1323:

“8.... To establish the offence under Section 161 of the Indian Penal Code all that prosecution had to establish was that the appellants were public servants and that they had obtained illegal gratification for showing or forbearing to show, in the exercise of their official functions, favour or disfavour to Ramanlal. The question whether there was any offence which the first appellant could have investigated or not is irrelevant for that purpose. If he had used his official position to extract illegal gratification the requirements of the law is satisfied.

20.4. The Constitution Bench of the Hon'ble Supreme Court in *Dhaneshwar Narain Saxena v. Delhi Admn.*, reported in AIR 1962 SC 195 has held as follows:

“4. It will be observed that the heading of Section 5 is Criminal misconduct in the discharge of official duty. That is a new offence which was created by the Act, apart from and in addition to offences under the Indian Penal Code, like, those under Section 161, etc. The legislature advisedly widened the scope of the crime by giving a very wide definition in Section 5 with a view to punish those who, holding public office and taking advantage of their official position, obtain any valuable thing or pecuniary advantage. The necessary ingredient of an offence under Section 161 of the Indian Penal Code, is the clause “as a



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motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant”, but it need not be there in order to bring an offence under Section 5 of the Act home to the accused. The offence under this section is, thus, wider and not narrower, than the offence of bribery as defined in Section 161 of the IPC. The words “in the discharge of his duty” do not constitute an essential ingredient of the offence. The mistake in the judgment of this Court in the aforesaid ruling in State of Ajmer v. Shivji Lal [(1959) Supp. (2) SCR 739] has arisen from reading those words, which are part merely of the nomenclature of the offence created by the Statute, whose ingredients are set out in sub-clauses (a) to (d) that follow, as descriptive of an essential and additional ingredient of each of the types of offence in the four sub-clauses. That that is the source of the mistake is apparent from the erroneous way in which the section has been quoted at p. 744 of the Supreme Court Report, in the paragraph preceding the paragraph quoted above. The ingredients of the particular offence in clause (d) of Section 5(1) of the Act are; (1) that he should be a public servant; (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant; (3) that he should have thereby obtained a valuable thing or pecuniary advantage; and (4) for himself or for any other person. In order to bring the charge home to an accused person under clause (d) aforesaid of the section, it is not necessary, that the public servant in question, while misconducting himself, should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. “Duty” and “misconduct” go ill together. If a person has



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misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. That “misconduct”, which has been made criminal by Section 5 of the Act, does not contain the element of discharge of his duty, by public servant, is also made clear by reference to the provisions of clause (c) of Section 5(1). It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he cannot be said to have been doing so in the discharge of his official duty (vide the case of Hori Ram Singh v. Crown [(1939) FCR 159] . An application for special leave to appeal from that decision was refused by the Privy Council in Hori Ram Singh v. King-Emperor [(1940) FCR 15] . This Court, therefore, misread the section when it observed that the offence consists in criminal misconduct in the discharge of official duty. The error lies in importing the description of the offence into the definition portion of it. It is not necessary to constitute the offence under clause (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under Section 5(1)(d). It is also erroneous to hold that the essence of an offence under Section 5(2), read with Section 5(1)(d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.”



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21. Plea of delay in preparing the complaint:

The delay in the complaint is concerned, as rightly pointed out by the learned Additional Public Prosecutor from 21.02.2005 onwards, P.W2 consistently made the request to the appellant to transfer the PF account. Finally on 05.04.2005, he informed the said demand made by the accused officer to PW.4. P.W4 directed him to approach the appellant and when he approached the appellant, again the appellant reiterated the demand and reduced the bribe amount from Rs.1,500/- to Rs.1000/- and also directed him to produce the said amount on 06.04.2005 at 02.00 p.m. Hence, he made a complaint on 06.04.2005. Therefore, the delay was properly explained. In this aspect, it is relevant to note the Hon'ble Supreme Court Judgement reported in ***AIR1953SC179:(1953) 1 SCC***

220 [Mahadev Dhanappa Gunaki v. State of Bombay].

“4. Thus it is said that although there was a definite allegation of the alleged offer of bribe made by the appellants to the two police officers on 24-1-1949/25-1-1949 and although the two police officers informed their superior officers and the latter advised the trapping of the appellants, nothing was done for two months and it is concluded from such inaction that no bribe had in fact been offered and that this story was, therefore, false. We see no force in this argument, because the police authorities had perforce to wait until the appellants made a further move in the matter. It is not reasonable to suggest that the police authorities



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should go out of their way and actively invite bribes in order to trap the appellants.”

22. Question of Sentence:

Considering the submission of the learned counsel for the appellant that the appellant is aged about 76 years at time of trial and he is suffering from various old age related ailments, more particularly, he is suffering from heart problem, this Court is inclined to reduce the sentence of imprisonment imposed by the learned trial Judge from two years to one year.

23. Conclusion:

The prosecution proved its case that P.W.2 was transferred from Swamimalai Panchayat to Thiruvaiyaru Town Panchayat on 07.12.2004 and to transfer his PF account, the appellant made a demand of bribe amount of Rs.1,000/- and received the same. The same was proved by the prosecution to the evidence of P.W.2, P.W.3, P.W.4 and P.W.10 and Ex.P2, Ex.P5, Ex.P10, Ex.P15 and etc. Further, the defence of the appellant that he received the amount as a repayment of loan has not been proved in accordance with law. Therefore in all aspects, the prosecution proved the case beyond reasonable doubt as held by the trial Court. This Court does



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not find any merit in the contention of the learned counsel for the appellant to interfere in the finding of the learned trial Judge in convicting the appellant under Sections 7, 13(1) d r/w 13(2) of the Prevention of the Corruption Act 1988. Accordingly, questions are answered against the appellant.

24. In the result, this Criminal Appeal is allowed in part. The conviction passed by the trial Court is confirmed and the sentence alone is modified to the extent that the appellant shall undergo one year rigorous imprisonment concurrently for the offence under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. Fine imposed by the trial Court is confirmed. Bail bond executed by the appellant stands cancelled. The learned trial Judge is directed to secure the appellant to undergo remaining period of sentence. Consequently, connected miscellaneous petition is closed.

09.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJJ



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To
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1. The Special Judge cum Chief Judicial Magistrate,
Thanjavur at Kumbakonam,
Thanjavur District.
2. The Inspector of Police,
Vigilance and Anticorruption Wing,
Thanjavur, Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

**Predelivery Judgment made in
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