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Criminal Appeal Nos.440 & 441 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.11.2024

Pronounced on : 03.01.2025

CORAM : JUSTICE N.SESHASAYEE

Criminal Appeal Nos.440 & 441 of 2023

1.Mariappa
2.Tamilselvi

.... Appellant in Crl.A.No.440 of 2023 / Accused-1
.... Appellant in Crl.A.No.441 of 2023 / Accused-2

Vs

The State Rep by
The Inspector of Police
Vigilance and Anti Corruption
Vellore
(Crime No:1/2012)

.... Respondent / Complainant

Common Prayer : Criminal Appeals filed under Section 374(2) of Cr.P.C., praying to set aside the conviction and sentence imposed upon the appellants by the Special Judge and Chief Judicial Magistrate, Tiruvannamalai in Spl.Case No.2 of 2014 by judgment dated 23.03.2023 and to allow the appeals, and pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the cases.



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Criminal Appeal Nos.440 & 441 of 2023

For Appellants : Mr.V.Karthik, Senior Counsel
(in both cases) Assisted by Mr.Adithya Varadarajan

For Respondent : K.M.D. Muhilan
Government Advocate [Criminal Side]

JUDGMENT

This batch of appeals are preferred by A1 and A2, challenging the conviction and the sentence imposed by the Special Court for Vigilance and Anti-Corruption cases (Chief Judicial Magistrate), Thiruvannamalai in Spl.C.C.No.2 of 2014 for offences under Section 7 and 13 (1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). While A1 was convicted for the offences under Section 7 and 13(1)(d) r/w 13(2) of the Act, A2 was convicted for the offences under Section 8, 12 and 13(2) r/w 13(1)(d) of the Act. The sentences imposed are as below:

Accused	Conviction	Sentence
A1	Offence under Section 7 of the Prevention of Corruption Act, 1988	To undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment
	Offence under Section 13(1)(d) r/w 13(2) of the Prevention of	To undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- and in default to undergo three months simple



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Accused	Conviction	Sentence
	Corruption Act, 1988	imprisonment.
A2	Offence under Section 8 and 12 of the Prevention of Corruption Act, 1988	To undergo six months rigorous imprisonment each and to pay fine of Rs.5,000/- each in default to undergo one month simple imprisonment each
	Offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988	To undergo one year rigorous imprisonment and to pay fine of Rs.5,000/- in default to undergo three months simple imprisonment

Besides these accused persons, there was one Gunasekaran, who was arrayed as A3 and the trial Court acquitted him. And during the pendency of the appeals, the appellant in C.A.No.441 of 2023 had passed away and hence the case had abated as concerning A2, and only the case of A1 requires to be considered in this appeal.

2. The case of the prosecution runs as below:

- a) In 2011 - 2012, A1, the appellant herein was working as a Junior Engineer, PWD (Construction and Maintenance), Cheyyar, Thiruvannamalai District.



- b) Certain Natarajan, the defacto complainant was a Civil Contractor of the PWD. He hails from Ambur in Vellore District but had been given a construction work in Cheyyar. In connection therewith, he had made an earnest money deposit (EMD for short) of Rs.8,47,500/-
- c) On 18.10.2010, the said Natarajan had handed over the construction to the PWD. In terms of the contract, which he had entered into with the PWD, he would be entitled to receive the EMD only after the officials of the PWD are satisfied about the quality of construction of the contractor within a period of one year from the date of delivery.
- d) On 07.12.2011, Natarajan had visited the appellant / A1 at his office in Cheyyar in connection with the release of the EMD, and A1 was then said to have made a demand of 4% of the total value of the contract of Rs.2.09 Crores as bribe. A2, appellant in CrI.A.No.441 of 2023 was a NMR working in the office of A1. On her part, she was said to have demanded 1% of the contract value.
- e) It is in this circumstance, the appellant / A1 had visited Natarajan again on 24.01.2012. Both A1 and A2 were said to be steadfast in their original demand. After a hectic negotiation and bargaining, the bribe



money was reduced from a certain percentage of the total value to a fixed sum of Rs.1.0 lakh in cash and another sum of Rs.1.0 lakh through a blank cheque. Out of this, A1's demand was limited to Rs.50,000/- in cash and A2's demand was to the remaining Rs.50,000/-.

- f) Unwilling to pay the bribe-money, on 25.01.2012, Natarajan approached the respondents, and gave his Ext.P17 complaint at around 6.15 a.m. to the DSP, who in turn forwarded it to P.W.6, the TLO. On receiving the complaint, P.W.6 registered Ext.P18 F.I.R.,. He soon organized a trap-team comprising Natarajan, and P.W.2 and P.W.3 as the shadow witnesses for the event.
- g) After completing the pre-trap procedures and entrusting the planted cash and the cheque to Natarajan under Ext.P3, Entrustment Mahazar, the team left off from Vellore, where the office of V and AC was located, to the office of the appellant at Cheyyar.
- h) At about 10.30 a.m, Natarajan had tendered an envelope containing Rs.50,000/- and a blank cheque for Rs.1 lakh to A1 and another cover containing Rs.50,000/- to A2. Indeed, according to the prosecution, when Natarajan appeared before him, A1 enquired if he had received



the money and the cheque he had demanded. A1 took the cash and the cheque from the envelope and handed over the cheque to A3, a local Electrical Contractor of the PWD. Once the payment and the receipt was completed, Natarajan alerted P.W.6, and he immediately arrived at the scene with P.W.3, the other shadow witness. He rushed to conduct a trap test and it proved positive. The trap was successful and P.W.6 proceeded to complete the post-trap procedures and prepared Ext.P4, Seizure Mahazar and also seized the currencies and the cheques, as well as the shirt, which A3 was wearing.

- i) Further investigation was thereafter taken over by P.W.7, and after completing his investigation, he laid a final report.

3.1 The trial Court framed appropriate charges against all the three accused persons. During the trial, the prosecution examined P.W.1 to P.W.7, marked Ext.P1 to Ext.P25 and M.O.1 to M.O.10. And, Natarajan, the defacto complaint had died before the trial and hence the prosecution lost a critical evidence to establish the crime. For the defence, A1 had produced Ext.D1 to Ext.D5, which came to be marked during the cross examination of P.W.4 and P.W.5, two of the



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official witnesses of PWD whom the prosecution had examined.

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3.2 On appreciating the evidence, the trial Court found A1 and A2 guilty of the charges framed against them and acquitted A3.

3.3 So far as A3 is concerned, he had taken a defence that *vis-a-vis* the project which Natarajan had undertaken, he was given an electrical sub-contract and the cheque for Rs.1 lakh represented the amount due to him for the work done. The trial Court accepted this explanation and exonerated him of the impending criminal liability.

4. The aforesaid judgement of the trial Court is now under challenge, and as stated in the opening paragraph, only A1 is now alive to oppose the conviction and sentence, which had befallen upon him vide the impugned judgement.

5.1 Mr.V.Karthick, learned Senior Counsel for the appellants made the following submissions:

(a) An offence under Section 7 of the Act is constituted only when bribe is



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demanded, paid and accepted by a public servant for doing an official favour to the bribe giver.

(b) The case of the prosecution is that the bribe was demanded by the appellant / A1 for issuing NOC for release of the EMD amount. Indeed, in terms of the procedure, only P.W.5, the Executive Engineer has the authority to release the EMD, but only after his satisfaction about the quality of the work done. So far as the present case is concerned, about 8 months prior to the alleged date of first demand (07.12.2011), the appellant, vide Ext.D3, had reported certain shortcomings about the quality of construction which Natarajan had made to P.W.4, who was the immediate superior of the appellant.

(c) P.W.4, in turn had forwarded Ext.D3 vide Ext.D4, dated 19.04.2011 to P.W.5. Both P.W.4 and P.W.5 admit to Ext.D3 and Ext.D4, communications respectively. This implies that as on the date of the first demand, the query as to the quality of construction made by Natarajan had already been raised by the appellant.

(d) It is in this backdrop, Natarajan addressed Ext.P6 communication dated 13.10.2011 to P.W.5 to release the EMD to him. P.W.5, in turn,



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forwarded the same to P.W.4, his immediate subordinate on 02.11.2011. P.W.4 would then forward it to the appellant on 14.11.2011. Responding to the same, the appellant had sent his response vide Ext.D2 dated 16.11.2011, wherein he had reiterated his earlier query made in Ext.D3. Obviously, the appellant had become a thorn in the flesh of Natarajan, as he had, with his Ext.D3, put a spoke on the hopes of Natarajan realizing his EMD.

(e) It is in this backdrop, Natarajan is said to have approached the respondents on 25.01.2012 and preferred a complaint, Ext.P17. The trap was organized and the trap-team had visited the office of the appellant. However, there are two significant factors which the prosecution has conveniently suppressed:

- i. Natarajan's son-in-law named certain Rajinikanth was working in the Police Department in Vellore Division at the relevant time. Indeed, he later was transferred to V and AC, and his influence on the course of investigation cannot be ruled out;
- ii. The DSP himself was physically present during the trap, and



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he oversaw it. This was spoken to by P.W.2 and P.W.3, but the prosecution had screened the DSP in its final report as it did not list him even as a witness.

5.2 It is in this backdrop, the consequences that flows out of the trap needs to be evaluated. So far as this is concerned, Natarajan, the defacto complainant had passed away during the investigation. Therefore, the defence did not have the advantage of cross examining him. It might be that the prosecution is handicapped to examine only P.W.2 and P.W.3, but that is the best evidence available even for the defence as well as for the Court to assess the ability of the evidence to sustain the charges framed against the appellant. Here, few facts emerge that are critical to the case of the defence:

- a) According to Ext.P3, cash of Rs.50,000/- in two lots were entrusted to Natarajan and also a blank cheque for Rs.1 lakh. Both P.W.2 and P.W.3 say that what was due to A1 was given in a separate envelope and what was intended to be given to A2 was given in a separate envelope. There, however, is no reference to the envelope in Ext.P3, Entrustment Mahazar;
- b) According to P.W.2, when Natarajan gave the cover to the appellant, he



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removed the cheque and handed it over to A3. He does not say that the appellant had removed it and counted the currencies. He directs his statement only against A2 when he says she counted the currencies given to her. However, P.W.3, in his evidence would say when P.W.6 arrived at the SOC, A1 handed over Rs.50,000/- from his pant pocket, whereas P.W.2 would say at the time when P.W.6 arrived, Rs.50,000/- which A1 said to have received was still lying on his table. This is a material contradiction as regards whether A1 had actually touched the currencies.

- c) So far as the cheque is concerned, P.W.2 did say that A1 has took out the cheque and handed it over to A3 and inasmuch as the Trial Court had found that the cheque was intended to be paid to A3, then A1 cannot be faulted for taking out the cheque and handing it over to A3. Since, the cheque was also planted by the TLO, necessarily when the appellant had touched it, the trap test would bound to be positive;
- d) This would lead the believability of P.W.2 and P.W.3. While P.W.3 says A1 had removed the money from his pant pocket but his pant was not seized by the TLO. On the contrary, the same TLO had seized the shirt of A3 since A3 had kept the cheque in his pocket;



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- e) Another material discrepancy in the evidence is that while P.W.2 says that Natarajan had tendered four cheque leafs, P.W.3 says only one cheque leaf was tendered. Indeed, TLO had seized only one cheque leaf (Ext.P5).
- f) P.W.3 then proceeds to state that the TLO had also recorded the statements of both A1 and A2 presumably in terms of Para 47 of the V and AC manual, in which both the accused persons, as well as the shadow witnesses and the TLO had signed. This document, however, was screened during the trial. However, P.W.6 denies that he had ever recorded any such statement.

5.3 Continuing his argument, the learned Senior Counsel submitted that the case of A1 is that the father of A2 had saved about a lakh for her marriage and Natarajan had borrowed this money from A2's father, and since A2 demanded return of the money, he repaid the amount. The amount of Rs.1 lakh paid in cash, constituted of two lots of Rs.50,000/- each is essentially intended for this.

5.4 The learned Senior Counsel further submitted that while according to Natarajan, the second demand was made on 24.01.2012, in the charge framed



against him, it was alleged that he had made his demand on 21.01.2012. Indeed, the appellant was called upon to establish only this charge, but the prosecution case had gone tangential to this. When prosecution was not able to establish the alleged demand made on 24.01.2012, then the proof of demand goes and necessarily one of the ingredients which is essential to constitute an offence under Section 7 of the Act, was not established.

6. In response, Mr.K.M.D.Muhilan, learned Government Advocate (Crl.Side) made the following submissions:

- a) It cannot now be controverted by the appellant that he was required to respond to a certain communication received from his superior authorities as to the advisability of releasing EMD to Natarajan and this necessarily involves appellant issuing a NOC as to the quality of the construction Natarajan had made. Unless he issues a NOC, it might be difficult for Natarajan to have his EMD released. This sets the tone for the trap.
- b) What is not disputed is that the appellant had received the money and the cheque, and entrusted the cheque to A3. There is still no answer



why the appellant touched the money or why he kept it over his table. It might be that there may be some inconsistencies between P.W.2 and P.W.3, but then, they were examined after some five years after the event. Therefore, there are bound to be certain internal inconsistencies, which is nothing but human. The Court, therefore, may not go for a meticulous analysis while appreciating the evidence but look to the core ingredient which is essential to constitute offence under Section 3(1)(d) of the Act.

- c) If all the filterable facts are filtered, it all boils down to appellant receiving the money. Here, he has to explain why he received it and why at all Natarajan issued separate Rs.50,000/- into two lots and just gave one lot to A2. If the entire money is due payable to A2, he could have given it to A2 directly.

Discussion & Decision

7. It is a case of a trap, where A1 along with A2 and A3 were alleged to have been caught red-handed when they allegedly received the bribe-money. A3 escaped because he was paid Rs.1.0 lakh in cheque and he indeed was a sub-



contractor of the defacto-complainant and the latter was required to settle his dues to the former. And so far as bribe money paid in cash is concerned, prosecution case is that it was tendered in two covers, each containing Rs.50,000/- and were tendered to A1 and A2. And the trap-test is proved positive. Therefore, the presumption under Sec.20 of the PCA comes into action, and a reverse burden is cast on the accused persons to rebut the same. And, today A2 has passed away and hence the case concerning her has abated. How A1 defends the charge and how believable is his line of rebuttal?

8. The first rebuttal which A1 offers is that he has no papers left before him vis-a-vis the return of EMD to Natarajan and hence no official duty is required to be discharged, which is a core ingredient of a charge under Sec.7 of the PCA. In other words, it is not a payment of some money that matters but whether this money was paid for achieving any official favours which could be accomplished without any such payment. Here the prosecution has scored a point over A1 when it indicated that A1 still has a job to complete as he has not issued a NOC vis-a-vis certain queries he had raised regarding the quality of the construction which Natarajan had made. This argument is neither adequately met, nor explained. It



therefore, could be gathered, A1 did have some official duty to perform to enable Natarajan to receive the EMD, when the crime was alleged to have happened.

9.1 The second leg of A1's contention is that there was no demand for bribe, but to start with this has to be associated with existence of any official duty required to be performed. One difficulty which the prosecution faced was that its only witness to prove demand for bribe – the defacto complainant Natarajan had passed away. Here in this context, the following statement on law made in ***J.Pandiaraj (Died), Rep by his LRs Vs. State by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri***, [CrI.A.299 of 2015, dated 08.11.2024] is relevant.

"6.1 Let the law be stated. For proving a crime under Sec.7 of the PC Act, the prosecution should establish the minimum facts which constitute the tripod – the demand, payment and acceptance of bribe money on which the crime rests. Even if one leg is not established then the offence cannot be said to have been committed.

6.2 While a successful trap gives an opening credence to the accusation in the FIR as to prompt further investigation into it, it is not conclusive. What does a trap-test establish? It can at the best prove that an accused person has either received the planted



currencies, or he has just touched it, for the moment the accused-person touches the planted currencies or an article without even completing the act of receiving it, the trap-test will produce positive results. Therefore notwithstanding its functional utility in providing an opening for investigation, a trap-test carries a weak evidentiary value to bring home the guilt of the accused person on its own strength, for it is neither capable of proving a demand for and the acceptance of bribe-money. At the best it may serve to prove payment of bribe, which perhaps is the easiest of the triple criteria to prove, since the bribe-giver himself is a decoy of the investigating agency.

6.3 How then to prove demand for bribe? It must be stated that it will be fiendishly difficult for any prosecuting agency to prove demand for bribe through direct evidence, for no person given to his senses will ever make a demand for bribe, leaving a trail for an investigating agency to track. In many cases, the prosecution tries to establish it by producing the CDR details of cellphone to cellphone call details, but its efforts invariably stop there. Unless the text of the cellphonic conversation, duly authenticated by a certificate issued under Sec.65B of the Evidence Act (now Sec.63 of BSA) is produced, no useful purpose would be served by mere production of the CDR. Necessarily, a demand for bribe must be inferred only from proof of payment and acceptance of bribe money.



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6.4 *The next aspect is proof of acceptance. As stated earlier, a trap-test is inconclusive to hold that the accused is guilty of accepting bribe, for it, at the best of times establishes that either the accused has received the planted article or has just touched it. In the context of proving the crime under Sec.7, what then constitutes acceptance, and how it is different from receipt of a planted article? Receipt involves a mere act of receiving, and it need not be accompanied by an intent to hold on to what is received. Therefore, acceptance requires a shade of intent more than that which is required for receiving. And, even acceptance of the planted currencies or article need not always lead to a conclusion that there is an intent to accept what is received. In other words, notwithstanding the fact that the bribe-giver may have paid anything as bribe, the alleged bribe-taker need not have received it with an intent that he is receiving what he receives as bribe. This implies that in a given case, there can be a mismatch between the intent of a bribe-giver in giving the bribe and the intent of the accused person in receiving it. Therefore, proof of acceptance of bribe depends on the purpose or the intent behind the acceptance of the tainted article. Hence, for completing an act of acceptance for proving the offence under Sec.7 or Sec.13(1)(d), the purpose or the intent for receiving the tainted or planted article should be incapable of being explained, which given the circumstance in which it is set, is acceptable to a reasonable man of law in the ordinary course of human conduct. It could therefore be concluded that while a simple act of receipt need not carry mens*



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rea, acceptance of the planted article does require mens rea. The distance between a receipt and acceptance of bribe may be slender, but it is critical.

6.5 However, the intent behind accepting the planted article, often the sinned-currencies, will be only within the personal knowledge of the accused person. It is hence, when a trap-test is proved positive, the presumption under Sec.20 of the PC Act gets activated. But the intent behind holding on to what is received by an accused during the trap will be only within the personal knowledge of the accused, and in terms of Sec.106 of the Evidence Act (now Sec.109 of the BSA) the burden will be on him to establish it. It is hence, the statute has imposed a reverse burden on him to explain. Ultimately, it is the quality of explanation that will decide whether the accused will enjoy his freedom or not. If the explanation and the evidence in aid of it, appears believable and reasonably be accommodatable within the conscience of the Court, then no act of acceptance of bribe can be said to have been established. This is essentially a question of fact.

6.6 Therefore, mere proof in aid of a self-serving act of payment of bribe-money, unaccompanied by poof of its acceptance (or should it be non-acceptance, since acceptance depends largely on the quality of the explanation offered for receiving the planted currencies or article), no demand for money can be deduced as an inferable fact. In other words, even though a demand for money is



capable of being proved mostly inferentially, still unless the factum of acceptance of bribe could be ascertained from the quality of explanation offered by the accused, a demand for bribe cannot be inferred.

6.7 In cases, where the prosecution attempts to prove demand for bribe as an independent fact but through shaky evidence, it may not carry much weight if the reverse burden cast on the accused person is not adequately discharged. If however, if the accused person is able to offer tenable and believable explanation as to the possession of planted currencies in his hand adequate enough to persuade the court to arrive at a conclusion that at the best there could be only receipt of planted article but not its acceptance, then a shaky evidence produced by the prosecution to prove the demand for bribe as an independent fact will accelerate the advantage of the accused person. Indeed, in a given case, it may also go to prove that the entire case against the accused was either fixed by the complainant, or that the trap itself was afflicted by malafides.

6.8 To this it may be added that while law requires all the three acts of demand, payment and acceptance of bribe must be simultaneously proved, it does not require that they must be established in the same order. Ordinarily, it will start from proof of payment of bribe (by default), followed by proof of acceptance (by evaluation from a plane of ordinary course of human conduct),



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from which flows the proof of demand (by inference)."

9.2 Therefore, inasmuch as the demand for bribe will be made only in the shadow of secrecy, the quality of explanation offered for touching the bribe currency which led to a positive trap test becomes critical. A1 neither denies that the money was not paid to him nor did he touch the currency. A2 submits that Natarajan had borrowed Rs.1.0 lakh which she or her father had saved for A2's marriage, and it is this money he had returned. Here, A2 did not attempt to establish that she or her father actually possessed Rs.1.0 lakh either as cash in hand or in the bank which was advanced to Natarajan. Secondly, if only Natarajan had to repay Rs.1.0 lakh to A2, he as well could have paid it directly to A2 and need not have put Rs.50,000/- in two different covers and should hand over one cover to A1 and another to A2. The line of explanation offered by A1 for rebutting the presumption under Sec.20 of the Act is logically unbelievable.

10. The learned senior counsel for A1 did point out certain discrepancies between the testimony of P.W.2 and P.W.3 but in the opinion of the Court, while deciding a charge under Sec.7, it is a quality of evidence, that through a probable



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explanation as to why an accused did not accept the bribe money becomes credible. Here the nature of discrepancies enlisted by A1 makes little impact in discrediting the prosecution version of the crime.

11. In effect, this Court does not find merit in the appeal of A1, and it is liable to be dismissed.

Result:

12. To conclude, this Court dismisses both the appeals :

- (a) Since A2 is dead, his appeal in CrI.A.No.441 of 2023 is dismissed as abated.
- (b) In so far as A1 is concerned, his appeal in CrI.A.No.440 of 2023 is dismissed, and the judgment of the trial Court in Special Judge and Chief Judicial Magistrate, Tiruvannamalai in Spl.Case No.2 of 2014 dated 23.03.2023 convicting A1 is hereby confirmed. His bail bond is cancelled, and he is required to surrender before the trial Court on or before 27.01.2025, and on his failure to surrender, the trial Court is directed to take steps to secure the custody of the A1 to undergo the remaining period



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of sentence.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Anu/ds

To:

1. The Special Judge and Chief Judicial Magistrate
Tiruvannamalai.

2.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery Judgments in
Crl.A.Nos.440 & 441 of 2023

03.01.2025