



Crl.M.P.(MD)No.1973 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.1973 of 2025

in Crl.A.(MD)No.202 of 2025

S.Rajasekaran,
S/o.K.Srinivasan,
Ex-Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
Residing at
No.75, West Street,
Melur, Srirangam,
Tiruchirappalli District.

Petitioner(s)

versus

State Rep. by
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Nagerkoil,
Kanyakumari District.

Respondent(s)

For Petitioner(s):

Mr.C.Arul Vadivel @ Sekar
Senior Counsel
for Mr.R.Shankar Ganesh
Advocate

For Respondent(s):

Mr.P.Kottaichamy,
Government Advocate (Crl. Side)



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ORDER

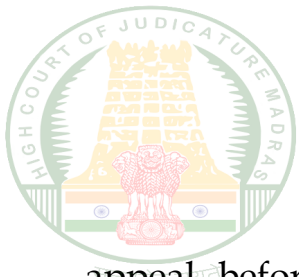
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The petitioner, an Inspector of Police of Vadasery Police Station, was arrested in connection with a case in Crime No.7 of 2013 on 28.06.2013 that he has demanded and received a sum of Rs.50,000/- from P.W.2, who is running a CD shop. The respondent/Vigilance and Anti-Corruption Wing has filed a final report as against the petitioner and the same was taken on file by the learned Special Judge/Chief Judicial Magistrate, Nagercoil, Kanyakumari District, in Spl.S.C.No.3 of 2014. Before the trial Court, the prosecution has examined 19 witnesses, marked 32 documents and 4 material objects. In conclusion of trial, the learned Special Judge/Chief Judicial Magistrate, Nagercoil, Kanyakumari District, by its Judgment dated 28.01.2025, found the petitioner guilty for the offence under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act and convicted and sentenced him as follows:

(i) For the offence under Section 7 of the Prevention of Corruption Act, to undergo 3 years rigorous imprisonment and to pay a fine of Rs.10,000/- with the default sentence of six months simple imprisonment.

(ii) For the offence under Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, to undergo 3 years rigorous imprisonment and to pay a fine of Rs.10,000/- with the default sentence of six months simple imprisonment.

As against the Judgment of conviction and sentence, the petitioner has filed an



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appeal before this Court in Crl.A.(MD)No.202 of 2025 and the same has been admitted by this Court on 02.04.2025. The petitioner has also moved this petition to suspend the sentence imposed by the trial Court, pending the appeal.

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2. The learned Senior Counsel appearing for the petitioner submits that the petitioner, an Inspector of Police of Vadasery Police Station, has registered a case as against the defacto complainant/P.W.2 and therefore, this complaint has been foisted as against the petitioner by P.W.2 at the instance of the CD shop owners' association. The learned Senior Counsel further submits that P.W.2, during his cross examination, has admitted that the petitioner was taking bath at the time of trap and the amount of Rs.50,000/- was kept by him in a diary, which was found in a coffee table. According to him, the amount was not handed over to the petitioner as projected by the prosecution case and there was no demand. It is a calculative case foisted by the CD shop owners' association, in order to prevent the petitioner from taking further action as against the CD shop owners' association.

3. The learned Senior Counsel has also referred the evidence of P.W.3, an official independent witness, who accompanied P.W.2 at the time of trap and submits that the evidence of P.W.2, that the petitioner was taking bath at the time of trap, was also confirmed by the evidence of P.W.3. Therefore, according to the learned Senior Counsel, there was no demand and there was no acceptance of trap amount as



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projected by the prosecution. However, the case has been foisted, in order to prevent the petitioner from taking further course of action as against the CD shop owners' association.

4. The learned Senior Counsel has also pointed out that the alleged demand made by the accused on 27.02.2013 was also not proved by the prosecution. Even according to the Investigation Officer and other witnesses, the petitioner was not present in the police station as claimed by P.W.2. Therefore, according to the learned Senior Counsel, the demand as well as the acceptance has not been proved by the prosecution in this case. However, the trial Court, without appreciating the evidence of P.W.2 and P.W.3, who turned hostile during the trial, has convicted and sentenced the petitioner erroneously.

5. The learned Senior Counsel has also relied on several grounds raised in support of the Appeal and also submits that on completion of the interim suspension granted by the trial Court, the petitioner has surrendered before the trial Court on 02.04.2025 and he is in jail. Therefore, the learned Senior Counsel requested this Court to consider the case of the petitioner for suspending the sentence pending the appeal.

6. The learned Government Advocate (Crl. Side) submits that this petitioner, who was working as Inspector of Police of Vadasery Police Station, has registered a

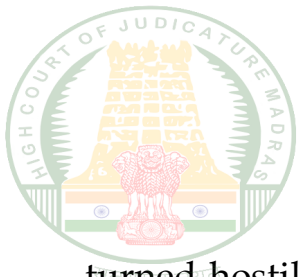


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case as against P.W.2/Defacto complainant and also demanded a sum of Rs.50,000/- as monthly mamool for not registering any case as against P.W.2. However, P.W.2 and P.W.3 have turned hostile and that too only during the course of cross examination. P.W.2/defacto complainant was examined in chief on 17.12.2015. In the chief examination, P.W.2/defacto complainant has narrated the incident as that of the prosecution that there was a demand and pursuant to the demand, he lodged a written complaint before the respondent/ Vigilance and Anti Corruption Wing and based on the written complaint, a trap was arranged by the Vigilance and Anti Corruption Wing. In the chief examination, P.W.2 has also admitted that the demand as well as the acceptance made by the accused on 27.06.2013. However, he turned hostile during the cross examination. P.W.2 was cross examined on various dates on 04.01.2018, 11.04.2018, 25.04.2018 and 27.06.2019. He supported the case of the prosecution in all these hearings. He took U-Turn on 27.06.2019 for the reasons best known and turned hostile.

7. The learned Government Advocate (Crl. Side) pointed out the manner in which the cross examination was conducted after a period of three years from the date of chief examination recorded by the trial Court. With regard to the evidence of P.W.3, the learned Government Advocate (Crl. Side) submits that P.W.3 has supported the case of the prosecution in chief examination on 20.07.2016, however, he



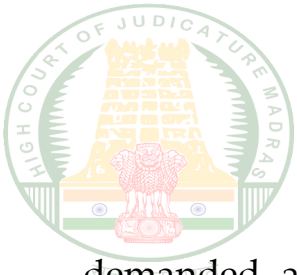
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turned hostile on 03.10.2019. P.W.3. was also cross examined after a period of three years. Therefore, according to him, the witnesses were won over by the petitioner, who was an Inspector of Police and therefore, they have turned hostile during the trial.

8. The learned Government Advocate (Crl. Side) further submits that apart from P.W.3, another independent witness, namely P.W.5, who accompanied P.W.2 and P.W.3 and other officials during the trap, has stated the manner in which the trap was arranged and that P.W.3 also accompanied P.W.2 at the time of occurrence and other narrations as projected by the prosecution. Therefore, according to him, the prosecution has sufficiently proved the case as against the petitioner. The learned Government Advocate further submits that the petitioner, being an Inspector of Police, has not only committed the offence and he also went to the extent of influencing the official witness and P.W.2 to make them as hostile during the course of trial. Therefore, he opposed to grant suspension of sentence.

9. This Court considered the rival submissions made and perused the materials placed on record.

10. The petitioner was an Inspector of Police at Vadasery Police Station. He has registered a case as against P.W.2/defacto complainant on 20.06.2013. The staff of P.W.2 was also arrested. P.W.2 claims that the petitioner/Inspector of Police has



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demanded a monthly mamool of Rs.50,000/- in order to avoid any case to be registered as against him in future. Therefore, the defacto complainant has lodged the above complaint before the respondent Police.

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11. As rightly pointed out by the learned Government Advocate (Crl. Side), P.W.2 has narrated the events as per the prosecution case in the chief examination which was recorded on 17.12.2015. He has also supported the prosecution case in the cross examination even on 25.04.2018. However, he turned hostile on 27.06.2019.

12. This Court is unable to understand the manner in which the cross examination was conducted by the trial Court. The person, who was examined in chief in the year 2015, was cross examined only in the year 2018.

13. The learned Senior Counsel appearing for the petitioner, by referring the Judgment of the trial Court, has pointed out that it is on the fault of the prosecution.

14. The delay in examining the witness after a period of three years has made P.W.2 to be a hostile witness. In this regard, this Court is inclined to refer the Judgments of the Hon'ble Supreme Court.

14.1. In Ramesh and Ors. vs. State of Haryana, reported in AIR 2016 Supreme Court 5554, the Hon'ble Supreme Court has stated as under:

“Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: “witnesses are the eyes and ears of



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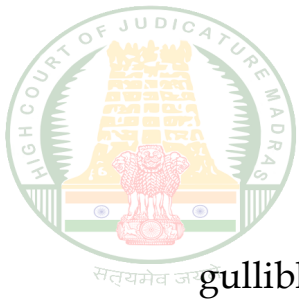
justice”. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system.”

14.2. In *State v. Sanjeev Nanda*, reported in (2102) 8 SCC 450, the Hon'ble Supreme Court has held as under:

“Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people’s faith in the system.

.....

Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those



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gullible witnesses who act under pressure, inducement or intimidation.

Further, Section 193 of the IPC imposes punishment for giving false evidence but is seldom invoked.”

15. P.W.3 is an official witness and he was working in the Agricultural Department. He was summoned by the Investigation Officer during the trap to be a witness for the trap. P.W.3 was said to have accompanied P.W.2 at the time of giving money. The initial statement of P.W.3 reveals that money was handed over to the petitioner. A phenolphthalein test was conducted and that report was marked. Material objects were also produced before the trial Court. However, P.W.3 turned hostile during the cross examination on 03.10.2019 as if he has not accompanied P.W.2 and he has informed that P.W.2 put the trap money in a diary which was kept in a coffee table. P.W.3 was also cross examined after a period of three years, i.e. on 03.10.2019, when he was examined in chief on 20.07.2016. Permission was given by the trial Court to cross examine the witnesses after a period of three years which may be the cause for the witnesses to turn hostile.

16. The fact remains that the material witnesses, namely, P.W.2, who was said to have handed over the trap money to the petitioner and P.W.3-shadow witness have turned hostile. Therefore, the petitioner is having valid grounds in this appeal that can be considered only during the final hearing. Since the appeal could not be



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taken up immediately, this Court is inclined to allow this petition.

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17. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the the learned Special Judge/Chief Judicial Magistrate, Nagercoil, Kanyakumari District and on further condition that the petitioner shall appear before the said Court daily at 10.30 a.m. until further orders.

18. However, the conduct of P.W.2 and P.W.3 and the trial Court cannot be ignored. Therefore, this Court is inclined to call for an explanation from the learned Special Judge/Chief Judicial Magistrate, Nagercoil, Kanyakumari District, who conducted the trial in Spl.S.C.No.3 of 2014, as to how the accused was permitted to cross examine those witnesses after a period of three years, when they were examined in chief on 17.12.2015 and on 20.07.2016 respectively. In this regard, the Registry is directed to call for an explanation from the learned Special Judge/Chief Judicial Magistrate, Nagercoil, Kanyakumari and place the same before this Court on 30.04.2025.

19. The case in Crime No.7 of 2013 has been registered as against the petitioner at the instance of P.W.2, who is a CD shop owner. He lodged a written complaint as



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if the petitioner has demanded a monthly mamool of Rs.50,000/-, based on which, a trap was arranged in the year 2013 and the petitioner was arrested and prosecuted.

After the trial, the petitioner was found guilty and convicted and sentenced as stated above. In view of the Judgment of conviction and sentence, the petitioner was dismissed from service. P.W.2/defacto complainant, who stated about the case of the prosecution in chief examination on 17.12.2015, turned hostile on 27.06.2019, which cannot be ignored just like that. Therefore, the respondent/Vigilance and Anti-Corruption Department is directed to initiate prosecution as against P.W.2.

20. P.W.3 is an official witness, who was working as Junior Engineer in the Agricultural Department. He was invited to be an official witness in the trap which was conducted on 28.06.2013. He also accompanied P.W.2 at the time of occurrence. In his chief examination, he stated about the prosecution before the trial Court on 20.07.2016, however, in his cross examination, he turned hostile on 03.10.2019 after his retirement. Therefore, the conduct of P.W.3 cannot be appreciated. Prosecution was laid as against the petitioner, who was working as Inspector of Police and he was dismissed from service on the evidence of P.W.2 and a trap was made as against him. An official witness, who stood as a shadow witness, questioned the system by giving evidence supporting the prosecution on 20.07.2016 and thereafter, contrary evidence on 03.10.2019, after his retirement, needs to be addressed. Therefore, The



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respondent/Vigilance and Anti-Corruption Department is directed to initiate
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prosecution as against P.W.3 along with P.W.2.

21. Post this matter on 30.04.2025 for compliance of the above directions.

sd/-
03/04/2025

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07/04/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

OGY
TO

1 THE SPECIAL JUDGE / CHIEF JUDICIAL MAGISTRATE,
NAGERCOIL,
KANYAKUMARI DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

3 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION WING,
NAGERKOIL,
KANYAKUMARI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.R.SHANKAR GANESH, Advocate (SR-3854[I] dated 03/04/2025)



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ORDER
IN
Crl.M.P.(MD)No.1973 of 2025
in Crl.A.(MD)No.202 of 2025
Date :03/04/2025

SS/SAR. /07.04.2025/13P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.