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Crl.A(MD)No.120 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	23/10/2024
Date of Pronounced	23/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.120 of 2019

State of Tamil Nadu
rep. by the Public Prosecutor,
High Court,
Madras-600 104.

The Inspector of Police,
V & AC, Pudukkottai,
(V & AC Pudukkottai
Crime No.09/1999)

: Appellant/Complainant

Vs.

1.Tr.G.Selvaraj
2.Tr.R.Muthuvel
3.Tr.C.Lashmanan

: Respondents/A1 to A3

Prayer: This Criminal Appeal is filed under Section 378(1)(b) of the Criminal Procedure Code, to set aside the judgment of acquittal of the respondents/Accused 1 to 3 passed by the Special Judge/Chief Judicial Magistrate, Pudukkottai, in Special CC No.03 of 2022, dated 21/12/2017, convict and sentence the respondents/Accused 1 to 3 of the charges framed against them.

For Appellant : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For 1st Respondent : Mr.D.Ramesh Kumar

For 2nd Respondent : Mr.V.S.Badrinath

For 3rd Respondent : Mrs.S.Prabha



J U D G M E N T

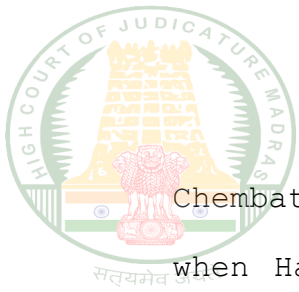
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This Criminal Appeal is filed against the judgment of acquittal of the respondents/Accused 1 to 3 passed by the Special Judge/Chief Judicial Magistrate, Pudukottai, in Special CC No.03 of 2022, dated 21/12/2017.

2.The case of the prosecution in brief:-

On 23/12/1999 at about 09.00 am at Ayyankadu Village in Alangdi Taulk A1 accompanied by A2 questioned one Muthukani and his relative Haneefa (PW2) about their act of cutting the Neem Trees stating that it belongs to the Government as they were grown in Poromboke land; to which Muthukani replied that the trees are standing in his land. On 24/12/1999, A2 alone went to Ayyankadu Village and met Muthukani, demanded to give Rs.2,000/- as gratifications for not filing case. Again 25/12/1999 A2 met Fathima Deevi, daughter in law of Muthukani and told her that A1 instructed him to demand her a sum of Rs.2,000/- to be given to A1.

It is the further case of the prosecution that on 25/12/1999, Haneefa accompanied by his relatives Mohammed Ibrahim, proceeded to meet A1 at his office and on their way when they met A2, he made demand of Rs.2,000/- to A1 as gratification; on the same day they met A1 at



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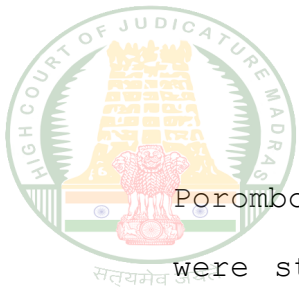
Chembattviduthi at four road junction. On 26/12/1999 again when Haneefa and Mohamed Ibrahim met A1 at about 08.00 pm

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at Karambakudi at his residence, A1 reiterated his earlier demand. When Haneefa expressed his inability to pay the money, A1 reduced his demand from Rs.2,000/- to Rs.1,300/- and agreed to accept the same and instructed Haneefa to pay the same on 27/12/1999 positively and then to take away the felled Neem Trees. As the complainant was not willing to give bribe, he lodged the complaint. Upon which, a case in crime No.9 of 1999 was registered under section 7 of the Prevention of Corruption Act, 1988. Based upon the complaint Trap was laid, investigation was undertaken and a final report was filed before the Special Judge/Chief Judicial Magistrate, Pudukkottai, which took cognizance in Special CC No.3 of 2002 for the offence under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act r/w 34 of IPC.

3.The following charges were framed against the accused persons:-

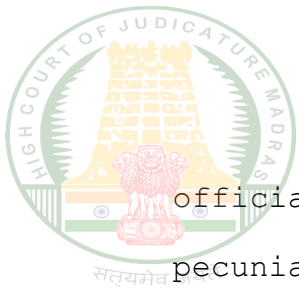
(i)On 23/12/1999 at about 09.00 am at Ayyankadu Village in Alangdi Taulk A1 accompanied with A2 and questioned one Muthukani and his relative Haneefa (PW2) about their act of cutting the Neem Trees stating that it is belongs to the Government as they were grown in



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Poromboke land and to which Muthukani relied that the trees were standing in his land; On 24/12/1999 A2 alone went to Ayyankadu Village and met Muthukani and demanded to pay Rs.2,000/- as gratifications for not foisting case; Again 25/12/1999 A2 met Fathima Deevi, Daughter-in-law of Muthukani and told hr that A1 instructed him to inform tat a sum of Rs.2,000/- to be paid to A1 for the illegal cutting of Neem Trees; on 25/12/1999, Haneefa accompanied with his relatives Mohamed Ibrahim and proceeded to met A1 at his office and on their way when they met A2, he made a demand of Rs.2,000/- to A1 as gratification and on the same day they met A1 at Chembattviduthi at four road junction; On 26/12/1999 again when Haneefa and Mohammed Ibrahim met A1 at about 08.00 pm at Karambakudi at his residence of A1 reiterated his earlier demand. When Haneefa expressed his inability to pay the money, A1 reduced his demand from Rs.2,000/- to Rs.1,300/- and agreed to accept the same and instructed Haneefa to pay the same on 27/12/1999 positively and then to take away the felled Neem Trees and thereby the accused persons have committed the offence under section 7 of the Prevention of Corruption Act r/w section 34 IPC;

(ii) In the course of the same transaction on 28/12/1999 at about 11.30 am, outside the room of the office of A1 at Theethanipatti, A1 to A3 being public servant by corrupt or illegal means and by abusing their



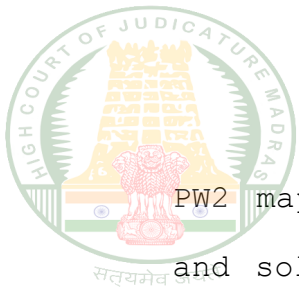
official position obtained Rs.1,300/- from Haneefa as pecuniary advantage for themselves and thereby the accused have committed the offence punishable under section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 r/w section 34 IPC.

4.To that charges, the accused pleaded not guilty and claimed to be tried.

5.During the trial process, on the side of the prosecution, 14 witnesses have been examined and 23 documents marked. Apart from that, MO1 to MO5 marked. No witness was examined on the side of the defence. But one document was marked as Ex.D1 during the cross examination of PW2.

6.The case of the prosecution, as narrated through the prosecution witnesses:-

PW2 Haneefa is living in Iyyankadu village, owned property measuring about 30 kulis. Apart from that, PW2's sister's father in law is having 4 acres of land and others in several places. Haneefa sold the property in favour of Karuppaiya and received Rs.30,000/- as advance for the total sale consideration of Rs.35,000/-. It was agreed that



PW2 may cut away the standing trees. Five trees were cut and sold to one Badhursha. On 22/12/1999 Badursha came to

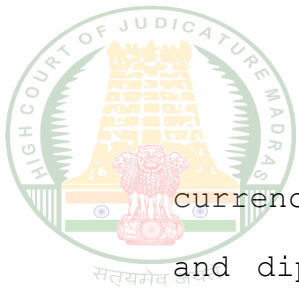
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the property and cut the trees. On the next day namely 23/12/1999 at about 09.00 am, the first accused Selvaraj who was working as Village Administrative Officer, Village Assistant the second accused came to that place and objected for cutting trees. They told him that it is their patta land. Measurement was done by the first accused and told that their trees standing in Vari area. However the first accused obtained the signature in white paper as if they admitted that by mistake they cut the trees. They also told that they should not remove the trees without their permission. On the next day, when they were going to the office of the first accused, the second accused saw them in the midway and asked them to pay Rs.2,000/- for removing trees stating that the first accused demanded that money. They went to the office of the first accused, but he was not available. So on 25/12/1999, he was told that the first and the second accused with the third accused visited the place and measured the property. On the next day, again they went to the office of the first accused. At that time, the second accused was present and told that the first accused has gone to the check post area. Again he demanded money for himself and for the first accused. Later they went to the check post area and met the first accused. They demanded money as stated by the second



accused. They returned to the house and informed their sister. On 26/12/1999 again they went to the office of the first accused. Again demand was made by the first accused, later it was reduced to Rs.1,300/-. Promising to pay the money he returned to the house. Unwilling to pay the bribe amount he decided to lodge a complaint and accordingly, on 27/12/1999 at about 11.30 am, they went to the Vigilance and Anti Corruption Department, Pudukottai and lodged the complaint under Ex.P3.

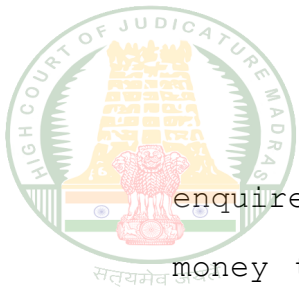
7.The further event is spoken by PW13 who was working as the Inspector of Police, in Pudukottai Vigilance and Anti Corruption Department. He received the complaint from PW2 on 24/12/1999 and registered a case in Crime No.9 of 1999 for the offence under section 7 of the Prevention of Corruption Act. He submitted the original records to the court and copies to the higher officials and made a request to the Government to depute two responsible officers for assisting him in trap proceedings. At the request made by him, one Daulathsha and Karunanidhi appeared before him. He introduced PW2 to the witnesses and informed them about the test to be undertaken. PW2 handed over Rs.1,300/- consisting of 100 rupees notes. Sodium bicarbonate solution was prepared and one of the police officials was directed to dip his hand in the solution; there was no colour change. Phenolphthalein powder was applied to the



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currency notes. Again the police officer counted the notes and dipped his hands in the solution. It turned pink. He prepared the mahazar mentioning the currency notes wherein all signed; instructed PW2 to go to the office of the accused and give the money if demanded by him and asked Daulathsha namely PW3 to accompany PW2 and witness the event. Further instructed PW2 to give signal if the accused receives the money. Along with the police team and the witnesses, they proceeded to the office of the accused, who were temporarily put up nearby the check post area. But later informed him that the accused did not receive the money stating that letter obtained from them is available in his office and so, they may come on the next day. They returned to the office and prepared the mahazar about events took place and on the next day, at his request on 28/11/1992 again all the witnesses appeared and the test was re-conducted. Again for which also mahazar was prepared. Again they started towards the office of the accused. At about 10.40 am, PW2 and the other witnesses went inside the office of the first accused. The police team was hiding in a nearby area.

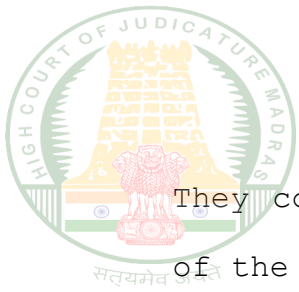
8. Further event is spoken by PW2. Inside the office of the first accused, the first accused was available in the office so also the second accused. The third accused entered into the office at that time. The first accused



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enquired him about the money; when he tried to give the money to the first accused, but the first accused without receiving the money directed him to give the same to the third accused. The third accused received the money and put it in a paper, folded. A1 returned the letter obtained from them; asked them to destroy the same. But PW2 told him that his the father in law also signed in the letter, so it must be returned to him. But the first accused received back the papers torn a portion, returned the remaining which contained the signature of the father in law. The entire event was witnessed by PW3. They came out of the office and as instructed, PW2 made the signal; police entered into the office of the first accused. He narrated the events to the Trap Laying Officer and identified the accused to them.

9.The further event is spoken by PW13. He enquired the first accused about the bribe, he told that no such bribe was received by him, towards cutting of the trees penalty were collected. They enquired the third accused who in turn told that he received the money as instructed by the first accused and produced the cover which contained money. Sodium bicarbonate solution was prepared and the third accused was directed to dip his hands. The left hand turned pink. But colour was not visible in respect of the right hand. Samples were collected, labeled and sealed.



They compared the notes mentioned in the mahazar with that of the notes available in the notes seized. It found to be tallied. The purse which contains the money was dipped in another solution it also turned pink. It was collected in another bottle, labeled and sealed. He recovered the paper pieces torn by the first accused which contains the signature of PW2. He recovered the relevant office register. He arrested the first and third accused. After due intimation, search was made in this house of the third accused. But nothing was recovered or seized, so also the first accused. Then ne made enquiry with regard to the minutes to be prepared by the revenue officials in case of cut and remove of trees standing in the Government properties. He submitted the material objects for chemical examination; made a request to his department for producing the relevant records and registers.

10.He handed over the file to Muthukani the Inspector of Police attached to the Vigilance and Anti-Corruption Department for further investigation. The concerned Inspector of the Police Muthkani was reported to be dead on 21/12/2016. So PW14 who knows that signature was examined. According to him, the Inspector of Police, took up the investigation, recorded the statement of the witnesses, visited the place of occurrence, prepared mahazar, collected certificates from the revenue



authorities. After completing the investigation filed final report on 02/05/2002.

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11.PW3 corroborated PW2 and PW13 in material particulars, regarding pre-trap, trap events, etc.

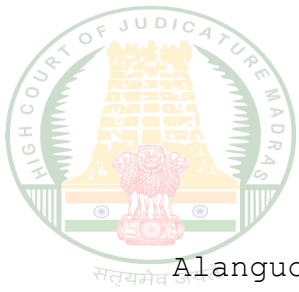
12.PW4 is the brother of PW1. He corroborated PW2 about the issue.

13.PW5 is the sister of PW2 she also corroborated PW2 regarding the issue.

14.PW6 is the purchaser who entered into an agreement with one Muthukasi Rawthar. According to him, Muthukani Rawather only sold the trees. But when cutting was made, the first accused intervened and stopped the cutting.

15.PW7 has spoken about the event took place, identify of the cutting of the trees.

16.PW8 is the neighbouring land owner. PW9 measured the property at the request made by the Investigating Officer. PW10 was working as Tasildhar, He has spoken about the procedure to be adopted by the VAO if the trees standing in the place of the Government Properties are cut.



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17.PW11 was working as Revenue Inspector in Alangudi taluk office during the relevant time. He visited the place of occurrence, namely, where the trees were cut on 27/10/1999, after getting instruction from the first accused, in the occurrence place he made enquiry. PW12 was working as Scientific Assistant in FSL, Chennai. He examined the material objects submitted to him by the Investigating Officer and submitted the report.

18.After closure of the prosecution evidence, when the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same.

19.After considering the evidence, both oral and documentary, the trial court found the accused not guilty under section 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, and acquitted them under section 235(1) of Cr.P.C.

20.Against which, this criminal appeal is preferred by the State.

21.Heard both sides.



22.It is a judgment of acquittal, the principles to be taken into account while deciding the appeal against the acquittal must be kept in mind as detailed in the judgment reported in ***Sanwat Singh & others Vs. State of Rajasthan (AIR 1961 SC 715):-***

"(i)Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive-inclusive of all evidence, oral or documentary;

(ii)Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground challenge;

(iii)If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv)If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v)If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi)In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."



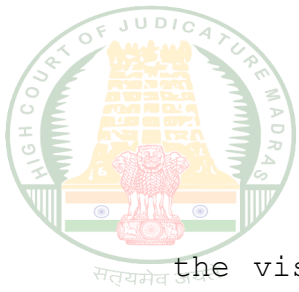
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23.It is further settled that the appellate court has full power of reviewing the evidence and can come to its own conclusion. The duty is cast upon the appellate court to record a finding of fact which caused the appellate court to differ from the judgment of acquittal. The reasons must be assigned for differentiating from the view taken by the Trial court.

24.With these principle in mind, now let us go to the evidence on record.

25.The back ground facts:-

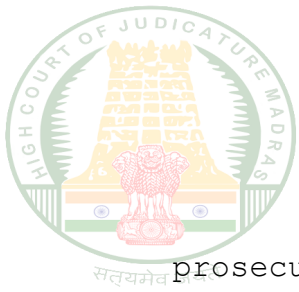
PW2 owned lands in Ayyankottai village. Similarly in the same area adjacent to the above said land Muthukani is also owning lands in two portions. Three plots were agreed to be sold to one Karuppaiah who is examined as PW6 on the side of the prosecution. At that time of the agreement, PW2 and Muthukani decided to cut and remove the standing trees. The trees were sold to one Badursha who is examined as PW7. On 22/12/1999 Bhadursha engaged labourers to cut the trees. On 23/12/1999, the revenue officials namely the accused and others went to the spot and questioned PW2 and his relatives as to how they can cut and remove the standing trees in the poramboke lands belongs to the Government.



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26.It is the allegation of PW2 that on the date of the visit, the accused has obtained the signature in blank papers from himself and the uncle which is marked as Ex.P2 on the side of the prosecution. On the next day, PW2 met the second accused on the way. At that time, the second accused alleged to have told PW2 that the first accused asked them to pay Rs.2,000/- and take the trees. He also demanded something for himself. On 25/12/1999, survey was conducted by the first and the second accused. At that time, the third accused was also present. PW2 was not satisfied with the survey conducted by the accused. On that day also demand was repeated by the second accused for himself and on behalf of the first accused. They met the first accused near the check post. At that time, the first accused alleged to have told PW2 to give bribe as per the instructions given by the second accused.

27.On 27/12/1999 again they met the first accused again demand was made by the first accused. It was reduced to Rs.1,200/-. Upon which the complaint was lodged on 27/12/1999. So the second demand alleged to have made on 27/12/1999. Upon which trap was laid. On that day trap was not successful. Since the first accused did not accept the money stating that Ex.P2 was available in his office. On the next day that is on 27/12/1999 trap was successful. This is the sequence of events.



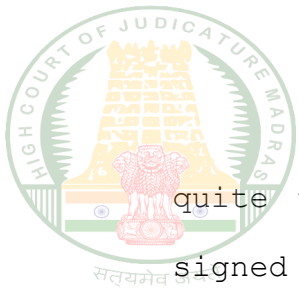
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28.Now pointing out this sequence of events, the prosecution would submit that since the initial demand, acceptance, recovery was established by the prosecution from the evidence of PW2 and PW3 and the trap laying officer, the case was established beyond all reasonable doubt. But however, the trial court though it fit having other facts on flimsy grounds and acquitted on unacceptable grounds and reasons.

29.Now in the light of the above said, we will see whether the judgment of acquittal passed by the trial court is proper and legal. For that purpose, re-appreciation is required.

30.Before we go into the other aspects, let us take the evidence of PW2 namely Haneefa whether he is a genuine person, since because the real name of PW2 was put into question by the accused during the course of the trial. It was cross examined by A2 that PW2 is owning passport in the name of Nagai Haneefa. Similarly, he is also owning another passport in the name of Haneefa, which one is correct is not clear on record.

31.Now we will go to the complaint. The complaint is in the name of PW2 shows himself as Mohammed Haneffa. He signed in the complaint in Tamil. But this signature is not available in Ex.P2, wherein PW2 has signed in English. In the deposition also, he signed in English. We find

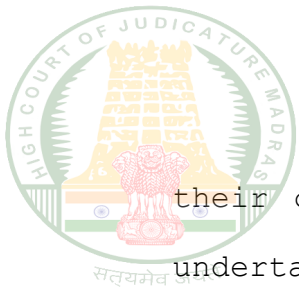


quite visible difference in the signatures. Why he has signed in differently in different occasions was not explained by him. Whether this aspect affects his evidentiary value and ultimately the prosecution case, will be considered in the course of the time.

32. Another important aspect spoken by PW2 during the course of the chief examination is that on the date of the inspection the first and the second accused obtained their signature in blank papers. That is marked as Ex.P2 as mentioned above. This document is greatly doubted by the trial court.

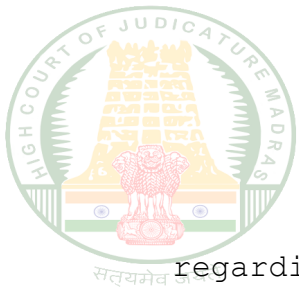
33. During the course of the evidence PW2 has stated that after paying the bribe amount, they demanded the papers signed by them and his uncle. But the first accused teared the paper into two pieces. One piece contains the signature of the PW12 was given to them. Another portion was completely destroyed. That was shown at the time of the trap that destroyed portion which were lying on the floor, was shown to the DSP. The DSP collected the destroyed portion also and pasted it that is marked as Ex.P2.

34. In this context, a suggestion was made to PW2 by the accused that Ex.P2 was tampered by PW2 and vigilance officials; they wrote the remaining portion according to



their contentions. This is the case of the accused. It is undertaking by PW2 and his Uncle to appear before the revenue officials. That portion was tampered and in that place, the above said portion was pasted.

35.Now coming to the main aspect of demand, it is the case of the PW2 that on 24/12/1999 initial demand was made by the second accused stating that the first accused told him to give Rs.2,000/- and take away. On that date the second accused also demanded some money for him. Regarding this initial demand made by the second accused, on behalf of the first accused there is no corroboration. The second demand was allegedly made on 26/12/1999. At that time also the second accused alleged to have told to PW2 to give Rs.2,000/- to the first accused and for some amount for him. They immediately went to the check post area where the first accused was available. The first accused told PW2 to cut as per the instructions given by the second accused. He made a threat to give a complaint against them for having cut the trees belongs to the Government. Regarding this aspect also except the evidence of PW2, no other corroborating evidence is available. PW2 would say that at that time along with him his brother Mohammed Ibrahim, PW4, was also present. PW4 the brother of PW2 has not stated anything about the alleged demand made by the second accused on behalf the first accused and himself.



36.This is the contradiction between PW2 and PW4 regarding the demand by the second accused on 25/12/1999.

This was projected by the trial court as a material contradiction.

37.Regarding the demand made by the first accused near the check post area, PW4 would say that PW2 only went to see the Village Administrative Officer and at that time, he went for taking water. When he says that when he went to take drinking water how he was able to say Rs.2,000/- was demanded by the second accused on that day is not known. So we can ignore PW4's evidence on that aspect. During the course of evidence PW4 would say that that was intimated to him only by PW2. So this shows that the alleged demand of Rs.2,000/- made by the first accused is not established. From this contradiction the trial has rightly rejected the prosecution case regarding the initial demand and the second demand.

38.Now in the light of the discussion, we will go to the trap events. On that date, when they entered into the office of the accused the first accused was available in the office along with the second accused. The third accused entered into the office. PW2 told the first accused that he has brought the money demanded by him. He gave the money to the first accused. But the first accused asked PW2

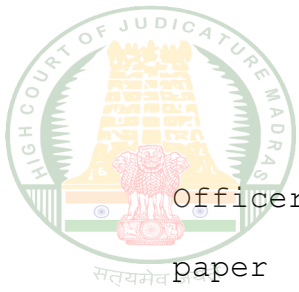


to give the money to the third accused. The third accused took some pieces of papers and put the same and folded it.

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But that occurrence took place outside the office of the accused. After that the third accused went inside the office of the accused and brought the paper signed by him. So this is the trap event spoken by PW2. PW3 is the shadow witness. But there is a major contradiction in his evidence. When he entered into the office all of three accused persons were available. PW2 would say that the third accused was entering into the office later. This according to the learned Additional Public Prosecutor clearly established by the prosecution regarding the demand on the date of the trap, acceptance, etc facts. But here again the contradiction between PW2 and PW3 regarding acceptance of the money.

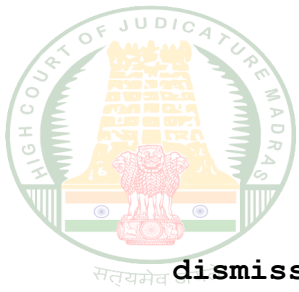
39.As mentioned above, PW2 says that the first accused asked the third accused to receive the money in a paper. Accordingly the third accused done. PW3 would says that the third accused received the money placed it in a paper and folded it. The third accused handed over the folded paper to the Trap Laying Officer which contains tainted money. But during the course of the cross examination, he contradicted himself, PW2 did not give money to the third accused. During the course of the investigation and statement before the Investigating



Officer, PW3 has stated that the third accused produced the paper wherein only PW2 signed. This contradiction was brought at the time of the cross examination. This material contradiction shows that whether the money was actually placed by PW2 or by the third accused in a paper. If the evidence of PW3 is believed, money was placed by PW2 in the paper, then as pointed out by the trial court, sodium bicarbonate solution test would have turned positive. But regarding left hand it turned pink. How this occurred is not explained by the prosecution. So the recovery itself is doubtful, so also acceptance in view of the glaring contradictions.

40. So, the trial court has taken a probable view for rendering the judgment of acquittal. It does not suffer from illegality or irregularity.

41. In view of the discussion, the identification of the PW2 need not be given any importance at all. Since the acceptance itself is doubtful in view of the glaring contradiction between the evidence of PW2 and PW3, the judgement of acquittal passed by the trial court requires no interference.



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42.In the result, this criminal appeal is **dismissed**, confirming the judgment of acquittal passed by the trial court.

23/01/2025

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Internet : Yes/No
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To,

- 1.The Special Judge/Chief Judicial Magistrate,
Pudukkottai.
- 2.The Inspector of Police,
Vigilance and Anti-Corruption,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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