



WEB COPY



Crl.A(MD)No.148 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	16/10/2024
Date of Pronounced	10/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.148 of 2019

Gunam (Died) : Sole Accused
1.Rajamani
2.Giriprakash : Appellants/Legal-heirs
of the deceased Gunam
(Appellants 1 and 2 impleaded
as per the order, dated 29/11/2022
made in Crl.MP(MD)No.14364 of 2022
in Crl.A(MD)No.148 of 2019).

Vs.

State rep. by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Pudukkottai.
(Crime No.3 of 2023) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the conviction and sentence passed in Special CC No.6 of 2014 on the file of the Chief Judicial Magistrate Court, Pudukkottai, dated 24/12/2018 and set aside the same as illegal and acquit the appellant.

For Appellants : Mr.K.Sivabalan

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

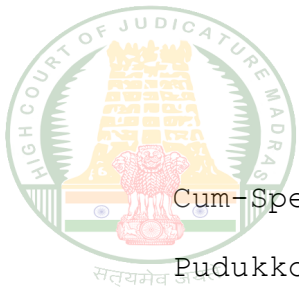


J U D G M E N T

This Criminal Appeal is filed against the conviction and sentence passed in Special CC No.6 of 2014 on the file of the Chief Judicial Magistrate Court, Pudukkottai, dated 24/12/2018.

2.The case of the prosecution in brief:-

The accused was working as Field Officer, Firka Surveyor In-charge in Puthunagar Firka, Kanddarakottai Taluk, Pudukkottai District. One Banumathi who is the PW4 herein, purchased a property in Survey No.78/9, to an extent of 0.02 Ares in Punalkulam Village, Kanddarakottai Taluk, Pudukkottai District. She preferred an application in the year of 2012 to earmark the boundaries of her property, for which, the de-facto complainant who is the husband of Banumathi also approached the accused several times. On 23/07/ 2013 at 11.00 am, he demanded a sum of Rs.5,000/- as bribe. As the de-facto Complainant was not willing to bribe, he lodged a complaint before the respondent police. Based on the complaint, Trap was laid. Case in Crime No.3 of 2023 was registered for the offence under section 7 of the Prevention of Corruption Act. The accused was arrested in the trap. After completing the formalities of the investigation, final report was filed and it was taken on file by the Chief Judicial Magistrate-



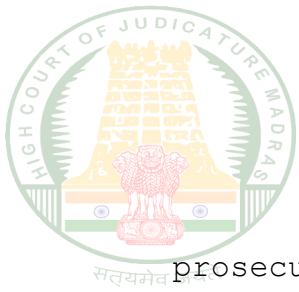
Crl.A(MD)No.148 of 2019

Cum-Special Judge for Prevention of Corruption Act,
Pudukkottai, in Special CC No.6 of 2014 for the offence
under sections 7 and 13(2) r/w 13(1)(d) of the Prevention
of Corruption Act, 1988. After completing Sec. 207 Cr.P.C
proceedings, the following charges were framed against the
accused persons:-

(1)On 23/07/2013 at about 11.00 am,
when the de-facto complainant gave a petition
seeking to survey the land, the accused
demanded Rs.5,000/- as bribe amount to make
arrangement to survey the land and thereby,
the accused committed the offence under
section 7 of the Prevention of Corruption Act,
1988; and

(2)In pursuance of the same
transaction, the accused by using his position
as a public servant obtained Rs.5,000/- as
pecuniary advantage for himself from the
complainant and thereby the accused committed
the offence under section 13(2) r/w 13(1)(d)
of the Prevention of Corruption Act, 1988.

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

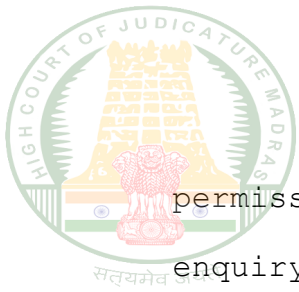


4. During the trial process, on the side of the prosecution, 21 witnesses have been examined and 32 documents were marked. Apart from that, MO1 to MO4 were also marked. On the side of the accused, no oral or documentary evidence was adduced.

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

PW2 is living in Thethuvasaipatti village. His wife namely Banumathi purchased the property in 2012 in Punalkulam village. On 25/10/2012 to measure the property, he remitted the charges. In the month of November, he enquired about the stage of the application with the accused. He asked him to come after some months. Again he contacted on 15/07/2013. At that time, he has stated that some expenditure must be incurred by him. Again on 23/07/2013, when he approached the accused, he demanded Rs.5,000/- so, he lodged a complaint with the respondent police on the same day under Ex.P2.

6. The complaint was received by PW19-Ramanathan, the Inspector of Police, on that day at about 04.00 pm, registered a case in Crime No.3 of 2023 under section 7 of the Prevention of Corruption Act. After obtaining proper



WEB COPY

permission from the higher authorities, he made preliminary enquiry with regard to the conduct of the accused. He was informed that he is not keeping good conduct. He made a request to the Government Departments to depute responsible persons to assist them in the pre-trap proceedings. As per his request, on 24/07/2013 PW2 and other official witnesses appeared before him. He introduced PW2 to the official witnesses and informed and explained them about the trap proceedings and the importance of the sodium carbonate solution test, etc.

7.PW2 handed over Rs.5,000/- currency notes consisting of Rs.1,000/- numbering about 5. They prepared a mahazar, note down the serial numbers mentioned in the concerned notes. He asked his one of the officials to prepare the sodium carbonate solution and asked him to count the notes. He counted the notes and asked him to dip his fingers in the solution. He dipped his hands and there was no colour changing. Later the currency notes were applied with phenolphthalein powder. Again, he asked him to count the note and dipped his hands in another preparation of sodium carbonate solution. Accordingly, that person counted the currency notes, dipped his hands and it turned pink.

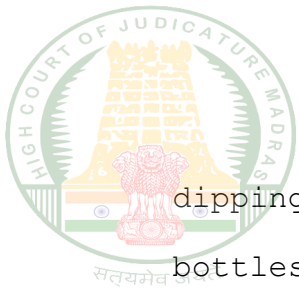


WEB COPY

8.He instructed PW2 to have the money with him and go to the office of the accused. If he demanded the money, he must give the same. If the accused received the money, he must give a signal. The entire event was recorded by way of mahazar, in which all the witnesses signed. He submitted the original records to the court and copies to the higher authorities. The police team along with the witnesses and PW2 went to the office of the accused at about 11.00 am. At about 10.50 am, PW2 and other official witness went to the offence of the accused.

9.Now the events are spoken by PW2. When he approached the accused, the accused asked him whether he brought money. He handed over the money. The accused received the same and put the same in his right hand pant pocket. At that time, the official witness Arockiya Sekar was present. After that, he came down to the office and made signal.

10.Now the further event is spoken by PW19 the Trap Laying Officer. On getting the signal from PW2, the police team went inside the office of the accused. The accused was identified by PW2. PW2 narrated the event. PW2 was sent out. He made enquiry with the accused. Sodium carbonate solution was prepared, in which the accused was directed to dip his hands separately. Both solutions turned pink on his



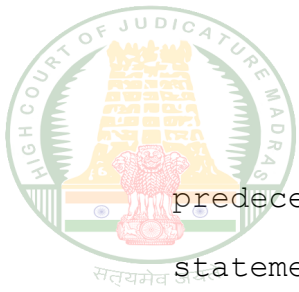
dipping. Those two solutions were collected in a separate bottles, labelled and sealed.

WEB COPY

11.He enquired the accused about the money, the accused handed over Rs.5,000/- from his pant pocket. The currency notes mentioned in the mahazar were compared with that of the currency notes available with the accused. It tallied. A Mahazar was prepared wherein the accused and the witnesses signed. He recovered the relevant records from the office of the accused. Arrested the accused at about 12.40 pm. When search was made, Rs.90/- was found in his pocket. That money was returned to him, since it was his personal money. Search was made in the house and nothing was recovered or seized. For which also, mahazar was also prepared and submitted the material objects to the court.

12.Further investigation was taken by PW20, the Inspector of Police, Mathiyalagan. On 24/07/2013 itself, he made a request to the Government namely concerned authorities for handing over the relevant records. He submitted the material objects to the FSL for proper test, recorded the statement of the witnesses, received the chemical examination report on 04/09/2013.

13.The further investigation was taken by PW21 Boominathan. He perused the draft final report of the



predecessor. After getting sanction order, he recorded the statement of PW1. After completing the investigation, filed the final report on 01/07/2014.

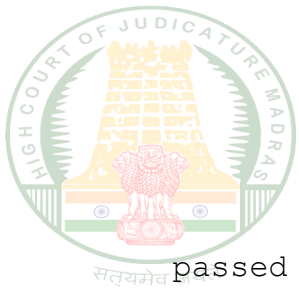
14.PW3 is the official witness, who corroborated PW2 and the Trap Laying Officer in material particulars about the pre-trap arrangement, trap proceedings, etc. facts.

15.PW4 is the wife of PW2 who has spoken about the steps taken by them to measure the property.

16.PW5 is the neighbour and has spoken about the measurement taken on 13/09/2013, so also PW6 and PW7.

17.PW9 was working as Deputy Tasildhar in Kantharvakottai and spoken about the application submitted by PW2 for measuring the property, demo undertaken, procedures to be followed by him while measuring the properties. PW10 is the forwarding officer, about the processing of the application submitted by PW2, so also PW13, PW14 and PW15.

18.PW16 is the Landlord where the accused was living by taking room for rent.



19.PW17 has spoken about the suspension order passed by him against the accused.

WEB COPY

20.PW18 is the Scientific Assistant, who examined the material objects submitted to him by the Investigating Officer through proper channel. He sent a report under Ex.P10 after making the chemical analysis.

21.After closure of the prosecution evidence, when the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

22.After considering the evidence, both oral and documentary, the trial court found the accused guilty for the offences under sections 7 and 13(2)r/w 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo one year RI and to pay a fine of Rs.2,000/- in default to undergo 3 months RI for the offence under section 7 of the PC Act; and further convicted him under section 13(2) r/w 13(1)(d) of the Act, sentenced him to undergo 2 years RI and to pay a fine of Rs.3,000/- in default to undergo 6 months RI and directed to run the sentences concurrently.

23.Against which, this criminal appeal is preferred by the appellant.



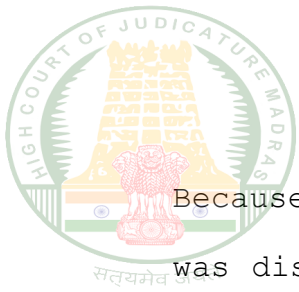
24.Heard both sides.

WEB COPY

25.PW2 Thandavamuthu the de-facto complainant and PW4 Banumathi are the husband and wife. The property was purchased in the name of PW4 and for measuring the same and sub division, a request in the form of petition was presented by PW2. On 25/10/2012, he paid the legal charges. Now, according to him, from 25/10/2012 till February 2013 for about 3 times, he contacted the accused for surveying the land. Finally on 05/07/2013, the accused demanded the bribe amount. But the amount is not mentioned by the accused. Later on 23/07/2013 also, he contacted the accused. At that time, he demanded Rs.5,000/- as bribe amount. On that account, he lodged a complaint on the very same day. This is the short substance of the evidence of PW2 regarding the initial demand and the demand on the date of trap prior to it.

26.Now we will go to whether any motive existed between the accused and PW2 for falsely implicating him.

27.Now we will straightaway go to the cross examination made by the accused to PW2. According to him, in pursuance of the request made, land was surveyed on 20/12/2012 itself. But villagers made objection stating that their pathway right is existing in that property.

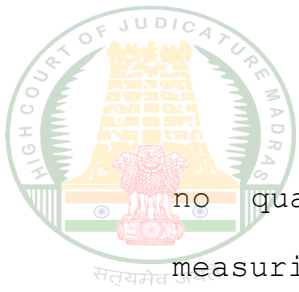


Because of the objections made by the villagers, the work was discontinued and the accused returned without measuring the same.

28.It is the further contention on the part of the accused that a portion of the property sought to be measured lies within Punalkulam. So, the accused told PW2 that survey cannot be undertaken. Fearing that action may be initiated against PW2 and his wife PW4, such a false case has been given. But absolutely, this contention on the part of the accused is without any basis and no evidence was let in by him even to probabalise his defence to show that there was previous motive for launching the complaint. So, it is seen that absolutely, there is no motive between the accused and PW2 prior to lodging of the complaint on any event.

29.Now with this in mind, let us go further.

30.The fact that PW2 made a request is not denied by the accused. The process undertaken by the Department on the request made by the accused has been elaborately spoken by PW9 to PW15. Various authorities and staffs working in the Taluk office dealing with the request made by PW2. There is no quarrel on that process. Similarly, there is

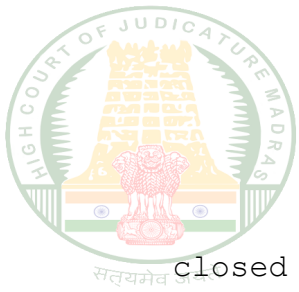


Cr1.A(MD)No.148 of 2019

no quarrel on that point that PW2 made request for measuring the property. So, we need not trouble much upon the evidence spoken by those witnesses.

31.We can straightaway go to the cross examination made by the accused to PW2 and the steps taken by him. At the time of cross examination, it was suggested to PW2 that he sent recommendation much prior to the alleged demand date. But in this context, we will go to the evidence of PW9. He would say that on 25/10/2012, he received the request under Ex.P8 and handed over the same to the Record Clerk for making proper entry in the relevant register. Later, he was transferred. So, he did not aware the subsequent events.

32.PW10 is the Senior Draftman working in the Department during the relevant time. According to him, he received the request from the Tasildhar and forwarded the same to the Taluk Surveyor. The Surveyor by name Gunam submitted a report. That was received by him on 02/11/2012 for further action. After making the measurement, he submitted a report on 20/12/2012. He made an endorsement and note that since the work is completed, file may be closed.



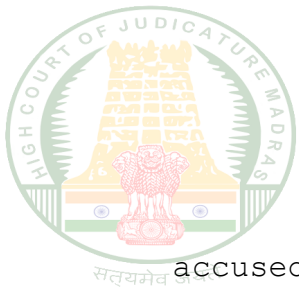
33.Further, PW10 has stated that the file was closed on 04/01/2013.

WEB COPY

34.Now pointing out this fact, it is contended on behalf of the appellant that since the work was already over, there is no occasion or chance for the accused to have demanded the bribe amount as stated by the prosecution.

35.As stated above, the date of demand was on 23/07/2013. The file was closed on 04/01/2013. But the fact remains that that was not intimated to the complainant. Had it been intimated to the complainant in time, then there was no occasion for the complainant to approach the accused.

36.It is the specific evidence on the side of the complainant that even at the stage of demanding the bribe amount, the accused has not informed him that he sent the file two months prior to that date. That was the specific allegation made by the complainant against the accused person. Absolutely, there is no explanation on the part of the accused except stating that since the work was already over, there was no occasion for him for demanding the bribe amount.

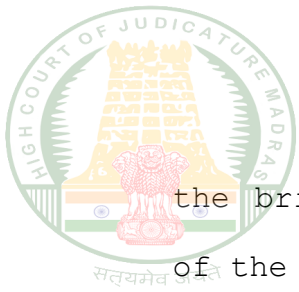


WEB COPY

37.It is nothing, but the tactics adopted by the accused in misdirecting the complainant that the measurement was not taken till the demand was made. This itself clearly indicates the guilty mind on the part of the accused. The accused cannot take advantage of his own wrong stating that his job was over and there is no occasion for him to demand the bribe amount. This argument is not well founded and accordingly, it is rejected.

38.As stated above, absolutely there is no motive between the accused and the complainant to falsely foist such a false complaint against the accused for the purpose wrecking vengeance. In the absence of any such motive, the contention raised by the accused that it is a fabricated and false complaint is out of place and will not stand to reason.

39.Another feature that was brought on record is that the complainant was not satisfied with the survey undertaken. When the file was closed on 04/01/2013, a request was made by the complainant for making resurvey by the Head Surveyor, for which payment was made by the complainant. For what purpose, the application was filed for measuring the property by the Head Surveyor is not explained by the prosecution. But this itself will not show that there was no occasion for the accused to demand



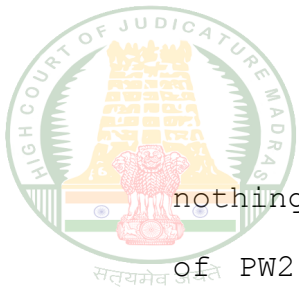
the bribe amount. So, this is also not supported the case of the accused.

WEB COPY

40.Having cleared all the above said objections, now we will go to the evidence of the complainant as to the specific allegation of demand of bribe amount, acceptance, etc.

41.As mentioned above, it is stated by him that after 25/10/2012, he met the accused for about 3 times. It is not the evidence that in those three times, demand was made by the accused as bribe. But on 15/07/2013, the accused told him that it may require some expenses. But it is not clear as to the amount of bribe demanded.

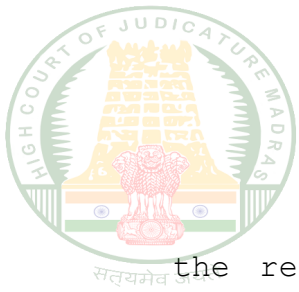
42.According to him, on 23/07/2013, he made a complaint to the Trap Laying Officer and the trap was laid. At about 09.45 am, on that date, as instructed by the Trap Laying Officer along with PW3, he contacted the accused. At that time, he made enquiry whether he brought the money, handed over the same and made a request whether they were proceeded to measure the property. At that time, as mentioned above, the accused told him that the file was closed or sending two months prior, accepted the money and put the same in pant pocket. This was corroborated by PW3 the shadow witness. Regarding the material particulars,



nothing has been brought on record to discard the evidence of PW2 and PW3 regarding the complaint, trap, demand and acceptance of money.

WEB COPY

43. During the course of the cross examination, it was suggested to PW2 de-facto complainant that when they entered into the office of the accused during trap proceedings, the accused was not available in the seat. He entered into the office only after some-time. During the absence of the accused, PW2 put the money in the pant pocket of the accused. But that was denied by PW2. But from the evidence of the Trap Laying Officer and shadow witness, it stands established on the side of the prosecution that the accused handed over the money to the Trap Laying Officer after taking it from his pant pocket. But before handing over the money, sodium carbonate solution was taken and the accused dipped both of his hands and both turned pink. If really, as suggestion made by the accused, without knowledge of the accused, money was put in his pant pocket is true, then the solution would not have turned pink. So, this clearly shows that the evidence of PW2 and the shadow witness that only the accused received the money in his hands is corroborated. When the demand and accepted is established *prima facie* on the side of the prosecution, the accused has not probabalised his defence.



Cr1.A(MD)No.148 of 2019

44.No doubt that PW4 has denied her signature in the request made by her for measuring the property. But that need not be taken much that this supported the case of the defence also.

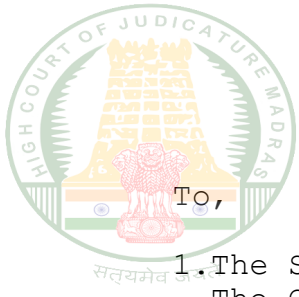
45.As mentioned above, the request made by PW2 stands established through various process that undergone at the hands of the Revenue Officials as noted above.

46.In view of the above said, I find no ground that was brought on record by the accused namely the appellants herein to interfere into the judgment of conviction and sentence passed by the trial Court. **Since the accused namely Gunam is reported to be dead, the sentence is incapable of execution.** The conviction stands confirmed.

47.With the above said, this criminal appeal is **dismissed**, confirming the judgment of conviction passed by the trial court.

10/01/2025

Index : Yes/No
Internet : Yes/No
er



Crl.A(MD)No.148 of 2019

To,

1.The Special Judge/
The Chief Judicial Magistrate,
Pudukkottai.

2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Pudukkottai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Cr1.A(MD)No.148 of 2019

G. ILANGO VAN, J

er

Cr1.A(MD)No.148 of 2019

10/01/2025



WEB COPY



Cr1.A(MD)No.148 of 2019