



WEB COPY



Crl.A(MD)No.213 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	31/01/2025
Date of Pronounced	24/02/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.213 of 2019

Dr.A.S.Ramesh : Appellant/Sole Accused

Vs.

State through,
Inspector of Police,
Vigilance and Anti-Corruption Wing,
Virudhunagar.
Crime No.3 of 2005 : Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the impugned judgment and conviction imposed in Special C.C No.3 of 2014, dated 30/10/2018 by the Special Judge/Chief Judicial Magistrate, Srivilliputhur.

For Appellant : Mr.S.Muralidhar
Senior Counsel
for Mr.G.Mariappan

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



J U D G M E N T

WEB COPY

This Criminal Appeal is filed against judgment of conviction and sentence imposed in Special C.C No.3 of 2014, dated 30/10/2018 by the Special Judge/Chief Judicial Magistrate, Srivilliputhur.

2.The case of the prosecution in brief:-

The accused Dr.A.S.Ramesh was working as Senior Assistant Surgeon in the Government Hospital Srivilliputhur, Virudhunagar District between 03/08/2001 and 01/03/2005. One Nallammal was admitted as an inpatient in the Female Ward in the Government Hospital, Srivilliputhur on 15/02/2005 for her head injury. She was taking treatment as inpatient from 15/02/2005 to 08/03/2005. The accused, who attended on her duty during that period suggested to her husband V.Jothirajan for scanning her head at the Head Quarters Government Hospital, Virudhunagar. When V.Jothirajan requested the accused to give his requisition for CT scan, the accused told him that he would give the letter. On 28/02/2005 at about 04.00 pm, when V.Jothirajan along with his friend M.Marimuthu met the accused at the Government Hospital, Srivilliputhur and requested his reference for CT scan, he demanded Rs.300/- as bribe. Not willing to bribe, the de-facto complainant lodged a complaint with the respondent police. Based upon



that complaint, a case in Crime No.3 of 2005 was registered for the offence under section 7 of the Prevention of Corruption Act. The accused was arrested in the trap. After completing the investigation, final report was filed. It was taken on file by the Chief Judicial Magistrate/Special Judge for Vigilance and Anti-Corruption cases, Virudhunagar District at Srivilliputhur, in Special CC No.3 of 2014. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

(i)The accused was working as Senior Assistant Surgeon in the Government Hospital, Srivilliputhur, Virudhunagar District between 03/08/2001 and 01/03/2005; On 15/02/2005, the complainant's wife Nallammal was admitted as inpatient for her head injury; The accused, who attended on her duty, suggested for scanning the head injury at the Head Quarters Government Hospital, Virudhunagar; When the complainant requested the accused to give his requisition for CT Scan, he told him that he would give the reference letter; On 28/02/2005, when the complainant along with his friend Marimuthu met the accused at the Government Hospital, Srivilliputur and requested his reference for CT scan, he demanded Rs.300/- as bribe and thereby,



WEB COPY



Cr1.A(MD)No.213 of 2019

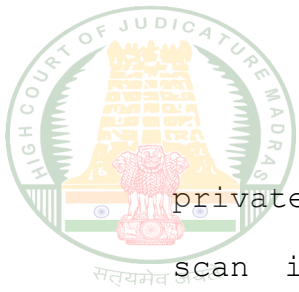
the accused committed an offence under section 7 of the Prevention of Corruption Act; and

(ii) In the course of the same transaction, the accused, on 01/03/2005 at about 01.15 pm at the Balaji Clinic owned by the him, has obtained Rs.300/- as pecuniary advantage from the complainant by abusing his position as a public servant and thereby, he has committed an offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

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, 14 witnesses have been examined and 25 documents marked. On the side of the accused, one witness was examined and 3 documents marked.

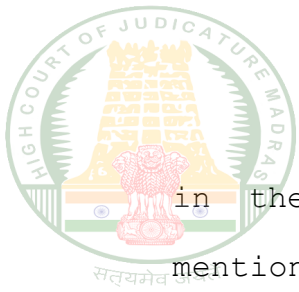
5.**PW2** is living in Srivilliputhur. On 14/02/2005, his wife was assaulted by the neighbour. So, his wife was admitted in the Government Hospital, Srivilliputhur, on 15/02/2005. The Medical Officer on duty, Dr.A.S.Ramesh, advised him to take scan. He further stated that in the



WEB COPY

private centre, it may cost Rs.5,000/-. She may take the scan in the Government Hospital, Virudhunagar; For the purpose of issuing reference (Ex.P5), he demanded Rs.300/- at 04.00 pm on 28/02/2005 in the Srivilliputhur Government Hospital Consulting room; At that time, his friend M.Marimuthu was also present. In this connection, on 01/03/2005, at about 09.00 am, he lodged a complaint with the Vigilance and Anti-Corruption Department.

6.Further event is spoken by **PW13**. He registered the case on 01/03/2005 at about 09.00 am, in Crime No.3 of 2005 under section 7 of the Prevention of Corruption Act. He submitted the original records to the Court and the copies to the higher authorities. For the purpose of assisting him in trap proceedings, he made a request to the Government Departments for deputing two officials. In pursuance of the above said request at about 10.30 an, one **Ramaraj** and **S.Ramesh** appeared before him. He introduced the official witnesses to PW2 and informed them about the test to be undertaken. He directed PW2 to produce Rs.300/- that he had brought. Sodium Carbonate solution was prepared and one of the police officials was directed to dip his hands in the solution. There was no colour change. Phenolphthalein powder was applied to the currency notes. The police official counted the notes and dipped his hands

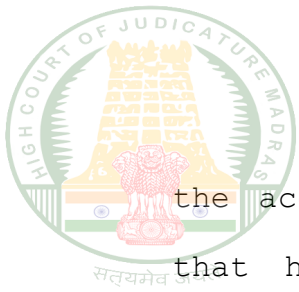


WEB COPY

in the solution. It turned pink. He prepared mahazar mentioning the serial numbers of the currency notes, in which all the witnesses signed, instructed PW2 to go to the clinic of the accused and give the money if demanded by him and asked the official witnesses to accompany PW2 and witness the event, etc. Further instructed PW2 to give signal if the accused receives the money. After completing the formalities, along with the police team and witnesses, they proceeded to the Government Hospital, Srivilliputhur reached there. As instructed earlier, PW2 and other official witnesses were instructed to go to the room of the accused and give money if demand is made. They were hiding in a near by place. When they went inside the room of the accused, he was not available. They were told that he went to Rajapalayam after the duty. So, at about 01.15 am, they went to Rajapalayam and reached the clinic of the accused.

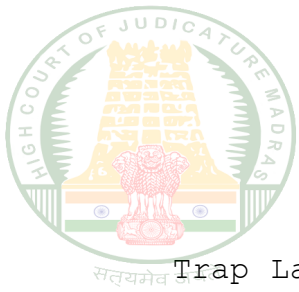
7.The further event is spoken by **PW2**. According to him, he gave the money to one Gopalan, who was not known to him. After that, he gave signal as indicated above to the Trap Laying Officer.

8.Further event is spoken by the Trap Laying Officer namely **PW13**. He made enquiry with PW2. He narrated the events and identified the accused. He made enquiry with



Cr1.A(MD)No.213 of 2019

the accused about the bribe amount. The accused admitted that he received the money from PW2. Sodium Carbonate Solution was prepared. The accused was instructed to dip his hands in separate bottles. The accused dipped his hands in separate bottles. Both solutions turned pink. After that, the accused tried to put the currency note in his mouth by taking it from the drawer, presented, notes were recovered. He collected scan report pertaining to PW2's wife and the prescription. After making preliminary enquiry, sodium carbonate solution was prepared in which the accused was instructed to dip his hands separately. He dipped his hands. Both solutions turned pink. Both were collected in a separate container, labelled and sealed. He made enquiry regarding the money received as bribe and the accused handed over Rs.300/-. They compared the serial numbers mentioned in the mahazar with that of the serial numbers in the currency notes handed over by the accused. They found to be tallied. He prepared a mahazar for the event, in which all the witnesses signed. At about 02.30 pm arrested the accused. Search was made in the house of the accused and seized Rs.9,780/-. That money was returned to the wife of the accused. The accused was sent for judicial custody. He submitted the original records and material objects to the concerned court.

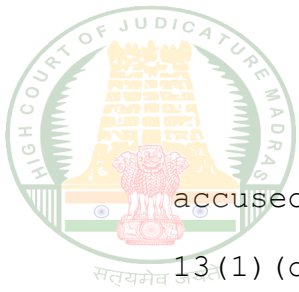


WEB COPY

9.**PW4** is the shadow witness, who corroborated the Trap Laying Officer in material particulars. Regarding the trap, he has stated that along with PW2, he went inside the Clinic of the appellant. The appellant alleged to have enquired PW2 whether he brought money. The appellant prepared the reference letter in his own hands and handed over to PW2 after receiving Rs.300/-. The money was put in the drawer. He identified Ex.P5 reference slip issued by the appellant.

10.Further investigation was taken by **PW14**, who was working in the Vigilance and Anti-Corruption Department as Inspector. He recorded the statement of the witnesses and submitted the material objects for chemical analysis to the FSL through court, received the report from the Lab, recorded the statement of the Scientific Assistant. Recorded the statement of the others, recovered the relevant registers, recorded the statement of the official witnesses.

11.In the meantime, he was transferred, the file was handed over to the Successor namely **PW15**. He took up the further investigation, verified all the statements and records recovered. After completing the investigation, filed final report on 07/01/2008 charge sheeting the



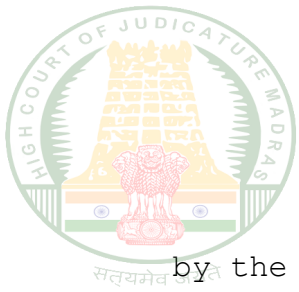
accused for the offences under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

WEB COPY

12.**PW12** is the Scientific Officer, who examined the material objects sent to her by the police through court and for chemical analysis. She filed the report under Ex.P19. With that, the prosecution side evidence was closed.

13.The accused was examined under section 313(1)(b) of the Code of Criminal Procedure Code about the incriminating circumstances available against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted against him.

14.At the conclusion of the trial, the trial court found the accused guilty, convicted for the offence under section 7 of the Prevention of Corruption Act and sentenced him to undergo 3 years RI and imposed a fine of Rs.10,000/- in default to undergo 6 months RI; and for the offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, sentenced him to undergo 3 years RI and imposed a fine of Rs.10,000/- in default to undergo 6 months RI and directed the sentences to run concurrently.



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

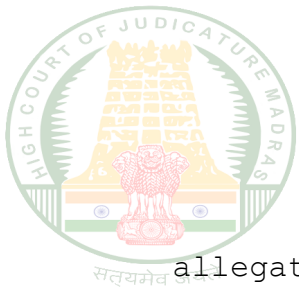
WEB COPY

16. Heard both sides.

17. Before starting the discussion on the main issue, one important factor requires to be noticed is that the tainted money alleged to have been received or accepted by the appellant was found stolen while in the court custody. Over which, a case in Crime No.94 of 2015 was registered. After completing the investigation, final report was filed, taken cognizance by the Judicial Magistrate No.2, Srivilliputhur, in CC No.14 of 2016. During the course of the investigation, the money stolen could not be recovered.

18. A report was called for from the Judicial Magistrate No.2, Srivilliputhur. The report was submitted, on 30/01/2025.

19. The learned Additional Public Prosecutor would submit that the accused during the course of the investigation has given confessional statement that the subject money was spent by him, so there was no occasion for the Investigating Officer to recover the money.



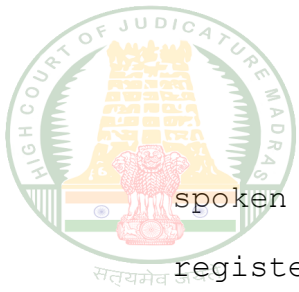
WEB COPY

20.The importance of this issue is that it is the allegation on the part of the prosecution that at the time of trap, the accused tried to chew the tainted money. and it was recovered from him in a crumbled manner. Only to see the same, the above said steps have been taken by this court. This court is handicapped without the tainted money. So, we are not in a position to see the state of tainted money.

21.Before we go to the main issue, we will keep in mind the background facts.

22.PW6 is the wife of the de-facto complainant/PW2. She was injured in an occurrence. She was admitted as inpatient on 15/02/2005. On 18/02/2005, she went missing, later re-admitted, on 20/02/2005. For about 18 days, she was inpatient from 20/02/2005 to 23/02/2005 and 24/02/2005 to 02/03/2005.

23.As per the case of the prosecution, the appellant herein treated the injured. This fact was borne out by the records as spoken by the witnesses. In the meantime, the alleged demand was made on 28/02/2005, over which, complaint was registered, on 01/03/2005. On the date of the complaint, after completing duty, the accused namely the appellant herein went at 07.15 am to take rest. PW7 has



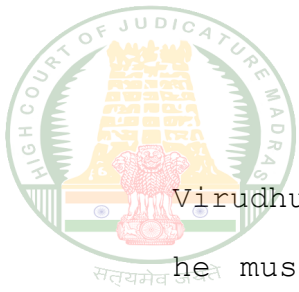
spoken about the admission of the injured. The accident register was recorded by PW8; Marked as Exs.P11 and P12 on the side of the prosecution. He admitted PW6 as inpatient.

PW7 was the Chief Medical Officer in the Government Hospital, Srivilliputhur. Later, PW9 the Chief Surgeon also treated the injured, who has also spoken about the above said facts. PW10 and PW11 are the Nurses, who were on duty on those days. We will discuss about their evidence in the later portion of the judgment.

24.Now, as mentioned in the preamble portion, it is the allegation of the prosecution that the accused suggested or advised CTC scan for PW6 in the Government Hospital, Virudhunagar. On 28/02/2005, at about 04.00 pm, the appellant/accused alleged to have demanded Rs.300/- as bribe amount for issuing the reference slip. This occurrence is stated to have taken place on 28/02/2005.

25.Now we will go to the evidence available on record regarding the initial demand alledgedly made by the appellant on 28/02/2005.

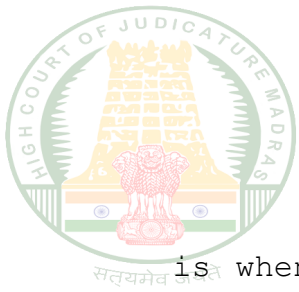
26.PW2 during the course of the chief examination would say that the appellant, who treated his wife advised to take CT scan and if it is taken in a private clinic, it may cost Rs.5,000/-, but in the Government Hospital,



Virudhunagar, it will be lesser. So, for making reference, he must be given Rs.300/- as bribe. At that time, his friend namely PW3 was present along with him. He promised him to bring the money on the next day. But not willing to bribe the accused, he lodged the complaint at about 09.00 am, on 01/03/2005. He participated in the pre-trap proceedings.

27.We will stop here for a moment. During the course of the cross examination by the prosecution he was treated as hostile, with reference to the trap proceedings and the alleged acceptance of bribe amount by the accused. Regarding the initial demand, he confirmed the same. During the course of the cross examination, he would also admit his participation in the pre-trap arrangement. He was later recalled by the accused for cross examination on his side, on 12/05/2015. at that time, he supported the case of the defence. This portion of the evidence will be discussed later.

28.Even with regard to the alleged demand made by the accused, on 28/02/2005, PW3 turned hostile. There are no corroborative evidence to the alleged demand made by the accused on 28/02/2005.



29.Now the question, which arises for consideration is when PW2 turned hostile, even during the course of the chief examination, whether his evidence can be reliable in respect of the initial demand alleged to have been made on 28/02/2005.

30.Now we will go to the complaint under Ex.P1. PW2 has stated in the complaint itself about the initial demand alleged to have been made on 28/02/2005 in the presence of PW3. At that time along with him, PW3 signed as a witness in the complaint itself. So, this, according to the prosecution, is sufficient enough to prove the initial demand on 28/02/2005. Subsequent turning of hostile need not be given any importance, since it is clear that PW2 was gained over by the accused.

31.For that purpose, the learned Additional Public Prosecutor would submit that the chief examination was made on 22/03/2012. On that date, he was not cross examined, later, he was recalled for further cross examination and on 03/01/2013, he supported the defence.

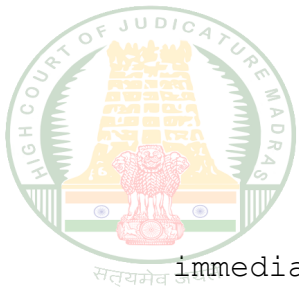
32.At this juncture, the learned Senior Counsel appearing for the appellant would submit that there is contradiction between the evidence of PW2 during the chief examination and the allegation in the complaint stating it



is a major contradiction. In the complaint, it is stated that the accused told him that in a private hospital, it may cost Rs.5,000/- for scanning and so, he will make reference to the Government Hospital, Virudhunagar; But in the chief examination, he has stated that the accused told him that scan can be taken in the Government Hospital, Virudhunagar, cost will be lesser.

33. But it is only a minor contradiction, it need not be given any importance at all. So, the learned Additional Public Prosecutor would state that it stands established on the side of the prosecution that on 28/02/2005, the accused demanded Rs.300/- as bribe amount for referring PW6 for scanning in the Government Hospital, Virudhunagar. For obvious reasons, as mentioned above, PW2 turned hostile. He cannot be considered to be a genuine person. But the complaint given by him is admitted. Even on 03/01/2013 itself, as mentioned above, he participated in the pre-trap arrangement, turned hostile only with regard to the event took place at the time of trap.

34. The motive suggested by the appellant for lodging the complaint is that even before discharge of PW6, the accused who assaulted her were granted bail, since it was intimated to the court that the injured was discharged from the hospital. So, this aspect caused trouble in his mind.



WEB COPY

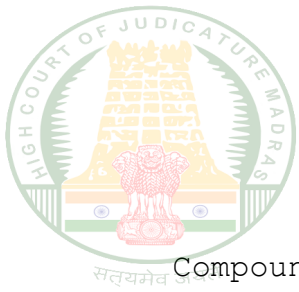
35. Apart from that for taking scan, PW6 was not immediately referred to the Government Hospital, Virudhunagar. It has also caused trouble in his mind. Because of the above said troubles, he approached a political person for advise. That person advised him to lodge a complaint with the respondent so that immediate treatment will be given to PW6. The appellant traced support from PW3. He has stated during the course of the examination that PW2 told him that no treatment was given and there is a delay in taking scanning.

36. So the question, which arises for consideration is whether these defences are probabalised by the accused.

37. We will take the probable theory in the later portion of the judgment. Now regarding the initial demand, it is the evidence available on record.

38. Regarding Ex.P5 the slip alleged to have been issued by the accused referring prescription for scanning in the Government Hospital, Virudhunagar, much controversy was raised by this appellant during the course of the argument.

39. Now we will clear this first, before we go to the trap events.

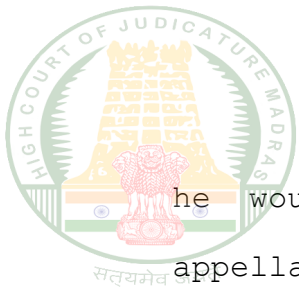


WEB COPY

40.PW2 says that when he requested a slip, Compounder was available in the Clinic of the accused, brought it, gave to him; It was handed over by him to the Trap Laying Officer at the time of trap. During the course of the cross examination made by the appellant, he has stated that after the pre-trap was over, he went to the Srivilliputhur Government Hospital to see PW6 and at that time, it 12.45 pm noon; The appellant was not available in the hospital, PW6 handed over the slip to him stating that in the morning, the slip was given to her by the Doctor through a Nurse. Ex.P5 bore the official seal.

41.Now we will go to the evidence of PW6 on that aspect. During the course of the cross examination, she would say that she was not able to remember whether Ex.P5 was given to her by the Doctor through a Nurse in the Government Hospital itself.

42.Now we will go to the evidence of the Nurses. But neither PW10 nor PW11 have stated anything about Ex.P5 slip. Through whom, Ex.P5 was given could not be found out. Since PW2 contradicts himself with reference to Ex.P5, now we will go to the evidence of the Trap Laying Officer to see from whom it was recovered. He would say that PW2 handed over Ex.P5 to him at that time of trap. PW4 is the shadow witness. During the course of the chief examination,



he would say that Ex.P5 was written in hand by the appellant, handed over the same to PW2.

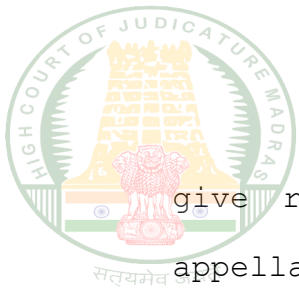
WEB COPY

43.From the evidence of these witnesses, it is seen that Ex.P5 was handed over by PW2 to the Trap Laying Officer at the time of trap.

44.We will go to the mahazar to find out whether any reference was made with reference to recovery of Ex.P5. Ex.P7 is the Mahazar referring the trap event, wherein we find reference to handing over of Ex.P5 to the Trap Laying Officer by PW2.

45.Now, again another argument that was advanced by the appellant is that as per the evidence available on record, Ex.P5 bore the official seal. The official seal might be available in the office that too in the custody of the Superintendent; Without his knowledge, it cannot be removed from the hospital. This fact is admitted by the prosecution witness. But, no official seal was recovered from the private clinic of the accused. But we see the seal of the appellant and his signature. He did not deny his signature in Ex.P5 and the seal.

46.Now another contention raised by him is that he never treated PW6. So, there was no occasion for him to

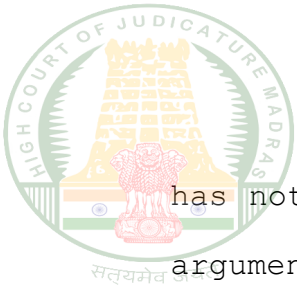


give reference slip under Ex.P5. For that purpose, the appellant would rely upon the cross examination made by him to PW14.

47.PW14 would say that he did not verify whether on 28/02/2005, the accused was on duty in the Government Hospital, Srivilliputur and did not peruse any record of treatment made by the accused. The accused also referring to Ex.P9, the treatment Card. Similarly, on 15/09/2005 also, PW14 has not verified any document showing the duty register to verify that the accused was not in the hospital at the time of admission.

48.But the Chief Medical Officer namely PW7 Chidambaranathan says that Ex.P15 duty register will show the duty assigned to the appellant. He also identified the signature of the accused in Ex.P5. During the cross examination, it was suggested to him that from 20/02/2005 to 23/02/2005, the accused did not treat PW6. After that one Dr.Paujraj and one Dr.Ramesh treated PW6. Simply because, on 28/02/2005, the accused did not treat PW6, no inference can be drawn that Ex.P5 was not issued by the accused.

49.Another controversy raised by the appellant is with regard to the inpatient number. But when the accused



Cr1.A(MD)No.213 of 2019

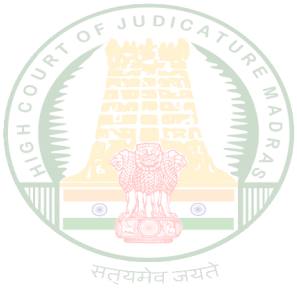
has not denied and disputed his signature in Ex.P5, all the arguments will not help him to probabalise his defence that it was not issued by him. It is not even the case of the defence that his signature was misused by some one.

50.From the discussion made above, on the basis of the evidence on record, it stands established that Ex.P5 was indeed issued by this appellant. So, the contention that there was no occasion for him to demand the money on 28/02/2005 also gain no support.

51.Now coming to the trap event. In this context, an argument was advanced by the appellant that PW2, the complainant, informed the Trap Laying Officer about the issue of reference sheet by the accused. So, no further action may be taken in his complaint, but it was not accepted by the Trap Laying Officer stating that the process cannot be and could not be stopped in midway.

52.The evidence of PW2 during the cross examination runs like this:-

"அ.சா.ஆ.5 – யை என் மனைவி
என்னிடம் ஸ்கேன் எடுப்பதற்காக
ஸ்ரீவில்லிபுத்தூர் அரசு மருத்துவமனையில்
நான் பார்த்த போது கொடுத்தார்.
அ.சா.ஆ.5 – ல் ஸ்ரீவில்லிபுத்தூர் அரசு



WEB COPY

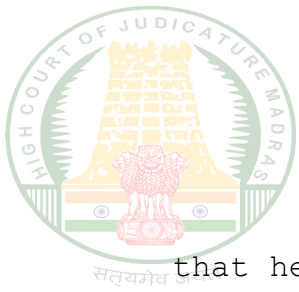


Cr1.A(MD)No.213 of 2019

மருத்துவமனை அதிகாரி என்று அலுவலக
முத்திரை குத்தப்பட்டுள்ளது என்றால் சரி.
அந்த சீலிப்பை அதிகாரிகளிடம்
கொடுத்துவிட்டு மருத்துவமனைக்கு ஸ்கேன்
எடுக்க எனக்கு பரிந்துரை செய்ய
எழுதிக்கொடுத்ததால் மேல் நடவடிக்கை
தேவையில்லை என்று தெரிகிறது.
காவல்துறை அதிகாரி துவங்கிய
நடவடிக்கையில் பாதியில் நிறுத்து இயலாது
என்றும் எனவே எதிரியின் வீடு உள்ள
ராஜபாளையத்தில் போலீஸாம் என்று
அழைத்துச் சென்றார்கள்.”

53.The meaning of this cross examination is that PW2 has already admitted that for the purpose of getting proper treatment for his wife, he sought the advise of a political person. As per his advise only, he gave the complaint. Now the purpose of the complaint was accomplished since Ex.P5 was issued in the morning itself.

54.But this argument also does not appeal to me, since as mentioned above, Ex.P5 was recovered from PW2 by the Trap Laying Officer at the time of trap. So, the particulars given by PW2 during the course of the cross examination is nothing, but another attempt to save the appellant from conviction.

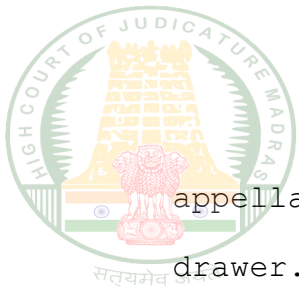


WEB COPY

55.Now the appellant would contend that PW2 says that he alone went to the house of the accused, but did not see him. But in the Clinic, the Assistant was present, gave the money to him stating that it is the fee for treatment. So, according to him, on the date of the trap, he did not see the accused, gave the money to the Assistant, which was the fee for treatment.

56.PW, during the chief examination, would say that at about 12.45 pm, they went to Rajapalayam as a team, after the pre-trap arrangements. They arrived Balaji Clinic owned by the accused. As instructed, along with the shadow witness, he went inside of the clinic and contacted one Compounder, requested that Compounder to bring the reference slip from the Doctor; That Compounder brought the reference slip from the Doctor, gave it to him, in turn, he gave the money to the Compounder; He never gave the money with the accused in person. So, the appellant would contend that this is sufficient to disbelieve the Trap event.

57.Now we will go to the evidence of the shadow witness PW4. He would say that along with PW2, they went inside the private Clinic of the appellant and the accused enquired PW2 whether he has brought the money; The reference slip was prepared by the accused by his own hands, gave to PW2, he in-turn gave the money to the



appellant; He received the money, put the same in the drawer.

WEB COPY

58.Now the question, which arises for consideration is which one of these two persons are believable.

59.As already stated, PW2 appears to be not a genuine person because of his turning his tongue frequently. Whether the evidence of PW4 can be accepted has to be decided in the light of the argument advanced by the appellant.

60.Trap in Rajapalayam is disputed by the appellant stating that absolutely, there is no evidence on record to show that PW2 was asked to come to Rajapalayam by the Appellant; When PW2 has admitted that Ex.P5 was handed over to him by his wife, even in the morning itself, there is no necessity to go to Rajapalayam to get the reference slip; The travelling time between Rajapalayam and Srivilliputhur is more than 1-1/2 hours; So, the trap would not have taken place at about 01.10 pm.

61.Now we will clear the time factor first.

62.PW5 is the another official witness. He would say that at about 01.30 am, they started from Virudhunagar

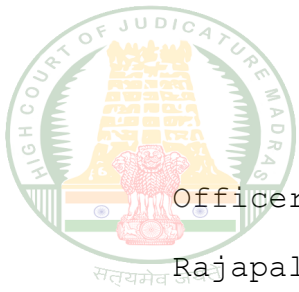


WEB COPY

to Srivilliputhur. In Srivilliputur Government Hospital, they were informed that the appellant, after completing the duty, went to Rajapalayam. So, they proceeded to Rajapalayam. During the chief examination, he has not mentioned the correct time of arrival in Rajapalayam. The Trap Laying Officer would say that at about 12.45 pm, they reached the Government Hospital, Srivilliputhur and later, arrived Rajapalayam at 01.15 pm. According to him, within half an hour from Srivilliputhur, they reached Rajapalayam. So, this according to the appellant is highly unbelievable. Since the travelling time between these two places is more than 1-1/2 hours.

63. But there is no evidence on this aspect to show the exact travelling time between these two places. But he is very particular about the reaching of Srivilliputhur Government Hospital and would say that at about 12.45 pm, they reached Srivilliputhur Government Hospital.

64. So, the question which arises for consideration is whether because of the distance between Srivilliputhur and Rajapalayam, the trap could not have been taken place at Rajapalayam can be accepted. But these are the simple issues, which need not be given much importance. The time taken for travelling may not assume any importance at all, since the evidence of PW2, PW4, PW5 and the Trap Laying



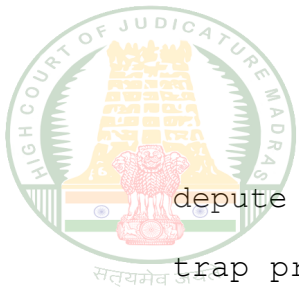
Officer are very clear to the effect that they went to Rajapalayam to the Clinic of this appellant.

WEB COPY

65.Now coming back to PW4's evidence regarding the demand, acceptance of money by the appellant, it was argued that during the course of cross examination, he would say that on that date, at about 08.00 am, he was informed about the trap; But the complaint itself was registered only at 09.00 am. So, absolutely, there is no occasion for the Trap Laying Officer to inform him at 08.00 am in the morning; He would further state that when they went to the Clinic of the appellant, no patients were available; Similarly, he has stated in his evidence during the course of cross examination that PW2 has known the residence of the accused; Only PW2, took them to the Clinic.

66.The appellant would submit that this is quite contra to the evidence of PW5 Ramaraj; So, because of the inconsistent evidence of PW4, he should not be believed regarding the very trap event itself.

67.Regarding the time factor and the compliant, we will go to the evidence of PW13 the Trap Laying Officer. He would say that on 01/03/2005 at about 09.00 am, the complaint was lodged by the complainant; At about 10.00 am, he sent communication to the Government Departments to



depute two responsible persons for assisting him in the trap proceedings. In pursuance of which, at about 10.30 am, two officials appeared before him.

68.No doubt that there is contradiction in this regard between the evidence of PW4 and the Trap Laying Officer. But this time factor does not assume any importance, because the time spoken by PW4 does not assume any importance in view of the fact that the trap was conducted, which is even admitted by PW2 himself during the course of cross examination.

69.Regarding the contradiction of finding location of the appellant's Clinic, in fact, there is contradiction between the evidence of PW4, PW5 and the Trap Laying Officer PW13. PW13 would say that PW2 took them to the Clinic of the appellant, since he was already known to him. The contradiction between PW4, PW5 and PW13 regarding that aspect also may not assume any importance, since it is only a minor contraction.

70.Regarding the presence of patients in the Clinic at the time of trap, PW2 would say that when they went to the Clinic of the appellant, a Compounder was present. PW5 would say that there were two or three patients at that time. PW13 has not stated anything about the presence of



the witnesses in the Clinic. Again, that is a minor contradiction between the evidence of PW4 and PW5.

WEB COPY

71.**Now the recovery:-** the appellant tried to put the money in his mouth after taking it from the drawer; But the Trap Laying Officer immediately prevented it by holding his hands and closed his mouth and then recovered the money from his hands; PW5 would say that the accused handed over the money to the Trap Laying Officer. Further, he would say that the accused put the money in his mouth and started chewing; But the Trap Laying Officer recovered the money from his mouth.

72.PW13 the Trap Laying Officer would say that the accused by taking the money from his drawer tried to put it in his mouth, he was pushed away and by using the minimum force, he recovered the money from his hands.

73.Apparently, there is contradiction between PW4, PW5 and PW13 regarding the attempt on the part of the appellant to chew the money by putting it in his mouth.

74.As mentioned in the opening paragraph of the discussion, the crumbled state of the tainted money could not be seen because of the theft and non-recovery.

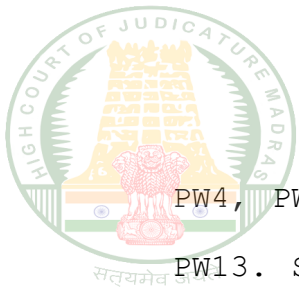


WEB COPY

75.No doubt that there is contradiction between the evidence of PW4, PW5 and PW13. But the question, which arises for consideration is whether because of the contradiction, the entire recovery process can be disbelieved. I do not think so. Because the evidence of these people are believable in respect of the overall trap events. If really, PW2 evidence can be believed to say that he handed over the money only to the Compounder and not the accused, then the Sodium Carbonate Solution test would not have turned positive.

76.Now we will go to the test. PW4 and PW5 would say that after recovery of money, test was conducted. But PW13 the Trap Laying Officer would say that the test was conducted before the recovery. This was commented by the appellant stating that trap was not conducted as per the settled procedure, directing the appellant to the Sodium Carbonate test even before recovery vitiates the entire recovery process.

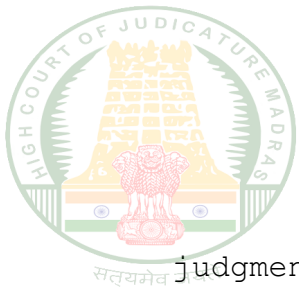
77.But PW13 is very clear in his evidence that before recovery process, the test was conducted. But why PW4 and PW5 have stated that only after recovery, test was conducted is not explained by the prosecution. More-over, it appears that no procedural violation was committed by PW13 in this regard. So, the contradictory evidence between



PW4, PW5 and PW13 does not affect the evidentiary value of PW13. So, the contention on the part of the appellant that the recovery itself is not proved, cannot be accepted.

WEB COPY

78. Now coming to the final stage, the prosecution would submit that simply because, PW2 turned hostile his evidence need not be completely disregarded. And in this context, he relied upon the judgement of the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab [(2015)3 SCC 220 and Nrayana Vs. State of Karnataka [2010]14 SCC 453]*** and would submit that practices of adjourning the matter for years together and thereafter, recalling the witness for cross examination was deprecated. He would further submit that even if the complainant turned hostile, his evidence need not be erased completely. These are the settled principles of law. The evidence of hostile witness cannot be completely discarded. The evidentiary value has to be tested on the case to case basis and the circumstances available. Even if PW2's evidence is discarded completely, the other circumstances must be taken into account in view of the settled position of law by the Hon'ble Supreme Court in the case of ***Neeraj Dutta Vs. State (Govt. of N.C.T. Of Delhi (2023 LiveLaw (SC) 2011)***. This judgment is cited by the appellant also.

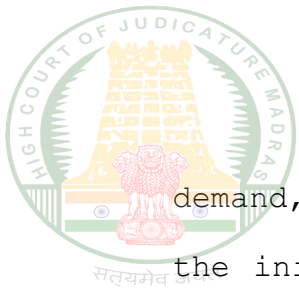


WEB COPY

79. Now the appellant, by relying upon the very same judgment, would submit that when the demand namely the initial demand itself has not been established, section 20 of the Prevention of Corruption Act will not come into operation; Even the demand on the date of the trap itself can be disbelieved, because of the inconsistent statement of PW4, PW5 and PW13, so also the recovery. According to him, when these three stages fail, automatically the appellant is entitled to the judgment of acquittal. Regarding that, he would rely upon the judgments of the Hon'ble Supreme Court in ***Prabhat Kumar Guupta Vs. State of Jharrkand and another [(2015)1 SCC (Cri) 427]*** and ***M.R.Purushotham Vs. State of Karnataka [(2015)2 SCC (Cri) 249]***.

80. Another contention is that when the Trap Laying Officer did not record the explanation of the appellant violating the manual, he is entitled for the benefit as per the judgment reported in ***S.P.Tamilarasan Vs. State [2017(3)MWN (Cr.)435]***.

81. In the light of the above said rival submission, on the basis of the precedents, if we look into the ingredients of the initial demand, since PW2 turned hostile, and there is no corroboration for the initial

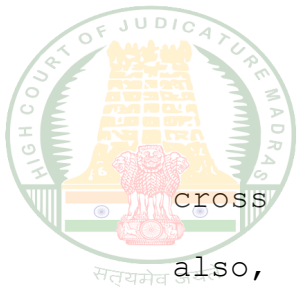


WEB COPY

demand, when PW3 also turned hostile, we can conclude that the initial demand alleged to have been made on 28/02/2005 was not established. But the demand was established on the date of the trap itself. It is proved satisfactorily. As mentioned above, I find no major contradiction in the evidence of PW4 regarding the demand made at the time of trap itself. There is no major contradiction in his evidence. In fact, PW2 has also admitted that along with PW4, they went inside the Clinic of the accused. So, the presence of PW4, at the time of trap stands established and the evidence on that aspect can be relied.

82.Regarding the recovery also, I find no major contradiction in the evidence of PW4, PW5 and PW13. Except the minor contradictions regarding the event of attempt to swallow the money, I find that absolutely no circumstance was brought on record by the appellant to disbelieve them. The appreciation of the evidence of the trial court warrants no interference.

83.For more clarity, now we will go to the evidence of the Trap Laying Officer on that aspect. He has stated in his evidence that he made enquiry with the accused with regard to the tainted money. But nothing has stated about the recording of his explanation after the trap events. No explanation was sought from him during the course of the

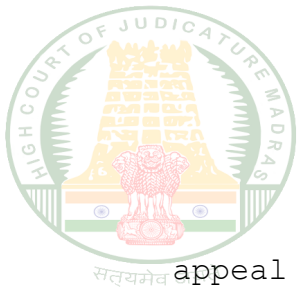


cross examination regarding this aspect. In the mahazar also, nothing has been recorded in this regard. It is nothing, but the manual violation. But that alone will not enure the benefit of the appellant, when he has not stated that because of the violation, he was seriously prejudiced.

84.Regarding the non-compliance of the manual, I am of the considered view that this is not a major issue. Violation of the Manual will not vitiate the prosecution, More-over, when the circumstantial evidences are overwhelming. To overcome all these issues only, the Hon'ble Supreme Court settled the position in **Neeraj Dutta's** case.

85.So, I conclude that the prosecution has established the case beyond all reasonable doubt, rightly it was held so by the trial court, which requires no interference.

86.In the light of the above said discussion, the conviction rendered by the Trial court requires no interference. Regarding the sentence period, considering the oldness of the matter and the amount involved, the sentence period is reduced to **one year RI for both offences.**



Crl.A(MD)No.213 of 2019

87.With the above said modification, this criminal

सत्यमेव appeal stands **dismissed**.

WEB COPY

Index : Yes/No
Internet : Yes/No
er

24/02/2025

To,

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



WEB COPY



Cr1.A(MD)No.213 of 2019

G. ILANGO VAN, J

er

Cr1.A(MD)No.213 of 2019

24/02/2025