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Crl.A(MD)No.133 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	21/10/2024
Date of Pronounced	28/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.133 of 2018

Ganesan (Died) : Appellant/Sole Accused

1.Jayalakshmi

2.G.Rajesh Kumar

3.G.Alamelumangai

4.G.Sathya Priya

(A1 to A4 are legal heirs of the deceased impleaded as per the order of the court, dated 22/09/2023 in Crl.MP(MD)No.13583 of 2023 in Crl.A(MD)No.133 of 2018)

Vs.

State through

The Inspector of Police,

Vigilance and Anti Corruption,

Sivagangai District.

(Crime No.3 of 2023)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records relating to the judgment in Special CC No.13 of 2014, dated 28/02/2018 on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai and set aside the same.

For Appellant : Mr.T.Antony Arulraj

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

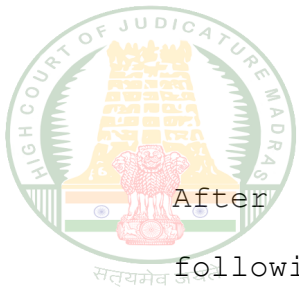


J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed in Special CC No.13 of 2014, dated 28/02/2018 by the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai.

2.The case of the prosecution in brief:-

On 22/10/2003, the accused demanded Rs.5,000/- from the de-facto complainant to prepare the bill for the Family Security Fund with regard to the deceased Ramathilagam. On 27/10/2003, the accused reiterated the demand. When the de-facto complainant disclosed his inability to give Rs.5,000/-, the accused asked him to give Rs.3,000/- on 28/10/2003 and remaining Rs.2,000/- within a week. As he was not willing to bribe, he lodged a complaint against the accused before the Inspector of Police, Vigilance & Anti-Corruption Wing, Sivagangai. Based upon that complaint, trap was laid. Case in Crime No.3 of 2003 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. It was taken on file by the Special Judge for Prevention of Corruption Act, Sivagangai, in Special CC No.13 of 2014 for the offences under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

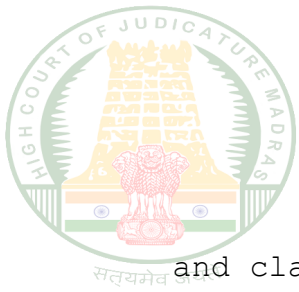


After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

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(1)The accused Ganesan was working as Superintendent in Child Development Project Office, Manamadurai, Sivagangai District from 01/05/2003 to 28/10/2003; Tmt.Ramathilagam was working as Helper in Anganvadi at Kaliyanendhal village and she died on 04/05/2003 nominating Sumathi; As her nominee to get the Family Security Fund; she gave a petition to get the Family Security Fund of Ramathilagam in Child Development Project Office, Manamadurai, Sivagangai; Her brother approached the accused on 22/10/2003 at 11.30 am and requested to take steps on the petition; at that time, the accused demanded Rs.5,000/- as gratification other than legal remuneration; in pursuance of the said demand on 29/10/2003 at about 03.30 pm, the accused reiterated his demand for taking steps on the petition of Smt.Sumathi and thereby, the accused committed an offence under section 7 of the Prevention of Corruption Act, 1988; and

(2)In the course of same transaction, on 28/10/2003 at about 03.00 pm, the accused being a public servant, received Rs.3,000/- and thereby he committed the offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

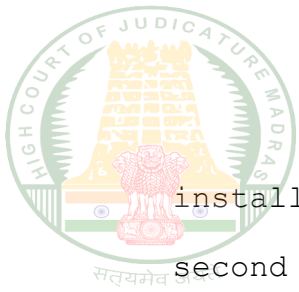


3.To that charges, the accused pleaded not guilty and claimed to be tried.

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4.During the trial process, on the side of the prosecution, 19 witnesses have been examined and 44 documents marked. Apart from that, MO1 to MO10 marked. On the side of the accused, no oral or documentary evidence was adduced.

5.**PW2** was living in Ulakudi, Virudhunagar district. His mother by name Ramathilagam was working as Noon Meal Organiser in Kaliyanenthal village. She died and for getting death benefit, he made a request with the Tiruchuli Taluk office. His brother by name Sivasubramaian was objected to that request. But later, they made compromise. After collecting relevant certificates, they presented a petition before the Child Development Project Officer, Manamadurai, on 16/08/2003, where the accused was working as Superintendent. Even after repeated contact, there was no proper response from the accused. Finally, on 27/10/2003 at 12.00 pm, when the de-facto complainant contacted the accused, he demanded Rs.5,000/- as bribe. He expressed his inability. But the accused insisted that they may get Rs.1,00,000/- as death benefit. So, they can give Rs.5,000/-. Again, he expressed his inability to pay the amount of Rs.5,000/-. But the accused demanded in two



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installments, first installment of Rs.3,000/- and the second installment of Rs.2,000/-. Later, he lodged a complaint on 28/10/2003 with the Vigilance and Anti-Corruption Department. The complaint was marked under Ex.P2.

6.The further event is spoken by **PW17**. He registered a case in Crime No.3 of 2003 under section 7 of the Prevention of Corruption Act and forwarded the original documents to the concerned court and copies to the concerned higher authorities. After getting proper approval from the higher authorities, he made a request to the Government Departments to depute two responsible officers for assisting him in trap proceedings. On his request, on 28/10/2003 at about 01.50 pm, one Gopalakrishnan and Ravindran appeared before him. On 28/10/2005, he introduced the official witnesses to PW2 and informed them about the test to be undertaken. He directed PW2 to produce six 500 rupees notes that he had brought. Sodium Carbonate 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 currency notes. Again, the police official counted the notes and dipped his hands in the solution. It turned pink. He prepared the mahazar mentioning the serial numbers of the currency notes wherein all the witnesses signed, instructed



PW2 to go to the office of the accused and give the money if demanded by the 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 office of the accused and reached the office. As instructed earlier, PW2 and the official witnesses were instructed to go to the office of the accused and give money if demand is made. They were hiding in a nearby place. At about 03.20 pm, PW2 and the official witnesses entered into the office of the accused.

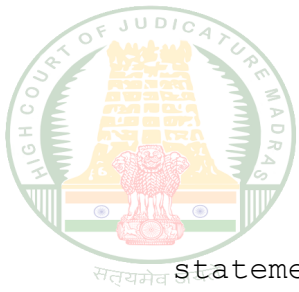
7.Further event is spoken by **PW3**. He along with PW2 went inside the office of the accused at 03.25 pm. At that time, the accused was not in the seat. The accused came inside the office after five minutes. When they made enquiry with regard to the preparation of the bill, he asked them whether they brought money. They gave the money to the accused, received by him, counted the same and put in the left side table drawer. They came down from the office and made signal as instructed earlier.

8.The further event is spoken by **PW17**. They went to the office of the accused after getting signal. PW2



narrated the events and identified the accused. After that, PW2 was sent out of the office. He made enquiry with regard to the money as bribe amount received by him. Sodium carbonate solution was prepared and the accused was directed to dip his hands. The solution turned pink. Samples were collected, labelled and sealed. The accused traced out the money, taken out from the Almirah and handed over consisting of six 500/- notes totally Rs.3,000/-. The money was recovered under proper mahazar. He collected the relevant records from the office. They compared the notes mentioned in the mahazar with that of the notes available in the currency notes seized. It was found to be tallied. On search, he was found in possession of Rs.6,320/-. That money was also seized. Accused was arrested the accused by the Deputy Superintendent of Police. Search was made in the house in the presence of the witnesses and recovered documents, but no jewels and cash was seized. Prior to that, proper mahazar was prepared for the entire trap events, in which all the witnesses signed. He submitted the material objects to the concerned court and send the alteration report adding the offence under section 7 r/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

9. **PW18** was working as DSP. On 28/10/2003 after getting intimation from PW17, he went to the office of the accused and made arrest.



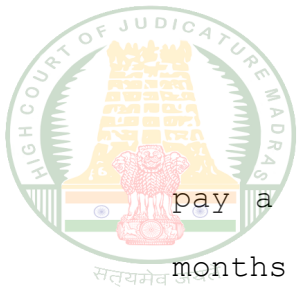
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10.**PW19** conducted investigation, recorded the statement of the witnesses, recovered records from the concerned Department, send the material objects for chemical analysis, received the chemical report, recorded the statement of the analyst. After getting sanction order, filed the final report.

11.**PW16** is the Scientific Officer, who examined the material objects sent to her by the police through court and for chemical analysis. She filed a report under Ex.P39. With that, the prosecution side evidence was closed.

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

13.At the conclusion of the trial process, the trial court convicted the accused for the offence under section 7 of the Prevention of Corruption Act, sentenced him to undergo 3 years RI and to pay a fine of Rs.1,000/- in default to undergo further 6 months SI; for the offence under section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, sentenced him to undergo 3 years RI and to



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pay a fine of Rs.1,000/-, in default to undergo further 6 months SI and directed the sentences to run concurrently.

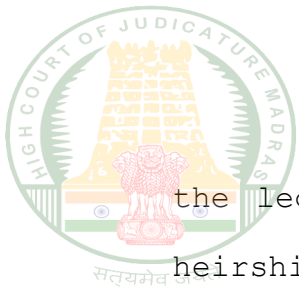
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14.Against which, this criminal appeal is preferred by the accused.

15.Heard both sides.

The background facts:-

16.The mother of PW2 by name Ramathilagam was working as Noon Meal Organizer in Kaliyanendal Village. She died on 04.05.2003. Death was intimated to the Project Officer, Child Health Centre. During her life time, she nominated Sumathi, who was examined as PW10. But, later there was difference of opinion between the legal heirs and PW2. His father had two wives. Deceased Ramathilagam is the second wife. Apart from that, Ramathilagam was the sister of the first wife. Through the first wife, the father had three children. Through the second wife namely Ramathilagam, there were three children. Because of the difference of opinion between the legal heirs of Ramathilagam, objection was made by some of the legal heirs. PW5 has spoken about the process for disbursement of death benefit. According to her, the death benefit was Rs.1,00,000/-. The legal heir is entitled for the death benefit and if there is any difference of opinion between

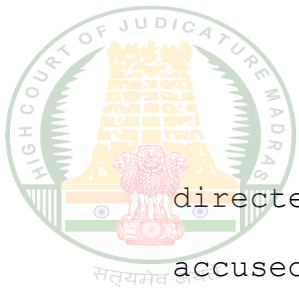


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the legal heirs, they insisted production of proper legal heirship certificate from Tahsildar. Sivasubramanian is one of the legal heir, who is examined as PW11, made the above said objection. Because of the difference of opinion between the legal heirs, he advised the Project Officer to advise the parties to produce proper legal heirship certificate. Later, the matter was compromised between the legal heirs. So, again another request was made. The request was forwarded to the accused. Now the case of the prosecution is that the accused demanded the bribe amount of Rs.5,000/-. Later reduced the same to Rs.3,000/-. In pursuance of the demand, he accepted the bribe amount from PW2. He was arrested and charge sheeted.

17.But, it is the evidence of PW2 that the amount was not reduced. But the accused demanded the same in two installments namely Rs.3,000/- as first installment, Rs.2,000/- balance after a week. That was accepted by PW2. This is the background facts.

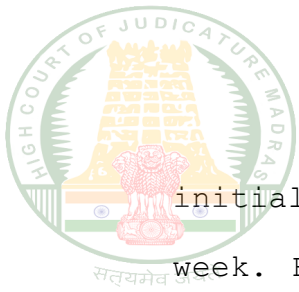
18.The defence has been taken that actually no amount was demanded as bribe. Because of the difference of opinion between the legal heirs, there was a delay in processing the application, more specifically as per the direction of PW8. On the date of alleged trap, actually he was not available in the site. The Trap Laying Officer



directed PW2 to drop the money below the table of the accused and the case has been foisted. This is the defence that was taken.

19.In the light of the above said factual background, now we will go into the main issue namely, demand and acceptance etc., facts.

20.As stated above, PW2 is the de-facto complainant. He would say that on 16.08.2003, he made a request to the Project Officer and for processing the same, initial demand was made on 21.10.2003. It was repeated on 27.10.2003. He was not satisfied with the conduct of the accused. So, he lodged a complaint on 28.10.2003 with the Trap Laying Officer. This is the core evidence on the side of the PW2. Now he says that for about two months. there was no proper action on the side of the accused and he was directed to come once again and once again and later only, he demanded the bribe amount. Regarding the demand on 21.10.2003 along with him his friend namely Ravichandran, who is examined as PW3 came with him. But, PW3 Ravichandran in chief examination, stated that on 27.10.2003 at about 12 noon, he went along with PW2 went to the Office of the accused and at that time, he demanded Rs.5,000/-. PW2 pleaded that he is unable to pay such a huge amount. Later, accused told them to give the money in two installments,



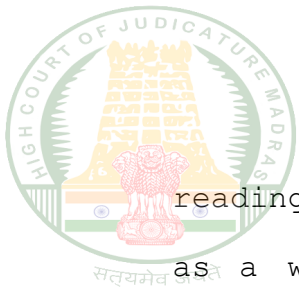
initially Rs.3,000/- and Rs.2,000/- thereafter, within a week. But during the cross examination, he turned hostile.

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He would say that on 27.10.2003, he did not go along with PW2 inside the office. Since PW2 was not knowing the place of office, he went to the office. But without going into the office, he was waiting outside. What was the conversation made between the accused and PW2 was not known to him. Why he turned hostile is not clear on record and prosecution was not able to bring out the reason. But, again PW3 turned in favour of the prosecution and stated that on that particular date, the accused demanded Rs. 3,000/- as initial amount and Rs.2,000/- balance after a week. Why, he was turning up and down is not clear on record. But this shows that PW3 is not a genuine person. So, no reliance can be placed on his evidence. So, we can ignore the evidence of PW3 and concentrate the evidence of PW2.

21.Whether any demand was made on 21.10.2003, repeated on 27.10.2003 has to be verified only with the aid of the subsequent events. Now we will go to the trap events.

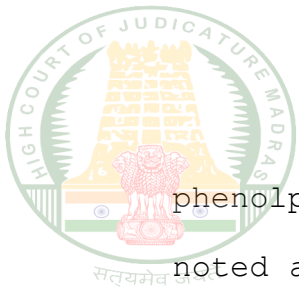
22.PW2 would say that the complaint was written on his dictation by PW3. PW3 says that at his dictation, he reduced the same into writing, in which PW2 signed after



reading the contents. In the complaint, he has also signed as a witness. Cross examination was made to PW3 on this point by the accused to the effect that the complaint was not written by PW3 at the dictation of PW2, but at the dictation of the Trap Laying Officer.

23.Now we will go to the evidence of the Trap Laying Officer. PW17 Mr.Mohammed Yasin would say that on 28.10.2003 at about 12.30 p.m., he received the written complaint from PW2 and registered the case. There was no reason for the PW17 to dictate the complaint, either to PW3 or PW2. So, the contention on the part of the accused that the complaint was not drafted at the dictation of PW2 by PW3 is baseless. When PW3 himself admits that he drafted the complaint at the dictation of PW2, it cannot be doubted. Prosecution has established the fact that the complaint was lodged legally. That was received by the Trap Laying Officer and case was registered.

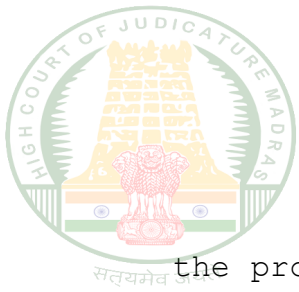
24.The further evidence of PW2 is that he along, PW4 the shadow witness, as instructed, they entered into the office of the accused at about 3.45 p.m., at that time he was not available. But, later he came to the office and enquired him about the bill. At that time, the accused asked them whether he has brought the money as demanded by him. He handed over the money, which was treated with



phenolphthalein powder during the pre-trap proceedings. As noted above, it was accepted by the accused, counted it and put the same in the left side drawer. This portion of his evidence is corroborated by PW4.

25.Now we will go to the evidence of Trap Laying Officer. As noted above, he would say that on receiving the signal from PW2, they entered into the office of the accused and narrated the events to him. He prepared the Sodium Carbonate solution. As noted above, accused was instructed to dip his hands in the solution. Both hands fingers turned into pink colour.

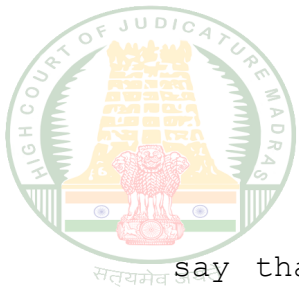
26.So the demand on the date of trap is established on the side of the prosecution. Absolutely, I find no reason to discard the evidence of PW2 and PW4 about their evidence on the date of trap, except the minor contradictions in the evidence of PW2 during the course of cross examination, but, his over-all evidence indicates that even on the date of trap the accused made demand. And as noted above, the sodium carbonate test also positive. Now the demand and acceptance of tainted money cannot be disputed. Except minor contradiction, I find absolutely no reason to discard the evidence of PW2 and PW4.



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27.The another witness was examined on the side of the prosecution is PW6. He was the Office Assistant working in the office during the relevant time and she would say that on the date of trap, she was on duty and Vigilance Department people and others visited the office. PW9 is another witness examined on the side of the prosecution to corroborate the trap events. She was the Project Officer as mentioned above. On the date of trap, he was requested to be a witness to the trap events. So, according to her, enquiry was made with the accused about the illegal demand of bribe amount. At that time, the accused was shivering. Sodium Carbonate test was taken. The accused was directed to dip his both the hands separately and both the hands were dipped and solution turned pink. Absolutely, nothing is on record to disbelieve her evidence regarding the above said trap event.

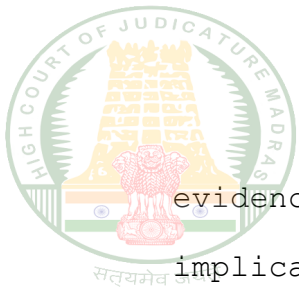
28.Now the second issue is acceptance. As noted above, PW2 and PW4 are very clear in their evidence that accused accepted the money, counted the same and put the same in the left side drawer. Now according to the accused, he never accepted or received money from PW2. Money was not recovered from his office or from the drawer. But the money was recovered below almirah. So, according to him, as mentioned above, only at the instigation or advise of the Trap Laying Officer, PW2 dropped the money below the almirah to implicate him.



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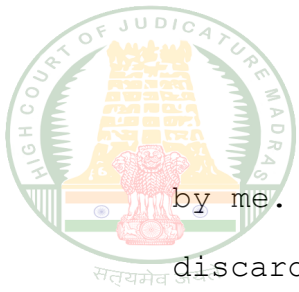
29. Now we will go to the recovery event. PW17 would say that when enquiry was made with the accused about the money, he collected the money from the backside of the almirah and produced it. On his further enquiry, the accused alleged to have stated that he placed the money on the backside of the almirah on noticing the entry of some stranger. No doubt the explanation offered by the accused is not admissible in evidence. So, we can ignore the above said explanation and turn to the evidence of Project Officer namely PW9. He would say that the Trap Laying Officer made enquiry with the accused about the money. Accused collected it from almirah and produced the same. So, there is some confusion as to where from the money was collected by the accused. PW17 says that it is from the backside of almirah. PW9 says that it is from the lower portion of almirah. Whatever it may be, this contradiction does not assume any importance at all for the simple reason that sodium carbonate test turned pink, which indicates that only because of acceptance of tainted money, it turned pink. So wherever, it is recovered even though there is some contradictions, the above said fact cannot be disputed and denied.

30. The explanation offered by the accused that only at the instigation of Trap Laying Officer, the money was dropped by the PW2, is completely without any basis and



evidence. There is no reason for the Trap Laying Officer to implicate the accused in Vigilance and Anti Corruption cases. Only a vague statement has been made by the accused to the effect that only for the purpose of speed up the process, the complaint was made by PW2. It is too a remote defence that can be taken. So, on over-all assessment of evidence on record, the conclusion reached by the trial Court is absolutely based upon evidence and reason also.

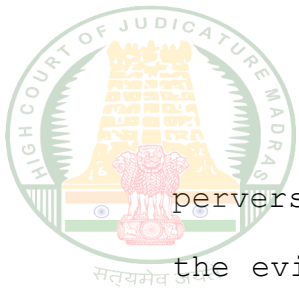
31.The appellant relied upon the judgment of the Hon'ble Supreme Court in the judgment reported in **Neeraj Dutta Vs. State [(2003)4 SCC 731]**. How this judgment fit the case of the appellant is not known. Absolutely, doubt, which is genuine in nature is successfully raised by the accused. The complaint as well as the trap event fully corroborate each other and also supported by oral evidence, simply because PW3 turned hostile, the demand that was made by the accused on two days can be easily verified by in his subsequent conduct on the date of trap. As indicated by the evidence of PW2 and PW4 the accused made enquiry whether he brought the money demanded. So, this indicates that there was initial demand. For what reason, PW3 turned hostile with regard to the first demand is not known. Moreover as stated above he is going on changing his version. He is not a genuine person and his evidence already has been rejected



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by me. From evidence of PW2, I find absolutely no reason to discard the same. The Project Officer is very clear in her evidence as to the delay caused in the process of same. For what purpose, he was delaying the process is not clear. Of course, he has stated that there is objections. But all those objections were cleared. A joint affidavit was made by PW2 in this regard. Even if PW2 was not able to get the benefit, because of the difference of opinion between them and he has to produce the proper legal heirship certificate from the Tahsildar, but the demand and acceptance of money from them has been clearly established by the prosecution. I find absolutely no iota of doubt in the prosecution case.

32.The appellant would further rely upon the judgment of the Hon'ble Supreme Court reported in **V.Sejappa Vs. State [(2016)12 SCC 150]**. It does not help his defence. Here, as mentioned above, the initial demand is clearly established by the prosecution. In the absence of proper proof of initial demand only, the judgment of Sejappa's case will apply. Even otherwise, now it has been categorically settled by the Hon'ble Supreme Court in **Neeraj Dutta's** case that even from the circumstantial evidence the demand and acceptance of the money can be established by the prosecution. So, I find that the judgment of the trial Court does not suffer from any



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perversity or illegality. The trial Court has appreciated the evidence in proper perspective and recorded the correct conclusion.

33.In the result, the criminal appeal **dismissed**, confirming the conviction and sentence passed by the trial court.

28/01/2025

Index : Yes/No
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To,

- 1.The Special Court for Trial of cases under Prevention Act, Sivagangai.
- 2.The Inspector of Police, Vigilance and Anti-Corruption, Sivagangai District.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.



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