

CRL.A(MD).No.279 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	18.12.2024
Pronounced on	:	15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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V.Malaichamy (Died)

M.Jeyalakshmi

.. Appellant

(As per order of this Court dated 18.12.2019, in Crl.M.P.(MD).No.11159 of 2019 in Crl.A.(MD).No.279 of 2018 the appellant was impleaded)

Vs.

State rep. by
Inspector of Police,
Vigilance and Anti Corruption,
Madurai

.. Respondent

Prayer: This Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to set-aside the judgment delivered by the learned Special Judge for Vigilance and Anti Corruption Court cum Chief Judicial Magistrate, Madurai in Special Case No.70 of 2011 and acquit the appellant/accused.

For Appellant : Mr.Ramasundarvijayaraj

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



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JUDGMENT

WEB COPY The accused in the Special Case.No.70 of 2011 on the file of the learned Chief Judicial Magistrate Court/Special Judge, Madurai, filed this appeal challenging the conviction and sentence passed by the learned trial Judge. The learned trial Judge convicted the appellant for the offence under Sections 7 and 13(2) r/w13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him to undergo one year simple imprisonment and a fine of Rs.2,000/- in default, one month simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act and to undergo two years simple imprisonment and a fine of Rs.3000/- in default, to undergo one month simple imprisonment for the offence under Section 13(1)(d) r/w13(2) of the Prevention of Corruption Act, 1988, for his demand and acceptance of Rs.1,500/- from P.W.2 to sign the form for obtaining marriage assistance fund for his sister namely, Chitra's marriage under the Moovalur Ramamirtham Ammayar, Memorial Marriage Assistance Scheme.

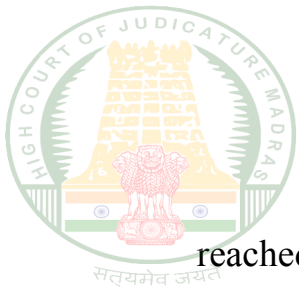
During the pendency of this Criminal Appeal, the appellant died. Therefore, wife of the appellant is contesting this appeal to continue the appeal of the deceased appellant.



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WEB COPY **2. Case of the prosecution:**

P.W.2 is the defacto complainant, who is the brother of one Chitra. The appellant/Malaichamy was working as Village Administrative Officer, Pulipatti Village and also in-charge of the Kidaripatti Village. Since P.W.2 belongs to Kidaripatti Village, he made an application to the appellant on 22.01.2010 to obtain marriage assistance fund for his sister's marriage under the Moovalur Ramamirtham Ammayar, Memorial Marriage Assistance Scheme. At that time, the appellant demanded a sum of Rs.1,500/- as bribe and received a sum of Rs.100/- as advance and asked him to come and meet him with bribe amount. On 25.01.2010, P.W.2 made a complaint before the Vigilance Department. P.W.12/Trap Laying Officer received the complaint and after enquiry, he registered a case in Crime No. 4 of 2010 for the offence under Section 7 of the Prevention of Corruption Act, 1988, and called two official witnesses P.W.3 and P.W.14 and demonstrated the phenolphthalein test on the amount brought by P.W.2. After demonstration of the phenolphthalein test, P.W.12 instructed P.W.2 to meet the Village Administrative Officer and on his demand he was directed to hand over the bribe amount. P.W.3 was directed to go along with P.W.2 and watch the transaction taking place between them. P.W.2 and P.W.3



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reached the Village Administration Office and since he was absent, he went to Melur Taluk office. In that place, the appellant was present and the appellant reiterated the demand and accepted the bribe amount of Rs. 1,400/- and returned a sum of Rs.500/- to P.W.2. P.W.2 thereafter, gave the signal to P.W.12 and his officers. On receipt of the signal, P.W.12 and his team of officer approached the appellant office and they conducted phenolphthalein test in the hands of the appellant and the same turned pink in colour and thereafter, P.W.12 enquired about the receipt of the bribe amount. The appellant pretended that he did not receive and thereafter, admitted the receipt of the bribe amount. Hence, the amount was recovered from the shirt pocket of the appellant and the same was subjected to phenolphthalein test and the same also turn pink in color. P.W.12 arrested the appellant and prepared the recovery mahazar in the presence of P.W.4, who is the staff of the Taluk Office, Melur and also P.W.4 who was the witness for the recovery proceedings and thereafter he arrested the accused and produced him before the Special Court and collected all the documents relating to the marriage scheme fund. After completing all the formalities, he also recovered the documents which were in the custody of the accused officer/appellant relating to P.W.2. After that he arrested the accused and the subsequent investigation was conducted by the Investigating Officer



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and he collected all the documents and final report was filed before the Special Court.

3.The learned Special Judge took the same on file in Spl.C.C.No.70 of 2011. The learned Special Judge framed the necessary charges. After framing of charges, the learned Special Judge questioned the appellant and he denied the charges and pleaded not guilty and stood trial.

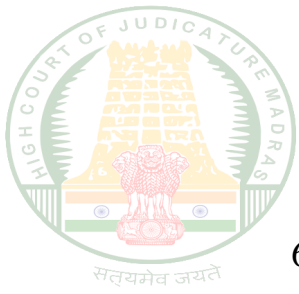
4.To prove the charges, the prosecution examined P.W1 to P.W14 and exhibited Ex.P1 to Ex.P15 and marked M.O1 to M.O5. The learned trial Judge questioned the appellant by putting the incriminating materials available against him from the evidence of prosecution witnesses and documents under Section 313 Cr.P.C, he denied the same as false and filed a written explanation and examined DW1 on his side and marked Ex.D1 to Ex.D3. The learned trial Judge after considering entire evidence on record convicted the appellant as stated above, vide impugned judgment.

5.The learned counsel for the appellant would submit that the amount was handed over to the appellant is not correct. Due to the motive between one of the village assistant, namely, Pandi, a false case was



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registered. P.W.2 was the member of a political party. Due to the vengeance, Pandi and P.W.2 conspired together and made a false compliant and thrust the trap amount in the pocket of the deceased accused and the same was probablised through the circumstances of the case and the same was not properly considered by the learned trial Judge. The learned counsel also submitted that the involvement of the appellant was not proved in accordance with law and also the acceptance of the money was not proved through legal evidence. Without any evidence to the foundation facts, namely, demand and acceptance the presumption under Section 20 of the Act, does not arise. The learned counsel also argued that the defence witness D.W.1 was examined to show the topography of the appellant place which was not in consonance with the evidence of the Trap Laying Officer, P.W.12, P.W.2 and P.W.3. The same was not properly considered by the learned trial Judge. He also submitted that the defence witness also was not given due importance. The learned counsel also submitted that now the appellant has died and his wife is prosecuting the appeal. Without obtaining any pensionary benefit, her entire family has ruined and in view of the above inherent improbability, she seeks to set aside the conviction and sentence passed against him.



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6. The learned Additional Public Prosecutor on instructions and on going through the impugned judgment and the records submitted that the demand and acceptance was clearly proved through the evidence of P.W.2, P.W.3, P.W.4 and P.W.14. Apart from the evidence of P.W.12/TLO. The same was properly considered by the learned trial Judge and proper conviction was passed against the deceased appellant. The appellant in 313 Cr.P.C., proceeding gave a detailed submission, in which he admitted that the meeting of the complainant/P.W.2 on 25.01.2010 as mentioned by the prosecution. His only defence is that the amount was thrust in his shirt pocket by P.W.2 with active collusion with one Pandi, Village Assistant. The Village Assistance had consumed liquor in the appellant's office and the same was questioned by him and threatened to take action against him. Hence, Pandi got annoyed. Therefore he and P.W.2 joined together and enacted a drama about the receipt of the bribe amount. The said defence is not correct. According to the prosecution, there was no record was produced by the defence to show that the relationship between Pandi and P.W.2. The evidence of an independent official witness P.W.3, P.W.4 and P.W. 14, who are the immediate superior of the deceased appellant correctly deposed about the recovery of the bribe amount from the pocket of the deceased appellant and their evidence are cogent and trustworthy.



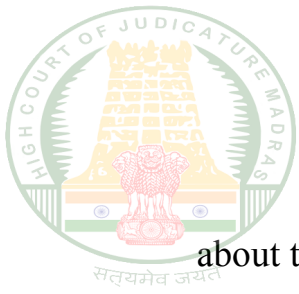
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Therefore, the learned Additional Public Prosecutor seeks to confirm the conviction and sentence imposed against him.

7.This court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

8. The question that arises in this appeal is *whether the prosecution has proved the case beyond reasonable doubt against the deceased appellant to substantiate the conviction and sentence imposed by the learned trial Judge?*

9. P.W.2 submitted the application to the deceased appellant on 22.01.2010 to obtain marriage benefit fund to his sister's marriage proposed to be held on 27.01.2010. As per the Moovalur Ramamirtham Ammaiyyar Memorial Scheme, amount of Rs.20,000/- was given to the destitute women. When he submitted the application, the deceased appellant made a demand of Rs.1,500/- and also demanded Rs.100/- as advance. P.W.2 further deposed that on 25.01.2010 he gave the complaint



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about the demand of Rs.1,400/- for issuing the nativity certificate and other necessary certificate to claim the amount under the said scheme to obtain the marriage relief fund. On 25.01.2010, he met the appellant/deceased. The appellant reiterated the demand and received the bribe amount. P.W.3 also corroboratively deposed about the said occurrence of the reiteration of demand on 25.01.2010. P.W.2 and P.W.3 clearly deposed about the reiteration of demand on 25.01.2010. Apart from that P.W.2 cogently deposed about the demand made on 22.01.2010.

10. Therefore, the demand was properly proved through the evidence of P.W.2 and P.W.3. P.W.2 and P.W.3 have cogently deposed and their evidence are trustworthy about the demand of money. The amount was accepted by the deceased appellant and the same was clearly deposed by P.W.2 and P.W.3 and the recovery was made in the presence of P.W.4, immediate superior of the deceased/appellant. P.W.14, another official witness, also has clearly deposed about the recovery of amount from the pocket of the deceased appellant. The evidence of independent witness namely, P.W.3, P.W.4 and P.W.14 are clear that the recovery was made from the pocket of the appellant. The theory of thrusting the amount in the pocket and the same found scattered in the ground and at that time, the



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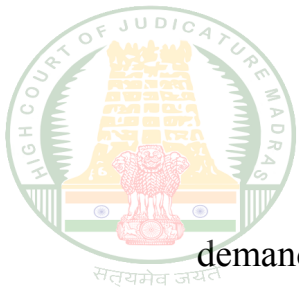
Vigilance Officer came and caught the accused is unbelievable defence.

P.W.3, P.W.4 and P.W.14 deposed about the recovery of the amount in the pocket of the appellant on his disclosure. Apart from that, the positive result of the phenolphthalein test in the hands of the appellant and also the shirt pocket of the appellant clearly proved that the amount was received by the appellant and the same was kept by him in his pocket.

11. D.W.1 was examined to demonstrate the topography of the occurrence place. Through demonstration of topography, the appellant wanted to disbelieve the evidence of P.W.2, P.W.3, P.W.14 and P.W.10.Ex.P. 2 was marked to prove topography. But, his evidence does not inspire confidence of this Court on the following version:-

எ.சா.ஆ.2 முழுமையான வரைபடம் இல்லை என்றால் சரிதான். இந்த வரைபடத்தில் வாய்காலுக்கோ மற்ற இடங்களுக்கோ குறியீடுகள் போட்டு நான் வாங்கவில்லை என்றால் சரிதான். எங்கள் அலுவலக புல வரைபடத்தில் அந்த விவரங்கள் இல்லை. புல எண் 19 வாய்க்கால் இல்லை என்பதால் தான் 1990 – லே அதற்கான குறியீடு புல வரைபடத்தில் இல்லை என்றால் அது பற்றி எனக்கு தெரியாது.

12. That apart, P.W.3, the official witness has no motive to depose against the appellant. When the evidence of P.W.3 is clear about the



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demand and acceptance, the same has to be accepted. Mere irrelevant, minor discrepancies relating to topography of the occurrence place is not a ground to eschew the evidence of P.W.2 and P.W.3.

13. Apart from that, file relating to P.W.2 also was recovered from the appellant. Further more, in the proceedings under Section 313 Cr.P.C., he admitted the meeting with P.W.2 on the date of the occurrence at the relevant point of time and his only defence is that the amount was thrust in his pocket. Therefore, the presence of the appellant on the date of the occurrence and meeting with P.W.2 is clearly proved through the cogent and trustworthy evidence of P.W.2, P.W.3 and also the admission made by the appellant/deceased in the proceedings under Section 313 of Cr.P.C. The only defence of thrusting is not believable as discussed earlier.

14. Therefore, this Court finds that the prosecution clearly proved the demand and acceptance and the acceptance of the bribe amount beyond reasonable doubt on the basis of the evidence of P.W.2, P.W.3, P.W.4, P.W.12 and P.W.14. The defence witness was examined on the side of the appellant to show the topography of the occurrence place. The topography is immaterial in this case, when the evidence of independent witness



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namely the immediate superior P.W.4 and the official witnesses P.W.14 and P.W.3 are cogent in relating to the acceptance of the money and the recovery of the amount. In view of the above discussion, the prosecution clearly proved the charge against the appellant and the conviction and sentence passed against him is confirmed. This Court finds no merit in the appeal. Hence, the conviction and sentence passed against him is liable to be confirmed. In view of the death of the sole appellant during the pendency of the appeal, the appeal is permitted to be continued by his wife.

15. Accordingly this Criminal Appeal stands dismissed. The conviction and sentence passed by the learned Special Judge for Vigilance and Anti Corruption Court cum Chief Judicial Magistrate, Madurai in Special Case No.70 of 2010, dated 31.05.2018 is hereby confirmed.

15.05.2025

NCC : Yes / No
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To

- 1.The larned Special Judge for Vigilance and Anti Corruption Court -cum-
Chief Judicial Magistrate, Madurai.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Madurai
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

sbn

Predelivery Judgment made in
CRL.A(MD).No.279 of 2018

15.05.2025