

CrI.A.(MD).No.364 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	10.01.2025
Pronounced On	:	15.05.2025

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.364 of 2018

M.Jeyaraj

... Appellant

Vs.

The State rep by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Madurai.
(Crime No.3 of 2013)

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment dated 27.07.2018 made in Special Case No.23 of 2013 on the file of the learned Special Judge for Prevention of Corruption Act, Madurai.

For appellant : Mr.R.Gandhi Senior Counsel for
Mr.M.Muthuvel

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



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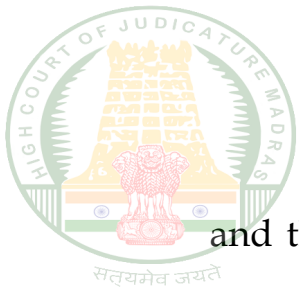
JUDGMENT

The sole accused in Special Case No.23 of 2013 on the file of the learned Special Judge for the Prevention of Corruption Act, Cases, Madurai, has filed this appeal challenging the judgment dated 27.07.2018 passed by the learned Special Judge for the Prevention of Corruption Act Cases, Madurai. By the said judgment, the learned trial Judge convicted the appellant for the offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and sentenced him to undergo two years simple imprisonment and a fine of Rs.1,000/-, in default, to undergo 3 months 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.1,000/-, in default, to undergo 3 months simple imprisonment for the offence under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.



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WEB COPY 2.P.W.2 and P.W.4 were working in a firm called Anitha Kitchen and Metal Company situated at Thiruparankundram, Madurai. P.W.2's cell phone was received by P.W.4 and he sold the same in a shop called Viram Communication Cell phone. He gave a complaint to the accused officer, who was the Special Sub Inspector of Police, attached with Subramaniyapuram Police Station, Madurai. P.W.2 gave the complaint on 30.03.2011 and the accused officer demanded a sum of Rs.1,500/- to return the phone. Thereafter, on 25.04.2011, the appellant again made a demand of Rs.1,500/- over phone and reiterated the said demand on 26.04.2011. Therefore, P.W.2 gave a complaint to P.W.11 attached with the respondent Vigilance Department. P.W.11 after receipt of the complaint from P.W.2, registered the case in Crime No.3 of 2013, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. Thereafter, he called two official witnesses namely, P.W.3 and one Sakthivel Seenivasan from the Government Aavin Milk Production Unit. In the presence of P.W.3



and the other official witnesses, he demonstrated the significance of the Phenolphthalein test with the money brought by P.W.2.

After that he instructed P.W.2 to hand over the money, if the accused officer reiterated the demand. P.W.3 was also instructed to accompany P.W.2 and instructed to observe the transaction taking place between P.W.2 and the accused officer. PW2 and PW3 went to the accused officer's police station at about 07.00 pm., and enquired with the Sentry of the said police station about the appellant and he informed that the accused officer would come to the police station usually around 10.00 am. Subsequently, P.W.2 and P.W.3 approached the accused officer and the accused officer reiterated the demand and received the amount and kept the same in his pant pocket. The same was witnessed by P.W.3, P.W.2 gave the signal and P.W.11 and his team entered into the police station and on seeing P.W.11 and other officers, the accused officer threw away the alleged bribe amount received from P.W.2 into the premises of adjacent saw mill, namely, Jawaharlal timber shop. Thereafter, P.W.11 conducted the test in the hands of accused



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officer and the said wash turned into pink in colour and when he questioned the accused officer, the accused officer disclosed the fact that he received the amount and thrown the bribe amount into the premises of adjacent Jawaharlal Timber shed. Then, the said saw mill was opened in the presence of the watchman of the said mill and the Station House Officer and the notes were picked up by the other official witness Sakthivel seenivasan. Thereafter, P.W. 11 arrested the accused and completed the preparation of the recovery mahazar. Then P.W.11 remanded the accused officer. Thereafter, the case file was entrusted to P.W.12 for investigation. P.W.12 continued the investigation and then P.W.13 completed the investigation and filed the final report before the Special Court for the Prevention of Corruption Act Cases, Madurai and the same was taken on file in S.C.No.23 of 2013.

3. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The learned trial Judge, on perusal of records and on hearing both sides and on

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being satisfied that there existed a *prima facie* case against the accused/appellant framed charges under Sections 7 and 13(1) r/w 13(2) of the Prevention of Corruption Act, 1988 and the same were read over and explained to him and on being questioned, the accused/appellant denied the charges and pleaded not guilty and stood trial.

4.The prosecution, in order to prove its case, had examined 13 witnesses as P.W.1 to P.W.13 and exhibited 20 documents as Ex.P1 to Ex.P20 and marked four material objects as M.O.1 to M.O.4.

5.The learned Trial Judge after completion of the examination of the prosecution witnesses questioned the appellant under Section 313 of Cr.P.C., by putting incriminating materials available against him in the prosecution evidence and the appellant denied them as false. In the said circumstances, the learned trial judge, after considering the entire evidence, convicted



the appellant without accepting the explanation, of the appellant and punished the appellant, by passing the impugned order as stated above. Challenging the same, he filed the present appeal before this court.

6. Mr.R.Gandhi, learned Senior Counsel appearing for the appellant made the following submissions:

6.1.To convict the accused officer under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 it is imperative on the part of the prosecution to prove the demand and acceptance of the bribe amount beyond reasonable doubt. In this case, the demand has not been proved.

6.2.According to P.W.2, he approached the accused officer on 28.03.2011 and the accused officer demanded bribe amount from him. Thereafter, the accused officer again demanded bribe on 30.03.2011 and also reiterated the said demand through telephone on 25.04.2011 and 26.04.2011. In the complaint, it is stated that the initial demand was made on 28.03.2011. But, in the evidence, it is



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stated that the demand was made on 30.03.2011. Therefore, on the score of the said material contradiction, the evidence of P.W.2 is liable to be rejected. According to P.W.2, and the complaint, the accused officer demanded the amount in the afternoon of 25.04.2011. The learned Senior Counsel emphasized the word “மதியம்” but, in the call detail record collected for both mobiles of the accused officer and P.W.2 there is a reference about the call at 06.12 hours. Therefore, the learned Senior counsel would submit that the demand through the phone on 30.03.2011 is not proved. Similarly, the learned Senior counsel would submit that as per the prosecution the demand was made through the phone on 26.04.2011. The accused officer even on 25.04.2011 through the phone asked him to come and meet at 10.00 am with the bribe amount. Therefore, he made a call to the accused officer on 26.04.2011 at 09.52 am. Then, he made the complaint. The said discrepancies between the evidence of P.W.2 and corresponding entry in the CDR report clearly proved that the alleged demand is not proved. The learned Senior counsel would submit that P.W.2



has many bad antecedents. Therefore, his evidence requires close scrutiny and considering the said discrepancies and the antecedents of P.W.2, the demand is not proved. Therefore, he seeks acquittal.

6.3.Both P.W.2 and P.W.4 have a list of theft cases to their credit. Hence, their evidence is not trustworthy. The same was admitted by both the police officers and P.W.2 and P.W.4 themselves. Therefore, their evidence is liable to be rejected.

6.4.The learned Senior counsel further submitted that the recovery was made from Jawaharlal Timber shop. According to P.W.2, the amount was received by the appellant and he counted it and then put the same in his pant pocket. According to the prosecution, on seeing P.W.11, he threw the money into Jawaharlal Timber Shop and the same was picked up by witness Sakthivel Seenivasan, but he was not examined. Therefore, the recovery was not supported by the corroborative evidence of Sakthivel Seenivasan.



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6.5.The learned Senior counsel also submitted that no person was examined to prove the recovery from the police station. P.W. 10/Inspector of Police attached with the said station was examined to prove the recovery. His evidence is not consistence with the evidence of P.W.3 and many inconsistencies are there between the evidence of P.W.11, P.W.10 and P.W.3. Therefore, the recovery was not proved in accordance with law.

6.6.The learned Senior counsel further submitted that the place of the recovery was not clearly proved and there is a doubt over the place of the recovery of the money.

6.7.The learned Senior counsel would further submit that the rough sketch and the observation mahazar was not prepared to demonstrate the place of the occurrence which is material in this case in view of the recovery of the amount from some other place.

6.8.The learned Senior counsel finally submitted that the sanctioning authority has not accorded sanction with due application of mind. In the sanctioning order and in the evidence, he stated that the accused officer was working as a Special Sub-



Inspector from 01.08.2002 to 26.04.2011. Whereas, he was promoted as a Special Sub-Inspector only on 30.08.2010. The said fact clearly demonstrated that he accorded sanction without application of mind. Therefore, the learned Senior Counsel seeks acquittal.

7.Submission of the learned Additional Public Prosecutor:

7.1.The learned Additional Public Prosecutor, would submit that the difference of time between the evidence and record is not a ground to disbelieve the evidence of P.W.2. The criminal background is not a ground to disbelieve the proved facts. Evidence was adduced before the Court below to prove the demand and acceptance by the appellant. P.W.2's evidence is cogent and the same is corroborated by the evidence of P.W.3. Both the witnesses have clearly deposed about the receipt of the bribe amount by the appellant. The conduct of the appellant throwing the amount into the premises of saw mill situated adjacent to the police station is a material circumstance to presume the receipt of the bribe amount.



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7.2.The learned Additional Public Prosecutor would further submit that the minor contradictions and the immaterial discrepancies relating to the time of the occurrence stated in the complaint and evidence is not a ground to disbelieve the entire prosecution case when the available material clinchingly proved the demand and acceptance on the part of the appellant.

7.3.The learned Additional Public Prosecutor also submitted that due to the examination of witnesses after number of years, these type of discrepancies relating to the time tend to occur and hence, he relied the judgment of the Hon'ble Supreme Court in *Vinod Kumar Garg v. State (NCT of Delhi)* reported in **2020 (2) SCC 88** and seeks to believe the evidence of P.W.2 and P.W.3. P.W.3 is an independent official witness and he has no motive to implicate the appellant in this case and he clearly deposed about the receipt of the bribe amount.



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7.4.Further, the learned Additional Public Prosecutor would submit that the reason stated by the appellant that the sanctioning authority has not applied his mind to accord sanction is not material. The discrepancies pointed out by the learned Senior counsel to render a finding that the sanctioning authority accorded sanction without application of mind is not acceptable. In view of the above submission, he seeks for dismissal of the appeal.

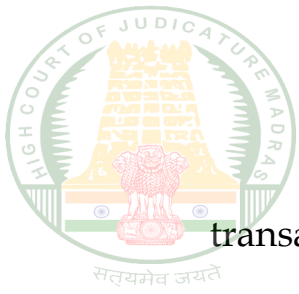
8.This Court considered the rival submissions made by the learned Senior counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

9.P.W.2 and P.W.4 were working in a firm, namely, Anitha Kitchen and Metal Company situated at Thiruparankundram, Madurai. P.W.2's cell phone was received by P.W.4 and he sold the same in a shop called Viram Communication Cell phone.



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Therefore, he gave a complaint to the accused officer. The accused officer was the Special Sub Inspector of Police, attached with Subramaniyapuram Police Station, Madurai. P.W.2 gave the complaint on 30.03.2011 and the accused officer demanded a sum of Rs.1,500/- to return the phone. Thereafter, on 25.04.2011, the appellant made a demand of Rs.1,500/- through phone and reiterated the said demand on 26.04.2011. Therefore, P.W.2 gave the complaint to P.W.11 attached with the respondent Vigilance Department. P.W.11 after receipt of the complaint from P.W.2, registered the case in Crime No.3 of 2013, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. Thereafter, P.W.11 called the official witnesses P.W.3 and one Sakthivel Seenivasan from the Aavin Milk Production Unit. In the presence of P.W.3 and other official witness, P.W.11 demonstrated the significance of the Phenolphthalein test with the money brought by P.W.2. After that P.W.11 instructed P.W.2 to hand over the money, if the accused officer reiterated the demand. P.W.3 also was instructed to accompany P.W.2 and observe the



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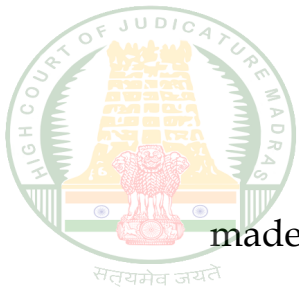
transaction between P.W.2 and the accused officer. The entire team visited the accused officer's police station at about 07.00 pm., and PW2 and PW3 enquired with the Sentry of the said police station about the appellant and he informed that the accused officer would usually come to the police station around 10.00 am. Subsequently, P.W.2 and P.W.3 approached the accused officer and the accused officer reiterated the demand and received the amount and kept the same in his pant pocket. The same was witnessed by P.W.3, P.W.2 gave the signal and P.W.11 and his team entered into the police station and on seeing P.W.11 and other officers, the accused officer threw away the alleged bribe amount received from P.W.2 into the premises of adjacent saw mill, namely, Jawaharlal timber shop. Thereafter, P.W.11 conducted the test in the hands of accused officer and the said wash turned into pink in colour and he questioned the accused officer and the accused officer disclosed the fact that he threw the bribe amount into the adjacent premises of Jawaharlal Timber saw mill. Thereafter, the said saw mill was opened in the presence of



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the watchman of the said mill and the Station House Officer and the money was picked up by the other official witness Sakthivel seenivasan. Thereafter, P.W.11 arrested the accused and completed the preparation of the recovery mahazar. Further, P.W. 11 remanded the accused officer.

10.The learned Senior counsel made much emphasis to the discrepancies of time between the evidence of P.W.2 and the documents. In the CDR report, it is specifically stated that at 06.12 hours, there was a call between the accused officer and P.W.2. Similarly on 26.04.2011 also there was some call between the accused officer and P.W.2. The said document corroborated with the evidence. Merely because there are some discrepancies relating to the time it is not a ground to disbelieve the evidence of P.W.2. P.W.2 clearly deposed about the recovery of cell phone from the shop owner on his disclosure. There was no cross examination on this aspect. The cell phone was under the custody of the accused officer. He has not returned the same. Therefore, the demand



made by the accused officer on 28.03.2011 is probable one. Apart from that the Hon'ble Supreme Court in the case of **Vinod Kumar Garg v. State (NCT of Delhi)** reported in 2020 (2) SCC 88 has held that in view of the examination of witness after number of years, usual discrepancies relating to the immaterial particulars are common and this is not a ground to disbelieve the evidence of the complainant and the official witnesses and the relevant paragraph is as follows:-

“14. Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt. Documents prepared contemporaneously noticed above affirm the primary and



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ocular evidence. We, therefore, find no good ground and reason to upset and set aside the findings recorded by the trial court that have been upheld by the High Court."

11.Further, the discrepancies relating to the date of oral demand is not material when the accused had the custody of the cell phone of P.W.2. Therefore, no material contradiction goes to the root of the evidence of P.W.2 and P.W.3 and hence, the demand was clearly proved in accordance with law.

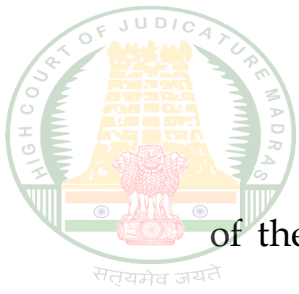
12.The learned Senior counsel argued that the evidence of P.W.2 and P.W.4 requires close scrutiny as they have previous bad antecedents. The Hon'ble Supreme Court in the case *Shashidhar Purandhar Hegde v. State of Karnataka* reported in 2004 12 SCC 492 has held as follows:-

"13. Merely because some of the witnesses are involved in criminal cases, that may at the most warrant a close scrutiny of their evidence but not total rejection."



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13. This Court considered both the evidence of P.W.2 and P.W.4. Even though they have some previous bad antecedents, P.W.2 clearly deposed about the demand and acceptance. P.W.4 deposed that P.W.2 borrowed a sum of Rs.2,000/- from him and failed to repay the said amount and hence, he received the cell phone (MO.2) of P.W.2 from him and sold to one Vairaprakash for Rs.850/- and adjusted the said amount and P.W.5 recovered the said cell phone and handed over to the appellant. The appellant demanded bribe to give the cell said phone to P.W.2. The said evidence of P.W.2 is cogent and natural. Apart from that, P.W.3, independent official witness has no motive against the appellant. He deposed about the demand and acceptance of the bribe amount. Therefore, on close, careful scrutiny of the evidence of P.W.2, this Court finds except the fact of the previous case nothing was elicited as to whether the appellant was either the Investigating Officer or witness in the said previous case and to disbelieve his testimony about the demand and acceptance of the bribe amount to return his cell phone. In addition to that, presence



of the previous case is positive circumstance to intimidate P.W.2

so to speak. Therefore, antecedents of the witnesses is not a ground to disbelieve their evidence relating to the demand and acceptance of the bribe amount. Therefore, the submission of the learned counsel to disbelieve their evidence cannot be accepted.

14.The learned Senior counsel also submitted that the recovery has not been proved by examining the other official witness. This Court is not inclined to accept the said submission on the ground that the evidence of available witnesses are cogent and trustworthy to prove the recovery. P.W.3 clearly deposed about the recovery and P.W.11 also clearly deposed about the recovery and apart from that the Station House Officer of the particular station, namely, P.W.10 also supported the recovery. The recovery was made on the disclosure of the appellant. In view of the said circumstances, the case of the appellant that the recovery was not proved in accordance with law cannot be accepted.

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WEB COPY 15.The learned Senior counsel submitted that no rough sketch and the observation mahazar were prepared and this will affect the prosecution case. This Court considered that there was no dispute over the presence of P.W.3 and no material circumstances were brought to disbelieve the evidence of P.W.3. In view of this non preparation of the sketch and observation mahazar is not a ground to disbelieve the case of the prosecution, more particularly, when the evidence of P.W.2 and P.W.3 are cogent relating to the demand and acceptance of the bribe amount.

16.The learned Senior counsel also submitted that the sanctioning authority has not applied his mind and this is not correct. The sanctioning authority considered the entire materials submitted by the investigating agency and accorded sanction. In the Sanction Order Ex.P.1, P.W.1 stated that the accused was working as Special Sub-Inspector of Police from 01.08.2002 to 26.04.2011. But, he was promoted as Special Sub Inspector of



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Police on 30.08.2010 and therefore, according to the learned senior counsel that there was non-application of mind in according sanction. This Court is unable to accept the same. This Court perused the sanction order and in the sanction order there was clear narration of the demand and acceptance of bribe amount and recovery of bribe amount. On the date of trap, he worked as Special Sub-Inspector of Police in the said C-2 Subramaniyapuram Police Station and in conclusion paragraph, it is stated that *“Whereas, I Sanjay Mathur, IPS, Commissioner of Police, Madurai City, Madurai, being the authority competent to remove the said Thiru. M.Jeyaraj, formerly Special Sub-Inspector of Police, C-2, Subramaniyapuram Police Station, Madurai City from service, after carefully and fully examining the materials as well as copy of FIR, Statements of witnesses and Thiru.M.Jeyaraj, along with the other records and also the report of the Director, Vigilance and Anti-Corruption, Chennai, placed before me in regard t the allegation and in circumstances of the case, am satisfied that the above said official should be prosecuted for the above said offences before the Court of law”.*



17. He also gave evidence before the Court in the following

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அந்த கடிதத்துடன் மேற்படி குற்ற வழக்கின் முதல் தகவல் அறிக்கை, சாட்சிகளின் வாக்குமூலம், எதிரியின் வாக்குமூலம் மற்றும் இதர ஆவணங்கள் இணைத்து அனுப்பப்பட்டிருந்தது. நான் அந்த ஆவணங்களை கவனமாக பரிசீலனை செய்தேன். அதன் மூலம் எதிரி மீது குற்ற நடவடிக்கைத் தொடர போதிய முகாந்திரம் இருப்பதை உணர்ந்தேன். எனவே, நான் 24.05.2012 தேதி எதிரி ஜெயராஜ் மீது குற்ற நடவடிக்கை மேற்கொள்ள ஊ.த.ச பிரிவு 19 (1) (சி) ன் கீழ் இணைவாணை வழங்கினேன். எதிரி மீது ஊ.த.ச பிரிவு 7 மற்றும் 13 (1) (டி) உ/இ 13 (2) ன் கீழ் குற்றநடவடிக்கை தொடர இசைவாணை வழங்கினேன்.

18. Therefore, this Court finds P.W.1 accorded sanction upon perusal of the material furnished by the Investigating Agency and came to the subjective satisfaction based on the materials. Further, neither miscarriage of justice nor prejudice caused to the appellant had been established.

19. It is not a ground to disbelieve the evidence of the said witness. This Court finds no merits in the case and this criminal appeal deserves to be dismissed.



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20. The appellant is aged about 63 years and suffering from various illness and hence, this Court reduces the sentence of imprisonment from two years to one year.

21. Accordingly, this appeal is partly allowed with the following terms:

(i) conviction recorded by the Special Court for Prevention of Corruption Act, Cases, Madurai, dated 27.07.2018 in S.C.No.23 of 2018, for the offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, is hereby confirmed.

(iii) Accordingly, the sentence of **two years Simple Imprisonment** passed by the Court below for the offence under Section 7 of Prevention of Corruption Act, 1988 is hereby **reduced to one year of simple imprisonment.**

(iv) The sentence of **two years Simple Imprisonment** passed by the Court below for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 is also hereby **reduced to one year of simple imprisonment.**



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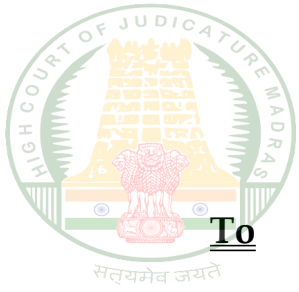
(v) The period of sentence already undergone by the accused/appellant shall be set off under Section 428 Cr.P.C., as against the substantive sentence.

(vi) The learned trial Judge is hereby directed to take steps to secure the appellant and confine him in prison to serve his remaining period of imprisonment.

22.List this case on 27.06.2025 under the caption for “reporting compliance”.

15.05.2025

NCC :Yes/No
Internet :Yes/No
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To

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- 1.The Special Court for Trial of
Prevention of Corruption Act, Cases, Madurai.
- 2.The Inspector of Police,
Vigilance and Anti Corruption Wing, 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.

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