

CRL.A NO. 685 OF 2010

- 1 -

2025:KER:53372

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

CRL.A NO. 685 OF 2010

AGAINST THE JUDGMENT DATED 19.03.2010 IN CC NO.29 OF 2004 (VC - 11/2003 OF VACB, KANUR) OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOZHIKODE.

<u>APPELLANT/ACCUSED:</u>

DR.CK.RAMACHANDRAN, S/O CK NARAYANAN

AGED 62 YEARS, PEARL, KEEZHUR AMSOM DESOM, IRITTY,

KANNUR - 670703, THALASSERY TALUK.

BY ADV SHRI.V.RAMKUMAR NAMBIAR

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA

 PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
- 2 DEPUTY SUPERINTENDENT OF POLICE VIGILANCE & ANTI-CORRUPTION BUREAU, KANNUR.



CRL.A NO. 685 OF 2010

- 2 -

2025:KER:53372

OTHER PRESENT:

SPL PP RAJESH .A VACB, SR PP VACB REKHA.S

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 08.07.2025, THE COURT ON 18.07.2025, DELIVERED THE FOLLOWING:

- 3 -

2025:KER:53372

"CR"

A. BADHARUDEEN, J

Crl. Appeal No. 685 of 2010

Dated 18th day of July 2025

JUDGMENT

The sole accused in C.C. No. 29 of 2004 on the files of the Court of Enquiry Commissioner and Special Judge, Kozhikode, has filed this appeal under Section 374 of the Code of Criminal Procedure (for short, 'CrPC'). He assails the conviction and sentence imposed on him in the above case by judgment dated 19.03.2010.



- 4 -

2025:KER:53372

- 2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor appearing for the Vigilance/prosecution in detail.
- 3. I shall refer the parties in this appeal as 'prosecution' and 'accused' hereinafter.
- 4. The prosecution case in a nutshell is that, the accused while working as Medical Officer, at Community Health Centre (for short, 'CHC'), Ititty, since 12.06.2003 FN, and as such being a public servant abused his official position, committed criminal misconduct and by adopting corrupt and illegal means demanded illegal gratification of ₹250/- from Sri.V.J.George,



- 5 -

2025:KER:53372

S/o Joseph Vellappally House, Kelakam, on 22.09.2003, accepted ₹100/- on 23.09.2003, had further demanded the balance amount of ₹150/- on 24.09.2003, re-iterated the same demand on 25.09.2003 and in pursuance of the said demand he accepted ₹150/- from the complainant as bribe at 14.45 hours on 25.09.2003 for discharging the complainant from CHC, Iritty and thereby, he had committed the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

5. When the final report was filed, the trial court took cognizance of the matter. Thereafter, upon completion of



- 6 -

2025:KER:53372

pre-trial formalities, charge was framed for the said offences, and evidence was recorded.

6. During trial, PWs 1 to 9 were examined, Exts. P1 to P24 and Material Objects MOs series 1 to 5 were marked on the side of the prosecution. Exts. D1 to D3 were marked on the side of the defence during the course of prosecution evidence. After completion of the prosecution evidence, the accused was examined under Section 313(1)(b) of the CrPC, and an opportunity was given to him to adduce defence evidence. However, no defence evidence was adduced.



- 7 -

2025:KER:53372

- 7. On evaluation of evidence, and on hearing both sides, the trial court found that the accused committed offences punishable under section Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act and sentenced him to undergo rigorous imprisonment for six months each and to pay a fine of ₹1000/- each, in default to undergo rigorous imprisonment for three months each under Sections 7 and 13(2) r/w Section 13(1)(d) of the PC Act, 1988. The substantive sentences shall run concurrently. Set off is allowed under Section 428 of the Code of Criminal Procedure.
- 8. While assailing the conviction and sentence, the learned counsel for the accused contended that, in order to establish the



- 8 -

2025:KER:53372

offences under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act, both demand and acceptance of illegal gratification must be proved beyond reasonable doubt. In the present case, the prosecution alleges that when PW1, the de facto complainant, was admitted to CHC, Iritty, the accused demanded bribe of ₹250/-. Accordingly, PW1 visited the doctor (the accused) at his residence in the evening on 22.09.2003, where the accused reiterated the demand for ₹250/-. As PW1 not have the full amount at that time—i.e., on did 23.09.2003—he went to the residence of the accused and paid ₹100/-, which the accused allegedly accepted.



- 9 -

2025:KER:53372

- 9. The further case of the prosecution is that the accused demanded the balance amount of ₹150/-, and this was informed by PW1 to the Vigilance Department. Following this, after starting the pre-trap proceedings, the Vigilance officials, along with PW1, proceeded to the residence of the accused along with MO1 series currency notes (i.e., ₹100 x 1 and ₹50 x 1), smeared with phenolphthalein powder, after completing the procedure for trap. As per prosecution case, upon demand made by the accused, PW1 placed the tainted notes on the teapoy in front of the accused.
- 10. According to the learned counsel for the accused, even in the evidence of PW1, there is no clear version that the Doctor



- 10 -

2025:KER:53372

actually accepted the MO1 series notes. It was contended that PW2, the Gazetted Officer who acted as a witness to the trap proceedings, deposed regarding the recovery of the MO1 series notes after its alleged acceptance by the accused. However, PW2 did not witness either the demand or acceptance of MO1 series notes. His evidence was confined to the point that when the hand of the Doctor when dipped in sodium carbonate solution, the solution turned pink, which, according to him, indicated accepted the notes smeared that the accused with phenolphthalein powder.

11. It is pointed out by the learned counsel for the accused that this evidence is unreliable because MO3—the sodium





- 11 -

2025:KER:53372

carbonate solution in which the fingers of the accused were alleged to be dipped when confronted with PW2 he deposed that in MO3 bottle there was no liquid at the time of his examination, even though the bottle contained liquid at the time of the occurrence and recovery of MO3. This, according to the defence, casts serious doubt on the credibility of the prosecution case.

12. Therefore, it is contended that there is no convincing evidence to prove the acceptance of ₹150/- by the accused. In view of these inconsistencies, and considering the present age and ailments of the accused, it is submitted that he deserves



- 12 -

2025:KER:53372

acquittal, as the prosecution has failed to establish the commission of the alleged offences beyond reasonable doubt.

13. Per contra, the learned Public Prosecutor contended that, as per the evidence of PW1, MO1 series currency notes were placed on the teapoy in front of the Doctor by PW1. Subsequently, PW1 came out and gave the pre-arranged signal. During this time, the Doctor took the MO1 series currency notes, which would establish the fact that when his hand was dipped into the sodium carbonate solution contained in the MO3 bottle, the same turned pink.



- 13 -

2025:KER:53372

14. Therefore, it is submitted by the learned Public Prosecutor that the combined evidence of PW1, complainant, and PW2, the Gazetted Officer who had no adverse interest against the accused, sufficiently proved the demand and acceptance required to constitute offence under Section 7 of the Prevention of Corruption Act. Accordingly, the offences punishable under Section 7, as well as Section 13(1)(d) read with 13(2) of the PC Act, are clearly established, as rightly found by the trial court. In view of this, the conviction and the moderate sentence imposed by the Special Court do not warrant any interference.



- 14 -

2025:KER:53372

- 15. On appraisal of the rival contentions, the following questions arise for consideration are:
 - 1. Whether the trial court is justified in finding that the accused committed offence punishable under Section 7 of the PC Act, 1988?
 - 2. Whether the trial court went wrong in holding that the accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988?
 - 3. Whether the verdict under challenge would require interference?
 - 4. The order to be passed?

- 15 -

2025:KER:53372

Point Nos. 1 & 2:-

16. While evaluating the evidence tendered by PW1, the de facto complainant in this case, he deposed that he made a complaint to the Vigilance Office, Kannur, on 25.09.2003, which was recorded by the police at the instance of the Deputy Superintendent of Police (for short, 'DySP'). The complaint so lodged is marked as Ext.P1. According to PW1, at about 8:30 p.m. on 21.09.2003, while he was on his way to Kelakam town to purchase articles for the purpose of sewing, Kuttan @ Janesh, and Jeny attacked him by using a torch and with their hands, and thereby caused injuries to his forehead and leg. Pursuant to this, at about 10:00 a.m. on 22.09.2003, he went to the

- 16 -

2025:KER:53372

Government Hospital, Iritty, and met the Doctor (accused). Thereafter, the accused informed PW1 that he wanted to meet him at his residence in the evening. When PW1 inquired why PW1 would visit the house, the Doctor informed that in connection with the crime, he would have to go to court for ₹250/- was demanded as a bribe. PW1 did not give any amount on 22.09.2003 as he did not have any money with him at that time. On 23.09.2003, his wife reached the hospital in the evening and entrusted some money to him. Later, he reached the accused's house at 3:00 p.m. and entrusted ₹100/- to the Doctor as demanded by him. Thereafter, the accused demanded ₹150/more and persisted with the demand, ignoring the financial



- 17 -

2025:KER:53372

difficulties stated by PW1. On 24.09.2003, PW1 again met the Doctor at his residence at 3:00 p.m., along with his ration card, and demanded for a discharge. He was accompanied by Padmanabhan (PW8) during this visit. This time, he entrusted ₹100/- more to the accused, but the accused demanded ₹150/- and did not accept ₹100/-. Then PW1 returned back. Then the accused informed PW1 that he would pay ₹150/- in the morning on 25.09.2003.

17. The further version of PW1 is that he soon telephoned the Vigilance DySP from a telephone booth and reached the Vigilance Office with ₹150/- in the morning on 25.09.2003. He deposed about the entrustment of MO1 series currency notes to





- 18 -

2025:KER:53372

the DySP and the demonstration of the phenolphthalein test and entrustment of the same to him. Ext.P2 is the mahazar prepared by the DySP when he took possession of MO1 series currency notes. Thereafter, the Vigilance party and PW1 proceeded towards the residence of the accused. They stopped two vehicles at a place from where the accused's house could be reached by walking for 5 to 10 minutes. At 3:45 p.m., they reached the accused's residence. The DySP instructed PW1 to entrust the MO1 series notes to the accused only if he made a demand for the same, and further instructed PW1 to give a signal by scratching his head if the accused would accept the money.



- 19 -

2025:KER:53372

18. According to PW1, when he entered the accused's house, the accused was sitting on a chair in the verandah. The Doctor asked whether PW1 had brought the money as demanded, to which PW1 replied affirmatively. He then took the money from his pocket and handed it over to the Doctor, who instructed PW1 to place the money on the teapoy. PW1 then placed MO1 series on the teapoy and came out; and gave the signal to the Vigilance Police. Thereafter, the DySP entered inside the verandah of the house of the accused and asked the Doctor (accused) whether he accepted the MO1 series notes: PW1 replied that, as requested by the Doctor, he had placed the notes on the teapoy. According to PW1, thereafter, using the



- 20 -

2025:KER:53372

as well as the Doctor were examined. When the hand of the accused was dipped in MO3 solution, the solution turned pink.

19. To corroborate the version of PW1, the then Additional Tahsildar of Kannur Taluk, the Gazetted Officer accompanied the Vigilance team, was examined as PW2. He deposed that he was familiar with both PW1 and the accused, and was a witness to the arrest of the accused. According to him, he reached the office of the Vigilance DySP as directed by the District Collector and found PW1 and CW3 present there. Then, the DySP informed PW2 about the purpose of his invitation and the registration of the crime. Thereafter, a



- 21 -

2025:KER:53372

ten-rupee currency note was dipped into sodium carbonate solution, and there was no change in colour. Then, phenolphthalein powder was smeared into the same note, and when dipped again into the sodium carbonate solution, the solution turned pink. The further evidence of PW2 is that MO1 series currency notes were produced by PW1 and marked with after noting its serial numbers. The said notes were identified by PW2. According to PW2, as per Ext.P2 (the mahazar), the notes were taken into custody by the DySP, and thereafter entrusted to PW1. Then the party proceeded to the accused's house in two vehicles. He also testified that the DySP gave directions to PW1 to give the signal, after which PW1

- 22 -

2025:KER:53372

entered the house. CW3, along with the DySP, entered the verandah and found that the Doctor sitting on a chair in the verandah. The Doctor attempted to stand up when they entered, but was directed by the DySP to remain seated. When the DySP asked the Doctor whether he had accepted money from PW1, the Doctor denied the same. Thereafter, the DySP introduced himself and, after calling PW1 inside, inquired about the demand and acceptance of bribe by the accused. The MO1 series were then found folded on the teapoy. Subsequently, the hands of PW2, the DySP, and CW3 were dipped in a mug containing sodium carbonate solution, but no colour change was observed. This solution was labelled as 'A' and identified as



- 23 -

2025:KER:53372

MO2 by PW2. Then, the Doctor's hand was dipped in the sodium carbonate solution, which turned pink. This solution was collected in a bottle, labeled 'B', and the same is identified as MO3. PW2 testified that there was liquid in MO3 at the time it was labeled and sealed; however, the liquid was not found when the same was shown to him before the court. Thereafter, the DySP dipped the MO1 series currency notes in sodium carbonate solution, and both the notes and the liquid exhibited pink colour change. This solution was marked as MO4. PW2 was cross-examined, but nothing significant was elicited to discredit the testimony of PW2.

2025:KER:53372

20. PW3, examined in this case, is the staff nurse working at CHC, Iritty, during September 2003. She deposed about the admission of PW1 at the CHC on 22.09.2003 as I.P. No.1620. She identified the case sheet and Diet Sheet as Ext.P6. The IP register pertaining to PW1 was marked as Ext.P7. According to PW3, PW1 absconded and was discharged on 25.09.2003. This was endorsed by PW3, and the endorsement was written by her. In Ext.P6, the relevant entries were made by the Medical Officer, Dr. Sainudheen. She also deposed that PW1 was at the hospital on 22.09.2003 and 23.09.2003, as evidenced by Ext.P8, the wound certificate register, and Ext.P8(a), the relevant page pertaining to PW1. In fact, the evidence of PW3 is confined to



- 25 -

2025:KER:53372

the admission of PW1, as deposed by him. It was PW4, the then Sub-Inspector of Police at Kelakam Police Station, who instructed Mathew Joseph, Head Constable, to record the statement of PW1 in the said case. According to PW4, the crime was registered as per Ext.P3, based on the occurrence narrated by PW1. He also supported the contentions of PW1, the statement marked as Ext.P3, as well as the mahazar marked as Ext.P11.

21. PW6, examined in this case, is the DySP, Vigilance, Kannur. According to PW6, on 24.09.2003, PW1 telephoned him and informed that the accused, who admitted him to the hospital, demanded bribe for his discharge. Accordingly, PW6 conducted a confidential verification and finding truth in the

2025:KER:53372

allegation, he directed PW1 to report to the Vigilance Office on the next day. PW1 arrived at the office at 10:00 a.m. Meanwhile, PW6 requested the District Collector to depute two officers to reach the Vigilance Office at 11:30 a.m. Ext.P1, the statement of PW1, was recorded, and thereafter, Ext.P1(a), the FIR, was registered. Soon after, CW2 (PW2) and CW3 arrived at the Vigilance Officer, he introduced them as witnesses to PW1.

22. According to PW6, thereafter, ₹150/- (i.e., ₹100 x 1 and ₹50 x 1) were produced by PW1 and marked with a 'V' on the Ashoka Pillar. The said notes identified by PW6 as MO1 series. By preparing Ext.P2, the mahazar, the MO1 series notes were taken into custody. PW6 deposed about conduct of



- 27 -

2025:KER:53372

phenolphthalein test by using a ₹10/- note by smearing phenolphthalein solution. Thereafter, on the MO1 series notes were entrusted to PW1 in a sealed cover with instructions to hand over the same to the accused when demanded. Ext.P2 mahazar was signed by PW6 and the witnesses.

23. He further deposed that thereafter, they proceeded in two vehicles towards the house of the accused and sent PW1 to give the money as demanded. At 02:50 hours, the complainant gave the signal. PW6 then entered the verandah of the house of the accused and enquired about the entrustment of ₹150/- by PW1 as demanded by the accused, but the accused denied the same.

2025:KER:53372

- 24. PW6 also deposed about conduct of the phenolphthalein test on the hands of the accused and on himself and other witnesses, using sodium carbonate solution contained in MO2 and MO3 bottles. According to him, when the doctor dipped his hand in MO2 solution, the solution turned pink. He further deposed about recovery of MO1 to MO4 series.
- 25. PW7, examined in this case, is Dr. E.K. Sainudheen. He deposed that he came to know about the arrest of the accused by the Vigilance Police while working as a Medical Officer at CHC, Iritty, and had supported the investigation. He produced certain documents from the hospital, which were marked as Ext.P9, attendance register, pertaining to the accused



- 29 -

2025:KER:53372

on the relevant days. Ext.P6 case sheet, Ext.P14 posting order of the accused, and Ext.P16 and Ext.P17 mahazars were also produced. He also reported that as per Ext.P7(a), PW1 was recorded as absconded and therefore discharged. Thus, the evidence of PW7 suggests that the accused was working as a doctor at CHC, Iritty, during the relevant period.

26. The demand of ₹250/- by the accused was deposed to by PW8, Padmanabhan, who also visited the residence of the accused on 24.09.2003 along with PW1.

2025:KER:53372

- 27. PW9 is the Vigilance Sub-Inspector who supported Ext.P18 (property list) as well as Exts.P4, P6, P7, P9, P10, P15, and P16.
- 28. Now, it is necessary to address the ingredients required to attract the offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

 The same are extracted as under:—

Section 7:- Public servant taking gratification other than legal remuneration in respect of an official act. – Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than





- 31 -

2025:KER:53372

legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in clause (C) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.





- 32 -

2025:KER:53372

Section 13:- Criminal misconduct by a public servant. – (1) A public servant is said to commit the offence of criminal misconduct,-

- (a) xxxxx
- (b) xxxxx
- (c) xxxxxx
- (d) If he,- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

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2025:KER:53372

- (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.
- 29. The learned counsel for the accused placed reliance on the decision of this Court reported in 2024 (4) KHC 52, Bharat Raj Meena v. Central Bureau of Investigation, Ernakulam with reference to Paragraph No. 12, where it was held that:-

"It is trite that proof of demand and acceptance of illegal gratification by a public servant is a prerequisite to establish the guilt of the accused / public servant under

- 34 -

2025:KER:53372

Section 7 of the PC Act. Indeed, proof of demand and acceptance of illegal gratification by a public servant can also be proved by circumstantial evidence in the absence of direct, oral and documentary evidence [See Neeraj Dutta v. State (Govt. of NCT of Delhi, 2023 (4) SCC 731]. Recently, the Supreme Court in Jagtar Singh v. State of Punjab, AIR 2023 SC 1567 reiterated the principle that the demand of illegal gratification, at least by circumstantial evidence, is sine qua non to attract the offence under Section 7 or Section 13(1)(d)(i) and (ii) of the PC Act. S.13(1)(a) of the PC Act provides that the prosecution is obliged to prove that the accused accepted or obtained or agreed to accept or agreed to obtain any



- 35 -

2025:KER:53372

gratification as a motive or reward as contemplated under Section 7 of the PC Act. Thus, the demand and acceptance by the public servant for illegal gratification must be independently proved by the prosecution as a fact in issue to establish the guilt under Section 7 or 13(1)(a) of the PC Act."

30. In fact the legal position as held in *Bharat Raj Meena* (supra), *Neeraj Dutta* (supra), and *Jagtar Singh*(supra) to the effect that the demand and acceptance of illegal gratification is sine qua non to attract offence under Section 7 of the PC Act. That apart, as per Section 13(1)(a) of the PC Act, the prosecution is obliged to prove that the accused accepted,



- 36 -

2025:KER:53372

obtained, or agreed to accept or agreed to obtain any gratification as a motive or reward as contemplated by Section 7 of the PC Act. There is no doubt that the demand and acceptance—the elements of the offence punishable under Section 7 of the PC Act—can be proved by either direct evidence or, in the absence of direct and documentary evidence, by circumstantial evidence.

31. Here, the evidence of PW1 would show that when he was admitted at CHC, Iritty, after an assault, the Doctor (accused) demanded ₹250/- as bribe and in view of the said demand on 22.09.2003, PW1 reached the residence of the Doctor (accused) and paid ₹100/- on demand and the same was



- 37 -

2025:KER:53372

accepted by the Doctor (accused). While accepting ₹100/-, he again demanded for the balance amount of ₹150/- as on 24.09.2003 and when PW1 given ₹100/-, again, the doctor (accused) did not accept the same and demanded to pay ₹150/as on 25.09.2003, and this aspect was deposed by PW8, who accompanied PW1 on 25.09.2003. In turn PW1 informed the same to the DySP Vigilance, and in continuation of pre-trap proceedings, PW1 along with the vigilance party reached the residence of the Doctor (accused), and as instructed by the DySP Vigilance, PW1 met the Doctor (accused) who was sitting in a chair in the varandah was informed and then the accused demanded ₹150/- and pursuant to the said demand, as directed



- 38 -

2025:KER:53372

by the Doctor (accused), PW1 placed MO1 series notes on the teapoy. Soon PW1 came out, and gave signal as instructed by the DySP, and in turn DySP and PW2 entered in the varandah of the house of the Doctor (accused) and as part of conduct of phenolphthalein test, the hand of the Doctor (accused) when dipped in sodium carbonate solution, the solution turned pink indicating acceptance of MO1 series by the accused from the teapoy.

32. It is interesting to note that the trump card upon which the learned counsel for the accused argued that there was no acceptance is based on the submission that MO1 series was placed on the top of the teapoy, and the Doctor (accused) did



- 39 -

2025:KER:53372

not directly receive the same. Regarding colour change in MO3 solution when the hand of the accused was dipped, the learned counsel for the accused argued that in MO3 bottle, no such solution was available at the time of evidence, and therefore, the said evidence cannot be safely relied upon. In this matter, as per the evidence of PW1, supported by the evidence of PW8, there was demand for ₹250/- for discharging PW1 and he accepted ₹100/- out of ₹250/- on 23.09.2003 and thereafter when the accused continued the demand for ₹150/- more and the same ended in trap proceedings.

33. Thus, the evidence available would suggest that the accused demanded ₹250/- as on 22.09.2003 and accepted ₹100/-

2025:KER:53372

on 23.09.2003 and ₹150/- on 24.09.2003, thereby justifying the ingredients to attract offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act. In the said circumstances, the finding entered by the trial court in this regard is only to be justified. Therefore, the conviction does not require any interference.

34. Coming to the sentence, in consideration of the request made by the learned counsel for the accused, I am inclined to modify the same. Accordingly, the sentence of imprisonment imposed for the offence punishable under Section 7 of the PC Act is modified for a period of three months and to pay a fine of ₹1,000/-. In default of payment of fine, the accused



- 41 -

2025:KER:53372

shall undergo rigorous imprisonment for a period of two weeks. For the offence under section 13(2) r/w Section 13(1)(d) of the PC Act, 1988, the accused is sentenced to undergo simple imprisonment for a period of two months, and to pay fine of ₹1000/-. In default of payment of fine, the accused shall undergo simple imprisonment for a period of two weeks. The substantive sentences shall run concurrently, and the default sentence shall run concurrently. Set off will be allowed for the period he was in custody in connection with this crime under Section 428 of the Code of Criminal Procedure.

35. In view of the finding above, the order suspending sentence and the bail bond executed by the accused stand

CRL.A NO. 685 OF 2010

- 42 -

2025:KER:53372

cancelled with direction to the accused to surrender before the trial court to undergo the modified sentence forthwith. Failing which, the trial court shall execute the sentence without fail.

The Registry is directed to forward a copy of this judgment to the trial court forthwith for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

RMV



CRL.A NO. 685 OF 2010

- 43 -

2025:KER:53372

APPENDIX OF CRL.A 685/2010

PETITIONER ANNEXURES

Annexure A1 A TRUE COPY OF THE MEDICAL CERTIFICATE DATED 21.6.2025 ISSUED BY DR.PRIYA U, CONSULTANT OPHTHALMOLOGIST OF DIVINE EYE HOSPITAL, IRITTY KARNNUR A TRUE COPY OF THE MEDICAL CERTIFICATE DATED Annexure A2

22.6.2025 ISSUED BY DR.ABDUL GAFOOR K.P., CONSULTANT PHYSICIAN OF THE NEW PAVANA

HOSPITAL, CHAKKARAKKAL, KANNUR