

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 814 of 2011

The Principal District Judge
Salem.

.. Petitioner

Versus

1.State

represented by the Inspector of Police
Edapaddi Police Station
Edapaddi Taluk
Salem District
Cr.No.147 of 2005.

2.Loganathan

.. Respondents

This Revision/Reference has been made under Section 395(2) of the Criminal Procedure Code, requesting this Court to pass a suitable order by setting aside the committal order and transferring of the case in S.C.No.161 of 2006 from the file of Principal District and Sessions Judge, Salem, on the point of territorial jurisdiction to the Erode Sessions Division, in order to take up trial for the expeditious disposal.

For Respondent No.1: Mr.V.Arul
Government Advocate
(Criminal Side)

ORDER

This Revision/Reference has been made under Section 395(2) of the Criminal Procedure Code, requesting this Court to pass a suitable order by setting aside the committal order and transferring of the case in S.C.No.161 of 2006 from the file of Principal District and Sessions Judge, Salem, on the point of territorial jurisdiction to the Erode Sessions Division, in order to take up trial for the expeditious disposal.

2. According to the learned Principal District and Sessions Judge, Salem, the case in S.C.No.161 of 2006 was taken on the file, on committal of the case against the accused, by name, Loganathan/second respondent herein, by the Judicial Magistrate No.2, Sankari, on 24.04.2006 in connection with the case in Cr.No.147 of 2005 of Edapaddi Police Station on 09.04.2005 for "woman missing" in P.R.C.No. 11 of 2005. When the Sessions Case was posted for framing the charge against the accused, the Sessions Judge came to know that earlier in Cr.No.62 of 2005 a case has been registered by the Bhavani

Sagar Police Station of Erode District, as early as on 13.04.2005 for the offence under Section 174 Cr.P.C. in connection with finding a dead body of a woman, aged about 30 years, nearby the Bhavani Sagar Canal near pump house. According to the Sessions Judge, after investigation by the Investigating Officer, it came to light that the deceased woman is Bhuvaneswari and she is the second wife of the accused Loganathan, who is impotent and the accused with an intention to commit murder of the deceased, brought her to Ooty from Chinnamanli, Edapaddi, Salem District and stayed at Coimbatore after visiting Ooty and many other places, again brought to Bhavani Sagar on 11.04.2005 at about 6.00 a.m. and committed murder of the said Bhuvaneswari by pushing her into the Bhavani Sagar Canal and hence, the case was altered into the offence under Section 302 IPC against the accused Loganathan. Actually, the complaint was registered in Cr.No.147 of 2005 by the Edapaddi Police Station for "woman missing" on 09.04.2005 itself and on 11.04.2005 at about 6.00 p.m., the dead body was found in Bhavani Sagar Canal, Erode District and hence, a case in Cr.No.62 of 2005 a case has been registered by the Bhavani Sagar Police Station of Erode District on 13.04.2005 for the offence under Section 174 Cr.P.C.

3. It is seen that some of the acts of the offence started at Chinnamanli, Edapaddi, Salem District, from where, the deceased Bhuvaneswari was taken by the accused to different places at Coimbatore and stayed at Coimbatore, after visiting Ooty, Nilgiris District, and thereafter, brought her to Bhavani Sagar, Erode District, where he committed the death of deceased Bhunaveshwari and thrown the dead body in the Bhavani Sagar. The dead body was found in the Bhavani Sagar Canal, Erode District and another case in Cr.No.62 of 2005 a case has been registered by the Bhavani Sagar Police Station of Erode District on 13.04.2005 for the offence under Section 174 Cr.P.C., as an unnatural death and on investigation, based on the extra-judicial confession given by the accused, it came to light that this was the woman who was found missing, hence, a case was already registered in Cr.No.147 of 2005 by Edapaddi Police Station on 09.04.2005 and subsequently, the case was altered for the offence under Section 302 IPC. Now, the query raised by the learned Principal District and Sessions Judge, Salem, by way of Reference is that some of the acts of the offence started from Edapaddi, Salem District, whereas, the dead body was found at the Bhavani Sagar Canal, Erode District, which is admittedly at two different Districts and now, the case has been committed to Principal District and Sessions Judge, Salem, whether it has to be treated as the case at Salem District as some of the acts of the offence started from Edapaddi, Salem District or transferred to Erode District as the dead body was found at Bhavani Sagar Canal, which lies within the jurisdiction of Erode Sessions Division and hence, sought necessary order for transferring the case also and that is how the Reference is now before this Court.

4. It is patently clear that some of the acts of the offence started from Chinnamanli, Edapaddi, Salem District, whereas, the dead body was found at the Bhavani Sagar Canal, Erode District, which is admittedly at two different Districts. Based on the extra-judicial confession given by the accused that he has taken his wife/deceased Bhuvaneshwari to different places at Coimbatore and stayed at

Coimbatore, after visiting Ooty and thereafter, brought her to Bhavani Sagar, Erode District, where he committed the death of deceased Bhunaveshwari and thrown the dead body in the Bhavani Sagar Canal. The dead body was recovered from the Bhavani Sagar Canal near pump house, based on which, a case was registered by the Bhavani Sagar Police Station of Erode District in Cr.No.62 of 2005 on 13.04.2005 for the offence under Section 174 Cr.P.C., as unnatural death. Further, on investigation, it came to light that this was the woman who was found missing, hence, a case for "woman missing" was already registered in Cr.No.147 of 2005 by Edapaddi Police Station on 09.04.2005 and subsequently, the case was altered for the offence under Section 302 IPC.

5. In this context, I have heard, Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the first respondent and he has brought to the notice of this Court the following decisions viz., (i) The Calcutta High Court judgment reported in (1898) ILR 25 Calcutta 858, Punardeo Narain Singh and another vs. Ram Sarup Roy; (ii) The Patna High Court unreported judgment in Criminal Writ No.177 of 2007 (Harish Kumar @ Harish Prasad Vs. The State of Bihar); (iii) The Delhi High Court judgment reported in 1975 Rajdhani LR 260, Kesar Lal vs. State; and (iv) The Karnataka High Court judgment reported in 2006 CrL.L.J.3738, Parashuram and others vs. State. Relying on the said decisions, learned Government Advocate would submit that where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. He would further submit that since, some acts of the offence started from Chinnamanli, Edapaddi, Salem District, therefore, the Principal District and Sessions Judge, Salem, has got the jurisdiction to try the case.

6. The question that now arises for consideration in this Criminal Revision Case is, As the offence consists of several acts done in different local limits, whether the Principal District and Sessions Judge, Salem, has jurisdiction to try the offence alleged against the accused ?

7. In the above context, I would like to elaborately deal with the various judgments relied on by the learned Government Advocate (Criminal Side). At the outset, I would like to refer to the judgment of the Calcutta High Court reported in (1898) ILR 25 Calcutta 858, Punardeo Narain Singh and another vs. Ram Sarup Roy, which deals with the old provision of Criminal Procedure Code. The question arose therein was as to, whether the Diara known as the Mutier Diara lies in the Balia or Sarun District. It was held that it depends upon what the boundary line of these two Districts is. Further, a reference was made to the notification of the Government of India, dated the 5th of December 1888, wherein, it was declared: "That the deep stream of the Gogra is the boundary between the Balia district in the North-Western Provinces and the Sarun district in Bengal, up to the point where the boundary line between Mouzah Ibrahimabad Nanhara in Balia, and Mouzah Shitab Diara in Bengal, meets that river." When there is an uncertainty in the matter, the course open is to invoke the assistance of Section 182 of the Criminal Procedure Code (as per the old provision and now it was amended as Section 178 Cr.P.C.), which lays down, "When it is

uncertain in which of several local areas an offence is committed, it may be inquired into or tried by a Court having jurisdiction over any of such local areas". In the said judgment, the words "local area" and the "spot" were discussed and in paragraph Nos. 5 and 6, the Calcutta High Court has held as under:-

"5. It is urged by the learned Vakild for the petitioner that the words "in which of several local areas" does not apply to any uncertainty as to the district, but uncertainty as to the particular spot upon which the alleged offence was committed. That would be a very narrow construction to put upon the section, and treats the term "local area" as synonymous with the term "spot". In my opinion the expression "local area" includes and was intended to include a "district", and this view is fortified by a reference to the language of Section 531 of the Criminal Procedure Code.

6. In my opinion then, there is, for the reasons I have stated, sufficient uncertainty as to which is the true boundary between these two districts, and there being that uncertainty, Section 182 applies, and it is competent for the Court in the Sarun district to inquire into this matter."

In the said judgment, in paragraph Nos. 15 and 16, the Calcutta High Court has further held as under:-

"15. The learned Vakild for the petitioner contends that this Section cannot apply to a case like the present, because the expression "local area" is not equivalent to "district", and there is no uncertainty here as to the spot in which the offence was committed, the uncertainty being as to the district in which the case should be tried. In other words, the learned Vakild's contention is that "local area" in Section 182 means a spot and not a district or province. He may be right so far that the expression "local area" may comprehend not only a district or province, but also a spot: but his contention is not right so far as it seeks to restrict the expression "local area" to the spot where the offence was committed. And that his contention is not right is evident from Section 531, that Section clearly showing that a Sessions Division, District or Sub-Division is, within the meaning of the Act intended to be included in the term "local area."

16. Lastly, it was contended that the marginal note to Section 182 would militate against the view we take. The answer to that is that the marginal note is no part of the Act, as has been pointed out in Sutton v. Sutton (1882) L.R.22 Ch.D.511 and Dukhi Mullah vs. Halway (1895) I.L.R. 23 Cal. 55, therefore, hold that as there is an uncertainty in the matter, the case is governed by Section 182, and the offence is, therefore,

triable in the Court having jurisdiction either over Sarun or over Balia."

In the above judgment, the Calcutta High Court has ultimately referring to Section 182 of Cr.P.C. (as per the old provision and now it was amended as Section 178 Cr.P.C.), has held that when it is uncertain in which of several local areas an offence is committed, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

8. Subsequently, after the incorporation in the new Act, Section 182 Cr.P.C. is amended as Section 178 Cr.P.C. and Section 531 Cr.P.C. is amended as Section 462 Cr.P.C. I would like to refer to the following judgments, which deal with the incorporation in the new Act. In an identical case, the High Court of Patna in Criminal Writ No.177 of 2007 (Harish Kumar @ Harish Prasad Vs. The State of Bihar), has held as under:-

"12. Thus after having conjoint reading of all the Sections referred above, it is evident that the Courts have been given concurrent jurisdiction and that happens to be reason behind presence of Section 186 of the Cr.P.C, where under High Court has been given power to decide the jurisdiction which of those courts should be allowed to proceed with the inquiry or trial. For better appreciation Section 186 is quoted below:

"S. 186 High Court to decide, in case of doubt, district where inquiry or trial shall take place. - Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided -

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued."

13. Section 186 empowers the High Court to settle at rest anomaly over jurisdiction avenue. If all the cases have been instituted within the original jurisdiction of same High Court, the same would be decided by the same High Court as per sub-clause (a) of 186. In case, the cases happens to be instituted within the jurisdiction of different High Courts, then a privilege has been given to that High Court within whose jurisdiction, the proceeding first commenced. From the document annexed by the petitioner as well as from the averments made through

counter affidavit, there is no controversy that Siswan P.S.Case No.85 of 2005 was registered on 05.12.2005 and Bairmo P.S.Case No.154 of 2005 was registered on 16.12.2005 that means to say Siswan P.S.Case was registered before institution of Bairmo P.S.Case. However, none of the parties been able to place the relevant documents more particularly the FIR with regard to seizure of the looted Belero jeep which was seized within the jurisdiction of Uttar Pradesh State (Allahabad High Court). For want of aforesaid document, this Court happens to be in dark whether the case of Ballia was registered first or at Siswan P.S."

9. The Delhi High Court in the case reported in 1975 Rajdhani LR 260, Kesar Lal vs. State, wherein, the offence of theft of car was committed at Delhi, thereafter, the car was taken outside the jurisdiction of Delhi and sold the car at Nagpur, has held in paragraph Nos. 2, 3, 5 and 6 as under:-

"2. Sections 178 to 184 Criminal Procedure Code are exceptions to the general rule laid by section 177 Criminal Procedure Code. Section 179 which has been noticed by the learned Additional Sessions Judge reads as follows:

"When A person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing had been done, or any such consequence has ensued."

The learned Additional Sessions Judge is perhaps right in this view that the offences under sections 468, 471 and 420 Indian Penal Code which were said to have been committed by the petitioners at Nagpur are not consequences of the offence of theft committed by the petitioners at Delhi. But section 179 is not the only exception to the general rule under section 177 Criminal Procedure Code section 180 Criminal Procedure Code, which has not been noticed by the learned Additional Sessions Judge is also an exception to the general rule and it reads as follows:-

"When An act is offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done."

The following three illustrations have been given to Section 180 Cr.P.C:

"(A) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed. (b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court with the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained. (c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place."

These illustrations are not exhaustive and there will be any number of other cases which will fall within the scope of section 180 Criminal Procedure Code. For instance, a murder might have been committed at Delhi and the body of the deceased might have been taken to Nagpur and there with the intention of causing disappearance of the offence of murder. The burial of the body at Nagpur a person with the intention of causing disappearance of evidence of the offence of murder would be an offence by Bagson of its relation to the offence of murder which was committed at Delhi. The Courts at Delhi would, therefore, have jurisdiction under section 180 Criminal Procedure Code to try persons charged both under section 302 as well as under section 201 Indian Penal Code, although the offence under section 201 Indian Penal Code was committed outside their territorial jurisdiction.

3. Further, sections 178 to 184 Criminal Procedure Code, are not the only exceptions to the general rule under section 177 Criminal Procedure Code. If the offences committed at different places form part of the same transaction, then also they can be tried by the Court having jurisdiction to try any one of the said offences by virtue of sections 235 to 239 Criminal Procedure Code. Reference may be made in this connection to a decision of the Supreme Court in Purushottamdas Dalmis v. State of West Bengal, AIR 1971 SC 1689 and the following observations of the Supreme Court in that case may be quoted:-

"It is further significant to notice the difference in the language of S.177 and S.233. Section 177 simply says that ordinarily every offence would be tried by a Court within the local limits of whose jurisdiction it was

committed. It does not say that it would be tried by such Court except in the cases mentioned in Sections 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open. Its provisions are not preemptory. There is no reason why the provisions of Sections 233 to 239 may not also provide exceptions to S.177, if they do permit the trial of a particular offence along with others in one Court.

...

5. As Sections 235 and 239 of the Code are enabling sections, The Legislature, rightly, did not use the expression which would have made it incumbent on the Court to try a person for the different offences committed in the course of the same transaction together. The omission to make such preemptory provision does not necessarily indicate the intention of the legislature that the Court having jurisdiction to try certain offences try an offence committed in the course of the same transaction, but 'beyond its jurisdiction.'

6. There can be no doubt that the offence under sections 468, 471 and 420 read with section 34 Indian Penal Code which are said to have been committed at Nagpur are offences only by reason of their relation to the offence of theft alleged to have been committed by the petitioners are Delhi. Therefore, in my view, the Courts at Delhi had jurisdiction to try the petitioners not only for the offences under sections 379 and 411 read with section 34 Indian Penal Code but also for the offence under sections 468, 471 and 420 read with section 34 Indian Penal Code. The learned Magistrate had thus jurisdiction to try the petitioners for offences covered by all the charges framed by him against the petitioners and the learned Additional Sessions Judge was wrong in his view that the learned Magistrate had no jurisdiction to try the petitioners for the offences under sections 468, 471 and 420 read with section 34 Indian Penal Code."

10. The Karnataka High Court in the case reported in 2006 CrI.L.J.3738, Parashuram and others vs. State, has held that where the offence consisting of several acts done in different local limits, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. It is relevant to refer to paragraph Nos. 7, 8, 9 and 10 of the Karnataka High Court, wherein it was held as under:-

"7. Sri.Girji, learned Government Pleader appearing for the State placing reliance on the decision of the Apex Court in the case of State of Madhya Pradesh v. Suresh Kaushal and another, 2001 (3) Crimes 314: (2001 AIR SCW 458), submits that in the instant case both the Courts namely the Court at Koppal and the Court at Raichur have jurisdiction in

the matter as some of the acts are committed within the jurisdictional limits of Koppal Court and the result has ensued in the local limits of Raichur Court. He has also brought to the notice of the Court the provisions contained u/s.178 particularly 178(d) to contend that where the offence consists of several acts done in different local areas, it may be inquired into by a Court having jurisdiction over any such local areas.

8. Having heard the learned counsel appearing for the parties and upon careful perusal of the materials on record, the point that arises for consideration in this petition is:

"Whether the Sessions Court at Koppal has jurisdiction to try the offence alleged against the accused/revision petitioners?"

9. A reading of the complaint and the charge-sheet filed by the police would disclose that a missing complaint was lodged by the mother before Gangavathi Police way back complaining that her daughter was missing. This was followed by several petitions filed by her to the police officers requesting them to trace her daughter. It is thereafter on 23.6.2004, she has filed the complaint stating that accused No.1 had come to her house and threatened her of dire consequences and she would also be finished as he had done in respect of his wife if she were to file any more complaint to the police. In this complaint, the complainant has stated about the alleged conspiracy hatched by accused Nos. 1 to 3 to finish her daughter. It is further alleged in the complaint that the deceased was called over telephone and she was asked to come to Kurnool Tata Darga which is part of Gangavathi Town falling within the jurisdiction of Koppal Court. It is there, near that Darga Katta that they are alleged to have spent a night and thereafter she was taken to a park in Manvi and from there she was taken to Cheekalaparvi river where she is allegedly killed by throwing a stone on her head and the dead body was thrown into the river. It is thus clear from the facts as emerge from the complaint and the charge-sheet filed that several acts are done before the final act culminating in the murder of the deceased took place, some of them being the conspiracy hatched and the deceased being solicited to come and join accused No.1 at Kurnool Tata Darga. The deceased was taken away from Gangavathi. A missing complaint was filed by the mother of deceased at Gangavathi. Therefore, if part of the offence namely calling her to Kurnool Tata Darga and thereafter taking her to Manvi enroute to the place

where she was killed as a result of a conspiracy hatched has occurred in Koppal jurisdiction as rightly contended by the learned Government Pleader both the Courts would get jurisdiction to try the offence.

10. The intention of the legislature as is discernible by a perusal of Section 179 is that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. The contention urged by the learned counsel Sri.Kareddy that the things or acts done must themselves amount to independent offence dehors the consequence cannot be accepted because the conjunction 'and' used in the section between the expression 'when an act is an offence by reason of anything which has been done' and the expression 'of a consequence which has ensued', suggests that the act contemplated here becomes of an offence on account of the cumulative effect of the things done and the consequences ensued. Therefore, it is not necessary to prove that the things done must themselves be offences under any of the provisions of the IPC."

11. In this case, actually, the complaint was first registered in Cr.No.147 of 2005 by the Edapaddi Police Station for "woman missing" on 09.04.2005 itself and on 11.04.2005 at about 6.00 p.m., the dead body was found in Bhavani Sagar Canal, Erode District and hence, a case in Cr.No.62 of 2005 a case has been registered by the Bhavani Sagar Police Station of Erode District on 13.04.2005 for the offence under Section 174 Cr.P.C. A reading of Section 178 of Cr.P.C., makes it clear that where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. Thus, in my considered opinion, the Edapaddi, Salem District, has got the jurisdiction, because, some of the acts of the offence started at Chinnamanli, Edapaddi, Salem District and a case in Cr.No.147 of 2005 was first registered by the Edapaddi Police Station for "woman missing" on 09.04.2005. After commencement of some of the acts of the offence at Edapaddi, Salem District, the deceased Bhuvaneshwari was taken by the accused to different places at Coimbatore and stayed at Coimbatore, after visiting Ooty, Nilgiris District and thereafter, brought her to Bhavani Sagar, Erode District, where he committed the death of deceased Bhuvaneshwari and thrown the dead body in the Bhavani Sagar and therefore, rightly, the case is pending before the learned Principal District and Sessions Judge, Salem District, which will be the competent Court to try the case.

12. With the above observation, this Criminal Revision Case is disposed of. The observation made in this order is only in respect of jurisdiction. Now that the matter is pending for quite a long

time, the learned Principal District and Sessions Judge, Salem, is directed to dispose of the Sessions Case in S.C.No. 161 of 2006, on merits and in accordance with law, as expeditiously as possible.

Sd/-
Asst.Registrar (CS II)

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Sub Asst. Registrar

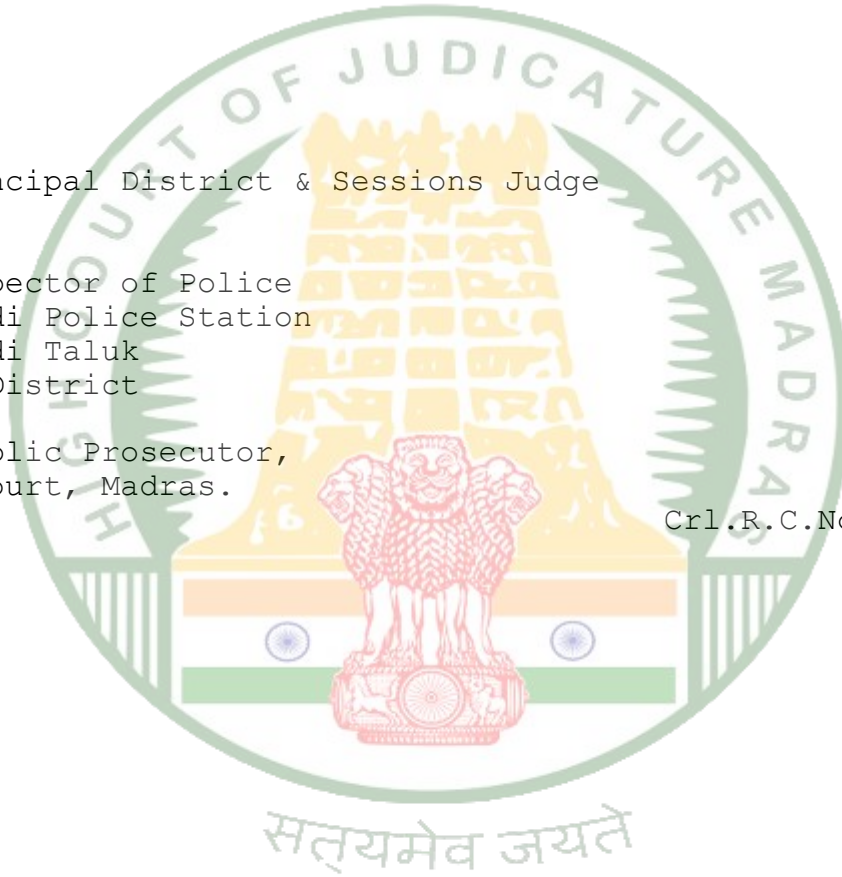
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To

- 1.The Principal District & Sessions Judge
Salem.
- 2.The Inspector of Police
Edapaddi Police Station
Edapaddi Taluk
Salem District
3. The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.814 of 2011

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