

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.8.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos.295 and 296 of 2014
and
MP.Nos.1 to 1 of 2014

G. Arun Prasanna ... Petitioner in both revision

Versus

1. Elango ... 1st respondent in CrI.RC.No.295/14
1. V.S.Subramani ... 1st respondent in CrI.RC.No.296/14

2. State by Inspector of Police
Uthukottai Police Station
Uthukottai.

3. Indian Institute of Animal Welfare
Venkatapuram,
Thiruvellore District
Having its registered office at
No.2, 9th South Cross Street
Kapaleeswarar Nagar,
Neelankarai, Chennai -41

(The 3rd respondent impleaded as per order of
this Court dated 19.08.15 made in MP.1&1/2015
in CrI.R.C.Nos.295 & 296 of 2014)

.. Respondents 2 and 3 in both petitions

Criminal Revision Cases filed under Section 397 and 401 of
Cr.P.C. to call for the records in CMP.Nos.419 and 420 of 2014 on the
file of the learned District Munsif cum Judicial Magistrate,
Uthukottai and set aside the order dated 07.2.2014.

For Petitioner : Mr.A.M.Muthu Ganesh
For R1 : Mr.C.Munusamy
For R2 : Mr.V. Arul
Government Advocate (CrI.side)
For R3 : Mr.A.Velmurugan

C O M M O N O R D E R

These Criminal Revision Cases arise out of the one and the same
occurrence in connection with a case registered in Cr.No.322 of 2013
and hence, all these revision cases are taken up together for common
disposal and disposed of by this common order.

2. The petitioner has filed the above Criminal Revision cases challenging the order dated 07.2.2014 passed by the Court below allowing the application filed by the first respondent under Sections 451 and 457 of Cr.P.C. for interim custody of the cattle.

3. The first respondent in both the cases are the accused. The cattle of the first respondent were seized by the second respondent police for the offence under Section 429 IPC read with 11 (i) & 12 of The Tamil Nadu Prevention of Cruelty to Animals Act, 1960. Therefore, the first respondent filed C.M.P.Nos.419 and 420 of 2014 praying for interim custody of the cattle till the disposal of the cases and the same have been allowed by the District Munsif cum Judicial Magistrate, Uthukottai, by order dated 07.2.2014 on certain conditions. Aggrieved over the same, the third party has filed the present revisions.

4. According to the revision petitioner, he is the president of People for Cattle in India, Chennai (PFCI), an organisation interested in the safety of the animals in question. According to him, there is large scale illegal transportation of Cattles from Andhra to Tamil Nadu and in certain cases Tamil Nadu is being used as a transit for transporting the Cattle to Kerala. The first respondent in both the cases have illegally transported 27 cattle (26 Bulls and 1 Male Bull Calf) and 26 cattle (Buffaloes) respectively and hence, the same were seized by the second respondent police and handed over to the the third respondent herein. The said cattle are being maintained by the the third respondent safely.

5. Learned counsel for the petitioner would contend that the first respondent in both the cases have transported the cattle in most cruel manner, by violating the principles of The Prevention of Cruelty to Animals Act, 1960 and the Transport of Animal Rules 1978. According to the learned counsel for the petitioner, more than six cattle cannot be transported in one vehicle. The learned counsel would further contend that the first respondent in both the cases have transported the cattle without getting permission from the competent authority. The learned counsel would also contend that to the alleged owners of cattle, the Lower Court ought not to have granted the custody of animals, because, as per the Prevention of Cruelty to Animals Act 1960, the cattle should be taken care of and maintained even during the course of trial in a proper way. When cruelty to cattle is made, rightly Sections 428, 429 and 237 IPC r/w.177 of Motor Vehicles Act are invoked. He would submit that by transporting in the lorries more than the prescribed number of animals, the owners of cattle have violated the provisions of Prevention of Cruelty to Animals Act, 1960. To substantiate his contention, learned Counsel would rely on a judgment of this Court reported in CDJ 2013 MHC 1960, Naseerulah vs. State by Sub-Inspector of Police, Coonoor & another, wherein, this Court has elaborately discussed about the various provisions of the Prevention of Cruelty to Animals Act 1960, Transportation of Animal Rules 1978, Motor Vehicles Act and Tamilnadu Animal Preservation Act 1958 and this Court has extracted the various violations and has ultimately held that the animals shall not be returned back to the accused, who caused injuries and death to the animals. Further, this Court has clearly held in the judgment how the Lower Court has to take into

consideration in such matters relating to return of animals. But, the Lower Court, without following the said judgment has straightaway ordered for return of animals. He would further add that now the cattle were maintained in a Goshala, the third respondent herein and, therefore, the Lower Court should have directed the alleged owners of cattle to pay the necessary maintenance charges for the maintenance and upkeep of animals, during the course of trial, but, violating the same, the Lower Court has straightaway passed the order directing the return of animals. He would further submit that the petitioner, has got every right to safeguard the interest and welfare of the cattle.

6. The learned counsel for the first respondent would submit that the first respondent in both the cases are the owner of the cattle and they have purchased the cattle on 16.12.2013 and 14.12.2013 respectively from Agriculture Market Committee, Gudivada, Andhra Pradesh for the purpose of agricultural operations and farm house and after obtaining fitness certificate, they have transported the cattle and if the cattle are kept in Goshala along with other animals, its health will get affected. The learned counsel for the first respondent would further submit that some of the cattle are not well and proper medical treatment has not been given to them. The learned counsel would also submit that since, the owners of the cattle were ready and willing to abide by any conditions, the Lower Court has rightly ordered for return of animals.

7. The learned counsel for the third respondent/Goshala submitted that the second respondent police handed over the cattle for safe custody to the third respondent and they are now in good health after giving best treatment by them.

8. Heard the learned counsel for either side and perused the entire materials available on record.

9. At the outset, I have to state that here is a case, where huge numbers of cattle were transported without any facility in the lorry in an inhumane manner and thus, there is a clear violation of Prevention of Cruelty to Animal Act 1960. Further, it violates Transport of Animals Rules, 1978. As per Rules 47 to 56 of the Transport of Animal Rules, 1978, no goods vehicle should carry more than six cattle and there should be a valid certificate by a qualified Veterinary Surgeon that the animals are fit to travel. Admittedly, in these cases, two lorries were used, (25 Bulls and 1 Male Bull Calf (26 cattle) in one lorry and 26 Bulls and 1 Male Bull Calf (27 cattle) in another lorry, to take the cattle and they were kept jam-packed with a rope fastened through their nose, that too, without any certificate. That by itself is a cruelty to animals. The owners of the cattle cannot be the persons, to whom, the custody of cattle can be entrusted. The cattle subjected to inhumane practice, that too, without giving any protection and therefore, the cattle should not be entrusted to the persons concerned. The cattle should be given proper basic maintenance. First of all, the ownership has to be established in this case. Therefore, in my considered opinion, during the course of trial, the cattle should not be entrusted to the custody of the persons, who are accused of the offence of committing cruelty to animals and hence, the Lower Court ought not to have granted return of cattle to owners of cattle.

10. I had an occasion to deal with a similar case, which is reported in CDJ 2013 MHC 1960, Naseerulah vs. State by Sub-Inspector of Police, Coonoor & another (cited supra), wherein, I have elaborately discussed about the various provisions of the Prevention of Cruelty to Animals Act 1960, Transportation of Animal Rules 1978, Motor Vehicles Act and Tamilnadu Animal Preservation Act 1958 and I have extracted the various violations and has ultimately held as under:-

"7. At the outset, when we see the case, the petitioner had carried 24 cows in one vehicle. The photographs which has been produced at the time of hearing the revision, show that the injuries caused to the animals because of the cramp nature as they were all kept in one lorry. Before dealing with this subject, first of all, we can deal with various enactments, rules and regulations which are already provided insofar as to the transportation of the cattle and safeguard of the cattle. Section 11 of the Prevention of Cruelty to Animals Act, 1960, elaborately deals with various cruelty meted out to animals and Section 11(1)(d) specifically deals with the injuries caused during transportation of animals. Chapter III, Section 11 deals with cruelty to animals generally which reads as follows:

"11. Treating animals cruelly.-(1) If any person-

(a) beats, kicks, overrides, overdrives, overloads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or

(b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed, or being the owner, permits any such unfit animal to be so employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to [any animal] or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by [any animal]; or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(emphasis supplied)

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of [any animal], fails to provide such animal with sufficient food, drink or shelter; or "

8. Further, we have got the Transport of Animals rules, 1978 enacted in exercise of powers conferred under Section 38 (2)(h) of the Prevention of Cruelty to Animals Act, 1960. In the rules, Rule 56 stipulates the conditions as to how the cattle should be transported in such a manner without causing any injury or discomfort to the animals. Rule 56(c) specifically stipulates that no goods vehicle shall carry more than six cattle. In fact, Rule 56 also empowers that the cattle should be transported with all precautions viz.,

(a) specially fitted goods vehicles with a special type of tail board on padding around the sides should be used;

(b) ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if low, should be raised;

(c) no goods vehicle shall carry more than six cattle;

(d) each goods vehicle shall be provided with one attendant;

(e) while transporting the cattle, the goods vehicle shall not be loaded with any other merchandise; and

(f) to prevent cattle being frightened or injured, they should preferably face the engine.

...

12. The facts in that case squarely applies to the fact of the present case. Therefore, also the lower Court was correct in dismissing the application. In fact, the power of Court to deprive person convicted of ownership of animal under Section 29 of the Act was also dealt with by the Supreme Court in a judgment reported in (2007) 15 SCC 588, State of M.P. Vs. Islam, wherein, the Supreme Court has categorically held that as per Section 29(1) of the Act, undoubtedly, confers jurisdiction on the Court, in the event the offender stands convicted, to pass an order of forfeiture of the animals in favour of the Government. But, a close scrutiny of language used therein, Section 29(1) stands appears to be restricted and subject to the provisions contained in sub-section (2) of Section 29 specifically lays down three specific conditions. The three specific conditions are as follows:-

- a) It is shown by evidence as to a previous conviction under this Act.
- b) as to the character of the owner or otherwise, as to the treatment of the animal.
- c) that the animal, if left with the owner, is likely to be exposed to further cruelty.

In this case, the Court should be guided by this principle that there should be an evidence that when the owner is already convicted of a previous offence of same nature or when there is an evidence that the character of the owner is as to which he treats the animal in a bad manner or animal is left with the owner is exposed to further cruelty. In this case, admittedly, there is an evidence that the cattle have been taken to Kerala for butchering purposes. When there is a specific ban in regard to slaughtering of cow and further more, there were lot of injuries caused and the post-mortem certificate issued by the doctor clearly indicates that there are injuries and the veterinary doctor has also been examined at the time of the seizure also and that when clear cut evidence is available, naturally, the custody cannot be given. Apart from this, as rightly pointed out by the learned Counsel for the respondent that there could be some guidelines issued to the lower Courts as well as the authorities concerned in respect of the transport of such animals. In this case, we are also governed by Section 32 of the Prevention of Cruelty to Animals Act, 1960 which confers the power of search and seizure for the the police officers in contravention of the provisions of the Act. An argument was made that the offence under Section 11(1)(d) is a non-cognizable offence within the meaning of Code of Criminal Procedure. But Section 102 of Cr.P.C. which is extracted below clearly empowers the police officer to seize any material with regard to any offence which include the offence under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960. In this connection, a ruling of the Gujarat High Court reported in 1998 Cr1.J. 1337 (Panjrapole, Deodar and etc., v. Chakaram Moraj Nat, Maldhari and another) wherein it is clearly stated that under Section 102 of Cr.P.C. the police has power to seize animals also. The following may be usefully extracted:

"18. Though at the first instance, the contention raised by Mr.Tirmizi appears to be attractive, in my view, it has no substance. Section 102 of the Cr.P.C. empowers the Police Officer to seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of the commission of an offence. Section 102 reads as follows: Section 102: Power of police officer to seize certain property.

(1) Any police officer may seize any property which may be alleged or circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

The words 'any offence' employed u/s.102 shows unmistakably that even though there may be commission of non-cognizable offence, the police may seize any property found under the suspicious circumstances. Sub-section (2) of Section 102 provides that, such officer, subordinate to the officer in charge of the police station, shall forthwith report the seizure to that officer. Sub-clause (3) provides that, every police officer acting under sub-clause (1) shall forthwith report the seizure to the Magistrate having the jurisdiction. Thus, the police officer has a power to seize animal on suspicion of commission of an offence committed under the Act of 1960 or under the other ancillary provisions, irrespective of the fact that they are non-cognizable offences. On such seizure, the police officer is required to forthwith report to the Magistrate having the jurisdiction. The Court is required to pass an appropriate order with respect to the custody of the animal under the provisions of Section 451 of the Cr.P.C. Thus, in my view, irrespective of the fact that, except offences under clause (i), (n) or (o) of Sub-section (1) of Section (11) or 12 of the Act of 1960, rest of the offences are non-cognizable, the police has a power to seize the animal under Section 102 of the Cr.P.C. and the Magistrate will be competent to pass an order u/s.451 of the Cr.P.C."

...

12. In this connection, Section 429 of I.P.C. also can be taken note of. In this case, Section 429 of I.P.C. provides punishment for mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees with imprisonment for a term which may extend to two years, or with fine, or with both. The said section is a cognizable one. If we read Section 429 of I.P.C., the word used in the Section is even

maiming the cattle and it is also included Cow or Ox. Here we come across in one vehicle more than 20 cows or buffaloes were transported and in that process, namely the people who has taken it in the vehicle or during the transport, one animal is being attacked by another which shows only the inhumane attitude and inducement of the said person transporting the animals. Therefore, even the maiming or injury caused because of the illegal transportation therefore, the owner can be hauled up. Unfortunately, when all these provisions are there, we find that these people transported these animals to butchery without following the rules and regulations. Taking into consideration that the prices are different from State to State. In fact, most of the cases, cattle are being transported continuously for a period of 48 hours crossing inter-State border without even providing fodder or water. They are mostly taken only for slaughtering house in Kerala. They are transported in complete violation of the legal provisions, that too, right under the nose of the authority who is duty bound to implement such laws. The object of the Prevention of Cruelty to Animals Act, 1960, is only to prevent animals from being put to cruelty and that it is imperative to implement both these Acts by the authorities concerned. I only fervently hope that hereafter these laws which are provided for preventing cruelty to animals will be implemented in the strict sense. The lower Courts in Tamil Nadu shall take note of these provisions and also see that as to how the offenders should be punished properly. Therefore, the finding of the lower Court that the petitioner is not entitled for return of the cattle is well founded and correct. At the same time, another painful thing has happened in this case and that has also to be taken note of. Subsequent to the cattle being handed over to the second respondent, they have maintained it for six months and during that period 21 cattle also died. The post mortem certificate have been produced. In all the cases, they have sustained injuries during illegal transportation. In fact, in one case, gangrene has set in and it has been operated from spreading further and the injuries of the nature sustained only during illegal transportation was the cause of the death. Here is the fittest case where Court has to come to the rescue of the animals and prevent cruelty meted out to the poor animals and the watchful thing of society which are taking care of the animals should be encouraged to stop this offence. Stringent action should be taken as against those who violates the laws in future. Even the vehicles which are used should be dealt with under the Motor Vehicles Act concerned and punishment has to be imposed."

11. In the decision cited supra, I have clearly indicated the mode to be done. The facts in that case squarely applies to the facts of the present cases. Here in these cases, if the cattle, if again left with the first respondent, is likely to be exposed to further cruelty. We find that the accused transported the cattle

without following the rules and regulations. The object of the Prevention of Cruelty to Animals Act 1960, is only to prevent animals from being put to cruelty. Further, stringent action should be taken as against those who violates the laws in future. The vehicles which are used for the commission of this kind of offence should be dealt with under the Motor Vehicles Act. The Lower Court has not considered the decision cited supra in a proper perspective and has ultimately granted the custody of cattle to the owners of cattle.

12. But, right now luckily, the cattle are maintained in a Goshala. In fact, the Managing trustee of the third respondent herein has filed a status report wherein, in paragraphs 4 and 5, it is stated as follows:

"4. I submit that at the time of transportation the above cattle had been subject to overcrowding and cruelty in violation of the Prevention of Cruelty to Animals Act, 1960. There have been blatant violations of the Prevention of Cruelty to Animals Act and the Transport of Animal Rules framed thereunder. Hence, the cattle are suffering from trauma and foot and mouth disease for which they needed medical supervision and care and the same is currently being provided by the third respondent Society. All the cattle are now in good health due to the best treatment available at the disposal of the third respondent. Everyone is welcome to visit my Ghosala at all reasonable times to the cattle under my custody.

5. I submit that as a trust interested in shelter, care and welfare of animals, the 3rd respondent trust has been providing home to the cattle in its custody and the best possible medical treatment and nourishment available at its disposal to the said cattle. I submit that the 3rd respondent is willing to continue the said service. "

13. For the foregoing discussions held and also in the light of the decision cited supra, the order of the Lower Court is liable to be set aside and accordingly, it is set aside. The Criminal Revision Cases are allowed. Consequently, connected Miscellaneous Petitions are closed. It is hereby made clear that the cattle shall be maintained in the Goshala/third respondent herein, in which they were already kept and maintained, till the disposal of the cases. Since the first respondent claims to be the owner of the cattle, in order to show is bonafide, the first respondent shall deposit a sum of Rs.1,00,000/- towards maintenance. The Lower Court shall decide at the time of disposal of the main cases regarding the maintenance to be provided by the alleged owner.

ga

24.08.2015

The matters having been listed today, i.e., 01.09.2015 under the caption "For Being Mentioned" in pursuant to the order of this court dated 24.08.2015 and made in CrI.R.C.Nos.295 and 296 of 2014 in the presence of the above advocates on either side the Court made following order;

On 24.8.2015, when the matters were listed, this Court, after hearing the learned counsel on either side, allowed the Revision cases. Paragraphs 12 and 13 of the order dated 24.8.2015 reads as follows:-

12. But, right now luckily, the cattle are maintained in a Goshala. In fact, the Managing trustee of the third respondent herein has filed a status report wherein, in paragraphs 4 and 5, it is stated as follows:

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2. Subsequently, on the next day i.e. on 25.8.2015, the learned counsel for the first respondent in both the cases submitted that on enquiry, it reveals that the cattle were not found in the Goshala.

3. Therefore, the matters are listed today under the caption, 'for being mentioned' at the instance of the learned Counsel for the first respondent.

4. Today, the first respondent in both the cases has filed an affidavit dated 31.8.2015 stating that there is no cattle available with the third respondent Goshala.

5. The learned counsel for the petitioner as well as the learned counsel for the third respondent submitted that originally the cattle were handed over to the Venkatapuram, Tambaram Branch but now they are in the custody of the Neelankarai branch of the third respondent.

6. The learned counsel for the first respondent submitted that the first respondent may be permitted to withdraw the averments made in paragraph Nos. 1 to 4 of the affidavit dated 31.8.2015.

7. The permission now sought for by learned counsel for the first respondent is granted and the averments made in paragraph Nos.1 to 4 of the affidavit dated 31.8.2015 is permitted to be withdrawn by the first respondent in both the cases.

8. Since the first respondent in both the cases has filed an affidavit stating that there is no cattle available with the third respondent Goshala, this Court is inclined to appoint an Advocate Commissioner to find out the real custody of the cattle. Accordingly, Mr.N.NAGANATHAN, Advocate, having office at 458, Law Chambers, High Court, Madras (Mobile No. 9444705890) is appointed as Advocate Commissioner in both the cases, to inspect the third respondent Goshala. The Advocate Commissioner shall inspect the Neelankarai branch as well as the Venkatapuram, Tambaram Branch of the third respondent Goshala, after giving due notice to both parties, and submit a report, on or before 10.9.2015. He shall be paid a remuneration of Rs.10,000/- (Rupees Ten thousand only), which shall be borne by the first respondent in both the cases equally. The Commissioner shall take the assistance of police concerned, if necessary, to inspect the third respondent Goshala.

9. In the meantime, the third respondent Goshala is directed to produce licence and other certificates with regard to the custody of cattle. The third respondent shall also file an affidavit with regard to the total number of cattle available in their custody.

Post on 10.9.2015.

ga

01.9.2015

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

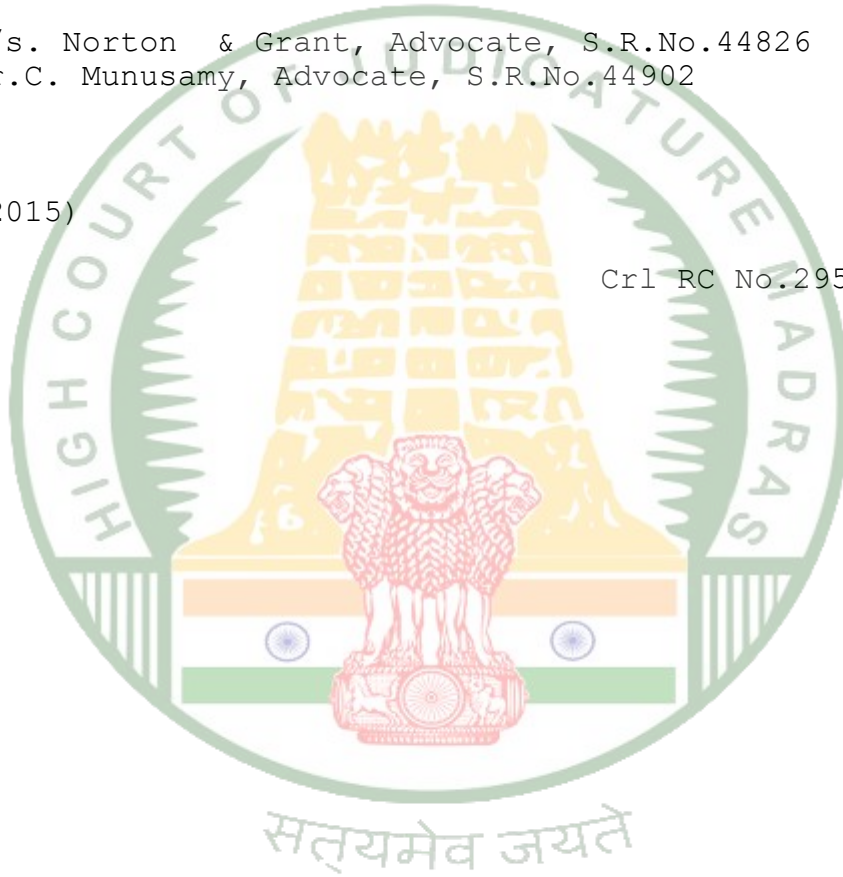
To

1. The District Munsif cum Judicial Magistrate,
Uthukottai.
2. The Public Prosecutor,
High Court, Madras.
3. Mr. N. Naganathan, Advocate (Advocate Commissioner)
458 Law Chambers
High Court, Madras (Mobile No.9444705890)

+lcc to M/s. Norton & Grant, Advocate, S.R.No.44826
+lcc to Mr.C. Munusamy, Advocate, S.R.No.44902

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