

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24 .04.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.No.32578 of 2014

Manoharan,
Managing Director of
M/s.Prime Sristi Housing Pvt. Ltd.,

...Petitioner

vs.

1. The State, rep. by
Inspector of Police,
T-14, Mangadu Police Station,
Mangadu.
2. The Additional Deputy Commissioner of Police,
Prohibition Enforcement Wing (East)
I/c. Special Investigation Team,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
3. The District Collector and District Magistrate,
Collector's Office,
Kancheepuram District, Kancheepuram.

...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to direct the respondents to permit the petitioner to inspect the site along with building and architect experts for taking necessary samples for scientific examination and to conduct other field tests.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for M/s.S.Ashok Kumar

For Respondents: Mr.S.Shanmughavelayutham
Public Prosecutor

Case reserved for orders on : 09.03.2015

O R D E R

The petitioner is the Managing Director of M/s.Prime Sristi Housing Pvt. Ltd., and a case has been registered against the petitioner and others in Crime Number 751 of 2014, on the file of Inspector of Police, T-14 Mangadu Police Station, Mangadu, Chennai, viz., the first respondent herein. After investigation, a final report has been filed under Section 173 (2) Cr.P.C., wherein, the petitioner has been arrayed as second accused.

2. The petitioner and other accused are chargesheeted for offence under Sections 120(B), 304(ii) and 308 IPC. The first accused, viz., M/s.Prime Sristi Housing Pvt. Ltd., constructed two multi-storeyed building, viz., 'Tower A' and 'Tower B' at No.52, Kundrathur Main Road, Moulivakkam, Chennai, and on 28.06.2014, Tower B building got completely collapsed, causing death of 61 persons and 27 persons sustained injuries. After investigation, the first respondent/Police filed a chargehseet, and as per the chargesheet, investigation discloses the following :-

i) The structural plan was drawn by an Architect Tmt. Suganya, and structurally designed by S.Nagesh, the Structural Engineer and submitted for approval by A1 Company through A8 Balagurusamy and the plan approved by CMDA has not been used for the actual construction of 11 storeyed building, and had it been used, the possibility of collapse would have been averted.

ii) The structural design given for the foundation, i.e. the raft and pile were inadequate to bear the entire weight of basement+stilt+11 storeyed building.

iii) The collapse of the building is primarily attributable to gross deficiency in the structural design of the reinforced concrete columns, in gross violation of the requirements for structural design prescribed in the National Building Code of India.

iv) The columns designed are also inadequate to bear the dead weight of such heavy structure.

v) The foundation was not designed as per the nature of the soil at the SOC, and foundation executed by the accused concerned are highly inadequate for the stable construction of eleven storeyed building.

vi) The improper detailing, such as provision of anchorage, length to reinforcement and column title are inadequate to cover the reinforcement.

vii) The design and construction of the building in all aspects are in violation of National Building Code, Bureau of Indian Standard.

viii) The materials such as concrete, steel and bricks used for the construction, were not properly tested, and hence, the requirement level of concrete and tolerance limit of steel were not proper.

and

ix) The accused concerned, removed many columns in the CMDA approved plan at the basement level for the convenience to create more space for car parking knowledge to endanger the structure of the building."

3. It is further stated in the chargesheet, as follows:-

i) The first accused/Company, represented by its Managing Director, viz., the second accused/Manoharan, and accused Nos.2 to 9 along with two other site Engineers, viz., i) Dineshkumar and ii) Mohamed Hassan (since expired) conspired to construct 11 storeyed building with knowledge and knowing the abovesaid facts, and invited the risk of danger of instability of the structures, which would in all probabilities, result in the collapse in the event of any slight external force, such as heavy wind, and rainfall, thunder light tremor, and any shake or movements due to other reasons, and each one did their best in one or other way, so as to achieve their common design of conspiracy by abetting themselves and to do any other act, as per the needs of situation warranted with a view to achieve their common design of such conspiracy, and did the said act with such knowledge, as aforesaid, resulting in the collapse of 11 storeyed building on 28.06.2014, at about 17.00 hours, during the rain, causing the death of 61 persons, who were trapped in the debris of the collapsed building, besides causing injuries to 27 employees, and thereby, A1, the abovesaid Company, represented by A2/Manoharan, the Managing Director of the said Company, A3/Muthukamatchi, A4/Venkatasubramanian, A5/Duraisingam, A6/Sankar Ramakrishnan, A7/Vijay Bargothra, A8/Balagurusamy and A9/Karthick appear to have committed the offence of conspiracy, punishable under Section 120(b) IPC.

4. The petitioner filed CrI.O.P.No.26558 of 2014, for bail, and this Court, by order dated 25.09.2014, granted bail, subject to certain conditions. Thereafter, the petitioner filed M.P.No.2 of 2014, in CrI.O.P.No.26558 of 2014, to modify the conditions imposed on him in the bail Petition and also prayed for a direction to permit the petitioner to inspect the site along with building by Architect Experts of his choice for making out defence, and while relaxing the condition, this Court passed the following order on 02.12.2014 :-

"Rare is the circumstance where this Court has occasion to agree with both sides. This Court finds itself in agreement with the submission of learned Public Prosecutor that the petitioner may seek appropriate direction towards permitting examination of the building by experts of his choice through moving a petition u/s.482 Cr.P.C. As the apprehension of the petitioner also totally is not unfounded, this Court would dispose of this petition with the observation that if and when this Court chooses to pass directions in favour of the petitioner and towards his having the building examined by experts of his choice, his accompanying them for the task cannot be construed as violation of any condition of bail imposed by this Court."

5. It is stated in this Criminal Original Petition that, on 31.10.2014, the petitioner requested the Professor, C.Natarajan, Department of Civil Engineering, National Institute of Technology (NIT), Trichy to inspect the site and to provide independent opinion for the cause of collapse of the building. The petitioner has also given details about the Educational Qualification of the said Professor/C.Natarajan, and his achievements in National and International levels and also about the researches done by him, which were published in various National and International journals.

6. The petitioner, relying upon the order, dated 02.12.2014, passed in M.P.No.2 of 2014 of CrI.O.P.No.26558 of 2014, as referred to above, filed the present Criminal Original Petition, seeking direction upon the respondents to permit him to inspect the site along with building by Architect Experts for taking necessary samples for scientific examination and to conduct other field tests and to pass such other orders, as this Court deems fit.

7. The third respondent, viz., the District Collector and District Magistrate, Kancheepuram, filed a detailed counter, stating the reasons for collapse of the building based on Expert Bodies report, and stated that already field inspection was conducted by the District Collector along with Police Department, Public Works Department, Chennai Metropolitan Development Authority, and members of the Technical Expert Committee, etc., and prima facie case has been made out by the petitioner, and the site was already inspected by various Experts, as appointed by prosecution and Experts are from Anna University, Indian Institute of Technology, Chennai and the College of Engineering, Guindy

Campus, Anna University. That apart, the Government also appointed the then Judge of this Court, Mr.R.Regupathy, to conduct enquiry and find out the causes for collapse of the building. The third respondent, therefore, contended that there is no need for any further inspection by any independent body, and hence, the Criminal Original Petition is liable to be dismissed.

8. The second respondent, viz., the Additional Deputy Commissioner of Police, Prohibition Enforcement Wing (East), Chennai, also filed a counter, stating that five Experts, as mentioned infra, and others have submitted their opinion, and therefore, there is no need for any independent inspection to be conducted by other experts and stated that Criminal Original Petition filed by the petitioner is not maintainable:-

- i) Professor Devdoss Menon, Structural Engineering Division, Civil Engineering Department, IIT, Chennai.
- ii) Dr.Monsingh D.Devadoss, Professor and Chairman, Faculty of Architecture, Anna University, Chennai.
- iii) Dr.C.Uma Rani, Associate Professor, Division of Structural Engineering, Anna University, Chennai.
- iv) Dr.M.Muttaram, Assistant Professor, Department of Soil Mechanics and Foundation Engineering, Anna University, Chennai.
- and
- v) Tr.P.K.Sathiyamoorthy, Assistant Executive Engineer, Office of the Engineer-in-Chief (Building) P.W.D, Chepauk, Chennai.

9. Mr.N.R.Elango, the learned Senior Counsel for the petitioner submitted that, as per the Meteorological report, and as admitted by the prosecution, during the relevant point of time, viz., the date on which, the tragic incident occurred i.e., on 28.06.2014, there was lightning and thunder, and according to the petitioner, the building might have been divided into two due to strike of lightning and the same is also admitted by the Experts by stating that no symptoms, that highly melted reinforcements, fire strike concrete parts were seen at the spot during rescue operations, and on that basis, they ruled out the possibility of collapse of the building due to thunderbolt.

10. The learned Senior Counsel for the petitioner further submitted that, according to the petitioner, the building might have been collapsed during lightning, and therefore, if the site is inspected by the petitioner along with Architect Experts of his choice, he will be in a position to find out certain materials, which would fortify his case that the building got collapsed due to

thunderbolt, and therefore, the Petition may be allowed. The learned Senior Counsel further submitted that the accused is also entitled to fair trial, and denial of the same tantamounts to violation of fundamental rights under Article 21 of the Constitution of India. The learned counsel relied upon judgements reported in i) A.I.R. (2013) SC 613 in re (V.K.Sasikala Vs. State, rep. by Superintendent of Police and ii) (2013) 5 SCC 741 in re (Natasha Singh Vs. Central Bureau of Investigation) in support of his contentions.

11. Mr. S.Shanmughavelayutham, the learned Public Prosecutor for respondents submitted that chargesheet has been filed in this case, and it has been filed only on the basis of the Experts' opinion and the persons, who gave opinion are not ordinary persons, and they are drawn from i) Structural Engineering Division, Civil Engineering Department, IIT, Chennai, ii) Faculty of Architecture, Anna University, Chennai, iii) Division of Structural Engineering, Anna University, Chennai, iv) Department of Soil Mechanics and Foundation Engineering, Anna University, Chennai, and v) Office of the Engineer-in-Chief (Building) P.W.D, Chepauk, Chennai, and all of them ruled out the possibility of collapse of the building by lightning. Therefore, no useful purpose would be achieved in permitting the petitioner to have inspection of the site with the help of Experts of his choice, and that would amount to parallel investigation, which is not permitted in law.

12. The learned Public Prosecutor also submitted that the petitioner, being an accused, is not entitled to lead evidence before the commencement of examination of prosecution witnesses, and by permitting the petitioner to have inspection of the site with Experts of his choice, it would amount to leading evidence by the defence before the examination of the prosecution witnesses. The learned Public Prosecutor relied upon the judgments reported in i) (1993) Supp. 4 S.C.C. 260 in re (Union of India and another Vs. W.N.Chadha), ii) (2009) 6 S.C.C. 65 (Narender G.Goel Vs. State of Maharashtra and another) and iii) CDJ (2010) DHC 596 in re (Jude Chidibere and others Vs. N.C.B.) in support of his contentions.

13. Having considered the arguments of the learned Senior Counsel for the petitioner and the learned Public Prosecutor for respondents, the issues that fall for consideration in this Petition are, Whether the petitioner is entitled to inspect the site along with Experts of his choice to get materials in support of his case, and whether it would amount to parallel investigation and permitting the defence to lead evidence before the commencement of examination of the prosecution witnesses.

14. As rightly submitted by the learned Senior Counsel for the petitioner, in M.P.No.2 of 2014 of CrI.O.P.No.26558 of 2014,

this Court has observed that the apprehension of the petitioner was not totally unfounded, and, if and when this Court chooses to pass directions in favour of the petitioner and towards his having the building examined by Experts of his choice, that cannot be construed as violation of any condition of bail imposed by this Court.

15. As a matter of fact, a reading of the portion of the order, dated 02.12.2014, passed in M.P.No.2 of 2014 of CrI.O.P.No.26558 of 2014, would also make it clear that the order was passed, as per the submission of the learned Public Prosecutor that the petitioner may seek appropriate direction towards permitting examination of the building by Experts of his choice through moving a Petition u/s.482 Cr.P.C. Presumably, on the basis of the submission of the learned Public Prosecutor in that Miscellaneous Petition, and also the concession/leniency shown by the Court, in the order, dated 02.12.2014, this Criminal Original Petition is filed by the petitioner, seeking for the prayer, as stated above.

16. Though in this Petition filed by the petitioner, it has not been stated that the building had collapsed due to the thunder stroke, and to prove that fact, site has to be examined by Experts of his choice, the petitioner has only stated that one Professor, C.Natarajan, from NIT, Trichy, is an Expert in Forensic Engineering and Investigation. He has conducted several investigations and served on various Expert Panels at the National and International levels, and he is an independent person, belonging to NIT Trichy, and he may be permitted to inspect the site to take necessary samples for scientific examination.

17. To find out whether the building was collapsed due to thunderbolt or due to reasons stated by the prosecution, various Experts were appointed by the respondent/Police Department, and those Experts have given reports in detail, and the Hon'ble First Bench of this Court, in the order, dated 04.12.2014, passed in Writ Petition Nos.20702 and 20703 of 2014, has extracted the gist of the reports, which is reproduced hereunder:-

" (i) Statement of Dr.Devadas Menon:

"Thus, as established through site observations and structural analysis and design calculations, in my opinion, the collapse of the building is primarily attributable to gross deficiency in the structural design of the reinforced concrete columns, in gross violation of the requirements for structural design prescribed in the National Building Code of India...."

(ii) Statement of Dr. Monsingh D. Devadas:
"The applicant should obtain EIA (Environment Impact Assessment) clearance from the competent authority before commencement of the construction and the same has to be produced at the time of completion certificate as a pre condition for approval (Porur Lake is very close as seen in the CMA Land use Plan for Moulivakkam)..... However, as per the CMDA approval drawing it is only on 16m. At the time of planning approval the qualifying road width should be 18m.... Therefore, the plans submitted to Local Body for building approval has to be verified. I have revealed above contents in my report submitted to the court. Further I state that in Annexure II and III (Form-B & C) as enclosures of the drawings, it has been noticed the filled in forms are incomplete. In both the forms there is no endorsement or any entry made by the CMDA. As regard to Approval Plans, I have stated in the report that both public and fire escape staircase are grouped together and fire escape staircase exit is not direct to outside open space. Refuge should be provided for the building above 24 mtrs as per National Building Code 2005. Fire escape staircase specification not shown...."

(iii) Statement of Dr.M.Muttharam:
"The soil investigation was conducted thoroughly and analysed that the bearing capacity of the raft is inadequate and settlement computations showed a higher value and that the existing raft foundation is inadequate to carry the total load from the 11 storeyed building...."

(iv) Statement of Dr.C.Umarani:
"Thus, as established through site observations and structural analysis and design calculations, in my opinion, the collapse of the building is primarily attributable to gross deficiency in the structural design of the reinforced concrete columns, in gross violation of the requirements for structural design prescribed in the National Building Code of India.... I have answered finally that the

possibility of damage of the building leading to complete collapse of this RC building may not occur to Thunder shower...."

(v) Statement of Er. K.P. Sathyamurthy:

"As per the foundation working detailing drawings furnished for collapsed building Block-B, columns that were not positioned in line with the centre of columns and centre of the pile cap which shows more eccentricity as shown figure below. Instead the columns were skewed to one side which results in instability of structural frame. My observation is that, for this particular case the structural design has not been done taking care of this more eccentricity at base. On reviewing the structural working drawings available for Block-B and also based on the site observations, the sizes and reinforcement of the columns are not sufficient enough to resist the axial compressive forces calculated as per the procedures laid out in the design codes. The global collapse of this building is initiated due to simultaneous collapse of a large number of RC columns in the basement floor..... Here, it is pertinent to note that, this building was not able to withstand its own self weight itself (dead load alone) i.e., live load not yet applied. After removing debris, during site inspection, one of the critical column the crushing of concrete and buckling of exposed steel bars at base has been physically seen and noticed that inadequate sizes of column and reinforcement provided during execution.... As far as foundation is concerned it is observed that the thickness of raft and number of piles provided for foundation is not adequate enough.... Further it is stated that considering the complexity of the project the builder has neither gone for project management nor carefully selected/appointed Architects, Structural Engineers, Construction/Site Engineers and skilled workers considering their qualification experience and expertise in these fields before implementation of this project which is against the Provision under clause 4.1 & 4.2 of National Building Code which resulted in bad structural design, deficiencies in

construction and combination of both...."

(vi) Statement of Thiru S.Selvakumar:

"The approval for issue of planning permission for multi storeyed buildings is vested with Government.... The Planning Permission issued under the provision of Tamil Nadu Town & Country Planning Act 1971, does not cover the structural stability aspect...". "

18. In the judgement reported in (2013) 5 SCC 741 (supra), the concept of fair trial has been discussed by the Hon'ble Supreme Court in para No.16, which reads as follows :-

"Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide: Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr. , AIR 1958 SC 376; Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors., AIR 2004 SC 3114; ZahiraHabibullah Sheikh & Anr. v. State of Gujarat & Ors. AIR 2006 SC 1367; Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.) (2007) 2 SCC 258; Vijay Kumar v. State of U.P. & Anr., (2011) 8 SCC 136; and Sudevanand v. State through C.B.I., (2012) 3 SCC 387".

19. In the judgment reported in A.I.R. (2013) SC 613 (supra), the Hon'ble Supreme Court held as follows:-

" It is not for the prosecution or for the Court to comprehend the prejudice that is likely to be caused to the accused. The perception of prejudice is for the accused to

develop and if the same is founded on a reasonable basis it is the duty of the Court as well as the prosecution to ensure that the accused should not be made to labour under any such perception and the same must be put to rest at the earliest. Such a view, according to us, is an inalienable attribute of the process of a fair trial that Article 21 guarantees to every accused. "

20. In the judgment reported in (2013) CrI.L.J. 3227 in re (Karan Singh Vs. State of Haryana and another), it is held as follows:-

Para No.12. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The Investigating Officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The Investigating Officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth." Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias. Words like 'personal liberty' contained in Article 21 of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the Investigating Officer to ensure that an innocent person should not suffer from unnecessarily harassment of false implication, however, at the same time, an accused person must not be given undue leverage. An investigation cannot be interfered

with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous influence, and investigation must be carried out with equal alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Article 21 of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19, 20 and 21 of the Constitution. (Vide: **Babubhai v. State of Gujarat & Ors.**, (2010) 12 SCC 254) : (2010) AIR SCW 5126.

21. Therefore, it is made clear from the above judgments, that the accused is entitled to have fair trial and fair investigation, and when the accused/petitioner claims that the building was not collapsed due to reasons stated by the prosecution, but due to thunderbolt, he is entitled to lead evidence to that effect and that can be done by the accused/petitioner only after inspecting the site with the help of certain Experts of his choice. But, at the same time, conducting parallel investigation of the case is not permissible in criminal law, and therefore, the petitioner cannot be permitted to take samples and send them to the Laboratory or Research Institute of his choice and get opinion/report.

22. It is seen that various Experts were appointed by the prosecution in this case, and in the report filed by Mr.K.P.Sathyamurthy, Assistant Executive Engineer, P.W.D., in para No.5.0, under the Heading Whether this building is affected lightning/thunder, it is stated that if lightning strikes on this multi-storeyed building, the lightning could have caused only damage to the portion of the structure, not to the multi-storeyed building collapsing to the bottom. Further, there is no symptoms that highly melted reinforcements, fire strike concrete parts seen at spot during rescue operations.

23. Dr.C.Uma Rani, Associate Professor, Division of Structural Engineering, Anna University, Chennai, towards the end of her report has stated that in the RC structure, which was under construction, there is no metal component for the lightning to seek a path to the ground. If lightning has struck the building, the components would be charred due to high temperature. Charring of building components was not noticed or reported, so chances of

complete building collapse due to lightning would not have occurred.

24. It is also seen from the letter of the India Meteorological Department, dated 13.08.2014, which is annexed in page No.52 the typed-set of papers, that thunder shower was observed and recorded at Meenambakkam observatory during 1628-1740 hours. The said observations suggest that the thunder and lightning over the site under consideration was quite possible and this report was given by Dr.S.R.Ramanan, the Scientist-E, for Deputy Director General of Meteorology.

25. Dr.B.Nageswara Roa, Professor, Department of Civil Engineering, IIT, Chennai, in his report has not touched upon the effect of lightning and he has conducted the following tests.

- A) Tests on Concrete Core
 - i) Density of Concrete Core,
 - ii) Water Absorption of Concrete Core, and
 - iii) Comprehensive Strength of Concrete Core.
- B) Tests on Bricks
 - i) Dimension of Brick Samples,
 - ii) Water Absorption of Brick Samples and
 - iii) Comprehensive Strength of Brick Samples.
- C) Tests on Steel
 - i) Section Weight of Steel Specimens
 - ii) Tensile Test
 - iii) Yield Strength of Steel
 - iv) Ultimate Tensile Strength of Steel and
 - v) Percentage of Elongation.

26. Mr. Dr.M.Muttharam, Assistant Professor, Division of Soil Mechanics and Foundation Engineering, Department of Civil Engineering, College of Engineering Guindy Campus, Anna University, in his report, dated 18.08.2014, did not advert to the effect of lightning on the building.

27. Dr.Monsingh D. Devadas, Chairman, Faculty of Architecture and Planing, Anna University, submitted a report, pertaining to Architecture and Planning, and he also did not say anything about the effect of lightning.

28. In the report, dated 04.07.2014, given by Dr.S.R.Ramanan, Scientist-E, for Deputy Director General of Meteorology, he observed that there was lightning and thunder over the site on the fateful day.

29. Mr.K.P.Sathyamurthy, Assistant Executive Engineer, P.W.D. and Dr.C.Uma Rani, Associate Professor, Division of Structural Engineering, Anna University, Chennai, have ruled out the possibility of striking of lightning on the building on the basis that, no symptoms of highly melted reinforcements, fire strike concrete parts were seen at the spot during rescue operations. If lightning has struck the building, the components would be charred due to high temperature. Charring of building components was not noticed or reported, so chances of complete building collapse due to lightning would not have occurred.

30. Therefore, in my opinion, the aforesaid Experts, viz., Mr.K.P.Sathyamurthy, and Dr.C.Uma Rani, have ruled out possibility of striking of lightning on the building on the basis that no such materials were found at the site, and if the building was struck by lightning, as an aftermath, building got collapsed, certain burnt materials, as stated therein, would have been found available in the site, and having regard to the fact that no such materials were recovered from the site, they have ruled out the possibility of the building collapsed due to strike of lightning. Therefore, the aforesaid two Experts Mr.K.P.Sathyamurthy, and Dr.C.Uma Rani, based their reports only on the materials furnished by the prosecution, and if any materials were available in the site to support the case of the defense, that cannot be denied to the defence.

31. The arguments of the learned Public Prosecutor for respondents that defence cannot be allowed to lead evidence before the examination of prosecution witnesses and decisions cited by him, viz., the judgments reported in i) CDJ (2010) DHC 596 in re (Jude Chidibere and others Vs. N.C.B.) and ii) (1993) Supp. 4 S.C.C. 260 in re (Union of India and another Vs. W.N.Chadha) cannot be applied to the facts of the present case, as permitting the petitioner/defence to have inspection on the site to find out whether any charred materials are found in the site, will not amount to leading defence witness, and it is only in the process of ascertaining the truth regarding the reason for the collapse of the building, and it is the duty of the prosecution to rule out that possibility.

32. Therefore, to rule out the possibility that there was no charring materials found in the site, inspection of the site is necessary, and no prejudice would be caused to the prosecution if the defence is allowed to have inspection of the site along with Expert of their choice to find out any such materials in the site to substantiate their case. At the same time, defence cannot be permitted to have samples taken by him and examined by Expert of his choice.

33. According to me, balance can be struck by permitting the defence to have inspection of the site with Professor C.Natarajan, Department of Civil Engineering, N.I.T. Trichy, and samples of materials as identified by Expert of the defence shall be taken by the investigating officer and that materials shall be divided into three parcels, and one such parcel can be sent to Government Laboratory for obtaining Expert's opinion, and remaining two parcels shall be retained by the Court, which seized of the matter. The prosecution is also entitled to depute any of its Experts during the inspection.

34. It is also made clear that, samples from the site shall be taken in such a manner, that the cover shall be sealed in the presence of Expert of the defence, and it must contain signatures of the Expert of the defence as well as Inspector of Police, who conducted investigation, on the wrappers, without giving any room for tampering the evidence by any persons.

35. With the above observations, the points raised in this Petition are answered as follows:-

i) As per the principal of fair trial, the defence is entitled to take material from the site in the manner, as stated in para Nos.33 and 34 of this order, to prove their case and it will not amount to leading evidence by the defence before the examination of the prosecution witnesses, and by sending the samples to the Government Laboratory by Investigating Officer, and by doing so, parallel investigation is also prevented, and fair trial opportunity is given to the accused/petitioner, to prove his case.

36. In the result, the Criminal Original Petition is allowed, as stated above.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

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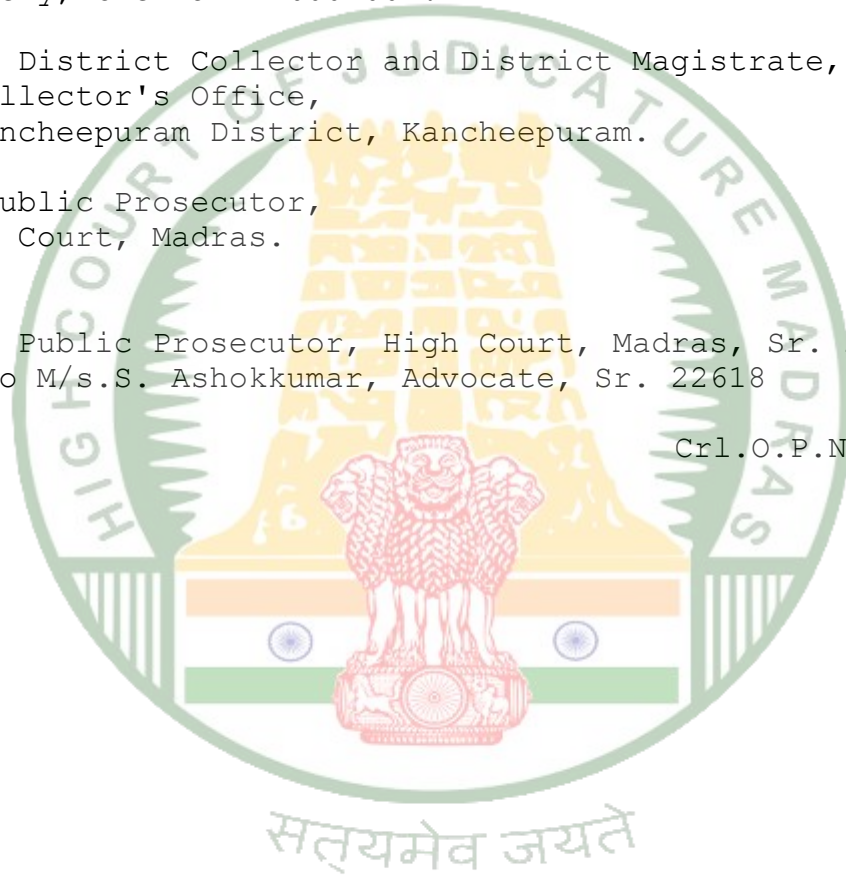
To

1. The Inspector of Police,
T-14, Mangadu Police Station,
Mangadu.
2. The Additional Deputy Commissioner of Police,
Prohibition Enforcement Wing (East)
I/c. Special Investigation Team,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
3. The District Collector and District Magistrate,
Collector's Office,
Kancheepuram District, Kancheepuram.
4. The Public Prosecutor,
High Court, Madras.

1 cc to Public Prosecutor, High Court, Madras, Sr. 23139
2 ccs to M/s.S. Ashokkumar, Advocate, Sr. 22618

Cr1.O.P.No.32578 of 2014

CA (CO)
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