

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVATION: 25.06.2014

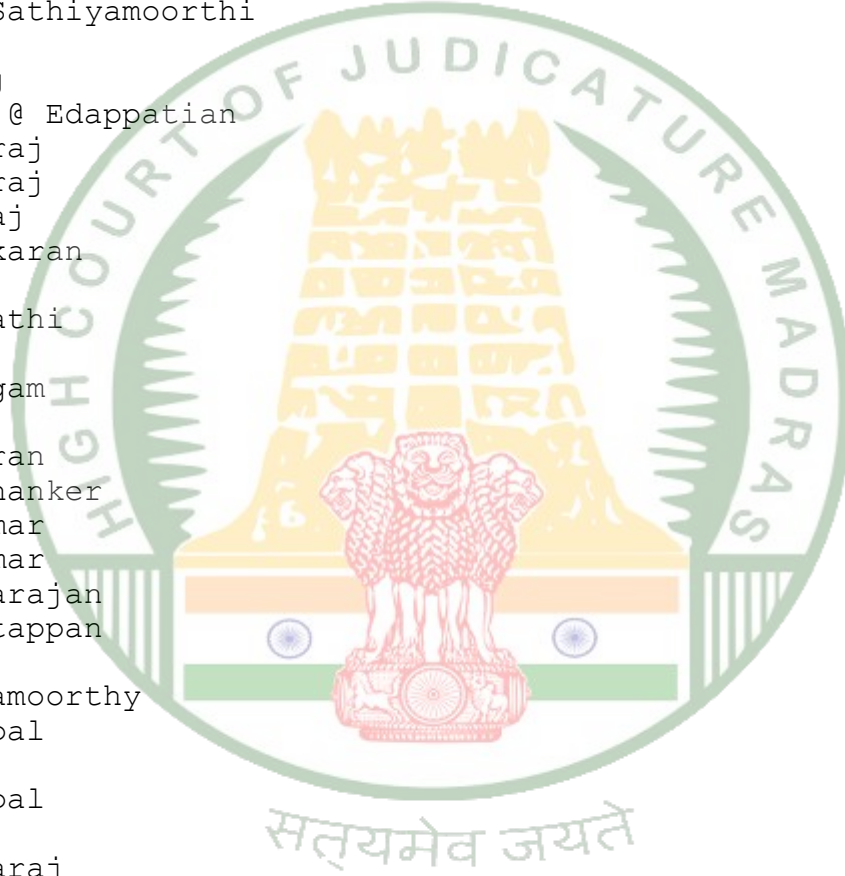
DATE OF PRONOUNCEMENT: 30.01.2015

CORAM:

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

Cr1.A.No.569/2010

- 1.Mani @ Sathiyamoorthi
- 2.Murugan
- 3.Selvaraj
- 4.Muniraj @ Edappatian
- 5.Govindaraj
- 6.Govindaraj
- 7.Chinnaraj
- 8.Gnanasekaran
- 9.Devaraj
- 10.Tiruppathi
- 11.Kumar
- 12.Shanmugam
- 13.Gopi
- 14.Manimaran
- 15.Gowrishanker
- 16.Jayakumar
- 17.Sivakumar
- 18.Govindarajan
- 19.Venkattappan
- 20.Sekar
- 21.Krishnamoorthy
- 22.Venugopal
- 23.Ahmed
- 24.Rajagopal
- 25.Vasu
- 26.Govindaraj
- 27.Saminathan
- 28.Igbal
- 29.Venugopal
- 30.Murugan
- 31.Selvaraj
- 32.Muthuraj
- 33.Kumar
- 34.Narayanan
- 35.Muniraj
- 36.Muthuraj
- 37.Govindan
- 38.Govindaraj



WEB COPY

Appellants/Accused 1 to 38.

Vs

State rep by

The Deputy Superintendent of Police

Rayakotta Police Station, Dharmapuri District

(Crime No.42/2007)

... Respondent/Complainant.

Prayer:- This Criminal Appeal is filed against the judgement dated 13.09.2010 made in SC.No.32/2010 by the learned Principal Sessions Judge, Dharmapuri District.

For Appellants : Mr.AR.L.Sundaresan, SC
AL.Ganthimathi.

For Respondent : Mr.V.MR.Rajendran, APP

JUDGEMENT

This Criminal Appeal is filed against the judgement dated 13.09.2010, made in SC.No.32/2010, by the learned Principal Sessions Judge, Dharmapuri District, in and by which, the Appellants/A1 to A38 were convicted and sentenced, as tabulated below:-

Accused	Conviction and Sentence
A1 to A3,A7,A8, A12, A13, A18, A22, A23, A25, A26, A27, A28, A30 to A32, A34 to A38	1. For the offence under Section 147 of IPC to undergo Rigorous Imprisonment for two years each and to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for three months each. 2. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years each and to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for one year each. 3. For the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for three months each.

Accused	Conviction and Sentence
A4	1. For the offence under Section 147 of IPC to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for three months. 2. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/- , in default to undergo Simple Imprisonment for one year. 3. For the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for three months. 4. For the offence under Section 452 of IPC to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one year. 5. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/- , in default to undergo Simple Imprisonment for one year.

सत्यमेव जयते

WEB COPY

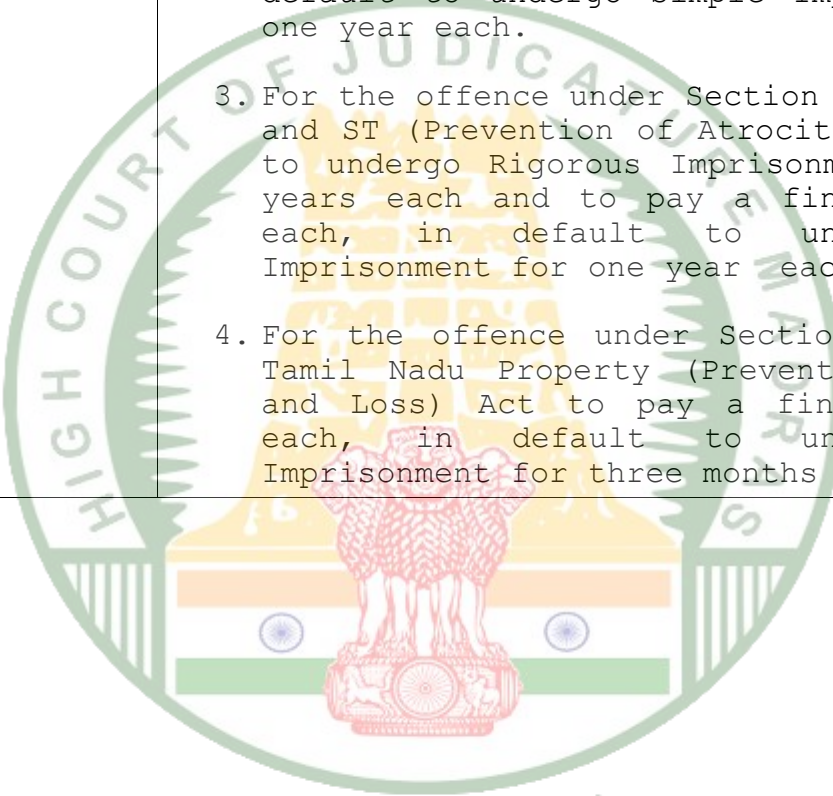
Accused	Conviction and Sentence
A6	1. For the offence under Section 324 of IPC to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one year. 2. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one year. 3. For the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for three months. 4. For the offence under Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one year.

सत्यमेव जयते

WEB COPY

Accused	Conviction and Sentence
A5, A9, A10, A15, A16, A19 and A33	1. For the offence under Section 147 of IPC to undergo Rigorous Imprisonment for two years each and to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for three months each. 2. For the offence under Section 323 of IPC to undergo Rigorous Imprisonment for one year each and to pay a fine of Rs.500/-, each, in default to undergo Simple Imprisonment for six months each. 3. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years each and to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for one year each. 4. For the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for three months each.
A20	1. For the offence under Section 147 of IPC to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for three months. 2. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/- , in default to undergo Simple Imprisonment for one year. 3. For the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for three months.

Accused	Conviction and Sentence
A11 and A21	1. For the offence under Section 147 of IPC to undergo Rigorous Imprisonment for two years each and to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for three months each. 2. For the offence under Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years each and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one year each. 3. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years each and to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for one year each. 4. For the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for three months each.


 सत्यमेव जयते
 WEB COPY

Accused	Conviction and Sentence
A17	1. For the offence under Section 147 of IPC to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for three months. 2. For the offence under Section 342 of IPC to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for six months. 3. For the offence under Section 452 of IPC to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one year. 4. For the offence under Section 3(1)(xv) of SC and ST (Prevention of Atrocities) Act, 1989 to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one year. 5. For the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for three months.

and the sentences were ordered to run concurrently.

2. The Appellants/A1 to A38 were charge sheeted, in respect of the community clash happened between two Communities, for the offence under Sections Sections 147, 148, 452, 380, 323, 324, 307 read with 34 and 109 of IPC and 3(1)(x), 3(1)(ix), 3(1)(xv) of the SC/ST Act, alleging that the Appellants/A1 to A38, on 8.2.2002 at about 16.00 hours and 22.00 hours, 22.30 hours respectively at Gummanoor Colony, formed an unlawful assembly, assaulted the Gummanoor Colony People, damaged the dwelling houses and two wheelers with thadi, stones, thonnai and knives, etc. and caused extensive damages and losses to the properties and injuries to the witnesses; that A1 to A42, having wrongfully restrained the witnesses by committing house trespass, caused injuries to the witnesses, by using thadi, kattai, thonnai stones, knives; that the Appellants abused members of the Schedule Caste of the Kummannoor Village, by saying their caste name and by degrading their community name.

3. The case was taken on file in SC.No.32/2010 by the learned Principal Sessions Judge, Dharmapuri District and necessary charges were framed. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.23 and also marked Exs.P1 to P71 and Mo.1 (series). On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case. On the side of the defence, Ex.D1 and D2 were marked. The court below, after hearing the arguments advanced on either side and looking into the materials available on record, found the accused/appellants guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

4. Mr.AR.L.Sundaresan, the learned senior counsel for the Appellants/accused has contended that the finding that the accused/Appellants committed the offence is not sustainable. It has been submitted, in this connection that the first occurrence and the second occurrence are sequel to each other and pointed out that the accused were acquitted in regard to the first occurrence in CC.No.107/2002 in respect of Cr.No.41/2002. The judgement in the said case has been exhibited as Ex.D1. It has been urged that the statements of the Prosecution witnesses, who also deposed in the case in CC.No.107/2002, are unnatural and are not reliable. More particularly, the evidence of PW.4 Dharman is totally unreliable, as his complaint in Cr.No.41/2002 ended in acquittal. Most of the witnesses, examined on the side of the Prosecution, are hearsay about the alleged occurrence that took place at 4.00 p.m. and 10.00 p.m. The learned senior counsel further submitted that the earliest information in this case has been suppressed and the complaint, said to have been lodged at 1.30 a.m. on 9.2.2002, is not only belated, but also not supported by the Prosecution even by their own evidence. The learned senior counsel pointed out that the evidence in this regard is totally contradictory. As per the Prosecution, the complaint was given in the hospital on 9.2.2002 at 1.30 a.m. (night), whereas PW.1 had stated that the complaint was lodged in the Royakottai Police Station on 9.2.2002 at about 9.00 a.m. He not only contradicts his own statement in Chief examination, but also the statement of PW.22, who registered the First Information Report.

5. The learned senior counsel vehemently argued that the testimony of the witnesses is not worthy of acceptance and it is unsafe to rely on such evidence to base conviction and drew the attention of the court to the material contradictions and inconsistencies in the evidence of the Prosecution, in all aspects. The learned senior counsel pointed out that in Ex.P1, no allegation is made that PW.1 was assaulted by A9 Devaraj and A10 Thirupathi by sticks, but a substantial improvement is made to the said effect in his deposition before the Court. Similarly, a major improvement has

been made by PW.1, only before the Court for the first time that his mother PW.6 Kuppammal was severely beaten up by the Appellants on her chest, stomach and sustained bleeding injury, which is absent in the First Information Report. Further, there is no allegation whatsoever in the complaint that the Appellants called the Prosecution witnesses, by degrading their community name, which has been introduced later after thought.

6. The learned senior counsel also pointed out that the witnesses have deposed that 200 members of unruly mob ransacked the entire colony, but the total damage, as projected by the Prosecution before the Court, was 4 aluminium vessels, 2 aluminium plates, 4 steel plates and 3 plastic pots. The learned senior counsel contended that conviction of the Appellants, based on the above unreliable and weak evidence, is unsustainable and is liable to be set aside.

7. Per contra,, Mr.V.MR.Rajendran, the learned Additional Public Prosecutor for the Respondent, has supported the impugned judgement of conviction and sentence of all the Appellants/accused. It has been urged that the testimony of the Prosecution witnesses are reliable and the conviction of the Appellants was wholly justified.

8. This court heard the submissions of the learned counsel on either side and also perused the material records placed.

9. The complainant PW.1, giving the background of the incident, has stated that on the previous day, i.e. on 8.2.2002, A8 accusing PW.4 Dharmalingam of committing theft, had assaulted with hand and threatened him with dire consequences. On the same day, at 6.30 p.m., A2 Murugan, threatened and scolded the Paul Society and threatened him that he would be taken care of with the help of the Villagers. Hence, the Prosecution party went to the Police Station and lodged the complaint. While they were returning at about 10.30 p.m. and when they reached near the Colony, the group of villagers numbering about 50, restrained them and attacked with stick, thonnai and caused injury. It is further alleged that they caused damages to the things in the houses of PW.13 and other.

10. At the outset, the complaint Ex.P1 mentions 20 named accused to have waylaid and attacked the witnesses. Whereas, PW.1, the complainant before the court, had deposed that more than 200 persons attacked them. If more than 200 persons had attacked, how the witnesses could identify only 20 persons is a mystery. The occurrence is said to have taken place on 8.2.2002 at about 22.30 hours. Whereas Ex.P1 complaint had been lodged on the next day i.e. 9.2.2002 at about 1.30 a.m. There is no satisfacatory explanation for the said delay in lodging the complaint by the Prosecution. That apart, there were three related complalints, one is registered in Cr.No.41/2002 given by PW.4 Dharmalingam against A8 alone, which

ended in acquittal. The occurrence related to Cr.No.41/2002 was on 8.2.2002 at 4.00 p.m. but the complaint was given only on 9.2.2002 at 1.00 a.m. Even though the said complaint was given on 9.2.2002, nothing is stated about the present occurrence i.e. 200 persons entered into their colony and ransacked them. Except A8, he never implicated any of the Appellants. But, PW.4 had improvised his version before the Court and stated so many things contrary to his complaint Ex.D2.

11. The most important factor, which creates more substantial doubt as to the Prosecution case, is that PW.1 and PW.4 were present at the time of giving the complaint. If the occurrence, as alleged by them, had taken place, all facts would find a place in the complaint given by PW.4 itself, which was lodged at 1.00 a.m. on 9.2.2002 and the evidence indicated that PW.1 and PW.2 were also present. It is the case of the defence throughout that the incident in question did not take place, as alleged by the Prosecution and Ex.P1 was prepared and came into existence after due deliberations, involving the accused/ Appellants. In this background, if we notice the contradictory version given by PW.1 and PW.4, in my opinion, it nearly fits into the defence theory.

12. That apart, as per PW.1, Ex.P1 complaint was given in the hospital, whereas the Investigating Officer says that it was given in the place of occurrence. According to PW.1, when he went to the Police Station, he was intercepted and told that already police had gone to the spot. Further, PW.1 in his evidence says that he gave the complaint at 9.00 a.m. whereas Ex.P1 was given on 8.2.2002 at 1.30 a.m. PW.1 further admitted that he was not present, when a group of persons about 200 came and attacked. If that be so, it is impossible for him to identify and name the accused in the complaint. There is every opportunity for the witnesses to select persons and implicate them in the complaint. This gives a great deal of doubt as to whether the First Information Report was lodged, as projected by the Prosecution.

13. The foremost criticism levelled by the learned senior counsel for the Appellants was that the First Information Report, which came into existence after a delay of nearly four hours, does not contain the allegation that the Prosecution witnesses were abused in their caste name. Apart from the fact that there is a total contradiction in regard to the time and place where the First Information Report was given, the omission to state about the witnesses being abused by their caste name renders the Prosecution case weak and unreliable.

14. In the instant case, the Prosecution case is that the accused abused the witnesses with the name of their caste. At the outset, there is no such allegation made in the First Information Report. According to the basic ingredients of Section 3(1)(x) of the

Act, the complainant ought to have alleged that the Appellants was not a member of the Schedule Caste or Schedule Tribe and they intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the complaint, nowhere it is mentioned that the Appellants was not a member of the schedule caste or schedule tribe and they intentionally insulted or intimidated with intent to humiliate the witnesses in a place within public view. When the basic ingredients of the offence are missing in the complaint, then any amount of evidence before the Court would be unreliable.

15. The vital contradiction, in the evidence of PW.1, is significant to be noticed. In his complaint, Ex.P1, he never stated that he was assaulted by A9 Devaraj and A10 Thirupathi by sticks, but in his evidence, he improvised and stated that he was attacked by the above two accused and his two wheeler and its lights were damaged. One more vital contradiction is that PW.1 never stated that his mother PW.6 Kuppanmal was severely beaten up by the Appellants on her chest, stomach and she sustained bleeding injury, whereas in his deposition he stated so, which is also fatal to the Prosecution. The aforesaid omissions, which amount to contradiction in material particulars, go to the root of the case and materially affect the core of the Prosecution's case and further render the testimony of such witnesses liable to be discarded. Having regard to the deliberate improvement made by PW.1 as regards place, time and the manner of occurrence, his testimony becomes suspicious and cannot be accepted in the absence of dependable corroboration. Therefore, it would be very difficult to place implicit reliance on each of their evidence or cumulatively to convict the accused/ Appellants. Therefore, in view of the discrepancies and infirmities in the Prosecution case, the finding of guilt recorded against the accused/ Appellants appears to be erroneous and this Criminal Appeal deserves to be allowed.

16. In the result, this criminal appeal is allowed. The impugned judgement of conviction and sentence are set aside. The Appellants are acquitted of the charges levelled against them. The bail bond if any executed by them shall stand cancelled and the fine amount if any paid by them shall be refunded to them.

Srcm

-s/d-
Deputy Registrar(J)
Dt:9/2/2015

True Copy

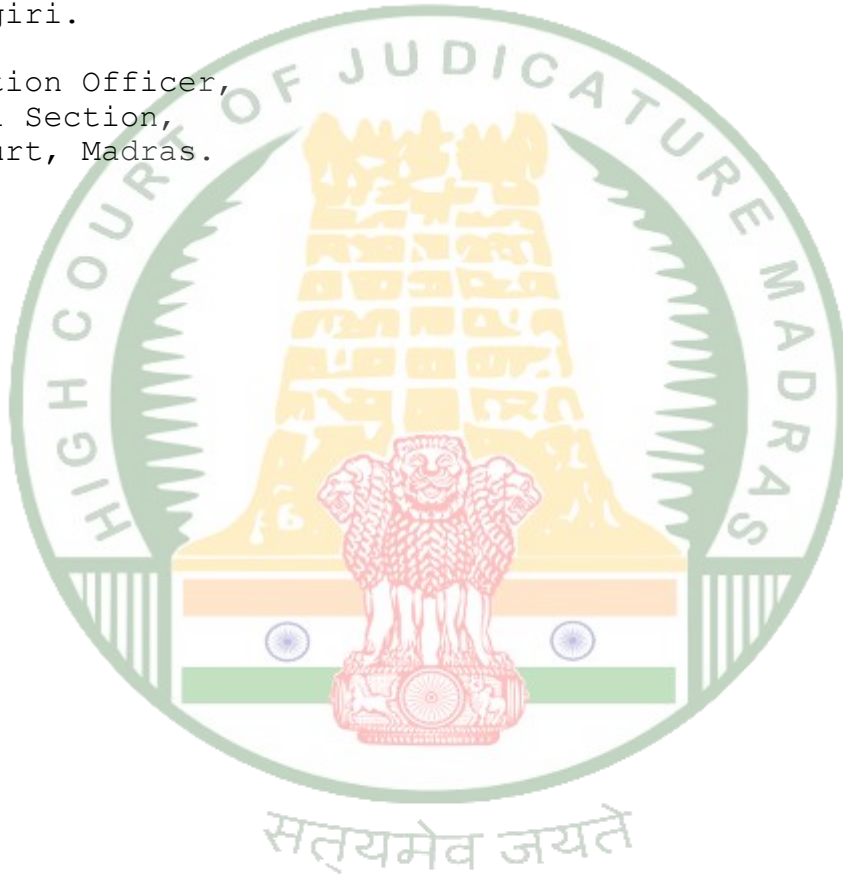
Sub-Assistant Registrar

To:

- 1.The Deputy Superintendent of Police, Royakottai Police Station,
Dharmapuri
- 2.The Principal Sessions Judge, Dharmapuri
- 3.The Public Prosecutor, High Court, Madras
- 4.The Judicial Magistrate, Palacode.
- 5.The Chief Judicial Magistrate, Dharmapuri @
Krishnagiri.
- 6.The Section Officer,
Criminal Section,
High Court, Madras.

km(co)
prk12/2

Crl.No.569/2010



WEB COPY