

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2015

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THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

W.P.No.6663 of 2015, 22604 of 2014

Crl.O.P.Nos.31447, 26757 of 2014

and

M.P.No.1 of 2015

K.Sivamani
Inspector of Police,
Manali New Town P.S.
Greater Chennai.

.. Petitioner in
W.P.No.6663 of 2015

Tmt.S.Vijayalakshmi

...Petitioner in
W.P.No.22604, and
Crl.O.P.Nos.31447 &
26757 of 2014

Vs

1. The Inspector of Police,
Vigilance & Anti Corruption,
Head Quarters,
Chennai-600 028

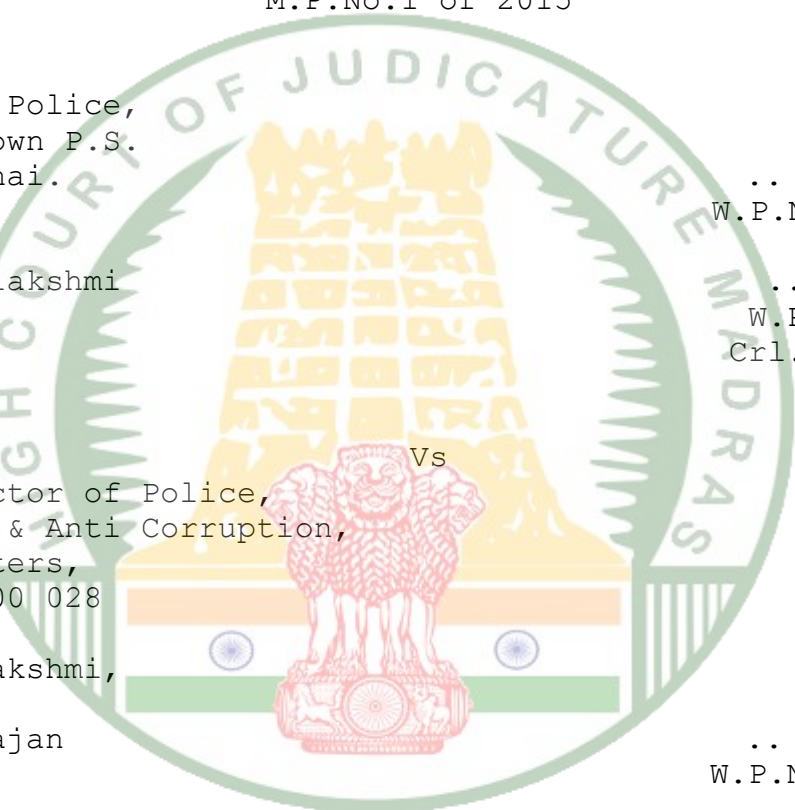
2. S.Vijayalakshmi,

3. S.Thiagarajan

.. Respondents in
W.P.No.6663 of 2015

1. The Director,
Directorate of Vigilance and Anti-corruption
Department,
Raja Annamalaipuram,
Chennai-600 028

2. The Deputy Superintendent of Police,
Directorate of Vigilance and Anti-Corruption,
NCB, No.21, Greenways Road,
Raja Annamalaipuram,
Chennai-600 028



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3. The Inspector of Police,
Vigilance and Anti-Corruption,
Head Quarters,
Raja Annamalaipuram,
Chennai-600 028

4. The Superintendent of Police,
Central Bureau of Investigation,
Shastri Bhavan,
Nungambakkam,
Chennai-600 034

... Respondents in
Crl.O.P.No.31447 of 2014

1. The Director General of Police,
Mylapore, Chennai-04

2. The Commissioner of Police,
Chennai City, Veppery,
Chennai-007

3. Mr.Sivamani
4. rr.Rajendran

.... Respondents in
W.P.No.22604 of 2014

The Inspector of Police,
Vigilance and Anti-Corruption,
Head Quarters,
Chennai-28

.... Respondent in
Crl.O.P.No.26757 of 2014

Prayer in W.P.No.6663 of 2015: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to FIR No.4 of 2014 on the file of the first respondent dated 18.07.2014 and to quash the same and direct the respondent 2 and 3 to pay a just Compensation.

Prayer in W.P.No.22604 of 2014: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to consider the petitioner written representation dated 24.07.2014 and to direct the respondents to take appropriate departmental action against the erred police officials namely Inspector of Police Mr.Sivamani & Sub-Inspector of Police Mr.Rajendran.

Prayer in Crl.O.P.No.26757 of 2014: Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondent to file

a final report in Crime No.4 of 2014 on 18.07.2014 on the file of the respondent police within a stipulated time.

Prayer in Crl.O.P.No.31447 of 2014: Criminal Original Petition filed under Section 482 Cr.P.C., to transfer the investigation in Crime No.4 of 2014 on the file of the third respondent to fourth respondent herein to secure the ends of justice.

For Petitioners : Mr.M.C.Swamy for
M/s.Senthil Swamy Association
in W.P.No.6663 of 2015

Mr.R.Shanmuga Sundaram, Sr.counsel
for Mr.D.Ashok Kumar
in W.P.No.22604, of 2014
Crl.O.P.Nos.26757 and 31447 of 2014

For Respondents :Mrs.A.Srijayanthi,Spl.G.P.for R1
in W.P.No.6663 of 2015

and for R1 and R2 in W.P.No.22604/14

Mr.A.N.Thambidurai,Addl.P.P
for respondents in Crl.O.P.Nos.26757
and 31447 of 2014

COMMON ORDER

W.P.No.6663 of 2014:

It appears that on a complaint lodged by one Mr.Parasmal H.Jain, both on his behalf and on behalf of three others, made directly to the Commissioner of Police of the City of Chennai on 16.09.2011, a First Information Report came to be registered on the file of C2-Elephant Gate Police Station in Crime No.175 of 2012, on 27.1.2012, for alleged offences under Sections 420 read with 506(ii) of Indian Penal Code, against a lady by name Mrs.S.Vijayalakshmi and her son Thiagarajan. It is claimed that subsequently, the complainant Parasmal H.Jain and the persons accused, namely, Vijayalakshmi and Thiagarajan entered into a memo of compromise on 7.2.2012 and the complaint in Crime No.175 of 2012 did not proceed further.

2. However, Mrs.S.Vijayalakshmi gave a complaint on 23.3.2012 to the Home Secretary, the Director General of Police as well as the Police Commissioner, claiming that on 7.2.2012 at about 9.30 a.m., a Sub-Inspector of Police, by name, Rajendran, attached to C-2 Elephant Gate Police station, visited her house and informed her that she and

her son were summoned by the Inspector of Police (Crimes) by name, Sivamani. According to the said complaint dated 23.3.2012, the Sub-Inspector of Police abused her and her son and dragged her son to the Police station and that they were compelled to enter into a memo of compromise, by the Inspector as well as the Sub-Inspector of Police.

3. Since no action was taken on the said complaint, S.Vijayalakshmi filed a petition in CrI.O.P.No.23207 of 2012, under Section 482 of the Code of Criminal Procedure, seeking a direction to the Commissioner of Police as well as the Director General of Police to register her complaint dated 22.3.2012 and to investigate the same. But the said petition was dismissed as withdrawn by an order dated 28.09.2012.

4. Thereafter, the said S.Vijayalakshmi filed a writ petition in W.P.No.26387 of 2012. The prayer in the said writ petition was also for a writ of mandamus to direct the Commissioner of Police to consider her representation dated 23.3.2012. It is relevant to note that the said Vijayalakshmi appears to have given two complaints, one dated 22.3.2012 and another dated 23.3.2012. While the complaint dated 22.3.2012 was for taking disciplinary action against the erring police officials, the complaint dated 23.3.2012 was for taking departmental action and criminal action against them.

5. But the said writ petition in W.P.No.26387 of 2012 was dismissed as withdrawn by an order dated 30.11.2012.

6. Thereafter, Vijayalakshmi's son, namely, S.Thiyagarajan, filed a complaint dated 30.11.2012 with the Commissioner of Police, seeking action against the Inspector and Sub-Inspector of Police. It was followed by another petition in CrI.O.P.No.30683 of 2012 for a direction to the Commissioner of Police, Deputy Commissioner of Police and the Inspector of Police, to register the First Information Report, on the basis of his complaint. In the said writ petition, it was brought to the notice of the learned Judge that the previous petition under Section 482 of Cr.P.C. filed by the mother S.Vijayalakshmi was already dismissed as withdrawn. Therefore, on the basis of the said statement, criminal original petition in CrI.O.P.No.30683 of 2012 was disposed of by a learned Judge, by an order dated 24.1.2013, directing the petitioner therein, namely, S.Thiyagarajan, to work out his remedies under Section 200 of the Code of Criminal Procedure.

7. However, the mother thereafter gave another complaint dated 10.07.2013 against the very same police officers and came up with a fresh petition under Section 482, in Criminal O.P.No.30354 of 2013. At this time, the mother was armed with a communication sent by the Special Rapporteur of the National Human Rights Commission, advising the Director General of Police to look into the matter and take

appropriate action against the erring police officers. But unfortunately, for the lady, the communication of the Special Rapporteur was held by a learned Judge of this Court to be of no avail and to be of no legal value in terms of the provisions of the Protection of Human Rights Act, 1993. Therefore, the third attempt made by S.Vijayalakshmi to have her complaint registered also failed when her petition in Crl.O.P.No.30354 of 2013 was dismissed by the order dated 18.2.2014.

8. Thereafter, S.Vijayalakshmi gave yet another complaint, this time to the Director of Vigilance and Anti Corruption, on 14.06.2014 and came up with a fresh attack in the form of Crl.O.P.No.16108 of 2014. Gaining by the past experience, the lady not only suppressed the previous proceedings, but also included only the officers connected with the Directorate of Vigilance and Anti Corruption as the respondents. Therefore, as was expected by her, the Director of Vigilance and Anti Corruption and his subordinates, who alone were impleaded as parties, to Criminal O.P.No.16108 of 2014, could not bring it to the notice of this Court that three earlier attempts made by Vijayalakshmi and one attempt made by her son had already failed.

9. In Criminal O.P.No.16108 of 2014, this Court directed a status report to be filed. In the status report, it was indicated that irrespective of whatever had happened to the complaints given both by S.Vijayalakshmi and by her son to the regular police, the Directorate of Vigilance and Anti Corruption took the complaint dated 14.6.2014 to file, numbered it as 4704/2014/POL/CC-I and a preliminary enquiry had already been ordered. Therefore, on the basis of the status report so filed by the Directorate of Vigilance and Anti Corruption about the registration of a preliminary enquiry and also on the basis of the communication of the Special Rapporteur of the National Rights Human Commission, another learned Judge allowed Crl.O.P.No.16108 of 2014 by an order dated 3.7.2014. This decision was actually based upon the dictate of the Supreme Court in Lalita Kumari Vs. Government of U.P. and others, reported in 2013 (4) MLJ (Crl) 579 SC.

10. Therefore based upon the said order, the Vigilance and Anti Corruption ultimately registered a First Information Report, in Crime No.4 of 2014, on 18.7.2014, against six persons, four of whom were the complainants, namely, Parasmal Jain and others in Crime No.175 of 2012. The Inspector of Police (Crime) and the Sub Inspector of Police (Crime) attached to the Elephant Gate Police Station were arrayed as the fifth and sixth accused in Crime No.4 of 2014 by the Department of Vigilance and Anti Corruption. The offences, for which, the FIR was registered, were under Sections 448, 384 and 506 of the Indian Penal Code, read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

11. Once the First Information Report was registered on

18.7.2014, yet another battle started, which has resulted in two writ petitions and two criminal original petitions, which I am now dealing with.

12. Immediately after the registration of the First Information Report, the defacto complainant Vijayalakshmi came up with a writ petition in W.P.No.22604 of 2014 for a mandamus to direct the Director General of Police to take departmental action against the police officers against whom a criminal complaint had been registered on 18.7.2014 by the Directorate of Vigilance and Anti Corruption.

13. After notice was ordered in the said writ petition on 21.08.2014, the defacto complainant came up with the above two criminal original petitions seeking inter alia (i) a direction to the police to file a final report in Cr.No.4 of 2014, within a time frame; (ii) to transfer the investigation from the file of the third respondent, namely, the Inspector of Police (V & AC) to the file of the fourth respondent, namely, the Superintendent of Police, Central Bureau of Investigation.

14. At last, the Inspector of Police, who is arrayed as the fifth accused in the criminal complaint in Crime No.4 of 2014, came up with W.P.No.6663 of 2015 for quashing the First Information Report. Therefore, the two writ petitions as well as the two criminal original petitions were tagged together and were taken up for consideration.

15. I have heard Mr.M.C.Swami, learned counsel for the petitioner in W.P.No.6663 of 2015, Mr.R.Shangmugasundaram, learned Senior counsel appearing for the defacto complainant, who is the petitioner in W.P.No.22604 of 2014 and two Criminal Original Petitions in Crl.O.P.Nos.26757 and 31447 of 2014 and Mr.A.N.Thambidurai, learned Additional Public Prosecutor appearing for the prosecution and Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the Government.

16. From the facts narrated in the first portion of this order, it could be obvious that the ground of attack to the sustenance of the First Information Report can be only one. Since the fate of the three petitions (two criminal original petitions and one writ petition) filed by the defacto complainant depends upon the fate of the writ petition filed by the fifth accused, I shall first deal with W.P.No.6663 of 2015.

W.P.No.6663 of 2015:

17. The petitioner challenges the First Information Report in Crime No.04 of 2014 on the primary ground that the First Information Report came to be registered pursuant to an order passed by this Court in Crl.O.P.No.16108 of 2014, that was obtained by the defacto

complainant by playing fraud, suppression of information and also indulging in forum shopping. Therefore, relying upon the decisions of the Supreme Court in S.P.Chengalvaraya Naidu vs. Jagannath-(1994)1 SCC 1; and A.V.Papayya Sastry vs. Government of Andhra Pradesh - (2007) 4 SCC 221, which were also cited with approval by the Supreme Court in Union of India and others vs. Ramesh Gandhi - (2012) 1 Supreme Court Cases 476, it is contended by Mr.M.C.Swamy, learned counsel for the petitioner that fraud vitiates all solemn acts and that any product of fraud cannot be allowed to stand in a Court of law. It is the contention of the learned counsel that if a person has brought into existence something by perpetrating fraud upon the Court, that something can never be allowed to stand. Therefore, it is contended by him that the very registration of the First Information Report was wholly illegal and was a product of fraud. According to the learned counsel, if the very initiation of the proceedings is vitiated by fraud, its continuation is also vitiated by the fraud. Therefore, the learned counsel contents strenuously that the First Information Report should be quashed.

18. There is no quarrel with the proposition that fraud vitiates all solemn acts. As I have indicated in the previous portion of my order, the mother-son duo indulged in a multi pronged attack. The mother first filed a petition in Crl.O.P.No.23207 of 2012 seeking a direction to the Commissioner of Police and the Director General of Police to register a complaint given by her on 22.3.2012. For reasons, which I am not able to decipher, the said petition was withdrawn and consequently dismissed on 28.09.2012.

19. In a second attempt, the mother filed the writ petition in W.P.No.26387 of 2012, but withdrew the same, on 30.11.2012.

20. The third attempt was made by the son in Crl.O.P.No.30683 of 2012, but the same was dismissed by an order dated 24.1.2013, directing the son Thiagarajan to take recourse to the procedure under Section 200 of the Code. Thereafter, the mother came up with her third petition (which is the fourth in succession), in Crl.O.P.No.30354 of 2013. The only difference between the two earlier petitions filed by her and one earlier petition filed by her son was that in Crl.O.P.No.30354 of 2013, the mother was armed with a communication sent by the Special Rapporteur of the National Human Rights Commission. But unfortunately for her, the said petition was also dismissed by this Court by an order dated 18.2.2014. But at last, in her untiring effort, the mother came up with her fourth petition (really the fifth petition in succession) in Crl.O.P.No.16108 of 2014. The small difference that the mother did in this petition is that she did not implead either the Director General of Police or the Commissioner of Police or the concerned local police. She chose to implead only the Director of Vigilance

and Anti Corruption, the Deputy Superintendent of Police (V & AC) and the Inspector of police (V & AC). Therefore, when a status report was called for by this Court in Crl.O.P.No.16108 of 2014, it really reflected only two things, namely, the communication of the Special Rapporteur of the National Human Rights Commission and the registration of a preliminary enquiry by the Vigilance and Anti Corruption. Therefore, the learned Judge, thought fit to follow the dictum in Lalita Kumari's case (2013 (4) MLJ (Crl) 579 SC) and allowed the Criminal Original Petition No.16108 of 2014, by order dated 3.7.2014.

21. In the petition in Crl.O.P.No.16108 of 2014, the defacto complainant did not even make a whisper about the filing of three previous criminal original petitions and one writ petition by her and the filing of one Criminal Original Petition by her son. Therefore, there is no doubt in my mind that the defacto complainant was guilty of suppression of material facts. If it were a civil case, I would certainly throw out the claim of the defacto complainant on this one ground, namely, that a person, who came to Court without clean hands will not be entitled to any relief at the hands of this Court. Suppressing material facts, especially relating to previous proceedings and snatching away an order from this Court are really condemnable. But unfortunately, when a criminal complaint of this nature is made by a common man, the same dictum cannot be allowed to throw the complaint out of the register. In complaints of this nature, the defacto complainants play only one part of the role. It is the state, which is the prosecuting agency and the interest of the state lies in ensuring the integrity of the officers, who constitute the State. Therefore, if on the basis of the principle that fraud vitiates all solemn acts I quash this First Information Report, it is not merely the interest of defacto complainant, but the interest of the State that I would be making to suffer. Therefore, the principle that fraud vitiates all solemn acts cannot be of universal application in cases where there is some person other than the person, who perpetrated a fraud, whose interest will also be in jeopardy. Therefore, despite my finding that the defacto complainant is clearly guilty of suppression of material facts and snatched an order from Court, I cannot go solely on that basis to quash the First Information Report.

22. There are two reasons for my above conclusion. The first reason is what I have indicated earlier, namely, that the quashing of the First Information Report would actually jeopardize the interest of the State also, which is duty bound to ensure that the officers maintain absolute integrity and honesty. The second reason is that irrespective of whether the local police wanted to take action or not, the Directorate of Vigilance and Anti Corruption had promptly taken the complaint of the defacto complainant dated 14.6.2014 on file, in file No.4704/14/POL/CC-I. Thereafter, the Directorate of

Vigilance and Anti Corruption has ordered a preliminary enquiry by order dated 30.06.2014 in No.PE.52/2014/POL/SIC. There is nothing that could prevent the Directorate of Vigilance and Anti Corruption from registering a First Information Report on the basis of the registration of the complaint on 14.6.2014 and the undertaking of the preliminary enquiry on 30.6.2014. It must be remembered that the offences for which the First Information Report is registered are not merely under the Indian Penal Code, but also under the provisions of the Prevention of Corruption Act, 1988. Therefore, such a complaint cannot be quashed on the basis that it came to be registered at the instance of a person whose conduct itself was questionable and the manner in which he obtained an order from this Court also become questionable.

23. If we keep aside the allegation relating to the manner in which the defacto complainant secured an order and if we look merely at the contents of the First Information Report in Crime No.4 of 2014, it can be seen that the same cannot be quashed for the mere asking. The Supreme Court has already laid down the fundamental principles on the basis of which a First Information Report could be quashed in State of Haryana and others vs. Bhajanlal and others 1992 Supp (1) Supreme Court Cases 335. A perusal of the contents of the First Information Report in Crime No.4 of 2014 would show that the contents thereof would not qualify any of the criteria laid down in Bhajanlal's case, so as to enable this Court to quash the complaint. Therefore, irrespective of the conduct of the defacto complainant and the manner in which an order was secured for registering the complaint, I do not think that the complaint could be quashed at this stage, especially when the allegations not only relate to the alleged offences under the Indian Penal Code, but also the offences under the Prevention of Corruption Act, 1988. Hence W.P.No.6663 of 2015 deserves to be dismissed. Accordingly, it is dismissed. Connected miscellaneous petition is dismissed.

W.P.No.22604 of 2014 and Crl.O.P.Nos.26757 and 31447 of 2014:

24. In Crl.O.P.NO.26757 of 2014, the defacto complainant seeks a direction to the police to file a final report within a time frame. In Crl.O.P.No.31447 of 2014, the defacto complainant seeks transfer of investigation to the file of the Superintendent of Police. In W.P.No.22604 of 2014, the defacto complainant seeks departmental action.

25. In the light of my findings against the conduct of the defacto complainant, I do not think that any of these prayers can be granted by me. It is true that a person's right to fight injustice should not be scuttled. But at the same time, no one should get a feeling that injustice cannot really be fought only on fair means and an injustice can also be fought through unfair means. Therefore

these three petitions Crl.O.P.Nos.26757 and 31447 of 2014 and W.P.No.22604 of 2014 deserve to be dismissed. Accordingly, they are dismissed.

26. It is open to the Directorate of Vigilance and Anti Corruption to independently carryout an investigation without simply going by what the defacto complainant has stated and to file a final report before the appropriate Court in accordance with law.

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

msk

To

1. The Inspector of Police,
Vigilance & Anti Corruption,
Head Quarters,
Chennai-600 028
2. The Director,
Directorate of Vigilance and Anti-corruption
Department,
Raja Annamalaipuram,
Chennai-600 028
3. The Deputy Superintendent of Police,
Directorate of Vigilance and Anti-Corruption,
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4. The Superintendent of Police,
Central Bereau of Investigation,
Shastri Bhavan,
Nungambakkam,
Chennai-600 034

5. The Director General of Police,
Mylapore, Chennai-04

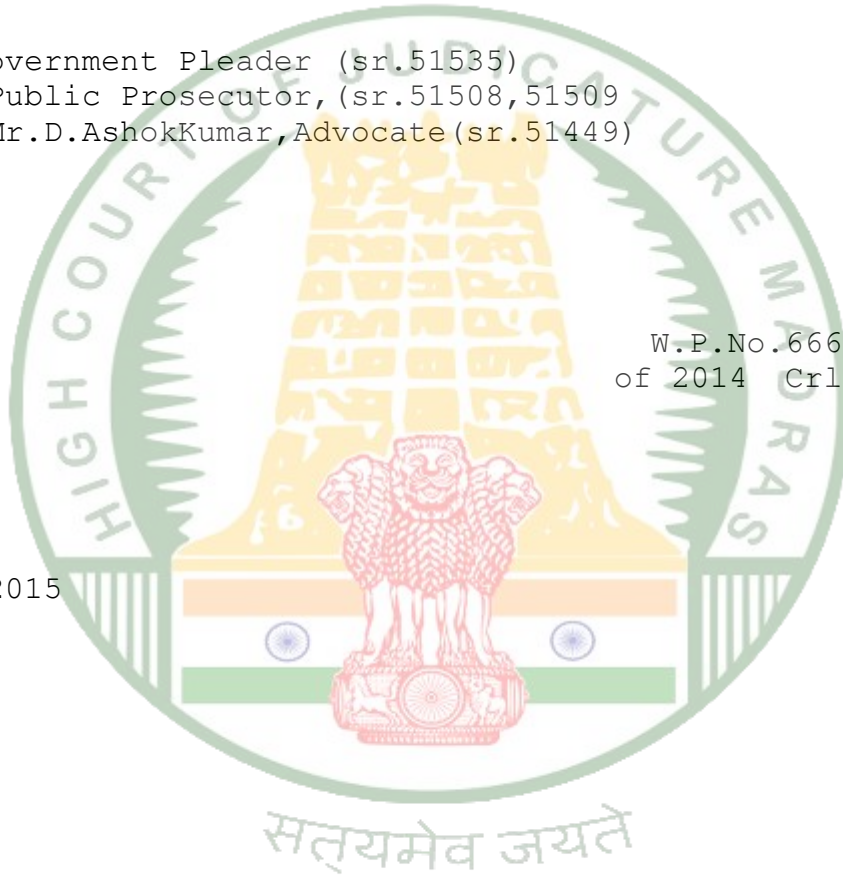
6. The Commissioner of Police,
Chennai City, Veppery,
Chennai-007

7. The Public Prosecutor,
High Court, Madras.

+1cc to Government Pleader (sr.51535)
+2 cc to Public Prosecutor, (sr.51508,51509)
+1 cc to Mr.D.AshokKumar,Advocate (sr.51449)

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cp 09/10/2015

W.P.No.6663 of 2015, 22604
of 2014 Crl.O.P.Nos.31447,
26757 of 2014



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