

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2016

PRONOUNCED ON : 09.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.1032, 2518, 4598 and 6416 of 2016
and

W.M.P. Nos.800 and 3959 of 2016

T. Ramesh ...Petitioner in W.P.1032 of 2016

Vs.

1. The State of Tamil Nadu
represented by the Principal Secretary to Government
Home (Prisons-IV) Department
Secretariat
Chennai 600 009
2. The Additional Director General of Police
and Inspector General of Prisons
Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Superintendent of Prisons
Central Prison - I
Puzhal
Chennai 600 066. ...Respondents in W.P.1032 of 2016

R. Srinivasan ...Petitioner in W.P.2518 of 2016

Vs.

1. The State of Tamil Nadu
represented by the Principal Secretary
Government of Tamil Nadu
Home Department
Fort St. George, Chennai - 600 009
2. The Superintendent of Prison
Central Prison
Puzhal,
Chennai - 600 066 ...Respondents in W.P.2518 of 2016

R. Sathish Babu

...Petitioner in W.P.4598 of 2016

Vs.

1. The State of Tamil Nadu
represented by the Principal Secretary to Government
Home (Prisons-IV) Department
Secretariat
Chennai 600 009
2. The Additional Director General of Police
and Inspector General of Prisons
Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Superintendent of Prisons
Central Prison - I
Puzhal,
Chennai 600 066. ...Respondents in W.P.4598 of 2016

Y. Narendran

...Petitioner in W.P.6416 of 2016

Vs.

1. The State of Tamil Nadu
represented by the Principal Secretary
Government of Tamil Nadu
Home Department
Fort St. George, Chennai - 600 009
2. The Superintendent of Prison
Central Prison
Puzhal,
Chennai - 600 066 ...Respondents in W.P.6416 of 2016

Prayer in W.P. No.1032 of 2016 : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records in connection with the impugned order passed by the 1st respondent in G.O. (D) No.872 dated 07.12.2015 and quash the same and further, direct the respondents to extend the benefit of the Advisory Board report dated 11.05.2012 and release the petitioner prematurely.

Prayer in W.P. No.2518 of 2016 : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records in G.O. (D) No.935, Home

(Prison IV) Department dated 28.12.2005 on the file of the first respondent and quash the same.

Prayer in W.P. No.4598 of 2016 : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records in connection with the impugned order passed by the first respondent in G.O. (D) No.931 dated 28.12.2015 and quash the same and further direct the respondents to extend the benefit of the Advisory Board report dated 11.05.2012 and release the petitioner prematurely.

Prayer in W.P. No.6416 of 2016 : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pursuant to the order passed by the first respondent in G.O. (D) No.932, Home (Prison-IV) Department dated 28.12.2015 and to quash the same as illegal.

For Petitioner in : Mr. V. Balu
WP.6416 of 2016

For Petitioner in : Mr. G. Ravikumar
WPs.1032 and 4598
of 2016

For Petitioner in : Mr. V. Bhiman
WP.2518 of 2016

For respondents in : Mr. S. Shanmugavelayutham
all WPs
Public Prosecutor
assisted by Mr. C. Emalias
Additional Public Prosecutor

COMMON ORDER

W.P. Nos. 1032 of 2016 and 4598 of 2016 are filed seeking quashment of G.O. (D) Nos.872 and 931, Home (Prisons-IV) Department dated 07.12.2015 and 28.12.2015 respectively passed by the first respondent and further, for a direction to the respondents to extend the benefit of the Advisory Board Report dated 11.05.2012 to the petitioners and release them prematurely.

2. W.P. Nos.2518 and 6416 of 2016 are filed seeking quashment of G.O. (D) Nos.935 and 932, Home (Prisons-IV) Department dated 28.12.2005 passed by the first respondent.

3. One Suseela Ranganathan was murdered, in connection with which a case in Crime No.829 of 1995 was registered by the

Inspector of Police, G-3, Kilpauk Police Station, Chennai and after the investigation was completed, final report was filed, in which the petitioners herein, were arrayed as accused. The case was committed to the Court of Sessions and trial in S.C. No.318 of 1996 was held by the Principal Sessions Judge, Chennai. The petitioners were convicted and sentenced on 02.04.1997 as follows:

S.No.	Offence	Sentence
1	Section 302 r/w 34 IPC	Life imprisonment
2	Section 449 IPC	7 years RI and Rs.1,000/- fine in default to suffer RI for 3 months
3	Section 397 r/w 34 IPC	7 years RI and Rs.1,000/- fine in default to suffer RI for 3 months
4	Section 201 r/w 34 IPC	7 years RI and Rs.1,000/- fine in default to suffer RI for 3 months

The appeals filed by the petitioners before the High Court and further appeal(s) to the Supreme Court were also dismissed.

4. Admittedly, the petitioners have completed 14 years of imprisonment as mandated by Section 433-A, Cr.P.C. Under such circumstances, they made representations to the jail authorities under Rule 341 of the Tamil Nadu Prison Rules, 1983 (for brevity "the Prison Rules") for placing their case before the Advisory Board for premature release. The Advisory Board comprising (1) the District Collector, Thiruvallur, (2) the Principal Sessions Judge, Thiruvallur, (3) the Chief Judicial Magistrate, Thiruvallur (4) the Superintendent of Prisons, Central Prison-I, Puzhal, Chennai, (5) The Regional Probation Officer, Chengalpet and Mr.A.V.S. Sathyanarayana Rao, Non-Official Member, met and considered the case of the petitioners and gave a report dated 11.05.2012 to the Government recommending premature release of the petitioners. However, the first respondent, by the impugned orders, rejected the representation of the petitioners, aggrieved by which, the petitioners are before this Court.

5. Heard M/s. V. Balu, G. Ravikumar and V. Bhiman, learned counsel for the petitioners and Mr. S. Shanmugavelayutham, learned Public Prosecutor appearing for the respondents.

6. Before proceeding further in the matter, it is necessary to look into the ground of rejection of the petitioners' case which finds place in the impugned Government

Orders. The reason for rejection of the petitioners' case in all the four impugned orders is one and the same. Hence, suffice it to extract the reasoning for rejection in any one of the four orders. Accordingly, the reasoning in G.O. (D) No.931, Home (Prisons-IV) Department dated 28.12.2015 is extracted hereunder:

"5. As per the rule 341(3) of Tamil Nadu Prison Rules, 1983, the case of the prisoners who have been sentenced to imprisonment for more than three years or imprisonment for life for the offences among others mentioned below shall not be eligible for premature release under the Advisory Board Scheme.

Prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State and prisoners sentenced under Sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489A, 489B and 489D of the Indian Penal Code (Central Act XLV of 1860).

6 The Government have carefully examined the recommendation of the Advisory Board. As the life convict Prisoners No.785, Sathish Babu, S/o Rangasamy, among others was convicted and sentenced to 7 years rigorous imprisonment under Section 397 read with 34 of Indian Penal Code, he is not eligible for premature release under Rule 341(3) of the Tamil Nadu Prison Rules, 1983 contained in Tamil Nadu Prison Manual Volume - II.

7 The Government have therefore decided to reject the recommendation of the Advisory Board held on 11.05.2012 in Central Prison, Puzhal-I, for premature release of life convict Prisoner. . . . "

7. The learned counsel for the petitioners submitted that the ground on which the Government has rejected the petitioners' plea for premature release, will not stand legal scrutiny, inasmuch as, the Government has relied upon Rule 341(3) of the Prison Rules, which does not apply to the petitioners who are serving imprisonment for life for the offence under Sections 302 read with Section 34 IPC and not for any of the offences enumerated in Rule 341(3) of the Prison Rules.

8. To appreciate the stand of the petitioners, it may be profitable to quote Rule 341 of the Prison Rules:

"341 Cases of prisoners to be placed before the Advisory Board:

(1) The sentences of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or imprisonment for life and imprisonment for terms exceeding in the aggregate twenty years shall, for the purpose of this rule, be deemed to be sentences of imprisonment for twenty years.

(2) The cases of prisoners undergoing imprisonment for life shall, ordinarily, be placed before the Advisory Board as constituted for consideration as to whether their parole will be recommended, on completion of ten years of actual imprisonment: (Emphasis supplied)

Provided that by virtue of provision contained in Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the cases of prisoners sentenced to imprisonment for life on or after 18th December 1978 for an offence for which death is one of the punishments provided by law, or in whose case a sentence of death imposed has been commuted under Section 433 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) into one of the imprisonment for life, shall be placed before the Advisory Board only if they have served at least fourteen years of imprisonment.

Explanation (1)-Special remission granted in the case of life convicts in connection with the Second World War Tamil Conference and Gandhiji's Centenary Celebrations shall be taken into account for calculation of two thirds of their life sentence in terms of rigorous imprisonment for 20 years, for eligibility for consideration under the Advisory Board Scheme, provided that such cases shall be placed before the Advisory Board only after the convicts have actually undergone imprisonment for ten years.

Explanation (2)-The set off period specified in Section 428 of the Code of Criminal Procedure 1973 (Central Act, 2 of 1974) in the case of lifers sentenced prior to 18th December 1978 shall be taken into account and their cases shall be placed

before the Advisory Board after completion of ten years of actual sentence including the above set off period, if any. The period of ten years shall also include the special remission of one year sanctioned in G.O. Ms.No.3333, Home dated 19th December 1971 and six months sanctioned in G.O. Ms.No.2475, Home, dated 14th September 1977.

Explanation (3): The set off period specified in Section 428 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall be taken into account in the case of lifers sentenced on or after 18th December 1978 referred to in the proviso under sub-rule (2) for computing the period of fourteen years.

(3) The cases of prisoners sentenced to more than three years, excepting lifers to whom sub-rule (2) applies, shall be placed before the Advisory Board if they have served two thirds of their sentence including remission: (emphasis supplied)

Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years or imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme:- (emphasis supplied)

(i) Prisoners convicted of rape, dacoity, terrorist crimes, offences against the State or prisoners sentenced under section 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B and 489-D of the Indian Penal Code (Central Act XLV of 1860);

(ii) Prisoners convicted of economical offences, black marketing, smuggling or misuse of power and authority;

(iii) Prisoners sentenced under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988), the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956), the

Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940, the Drugs Control Act, 1949 (Tamil Nadu Act XXA of 1949), the Dangerous Drugs Act, 1930 (Central Act II of 1930) and the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (Central Act 21 of 1954) or the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954).

The cases of prisoners imprisoned for failure to give security under Chapter VIII of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) and Criminal lunatics shall not be placed before the Advisory Board.

Explanation (1): - The cases of prisoners convicted by Court Martial shall also be placed before the Advisory Board for consideration under sub-rules (2) and (3).

Explanation (2):- Sentences of imprisonment for failure to furnish security shall not be taken into account in determining the aggregate sentence for the purpose of sub-rules (2) and (3).

Explanation (3): - The set off period specified in section 428 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall be taken into account in the case of all prisoners excepting lifers, to whom Explanations (2) and (3) of sub-rule (2) shall apply and to those sentenced to imprisonment not being in default of payment of fine, in determining the period of sentence served for the purpose of sub-rule (3).

(4) (i) The case of prisoners coming under sub-rule (2) shall be submitted to the Government by the Inspector General for orders with the recommendation of the Advisory Board, whether it recommends parole or not, together with the judgment of the Court and other connected papers.

(i-a) The Government may call for any report which the Government may think necessary, from any authority or person to

consider the premature release of the prisoner.

(ii) The cases of prisoners sentenced to seven years and above and whose cases whether or not recommended for parole by the Advisory Board, shall also be sent to Government for orders.

(iii) The cases of prisoners sentenced to less than seven years shall be sent to Government only if recommended for parole by the Advisory Board.

(iv) If the Government refuse to order parole of a prisoner referred to in the first paragraph of sub-rule (3), they shall direct the re-submission of his case for their re-consideration again after such period as they may deem fit;

Provided that prisoners other than life prisoners shall, on the expiry of their sentences, less the periods of remission earned, be sent on parole unconditionally without the specific orders of Government.

(5) The Superintendent of a prison in which such prisoners as are mentioned above are confined shall maintain a register in which the name of each prisoner shall be entered under a date three months before he would be eligible for consideration of his parole after allowing normal remission and if, for any reason, he ceases to earn remission or earns special remission, the due date shall be altered accordingly.

(6) The cases of old and decrepit prisoners who are incapable of doing any real work and would appear to be unable to commit or organise crime if sent on parole shall also be placed before the Advisory Board for consideration.

(7) The cases of all prisoners including life convicts who satisfy the following conditions shall be placed before the Advisory Board for consideration, namely:-

(1) That the prisoners are over 65 or 55 years of age according as they are male or

female prisoners, respectively, and have served not less than two and a half years of their sentence, including remission; and

(2) that they are serving sentences for their first and only conviction.

(8) Where order is received from the Government for parole of a prisoner on his executing a bond in addition to a bond from a surety, the Superintendent shall send the prisoner on parole only after obtaining the bond in Form No.130 from the prisoner and a bond in Form No.131 from the surety."

(emphasis supplied)

9. The learned Public Prosecutor appearing for the State submitted that the petitioners were convicted for an offence under Section 397 IPC which is one of the offences mentioned under Rule 341(3) of the Prison Rules and therefore, the petitioners will not be entitled to premature release.

10. The learned counsel for the petitioners submitted that though the petitioners were convicted for the offence under Section 397 read with 34 IPC, yet, the Trial Court had directed the sentences to run concurrently with imprisonment for life imposed on them for the offence under Section 302 read with Section 34 IPC and that they are in prison for the last 15 years and thereby, they have completed 7 years period of imprisonment for the offence under Section 397 read with Section 34 IPC and therefore, Rule 341(3)(i) of the Prison Rules cannot be put against them.

11. There appears to be force in this submission of the learned counsel for the petitioners that the 7 year sentence for the offence under Section 397 read with Section 34 IPC has already been undergone by the petitioners and hence, Rule 341(3)(i) of the Prison Rules, cannot be put against them. To this extent, the impugned orders of the Government denying premature release to the petitioners, by placing reliance upon Rule 341(3)(i) of the Prison Rules, is incorrect.

12. That apart, Rule 341(3) of the Prison Rules clearly excludes lifers to whom sub rule (2) will apply. Moreover, the expression in Rule 341(3) of the Prison Rules and the expression in the proviso appended to it, viz., "excepting lifers to whom sub-rule (2) applies" and "following categories" respectively, assume significance. The expression "following categories" means offences enumerated in Rule 341(3) proviso (i), (ii) and (iii).

Section 302 IPC does not find place in any of the categories enumerated in Rule 341 (3) (i), (ii) and (iii).

13. The question of applying the Advisory Board Scheme will come only during the currency of the sentence. Assuming for a moment, in this case, had the petitioners been convicted under Section 400 IPC and sentenced to 10 years, the petitioners will not be entitled to be considered under the Advisory Board Scheme. If the petitioners were convicted under Section 400 and sentenced to imprisonment for life (which is one of the punishments provided for the offence under Section 400 IPC), then too, the petitioners cannot be considered for premature release under the Advisory Board Scheme, even if they had completed 14 years of minimum sentence stipulated by Section 433-A, Cr.P.C.

14. Thus, looked at from any angle, the reasoning given in the impugned orders for rejecting the plea of the petitioners by placing reliance on Rule 341(3) proviso (i) of the Prison Rules is illegal.

15. Now, coming to Rule 341(2), it does not speak of premature release in contra distinction to the usage of the said expression in the proviso to Rule 341(3), whereas, it uses the expression "parole".

16. A Full Bench of this Court in *State vs. Yesu and Velaiyan* [2011-4-MLJ (Cr1.)] 339 has held that there are no Parole Rules in Tamil Nadu and the Government cannot release prisoners on parole and the only power to release convicted prisoners is via Tamil Nadu Suspension of Sentence Rules, 1982, framed by the State Government in exercise of the powers under Section 432(5) of the Code.

17. In my opinion, usage of the word "parole" in Rule 341 (2) appears to be a misnomer. I am emboldened to say this in the light of the proviso to Rule 341(2) of the Prison Rules, wherein, it is clearly stated that the case of a prisoner sentenced to imprisonment for life, shall not be placed before the Advisory Board before he has completed 14 years of imprisonment. This is antithetical to the Tamil Nadu Suspension of Sentence Rules which provides for ordinary leave and emergency leave for all classes of convicted prisoners. Thus, the question of seeking opinion of the Advisory Board does not arise when the leave application of a convict prisoner, either for ordinary leave or emergency leave is put up for consideration by the authorities. Section 433-A, Cr.P.C. states that a person sentenced to life imprisonment should have to undergo a minimum period of 14 years and only thereafter, any

remission or commutation of the sentence can be considered by the appropriate Government under Section 432 Cr.P.C. So, the reference to Section 433-A in proviso to Rule 341(2), makes it clear that the expression "parole" must necessarily mean premature release under Section 432 Cr.P.C.

18. The Advisory Board Scheme under Rule 341 of the Prison Rules is envisaged in order to reduce the congestion in prisons and also as a means to draw the attention of the Government for considering the release of prisoners under Section 432 Cr.P.C. That is why, the Advisory Board meets periodically and reviews the cases of individual prisoners and makes routine recommendations to the Government. It is for the Government to either accept it or reject the recommendations. The Prison Rules which are framed under Section 59 of the Prisons Act, 1894, cannot have the effect of cutting short sentence of imprisonment passed by Courts without Government intervention under Section 432 of the Code.

19. Very recently, a Constitution Bench of the Supreme Court in Union of India vs. Sriharan @ Murugan and others [2015 (13) Scale 165], has completely considered the contours of the power of the Government under Section 432 Cr.P.C. and the following passage from the said judgment clinches the issue.

"163. Question 52.6 Whether suo motu exercise of power of remission under Section 432(1) is permissible in the scheme of the section, if yes, whether the procedure prescribed in sub-section (2) of the same section is mandatory or not?

Ans. No suo motu power of remission is exercisable under Section 432(1) of Code of Criminal Procedure It can only be initiated based on an application of the person convicted as provided under Section 432 (2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the concerned Court."

20. From the above, it is clear that no one has an indefeasible right to be released from prison either after the completion of 14 years or 20 years and it is for the appropriate Government to release a person under Section 432, Cr.P.C., for which the opinion of the Presiding Judge of the Court by which conviction was made or confirmed, is a sine qua non.

21. The learned counsel for the petitioners submitted that, since the Principal Sessions Judge, Thiruvallur, was a part of the Advisory Board and that he has also recommended for premature release of the petitioners, resort to Section 432(2), Cr.P.C. may not be necessary in this case.

22. I am not able to persuade myself to agree with this submission of the learned counsel for the petitioners, because, the Principal Sessions Judge, Thiruvallur, was not the Judge who convicted and sentenced the petitioners. As stated above, the petitioners were convicted and sentenced by the Principal Sessions Judge, Chennai and not by the Principal Sessions Judge, Thiruvallur. That apart, the Principal Sessions Judge, Thiruvallur is an Ex-Officio Member of the Advisory Board, because, Puzhal Prison is located within his territorial jurisdiction, i.e., in Thiruvallur District. When a Judge sits as an Ex-Officio Member in the Advisory Board, he does not exercise power under Section 432 (2) CrI.P.C. It is pertinent to point out that Section 432(2) CrI.P.C. will come into play only when the Government is in consideration of a petition under Section 432(1) Cr.P.C., in the light of the categorical statement of law made by the Supreme Court in Sriharan's case (supra) that suo motu exercise of power under Section 432(1), Cr.P.C. is not permissible and that exercise of power under Section 432(1) must be in accordance with the procedure under Section 432(2) Cr.P.C.

23. In the result, the writ petitions are allowed and the impugned orders are quashed with a direction to the first respondent to re-consider the case of the petitioners for premature release, within a period of six months from the date of receipt of a copy of this order, in the light of the law laid down by the Supreme Court in Sriharan's case (supra), subject to the receipt of opinion from the Presiding Judge under Section 432 (2) Cr.P.C. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cad

To

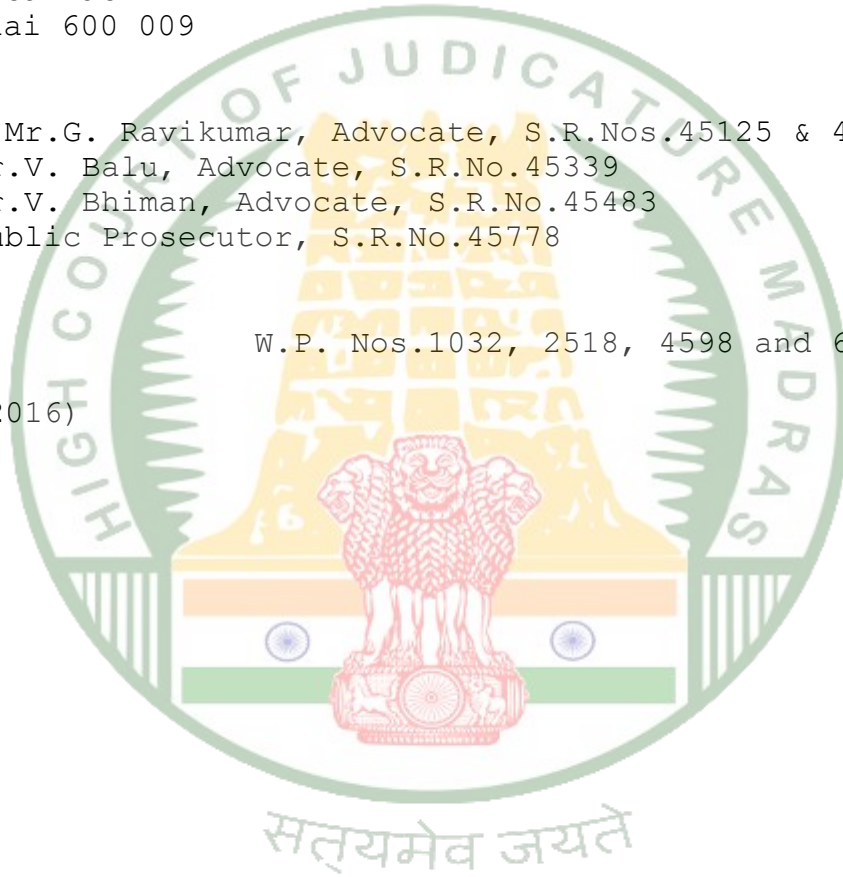
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+4cc's to Mr.G. Ravikumar, Advocate, S.R.Nos.45125 & 45126
+1cc to Mr.V. Balu, Advocate, S.R.No.45339
+1cc to Mr.V. Bhiman, Advocate, S.R.No.45483
+1cc to Public Prosecutor, S.R.No.45778

W.P. Nos.1032, 2518, 4598 and 6416 of 2016

GJ II(CO)
CA(16/08/2016)



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