



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 21 .06.2016

ORDERS DELIVERED ON : 12 .07.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.9956 of 2016

and

W.M.P.(MD)No.7862 of 2016

P.K.S.Surya Prakash

.. Petitioner

vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

2.The Superintendent of Police,
Madurai District,
Madurai - 625 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent issued in Letter No.1300564-CRM MDU dated 01.03.2016 and quash the same as illegal and consequently direct the 1st Respondent to process his application in accordance with the Notification issued by Government of India Ministry of External Affairs in G.S.R.No.570 (E) dated 25.08.1993 and in the light of the order dated 27.05.2010 passed by this Honble Court in W.P.(MD)No.6623 of 2010.

For Petitioner : Mr.C.Arul Vadivel @ Sekar

For R1 : Mr.D.Saravanan

For R2 : Mr.S.Chandrasekar
Government Advocate



O R D E R

Heard both sides.

2.The Petitioner has focused the instant writ petition praying for passing of an order by this Court in calling for the records of the First Respondent issued in Letter No.1300564-CRM MDU, dated 01.03.2016 and to quash the same as an illegal one. Further, he has sought for passing of an order by this Court in directing the First Respondent to process his application in accordance with the Notification issued by the Government of India Ministry of External Affairs in G.S.R.No.570 (E), dated 25.08.1993 and in the light of the order dated 27.05.2010 passed by this Court in W.P. (MD)No.6623 of 2010.

3.It is the case of the Petitioner that five false cases were registered against him, his father and mother along with others in respect of the quarry operations in the following crime numbers:-

(i) Crime No.162 of 2012 on the file of Keelavalavu Police Station, Madurai District;

(ii) Crime No.670 of 2012 on the file of Melur Police Station, Madurai District;

(iii)Crime No.470 of 2012 on the file of Y.Othakadai Police Station, Madurai;

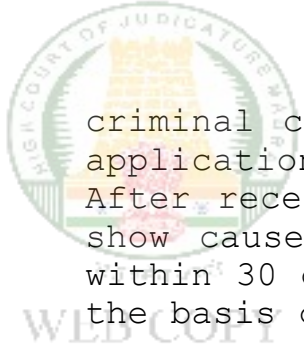
(iv)Crime No.396 of 2013 on the file of Melur Police Station and

(v)Crime No.417 of 2013 on the file of Melur Police Station, Madurai District.

4.Further, the Petitioner made an application for reissue of his Passport before the First Respondent. Since he has not received any summon from any Court, in any of the aforesaid cases, he had not mentioned about the pendency of any criminal case in any court of law in the said application.

5.The stand of the Petitioner is that since the application for renewal was not processed by the First Respondent/Regional Passport Officer, Government of India, Regional Passport Office, Madura, for a quite long time, he filed W.P.(MD)No.20915 of 2014 for issuance of Mandamus to direct the First Respondent to issue passport to him as per his passport application. His mother Shanthi also filed a similar Writ Petition in W.P.(MD)No.20917 of 2014 and this Court on 17.03.2015 by means of a common order, directed the First Respondent to consider his application and to pass appropriate orders on merits and in accordance with Law within a period of thirty days from the date of receipt of the copy of the order.

<https://hcservices.courtsof.gov.in/hcservices> 6.It is represented on behalf of the Petitioner before this Court that the Petitioner submitted a representation before the First Respondent on 26.03.2015 mentioning about the pendency of



criminal case filed against him and requested him to process his application in accordance with law as directed by this Court. After receiving his representation, the First Respondent issued a show cause notice, dated 28.04.2015 seeking explanation from him within 30 days with reference to the pendency of criminal cases on the basis of the report of the Second Respondent.

7.The version of the Petitioner is that in the said show cause notice it was clearly mentioned that unless an explanation was furnished by him within the stipulated period of thirty days after receipt of the show cause notice, he would be denied with the issuance of passport. Furthermore, it is projected on the side of the Petitioner that curiously, the First Respondent/Regional Passport Officer, issued another letter on the same day, viz., on 28.04.2015 refusing his application in File No.MD1077641666514, dated 25.04.2014, denying issuance of passport to him.

8.It comes to be known that the Petitioner filed a writ petition before this Court in W.P.(MD)No.10137 of 2015 praying for issuance of Ceriorarified Mandamus challenging the refusal letter dated 28.04.2015 and for a consequential direction to reissue the Passport to him within the time frame. This Court, by means of a common order dated 09.07.2015, had quashed the said order of the First Respondent and remitted the matter back to him for processing his application in accordance with Law. Thereafter, the First Respondent/Regional Passport Officer, Madurai once again passed the present impugned order in letter No.1300564-CRM/MDU, dated 01.03.2016 refusing to process his application on the ground that his action would attract Section 6(2)(f) r/w Section 12(1)(b) of the Passports Act, 1967.

9.The Learned Counsel for the Petitioner urges before this Court that after the decision of the Hon'ble Supreme Court in **MENAKA GANDHI v. UNION OF INDIA** reported in **1978 1 SCC 248**, the Government of India in exercise of power conferred under Section 22(a) of the Passport Act, issued a notification on 16.08.1979 exempting the citizens of India against whom proceedings in respect of an offence alleged to have been committed by him are pending before any Criminal Court in India and who produce orders from the court concerned permitting them to depart from India from the operation of Section 6(2) (f) of the Passport Act.

10.The Learned Counsel for the Petitioner proceeds to take a plea that the Government of India by means of notification, dated 25.08.1993, had modified certain conditions mentioned in the earlier notification. As such, the citizens against whom criminal cases are pending, are to be exempted from the operation of Section 6(2) (f) of the Passport Act, if they produce orders from the court concerned permitting them to travel abroad.

11. Added further, the Learned Counsel for the Petitioner relies on the decision in **SHREE PRASAD KUNDALIA v. UNION OF INDIA** reported in (1998) 2 Cal. LT 415, wherein it was held that 'every pendency of all types of criminal case would not automatically disentitle an applicant to refuse a passport. The Passport authority in the light of the material placed before him has to decide independently as to whether the pendency of any case or case is such an event, which should disentitle the applicant, in respect of the issuance of passport'.

12. The Learned Counsel for the Petitioner projects an argument that the Petitioner brought to the notice of the First Respondent/Regional Passport Officer, Madurai about the pendency of cases through a representation, dated 26.03.2015 after the order passed by this Court in W.P.(MD)No.20917 of 2014, dated 17.03.2015. However, it is represented on behalf of the Petitioner that the impugned order dated 01.03.2016 of the First Respondent is in violation of the Principles of Natural Justice and in violation of the order dated 09.07.2015 passed by this Court in W.P.(MD)No.10137 of 2015. In this connection, the clear cut stand of the Petitioner is that no notice was issued and no personal hearing was given to the Petitioner before passing the impugned order.

13. The Learned Counsel for the Petitioner emphatically contends that this Court in W.P.(MD)No.6623 of 2010, dated 27.05.2010, held that 'renewal of passport cannot be refused merely on the ground of pendency of criminal case. Also that it is represented on behalf of the Petitioner this Court had given liberty to him to approach the Court concerned with appropriate order on merits and in accordance with Law. However, the First Respondent/Regional Transport Officer, Madurai had even refused to process his application by invoking Sections 6(2)(f) r/w Section 12(1)(b) of the Passport Act, which is unsustainable in Law.

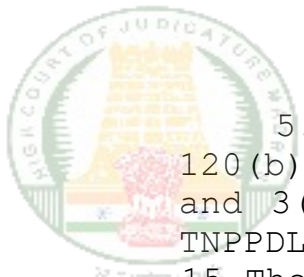
14. Conversely, it is the contention of the learned Central Government Standing Counsel that as against the Petitioner, cases were registered in the respective Crime numbers and they are as under:-

1. Keelavalavu Police Station Cr.No.162/12 under Sections 447, 109, 379, 406, 420, 434, 465, 467, 468, 471 and 304(ii) IPC r/w. 109, 114, 511 of IPC and 3(i) & 4 of TNPPDL Act & 6 r/w. 3(a), 4(a) of Explosives Substances Act.

2. Othakadai Police Station Crime No.470 of 2012 under Sections 447 IPC r/w 3(1) of TNPPDL Act.

3. Othakadi Police Station Crime No.555/12 under Sections 406, 420 IPC.

4. Melur Police Station Crime No.396/13 under Sections 447, 109, 379, 406, 420, 434, 465, 467, 468, 471 and 304(ii) r/w 511 of IPC and Sec. 3(a), 4(1) of Explosive Substances Act, 3(i) (ii) of TNPPDL Act and also under Sections 4(1), 4(1-A) and 21(b) MMDR Act.



5.Melur Police Station Crime No.417/13 under Sections 120(b), 406, 420, 434, 447, 430, 379, 304(II) r/w 511 IPC and 3(a) 4(a) of Explosive Substances Act, 3(i) (ii) of TNPPDL Act and 4(A), 4(1-A), 21(b) MMDR Act."

15.The stand of the First Respondent is that the Inspector of Police/Investigation Officer, Melur Circle, Madurai District, in the report dated 23.08.2013 had therefore, recommended for impounding of passport issued to him based on the pending criminal cases. Moreover, a show cause notice dated 06.09.2013 was issued to the Petitioner seeking explanation as to why action should not be initiated in terms of the Passports Act, 1967 and that the Petitioner had not responded to the said show cause notice.

16.Further plea of the First Respondent is that the Superintendent of Police, Madurai District, in the report dated 05.08.2015 had confirmed that a criminal case in P.R.C.No.06 of 2014 in Crime No.670 of 2012 under Sections 4 and 5(a) of Explosive Substances Act and 120(b) of IPC & 3(a), 4(b), 5(a) & 6 of Explosive Substances Act, 1908, is pending against the Petitioner before the learned Judicial Magistrate, Melur.

17.The learned Central Government Standing Counsel for the First Respondent contends that on receipt of the police report dated 05.08.2015 as stated supra, a show cause notice, dated 03.09.2015 was issued to the Petitioner seeking explanation as to why action should not be initiated against him in accordance with the Passports Act and further, the Petitioner had not furnished proper explanation in his explanation dated 30.09.2015 in regard to the criminal case pending against him before a Court of Law and therefore, the action of the Petitioner attracts Section 6(2)(f) of the Passports Act, 1967. As such, the office of the First Respondent is unable to process his Passport application and refused his Passport application and advised him to apply for reissue of Passport facilities after completion of criminal cases pending against him before Court of Law through letter dated 01.03.2016.

18.In response, the learned Government Advocate for the Second Respondent contends that the Petitioner is involved in the following Criminal Cases pending against him before the learned Magistrate, Melur and the details are as under:-

"(i)Keelavalavu Police Station Cr.No.162/12 under Sections 120(B) r/w 447, 379, 109, 120(B) 406, 409, 420, 430, 434, 465, 467, 468, 471 and 304(ii) IPC r/w. 109, 114, 511 of IPC and 3(i), 4 of TNPPDL Act 1992 and 6 r/w 3(a), 4(a) of Explosives Substances Act, 1908.

(ii)Melur Police Station Crime No.396/13 under Sections 120(B), 447, 379, 406, 420, 430, 434, 465, 467, 468, 471 and 304(ii) IPC r/w 511, 109, 114 IPC and Sec. 3(i) (ii), 4 of of TNPPDL Act 1992 and Section 6 r/w 3(a) 4 (a) of Explosive Substances Act.



(iii).Melur Police Station Crime No.417/13 under Sections 120(B), 447, 109, 379, 406, 420, 434, 465, 467, 468, 471 IPC r/w 511, 114 IPC and Section 3(i) (ii), 4 of TNPPDL Act and Section 6 r/w 3(a) 4(a) of Explosive Substances Act.

(iv)Melur P.S.Cr.No.670/12 U/s. 6, 3(a), 4(a), 4(b), 5(a) and 6 of Explosive Substances Act, 1908 r/w 120 B IPC.

(v).Othakadai Police Station Crime No.470 of 2012 under Sections 147, 447 IPC & 3(i) of TNPPDL Act r/w 109, 114, 149 IPC."

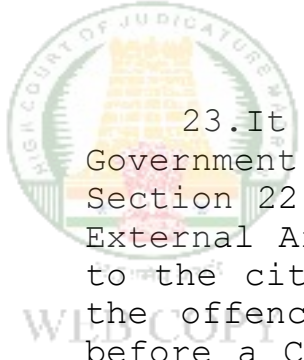
19.On behalf of the Second Respondent it is brought to the notice of this Court that this Court while granting anticipatory bail to the Petitioner, had ordered him to surrender his passport before the learned Judicial Magistrate, Melur, and this was ordered so as to prevent him from travel to foreign countries and fleeing from the clutches of Law. Apart from that the Petitioner was served with summons on 07.06.2016 in Melur Police Station Crime No.670 of 2012 under Section 6, 3(a), 4(a), 4(b), 5(a) and 6 of Explosive Substances Act, 1908 r/w 120 B IPC for appearance before the learned Magistrate, Melur on 15.07.2016. Also that for the above pending investigation cases many more documents are yet to be collected from the following departments:-

- "(1) Income Tax
- (2) Sales Tax
- (3) Banks
- (4) Export and Import Details from the Customs Department."

20.The learned Government Advocate for the Second Respondent contends that if the Petitioner is allowed to travel foreign country, he may abscond at any time and settle in foreign countries and he may not be able to answer the charges framed against him by the trial Court in P.R.C.No.06 of 2014. Also that he has to attend each and every hearing before the trial Court and in so far as Melur Police Station Crime No.670 of 2012, in P.R.C.No.06 of 2014, the Petitioner is the third accused and charge sheet was filed against him before the trial Court.

21.As a matter of fact, it is represented on the side of the Second Respondent that the trial Court took cognisance of the offences in P.R.C.No.06 of 2014 dated 28.01.2014 and the process against the Petitioner is being issued. Therefore, at this stage, if the Petitioner is allowed to travel to foreign countries, the entire criminal proceedings would come to stand still and in view of the pendency of criminal cases against him, the passport cannot be issued to him.

<https://hcservices.ecourts.gov.in/hcservices/> 22.This Court has heard the arguments of the Learned Counsel for the Petitioner and the Respondents and noticed their contentions.



23. It is to be borne in mind that the notification of the Government of India, dated 25.8.2013 in G.S.R.No.570(E), under Section 22(c) of the Passport Act, 1967, issued by the Ministry of External Affairs, New Delhi refers to the exemptions being granted to the citizens of India against whom proceedings in respect of the offence alleged to have been committed by them are pending before a Criminal Court in India and on production of orders from the Court concerned permitting them to depart from India from the operation of the provisions of Clause (f) of Sub-Section (2) of Section 6 of the Act, subject to the conditions prescribed therein.

24. One cannot ignore the vital fact that the Hon'ble Supreme Court in **Menaka Gandhi's case** reported in **1978(2) SCJ at Page 312**, had considered the validity of Section 10(3)(c) of Passport Act. Further, it is not out of place for this Court to relevantly point out the decision in **Deepak Dwarkasingh .vs. Union of India** reported in **AIR 1997 Bombay 181**, wherein, at Special Page 185 and 186 at Para 10, it is observed as under :

"10. In view of the aforesaid notifications by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore, cannot reject the application for mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification. In the present case, the passport authority has failed to bring the relevant notification to the notice of the applicant inspite of the fact that the application was pending before the authority for more than one -and -half years. In fact, it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of Section 6(2) (f). It is matter of regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the fundamental right of



the citizen. At no point of time, the passport authority had informed the Petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that will today the Petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the Petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases.

Accordingly, it is directed that in all cases covered by Section 6(2) (f), the passport authority shall forthwith inform the applicant about his right to apply to the concerned Criminal Court for permission to travel abroad in terms of the notification dated 25th August, 1993. In case, the applicant demands a copy of the notification, same shall be supplied by the passport authority subject to payment of charges. Needless to mention that it will be open for the applicant to approach the Criminal Court, where criminal case against him is pending, for permission to travel out of India. Even if he has not received summons from the Criminal Court, it will be open for the applicant to apply to that Court for a limited purpose of issuing the necessary orders for grant and/or renewal of passport. Considering the fact that the matter involves the fundamental rights of the applicant, the concerned Court shall decide such application as expeditiously as possible and preferably within four weeks from the date of receipt of such application, after notice to the prosecution. In case, the Criminal Court passes an order for issuance of passport, the passport authority shall forthwith issue the passport to the applicant subject to the terms and conditions mentioned in the notification but without making any endorsement on the passport about the pending criminal case."

25. In fact, the above sated decision, in **AIR 1997 Bombay 181**, was followed by the Gujarat High Court in the decision in the case of **Dhiren Baxi .vs. Regional Passport Officer, Ahmedabad** reported in **AIR 2003 Gujarat 108** and at para 10, among other things, it is held as under:-

"10.....As observed by the Bombay High Court, the passport authority, in future cases of similar nature, may inform the applicants, against whom any



criminal case is pending, about the Notification of the Central Government and may inform such applicant that they may approach the concerned and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the passport authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the criminal court permits the Petitioner to go abroad, the passport authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the ground of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if there are other grounds available to the passport authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the Petitioner, in case permission is granted by the Magistrate as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent criminal court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present Petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject."

26. At this stage, it is to be pointed out that neither the Passports Act, 1967, nor the Rules, require a passport holder to leave the borders of India.

27. In fact, it is the duty of the Passport authority to bring the relevant notification to the notice of an applicant, so as to enable him to apply before the concerned criminal Court seeking permission to travel abroad.

28. As per Section 10(3) of the Passports Act, 1967, the power conferred on the part of Passport authority to impound a passport is Quasi-Judicial one. Even if it is considered as an administrative power under Section 10(3) of the Passports Act, then, it entitles adverse Civil consequences.

29. In Law, the validity of an order/Judgment is to be based on the reasons stated therein and not by anything else, as per decision of the Hon'ble Supreme Court in **MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER, NEW DELHI** reported in **AIR 1978 SC 851**.



30. It is to be significantly pointed out that a citizen of a country has a 'Right To Travel', but the same is not an absolute one. Undoubtedly, Section 10(3) (e) of the Passports Act, 1967, gives power to the Passport authority to impound the passport of a person in respect of the offences alleged to have been committed by the holder of passport or travel documents are pending before a criminal court. In such a situation, this Court opines that an opportunity must be provided to the concerned individual by the Passport authority to present his case/contradict the view of the Passport authority for impounding a passport. If necessary opportunity is provided to the concerned person, then, it is a fair procedure and in tune with the Article 21 of the Constitution of India and also adhering to the Principles of Natural Justice.

31. In this connection, it is not out of place for this Court to make a significant mention that it is quite clear from the ingredients of Section 12(1)(b) of the Passports Act, 1967, that the said provision can only be attracted when certain ingredients are fulfilled and further the words 'Knowingly furnished any false information' and the words 'suppress any material information' with a view to obtain a passport or travel document under the Act', and 'without lawful authority, alters or attempts to alter or causes to alter the ingredients made in a Passport or transfer document' would assume importance as per decision in **RAGHURAM KAMISSETTY v. REGIONAL PASSPORT OFFICER, SEC'BAD, A.P. AND ANOTHER** reported in **2007 (6) ALD 466**.

32. It is to be pointed out that the show cause notice issued by the Second Respondent, dated 03.09.2015, the Petitioner had furnished his explanation/remarks on 30.09.2015 addressed to the Regional Passport Officer, Madurai and the Passport issuing authority/Passport Office, Madurai. In his explanation, the Petitioner had among other things stated that mere registration of First Information Report does not mean that a criminal case is pending against her within a meaning of Section 6 and Section 10 of the Passports Act, etc. Notwithstanding the fact that the impugned order of the First Respondent dated 01.03.2016 in Reference column at serial No.3, there is a mention of Petitioner's reply, dated 30.09.2015, sent by post, unfortunately the same was not adverted to, at the time of passing the impugned order. In fact, it is inter alia mentioned as follows:-

"You have suppressed the above material information in your passport application and applied for passport facilities. Your action having done so attracts Section 6 (2)(f) read with Section 12(1)(b) of Indian Passport Act, 1967. Hence, this office is unable to process your application for rendering further passport facilities and

the application No. MD1077641666514 is treated as refused.



You may apply for passport facilities after completion of criminal cases pending against you before court of law or with court order permitting you to travel abroad."

33. The very fact that the First Respondent/Regional Passport Officer/Authority, had not borne in mind the explanation, dated 30.09.2015 submitted by the Petitioner at the time of passing the impugned order of impounding the Petitioner's passport, this Court is of the considered view that the First Respondent had passed the impugned order dated 01.03.2016 in negation of the Principles of Natural Justice embodied in 'Audi Alteram Partem Rule'. As such, to secure the ends of justice, this Court interferes with the impugned order dated 01.03.2016 passed by the First Respondent and sets aside the same. Consequently, the writ petition succeeds.

34. In the result, the writ petition is allowed leaving the parties to bear their own costs. Resultantly, the impugned order dated 01.03.2016 passed by the First Respondent/Regional Passport Officer, Madurai, is set aside by this Court for the reasons assigned in this writ petition. Liberty is granted to the First Respondent to pass fresh orders in the subject matter in issue by passing a reasoned, speaking order on merits, by adverting to the explanation of the Petitioner, dated 30.09.2015, by taking note of the notification of the Central Government in G.S.R.No.570 (E), dated 25.08.1993 and in accordance with law (Ofcourse, by providing necessary opportunity to the Petitioner keeping in mind the Principles of Natural Justice).

35. Before parting with the case, this Court, pertinently points out that in view of the pendency of criminal case before the concerned criminal Court and that the Petitioner is to attend the criminal Court on 15.07.2016 for his appearance in P.R.C.No.06 of 2014, the, this Court deems it fit and proper in directing the Petitioner to file necessary Miscellaneous Application before the concerned Judicial Magistrate Court and to seek permission of the said Court to travel abroad. If such a Miscellaneous Petition is filed before Criminal Court, then, the concerned Court is to pass necessary orders imposing necessary conditions. If the Petitioner obtains necessary permission from the concerned/competent Criminal Court, where the cases are pending, the First Respondent/Passport Authority is to act in accordance with the said order, ofcourse, subject to the notification of the Central Government, as the case may be. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(Cs I)

/True copy/



To

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

2.The Superintendent of Police,
Madurai District,
Madurai - 625 001.

+1cc to Mr.C.Arul Vadivel @ Sekar, Advocate SR.No.35861

+1cc to Special Government Pleader SR.No.36363

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PRE-DELIVERY ORDER MADE IN
W.P.(MD) No.9956 of 2016
12.07.2016