

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Crl.A.No. 153 of 2016

Gopi @ Gopinath

... Appellant / Accused

Vs.

The State rep. By
Inspector of Police,
Law and Order,
F-2, Egmore Police Station,
Chennai - 8

... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure to set aside the Order dated 25.08.2015 passed by the Mahila Court, Chennai in S.C.No.253 of 2014

For Appellant : Mr.M.Selvam for
Mr.K.Premchandar

For Respondent : Mr.K.Mathan
Government Advocate (Crl.Side)

J U D G M E N T

The Appellant / Accused has preferred the instant Criminal Appeal before this Court (As an aggrieved person) as against the Judgment dated 25.08.2015 in S.C.No.253 of 2014 passed by the Learned Sessions Judge, Mahila Court, Chennai.

2. The Learned Sessions Judge, Mahila Court, Chennai while passing the Impugned Judgment in S.C.No.253 of 2014 on 25.08.2015 at Paragraph No.21 had observed that 'The prosecution witnesses P.W.1 to P.W.6 in their evidence had deposed that at about 9.45 a.m. they heard the noise / sound at the lift and after getting down from the lift when they came down, young girl came out from the lift and at that time, the Accused (Appellant) came out from lift and within a short time when the young girl's mother came out of the lift along with the said girl and stated that the elderly person wrongly behaved with her daughter and she gave a police complaint. Thereafter, when P.W.1, P.W.2 and P.W.4 after P.W.4 (victim girl) informed about the incident,

P.W.1, informed the Ward Doctor about the happening of occurrence and immediately he phoned up to the Police. Thereafter, all the witnesses had stated immediately the police came to the hospital and they caused enquiry with them and after knowing the arrival time of the Accused went near the maternity hospital gate and the Accused was caught. Thereafter, he was brought to the Security Room, lift nearby and when he was shown to the young girl (victim), she identified him and also he was identified at the police station. All the witnesses examined on the side of the prosecution and the sub-Inspector of Police, P.W.9 also examined them and the Accused was arrested at the maternity hospital. P.W.8, Doctor had deposed that in regard to the incident, the young victim girl's mother came and informed him and immediately he called a Female Doctor and asked the said Doctor to examine the young girl and that she had issued medical notes pertaining to the young girl and further stated that the said girl, P.W.4 was admitted as an inpatient in their hospital'.

3. In short, the trial Court had categorically observed in its Judgment that all the prosecution witnesses had deposed about the happening of occurrence and finally came to the resultant conclusion that the charge levelled against the Accused (Appellant) under Section 10 of the Protection of Children from Sexual Offences Act, 2012 was proved based on the evidence of Prosecution Witnesses and Documents and imposed a punishment of Five years of Rigorous Imprisonment upon the Accused (Appellant). Considering the fact that the Appellant / Accused was an aged person and he was imposed with a fine of Rs.1,000/- (Rupees One Thousand only), in default of payment of fine, he was further directed to undergo Three Months Simple Imprisonment. Besides this, the Accused (Appellant) was directed to pay a sum of Rs.5,000/- to the affected young girl (Minor - P.W.4). During the trial of the case, the Accused was already in prison, the said period was directed to be set off under Section 428 of Cr.P.C.,

4. Challenging the correctness, legality and validity of the Judgment of the Conviction dated 25.08.2015 in S.C.No.253 of 2014 passed by the trial Court, the Appellant / Accused has focussed the present Appeal before this Court by taking a plea that the trial Court should not have convicted the Appellant / Accused when the prosecution had failed to prove its case beyond reasonable doubt. In this regard, it is represented on behalf of the Appellant that the trial Court's Judgment is against Law, Weight of Evidence and probabilities of the case.

5. The Learned Counsel for the Appellant urges before this

Court that the very conception of the prosecution story through Ex.P.1 - Complaint was itself doubtful, in as much as the prosecution version was not supported through the evidence.

6. The Learned Counsel for the Appellant takes a plea that the evidence of P.W.4 (Victim) was not supported by the evidence of P.W.8 (Doctor).

7. Advancing his arguments, the Learned Counsel for the Appellant puts forward an argument that the trial Court should have disbelieved the evidence of P.W.4 (Victim girl) and when the Respondent / Prosecution had failed to prove the 'Arrest of the Appellant / Accused', his 'Confession' and 'Recovery' beyond reasonable doubt, then, the Appellant ought to have been acquitted.

8. In response, the Learned Government Advocate (Crl.Side) appearing for the Respondent / Prosecution submits that before the trial Court, on behalf of the Respondent / Prosecution, witnesses P.W.1 to 9 were examined and Exs.P.1 to P.10 were marked. However, no Material Objects were marked. On the side of the Appellant / Accused no one was examined as a witness and that no document was marked. Further, the trial Court had relied on the evidence of the Respondent / Prosecution witnesses and considered the documentary evidence available on record and came to the consequent conclusion that the Appellant / Accused was guilty in respect of an offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 and imposed a punishment of Five Years Rigorous Imprisonment and also directed him to pay a fine of Rs.1,000/-etc.,

9. At the outset, this Court relevantly points out that the charge levelled against the Appellant / Accused was that when the complainant (P.W.1), Tmt. Sherli Jayachitra Mariyadoss's daughter, 11 year old Elakiya (P.W.4) was admitted into the Children Hospital on 23.04.2014 in G-4 Ward at the second Floor for treatment of 'Epilepsy' and while she was under going treatment on 27.04.2014 at about 9.45 a.m., she informed that she was proceeding to purchase coffee powder and while she went alone in the Hospital Lift and when the Lift button was wrongly pressed to the third floor, the lift reached the third floor and got locked and since it was not working, she got afraid and when she pressed the alarm button, within a short time, the lift opened itself and at that time, the Accused (Appellant), who was in the third floor came into the lift and when the minor girl, Elakiya (P.W.4) informed him that she want to go the ground floor, he and the minor girl, Elakiya came in the lift downward at the first floor and again the lift got locked and came to halt, at that time, he squeezed her breasts and after removing

the zip, he took his private part and lifted her skirt and pressed on the back side and asked her to come near him and caught hold of her and when she raised a noise, at that time, the Lift opened itself automatically and he ran away from the said place and thereby committed an offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012.

10. In the instant case, it is the evidence of P.W.1 (Mother of Minor, P.W.4 - Victim Girl) that her husband, viz., Mariyadoss is working as a Electrician and her daughter, Elakiya (P.W.4) was aged 12 years and her date of birth was 03.08.2002 and that she was studying in VI standard at Lurth Terasa Girls Higher Secondary School situated at Perambur Church and that during 7th Month in the year 2013, because of their family problems, her daughter was affected 'Epilepsy Disease' and for that she was taking treatment at the Egmore Children Hospital.

11. It is the further evidence of P.W.1 that on 22.04.2014 since her daughter, P.W.4 was affected with the Epilepsy disease pain, she admitted her at the Egmore Government Hospital as an inpatient and that on 27.04.2014 morning she asked her for a coffee and she informed her daughter to purchase a coffee powder and after her daughter, P.W.4 left the place, the lift was not working and in the ward there was a talk that somebody's child was caught inside the lift and when she went and saw, at that time, the lift was functioning and therefore, since there was no problem, she returned to her ward and when her daughter (P.W.4) returned after purchasing the coffee powder she found legs were trembling and when she made an enquiry, then, her daughter (P.W.4) informed her that while she was proceeding in the Lift, she pressed the button wrongly in the Lift to proceed upwards (rather than the downwards) and therefore, the Lift proceeded upwards and halted and as such, she was standing in the lift because she could not come out of the lift and when somebody at the downstairs pressed the button, the lift opened itself and therefore, she came out of the lift and while she was standing at that time, an old man asked her daughter as to why she was standing there and that her daughter narrated the incident to him and apart from that when her daughter informed him that she was afraid, he informed that he would take her to the downstairs in the lift and while travelling with her in the lift, the said old man squeezed her daughter's breast and further he removed his Jatti and also pressed his male private part in her private part for which she informed him to leave her and when she raised noise, he closed her mouth with his hands and also embraced her and at that time, the lift came down and that her daughter (P.W.4) came out.

12. P.W.1 proceeds to state in her evidence that her

daughter, P.W.4 after purchasing the coffee powder informed her about the happening and immediately when she enquired with the security, she was informed that the old man was one Gopinath who used to supply milk to the hospital and when he returned, he would be sent to her ward. Further, P.W.1 adds in her evidence that when she came along with her daughter P.W.4 to the ward, Doctor asked her to where they had been and she informed the Doctor about the occurrence that took place and immediately, the Doctor, gave an information to the police through Phone and later the police had enquired her and her daughter and that she gave a complaint, which was received by the Police and Ex.P.1 was the complaint given by her and Ex.P.2 was copy of the Birth Certificate of her daughter, P.W.2.

13. P.W.2 (Father of P.W.4 - Victim - Minor girl) in his evidence had deposed that his daughter, P.W.4, would be frequently affected with Epilepsy and therefore, she was provided a treatment and based on Doctor's advise later, they had decided to provide treatment to her daughter at the 'Children Hospital' and one week prior to the occurrence his daughter, P.W.4 was admitted as an inpatient at the Hospital and that on 27.04.2014 morning at 9.30 a.m., he came to the hospital with the tiffin and since he was informed that during night time, one person alone to stay at the Hospital he asked his wife to remain with his daughter and later he went to his house and in the morning on the said day, he made an enquiry with his wife about his daughter and his wife (P.W.1) informed him that P.W.4, his daughter had gone for purchasing a coffee power and at that time, his daughter came to the ward and since his daughter, P.W.4 at that time was in palpitation mood, she was talking to his wife in a secret manner and it is the further evidence of P.W.1 that when he asked him about the said secrecy, his daughter, P.W.4 informed him that she pressed the button wrongly and therefore, the lift went upwards and at that time, the lift came to a halt in midway and in the lift there was an old man, who misbehaved with her and committed some mischief with her. Further when he asked his wife, P.W.1 about when was the mischief as to her daughter speaking about the same, his wife (P.W.1) informed him that when his daughter (P.W.4) was in the lift at that time, an old man had lifted her inskirt and pressed his male private part and further he also pressed her breast and that she got rid of him and after pressing the button, an alarm was raised and the lift came to a halt at the ground floor and soon after opening the lift she came out and purchased the coffee powder.

14. P.W.2, had deposed that they immediately searched for an old man but he was not there and after making an enquiry search, he was informed that there was no one like that. Thereafter,

based on her daughter's identification about an old man, the security people informed him that the said person used to supply milk to the hospital and his name is one Gopi and probably that person would be the said person. Thereafter, they gave a complaint before the Ward Doctor, who phoned up to the police and later the Police had come to the hospital and caused an enquiry with them. Besides this, the Accused (Appellant) was called to the police Station and they were also called to the police station and in the police station, her daughter, P.W.4 had identified the Accused (Appellant) and in this regard, he was examined by the police.

15. Since P.W.3 in his evidence had repeated as to what P.W.1 and P.W.2 had deposed before the trial Court, the same is not repeated. Further, P.W.3 stated in his evidence that the Accused (Appellant) was brought to the security room by the Police and P.W.4 had identified him and thereafter the Accused (Appellant) was taken to the police station and that he was examined by the police.

16. P.W.4 (Victim girl) in her evidence had deposed that on 27.04.2012 she was at the Baby hospital and that since she had Epilepsy she was admitted into the hospital in the three storey Hospital and she was admitted in the Second Floor and her mother (P.W.1) was there along with her and on that date at about 9.45 a.m., her mother P.W.1 asked her to purchase a coffee powder and at that time she wrongly pressed button of the lift (instead of lift going to the downwards, she pressed the 3rd button) and for long time, the lift came to a halt and when she pressed the bell on being afraid of the same, at that time, she was alone in the lift and one elderly person was standing outside and when that person pressed the button of the lift from out side, the door of the lift got opened and in the third floor when the door of the lift was opened apart from the elderly person, no one was there and at that time, an elderly person (old person) asked her where she should go and that she informed him that she had wrongly pressed the button of lift for downstairs instead of pressing upward and immediately, the elderly person came inside the lift and pressed the button and when the lift was proceeding the downwards, he squeezed her breast and she immediately moved from that place, again he came near her and made behind her and at the toilet portion pressed his private part and immediately she raised a noise and at that time, an elderly person, (old man) stated that he had not done anything and the lift halted at the First floor wherein many persons had boarded the lift and she had not informed the incident to any one.

17. It is the evidence of P.W.4 that after proceeding downwards, she was afraid and after purchasing coffee powder

came to the upstairs and informed her mother (P.W.1) and her mother, P.W.1 had caused an enquiry with the security people and thereafter, she went upstairs and when the lady police made an enquiry, with her she informed them and that she was sent for a check up and had informed the Doctor about the happening of the incident and she had seen the elderly person at the Hospital. Besides this, in Ex.P.4 (Section 164 Statement), her mother's signature was found and below her signature her mother had signed.

18. P.W.5 in his evidence had deposed that he worked as a security at the Egmore Government Children Hospital for the past seven months and seven months before he had left the job and that he had seen the Accused (Appellant) who used to come near the gate of the hospital and when he questioned him as to who is he, he informed that he would come to the hospital for supplying milk packets and that he knows the P.W.4, who was admitted into the hospital for her Epilepsy disease (while he was working at the hospital) and that during April, 27 when he was standing near the gate at about 9.45 a.m., in the morning there was a noise in the lift and at that time, the lift got stopped in the middle and all the near by public knocked the lift and again the lift came down and when the lift got opened at that time, P.W.4 (victim - minor girl) and the Appellant / Accused were in the lift and both of them came out of the lift and within a short time, P.W.4's mother came there and gave a complaint by stating that she wanted to see the Manager and that he took P.W.1 along with him to see the Manager and he does not know what was spoken by P.W.1 with the Manager and in this regard, he was examined by the police.

19. P.W.6 (in his evidence) had deposed that he does not know the Appellant / Accused and that he does not know the P.W.4 (victim girl) and he was on duty near the next gate, at that time, he heard the 'Noise / Alarm' and he along with Supervisor and Manager went to the said place and again the lift came down after working and at that time, in the lift the Appellant / Accused and P.W.4 were there and he does not know about the age of the child (P.W.4) and the police constable came there and asked him as to which police worked at the gate and that he informed her that he and another person worked at the gate and their names were noted by her.

20. P.W.7 in his evidence had deposed that on the date of occurrence he saw the Appellant / Accused and further that he is working as Security Manager and that on 27.04.2014 (sunday) at about approximately 9.00 a.m. to 10.00 a.m. in the morning in the administrative old block at the third floor, the lift got struck and the alarm was ringing and that when they went there

and found they saw the lift, which came down automatically to the ground floor and at that time, one girl child aged about 10 years came out in a frightening manner and at that time, the Appellant / Accused was in the same lift and when he enquired about him, he informed that he was an ex-employee and at the time of occurrence, he was supplying milk packets to the nurses quarters.

21. Proceeding further, P.W.7 adds in his evidence that later at about 10.15 p.m, the child who ran away from the lift along with her mother, P.W.1 came to his office and informed in the office that an elderly person (old man) who came in the lift had misbehaved with the child (P.W.4) and later the child's mother (P.W.1) had stated that she would present complaint before the police and he also advised her to lodge a complaint and subsequently constable Vijayalakshmi had enquired him and other security personnel. Furthermore, P.W.7 had stated that in Observation Mahazar, Ex.P.5, his signature is found along with one Krishnamurthy and that in Ex.P.6, Confession Statement given by the Appellant / Accused, he affixed his signature.

22.P.W.8 (Doctor) in her evidence had deposed that on 27.04.2014 when she was working at G.4 Ward at the Egmore Children Welfare Hospital, Minor girl, Elakiya (P.W.4), aged 12 years came running from the lift at the second floor at that time, along with her, her mother was there and both of them informed her that an elderly person (old man) had misbehaved with the child namely, P.W.4 and that he informed the Woman Doctor (who was working along with him) to examine the said minor girl and the said woman Doctor on examination of P.W.4 informed her that no injury or outer injury was found in her body and that she had furnished Ex.P.7, A.R. Copy. Further, she had sent the P.W.4 to the maternity hospital for medical examination and also gave a detailed report to F-2 Egmore Police Station based on the requisition of Inspector and Ex.P.8 was the said report and that he was examined by the Police.

23. P.W.9 (S.I. Of Police Law and order) in her evidence had deposed that while she was serving at F-2 Egmore Police Station as Sub-Inspector of Police at about 10.45 a.m., P.W.1 (Sherlin Jayachitra) presented herself before the police station and gave a complaint, which was received by her in P.S.Crime No.501 of 2014 and registered a case under Section 10 of the Prevention of Children from Sexual Offences Act, 2012 and Ex.P.9 was the First Information Report and later she examined P.W.1 and obtained a statement and also she went near the lift of Egmore Children Hospital and examined witnesses Rajesh and Krishnamurthy who were working there and in their presence prepared an Observation Mahazar (Ex.P.6) and a Rough Plan (Ex.P.10) and later she

examined Securities, Kumar, Dhanalakshmi and Magesh and recorded their statements.

24. It is the further evidence of P.W.9 that she examined P.W.4 (Affected minor girl) and also her father - P.W.2 and recorded their statements and based on the information, she went near the back side gate near the children hospital and examined witnesses Rajesh and Krishnamurthy, who identified the Appellant / Accused and after calling P.W.1, P.W.4 and on their identification, the Appellant / Accused was arrested and in the same place, before the same witnesses, a confession statement of the Appellant / Accused was recorded etc., Moreover, she gave a requisition to the Court Concerned for recording the Section 164 of Cr.P.C., statements of Minor girl (P.W.4) and her mother (P.W.1) and on the same day, she produced both of them before the Court and after completion of investigation, she laid a charge sheet under Section 10 of the Protection of Children from Sexual Offences Act, 2012.

25. It is the evidence of P.W.9 (In cross examination) that she does not know as to who had written Ex.P.1 - Complaint and that he had received the complaint and registering the case. It took some five minutes to ten minutes time and that on 27.04.2014 at about 11.15 a.m., she went to G-4 Ward and prepared Observation Mahajar and later examined P.W.2, (Father of P.W.4) and after registering the FIR, she examined witnesses.

26. In this connection, it may not be out of place for this Court to make a significant mention that Section 7 of the Protection of Children from Sexual Offences Act, 2012 defines of 'Sexual Assault'. As a matter of fact, it mentions that 'Person is said to commit Sexual Assault' :

'Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault'

'This clause defines the offence of sexual assault. It provides that a person is said to commit sexual assault if he with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration.'

27. Section 8 of the Act Provides 'Punishment for Sexual Assault'. Section 9 of the Act defines Aggravated Sexual Assault.

Section 10 of the Act mentions of 'Punishment for 'Aggravated Sexual Assault'

28. A reading of the ingredients of Section 10 of the Act clearly points out that 'who ever commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine'.

29. Coming to the facts of the present case, this Court significantly points out that the victim girl, P.W.4 in her evidence had narrated about the happening of the occurrence. Also P.W.4's Mother (P.W.1) and her Father, (P.W.2) had deposed before this Court as to what her daughter had uttered to them about the occurrence. In fact, in the instant case, the Ward Doctor of the Hospital on being apprised of the happening of the occurrence, immediately, phone up to the police and P.W.8 (Doctor) had also stated in his evidence that when P.W.4 came to him after the occurrence, he informed to the other Lady Doctor immediately to examine P.W.4 and further that she had furnished Medical Notes, Ex.P.8 in favour of P.W.4.

30. In reality, P.W.4 was admitted as an inpatient at the Egmore Children Hospital. Even in Section 164 of Cr.P.C., statement, namely, Ex.P.3 (P.W.1 statement) and Ex.P.4 Statement of P.W.4, they had mentioned about the occurrence and the Appellant / Accused. Suffice it for this Court to point out that the Appellant / Accused was identified by the P.W.4 and 'No Motive' in the present case was suggested to point out that a false case was foisted upon the Appellant / Accused.

31. In view of the detailed qualitative and quantitative discussions mentioned supra and also this Court considering the evidence of the prosecution witnesses and the documentary evidence available on record and on an overall assessment of the attendant facts and circumstances of the instant case in a conspectus fashion comes to an inescapable and irresistible conclusion that the Respondent / Prosecuting Agency had established its case against the Appellant / Accused beyond all shadow of doubt, as opined by this Court. Therefore, the finding of the trial Court that the Appellant / Accused had committed an offence under Section 7 of the Protection of Children from Sexual Offences Act, 2012 is free from any legal flaw.

32. However, this Court taking note of the fact that the Appellant / Accused is now presently aged about 70 years (being a senior citizen) and is in duress ever since from the date of Judgment of the trial Court on 25.08.2015 in S.T.C.No.253 of

2014, this Court exercising its judicial discretion reduces the punishment from that of Five Years Rigorous Imprisonment to that of Three Years Rigorous Imprisonment to secure the ends of justice.

33. In so far as it relates to the imposition of fine of Rs.1,000/- by the trial Court and the award of compensation of Rs.5,000/- (imposed on the Appellant) by the trial court to P.W.4 is not displaced by this Court. Consequently, the Criminal Appeal succeeds in part.

34. In fine, the Criminal Appeal is allowed in part. The Judgment of the trial Court dated 25.08.2015 in S.C.No.253 of 2014 is affirmed by this Court for the reasons assigned in this Appeal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Mahila Court,
Chennai
2. The district Collector,
Chennai.
3. The Director General of Police,
Mylapore, Chennai.
4. The Superintendent of Police,
Central Prison, Puzhal,
Chennia.
5. Inspector of Police,
Law and Order,
F-2, Egmore Police Station,
Chennai - 8

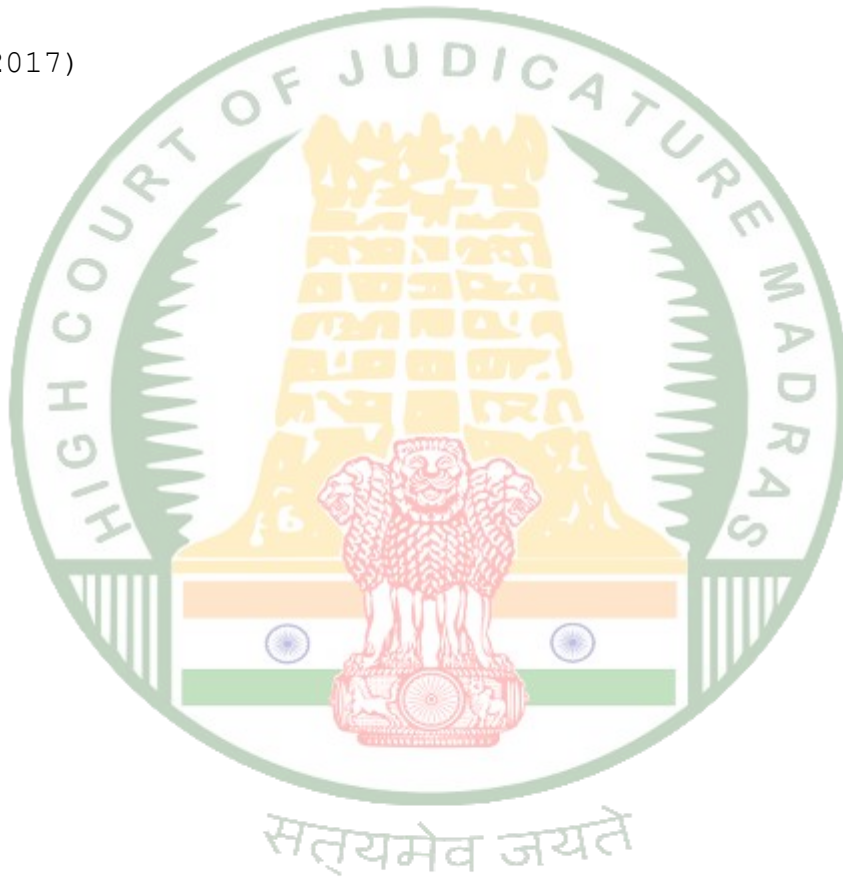
6. The Public Prosecutor,
High Court, Madras.

7. The Record Keeper,
High Court, Madras

+1cc to Mr.Selvam, Advocate, S.R.No.18284

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RSK (CO)
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