

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

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THE HON`BLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.No.27120 of 2010

and

M.P.No.1 of 2010

Muralidharan

... Petitioner

Vs

State represented by
Inspector of Police,
Tiruvannamalai Town
Police Station,
Crime No.1376 of 2010
Tiruvannamalai District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in C.C.No.451 of 2010 on the file of the learned Judicial Magistrate No.I, Tiruvannamalai and quash the same.

For Petitioners

: Mr.G.Ravikumar

For^t Respondent

: Mr.B.Ramesh Babu
Government Advocate (Crl. Side)

ORDER

The petitioner who is the sole accused in C.C.No.451 of 2010 has filed this Criminal Original Petition to quash the charges against him under Sections 419 and 420 IPC and under Section 15(3) of Indian Medical Council Act which is pending before the learned Judicial Magistrate No.I, Tiruvannamalai.

2. Brief facts of the case is that on 09.05.2010 at about 14.00 hours, the first informant who is also the Investigating Officer has on secret information took up suo motto investigation and thereafter, he along with S.I Boopathy, SSI Gembu, Constables and Village Administrative Officer and Village Assistant had gone to one Anbu Clinic in L.G.G.S Nagar within the jurisdiction of the Tiruvannmalai Town Police Station and had inspected the clinic where there was a quack / fake Doctor was alleged to be practising and conducted search at the place. At that time, one person ran away from the clinic. When the Investigating Officer had enquired the persons in that area, he was informed that the person who ran away is one Doctor Muralidharan, S/o.Chandran. Thereafter, a search had been conducted

in the premises by the Police party and they had found Allopathy Medicines and Stethoscope. The medicines and stethoscopes were recovered under the mahazar in the presence of the Village Administrative Officer and the Village Assistant and that he came to know that the above person who ran away from the place knowing that he was not qualified Doctor had in order to cheat the public had practised medicine and prescribed Allopathy drugs and administered injections to the public. Since the person had run away from the place, the properties were seized and taken to the police station and the case in Crime No.1376 of 2010 was registered for the offences under Sections 417 and 420 IPC and under Section 15(2)(b) of the Indian Medical Council Act. Thereafter, the very same Inspector who registered the complaint suo motto, had conducted the investigation and examined 11 witnesses including himself and had filed the final report against the accused for the offences under Sections 419, 420 IPC and under Section 15(3) of the Indian Medical Council Act before the learned Judicial Magistrate Court, Tiruvannamalai, which had been taken up in C.C.No.451 of 2010. The petitioner had been released on anticipatory bail by this court. After the filing of the charge sheet, the petitioner had filed this quash petition on the grounds that there is no prima facie material or prima facie case against the petitioner

connecting him with the offences mentioned in the charge sheet and that the reading of the FIR, charge sheet and the counter filed before this court reveals that one person is stated to have escaped from the spot / scene of occurrence and when the same is enquired with the persons available in the said clinic and that they have stated that the name of the person is Anbu Clinic Doctor Muralidharan and however, there is no material in the charge sheet from any of the witnesses implicating specifically that the petitioner is the person who escaped from the alleged scene of occurrence and no other independent or local witnesses have been examined by the respondent to connect the accused with the alleged case and the offence.

3. It is contended by the learned counsel for the petitioner that 12 witnesses have been examined and though certain other persons were present in the scene of occurrence and have stated to have named the person who absconded from the place, no person in the public have been examined and excepting the two persons who have been cited as witnesses in the observation mahazar, all other witnesses cited in the charge sheet are official witnesses who are unknown to the accused, who are the members of the police party, which conducted the search and seizure and thereby the investigation

suffers from infirmity and further since the person who has suo motto taken up investigation and registration of the case as complainant has conducted the investigation himself which is an illegality. The counsel further contended that there is no material for the offences under Sections 419 and 420 IPC and Section 15(3) of Medical Council Act against the petitioner in this case. In the statement of the witnesses recorded under Section 161 of Cr.P.C., LW1 Boopathy had disclosed that based on oral enquiry with persons available in Anbu Clinic he was informed that "one doctor Muralidharan escaped from the clinic" and this material is inadmissible and hearsay evidence without the examination of any specific person available in the alleged clinic. The same has been repeated in the statement of LW3 and therefore, their statements will be no use for prosecution and thereafter, he also submitted that the statement recorded under Section 161 of Cr.P.C from LW2 Mr.P.Gembu, Sub Inspector of Police is self-contradictory in nature. In earlier portion of the statement of LW1, it had been stated that one person escaped from the Anbu Clinic and in the continuing portion he has stated that the name of the escaped person name is one Prabhu. Further, there is no material connecting the said Prabhu with the petitioner Muralidharan in this case. Likewise, LW5, LW6, LW7 and other witnesses do not implicate the petitioner in this case

and taking into consideration, the statement of the 12 witnesses available on record there is absolutely no legal material to implicate the petitioner Muralidharan to the offences right from the registration of the case till filing of the charge sheet.

4. The learned counsel for the petitioner further contended that in this case the uncontroverted allegations made in the FIR / complaint and the evidence collected in support of the same do not disclose commission of any offence and make out a case against the accused and that the allegations made in the FIR or complaint are so absurd and inherently improbable and that on the available material no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

5. Further, to throw light on the illegality of the proceedings towards the aspect of the case being registered and investigated by the very same officer, the counsel for the petitioner has relied on the following judgments reported in **(1996) 11 SCC 709** (Megha Singh vs. State of Haryana), **1995 MLJ (Cri.) 410** (Thalavoi v. State rep. by Inspector of Police, Cheranmahadevi Police Station, Cheranmahadevi) and also the unreported decisions of this Court in **Cri.R.C.No.272 of**

2006, Crl.O.P.No.11980 of 2016 and Crl.O.P.No.11441 of 2017 and submitted that the statement of the witnesses regarding the search and the manner in which the accused is stated to have escaped from the place of occurrence do not seem to be probable.

6. Since the allegation that the Doctor escaped from the scene of occurrence right under the nose of the police party seems to be unreasonable and improbable, the counsel referred to Paragraph Nos.21 to 23 of the unreported judgment of this Court in Crl.O.P.No.11441 of 2017, (**V.Shanmugam vs. The Sub Inspector of Police, Mudaliarpet Police Station, Puducherry**), wherein this Court, while considering the aspect of the case being registered and investigated by the very same Officer and the aspect of probabilities in the prosecution case, has held as follows:

"21. Another limb of contention by the Learned Senior counsel for the petitioner is that the defacto complainant cannot lodge the complaint and also investigate it. What is evident from the FIR is that he is not only the complainant, but also registered it himself and took up the case for investigation. In support of the said contention, the Learned Senior Counsel has relied upon the following judgments:

(i)The Hon'ble Supreme Court in the decision reported

in 1996 (11) SCC 709 (Megha Singh v. State of Haryana), has observed as follows:

4. After considering the fact and circumstance of the case, it appears that there is discrepancy in the depositions of the P.Ws 2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW-3. Siri Chand, head Constable arrested the accused and no search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161, Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

(ii) In the judgment reported in 2005 CrLJ 377 (State of Karnataka, Paper Town...v. Sheshadri Shetty and others), the Karnataka High Court, following Megha Singhs case, held as follows:

5. Smt. Nesargi, learned Counsel who represents the accused was very quick to point out to us that the spirit of the principle laid down by the Supreme Court

was not that the Court would have to disregard the evidence of the Investigating Officer but it is her submission that the principle is much wider in so far as where the complainant happens to be the Investigating Officer and where he proceeds with the investigation that according to her, the entire investigation would be vitiated in law.

6. For purposes of resolving this rather complex legal issue, we have carefully applied our minds to the principle underlying the Supreme Court decision. The rule of fairness which is the bed rock of criminal investigations pre-supposes impartiality and starting from this premise what emerges is that where the Investigating Officer is the complainant, he is offending the principle of impartiality as far as the quality of the investigation is concerned. Though the Government Pleader has tried to salvage the position by contending that the Court should totally disregard the evidence of the I.O. P.W. 8 and examine the question as to whether the prosecution case is established on the basis of the remaining evidence, we need to point out that this procedure would not pass the legal test of fairness. The reason for this is because in his capacity as the Investigating Officer, P.W. 8 has not only given evidence at the trial but P.W.8 is really the main architect of the prosecution cases. Everything that P.W. 8 has done right from the recording of evidence to the drawing up of

panchanamas and the like would be hit by the lurking suspicion that if he is the complainant in the cases he may not be acting impartially. It is precisely this underlying principle which effects the quality of the whole of the prosecution case because P.W./8 as the Investigating Officer is the architect of that edifice. Therefore, though initially it did appear to us that the submission canvassed by Smt. Nesargi was not on the strong side, on a total review of the legal position we find that the learned Counsel was right in advancing the submission because the principle laid down in Megha Singh's Case would virtually render the investigation as tainted and if this is the position, it is virtually the end of the prosecution case.

7. One of the submissions canvassed by the learned Government Pleader was that a scrutiny of the present investigation will indicate that there is not the slightest hint of bias or partiality and therefore the Court should not bend over backwards and apply the principle in a vacuum and virtually shoot down the prosecution case. This argument is not altogether correct because the principles of ethical jurisprudence hold good irrespective of what the consequences are. Where the law prescribes a prohibition to the Investigating Officer being the complainant, such as a situation in which the law would preclude a prosecutor from being a witness at a trial or a situation in which where the prosecutor is absent, the Presiding Officer takes over

the role of the prosecutor. The law prescribes a certain bar for valid reasons, there can be no compromise and if the bar is transgressed then the consequences are automatic. It would be too dangerous to accept the argument that the Court should still test the material to find out whether there are traces of bias.

12. Before parting with this judgment, we need to remind the prosecuting authorities that the error that has occurred in the present case ought never to be repeated and the Director General of Police still bring it to the notice of all Investigating Officers in the state that there is a legal bar to an Investigating Officer functioning in the dual capacity of the complainant also and that this error should not be repeated because it would virtually vitiate even an otherwise reasonably good investigation.

(iii) The Apex Court followed the ratio in Megha Singhs case in the judgment reported in (2005) 5 SCC 258 (Mukhtiar Ahmed Ansari v. State) and acquitted the accused. However, the view of the Apex Court has been distinguished by the Apex Court in many cases including the case reported in (2015) 3 SCC 220 (Vinod Kumar v. State of Punjab) following the judgment reported in (2004) 5 SCC 230 (Jeevanantham v. State) holding that unless the defacto complainant, who also happens to be the investigation officer, is personally biased and prejudiced and personally

interested to get conviction to the accused, the contention cannot be sustained.

22. Therefore, considering the law and examining the facts of the case on hand, it is evident from the contents in the FIR that the complaint was lodged by the Sub-Inspector of Police, registered by him and he is also the investigating officer. In column 4 of the FIR, the type of information is suo-motto, in column 6, the name of complainant/informant is R.Rajan, Sub Inspector of police. However, the complaint commences as if the raid was conducted based upon reliable information. It also appears that the 13 accused were arrested even before the complaint was lodged and registered, which occurred only after the raiding party reached the station at 04.15 hours. This Court has already discussed the probability of the petitioner escaping from the premises in the presence of 13 police officials, is next to impossible. Also, being from the same department and being a recipient of several accolades including Rajiv Gandhi Award on 16.08.2016 and have worked under the defacto complainant himself, it is incomprehensible to believe that none of the officers recognized the petitioner.

23. As already pointed out, the FIR does not identify the 14th person as police constable Shanmugham. The petitioner has made flabbergasting allegations about the conspiracy by certain police officers to frame him in false cases. Specific allegations have

been made against P.Ramesh, an Special Task Force member who raided along with the complainant. The lateral inclusion of some Shanmugham of Kurivinatham in the FIR after initially describing that secured all the 13 accused and then implicating the petitioner to be that Shangmugham named in the FIR and terminating his services in a short span of time without any opportunity, reflects the malafide and prejudicial intention of some official with vested interest for whom the defacto complainant has acted as a stooge. It is pertinent to reiterate that the allegations were made by the higher officials in the note file without any basis, statements, documents or report to support the same. The contention of the Learned Senior Counsel for the petitioner is further substantiated by the fact that an attempt was made to misguide the learned Government Advocate to report to this Court as if the charge sheet was filed. The desperation to implicate the petitioner is clear and patent. Therefore, this Court is unable to come to any other conclusion that the petitioner is being targeted by the department, which, in my view, is vindictive and cannot be permitted".

7. In the judgment reported in **(1996) 11 Supreme Court Cases 709** (Megha Singh vs. State of Haryana) it has been held as follows: (Para 4)

"After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of Pws 2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridge were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation".

8. In a later decision in **(2005) 5 Supreme Court Cases 258** (Mukhtiar Ahmed Ansari vs. State (NCT of Delhi) it has been held as follows:(para 32 and 33)

" 32. The counsel also raised an objection against investigation by PW 11 ASI, Ram Mehar Singh. He is the complainant as well as Investigating Officer.

33. In Megha Singh v. State of Haryana, [1996] 11 SCC 709, the investigation was conducted by the very

same police official who had lodged the complaint. Deprecating the practice, this Court observed that in the absence of independent corroboration, no conviction can be recorded in such cases. In the opinion of this Court, it was a "disturbing feature of the case". The conviction of the accused was, therefore, set aside and he was ordered to be acquitted".

9. In the judgment of this court reported in **1995 MLJ (CrI.) 410** (Thalavoi v. State rep. by Inspector of Police, Cheranmahadevi Police Station, Cheranmahadevi) it has been held as follows:(Para 7)

"The learned counsel would contend that no independent witness has been examined in these cases and only the investigating officer who filed the complaint and his subordinate policemen have been examined and therefore, the prosecution version cannot be accepted. If no witness was available in the place where these substances were seized. I cannot hold that the case of the Prosecution should be thrown out, for non-examination of the independent witness. Therefore, this ground raised by the learned counsels cannot be accepted. With regard to the third ground raised by the learned counsels, I find that the Officer who lodged the complaint and registered the F.I.R. himself has done the investigation and filed the charge sheet. In revision case No.86 of 1991 the Sub Inspector of Police by name Chellasamy, Seranmadevi Police Station had

filed the complaint for the above said offence. The very same officer has examined the witnesses and had filed the charge sheet. Similarly in the other revision also the Inspector of Police by name Arumugham had filed the F.I.R and examined the witnesses under Sec.161 of Criminal Procedure Code and and filed the charge sheet. Therefore, the officer who filed the complaint had himself investigated and filed the charge sheet. Therefore, the officer who filed the complaint himself investigated and filed the charge sheet. This practice has been condemned by the Supreme Court and also our High Court as the allegation of the Officer who registered the F.I.R. Will be simply supported by him if the same officer takes upon the case for investigation because he may not record the Statement against his own version. In *Bhagwan Singh v. The State of Rajasthan*, 1976 CrI.L.J, 713, the Supreme Court has observed that the Head Constable who lodged the First Information Report himself did the investigation and it was an infirmity in the Prosecution Case. In *Gholtu Modi v. State of Bihar*, 1986 CrI.L.J.1031, the Patna High Court has held that when the officer who launched the complaint himself and taken up the investigation, the officer cannot be impartial while investigating the case and therefore, the prosecution must fail. In *Singaravelu v. State*, 1985 L.W.(CrI.) 336. This Court

also has considered this practice in a revision case for offence under Sec.75 of the City Police Act and as the Sub Inspector of Police after giving the complaint F.I.R. himself had taken up the investigation and filed the charge-sheet and also deposed before the court it was held that the procedure followed by him was illegal and, the prosecution must fail. In the light of these decisions, as the officers who launched the complaint and F.I.R themselves had taken up the investigation in these cases and filed the charge sheet, naturally there was no chance for verification of the correctness of the allegations made in the F.I.R by an independent investigation Officer and the Officer who lodged the complaint would have been naturally interested in securing the evidence to support his version and it cannot be stated that his approached was unbiased. Therefore, following the above decisions, I take the view that the procedure followed by the investigating Officers in these cases is illegal and the prosecution story cannot be accepted. In view of this infirmity the prosecutions are bound to fail".

10. In the unreported decision in CrI.R.C.No.272 of 2006

(P.Govindan vs. State, Rep. By Inspector of Police, CB CID, Dharmapuri) it has been held as follows:(para 19)

"19.In Megha Singh vs. State of Haryana

reported in AIR 1995 SC 2339, the Hon'ble Supreme Court has observed that a Head Constable, being the complainant on whose complaint a formal FIR was lodged and the case was initiated, should not have proceeded with the investigation of the case and that there was occasion to suspect fair and impartial investigation as he was not only the complainant but also the person who carried on with the investigation and examined the witnesses. Referring to the said observation made by the Hon'ble Supreme Court, a learned Single Judge of this Court (V.Kanagaraj, J.) in Rathinam vs. State by Forest Range Officer, Vazhapadi, Salem District reported in 2001-1-LW(CrI) 143 also observed, "this telling judgment of the Apex Court leaves no room to entertain any other thought and hence this propositions of law has to be accepted in toto". It was also observed therein as follows:

" It is held that a complainant himself cannot be the investigating officer in the case initiated by himself. Such of the acts assumed adopted by the Investigating Officer, since being opposed to fair and impartial investigation, they are hereby discredited. Hence at this score also, the prosecution fails to save its head".

11. In the unreported judgment in CrI.O.P.No.11980 of 2016 (Pandu vs. State by, Inspector of Police, J-1, Police Station, Saidapet,

Chennai) it has been held as follows:(para 8)

"8.The slip alleged to have been issued by the petitioners and said to have been sized by the complainant was not on the letter-pad showing the name and style of any clinic nor it contained the name of the petitioners. Except the stray averments that the slip was given by the petitioners for a relative of Guna, there is no other allegation against the petitioners that they were practising allopathy system of medicines. Though the FIR is not an encyclopaedia of the prosecution case, yet, it should contain at least minimum ingredients disclosing the commission of a cognizable offences. The whole complaint proceeds on mere surmises. Admittedly, this court had dismissed a batch of quash petitions filed by the quacks holding that FIRs in those case disclose the commission of cognizable offences. In the instant case, the complaint lacks minimum ingredients for making out a prima facie case against the petitioners to proceed further. The de facto complainant had not even obtained a statement from Guna to the effect that it was the petitioners who had given him the slip containing names of allopathy medicines. There is no material available to link the petitioners with the slip inasmuch as even according to the complainant the slip was seized from Guna. Thus, the prosecution against the petitioners is solely baseless and allowing the prosecution to proceed further against the petitioners would only be a wasteful exercise and would be abuse of process of Court.

Therefore, this Court has no hesitation to quash the proceedings as against the petitioners”.

12. The learned counsel for the petitioner contended that in the case referred above in CrI.O.P.No.11980 of 2016 even in the case where certain materials namely, the slip had been stated to have been recovered from the relative of Guna, the court finding no other material to link the petitioner with the slip recovered from the clinic had quashed the complaint against the accused and it was contended that the case on hand is a weaker prosecution in which no other independent witnesses have been examined to connect or identify that the petitioner is the person who absconded from the clinic. Moreover, the statement of the witnesses that they have gone as a group and that the petitioner absconded from the scene of occurrence is an unbelievable story and makes the case improbable and in such circumstances prayed that the continuation of the case without any legal material to connect the petitioner with the crime is an abuse of process of law thereby prayed for quashing of the case against him. When this Court put a question to him with regard to the personal bias on the part of the respondent, the counsel for the petitioner contended that the respondent is the local Inspector and that if he had been fair he should have handed over the instigation to his superior officer,

which has not been done and that his anxiety to complete investigation by himself shows his malafides and thus, the investigation is tainted. The reasoning of bias attributed to the respondent is accepted. Further, in respect of the improbability of the petitioner having escaped under the noose of the police party the counsel for the petitioner once again referred to para 22 of the judgment in CrI.O.P.No.11441 of 2017 of this Court.

13. The learned Government Advocate (Crl. Side) has filed counter. Even in the counter, no material has been stated. There is no material to connect that the petitioner is the person who escaped from the scene of occurrence and moreover, no independent witnesses have been examined and moreover, though it is stated in the FIR that other public were present, no effort was taken by the Investigating Officer to examine any person to link that the person who escaped from the scene of occurrence is the petitioner. As rightly pointed out by the learned counsel for the petitioner, this Court finds that while taking into consideration the uncontroverted allegations of the respondent, there is no material to connect the petitioner with the crime and the possibility of the allegation made in the FIR and it is an illustrious case where controverted allegations made in the FIR or

complaint and evidence collected in support of the same do not disclose commission of offence and make out a case against the accused and an abuse of process of law. In the result, the proceedings against the petitioner in C.C.No.451 of 2010, on the file of the learned Judicial Magistrate No.I, Tiruvannamalai, are quashed.

14. This Criminal Original Petition is ordered accordingly. Consequently, the connected miscellaneous petition is also closed.

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Index : Yes/No
Internet: Yes/No

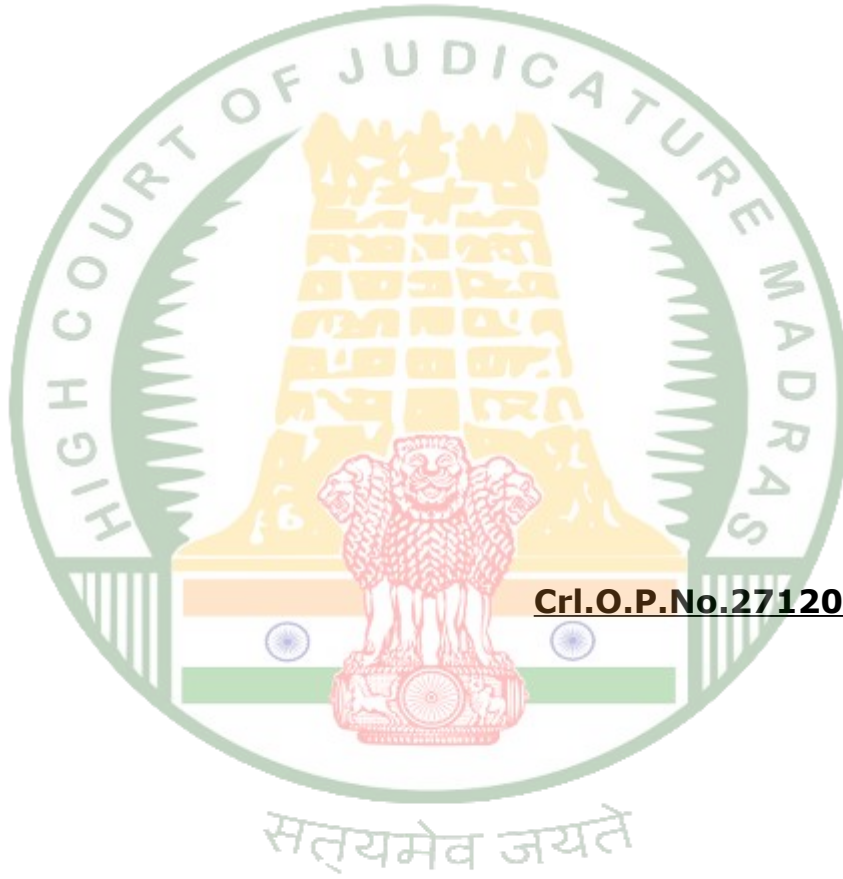
To

- 1.The Judicial Magistrate No.I, Tiruvannamalai,
- 2.The Public Prosecutor,High Court, Madras.
- 3.Inspector of Police,Tiruvannamalai Town
Police Station, Tiruvannamalai District.

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A.D.JAGADISH CHANDIRA, J

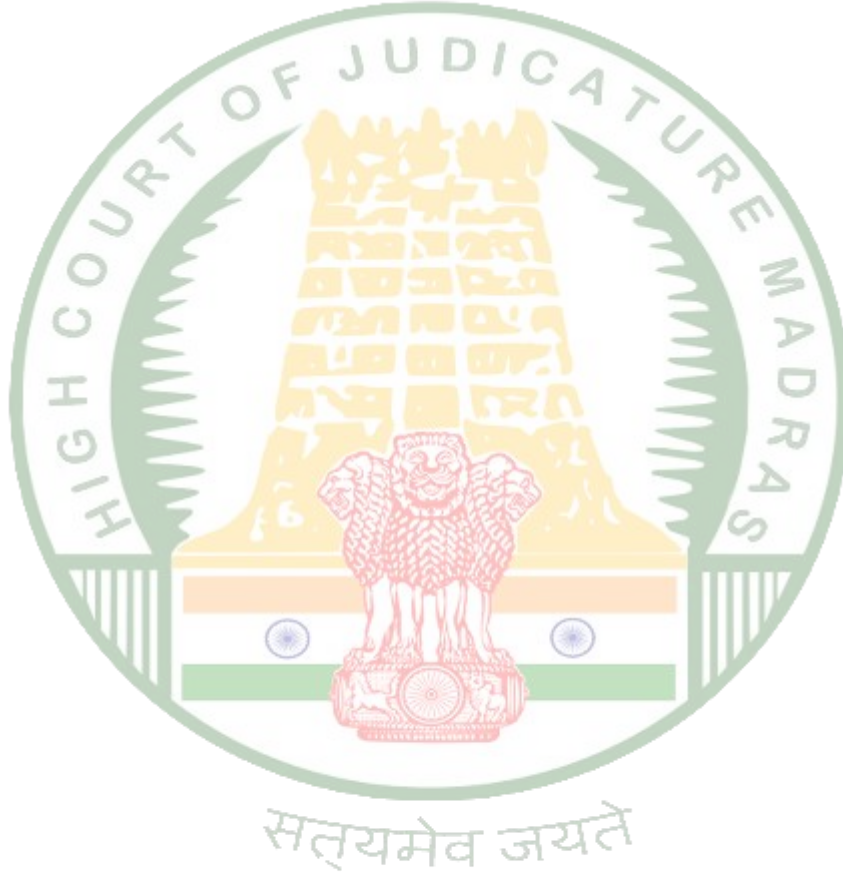
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