



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2017
DELIVERED ON : 10.08.2017

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRL.A. [MD] Nos.237, 241, 243, 244,
249, 250, 253, 258, 268 of 2014 AND 59 of 2015

Crl.A. [MD] No.237/2014:-

R.Balaji	.. Appellant / A-14
Versus	
State rep.by The Inspector of Police East Police Station Kumbakonam Thanjavur District. [Cr.No.261/2004]	.. Respondent / Complainant

Prayer:-

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure to call for the records relating to the judgment dated 30.07.2014 made in SC.No.275/2006 on the file of the learned Principal Sessions Judge, Thanjavur and set aside the same.

Crl.A. [MD] No.241/2014:-

R.Pulavar Palanisamy	.. Appellant / A-1
Versus	
State rep.by The Additional Superintendent of Police [Crime] Thanjavur, in Kumbakonam East Police Station. [Cr.No.261/2004]	.. Respondent / Complainant

Prayer:-

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure against the judgment and conviction dated 30.07.2014 passed by the learned Principal Sessions Judge, Thanjavur, in SC.No.275/2006.



Crl.A. [MD] No.243/2014:-

Santhalakshmi
த.சந்தலக்ஷ்மி

.. Appellant / A-3

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Versus

State rep.by

Additional Superintendent of Police [Crime]

Thanjavur, in Kumbakonam East Police Station

[Cr.No.261/2004]

.. Respondent / Complainant

Prayer:-

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure against the judgment and conviction dated 30.07.2014 passed by the learned Principal Sessions Judge, Thanjavur, in SC.No.275/2006.

Crl.A. [MD] No.244/2014:-

T.Thandavan

.. Appellant / A-16

Versus

State Rep.by

The Inspector of Police

East Police Station

Kumbakonam

Thanjavur District.

[Cr.No.261/2004]

.. Respondent / Complainant

Prayer:-

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure to call for the records in SC.NO.275/2006 on the file of the learned Principal Sessions Judge, Thanjavur, set aside the conviction and sentence imposed on the appellant vide judgment dated 30.07.2014.

Crl.A. [MD] No.249/2014:-

Sivaprakasam

.. Appellant / A-15

Versus

State rep.by

Additional Superintendent of Police [Crime]

Thanjavur, in Kumbakonam East Police Station

<https://hcservices.courts.gov.in/hcservices/>

[Cr.No.261/2004]

.. Respondent / Complainant

**Prayer:-**

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure against the judgment and conviction dated 30.07.2014 passed by the learned Principal Sessions Judge, Thanjavur, in SC.No.275/2006.

Crl.A.[MD] No.250/2014:-

G.Durairaj

.. Appellant / A-17

Versus

State Rep.by
The Inspector of Police
East Police Station
Kumbakonam.
[Cr.No.261/2004]

.. Respondent / Complainant

Prayer:-

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure to call for the records in SC.NO.275/2006 on the file of the learned Principal Sessions Judge, Thanjavur, set aside the conviction and sentence imposed on the appellant vide judgment dated 30.07.2014 and acquit the appellant.

Crl.A.[MD] No.253/2014:-

B.Jayachandran

.. Appellant / A-12

Versus

State Rep. by
The Inspector of Police
East Police Station
Kumbakonam.
[Cr.No.261/2004]

.. Respondent / Complainant

Prayer:-

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure to call for the records in SC.NO.275/2006 on the file of the learned Principal Sessions Judge, Thanjavur, for the trial of section 465 read with 197 IPC, set aside the conviction and sentence imposed on the appellant vide judgment dated 30.07.2014 and acquit the appellant.

Crl.A.[MD] No.258/2014:-

R.Vijayalakshmi

.. Appellant / A-4

Versus

State rep.by
Additional Superintendent of Police [Crime]
East Police Station, Kumbakonam
Thanjavur District.
[Cr.No.261/2004]

.. Respondent / Complainant

**Prayer:-**

Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure against the judgment passed by the learned Principal Sessions Judge, Thanjavur, in SC.No.275/2006 dated 30.07.2014.

Cr1.A.[MD] No.268/2014:-

State rep.by
The Public Prosecutor,
High Court, Madras
[Kumbakonam East Police Station
Crime No.261/2004]

.. Appellant/Complainant

Vs

1.B.Palanisamy [A-7]
2.R.Narayanasamy [A-8]
3.J.Radhakrishnan [A-9]
4.K.Balakrishnan [A-10]
5.G.Madhavan [A-13]
6.V.Balasubramanian [A-18]
7.P.Devi [A-19]
8.R.Mahalakshmi [A-20]
9.T.Anthoniammal [A-21]
10.R.Sathyamurthy [A-22]
11.K.Murugan [A-23]

.. Respondents / A7 to
A10, A13, A18 to A23

Prayer:-

Appeal filed under section 378 Cr.P.C., to set aside the judgment of acquittal of the respondents [A7 to A10, A13, A18 to A23] of the charges framed against them passed by the learned Principal Sessions Judge, Thanjavur in SC.No.275/2006 dated 30.07.2014 and convict the respondents [A7 to A10, A13, A18 to A23] for the charges framed against them, pass sentence against them in accordance with law.

Cr1.A.[MD] No.59/2015:-

Vasanthi

.. Appellant / A-5

Versus

State rep.by
Additional Superintendent of Police [Crime]
Thanjavur, East Police Station, Kumbakonam.
[Cr.No.261/2004]

.. Respondent / Complainant



Criminal Appeal filed under Section 374 [2] of the Code of Criminal Procedure to set aside the judgment passed by the learned Principal District and Sessions Judge, Thanjavur, in SC.No.275/2006 dated 30.07.2014.

For Appellants in
Crl.A.[MD] Nos.241/2014 : Mr.N.Mohideen Basha

For Appellant in
Crl.A.[MD] No.243/2014 : Mr.K.Balasundaram

For Appellant in
Crl.A.[MD] No.258/2014 : Mr.B.Jameel Arasu for
Mr.N.Anand Kumar

For Appellant in
Crl.A.[MD] No.59/2015 : Mr.K.Mohanasundaram

For Appellant in
Crl.A [MD] Nos.250&253/2014: Mr.S.Venkatesan

For Appellant in
Crl.A. [MD] No.237/2014 & for
RR 1 to 4 and 6 in Crl.A.[MD]
No.268/2014 : Mr.G.R.Swaminathan
for Mr.T.Antony Arulraj

For Appellant in
Crl.A.[MD] No.249/2014 : Mr.Gopalakrishna
Lakshmana Raju,
Senior Counsel
for Mr.R.Venkatesawaran

For Appellant in
Crl.A. [MD] No.244/2014 : Mr.P.Saravanan

For Appellant in
Crl.A.[MD] No.268/2014 : Mr.R.Rajarathinam
and Public Prosecutor
For Respondent in other assisted by
Appeals Mr.C.Ramesh
Addl.Public Prosecutor

For R5 in
Crl.A.[MD] No.268/2014 : Mr.O.Sivakumar

For RR 7 to 9 in
Crl.A [MD] No.268/2014 : Mr.P.Ganapathi
Subramanian



For R10 in
Crl.A.[MD] No.268/2014 : Mr.Y.Prakash

For R11 in
Crl.A.[MD] No.268/2014 : Mr.C.Ramachandran

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COMMON JUDGMENT

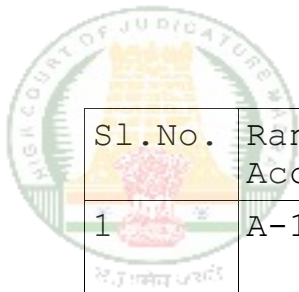
M. SATHYANARAYANAN, J.

The appellants in Crl.A.[MD] Nos.237, 241, 243, 244, 249, 250, 253, 258 / 2014 and 59/2015 are arrayed as Accused Nos.14, 1, 3, 16, 15, 17, 12, 4 and 5 respectively, in SC.No.275/2006 on the file of the Court of the Principal Sessions Judge, Thanjavur.

2. The above said appellants were charged for the commission of the following offences:-

Sl.No.	Charge No.	Accused Nos.	Sections
1	1 st Charge	1 to 5	304 r/w 120-B IPC [94 counts]
2	2 nd Charge	1 to 5	338 IPC [18 counts]
3	3 rd Charge	1 to 5 and 19, 20, 21	285 IPC
4	4 th Charge	1 to 3, 7 to 10 & 13 to 18	467 r/w 197 IPC
5	5 th Charge	1 to 3, 12, 22, 23	465 r/w 197 IPC
6	6 th Charge	7 to 10, 12 to 23	304 r/w 120-B r/w 109 IPC
7	7 th Charge	7 to 10 & 12 to 23	338 r/w 109 IPC
8	8 th Charge	1 to 3	Sec.46 & 47 of Tamil Nadu Recognised Private School [Regulation] Act, 1973
9	9 th Charge	1 to 3 & 19, 20, 21	Section 23 of Juvenile Justice [Care and Protection of Children] Act, 2000
10	10 th Charge	1 to 3	Sec.320 of Tamil Nadu District Municipalities Act, 1920

They were convicted and sentenced vide Impugned Judgment dated 30.07.2014.as follows:-



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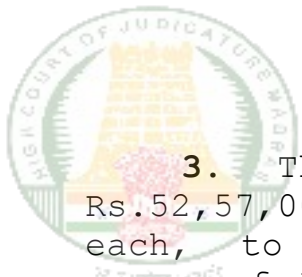
Sl.No.	Rank of the Accused	Conviction under Section	Sentence imposed
1	A-1	304 [2] IPC [94 counts]	To undergo rigorous imprisonment for ten years and to pay fine of Rs.50,000/- for each count and in default, to undergo simple imprisonment for two years for each count.
		338 IPC [15 counts]	To undergo rigorous imprisonment for two years and to pay fine of Rs.25,000/- for each count and in default, to undergo six months simple imprisonment for each count.
		337 IPC [3 counts]	To undergo rigorous imprisonment for six months and to pay a fine of Rs.10,000/- for each count and in default to undergo simple imprisonment for one month for each count.
2	A-1 to A-5	285 IPC	Each of the accused were sentenced to undergo six months rigorous imprisonment
3	A-1	467 read with 197 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo two years simple imprisonment
4	A-1, A-2 & A-12	465 read with 197 IPC	Each of the accused were sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.50,000/- each and in default, to undergo six months simple imprisonment.
5	A-1 to A-3	46 of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973	To pay a fine of Rs.100/- and in default, to undergo one month simple imprisonment.



Sl.No.	Rank of the Accused	Conviction under Section	Sentence imposed
		47[1] of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973	To pay a fine of Rs.500/- and in default, to undergo one month simple imprisonment.
6	A-1 & A-2	320 of the Tamil Nadu District Municipalities Act, 1920	To pay a fine of Rs.100/- and in default, to undergo one month simple imprisonment.
7	A-2 to A-5	304 [2] IPC [94 Counts]	Each of the accused were sentenced to undergo five years rigorous imprisonment.
		338 IPC [15 counts]	Each of the accused were sentenced to undergo rigorous imprisonment for two years for each count.
		337 IPC [3 counts]	Each of the accused were sentenced to undergo six months rigorous imprisonment for each count.
8	A-14 to A-17	467 r/w 197 IPC	To undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo one year simple imprisonment.

They were also acquitted of the charges - the details of which, are as follows:-

Sl.No.	Rank of the Accused	Acquittal under Section
1	A-1 to A-5	120-B IPC
2	A-19 to A-21	285 IPC
3	A-7 to A10, A-12 to A-23	304 IPC r/w 120-B r/w 109 and 338 r/w 109 IPC
4	A-2, A-3, A-7 to A-10, A-13, A-18	467 r/w 197 IPC
5	A-3, A-22, A-23	465 r/w 197 IPC
6	A-1 to A-3, A-19 to A-21	23 of the Juvenile Justice [Care and Protection of Children] Act, 2000
7	A-3	320 of the Tamil Nadu District Municipalities Act, 1920.



3. The Trial Court, out of the total fine amount of Rs.52,57,000/-, has ordered payment of compensation of Rs.50,000/- each, to the parents of the deceased 94 children, aggregating to a sum of Rs.47,00,000/- and Rs.25,000/- each, to the parents of the grievously injured 15 children, aggregating to a sum of Rs.3,75,000/- and a sum of Rs.10,000/- each, to the parents of the children, who suffered simple injuries, aggregating to a sum of Rs.30,000/- and the remaining amount should be credited to the Government Treasury.

4. The sentences of imprisonment imposed upon the accused were ordered to run concurrently and the Trial Court has also granted set-off under Section 428 Cr.P.C, regarding sentence already undergone by the convicted accused during investigation and trial.

5. The State, aggrieved by the order of acquittal of the accused in respect of some of the charges, also preferred Crl.A. [MD] No.268/2014.

6. All the appeals arise out of the Impugned Judgment dated 30.07.2014 in SC.No.275/2006 on the file of the Court of Principal Sessions Judge, Thanjavur. Therefore, all these appeals are disposed of by this common Judgment.

7. The case is known as "Kumbakonam School Fire Tragedy" case. The relevant facts leading to the present appeals, as culled out from the impugned judgment, are narrated as follows:-

7.1 In Survey No.762/B, a Superstructure is situate, bearing Door No.12-E and in Survey No.763/B, the Door Number of the Superstructure is 13. Both buildings are situate in Kasiraman Street, Kumbakonam Town, Thanjavur District. In the buildings / Superstructures, bearing Door Nos.12-E and 13, three Schools were run, namely, [1] Sri Krishna Aided Primary / Elementary School ; [2] Saraswathi Nursery and Elementary / Primary School ; and [3] Sri Krishna Girls High School.

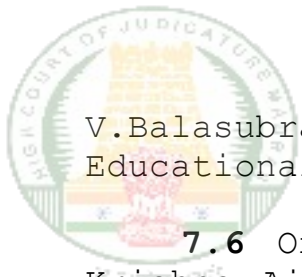
7.2 According to the prosecution, **Accused No.1 [A-1]** - Appellant in Crl.A.[MD] No.241/2014, viz., Pulavar R.Palanisamy, is the Administrator, Secretary and Correspondent of all three Schools. The wife of A-1 / Appellant in Crl.A.[MD] No.241/2014, viz., Tmt.P.Saraswathi, was arrayed as **Accused No.2 [A-2]** - Appellant in Crl.A.[MD] No.242/2014 and she is the Correspondent of Sri Krishna Aided Primary / Elementary School. One Prabakaran, who was originally arrayed as one of the accused and granted tender of pardon, was examined as P.W.1 and he was the Correspondent of Saraswathi Nursery and Elementary School.



7.3 Accused No.3 [A-3], viz., Santhalakshmi - Appellant in Crl.A.[MD] No.243/2014, was the Headmistress of Sri Krishna Aided Primary / Elementary School. P.W.1-Prabakaran, was the Headmaster of Sri Krishna Girls High School. P.W.115 - Manimozhi, was the teacher of IV Standard in Sri Krishna Aided Primary / Elementary School and also the Headmistress of Saraswathi Nursery and Elementary School.

7.4 Accused No.4 [A-4], viz., Vijayalakshmi - Appellant in Crl.A.[MD] No.258/2014, was the Noon Meal Organiser of Sri Krishna Aided Primary School and also the teacher of V Standard in the said School. **Accused No.5 [A-5]**, viz., Vasanthi - Appellant in Crl.A.[MD] No.59/2015, was the Cook in the Noon Meal Centre. P.W.177, viz., Sivasankari, was the Cooking Assistant in the said Noon Meal Centre. P.W.178 - Kalyani, was employed as a Sweeper in Sri Krishna Aided Primary School and was also a Menial, working in the house of A2 - Appellant in Crl.A.[MD] No.242/2014.

7.5 Accused No.6 [A-6], viz., M.Palanisamy, was the District Educational Officer, Thanjavur and the prosecution launched against him, was later on, withdrawn under Section 321 Cr.P.C. **Accused No.7 [A-7]**, viz., P.Palanisamy, was the Headmaster of Girls High School, Poodhalur and was also in additional in-charge as the District Elementary Education Officer, Thanjavur, at the time of the occurrence / incident. **Accused No.8 [A-8]**, viz., R.Narayanasamy, was the Headmaster of Kasanadu Government High School and was additional in-charge of the District Education Officer, Thanjavur and **Accused No.9 [A-9]**, viz., J.Radhakrishnan, was the Elementary Education Officer, Tiruvidaimarudhur and was also in additional in-charge as Kumbakonam Elementary Education Officer as well as the Assistant Elementary Education Officer, between 01.06.2004 and 16.07.2004. **Accused No.10 [A-10]**, viz., K.Balakrishnan, was the Additional Assistant Elementary Education Officer of Kumbakonam. **Accused No.11 [A-11]**, viz., K.Paramasivam, was the Tahsildar, Kumbakonam and the prosecution launched against him, was later on, withdrawn. **Accused No.12 [A-12]**, viz., B.Jayachandran - Appellant in Crl.A.[MD] No.253/2014, was the Inspection Engineer. **Accused No.13 [A-13]**, viz., Madhavan, was the Additional Assistant Elementary Education Officer of Kumbakonam. **Accused No.14 [A-14]**, viz., R.Balaji - Appellant in Crl.A.[MD] No.237/2014 was the District Elementary Education Officer, Thanjavur. **Accused No.15 [A-15]**, viz., Sivaprakasam - Appellant in Crl.A. [MD] No.249/2014 is the Assistant attached to the Office of the Thanjavur District Elementary Education Office. **Accused No.16 [A-16]** - Thandavam - Appellant in Crl.A [MD] No.244/2014, was the Superintendent in the very same office. **Accused No.17 [A-17]**, viz., G.Durairaj - Appellant in Crl.A.[MD] No.250/2014, was the Personal Assistant to the Thanjavur District Elementary Educational Officer. **Accused No.18 [A-18]**, viz.,



V.Balasubramanian, was the Thanjavur District Elementary Educational Officer [Nursery].

7.6 On the date of incident / occurrence on 16.07.2004, Sri Krishna Aided Primary / Elementary School was functioning in the first floor, having a thatched shed. **Accused No.19 [A-19]**, viz., Devi, was the Class Teacher of III-B. **Accused No.20 [A-20]**, viz., Mahalakshmi, was the Class Teacher of IV-C. **Accused No.21 [A-21]**, viz., Anthoniammal, was the Class Teacher of IV-A. **Accused No.22 [A-22]**, viz., Sathiamurthy, was the Commissioner of Kumbakonam Municipality. **Accused No.23 [A-23]**, viz., Murugan, was the Town Planning Officer of Kumbakonam Municipality. **Accused No.24 [A-24]**, viz., Kannan, was the Director of Elementary Education and the prosecution launched against him, was later on, withdrawn.

7.7 In Survey No.762/B, the superstructure bearing Door No.12-E, was located and in the ground floor, classrooms of Sri Krishna Aided Primary / Elementary School were conducted and in the first floor, classrooms of Sri Krishna Aided Primary / Elementary School as well as Saraswathi Nursery and Elementary School were located. In the second floor, classrooms of Sri Krishna Girls High School were conducted. In Survey No.762/B - Door No.12-E, the front portion was a tiled portion and the rear portion is having a thatched roof. The first and second floors were all tiled roofs.

7.8 In Survey No.763/B, bearing Door No.13, in the ground floor, classrooms of Saraswathi Nursery and Elementary / Primary School were located and in the first floor, Sri Krishna Aided Primary / Elementary School were located as well as the classroom of X-Standard of Sri Krishna Girls High School was also located. In the superstructure bearing Door No.13 in the said Survey Number, the entire ground floor was covered with tiled roof and the rear portion was covered with thatched roof and in the first floor, one portion was having tiled roof and the remaining portion was having thatched roof.

7.9 The superstructures bearing Door Nos.12-E and 13, are located side-by-side and to reach the first floor, one has to use the staircase of Sri Krishna Aided Primary / Elementary School and in one of the buildings, two staircases were there and one was located in the front portion and the other was located in the rear portion. The Noon Meal Centre of Sri Krishna Aided Primary / Elementary School was located on the western rear portion of Saraswathi Nursery and Elementary / Primary School and in the front portion of the Noon Meal Centre / Kitchen, classrooms of Sri Krishna Aided Primary / Elementary School as well as the classrooms of Saraswathi Nursery and Elementary School were located and very near to the Noon Meal Centre kitchen, toilets / washrooms were located.



7.10 The roof of kitchen of the Noon Meal Centre, were covered with thatched roof and so also the rear portion of Saraswathi Nursery and Elementary / Primary School and the classrooms of Saraswathi Nursery and Elementary / Primary School in the ground floor and some of the classrooms which were located in the first floor belonged to Sri Krishna Aided Primary / Elementary School and the roofs of the said classrooms were covered with thatched roof.

7.11 The prosecution further alleges that the staircases leading to the classrooms were very narrow and no proper lighting facilities, ventilation and drinking water facilities were there in the ground floor. There were about 700 students studying in all the three schools and eight toilets/washrooms were provided and no fire fighting equipments were also in place. In Sri Krishna Girls High School, no library or Laboratory was there.

7.12 On 12.07.2004 and 13.07.2004, the thatched roofs put up on the rear portion of Saraswathi Nursery and Elementary School, front portion of Sri Krishna Aided Primary / Elementary School, the kitchen of the Noon Meal Centre and the first floor of the premises located in S.No.763/B were removed and new thatched roofs were put up and the removed thatched roofs were kept aside for the purpose of using it as a firewood in the kitchen of the Noon Meal Centre and were kept very near to the kitchen as well as near the toilets/washrooms.

7.13 The prosecution further states that the brother of A-2 - Tmt.P.Saraswathi [Appellant in CrI.A.[MD] No.242/2014], was the brother-in-law of A-1 [Pulavar R.Palanisamy - Appellant in CrI.A. [MD] No.241/2014] as well as his wife, viz., Dhanalakshmi, died and their four daughters, viz., Santhalakshmi [Appellant in CrI.A. [MD] No.243/2014] ; Hemalatha [wife of P.W.1] ; Usharani [P.W.109] and Krishnaveni, were adopted by A-1 and A-2 and they were brought up by them. P.W.109-Usharani, was a teacher in Sri Krishna Aided Primary / Elementary School and her husband is P.W.157 - Kamaraj. A-1 and A-2 - Appellants in CrI.A.[MD] Nos.241 and 242/2014, had purchased lands in Survey No.763/B in the name of P.W.109 and they obtained Housing Loan from Kumbakonam Cooperative Society and to discharge the said loan, they were deducting amounts from the salary of P.W.109.

7.14 Subsequently, there was a misunderstanding between P.W.109 and A-1 and A-2 on account of the fact that P.W.109 insisted not to deduct any amount from her salary towards discharge of loan amount to Kumbakonam Cooperative Society and in this regard, P.W.109 had given representations/complaints to A-10, A-19 and A-11 as against A-1 and A-2 under Ex.P.109 and the series of complaints given by her, were also marked as Exs.P.19 to 23.



7.15 A-1 - Appellant in CrI.A.[MD] No.241/2014, directed shifting of the students studying in VI and VII Standards in Sri Krishna Aided Primary / Elementary School as well as the student studying in Saraswathi Nursery and Elementary School to Sri Krishna Aided Primary / Elementary School to show the Teacher-Students ratio in Sri Krishna Aided Primary / Elementary School as 1 : 40, for the reason that the officials of the District Elementary Education Department are coming for inspection on 14.07.2004. A-3 [Appellant in CrI.A.[MD] No.243/2014], in compliance of the directions / orders of A-1, shifted the students accordingly and however, shifted them to their respective classes due to the fact that the officials attached to the District Elementary Education Officers did not come for inspection on 14.07.2004.

7.16 On 15.07.2004, anticipating inspection, same process was done and on that day also, the officials did not turn up. Similarly, on 16.07.2004, same exercise was done and on that day, P.W.1 - Correspondent of Saraswathi Nursery and Elementary School, went on leave. On 16.07.2004, at about 11.00 a.m., preparation was made to cook food under the Noon Meal Scheme for the children and at that juncture, the removed thatched sheets which were kept nearby, caught fire and it spread to the thatched roofs put up in the above said classrooms.

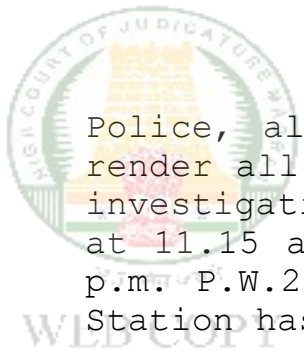
7.17 P.W.215 - Inspector of Police, Kumbakonam East Police Station, who was on patrol, on hearing the telephonic information, rushed to the spot and so also P.W.228 - the Deputy Superintendent of Police, Kumbakonam, on hearing information through P.W.215. The other police officials, viz., P.Ws.216, 219, 220, 221, 223, 224, 225 and 227 and Mr.Gunasekaran, Inspector of Police [since deceased] had also rushed to the spot. P.W.137 - Shanmugam, who was running a grocery shop near the said Schools, gave information to the Fire and Rescue Services and they brought Fire Tenders and tried to put off / control the flame and at that juncture, the fire emanated from the kitchen of the Noon Meal Centre, spread up to the first floor. The children studying in the Schools, were fleeing through the front entrance by using the staircases. P.W.138, who was a nearby resident to the School, provided the Fire and Rescue Services with water. P.Ws.141, 143, 144, 145, 146 as well as 142 volunteered their services to rescue the children from the Schools ; but on account of heavy smoke, they were unable to enter the Schools. They made an attempt through the house of Gurukkal Nagarajan located on the Southern side of the Schools and broke open the Jolly/Window and entered the School and they saw the fire and also heard the scream of the children and when they made an attempt to enter inside the premises, a portion of the roof fell down and they also saw the deceased children and injured children and with the help of the police, they brought



them down and through the vehicle of P.W.215, sent the children to the Government Hospital, Kumbakonam, for treatment. The deceased children were also taken to the Government Hospital, Kumbakonam and on hearing the news, people started assembling there and to control them, police personnel also came to the spot. P.W.164, was the maternal uncle of the deceased children, viz., Priyanka and Soniya, and on hearing the information, he joined with the public to rescue the children. P.W.153 was the Fire Officer attached to the Fire and Rescue Services at Kumbakonam and on hearing the telephonic information about the incident, took 17 personnel of Fire Brigade and went to the spot with two Fire Tenders as well as Ambulance and reached the spot at 11.00 a.m. and they found a portion of fire inside the nearby staircase of Sri Krishna School and they divided into two teams and tried to enter the premises and found the staircases leading to the Floors above the ground floor, were narrow and they also heard the scream of the children and found lot of smoke and the place was also very dark and despite the said fact, they rescued some children and found some of the children with burning injury and some of them without any injuries. They rescued the children with the help of police and public. Similarly, P.Ws.152, 150, 151 and 149, who were the officials of the Fire and Rescue Services of the nearby places, had also rushed to the spot and tried to control the fire. P.W.154, the Ambulance Driver, on hearing the telephonic information, went to the spot with the Ambulance and took the children to the Government Hospital, at Kumbakonam and also took the body of the deceased children to their places. P.W.195 - Photographer, on instructions from P.W.215, took photographs of the spot, marked as Ex.P.16 series and also went to the Government Hospital at Kumbakonam and took photographs of the bodies of the deceased children and also recorded the same in the Compact Disc [CD] and those material objects were marked as M.Os.17 series and 18 respectively.

7.18 P.W.15, - Bharathy, was the Village Administrative Officer of Baburajapuram during the year 2004 and was also additional in-charge of Kumbakonam City Village Administrative Officer and he went to Kumbakonam East Police Station and at about 12.00 Mid Noon, lodged a complaint with regard to the said fire accident under Ex.P.16. P.W.215, the Station House Officer, upon receipt of the complaint under Ex.P.16, has registered a case in Cr.No.261/2004 under Section 304[A] IPC. The Printed First Information Report was marked as Ex.P.420 and dispatched the originals to the Court of Judicial Magistrate, Kumbakonam.

7.19 The District Superintendent of Police, Kumbakonam, vide proceedings under Ex.P.557 dated 16.07.2004, had appointed the Additional Superintendent of Police of Prohibition Enforcement Services, Tirunelveli, viz., Thiru.Kalyanasundaram, as the Investigating Officer and he was examined as P.W.229. The Superintendent of



Police, also instructed the Kumbakonam Taluk Police Personnel to render all help and assistance to P.W.229 to conduct and carry out investigation. P.W.229, on receipt of the telephonic information at 11.15 a.m. on 16.07.2004, went to the spot and at about 12.15 p.m. P.W.215, the Station House Officer of Kumbakonam East Police Station has handed over the Case Diary to P.W.229.

7.20 P.W.229 - Investigating Officer, commenced the investigation and asked the Assistant Director of Forensic Laboratory, Thanjavur, as well as the Police Photographer to come to the spot and accordingly, at about 14.00 hours on 16.07.2004, the Assistant Director of Forensic Laboratory, Thanjavur, viz., Vijayakumar [P.W.206] came to the spot along with his officials. So also the photographer [P.W.185] and he took photographs marked as Ex.P.15 series. P.W.206, after inspecting the place, submitted a detailed report marked as Ex.P.395 and he also went to Kumbakonam Government Hospital along with P.W.229 and saw the burnt bodies of the children and gave the following opinion:-

"Out of three ovens, the fire not subsidized in two ovens and the fire / spark emanated from the two ovens, touched the thatched roof of the kitchen and it spread over places which included the thatched roof put up on the classrooms of the first floor. From the classrooms with thatched roof, a way was available on the South-West column and therefore, the children might have find it difficult to come out and the entrance on the Eastern side has been blocked by putting up a wall."

He further opined under Ex.P.395 that, "the fire emanated from the kitchen of the Noon Meal Centre spread to other places and thereby, the fire accident took place."

7.21 P.W.229 continued with the investigation and examined the witnesses and recorded their statements under Section 161[3] Cr.P.C., and investigated the place of occurrence and in the presence of P.W.155 and one Senthilkumar, prepared the Observation Mahazar marked as Ex.P.134. P.W.229 had drawn the Rough Sketch under Ex.P.543 on 16.07.2004, which exhibited the topography of the School and the other Rough Sketches have also been marked as Exs.P.544 and 545 respectively. At about 3.30 p.m., on 16.07.2004, P.W.229 went to the first floor of Sri Krishna Aided Primary / Elementary School and seized the articles marked as M.Os.2 to 5 under the cover of Mahazar - Ex.P.135 and at about 4.00 p.m. on the same day, he went to the kitchen of the Noon Meal Centre attached to Sri Krishna Aided Primary / Elementary School and seized M.Os.6 to 12 under the cover of Mahazar - Ex.P.136. At about 6.00 p.m., P.W.229 effected seizure of M.Os.13 and 14 from outside the kitchen under the cover of Mahazar - Ex.P.137 in the presence of P.W.155 and one Senthilkumar.



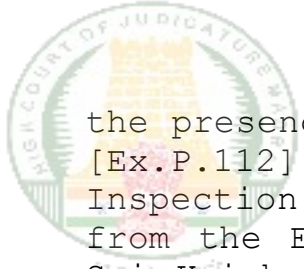
7.22 P.W.229 went to the Government Hospital at Kumbakonam and at about 10.00 p.m. on 16.07.2004, recorded the statements of the injured children, viz., P.Ws.6 to 14 and 16 under Section 161 [3] Cr.P.C. He went to SD Hospital at Kumbakonam and recorded the statement of the injured student, viz., P.W.2 and went to SP Hospital and recorded the statement of P.W.3 and subsequently, examined the witnesses and recorded their statements.

7.23 P.W.229, on the basis of the investigation conducted by him, altered the charges to one under sections 304, 338, 285, 108 [1], 109 read with Rule 3 of the Tamil Nadu Primary Education Rules and Rule 5 of the Tamil Nadu District Municipalities Act and the Altered Report was marked as Ex.P.542 and dispatched the same to the Court of Judicial Magistrate, Kumbakonam.

7.24 P.W.229 conducted inquest on the dead bodies of the deceased children in the presence of Panchayatdars and the Inquest Reports were marked as Exs.P.425 to 518. P.W.215, the Station House Officer of Kumbakonam East Police Station, in obedience to the orders passed by the Investigating Officer / P.W.229, went to Thanjavur Government Medical College Hospital and conducted inquest on the bodies of four students who were admitted for treatment and the Inquest Reports were marked as Ex.P.421 to 424.

7.25 P.W.229, on receipt of information, effected arrest of A-1 [Palanisamy] ; A-2 [Saraswathi] ; A-3 [Santhalakshmi] at about 06.00 a.m. on 17.07.2004 and recorded their statements separately and thereafter, brought them to Kumbakonam East Police Station and handed over them to P.W.215. P.W.229, as per the information received, effected arrest of A-4 and A-5 respectively near the junction of Kasiraman Street, Kumbakonam at about 10.00 a.m. on 17.07.2004 and recorded their statements independently and sent A-1 to A-5 for remand to the Court of Judicial Magistrate, Kumbakonam.

7.26 P.W.229 recorded the statements of the teachers, viz., P.Ws.110, 121, 122, 123 and thereafter, dispatched a Special Team to examine and record the statements of the students in all the three Schools. Accordingly, P.W.228 had examined and recorded the statements on 18.07.2004 and P.W.229, on 19.07.2004, had recorded statements of P.Ws.91, 109, 111 to 120 and 124 and also recorded statements of A-19 [Devi] ; A-20 [Mahalakshmi] and A-21 [Anthoniammal]. P.W.229, on 19.07.2004 at about 3.00 p.m., went to the spot and seized Exs.P.24, 40, 56, 58, 63, 79 to 111 from the classroom located in the ground floor of Sri Krishna Aided Primary / Elementary School in the presence of P.W.147 - Village Administrative Officer under the cover of Mahazar [Ex.P.78] and on 19.07.2004, from the second floor of Sri Krishna Girls High School, seized Exs.P.25, 26, 29, 30, 32, 42, 43, 61, 113 to 131 in



the presence of P.W.146 and one Sampath under the cover of Mahazar [Ex.P.112]. Similarly, on the same day, P.W.229 seized the Inspection Record of the Inspector of Schools, marked as Ex.P.133 from the Eastern side of the room located in the first floor of Sri Krishna Aided Primary / Elementary School in the presence of P.W.149.

7.27 P.W.229, during the course of investigation, found that the Administrator of Sri Krishna Aided Primary / Elementary School, viz., A-1 [Palanisamy], had purchased the said School which was a running School during the year 1963 and was functioning as the Headmaster of the said School till the year 1988. The wife of A-1, viz., A-2, was the Headmistress and Correspondent and after expiry of the term in the year 1992, was functioning as the Secretary and A-3 was the Headmistress of the said Schools and A-1 got upgradation to Middle School during the year 1993 and was running classes for 6th, 7th and 8th Standard and in the year 1993, got approval for upgradation to run the School as High School under the name and style as "Sri Krishna Girls High School" and after the said efforts, A-2 and A-3 had assisted A-1. P.W.229 continued with the investigation and one of the team members, viz., P.W.225 - Inspector, had effected arrest of A-9 on 20.07.2004 and recorded his statement and another Inspector - P.W.220, had effected arrest of A-6 on 20.07.2004 and recorded his statement under Ex.P.229. Similarly, another Inspector attached to the Special Team, viz., P.W.215, had effected arrest of A-11 and recorded his statement. A-7 was arrested by P.W.227 on 20.07.2004 and A-18 was also arrested. P.W.219 effected the arrest of A-12 on 20.07.2004 at 11.00 a.m. and recorded his statement and P.W.223 effected arrest of A-10 on 20.07.2004 at 1.00 p.m. and recorded his statement. The Assistant Inspector of Police attached to the said team, viz., P.W.226, effected arrest of A-13 on 20.07.2004 at 7.00 p.m. and recorded his statement. P.W.229 further altered the charges to one under Sections 120-B, 162, 197 IPC and Section 5 of the Tamil Nadu Recognised Private Schools [Regulations] Act, 1973 and Rule 15[2] of the Tamil Nadu Public Buildings [Licensing] Rules and sent the Altered Report under Ex.P.549 to the Court of Judicial Magistrate, Kumbakonam and also produced the above said arrested accused for remanding them to judicial custody.

7.28 P.W.229 examined the witnesses who were residing nearby to the place of occurrence and recorded their statements and summoned the Educational Officials, viz., A-14 to A-17 and recorded their statements as to the grant of approval in respect of Saraswathi Nursery and Elementary School and also got informations marked as Exs.P.158, 159, 160, 162, 147, 200 to 202, 546, 547. The Sub Inspector of Police attached to the Police Station, viz., Gunasekaran had recorded statements of some of the witnesses and the Sub Inspector of



Police attached to Kumbakonam West Police Station, recorded the statements of the witnesses and both of them forwarded the recorded statements to P.W.229 - the Investigating Officer. P.W.224 - Inspector of Police of Pandhanallur Police Station, had also recorded statement on 22.07.2004 and forwarded the same to P.W.229.

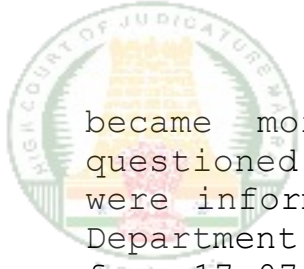
7.29 P.W.229, on becoming aware of the surrender of A-18 before the Court of Judicial Magistrate, Trichy, submitted an application for his Transfer of Prisoner Warrant and after obtaining orders, took A-18 under police custody and conducted enquiry on the basis of Exs.P.158 to 161, 157, 200 to 202, 546 and 547 and also collected the entire files from the District Elementary Educational Officer, marked as Ex.P.550. P.W.216, the police official attached to All Women Police Station, Kumbakonam, recorded the statements of some of the witnesses on 23.07.2004 and so also the Inspector of Police, Tirupanandhal Police Station - P.W.219, who recorded the statements of some of the witnesses. Similarly, P.Ws.222, 224, 225, 227 have recorded the statements of the witnesses and forwarded the same to P.W.229. P.W.229 also examined witnesses on 23.07.2004 and recorded their statements and on 24.07.2004, has produced A-18 before the Court concerned for remand.

7.30 P.W.15 has reported about the happening of the fire accident again in Sri Krishna Aided Primary / Elementary School at about 9.15 p.m. on 23.07.2004 and handed over the complaint to P.W.215, based on which, a case in Cr.No.267/2004 was registered and the FIR was marked as Ex.P.563. P.W.215, after investigation, opined that no fire accident took place on 23.07.2004 in the said School and closed the further investigation. P.W.229 had examined the Village Administrative Officer - P.W.159 and recorded his statement and came to know that in respect of Door No.12-E, Property Tax was not paid. P.W.229 continued with the investigation and examined many witnesses between 24.07.2004 and 27.07.2004 and recorded their statements. The parents of 94 children were also examined as P.Ws.21 to 108. The parents of the victims, in their statements given to P.W.229, had said about the deficiencies found in the said School, especially, with regard to the thatched roof and they also told him to replace thatched shed ; but it was not done.

7.31 P.W.229 also found that in connection with the inspection by the Education Department Officials on 14.07.2004 and 15.07.2004, students who were studying in Sri Krishna Girls High School who were lesser in height, were shifted to Sri Krishna Aided Primary / Elementary School and Saraswathi Nursery and Elementary School and their uniforms were also changed with

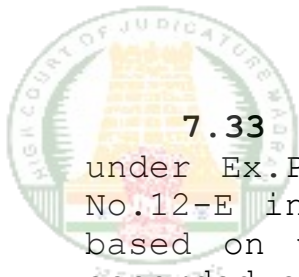
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Police. In instructions that when their names were asked, they were asked to tell different names and as a result of which, classrooms



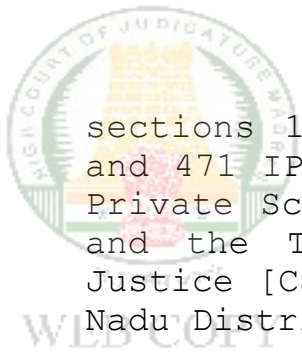
became more cramped. The parents of the children had also questioned P.Ws.1 to 3 as to the shifting of the students and they were informed that with regard to the inspection of the Education Department Officials on 15.07.2004 and 16.07.2004, it was done and from 17.07.2004, they will be asked to sit in the regular classes. P.W.229 collected other documents and also examined the injured students, viz., P.Ws.4, 5, 7 and 8 to 20 and recorded their statements and they told them about the shifting of the classrooms and change of the uniforms in connection with the inspection to be done by the Education Department Officials. P.W.229 during the course of investigation also found that the teachers, viz., P.W.110, A-21, A-22 and one Devi, on hearing about the fire accident, took their handbags and fled away from the scene of occurrence. P.W.229 also recorded the statements of P.Ws.2 to 20 as to the treatments undergone by them and also seized the Accident Registers marked as Exs.P.397, 247 to 276. P.W.229 also collected Death Certificates of the students marked as Exs.P.277 to 286 and for conducting autopsy, handed over the bodies of the children and also collected their respective Postmortem Reports, marked as Exs.P.290 to 367 and also collected the Accident Registers of the children, marked as Exs.P.371 to 388 respectively.

7.32 P.W.229 also examined P.Ws.109 to 124 and recorded their statements and also seized relevant Attendance Registers. P.W.229 also found that P.Ws.111, 112, 121, 122, 123 made efforts to rescue the children and also examined the non-injured students, viz., P.Ws.125 to 136. P.W.229 also examined and recorded the statements of P.Ws.177 and 178 and further recorded the statement of P.W.1 and P.W.215, on instructions from P.W.229, recorded the statements of the students, who were studying in Sri Krishna Aided Primary / Elementary School and also examined P.Ws.184, 161 and 179 and seized records of the Town Planning Department, Kumbakonam and also examined the doctors who treated and conducted autopsy on the bodies of the deceased children. P.W.229 obtained Search Warrant to search places of A-1 and inspected the premises on 11.09.2004 and seized Exs.P.232, 235, 237, 238, 241, 554 to 556 and also examined Education Department Officials, viz., P.Ws.165 to 176 and also recorded the statements of P.W.166-Assistant Elementary Educational Officer and found that though some defects were pointed out, those defects were not rectified. He also seized the Attendance Registers and examined other witnesses, especially, P.W.126, who was the Joint Director of School Education and also seized the record relating to the grant of recognition / renewal of the said Schools. P.W.229 found that Sri Krishna Girls High School was functioning from the year 1997 and A-14 made a recommendation for renewal of the recognition / permission for the period from 01.06.2003 to 31.05.2006 and it was renewed on 05.1997, which was marked as Ex.P.201.



7.33 P.W.229 further found that A-2 submitted an application under Ex.P.212 with regard to construction of the house in Door No.12-E in Survey No.762/B and the Plan was marked as Ex.P.548, based on which, the Commissioner of Kumbakonam Municipality has accorded approval and P.W.109 also submitted an application to put up superstructure in Door No.13 in Survey No.763/B and permission was granted bearing Licence No.36/89. P.W.229 further found that necessary Planning Permission in respect of the superstructure put up in Sri Krishna Aided Primary / Elementary School and Saraswathi Nursery and Elementary School, have not been obtained and also seized relevant records which were marked as Exs.P.208 to 217 respectively. P.W.229 also examined P.Ws.182, 184, 158 with regard to the availability of playground facilities for running the Schools and also examined P.W.183, the Personal Assistant to Collector, Thanjavur District, who was in-charge of running of Noon Meal Centre and the relevant Government Orders / Proceedings were marked as Exs.P.219 to 230 respectively. P.W.229 conducted investigation for nearly nine months in four parts and found that Sri Krishna Girls High School was located in the second floor and in the ground floor of Door No.13, Saraswathi Nursery and Elementary School was functioning and in respect of classrooms 5A, 4C, 4A and 3B, thatched roofs were put and shifted the classroom of 10th Standard in Sri Krishna Girls High School to first floor of Door No.13 and blocked the way and converted it as a classroom.

7.34 P.W.229 further found that in respect of superstructures bearing Door Nos.12-E and 13, approval was accorded as residential premises and without converting / modifying the utility, premises were run as Schools. P.W.229 also found that the roof of the kitchen attached to the Noon Meal Centre had a thatched roof and it was located very near to L.K.G and U.K.G classrooms and classes 3-A, 4-A, 4-B of Sri Krishna Aided Primary / Elementary School and the defects have not been noted by A-1 to A-5, A-7, A-9, A-10 and A-14 in the relevant records and that the removed thatched sheds were also kept near the oven of the kitchen as well as outside. P.W.229 further found about shifting of the students to overcome the deficiency of Teacher-Students ratio and though A-10 and A-13 has recorded the said deficiency, did not pursue further. P.W.229 got transfer to Chennai during April 2005 and as per the proceedings of the District Superintendent of Police, Thanjavur, under Ex.P.61, P.W.230 - Additional Superintendent of Police, Crime Branch, Thanjavur District, was appointed as the Investigating Officer and the said official having found that P.W.229 has examined 650 witnesses, completed investigation and as per the said investigation, 24 persons were arrayed as accused and A-6 to A-11, A-13 to A-18, A-22 to A-24 were Government officials and after obtaining sanction, filed the charge sheet / final report on 29.06.2006 before the Court of Judicial Magistrate, Kumbakonam, charging A-1 to A-24 for the commission of the offences under



sections 120-B read with 304, 338, 285, 167, 197, 465, 467, 468 and 471 IPC and the other provisions of the Tamil Nadu Recognised Private Schools [Regulations] Act and the Rules framed thereunder and the Tamil Nadu Public Buildings [Licence] Act ; Juvenile Justice [Care and Protection of Children] Act as well as the Tamil Nadu District Municipalities Act, 1920.

7.35 The Court of Judicial Magistrate, Kumbakonam, on receipt of the Final Report, issued summons to all the accused and on their appearance, furnished copies of the documents and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of Principal Sessions Judge, Thanjavur, who on receipt of the same, took it on file and numbered as SC.No.275/2006. The learned Principal Sessions Judge, Thanjavur/ Trial Court, issued summons to the accused and on their appearance, framed charges as stated above.

7.36 It has already been pointed out that the prosecution against A-6, A-11 and A-24 were withdrawn. The accused charge-sheeted, had denied the charges and pleaded not guilty. The prosecution, out of 501 witnesses cited, had examined 230 witnesses ; marked Exs.P.1 to 565 and produced M.Os.1 to 18. All the accused were questioned under Section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against them in the evidences rendered by the prosecution and they denied it as false. On behalf of the accused, A-14 examined himself as D.W.1 and the Revenue Divisional Officer of Kumbakonam was examined as D.W.2 and Exs.D1 to D41 were marked.

7.37 The Trial Court, on consideration and appreciation of oral and documentary evidences, had convicted the accused as stated above and acquitted them in respect of some of the charges and totally acquitted some of the accused. The convicted accused, challenging the conviction and sentences passed by the Trial Court in the impugned Judgment, had filed the above appeals and the State, aggrieved by the order of acquittal, had filed CrI.A.[MD] No.268/2014.

8 It is to be noted at this juncture that the appellant in CrI.A.[MD].No.242/2014/A-2, namely Tmt.Saraswathi, wife of A-1/ Palanisamy was convicted in pursuant to the impugned judgment and she filed a petition in Criminal Miscellaneous Petition seeking suspension of sentence of imprisonment and pending disposal of the same, died due to illness. The respondent/prosecution had also filed a memo to that effect and therefore, the appeal in CrI.A.[MD].No.242/2014 **was already dismissed as abated on 22.11.2016.**

CrI.A. [MD] No.241/2014:-

9 Mr.N.Mohideen Basha, learned counsel appearing for the appellant in CrI.A.[MD].No.241/2014 [A-1], namely Palanisamy [male, aged 88 years in 2016] made the following submissions:



- ♦ The brother of A-2/brother-in-law of A-1, along with his wife, died and therefore, both of them had adopted their four daughters and one of the daughters is Hemalatha, whose husband is P.W.1- Prabakaran and A-3- appellant in CrI.A.[MD]. No.243/2014, namely Santhalakshmi is sister of Hemalatha and sister-in-law of PW1.
- ♦ P.W.1 is the Headmaster of Sri Krishna Girls High School from 01.06.1997 and also the Correspondent of Sarawathi Nursery, and Elementary/Primary School. PW1 was originally arrayed as one of the accused and as per the Tender of Pardon proceedings under Section 306 CrPC dated 03.02.2005 under Ex.P.407, he was granted Tender of Pardon and became a witness for the prosecution and was examined as P.W.1.
- ♦ P.W.1, in his chief examination, would depose that A-1 told him that one of the adopted daughters, namely Usha Rani-his sister-in-law had given a complaint to the Education Department officials as to the lack of Teacher-Students strength and in order to make up the said deficiency, students from two other schools, namely Sri Saraswathi Nursery and Elementary/Primary School and Sri Krishna Girls High School have to be shifted and they should be shifted to Sri Krishna Aided Elementary/Primary School in order to make the strength of 1:40 Teacher - Students ratio and the said exercise was carried out on 14.07.2004 and 15.07.2004 as well as on the fateful day on 16.07.2004. However, P.W.1, in the cross examination made a crucial admission that the availability of Teacher - Students ratio will be a matter for consideration only in the month of July every year, that too, after completion of admissions and he would further admit that though the sanctioned strength of teacher is 16, only 13 teachers are working and in the light of the said crucial admission, there is absolutely no necessity to shift the students for the purpose of making good the Teacher - Students ratio.
- ♦ P.W.1 would further depose in the cross examination that all the three schools have different uniforms. If the version of PW1 is believed, it is difficult to ask the students to wear different uniforms as the sizes would differ and if the students allowed to sit in different schools in different uniforms, then it will come to the adverse notice to the Educational Department officials, who will be making visits to ascertain the students strength and hence, the said version cannot be believed at all.

<https://hcservices.court.gov.in/hcservices> also pointed out that P.W.1 made very many improvements from that of his statements recorded under Sections 161(3) as well as 164 Cr.P.C. While deposing and



since he has made very many improvements in his testimonies from that of his earlier statements, his evidence cannot be believed at all.

- ◆ Insofar as the allegation levelled by the prosecution that no playground is in existence, documents have been brought forward/fabricated as if playground is there for the purpose of fulfilling the procedural formalities, it is the submission of the learned counsel appearing for A-1 that admittedly P.W.1, in his capacity as the Correspondent of Sri Saraswathi Elementary/Primary School, had forwarded Exs.P1 to P15 for necessary approval and though he would state that under compulsion from A1, he did so, it has been done only for the purpose of wriggling out of the case and as already pointed out, P.W.1 was arrayed as one of the accused and after recording the statements from him for very many times, he was arrested and in pursuant to the Tender of Pardon proceedings, he was taken as one of the witnesses for the prosecution and the above said facts would also disclose that P.W.1 was under duress and compulsion to depose in favour of the prosecution. P.W.1 did not disown his signatures in Exs.P1 to P15 and in the light of the prevaricating stand, his evidence cannot be believed at all.
- ◆ The prosecution also placed reliance upon the evidence of P.W.109 - sister-in-law of P.W.1 and one of the adopted daughters of A-1 and A-2 as well as the sister of A-3 and her husband was examined as P.W.157. It is the further version of P.W.109 that her adopted parents/A-1 and A-2 had bought properties in T.S.No.763B, Kasiraman Street, Kumbakonam in her name and mortgaged the same for the purpose of putting up a school building and since payments due and payable towards the said loan had been deducted out of her salary and also got aggrieved by the said act and as a consequence, she lodged a complaint under Ex.P22 to the Education Department. P.W.157- husband of P.W.109 came to the school on one such occasion and had quarelled with A-1 and in this regard, A-1 had also lodged a complaint against P.W.157. The Additional Assistant Elementary Education Officer, Kumbakonam has also sent a notice dated 21.06.2000, marked as Ex.D22 with regard to the complaint made by P.W.109.
- ◆ It is the submission of the learned counsel appearing for A-1 that though it is alleged by the prosecution that A-1 in fact managing the affairs of all the three schools, the uncontroverted facts even as per the documentary evidence <https://hcservices.ecourts.gov.in/hcservices/> the prosecution was the Correspondent only of the Girls High School and absolutely no evidence is forthcoming except the self-serving statements of P.W.1, P.W.109 and



her husband P.W.157 and their testimonies have to be considered in the light of Tender of Pardon given to P.W.1 and the animosity of P.W.157 against A-1 and A-2 and in the absence of any corroboration in the form of material particulars from independent sources, it cannot be stated that A1 was managing the affairs of all the three schools.

- ♦ The learned counsel appearing for A-1 would further contend that with regard to the shortage of teaching staff and maintenance of Teacher - Students ratio, P.W.109 had clearly admitted that such a ratio would come into play only after admissions are over during July and admittedly, the occurrence/incident took place on 16.07.2004 and such an exercise was never carried out before the incident and as such, no purpose would be served in interchanging the students of three schools, who, admittedly have different sets of uniforms all together.
- ♦ P.W.109 had also admitted that she had quarrelled with one of her sisters/A-3 and A-1 had also lodged a complaint against her husband, namely P.W.157. P.W.109 during the course of her testimony had also spoken with regard to the topography of different classrooms and her testimony would reveal that each classroom is having fans and lights separately and each floor is having window and Public Addressable System and prayer will be conducted through Public Addressable System and since her testimony is tainted with *malafide* and oblique motive to frame A-1 and A-2 and to some extent her own sister/A-3, her testimony cannot be believed at all.
- ♦ The prosecution also examined P.W.110, namely Maria Angeline - class teacher of V Standard 'A' Section as to the shifting of students to make good the Teacher - Students ratio and it is her version that some students from the class of A-21, namely Anthoniammal were brought to her class and the said exercise was routinely carried out for about last 7 or 8 years and she would further depose that augmenting the students strength is to comply with the norms of Serve a Sikhsa Scheme. The version of P.W.110 is contrary to the version of P.W.109 for the reason that Teacher - Students ratio should be verified by the concerned Education Department that too only after admissions are over and admittedly, at the time of fire accident, admissions have not been completed.
- ♦ The inspections done by the concerned Education Department officials periodically have also been spoken to by P.W.113, who would depose that the Education Department officials make visits for the purpose of verification and also testing the students and teaching capability of the teachers and she would also admit that three different



uniforms were worn by students studying in three different schools and she would admit that though the sanctioned strength of the Teachers was 14, there were 3 vacancies and in the light of the same, there is no need on the part of A-1 to instruct the concerned teachers to shift the students having different uniforms to make good the said deficiency.

- ♦ Similarly, P.W.115, namely Manimozhi is the IV standard teacher working in Sri Saraswathi Elementary and Primary School and she had also spoken about the shifting of students with regard to Teacher - Students strength and the intending visit of the educational officers on 14th and 15th of July 2004.
- ♦ The learned counsel appearing for A-1 would submit that the witnesses though had spoken about the shifting of students, did not mention anything about the change of uniforms and admittedly, three different kinds of uniforms are prescribed and to be worn by the students studying in the respective schools.
- ♦ The learned counsel appearing for A-1 has also drawn the attention of this Court to the testimony of P.W.115 and would submit that even as per her evidence, between 1994 and 2004 the Education Department officials made visits four times every year and she has also signed as Headmistress in the approval application and her husband is a Police Officer.
- ♦ It is the further submission of the learned counsel appearing for A-1 that since the said witness did not speak about the change of uniforms and admitted about the signing of approval application as Headmistress, it is not open to her to shift the stand to suit the convenience of the prosecution and it is also to be kept in mind that her husband is also a police officer and as such, she is naturally inclined to depose in favour of the prosecution.
- ♦ P.W.158 was also examined by the prosecution as to the availability of playground and he would depose that A-1 got his signature in Ten rupees and Two rupees Stamp Papers and he is owning an agricultural land only and however admitted his signature in Ex.P139- lease agreement dated 24.02.2003.
- ♦ The learned counsel appearing for A-1 would submit that in the cross examination, P.W.158 would admit that he is a Post Graduate and A-1 is known to him for 5 or 6 years and according to the contents of Ex.P139, which was also marked as Ex.D25, he voluntarily subscribed his signature and in the light of the said testimony, it cannot be said



that with regard to the availability of playground, relevant documents have been fabricated/created and admittedly, the concerned educational officer, after going through the proposal/recommendation, has also granted approval and as such, the ingredients of the offence under Section 467 r/w. 197 I.P.C. have not been made out at all.

- ♦ The learned counsel appearing for A-1 has invited the attention of this Court to the testimony of P.W.229, namely Kalyanasundaram, Additional Superintendent of Police/Investigating Officer and would submit that as per his testimony, very many witnesses cited by the prosecution had improved their versions from that of the statements recorded under Sections 161(3) and 164 CrPC and that apart, they were further cross examined after a lapse of time and as such, the Trial Court has committed a grave error in without appreciating the said crucial aspect and without even discussing the testimony of the witnesses, simply accepted it as true and given a finding of guilt and in any event, the sentence of imprisonment for life awarded against A-1 for the offences under Section 465 r/w. 197 I.P.C. is highly disproportionate.
- ♦ The learned counsel appearing for A-1 has also drawn the attention of this Court to the cross examination of P.W.229/Investigating Officer, wherein he made the following admissions:
 - (i) A-1 and A-2 retired as Teacher and Headmistress in the year 1992 itself.
 - (ii) P.W.109 -sister-in-law of P.W.1 and one of the adopted daughters of A-1 and A-2, had applied for building plan approval.
 - (iii) Specific plan or nature of superstructure to be constructed for a school building as per the provisions of Tamil Nadu Recognized Private School (Regulation Act), 1973 and rules framed thereunder to be furnished in the concerned Education Department for granting permission to run a school in any building.
 - (iv) P.Ws.2 and 3 - students, in their statements recorded under Section 161(3) CrPC did not state about the shifting of students from one school to another and also did not speak anything about the role played by A.1.
 - (v) P.W.5 did not state anything about the complaint made to A1 to change the thatched sheet/roof and on 14th, 15th and 16th of July 2004 officials would visit the school for inspection, during investigation, but however made



improvements while deposing as a witness.

(vi) P.W.229/Investigating Officer would admit that none of the teachers had spoken about the shifting of the students and change of uniforms and so also, P.Ws.6 and 7.

(vii) P.W.229, in the cross examination, would further admit that P.W.8 did not speak about the change of thatched roof and shifting of 20 students and so also P.W.9, who did not speak anything about the availability of only one passage for access to the school.

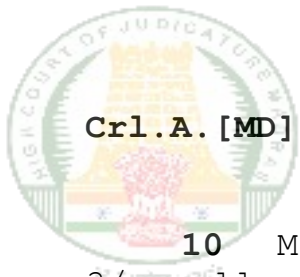
(viii) Similarly, P.W.10 did not state about the availability of single staircase.

- ♦ The learned counsel appearing for A-1 has also invited the attention of this Court to the detailed cross examination done, especially the answers elicited by P.W.229 with regard to the testimonies of P.Ws.11 to 19, 110 to 124 and especially invited the attention of this Court to Page No.332 of Volume 8 wherein P.W.229 would state that there is no rule, prohibiting the running of the noon meal kitchen under thatched roof, before the fire accident.
- ♦ The learned counsel appearing for A-1 has further invited the attention of this Court to the testimony of P.W.83, namely Ramamoorthy, District Elementary Educational Officer and would state that whatever irregularities noted have been rectified and after perusal of the same, the department had sent the files to higher authority for approval and final approval has been granted by the topmost official, namely P.W.24, against whom prosecution was withdrawn.
- ♦ The learned counsel appearing for A-1 has also invited the attention of this to the relevant provisions under which A-1 have been charged and would submit that the ingredients of the offences have not been made out at all from the oral and documentary evidences projected by the prosecution and the lease agreement, in and by which playground was taken on lease from P.W.158, cannot be treated as valuable security and as such, Section 467 IPC cannot be invoked at all for forging the valuable security.
- ♦ Insofar as the invocation of the provision under Section 304(II) I.P.C. is concerned, admittedly A-1/appellant in CrI.A.[MD].No.241/2014 did not have knowledge/culpable state of mind and even as per the version of the Fire and Rescue Services officials, who have been examined as witnesses, it is a case of fire accident only and in the



absence of any intention/knowledge, ingredients of the said offences have not been made out at all.

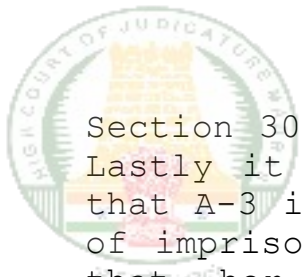
- ◆ It is the further submission of the learned counsel appearing for A-1 that the 4th charge made against A-1 viz., under Section 467 r/w. 197 I.P.C. is unsustainable in law for the reason that admittedly, all the forms have been signed by P.W.1 as the Correspondent and though he took a stand that on account of pressure exerted by A-1, he did so and his version is not supported/corroborated by any witness on material particulars and further pointed out that though P.W.1 was summoned for about 20 times and was arrested, P.W.229 took a belated decision against him only for the purpose of pardoning and to take him as a prosecution witness and in the light of the role played coupled with the prevaricating stand, his evidence is totally unbelievable and further pointed out that P.W.109 had applied for building plan approval and signed all the documents and later on, she turned the table against A-1 for the reason that with regard to the mortgage of properties, dues were deducted from her salary.
- ◆ Attention of this Court was also drawn by the learned counsel appearing for A-1 to the testimonies of the parents, wherein they have stated that all the three schools impart quality education to the students and no capitation or excess fee have been demanded and on account of the said fact only, they have admitted their wards.
- ◆ Insofar as the Noon Meal Centre kitchen, it is the submission of the learned counsel appearing for A-1 that admittedly it is under the control of the Collector of Thanjavur District and P.W.183, namely Mathiyalagan, Personal Assistant to the Collector would admit that Noon Meal Centres are under his administrative control and there is no specific rule for putting thatched roof on the Noon Meal Centre and also made very many crucial admissions and based on his sole testimony, the Trial Court ought to have acquitted A-1 and at least should have awarded benefit of doubt and without taking into consideration the fact that he was aged 88 years and that his wife/A-2 was suffering due to cancer and she is no more, ought to have awarded at least minimum sentence and therefore, prays for his hon'ble acquittal or in the alternative, reduction of the period of conviction under Section 467 r/w. 197 IPC to the period of sentence of imprisonment already undergone by him.



Crl.A. [MD] NO.243/2014:-

10 Mr.K.Balasundaram, learned counsel appearing for A-3/appellant in Crl.A.[MD].No.243/2014 would submit that A-3 is the sister-in-law of P.W.1 and one of the sisters of P.W.109 and she is the adopted daughter of A-1 and A-2 and on the facts of the case would submit that the appellant/A-3 was the Headmistress of Sri Krishna Aided Primary School and she is not at all interested with the administration of all the three schools and apart from the fact that she was the Headmistress, she is the class teacher of V standard 'B' Section and one of the students studied in her class, died in the fire accident and the said fact was also admitted by P.W.105- Anuradha/teacher. The learned counsel appearing for A-3 would further contend that it is not even the testimony of any of the witnesses that A-3 had directed shifting of students from one school to another and as per the oral testimony of P.W.2, A-1 and one Sachu alone asked for change of students from one class to another. The learned counsel appearing for A-3 has also drawn the attention of this Court to the testimony of P.W.115 [Manimozhi]- teacher and she would depose that shifting of students was done on the directions of A-2 (since died) and the interested person spoken against her is P.W.1/brother-in-law and Headmaster of Sri Krishna Girls High School and Correspondent of Sri Saraswathi Nursery and Elementary/Primary School and admittedly, on the date of the incident on 16.07.2004 and as already argued by the learned counsel appearing for A1/appellant in Crl.A.[M.D].No.241/2014, prior to his examination, he was summoned by the Investigating Officer/P.W.229 for more than 20 times and after recording statements on very many occasions, he was arrested for the reasons best known that too for the purpose of extracting confession and treated him as an approver to support the case of the prosecution, as the other materials were of no purpose to sustain the case of the prosecution and since he has also made very many improvements from that of his statements recorded under Sections 161(3) and 164 CrPC, the testimony of such a tainted witness cannot be relied upon.

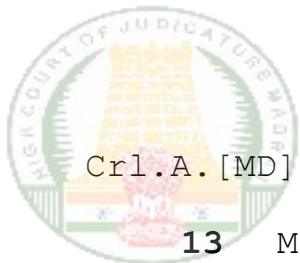
11 The learned counsel appearing for A-3/appellant in Crl.A. [MD].No.243/2014 has invited the attention of this Court to the cross examination of P.W.229/Investigating Officer and would submit that it was admitted that nobody had preferred any complaint against A-3 and she did not gain anything from shifting of students and it was also not possible for the reason that students were in different coloured uniforms and it is not even the testimonies of the witnesses that uniforms were changed to sit in some other school. It is also contended by the learned counsel appearing for A-3 that the ingredients of the offence under



Section 304(II) IPC have not been made out at all as against A-3. Lastly it is contended by the learned counsel appearing for A-3 that A-3 is aged about 54 years and completed half of her sentence of imprisonment and if at all, this Court reaches the conclusion that her conviction is to be sustained, the sentence of imprisonment may be modified to one already undergone by her and prays for honourable acquittal or in the alternative, modification of the sentence of imprisonment.

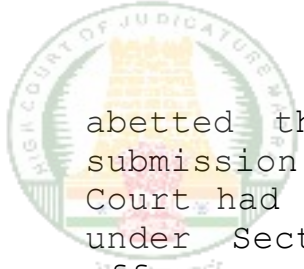
Crl.A.[MD] No.258/2014:-

12 Mr.B.Jameel Arasu, learned counsel appearing for A-4/appellant in Crl.A.[MD].No.258/2014 would submit that as per the version of the prosecution, A-4 is the Noon Meal Organizer of Sri Krishna Aided Elementary School and she is also a V Standard teacher and as per her duties and responsibilities, she has to arrange for food articles to enable A-5/appellant in Crl.A.[MD].No.59 of 2015 to prepare food for the Noon Meal Scheme and though she has been convicted under Section 304(II) I.P.C., burden lies heavily on the prosecution to prove that there was permission for putting up thatched roof over the kitchen and it was also admitted by some of the witnesses examined by the prosecution that there was no permission or requirement for putting up thatched roof and so many Noon Meal Centres were functioning over the thatched roof and in the absence of any intention or *mens rea* in causing the death or knowledge over the said act, the conviction under the said Section is wholly unsustainable. It is the further submission of the learned counsel appearing for A-4 that in the absence of specific charge under Section 337 I.P.C., conviction recorded under the said provision is also unsustainable and would further submit that in the absence of any evidence as to the origin of fire and how it has been spread, the case of the prosecution against her falls to the ground. The learned counsel appearing for A-4 also put forward the submission that though the Trial Court in para 572 of the judgment had recorded a finding that A-2 to A-5 did not involve themselves in the commission of the offences at all, chose to give a finding of guilt and as such, the findings are *per se* unsustainable, erroneous and not supported by evidence on record. Alternatively, it is submitted by the learned counsel appearing for A-4 that the appellant/A-4 is aged 49 years and he had already undergone half of the sentence of imprisonment and if this Court concludes that the ingredients of the offence under Section 304(II) I.P.C. are not made out, the sentence of imprisonment may be restricted to one already undergone and prays for modification of the sentence of imprisonment.



Crl.A.[MD] No.59/2015:-

13 Mr.K.Mohanasundaram, learned counsel appearing for A-5/appellant in Crl.A.[MD].No.59 of 2015 would submit that Noon Meal Centre is in respect of Sri Krishna Aided Primary School and the appellant/A-5 was working as Noon Meal Cook and according to the prosecution, the old thatched shed put up has been replaced with new ones and the removed old thatched sheets/roofs have been kept inside the kitchen as well as in toilets/washrooms and at about 11.00 a.m. on 16.07.2004, fire ignited from kitchen spread to first floor and as a result of severe burn injuries, 94 children died and 18 children suffered grievous burn injuries. It is the further submission of the learned counsel appearing for A-5/appellant in Crl.A[MD].No.59/2015 that absolutely there is no evidence to show or substantiate about the origin of fire in the Noon Meal Kitchen and the ingredients of the offences under Sections 304(II), 338, 337 and 285 I.P.C. have not been made out at all. Assuming for a moment that fire has emanated from the kitchen, it was an accidental one and in the absence of any intention/knowledge and *mens rea* that the putting up of thatched sheets over the kitchen will result in fire, the appellant/A-5 cannot be mulcted with the said liability and responsibility. It is the further submission of the learned counsel appearing for A-5 that the duties and responsibilities is only to put noon meal and there is no responsibility whatsoever as to the putting up of thatched sheets over the kitchen and the procedural aspect as to appointment of concerned staff and maintenance of Noon Meal Centre was spoken to by P.W.183, Personal Assistant to the District Collector Thanjavur and his evidence did not advance the case of the prosecution and in fact would come to her aid. It is further contended by the learned counsel appearing for A-5 that though the custody of the school premises was taken on the date of the incident on 16.07.2004, subsequently, one more fire accident took place on 23.07.2004 as evidenced under Ex.P563-First Information Report and though it has been closed, no proper investigation has been done as the fire accident took place nearly 7 days after the original fire accident that too when the school premises was in the custody of the authorities and the prosecution has failed to explain the same. The learned counsel appearing for A-5 has also invited the attention of this Court to paragraph 386 of the impugned judgment and would submit that as per the findings recorded by the Trial Court in the said paragraph, no eye witness was examined on behalf of the prosecution as to the emanation of fire and from which place and however, the concerned witnesses had deposed that the kitchen in the Noon Meal Center caught fire. Attention of this Court was also invited to paragraph 452 of the impugned judgment, wherein a finding has been recorded as to the ~~services are provided~~ thatched sheets in the kitchen nearby and the likelihood of getting caught fire and though the said fact is known to A-4 and A-5, they started cooking food and thereby,

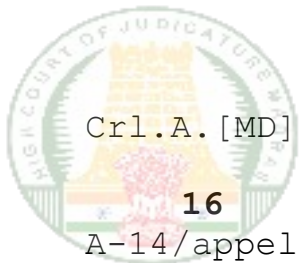


abetted the commission of the offences. It is the further submission of the learned counsel appearing for A-5 that the Trial Court had acquitted A-4 and A-5 for the commission of the offence under Section 120-B IPC and however, convicted them for the offence under Section 304(II) I.P.C. and in the absence of *mens rea* or intention, the conviction recorded and passed against the appellant/A-5 is wholly unsustainable and prays for honourable acquittal. The learned counsel appearing for A-5 alternatively made a submission that the appellant/A-5 had already undergone half of the substantive sentence of imprisonment and if this Court comes to the conclusion that the charges framed against her have been proved beyond reasonable doubt, the sentence already undergone by her may be treated as substantive sentence and she may be released.

Crl.A.[MD] No.253/2014:

14 Mr.S.Venkatesan, learned counsel appearing for A-12/appellant in Crl.A[MD].No.253 of 2014, who had issued the Stability Certificate in respect of the school building would submit that the appellant had issued the Stability Certificate in respect of the property bearing Door No.12E in Survey No.762/B, but in respect of the other premises in Door No.13 in Survey No.763/B, he did not issue any such certificate. It is the further submission of the learned counsel appearing for A-12 that despite fire accident, the building did not collapse and even as on today, it continues to exist and the said vital aspect has been overlooked by the prosecution as well as by the Trial Court.

15 The learned counsel appearing for A-12 has also drawn the attention of this Court to paragraph Nos.464 and 465 of the impugned judgment and would submit that none of the witnesses had stated that the fire accident had happened on account of instability of the building and having acquitted for the offences under Sections 304 read with 120-B read with 109 IPC and 339 IPC, the Trial Court ought to have acquitted him for the offence under Section 197 IPC for the reason that the Stability Certificate issued by the appellant confirms the stability of the building and despite the accident, it did not collapse. The learned counsel appearing for A-12 has further invited the attention of this Court to paragraph Nos.487 and 488 of the impugned judgment and would submit that A-7 to A-10 and A-12 to A-23 have been acquitted with regard to the commission of the offence of conspiracy, abetment etc., and in the absence of any tenable evidence, the Trial Court has committed a grave and serious error in convicting the appellant for the said offence and also pleaded leniency for the reason that he is aged about 80 years.



Crl.A.[MD] NO.237/2014:-

16 Mr.G.R.Swaminathan, learned counsel appearing for A-14/appellant in Crl.A.[MD].No.237/2014, who was also examined as D.W.1 made the following submissions:

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- (1)The appellant/A-14 was charged for charges 4, 6 and 7 only and he was acquitted for the charges 6 and 7 and however, he was convicted for the offence under Section 467 read with 197 IPC.
 - (2)The appellant/A-14 is a middle rank officer and on the Note put up by his subordinates, he made a recommendation to the superior officers and ultimately, A-24 / Director of Elementary Education, had approved the recommendation and the fact remains that the prosecution launched against him has been withdrawn under Section 371 I.P.C. and as such, he cannot be convicted and even otherwise, the ingredients of the same have not been substantiated / proved by the prosecution.
 - (3)Section 197 I.P.C. cannot come to the aid of the prosecution and Ex.P.202 cannot be termed / construed as certificate and P.W.229 - Investigating Officer has also admitted during the course of cross examination that he is not under obligation to make personal inspection and based on the inspection note put up he has made positive recommendation and it was approved by the topmost official, namely A-24.
 - (4)Though A-14 has been examined, the alleged infirmities pointed out by the prosecution would not come to their aid for the reason that for making recommendation he cannot be mulcted with the responsibility and the prosecution launched against A-24 has been withdrawn and A-24 can either accept the proposal/recommendation in toto or partly or reject it also and in the case on hand, he has accepted the proposal.

17 The learned counsel appearing for the appellant / A-14, in support of his submissions, placed reliance upon the decisions in **AIR [30] 1943 Calcutta 40 [Prafulla Kumar Khara and another Vs. Emperor]**, and **2000 Cr.L.J. 292 [D.Jothi Vs. K.P.Kandasamy]** and would submit that in the absence of any positive evidence as to the wilful act or as to the non-genuineness of the recommendation made, he cannot be convicted under Section 467 read with 197 IPC and would further add that he had already undergone half of the substantive sentence and prays for complete exoneration and honourable acquittal.



Crl.A.[MD] NO.249/2014:-

18 Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel for Mr.R.Venkatesawaran, learned counsel appearing for A-15/appellant in Crl.A.[MD].No.249 of 2014 made the following submissions:

- Three charges were framed against the appellant viz., Charge Nos.4, 6 and 7 and he was convicted in respect of charge No.4 for the offence under Section 467 read with 197 IPC and was sentenced with 5 years rigorous imprisonment with a fine of Rs.10,000/- in default, one year simple imprisonment and in respect of other two charges, he has been acquitted.
- The role played by A-15 according to the prosecution is that he has put up the Note file to his superior under Ex.P.202. Ex.P.202 contains the factual details and therefore, there is no question of forgery of valuable security. Insofar as Section 467 r/w. 197 IPC is concerned, A15 did not sign a false certificate and he has no authority to issue such certificate and he merely put up the Note to the superior officer to take a decision either positively or negatively and hence, the ingredients of the offence have not been made out at all. The witnesses to speak about the procedural aspect as to the approval to be granted by A-24, against whom prosecution has been withdrawn, would clearly reveal that he has no role to play at all and the findings rendered by the Trial Court in that regard is contrary to the evidence available on record viz., Ex.P562 and though necessary approval orders have been passed previous to the occurrence, it was communicated belatedly and the Trial Court also overlooked the fact that he has not vested with any power to effect conviction.
- The finding of the Trial Court, based on the recommendations made under Ex.P202, that if the recommendations under Ex.P202 are not made, Saraswathy Nursery and Primary School would not have been run and the accident would not have taken place, is based on surmises and conjectures and the topmost official, namely A-24 would have taken decision to reject in toto but whereas a positive order was passed and the mere fact of accident and the death of very many young children would not lead to the presumption that he was guilty of the charges.



Collector, Noon Meal Centre is under the control of the Collector and in his testimony, he has not implicated any of the officials of the Education Department and relevant Government Orders have been marked to the Revenue Department and not to the Educational Department and therefore, he cannot be mulcted with the responsibility and the said vital aspect has been overlooked and the findings rendered upon him are based on 'no evidence'.

CrI.A [MD] No.244/2014:-

19 Mr.P.Saravanan, learned counsel appearing for A-16 / appellant in CrI.A.[MD].No.244/2014 made the following submissions:-

- The appellant / A-16 was working as Superintendent in the District Elementary Education Office, at Thanjavur and by virtue of his occupation, dealt with the application submitted for renewal to Saraswathi Nursery and Elementary / Primary School and the duty assigned to him is to verify whether the application submitted for renewal, was in order or not.
- The duty of the appellant / A-16 is to go by the Note made by the Assistant attached to the said office, viz., A-15 and based on the same, make his recommendation and forward the same to the Personal Assistant to the District Elementary Education Officer, Thanjavur [A-17] and the Note will be dealt with by the District Elementary Education Officer, Thanjavur [A-14]. In the case on hand, A-18, viz., the Assistant Elementary Educational Officer, has inspected the place physically and forwarded his report to A-14, who in-turn, had forwarded the same to the Director of Elementary Educational Officer [A-24] against whom the prosecution launched, was withdrawn.
- The appellant dealt with the application for renewal of Saraswathi Nursery and Elementary / Primary School for the year between 2003-2006 and it is not in dispute that it had obtained recognition during the year 1995. According to the prosecution, fire emanated from the kitchen attached to the Noon Meal Centre belonged to Sri Krishna Aided Primary / Elementary School and the said Centre is in no way connected with the students of Saraswathi Nursery and Primary / Elementary School. It is the primordial submission of the learned counsel appearing for the appellant / A-16 that the Trial Court though found that A-10 and A-13 did not make proper verification, exonerated them. But, in the case on hand, A-16 has not even been entrusted with such a responsibility and that apart, the competent authority, viz., the District Elementary Education Officer [A-14] is competent to order inspection under Rule 27 of the Tamil Nadu Recognised

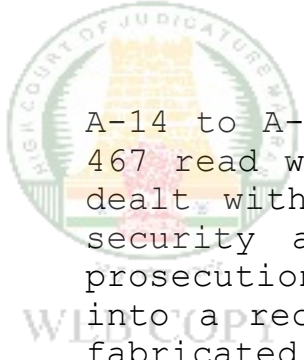


Private Schools [Regulation] Act, 1973. It has also been brought to the knowledge of this Court by the learned counsel appearing for the appellant / A-16 that A-11, viz., S.Paramasivam, Tahsildar, has filed a petition for discharge before the Trial Court and it was allowed and one of the witnesses aggrieved, had filed a revision against discharge before the Madurai Bench of Madras High Court in Cr1.RC. [MD] No.580/2010 and vide order dated 31.08.2010, this Court had dismissed the said revision, confirming the order of discharge and in the said order, this Court has taken note of the charge framed against A-11 with regard to the issuance of the Licence without proper scrutiny and found that it pertains to Saraswathi Nursery and Elementary / Primary School and not in respect of Sri Krishna Aided Primary / Elementary School, wherein the fire accident took place and as the appellant is similarly placed like that of A-11, the benefit of the said order shall also be extended to him.

- The Trial Court was on misconception as if Saraswathi Nursery and Elementary/Primary School was functioning based on the renewal application dealt with by the appellant/A-16 and the process of renewal ended on 20.07.2004 and it has nothing to do with the fire accident which took place on 16.07.2004 and that apart, the ingredients of the offences under Section 467 read with 197 IPC have not been made out at all for the reason that the topmost official, viz., A-24, who signed the Note, has not been proceeded further, as the prosecution launched against him, was withdrawn and the contents of the documents marked as Ex.P.62 cannot be said to have been made without proper authority or enquiry.
- Attention of this Court was drawn to the typed set of documents containing the order dated 31.08.2010 made in Cr1.RC. [MD] No.580/2010 and a part of the report of the Hon'ble Mr. Justice K.Sampath [Retd.], Commission of Enquiry, as well as the decisions reported in **2009 [4] MLJ [Cr1.] 1133 [Poongavanam Vs. State by the Inspector of Police, Pallikaranai Police Station]** and **2009 [8] SCC 751 [Mohammed Ibrahim and others Vs. State of Bihar and another]**.

Cr1.A.[MD] No.250/2014:-

20 Mr.S.Venkatesan, learned counsel appearing for the appellant / A-17 in Cr1.A.[MD] No.250/2014 would submit that the appellant/A-17 was working, at the relevant point of time, as the Personal Assistant to the District Elementary Education Officer [A-14] and he dealt with the file relating to Ex.P.562 which was forwarded to A-24 and beyond that, he has nothing to do with the case. It is the further submission of the learned counsel appearing for the appellant / A-17 that the Trial Court found that



A-14 to A-17 were guilty of the offences punishable under Section 467 read with 197 IPC, overlooking the materials that they merely dealt with the Note file and it cannot be cited as a valuable security and even otherwise, it is not even the case of the prosecution that the contents of the Note file which culminated into a recommendation under Ex.P.562 dated 14.06.2004, have been fabricated or forged and therefore, the findings rendered by the Trial Court in that regard, are *per se* unsustainable and based on 'no evidence' and perversity is also attached to the said findings. The learned counsel appearing for the appellant / A-17 also made an alternate submission that the appellant / A-17 is aged about 75 years and apart from suffering due to age related ailments, is also suffering due to diabetes and urology problem and had undergone more than half of the substantive sentence of imprisonment and if this Court holds that the conviction against him is sustainable, may modify the sentence to one of already undergone and prays for appropriate orders.

Crl.A.[MD] NO.268/2014:-

21 *Per contra*, Mr.R.Rajaratnam, learned Public Prosecutor, appearing for the State made the following submissions:-

- ➔ A-1 / appellant in Crl.A.[MD] No.241/2014 was the Founder of all the three schools and admitted that Sri Krishna Aided Primary / Elementary School was functioning in a thatched roof building situate in S.No.763/B and the adjacent land in S.No.762/B was purchased in the name of his wife / A-2 [Appellant in Crl.A.[MD] No.242/2014] and thereafter, a superstructure containing two floors was constructed. A-1, thereafter purchased a land in S.No.873/B in the name of one of his adopted daughters, viz., P.W.109-Usharani [sister-in-law of P.W.1 and sister of A-3] and as per materials placed, some of the classes of Sri Krishna Aided Primary / Elementary School had thatched roofs and so also the kitchen attached to Noon Meal Centre of the said School. A-2 / Appellant in Crl.A.[MD] No.242/2014 was the Correspondent of the said School.
- ➔ Though A-1 took a stand that the superstructures put up in the said lands were in accordance with the Planning Permission and that the Education Department officials had also periodically inspected as to the availability of amenities, the fact remains that it lacks minimum basic facilities and all the three schools were located in a cramp place without proper ingress or egress.

<https://hcservices.ecourts.gov.in/hcservices/> Though Sketches marked as Exs.P.543 to 545 would submit that all the three schools were functioning in Door No.12-E located in S.No.762/B and A-11, against whom the



prosecution was withdrawn, had accorded permission to run two schools in the premises bearing Door No.12-E.

→ The testimony of P.W.1 who was accorded Tender of Pardon and treated as an Approver, would reveal that A-1 was behind the administration of all the three schools and it was also corroborated by the evidences of P.Ws.109 to 124 who were the teachers in the said schools and as such, it would be futile on the part of A-1 to contend that he has nothing to do with the administration of Sri Krishna Aided Primary / Elementary School.

→ Insofar as the scene of occurrence, viz., Kitchen attached to the Noon Meal Centre is concerned, it is the submission of the learned Public Prosecutor that though the Noon Meal Kitchen was constructed by the Government, as per the evidence of P.W.196, maintenance is to be carried out by the Management of the School only and the thatched roof on the said kitchen as well as some of the classrooms have been put up by A-1 only and those were replaced three days prior to 16.07.2004 and the said fact has been spoken to by P.Ws.1 to 14, 16 to 20, 109 to 126. The removed old thatched sheds have not been discarded ; but were kept inside the kitchen and near the kitchen also and the purpose for replacement was on account of surprise inspection to be made by the officials attached to the Elementary Education Office between 14.07.2004 and 16.07.2004.

→ To set right the Teachers : Students ratio, the students of Saraswathi Nursery and Primary / Elementary School and Sri Krishna Girls High School as well as the students of Sri Krishna Aided Primary / Elementary School were shifted to Sri Krishna Aided Primary / Elementary School and while they were sitting in classrooms, unfortunately, fire emanated from the kitchen and it spread to the other floors, wherein some of the classrooms have been provided with thatched sheds, which ultimately resulted in the death of 94 children and also resulted in grievous injuries to 15 children and 3 children suffered simple injuries. The complaint made by the parents, who were examined as P.Ws.21, 23, 32, 33, 35, 37, 60, 61, 62, 71, 73 and 81, through A-1, pointed out that a fire accident took place in a Marriage Hall and it resulted in the death of 64 persons and nothing has been done to rectify the said mistake.

→ The prosecution through overwhelming oral and documentary evidences, had proved the fact that fire emanated from the kitchen attached to the Noon Meal Centre only and the testimonies of injured students viz., P.Ws.2 to 14, 16 to 20 and the teachers working in the said Schools, who were examined as P.Ws.109 to 124. The said testimonies were also amply corroborated by P.Ws.125, 126, non-injured students as



well as the oral evidence of the Expert, viz., P.W.206- Forensic Science Expert, which has been marked as Ex.P.395. It was also pointed out by the prosecution that there was only one staircase to ingress and egress and on account of spill of fire, panic and confusion prevailed on account of the lack of way out / egress and the children perished in fire.

- Insofar as the role played by A-2 / wife of A-1, A-3 [adopted daughter of A-1 and A-2 / sister-in-law of P.W.1 and sister of P.W.109] and the Noon Meal Organizer / A-4 and A-5 are concerned, it is the submission of the learned Public Prosecutor that A-2 was the Correspondent of Sri Krishna Aided Primary / Elementary School to which, the Noon Meal Centre was attached and she carried out the instructions of A-1 fully by shifting the students from one School to another. A-4, who was the Noon Meal Organizer, was also a teacher of 5th Standard in Sri Krishna Aided Primary / Elementary School, failed to ensure that the removed thatched sheets from the kitchen were not kept near the oven and A-5 who is having prime responsibility to cook food for the children, though is very well aware that the thatched sheets near the oven are likely to catch fire, did not remove them and as such, A-1 to A-5 are jointly liable and responsible for the death and injuries caused to the children.
- Insofar as the conviction of A-1 to A-5 under Section 304 [II] IPC is concerned, it is submitted by the learned Public Prosecutor that all of them were very well aware of the consequences of having a thatched roof over the kitchen wherein the Noon Meal is cooked with the help of oven and that apart, the removed thatched sheets instead of being discarded, were kept near the oven in the kitchen itself and also in the adjacent place and therefore, it is a case of gross negligence on their part. The Education Officials who were arrayed as A-7 to A-10 and A-13 to A-18, did not discharge their duties properly and failed to ensure about the availability of basic amenities and access, viz., ingress and egress and as a result of which, the children though made efforts to escape from the fire, did not succeed in their endeavour and perished and A-22 and A-23, being the officials of the Municipality and Town Planning Officer respectively, did not inspect the Schools properly and allowed to run in violation of Norms and Rules.
- A-12, being an Engineer, without proper verification, has issued the Stability Certificate and as such, he has been rightly convicted for failing to discharge his duties properly and effectively and having a culpable state of mind.
- For the purpose of getting approval / recognition, Exs.P.139, 141 to 143, were brought forth as if a Playground was



available in S.No.181/5 and the witnesses, viz., P.Ws.158, 159 and 163, did not support the stand of A-1 and though the land has been classified as agricultural land, documents have been fabricated and created as if it was a playground based on which, temporary approval was granted under Ex.P.190 and it was also spoken to by P.W.175.

- ➔ Insofar as the conviction of the Education Officials under Section 467 read with 197 IPC is concerned, it is the submission of the learned Public Prosecutor that A-14 made a positive recommendation under Ex.P.562 and without verifying the rectification of the defects, it was blindly approved by A-16 and A-15 and A-17 had also played their role in preparing Ex.P.562 and A-1 with the help of A-2, A-3, A-12 and other acquitted accused, viz., A-22, A-23 had obtained the approval and Exs.P.139, 141 to 143 were created to get the approval of Sri Krishna Girls High School with regard to the availability of playground.
- ➔ The findings rendered by the Trial Court for acquitting A-7 to A-10, A-12, A-13 to A-18, A-22 and A-23, are *per se* unsustainable and also against the evidence available on record for the reason that they had played their role in creation of Exs.P.139, 141 to 143 and Exs.P.111, 133 also and having subscribed their signatures, they are supposed to be aware of the contents and authenticity of the particulars furnished and as such, the Trial Court, ought to have convicted A-2, A-3, A-7 to A-10, A-13 to A-18 for the commission of the offence under Section 467 read with 197 IPC and A-22 and A-23 for the commission of the offence under Section 465 read with 197 IPC. Similarly, A-7 to A-10, A-12 to A-23 are also liable to be convicted for the commission of the offence under Section 304 read with 109 IPC and under Section 338 read with 109 IPC.

In sum and substance, it is the submission of the learned Public Prosecutor that the reasons assigned by the Trial Court for convicting the accused are equally applicable to A-7 to A-10, A-12 to A-23 also and they are also liable to be convicted and sentenced accordingly and thus, prayed for dismissal of the appeals filed against the conviction and sentence and allowing of the appeal in CrI.A.[MD] No.268/2014 filed against the acquittal.

22 This Court, taking into consideration of the fact that 94 school children died in the incident which took place on 16.07.2004 at 11.00 a.m. and further that 15 children got grievous injuries and 3 children got simple injuries and the mental agony being undergone by the parents of the deceased children, paid its service to the society and best attention to the submissions made by the respective learned counsel appearing for the appellants / convicted accused and the learned Public Prosecutor appearing for



the State, who also prayed for allowing of the appeal in CrI.A. [MD] No.268/2014 filed against the judgment of acquittal.

23 This Court before dealing with the oral and documentary evidences and other materials available on record to adjudicate these appeals, has taken note of the fact that immediately after the said incident, the State Government had appointed Hon'ble Mr. Justice K.Sampath - a retired Judge of this Court, as One Man Commission of Enquiry to look into the aspects which led to the said incident and also to suggest remedial measures and the said Commission of Enquiry has submitted its findings to the State Government. Initially, the State Government has also awarded Ex-gratia payment to the parents of the deceased as well as injured children and not satisfied with the same, a writ petition was filed to grant more compensation and this Court, has initially appointed Hon'ble Mr. Justice P.Shanmugam, a retired Judge of this Court, to adjudicate the issue relating to compensation and since the learned Judge was not inclined to take up the assignment on account of personal reasons, the Hon'ble Mr. Justice K.Venkataraman, a retired Judge of this Court was appointed and the learned Judge, by holding several sittings, has suggested for enhanced payment of compensation and it is being disbursed.

24 The following questions arise for consideration in the appeals filed against the conviction, viz.,

CRL.A. [MD] Nos.237, 241, 243, 244, 249, 250, 253, 258 of 2014 and 59 of 2015:-

[a] Whether the ingredients of the offences for which the appellants / accused were convicted and sentenced, have been made out?;

[b] Whether the findings rendered by the Trial Court holding them guilty of the offences are sustainable, on facts and in law? ;

[c] Whether the alternate plea made by the appellants / convicted accused, for modification of the sentence of imprisonment and findings, is sustainable? ; and

[d] To what other relief the appellants / convicted accused are entitled to?

CrI.A. [MD] No.268/2014:-

[e] Whether the appeal against acquittal filed by the State against acquittal of some of the convicted accused in respect of certain charges and the total acquittal of other accused are sustainable?

**25 QUESTION Nos. [a] to [c]:-**

25.1 The charges framed and conviction recorded against the convicted accused / appellants extracted in the earlier paragraphs, are to be read as part and parcel of the findings, in order to avoid repetition. The appellants / convicted accused were convicted for the commission of the following offences under Sections:-

- [i] 304[II] IPC
- [ii] 337 IPC
- [iii] 338 IPC
- [iv] 285 IPC
- [v] 467 read with 197 IPC
- [vi] 465 read with 197 IPC
- [vii] 46 and 47 of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 ; and
- [viii] 320 of the Tamil Nadu District Municipalities Act, 1920.

25.2 The Trial Court has also imposed fine of Rs.51,65,700/- upon A-1 and the fine amount has not been paid.

25.3 Originally, the charge was framed under Section 304 read with 120-B IPC and the Trial Court has recorded conviction under Section 304[II] IPC.

25.3.1 SECTION 304 IPC:-

[a] It is relevant to extract Section 304 IPC:-

"Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

[b] The scope of section 300 IPC and 304[I] IPC came up for consideration before the Hon'ble Supreme Court of India in the decision reported in **2005 Cr1.L.J 684 [SC] [Thangaiya Vs. State of Tamil Nadu]** and it is relevant to extract paragraph No.9:-



9. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is culpable homicide but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder' is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

[c] The Hon'ble Supreme Court of India in **paragraph No.12** of the above cited judgment has taken into consideration Sections 299 and 300 IPC and observed that, "to put it more broadly, it is the degree of probability of death which determines whether the culpable homicide is of the gravest, medium or lowest degree." In **paragraph No.13**, it is observed that, "for cases to fall within clause [3], it is not necessary that the offender intended to cause death, so long as death ensues from the intentional body injury or injuries sufficient to cause death in the ordinary course." The Apex Court, in the above cited decision, incidentally considered clause [4] of Section 300 IPC and in **paragraph No.19**, held that, "it will be sufficient to say that clause [4] of Section 300 IPC, would be applicable where the knowledge of the offender as to the probability of death of a person or persons, in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act of having been committed by the offender without any excuse for incurring cause of death or such injury as aforesaid." In **paragraph No.20**, it was further observed that "the above are only broad guidelines and not cast iron imperatives....."

[d] In the decision reported in **2012 [8] SCC 450 [State through PS Lodhi Colony, New Delhi Vs. Sanjeev Nanda]**, famously known as "BMW hit and run" case, the respondent / accused, under intoxication, had driven BMW car, rash and negligently, which resulted in the death of many persons and some of them had also sustained injuries.



The Trial Court found the respondent / accused guilty of the commission of the offence under Section 304[II] IPC and awarded sentence of imprisonment for a period of five years and he was acquitted of other charges and co-accused were also convicted under Section 201 IPC. The accused preferred an appeal before the High Court of Delhi and the High Court found the accused guilty of the commission of the offence under Section 304[A] IPC and reduced the sentence to two years and further found that the accused has no intention or knowledge to cause death and therefore, no case for conviction of the accused under Section 304[II] IPC was made out. The State, aggrieved by the said Judgment, filed an appeal before the Hon'ble Supreme Court of India and the Hon'ble Apex Court has found that the accused has committed the offence punishable under Section 304[II] IPC and taking into consideration the aggravating and mitigating circumstances, modified the conviction and sentence and maintained the sentence awarded by the High Court, which was already undergone and made it clear that in view of the peculiar facts and circumstances, the said decision came to be rendered and may not be treated to be as a precedent of law and other propositions. One of the Hon'ble Judges, authored a supplementing Judgment and extensively considered the scope of Sections 304[A] and 304[II] IPC and also taken into consideration the following Judgments:-

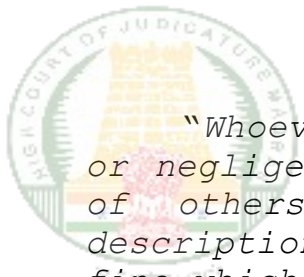
[1] 2012 [2] SCC 648 [Alister Anthony Pareira Vs. State of Maharashtra] ;

[2] 2009 [14] SCC 771 [Jagriti Devi Vs. State of Himachal Pradesh] ;

[3] 1976 [4] SCC 382 [State of Andhra Pradesh Vs. Rayavarapu Punayya] and directed the appellant / accused to pay an amount of Rs.50 lakhs towards compensation payable to the victims with a further direction that he shall do community service for two years through arrangements made by the Ministry of Social Justice and Empowerment.

[e] In **Alister Anthony Pareira's case** [cited supra], the Hon'ble Apex Court has held that "Section 304[II] IPC may be attracted if such rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death....". In **Jagriti Devi's case** [cited supra], the Hon'ble Supreme Court of India has held that "Section 304[II] IPC comes into play when the death is caused by doing an act with knowledge that it is likely to cause death ; but there is no intention on the part of the accused, either to cause death or cause such bodily injury as is likely to cause death."

25.3.2 SECTION 337 IPC:-



"Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

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[b] One of the essential ingredients of the section must be that the hurt must be caused to someone in doing an act and the person bearing to take reasonable care is said to be negligent of his act. The negligence or rashness must be proved as is necessarily carry with it criminal liability **[Arumugham Vs Gnanasoundara reported in AIR 1962 Mad 362]**. In the decision reported in **1971 Cr1.L.J [N] 7 [SC] [I.Kishan Chand Vs. State of Haryana]**, it has been held that "for application of section 337 IPC, hurt must be direct result of the rash and negligent act. No conviction is permissible when rashness or negligence of third party intervenes."

[c] The prosecution, in order to bring home the offence u/s.337 IPC, is to prove that [1]the accused committed an act, which is rash or negligent ; [2] that this rash or negligent act was such that it could endanger human life or personal safety of others ; and [3] that the rash and negligent act caused hurt, that is to say, a bodily pain or disease or infirmity to the victim.

25.3.3 SECTION 338 IPC:-

[a] It is relevant to extract section 337 IPC:-

"Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees."

[b] Section 338 IPC is applicable to cases when other ingredients of section 337 IPC are complied with and in addition to that, the act should result in grievous hurt or injury to someone. The intensity of commission of such an act ought to endanger human life or personal safety of the others **[Dr.P.B.Desai Vs State of Maharashtra reported in AIR 2014 SC 795 : 2014 Cr1.L.J.385 [SC]]**.

25.3.4 SECTION 285 IPC:-

[a] It is relevant to extract Section 285 IPC:-

"Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life or to be likely



to cause hurt or injury to any other person or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter ; shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

[b] The essential ingredients of section 285 IPC is [a] that there must be some fire or combustible matter in the conscious possession of the accused ; [b] that the accused has acted in such a way that endangered human life or was likely to cause hurt or injury in person or property of any other person ; [c] that he acted with rashness or criminal negligence or the prosecution may also prove the following ; [a] that there must be some fire or combustible matter in the conscious possession of the accused ; [b] that the accused omitted to take such order with the fire or the combustible matter in his possession as is sufficient to guard against any probable danger to human life therefrom ; [c] that he omitted to take such order knowingly or negligently.

25.3.5 SECTION 465 IPC:-

[a] It is relevant to extract section 465 IPC:-

"Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The said provision provides punishment for the commission of the offence of forgery. Forgery is defined u/s.463 IPC. The basic elements of forgery are [a] the making of a false document or part of it, and [b] such making should be with such intention as is specified in the section, viz., [1] to cause damage or injury to the [i] public, or [ii] any person ; or [2] support any claim or title ; or [3] to cause any person to part with property ; or [4] to cause any person to enter into an express or implied contract ; or [5] to commit fraud or that fraud may be committed.

[b] Until a false document is made either in whole or in part, there cannot be any forgery. Mere preparation for the commission of a possible crime of forgery without a false document in part or in whole cannot itself be either forgery or abetment of forgery. [**Pramatha Nath Vs. State of West Bengal** reported in **AIR 1951 Cal 581**].

[c] An intent to defraud is an essential ingredient of the offence u/s.465 IPC and the question whether there was an intent to defraud must depend on the facts and circumstances of each case [**Jyotish Chandra Vs. Emperor** reported in **10 Cr1.J 579 : Indian Cases 415**].



[d] A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, will be sufficient to support a conviction.

[e] The prosecution, in order to establish the commission of the offence of forgery must prove not only that the document is a false document u/s.464 IPC, but it was created by the accused with one of the intents mentioned in section 463 IPC and the prosecution has to prove beyond reasonable doubt that the accused person knew that the document was forged.

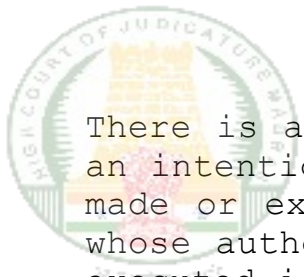
25.3.6 SECTION 467 IPC:-

[a] It is relevant to extract section 467 IPC:-

"Whoever forges a document which purports to be a valuable security or a Will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

[b] The scope of Sections 467, 471, 463 and 464 IPC came up for consideration before the Hon'ble Supreme of Court of India in the decision reported in **2009 [8] SCC 751 [Mohammed Ibrahim and others Vs. State of Bihar and another]**. The facts of the case would disclose that one of the appellants / accused who had no connection with the land and no title thereto, had executed two Registered Sale Deeds in favour of A-2 and A-3 to A-5 therein were the witness, scribe and stamp vendor respectively. A petition for discharge was filed before the Trial Court and it was rejected and a challenge made before the High Court, also ended in failure and therefore, an appeal was preferred before the Hon'ble Supreme Court of India. The Hon'ble Apex Court has formulated the question, "whether the materials on record, prima facie constitute any offences against the accused?".

[c] In paragraph No.13, the Hon'ble Apex Court observed that the condition precedent for the offences under Section 467 and 471 IPC is forgery. The condition precedent for forgery is making a false document [or] false electronic record [or] part thereof. In paragraph Nos.16 & 17, it is observed that "to fall under the first category of "false documents", it is sufficient that the document has been made or executed dishonestly or fraudulently.



There is a further requirement that it should have been made with an intention of causing it to be believed that such a document was made or executed by, or by an authority of person, by whom or by whose authority he knows it was not made or executed. If what is executed is not a false document, there is no forgery and if there is no forgery, then neither section 467 IPC nor section 471 IPC are attracted."

[d] The prosecution to bring home an offence, is to prove all the elements required to be proved for the offence u/s.465 IPC and further that the document forged is one of the kinds mentioned in section 467 namely, [1] valuable security ; [2] a Will ; [3] an authority to adopt a son ; and [4] an authority which purports to authorise any person to make or transfer any valuable security or to receive the principal etc.,

25.3.7 SECTION 197 IPC:-

[a] It is relevant to extract section 197 IPC:-

"Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence."

[b] The essential ingredients are that issuing or signing of a certificate, is required by law to be given or signed or relating to a fact for which, such certificate is by law admissible in evidence and it must have been issued or signed knowing or believing that it is false in any material point.

[c] In order to charge a person u/s.197 IPC, the certificate must be one that it should be, by some provision of law, admissible in evidence, as such certificate without further proof. **[Shaik Nimatullah, In Re reported in 1982 [2] Cal Head Notes 170].**

25.3.8 SECTIONS 46 AND 47 OF THE TAMIL NADU RECOGNISED PRIVATE SCHOOLS [REGULATION] ACT, 1973:-

[a] It is relevant to extract Sections 46 and 47 of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973:-

"46:Penalty for not giving information or giving false information:

If any person, when required, by or under this Act or any rule made under this Act, to furnish any information, omits to furnish such information or furnishes any information, which he knows, or has reasonable cause to believe to be false, or not true, in any



material particular, he shall be punishable with fine which may extend to one hundred rupees.

47:Other Penalties:-

[1] If any person willfully contravenes, or attempts to contravene, or knowingly abets the contravention of any of the provisions of this Act or any rule made thereunder, he shall be punishable with fine which may extend to five hundred rupees and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

[2] If any person willfully obstructs any authority, officer or person, from entering any private school in the exercise of any power conferred on it or him or by or under this Act, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees or with both."

[b] The framing of charge against A-1 to A-3 for the violation of the above said provisions of law appears to be vague for the following reasons:-

- Rule 3 of the Tamil Nadu Recognised Private Schools [Regulation] Rules, 1974, speaks about Stages of Education. Rule [5] which deals with the Application for permission, the application for opening up of a Pre-primary / Primary / Middle School, shall be in Form No.I and Clause No.[12] speaks about building. In G.O.Ms.No.474, Education Department, dated 24.04.1991, as subsequently amended, the Code of Regulations for Approved Nursery and Primary Schools in Tamil Nadu came to be framed. Rule 9 of Chapter II speaks about the Approval of Un-recognised Nursery / Primary Schools and Rule No.10 speaks about the Powers to Grant Approval and Sub-Clause [1] says that the Competent Authority to grant approval to an unapproved Nursery / Primary Schools or to upgrade the existing schools, will be the Director or an Officer authorised by him and the application shall be in prescribed format as per Annexure No.I and Clause [3] of Rule 10 speaks about the satisfaction of the conditions for the purpose of approval.
- The Grant in Aid Code of Tamil Nadu Education Department deals with the "grants-in-aid of recognised educational institutions under Private Management that the object of extending and improving secular education". Rule 4 speaks about the objects for which it may be given. Rule 23 speaks about the average daily attendance of pupil and Rule 29

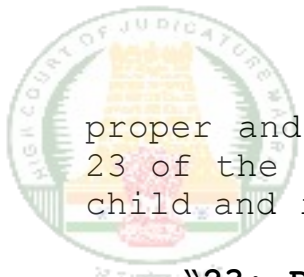


speaks that the application for aid shall be submitted in Form under Appendix.

- This Court, in the decision reported in **1998 [3] CTC 753 [The Management of Papanasam Vs. The Chief Educational Officer]**, has held that the right to get funds from the Government is not a matter of right.
- A perusal of Charge No.8 would reveal that A-1 to A-3 are sought to be prosecuted for violation of sections 46 and 47 of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 and what are all the specific provisions of the said Act have been violated, have not been indicated in the said charge.
- Chapter XVII of the Code of Criminal Procedure deals with the Charge. Sub-section [3] of section 211 Cr.P.C., says that if the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged and sub-section [4] says that the law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. Section 215 says that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact, misled by such error or omission, and it has occasioned a failure of justice.
- Section 465 Cr.P.C., deals with the finding or sentence when reversible by error, omission or irregularity and sub-section [2] says that in determination of the same, the Court have regard to the fact whether the objection should have been raised at an earlier stage in the said proceedings. As already pointed out, it does not specifically deal with the failure of the specific provision/s of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 and therefore, this Court is to see whether any witness has specifically spoken about the violation of the specific provision or any documentary evidence available with regard to the same.

25.3.9 SECTION 23 OF THE JUVENILE JUSTICE [CARE AND PROTECTION OF CHILDREN] ACT, 2000:-

[a] A-1 to A-3 and A-19 to A-21 have been charged for the offence under Section 23 of Juvenile Justice [Care and Protection of Children] Act, 2000 and they were acquitted from the said charge by the Trial Court and the prosecution had failed to adduce



proper and sufficient evidence to prove the said charge. Section 23 of the said Act provides for penalty for cruelty to Juvenile or child and it is relevant to extract the same:-

"23: Punishment for cruelty to Juvenile or child:-

Whoever, having the actual charge of, or control over, a Juvenile or the child, assaults, abandons, exposes or wilfully neglects the Juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such Juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both."

[b] The said provision is analogous to section 41 of the Juvenile Justice [Care and Protection of Children] Act, 1986.

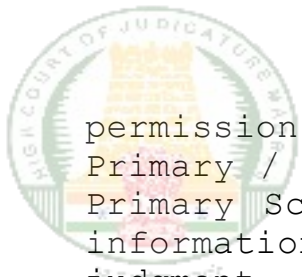
[c] The suffering undergone by a Juvenile or child shall be deemed to be caused wilfully resulting out of an act or omission or probability of the suffering to be caused and the concerned person had done it with the knowledge and insofar as "neglect", especially is concerned, the person who commits the offence shall have *mens rea*.

25.3.10 SECTION 320 OF THE TAMIL NADU MUNICIPALITIES ACT, 1920:-

[a] Section 320 of the said Act provides for penalty for not giving or giving false information and the said provision reads as follows:-

"If any person who is required by the provisions of this Act or by any notice or other proceedings issued under this Act to furnish and information - [a] omits to furnish it, or [b] knowingly or negligently furnishes false information, such person shall be liable to a fine not exceeding Rs.100."

[b] A-1 to A-3 have been charged for the commission of the said offence. A-3 has been acquitted and A-1 and A-2 were sentenced to pay a fine of Rs.100/- each with a default sentence of one month simple imprisonment. The tenth charge pertains to commission of the said offence and the purport of the charge is that A-1 to A-3 did not obtain licence or approval/permission to run three schools in the same premises ; in the year 1988 A-2 obtained permission to put up a school building in Survey No.762/B and in the same Survey Number, applied for permission to put up a residential building, cancelling the earlier permission and on that basis, permission was accorded to put up a residential premises and with that permission, A-1 to A-3 did not obtain any



permission and however, run schools, viz., Sri Krishna Aided Primary / Elementary School ; Saraswathi Nursery and Elementary / Primary School and Sri Krishna Girls High School and gave false information. The Trial Court in paragraph No.566 of the impugned judgment, has recorded the finding that the reports of the prior inspection disclose the said violation and as such, they are to be convicted and sentenced and however, acquitted A-3 for want of proper and sufficient evidence.

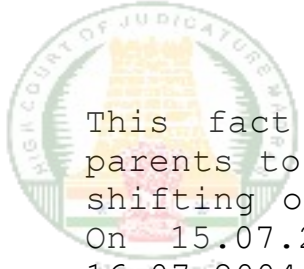
[c] This Court, keeping in mind the ratio / principles laid down in the above cited decisions and after taking note of the above statutory provisions in depth, scrutinised all the oral and documentary evidences as well as the materials and the reasons assigned by the Trial Court.

26 This Court, for the sake of convenience and better understanding to the provisions, now deals with the appeals filed by the concerned accused against conviction and sentence at the first instance and to take up the appeal against acquittal filed by the State thereafter.

Crl.A.[MD] No.241/2014 filed by Pulavar R.Palanisamy [A-1]:-

26.1 P.W.1 is the husband of Hemalatha, one of the adopted daughters of A-1 and A-2 and brother-in-law of P.W.109 - Usharani as well as to A-3 - Santhalakshmi. P.W.1 in the chief examination would admit that from the year 1995, as per the orders of A-1, P.W.1 was the in-charge Correspondent of Saraswathi Nursery and Elementary/Primary School and he also worked as the Headmaster of Sri Krishna Girls High School and that A-1 was the Manager of Sri Krishna Aided Primary / Elementary School and his wife A-2 was the Correspondent and A-3 was the Headmistress. P.W.1 would admit that he was the Correspondent of Saraswathi Nursery and Elementary/Primary School and he has also spoken about the topography of the building. He would further depose that the thatched roof put up on the Noon Meal Centre attached to Sri Krishna Aided Primary / Elementary School, has been changed and the removed thatched sheets were kept inside the kitchen as well as in the wash rooms for the purpose of using it as firewood.

26.2 P.W.1 would also depose that for the purpose of cooking food, ovens have been used. Insofar as shifting of students is concerned, for the purpose of showing Teacher - Students ratio at 1:40, 6th and 7th Standard students of Sri Krishna Girls High School, as per the orders of A-1, would be shifted to Sri Krishna Aided Primary / Elementary School and that the shoes, uniforms, belt worn by the students studying in Saraswathi Nursery and Elementary/Primary School would be removed and they would be made to sit in Sri Krishna Aided Primary / Elementary School and in this regard, parents of the wards also made a complaint to him.



This fact was informed to A-1, who told P.W.1 to direct the parents to meet him and he has also questioned A-1 with regard to shifting of the students who asked him to mind his own business. On 15.07.2004 also, students were shifted like that and on 16.07.2004 [the date of fire accident], he was on casual leave and applied for the same to P.W.109 and he received information about the fire accident at about 4.45 p.m., while he was waiting in Tiruppur Bus Stand to board the bus. Insofar as obtaining permission / approval is concerned, P.W.1 would depose that in the year 1997, A-1 in his capacity as Correspondent, has obtained his signature and the entire documents would be prepared by him and in the year 1997, no recommendation was given and for the years 2003-2006, A-1 got the signature from P.W.1 and though he was aware of the fact that sending of such proposal after six years is wrong, he had signed the same in the light of the threat and coercion made by A-1. Insofar as the Playground also, similar threat was wielded out and accordingly, P.W.1 had signed the relevant documents and also told him that in future, he will not put his signature. In that regard, for the purpose of showing playground to run the school, viz., Saraswathi Nursery and Elementary/Primary School, the land belonging to P.W.158 have been took out on lease on a yearly rental of Rs.1,000/- and was used as a playground for 15 years and similar exercise was done for the High School also and A-1, in his capacity as Secretary, had signed the same and in this regard, there was misunderstanding between P.W.109 and her husband - P.W.157 and A-1 also lodged a complaint against P.W.157 on the file of Kumbakonam East Police Station. P.W.1 would further depose that in connection with the fire accident, he was examined by the police including P.W.229 - the Investigating Officer and he was arrested on 20.12.2004 at Kumbakonam Bus Stand and on 29.12.2004, when he was produced before the Court of Judicial Magistrate, Thanjavur, he agreed to give a statement and accordingly, he was issued with summons for appearance on 02.02.2005 and on 12.09.2006, P.W.1, on receipt of summons, has given a statement which was recorded under Section 164 Cr.P.C. P.W.1 would admit the signatures in Ex.P.1, which was marked subject to objection and would further admit that his signatures in Exs.P2 to P6 as well as in Ex.P7 and Ex.P8 were filled up by A-1. P.W.1 would further admit his signature in Exs.P9 to P14 also.

26.3 P.W.1 was subjected to extensive cross-examination by the learned counsel appearing for A-1 and A-2 and he would admit that recognition / renewal was accorded to Sri Krishna Girls High School and at the time of fire accident, it was having recognition and A-1 was the Correspondent. P.W.1 would further depose in the cross-examination that he was not aware of the recognition granted to Sri Krishna Aided Primary / Elementary School in the year 1950 <https://hcservices.courts.gov.in/hcservices/> that once the permanent recognition / approval accorded, it need not be renewed and would further admit that insofar as Sri Krishna Aided Primary / Elementary School is



concerned, there is no question of renewal of recognition and A-2 was the Correspondent.

26.4 Attention of P.W.1 was also drawn to Exs.P1 to P15 and though he would depose that he did not forward the same to the Director of School Education, would later on admit that in Ex.P.11 it was stated that he has forwarded the same and he was not aware as to the permission / approval accorded by the said officials on 11.07.2004 and in the proposal, his name has been shown as Administrator / Correspondent. But, he was not holding the post and would further admit that he was not aware of the applicability of the provisions of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973, to the Elementary / Primary Schools.

26.5 P.W.1 would further admit that except subscribing the signature to the proposal, he was not aware of the contents of the same and even before giving evidence also, he did not go through the contents of the same. P.W.1 also states that in respect of the students studying in three schools, different sets of uniforms have been provided and that the Noon Meal Centre has been established to provide noon meal to the students studying in Sri Krishna Aided Primary / Elementary School and the control of the same is with the District Collector and he cannot interfere with the function and so also A-1 and A-2.

26.6 P.W.1 also made a crucial admission that he was not aware of how long the Noon Meal Centre was functioning ; but when he joined on 1993, it was in existence and even at that time, thatched roof was put over the kitchen attached to Noon Meal Centre and firewood was used for the purpose of cooking. Insofar as Teacher-Students ratio, it is the evidence of P.W.1 that during September, the Education Department Officials used to verify and inspect the same and insofar as Sri Krishna Aided Primary / Elementary School is concerned, the sanctioned strength of teachers is 16 and 13 teachers were working and also further made a crucial admission that there is no necessity for the Education Department officials to come and satisfy themselves as to the Teacher-Students ratio during July. In respect of the change of uniforms, P.W.1 would depose that only shoe, tie and belt will be changed and the uniform will not be changed and was not aware of the permission accorded to two buildings situated in two survey numbers by the Kumbakonam Municipality and that the High School building is in the name of A-2 and the building in which the Elementary / Primary School was located is in the name of P.W.1 and he was not aware whether the building, in which the Elementary and Primary School was located is in the name of P.W.109 and would further depose that there was misunderstanding between A-1 and P.W.109 [Usharani]. P.W.1 would also admit that insofar as School Service Examination is concerned, without recognition, they will not be allowed to sit and write the examination.



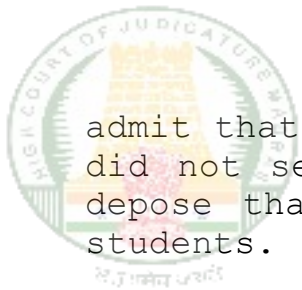
26.7 P.W.1 would further depose in the cross-examination that there is no rule or guideline as to the area of a classroom and very many schools have been run in the old buildings and they were also functioning in buildings with thatched roof and was not aware of the relevant statutory provisions. P.W.1 would also admit that during inspection, none of the Education Department Officials notified any deficiency and insofar as the Aided Primary / Elementary School is concerned, every year inspection would be taking place and was not aware as to the deficiency pointed out with regard to the thatched roof.

26.8 Attention of P.W.1 was also drawn to Exs.D1 and D2 and he would admit that A-1 did not run the Girls High School in violation of law.

26.9 P.W.1 was put a specific question with regard to obtaining of signatures in the above cited prosecution exhibits by A-1 under force and threat, he did not make any complaint to any Educational Department officials and did not tell anybody about it and even in the Meeting convened by the Education Department officials, he did not make any complaint.

26.10 P.W.1 also made a crucial admission that prior to fire accident, nobody has made any complaint against the three schools and no parents lodged a written complaint ; but they made only an oral complaint and even in respect of the oral complaint made by the parents, he did not inform the Education Department officials. It was also deposed by P.W.1 that since the school was running properly, very many students were admitted and despite the fire accident, the School building did not collapse. P.W.1 was further re-called on the petition filed on behalf of A-1 and A-2 on 26.09.2012 and 27.09.2012 and he would state that students studying in Classes I to V in Sri Krishna Aided Primary / Elementary School would take noon meal and it is under the direct control of the District Collector and though for ten years, parents made complaint with regard to shifting of students, he cannot particularly tell the date and year and he also did not lodge any written complaint to the Education Department officials for the reason that none of the parents had given him the written complaint.

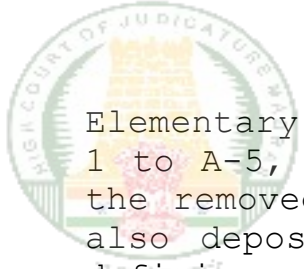
26.11 P.W.1 would further depose that different set of uniforms have been provided for students studying in three schools and at the time of submitting leave letter for taking leave on 16.07.2004, he was having cordial relationship with A-1 to A-3 and though he has no enmity with P.W.109, he was not in talking terms. He would further admit that he went to Kumbakonam Town Police Station for three or four times and his statements were recorded and subsequently, he was arrested. P.W.1 would further



admit that he was examined by the police about twenty times and he did not see the documents kept in the Almirah and would further depose that he did not tell the police that he has shifted the students.

26.12 P.W.229 - Additional Superintendent of Police / Investigating Officer, in the chief examination, would depose that after he took charge as Investigating Officer, he started conducting investigation and found that A-2, for the purpose of putting a school building in Door No.12E in Survey No.762/B, submitted an application during the year 1988 marked as Ex.P12 and the rough plan in Ex.P548 was also enclosed, based on which, the Commissioner of Kumbakonam Municipality has accorded the permission on 17.11.1988 and on 10.03.1989, A-2 once again submitted an application to cancel the said permission with a request to convert it as a residential one and similarly, P.W.109 in respect of superstructure in Door No.13, has submitted an application to put up a superstructure to the Commissioner of Kumbakonam Municipality, marked as Ex.P.216 and necessary permission was also accorded. In Door No.12-E [Survey No.762/B], Sri Krishna Aided Primary / Elementary School was functioning and in Door No.13 [Survey No.763/B], Saraswathi Nursery and Elementary/Primary School was functioning and till the date of incident on 16.07.2004, for the said schools, no permission to use it as a school building has been obtained by A-1 to A-3. P.W.229 was once again summoned to continue the chief examination. The investigation done by him was divided into four parts, viz., the buildings in which the three schools were running ; details of the three schools ; the details pertain to Noon Meal Centre attached to Sri Krishna Aided Primary / Elementary School and also given the description / topography of the Schools. P.W.229 would depose that thatched roofs have been put up in Classes 5A, 4C and 3B of Sri Krishna Aided Primary / Elementary School in the top floor open space and in the same floor, 10th Standard of Sri Krishna Girls High School was functioning and the classrooms containing thatched roofs caught fire in which 94 children died in the said fire accident and 18 children escaped with injuries and on account of lack of space, 10th Standard has been shifted to the first floor of Door No.13 by closing the door and converting it as a house and on account of it only, one access was available and that the door has also been put up to close the rear side access and the students were unable to escape and died.

26.13 P.W.229 would further depose in the chief examination that Government Order is available to run the Noon Meal Centre in respect of the students studying in Sri Krishna Aided Primary / Elementary School and it was covered with thatched sheet and was functioning very near to LKG and UKG classes in Saraswathi Nursery and Elementary/Primary School as well as near the classrooms - 3A, 4A and 4B of Sri Krishna Aided Primary /



Elementary School and the said deficiency has not been noted by A-1 to A-5, A-9, A-7, A-10 and A-14 in the Attendance Register and the removed thatched sheets have been kept by A-4 and A-5. It is also deposed by P.W.229 in the cross-examination with regard to deficiency of Teacher-Students strength that for the purpose of making it good during surprise inspection conducted by the Education Department Officials thrice in a year, students were shifted.

26.14 It is to be pointed out that the chief examination of P.W.229 commenced on 06.02.2014 and completed on 12.02.2014. On 17.02.2014, he was cross-examined by the learned counsel appearing for A-1 and A-2 and the portion of the said cross-examination, relevant for consideration, is extracted below:-

".....P.W.229 in the cross examination would depose that by about 12.30 p.m. on 16.07.2004, the fire was put off and he went to the scene of occurrence at about 12.15 p.m. on that day and the Fire and Rescue officials had given the said report and he asked them to convey the said information to the Deputy Superintendent of Police, Kumbakonam and he examined the first witness at 12.45 p.m., on 16.07.2004 and recorded his statement. The first witness, viz., P.W.15-Village Administrative Officer [the first informant], has already conveyed the incident through telephone."

26.15 It is the submission of the learned counsel appearing for A1/appellant in CrI.A.[MD] No.241/2014 that even prior to lodging of the complaint by P.W.15, information in the form of report was submitted by the Fire and Rescue Officials and as such, the complaint given by P.W.15 cannot be cited as the first information and the earliest information has been burked. It is to be noted at this juncture that P.W.206 - Forensic Expert gave his opinion in Ex.P.394 and according to P.W.1, telephonic information was given with regard to the fire accident and cryptic telephonic information cannot be treated as a first information **[2013 [6] SCC 428 [Yanob Sheikh @ Gagu Vs. State of West Bengal]]**. Even otherwise, the information pertains only to fire accident and no interpolation or exaggeration took place and as such, the point urged by the learned counsel appearing for A-1 / appellant in CrI.A.[MD] No.241/2014 is found to be of 'no substance'.

26.16 P.W.229 would further depose that P.Ws.149, 138, 137 are the eyewitnesses and his attention was also drawn to the Tamil Nadu Recognised Private Schools [Regulation] Rules, 1974 and he would depose that with regard to the infraction of Rule No.3, it has been stated as violation and insofar as violation of the District Municipalities Act is concerned, Section 5 has been violated and the said violations are not punishable. Out of the five persons who were initially examined by P.W.229, one Selvam alone has spoken about A-1 and A-2 and other four did not utter



anything about them and the said Selvam has not been cited as a witness.

26.17 Insofar as the origin of the fire accident is concerned, P.W.229, in the cross-examination would depose that as per Column No.15 of the Inquest Report, the cause of death was on account of emanation of fire from the Noon Meal Centre Kitchen attached to Sri Krishna Aided Primary / Elementary School and it spread to other thatched roofs put up on the classrooms and on account of injuries sustained, very many students died and the names of the accused have not been mentioned in the Inquest Reports. P.W.229 would further depose that while he searched the Schools, A-1 to A-3 were in custody and he did not obtain permission to search the schools and P.W.1 was arrested on 20.12.2004. P.W.229 made a crucial admission that he was not aware of the requirements / regulations to run the school for the reason that he was not well acquainted with the functions of the said Department and however, during the course of investigation, deposed that he was aware of the same to certain extent from the Education Department officials.

26.18 P.W.229 was summoned on 21.02.2014 by the learned counsel appearing for A-1 and A-2 to continue the cross-examination and he would depose that with regard to the inspection of the school and further action to be taken, the police has no role to play and it is the duty of the Director of the School Education, Assistant Elementary Education Officer and the District Elementary Education Officer as well as higher officials upto the Secretary to Government of the said Department. He would further depose that since the other penal offences are connected, he is competent to investigate the violation of the said provisions also.

26.19 P.W.229 would admit that Sri Krishna Aided Primary / Elementary School got permanent recognition during the year 1950 and originally, it was established by one T.R.Ganesan, from whom A-1 had purchased it during the year 1963 and he was the Headmaster of the said School between 1963-1969 and from the year 1969, his wife, viz., A-2, was functioning as Headmistress. A-1 retired in the year 1988 and A-2 retired in the year 1992. Thereafter, A-2 continued as the Correspondent and from the year 1992, A-3 was the Headmistress of the said School. P.W.229 would depose that in the light of the permanent recognition accorded to the said school, there is no necessity to go for renewal and however, every three years, the Stability Certificate, Sanitation Certificate and Building Licence have to be obtained from the concerned officials and should be kept in the files and for the purpose of imposition of the said condition, no document is available and however, P.W.171 had deposed about the same and the violation of the said condition has not been stated either in the

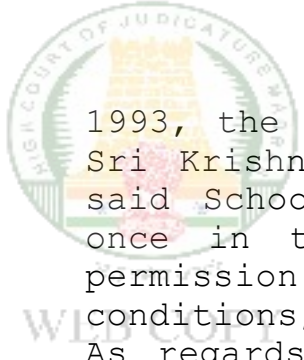


Inspection Report or in the Attendance Register.

26.20 P.W.229 would further admit that from the 1950, no education officials have issued those certificates and there are no entries in the records also and in this regard, no action has been taken against A-22 and A-23 and the Joint Director of School Education has also deposed about non-requirement of the renewal in respect of permanent recognition. P.W.229 also admitted that when permanent recognition / approval was accorded to Sri Krishna Aided Primary / Elementary School, it was functioning under thatched sheet/roof and when A-1 purchased the said School in the year 1963, it had thatched shed. P.W.229 would further admit that the land in Survey No.763/B [Door No.13] was purchased by A-1 and A-2 in the name of P.W.109 and to put up a superstructure, permission was obtained in the name of P.W.109 by A-1 and A-2. P.W.229 would further depose that with regard to the Approval Plan given by Kumbakonam Municipality, the original was not available and he obtained the Xerox copies, marked as Ex.P.217 and further answered that the superstructure is not in consonance with the Approval Plan and till the date of accident, no action has been taken by Kumbakonam Municipality officials and A-22 and A-23 shall take up that responsibility. It is to be pointed out that A-22 and A-23 were acquitted by the Trial Court, vide reason stated in paragraph No.562 of the impugned judgment, on the ground of want of evidence let in by the prosecution.

26.21 The officials examined would also state that with regard to violation of the Sanction Plan and the deviation, no complaint has been received and therefore, they did not take any action and A-22 and A-23 also stated about the non-receipt of any complaint and though some of the witnesses had stated about the deviation, the said witnesses did not see the building. Insofar as putting up the two storeyed superstructure in Survey No.762/B is concerned, there is no document available to show that for the said building, licence was available and the ground floor is meant for residential purpose.

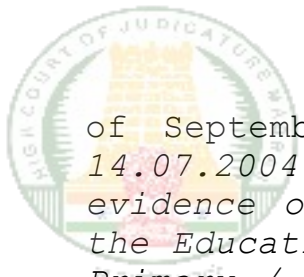
26.22 P.W.229 was further cross-examined on 25.02.2014 by the learned counsel appearing for A-1 and A-2 and he would depose that with regard to the nature of the school building, there is no specific provision available either in the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 or in the Tamil Nadu District Municipalities Act and the Rules framed thereunder and when a suggestion was put to him that even in a residential building also school can be run, P.W.229 would depose that to his knowledge, no such power has been available and would admit that with regard to running of the School, the Department of School Education is the competent authority and even in the year 1950, permission for recognition / approval has been accorded to Sri Krishna Aided Primary / Elementary School and in the year



1993, the Director of School Education has accorded permission to Sri Krishna Girls High School and A-1 was the Secretary of the said School and after 1993, approval / recognition was renewed once in three years in respect of the said school and such permission has been accorded till the year 2005 subject to certain conditions, out of which two conditions have not been fulfilled. As regards Saraswathi Nursery and Elementary/Primary School, the Director of Elementary Education [A-24 against whom the prosecution has been withdrawn] has accorded permission on 11.07.2004 and P.W.1, in his capacity as the Correspondent has obtained such a permission and A-24 has passed the said order based on the proposal submitted by A-14 and P.W.176 has also put the seal of approval and no error or deficiency has been noted and if it was there, it was the responsibility of the District Elementary Education Officer to bring it to the knowledge of the concerned officials. Insofar as the renewal of the approval / permission to Sri Krishna Girls High School, none of the officials pointed out any deficiency and one Pinangapani, the District Elementary Education Officer, has put up the proposal for renewal and he has not been cited as a witness. P.W.229 would further admit that since such a renewal / permission for recognition / approval has been accorded subject to conditions, he did not find fault with the procedure.

26.23 Insofar as Teacher-Students ratio is concerned, it was deposed by P.W.229 - Investigating Officer that in respect of Sri Krishna Aided Primary / Elementary School, the sanctioned teacher strength is one Headmaster and 12 teachers and in the year 2004, the school was functioning with such a strength and as per the Attendance Register of Sri Krishna Aided Primary / Elementary School, 483 students were there ; but on enquiry, it revealed that only 324 students were studying and in the absence of entire documents, he was not in a position to ascertain the details of 483 students and so also the veracity of the Admission Register and further admitted that entire documents have not been available / collected. P.W.229 further deposed that it is the duty of the Education Department officials to verify as to the attendance of the students as per the Attendance Register and for the purpose of Grant, the Teacher-Students ratio / strength has been fixed by the Government and such a recommendation is made by the District Elementary Education Officer and every year, for that purpose, such an inspection will be done and the officials used to visit the schools and it is to be done only after the admission process is over.

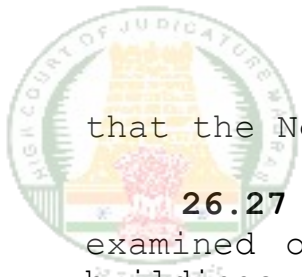
26.24 P.W.229 would admit that during the course of investigation, none of them has told about the month during which such inspection is to be conducted and insofar as the admission of students is concerned, in respect of Sri Krishna Aided Primary / Elementary School is concerned, such a process would take place till the end



of September. P.W.229 made a very crucial admission that on 14.07.2004, 15.07.2004, 16.07.2004 and 17.07.2004, there is no evidence or material available as to the inspection conducted by the Education Department officials in respect of Sri Krishna Aided Primary / Elementary School and only through the statements given by the teachers, he became aware of the same. P.W.229 would further admit that A-19, A-20 and A-21 were earlier examined as witnesses and their statements under Section 164 Cr.P.C., have also been obtained for the purpose of citing as witnesses.

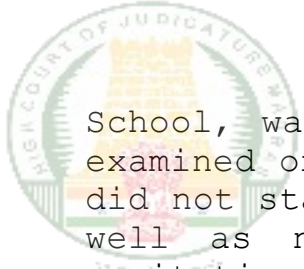
26.25 Insofar as running the Noon Meal Centre is concerned, P.W.229 - the Investigating Officer would deny the suggestion that it was run under the direct control / administration of the District Collector, however admitted that with regard to appointment of staffs are concerned, such a power has been vested with the Collector and nomination is to be done by the Correspondent of the said School and he did not obtain any statement from P.W.183 and would further admit that P.W.183, being the Personal Assistant to the District Collector of Thanjavur District is in-charge with regard to administration of the Noon Meal Centre, he has to do necessary inspection and after collecting materials, would make a recommendation and insofar as Municipality Schools are concerned, the Commissioner of Municipality is to look after the same and as per Government Order, District Collector is the Administrative Authority and denied the suggestion that with regard to location and running of Noon Meal Centre is concerned, school administration has no role to play. P.W.229 further admitted that though salary has been received by Noon Meal Organizer, he is under the control of the Municipality and in this regard, his attention was also drawn to Exs.D.35 to D.38.

26.26 P.W.229 also admitted that with regard to the Noon Meal Scheme is concerned, he did not examine the District Collector and the Noon Meal Centre has been located behind Saraswathi Nursery and Elementary / Primary School building and it stands in the name of P.W.109 and P.W.109 during the course of investigation would state that she has no connection with the said Centre. P.W.229 further made a crucial admission that none of the officials has pointed out about the location of the Noon Meal Centre for the reason that no officials connected with the Noon Meal Centre had examined the premises and given their opinion and that the officials of the Education Department have no role to play with regard to the inspection of the Noon Meal Centre and with regard to the availability of sanitation facilities, they have got a power. It was also deposed by P.W.229 that with regard to the running of Noon Meal Centre, neither the students nor the parents did lodge any complaint to the officials and however, some of the parents during the course of investigation, had stated so and would further admit



that the Noon Meal Centre was functioning for very many years.

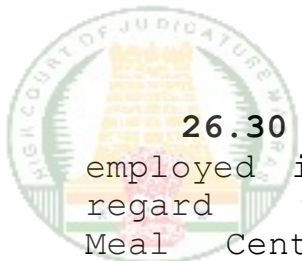
26.27 P.W.229 was recalled on 26.02.2014 and further cross-examined on behalf of A-1 and A-2 and he would depose that two buildings were constructed in the year 1989 and 1992 respectively and the official, who has accorded permission, has not been examined. It was also deposed by P.W.229 that except the teachers, none of the officials attached to the Municipality, have not at all spoken about the inspection made to the said School and there were no witnesses to state that the school was running. Insofar as the availability of sanitation facilities is concerned, a suggestion was put to him that very many schools are functioning without said facilities and it was answered by P.W.229 that he was not aware of the same. Insofar as the location of the Noon Meal Centre is concerned, P.W.229 would state that in other private schools, such a centre was located inside the school premises. To the contradiction pointed out in the evidence of P.W.229 elicited, P.W.229 would depose that while he was examined on 16.07.2014, he did not state that A-1 was the cause of the accident and so also shifting of the students on 14.07.2004 and 15.07.2004. P.W.4 also did not state the name of A-1 and she also did not state about the cause of accident on account of the use of changed thatched roof as well as shifting of the students. P.W.229 would further state that he did not examine the Sanitary Inspector of Kumbakonam Municipality and however, examined the Municipality Doctor and he was aware of the provisions of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973. P.W.4 also stated on similar lines as that of P.W.3 and P.W.4 did not initially state anything about the thatched roof or shifting of the students. However, during the course of investigation, P.W.229 became aware that one day prior to the accident, i.e., on 15.07.2004, such arrangement was made. P.W.5 did not elaborately state anything about the narrow passage with regard to ingress and egress and also with regard to change of thatched roof as well as shifting of the students. A perusal of the entire cross-examination of P.W.229 would disclose that most of the witnesses did not specifically state the name of A-1 and made a complaint with regard to change of thatched roof, catching fire of the same and shifting of the students and while recording further statements some day later, they did state so and made further improvements during the course of their oral evidence. Insofar as the examination of teachers, viz., P.Ws.109 to 124, are concerned, P.W.113 did not speak about the location of the thatched roof and also with regard to the availability of sanitation facilities and also marking of attendance in respect of students who did not actually attend the school. But in the further examination, the very same witnesses did speak about the keeping of the removed thatched sheets near the kitchen for the purpose of using it as a Services room. Similarly, P.W.109 did not state anything with regard to the rescue of the injured students. P.W.115, who was the Headmistress of Saraswathi Nursery and Elementary / Primary



School, was examined on 19.07.2004 by P.W.229 and he was further examined on 31.07.2004 and during the initial examination, P.W.115 did not state anything about the location of the thatched sheet as well as narrower access as well as the availability of the sanitation facilities. But, in the further examination, he did state something about the shifting of the students and change of thatched roofs and so also P.Ws.116, 118, 119 and other teachers, especially, P.Ws.122 and 123. P.W.123, according to P.W.229 - the Investigating Officer, in the initial examination, did not state about the dictate or mandate given by A-1 to shift the students, but in the further examination had stated so.

26.28 From the testimonies of the teachers, it is to be noted at this juncture that the students and teachers who were examined as P.Ws.2 to 14, 16 to 20 and 109 to 124, in the initial examination, did not state anything about the change of the thatched roof ; keeping the old thatched sheets inside the kitchen as well as near the kitchen for the purpose of using it as firewood ; the change of uniform ; and shifting of students to show the Teacher- Students ratio. But, in the subsequent examination done few months later, they stated so and the cross-examination of the Investigating Officer / P.W.229 done on behalf of A-1 and A-2 had also shown contradictions in the form of improvements in the testimonies of the above said witnesses / statements recorded under Section 161[3] Cr.P.C. / 164 Cr.P.C. P.W.153 was examined by P.W.229 on 04.08.2012 and in the examination, he did not elaborately state anything about the raising of alarm by the children and the difficulty in access on account of the narrow passage. P.W.177, who was the Noon Meal Assistant, in the examination done by P.W.229, did not state anything about the keeping of the old removed thatched sheets for the purpose of using it as firewood.

26.29 It is one of the primordial submissions of the learned counsel appearing for A-1 that with regard to the origin of fire, there is no clear cut or definite evidence is available and a suggestion has also been put as to the emanation of the fire on account of short circuit and since proper investigation has not been done with regard to the said vital and material fact, even treating it as a worst case, it can be only be treated as a fire accident on account of the act of God and as such, A-1 cannot be mulcted with criminal liability / responsibility and since the relevant documents have not been seized by P.W.229 - Investigating Officer with regard to the shortages pointed out and the alleged fabrication of records, his conviction under various sections, especially, with regard to the award of life imprisonment, imposition of huge amount of fine, especially, with regard to his conviction under Section 467 read with 197 IPC and 465 read with 197 IPC, is wholly improper.



26.30 P.Ws.149 to 153, at the relevant point of time, were employed in the Tamil Nadu Fire and Rescue services and with regard to origin of fire in the kitchen attached to the Noon Meal Centre, this Court had scanned and analyzed their testimonies. They merely speak about the summoning of their services and dozing of fire. Therefore, the crucial witness is P.W.206, the Forensic Expert and he was the Assistant Director, Regional Forensic Laboratory, Thanjavur and in the chief examination, he would depose that he inspected the place of incident on 16.07.2004 and there are two access to the said place and besides the hall on the south-west corner, the noon meal kitchen was located and it is measuring about 12 X 12 feet and three ovens were located in the said kitchen and the said place was littered with ash and burnt sticks / woods and photographs were taken and on the southern side, thatched sheets were left over the classrooms and the walls were also constructed with the aid of brick. On inspection, suggestions/advice were given to P.W.229 as follows: *"out of three ovens, heat did not subsidize in two ovens and the spark emanated from the two ovens reached the thatched roof and also the removed thatched roofs were kept nearby which in turn spread to the thatched roofs put up on the classrooms and since only one access was available on the south-west corner, children were unable to come out and the said witness was cross-examined on behalf of A-1 and A-2 and he would depose that the entire thatched roof put up on the kitchen as well as classrooms were found to be in burnt condition."* The said witness was also elaborately cross-examined on behalf of A-14 / appellant in CrI.A.[MD] No.237/2014 and he once again reiterated that from two ovens designated / pointed out 1 and 2, the spark emanated from it, touched the removed thatched sheets and thereafter, fire spread and denied the suggestion that it was on account of short circuit and he would further depose that instead of thatched roof, if some other roof was put up, fire would have been avoided and if the fire tenders put by the school was properly utilized, it would have been avoided. The said witness was also cross-examined on behalf of A-19, A-20 and A-21, who were acquitted and he would admit that burnt and semi-burnt out materials available in the kitchen and nearby places were not sent for chemical examination and in the absence of the same, he is not in a position to state as to which article has caused the fire.

26.31 The fact remains that for the purpose of cooking Noon Meal, three ovens were put inside the Noon Meal Kitchen and firewoods have been used to generate heat for the purpose of cooking food. Though suggestions have been put to the concerned witnesses, as to the keeping of the removed thatched sheets inside the kitchen and nearby places, it has been established by the prosecution that the noon meal kitchen was having a thatched roof for many years and it was removed and replaced with another set of new thatched sheets. The prosecution has also established



the fact that some of the classrooms also had thatched sheets by way of roof. The students and teachers, who have been examined in initial examination, did not state anything about the thatched sheets found on the kitchen as well as on the classrooms and the removal of old thatched sheets on the roof of the kitchen and keeping it for the purpose of using it as firewood. The fact remains that the firewood has been used in three ovens and it is the categorical evidence of P.W.206 that the spark emanated from two out of three ovens, resulting in catching fire of the thatched roof which in turn, spread to classrooms where thatched roofs have been put up. The evidence available on record would disclose that there are only two entrances available and one of it has been closed and converted into a classroom and the remaining staircase is very narrow and therefore, the egress in the event of emergency was almost an impossible one.

26.32 Thus, the prosecution has established through the evidence of witnesses that fire emanated from the kitchen attached to the Noon Meal Centre, though no clear-cut evidence is available from the testimony of P.W.206 that in the absence of non-sending of the seized firewood/remains of the burnt thatched sheet for chemical examination, as to the material which caused the fire. Though a suggestion has been put to the said witness that due to electrical short circuit, fire was caused, the facts available from the evidence would clearly disclose that the fire emanated from the kitchen only and it spread to various classrooms which had thatched roof. Therefore, the cause of the incident is only by the case projected by the prosecution.

26.33 Therefore, the incidental question arises for consideration is "Whether the concerned accused have been rightly convicted under Section 304[II] IPC, though they were charged for the commission of the offence under Section 304 read with 120-B read with 109 IPC.

26.34 A-1 to A-5 were convicted for the offence under Section 304[II] IPC [94 counts] and were acquitted for the commission of the offence under Section 120[B] IPC. A-1 was awarded 10 years rigorous imprisonment, fine of Rs.50000/- for each count [Rs.47 lakhs] and in default, to undergo 2 years Simple Imprisonment. A-2 to A-5 were awarded 5 years rigorous imprisonment. In the decision reported in **2005 Cr1.L.J 684 [SC] [Thangaiya's case]**, cited supra, the Hon'ble Supreme Court of India, for the purpose of fixing punishment, proportionate to the gravity of the generic offence, the Indian Penal Code [IPC] practically recognises three degrees of culpable homicide. The culpable homicide of the third degree as observed by the Hon'ble Apex Court in the above cited decision, is the lowest type of culpable homicide and the punishment provided for it, is also lowest among the punishments provided for the three grades and it

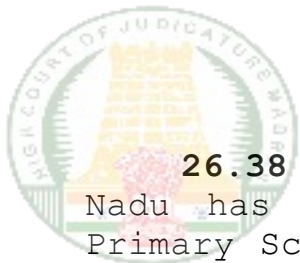


is punishable under the Second Part of Section 304 IPC.

26.35 In **AIR 1966 SC 1874 [Rajwant Vs. State of Kerala]**, it has been held that "for cases to fall within clause [3], it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinarily course of nature."

26.36 In **2014 [6] SCC 173 [Susheel Ansal Vs. State through CBI]**, cited supra, also known as **Uphaar Cinema Fire Tragedy** case, the scope of 304[A] IPC and 304[II] IPC came up for consideration and in paragraphs 104 and 105 of the said judgment it is observed that "whether a duty of care exists under the common law and the duty is additionally supported and clarified by the statutory provisions, a breach of the statutory duty would be proof enough of negligence. It would not be open to the defendant in such a case to argue that the harm was not foreseeable, since the very object of the legislation is to put that particular precaution beyond controversy. The breach of statutory duty constitutes negligence per se, but it applies only to legislation which is designed to prevent a particular mischief in respect of which the defendant has already under duty in common law. Failure to meet the prescribed statutory standard is then treated as unreasonable conduct amounting to negligence, because, a reasonable man would not ignore precautions required by Statute and the defendant cannot claim that the harm was unforeseeable because the legislature has already anticipated..... On the other hand, where the legislation does not deal with circumstances in which there is an existing common law duty, then, only expressly stated, breach of the statute would not give rise to an action because the damages may greatly exceed the penalty considered appropriate by the legislature."

26.37 Form No.I [vide Rule 5[1]] of the Tamil Nadu Recognised Private Schools [Regulations] Rules, 1974, speaks about the application for opening of a Pre-Primary / Primary / Middle School and as per Clause No.[12], "what is the accommodation proposed to be provided for the proposed school" and sub-clause [c] calls upon the applicant to state whether the building is a pucca, thatched or a tiled one. Similarly, Form No.II [vide Rule 5[5]] contemplates the submission of the statement of particulars in respect of existing schools and as per the said Rule, the Educational Agency of every Private School in existence on the date of commencement of the Act, shall, before the expiry of six months from that date, send to the authorities empowered to grant permission to open a new School as specified in Rule 4, a statement in Form No.II. Clause [7] is similarly worded like that of clause No.[12] in Form No.I. In Clause 7[b], the applicant has to state whether the building is pucca, thatched or tiled one.



26.38 The Education Department of the Government of Tamil Nadu has framed Code of Regulations for Approved Nursery and Primary Schools in Tamil Nadu and as per G.O.Ms.No.484, Education dated 24.04.1991 as subsequently amended, Regulation No.9 says that all recognised nursery / primary schools as on will be granted approval by the Department on submission of particulars in the proforma prescribed [Annexure I]. Approval will be accorded for nursery classes and primary classes, i.e., Standards I to V that actually exist. Regulation No.10 says that the competent authority to grant approval to an unapproval of nursery/primary schools or to upgrade the existing school will be the Director or an officer authorised by him. The application will be made in proforma prescribed in Annexure I. Regulation 10 [iii] speaks of the conditions which shall be satisfied for the purpose of approval and as per condition No.[a], the Educational Agency shall produce [1] a licence permitting the use of the School building as public building under the Tamil Nadu Public Buildings [Licensing] Act, 1965 ; [2] a structural community certificate of the school building issued by Executive Engineers of the Public Works Department or from the Chartered Engineers in the panel of qualified and Registered Engineers maintained by the District Collectors in accordance with the said Act ; [3] a Sanitary and Hygiene Certificate issued by the Health Officer of the locality ; [4] a No Objection Certificate obtained from the Station Officer [Fire and Rescue] in the area, where the school is situated ; and [aa] there shall not be any thatched structure in the School Premises.

26.39 It is pertinent to point out at this juncture that Regulation 10[iii][a] to [c] came to be substituted vide G.O.Ms.No.117, School Education [Q-1] Department, dated 07.09.2004 and the substitution came into being after the fire accident / incident pertains to this case. It is the evidence of P.W.229 - the Investigating Officer that Sri Krishna Aided Primary / Elementary School has been accorded permanent recognition even in the year 1950 and in respect of Saraswathi Nursery and Elementary / Primary School permission / approval was accorded on 11.07.2004 and initially, it was upto the period 1997 and none of the concerned Educational Officials had chosen to pass orders that the recognition / approval accorded to all the three schools were incorrect/wrong. It is the categorical evidence of P.W.229 that fire emanated only from the kitchen attached to the Noon Meal Centre which in turn spread to Sri Krishna Aided Primary / Elementary School and the reason being the kitchen was covered with the replaced thatched roof and the removed thatched roof were kept near the oven, inside the kitchen as well as adjacent to washrooms and spark from two out of three ovens reached the thatched roof of the kitchen and thereafter, the emanated fire spread to thatched roofs of some of the classrooms and since the



access is restricted to only one staircase, the children were unable to escape and 94 children died and 18 children sustained grievous injuries. The Investigating Officer has also admitted that he was not aware of the Rule prohibiting laying of the thatched roof prior to the said incident and as per the Government Order in respect of the Noon Meal Centre, it should not be covered with thatched roof, but should be covered with asbestos sheet and denied the suggestion that there is no connection between the provision of the nutritious meal in the Education Department and if A-14 would have processed the files properly, the accident would have been avoided. P.W.229 also denied the suggestion that the Education Department Officials have nothing to do with the inspection of the Noon Meal Centre. The Trial Court has recorded the finding that A-1 to A-3 had shifted the students for the purpose of showing the Teacher-Students strength and on account of use of thatched roof over some of the classrooms and keeping the removed thatched sheets in the kitchen as well as nearby places had resulted in the death of very many children and grievous injuries to some of the children and as such, they are liable to be convicted for the commission of the offence under Section 304 [III] IPC.

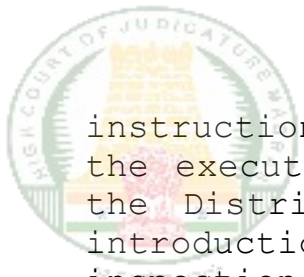
26.40 In the light of the finding reached by the Trial Court, it is relevant to consider the testimonies of P.Ws.176 and 183. P.W.176, at the relevant point of time, was the Joint Director of the School Education and as per the chief examination, for inspection of the Nursery School, the Assistant Elementary Education Officer [Nursery] and the District Elementary Education Officer has to carry out the said exercise and A-18 - Mr.V.Balasubramanian [acquitted accused], after inspection, has pointed out certain deficiencies and indicated that if it is rectified renewal can be done and it has been marked as Ex.P.200 and the deficiencies pointed out, are marked as Ex.P.201. She would further aver that subsequently, the deficiencies pointed out have been rectified by the Correspondent and however, in the file, no such document is available and a clarification has been sought as to whether a fresh recommendation / approval can be granted between 01.06.2003 and 31.05.2006 and A-14 has signed the covering letter and it is in receipt of Saraswathi Nursery and Elementary / Primary School. P.W.176 would state that normally the Assistant Elementary Education Officer, while inspecting the School, shall also inspect the Noon Meal Centre and it is an unwritten rule and the said official is having power to inspect the Noon Meal Centre.

26.41 In the cross examination done on behalf of A-1 and A-2, the said witness, after going through Exs.P.157, 200 to 202, would state that the said files have been dealt with by the District Elementary Educational Officer and since the recommendation / ~~proposition made~~ in the Note was in order, the Directorate of Elementary Education has accorded approval and before cancellation



of the same, the said school shall be put on notice. But, in the case on hand, no such notice has been sent to the concerned School. P.W.176 would admit that there are very many Primary / Elementary Schools functioning without permission / recognition. Insofar as the appointment of Noon Meal Centre staffs is concerned, P.W.176 would state that they have to be appointed by the District Collector and in respect of the said subject, the Personal Assistant [Noon Meal Scheme] has been posted. She would further state that the Noon Meal Centre should be located inside the school campus with sufficient protection for the children. On behalf of A-14, she was cross-examined and she has stated that with regard to the functioning of Noon Meal Centres, there are Government Orders ; but she may not be aware of the same and there is no rule for approval to be obtained from the concerned Municipality.

26.42 P.W.183 was the Personal Assistant to the District Collector of Thanjavur, between 18.03.2003 and 16.08.2004 and in the chief examination, he would state that in Thanjavur District, there are 1396 Noon Meal Centres and insofar as the Municipalities are concerned, it will be under the control of the respective Municipal Commissioners. The said witness has also stated that there are five Government Orders governing the same and as per Ex.P.218, the administration relating to the Noon Meal Centre vests with the Commissioner of Municipality and with regard to the disciplinary action etc., as per the Government Order in G.O.Ms.No.158, Social Welfare and Nutritious Meal Programme Department, dated 29.09.2009, marked as Ex.219, the Commissioner is the appropriate authority. The said witness would further state that in respect of Aided Primary School, the Correspondent has to construct the Noon Meal Centre and the food articles required, was also to be purchased by the Correspondent and with regard to the appointment of Noon Meal Centre Staff, recommendation shall be made by the Correspondent to the Collector and the Noon Meal Centre shall be inspected by the Tahsildar and the Municipal Commissioners and thereafter, necessary permission shall be granted. The said witness would admit that in Thanjavur District, three Municipalities are there and in respect of the Noon Meal Centres located within the jurisdiction of a Municipality, the District Collector is having power to inspect and insofar as he is concerned, he has to inspect 20 Noon Meal Centres every month and releasing the Grant to the Noon Meal Centre is covered under the Government Order marked as Ex.P.220. The witness would later on state that in respect of Aided Primary School located within the Municipality, the Municipal Commissioner alone is having power. The said witness was cross-examined on behalf of A-1 and A-2 and he would state that as per Ex.D.30, the District Collector has passed an order appointing him as the Noon Meal Centre Officer and he would further aver that the Government was not having sufficient funds and as per the Government Order marked as Ex.P.224, the Correspondents of the Schools have been given

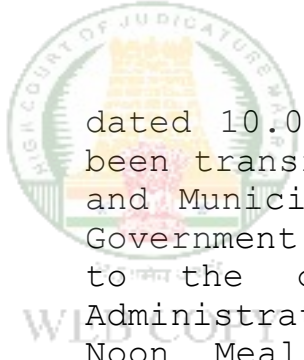


instructions to construct a Noon Meal Centre and would admit that the execution of the said scheme is wholly within the purview of the District Collector from the year 1982, giving the year of introduction. The said witness would also admit that he has to do inspection of the Noon Meal Centre and with regard to the location of the Noon Meal Centre, it is under the control of the District Collector and he is the ultimate authority.

26.43 The said witness had also made a categorical admission that from the year 1998 onwards, the Noon Meal Centre was located inside the School building and with regard to the functioning of the said Centre, he has got a power to visit and he was not aware of the location of the Noon Meal Centre in Sri Krishna Aided Primary / Elementary School and with regard to the functioning of the kitchen, he has not received any complaint. The said witness would further state that with regard to the affairs of the Noon Meal Centre administration of the School, the Correspondent and the Secretary cannot interfere and when it was pointed out that as per the order dated 22.01.2003 made in WP.No.24467/2001, the School administration cannot do so, the witness pleaded ignorance. P.W.183 further made a crucial admission that in all Noon Meal Centres, firewood has been used in the oven and necessary expenses for purchasing the same will be borne by the Collectorate and denied the suggestion that in very many Noon Meal Kitchens, thatched roofs have been put up. The said witness was summoned and further cross-examined on 14.08.2013, wherein, he has admitted that next to the District Collector, he is the competent authority in respect of the Noon Meal Centre and he would further state that in respect of the entire District, they will give orders as to how the Noon Meal Centre is to be located and based on that order only, it should be established.

26.44 P.W.183 was also cross-examined on behalf of A-22 and A-23 and he would state that if the daily administration of the Noon Meal Centre is not conducted properly, it is for the District Collector to take appropriate action and the police cannot take any action and even before he joined duty as Personal Assistant to the District Collector, necessary permission has been accorded to locate the Noon Meal Centre inside the premises of Sri Krishna Aided Primary / Elementary School and he has not received any complaint from Kumbakonam Municipality with regard to the functioning of the said Centre. P.W.229 - the Investigating Officer would also admit that P.W.183, the Personal Assistant to the District Collector, is in-charge of the Noon Meal Centres running in the said Schools and as per the Government Order, the District Collector is the Administrator.

26.45 As per Ex.P.218, issued by the Department of Social Welfare and Nutritious Meal Programme Department, in G.O.Ms.No.227



dated 10.07.1997, the implementation of the Noon Meal Scheme has been transferred from the said Department to the Rural Development and Municipal Administration Department. A perusal of the said Government Order would indicate that no guidelines have been given to the officials of the Rural Development and Municipal Administration Department to carry out the instructions of the Noon Meal Centre. The Social Welfare and Nutritious Meal Department has issued G.O.Ms.No.158 dated 29.09.2000 marked as Ex.P.219, wherein it has been indicated that with regard to the staff attached to the Noon Meal Centre, the transfer and disciplinary action would be under the control of the Municipal Administration and Water Supply Department and here again, nothing has been indicated as to the periodical inspection to be carried out by the officials of the said Department.

26.46 The proceedings of the Collector of the Thanjavur District, marked as Ex.P.220, would make it clear that with regard to the expenses incurred for running the Noon Meal Centre, the Collector of Thanjavur District has passed necessary proceedings, sanctioning a sum of Rs.2,00,250/- and the Annexure would also indicate the sanction of the said amounts to various Noon Meal Centres located in Thanjavur District. Similarly, under Ex.P.222, the Collector of Thanjavur District has passed the proceedings, sanctioning a sum of Rs.8,58,002/- for grant of Basic Pay, Dearness Allowance and other allowances and Ex.P.223 was also passed by the very same official on similar line.

26.47 The most important document is Ex.P.224 - the proceedings of the Additional Secretary to Government, Rural Development and Local Administration Department, Chennai-9, addressed to the Commissioner, Corporation of Madras, Commissioner, Corporation of Madurai, Commissioner, Corporation of Coimbatore and the Director of Municipal Administration and copies of the said proceedings dated 13.08.1982 have also been marked to Public [NNMP] Department, Social Welfare Department, Finance Department, Food and Cooperation Department, Director of Social Welfare, Registrar of Cooperative Societies, General Manager, Tamil Nadu Civil Supplies Corporation and to all the District Collectors for information. In paragraph No.2 of the said proceedings, it has been indicated that **"no separate construction for storage of materials will be permitted in this case, the materials will have to be stored in the pucca building itself, to which, the shed is an adjunct. For such "lean to", it may be suffice if the pre-school partition where the children play, read and eat has a thatched roof ; but in no account, should the cooking shed have a thatched roof as there is danger of fire. The cooking shed should have a non-inflammable roof to say, asbestos, zinc sheet, light roofing or some other suitable material."** It has been considered pursuant to the Minutes of the Meeting chaired by the Chief Secretary to Government on 07.09.1982

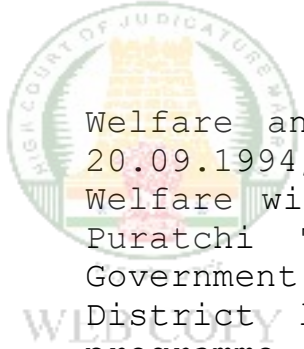


that Rs.5000/- may be allocated for such a shed for the pre-school and another Rs.5000/- for cooking shed....."

26.48 It is very pertinent to point out at this juncture that though the communication has been addressed to the Director of Municipal Administration, no evidence has been made available by the prosecution as to whether the said official in turn has sent further communication / Circular / Administrative instructions to all the Municipalities bringing to their knowledge about the thatched roof on the cooking shed. It is also to be pointed out at this juncture that the said communication has also been addressed to all the Collectors for information, which include the District Collector of Thanjavur District [P.W.210]. This Court in the earlier paragraphs has pointed out that the substitution in the form of Code of Regulations for Nursery and Primary Schools in Tamil Nadu came into being in Regulation No.10 only after the incident in respect of this case vide G.O.Ms.No.117, School Education Department dated 07.09.2004.

26.49 P.W.229 - the Investigating Officer though would state that the Government Orders are governing the field, the fact remains, as per G.O.Ms.No.218, there is no specific indication as to the inspection done by the local body officials and the administrative instructions marked as Ex.P.224, dated 13.08.1982, sent by the Additional Secretary to Government, Rural Development and Local Administration Department, Chennai-9, does not indicate that based on the Administrative instruction, further communication / circular / administrative instructions have been issued to the Municipalities. The said communication also does not indicate that it has been sent to the School Education Department also.

26.50 Though P.W.210 has been examined by the prosecution, it is only with regard to the sanction accorded to prosecute the Tahsildar and the cross-examination done on behalf of A-1 and A-2 mainly pertains to structural stability of the building and the said witness has admitted that even after the accident, the structural stability remains perfect and since the Tahsildar has failed to take necessary action, he has accorded sanction. The Collector, who is the competent person to speak about Exs.P.220, 221, 222, 223 as well as Ex.224, have not said anything about the said documents. It is very important to note at this juncture that Ex.P.225 - G.O.Ms.No.498, Social Welfare and Nutritious Meal Programme [NMP-I] Department, dated 18.09.2002, would indicate that the Director of Social Welfare will be re-designated as the Director of Social Welfare and Nutritious Meal Programme with the Nutritious Meal Personal Assistants reporting to him as the Head of the Department while continuing to work as hitherto under the District Collectors. Under Ex.P.226 - G.O.Ms.No.251, Social

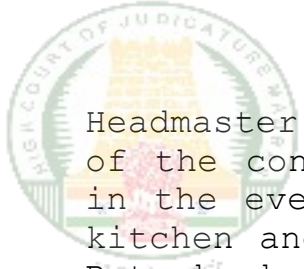


Welfare and Nutritious Meal Programme [NMP-I] Department, dated 20.09.1994, it has been indicated that the Director of Social Welfare will be the Head of the Department for implementation of Puratchi Thalaivar Dr.MGR Nutritious Meal Programme and the Government do not want to upset the existing structure in the District level and the Collectors will continue to run the programme through Noon Meal Personal Assistants Rural Development set up and the Social Welfare machinery and the only change contemplated is transfer of control of the Personal Assistant [NMP] in the Districts from the Director of Rural Development to the Director of Social Welfare.

26.51 As already pointed out, the evidence of P.W.183 through whom all relevant Government Orders have been marked would clearly speak that the Personal Assistant to the District Collector, Noon Meal Programme, is in-charge of the same. The prosecution has also failed to adduce any evidence and has also drawn the attention of this Court to the oral and documentary evidences as to the follow up action taken either by the Director of Social Welfare or by the Personal Assistant [Noon Meal Programme] - P.W.183, to carry out the inspection of the Noon Meal Centres. The evidence of P.W.183 would also indicate that per month, he has to inspect 20 Noon Meal Centres and though he would state that he has no power to inspect the schools which fall within the local body, in the light of the exhibits pointed out above, he has to report to the Directorate of Social Welfare as to the maintenance of Noon Meal Scheme and it appears that he has not discharged his duties cast upon him properly.

26.52 The Commissioner of Kumbakonam Municipality who was arrayed as A-22 has also been acquitted by the Trial Court and though the State has filed an appeal challenging the order of acquittal passed against some of the accused, which include A-22, in the light of the infirmities pointed out above, which go deep into the root of the matter, the order of acquittal passed against A-22 may not warrant interference. However, the evidence let in by the prosecution clearly point out covering of the thatched roof over the kitchen and insofar as the removed thatched sheets kept inside the kitchen as well as nearby places is concerned, the testimonies of the witnesses pointed out in the earlier paragraphs would indicate that at the earliest point of time, when the statements were recorded under Section 161[3] Cr.P.C., they did not say so and some time thereafter, their further statements were recorded wherein they have spoken about the said fact and the contradiction has also been elicited through the said witnesses as well as through the Investigating Officer - P.W.229. The prosecution is also not able to prove that some of the classrooms were also covered with thatched roof.

26.53 A-1, who was the helm of the whole affair as the



Headmaster and later on, as an Administrator, was very well aware of the consequences of having catching fire of the thatched roof in the event of spark emanated from the ovens located inside the kitchen and the likelihood of injury that would have been caused. But, he has no intention to cause injury that it will be probably caused and he is guilty of gross and culpable neglect and also failed to exercise reasonable and proper care and take appropriate precaution to prevent such a kind of accident/incident.

26.54 Insofar as the shifting of students for the purpose of showing Teacher-Students strength is concerned, the evidence made available by the prosecution would clearly indicate that the said process is to be undertaken only during September and that too, after the completion of the admission process and since the School in which the Noon Meal Centre is attached and in which the fire accident took place, has been accorded permission / recognition and in respect of another Aided School, extension of approval has been granted and in the light of contradictory evidence given by the concerned witnesses as noted by this Court in the earlier paragraphs and further that the uniforms prescribed for the children studying in three schools are altogether different, the prosecution has failed to establish the said fact. The topography of the school would also point out that only two entries were available and one of which has been closed for the purpose of making a classroom and therefore, only one access was available in the form of staircase to have ingress and egress and on account of the sudden incident, the children who were of tender age, became panic and though they tried their best to escape from the fire, they were unable to do so on account of lack of access and A-1, being the helm of affairs, was very well aware of the same and failed to take any reasonable and proper care to have proper access and was negligent. Therefore, the Trial Court was right in convicting A-1 for the commission of the offence under Section 304 [II] IPC. However, in the light of the deficiencies pointed out above, this Court is of the considered view that award of ten years rigorous imprisonment and fine for each count, requires modification and the modification of sentence of imprisonment and fine will be dealt with later.

26.55 Insofar as the conviction of A-1 and A-2 for the commission of the offence under sections 337 and 338 IPC are concerned, the Trial Court did not award any separate sentence and the Trial Court has awarded sentence of two years rigorous imprisonment and fine of Rs.25,000/- for each count with a default sentence and six months rigorous imprisonment and a fine of Rs.30,000/- for each count respectively and since this Court has recorded the finding that since A-1 has failed to exercise any reasonable care and was negligent, was rightly punished for the commission of the said offences and however, this Court is of the considered view that the fine amount requires modification for the



reason that the maximum fine that can be imposed under those two Sections is Rs.500/- and Rs.1000/- respectively.

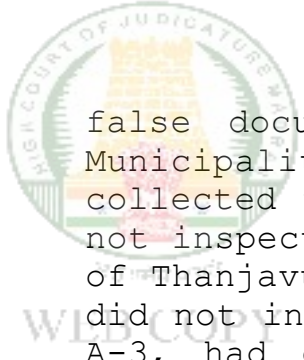
26.56 So far as the conviction of A-1 under Section 285 IPC is concerned, he was very well aware of the use of firewoods in the oven attached to the Noon Meal Centre Kitchen, which is having a thatched roof and a common sense should have been prevailed upon him to anticipate the fire accident ; but he was negligent and failed to take any reasonable care to prevent the accident and as such, he has been rightly convicted and imposed with a sentence of six months rigorous imprisonment.

26.57 A-1 was convicted under Section 467 read with 197 IPC and was imposed with the punishment of life imprisonment and fine of Rs.10,000/-, with a default sentence of two years simple imprisonment and was convicted under Section 465 read with 197 IPC and was imposed with the punishment of two years rigorous imprisonment and a fine of Rs.50,000/- with a default sentence of six months simple imprisonment and the sentences imposed against A-1 were ordered to be run concurrently by the Trial Court in the Impugned Judgment.

26.58 Since A-1 has been convicted for life for the commission of the offence under Section 467 read with 197 IPC, elaborate arguments have been advanced by the learned counsel appearing for A-1 / appellant in Crl.A. [MD] No.241/2014.

26.59 As per the 4th charge framed against A-1 to A-3, A-7 to A-10 and A-13 to A-18, A-1 compelled P.W.1- Prabhakaran, Correspondent of Saraswathi Nursery and Elementary/Primary School, in his capacity as the correspondent to subscribe his signature and the recognition / approval has not been renewed for the years 2000 - 2003 and for the renewal for the years 2003-2006, necessary proposal has been dealt with by A-7 to A-10, A-13 to A-18 and to make up the Teacher - Students strength, the students have been interchanged / shifted and in that regard, A-1 to A-3 have submitted false documents and those documents were accepted and A-7 to A-10, A-13 to A-18 created documents subscribing their signatures and hence, all of them have been charged for the commission of offence under Section 467 read with 197 IPC. The Trial Court has acquitted A-2, A-3, A-7 to A-10, A-13 and A-18 and convicted A-1 for life with a fine as well as with a default sentence and further convicted A-4 to A-17 with an imprisonment of five years rigorous imprisonment, fine and also with a default sentence and challenging the acquittal, the State has also filed the appeal.

26.60 The 5th charge is that A-12, being the Engineer, without inspecting all the three schools and without verifying the Town Plan, has falsely prepared the sketch / Plan and created a



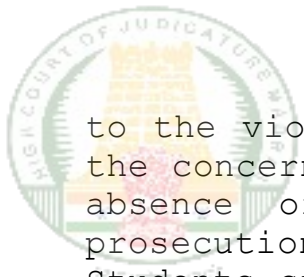
false document and A-22, being the Commissioner of Kumbakonam Municipality, did not personally inspect the school and not collected taxes and though was in-charge of Noon Meal Centre, did not inspect the same and submitted false accounts to the Collector of Thanjavur District and A-23, being the Town Planning Inspector, did not inspect the school building and in collusion with A-1 and A-3, had created documents, which resulted in the death of 94 children and grievous injuries to 18 children and thereby, A-1 to A-3, A-12, A-22 and A-23 had committed the offence under Section 465 read with 197 IPC. The Trial Court, vide impugned Judgment, has convicted A-1, A-2 and A-12 with two years rigorous imprisonment, fine of Rs.50,000/-, with a default sentence and acquitted A-3, A-22, A-23 for which the State has also preferred the appeal against the acquittal.

26.61 This Court in the earlier paragraphs had dealt with the ingredients of the offences for which all the accused have been charged.

26.62 This Court has analysed the oral and documentary evidences to find out whether the conviction of A-1 / appellant in CrI.A.[MD] No.241/2014 under the said provisions is sustainable and alternately, if the conviction is sustained, whether the sentence of life imprisonment awarded as well as the fine imposed requires modification.

26.63 Insofar as the shifting of the students, P.W.1 who was initially cited as an accused, after examination for very many times, later on taken into custody and accorded Tender of Pardon and was cited as prosecution witness No.1. The evidence made available by the prosecution, details of which have been extracted in the earlier paragraphs discussed, would clearly indicate that the said exercise is to be carried out only after the school admissions are over and that too, during September. The testimony of P.W.1 would also clearly indicate that in order to make up the Teacher-Students strength of Sri Krishna Aided Primary/Elementary School, shifting of the students has been done. However, he would admit that the sanctioned strength is 16, whereas only 13 teachers are working. It is to be pointed out at this juncture that for the purpose of receiving Grant-in-Aid only, the inspection is being done by the concerned Education Department officials.

26.64 The Grant-in-Aid Code of the Tamil Nadu Education Department would also indicate that the said rules do not apply to Anglo Indian Schools or to Primary Schools including Adult Literacy Schools, which are aided under separate rules and the Government is having discretion to refuse or withdraw any grant. Neither in Tamil Nadu Recognised Private Schools [Regulations] Act nor in the Rules framed therein, the Teacher-Students strength has been indicated and the prosecution did not let in any evidence as



to the violation of any specific statutory provision. Therefore, the concerned accused has also been put to disadvantage and in the absence of any specific charge, the case projected by the prosecution as to the shifting of students to make up Teacher-Students strength falls to the ground. P.W.109, one of the adopted daughters of A-1 and A-2 would admit that such a ratio would be calculated only after the admissions are over and she is also got an axe to grind for the reason that she has developed a quarrel with her adopted father / A-1 with regard to the deduction made from her salary to settle the mortgage loan in respect of land purchased in their names and in this regard, her husband / P.W.157 also had a quarrel with A-1, which resulted in filing of a criminal complaint against him by A1. The testimony of P.W.110 / the class teacher of 5A, would also disclose that in order to show the strength in respect of **Sarva Siksha Abhian Scheme (SSA)**, such an exercise was carried out and here again, it is to be pointed out at this juncture, that the guidelines relating to the said requirements contemplated under the said scheme have not been filed as an exhibit by the prosecution. The testimony of P.W.113 would also indicate that different sets of uniform have been prescribed for students studying in three schools and it is not even the case of the prosecution that the entire sets of uniform which include belt and shoes have been changed to augment the students strength to satisfy the Teacher-Students ratio and the said aspect has also been discussed in detail by this Court in the earlier paragraphs while dealing with the testimonies of the concerned witnesses.

26.65 The oral evidence of P.W.115, who is the 4th standard teacher of Saraswathi Nursery and Elementary / Primary School would disclose that anticipating inspection by the Education Department officials on 14/15/16.07.2004, exchange / shifting of students has been done and her evidence regarding the change of uniform is totally unbelievable as it is not corroborated by the above cited witnesses. The said witness would also disclose that between 1994 and 2004, the Elementary Education Department Officials had done inspection four times every year. Similarly, P.W.124 has spoken to that effect. But, the Investigating Officer - P.W.229 would admit in the cross examination that the concerned witnesses during initial investigation, did not state so and the contradiction in the form of improvement in their oral evidence from that of the statement recorded during investigation, has also been elicited by the learned counsel appearing for A-1 before the Trial Court. The parents and the relatives of the deceased / injured students who have been examined as P.Ws.21 to 108 have made very many improvements from that of their statements recorded during investigation and the contradictions have been elicited through the Investigating Officer - P.W.229 and in the type of the improvements made, which are in total contradiction from that of their statements recorded under Section 161[3] / 164



Cr.P.C., it is not safe to rely upon their testimonies, insofar as the case of the prosecution as to the shifting of the students to make up Teacher-Students ratio / strength, is concerned. The Trial Court has dealt with the charge from paragraph 489 onwards.

26.66 In paragraph 490 of the impugned judgment, the Trial Court, while dealing with charges No.4 and 5, had observed that with regard to the recognition/approval in respect of Saraswathi Nursery and Elementary/Primary School, for the years between 1997 and 2003, A-1 to A-3 joined together and got signature of P.W.1 and without getting it, once again got the signature of P.W.1 in respect of the period between 2003 and 2006 and submitted the same. A-7 to A-10 and A-13 to A-18 without proper verification and noting down the deficiencies and further that recognition/approval has not been granted for the period between 1997 and 2003 and that in respect of Sri Krishna Girls High School, Sri Saraswathi Nursery and Primary School and Sri Krishna Aided Elementary School is concerned, to show Teacher - Students ratio, A-1 to A-3 shifted the students and without inspection, A-7 to A-10 and A-13 to A-18 had accepted the false documents submitted by A-1 to A-3 and subscribed their signatures.

26.67 Insofar as the 5th charge is concerned, in paragraph 491 of the judgment, the Trial Court observed that A-12, namely Jayachandran-Engineer, without inspecting the school building of Sri Krishna Aided Primary School, Sri Krishna High School and Saraswathi Nursery and Elementary/Primary School and also without looking into the plan, had given a false Stability Certificate and as such, A-12 had aided A-1 to A-3. Similarly, A-22, Commissioner of Kumbakonam Municipality, without inspecting the building in S.No.763/B and without collecting tax and also without inspecting the Noon Meal Centre, had falsely sent reports every year to the District Collector Thanjavur. A-23 - Town Planning Inspector, without verifying the three schools and without noting the deficiencies, had helped A-1 to A-3 and as such, all of them have committed the offence under Section 465 read with 197 IPC.

26.68 The Trial Court had acquitted A-2, A-3, A-7 to A-10, A-13 and A-18 in respect of Charge No.4 and acquitted A-3, A-22 and A-23 in respect of Charge No.5. Challenging the said judgment of acquittal, the State has preferred an appeal in CrI.A [MD].No.268 of 2014.

26.69 This Court, in the earlier paragraphs held that the prosecution has failed to let in any proper and sufficient evidence as to the compliance of the statutory requirement of Teacher - Students strength and the evidence let in by the parents of the deceased/injured children and teachers cannot be believed for the reason that they made very many improvements from that of the statements recorded under Section 161(3) or 164 Cr.P.C during



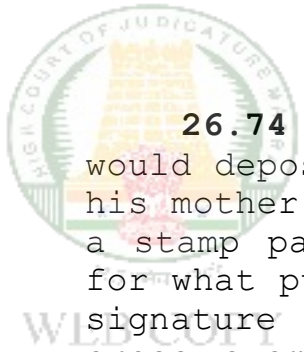
the course of oral evidence with regard to the said aspect and as such, it is not safe to rely upon their testimonies to prove the said fact.

26.70 The prosecution had advanced arguments that in order to satisfy the requirement of playground, A-1 had approached P.W.158 for the purpose of leasing out the lands belonging to him. P.W.158 had deposed that he is not owning any land like a playground and he does not have any land in S.No.181/75 and admitted his signature in Ex.P139 - Lease Deed dated 18.07.2003.

26.71 P.W.159- Village Administrative Officer, Thenpandi Village, would depose that the lands in S.No.181/5 are not available as per the Village Chitta marked as Exs.P.141 to 143. P.W.163, who is the son of P.W.110, had spoken about the subscribing of signature by his mother due to the pressure exerted by A-1 in the stamp paper as well as in the blank documents and admitted his signature in blank paper marked as Ex.P145.

26.72 The substratum of Charge No.4 extracted in the earlier paragraphs does not specifically speak about the creation of false and fabricated documents to show about the existence of playground and further, the violation of the specific statutory provisions has also not been stated. P.W.158, in the chief examination, would state that he is carrying on agricultural activities and he knows A-1 as a friend and about one year prior to the incident, for the purpose of showing playground, his signatures had been obtained and he does not own lands in S.No.181/75 and admitted his signature in Ex.P.141-Lease Deed and also admitted in Ex.P139, which was marked subject to objection on the ground that it was a xerox copy. In the cross examination done on behalf of A-1 and A-2, P.W.158 would depose that he is a Post Graduate and as per the request made by A-1 to A-3, he has subscribed his signature in Ex.P.139, immediately after the last word and denied that he read, understood and subscribed his signature and would further add that at the request made by A-1, for the purpose of school, he has subscribed his signature and would further depose that his sample signature has also been obtained.

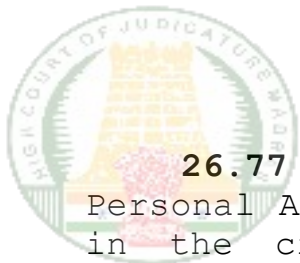
26.73 P.W.159- Village Administrative Officer, would depose that the agreements, Exs.P.141 to 143, marking of the same has been objected on the ground that those were xerox copies and would depose that there was no such S.No.181/5 in village chitta and in the cross examination done on behalf of A-1 and A-2, he admitted that the village accounts have not been seized from him by the police and he cannot tell about the lands in each survey numbers and he knows P.W.158 and he does not know whether he possesses



26.74 P.W.163, son of P.W.110, in the chief examination would depose that during January and February 2003, he went to see his mother and at that time, A-1 asked him to put his signature in a stamp paper as well as in a blank paper and when he requested for what purpose, A1 asked him to put his signature and he put his signature for the reason that his mother is employed. In the cross examination done on behalf of A-1 to A-3, he would admit that he did not disclose the compulsion exerted by A-1 to put his signature in blank papers and did not issue notice in that regard and he was examined by the police on 29.07.2004 and he does not remember as to when he subscribed his signature and when he saw the document on 29.07.2004, he saw the type written contents of the same.

26.75 A perusal of Charge No.4 would clearly reveal that specific allegation with regard to fabrication of the document as to the existence of playground has not been stated at all and it merely pertains to shifting of the students from one school to another for the purpose of Teacher - Students ratio. The requirement as to the existence of playground as contemplated under the statutory provisions have not been stated at all in the said charge and however, evidence has been let in by marking xerox copies of the documents, for which, objections were also raised on behalf of A-1 and A-2 and those objections were overruled and documents have been marked.

26.76 The Trial Court, in paragraph No.497 of the judgment, recorded the finding that A-1, being the Correspondent and Secretary of Sri Krishna Girls High School, without having a playground, for the purpose of getting recognition/approval, had created false and fabricated documents and submitted the same. P.W.175 would depose that with regard to the permanent recognition to Sri Krishna Girls High School, defects have been pointed out on 11.10.2002 and the Secretary of the School/A-1 rectified the defects, which have been marked as Ex.P191 and it has also been forwarded to the Chief Educational Officer and the lease pertaining to the playground, has not been registered and since the original of the same has not been produced without making any comments, it was forwarded to the Chief Educational Officer and vide, proceedings dated 06.01.2004, the Chief Educational Officer, namely Palanisamy /A-6, against whom prosecution has been withdrawn, has accorded approval for the said school for the period between 10.09.2002 and 09.09.2005 and Classes VI to VIII are given aid and Classes IX and X are running without aid and additional approval has been granted with regard to the playground and sanitation facilities under Ex.P190. In the cross examination, the said witness would admit that formalities are standardized one and no notice has been given to the said school with regard to violation of the said conditions. Thus, it is a case of conditional recognition.



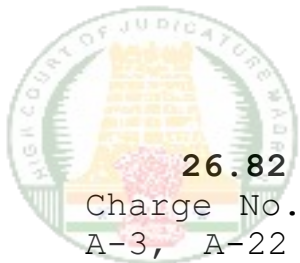
26.77 It is also pertinent to point out that P.W.175 - Personal Assistant to the District Educational Officer, Thanjavur, in the cross examination, admitted that whatever formalities required to be followed for continuance of recognition have been followed in respect of Sri Krishna Girls High School and A-1, after fully complying with the defects, had resubmitted the proposal seeking continuous recognition/approval and it was placed before the Chief Educational Officer, who accorded continuous recognition.

26.78 In the light of the oral testimony of P.Ws.174 and 175, it cannot be said that the documents have been created and fabricated to show the existence of playground and even otherwise, Charge No.5 does not specifically state the same.

26.79 One of the essential ingredients contemplated under Section 467 IPC is that the accused should have committed forgery and other ingredients are that "*forgery in relation to a document should be a valuable security or a Will..... or any document purporting to be an acquittance....*" This Court, even for the sake of arguments construes that the documents pertaining/seeking continuous recognition in respect of Sri Krishna High School can be termed as valuable security, is of the considered view that forgery on the part of A-1 has not been proved/substantiated by the prosecution and the testimony of P.Ws.174 and 175 would clearly reveal that the defects including documents relating to the playground have been pointed out and A-1 rectified them and submitted the same and thereafter, approval was granted and it is the categorical evidence of P.W.175 with regard to continuous non-compliance of the defects, no communication has been sent to the school.

26.80 The prosecution has also failed to establish by framing a specific charge as to the submission of the application for continuous recognition would come within the ambit of Section 197 IPC and even assuming that it is a requirement under law, the said requirement, in the absence of any charge, had resulted in serious prejudice to the concerned accused and also resulted in failure of justice.

26.81 It is to be pointed out at this juncture and as already noted, rest of the accused, namely A-2, A-3, A-7 to A-10, A-13 to A-18 were acquitted and the State has filed appeal against their acquittal and the merits of the said appeal will be considered by this Court in the latter portion of this judgment and therefore, the conviction and sentence passed against the appellant/A-1 in respect of Charge No.4 i.e., 467 r/w. 197 IPC is unsustainable on facts and in law.



26.82 A-1 to A-3, A-12, A-22 and A-23 stood charged for Charge No.5 for the offence under Section 465 read with 197 IPC. A-3, A-22 and A-23 were acquitted by the Trial Court, against which State had preferred an appeal.

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26.83 The Trial Court, in paragraphs No.501 to 508 of the impugned judgment, had discussed the evidence pertaining to the said charge. The allegation under the said charge in respect of A-1, A-2 and A-12, were merely based on Stability Certificate given by A-12 - Engineer. The Trial Court, in paragraph No.464 of the impugned judgment had recorded the finding that the prosecution has failed to prove that on account of the issuance of incorrect Stability Certificate, the fire accident had occurred. In paragraph No.465 of the impugned judgment, the Trial Court had recorded the finding that A-12 had given Stability Certificate in respect of Saraswathi Nursery and Elementary/Primary School and Sri Krishna Girls High School and insofar as Sri Krishna Aided Elementary School is concerned, where the fire accident took place, he did not give the Stability Certificate and therefore, acquitted him of the Charge Nos.6 and 7.

26.84 In the considered opinion of this Court, the findings recorded by the Trial Court in paragraphs No.464 and 465 of the impugned judgment have a bearing in respect of Charge No.5.

26.85 The substratum of the Charge No.5 is that A-12, A-22 and A-23, in collusion with A-1 to A-3, had created a false document on account of which the fire accident took place resulting in death of 94 children and grievous injuries to 18 children. The Trial Court, in paragraph No.559 of the impugned judgment, had recorded the finding that A-12, without proper verification, issued the Stability Certificate to enable A-1 and A-2 to get the recognition and therefore, against A-1, A-2 and A-12, the said charge has been proved by the prosecution by letting in sufficient evidence. In paragraph No.560, the Trial Court dealt with the said charge against A-3, A-22 and A-23 and recorded the finding stating that A-12 has nothing to do with Sri Krishna Girls High School and the prosecution has failed to let in any evidence as to the collusion with other accused. The Trial Court, in paragraph No.562 of the impugned judgment, recorded the finding that the prosecution has failed to adduce any evidence that during their tenure of service with regard to usage of thatched roof for the first time and the change of user and therefore, acquitted him.

26.86 This Court while dealing with the charge under Section 304 (II) I.P.C., had recorded the finding that the prosecution has proved the emanation of fire in the kitchen



attached to Noon Meal Centre of Sri Krishna Aided Primary/Elementary School and A-1 would have anticipated that having a thatched roof on the kitchen with open ovens would result in fire accident and further that, some of the classrooms also had thatched roofs and the spread of fire would result in serious accident and therefore, the Trial Court has rightly found that he is guilty of the offence punishable under Section 304 [II] I.P.C., however, this Court is of the view that the sentence of imprisonment and fine requires modification.

26.87 It is not even the case of the prosecution that on account of the alleged false/improper Stability Certificate issued by A-12, in connivance with A-3, A-22 and A-23, the fire accident had occurred. The fact remains that despite the said fire accident, the building did not collapse and even as on today, it continues to remain in existence. As already pointed out, the substratum of Charge No.5 is that on account of creation of false document by A-12, A-22 and A-23, in connivance with A-1 to A-3, fire accident had occurred, however the case of the prosecution is that because fire emanated from the kitchen of the Noon Meal Centre and spread to the classrooms wherein thatched roofs are laid and on account of the only narrow passage available, children were unable to escape and consequently, perished/sustained grievous injuries. Thus, the prosecution have not proved Charge No.5 against A-1.

26.88 Insofar as Charge No.8 viz., Sections 46 and 47 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, A-1 to A-3 were convicted and the reading of the said provisions would disclose that they are general in nature.

26.89 A perusal of Charge No.8 would disclose that there are deficiencies in providing basic amenities and the said fact has been suppressed and a false information has been furnished to the Education Department officials. The Trial Court, in paragraph No.551 of the impugned judgment, has recorded a finding that with regard to availability of sufficient space, washroom and toilet facilities and other basic amenities, such as, water supply and ventilation, the concerned Education Department officials have informed the Administrator/Correspondent and further that no steps have been taken to install the same, though some of the classrooms had thatched roofs and therefore, Exs.P111 and 133 - Inspection Reports are only name sake and also for the purpose of satisfying the superior officers.

26.90 In paragraph No.552 of the impugned judgment, the Trial Court put the blame on A-10 and A-13 and however, in paragraph No.557 of the impugned judgment, has recorded a finding that the prosecution has failed to adduce any evidence and as such, the recommendation was made by such accused and mistake had



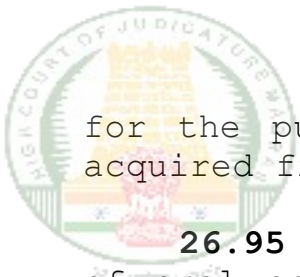
occurred in the said documents and A-18, after inspecting the School on 09.01.2004, submitted a deficiency report and taking into consideration of the fact, had found that A-7 to A-10, A-13 and A-18 are not guilty under Sections 467 r/w. 197 I.P.C. However, as against the said acquittal, the State had also preferred appeal.

26.91 Thus, in the absence of any infraction of specific provisions, Rules/Regulations/Code of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, and taking into consideration the penal nature of the provisions under Sections 46 and 46 of the said Act coupled with the fact that the prosecution has failed to let in proper and sufficient evidence as to the ingredients of the said penal provisions and also in the light of the reasons assigned in the above paragraphs, this Court is of the view that Charge No.8 framed against A-1 has not been proved by the prosecution.

26.92 Charge No.10 pertains to non-obtaining of permission to run the three schools in the same premises and A-2, though got permission to run a school in S.No.762/B, could not able to run the school and as a consequence, requested to cancel the permission to put up a school building and based on that A-1 to A-3 run all the three schools and thereby submitted false information to Kumbakonam Municipality and therefore, they are liable for the violations of the provisions of Section 320 of the Tamil Nadu District Municipalities Act, 1920.

26.93 P.W.181 -Town Planning Inspector would depose that A-2 has submitted an application to put up construction in S.No.762/B and then the Commissioner accorded permission to put up school building and thereafter, under Ex.P.214, A-2 made application to change it as residential building and under Ex.P.215, such permission was granted in respect of construction of residential building in S.No.762/B.

26.94 P.W.109- Usha Rani - one of the adopted daughters of A-1 and A-2 and sister of A-3, had submitted the application to put up a residential building and permission was accorded in the concerned register, marked as Ex.P.216 subject to objection and the approved plan has been marked as Ex.P217. P.W.182, the then Commissioner of Kumbakonam Municipality, has spoken about the said document and he would depose with regard to the unauthorized construction and change of user of residential into a school building and for other purpose, inspection is to be carried out. In the cross examination done on behalf of A-1 and A-2, P.W.182 would admit that during his tenure, no complaint has been lodged against A-1 and A-2 for unauthorized user and with regard to unauthorized usage, power is vested with the Education Department



for the purpose of running a school and no permission has been acquired from the municipality.

26.95 It is to be noted at this juncture that in the light of oral and documentary evidence made available coupled with the testimonies of the prosecution witnesses, the school was constructed and A-1 and A-2, being the husband and wife and A-1 and being the head, with regard to running of the school, have major role to play and therefore, findings recorded by the Trial Court as to the proving of the said charge are sustainable.

A-1 [CONCLUSION]

26.96 In the result, the finding of the guilt recorded by the Trial Court as against A-1 to the sustainment of the Charge Nos.1 to 3 are confirmed and however, the sentence of imprisonment and fine require modification. In the light of the fact that the State has awarded ex-gratia to the family of the victims and in pursuant to the orders passed in the writ petition, a retired judge was appointed and after recording evidence in his report, has suggested payment of enhanced compensation and the said order has been complied with by the State Government. Moreover, the appellant/A-1 is aged about 87 years and was incarcerated and had already undergone the period of imprisonment for very many years and his sentence of imprisonment was suspended by this Court while entertaining the appeal, vide order dated 29.11.2016 and 01.12.2016 in MP [MD] NO.1/2014 in CrI.A.[MD] NO.241/2014 and that apart, his wife, namely A-2 was incarcerated after conviction and she died on account of cancer and he is left with no or any support and he is also not financially sound and therefore, the sentence of imprisonment and fine imposed requires modification.

27 A-2 was convicted in respect of Charge Nos.1, 2, 3, 8 and 10 and in pursuant to the award of conviction and sentence passed by the Trial Court, she was in custody and she was aged about 81 years and on account of the fact that she was suffering due to Cancer, was admitted to Government Hospital and without responding to the treatment, she died and the prosecution has filed a death memo to that effect. In the light of Section 397(2) Cr.P.C, the appeal stood abated on account of the demise of A-2. Hence, CrI.A.[MD].No.242 of 2014 was dismissed as abated on 22.11.2016.

28 CRL.A[MD].NO.243 OF 2014 - A-3[Tmt.Santhalakshmi]

28.1 A-3 is one of the adopted daughters of A-1 and A-2 and sister-in-law of P.W.1 and sister of P.W.109. This appellant/A-3 has been convicted in respect of Charge Nos.1 to 3, at the relevant point of time, was the Headmistress of Sri Krishna Aided Elementary/Primary School



wherein in the kitchen attached to the Noon Meal Centre, fire accident occurred.

28.2 The substratum of allegations levelled against A-3 is with regard to the shifting/interchanging of students studying in the three schools to make good the Teacher - Students ratio. This Court, while dealing with the appeal filed by A-1, had recorded the finding that the prosecution has failed to let in proper and sufficient evidence as to the shifting of students for the purpose of Teacher - Students ratio and the said findings are equally applicable to this appellant/A-3 also.

28.3 The Trial Court, in paragraph No.390 of the impugned judgment, had observed that A-3, in the written submission, stated that on the date of incident, she was taking classes and 38 students had attended the class and none of them had sustained injuries and however, had recorded the finding that the appellant/A-3 did not state anything as to how the accident had occurred. In paragraph No.451 of the impugned judgment, the Trial Court has recorded the finding that all the three schools were run by A-1 and A-2, his wife, had assisted him and at the time of fire accident, A-3 was the Headmistress of Sri Krishna Aided Elementary/Primary School and as such, she has aided A-1.

28.4 P.W.1 - brother-in-law of A3, who was cited as one of the accused, was arrested and later on, granted, Tender of Pardon and taken as an approver. In the cross examination done on behalf of the appellant/A-3, P.W.1 would depose that for the past 10 years, the parents and the teachers used to lodge complaint regarding shifting of the students and he did not specifically state as to the date of the complaint. P.W.1 would further admit that separate uniforms were given to the students studying in three schools and he has been examined very many times by the police before he was arrested. P.W.1 would further depose that his son is studying in the school of A-1 and he is also in the care and custody of the appellant/A-3. Thus, the testimony of P.W.1 is of no help to the prosecution to sustain the guilt against the appellant/A-3.

28.5 P.W.112, one of the teachers, in the evidence, had admitted that not even a single student died in the school in which the appellant/A-3 was taking classes at the time of accident. P.W.112 had deposed that one Sachu played her role with regard to the shifting of students. The testimony of P.W.105- one of the parent of the deceased students would disclosed that Sachu - P.W.120 shifted the students on 15.07.2004 and however, the accident/incident took place on 16.07.2004.

28.6 P.W.110 - one of the teachers, in the cross examination done on behalf of A-3 had deposed that at the time of



inspection by Education Department officials, he did not state anything about the shifting of students and none of the parents had given complaint as to the deficiencies.

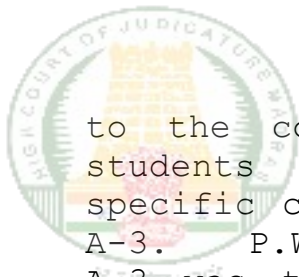
28.7 Similarly, P.W.113- one of the teachers, had deposed that with regard to the shifting of students and other deficiencies, did not inform anything to the Education Department officials at the time of inspection. P.W.115- one of the teacher would depose that four times the Education Department officials came to the school for inspection.

28.8 P.W.117 - one of the teachers would depose that in respect of Sri Krishna Aided Elementary/Primary School is concerned, the sanctioned strength of the teachers was 14 and 12 teachers were working and one Headmaster was in-charge. It is also to be noted at this juncture that in the event of excess teacher available, either they will be deployed to other needy school with or without sanctioned posted and it is not even the evidence of the Education Department officials as to the said deficiency.

28.9 P.W.120 - Sachu would depose that in respect of Sri Krishna Aided Primary/Elementary School, the Administrator is A-1 and Correspondent is A-2 and she would further depose that on 14.07.2004 and 15.07.2004, to make good the said deficiency, students studying in the said school were interchanged. In the cross examination, the said witness would depose that uniforms are entirely different and from the uniforms, one can make out or identify the students of each school and in respect of Saraswathi Nursery and Primary/Elementary School, P.W.155 is the Headmaster and further deposed that making good the shortage by shifting students is wrong and she did not give any complaint to anybody including the Education Department officials.

28.10 It is also to be noted at this juncture that P.W.120 had deposed that though there are very many nursery schools in Kumbakonam Town, the said schools are not popular and therefore, the students from villagers are studying in the said school and when compared to fees charged by other schools, it is very less and that good and quality education was also imparted. It is further deposed that at the instance of A-2, students were shifted on 14/15.07.204 and reiterated that all the three schools were running properly. The testimonies of the other witnesses would disclose that P.W.120 had shifted the students, however her evidence is that it was done by A-2, who is no more.

28.11 P.W.229/Investigating Officer, in his cross examination done on behalf of A-3, would admit that there are entirely different sets of uniforms for all the three schools and insofar as A-3 is concerned, his investigation did not reveal as



to the complaint of the parents with regard to shifting of students and either the parents or teachers have given any specific complaint as to the shifting of students on the part of A-3. P.W.229 would further admit that at the time of incident, A-3 was taking classes in V 'B' of Sri Krishna Aided Primary School and none of the students sustained any injury or died for the reason that the said classroom was having a permanent roof and in respect of classes taken by P.W.112 and P.W.115, 7 and 3 students died respectively and he would further depose that A-3 had given oral instructions for shifting of the students.

28.12 It is to be seen at this juncture that the witnesses examined to sustain the charge against A-3, have not deposed anything in favour of the prosecution and it is their evidence that shifting of students was done at the instance of A-2. In the absence of any credible evidence as to the death of the students on account of shifting of students to the classroom with thatched roof, this Court is of the considered opinion that **Charge No.1 framed against A-3/appellant in CrI.A.[MD].No.243 of 2014 has not been proved by the prosecution.**

28.13 The appellant was also charged for the offence under Section 120-B IPC, for which she was acquitted by the Trial Court, against which the State has preferred an appeal.

28.14 The Trial Court had convicted A-3 for the commission of offences under Sections 338, 337 and 285 IPC and in the light of the findings recorded by this Court in respect of Charge No.1 coupled with the fact that the ingredients of the said offences have not been established by the prosecution through oral and documentary evidence, she is entitled to be acquitted.

28.15 The findings recorded by this Court in respect of the said charge in the appeal in CrI.A.[MD].No.241 of 2014 filed by A-1 are applicable to this appellant/A-3 also. The penal provisions under Sections 46 and 47 of the Tamil Nadu Recognised Private School [Regulation] Act, 1973 are general in nature and it is obligatory on the part of the Trial Court to frame specific charge as to the violation of relevant provisions of the said Act and unfortunately, it has not done so. The oral and documentary evidence let in by the prosecution did not point out violation of any specific provision.

28.16 This Court, while recording the findings of acquittal in respect of the said charge insofar as A-1 is concerned, has given elaborate reasons and also noted grave and serious prejudice caused to the accused in defending the charges, in the absence of specific violation of the concerned provisions of the Act, which would in turn lead to the penal provisions under Sections 46 and 47 of the Tamil Nadu Recognised Private School [Regulation] Act,



1973.

28.17 It is to be reiterated at this juncture that P.W.229/ Investigating Officer in the cross examination had also admitted that on 14/15.07.2004, none of the parents of the children had given any complaint against the concerned school and would further admit that he was aware of the responsibilities of a Headmaster/Headmistress and he has not collected relevant documents in that regard and A-1 to A-3, did not indicate in the records about the inspection of the Education Department officials on 14/15.07.2004 and was also not aware of the order obtained by A-1 in the Court as to the non-formation of the Committee for the Elementary School. It is also very pertinent to point out at this juncture that with regard to duties and responsibilities of a Noon Meal Organizer/A4, no document has been filed by the prosecution.

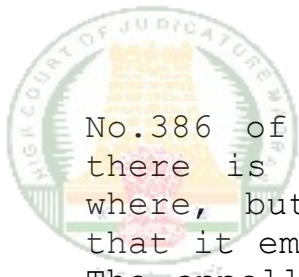
28.18 The Trial Court, in paragraph 563 of the impugned judgment, had recorded a finding that A1 to A-3 had submitted incorrect documents and plan and also obtained lease in respect of playground and hiding the deficiency, submitted the same to the Education Department officials and as such, they have violated the provisions contemplated under the Tamil Nadu Recognised Private School [Regulation] Act, 1973. It is not even the case of the prosecution that A-3 has submitted false and fictitious documents to establish with regard to the requirement of playground and therefore, the findings recorded by the Trial Court in respect of the said charge are wholly unsustainable. Hence, A-3 is to be acquitted in respect of the said charge also.

28.19 In conclusion, A-3/appellant in CrI.A.[MD].No.243 of 2014 is acquitted in respect of Charges No.1 to 3 and 8.

29 CRL.A[MD].NO.258/2014 - A-4[TMT. VIJAYALAKSHMI]

29.1 A-4 has been convicted and sentenced in respect of Charges No.1, 2 and 3 and she was acquitted for the offence under Section 120-B IPC. As per Charge No.1, A-5, namely Vasanthi/appellant in CrI.A.[MD].No.59 of 2015 had filled up water in the vessels and for the purpose of lighting oven, used to remove the thatched roof inside the kitchen and poured kerosene and lighted it and along with the appellant/ A-4, went to the store room for taking rice and at that time, fire emanated from the oven reached and touched the thatched roof put up on the kitchen and it spread to the first floor and as a result, 94 children died on account of burn injuries. Charge Nos.2 and 3 are in consequence of Charge No.1.

29.2 A-4, apart from being the organizer of Noon Meal <https://hcservices.courts.gov.in/hcservices/> Centre of Sri Krishna Aided Primary School, was a class teacher of V Standard of the very same school. The Trial Court, in paragraph



No.386 of the impugned judgment, had recorded the finding that there is no eye witness as to how the fire emanated and from where, but however the concerned witnesses had spoken the fact that it emanated from the Noon Meal Kitchen from the ground floor. The appellant/A-4, in the written submission, submitted that fire emanated from the thatched roof of the first floor in the classroom and on that day, it has emanated from the kitchen attached to the Noon Meal Centre and old thatched sheets having been removed and have not been kept near or inside the kitchen. The Trial Court, in paragraph No.397 of the impugned judgment, had recorded the finding that the fire emanated from the removed thatched sheets kept inside or near the kitchen and spread to the first floor.

29.3 P.W.196 was the Commissioner of Kumbakonam Municipality at the relevant point of time and he speaks about the maintenance of service records pertaining to A-4 and A-5 and as per Ex.P344, A-4 was appointed as Noon Meal Organizer on 05.10.1998 and till 16.07.2004, salary was disbursed from Kumbakonam Municipality and subsequent to the incident, she was placed under suspension. P.W.196 would further depose that after 1997 to 1998, the control of the Noon Meal Centres are within the ambit of Municipalities and he used to conduct inspection and he cannot conduct 100% inspection. In the cross examination done on behalf of A-1 and A-2, the said witness would admit that the administration of the Noon Meal Centre was with the Commissioner of Municipality and however the workers are appointed by the District Collector and the location of the Noon Meal Centre and procedure to be adopted have to be given by the District Collector and the said proceedings have been marked as Ex.D33. The said witness also made a crucial admission that till the date of incident, fire woods were used for oven and for purchase of fire woods amount would be given.

29.4 In paragraph No.452 of the impugned judgment, the Trial Court has given the finding that all the three schools were run by A-1 and assisted by his wife/A-2 and A-3, being the Headmistress of Sri Krishna Aided Primary/Elementary School, is the adopted daughter of A-1 and A-3 and the removed thatched sheets were kept near the kitchen attached to the Noon Meal Centre and on account of the fire emanated from the kitchen, which spread to the classrooms, many children died and A-4 and A-5 did not take any steps to remove the thatched roofs, though they are very well aware of the fact that there is a possibility of such a incident and exhibiting gross negligence, they have commenced their work and as such, they have aided A-1. Insofar as conspiracy, the Trial Court acquitted A-4.

29.5 In paragraph 454 of the impugned judgment, the Trial Court recorded the finding that A-1, being the individual, had



done all the acts and A-2 to A-5, being handmaids, aided the mistakes committed by him and therefore, convicted them in respect of Charge Nos.1 to 3.

29.6 P.W.183- Personal Assistant to the District Collector In-charge did not state anything about the duties and responsibilities of Noon Meal Organizer. Ex.D33 is the proceedings of the District Collector in respect of Noon Meal Centre Tanjavore dated 28.09.2010 and the said document throws light with regard to the duties and responsibilities of the Noon Meal Organizer and it merely pertains to disposal of food articles and sanitary conditions of the kitchen attached to the Noon Meal Centre and the consequences of shortage of food articles.

29.7 P.W.229/Investigating Officer, in the cross examination done on behalf of A-4 and A-5, would depose that on the date of incident, P.W.177 was the Noon Meal Assistant and she has not been arrayed as the accused and with regard to the location of Noon Meal Kitchen, A-4 and A-5 had no role to play and though P.W.155 was the Headmaster of Saraswathi Nursery and Primary School, the entire administration was looked after by A-4 and the salary was received only through P.W.115 and he did not inform of lodging of any complaint by P.W.115.

29.8 The evidence available on record would indicate that A-4 went to the kitchen to procure food articles and for the purpose of cooking food, A-5/cook, by lighting, made preparation by boiling water for the purpose of cooking food. In the absence of any oral and documentary evidence let in by the prosecution as to the role played by A-4 with regard to cooking coupled with the fact that Ex.D33 did not spell out any responsibility on the part of A-4, it cannot be said that she exhibited negligence and further that the ingredients for recording conviction under Section 304 (II) I.P.C. have not been made out against her.

29.9 The conviction and sentence recorded against A-4 for the offences under Sections 337, 338 and 285 I.P.C. is a consequence of conviction recorded under Section 304(ii) I.P.C. and even otherwise, the ingredients of the said offences have not been made out at all against her.

29.10 **In conclusion, the appellant in Cr1.A.[MD]No.258 of 2014/A-4 is to be acquitted of the Charges No.1,2 and 3 .**

30. CRL.A. [MD] No.59/2015 -[A-5]/Tmt.R.Vasanthi

30.1 The appellant / A-5 was charged for the commission of the offence under Section 304[II] IPC [94 counts] and was convicted for the commission of the offences under Sections 304 [II] IPC [94 counts] ; Section 338 IPC [15 counts] ; 337 IPC [3



counts] ; Section 285 IPC. The details of the conviction and sentence have already been incorporated.

30.2 The substratum of the charges framed against A-5 is that she was attached to the Noon Meal Centre of Sri Krishna Aided Primary / Elementary School and two days prior to the date of occurrence / incident on 16.07.2004, thatched roof / sheet put up on the kitchen were removed and new one was put up and the removed thatched sheets were kept inside the kitchen as well as near the washroom which was located nearby. It was further alleged that A-4 and A-5 started preparation for cooking food and the appellant / A-5 filled up water for the purpose of boiling it and put it on the oven and had put the removed thatched sheets inside the oven ; poured kerosene over it and lighted it and she went along with A-4 to take the rice and at that juncture, a spark emanated from the said oven and it reached the thatched roof put up on the kitchen and it got fire and it in-turn, spread over the thatched roofs put up on some of the classrooms and as a consequence, 94 children died and it was further alleged that on account of the said act on the part of the appellant / A-5, 18 children also sustained grievous injuries.

30.3 It was contended on behalf of A-4 and A-5 that they did not light the oven on that particular day and no spark emanated from the oven and further that, the removed thatched sheets have not been kept inside as well as near the kitchen. The Trial Court, in paragraph Nos.383 and 384 of the impugned judgment, had taken note of the fact that in the event of fire emanates from the kitchen which was having a thatched roof, there is every possibility of the said fire being spread to other places and the testimony of the Assistant Director, Forensic Laboratory, Thanjavur, who was examined as P.W.206, also established the said fact.

30.4 The Trial Court, though in paragraph No.386 of the impugned judgment has recorded the fact that there are no eyewitnesses to speak as to how the fire developed and spread, in the absence of eyewitnesses, had taken note of the fact that the prosecution witnesses had deposed that it emanated from the kitchen attached to the Noon Meal Centre. The Trial Court, in paragraph No.397 of the Impugned Judgment held that though everything in connection with the incident has been denied by A-4 and A-5, the prosecution was able to establish that the fire emanated from the kitchen and it spread to the first floor. In paragraph No.452 of the impugned Judgment, the Trial Court has recorded the finding that at the time of the incident, A-4 and A-5 were present and the prosecution had proved as to the removal of the old thatched sheets put up on the kitchen by replacing with a new one and keeping up the same inside the kitchen as well as nearby the kitchen and the fire emanated from the kitchen spread



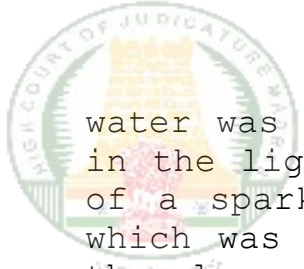
to classrooms wherein thatched roofs were put up and despite knowing of the fact and aware of the consequences as to the keeping of the removed thatched sheet inside the kitchen as well as nearby, A-4 and A-5 started preparation for cooking and thereby, they wielded A-1.

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30.5 The Trial Court in paragraph No.553 of the impugned judgment, has recorded the finding that A-1 having taken the assistance of A-3 and P.W.1, has acted on his own whims and fancies ; created the situation which resulted in the the grave and serious fire accident and ultimately concluded that the appellant/A-1 is liable to be convicted and sentenced for the commission of the aforesaid offences.

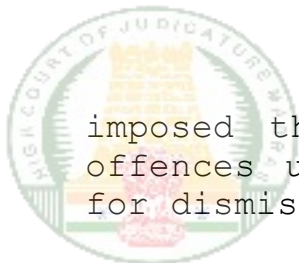
30.6 This Court, while dealing with the appeal filed by A-4 in CrI.A.[MD] No.258/2014, has recorded the finding that she cannot be held liable and responsible for the incident/accident and even as per Charge No.1, it was the appellant / A-5 who had used one of the removed thatched sheets for the purpose of lighting the oven and the documents let in by the prosecution did not speak about the responsibility on the part of A-5 in respect of actual cooking ; but she has to supervise the noon meal kitchen, especially to provide articles / groceries for the purpose of preparing food.

30.7 Mr.K.Mohanasundaram, learned counsel appearing for the appellant / A-5 would submit that the Trial Court, has assumed that since A-5 is the cook, she had made preparation for cooking food by lighting the oven by using the removed thatched sheets and it was solely based upon the opinion given by the Assistant Director of Forensic Laboratory, Thanjavur, who was examined as P.W.206, coupled with his report marked as Ex.395 and his oral testimony would reveal that his opinion is based on surmises and conjectures. The learned counsel would submit that noon meal have to be prepared for 200 children and for that purpose, large vessels will be used and even as per the case of the prosecution, firewoods have been used in the oven for preparing the food, the circumference of the vessel will cover the entire oven and as such, there is no possibility for the spark emanated from the oven reaching the roof which is about 7 feet from the base and therefore, the theory projected by the prosecution was purely imaginary and the Trial Court has also recorded the finding that there are no eyewitnesses as to the emanation of the fire from the kitchen. The learned counsel has also drawn the attention of this Court to the evidence of P.W195 - Photographer as well as to M.O.16-Photograph series and would submit that very soon after the occurrence, photographs were taken and the vessel used for cooking has not been found and though the prosecution has alleged that A-5, for the purpose of cooking food, has lighted the oven by using the removed thatched sheets, the fact remains that the vessel with



water was put on the oven and thereafter only, it was lighted and in the light of the facts projected out, there was no possibility of a spark emanating from the oven to reach the thatched roof, which was located 7 feet from the base. It is also contended by the learned counsel appearing for the appellant / A-5 that necessary and vital documents have not been produced by the prosecution such as Certificate issued by the Fire and Rescue Services and Reports and it was also an admitted fact that after the fire incident on 16.07.2004, the entire school premises were in the custody of the police and however, another fire broke out on 23.07.2004 in the very same School and a First Information Report was also registered in Cr.No.267/2004, marked as Ex.P.563 and without proper investigation, it was closed and since the nature and origin of fire has not been established by the prosecution, the finding of guilt and conviction on the part of the appellant / A-5 was purely based upon surmises and conjectures and in any event, the Trial Court ought to have awarded benefit of doubt to her. Alternately, it is the submission of the learned counsel appearing for the appellant / A-5 that assuming for the sake of argument that the origin of the fire as projected by the prosecution is true, the appellant/A-5 who is aged about 55 years, had already undergone at least, half of the sentence and taking into consideration the fact that she belongs to low income group, eking out her livelihood by doing menial jobs, the sentence already undergone by her, shall be treated as substantive sentence and she may be let off.

30.8 *Per contra*, Mr.R.Rajarithnam, learned Public Prosecutor would contend that the testimonies of the injured students, viz., P.Ws.4, 5, 10 coupled with the evidence of P.W.206-Forensic Expert, had substantiated the case of the prosecution as to the origin of the fire and it is convincingly established through the oral and documentary evidences that the thatched roof was put up on the kitchen as well as on some of the classrooms in utter disregard and violation of the relevant Government Orders and the fire which emanated from the kitchen, spread to classrooms, wherein the thatched roofs were put up and the students were unable to escape for the reason that there was only one staircase having ingress and egress and as a result, very many of them died and some of them had sustained grievous injuries. It is the further submission of the learned Public Prosecutor that the appellant/A-5 being the Cook of the Noon Meal Centre attached to Sri Krishna Aided Primary / Elementary School, was very well aware of the consequence in keeping removed thatched sheets inside the kitchen as well as nearby and in fact, used it as a firewood to light the oven and the spark emanated from the oven reached / touched the roof of the kitchen and got fire and it spread to other areas and any person with common sense and with an average <https://hcservices.education.tn/reservices/> is supposed to be aware of the consequences of keeping the material near the oven which is likely to catch fire and the Trial Court has sympathetically considered her case and



imposed the conviction and sentence for the commission of the offences under Sections 304[II], 338, 337 and 285 IPC and prays for dismissal of the appeal.

30.9 Though the Trial Court has recorded the finding that there were no eyewitnesses as to the origin of fire, the possibility of fire on account of short circuit has been ruled out. The appellant / A-5 for the purpose of cooking food, has lighted the oven and put the vessel to boil water and went out along with A-4 to bring the articles for cooking food and the fire which had sparked from the oven, reached the roof put up on the kitchen and caught fire and spread to classrooms wherein thatched roofs were put up and as a result, very many children died and some of them also sustained injuries. As rightly contended by the learned Public Prosecutor, the appellant, being the Cook, should have aware of keeping the removed thatched sheets inside the kitchen and she should have taken normal precaution ; but she has failed to do so. The evidence of P.W.206-Forensic Expert coupled with the report - Ex.P.395 had also established the case of the prosecution that the cause of the fire was due to the fire emanated from the kitchen of the Noon Meal Centre.

30.10 Though the act on the part of the appellant / A-5 was unintentional, the fact was that though she had the knowledge that keeping the removed thatched sheets inside the kitchen would result in fire accident, she has not done anything to take normal precaution to prevent the same and as such, she has been rightly convicted for the commission of the offence under Section 304[II] IPC and other allied offences.

30.11 This Court has taken note of the alternate plea made by the learned counsel appearing for the appellant / A-5 that she belongs to economically backward class and that she is aged about 55 years and also had undergone substantive period of sentence and is inclined to consider the prayer for modification of the sentence.

30.12 In conclusion, **Crl.A.[MD]No.59 of 2015 is dismissed and the conviction against A-5 is confirmed and the sentence of imprisonment is modified to one, already undergone.**

31. CRL.A.[MD]No.253/2014 - [A-12] B.JAYACHANDRAN

31.1 The appellant / A-12 was charged in respect of Charge Nos.5, 6 and 7 and was convicted in respect of Charge No.5, viz., 465 read with 197 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.50,000/- with a default sentence to undergo six months simple imprisonment.

<https://hcservices.ecourts.gov.in/hcservices/>

31.2 This Court, while dealing with the appeal filed by A-1

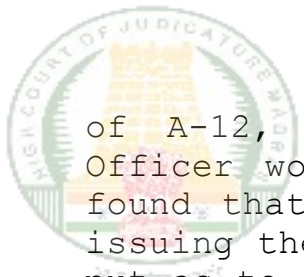


in CrI.A.[MD]No.241/2014, had dealt with the role played by this appellant / A-12 in paragraph No.26.60 and found that despite the intensity of the fire accident, the School building for which he has issued the Stability Certificate, did not collapse.

31.3 The substratum of the charge against this appellant is that he had issued the Stability Certificate in respect of the premises bearing Door No.12-E in S.No.762/B and not in respect of Door No.13 in S.No.763/B, where the fire emanated from the kitchen of the Noon Meal Centre attached to Sri Krishna Aided Primary / Elementary School. The learned counsel for the appellant / A-12 has drawn the attention of this Court to the impugned judgment passed by the Trial Court and would submit that in paragraph Nos.464, 465, 487 and 488, the said Court has recorded the findings that the prosecution has failed to establish that on account of the Stability Certificate with incorrect particulars issued by this appellant/A-12, the fire accident was caused and that the fire emanated from the kitchen attached to the Noon Meal Centre of Sri Krishna Aided Primary / Elementary School and for that building, he did not issue the Stability Certificate. Insofar as the lighting of thatched roof and removing it and replacing with a new one, the Trial Court has recorded the finding that A-7 to A-10, A-12 and A-23 did not aid A-1 to A5 and therefore, acquitted A-7 to A-10, A-12 and A-23 for the commission of the offences under Section 304 read with 120-B read with 109 IPC and 338 read with 109 IPC. It is the submission of the learned counsel that despite such a finding, the Trial Court has erroneously reached the conclusion in respect of Charge No.5 and convicted and sentenced the appellant / A-12.

31.4 Charge No.5, insofar as this appellant / A-12, reads that A-12 without inspecting the building in which all the three schools were located and without seeing the plan, has created a false / incorrect plan and issued the Stability Certificate. P.W.230, the Deputy Inspector General of Police, in the cross-examination done on behalf of A-12, A-13, A-15 to A-17 would admit that prior to the filing of the charge sheet / final report, he did not examine any witnesses with regard to the role played by the appellant / A-12 and based on the documents collected during investigation, he filed the final report.

31.5 P.W.229-the Investigating Officer, in the cross-examination done on behalf of A-10, would state that A-10 was the competent authority to inspect Sri Krishna Aided Primary / Elementary School and the said school has already got permanent recognition ; but there is no rule for continuous recognition. However, his investigation has revealed that it was a conditional one. The said condition is that for every three years, the Stability Certificate and Sanitary Certificate have to be obtained and put up in the files. In the cross-examination done on behalf



of A-12, A-13, A15, A-16 and A-17, P.W.229-the Investigating Officer would state that during the course of investigation, he found that the appellant/A-12 did not visit the premises before issuing the Stability Certificate and when a specific question was put as to any deficiency in the Stability of the building, P.W.229 replied that he was not aware of it ; but denied the suggestion that even as on date, the building is stable and in a strong condition. P.W.229 would submit that he has also drawn a rough sketch / plan which is contrary to the Stability Certificate and Plan given by the appellant/A-12.

31.6 The Trial Court in paragraph No.545 has recorded the finding that despite the lack of space to run two schools, inspection has not been carried out properly and A-11, A-12 to A-14 and A-17 joined together and issued an incorrect Stability Certificate and granted permission to run a school based on which, schools were running. In paragraph No.559, the Trial Court has recorded the findings that the appellant/A-12 without inspection, has issued the Stability Certificate and as such, he along with A-1 and A-2 are liable to be convicted for the commission of the offence under Section 465 read with 197 IPC. The evidence already available on record would indicate, especially, the testimony of P.W.229, the Investigating Officer, while he was cross-examined on 25.02.2014 on behalf of A-1 and A-2 to the effect that there is no specification as to how the school building should be there, either in the Tamil Nadu Recognized Private Schools [Regulation] Act, 1973 or in the Tamil Nadu District Municipalities Act, 1920, and the power vests with the Education Department to accord permission to run the school and that even in the year 1950, Sri Krishna Aided Primary / Elementary School was granted permanent recognition. It is to be noted at this juncture that fire emanated from the kitchen attached to Noon Meal Centre of the said School and in respect of the premises, wherein the said school was located, the appellant/A-12 did not issue any Stability Certificate. The Stability Certificate is issued for the purpose that the building is in a stable and sound condition and it can withstand any mishap. It is not even the case of the prosecution that on account of the fire accident, the structure has become weakened and collapsed or requires immediate demolition. The fact remains that even as on date, the building continues to be in existence and neither the District/Local Administration nor the Education Department moved the authorities concerned for demolition of the said structure. Therefore, it cannot be said that the appellant/A-12 had issued or signed a false certificate. The prosecution has failed to prove the ingredients of the offence punishable under Section 465 IPC and also 197 IPC and even otherwise, the appellant/A-12 had already undergone substantive period of sentence. Therefore, he is to be acquitted.



the conviction against A-12 is set aside and he is acquitted of all the charges levelled against him.

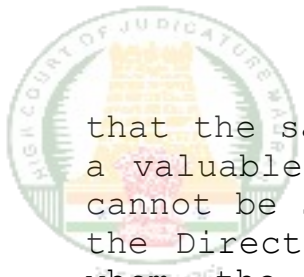
32 CRL.A.[MD] No.237/2014 - [A-14 -R.BALAJI]

32.1 This appellant / A-14 was convicted in respect of charge No.4, i.e., 467 read with 197 IPC and was sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of one year simple imprisonment.

32.2 The substratum of the charge framed against the appellant / A-14 is that P.W.1 was the Correspondent of Saraswathi Nursery and Elementary / Primary School from the year 1995 and from him, A-1 in the capacity of the Correspondent, used to get signatures in the concerned documents and due to the compulsion exerted by A-1, P.W.1 subscribed his signature and however, recognition / approval is yet to be issued and without recognition and without making good the deficiency for the years 2003-2006, proposal was submitted for renewal of the recognition/approval and without renewing the recognition/approval between 2000-2003, A-7 to A-10, A-13 to A-18 had dealt with the said proposal for the years 2003-2006 and without inspection and verification of the compliance of the deficiencies and without taking into consideration the fact that the students have been shifted/interchanged to make good the deficiency and also to comply with the Teacher-Students strength/ratio, A-7 to A-10, A-13 to A-18 had accepted false/fabricated documents submitted by A-1 to A-3 and signed it and issued a false certificate and thereby, all the accused had committed the offence punishable under Section 467 read with 197 IPC.

32.3 This Court, while dealing with the Appeal in Crl.A.[MD] No.241/2014, has held that the prosecution has failed to adduce any tenable or worthy evidence with regard to shifting of the students to comply with the Teacher-Students ratio and held that the charges framed against A-1 for the commission of the offences under Sections 467 read with 197 IPC and 465 read with 197 IPC, have not been proved.

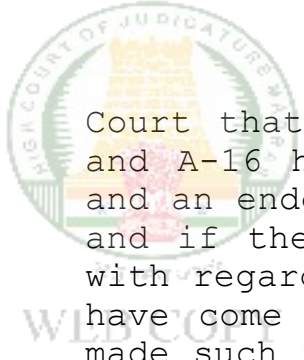
32.4 Mr.G.R.Swaminathan, learned counsel appearing for the appellant / A-14 would submit that in respect of Charges No.6 and 7, the appellant / A-14 was acquitted and no appeal has been filed by the State challenging the order of acquittal and he is only a middle rank officer in the District Elementary Education Office at Thanjavur. Based on the Office Note put up under Ex.P.202 and Ex.P.562, recommendation has been made which was ultimately approved by the top ranking officer, viz., A-24, against whom the prosecution has been withdrawn and the prosecution has failed to prove the ingredients of the offences for which he was convicted and a mere positive recommendation would not lead to a presumption



that the said accused had forged the document which purports to be a valuable security or Will and even otherwise, the Notes put up cannot be said as fabricated or forged and it was also accepted by the Director of Elementary Education Officer, viz., A-24 [against whom the prosecution has been withdrawn] and as such, the conviction and sentence imposed on the appellant/A-14 is wholly unsustainable. The learned counsel appearing for the appellant / A-14 also made an alternate submission that this accused has already undergone substantive period of sentence of imprisonment and it may also be taken as a factor in the event of the appeal being dismissed. The learned counsel appearing for the appellant / A-14, in support of his submissions, has placed reliance upon the decisions reported in **[1] AIR [30] 1943 Cal 40 [D.Jothi Vs. K.P.Kandasamy and others]** and **[2] 2000 CrI.L.J 292 [Prafulla Kumar Khara and another Vs. Emperor]**.

32.5 *Per contra*, Mr.R.Rajaratnam, learned Public Prosecutor would contend that the appellant/A-14 during his examination as D.W.1, has made an admission about the positive recommendation made, based on which only, A-24 accorded approval and immediately, after the incident, recognition granted to the same school, was withdrawn. It is the further submission of the learned Public Prosecutor that the appellant/A-14, being the District Elementary Education Officer, is expected to go through the Note Files and verify about the facts stated in the recommendation made as to the compliance of the relevant statutory regulations and however, he has deliberately failed to do so and knowing pretty well that the Note File has been put without actual inspection and verification, the appellant/A-14 ought not to have made a positive recommendation and therefore, he has been rightly convicted and sentenced by the Trial Court.

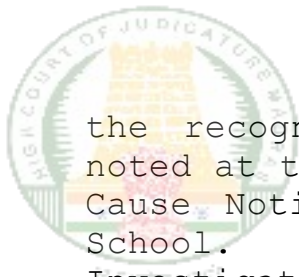
32.6 The Trial Court, in paragraph Nos.530 to 537 of the impugned judgment has found that Ex.P.202 - recommendation was submitted by the appellant / A-14 and prior to that, under Ex.P.562, the Assistant Elementary Education Officer, Kumbakonam, has submitted a recommendation. Ex.P.562-recommendation is in respect of Saraswathi Nursery and Elementary / Primary School which also discloses the compliance of the defects pointed out ; grant of recognition/approval in respect of the said school from 01.06.2003 to 31.05.2006 and the said Note was made by A-16 and without taking note of the fact that in respect of the earlier period, no such recommendation was given, has merely signed the Note put up by A-16 and thereby, made a recommendation to A-24. The Trial Court has also taken note of the fact that A-14 who was examined as D.W.1, had admitted about the non-availability of the playground and though he took a stand that he is not under duty or obligation to make a personal inspection, the fact remains that without due and proper application of mind, A-14 had merely made a positive recommendation. It was further observed by the Trial



Court that A-14, in his examination as D.W.1, admitted that A-15 and A-16 had worked under him and Ex.P.562 was prepared by A-15 and an endorsement was made by A-16 and initial was put up by A-17 and if there was proper application of mind on the part of A-14 with regard to the report submitted by A-18, the deficiency could have come to his knowledge and in that event, he could not have made such recommendation under Ex.P.202 and if it was not so, A-24 would not have accorded approval under Ex.P.546 and if A-14 to A-17 did not make a positive recommendation, the school would not have been run and there is no possibility of happening of the accident and no steps have been taken to verify about the laying of the thatched roof over the classrooms and availability of sanitation facilities. The Trial Court recording the said findings, had observed that A-14 to A-17 had helped A-1 and therefore, convicted and sentenced the appellant/A-14.

32.7 Ex.P.200 is the letter sent by A-18 [acquitted] addressed to the District Elementary Education Officer, Thanjavur, dated 14.01.2004 seeking renewal of recognition / approval with regard to Saraswathi Nursery Elementary / Primary School and pointed out the lack of attendance on the part of the students. Under Ex.P.201, A-18 has prepared the Check List with regard to the request made for recommendation / approval / permission in respect of Saraswathi Nursery and Elementary / Primary School and pointed out the deficiency in respect of Sl.Nos.1, 2, 7, 8, 10, 12 to 15, 18, 19, 23, 25 to 30. Deficiency No.15 pertains to Stability Certificate and Deficiency No.19 pertains to playground. The said official noted that the Sanitation Certificate has been provided. The appellant / A-14 in his letter/recommendation dated 14.06.2004 [Ex.P.202], addressed to A-24 has stated that in respect of Saraswathi Nursery and Elementary / Primary School, with regard to the granting of recognition/approval for the period from 01.06.2003 to 31.05.2006, the Assistant Elementary Educational Officer, Kumbakonam, sent a letter / proceedings dated 12.12.2003 and it was verified by A-15 and the deficiencies pointed out, have been removed and it has been further indicated in Ex.P.202 that the school is having all basic facilities and it is also easily accessible and therefore, based on the recommendation made by the Assistant Elementary Education Officer, Kumbakonam, made a positive recommendation for grant of approval in respect the said school for the period between 01.06.2003 and 31.05.2006.

32.8 The Director of Elementary Education [A-24 against whom the prosecution was withdrawn], vide proceedings dated 11.07.2004, has taken into consideration the recommendation made by A-18 and A-14, and has granted recognition/approval under Ex.P.546, in favour of Saraswathi Nursery and Elementary / Primary School for the period between 01.06.2003 and 31.05.2006 subject to certain conditions. Later on, after the fire accident, A-24 has withdrawn

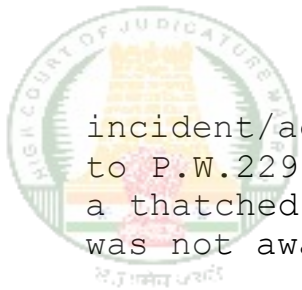


the recognition/approval granted under Ex.P.547. It is to be noted at this juncture that prior to issuance of Ex.P.547, no Show Cause Notice has been issued to the Correspondent of the said School. This Court has already pointed out that P.W.229-the Investigating Officer, while cross-examined on behalf of A-1 and A-2 on 25.02.2014, had admitted that either in the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 or in the District Municipalities Act, the requirements as to the School building, have not been prescribed and A-24, under Ex.P.546, has accorded approval and it was received by P.W.1 in his capacity as Correspondent.

32.9 P.W.229 - the Investigating Officer, would further admit that P.W.176 as well as A-24 did not point out or note any mistake in the recommendation made and later on, stated that if there are any mistakes, it was the duty of the District Elementary Educational Officer and he would further admit that no official has stated about the mistake committed in respect of recognition / approval granted in favour of Sri Krishna Girls High School. In the cross-examination done on behalf of A-7 to A-9, P.W.229 would depose that based on the recommendation made by A-14, A-24 has accorded approval and during the course of investigation, it came to his knowledge that A-14 did not apply his mind properly. P.W.229, in the cross-examination done on behalf of A-18 would depose that A-18 [acquitted] is the official to make inspection in respect of Nursery Schools and he was in-charge of the said post from 07.07.2000 to 16.07.2004 and a suggestion was put to him that he has to inspect 239 schools which are under his control.

32.10 P.W.229-Investigating Officer during cross-examination done on behalf of A-14, denied the suggestion that for running Nursery/Primary School, no approval is required and would admit that the appellant/A-14 was in-charge of the post of District Elementary Education Officer for a period of four months between 01.03.2004 and 30.06.2004 and the incident/accident/occurrence took place on 16.07.2004 and the approval was granted on 11.07.2004 and it was granted based on the building licence and Sanitary Certificate and denied the suggestion that it was based upon the approved building licence and Sanitary Certificate. P.W.220 would further depose that in Ex.P.202, it has been falsely stated that the deficiencies have been pointed out and however, the documents have not been enclosed and would further admit that insofar as Ex.P.202 is concerned, the District Elementary Educational Officer [A-14] is only a recommending authority.

32.11 It was further admitted by P.W.229 - the Investigating Officer that A-14 retired on 30.06.2004 and the approval was granted on 11.07.2004 and it was further deposed by P.W.229 that A-14 would have perused the files properly, action would have been taken against the said school and thereby, the



incident/accident would have been prevented. A suggestion was put to P.W.229 that prior to the incident, there is no bar for putting a thatched shed over the school and it was answered by him that he was not aware of it.

32.12 P.W.176 was the Joint Director of Education and she would depose that necessary school inspection should be done by the Assistant Elementary Educational Officer [Nursery] as well as the District Elementary Educational Officer and A-18 has conducted inspection in respect of Saraswathi Nursery and Elementary / Primary School and pointed out certain deficiencies under Ex.P.157 and also stated that if the deficiencies are rectified, renewal/recognition can be done. The said witness would further depose that though in Ex.P.202, A-14 had stated that the deficiencies pointed out, have been rectified, no documents are available on file and the said recommendation was scrutinised by the Office of the Director of Elementary Education and was granted by A-24 under Ex.P.546 and no proposal has been made for renewal/approval/recognition. P.W.176, in the cross-examination done on behalf of A-1 and A-2 would admit that after verifying Exs.P.157, 200 and 202, she did not sign the said file as it belonged to the office of the District Elementary Educational Officer and since the recommendation made was proper, the Director of Elementary Education had accorded approval under Ex.P.546 and would further admit that prior to the cancellation of the same under Ex.P.547, no notice has been given to the concerned school. P.W.176 would further admit that deficiencies have been verified and since it has been rectified, recommendation was made by the District Elementary Educational Officer.

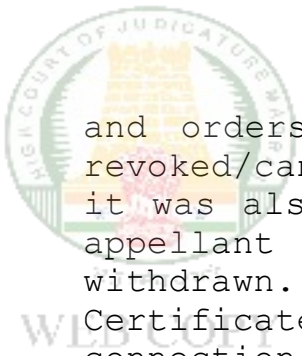
32.13 P.W.176 in the cross-examination done on behalf of A-18 would admit that the Assistant Elementary Educational Officer would inspect the School and make his opinion/recommendation to the District Elementary Educational Officer and in the cross-examination done on behalf of A-22 and A-23, she would admit that there is no requirement for getting approval from Municipality and for the purpose of getting recognition/approval, the Stability Certificate, Sanitary Certificate and Endowment are required and apart from the said documents, no further documents are required for granting approval/recognition.

32.14 The appellant/A-14 examined himself as D.W.1 and he would state that he functioned in that capacity between 01.03.2004 and 30.06.2004 and out of four months, 86 days are the effective working days and under him, there are 1232 Panchayat Elementary Schools, 341 Middle Schools and 200 Nursery Schools and during March 2004, he visited 30 Schools and inspected 8 Assistant Elementary Educational Offices and also attended Meetings convened by the Collectorate, the District Elementary Educational Office



and also the Flying Squad pertains to 12th standard examination and also took part in Kumbakonam Mahamaham festival. D.W.1 / A-14 in the chief examination would state that during April 2004, he visited 29 schools as well as 4 District Elementary Educational Offices and 11 buildings in Sarva Siksha Abhiyan [SSA] and also worked as Supervisor regarding Polio Eradication Scheme. During May 2004, he participated in 7 meetings of Block Resource Committee and conducted inspection and during June, he visited 19 Schools and attended 3 meetings conducted by the Director of Elementary Education and he would further depose that he has also received Good Teacher's Award as evidenced under Exs.D.39 to 41. In the cross-examination done by the prosecution, he would state that he worked in the capacity as the District Elementary Educational Officer, Thanjavur, for 132 days and he knows his duties and responsibilities. Attention of A-14 was drawn to G.O.Ms.No.484, Education Department dated 24.04.1991, prescribing the rules for Nursery and Primary Schools and he would depose that his Assistant was A-15 and A-16 was the Superintendent and A-18 was the Assistant Elementary Education Officer [Nursery] and A-13 was the Assistant Elementary Education Officer. He would further depose in the cross-examination that it is not necessary that the District Elementary Education Officer should make personal inspection and he can make only a visit and it is not an inspection and used to make a surprise visit and he would state that in the recommendation emanated with regard to the approval of the Nursery School, he should see the proposal to find out as to whether it is correct or not and he has to look into the files relating to Saraswathi Nursery and Elementary / Primary School and his recommendation under Ex.202 was based upon the Notes by A-18 as to the rectification of the deficiencies; but no separate Noting was there and A-18 has noted 20 deficiencies which was marked under Ex.P.200. The said witness would depose that Ex.P.562 was prepared by A-15 and an endorsement was made by A-16 for grant of fresh recommendation / approval for the period from 01.06.2003 to 31.05.2006 in respect of Saraswathi Nursery and Elementary / Primary School and he has also looked into the file as to the compliance of 20 deficiencies and he has also gone through the Notings put up by his officials as to the compliance of the said deficiencies and however, even when he saw it now, it was not available. The said witness would further depose that the recommendation made to the Directorate of Elementary Education was made without looking into the files and he was not aware of the rectification of the deficiencies and he did not verify as to the availability of five acres of playground.

32.15 It is the primordial submission of the learned counsel appearing for the appellant/A-14 that Ex.P.202 cannot be construed as a certification and it is merely a recommendation and it is always open to the higher official, viz., A-24, either to accept or reject the same and in the case on hand, it was accepted by him



and orders have been passed under Ex.P.546 which was later on revoked/cancelled under Ex.P.547 after the incident/accident and it was also pointed out by the learned counsel appearing for the appellant / A-14 that the prosecution against A-24 was also withdrawn. It is to be pointed out at this juncture that if a Certificate is not required under law, to be given or signed, no connection can be passed based on the first part of Section 197 IPC. In the decision reported in **AIR [30] 1943 Cal 40 [cited supra]**, it has been held that *"in order to constitute an offence under Section 197 IPC, a certificate must be in relation to a fact of which, such certificate is by law, admissible in evidence."* It is further observed that *"conviction and punishment may be imposed under sections 197 and 198 IPC in respect of a Certificate which is required by law to be given or signed or one that relates to any fact of which, such certificate by law, is admissible in evidence."*

32.16 In the decision reported in **2000 Cr1.L.J 292 [D.Jothi Vs. K.P.Kandasamy and others]**, [cited supra], it is observed that "as per section 197 IPC, certificate contemplated therein is a certificate which is required, not to be given or signed for the use in the Courts, administration of justice. That means, a certificate issued as required by some law and it has some reference to some statutory requirements". In the light of the law laid down, incidentally, a question arose for consideration whether Ex.P.202-communication / recommendation sent by the appellant/A-14 to A-24 dated 14.06.2004 comes within the ambit of "certificate" under Section 197 IPC and as a consequence, whether he is liable to be convicted.

32.17 The appellant / A-14 has been convicted for the commission of the offence under Section 467 read with 197 IPC and the essential ingredients are that the accused had committed forgery and such forgery was committed in relation to a document which purports to be a valuable security.

32.18 This Court, while dealing with the procedure adopted by the Trial Court in framing the charge, had found that Charge No.8 framed against A-1 to A-3 pertains to violation of Sections 46 and 47 of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973 and that the penal provisions are general in nature and no specific instances and violation of the relevant or particular provisions have been enumerated or brought to the knowledge of the concerned accused and therefore, held that A-1 to A-2 are to be acquitted.

32.19 In respect of this appellant/A-14 also, the prosecution has failed to bring home the exact nature of statutory violation in respect of the recommendation made by him to A-24 under Ex.P.202. In fact, A-24 had approved the said recommendation and



passed an order of approval under Ex.P.546, which, after the accident/incident, was revoked under Ex.P.547.

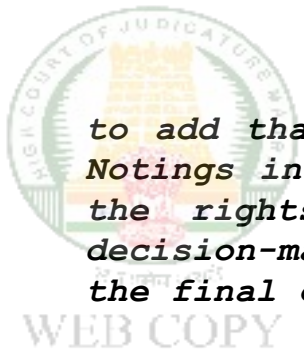
32.20 If Ex.P.202 is construed as a certification by the appellant / A-24, then the meaning of the word "certify" is to be taken note of. The word "certify" as per **B.Ramanatha Aiyar's Law Lexicon [V Edition]** is "to give certain knowledge or opinion of ; make evidence ; vouch for truth of ; attest ; to make statement as to matter of fact ; to testify in writing ; to give a certificate of ; make a declaration about in writing under hand or in seal ; to make attestation either in writing or oral as to truth or excellence of something."

32.21 The prosecution, in the light of the ingredients prescribed for the commission of the offence punishable under Section 467 read with 197 IPC, is under obligation to establish that Ex.P.202 is a certificate and it has been forged.

32.22 In the decision reported in **2010 [2] SCC 422 [Union of India and another Vs. Karthick Chandra Mondal and another]**, the question as to whether the internal communication exchanged between the officers can be deemed to be a Government document? came up for consideration and it has been held in paragraph No.18 of the said citation that "an order should be deemed to be a Government order as and when it is issued and published. The internal communication while processing the matter, cannot be said to be orders issued by the competent authority unless they are issued in accordance with law". The reliance has also been placed upon the decision reported in **1987 [3] SCC 34 [State of Bihar Vs. Kripalu Shankar]**.

32.23 In the decision reported in **Kripalu Shankar's case [cited supra]**, a question arose for consideration whether notings in office file, even if derogatory to Court's order, would constitute criminal contempt. The Hon'ble Supreme Court of India, in the said decision, has held in paragraphs 15, 16 and 18 that "notes in a file can be culminated into an order affecting the rights of the parties only when it reaches the Head of Department and is expressed in the name of the Government authenticated in the manner provided under Article 166[2]".

32.24 In the decision reported in **2009 [1] SCC 180 [Sethi Auto Service Station and another Vs. Delhi Development Authority and others]**, the Hon'ble Apex Court has observed in paragraph 14 that "it is trite to state that Notings in a Department File do not have the sanction of law to be an effective orderA Noting by an officer is an expression of his view point on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless



to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned. "

[emphasis supplied]

32.25 In the considered opinion of the Court, Ex.P.202 can be construed only as a recommendation to enable the superior authority, viz., A-24 [against whom the prosecution has been withdrawn] to take a final call and pass orders and in the case on hand, it was accepted and final orders were passed under Ex.P.546. The recommendation made by the appellant / A-14 is merely a persuasive effect and it was open to A-24, the superior authority, to either accept the same, reject the same or partially accept the same or partially reject the same or modify the same and however, he has accepted the said recommendation and passed a positive order under Ex.P.546 which later on, came to be revoked under Ex.P.547, without notice to the concerned school, as deposed by P.W.176. Since prosecution has been withdrawn against A-24, who passed the final order, the appellant/A-14 cannot be convicted and even otherwise, the ingredients of the offence under Section 467 read with 197 IPC, have not been made out against him and as such, he is to be acquitted.

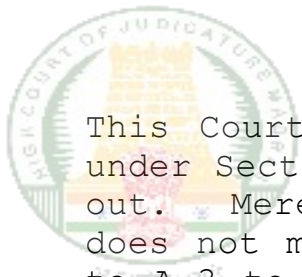
32.26 *In conclusion, CrI.A.[MD]No.237 of 2014 is allowed and the conviction against A-14 is set aside and he is acquitted of the charge levelled against him.*

33 CRL.A [MD] No.249/2014 - [A-15 - SIVAPRAKASAM]

33.1 The appellant/A-15 was convicted under Charge No.4 for the commission of the offence under Section 467 read with 197 IPC and was sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence.

33.2 In the appeal filed by A-14/appellant in CrI.A.[MD] No.237/2014, this Court has held that A-14 is not guilty of the said offence. Neither P.W.176 nor A-14, who was examined as D.W.1, had spoken anything about or against this appellant/A-15. The appellant/A-15, at the relevant point of time, was an Assistant in the office of the District Elementary Educational Officer, Thanjavur and the said post was occupied by A-14. Under Ex.P.202 - recommendation submitted by A-14 to A-24, below the signature of A-24, A-14 has merely initialed it.

33.3 This Court has already held that Ex.P.202 is merely a recommendation and it was open to A-24, the superior official to either accept or reject or partially accept or partially reject the same and however, he passed the final order under Ex.P.546.



This Court has already held that the ingredients of the offence under Sections 467 and 197 IPC as against A-14, have not been made out. Merely because A-15 has put his initials in Ex.P.202, it does not mean that along with A-14, A-16 and A-17, he helped A-1 to A-3 to commit the said offence. In the considered opinion of the Court, the findings rendered by the Trial Court are per se unsustainable in law and on facts. This Court in the appeal filed by A-1 / appellant in Crl.A.[MD] No.241/2014, has held that he cannot be held guilty of the offences under Section 465 read with 197 IPC as well as 467 read with 197 IPC.

33.4 The prosecution has also failed to bring on record the duty and responsibility on the part of this appellant/A-15 in his capacity as Assistant to persuade the superior official to recommend the matter in a particular manner. In the light of the said reasons, the appellant / A-15 is not found guilty of Charge No.4 and he is to be acquitted.

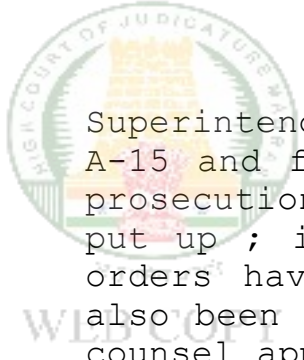
33.5 In conclusion, Crl.A.[MD]No.249 of 2014 is allowed and the conviction against A-15 is set aside and he is acquitted of the charge levelled against him.

34 CRL.A.[MD]No.244/2014- [A-16-D.THANDAVAM]

34.1 The appellant / A-16 was charged for Charge No.4 for the offence under Section 467 read with 197 IPC and was convicted and sentenced to undergo 5 years rigorous imprisonment with a fine of Rs.10,000/-, in default to undergo one year simple imprisonment.

34.2 The appellant/A-16 was working as Superintendent in the Office of the District Elementary Education Officer, Thanjavur and he handled the application submitted for renewal in respect of Saraswathi Nursery and Elementary / Primary School and his role was to verify whether the application is complete in all respects, as per the Notings put up by A-15 [appellant in Crl.A.[MD] No.249/2014] and forward the same to A-18, who has to do inspection and forward the report to A-14 who in turn, under Ex.P.202, made recommendation, which was accepted by A-24 and he passed the final order under Ex.P.546, which was later on revoked under Ex.P.547 after the accident / incident.

34.3 It is to be pointed out at this juncture that even according to the prosecution, A-14, A-15, A-16 and A-17 had handled the application relating to Saraswathi Nursery and Elementary / Primary School and whereas, fire accident took place in Sri Krishna Aided Primary / Elementary School. The learned counsel appearing for the appellant /A-16 would submit that the said school had obtained recognition as early as on 02.05.1995 itself and the appellant, being in his capacity as the



Superintendent, merely verified the Note put up by his Assistant / A-15 and forwarded the same to A-14. It is not the case of the prosecution that when any application being submitted, Note was put up ; inspection was done ; recommendation was made and final orders have been passed and that the contents of the same have also been forged. Therefore, it is the submission of the learned counsel appearing for the appellant / A-16 that the ingredients of the offences for which the appellant has been convicted, have not been made out at all and the findings rendered by the Trial Court in that regard, are perverse and prays for interference. He would further add that this Court, while confirming the order of discharge passed by the Trial Court in respect of the accused, viz., A.Inbaraj, had taken note of the fact that though the said official has not carried out inspection and issued the certificate, he cannot be held liable and responsible for the reason that the incident took place in the kitchen attached to the Noon Meal Centre of Sri Krishna Aided Primary / Elementary School and not in respect of the other two schools.

34.4 The learned counsel for the appellant/A-16 has invited the attention of this Court to the judgment reported in **2009 [8] SCC 751 [cited supra]** and would submit that the scope of section 467 IPC came up for consideration and the Hon'ble Supreme Court of India has held that "*if what is executed is not a false document, there is no forgery and if there is no forgery, then neither section 467 IPC nor section 471 IPC are attracted.*" [paragraph No.17] and therefore, the learned counsel for the appellant / A-16 prays for Hon'ble acquittal.

34.5 *Per contra*, the learned Public Prosecutor would submit that knowing pretty well about the falsity of the contents, A-16 has subscribed his signature and therefore, he helped A-1 to A-3 for the commission of the offences and therefore, he has been rightly convicted.

34.6 In the considered opinion of the Court, the ingredients of section 467 read with 197 IPC have not been made out against the appellant / A-16 for the reason that in his capacity as Superintendent attached to the office of the District Elementary Educational Officer, he merely checked and verified the Note put up by his Assistant [A-15 / appellant in CrI.A.[MD] No.249/2014] and thereafter, forwarded the said application to A-14 [acquitted now] and he pointed out certain deficiencies and A-14 [District Elementary Education Officer] made a positive recommendation to A-24 under Ex.P.202 and final orders were passed by A-24 [against whom the prosecution has been withdrawn] under Ex.P.546, which, after incident/accident, came to be revoked under Ex.P.547. Mere verification of the contents of the Note put up by the Assistant, <https://hcservices.ecourts.gov.in/hcservices/> in no way attracts the commission of the offence on the part of this appellant/A-16 and the findings rendered by the Trial Court



are based upon "no evidence" and *per se* unsustainable in law and on facts and hence, the conviction and sentence imposed on the appellant / A-16 is liable to be set aside.

34.7 In conclusion, Crl.A.[MD]No.244 of 2014 is allowed and the conviction against A-16 is set aside and he is acquitted of the charge levelled against him.

35 CRL.A.[MD] No.250/2014 [A-17- G.DURAIRAJ]

35.1 The appellant/A-17 was the Personal Assistant to the District Elementary Education Officer - A-14 and along with A-1, A-14 to A-16, he was convicted for the commission of the offence under Section 467 read with 197 IPC [Charge No.4] and was imposed with the sentence of five years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of one year simple imprisonment.

35.2 The reasons assigned by this Court for acquittal of A-15 and A-16 are applicable to the appellant herein also for the reason that in Ex.P.202, the recommendation made by A-14 to A-24, he merely put his initial below the signature of A-14 and the prosecution has miserably failed to establish or substantiate the role played by this appellant/A-17 in his capacity as the Personal Assistant to A-14 in making such a recommendation. No office Note or Internal Notes have been produced or marked by the prosecution as to the duties and responsibilities of this accused and it is not even the case of the prosecution that he influenced A-14 to take a decision in a particular manner. None of the ingredients of the offence for which this appellant/A-17 has been convicted, have been made out by the prosecution at all and once again, the findings rendered by the Trial Court are based upon "no evidence" as neither the witnesses nor the documents have said anything against this appellant/A-17. Therefore, he is not found guilty for the offences u/s.467 read with 197 IPC and he is liable to be acquitted.

35.3 In conclusion, Crl.A.[MD]No.250 of 2014 is allowed and the conviction against A-17 is set aside and he is acquitted of the charge levelled against him.

36. CRL.A.[MD].NO.268 OF 2014 [APPEAL AGAINST
ACQUITTAL]

36.1 The State, aggrieved by the judgment of acquittal passed by the trial Court viz., judgment dated 30.07.2014 made in SC.No.275/2006 on the file of the learned Principal Sessions Judge, Thanjavur in respect of some of the charges framed against the convicted accused as well as the total acquittal in respect of some of the accused had filed this appeal by invoking Section 378 Cr.P.C.



36.2 This Court, while dealing with the appeals filed against conviction, has also extracted the charges framed against the accused and conviction and sentence passed against them as well as the acquittal of charges framed against them and therefore, it need not be re-stated once again. However, for the sake of convenience, it is relevant to state the details of acquittal in respect of charges framed against convicted accused as well as total acquittal of the charges of the rest of the accused.

Charge No.	Accused	Charged under Section	Acquittal for the Sections
1	A-1 to A-5	304 r/w. 120-B IPC (94 counts)	A-1 to A-5 acquitted u/s. 120-B IPC
3	A1 to A-5, A-19, A-20, A-21	285 IPC	A-19, A-20 and A-21 acquitted
4	A-1 to A-3, A7 to A-10, A-13 to A-18	467 r/w. 197 IPC	A-2, A-3, A7 to A10, A13 and A-18 acquitted
5	A-1 to A-3, A-12, A22 and A-23	465 r/w. 197 IPC	A-3, A-22 and A-23 acquitted
6	A-7 to A-10, A-12 to A-23	304 r/w. 120-B r/w. 109 IPC	Total Acquittal
7	A-7 to A-10 A-12 to A-23	338 r/w. 109 IPC	Total Acquittal
9	A-1 to A-3, A-19 to A-21	Section 23 of Juvenile Justice (Care and Protection of Children Act, 2000)	Total Acquittal
10	A-1 to A-3	Section 320 of Tamil Nadu District Municipalities Act, 1920	A-3 alone acquitted



36.3 This Court, before dealing with the findings recorded by the Trial Court in acquitting some of the convicted accused for certain offences and total acquittal of some of the accused, is to keep in mind the ratio laid down in various decisions rendered by the Hon'ble Supreme Court of India while dealing with appeal against acquittal.

36.4 In **Babu v. State of Kerala [(2010) 3 SCC (Cri) 1179 = (2010) 9 SCC 189]**, the Hon'ble Supreme Court of India has dealt with the issues pertaining to appeal against acquittal and in para 12 of the judgment, it has been observed as under:

"12.... The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate Court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court."

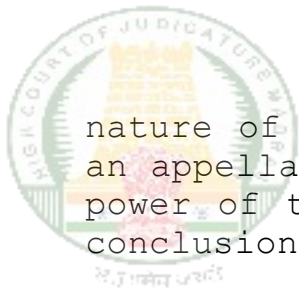
In the same decision, reliance was also placed upon the decision in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415 = (2007) 2 SCC (Cri) 325]**, wherein the Hon'ble Supreme Court of India has reiterated the legal position as under:

"15. In **Chandrappa v. State of Karnataka [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]** this Court reiterated the legal position as under: (SCC p. 432, para 42)

"(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the



nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

The Hon'ble Supreme Court of India also referred to its earlier decision in ***State of U.P. v. Banne [(2009) 4 SCC 271 = (2009) 2 SCC (Cri) 260]***, wherein it gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court and the circumstances include:

"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

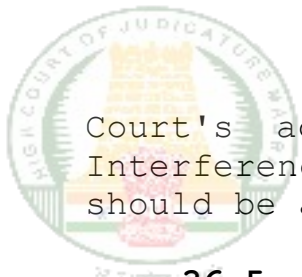
(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

In paragraph No.19 of the said judgment, law on the issue has been summarized by stating that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal and the appellate court should bear in mind the presumption of innocence of the accused and further that the trial



Court's acquittal bolsters the presumption of his innocence; Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

36.5 In *Kuldeep Singh v. Commissioner of Police [(1999) 2 SCC 10 : AIR 1999 SC 677]*, the Hon'ble Apex Court held that "if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order

would be perverse, but if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with".

36.6 In *Satyavir Singh v. State of Uttar Pradesh [(2010) 2 SCC (Cri) 48 = (2010) 3 SCC 174]*, the Hon'ble Supreme Court of India has considered the scope of Sections 378 and 386 Cr.P.C and while reiterating the nature and scope, in paragraph No.18 observed that "Before the appellate Court, where the judgment of acquittal is recorded, two important aspects emerge from such judgment. Firstly, there is presumption of innocence of the accused person in our criminal jurisprudence and secondly, the court concerned has recorded the finding in favour of the accused and disbelieved the prosecution and has founded as a matter of fact that the prosecution has failed to prove its case beyond reasonable doubt, thus giving the benefit to the accused. Both these presumptions - jurisprudential and in regard to the factual matrix - must be kept in mind and unless the conclusions reached by the Court were palpably erroneous or contrary to law or it is likely to result in injustice, the High Court may be reluctant in interfering with the judgment of acquittal and also placed reliance upon the decision in *Khedu Mohton v. State of Bihar [(1970) 2 SCC 450 : (1970) SCC (Cri) 479]*."

36.7 Mr.Rajarathinam, learned Public Prosecutor appearing for the appellant/State made the following submissions:

(i) The acquittal of A-19 to A-21 passed by the Trial Court on the ground that they have kept the children in the other floor of the school, as they were not aware of the fact that removal of thatched roofs which were kept near the kitchen attached to Noon Meal Centre would catch fire and therefore, resulted in the death of children studying in the said school, is unsustainable.

(ii) The Trial Court further held that removal of thatched sheets have not been handled by A-19 to A-21 and as such, they cannot be held responsible for the accident/incident.



(iii) A-19 to A-21, at the relevant point of time, worked as teachers and having aware of the fact that the kitchen was having thatched roofs and some of the classrooms also having thatched roofs, ought to have taken necessary precautions immediately and after fire, they did not take any care to bring the children to safety and whereas they fled away from the scene and despite the testimonies of the witnesses available, the trial Court has committed grave error in acquitting them.

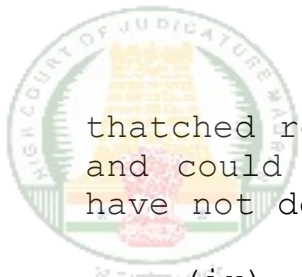
(iv) Similarly, acquittal of A-7 to A-9 is also unsustainable for the reason that though the said officials are put additional charge and since the prosecution was able to establish that they did not discharge their duties properly and effectively and if they have done so, could have noticed the defects and deficiencies and thereby prevented the accident/incident. So also A-10.

(v) The Trial Court ought to have seen that P.W.176 - Uma Maheswari has deposed that though there is no specific rule as to the inspection of Noon Meal Centre by the Education Department officials, unwritten rule is that while carrying out inspection of the school, they have to inspect the Noon Meal Centre also and in the light of the said facts and circumstances, the concerned Education Department Officials cannot shut their responsibilities and the said vital aspect has been completely overlooked by the Trial Court.

(vi) A-12- the Engineer, who has issued the Stability Certificate for the school, has not gone to the school and without looking into the relevant compliance, merely issued the Stability Certificate and therefore, the Trial Court fell into error in acquitting him.

(vii) A-13 and A-14, who were the Additional Elementary Education Officer, Kumbakaonam and District Elementary Education Officer, Thanjavur respectively, had given approval to the school building without proper verification for the period between 2003 and 2006 and periodical inspections have also not been conducted and merely acted in tandom with A-1 and as a result, the incident which could have been avoided was waited to happen and happened and it resulted in the death of so many young children and also grievous injuries to some children. The defence projected is that the approval was granted by A-24, against whom prosecution was withdrawn and he merely acted by their reports.

(viii) A-22 - Commissioner of Kumbakonam Municipality and A-23- Town Planning Officer, Kumbakonam did not discharge their duties properly for the reason that they have been authorized to inspect the school and note any deficiencies and though they held in-charge for a shorter period, they did not make any visit to the school and if they have done so, would have noted about the



thatched roofs on the kitchen as well as in some of the classrooms and could have given advise to remove it, but unfortunately they have not done so, which resulted in the tragic fire accident.

(ix) A-7 to A-10, who have verified about the Teacher : Students strength, did not verify their duties and A-1 directed the concerned teachers to shift the students for the purpose of maintaining Teacher - Students strength and as a consequence, students studying in Sri Krishna Girls School as well as in Sri Krishna Aided Elementary School were shifted to Saraswathi Nursery and Primary/Elementary School and as a consequence, they died in the fire accident/incident.

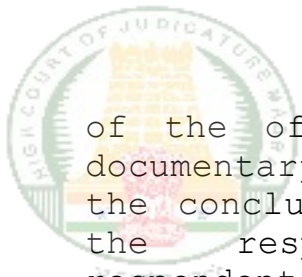
(x) Insofar as the acquittal of A-1 to A-5 under Section 120-B IPC, it is the submission of the learned Public Prosecutor that there are overwhelming evidence available on record that A1, being the head of three schools, had fabricated the records to show as if playground was in existence and also instructed the teachers to shift the students from one school to another to make good the Teacher - Students ratio and the other accused also conspired with A-1.

(xi) The prosecution was also able to prove the conspiracy hatched by A-1 to A-5 and also let in proper and sufficient evidence and the trial Court, without properly appreciating the same, had acquitted A-1 to A-5.

(xii) The Acquittal of A-2, A-3, A-7 to A-10, A-13 to A-18 for the offence under Section 467 r/w. 197 IPC is also *per se* unsustainable for the reason that the evidence let in by the prosecution would clearly establish the fact that no playground was in existence and approval has been obtained as if for running the school, but factually it was not so.

In sum and substance, it is the submission of the learned Public Prosecutor that the incident/accident is a result of combination of errors, infirmities and negligence, for which, the acquitted accused alone are responsible and if normal care and caution was taken in the form of periodical inspection, the tragedy would have been avoided and on account of the deliberate and wilful act and negligence, lives of young children were lost and some of them had also sustained grievous injuries, which would definitely have a mental scar and lasting impact and therefore, prays for reversing the judgment of acquittal and sentencing them in proportionate to the offences committed.

36.8 *Per contra*, the respective learned counsel appearing for the respondents /A-7 to A-10, A-13, A-18, A19 to A-21 would submit that the evidence let in by the prosecution have been appreciated in proper perspective and it is not as if the Trial Court has acquitted all and taking into account the fact that most



of the officials were in-charge officials and considering the documentary evidence let by the prosecution, has rightly reached the conclusion to acquit them. It is the further submission of the respective learned counsel appearing for the respondents/acquitted accused that the ingredients of the offences for which they have been charged/acquitted have not been made out at all and the prosecution has also failed to prove the guilt beyond reasonable doubt and almost all of them had undergone nearly half of the sentence of imprisonment and on account of their conviction, their family members were also put to stigma and most of them are also in advanced age and suffering due to various ailments and on account of mental stress and physical condition, their service career is also ruined on account of the prosecution and therefore, prays for confirmation of the order of acquittal passed against them by the Trial Court.

36.9 This Court has carefully considered the submissions made by the learned Public Prosecutor and the respective learned counsel appearing for the respondents/acquitted accused and also perused the oral and documentary evidence and other materials placed before it.

36.10 The Trial Court, in paragraph No.453 of the impugned judgment, has recorded the finding that A-1 to A-5, prior to the occurrence, did not conspire with regard to putting thatched roof on the kitchen as well as on the classrooms and the shifting of students from one school to another and the prosecution did not let in any evidence in that regard. In paragraph No.459 of the impugned judgment, the Trial Court has dealt with A-7 to A-9 and found that the said accused were in-charge for 15 and 45 days respectively in the post of District Elementary Educational Officer, Thanjavur and Assistant Elementary Educational Officer, Kumbakonam and also in-charge of Additional Elementary Educational Officer and leaving out holidays, they were respectively in-charge of 11 days and 32 days only. The Trial Court further recorded the finding that the said officials were working as Headmasters and since the concerned administration department did not post officials, they were put in-charge and also taken note of the fact that they being headmasters and since it was the admission time, they have to look after admissions and as such, they cannot be held negligent and abetted the commission of the offences.

36.11 The fourth respondent in this appeal/A-10 is the Additional Assistant Elementary Educational Officer, Kumbakonam between 12.11.1999 and 30.06.2003 and he has inspected Sri Krishna Aided Elementary School several times by way of monthly inspection and annual inspection and also submitted his report/Ex.P133, wherein he has recorded a finding that the said school is having <https://hservices.apurta.gov.in/hservices/> and it was also submitted to the District Elementary Educational Officer. The Trial Court has recorded a



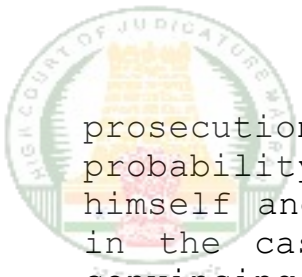
finding that the contents of the said report are not disputed by the prosecution and it is not even its case that it has been fabricated and thus the Trial Court, insofar as A-7 to A-10 are concerned, found that they are not guilty under Section 304 read with 120-B read with 109 IPC.

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36.12 In paragraph 466 of the judgment, the Trial Court has dealt with the charges pertaining to respondent Nos.5 and 6 in this appeal, namely A-13 and A-18 respectively. A-13 was working as Additional Assistant Elementary Educational officer between 01.07.2003 and 31.05.2004 and were noting the attendance particulars and he took a stand that he has no power to inspect the school. A-18 would state that he was the District Additional District Elementary Educational Officer, Thanjavur between 07.07.2000 and 16.07.2004 and after receipt of the application for renewal of the recognition/approval for Saraswathi Elementary School, he inspected it and noted down certain deficiencies, based on which both the accused were charged for the offence under Section 304 read with 120-B read with 109 IPC and 338 read with 109 IPC and the Trial Court found that they have not done anything leading to the fire accident and the prosecution did not let in proper and sufficient oral or documentary evidence.

36.13 The respondents 7 to 9/A-19 to A-21 were the lady teachers of Sri Krishna Aided Elementary School and it is the case of the prosecution that they only shifted the students from one school to another and on the fateful day, the classrooms in which they were taking classes, caught fire and as a consequence, 94 children died and 18 children sustained grievous injuries. A-19 to A-21 stated that the prosecution allege that without saving children they picked up their handbags and ran away. The Trial Court, in paragraph Nos.475 to 482 of the impugned judgment, has dealt with the oral evidence let in by the prosecution. The students said to have been examined as P.Ws.11, 18 and 19 respectively would depose that some of them held handbags in their head and they were not in a position to tell who are all the teachers, but the fact remains that they were guided by teachers to come out of the classrooms and the said witnesses did not specifically mention their names except P.W.11, who would state that she came out after holding A-19.

36.14 P.Ws.137 to 153 would depose that they were not in a position to enter the school. P.W.153- Assistant Fire Officer, would depose that the Fire and Rescue personnel divided into two groups and entered the school and the stairs were very narrow and they rescued the children and public and police also helped them. In the considered opinion of the Court, through the testimonies of the witnesses, it failed to establish that when seeing the children, the above said accused fled away from the scene of occurrence and even if we accept the arguments advanced by the



prosecution in that regard, reaction of a concerned person in all probability in the event of fire accident is to save and protect himself and the reaction differs from person to person. However, in the case on hand, the prosecution has failed to adduce any convincing evidence as to the inaction/negligence on the part of A-19 to A-21 and no evidence has also been let in by the prosecution that they colluded with A-1 to A-5.

36.15 The 10th respondent/A-22 was the Commissioner of Kumbakonam Municipality and A-23 was the Town Planning Officer of the same municipality and it is the case of the prosecution that they did not inspect the school building and if they would have done so, they would have noted about the existence of thatched roofs in the kitchen as well as in the classrooms, remedial measures would have been taken earlier. A-22/10th respondent was the Commissioner of Kumbakonam Municipality between 08.08.2003 and 31.10.2004 and A-23/11th respondent was the Town Planning Commissioner in respect of the same municipality between 09.01.2004 and 31.05.2005 and the witnesses examined by the prosecution would depose that very many schools were functioning with thatched roof. P.W.176, who was the Joint Director of School Education, would depose that ordinarily, the Assistant Elementary Educational Officer, while inspecting the school, has to inspect the Noon Meal Centre and it was the unwritten rule and in the cross examination would state that the proposal for renewal was in order and therefore, A-24, against whom prosecution was withdrawn, has granted approval.

36.16 P.W.183 - Personal Assistant to the District Collector, Thanjavur District would depose among other things that in Thanjavur, three municipalities were there and in respect of the schools located within the Municipalities, the Inspector and the Municipal Commissioner is having power to inspect the same and he has to inspect 20 schools also.

36.17 P.W.183, in the course of cross examination, has admitted that he has to oversee the Noon Meal Centre and the location of the kitchen in the Noon Meal Centre is the decision of the District Collector and he is the ultimate authority and would further add that from 1998 onwards, kitchen attached Noon Meal Centre was in the campus of Saraswathi Nursery and Elementary/Primary School and he has power to visit also, but he was not aware of the Noon Meal Centre in the said school and he did not receive any complaint also. The said witness would further state that in all Noon Meal Centres, fire-woods were used and administration used to pay for procuring the same and in respect of the entire district, they will issue orders as to how the Noon Meal Centre should be located.

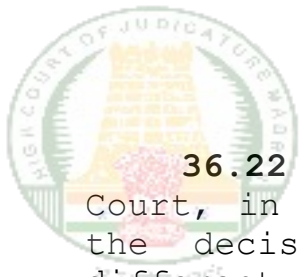


36.18 The learned Public Prosecutor would submit that in the event of any violation or deviation in construction is noted, the Municipal Commissioner shall inspect and submit a report based on which, action will be taken. P.W.184, who was the Town Planner, would state that during his tenure, no complaint has been received as to the deviation in construction and therefore, he did not inspect. The evidence let in by the prosecution would reveal that no complaint whatsoever has been received in respect of deviation and it was also stated that all along fire woods are used in the kitchen in Noon Meal Centres and necessary expenses for procuring the same will be borne by the administration.

36.19 P.W.229/Investigating Officer, in his cross examination, stated that prior to the incident, he was not aware of any Rule that schools with thatched roofs should not function and during the course of investigation, stated that based on Government Order, it should not take place. This Court, while dealing with the appeal against conviction, has held that Sections 46 and 47 of Tamil Nadu Recognised Private School [Regulation] Act, 1973 are general in nature and in Charge No.9 framed against A-1 to A-3, A9, A20 and A21, no specific instances as to the violation/infracture of any particular provision has been stated. Normally a Government Order will not have any statutory force, unless it is issued under Section 309 of the Constitution of India [or] it has also been issued to fill up the gaps left out by the Statute or Legislation. This Court further held that in the absence of specific allegation as to the violation of the relevant provisions of the statutory enactments, the accused will also be put to grave prejudice.

36.20 P.W.229 would also depose that P.W.183, on behalf of the District Collector, has to look after the Noon Meal Centre and as per the Government Order, the District Collector is the administrative in-charge and that no officer has told about the location of Noon Meal Centre and neither the students nor the parents did not give any complaint stating that the Noon Meal Centre was functioning in the said school for very many years.

36.21 A perusal of the reasons assigned by the Trial Court, while acquitting A-7 to A-10, A-13, A-18 to A-23, would reveal that the findings of acquittal has been reached based upon appreciation of evidence. In the considered opinion of the Court, the findings rendered, which are the basis for the order of acquittal passed by the Trial Court, is based upon proper appreciation and consideration of relevant materials and are also reasonable and plausible and no perversity is attached to the said findings.



36.22 It is also a well settled position of law that this Court, in exercise of its appellate jurisdiction, may not reverse the decision rendered by the Trial Court merely because a different view is possible and shall also determine that there is presumption of innocence in favour of the accused on the basis of the order of acquittal. It is also pertinent to note at this juncture that the above said respondents were also incarcerated during trial and most of them are aged about 70 years and their service career had also been affected on account of the criminal prosecution and their families have also suffered socially and financially and taking into consideration the passage of time of nearly 13 years, this Court is not inclined to interfere with the order of acquittal passed by the Trial Court.

36.23 It is also brought to the knowledge of this Court that apart from awarding exgratia to the parents of the deceased children and meeting out the treatment expenses to the injured children, for the purpose of paying compensation, a retired Judge of this Court was appointed to determine the quantum of compensation and the learned Judge has also determined the quantum and steps are under progress to distribute the enhanced quantum of compensation to the parents of the deceased/injured children.

36.24 No doubt, death of children at an young age continue to haunt the parents and the injured children may have psychological scar. However, the State Government has taken efforts to mitigate the suffering in the form of compensation and has also given psychiatric counselling to the injured children. The State Government had also appointed One Man Enquiry Commission by appointing the Hon'ble Mr. Justice K. Sampath, a retired Judge of this Court and the learned Judge, in his report, has also suggested remedial measures, based on which **G.O.Ms.No.117, School Education (Q) Department dated 07.07.2007**, came to be passed substituting Regulation 10 of Code of Approval for Nursery and Primary School and it stipulates that there shall not be any thatched roof in the school premises. The said Government Order issued in the form of substitution implies that prior to the said Government Order dated 07.07.2007, schools with thatched roofs were allowed to function and it is brought to the knowledge of this Court that in terms of the said Government Order, which came to be issued after the present incident which took place on 16.07.2004, no schools are allowed to function with thatched roofs/sheets and as well as kitchen attached to Noon Meal Centres.

36.25 In the light of the reasons assigned above, this appeal against acquittal viz., Crl.A.[MD].No.268 of 2014 is liable to be dismissed and accordingly, dismissed.



37

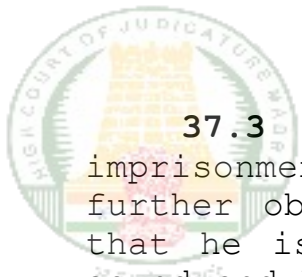
Findings with regard to Fine amounts:-

**37.1 Crl.A.[MD]No.241/2014 - A1- Pulavar R.Palanisamy-
aged 86 years.**

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A-1 was convicted for the commission of offences under Sections 304(ii) IPC [94 counts] and he was sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.50,000/- for each count [totalling to Rs.47,00,000/-] with a default sentence of two years simple imprisonment. This Court in paragraph No.26.96 has observed among other things that the sentence of imprisonment and fine imposed upon the appellant/A-1 requires modification.

37.2 The appellant/A-1 was incarcerated during investigation/trial and vide impugned judgment dated 30.07.2014 in S.C.No.275/2006, on the file of the Principal District and Sessions Judge, Thanjavur, was convicted and imposed with sentence of imprisonment and fine for the commission of various offences - the details of which have been given in this judgment and on the date of said conviction, he was taken into custody. A-1, challenged his conviction and sentence by filing Crl.A.[MD].No.241/2014 and it was entertained and pending disposal of the same, filed M.P.[MD].No.1 of 2014 for suspension of sentence of imprisonment and however, the said petition has not been given disposal and after arguments have commenced in these batch of appeals, this Court has suspended the sentence of imprisonment, vide order dated 29.11.2016, subject to condition that the appellant/A-1 shall deposit a sum of Rs.1,00,000/- towards fine to the credit of the said Sessions Case and it is reported that the said conditional order has been complied with. The appellant/A-1, apart from undergoing incarceration during the course of investigation and trial, after conviction vide impugned judgment dated 30.07.2014, was incarcerated for more than 2 years and during the course of arguments advanced in the petition for suspension of sentence of imprisonment, it was brought to the knowledge of this Court that he is suffering from illness due to advanced age of 86 years and also due to Diabetes Mellitus, prostamegaly and anemia and age related complications and his wife, namely Tmt.P.Saraswathi/A-2/appellant in Crl.A.[MD] No.242/2014 has also filed a petition for suspension of sentence of imprisonment and the same has been kept pending and the wife of A-1, namely A-2 was also incarcerated during trial and investigation and after conviction on 30.07.2014, was taken into custody and since she was suffering due to cancer, he was admitted in Prisoners Ward in Government Royapettah Hospital and without responding to treatment, she died.



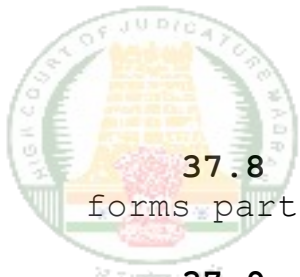
37.3 This Court, while suspending the sentence of imprisonment of A-1, has considered the demise of his wife/A-2 and further observed in paragraph No.26.96 of this impugned judgment that he is left with no support and he is also not financially sound and held that the sentence of imprisonment and fine requires modification.

37.4 In *Jivan Trikan v. Kutch Government* [AIR 1950 Kutch 1973], it is observed that the amount of fine imposed should be within the means of the accused to pay though he must be made to feel the pinch of it; imprisonment in default of fine should also be long enough to induce the accused to pay the fine rather than suffer the imprisonment. It is also to be noted at this juncture that it should be for the accused to pay the quantum of fine and the maximum fine amount should depend in every case upon his position in life.

37.5 This Court, while partly allowing the appeal filed by A-1/ CrI.A.[MD]No.241/2014, has confirmed his conviction under Sections 304(ii), 337, 338, 285 IPC and Section 320 of the Tamil Nadu District Municipalities Act, 1920 and acquitted him for the commission of offences under Sections 467 read with 197 IPC and 465 read with 197 IPC and Sections 46 and 47 of the Tamil Nadu Recognized Private School Regulation Act, 1973. The Trial Court, while imposing the total fine amount of Rs.47,00,000/- viz., payment of Rs.50,000/- to each parents of the 94 children died, had directed payment of Rs.25,000/- to the parents of 15 children who suffered grievous injuries and Rs.10,000/- to the parents of three children, who suffered simple injuries.

37.6 It is also brought to the knowledge of this Court that in G.O.Ms.No.226, School Education தோ.க.2(2) Department dated 08.12.2016, the Government had taken note of the Report of the One Man Commission, viz., The Hon'ble Mr.Justice K.Venkataraman, Judge [Retd], High Court of Madras, dated 31.03.2016, which was also considered by this Court in the order dated 13.07.2016 in WP.No.8196/2012 and took a decision to implement the same and accordingly, a sum of Rs.5 lakhs each was ordered to be paid to the families of the deceased 94 children and out of 6 grievously injured children, for three children, a sum of Rs.6 lakhs each was ordered to be paid and in respect of the other three children, a sum of Rs.5 lakhs each was ordered to be paid. 12 children who sustained simple injuries, were also ordered to be paid with a sum of Rs.50,000/- each and the said sums are inclusive of the compensation / relief amount ordered to be paid as per G.O.(1D) No.342, School Education Dept. dt. 17.7.2004.

37.7 Thus, as per the said Government Order, a sum of RS.8,23,97,252/- was ordered to be paid and the said Government Order also contains Annexure-I.



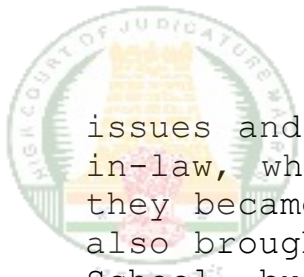
37.8 The above cited Government Order is taken on file and forms part of this Judgment.

37.9 The Hon'ble Supreme Court of India in the decision reported in **2017 [5] SCC 817 [S.P.S.Rathore Vs. Central Bureau of Investigation and another]**, has taken into consideration the conviction and sentence passed against an IPS Officer, who was in the cadre of Inspector General of Police. The appellant therein was convicted under Section 354 IPC and was sentenced to undergo imprisonment of six months and to pay a fine of Rs.1000/-. The appellant / accused challenging the said conviction, filed an appeal before the Appellate Court and the father of the victim as well as the Prosecuting Agency, viz., CBI, also filed criminal appeals for enhancement of sentence. The Lower Appellate Court has dismissed the appeal filed by the appellant / accused and while allowing the appeals filed by CBI and Madhu Prakash-parent of the victim, had enhanced the sentence of imprisonment from six months to 1 ½ years and did not disturb the sentence of fine amount. The appellant / accused challenging the same, filed an appeal before the Hon'ble Supreme Court of India. On behalf of the appellant / accused, apart from challenging the conviction and sentence on merits, submission was also made regarding the mitigating factors and it was taken note of by the Apex Court. It is relevant to extract paragraph No.55 of the said decision:-

"...

55 With regard to the sentence of the appellant-accused, the learned Senior Counsel on his behalf has pointed out certain mitigating factors which are - old age of the appellant-accused, health ailments, responsibility of looking after the unmarried daughter suffering from congenital heart disease, past meritorious service and prolonged trial. Keeping in view the aforementioned factors, especially the old age and physical condition of the appellant-accused, we do not think it expedient to put him back in jail. While we uphold the findings as to the guilt of the appellant-accused, we are of the opinion that the cause of justice would be best subserved when the sentence of the appellant-accused would be altered to the period already undergone. We, therefore, reduce the sentence of the appellant to the period already undergone by him as a special case considering his very advanced age."

37.10 In the light of the fact that the appellant/A-1 had already undergone nearly four years of rigorous imprisonment and further that, he is in the advanced age of 86 years and he is suffering due to age related complications and other ailments coupled with the fact that his wife/A-2 also died while suffering incarceration and he is left with no other support and the prosecution has also brought out the fact that A-1 and A-2 had no



issues and A-1 brought up four daughters of his deceased brother-in-law, which include A-3, P.W.109, wife of P.W.1 and another as they became orphans on account of demise of their parents. It is also brought to the knowledge of this Court that the land and the School buildings are still in the custody of the Revenue Divisional Officer, Kumbakonam and as on today, the appellant / A-1 is left with no other support and is also financially unsound. In the light of the above facts and circumstances, this Court is of the view as well as of sympathetic consideration view that it is a fit case wherein the sentence of imprisonment and fine imposed for the conviction under Section 304(ii) IPC, requires modification.

37.11 Accordingly, the sentence of imprisonment already undergone by the appellant/A-1 during the course of trial and investigation and after conviction, shall be treated as substantive sentence of imprisonment. In the result, the sentence of 10 years rigorous imprisonment imposed upon the appellant/A-1 for the offence under Section 304(ii) IPC, is modified to one of sentence of imprisonment undergone by him during trial and investigation and post conviction.

37.12 As regards fine amount, this Court, while suspending the sentence of imprisonment for A-1, has directed him to pay a sum of Rs.1,00,000/- towards fine and it is represented that the said order has also been complied with and he has also come out and he has complied with the other conditions imposed by this Court. Accordingly, the sentence of fine of Rs.50,000/- for each count, totalling Rs.47,00,000/- for 94 counts has been modified to the fine amount of Rs.1,00,000/- for the reasons assigned above and the said amount has also been paid by the appellant/A-1 in compliance of conditions imposed for suspension of the sentence of imprisonment.

37.13 Insofar as Sections 338 IPC [15 counts] and 337 IPC (3 counts), the Trial Court has imposed sentence of rigorous imprisonment for 2 years and 6 months respectively for each count and imposed a fine of Rs.25,000/- and Rs.10,000/- respectively totalling to Rs.3,75,000/- (Rs.25,000/- each for 15 children who suffered grievous injuries) and Rs.30,000/- (Rs.10,000/- each for 3 children who suffered simple injuries) respectively with default sentence.

37.14 As regards the commission of offence under Section 337 IPC, on conviction, the accused shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both. As regards the commission of offence under Section 338 IPC, on conviction, the accused shall be punished with imprisonment of either description for a term which may extend to



two years or with fine which may extend to one thousand rupees or with both.

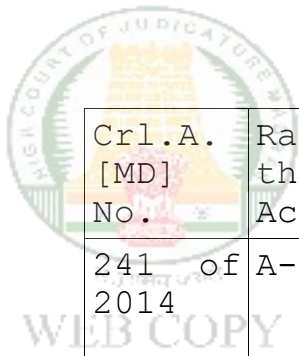
37.15 In the light of the restriction with regard to the imposition of quantum of fine, this Court is of the view that the fine and default fine amount imposed by the Trial Court for the offences under Sections 337 and 338 IPC also requires modification. Accordingly, the fine imposed under Section 338 IPC (15 counts) is modified to a sum of Rs.1,000/- for each count, totalling Rs.15,000 [Rs.1,000/- x 15] with a default sentence to undergo 1 month simple imprisonment and the fine imposed under Section 337 IPC (3 counts) is modified to a sum of Rs.500/- for each count, totalling Rs.1,500/- [Rs.500/- x 3], with a default sentence to undergo 1 month simple imprisonment.

37.16 The appellant/A-1 is granted three months time to pay the modified fine amount imposed for his conviction under Sections 337 and 338 IPC, failing which he will be taken into custody to undergo the default sentence.

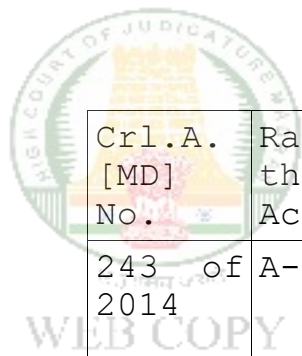
38 Crl.A.[MD].No.59 of 2015/A-5 - Mrs.Vasanthi

The appellant/A-5 was a Cook attached to Noon Meal Centre Kitchen where fire emanated and spread, which resulted in the demise of 94 children, grievous injuries to 15 children and simple injuries to 3 children. This Court has confirmed the sentence passed under the above Sections and in paragraph No.30.12 and has indicated that the sentence of imprisonment is modified to one already undergone. The appellant/A-5 is aged about 56 years and was incarcerated during investigation and trial and was taken into custody on the date of the impugned judgment dated 30.07.2014 and she filed M.P.[MD]No.1 of 2014, for suspending of sentence, which was kept pending and vide order dated 29.11.2016, this Court has suspended the sentence of imprisonment with certain conditions and she has also complied with the same. Though the appellant/A-5 was charged for the commission of offence under Section 304 (ii) IPC read with 120-B IPC along with A-1 to A-4, the Trial Court has convicted her for the offence under Section 304(ii) IPC and other allied offences.

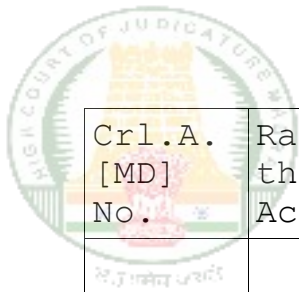
39 The appellant/A-5 is economically backward and hailing from rural area and on account of the conviction and sentence, she and her family suffered stigma and she was also incarcerated for nearly four years and therefore, this Court is of the considered view that the sentence of imprisonment already undergone by her during investigation/trial and post conviction is to be treated as substantive sentence.



Crl.A. [MD] No.	Rank of the Accused	Charge No.	Conviction under Section	Result / Findings of this Court
241 of 2014	A-1	1	304[II] IPC	THE APPEAL IS PARTLY ALLOWED and the Conviction confirmed ; Sentence modified to one of period already undergone by the appellant during investigation, trial and post conviction. Fine amount awarded by the Trial Court is modified to one of Rs.1,00,000/- which was already paid by the appellant in pursuant to the order passed by this Court dated 29.11.2016 in MP [MD] No.1/2014, while granting suspension of sentence.
		2	338 & 337 IPC	Conviction and Sentence confirmed. Fine amount awarded by the Trial Court is modified and the appellant is directed to pay the total modified fine amount of Rs.16,500/- [Rs.15000/- [for the offence under Section 338 IPC] + Rs.1500/- [for the offence under Section 337 IPC] within a period of three months from the date of receipt of a copy of this order, in default to undergo one month simple imprisonment.
		3	285 IPC	Conviction and Sentence confirmed
		4	467 read with 197 IPC	Conviction and Sentence are set aside.
		5	465 read with 197 IPC	Conviction and Sentence are set aside.
		8	46 & 47 of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973	Conviction and Sentence are set aside.
		10	320 of the Tamil Nadu District Municipalities Act, 1920	Conviction and Sentence are confirmed.



Crl.A. [MD] No.	Rank of the Accused	Charge No.	Conviction under Section	Result / Findings of this Court
243 of 2014	A-3	1	304[II] IPC	THE APPEAL IS ALLOWED and the Conviction and Sentence are set aside.
		2	338 & 337 IPC	Conviction and Sentence are set aside.
		3	285 IPC	Conviction and Sentence are set aside.
		8	46 & 47 of the Tamil Nadu Recognised Private Schools [Regulation] Act, 1973	Conviction and Sentence are set aside.
258 of 2014	A-4	1	304[II] IPC	THE APPEAL IS ALLOWED and the Conviction and Sentence are set aside.
		2	338 & 337 IPC	Conviction and Sentence are set aside.
		3	285 IPC	Conviction and Sentence are set aside.
59 of 2015	A-5	1	304[II] IPC	THE APPEAL IS DISMISSED and the Conviction confirmed ; but the Sentence of imprisonment awarded by the Trial Court is modified to one of period already undergone by her during investigation, trial and post conviction.
		2	338 & 337 IPC	Conviction confirmed ; but the Sentence of imprisonment awarded by the Trial Court is modified to one of period already undergone by her during investigation, trial and post conviction.



Crl.A. [MD] No.	Rank of the Accused	Charge No.	Conviction under Section	Result / Findings of this Court
		3	285 IPC	Conviction confirmed ; but the Sentence of imprisonment awarded by the Trial Court is modified to one of period already undergone by her during investigation, trial and post conviction.
253 of 2014	A-12	5	465 read with 197 IPC	THE APPEAL IS ALLOWED and the Conviction and Sentence are set aside.
237 of 2014	A-14	4	467 read with 197 IPC	THE APPEAL IS ALLOWED and the <i>Conviction and Sentence are set aside.</i>
249 of 2014	A-15	4	467 read with 197 IPC	THE APPEAL IS ALLOWED and the <i>Conviction and Sentence are set aside.</i>
244 of 2014	A-16	4	467 read with 197 IPC	THE APPEAL IS ALLOWED and the <i>Conviction and Sentence are set aside.</i>
250 of 2014	A-17	4	467 read with 197 IPC	THE APPEAL IS ALLOWED and the <i>Conviction and Sentence are set aside.</i>
268 of 2014				APPEAL AGAINST ACQUITTAL PREFERRED BY THE STATE IS DISMISSED

41 The Bail Bonds executed by A-3, A-4, A-5, A-12, A-14, A-15, A-16 and A-17 shall stand terminated and the fine amounts paid if any by A-14 to A17 shall be refunded. If the appellant/A-1 in Crl.A.[MD].No.241 of 2014, pays the modified fine amount for the commission of the offences under Sections 337 and 338 IPC, within the time granted by this Court as stated above, the bail bonds shall stand terminated; otherwise, he shall be taken into custody forthwith to serve the default sentence.

Sd/-
Assistant Registrar(CS-II)

/True Copy/



Encl.: xerox copy of G.O.(Ms)No.226, School Education [Tho.Ka.2 (2)] Department dated 08.12.2016 with annexure.

To
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1. The Principal District and Sessions Judge
Thanjavur.
2. The Chief Judicial Magistrate,
Thanjavur, at Kumbakonam.
3. The Inspector of Police
East Police Station
Kumbakonam
Thanjavur District.
4. The Superintendent of Central Prison
Tiruchirappalli.
5. The Superintendent of Police
Thanjavur District.
6. The District Collector,
Thanjavur.
7. The Director General of Police,
Mylapore,
Chennai - 4.

+1cc to Spl.Government Pleader Sr.No.72656
+1cc to Mr.T.Antony Arul Raj, Advocate Sr.No.72061
+1cc to Mr.N.Mohideen Basha, Advocate Sr.No.72275
+1cc to Mr.K.Balasundaram, Advocate Sr.No.71972
+2cc to Mr.R.Venkatesawaran, Advocate Sr.No.72470
+2cc to Mr.S.Venkatesan, Advocate Sr.No.72231,72230

VB/MR/SAR4/19/09/2017/129P/16C

ORDER MADE IN

**CRL.A. [MD] Nos.237, 241, 243, 244,
249, 250, 253, 258, 268 of 2014 AND 59 of 2015**

10.08.2017