



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cont.P. (MD) .No.1272 of 2016

in

W.M.P. (MD) No.7376 of 2016

in

W.P. (MD) No.9293 of 2016 and

W.P. (MD) No.7524 of 2016 and

W.P. (MD) No.19752 of 2015

Cont.P. (MD) .No.1272 of 2016

Anna Pothu Thozhilaler Sangam
Kanyakumari,
Reg. No.0041/670 K.K.M.,
Represented by its President
S.Sahayamalan

.. Petitioner

Vs

1.Thiru.Chandrakanth B.Kamble,
The Principal Secretary to Government,
Transport Department,
State of Tamil Nadu,
Secretariat, Chennai.

2.Thiru.Satyabrata sahuo,
The Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai.

3.Thiru.Barani,
The Deputy Commissioner,
Transport Department,
NGO Colony, Palayamkottai,
Tirunelveli District.

4.Thiru.Sajjan Singh R Chavan,
The Regional Transport Authority/
District Collector, Nagercoil,
Kanyakumari District.

5.Thiru.Dharmaraj
The Superintendent of Police,
Nagercoil,
Kanyakumari District.



6.Thiru.R.Rajinikanth,
The Regional Transport Officer,
Regional Transport Office,
Nagercoil, Kanyakumari District.

7.Thiru.Tirumalaikumar,
The Executive Officer,
Kanyakumari Special Grade Town Panchayat,
Kanyakumari, Kanyakumari District.

8.Thiru.S.Saravanakumar,
The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari, Kanyakumari District. ... Contemnors/Respondents

Contempt Petition (MD)No.1272/2016: Contempt Petition filed to punish the contemnors/Respondents 1 to 8 for their wilful and deliberate disobedience of the orders passed by this Court dated 19.05.2016 made in WMP(MD)No.7376 of 2016 in WP(MD)No.9293 of 2016.

Prayer in WMP(MD). 7376/ 2016 :

To grant an order of Ad-Interim Direction directing the Respondents No.1 to 8 to forbear the Respondents No.9 to 14 or their men or agents or any other person claiming right through them from collecting individual fares on Tourist Maxi Cabs, pending disposal of WP.

Prayer in WP(MD). 9293/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents No.1 to 8 to prevent the operation of contract carriage vehicles like Maxi Cabs under the system of Package System of collecting individual fares by the Respondents No.9 to 14 as that of plying stage carriage in and around Kanyakumari District and Tirunelveli District in contravention of Tamil Nadu Motor Vehicle Act and Rules, 1989.

For Petitioner : Mr.S.Balamurugan
For Respondents : Mr.Aayiram K.Selvakumar
Government Advocate

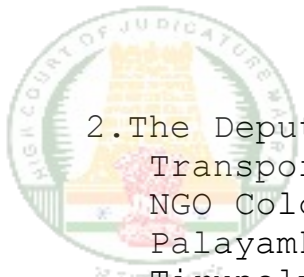
W.P. (MD)No.19752 of 2015

A.Nagalingam

... Petitioner

Vs

1.The Commissioner,
Transport Department,
Ezhilagam,



2.The Deputy Commissioner,
Transport Department,
NGO Colony,
Palayamkottai,
Tirunelveli District.

3.The Regional Transport Authority,
Nagercoil,
Kanyakumari District.

4.The Regional Transport Officer,
Nagercoil,
Kanyakumari District.

5.The Inspector of Police,
Kanyakumari,
Kanyakumari District.

... Respondents

Prayer in WP(MD)No.19752 of 2015: This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents 1 to 3 to instruct the 4th and 5th respondents not to interfere with the petitioner's business to act as an agent or canvasser in respect of public service vehicles by issuing tickets to the passengers in accordance with proceedings of the 4th respondent dated 21.09.2015 within the District of Kanyakumari by considering the representation of petitioner dated 12.10.2015.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.Aayiram K.Selvakumar
Government Advocate

W.P. (MD)No.7524 of 2016

S.Palavesam

... Petitioner

Vs

1.The Principal Secretary to Government,
Transport Department,
State of Tamil Nadu,
Secretariat, Chennai.

2.The Transport Commissioner,
Transport Department,
Ezhilagam, Chempauk, Chennai.

3.The Deputy Commissioner,
Transport Department,
NGO Colony, Palayamkottai,
Tirunelveli District.

4.The Regional Transport Authority/
District Collector,

Kanyakumari District.



5.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

6.The Regional Transport Officer,
Regional Transport Office,
Nagercoil, Kanyakumari District.

7.The Executive Officer,
Kanyakumari Special Grade Town Panchayat,
Kanyakumari, Kanyakumari District.

8.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari.

9.A.Nagalingam

10.N.Aravinth

11.Joseph Fernando

12.C.Sundar

13.K.Anilkumar

14.Prakash

.. Respondents

Prayer in WP(MD)No.7524 of 2016: This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the Respondents No.1 to 8 to prevent the operation of contract carriage vehicles like Maxi Cabs under the system of Package System of collecting individual fares by the Respondents No.9 to 14 as that of plying stage carriage in and around Kanyakumari District and Tirunelveli District in contravention of Tamil Nadu Motor Vehicle Act and Rules, 1989.

For Petitioner : Mr.S.Balamurugan

For Respondents : Mr.Aayiram K.Selvakumar (for R1 to R8)
Government Advocate

Mr.S.C.Herold Singh (for R9, R11 and R14)

W.P. (MD) No. 9293 of 2016

Anna Pothu Thozhir Sangam
Kanyakumari,
Reg. No.0041/670 K.K.M.,
Represented by its President
S.Sahayamalan

.. Petitioner

Vs

1.The Principal Secretary to Government,
Transport Department,
State of Tamil Nadu,



Secretariat, Chennai.

2.The Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai.

3.The Deputy Commissioner,
Transport Department,
NGO Colony, Palayamkottai,
Tirunelveli District.

4.The Regional Transport Authority/
District Collector,
Nagercoil,
Kanyakumari District.

5.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

6.The Regional Transport Officer,
Regional Transport Office,
Nagercoil, Kanyakumari District.

7.The Executive Officer,
Kanyakumari Special Grade Town Panchayat,
Kanyakumari, Kanyakumari District.

8.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari.

9.A.Nagalingam

10.N.Aravinth

11.Joseph Fernando

12.C.Sundar

13.K.Anilkumar

14.Prakash

.. Respondents

Prayer in WP(MD)No.9293 of 2016: This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the Respondents No.1 to 8 to prevent the Respondents No.9 to 14 as that of plying stage carriage in and



around Kanyakumari District and Tirunelveli District in contravention of Tamil Nadu Motor Vehicle Act and Rules, 1989.

For Petitioner : Mr.S.Balamurugan

For Respondents : Mr.Aayiram K.Selvakumar (for R1 to R8)
Government Advocate

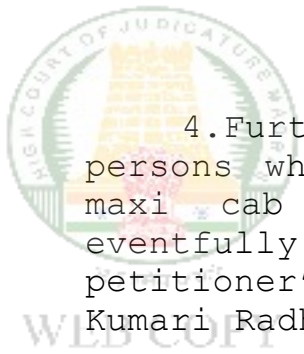
Mr.S.C.Herold Singh (for R9, R11 and R14)

COMMON ORDER

The case of contempt petitioner in his writ petition is that he is the President of Anna Pothu Thozhilalar Sangam, Kanyakumari which is affiliated with Anna Pothu Thozhilalar Sangam vide registration No.0041/670 K.K.M. in their Association, more than 250 car owners and drivers have been enrolled as members and they are depending only on the tourism business for their livelihood. Whereas the several hooligans without even getting registered their agencies, are doing tourism business in contravention with laws in vogue and such travel agencies do not have any proper identification and registration with the tourism department. In many occasion, numerous fleecing and untoward incidents committed by such unidentifiable persons involved in tourism business without authentication and because of such bitter incidents, our fiduciary among the tourists has been spoiled. More over there is no proper guidelines to streamline the tourism business in Kanyakumari, because of which many anti-social elements are doing made-up travel agencies by printing bogus pamphlets for tour itinerary and perpetrating lot of crimes in the name of tourism business.

2.In the interest of tourism development, their association has made a representation on 16.02.2015 to the respondents to curb the illegal tourism business and requested them to streamline the same forthwith, but there is no action and on the other hand, the illegal activities of fictitious travels agencies are booming illegal tourism business and there is lot of chances for untoward incidents.

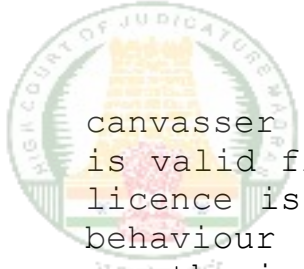
3.It is the further case of petitioner is that some of the maxi cab owners/drivers started to ply their vehicles on package basis for individual fares, which is against the provisions contained in the Tamilnadu Motor Vehicles Rules and therefore many complaints made before the Regional Transport Officer, Nagercoil concerned in the year 2000 itself and based on the suggestions made by the then Regional Transport Officer, Nagercoil as well as the District Collector of Kanyakumari, those who run their travels services on package basis with maxi cab and taking more passengers than the permit, were restricted.



4. Further the respondent Nos.9 to 14 and similarly other persons who are all putting individual tickets in respective of maxi cab vehicles on the unapproved package basis, which eventually gives effect on the business of the members of the petitioner's association and similar other association namely Kumari Radhaveethi Car Driver and Owners Association, Kanyakumari.

5. Earlier, another association namely Kumari Radhaveethi Car Driver and Owners Association represented by one Palavesam who is the petitioner in WP(MD)No.7524 of 2016, has filed a Writ Petition in WP.No.20636 of 2014 to regulate the tourism business and streamline the plying of tourist vehicles in and around the Kanyakumari District. During pendency of said writ petition, one of the travel agent namely Y.Selvin S/o Yesupatham filed a writ petition in WP.No.3524 of 2015 for forbearing the police authorities from interfering with the peaceful conduct of business in running his TATA maxi cab vehicle bearing registration No.TN63-H-9399 as per the valid permit issued by the transport authorities and direct the police authorities to provide adequate police protection to plying his vehicle. On 09.04.2015, the said writ petition was pleased to dispose, observing that this Court is not inclined to go into the interse dispute between them. Admittedly, the complaint of the fourth respondent, petitioner herein is pending consideration by the respondent No.3. Considering the submission made and also taking into consideration the allegation made against the respondent No.3, this Court is inclined to issue a direction to the respondent No.1 to transfer the complaint of the fourth respondent as well as representation dated 16.02.2015 to any other officer under the control of respondent No.1 with a direction to consider the complaint of the fourth respondent/petitioner herein and to pass appropriate orders within six weeks from the date of receipt of copy of this order. While passing the order, the representation of the 9th respondent herein and others dated 16.02.2015 also may be looked into. It is made clear that the petitioner/respondent No.9 cannot be stopped from doing his lawful running of the Taxi by an oral order. It is also made clear that the petitioner cannot do his business with Package System, which according to learned counsel for the petitioner, the petitioner is not doing.

6. When there is specific undertaking given before this Court that the petitioner Y.Selvin who represented for respondent No.9 also cannot do their business with package system. After knowing the said order and in order to defeat the spirit of the Court's order that too before arriving at a decision by the Superintendent of Police, Kanyakumari District on the complaint of petitioner's Association regarding package system in tourism business, one Mr.Nagalingam, the 9th respondent in this writ petition has approached the 4th respondent and obtained a license meant for travel agent/canvasser which according to the 9th respondent the said licence was issued on 21.09.2015 to act as an agent or



canvasser in respect of public service vehicles and this licence is valid from 18.09.2015 to 17.09.2016 and thus the said canvasser licence is stands cancelled on 1.09.2016 for the reasons that his behaviour in issuing a false certificates and keeping an unauthorized board stating that the Government of Tamilnadu will earn a bad name to Government and also violated the undertaking given in WP(MD)No.3524 of 2015.

7.It is worthwhile to mention that the Rule 234 of Tamilnadu Motor Vehicles Rule, which deals that no person shall act as an agent or canvasser and no owner of the public service vehicle shall employ or permit any person to act as an agent or canvasser, unless such person has obtained a licence in Form ACL, i.e. canvasser licence.

8.The above rule make it clear that the 9th respondent who obtained canvasser licence in view of Rule 234(2) can collect and canvass for ticket and rule 234(1) deals that every owner of public service vehicle to be let or plying for hire shall intimate to the regional transport authority concerned or its secretary if so authorize, the name and address of the person appointed in this regard as canvasser.

9.Therefore, the conjoined reading of sub rule 1 and 2 of Rule 234 of Tamil Nadu Motor Vehicle Rule, whoever obtained canvasser licence, can act as an agent or canvasser only for the public service vehicle who already authorized such canvasser or agent for booking ticket for their own ticket.

10.This is the bone of contention of the petitioner that such a canvasser or agent cannot collect or book tickets for the public service vehicle, who did not authorize or intimate the name of such canvasser to the regional transport authority. In the case on hand the 9th respondent himself admitted in WP(MD)No.19752 of 2015 that as a part of said canvasser licence, he has established own office in the name of Nanthu Travels with all amenities and further admitted that he used to arrange trip in maxi cab vehicles and facilitate the people who approaches him to enjoy the travel around Kanyakumari District and he is collecting individual charge of Rs.150 per head and issue tickets for their choices to take to the important tourist places situated in and around the Kanyakumari District in maxi cab vehicles. In view of the above, according to him he is conducting a Nandhu Travels and collecting individual fares from the passenger, in view of licence obtained under Rule 234, the 9th respondent cannot run a travel agency and collect individual fares from the passengers, but he can book and collect tickets from the passengers only for the public service vehicles who authorized him to act as an agent or canvasser for their authorized ticket in public service vehicle alone. In other words, the 9th respondent can collect fares and book tickets for the ticket which authorized by transport department in public service vehicle, such vehicle owner authorized him to act as a



canvasser and he cannot book and collect tickets for the public service vehicle who did not authorized him and also unauthorized ticket.

11.It is the main allegation of petitioner is that the 9th respondent is doing travel agency business and he is illegally circulating and mis-utilizing his licence to the other travel agencies belongs to respondents No.10 to 14, for the purpose other than the purpose it was granted and other public service vehicle owners cannot permit and authorize the 9th respondent as canvasser for concession basis without the permission of transport authorities.

12.Further, it is also allegation of petitioner that the 9th respondent has invented a package system, putting individual fares on contract carriage vehicles and on strength of his canvasser licence, he himself operating own vehicles under package system and collecting individual fares which against the terms of canvasser licence and permit condition of contract carriage vehicles. According to Transport authorities, the canvasser can act as an agent for the contract carriage to book tickets only as per permit condition which did not mean that such agent or canvasser can book tickets for the contract carriage and further also the contention of 2nd respondent/transport authorities that the collection of individual fares in maxi cab by travel agency is not allowable and the letter dated 30.09.2015 to that effect already sent to the tourist taxi and maxi cab operators.

13.Now, it is relevant to extract provision under Section 2(7) of Motor Vehicle Act 1989, it is stated as follows:-

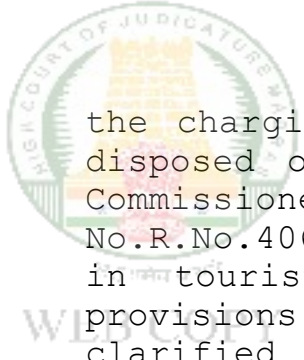
"a contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum.

(i) maxi-cab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers; and section 2(40) stage carriage means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward are separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey; the conjoint reading of section 2(7) and section 2(40) of Motor Vehicle Act the petitioner cannot collect individual fare for the contract carriage."

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

14.In the earlier writ petition in WP.No.20636 of 2014 filed by another petitioner namely Palavesam to regulate and streamline



the charging of individual tickets on the contract carriage, was disposed of on 17.04.2014, in view of this order the Transport Commissioner, Chepauk, Chennai has clarified vide his letter No.R.No.40668/A4/2015, dated 30.09.2015 that the individual fare in tourist maxi cabs/Motor cabs cannot be allowed as per provisions of section 2(7) of Motor Vehicles Act and also clarified that the permit holder of contract carriage (maxi cabs/Motor cabs cannot be allowed as per provisions of Section 2 (7) of Motor Vehicles Act and also clarified that the permit holder of contract carriage (maxi cab, motor cab) cannot operate their vehicles as stage carriage as against the permit condition and also suggested to the Regional Transport Authority/Collector, Nagercoil, Kanyakumari District to initiate action against the violation of permit condition as per section 86(c), 86(1) of Motor Vehicle Act, 1988 and rule 206 of Tamil Nadu Motor Vehicle Rule 1989, if the permit holder is regular offender, than the permit may also be cancelled.

15. In view of above legal position, the individual fare cannot be collected from the tourist passengers of the contract carriage. More particularly the maxicab vehicle shall not collect individual fare, but they can collect money as reward or hire on contract basis to whole of the vehicle or a particular group only. The contract carriage vehicle cannot pick up and set down the passengers, but they can take the passengers only as per permit conditions. However the 9th respondent has misused his canvasser licence in Form ACL and also running an unlawful travels agency in the name of Nandu Travels which has no authority to book individual fares and cannot engage to arrange tourism under individual faring system on contract carriage.

16. In such circumstances, the petitioner namely Sahayamalan has filed present writ, seeking the prayer forbearing the contract carriages form putting individual fares under package system and on 19.05.2016, this Court granted an order of interim direction to respondents 1 to 8 to forbear respondents 9 to 14 from collecting individual fares on tourist maxi cabs. As the 9th respondent violated the interim order of this Court and collecting tickets on the contract carriage as it being of stage carriage.

17. Further the Inspector of Police, Rajakkamangalam Circle has sent a report to the Superintendent of Police, Kanyakumari that on probe he came to light that the Y.Selvin and his supporters are found running maxicabs in the Kanyakumari tourist centers by collecting Rs.150/- for each tourist because of which a loss to the Government and these facts also confirmed by regional transport authorities.

18. Pending contempt petition, the 11th respondent in writ got himself impleaded as party to contempt proceedings as 9th contemnor/respondent and he represented before this Court that he also obtained canvasser licence under 234(2) of Tamilnadu Motor

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Vehicles Rules and he represented that he can collect and sale of tickets of contract carriage vehicles and he can pick up passengers at the door steps of his officer and can put individual tickets in the rate as fixed by his own. This was strongly opposed by the contempt petitioner and Government Pleader.

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19. The contract carriage as defined under Section 2(7) of Tamilnadu Motor Vehicles Act, it can be plied from one point to another and in either case without stopping to pick up, or set down along with the line of that route passengers not included in the contract. But the stage carriage as defined under Section 2(40) of the Act, a motor vehicle carrying or adapted to carry passengers for hire or reward at separate fares paid for the whole journey or for stages of the journey. The distinction between the two i.e. contract carriage and stage carriage is that the contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it, but it has not the right to pick up other passengers en route. The stage carriage, on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers enroute who pay the fare for the distance they purpose to travel.

20. In the case on hand, admittedly, the 9th and 11th respondents in the writ petitions arising out of present contempt, namely Nagalingam and Joseph Fernando have sworn in their affidavit in WP(MD)No.19752 of 2015 and sub application No.101 of 2016 in present contempt petition that they used to arrange trips for individuals, putting on individual fare as they fixed on the passenger and picking up and set down the passenger along with enroute as that of stage carriage, charging Rs.150/- per person and issuing tickets which like that of Omni buses that carries passengers from one place to another. This cannot permissible under canvasser licence issued under Rule 234(2) of Tamilnadu Motor Vehicle Rules and contract carriage cannot ply as stage carriage. More over the 9th and 11th respondents are agents/canvassers who can sell and book tickets for the authorized contract carriages from one point to another as per their permit conditions. But, they cannot fix fare on the passengers individually for fixed fare on their own and they cannot carry passengers like that of stage carriage known as public service vehicles and they cannot invent a package system under canvasser licence.

21. In support of contentions raised on the side of the 9th and 11th respondents, they rely upon a decision reported in 1987 The Madras Law Journal 156 in which it has been held that travel agency collecting separate fares from passengers between two points without stopping to pick up or set down along the line of the routes passengers not included in the contract is held were services, courts.gov.in/hoservices/ and Transport Authorities held that vehicles plied regularly as stage carriages and called upon them to pay tax for concerned quarters which was set aside by this Court. But,



this decision will not help the respondents 9 and 11 in this contempt petitions as this facts and circumstances will not applicable for the case on hand when they themselves admitted that they are used to arrange and book individual tickets per head for the distance they propose to travel and placed reliance on yet another decision reported in **(1993) 1 MLJ 516** which also not applicable for them and both decisions are against the recent ruling rendered by the Hon'ble Division Bench of this Court where myself was party in Suo Motu WP((MD)No.20030 of 2016 dated 15.11.2016 whereby issued direction that the Government of Tamilnadu and other authorities of the Government such as Authorities of Transport Department, Revenue and the Police shall not permit contract carriage operators or their agents to fix/collect individual fares for/from the passengers travelling in the contract carriages and they shall take appropriate legal action against the violators.

22.In view of the above, the concerned authorities, respondents 1 to 8 are directed to ensure that the travel agencies like respondents 9 and 11 shall not permit contract carriage operators or their agents like respondents 9 and 11 to fix/collect individual fares for/from the passengers travelling in the contract carriage and the authorities concerned shall take appropriate legal action against the violators including 11th respondent and take necessary action against violators for having misused the licence issued under Rule 234(2) of Tamilnadu Motor Vehicle Rules and also for having violated their permit conditions of respective contract carriages involved in this issue viz. Registration No.TN-74-AB-9936 owned by 14th respondent and TN-75-C-4026 owned by the 9th respondent and TN-74-U-8808 other vehicles if they found to be involved.

23.With the above direction, writ petitions in WP(MD)No.9293 of 2016 and 7524 of 2016 are allowed and the petitioner in writ petition (MD)No.19752 of 2015 is not entitled for any relief, accordingly WP(MD)No.19752 of 2015 is dismissed. Consequently, the respondents 1 to 8 are directed to follow provisions contained in Tamilnadu Motor Vehicle Act for the violations found in future and ensure that there shall not any operation of contract carriages like maxi cab, putting individual fares on the passengers as that of stage carriage. In view of the order passed in the writ petition, the Contempt Petition No.1272 of 2016 is closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar



Transport Department,
State of Tamil Nadu,
Secretariat, Chennai.

2.The Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai.

3.The Deputy Commissioner,
Transport Department,
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Kanyakumari, Kanyakumari District.

8.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari.

+1cc to M/s. S.BALAMURUGAN Advocate in SR. No.15618

+1cc to M/S.S.C.HEROLD SINGH, Advocate SR.No.14647

VS

JS/SV.MMS/11.04.2017/13P-11C

Cont.P. (MD) .No.1272 of 2016

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