

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11 -09-2018

Pronounced on : 20 -09-2018

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

CrI.O.P.No.6581 of 2018

State represented by
The Station House Officer,
D'nagar Police Station,
(In Cr.No.33 of 2017)
Through Public Prosecutor,
Puducherry
[PRC No.02/2017] ... Petitioner/ Respondent

Versus

Senthil@Ramesh@Senthil Counder ...Respondent/ Accused

PRAYER: Criminal Original Petition is filed under Section 439(2) of the Code of Criminal Procedure, seeking to cancel the bail granted to the respondent vide order dated 12.02.2018 in CrI.M.P.No.264 of 2018 by the learned Principal Sessions Judge, Puducherry in PRC No.2 of 2017 pending on the file of the Judicial Magistrate-I, Puducherry arising out of Cr.No.33/2017 on the file of the petitioner herein.

For Petitioner : Mr.Bharathachakaravarthy,
Public Prosecutor (Puducherry)

For Respondent : Mr. Abudu Kumar Rajarathinam
for Mr. V.S. Senthil Kumar

O R D E R

This Criminal Original Petition has been filed to cancel the bail granted to the respondent vide order dated 12.02.2017 in CrI.M.P.No.264 of 2018 in PRC No.2 of 2017 on the file of Principal Sessions Judge, Puducherry.

2.The case of the prosecution is that on 15.02.2017 at about 14.00 hours at Sri Lakshmi Vasam, No.108, AKR Lakshmi Mahal Premises, Vazhdavur Road, Koundanpalayam, Puducherry, the respondent/A2, along with eleven others, said to have formed themselves into an unlawful assembly and prevented the deceased Murali from stepping out of his house, waylaid and assaulted him with aruval, thereby causing his death. After committing the crime, the respondent and others have thrown the body of the deceased at Kokkupark Junction with an intent to screen the evidence. In connection with this

incident, a case in Crime No. 33 of 2017 came to be registered against 12 accused, in which the respondent herein was shown as second accused. The case was registered for the offences under Sections 147, 148, 302, 342, 201 IPC r/w.149 of IPC. During the course of investigation, except this respondent/A2, all other accused were arrested on different dates and times and they were remanded to judicial custody. Thereafter, the petitioner/Law Enforcing Agency arrested the respondent/A2 on 04.11.2017 in the above said Crime No.33 of 2017 and remanded him to judicial custody on 05.11.2017. Thereafter, the petitioner/Police completed the investigation in Crime No. 33 of 2017 and filed charge sheet before the learned Judicial Magistrate I, Puducherry on 12.06.2017 and the same was taken on file in PRC No.2 of 2017 by the Judicial Magistrate I, Puducherry. In the above final report, the respondent/A2 was shown as absconding accused and therefore, the learned Magistrate issued a Non Bailable Warrant against the respondent/A2 on 15.06.2017 and posted the case on 20.06.2017.

3. At this stage, the respondent/A2 filed Crl.O.P.No.16363 of 2017 and Cr.M.P.No.2879 of 2017 in PRC No.2 of 2017, to stay the proclamation order on the file of the Judicial Magistrate I, Puducherry in the above Crime No.33 of 2017 and the same was closed and disposed on 14.11.2017 by this Court. Subsequently, the respondent/A2 was arrested and produced before the Judicial Magistrate I, Puducherry on 05.11.2017, as mentioned above.

4. At this stage, the respondent/A2 has filed Crl.M.P.No.264 of 2018 in PRC No.2 of 2017 on the file of Principal Sessions Judge, Puducherry seeking bail. In the application for bail, it was stated that the respondent/A-2 is innocent and he has nothing to do with the alleged offence. It is his case that he has not indulged in assaulting the deceased and there is no specific overt act attributed against him and he was falsely implicated in the above said offence. Even during the detention period, he was not enquired by the petitioner though he was very much available in the prison. In view of the above, even after the arrest of the petitioner/A2, he has co-operated with the investigation and his confession statement was also recorded. Since the charge sheet has already been filed, the question of tampering the witness by the respondent/A2 does not arise. According to the respondent, considering the all above aspects, the lower Court granted bail in favour of the respondent/A2.

5. The case of the petitioner is that the respondent/A2 is a history-sheeter who proclaims himself to be the Master Don of all rowdy and history sheeters in Puducherry. It is the further case of the petitioner that the respondent/A-2 convened a meeting of two rival rowdy groups headed by one Sundar @ Sakthivel @ Maduvupet Sundar and others and another group headed by the deceased Murali at the

house of the respondent/A2. The respondent and other accused murdered the said Murali and very casually transported the dead body with the help of two other accused in a two wheeler and when they were travelling in the two wheeler, accidentally the dead body fell down near Civil Suppliers Office, ECR Kokkupark junction and since large number of public gathers, the accused ran away from the scene.

6. The learned counsel for the petitioner would further submit that the respondent/A2 is an influential person and wielded great men and muscle power. The respondent has several cases to his credit and he had antecedents. Even the charge sheet was filed in the above case showing the respondent/A2 as absconding accused. Even after the case was taken on file in PRC No.2 of 2017, the respondent/A2 continuously absconded and therefore, a petition was filed in Crl.M.P.No.3637 of 2017 and the learned Magistrate I, Puducherry, declared that the respondent/A2 is a proclaimed offender. Subsequently, once again Crl.M.P.No.4282 of 2017 was filed and one of his properties and 3 bank accounts were ordered to be attached by the Judicial Magistrate I, Puducherry. Apart from this, there was a direction by this Court in the anticipatory bail petition filed by the respondent/A2 in Crl.O.P.No.7438 of 2017 by order dated 20.06.2017, directing the respondent herein to surrender before the Judicial Magistrate-I, Puducherry. Despite the said direction, the respondent/A2 has not complied with the direction. Similarly, he disobeyed the proclamation notification issued under Order No.7/1206/JM-1/2017, dated 23.06.2017 and Preventive Detention Order was also passed since the activities of the respondent/A2 were prejudicial to public law and order, vide order No.04/DM/RO/D2/PPASSA/2017 dated 19.06.2017 and that order also willfully evaded by the respondent/A2.

7. According to the petitioner, the Law Enforcing Agency had put great efforts to secure the respondent/A2 and only on 04.11.2017, he was arrested and remanded to judicial custody. After the remand, the respondent/A2 filed the bail application in Crl.M.P.No.264 of 2018 before the Principal Sessions Court, Puducherry. The petitioner/Law Enforcing Agency filed a detailed objections objecting to the grant of bail to the respondent/A2 on 05.02.2018. Despite serious objections raised by the petitioner herein and also explaining the previous pending cases against the respondent/A2, the lower Court, by its order, dated 12.02.2018, granted bail in favour of the respondent/A2. As against the bail granted in favour of respondent/A2, the petitioner is before this Court.

8. Mr.Bharthachakravathy, the learned Public Prosecutor (Puducherry) appearing for the petitioner would submit that the respondent is a history-sheeter in the Union Territory of Puducherry as well as in the State of Tamil Nadu. The respondent/A2 was detained on several occasion in

several cases under the Tamil Nadu Act 14, 1982. He would further submit that there are 22 cases pending against the respondent/A2, out of which, the respondent/A2 got acquittal in 7 cases and discharged from the offences in 7 cases and as on date, there are 8 cases pending against the respondent/A2. It is relevant to note that one case is pending since 2005 and another case is pending from 2010 and the remaining 6 cases are pending from the years 2017 and 2018 respectively. He would further submit that in spite of the fact that the pendency of the above cases were brought to the notice of the lower Court and detailed objection was filed in Cr.M.P.No.264 of 2018, without considering all those previous cases pending against the respondent/A2 and without assigning any reasons, the Court below simply granted bail in favour of the respondent/A2, which is unsustainable and therefore, he prays for cancellation of bail granted by the lower Court.

9. Per contra, the learned counsel for the respondent/A2, would submit that though the petitioner was projected as the respondent/A2, as Don of all rowdy and history sheeters in Puducherry, the cases registered against the respondent are all false and concocted. Out of 20 cases, 7 cases ended in acquittal and in 7 cases, the respondent was discharged from the charges levelled against him and only 3 cases were pending for trial. There is no averment in the counter affidavit as if the respondent indulged in tampering the evidences or hampering the witnesses in the above said criminal case and that the respondent/A2 filed three Anticipatory Bail petitions and the same were dismissed. However, the respondent/A2 filed a bail petition only after the change of circumstances, i.e., after filing of the charge sheet, the respondent/A2 filed a bail petition. In the absence of any evidence to show that the respondent indulged tampering or threatening the witnesses of the prosecution and in view of change of circumstances, since the final report has been filed before the Competent Court, there is no necessity for further investigation in the present case. Having regard to the above, after elaborate discussion, the learned Principal Sessions Judge, Puducherry, granted bail to the respondent/A2, which is legally sustainable.

10. The learned counsel for the respondent/A2 relied upon the decision rendered by the Hon'ble Supreme Court in the case of Nityanand Rai vs State Of Bihar & Another in Appeal (Crl.) No.529 of 2005 dated 11.04.2005, wherein the relevant portion is extracted hereunder:

"... .. Against the said order of rejection of regular bail, the appellant preferred a Criminal Miscellaneous Petition before the High Court of Patna which by its order dated 19th of September, 2003 granted the bail to the petitioner subject to his furnishing a bond of Rs. 10,000/- with two sureties of the like amount each to

the satisfaction of the CJM, Hajipur. However, even before the appellant could be released from custody pursuant to the bail granted by the High Court the complainant in the case moved an application before the High Court of Patna in CrI. Misc. No. 29702 of 2003 seeking cancellation of the bail granted to the appellant alleging that the appellant was an influential man and had been manipulating the investigation for the past ten years and was ultimately brought to trial only because of the change in the hierarchy of police i.e. when an impartial investigating agency came into picture. It was also urged that the appellant had suppressed material facts while obtaining the bail from the High Court in as much as the appellant did not disclose that in the connected criminal trial the co-accused have been found guilty of an offence under Section 302 etc. and that since the date of the appellant's surrender pursuant to the direction issued by the High Court on 17th of July, 2003, the appellant and his musclemen have been threatening the witnesses and preventing the complainant from pursuing the case against the appellant. It was also stated in the said application for cancellation of bail that two complaints have already been filed in the Sadar Police Station, Hajipur on 10-10-2003 and 13-10-2003 alleging a threat by the appellant and his henchmen.

The High Court by the impugned order allowed the said application for cancellation of bail filed by the complainant on the ground that there was a threat to the prosecution witnesses by the appellant and his musclemen and that the appellant had not brought to the notice of the court that in the connected trial the two accused have already been convicted by the trial court and were sentenced to life imprisonment. The court in the impugned order also noticed that in the order granting bail it unfortunately failed to notice that the appellant was one of the two accused who were described as the active assailants.

Challenging the above order of cancellation of bail in this appeal the appellant contends that the High Court while canceling the bail has not borne in mind the well settled principles of law

in regard to cancellation of bail and has approached the case as if it was hearing a bail application for the first time. It is also contended that the basis of the alleged threat which was taken note of by the High Court, i.e. the two complaints filed by the complainant dated 10-10-2003 and 13-10-2003 in Hajipur Police Station could not have been genuine in as much as on the date when these two complaints were filed, the appellant was, as a matter of fact, in custody and was only released pursuant to the bail granted by the High Court on 15-11-2003 nearly a month after the two alleged complaints of threat were lodged, hence, no reliance could have been placed on such a pre planned complaint. It is also submitted on behalf of the appellant that though the appellant was included in the First Information Report filed in the year 1993, the investigating agency could not find any material against the appellant, hence no charge-sheet was filed against the appellant for nearly 10 years until the same was done on 11-7-2003, this too because of the fact that the investigating Police officer was annoyed with the appellant because of a privilege motion brought against the said police officer in the assembly at the instance of the appellant as a Member of the Legislative Assembly, in which the said police officer had to tender an apology."

11. On perusal of the above decision, it is evident that in that case, as against the order of rejection of regular bail the High Court of Patna granted bail to the accused. As against the bail granted in favour of appellant therein, the prosecution agency moved a cancellation of bail before the very same Court and it was allowed on the ground that there was a threat to the prosecution witnesses by the accused through his musclemen and also suppressed the materials in connection with the previous cases pending against him. Challenging the said cancellation bail, the appeal preferred by the appellant therein before the Hon'ble Supreme Court. The Apex Court allowed the appeal on the ground that though the appellant's name was included in the FIR filed in the year 1993, the investigating agency could not find any material against the appellant and no charge sheet has been filed against him for nearly 10 years until the same was done on 11.07.2003 and accordingly, the appellant was released on bail pursuant to bail order granted by the High Court dated 15.11.2003. Therefore, the cancellation of bail granted by the High Court was set aside by the Hon'ble Apex Court.

12. The learned counsel for the respondent/Accused also relied upon another decision rendered by the Hon'ble Supreme Court of India in Ms.X v. The State of Telangana and Another in CrI.A.No.000716 of 2018 (@ Special Leave Petition (Criminal) No.1130 of 2018) , wherein it is held as follows:

"12. Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted.

(1995) 1 SCC 349 Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles have been reiterated by another two Judge Bench decision in Central Bureau of Investigation, Hyderabad v. Subramani Gopalakrishnan and more recently in Dataram Singh v State of Uttar Pradesh:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally, speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on

record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

13. It is relevant to mention the decision of the Hon'ble Supreme Court in the case of Daulatram v. State of Haryana 1995 (1) SCC 349 : 1995 Cri LJ 3648, wherein the Apex Court has held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. The grounds for cancellation of bail broadly are : interference or attempt to interfere with due course of administration of justice or abuse in any manner. Further, the satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding, is yet another reason for justifying the cancellation of bail. It is also held therein that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

14. In the instant case, admittedly, the bail was granted by the lower Court. According to the petitioner/State, there are 22 cases pending against the respondent/A2. Out of 22 cases, 7 cases ended in acquittal and in 7 cases, the respondent was discharged from charges and as on date, 8 cases are pending against the respondent/A2. Out of 8 cases, 4 cases are under trial and 4 cases are under investigation. Though the said averments were raised by the petitioner as well as the respondent before the lower Court, the lower Court without assigning any reason and without considering the previous cases pending against the respondent/A2, had simply granted bail. It is also brought to the notice of this Court that the respondent/A2 was detained under Act 14, by the Puducherry Government and, at present, the respondent/A2 is in prison and if bail is granted to the respondent/A2, there may be chances for him to abscond or create unrest in society. It is also brought to the notice of this Court that even in the charge sheet filed before the Court below, the respondent was shown as an absconding accused. Without considering all these aspects, the Court below simply granted bail to the respondent.

15. Applying the above settled position of law by the Hon'ble Supreme Court in the case of Daulatram, referred to above, and considering the factual position of the present case, this Court is of the view that the bail granted to the respondent/A-2 is required to be cancelled. Accordingly, this Criminal Original Petition is allowed and the order of the Principal Sessions Judge, Puducherry, is set aside. However, this order will not stand in the way of the respondent/A-2 to work out his remedy in the manner known to law, if there exists a change of circumstance.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

kal

To

1.The Principal Sessions Judge,
Puducherry.

2.The Judicial Magistrate-I,
Puducherry

3.Do thro the Judicial Magistrate-I, Puducherry

4.The Superintendent,
central Prison,
Kalapet, Pudhucherry.

5.The Station House Officer,
D'nagar Police Station,
Puducherry.

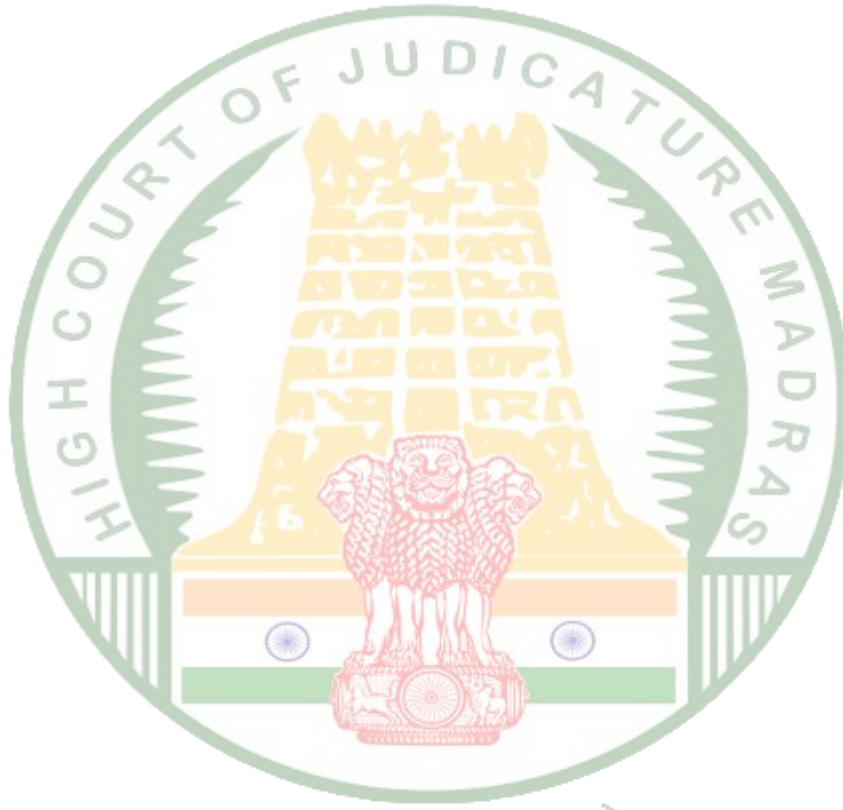
+1cc to Mr.V.S.SENTHIL KUMAR, Advocate SR.No. 17924

+1cc to the public prosecutor, Pudhucherry SR.No. 17983

WEB COPY

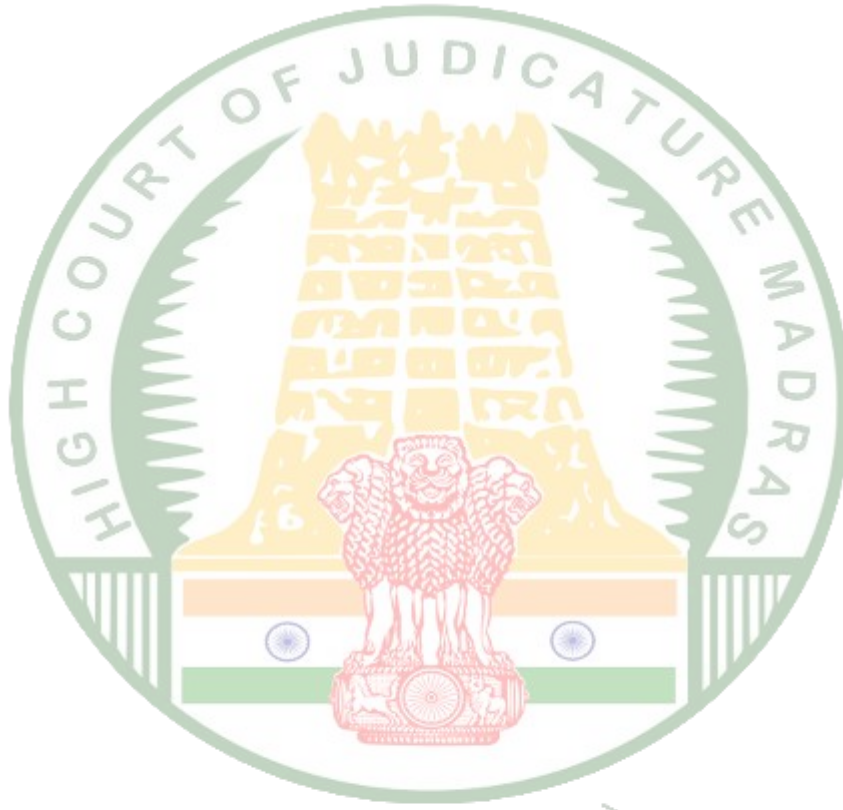
order in
Crl.O.P.No.6581 of 2018

ASK(15/10/2018)



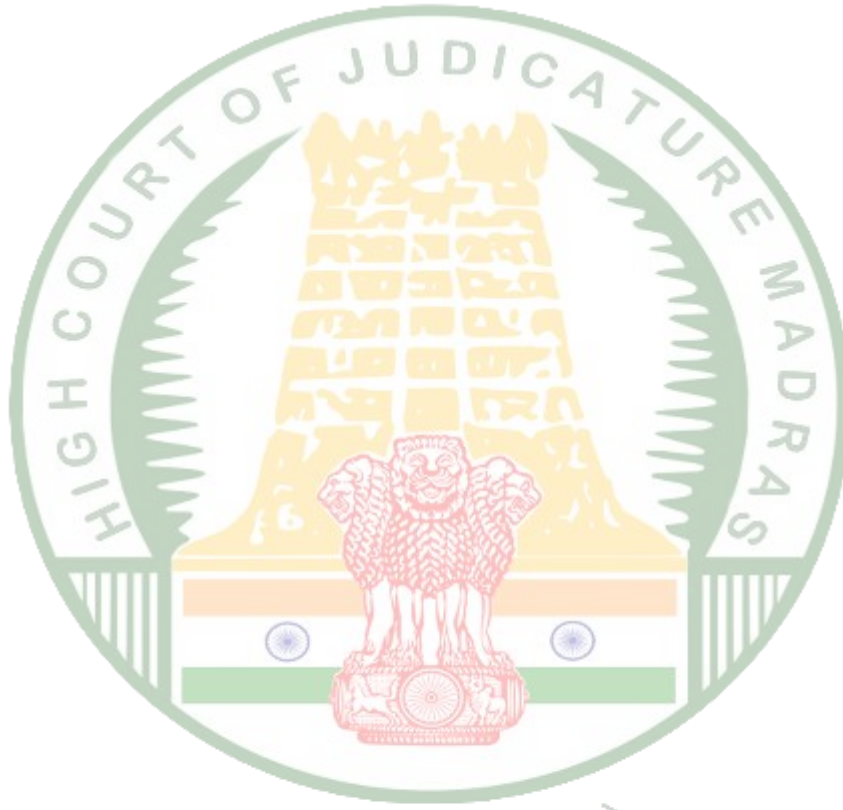
सत्यमेव जयते

WEB COPY



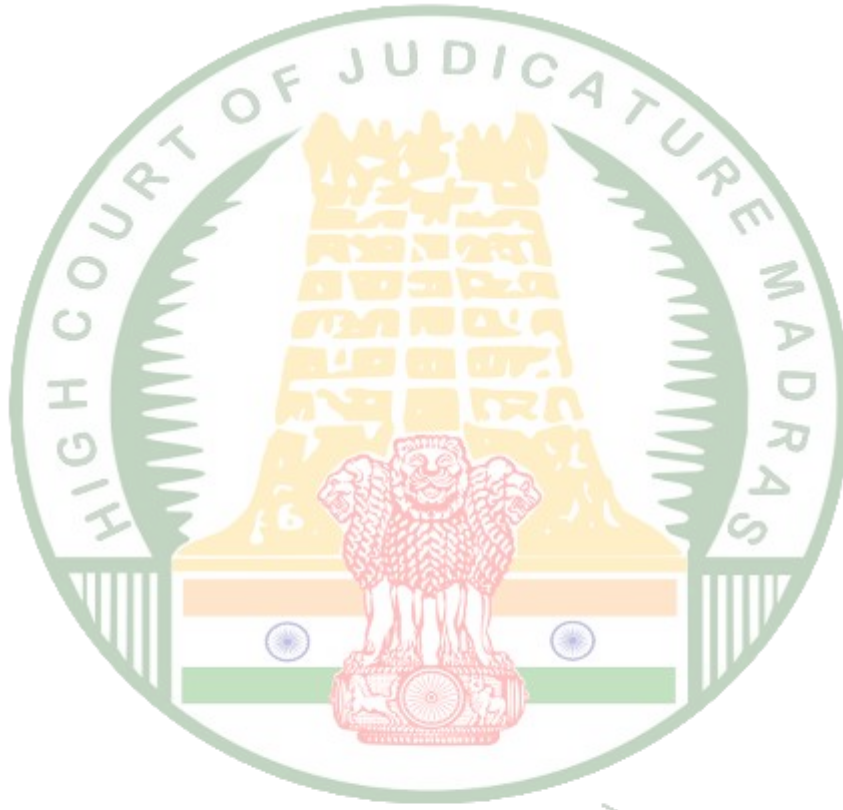
सत्यमेव जयते

WEB COPY



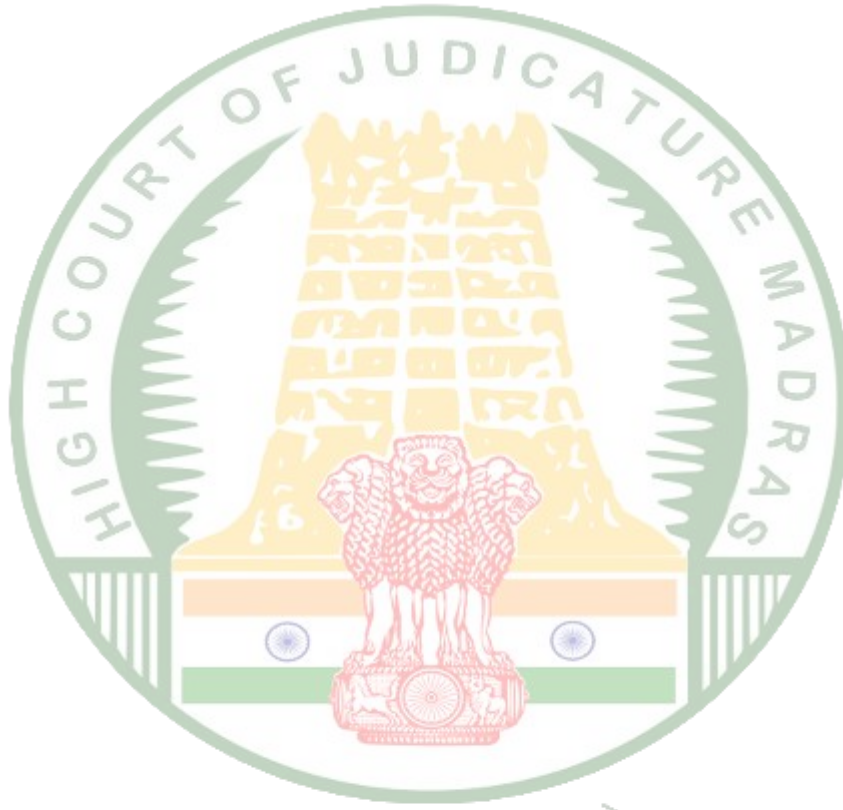
सत्यमेव जयते

WEB COPY



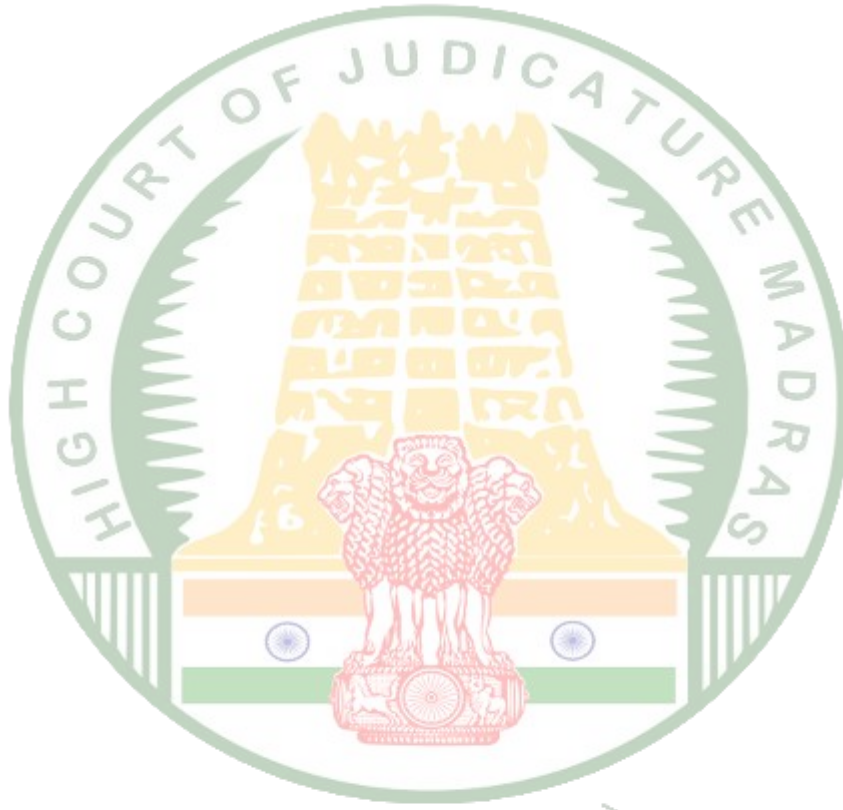
सत्यमेव जयते

WEB COPY



सत्यमेव जयते

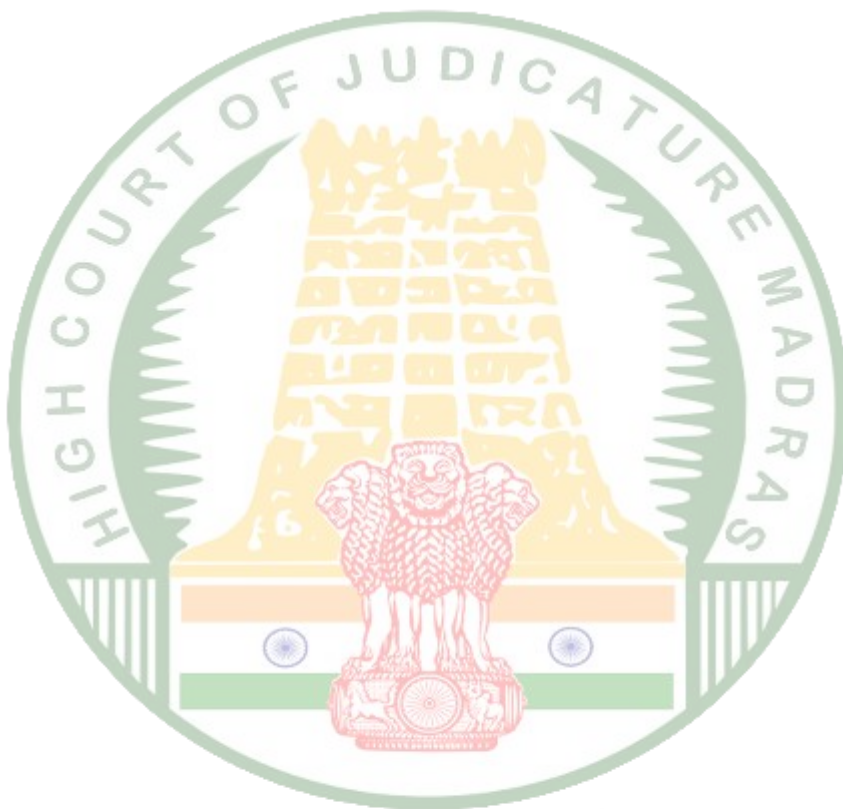
WEB COPY



सत्यमेव जयते

WEB COPY

Ms. X. V. S. State of Tennessee and Anderson Co. v. Anderson Co. B. a.



सत्यमेव जयते

WEB COPY