

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2017

PRONOUNCED ON : 31.05.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Crl.M.P.No.11703 & 11704 of 2017
in Crl. R.C.Sr.No.37867 & 37866 of 2017

Crl.M.P.No.11703/2017:

1.Ramu @ Ramachandiran
2.Sathish @ V. Saravanan

.. Revision
Petitioners/Accused

Versus

The State rep. by
The Inspector of Police,
Kandamangalam Police Station,
Villupuram District.
(Crime No.249 of 2015)

.. Respondent/Complainant

Crl.M.P.No.11704/2017:

1.Vino @ Vinothkumar
2.Navin @ Navinkumar

.. Revision
Petitioners/Accused

Versus

The State rep. by
The Inspector of Police,

Kandamangalam Police Station,
Villupuram District.

(Crime No.249 of 2015)

..

Respondent/Complainant

Prayer in Crl.M.P.No. 11703 of 2017: This petition filed under Section 5 of Limitation Act seeking to condone the delay of 479 days in filing the revision petition in C.M.P.No.531 of 2016, dated 06.02.2016, passed by the learned Judicial Magistrate No.II, Villupuram.

Prayer in Crl.M.P.No. 11704 of 2017: This petition filed under Section 5 of Limitation Act seeking to condone the delay of 482 days in filing the revision petition in C.M.P.No.464 of 2016, dated 03.02.2016, passed by the learned Judicial Magistrate No.II, Villupuram.

Crl.R.C.Sr.No.37866 of 2017:

1.Vino @ Vinothkumar
2.Navin @ Navinkumar

.. Revision
Petitioners/Accused

Versus

The State rep. by
The Inspector of Police,
Kandamangalam Police Station,
Villupuram District.
(Crime No.249 of 2015)

.. Respondent/Complainant

Crl.R.C.Sr.No.37867 of 2017:

1.Ramu @ Ramachandiran
2.Sathish @ V. Saravanan

.. Revision
Petitioners/Accused

Versus

The State rep. by
The Inspector of Police,
Kandamangalam Police Station,
Villupuram District.
(Crime No.249 of 2015)

.. Respondent/Complainant

Prayer in Crl.R.C.Sr.No.37866/17: Criminal Revision filed under Section 397 & 401 of Cr.P.C. praying to set aside the order dated 03.02.2016 passed in Crl.M.P.No.464 of 2016 in Crime No.249 of 2015 by the learned Judicial Magistrate-II, Villupuram.

Prayer in Crl.R.C.Sr.No.37867/17: Criminal Revision filed under Section 397 & 401 of Cr.P.C. praying to set aside the order dated 06.02.2016 passed in Crl.M.P.No.531 of 2016 in Crime No.249 of 2015 by the learned Judicial Magistrate-II, Villupuram.

For Revision Petitioners
in all the petitions : Mr.S.Anburaja

For Respondent in all
the petitions : Mr.C.Iyyapparaj,
Additional Public Prosecutor

COMMON ORDER

Crl.M.P.No.11703 of 2017:

The petitioners herein along with the petitioners in

the other M.P. had been arrayed accused in Crime No.249 of 2015 on the file of the respondent police i.e., Kandamangalam Police Station, Villupuram District for the alleged offences punishable under Sections 147, 148, 341, 342, 120(b) and 302 of IPC. Pursuant to the said case, the petitioners herein had been arrested on 12.10.2015 and remanded on the same day. Thereafter, since no final report was filed within the statutory period, these petitioners had moved a bail application under Section 167(ii) of Cr.P.C. in C.M.P.No.163 of 2016. In the said bail application, the learned Magistrate had granted bail by order dated 12.01.2016, imposing certain conditions such as, that, two sureties shall be executed by each of the petitioner out of whom, one must be a family member for a sum of Rs.10,000/- and further that the petitioners on release, shall report and sign before the respondent police every day at 5.00p.m. for 15 days.

2. Pursuant to the said bail order granted to the petitioners, they were released on bail. The first petitioner was released from Cuddalore Central Prison on 01.02.2016

and the second petitioner was released on bail on 02.02.2016. Further, in compliance of the condition imposed by the learned Magistrate at the time of grant of bail, the petitioners did not turn up to the respondent police station, to sign every day at 5.00.p.m. for 15 days. In view of this wilful disobedience and the non-compliance of the condition imposed by the learned Magistrate as a bail condition, the respondent police, moved a petition before the learned Magistrate to cancel the bail granted to the petitioners. In the said petition i.e., C.M.P.No.531 of 2016, the learned Magistrate, after having scrutinised the case papers and satisfied that the petitioner did not comply with the conditional order to appear before the respondent police at 5.00p.m. and sign in the register for 15 days, by his order dated 06.02.2016, had cancelled the bail and the bail bond executed was also cancelled. The learned Magistrate also issued Non-Bailable warrant against the petitioners/accused. Aggrieved over the said order dated 06.02.2016, made in C.M.P.No.531 of 2016, these petitioners filed the main revision case in CrI.R.C.Sr.No.37867 of 2017 belatedly with the delay of 479 days. In order to condone the delay of 479

days, the petitioners filed Crl.M.P.No.11703 of 2017.

Crl.M.P.No.11704 of 2017:

In the very same case in Crime No.249 of 2015 on the file of the respondent police, these two petitioners in this petition also were made as accused for the alleged offences punishable under Section 147, 148, 341, 342, 120(b) and 302 of IPC..

3. In this case also, the statutory bail under Section 167(ii) of the Code of Criminal Procedure was granted by the learned Magistrate to these petitioners, by order dated 12.01.2016. Here also similar conditions were imposed therefore, these petitioners had to appear before the respondent police for 15 days daily at 5.00p.m. and to sign. However, the petitioners herein had not complied with the conditional order of bail granted by the learned Magistrate in spite of the fact that the first petitioner herein released from the Cuddalore Central Prison on 18.01.2016 and the second petitioner herein was released from Gingee prison on 22.01.2016. Therefore, the respondent police moved a

petition to cancel the bail before the learned Magistrate in CMP.No.464 of 2016 where the learned Magistrate, after having taken into account the records produced before the learned Magistrate after satisfying with the same to the effect that the petitioners had not complied with the bail condition imposed on them, had passed an order on 03.02.2016 cancelling the bail granted to the petitioners and the bail bond also was directed to be cancelled and the learned Magistrate had also issued Non-Bailable Warrant against the petitioners. Aggrieved over the said order passed by the learned Magistrate cancelling the bail and issuing NBW against the petitioners made in CMP.No.464 of 2016 dated 03.02.2016, these petitioners filed the main Criminal Revision Case in SR.No.37866 of 2017 with the delay of 482 days in filing the said revision petition. In order to condone the said delay, these petitioners filed the present CMP.No.11704 of 2017.

4. In support of both these petitions, to condone the delay of 479 days and 482 days respectively, supporting affidavits had been filed in both petitions, by the respective

first petitioner in each of the petition.

5. In Crl.M.P.No.11703 of 2017, the first petitioner one Ramu @ D.Ramachandran filed a supporting affidavit where, he has stated the following as reason for delay in filing the Criminal Revision Case.

“I humbly submit that subsequently after the order of the Learned Judicial Magistrate in CMP No.531 of 2016, I met with accident and I got fracture in leg and taken native treatment I was recovered only on 20.05.2016 and continue life threat from the rival parties therefore, I was unable to file this revision petition before this Hon’ble Court against the Judgment order in CMP No.531 of 2016 on the file of the learned Judicial Magistrate No.II, Villupuram, in time. In the above circumstances there is delay of ___ days in filing the revision petition.

I humbly submit that I was in great difficulty in mobilizing funds for expenses and advocate fees to file a revision petition, as I spent huge amount my medical treatment.”

6. In the second M.P. i.e., in Crl.M.P.No.11704 of 2017, the first petitioner in that petition one Vino @ Vinoth kumar filed a supporting affidavit where, he has given the

following reason for the delay in filing the said revision:

“I humbly submit that subsequently after the order of the Learned Judicial Magistrate in CMP No.464 of 2016, I was suffering viral fever and admitted in the hospital I was discharged from the hospital only on 23.03.2017 and also continue life threat from the rival parties therefore, I was unable to file this revision petition before this Hon’ble Court against the Judgement order in CMP.No.464 of 2016 on the file of the Learned Judicial Magistrate No.II, Villupuram, in time. In the above circumstances, there is delay of ___ days in filing the revision petition.

I humbly submit that I was in great difficulty in mobilizing funds for expenses and advocate fees to file a revision petition, as I spent huge amount my medical treatment.”

7. I have perused the said reasons given on behalf of the petitioners in the respective supporting affidavits which has been exactly extracted herein above. In the first petition, only the first petitioner had filed the supporting affidavit where, he has stated that, he met with an accident and got fracture in his leg and he had taken native treatment and he was recovered only on 20.05.2016. The said affidavit

the second petitioner. Assuming that the reason given by the first petitioner that, he met with an accident and with the result, he suffered with the fracture in his leg and he recovered only on 20.05.2016 whereas, this revision case was filed only on 29.08.2017 and this condone delay petition was filed only on 12.09.2017, this Court finds absolutely no reason for the delay from 20.05.2016 till the date of filing of the revision, except to state that, he was in life threat from the rival parties and also he had great difficulties in mobilising fund and advocate fees. Like that, in CrI.M.P.No.11704 of 2017 also, the reason for delay was given by the first petitioner where, he has stated that he was suffering with viral fever and he was discharged from the hospital only on 23.03.2017. From which date, he was suffering from viral fever has not been stated by the first petitioner and in that petition also, the second petitioner did not give any reason for his non approaching this Court in filing revision in time. The main revision in this petition is concerned was filed by the petitioners only on 29.08.2017 and here also nothing was stated from 23.03.2017 till the filing of the revision case what was the reason for delay

except to state that the petitioner was in alleged life threat and also he was facing great difficulties in mobilising funds for expenses and advocate fees to file the revision petition.

8. On perusal of these reasons given by the petitioners in these two petitions, this Court is not satisfied with the reasons given by the petitioners for such a huge delay of more than a year in approaching this Court, by filing the revision case. Even the said reasons given by the petitioners in the respective petitions are not supported by any documents as in both cases health ground has been shown as a prime reason for delay. Even before this Court, nothing has been filed in support of the said contention made by the respective petitioners in the supporting affidavit to these condone delay petitions and therefore, this Court is of the view that for the reasons stated in the affidavit filed in support of these petitions, the petitioners plea to condone the delay need not be entertained or accepted.

9. However, since some submissions were made by the learned counsel for the petitioners on merit of the main

revision case also, as because of that, some lenient view can be taken in this condone delay petitions, that was pleaded by the learned counsel for the revision petitioners.

10. According to the learned counsel appearing for the petitioners, the learned Magistrate before passing the impugned order cancelling the bail and issuing Non-Bailable Warrant against these petitions, had not issued any notice to the petitioners and no opportunity was given to them, to get their response to the satisfaction of the Magistrate as to why the petitioners had not complied with the conditional order imposed by the learned Magistrate while granting bail. The said factor of non-issuance of any notice or opportunity given to the petitioners was not denied by the learned Additional Public Prosecutor appearing for the respondent.

11. In this regard, the learned counsel appearing for the petitioners would heavily rely upon the judgement of this Court reported in **2010(1) MWN(Cr.) 368** in the matter of **Prapbakaran vs. The State represented by Inspector of Police, Kavindapadi Police Station, Erode District.** By

relying the said judgement, the learned counsel would submit that, though the power of cancellation of bail is very much vested with the learned Magistrate granting the bail, in case the condition imposed by the bail Court was not complied with, before cancelling the bail order, the learned Magistrate must have given an opportunity to the parties/accused persons before forfeiting the bail order already granted.

12. I have gone through the said judgment relied upon by the learned counsel for the petitioners and have noted the observations made by the learned Judge in the said judgement which reads thus:

"4. I have considered the rival submissions. In my considered opinion too, the learned Magistrate was not right in cancelling the bail order without notice to the petitioner. Of course, under [Section 437 \(5\) of Cr.P.C.](#), the learned Magistrate has got power to cancell the bail. But it is settled law that before passing such an order, the learned Magistrate is required to issue notice to the accused, so as to afford him an opportunity to explain as to why the bail should not be cancelled. Such course has not been adopted by the learned Magistrate in this case. Therefore, it is on this ground alone the impugned order to the extent of cancellation of the bail, deserves to be set aside."

13. In so far as the second part of the impugned order where, Non-Bailable warrant was issued against these petitioners, are concerned, even in respect of such aspect also, the learned counsel appearing for the petitioners would heavily rely upon the very same judgement where, this aspect has been exhaustively dealt with by the learned Judge.

14. I have gone through the said aspect of the said judgement also where, the learned Judge has given the following findings:

“5. In respect of the second part of the impugned order, whereunder, non-bailable warrant has been issued by the learned Magistrate, whether it requires any interference at the hands of this Court, is the next question to be considered. At this juncture, it should be noticed that forfeiture of bond as indicated in [Section 446](#) of the Criminal Procedure Code is by the act of the accused, who has committed breach of the condition imposed. Such forfeiture emanates only from the conduct of the accused and there is no need or occasion for the Court to pass any order to forfeit such bond. [Section 446](#) of the Code which deals with forfeiture of bonds reads

as under:-

446. Procedure when bond has been forfeited-

(1) Where a bond under this Code is for appearance, or for production of property, before a court and it is proved to the satisfaction of that court or of any court to which the case has subsequently been transferred, that the bond has been forfeited, (Emphasis supplied)

or where, in respect of any other bond under this Code, it is proved to the satisfaction of the court by which the bond was taken, or of any court to which the case has subsequently been transferred, or of the court of any Magistrate of the first class, that the bond has been forfeited, (Emphasis supplied)

the court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation. - A condition in a bond for appearance, or for production of property, before a court shall be construed as including a condition for appearance, or as the case may be, for production of property before any court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same, as if such penalty were a fine imposed by it under this Code:

"Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months."

(3) The court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under [section 106](#) or [section 117](#) or [section 360](#) is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under [section 448](#), a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in proceedings under against his surety or sureties, and, if such certified copy is so used, the court shall presume that such offence was committed by him unless the contrary is proved.

6. The language "has been forfeited" employed in more than one place in [Section 446](#) of the Criminal Procedure Code would clearly reflect the same. Under this provision, the Court is required only to record its satisfaction on proof that such forfeiture has taken place and then to call upon the person to pay penalty thereto in terms of the bond. If sufficient cause is not shown, the Court shall impose penalty.

7. As I have already indicated supra, the crucial moment at which the bond shall stand automatically cancelled is, as soon as the learned Magistrate records his satisfaction that the bond has already been forfeited on the act of the accused. In this regard few judgments from various High Courts need to be referred to.”

15. In the said judgement after having taken note of the judgement of the Orissa High Court reported in **Jagannath Rout vs State of Orissa** reported in **1975 CrI.L.J.1684** and the Delhi High Court judgement in **Sham Sunder v. State of Delhi** reported in **1990 CrI.L.J. 2370**, the learned Judge has given his view in the following terms:

“10. I regret, I am unable to persuade myself to agree with the said view taken by the Orissa High Court as well as Delhi High Court wherein the learned Judges have taken the view that where there is failure of the accused to appear before the Court, no further enquiry or proof is necessary or contemplated for recording satisfaction. In my considered opinion, mere failure to appear before the Court, in the absence of any willfulness on the part of the accused, would not amount to "a breach" in terms of [Section 446](#) of the Code of Criminal Procedure. Manifestly, there has to be an animus on the part of the accused not to abide by or comply with, the terms and conditions of the bond. Such animus alone makes the failure of the accused to appear, a breach in terms of [Section 446](#) of the Code. Such animus on the part of the accused could be ascertained only after

affording sufficient opportunity to the accused. For example, while on his way to the Court, if an accused had met with an accident and he was taken to a hospital, such failure of the accused to appear before the Court on that particular date of hearing can never be treated as breach in terms of [Section 446](#) of the Code. On receipt of notice, if the accused satisfies the Court that he was prevented from appearing before the Court due to sufficient reason, like the one, illustrated above, the Court may not record such satisfaction holding that the accused had committed a breach of bond. The language "proved to the satisfaction" needs to be underscored, which clears doubt, if any, that the term "proof" held within it "disproof" by the accused / surety also. Such proof or disproof of animus can be arrived at only after sufficient opportunity to the accused / surety. Such opportunity shall satisfy the principles of natural justice "Audi Alteram Partem" which is not alien to criminal law as it has the sanction of the Constitution of India. Therefore, before recording such satisfaction, notice to the accused is necessary and further enquiry should follow. On such enquiry only, the learned Magistrate has to get satisfied himself on proof as to whether there was any breach of the terms of the bond; and after so satisfied that breach has taken place, then only such recording of the satisfaction of the Court will indicate the breach of the terms of the bond.

11. The above view of mine is fortified by judgment of Himachal Pradesh High Court in [Narata Ram v. State of Himachal Pradesh](#), 1994 Cri. L.J. 491, wherein, the Himachal Pradesh High Court in para 10 has held as follows:-

"The scheme of [Section 446](#) of the Code of Criminal Procedure envisages two stages, as indicated above. No doubt, accused did not appear nor they could be produced by the petitioner and non-bailable warrants had been issued for their appearance on 1st July, 1992, the Court below had also afforded an opportunity to the petitioner to produce the accused on 1st July, 1992. Had this last opportunity to produce the accused been afforded, the portion of the order dated 25th May, 1992, directing the forfeiture of the amount under the bonds was legal and valid and for the reasons stated above, the Court could be deemed to have satisfied regarding the existence of reasonable grounds for directing the forfeiture of the bond. Here, a composite order was passed. The petitioner could have produced the accused on 1st July, 1992 and had he complied with the order to this effect, the circumstances would not have attracted the issuance of order forfeiting the bonds. Thus, in such circumstances, the Court cannot be deemed to have satisfied itself as to the existence of grounds for directing the issuance of forfeiture of the bonds on 25th May, 1992. In other words, the trial Court committed an illegality by exercising jurisdiction improperly, which had also not been noticed by the appellate Court."

12. In para 13 of the said judgment, the Himachal Pradesh High Court has gone to the extent of saying that issuance of notice to the individual to afford an opportunity is part of principles of natural justice which states that no adverse order could be passed to affect any party without affording sufficient opportunity of being heard.

In view of the said position, I am of the firm view that before recording such satisfaction that breach has been committed, the learned Magistrate is required to issue notice and after affording an opportunity to offer any explanation, if the Magistrate is not satisfied with the said explanation offered by the accused, then, he has to record such satisfaction that the terms of the bond have been breached which alone signifies the forfeiture of the bond.”

16. Thereafter, in the said judgement, the learned Judge having taken note of the fact that in view of Section 446(A) of the Code, which was introduced subsequently, the emerging position would be that if the Non-Bailable Warrant got issued the affected party can work out the remedy under Section 70(2) of the Code. The relevant portion of the said judgement reads thus:

16. In the meanwhile, i.e. until the bond gets cancelled as stated above, in order to secure the presence of the accused, the Magistrate may issue a process which may be either a summons or a warrant (Bailable or non-bailable) for his arrest. Before the bond gets cancelled, if the accused appears, the Magistrate, on an appropriate petition under [section 70 Cr.P.C.](#), may cancel the warrant issued. Until the bond gets cancelled, there is no requirement to get a fresh bond executed by the accused and the sureties. If once the bonds stand cancelled in terms of [Section 446-A](#) of the Criminal Procedure Code, then the accused can be released only on execution of a

fresh bond with or without sureties as the case may be. Thus, it emerges tacitly clear that prior to the introduction of [Section 446-A](#), the bail bond shall stand cancelled only when the bail is cancelled either under [Section 437](#) or [439 of the Criminal Procedure Code](#), whereas, now, such cancellation takes place automatically by operation of [Section 446-A](#) of the Criminal Procedure Code without there being an order of cancellation of bail. If once bail itself is so cancelled, the only remedy for the accused is to get into judicial custody and then apply for fresh bail. In view of all the above, the issuance of Non bailable warrant by the lower Court does not require interference.

17. In the result, the Criminal Original Petition is allowed; the order of the learned Judicial Magistrate No.II, Gobichettipalayam dated 30.10.2009 made in C.M.P.No.1651 of 2009 is set aside; however, the latter part of the order issuing non-bailable warrant is confirmed, giving liberty to the petitioner to work out his remedy under [Section 70\(2\)](#) of Code of Criminal Procedure before the Magistrate.”

17. After having gone through the aforesaid judgement where number of judgements of this court and the Honourable Apex court was considered, I am of the view that since no opportunity was given to these petitioners before cancelling the bail and the subsequent issuance of non bailable warrant, the aforesaid judgement would squarely apply to this case also. Therefore, prima facie, this Court

<http://www.judis.nic.in> feels that the petitioners herein also are on the same footing.

18. In view of the said position, since the petitioners have a bright chance for presenting an arguable case before this Court in the main revision case, if the delay caused in filing the revision case are not condoned, the very purpose of filing the revision would get defeated and in order to ensure justice, that in criminal jurisprudence towards the accused persons, as every opportunity shall be extended to them, this Court is inclined to entertain and accept these two petitions to condone the delay, even though no adequate and satisfying reasons have been adduced by the respective petitioners in these petitions for the delay in filing the revision.

19. For all these reasons, these miscellaneous petitions to condone the delay are allowed and the delay is condoned. The Registry is directed to number the main Criminal Revision case and post the matter for hearing immediately.

Index :Yes/No

Speaking order/Non-speaking order
smi

To

1.The Judicial Magistrate No.II,
Villupuram.

2.The Inspector of Police,
Kandamangalam Police Station,
Villupuram District.

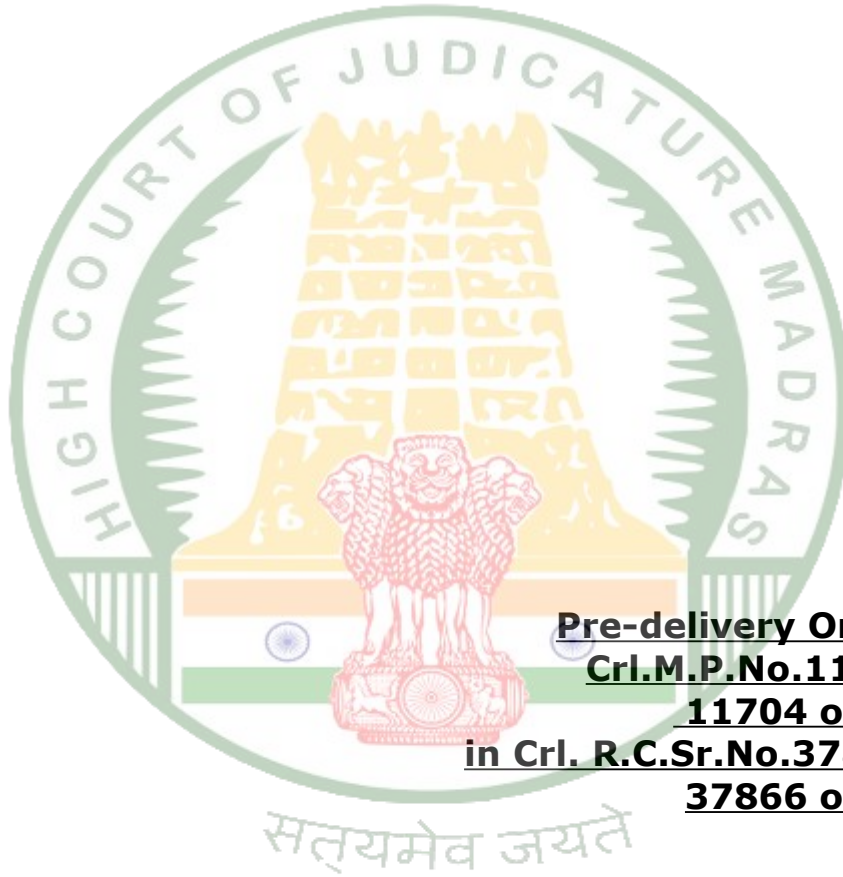
3.The Public Prosecutor,
High Court, Madras.



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R.SURESHKUMAR, J.

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Pre-delivery Order in
Crl.M.P.No.11703 &
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31.05.2018