

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 10.07.2018]

[Pronounced on : 10.10.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.630 of 2018

and

Crl.M.P.Nos.7433 and 7434 of 2018

R.Subramanian ... Petitioner/2nd Accused

.. Vs ..

The Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office,
3rd Floor, C Block,
Murugesu Naicker Complex,
No.84, Greaves Road,
Chennai - 600 006. Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. praying that the order dated 20.04.2018 of the learned Principal Sessions Judge, Chennai, taking cognizance of the offence by ordering that the complaint be taken on file as C.C.No.4 of 2018 be revised and set aside and the complaint be dismissed under Section 203 Cr.P.C.

For Petitioner: Mr.P.Kumaresan
for Mr.M.Kaviraj

For Respondent: Mr.G.Rajagopal,
Additional Solicitor
General Assisted by
M/s.G.Hema, Special Public Prosecutor

ORDER

This Criminal Revision Case is filed by the petitioner/second accused challenging the order dated 20.04.2018 passed by the learned Principal Sessions Judge, City Civil Court, Chennai, Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as "PML Act"] in taking cognizance of the offence in C.C.No.4 of 2018 in ECIR No.CEZO/08/2014.

2. By the adjudication order dated 20.04.2018, the learned Principal Sessions Judge, City Civil Court, Special Court designated for trying the offence of PML Act, Chennai, has taken cognizance of the offence in ECIR/CEZO/08/2014 and also taken the case as C.C.No.4 of 2018 and adjourned the matter to 23.04.2018 and on that date, the learned Principal Sessions Judge, ordered for issuance of summons to A.3 to A.7, since A.2 was already remanded to judicial custody. Challenging the said order of cognizance taken by the learned Principal Sessions Judge, the petitioner herein/second accused has preferred this criminal revision case before this Court.

3. The brief facts leading to filing of the above C.C.No.4 of 2018 are hereunder:-

[i] The first accused is M/s.Subhiksha Trading Services Limited in which, the revision petitioner namely, R.Subramanian is the Managing Director and arrayed as second accused and accused Nos.3 to 5 are alleged to be the Directors of M/s.Triad Trading Services Private Limited and accused Nos.6 and 7 are the Directors of M/s. Custodial Services India Private Limited.

[ii] The respondent herein/complainant is the Assistant Director, Directorate of Enforcement, Chennai. The complainant, who is a public servant, is authorized to file this complaint under Section 45(1) of the PML Act. The case of the respondent herein/complainant is that the Economic Offence Wing, Chennai, had registered a criminal case in FIR No.05/2013 dated 21.10.2013 for the offences committed under Sections 406, 420 and 120-B of IPC r/w. Section 5 of TNPID Act against the revision petitioner for non-refund of deposit money and interest approximately around Rs.150 Crores to the depositors by M/s.Vishwapriya Financial Services Limited wherein, the revision petitioner was the Managing Director. He was arrested by the Economic Offences Wing (EOW), Chennai, on 19.09.2015. The case is under final stage of investigation by Economic Offences Wing, Chennai.

[iii] In addition to the above EOW case, the Central Bureau of Investigation, BS & FS, Bangalore, has registered an FIR in RCA (E)/2013 on 26.07.2013 for the alleged commission of offences under Sections 120-B r/w. 420 IPC 1860 and Sections 13(2) r/w. 13(1) (d) of the Prevention of Corruption Act, 1988 for Bank Fraud. After due investigation, the CBI has filed Charge Sheet No.9635/2014 dated 13.08.2014 which has been taken on file in the above said calendar case.

[iv] As per the Charge Sheet filed by the CBI, since the offence under Section 420 of IPC is a scheduled offence by virtue of Section 2(1)(x) & (y) of the PML Act, and as there was a prima facie case for offence of money laundering under Section 3 of the PML Act, the Directorate of Enforcement, recorded an Enforcement Case Information Report No.8/2014 dated 26.09.2014 against the revision petitioner herein and

others and initiated investigations under PML Act, and arrested the revision petitioner herein. In the statement recorded under Section 50(2) & (3) of PML Act, in the presence of jail authorities, the revision petitioner has stated about the various loan facilities availed by him from various banks for establishing Subhiksha Chain of Stores and ECIR details etc. However, he has not revealed the whereabouts of the proceeds of crime which involved in money laundering.

[v] The proceeds of crime involved as per the CBI Charge Sheet is Rs.77 Crores and the Directorate of Enforcement has attached the proceeds of crime for the value of only Rs.9.47 Crores so far. The investigation under PML Act revealed that the accused has defaulted around Rs.700 crores (approx) from the consortium of bankers. The accused, who was the Managing Director of M/s. Viswapriya Financial Services Limited, did not pay the depositors to the tune of Rs.150 crores in the ongoing case registered by EOW, Chennai. The investigation under PML Act revealed that the revision petitioner herein has committed offences of money laundering under Section 3 punishable under Section 4 of the PML Act. Hence, the respondent herein has filed a complaint in C.C.No.4 of 2018 against the revision petitioner herein and others on 19.04.2018 seeking leave of the Court to file supplementary complaint. The complaint lodged by the Bank of Baroda is based on records. The offence of money laundering is a continuing offence having retrospective and overriding effect. The issue of retrospective effect of the provisions of the PML Act is pending before the Supreme Court in various cases. The complaint filed by the respondent herein/complainant in C.C.No.4 of 2018 against the revision petitioner and others on 19.04.2018 was taken cognizance by the Special Court designated for trying the offence of PML Act, Chennai, and trial is pending. Taking cognizance of the above said case in C.C.No.4 of 2018 is challenged by the Managing Director and Director of the first accused company.

4. (i) Mr.P.Kumaresan, learned counsel appearing for the revision petitioner/A.2 would contend that the Enforcement Case Information Report (hereinafter referred to as ECIR) itself sets out that the same was registered based on the final report filed by CBI and taken on file by the learned Additional Chief Metropolitan Magistrate, Egmore, as C.C.No.9635 of 2014 in respect of alleged offence of the revision petitioner/A.2 and M/s.Subhiksha Trading Services Ltd.,/A.1 under Section 420 IPC in respect of loans availed from Bank of Baroda by the first accused between 31.12.2007 and 15.05.2008. He further submitted that the respondent herein relying on the investigations claimed to be conducted by it since 2014 when ECIR 8/2014 was registered has filed a complaint with the learned Principal Sessions Judge, Chennai, dated NIL of March 2018 and such complaint was presented on 19.04.2018 before the learned Principal Sessions Judge, Chennai, claiming that the seven accused named therein

including the revision petitioner herein had committed offences of money laundering in respect of the five properties set out in the 2 PAOs dated 21.03.2016 and 28.03.2018.

4 (ii). Learned counsel appearing for the revision petitioner also contended that the learned Principal Sessions Judge has mechanically taken the complaint on file and directed to issue summons to the accused under Section 204 of Cr.P.C. without examining the complaint in any manner and without noting that the complaint actually revealed no case for further proceeding and was bound to have been dismissed as per Section 203 of Cr.P.C. as even if the complaint averments were taken uncontroverted and the prevailing law of the land applied to such facts, no prosecutable offence was at all made out by the complainant against any of the accused named in the complaint including the revision petitioner herein.

4 (iii). Based upon the above factual position, the learned counsel appearing for the revision petitioner/A.2 would contend that the learned Principal Sessions Judge had also wholly failed to note that the officer concerned was not competent to file the complaint in accordance with the notifications set out in the complaint itself.

4 (iv). It is contended that the learned Principal Sessions Judge has mechanically taken the complaint on file as C.C.No.4 of 2018 and directed for issuance of process by way of summons under Section 204 of Cr.P.C. and failed to note that it was the admitted case of the complainant in the complaint itself that the investigation into ECIR No.8/2014, in which the complaint was filed, was incomplete and that the complainant had interalia sought permission at para Nos.35 and 36 of the complaint to amend the complaint adding further accused and file additional complaint due to investigation into the said matter being stated as ongoing.

4 (v). Further, it is submitted by the learned counsel appearing for the revision petitioner that the learned Principal Sessions Judge ought to have returned the complaint to the respondent with a direction to present the same in final form post completion of investigation and could not have received it and taken on file, when the complaint itself set out that the investigation is incomplete and an incomplete complaint cannot be taken on file for being proceeded with. It is also submitted that the learned Principal Sessions Judge had not perused the complaint and documents are exfacie evident from the fact that the complainant specifically admits incomplete investigation and seeks permission to amend/the complaint, add accused, file additional complaint, in view of the admitted facts of incomplete investigation and despite none of them being permissible in a complaint case, taken cognizance as per Section 190(1)b of Cr.P.C.

5. The learned counsel appearing for the revision petitioner also drawn my attention to the fact that Section 420 IPC was not a offence under the PML Act till 01.06.2009 and as such, for the period between 31.12.2007 and 15.05.2008, even assuming that the revision petitioner and the first accused had committed the offence under Section 420 IPC as alleged in the final report filed by the CBI before the Special Court, since Section 420 IPC was not a offence under PML Act, at any point of time, during the relevant alleged period, the same cannot be taken by the Act and stated that the position of law regarding criminal laws not having any retrospective effect is guaranteed under Article 20(1) of the Constitution of India and hence, taking cognizance is bad in law. The first requirement for money laundering case is that the property alleged to have been derived from crime of offence.

6. In the instant case, Section 420 IPC is not a offence for the period between 2007 and 2008. Therefore, without taking note of the said fact, the designated Court mechanically taken cognizance and prayed to set aside the same.

7. According to the revision petitioner, as per the complaint, seven accused were in possession of the property even in the year 1997. When such being the factual position, they ought not to have included the property and this vital fact has not been taken into consideration by the designated Court before taking cognizance.

8. Learned counsel appearing for the revision petitioner also contended that the properties mentioned in the schedule of the complaint are not proceeds of crime and contended that there can be no retrospective application to criminal law to treat Section 420 IPC which was made as a offence only on 01.06.2009 as applicable to offence under Section 420 IPC committed in the year 2007-2008. As such, the property cannot be included in the complaint.

9. It is further contended that five properties are set out in the complaint on the ground that they are tainted and involved in money laundering. However, those properties, as per the schedule given in the complaint itself, are being held by the revision petitioner and associates even many years prior to the loan disbursement by the Bank of Baroda to the first accused-M/s. Subhiksha Trading Services Ltd., which were only in the year 2007 and 2008. However, the properties are completely acquired by the revision petitioner and his wife even in the year 1998 and 2004 and hence, inclusion of those properties is bad in law.

10. The learned counsel for the revision petitioner also contended that the complaint is wholly merit less even if the contentions in the complaint are taken, at face value as the

complaint fails at the very threshold that there can be no retrospective application of criminal law to treat Section 420 IPC, made an offence only on 01.06.2009, applicable to offence under Section 420 IPC set out as committed in 2007-2008 by the revision petitioner and the first accused. The complaint was bound to have been rejected under Section 203 Cr.P.C. by the learned Principal Sessions Judge even for this one reason alone. The complaint setting out five properties as tainted and involved in money laundering when such properties are held many years prior to the loan disbursement by Bank of Baroda to the first accused which was only in the year 2007 and 2008 makes the complaint wholly absurd even chronologically as properties acquired by persons in 1997, 1998 and 2004 cannot be now held tainted by a transaction of loan in the year 2007-2008 and that when such loan is wholly unrelated to said properties. The learned Principal Sessions Judge having taken cognizance of the offences as a complaint case has failed to notice that there is no provision in the Criminal Procedure Code allowing continuation of investigation in complaint cases unlike in the case of cases instituted on police report where Section 173(8) Cr.P.C. enables such further investigation. The learned Principal sessions Judge has failed to note that the complainant in the complaint itself has admitted that the investigation is incomplete and has sought permission inter alia to file additional complaints, add names of additional accused and alter the complaint etc., none of which are permissible in complaint cases.

11. The learned Principal Sessions Judge has wholly failed to note that Accused Nos.3, 4 and 6 are set out as witnesses at Sl.Nos.13, 16 and 24 in the complaint making it unambiguous that the complaint was wholly unworthy of cognizance as the learned Principal Sessions Judge ought to have realized that no accused can be complainant's witness in the complaint. That the complaint was also bound to have been rejected for reason that the Special Court was barred from taking cognizance of any offence under Section 3 of PML Act on complaint by any person other than the Director of Enforcement and the present complaint filed by the respondent in capacity as set out as Additional Director could not have been taken on file in view of the bar under Section 45 of PML Act.

12. Per contra, Mr.G.Rajagopal, learned Additional Solicitor General assisted by M/s.G.Hema, learned Special Public Prosecutor appearing for respondent would contend that issuance of retrospective effect of the provisions of the PML Act is pending before the Supreme Court and they have filed a petition for Special Leave to Appeal (Crl.) No.4466/2017, wherein, the Supreme Court has ordered as under:-

"Leave granted.

In the meantime, the impugned judgment and order will not operate as a precedent.

Liberty is granted to file Rejoinder Affidavit within a period of 4 weeks from today."

13. Further, in the Special Leave Petition (Criminal) Diary No.4968/2018, the Supreme Court has ordered as under:-

"Delay condoned.

Leave granted.

Pending appeal, the impugned judgment and order will not operate as a precedent.

Tag with criminal No.1269/2017 and connected matters."

14. In view of the orders of the Supreme Court as stated supra, the point of retrospective operates the provisions of the PML Act, I am not inclined to address the issue as the same is pending before the Supreme Court.

15. Learned Additional Solicitor General also placed before this Court regarding the competency of the Assistant Director, Directorate of Enforcement to file a complaint under Section 45 of the PML Act before the designated Court and approved Order in F.No.6/14/2008-ES dated 11.11.2014 of Government of India, Ministry of Finance, Department of Revenue, New Delhi and hence, the contention of the learned counsel appearing for the revision petitioner that the complaint instituted by the Assistant Director, Directorate of Enforcement lacks competency and has no legs to stand and in view of the specific empowerment by delegated power, I hold that the complaint filed by the Assistant Director, Directorate of Enforcement is maintainable under Section 45 of the PML Act.

16. It is to be stated that the object of the PML Act is to prevent Money Laundering and to provide for confiscation of the property derived from or involved in money laundering and for matters connected therewith or incidental thereto. The importance and purpose of Section 3 of the PML Act is to define the activities which constitute the offence of money laundering which includes (i) directly or indirectly attempting to indulge in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property or (ii) knowingly assisting in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projection or claiming it as untainted property or (iii) knowingly is a party or is actually connected in any process or activity connected with the proceeds of crime including it as untainted property. The principal aspect that constitutes the offence of money laundering is involving in the process or activity connected with the proceeds of crime and projecting it as untainted property.

17. The next contention of the learned counsel appearing for the revision petitioner/A.2 that what was filed before the designated Court is only an incomplete interim report and

taking cognizance of the incomplete report is bad in law and even as per the averments in the complaint, they have stated that they wanted further time to do further investigation and to file a supplementary charge.

18. Learned counsel appearing for the revision petitioner drawn my attention to the various grounds raised in the memorandum of grounds of criminal revision and contended that there is no provision in the Criminal Procedure Code allowing continuation of investigation in a complaint case unlike the complaint is instituted by the police report and stated in the complaint that the investigation is only partial and they have filed the complaint with liberty to file supplementary complaint or additional investigation.

19. Mr.G.Rajagopal, learned Additional Solicitor General would contend that although the power to conduct further investigation is envisaged in Section 173(8) of the Code relating to police investigation under Chapter XII of the Criminal Procedure Code, the said powers would extend to investigation of a crime, cases where investigations are conducted by any other agency under a Special Statute, namely PML Act and restricted his argument to Section 2(h) of the Code of Criminal Procedure and also relied upon the decision reported in (1994) 3 SCC 440 [Directorate of Enforcement Vs. Deepak Mukherjee]

20. Section 2(h) of the Criminal Procedure Code deals with investigation which reads as follows:-

"(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf"

21. While considering the said provision and also with that of the further investigation as stated in Section 173(8) of Cr.P.C., the Calcutta High Court in the case of Amit Banerjee Vs. Shri Manoj Kumar, Assistant Director, Enforcement Directorate in C.R.M.1209 of 2016, has held as follows:-

"Coming to the issue of filing of the supplementary complaint, I find that the said complaint was presented before the Special Court pursuant to the leave granted by the Special Court to conduct further investigation. Although the power to conduct further investigation is envisaged in Section 173(8) of the Code relating to police investigation under Chapter XII of the Code, the said powers would extend to investigation of a crime, cases where investigations are conducted under the special law conducted by any other agency under a special statute, namely PML Act, in view of the fact that 'investigation' as defined in Section

2(h) of the Code is to include investigation conducted by other agencies under special statutes as has been held in Directorate of Enforcement Vs. Deepak Mukherjee in (1994) 3 SCC 440."

22. After going through the decision and also taking note of the "investigation" as defined under Section 2(h) of the Criminal Procedure Code with that of Section 173(8) of the Criminal Procedure Code, I am of the view that after obtaining necessary permission or leave from the Special Court, the Enforcement Directorate can file supplementary complaint and the same is in consonance with the PML Act.

23. Furthermore, it is to be stated that if there are more than one offenders, who have committed offence or offences in the course of same transaction, the accused are to be tried together as envisaged under Section 223 of Cr.P.C. Therefore, filing of subsequent complaint and the prayer of the prosecuting agency to prosecute the offenders including the revision petitioner herein in the subsequent complaint along with offenders arrayed in the earlier complaint cannot be said to be a procedure which is alien to law or prejudice to the interest of the complaint.

24. The Apex Court in the case of S.R. Sukumar Vs. S.Sunad Raghuram reported in (2015) 9 Supreme Court Cases 609 has held that there are limited powers to amend a complaint and in order to correct patent exfacie errors, which do not prejudice the accused or in certain circumstances where the trial of the offence or the offenders in the subsequent complaint are to be conducted together. In the aforesaid factual matrix, I am of the view that the filing of the subsequent complaint and the prayer to proceed against the accused therein along with accused persons in the earlier complaint is in no way prejudicial to the interest of the accused persons and is, in fact, for the ends of justice and to avoid multiplicity of proceedings.

25. At this juncture, it is relevant to refer Section 65 of the PML Act which reads as follows:-

"65. Code of Criminal Procedure, 1973 to apply.- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provision of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."

26. Therefore, on consideration of the above two decisions and also taking note of the express provisions contained in Section 65 of the PML Act with regard to the procedure as contemplated under Section 173(8) of Cr.P.C., further investigation can be carried out by the Director of Enforcement and such being the case, a prayer for further

investigation and leave or liberty to file supplementary complaint cannot be termed as contra to provisions of the PML Act and as such, the prayer as stated in the complaint which was taken cognizance by the Special designated Court cannot be termed as illegal and accordingly, the contention of the learned counsel appearing for the revision petitioner is that the complaint has been filed in a half cooked manner to cover the statutory period meant for filing of the final report is considered and held that in view of the provisions contained in Section 65 of the PML Act which is not inconsistent with sub-Section 2 of Section 173 of the Criminal Procedure Code and hence, the same cannot be faulted with and the said contention of the learned counsel appearing for the revision petitioner is hereby rejected. Furthermore, the High Court of Ranchi in the case of Narendra Mohan Singh Vs. Directorate of Enforcement in Crl.M.P.No.2686 of 2013 has held that the maintainability of the supplementary complaint on the premise that the provisions as contained in Section 44(1)(b) and 45 of the PML Act, refers to "a complaint". Even if such reference is thereof "a complaint", it never prevents for filing of supplementary complaint as the reference of a complaint has been made in those provisions in the context that whenever a complaint filed by an authority authorized, court may take cognizance over it.

27. After going through the complaint as contained in the above said Sections 44 (1) (b) and 45 of PML Act along with Section 65 of PML Act and taking note of the primary object of the constituents of the offence of money laundering, I am of the view that after further investigation, a supplementary complaint can be lodged in the same manner in which supplementary charge is submitted in a police case and to give restricted meaning as contended by the learned counsel appearing for the revision petitioner, which will lead to a situation that after filing of the complaint, if the culpability of other persons is found during the subsequent investigation, those culprits and the accused cannot be prosecuted which clearly is against the intention of the legislature and the object of PML Act.

28. The object of the PML Act is to prevent money laundering and to provide for confiscation of the property derived from, or involved in, money laundering and for matters connected there with or incidental thereto.

29. Thus, I concur with the view expressed by the Ranchi High Court in the case of Narendra Mohan Singh Vs. Directorate of Enforcement in Crl.M.P.No.2686 of 2013 to the limited extent it relating to further investigation and filing of supplementary complaint and it is further to be noted that sub-section (1) of section 173 of the Criminal Procedure Code speaks about report to be filed after investigation without delay, but does not provide for any limitation for the same. Moreover, Section 173(8) of the Criminal Procedure Code

provides for further investigation and that there are no contrary provisions in the PML Act and hence, further investigation can be carried out by the Directorate of Enforcement even under the PML Act.

30. Hence, I have no hesitation to hold that supplementary complaint can be filed based upon the further investigation and leave and liberty sought for in the present complaint cannot be termed as illegal and incomplete as claimed by the revision petitioner and after obtaining special permission for further investigation as provided under the Criminal Procedure Code under Section 65 of the PML Act, the Enforcement Directorate can complete the further investigation and file a supplementary complaint in consonance with Section 44 (1) (b) and 45 of the PML Act and hence, the above contention of the learned counsel appearing for the revision petitioner is hereby rejected on the above reasoning and hence, all the contentions raised by the learned counsel appearing for the revision petitioner with regard to retrospective operations of the Act in respect of Section 420 of IPC and competency for filing the complaint before the designated Court and seeking special leave and liberty for further investigation and to file supplementary complaint after further investigation would not vitiate the cognizance as contended by the learned counsel for the revision petitioner and for the reasons mentioned in the preceding paragraphs, I do not find any illegality or irregularity in the cognizance taken by the learned Principal Sessions Judge, City Civil Court, designated Court under PML Act, Chennai. Since, the challenge is made as to the order of attachment of property standing in the name of wife and others, its probate value can be gone into only at the time of trial and accordingly, the said contention also stands rejected.

31. Accordingly, the criminal revision case is devoid of merits and the same is dismissed. The connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Principal Sessions Judge,
Chennai.

2. The Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office,
3rd Floor, C Block,
Murugesu Naicker Complex,
No.84, Greaves Road,
Chennai - 600 006.

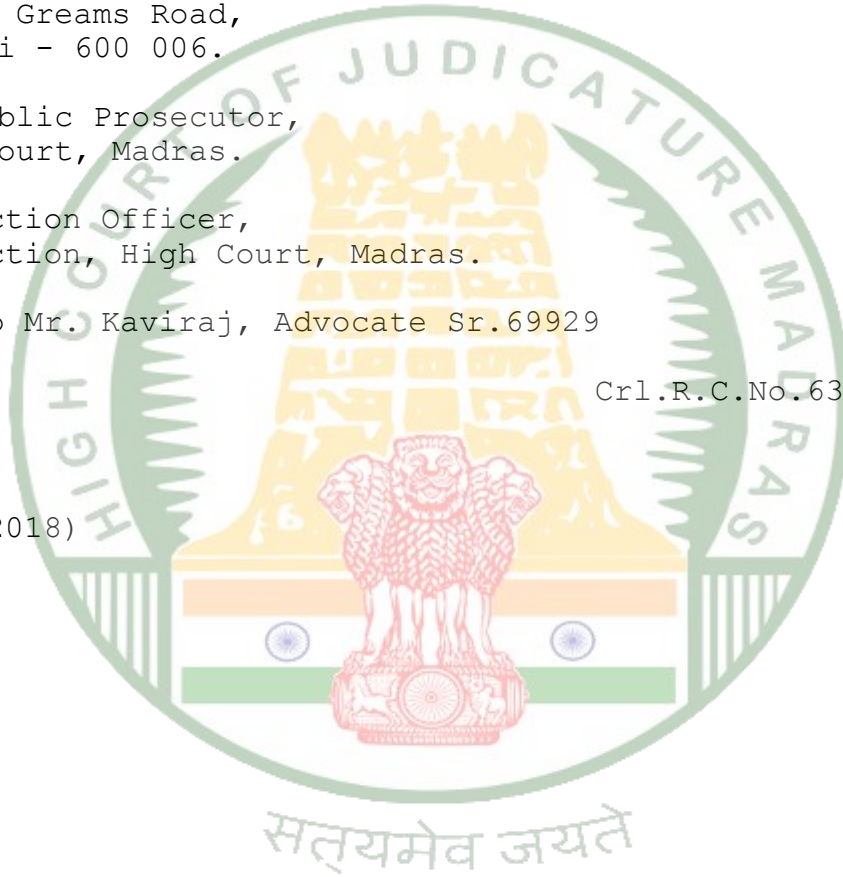
3. The Public Prosecutor,
High Court, Madras.

4. The Section Officer,
Crl.Section, High Court, Madras.

+ 2 ccs to Mr. Kaviraj, Advocate Sr.69929

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BR(CO)
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