IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.02.2018

Orders Reserved on	Orders Pronounced on
22.09.2017	28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.16461 & 19966 of 2010
and
M.P.Nos.1 & 2 of 2010 (in both Crl.O.Ps)

Crl.O.P.No.16461 of 2010:

Arul Selvan
The Authorised Officer
Indian Bank, ARMB
No.55, Wellington Estate
Ethiraj Salai
Chennai-600 008 ... Petitioner / 2nd Accused

-vs-

1.A.H.Abdul Hameed
Field Manager
M/s.G.V.Films Limited
1, Five Rathas Street
Mahabalipuram ... 1st Respondent / Complainant

2.K.Kannammal
The Tashildar
Thirukazhukundram
Office of the Tashildar
Thirukazhukundram ... 2nd Respondent / 1st Accused

3.Irudayaraj
Surveyor
Office of the Tashildar
Thirukazhukundram

4.Rajendran
Revenue Inspector
Mahabalipuram

5.Ponnumathi
Village Administrative Officer
Mahabalipuram ... Respondents 3 to 5 /Accused Nos.3 to 5

Crl.O.P.No.19966 of 2010:

1.K.Kannammal
The Tashildar
Thirukazhukundram
Office of the Tashildar
Thirukazhukundram

2.Irudayaraj
Surveyor
Office of the Tashildar
Thirukazhukundram

3.Rajendran
Revenue Inspector
Mahabalipuram

4.Ponnumathi
Village Administrative Officer
Mahabalipuram ... Petitioners / Accused 1, 3 to 5

-vs-

A.H.Abdul Hameed
Field Manager
M/s.G.V.Films Limited
1, Five Rathas Street
Mahabalipuram ... Respondent / Complainant

PRAYER (in both Crl.O.P.Nos.16461 & 19966 of 2010): Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure seeking to call for the records in C.C.No.80 of 2010, on the file of the District Munsif-cum-Judicial Magistrate, Thirukazhukundram and quash the same.

For Petitioners : Mr.G.Masilamani, Senior Counsel
(in both Crl.O.Ps) for Mr.T.Sathiyamoorthy

For Respondent : Mr.V.Bhiman
(in both Crl.O.Ps)

COMMON ORDER

Since the relief sought for in both the criminal original petitions are one and the same seeking to quash the very same proceedings, they have been clubbed and heard together and are being disposed of by this common order. R2 to R5 who are also accused in C.C.No.80 of of 2010, on the file of the District Munsif-cum-Judicial Magistrate, Thirukazhukundram were added as formal parties.

2. Crl.O.P.No.16461 of 2010 has been filed by the Petitioner/A2 and Crl.O.P.No.19966 of 2010 has been filed by the petitioners/A1, A3, A4 and A5, seeking to quash the proceedings, initiated against them, in C.C.No.80 of 2010, pending on the learned Judicial Magistrate, Thirukazhukundram for offences u/s 341, 392, 447, 506(i), 120(b) r/w 34 IPC on the complaint filed by the respondent/complainant A.H.Abdul Hameed. Since R2 to R5 in Crl.O.P.No.16461 of 2010 have filed separate quash petition in Crl.O.P.No.19966 of 2010, R2 to R5 were deleted as per the order of this court dated 18.08.2017 passed in Crl.O.P.No.16461 of 2010.

3. The case of the complainant in brief is that he is the Field Manager of M/s.G.V.Films Limited (hereinafter, referred to as “the Company”), a Public Limited Company and the complaint schedule property (hereinafter, referred to as “the property”) is in absolute possession and enjoyment of the Company. The Company had appointed the complainant as its Field Manager to take care of and manage the property, wherein he is residing with his family for the past sixteen years. Furthermore, the complainant had also appointed Logaprakasam and Noorul Ameen as the security people for his assistance. Several litigations have been pending including the declaration of title and redemption of mortgage. The property had been mortgaged with the Indian Bank and the Bank has initiated proceedings, under the SARFAESI Act, for recovering its dues and sold the property to some third party in an auction. When such being the position, on 20.05.2009, the second accused along with the other Bank Officers attempted to dispossess the complainant from the property with the help of the local Police. On the same day, the complainant lodged a complaint before the concerned Police and obtained an order of status quo from this Court by filing O.A.Nos.2257 and 2258 of 2009. In the appeals viz., O.S.A.Nos.211 and 212 of 2009, preferred by the Company against the dismissal of the applications filed for injunction, this Court directed the Bank and the parties concerned not to alter the physical features of the property for two weeks. Taking advantage of such situation, on 24.07.2009, at about 07.30 a.m., at the instigation of the second accused, the other accused persons accompanied by several Police Officers,Police Constables, Revenue Officers and several unknown persons forcibly entered into the property by breaking open the locked gate and demanded the complainant to vacate and deliver the possession of the property forthwith to the Bank and attempted to take the articles available in the property. Thereafter, on the warning given by the counsel for the complainant, the property was again locked and sealed by the Police. According to the complainant, the accused had trespassed into the property illegally, constrained the complainant and his family members by

threat in order to take away the valuable articles and thereby committed the offence punishable under Sections 341, 392, 447 and 506(i), 120(b) r/w 34 I.P.C. Seeking to punish the accused for the above said offence, the complainant lodged a private complaint against them, under Section 200 Cr.P.C., before the learned Judicial Magistrate, Thirukazhukundram, and the same has been taken on file as C.C.No.80 of 2010. Seeking to quash the said proceedings initiated by the complainant, the petitioners are before this Court.

4. Mr.G.Masilamani, the learned Senior Counsel appearing for thepetitioners would submit that the complaint is barred under Section 32 of the SARFAESI Act, 2002 and he would submit that the entire action has been initiated pursuant to the action taken under the SARFAESI Act, 2002 and that the petitioners have acted as per the directions of the orders passed by the Debts Recovery Tribunal and that as per Section 32 of the SARFAESI Act, 2002, the acts done by the petitioners are not done with any personal or ill motive and that as per Section 32 of the SARFAESI Act, 2002 no suit, prosecution or other legal proceedings shall lie against them for anything done in good faith under this Act. He would also submit that the respondent/complainant who is a person setup by the unsuccessful borrower in their ill attempts to obstruct the Bank from taking possession of the mortgaged properties by the officials, while suppressing the orders and findings of the competent courts in earlier proceedings had knowingly and willfully made false statements and thereby by filing this private complaint made an attempt to arm twist and harass the officials who have taken action against the defaulters in good faith. He would submit that four companies promoted by the same Directors namely Sujatha Films Limited, borrowed money from Indian Bank and their sister concerns by name M/s. Parsn Medicinal Plants Private Limited and M/s. Coconut Groves mortgaged the properties standing in the name of the said companies and consequent to the default in payment of loan, recovery proceedings were initiated under the SARFAESI Act.

5. The Learned Senior Counsel would further submit that initially first respondent /complainant claiming himself to be a lessee in respect of one of the mortgagor company filed appeal under SARFAESI Act and challenged the action and the same was dismissed. Thereafter, three companies had also challenged the proceedings and all the attempts made by them failed and all the petitions were dismissed. Thereafter yet another company by name M/s. G.V.Films Limited promoted by the same Promoter/Directors filed civil suit before this Court claiming right by adverse possession against the mortgagor companies and attempted to derail the SARFAESI proceedings. The Division Bench of this Court vide order dated 17.07.2009 held that M/s.

G.V.Films Limited is not in possession of the mortgaged property. Whilst the matter being so, on 15.05.2009 the Bank had initiated proceedings under Section 14 of the SARFAESI Act, 2002 and filed an application for taking possession before the District Magistrate from the Mortgagors. On 21.07.2009 the District Magistrate passed an order under Section 14 of the SARFAESI Act directing the police and Revenue Officials to assist the petitioner in taking possession of the property and thereby pursuant to the order passed by the District Magistrate under Section 14 of the SARFAESI Act, possession was taken on 24.07.2009. No complaint has been filed by the borrower or the Mortgagor company against the action taken by the Bank through its officials and no complaint has been filed by the borrower and the Mortgagor against the police and Revenue Officials who assisted recovery proceedings whereas on the instigation of the borrowers the private complaint had been filed by the respondent/complainant with false allegations suppressing the earlier proceedings in connection with the loans and the properties.

6. The learned Senior Counsel would submit that even in the complaint in para 1 to 11 it is admitted that A1 is the Tahsildar, A2 is the Authorized Officer of the Indian Bank, A3 is the Surveyor, A4 is the Revenue Inspector and A5 is the Village Administrative Officer. Further it had also been admitted by the complainant that the property was under mortgage with the Indian Bank and that recovery proceedings under SARFAESI Act has been initiated and the property has also been sold. It is also admitted that possession was taken in the presence of Revenue Officials, Police Officers and Constables and that A1 had also taken inventory of the articles present in the property. Hence even as per the complainant the proceedings had been taken pursuant to the SARFAESI proceedings. When that being so, when there is specific bar under Section 32 of the SARFAESI Act,when the officers are protected under the Act for action taken by them the learned Magistrate erred in taking cognizance of the complaint when the action is initiated in good faith for taking possession of the property which was under mortgage with Indian Bank. Further, it is not a case where the possession was taken by using illegal means. Even in the complaint it was admitted that the possession was taken in the presence of police officers and Revenue Officials and inventory of articles available in the property were taken and kept under lock and key with the seal of police. The custody was also handed over to the police.

7. In support of his contention that the officers are protected in respect of the action taken in good faith, the learned Senior Counsel relied on the judgments reported in: (i) (2015) 6 SCC 287 in the case of Priyanka Srivastava Vs. State of

U.P.; and (ii) (2008) 9 SCC 613 Goondla Venkateswarlu vs. State of Andhra Pradesh and another.

8. The learned Senior Counsel would submit that the proceedings is nothing but an abuse of process of law wherein the complainant had made false averrments which are contrary to and suppressing the various orders passed by this Hon'ble Court. The learned Senior Counsel would submit that the Division Bench of this Court did not restrain the Bank from taking possession of the property whereas the Division Bench of this Court had directed the Bank not to alter the physical features of the property for giving categorical finding that M/s. G.V.Films Limited is not in possession of the suit property. He would submit that in para 11 of the complaint a reference was made in respect of the order dated 17.07.2009 in OSA No.211 of 2009 and 212 of 2009,whereas in the very same order at para 8 it had been held by the Division Bench of this Court that M/s. G.V.Films Limited is not in possession of the suit property and is also not the owner of the property. Whereas in the complaint at para 7 it had been falsely averred by the complainant that M/s. G.V.Films Limited is in possession of the property which is contrary to the categoric finding of the Division Bench of this Court that M/s. G.V.Films Limited is not in possession of the property and thereby by filing a false statement that M/s. G.V.Films Limited is in possession and that the claim of the complainant that he is the employee of M/s. G.V.Films Limited is not only self contradictory but an absolute falsity thereby making it abundantly clear that the borrower company, Mortgagor company and M/s. G.V.Films Limited who were all promoted by the same group of Directors after losing all legal battles in order to take revenge and harass the officers and the Bank had set up this complainant to file the private complaint. Further, the complainant has not only suppressed the real facts but also knowingly made false statement and given false information about the Court orders. The learned senior counsel would submit that the respondent/complainant filed S.A.No.1/2005 before the Debt Recovery Tribunal-1 at Chennai challenging the statutory possession notice issued under section 13(4) of the Act wherein he had claimed himself to be a lessee in the scheduled property running a diary farm with a prayer to restrain the bank from taking physical possession whereas in the private complaint the respondent/complainant claims to be the employee of M/s. G.V.Films Limited. At para 9 of the complaint he had stated that he is the Field Manager of M/s. G.V.Films Limited and is residing in vast stretch of land measuring 72 Acres which is in absolute possession and enjoyment of the said company and it had also been stated that the company had appointed him as Field Manager to take care and manage the said property and is residing there with his family for the past more than 15 years.

9. The learned Senior Counsel would submit that the petitioner in Crl.O.P 16461/2010 is a full time Senior Officer with the designation as Assistant General Manager and the petitioners in Crl.O.P.No 19996/2010 are revenue officials who assisted the bank in the recovery proceedings pursuant to statutory orders whereas the respondent/complaint instead of filing appropriate petitions under the SARFAESI Act had with malicious intention filed the criminal complaint to harass the officials who had discharged their official functions. He would submit that the instant case rightly falls within parameters laid down by the judgment of the Apex Court reported in 1992 supp 1 SCC 335 in the case of State of Haryana vs. Bhajan Lal since the criminal proceedings is manifestly attended with malafides and the proceedings is maliciously initiated with ulterior motive to wreck vengeance against the officials who had initiated recovery proceedings to recover the public monies and especially under the provisions of law and he would submit that continuation of the proceedings will adversely affect the prospects of the petitioner who is put to irreparable injury and inconvenience. He would also contend that the complaint was filed by the respondent/complainant for offences under Section 341,392,447,and 506(i) I.P.C and the learned Magistrate had issued summons for to answer charge under section 341,379,120(b) r/w Section 34 I.P.C. and that even reading the complaint in entirety no offences alleged are made out in the complaint against the petitioners/accused.

10. Per contra Mr.V.Bhiman, learned counsel appearing for the respondent/complainant in both petitions would vehemently oppose the arguments made by the learned counsel and would contend that the petitioners/respondents without following the statutory Rules and provisions acted in a high handed and arbitrary manner and had dispossessed the respondent/complainant and also committed offence of wrongful restraint and theft. He would also submit that though an order was passed by this Court on 17.07.2009 in O.S.A.No.211 of 2009, granting two weeks time to pay an amount of Rs.55.25 Crores and till such time the respondents were directed not to alter the physical features of the property, the petitioners/accused with scant regard and respect to the order evicted the respondent/complainant on 24.07.2009 by force. Thereby the complainant was constrained to file the complaint.

11. In respect of the above submission, learned Senior Counsel for the petitioners contended that the order of this Hon'ble Court in OSA No.211 of 2009 is clear and it had only stated that the petitioners shall not alter the physical features of the property and not otherwise and that the petitioners/accused had not altered the physical features of the property. He would also further submit that in respect of the possession there is a categoric finding that possession was

already taken by the Bank and thereby submitted that the complainant was set up to threaten the officials to prevent them from doing their legal duty.

12. I have heard the rival submissions of both sides and carefully perused the materials placed on record.

13. In Priyanka Srivastava Vs. State of U.P. (2015) 6 SCC 287, the Hon'ble Supreme Court has held as follows:-(Para 19,32 and 33)

> " 19. We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) Cr.P.C., as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken it, needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one time settlement which the financial institution possibly might not have acceded. That apart, despite agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bonafide. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no efforts were made. "
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> 32.The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.
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> 33. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as
> follows :
>
> "32. Protection of action taken in good faith.-
> No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of

his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."

14. In (2008) 9 SCC 613 Goondla Venkateswarlu vs. State of Andhra Pradesh and another, the Hon'ble Apex Court has held as follows:- (Paragraphs 20 to 25):

> Section 37 like Sec. 197 of the Code of Criminal Procedure aims at preventing vexatious prosecution and proceedings against public servants.
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> 20. Section 37 puts embargo on institution of suits, prosecution or other proceedings against any officer or any servant of the State Government for any act done or purported to be done under the Act without previous sanction of the State Government. There is a further embargo i.e. no such suit, prosecution or proceeding shall be instituted after the expiry of six months from the date of the act complained of. Sub-sec. (2) affords protection to the officer referred to above in respect of an act if the same was done in good faith in the course of execution of duties imposed or the discharge of functions entrusted by or under the Act.
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> 21. "Good faith" according to the definition in General Clauses Act means a thing, which is in fact done honestly whether it is done negligently or not (See H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scinida Bahadur of Gwalior etc. V/s. Union of India and Anr., 1971 1 SCC 85.
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> 22. Anything done with due care and attention which is not malafide is presumed to have been done in "good faith" (See Madhavrao Narayanrao Patwardhan V/s. Ram Krishan Govind Bhanu and Ors., 1959 0 SCR 564.
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> 23. Section 197 of the Code of Criminal Procedure provides for protection to public servants in discharge of official duties. There is a need to balance between protection to officers and protection to citizens.
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> 24. In Rakesh Kumar Mishra V/s. State of Bihar and Ors., 2006 1 SCC 557 it was observed as follows:
>
> "The protection given u/s. 197 is to protect responsible public servants against the institution of possibly vexatious criminal

proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Sec. 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Sec. 197 does not get immediately attracted on institution of the complaint case."

15. In the instant case the petitioners are undoubtedly officials of the Bank and officials working in the Revenue Department. The alleged acts committed by them and the action taken by them is consequent to the orders passed by the appropriate Debt Recovery Tribunal and this Hon'ble Court in respect of recovery of loans. Nowhere in the complaint it has been stated that the petitioners/accused acted with personal grudge or ill-motive and nothing has been averred in the complaint that they have acted with bad faith. Moreover no personal allegations are made against the petitioners/accused that they have committed any act with ill intention. It is seen that at one point of time the respondent/complainant in S.A. 1/2005 file before DRT -1 Chennai had projected himself to be a lessee of M/s. G.V.Films Limited and whereas in the complaint he had projected himself as the field manager and employee of M/s. G.V.Films Limited. From the above it is clear that the complainant had been set up by the defaulters who had attempted to thwart the proceedings taken by the officials to take appropriate legal action. Further reading the complaint in entirety the allegations do not make out a case against the petitioners/accused for the offences alleged. The undisputed documents filed along with the petition would go to show that the complainant had chosen to state incorrect and false facts by suppressing material facts before the Magistrate to secure an improper order to cause needless hardship to the petitioners/accused. As rightly pointed out by the learned Senior Counsel for the petitioners it is a case where the proceedings is initiated with mala fidies.

16. In 1992 supp 1 SCC 335 in the case of State of Haryana vs. Bhajan Lal. The Hon'ble Apex Court held as follows:

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide-ï7 myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the un-controverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar en-grafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

17. I have carefully and consciously gone through the petitions and the documents filed along with the petitions and heard the learned counsels in detail. In my considered opinion the proceedings pending in C.C.No.80 of 2010, on the file of the District Munsif-cum-Judicial Magistrate, Thirukazhukundram, is nothing but an abuse of process of law.

18. In view of the above, the proceedings pending in C.C.No.80 of 2010, on the file of the District Munsif-cum-Judicial Magistrate, Thirukazhukundram, is quashed. Both the Crl.O.Ps. are allowed. Consequently, connected Crl.M.Ps.are closed.

Sd/-
Assistant Registrar(AUDIT)

//True Copy//

Sub Assistant Registrar

gr.

TO:

1 DISTRICT MUNSIF-CUM-JUDICIAL MAGISTRATE,
THIRUKAZHUKUNDRAM

2. DO THRO CHIEF JUDICIAL MAGISTRATE,
KANCHEEPURAM DISTRICT.

+3cc to Mr.T.SATHIYAMOORTHY, Advocate,
S.R.No. 15499, 15500 & 15866

PRE-DELIVERY COMMON ORDER
in
Crl.O.P.Nos.16461 & 19966 of 2010
and M.P.Nos.1 & 2 of 2010 (in both Crl.O.Ps)

SKS(CO)
TR(20/03/2018)