

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2018

DELIVERED ON : 24.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.795 of 2017
and
Crl.M.P.No.7288 of 2017

1.Mohammed Shabek
2.Katheep Batsha
3.Mohammed Shabee
4.Dhinesha
5.Krisha
6.Ashipkhan

... Petitioners

Vs

1.The State,
rep. by the Inspector of Police,
Chithode Police Station,
Erode District.

2.The Velliyangiri Kosala,
rep. by its Administrator K.Parameswaran,
Panjavayal,
Naraseepuram Post,
Coimbatore.

... Respondents

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. against the order dated 25.04.2017 made in S.T.C.No.238 of 2017 on the file of the Judicial Magistrate No.III, Erode.

For Petitioners : Mr.V.Raghavachari
for M/s.T.N.Rangesh Kanna

For Respondents: Mr.G.Harihara Arun Soma Sankar
Government Advocate (Crl. Side)
for 1st respondent

Mr.N.R.Elango
Senior Counsel
for M/s.S.Suresh
for 2nd respondent

ORDER

This Criminal Revision Case has been filed by the petitioners against the order dated 25.04.2017 passed in S.T.C.No.238 of 2017 on the file of the learned Judicial Magistrate No.III, Erode.

2. The case of the prosecution is that on 23.01.2017 at about 11.00 hours, the defacto complainant, S.P.Srinivasa Murthy, and his friend were returning in a two wheeler from Bhavani to his native and when they were nearing Nasiyanur junction, in front of Hotel Paradise, he saw six lorries covered with Tarpaulin sheets parked there. In one of the lorries Tarpaulin sheet was loosely tied and through that side, he saw the injured cows and bullocks. When he tried to open the other lorries covered with Tarpaulin, the drivers and the hotel owners chased them in two wheelers with knives. The complainant and his friend called their friends over mobile phone. Immediately, their friends and nearby villagers assembled and they went near lorries bearing registration Nos.KA 45 8793; KA 13 1393; KA 45 9454; KA 41B 4215; KA 01 AD 3662 and KL 48 B 0766 and found totally 81 cattle being illegally transported in the lorries.

3. Based on the complaint, a case in Crime No.30 of 2017 under Sections 428, 429 and 506(ii) of I.P.C. on the file of Chithode Police Station was registered against the petitioners and 11 others. After examining the witnesses and on completion of the investigation, on 06.04.2017, the Sub Inspector of Police, Chithode Police Station filed charge sheet under Section 294(b) I.P.C. against accused Nos.1 and 2 and under Section 428 I.P.C. and Section 11(1)(a)(d)(e) of Prevention of Cruelty of Animals Act, 1960 against accused Nos.3 to 17 before the learned Judicial Magistrate No.III, Erode. The learned Judicial Magistrate No.III, Erode has taken the case on 18.4.2017 as S.T.C.238 of 2017.

4. After notice to the accused, on 25.04.2017, all the accused appeared before the learned Judicial Magistrate No.III, Erode and when they were asked about the offence, all the accused admitted the guilt and also filed application admitting the guilt. In view of the admission made by the accused, the learned Judicial Magistrate No.III, Erode convicted the accused 1 and 2 under Section 294(b) I.P.C. and the accused 3 to 17 under Section 428 and Section 11(1)(a)(d)(e) of Prevention of Cruelty of Animals Act, 1960 and imposed fine of Rs.1000/- each on the accused 1 and 2, failing which it was ordered that they should undergo two weeks simple imprisonment. As far as accused Nos.3 to 17 are concerned, the learned Judicial Magistrate imposed fine of Rs.2000/- each on the accused 3 to 17 for the offence under Section 428 I.P.C., failing which it was

ordered that they should undergo one month simple imprisonment and also imposed fine of Rs.150/- each for the offence under Section 11(1)(a)(d)(e) of the Prevention of Cruelty of Animals Act, failing which to undergo fifteen days simple imprisonment. While so convicting the accused, the learned Judicial Magistrate observed that one Ashmath and one Umeer were owners of 29 cattle and they were not charged and/or arrayed as accused. Hence, they were entitled to return of 29 cattle on payment of maintenance charges of Rs.50/- each cattle per day. The learned Judicial Magistrate also directed that after taking custody of the cattle by Ashmath and Umeer, cattle will have to be transported through vehicles as per the provisions of Motor Vehicles Act. If Ashmath and Umeer failed to take steps to get custody of 29 cattle, the same were ordered to be sold and the sale amount was to be deposited into the Government.

5. As far as the remaining 54 cattle are concerned, the learned Judicial Magistrate ordered that since accused Nos.4, 7, 9, 12, 15 and 16 were convicted, they are not entitled to return of cattle for the reason that if cattle are returned, there was a reasonable apprehension that the cattle again would be subjected to further cruelty. The learned Judicial Magistrate directed the second respondent to sell cattle after the appeal time and appropriate the amount into the Government account and also directed to file a report in this regard. The learned Judicial Magistrate, directed to hand-over the seized vehicles to the owners after the appeal time. Aggrieved by the order of the learned Judicial Magistrate, accused Nos.4, 7, 9, 12, 15 and 16 have preferred this Criminal Revision Case.

6. Resisting the Revision Case, the first respondent State filed counter stating that as ordered by the learned Judicial Magistrate, Asmath and Umeer have not taken custody of 29 cattle and they are still in possession of the second respondent. It is stated that as there was a specific order in S.T.C.No.238 of 2017, the relief sought for by the petitioners cannot be granted and if the cattle are handed over to the petitioners, they may indulge in similar cruelty. Hence, prayed for dismissal of the revision case.

7. The second respondent filed counter stating that it was evident that the cattle were transported in closed vehicles, jam packed, without food, water and air. In order to prevent the movement of the cattle their necks were tied closely and chilies were kept in their eyes, which would show the conduct of the accused in treating the cattle. It is stated that the lower Court has also opined that if the cattle are given custody to the petitioners, they may indulge in further cruelty. Therefore, the petitioners, who happen to be the owners of the cattle are not entitled for return of cattle.

8. I heard Mr.V.Raghavachari for Mr.T.N.Rangesh Kanna, learned counsel for the petitioners, Mr.G.Harihara Arun Soma Sankar, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.N.R.Elango, learned Senior Counsel for M/s.S.Suresh, learned counsel for the 2nd respondent. I have also perused the materials available on record.

9. Based on the complaint lodged by one S.P.Srinivasa Murthy, a case in Crime No.30 of 2017 under Section 506(ii) I.P.C. read with Section 11(1)(a)(d)(e) of Prevention of Cruelty of Animals Act, 1960 (hereinafter referred to as 'PCA Act') against the accused 1 to 17. Thereafter, the Investigation Officer filed alteration report under Sections 428, 429, 506(ii) I.P.C. read with 11(1)(a)(d)(e) of PCA Act. After examination of witnesses, the first respondent altered Sections as 294(b), 428 I.P.C. read 11(1)(a)(d)(e) of PCA Act and on 6.4.2017, the first respondent has filed the final report before the learned Judicial Magistrate No.III, Erode, who in turn took up the case on its file as S.T.C.No.238 of 2017.

10. When the matter was taken up by the learned Judicial Magistrate on 25.04.2017, the accused have filed petition under Section 241 Cr.P.C. and pleaded guilty. Accepting the guilty petition filed by the accused, the learned Judicial Magistrate convicted the accused and imposed fine as aforesaid. In the order, the learned Judicial Magistrate also observed that one Ashmath and one Umeer, owners of 29 cattle, were not arrayed as accused and hence, they were entitled to return of 29 cattle, which were kept in the second respondent Goshala, subject to payment of maintenance charge of Rs.50/- each cattle per day. There is no quarrel over 29 cattle which are stated to belong to Ashmath and Umeer. According to the first respondent, Ashmath and Umeer have not taken custody of 29 cattle as directed by the learned Judicial Magistrate. This Court does not intend to express anything on the aforesaid aspect as the order of learned Judicial Magistrate is unambiguous on the said aspect.

11. The petitioners, who are accused Nos.4, 7, 9, 12, 15 and 16 are now claiming return of cattle numbering 54 contending that the order of the learned Judicial Magistrate does not satisfy the mandate under Section 29 of PCA Act.

12. Section 29 of PCA Act provides:

"Section 29: Power of court to deprive person convicted of ownership of animal.—(1) If the owner of any animal is found guilty of any offence under this Act, the court, upon his conviction thereof, may, if it thinks fit, in addition to any other punishment, make an order that the animal with

respect to which the offence was committed shall be forfeited to Government and may, further, make such order as to the disposal of the animal as it thinks fit under the circumstances.

(2) No order under sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal, if left with the owner, is likely to be exposed to further cruelty.

(3) Without prejudice to the provisions contained in sub-section (1), the court may also order that a person convicted of an offence under this Act shall, either permanently or during such period as is fixed by the order, be prohibited from having the custody of any animal of any kind whatsoever, or, as the court thinks fit, of any animal of any kind or species specified in the order.

(4) No order under sub-section (3) shall be made unless—

(a) it is shown by evidence as to a previous conviction or as to the character of the said person or otherwise as to the treatment of the animal in relation to which he has been convicted that an animal in the custody of the said person is likely to be exposed to cruelty;

(b) it is stated in the complaint upon which the conviction was made that it is the intention of the complainant upon the conviction of the accused to request that an order be made as aforesaid; and

(c) the offence for which the conviction was made was committed in an area in which under the law for the time being in force a licence is necessary for the keeping of any such animal as that in respect of which the conviction was made.

(5) Notwithstanding anything to the contrary contained in any law for the time being in force, any person in respect of whom an order is made under sub-section (3) shall have no right to the custody of any animal contrary to the provisions of the order, and if he contravenes the provisions of any order, he shall be punishable with fine which may extend to one hundred rupees, or with

imprisonment for a term which may extend to three months, or with both.

(6) Any court which has made an order under subsection (3) may at any time, either on its own motion or on application made to it in this behalf, rescind or modify such order.

13. In the case on hand, large number of cattle were transported by the accused persons without providing any basic facilities in vehicles in an inhumane manner and thus, there is a clear violation of PCA Act. It also violates Transport of Animal Rules, 1978. As per Rules 47 to 56 of the Transport of Animal Rules, 1978, no goods vehicle should carry more than six cattle and there should be a valid certificate by a qualified Veterinary Surgeon that the animals are fit to travel and each consignment should bear a label showing the name and address of the consignor and the consignee.

14. Rule 56 of Transport of Animal Rules stipulates the conditions as to how the cattle should be transported without causing any injury or discomfort to the animals. Rule 56(c) specifically stipulates that no goods vehicle shall carry more than six cattle. In fact, Rule 56 also empowers that the cattle should be transported with all precautions viz.,

- (a) specially fitted goods vehicles with a special type of tail board on padding around the sides should be used;
- (b) ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if low, should be raised;
- (c) no goods vehicle shall carry more than six cattle;
- (d) each goods vehicle shall be provided with one attendant;
- (e) while transporting the cattle, the goods vehicle shall not be loaded with any other merchandise; and
- (f) to prevent cattle being frightened or injured, they should preferably face the engine.

15. Section 11 of PCA Act elaborately deals with various cruelty meted out to animals and Section 11(1)(d) specifically deals with the injuries caused during transportation of animals. Chapter III, Section 11 deals with cruelty to animals, which reads as follows:

- "11. Treating animals cruelly.-(1) If any person-
- (a) beats, kicks, overrides, overdrives, overloads, tortures or otherwise treats any animal so as to

subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or

(b) employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed, or being the owner, permits any such unfit animal to be so employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of any animal, fails to provide such animal with sufficient food, drink or shelter; or "

16. In this case, 84 cattle were being illegally transported by the accused. The details of cattle/buffalo are as under:

Adult Cattle - Female (7 - 9 years)	..	3 Nos.
Heifer Cattle - Female (1 - 2 years)	..	5 Nos.
Bull Calf - Male (1 - 2 years)	..	11 Nos.
Bullock - Male (8-10 years)	..	17 Nos.
Adult Buffalo - Female (7 - 8 years)	..	5 Nos.
Heriber Buffalo - Female (2 - 3 years)	..	13 Nos.
Buffalo Bull Calf - Male (1 - 2 years)	..	17 Nos.
Buffalo Bull - Male (8 - 10 years)	..	13 Nos.

17. Placing reliance upon the decision of the Hon'ble Supreme Court in Manager, Pinjrapole Deudar and another v. Chakram Moraji Nat and others, reported in (1998) 6 SCC 520, the learned counsel for the petitioners contended that the petitioners have not been convicted earlier for any of the offences under PCA Act and therefore, they are entitled to

return of cattle. The decision in *Manager, Pinjrapole Deudar and another v. Chakram Moraji Nat and others*, supra, is in relation to interim custody. But, in the case on hand, since the petitioners have been convicted under PCA Act, the aforesaid decision on facts and is not applicable to the case on hand.

18. It is evident from the prosecution version that cattle were kept in lorries and jam-packed with tarpaulin covering. In order to prevent the movement of cattle, their necks were tied closely and chilli powder was sprayed in their eyes. Such an act of the accused would clearly show the inhuman treatment the animals were subjected to by the accused. It was also noticed that some bullocks sustained leg injuries and eye injuries due to spraying of chilli powder in its eyes. Apart from the said injuries, several cattle sustained bleeding injuries and suffered suffocation because of inhumane method of transportation. Finding that the accused 1 to 17 illegally transported cattle and also based on admission of guilt, the learned Judicial Magistrate has rightly convicted the accused and also observed that the petitioners are not entitled to return of the cattle.

19. Section 29(1) undoubtedly confers jurisdiction on the Court, in the event the offender stands convicted, to pass an order of forfeiture of the animals in favour of the Government. But, on a close scrutiny of the language used therein, Section 29(1) appears to be restricted and subject to the provisions contained in sub-section (2). Sub-section (2) of Section 29 specifically lays down three specific conditions without which applicability thereof would not arise. The same being: (a) it is shown by evidence as to a previous conviction; or (b) as to the character of the owner or otherwise as to the treatment of the animal; or (c) that the animal, if left with the owner, is likely to be exposed to further cruelty.

20. It is the specific case of the prosecution as well as the second respondent herein that if the cattle were handed over to the petitioners, they may further indulge in similar cruelty. That apart, it appears from the evidence on record, which has been threadbare analysed by the Court below, that the cattle had been subjected to inhumane treatment and the entire episode is horrendous. The right which the animals have against human beings not to be tortured and against infliction of unnecessary pain or suffering had been, ex facie, grossly violated by the accused.

21. The Hon'ble Supreme Court in Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547 : (2014) 3 SCC (Cri) 136, at page 595 :

"72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act."

22. It is pertinent to note that even though the Central Motor Vehicle (Amendment) Act was passed in 2016 stating stricter rules shall be applicable for the transportation of animals, but it has not been effectively implemented. As per the Act, vehicles carrying animals should have permanent partitions to enable the transportation of animals individually in each partition. The amendment further specifies that the size of partitions should not be less than 2 sq.m for cows and buffaloes, 2.25 sq.m for horses and mares, 0.3 sq.m for sheep and goats, 0.6 sq.m for pigs and 40 sq.m for poultry. However, transporters are flouting rules by overloading their vehicles with animals as there is a possibility of them sustaining injuries and transmission of disease. The Government had passed the Amended Motor Vehicles Act, but it does not have mechanism to monitor vehicles not adhering to rules. Thus, the Amended Act remains restricted on paper due to poor implementation. The Regional Transport Officer to inspect the make of the vehicles before issuing permit and they should effectively implement the rules of the Central Motor Vehicles (Amendment) Act.

23. Here is the fit case where Court has to come to the rescue of the animals and prevent cruelty meted out to the poor animals. Stringent action should be taken as against those who violate the such rights of animals and the animal welfare legislations. Even the vehicles which are used should be dealt with under the Motor Vehicles Act and punishment as contemplated therein should be imposed.

24. It is apposite to mention that in this case, if the custody of the cattle is again given to the petitioners, there is likelihood of the cattle being subjected to further cruelty. I find that the petitioners have transported the cattle illegally without following the rules and regulations. The cattle were being transported continuously from District to District without even providing fodder or water. In the case on hand, the transportation was done in total violation of the legal provisions. The vehicle which is used for the commission of this kind of offence should be dealt with under the Motor Vehicles Act. The lower Court has rightly considered the decision cited supra and has ultimately dismissed the petitions.

25. In the present case, now, the cattle are maintained in Goshala, by name, Velliengari Goshala, Panjavayal, Naraseepuram Post, Coimbatore (2nd respondent). When a voluntary organization such as the second respondent came forward to save the life of cattle, it would not be appropriate to order return of the cattle in question to the petitioners in the capacity of owners of the cattle who have not even had the basic courtesy to

provide the basic amenities like fodder and water to the cattle while transporting them and ultimately, due to the inhumane treatment meted out to the cattle, some cattle sustained suffocation and bleeding injuries.

26. Before parting with the order, it is reiterated that the object of PCA Act is only to prevent animals from being put to cruelty. Therefore, stringent action should be taken as against those who violate the laws. The finding of the learned Judicial Magistrate that the petitioners are not entitled to return of the cattle is well founded, as the accused themselves pleaded guilty and have been convicted. This Court finds no infirmity and/or perversity in the order of the learned Judicial Magistrate No.III, Erode.

27. For the foregoing discussions and in the light of the provisions of PCA Act, supra, which was rightly followed by the learned Judicial Magistrate No.III, Erode, the impugned order of the learned Judicial Magistrate No.III, Erode is liable to be confirmed and accordingly, it is confirmed.

28. In the result, the Criminal Revision Case is dismissed. It is hereby made clear that the cattle shall be maintained in the Goshala, in which they were already kept and maintained.

29. This Court, taking into consideration the cruelty to which the cattle are subjected to,

(a) this Court directs the Chief Secretary of the Government of Tamil Nadu and the authorities concerned in the Animal Welfare Department, State of Tamil Nadu, as well as the Transport Department, State of Tamil Nadu to ensure that these laws do not remain mere paper tiger. They should take immediate stringent steps to give life to law and teeth to the provisions for fulfillment of the soul of the said enactments;

(b) the Registrar General of this Court is hereby directed to issue circulars to the lower Courts in the State of Tamil Nadu to take note of these provisions and to deal with the cases in proper manner and the offenders should be punished properly for violation of the provisions of the Prevention of cruelty of Animals Act, 1960

and the Motor Vehicles Act relating to transportation of cattle too. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To:

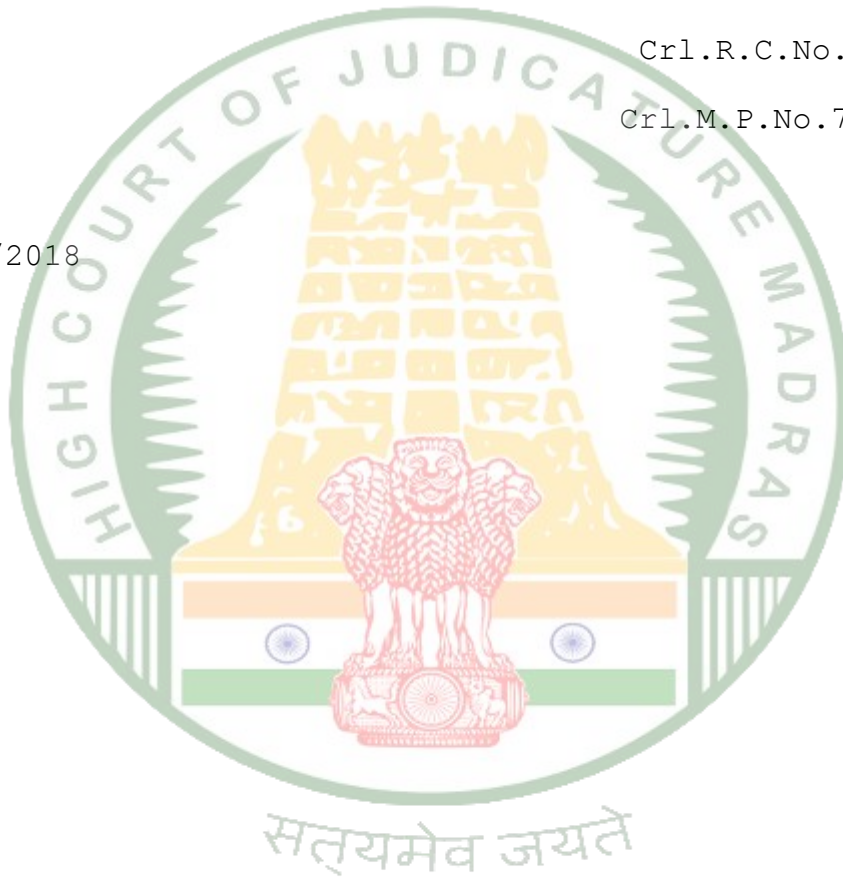
1. The Registrar General,
High Court, Madras.
2. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
3. The Inspector of Police,
Chithode Police Station,
Erode District.
4. The Registrar Judicial,
High Court, Chennai-104.
5. The Chief Secretary,
Animal Welfare Department,
Government of TamilNadu,
Fort St. George, Chennai-9.
6. The Chief Secretary,
Transport Department,
Government of TamilNadu,
Fort, St. George, Chennai-9.
7. The Section Officer,
F Section,
High Court,
Chennai-104.
8. The Section Officer,
Criminal Section,
High Court, Madras-104.

9. The Judicial Magistrate,
No.III, Erode.

10.The Chief Judicial Magistrate,
Erode.
(For Information)

CrI.R.C.No.795 of 2017
and
CrI.M.P.No.7288 of 2017

rgn[co]
srg 25/09/2018



WEB COPY