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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
30.01.2018	09.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Cr1.O.P.(MD) No.16342 of 2017

and

Cr1.M.P.(MD) No.10839 of 2017

and

Cr1.O.P.(MD) No.16710 of 2017

1.R.Lakshmi

Formerly Commissioner
Tirunelveli Municipal Corporation
Tirunelveli, now working as
Regional Director of
Municipal Administration
Salem Region, Salem

2.O.Karuppasamy

Assistant Executive Engineer
Mechanical Ac
Now working as Assistant
Commissioner-cum-Assistant
Executive Engineer
Tirunelveli Corporation
Tirunelveli

3.A.Baiju

Formerly Junior Engineer
Tirunelveli Municipal Corporation
Tirunelveli, now working as
Assistant Engineer
in Tirunelveli Corporation
Tirunelveli

... Petitioners in Cr1.O.P.(MD).No.
16342 of 2017 / A2, A5 & A6

4.Dr.V.Narayanan Nair

5.T.Balasubramanian

... Petitioners in Cr1.O.P.(MD).No.
16710 of 2017 / A4 & A8

-vs-

1.The State, rep by Inspector of Police
Vigilance and Anti Corruption
Tirunelveli Detachment
Tirunelveli

<https://hcservices.ecourts.gov.in/hcservices/>
Crime No.2 of 2017

... 1st Respondent / Complainant
in both cases



2.R.Authees
S/o.Rajadurai
Inspector of Police
Vigilance & Anti Corruption
Tirunelveli Detachment
Tirunelveli ... 2nd Respondent / *De facto* Complainant
in CrI.O.P.(MD) No.16342 of 2017

3.S.Sudalaikannu ... 2nd Respondent / *De facto* Complainant
in CrI.O.P.(MD) No.16710 of 2017

PRAYER (in CrI.O.P.(MD) No.16342 of 2017) : Criminal original petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the impugned FIR in Crime No.2 of 2017, on the file of the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli Detachment, Tirunelveli and quash the same.

PRAYER (in CrI.O.P.(MD) No.16710 of 2017) : Criminal original petition filed under Section 482 of the Code of Criminal Procedure to call for the records in Crime No.2 of 2017, on the file of the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli Detachment, Tirunelveli District and quash the proceedings in the above case in Crime No.2 of 2017 as against the petitioners herein.

For Petitioner : Mr.Veera.Kathiravan, Senior Counsel
(in CrI.O.P.(MD).No.16342 of 2017) For M/s.Veera Associates

For Petitioner : Mr.I.Subramanian, Senior Counsel
(in CrI.O.P.(MD).No.16710 of 2017) For Mr.S.Hameed Ismail

For 1st Respondent : Mr.C.Mayil Vahana Rajendran
(in both cases) Additional Public Prosecutor

For 2nd Respondent : No appearance
(in both cases)

C O M M O N O R D E R

The factual matrix of the case is as under:

The dispute in this case relates to laying a link road covering a distance of 650 Metres in S.N.High Road, Tirunelveli between Parvathi Theatre and Arunagiri Theatre. It appears that there was a demand from the public to lay a link road for quite sometime. But, somehow or the other, the proposal did not go through. When P.Jeganathan alias Ganesan (A1) became the Deputy Mayor of Tirunelveli Municipal Corporation, he started taking steps to complete the project between 2014-2015. A busybody, by name, S.Sudalaikannu filed a Public Interest Litigation in W.P.(MD) No.1842 of 2015 for the issuance of a writ of mandamus forbearing the Revenue and Municipal Authorities from laying the road without finalizing the acquisition proceedings.



2. A Division Bench of this Court heard the matter in detail and passed final orders on 06.07.2015 closing the writ petition with the following observations:

"2. Today, photocopy of the details of S.N.High Road - Link road from Parvathi Theatre to Arunagiri Theatre near Kurukkuthurai road A4 14, D4D4, D3D3, 50 scheme road Length 650m, are filed and the same is as under:-

'TIRUNELVELI CORPORATION

S.N.High Road - Link road from Parvathi Theatre to Arunagiri Theatre near Kurukkuthurai road A4 14, D4D4, D3D3, 50 scheme road Length 650m

TOMP (Traffic Operation and Management Plan) Project work

Administrative Sanction accorded by the Member Secretary, Committee of Town and Country Planning vide proceedings Roc No.30956/02/NPD dated 25.12.2004.

I. Cost of Land Acquisition :Rs.40.00 Lakhs

II. Cost of formation of road : Rs.60.00 Lakhs

Total Project cost : Rs.100.00 Lakhs

Extent of acquisition land : 7350 sq.m

Land Survey No.1456/1, 1457, 1460/1, 1459/2B, 1498, 1499/1B, 1499/2, 1504/1, 1504/2, 1505/1, 589/1 to 589/21, 588, 592/2, 587/4, 587/3, 587/2, 586.

Administrative Sanction accorded by MA&WS Dept., vide G.O.(M.S.) No.50 dated 16.04.2013 for land acquisition.

Acceptance letter given by the land owners through Rs.20/- Non-Judicial Stamp paper for survey No.1504/2, 1460/1, 592/2, 1504/1, 1456/1, 1457, 1499/1B, 1459/2B, 1499/1B, 1505, 1499/2.

Two land owners at the entrance of the road have given their consent to enter upon the land for the formation of road pending finalization of Land Acquisition process for which the Council also approved vide its resolution No : 50 Dt 29.05.2014.

Accordingly, letter has sent to the engineering section to form the 50' scheme road from Parvathi theatre to Manipuram road vide letter Roc.No.GP1/9729/2004 dated 16.6.2014 since the land owner Thiru.John Subbiah, Thiru.S.Karunanithi are accepted to enter upon the land by the Corporation to form



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the road on their land of Survey No.1456, 1457, 1460.

Further, to implement the purpose of link road from Parvathi theatre to Arunagiri theatre near Kurukkuthurai road for convenience of the public by the council due to responsible authority as said in the Scheme schedule clause 17(ii) of approved Swamy Nealliappar High Road Detail Development Plan an estimate, has been prepared to provide new formation of 50' scheme road for an estimate cost of Rs.70.00 lakhs and it has been sanction vide CCR.No.88 dated 30.06.2014.

Two tenders were received on 25.07.2014 for this project work and the lowest tender offered by the Thiru.T.Balasubramanian's price bid has accepted by the council vide CCR No : 143 dated 31.07.2014 and at present the formation of WMM road has completed from Parvathi theatre to Arunagiri theatre near Kurukkuthurai road and the purpose has been served to the public and traffic on 15.06.2015 after implementation of this project on 15.06.2015 under TOMP as well as notification of the S.N. High Road D.D. Plan."

3.In view of the laying of the road, and the same being put in use by the public, Mr.T.Lajapathi Roy, learned counsel for the petitioner is agreeable for the writ petition being closed. Accordingly, the writ petition is closed. No costs. Consequently, M.P(MD) No.1 of 2015 is closed."

3. From the above, it is clear that the road project was completed and public started using the link road. Since it was a setback for Sudalaikannu, he gave a complaint dated 15.07.2015 to the District Collector, Tirunelveli, alleging certain irregularities in the road project and followed it up by filing CrI.O.P.(MD) No.2218 of 2016, under Section 482 Cr.P.C., for a direction to the Vigilance and Anti Corruption Police to register an F.I.R., based on his complaint. In the said criminal original petition, notice was ordered to the Police and Mr.R.Authees, Inspector of Police, Vigilance and Anti Corruption, Tirunelveli, filed a status report dated 05.01.2017 stating that a detailed enquiry was conducted on the complaint given by Sudalaikannu and it was found that there was no pecuniary loss to the Corporation. It may not be out of place to extract the relevant paragraphs from the status report dated 05.01.2017 of the Investigation Officer:

"In this para, the averment of the petitioner herein is as to his representation to respondents-1 and 2 herein, and this averment is not denied. As to the averment of the petitioner herein that



the amount of Rs.70 Lakhs spent under the guise of forming the road, in question is pecuniary loss to the Corporation and converted as personal gain to Tr.Jeganathan, the former Mayor in-charge of Tirunelveli Municipal Corporation, it is submitted that in as much there is no evidence to show that the road was formed without public interest, and that in as much road has been formed, the expenditure of Rs.70 lakhs incurred for the formation of road cannot be construed as pecuniary loss to the Corporation. It is further submitted that there is no evidence to show that Tr.Jeganathan, the former Mayor in-charge of Tirunelveli Municipal Corporation obtained pecuniary advantage in the issue. However, prima facie, there is evidence to show that Tr.Jeganathan and Tmt.Laxmi, Tr.Soundarajan, Formerly Executive Engineer, now retired from service, Tr.Elongovan, Junior Engineer, (now deceased) have committed serious procedural irregularity in the work of formation of 50 feet width Wet Mix Macadam road between Parvathi Theatre and Arunagiri Theatre in Ward No.40 of Tirunelveli City Municipal Corporation even prior to taking possession of the land through acquisition process, and even prior to awarding compensation to the land owners wherein the road, in question has been formed."

...

It is humbly submitted that the link road in question was laid from Parvathi Theatre to Arunagiri Theatre without following the acquisition and compensation procedures. Out 25 land owners including the Government Department, only two owners had given consent to surrender the land at the cost fixed by the authorities. Yet resolution has been passed by the Corporation Council (Resolution No.50, dated 29.05.2014) to lay the link road. Further, no compensation has been paid to the land owners so far. It is also true that approximately 1300 sq.ft. Of land of the Education Department was utilized in unauthorized manner without seeking concurrence from the concerned department. However, there is no evidence to prove the allegation that by the former Deputy Mayor and five others obtained pecuniary gain."

4. Thus, from a reading of the status report dated 05.01.2017, it is clear that neither the Deputy Mayor nor the Engineers working in the Municipal Corporation had derived any pecuniary advantage in



laying 650 Metres Road, but, however, it is seen that they have hurriedly laid the road without waiting for the acquisition proceedings. Though such a status report was filed, a learned Single Judge of this Court disposed of CrI.O.P.(MD) No.2218 of 2016 on 18.01.2017 by passing the following order:

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"3. It is represented by the learned Government Advocate (CrI. Side) that the Inspector of Police, Vigilance and Anti-Corruption, Tirunelveli District, who is the Investigating Officer in this case, has already sent the Enquiry Report to the Vigilance Commissioner, Chennai on 13.01.2017 for obtaining necessary permission to register a regular case against the accused persons.

4. In view of the above submission, after obtaining necessary permission from the Higher Official, the Investigating Officer is directed to investigate into the matter and conclude the same within a period of six months from the date of receipt of a copy of this order and thereafter, file a charge sheet before the concerned jurisdictional Court, if it is found during the course of investigation that prima facie case is made out against the accused persons.

5. With the above direction, this Criminal Original Petition is disposed of."

5. Pursuant to the above directions, Mr.R.Authees, Inspector of Police, Vigilance and Anti Corruption, Tirunelveli, registered a suo motu F.I.R. in Crime No.2 of 2017, on 04.02.2017, under Sections 120-B, 447, 427 I.P.C. and Sections 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 3(1) of T.N.P.P.D.L. Act, 1992, against P.Jeganathan @ Ganesan (Formerly Deputy Mayor, Tirunelveli Municipal Corporation) [A1], R.Lakshmi (Formerly Commissioner) [A2], K.P.Jai Xavier (Formerly City Engineer) [A3], V.Narayanan Nair (City Engineer) [A4], D.Karuppasamy, (AEE MECH-A.C.) [A5], A.Baiju, (Junior Engineer) [A6], M.Soundarajan (Formerly Executive Engineer) (retired from Service) [A7] and T.Balasubramanian (Contractor) [A8].

6. After waiting for six months as directed by this Court in the order dated 18.01.2017 in CrI.O.P.(MD) No.2218 of 2016, R.Lakshmi (A2), Dr.V.Narayanan Nair (A4), D.Karuppasamy (A5), A.Baiju (A6) and T.Balasubramanian (A8) filed CrI.O.P.(MD) No.11426 of 2017 seeking to quash the F.I.R. in Crime No.2 of 2017, on the file of the Inspector of Police, Vigilance and Anti Corruption Wing, Tirunelveli. This Court, without going into the merits of the case, dismissed the petition on 30.08.2017 on the short ground that investigation had commenced on the directions of this Court in CrI.O.P.(MD) No.2218 of 2016 and therefore, it may not be appropriate to quash the F.I.R. It may be apposite to extract Paragraph Nos.5 and 6 of the Order, dated 30.08.2017, passed by this Court in CrI.O.P.(MD) No.11426 of 2017.



5. On perusal of the facts, it is seen that earlier, in the petition filed by the second respondent/defacto complainant, this Court has issued a direction directing the first respondent police to investigate the matter and conclude the same within a period of six months and file charge sheet and if it is found during investigation that a prima facie case is made out against the accused persons. Now, the investigation is under progress and the respondent police, admittedly, did not file a final report. In the earlier order, this court only directed the first respondent police to conclude the investigation and after investigation, to file final report, if at all a prima facie case is made out against these petitioners. Thus, the interest of the accused is already protected by the earlier order. In the said circumstances, as the investigation is pending and final report is yet to be filed, at this stage, the petitioners cannot seek for quashing of F.I.R stating that there is no prima facie case made out against the petitioners.

6. Under the said circumstances, there is no merit in the quash petition. Hence, this Criminal Original Petition is dismissed. As the time granted by this court to complete the investigation has already been expired, the first respondent is directed to complete the investigation and file a final report within a period of one month from the date of receipt of a copy of this order.

7. From the above, it is seen that in CrI.O.P.(MD) No.2218 of 2016, this Court had given six months time to the Police to take a decision whether to prosecute the accused or not. In CrI.O.P.(MD) No.11426 of 2017, this Court gave one more month time to take a decision in this regard. Now, since more than three months time has elapsed, the accused have once again approached this Court seeking to quash the F.I.R., in Crime No.2 of 2017.

8. Heard Mr.Veera.Kathiravan, learned Senior Counsel for the petitioners in CrI.O.P.(MD) No.16342 of 2017, Mr.I.Subramanian, learned Senior Counsel for Mr.S.Hameed Ismail, learned counsel on record for the petitioners in CrI.O.P.(MD) No.16710 of 2017 and Mr.C.Mayilvahan Rajendran, learned Additional Public Prosecutor for the respondent - Police in both cases and perused the materials filed in the form of typed set.

9. The learned counsel for the petitioners / accused submitted that the accused were only Engineers; that they had only carried out the resolution passed by the Municipal Corporation Council; that some of them have retired from service and infact, K.P.Jai Xavier,



(Formerly City Engineer) [A3] had even died. While so, in the guise of investigation, a damocles sword is kept hanging over the heads of the petitioners indefinitely.

10. The learned counsel for the petitioners / accused also submitted that P.Jeganathan alias Ganesan (A1), who was the Deputy Mayor of Tirunelveli Municipal Corporation, had defected to a different political camp and that is perhaps standing in the way of the Police to close the F.I.R., even though there was no criminality or pecuniary advantage derived by anyone in the road project.

11. Per contra, the learned Additional Public Prosecutor submitted that steps are being taken by the Investigation Officer to conduct a Super Numeric Check with the help of qualified Engineers of P.W.D. to find out the worthiness of the road and therefore, the F.I.R. should not be quashed.

12. This Court gave its anxious consideration to the rival submissions.

13. At the outset, this Court places on record its appreciation to Mr.R.Authees, Inspector of Police, Vigilance and Anti-Corruption, Tirunelveli, for having conducted a thorough enquiry and for taking a principled stand before this Court in CrI.O.P.(MD) No.2218 of 2016 against the onslaught of Sudalaikannu by filing a status report stating that there are no materials to register an F.I.R., and that there could only be some procedural irregularities in the work. Since this Court had specifically directed the Police to investigate into the matter, he must have been forced to register a *suo motu* F.I.R., for conducting investigation under Chapter XII of the Code of Criminal Procedure, so that, he is not hauled up for contempt by this Court. Hence, the respondent - Police cannot be faulted for having registered the F.I.R.

14. At the same time, it may be necessary to state that the petitioners were not heard in CrI.O.P.(MD) No.2218 of 2016, because, law does not contemplate pre-decisional hearing of a proposed accused before registration of an F.I.R. It may be necessary to extract the actual allegations against the petitioners in the F.I.R., which are as under:

"4. When the process of taking possession of the site through acquisition, and the process of award of compensation to the land owners was not completed, the officials viz., Tr.P.Jeganathan alias Ganesan, formerly Deputy Mayor, Tmt.R.Lakshmi, formerly Commissioner, Tr.M.Soundarajan, Formerly Executive Engineer, now retired from service, Tr.Elongovan, Junior Engineer, (now deceased) all of the Corporation put up an office note under date "22.05.2014" for the approval of Tr.P.Jeganathan alias Ganesan to prepare estimate at the cost of



Rs.70 lakhs for the formation of the road, in question, and Tr.P.Jeganathan alias Ganesan approved the office note under date "23.05.2014". Thereafter, the subject of formation of road, in question, was placed before the Council, and the Council gave approval for the commencement of the work forthwith as two land owners had agreed to surrender their lands at the cost fixed by the authorities (Resolution NO.50 Dt.29.05.2014). Thereafter, tenders were invited, and the lowest tender rate of RS.72,91,056/- was approved by the Corporation, and wet mix Macadam road was formed, and a sum of Rs.65,50,269/- (Rs.71,95,944/- minus tax of Rs.6,45,675/-) was paid to the Contractor Tr.T.Balasubramanian by Cheque No.512692 dated 29.06.2015.

5.The prescribed procedure that is being followed in Government Departments is that work would be started after handing over the site to the contractor by the Department, implementing the scheme. But, in the instant case, the site wherein the road, in question was laid was not acquired through land acquisition process, and compensation amount was not awarded to the concerned land owners. The aforesaid basic procedure was not followed.

6.Prima facie, there is evidence to show that Tr.P.Jeganathan alias Ganesan, Tmt.R.Lakshmi and Tr.Soundarajan, formerly Executive Engineer, now retired from service, Tr.Elangovan, Junior Engineer, (now deceased) have committed serious criminal conspiracy in the work of formation of 50 feet width Wet Mix Macadam road between Parvathi Theatre and Arunagiri Theatre in Ward No.40 of the Corporation even prior to taking possession of the land through acquisition process, and even prior to awarding compensation to the owners of the lands wherein the road, in question has been formed.

7.According to the Measurement Book Nos.1,2,3 & 4 wherein measurements relating to the formation of the link road, in question had been recorded, (1) Tr.Baiju, Junior Engineer, (2) Tr.Karuppasamy, Assistant Executive Engineer, (3)Tr.Narayana Nair, Executive Engineer, and (4)Jai Xavier, City Engineer had executed the work. The contractor Tr.T.Balasubramanian who had executed the road work was fully aware of the fact that the land of the Teacher Training School (now Govt. Hr. Sec. School) in T.S.1452-part did not find place in the administrative and technical sanctions, accorded for the formation of the road, as he was directed by the Municipal authorities to form the road in accordance



with the administrative and technical sanction accorded for the formation of the road. Hence, the aforesaid Tr.Baiju, Tr.Karuppasamy, Tr.Narayana Nair, Tr.Jai Xavier, and contractor Tr.T.Balasubramanian had committed the offences punishable under Sections 120-B, 447 and 427 IPC, and Section 3(1) of the Tamil Nadu Public Property (Prevention of damage & Loss) Act, 1992, as stated above.

8. According to the records maintained by both Revenue and Survey Departments of Tirunelveli, Town Survey No.1452 is owned, on record, by the Govt. Institution namely "women's Teacher Training School.". The enquiry revealed that the western side compound wall of the Govt. Hr. School campus (formerly women's Teacher Training School Campus) was demolished, and a portion of the western side play ground of Govt. Hr. Sec. School was encroached by the Municipal Corporation authorities, and the road, in question namely link road between Parvathi Theatre and Arunagiri theater was laid by the Tirunelveli Municipal Corporation authorities. The road, in question has been laid in T.S.No.1452 (part) belonging to the "Women's Teacher Training School"(now Govt. Hr. Sec. School premise). The acquisition process is not yet completed. In G.O.Ms.No.50,Dt.16.04.2013 wherein the Govt. have accorded administrative sanction for the formation of road, in question, the Town Survey No.1452, in question does not find place. So, it is quite obvious that the land of the teacher training school, Tirunelveli (Now Govt. Hr. Sec. School) in T.S.No.1452-part wherein the road has been laid at an area of approximately 1,300 Sq.ft had been illegally taken away by the Municipal Corporation authorities, and utilized for the construction of the road, in question. The act of the Municipal Corporation authorities in illegally demolishing the compound wall, and illegally taking possession of land measuring 1,300 sq.feet in T.S.No.1452-part belonging to the Govt. Hr. Sec. School, Tirunelveli (formerly Teacher Training School) constitutes offences punishable under Sections 120-B IPC r.w 13 (2) r/w 13 (1) (d) of PC Act, 1988, and 447 and 427 IPC and under Section 3(1) of the Tamil Nadu Public Property (Prevention of damage & Loss) Act, 1992."

15. Thus, even the F.I.R. states that there were objections from various quarters for putting up the link road, but however, the Municipal Corporation Council approved the commencement of the work forthwith as two landowners had agreed to surrender their lands at



the cost fixed by the Authorities. It is not the case of the respondent - Police that the accused had laid a private road for their residence. Admittedly, a link road connecting two vital points was laid so as to enable the public to have short access to the main highway. This is an administrative decision that has been taken by the Municipal Corporation Council and only thereafter, it has been implemented by the accused, who were the Engineers at the relevant point of time. Can it be stated that these Engineers conspired to lay 650 Metres Thar Road by ignoring the need to pay compensation to the landowners? Payment of compensation or otherwise is the lookout of the Revenue Authorities. When the elected members of the Municipal Corporation Council had passed a resolution directing the Engineers to lay the road, can a criminal case be registered against the Engineers for having carried out their duties?

16. The learned Additional Public Prosecutor submitted that the Investigation Officer is conducting a Super Numeric Check to find out about the measurements of the road and if he found any irregularities, the petitioners would be prosecuted for the same. This stand by the Police now appears to be witch-hunting especially in the light of the authoritative pronouncement of the Honourable Supreme Court in *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others vs. Sahngoo Ram Arya and another*, reported in (2002) 5 SCC 521, wherein, it has been categorically held that a Police investigation cannot be set in motion in order to find out as to whether a person has committed any offence inasmuch as that would offend Article 21 of the Constitution of India. At this juncture, it would be more relevant to extract the relevant portion of the said decision:

"6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen...."

17. Therefore, the direction issued by this Court in CrI.O.P. (MD) No.2218 of 2016 cannot be overstretched to include a roving investigation for the purpose of finding out as to whether the accused had committed any offence in laying of the road. In other words, the respondent - Police now wants to find out if there is any irregularity in laying the bitumen or in the measurements of the road, which clearly amounts to scouting for materials for fixing the accused. This cannot be permitted. Hence, this Court is of the view that this is a fit case in which the first information report can be quashed.

18. In the result, both the criminal original petitions are allowed and the F.I.R. in Crime No.2 of 2017, on the file of the



Inspector of Police, Vigilance and Anti Corruption, Tirunelveli Detachment, Tirunelveli, is hereby quashed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(C.O)

Sub-Assistant Registrar

To

- 1.The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli Detachment,
Tirunelveli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+One cc to M/s.Veera Associates, Advocate, SR.No.47844

+1 cc to Mr.S.Hameed Ismail, Advocate, SR.No.47617

+2 ccs to The Additional Public Prosecutor, SR.Nos.47853&47854

sm/krk
RL/7C/12P/KK/SAR1/22/2/2018

Common Order
in
Cr1.O.P.(MD) No.16342 of 2017
and
Cr1.M.P.(MD) No.10839 of 2017
and
Cr1.O.P.(MD) No.16710 of 2017

09.02.2018