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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 28.08.2018
ORDERS PRONOUNCED ON : 30.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD)No.15316 of 2018
and
CrI.MP(MD)Nos.6784 and 6785 of 2018

Siva @Sakthivel

... petitioner / Accused

Vs

M.Kumaravel

... respondent /complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to direct the learned Judicial Magistrate, Ambasamuthiram to conduct a joint Trial of the case in CC No.218 of 2017 along with the case in C.C.No.228 of 2016 on its file, under the provision of Sections 210 Cr.P.C.

For Petitioner : Mr.Thiruvadikumar

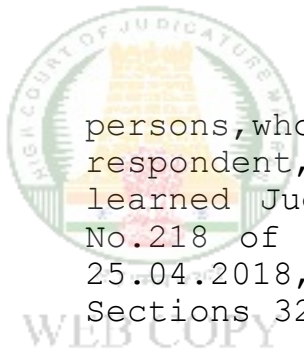
ORDER

This petition has been filed for a direction to the learned Judicial Magistrate, Ambasamuthiram, to conduct a joint trial of the cases in CC No.218 of 2017 along with CC No.228 of 2016.

2.The respondent lodged a complaint before the V.K.Puram Police Station, Tirunelveli District and the same was registered in Crime No.94 of 2016 for the offence under Sections 147, 148, 294(b), 323, 324 and 506 (ii) IPC. Totally six persons were arrayed as accused. The petitioner was also arrayed as A-2 in the said complaint.

3.The FIR came to be investigated by the Police and a final report was filed, wherein the name of the petitioner was dropped and the final report was filed only as against five accused persons. The final report was taken on file in CC No.228 of 2016 as against the five accused persons for the offence under Sections 147, 148, 294 (b), 323, 324 and 506 (ii) IPC.

4.The respondent filed an objection petition, since the name of the petitioner was deleted in the final report. He was given liberty to file a private complaint. The respondent, therefore, proceeded to file a complaint under Section 200 of CrPC as against all the six



persons, who were named in the FIR. The sworn statement of the respondent, Petchiyammal and Subbulakshmi were also recorded by the learned Judicial Magistrate and the case was taken on file in CC No.218 of 2017 only as against the petitioner. By an order dated 25.04.2018, the learned Judicial Magistrate framed charges under Sections 324 and 506 (i) IPC as against the petitioner.

5. In the private complaint which was taken on file in CC No.228 of 2016 as against the petitioner, a memo came to be filed on 11.06.2018, wherein a request was made to the learned Judicial Magistrate to conduct a joint trial. In spite of the filing of the memo, the learned Judicial Magistrate proceeded to deal with both the cases separately. Aggrieved by the same, the present petition has been filed seeking for a joint trial.

6. The learned Counsel for the petitioner would submit that that as per Section 210 of CrPC, it is imperative on the part of the Court below, to enquire into or try together both the cases. The learned Counsel would further submit that the prosecution version in both cases are similar. Therefore, the learned Counsel would submit that the accused person would be put to great prejudice in the event of conducting independent trial in both the cases.

7. It would be appropriate to extract Section 210 of CrPC, which is as follows:

"210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence:

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation;

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report;



(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

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8. The learned Counsel for the petitioner would specifically rely upon Sub Section 3 to Section 210 of CrPC and would contend that where the accused persons are not common in the Police case and the private complaint, Sub Section 3 to Section 210 CrPC would apply. The learned Counsel, therefore, submitted that when the private complaint and the Police case relates to the same incident, joint trial of the two cases is permissible.

9. It is apposite to refer to certain judgments on this issue.

10. The Hon'ble Supreme Court in the judgment in Harjinder Singh Vs State of Punjab and others, reported in (1985) 1 SCC 422 has held as follows:

5. ... On April 7, 1984 the appellant filed an application that as the prosecution versions in the police challan case and the complaint case were conflicting and the number of accused and the prosecution witnesses were also different, the trial of the two cases may not be held together. While this application was pending, the respondents made an application on April 24, 1984 that the police challan case and the complaint case be consolidated and clubbed together. That application of theirs was allowed by the learned Additional Judge who by his order dated April 24, 1984 directed that the cases may be clubbed and consolidated and the evidence recorded in one case be read as evidence in the other case.

6. ...

7. ...

8. In the facts and circumstances of this particular case we feel that the proper course to adopt is to direct that the two cases should be tried together by the learned Additional Sessions Judge but not consolidated i.e. the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. The learned Additional Sessions Judge should after recording the evidence of the prosecution witnesses in one case, withhold his judgment and then proceed to record the evidence of the prosecution in the other case.

<https://hcservices.ecourtservices.nic.in/HCServices/> The learned Judge should then proceed to simultaneously dispose of the cases by two separate judgments taking care that the judgment in one case is not based on the evidence recorded



in the other case. In Kewal Krishan's case, supra, this Court had occasion to deal with a situation as the present, where two cases exclusively triable by the Court of Sessions, one instituted on a police report under Section 173 of the Code and the other initiated on a criminal complaint, arose out of the same transaction. The Court observed that to obviate the risk of two courts coming to conflicting findings, it was desirable that the two cases should be tried separately but by the same court.

11. The Hon'ble Supreme Court in the judgment in Manikandan Vs. Pandian and others, reported in 1989 Supp (2) SCC 648 has held as follows:

2. The facts leading to the appeal may briefly be stated :

On November 15, 1984 at about 5.00 PM, Peria Mayan elder brother of the appellant received a fatal stab injury at his right side of the abdomen. The appellant took him to the Police Station B-II SS Colony, Circle B North, District Madurai South and gave information about the attack and the assailants. The Sub Inspector who was in charge of the Police Station recorded that statement. He found the victim in a critical condition. He registered the case under Sections 324 and 307 of the Indian Penal Code and issued First Information Report with the name of the first respondent as the accused. The victim died at 5.25 PM on the same day. Consequently, the offence was altered into one under Section 302 of the Code. After investigation, the police filed charge-sheet against the accused before the Judicial Magistrate II, class No. II, Madurai. The accused has been committed to the Court of Session.

3. When the said case was pending, the appellant filed a complaint before the aforesaid Magistrate. In that complaint, he has mentioned the names of three accused including the accused against whom the charge-sheet has already been filed. The allegations in the complaint are almost similar with the averments in the First Information Report. In the complaint, the appellant has stated that he had informed the police the names of all the three accused who participated in the murder of his brother but he came to know that the charge-sheet was filed only against the first accused. The learned Magistrate upon examining the complainant took cognisance of the offence under Section 302 IPC and issued process to all the three accused.

4. The accused moved the High Court under Section



482 of the CrPC for quashing the proceedings instituted upon the private complaint. The High Court accepted the petition and quashed the proceedings. The reasons given by the High Court may be summarised as follows : That there is absolutely no variation between the case set out in the charge-sheet filed by the police and the private complaint filed by the appellant. The first information report has been laid by the appellant before the police within half an hour of the occurrence.. There he has mentioned only the name of the first accused. The police has investigated into the matter and filed the charge-sheet against the first accused. There is, therefore, no need whatsoever for a separate private complaint either against the first accused or against the other two accused. Since the appellant has not mentioned about the other two accused in his information to the police, the case on private complaint as against the other two accused was purely an after-thought. The allegations indeed came five months later and were intended only to harass the other two accused by implicating them in the crime of murder.

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8. The private complaint thus contains reasons why the appellant found it necessary to move the learned Magistrate. The High Court without appreciating the grievance of the appellant has proceeded, solely on the omission of names of the two accused in the First Information Report and the charge-sheet filed by the police. In fact, that was the very grievance of the appellant. If the appellant had mentioned the names of all the three accused who, according to him, were responsible for the murder of his brother, but the sub-inspector of police issued the First Information Report only against the first accused, it is indeed a serious matter to be looked into. It is at any rate too premature to state that the appellant was making improvement in the case so as to involve the other two accused with a view to harass them. We cannot, therefore, sustain the order of the High Court.

9. Before parting with the case, it may be necessary to point out that the two cases however, cannot be consolidated and tried together though the case instituted on private complaint is in respect of the same offence for which the charge-sheet has been filed against the first accused. The entire evidence in the case may not be the same. It may, therefore, be proper to record the evidence separately in both the



cases unless the witnesses are common, The cases be tried one after another. In this context, we invite the attention of the parties and the trial court to have regard to the principles laid down in Harjinder Singh v. State of Punjab.

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12.This Court had an occasion to consider the scope of Section 210 of CrPC in Kadiresan Vs. Kasim and others, reported in 1987 CrLJ 1225 and this Court held as follows:

4.The learned counsel for the revision petitioner would contend that in the present case, there has been a miscarriage of justice in as much as the evidence he wanted to adduce in support of the private complaint filed by him was not accepted by the trial Court. He contended that when there is a complaint case and police case in respect of the same offence, as per S. 210, Cr.P.C. though it is imperative. On the Magistrate to enquire into or try together the complaint case and the case arising out of the police report and the procedure to be followed by him in the one prescribed for the case instituted on police report, the two cases remain separate and the Magistrate cannot prevent the complainant from adducing his evidence in respect of the complaint case. In support of his stand, he produced three judgments. The first judgment is by the High Court of Kerala in Annamma v. Antony Chacko, 1976 Mad LJ (Cri) 529 where it was observed that assuming that S. 210, Cr.P.C. applies to the case, the refusal of the Magistrate to examine the witnesses mentioned in the complaint is not justified. The second one is by the same High Court in Mani v. Swainatha, 1985 Mad LJ (Cri) 596, where it was observed that the two cases under S. 210 P.C. should be tried together by the same Court, but not consolidated. In support of that decision the Kerala High Court placed reliance on the decision of the Supreme Court in Harjinder Singh v. State of Punjab, 1985 SCC (Cri) 93 : (1986 Cri LJ 831), which is the third decision cited by the learned counsel for the revision petitioner. In that case, the Supreme Court has observed that in case of joint trial, the cases should not be consolidated and that the evidence should be recorded separately in each case and after the other except to the extent that the witness for the prosecution who was common to both the cases be examined in one case and his evidence be availed as evidence in the other. It is this ratio which has been applied by the Kerala High Court in the decision second quoted, in instances contemplated in S. 210, Cr.P.C.



5.

6. In the present case, the Magistrate did not act at the beginning strictly in accordance with S. 210, Cr.P.C. by way of staying the proceedings and calling for a report. But after the case filed by the police has been transferred to his Court, the Magistrate has become aware that the cases were covered by S. 210, Cr.P.C. and he purported to act under that section. As per that section, the merging of the cases is not contemplated. What is contemplated is only that the cases be tried together. The clubbing of the cases was operated on 23-9-1980, the date on which the complainant was absent and his absence was excused by the Court. The complaint has then filed before the end of the trial and before the pronouncement of judgment on 5-3-1981, a petition, namely Cr.M.P.446 of 1981, drawing the attention of the Magistrate about the necessity to keep the identity of each case separately. Therefore, the fact that the Magistrate has recorded that C.C. 113 of 1980 is clubbed with C.C. 339 of 1980 does not amalgamate the cases and reduce them only to one case.

7. As per S. 210, Cr.P.C. the two cases continued to exist separately. But the cases should be tried as if both of them have been instituted on a police report, from the time the Magistrate has taken cognisance of an offence under the police report. It is to be noted that this contingency may happen at any stage of the private complaint case because the Magistrate would have stayed that case only when it has been made to appear to him that an investigation by the police is in progress in relation to the same subject matter.

8.

9. The error of the Magistrate arose from, the fact that he made a confusion between joint trial and complete amalgamation of cases. As held by the Supreme Court in the decision supra, there cannot be amalgamation of cases when joint trial is permitted.

10. In the decision relied on by the learned judge for the accuse-respondents, it was not held that in case of joint trial complainant would be debarred from adducing his own evidence, the matter



before Court at that time was whether there could be a joint trial or not. The Court answered in the affirmative and said that since the foundation for the charge was one and the same and it was one just that there should be one and the same and it was only just that there should be on trial and S. 210, Cr.P.C. is a procedure beneficial to the accused and that there need not be two separate trials of the same offence, therefore, those observations of this Court in *Chinnu Naicken v. Rangasami*, 1982 Mad LW Cri 160 : (1983 Cri LJ 494) is no manner contrary to the views taken by the Kerala High Court. At any rate, now that the decision of the Supreme Court is available on that point, there may be any controversy whatsoever. When using a loses language, two cases are said to be clubbed, that means that they are being tried together but that cannot make any one of those cases to lose its identity. Once in a matter summons has been issued by the Magistrate, unless the accused is discharged, the case continues to exist, and, therefore, judgment should indicate what is the fate of the accused in each case.

11. The Court, while ordering that both the cases would be clubbed in respect of this that occurrence has practically merged them which it had no jurisdiction to do. Since it is clear from the language of S. 21, Cr.P.C. that both the cases exist side by side and continue to have their specific identities and the Court has no jurisdiction to merge them it is always better to avoid terms like 'clubbing' and to use the language of the Code itself, that is to say 'trying together'. Since the court below has committed a gross error which has affected the interest of justice in both the cases, the revision petition has to be allowed and the trial court while dealing with the matter should follow the guidelines indicated by the Supreme Court in *Harjinder Singh v. State of Punjab* 1985 SCC (Cri) 93 : (1986 Cri LJ 831) already quoted.

13. The Hon'ble Supreme Court had another occasion to consider the same issue in *Pal @ Palla Vs. State of Uttar Pradesh*, reported in (2011) 2 MLJ (Cr1) 487 (SC).

11. The question, therefore, which arises for consideration in this appeal is whether a common trial can be held in respect of two cases, one on the basis of the charge-sheet filed by the police and the other on the basis of a protest petition which has been created as a complaint having been committed to the Court of Sessions, although, none of the accused in the said two cases are common. In fact, as



indicated hereinabove, the accused in one of the cases are the witnesses in the other and vice versa.

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14. Mr. R.D. Upadhyay, learned counsel, who appeared for the appellant, urged that Section 210 Cr.P.C. provides for the procedure to be followed when there is a complaint case and a police investigation in respect of the same offence. He submitted that Sub-Section (2) of Section 210 makes it clear that if the Magistrate takes cognizance of an offence on a report filed by the Investigating Officer under Section 173 Cr.P.C. against any person, who is also an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases have been instituted on a police report. Mr. Upadhyay submitted that Sub-Section (3) of Section 210 was not attracted to the facts of this case since it deals with a procedure where, if the police report did not relate to any accused in the complaint case or the Magistrate did not take cognizance of any offence on the police report, he would proceed with the inquiry or trial, which might have been stayed by him under Sub-Section (1) in accordance with the provisions of the Code.

15. According to Mr. Upadhyay, the clubbing of the two cases together was not in accordance either with the provisions of Sub-Section (2) of Section 210 Cr.P.C. or the directions given by the High Court in the earlier proceedings between the parties. Mr. Upadhyay urged that having regard to the peculiar facts of the case, where the accused in one case is the witness in the other, difficulties were bound to arise at the time of examination of witnesses in a common trial. On the other hand, if the two cases were tried separately, as directed by the High Court and the witnesses were examined separately, it would be possible to arrive at the truth after comparing the two sets of evidences that would be led in the two separate cases. Learned counsel submitted that the order passed by the High Court was contrary to the provisions of Section 210(2) Cr.P.C. and was liable to be set aside.

16. In support of his submissions, Mr.



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Upadhyay firstly referred to the decision of this Court in Harjinder Singh vs. State of Punjab & Ors. [(1985) 1 SCC 422], where in an almost identical situation, this Court, while interpreting Section 223 Cr.P.C., held that clubbing of the two cases, one on a police challan and the other on a complaint, was not permissible and if the prosecution versions in the two cases were materially different, contradictory and mutually exclusive, as in the instant case, such cases may be ordered to be tried together, but not consolidated. In other words, the evidence is to be recorded separately in both the cases and they should be disposed of simultaneously so that the procedure does not infringe the provisions of Article 20(2) of the Constitution read with Section 300 Cr.P.C.

17. In this regard reference was also made to an earlier decision of this Court in Kewal Krishan s/o Lachman Das vs. Suraj Bhan & Anr. [(1980 (Supp.) SCC 499)], on which reliance had been placed in Harjinder Singh's case (supra), where the same views had been expressed and it had been observed that the two cases should be tried separately but by the same court to avoid risk of two courts coming to conflicting findings. Mr. Upadhyay submitted that Section 223 Cr.P.C. did not contemplate clubbing of cases, though, it provides for trial of two cases arising out of the same transaction, on a police report and on a complaint, separately, but by the same court. Learned counsel submitted that the High Court was, therefore, wrong in clubbing the two cases together in a single trial and the impugned order was, therefore, liable to be set aside.

22. Section 210 Cr.P.C. provides the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Sub-Section (1) of Section 210 provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation. Sub-Section (2) provides that if a report is made by the Investigating Officer under Section 173 and on such report cognizance of any offence is taken by the



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Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub-Section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code.

23. Although, it will appear from the above that under Section 210 Cr.P.C. the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, in our view, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises. In our view, this is a case where the decision in Harjinder Singh's case (supra) would be more apposite. In the said case, the question of Article 20(2) of the Constitution, as well as Section 300 Cr.P.C., relating to double jeopardy was considered. A similar situation has arisen in this case where the version in the complaint case and the police report are totally different, though, arising out of the same incident. In our view, this is a case where the two trials should be held simultaneously but not as a single trial.

24. The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. As was observed in Harjinder Singh's case (supra) clubbing and consolidating the two cases, one on a police challan and the other on a complaint, if the prosecution versions in the two cases are mutually different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases



being recorded separately, so that both the cases could be disposed of simultaneously.

14. In the present case admittedly the petitioner was an accused in Crime No.94 of 2016. The Police chose to drop the petitioner in the final report, mainly on the ground that at the time of incident, the petitioner was not present in the scene of occurrence, therefore the name of the petitioner was dropped from the final report. This is evident in the final report that was filed by the Police on 23.04.2016 before the Judicial Magistrate, Ambasamuthiram. Subsequently, the respondent has filed the complaint under Section 200 CrPC, wherein he is aggrieved by the dropping of the name of the petitioner and also the manner in which the investigation was conducted by the respondent Police. The facts as contained in the private complaint are the same that was alleged by the respondent in his complaint, which came to be registered in Crime No.94 of 2016.

15. It can also be seen that the respondent, Petchiyammal and Subbulakshmi have given sworn statements before the complaint was taken cognizance. These three witnesses are also shown in the list of witnesses in the final report.

16. The learned Magistrate has also proceeded to examine the petitioner and two others mentioned above, as witnesses in CC No.218 of 2017 as PW.1 to PW.3 and has proceeded to question the petitioner who was arrayed as an accused in the said CC, under Section 281 of the Code of Criminal Procedure, wherein the memorandum of substance of the examination of the accused was recorded. Thereafter, charges have been framed against the petitioner for the offence under Sections 324 and 506(i) IPC by an order dated 25.04.2018.

17. A reading of the judgments cited supra makes it clear that where the Court tries two cases one instituted on the Police report under Section 173 of the Code of Criminal Procedure and the other initiated on the criminal complaint, arising out of the same prosecution, the two cases should be directed to be tried together, but not consolidated. In other words, the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution are common to both the cases be examined in one case and their evidence be read as evidence in the other. This has been the consistent view of the Hon'ble Supreme Court in the above cited judgments.

18. In the judgment rendered by this Court cited supra, it has been categorically held that where foundation for the charge was one and the same, it was only just that there should be one trial and Section 210 of the Code of Criminal Procedure is a procedure beneficial to the accused and that there need not be two separate



trials for the same offence.

19. In the present case, the foundation for both the cases is the same and in fact the witnesses in both the cases are also the same. The only difference is that the petitioner is not an accused in CC No.228 of 2016 and he has been made as an accused subsequently in the private complaint filed by the respondent which was taken cognizance in CC No.218 of 2017.

20. Under such circumstances, appropriate course to adopt is to direct the two cases to be tried together by the learned Judicial Magistrate, Ambasamuthiram, but not consolidated. The evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other.

21. In the result, the criminal original petition is allowed and the learned Judicial Magistrate Ambasamuthiram is directed to conduct a joint trial in CC N.228 of 2016, but not consolidated. As stated above, the learned Judicial Magistrate shall record the evidence separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. Thereafter the learned Judicial Magistrate shall proceed to simultaneously dispose of the cases by two separate judgments based on the evidence recorded in the respective cases.

22. The learned Judicial Magistrate, Ambasamuthiram is further directed to dispose of CC Nos. 228 of 2016 and 218 of 2017 in the manner stated above, within a period of four months from the date of receipt of the copy of this order. Consequently, connected miscellaneous petitions are closed.

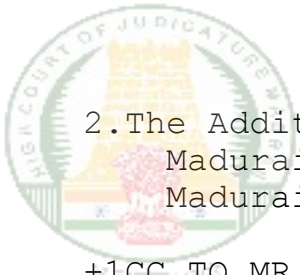
Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
1. The Judicial Magistrate,

Ambasamuthiram.



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.A.THIRUVADI KUMAR, ADVOCATE IN SR.NO.81626.

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DS RSK SAR-4 27.09.2018 14P/4C

order made in
Cr1.O.P. (MD) No.15316 of 2018
&
Cr1.MP (MD) Nos.6784
and 6785 of 2018
30.08.2018