

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH  
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Writ Petition No.6703 of 2018

Between

Aijaz Ahmed @ Mohd. Sharfuddin,  
S/o. Mohd. Qutubuddin, Aged 57 years,  
Occ: Translator, R/o. H.No.16-9-409/21,  
Old Malakpet, Hyderabad, Telangana State

... Petitioner

and

1. The Union of India, Rep. by Secretary of  
Ministry for Home Affairs, New Delhi;  
and 13 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 08-6-2018

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE Ms. JUSTICE J.UMA DEVI

- |   |                                                                            |        |
|---|----------------------------------------------------------------------------|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals       | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

\* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.6703 of 2018

% Date: 08-6-2018

# Aijaz Ahmed @ Mohd. Sharfuddin,  
S/o. Mohd. Qutubuddin, Aged 57 years,  
Occ: Translator, R/o. H.No.16-9-409/21,  
Old Malakpet, Hyderabad, Telangana State

... Petitioner

Vs.

- \$ 1. The Union of India, Rep. by Secretary of  
Ministry for Home Affairs, New Delhi
2. The State of Telangana, Rep. by its Chief Secretary,  
Secretariat, Hyderabad
3. The State of Telangana, Rep. by its Prl. Secretary,  
Home Dept., Secretariat, Hyderabad
4. The Director General of Police, Telangana State,  
Lakdi-ka-pool, Hyderabad
5. The Commissioner of Police, Hyderabad City,  
Basheerbagh, Hyderabad
6. The SHO, Malakpet PS, Hyderabad,
7. K.N. Vijay Kumar, S/o Nagamuni, Aged 55 years,  
Occ: Asst. Commissioner of Police,  
Central Crime Station, Hyderabad
8. Avinash Mohanty S/o A.K. Mohanthy, Aged 40 years,  
Occ: Deputy CP, CCS, Hyderabad
9. Nayeem, Aged 43 years, Occ: SI Div.D,  
CCS, Hyderabad
10. R.Srinivas S/o R.Kistaiah, Aged 45 years,  
Occ: Real Estate Agent, R/o 7-2-581/582,  
Burgushetty Bazar, Secunderabad
11. R.Krishna Kumar S/o R.Kistaiah, Aged 43 years,  
Occ: Reat Estate, R/o 7-2-581/582,  
Burgushetty Bazar, Secunderabad

12. P.Thirmal Reddy S/o P.Venkat Reddy, Aged 48 years,  
Occ: Private Service, R/o Shamirpet, R.R. Dist.
13. Venkata Raya Verma Vegesna, Occ: Managing Director,  
Vertex Corporate, 4<sup>th</sup> Floor, Plot Nos.8 and 9,  
Jubilee Enclave, Opp: Hitex Entrance, Madhapur,  
Hyderabad
14. Ali Mohammed S/o Mirzaqudhrathullah, Aged 53 years,  
R/o 22-4-431/1, Kotla Alijah, Hyderabad
- ... Respondents

! Counsel for Petitioner: Mr. M.Ram Reddy

Counsel for Respondents 1&2: GP for GAD (TG)

Counsel for Respondents 3to6: GP for Home (TG)

Counsel for Respondents 7to9: Mr. N.Naveen Kumar

Counsel for Respondents 10to14: ---

< Gist:



> Head Note:

? Cases referred:

1. (2014) 2 SCC 1
2. (2006) 1 SCC 627

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.6703 of 2018

Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition seeking a declaration that the failure of the 6<sup>th</sup> respondent/ Station House Officer, Malakpet Police Station, to register a FIR against the respondents 7 to 14 despite the orders of the learned VII Additional Chief Metropolitan Magistrate in Sr.No.683 of 2018, dated 22-02-2018, is illegal and also to declare the action of the 8<sup>th</sup> respondent/Deputy Commissioner of Police and his subordinates in harassing the petitioner and his family members as illegal.

2. Heard Mr. M.Ram Reddy, learned counsel for the petitioner, the learned Government Pleaders (GAD) and (Home) and Mr. Naveen Kumar, learned counsel for the respondents 7 to 9.

3. The averments with which the petitioner has come up with the above writ petition are that the petitioner is doing the job of a Translator for the past 25 years; that a person by name R.Srinivas, who is the 10<sup>th</sup> respondent herein, used to come to his office regularly for translation of some Urdu documents; that in May-June, 2017, the 10<sup>th</sup> respondent along with some Police personnel of the Central Crime Station came to the petitioner's house and requested the petitioner to give a statement against one B.Sailesh Saxena, Advocate,

by offering an amount of Rs.5,00,000/-; that they wanted the petitioner to give a statement before the Assistant Commissioner of Police, who is the 7<sup>th</sup> respondent, to the effect that the petitioner used to prepare forged and fabricated documents for Mr. B.Sailesh Saxena, Advocate, in respect of the properties situate in Hyderabad and Ranga Reddy District; that when the petitioner refused to give such false statements, the officials of the Central Crime Station took the petitioner on 11-10-2017 at 3.30 p.m. to the Central Crime Station; that due to the harassment meted out at the police station, the petitioner had a chest-pain and got admitted in Apollo Hospital; that the said R.Srinivas, R.Krishna Kumar, P.Thirmal Reddy along with the Police personnel of the Central Crime Station are regularly visiting the petitioner's house and threatening him to give false statement; that they also offered to pay Rs.5,00,000/- to the petitioner; that the 10<sup>th</sup> respondent came to the petitioner's house and offered an advance of Rs.2,00,000/-, but the petitioner refused; that the petitioner was informed that several cases were foisted against Sailesh Saxena at the instance of land grabbers (respondents 13 and 14) since the said Sailesh Saxena filed civil cases and obtained orders against these land grabbers; that due to such harassments, the petitioner made arrangements to shift from Malakpet to Somajiguda; that under these circumstances, the 10<sup>th</sup> respondent came to the house of the petitioner along with the respondents 13 and 14;



that while the respondents 13 and 14 were sitting in the car, the 10<sup>th</sup> respondent came to the petitioner and offered Rs.25,00,000/- for giving a false statement against Sailesh Saxena; that the 10<sup>th</sup> respondent also told the petitioner that the respondents 13 and 14 had come to meet the petitioner; that when the petitioner refused to meet them, they left; that thereafter, the petitioner and his son went to M.S. Maqta for searching for a house for rental purposes; that at that time, the car in which the respondents 10, 13 and 14 came, started following the petitioner's car; that after seeing this, the petitioner stopped his car near the Masjid at M.S. Maqta; that immediately, the 10<sup>th</sup> respondent again came to the petitioner and threatened that unless the petitioner gave a false statement against the Advocate, he will be implicated in false cases; that in order to avoid the harassment, the petitioner entered the Masjid at M.S. Maqta for namaz; that after the petitioner took treatment in Apollo Hospital and was proceeding to Asmangadh from T.V. Tower Road, the respondents followed the petitioner's car, overtook his car near Samhita St. Thomas College and stopped the car and again threatened the petitioner; that therefore the petitioner filed W.P.No.27608 of 2017 and the same was admitted by this Court; that the petitioner is suffering from diabetes, hypertension and heart ailment for the past 15 years; that though the petitioner gave lot of complaints to the Commissioner of Police, no action was taken against the

respondents 7 to 14; that on a private complaint filed in C.C.Sr.No.683 of 2018, the VIII Additional Chief Metropolitan magistrate passed an order dated 22-02-2018 referring the case to Malakpet Police Station under Section 156(3) Cr.P.C; that the Station House Officer did not register a FIR due to the influence of respondents 7 and 8; that thereafter respondents 10 to 14 came to the petitioner's house on 25-02-2018 in two cars and threatened the petitioner to withdraw the complaint; that they also warned the petitioner that he will be implicated in multiple criminal cases and that therefore the petitioner was compelled to approach this Court by way of the above writ petition.

4. The 6<sup>th</sup> respondent/Station House Officer has filed a counter affidavit denying the allegations of harassment and also denying the allegations that the petitioner was forced to give false statements against Mr. Sailesh Saxena. It is also contended in the counter affidavit that in the course of investigation of the criminal complaints against an Advocate by name Mr. Sailesh Saxena, it was discovered that the petitioner along with other accused created documents in the name of non-existent persons, enabling the initiation of a bogus litigation against the original owners of the properties in Bhojagutta and Banjara Hills with the aim of coercing the owners into a settlement for financial gain; that in view of the said discovery, a notice under Section 91/160 Cr.P.C was attempted to be served on the petitioner; that the office of the

petitioner carrying the name board “AIMS Associates” was found locked; that it was learnt that the petitioner had gone to Saudi Arabia for Umrah; that the petitioner thereafter filed W.P.No.27608 of 2017 alleging that the officials of the Central Crime Station offered him money in order to falsely implicate Sailesh Saxena in the criminal cases; that though the petitioner is claiming ignorance of the cases filed against Sailesh Saxena, he has made a reference in his Affidavit to the civil cases filed by Sailesh Saxena, showing thereby that he was a puppet in the hands of Sailesh Saxena; that when the petitioner was summoned to the Central Crime Station for examination and verification of the veracity of the confession made by Sailesh Saxena implicating the petitioner, the petitioner appeared for an enquiry on 11-10-2017; that after his appearance along with his son, the petitioner claimed that he was a patient suffering from heart ailments; that the petitioner also gave an undertaking to appear whenever required, for investigation; that after the VII Additional Chief Metropolitan Magistrate, Nampally, referred the complaint by order dated 22-02-2018 for investigation and report, the petitioner was summoned to the police station; that at that time the petitioner stated that he never lodged any complaint; that therefore the Station House Officer submitted a detailed report in Sr.No.1202 of 2018, dated 10-4-2018; and that the present writ petition is only to pre-empt public servants from



performing their lawful duties and hence the same is liable to be dismissed.

5. Drawing our attention to the private complaint filed by the petitioner on the file of the VII Additional Chief Metropolitan Magistrate in Sr.No.683 of 2018 and the docket order passed by the learned Magistrate on 22-02-2018 referring the complaint to the Police under Section 156(3) Cr.P.C for investigation and report, it is contended by the learned counsel for the petitioner that as per the law declared by the Constitution Bench of the Supreme Court in **Lalita Kumari v. Government of U.P.**<sup>1</sup>, the Station House Officer was obliged to register a FIR and proceed with the investigation and that the failure of the 6<sup>th</sup> respondent to do so is an abdication of duties. The learned counsel for the petitioner also invited our attention to a judgment of the Supreme Court in **Mohd. Yousuf v. Smt. Afaq Jahan**<sup>2</sup> and contended that the scope of the investigation contemplated under Section 156 of the Code is different from the scope of the investigation envisaged in Section 202 Cr.P.C. The Supreme Court in that case indicated various steps to be taken for investigation under Section 156 Cr.P.C. The investigation should start with the making of an entry in a book to be kept by the officer-in-charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started

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<sup>1</sup> (2014) 2 SCC 1

<sup>2</sup> (2006) 1 SCC 627

thereafter can end up only with a report filed by the Police as indicated in Section 173 Cr.P.C. It was further held by the Supreme Court in that case that even if a Magistrate does not say so in so many words, while directing investigation under Section 156(3) Cr.P.C., it is the duty of the Police Officer to register the FIR, because that Police Officer should take further steps contemplated in Chapter-XII of the Code only thereafter.

6. Therefore, on the basis of the law declared by the Supreme Court in *Mohd. Yousuf*, it is contended by the learned counsel for the petitioner that since the Additional Chief Metropolitan Magistrate has passed an order on 22-02-2018 referring the matter to the Police under Section 156(3) Cr.P.C for investigation and report, the Police have no alternative except to register the FIR.

7. We have carefully considered the above submissions.

8. Before we proceed to consider the contentions of the learned counsel for the petitioner, it may be necessary to record one important fact, which is not borne out by the records in this case but which has a causal connection to the case on hand. The present writ petition was actually tagged along with W.P.No.4023 of 2018 filed by an Advocate by name B.Sailesh Saxena. The learned Government Pleader wanted both writ petitions to be taken together. But the learned counsel for the petitioner insisted that this case is different from the case filed by Mr. Sailesh Saxena and that they need

not be heard together. Though we conceded the request, both writ petitions were heard on the same day. While the present writ petition was heard in the morning on 02-5-2018 (the last working day for Court before the closure of court for Summer Vacation), the other writ petition W.P.No.4023 of 2018 filed by the Advocate Mr. B.Sailesh Saxena was heard in the afternoon on the same date.

9. The reason why we are recording the above fact is –

(i) that in W.P.No.4023 of 2018, there are 17 respondents while there are 14 respondents in the present writ petition;

(ii) that the respondents 1 to 9 in both the writ petitions are the same;

(iii) that the respondents 11 to 15 in W.P.No.4023 of 2018 are the respondents 10 to 14 in the present writ petition; and

(iv) that the prayers in both the writ petitions are exactly identical, as could be seen from the following table:

| Prayer in W.P.No.4023/2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Prayer in W.P.No.6703/2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to order, direction particularly one in the nature of writ of Mandamus or any other appropriate writ 1) to declare the action of Respondent No.6 in not registering the FIR against the Respondent Nos.7 to 17 inspite of orders and direction from the learned XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad in Sr.No.662/2018 vide Dis.No.150/XIV ACMM/HYD/2018 dated 05-02-2018 as illegal, | For the reasons stated in the accompanying affidavit, the petitioner prays that the Hon'ble Court may be pleased to order, direction particularly one in the nature of writ of Mandamus or any other appropriate writ 1) to declare the action of Respondent No.6 in not registering the FIR against the Respondent Nos.7 to 14 inspite of orders and direction from the learned VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad in Sr.No.683/2018, dated 22-02-2018 as illegal, arbitrary and unconstitutional in the interest of |

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| <p>arbitrary and unconstitutional in the interest of justice and pass such other order or orders may deem fit and proper in the circumstances of the case, 2) to declare the action of the Respondent No.8 and his subordinates to harass the petitioner and his family members by coming with anti social elements of land mafia to the petitioner's house and threatened to withdraw the said crime pending before the Respondent No.6 which was registered against the Respondent Nos.7 to 17 as illegal, arbitrary, unconstitutional in the interest of justice and pass such other order or orders may deem fit and proper in the interest of justice and 3) to declare the action of Respondent Nos.7 and 8 threatening petitioner and his family members that they will implicate multiple false criminal cases against the petitioner and his family members and also implicate the petitioner under Preventive Detention Act, if said crime is not withdrawn pending before the Respondent No.6 which was registered against the Respondent Nos.7 to 17 as illegal, arbitrary, unconstitutional in the interest of justice and pass such other order or orders may deem fit and proper in the interest of justice.</p> | <p>justice and pass such other order or orders may deem fit and proper in the circumstances of the case, 2) to declare the action of the Respondent No.8 and his subordinates to harass the petitioner and his family members by coming to the petitioner's house and threatened to withdraw the said crime pending before the Respondent No.6 which was registered against the Respondent Nos.7 to 14 as illegal, arbitrary, unconstitutional in the interest of justice and pass such other order or orders may deem fit and proper in the interest of justice.</p> |
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10. The only difference between the writ petition filed by the Advocate Mr. Sailesh Saxena and the present writ petition is that Mr. Sailesh Saxena is already an accused in 6 criminal cases, while the petitioner is not made an accused at least as on date. But the petitioner in the other writ petition and the petitioner herein appear to have a common cause. This is seen from the fact that the allegation of Mr. Sailesh Saxena is that on the basis of fabricated materials he had been implicated in a criminal case and the allegation of the petitioner herein is that he is under threat and coercion to



give evidence against Sailesh Saxena. An interesting if not intriguing commonality is that the petitioner herein as well as Sailesh Saxena filed private complaints under Section 200 Cr.P.C almost simultaneously. While the petitioner herein got an order on 22-02-2018, Mr. Sailesh Saxena got an order on 05-02-2018. Keeping this background in mind, we shall take up for consideration the contentions raised.

11. The main grievance of the petitioner is that he lodged a private complaint under Section 200 Cr.P.C as against the respondents 7 to 14 for alleged offences under Sections 120B, 195, 195A and 506 IPC read with 34 IPC and that despite the VII Additional Chief Metropolitan Magistrate referring the complaint under Section 156(3) Cr.P.C., the 6<sup>th</sup> respondent failed to register a FIR and proceed with the investigation.

12. The sum and substance of the allegations in the complaint lodged by the petitioner is that the respondents 7 to 14 are compelling the petitioner to give an incriminating statement against an Advocate by name B.Sailesh Saxena and that when the petitioner refused to accept monetary consideration for giving a statement, the Police officials are threatening to foist criminal cases against the petitioner and started harassing the members of the family of the petitioner.

13. But there is a missing thread in the whole story weaved by the petitioner. According to the petitioner, the police want to implicate Mr. Sailesh Saxena in a false case as



though he used the services of the petitioner to create forged and fabricated documents in the names of non-existent persons. But if this is true, then the Police should be looking at the petitioner as a co-conspirator and co-accused in the criminal complaints filed against Sailesh Saxena and the Police will not be chasing the petitioner to become a witness. Normally witnesses who give statements to the police under section 161 of the Code, turn hostile only during trial. At that stage, nothing can be done by the police. But to say that even at the stage of investigation, the police want to record the statement of an unwilling witness, is equivalent to saying that the police want to sabotage the case of the prosecution even at the threshold.

14. Section 160(1) of the Code empowers the Police Officer making an investigation, to require the attendance of any person, if such person appears to be acquainted with the facts and circumstances of the case. But no such statement recorded by the Police under Section 161(3) Cr.P.C., shall be signed by the person making it, in view of Section 162(1) of the Code. This is despite the fact that the person summoned under Section 160(1) Cr.P.C is bound to answer truly all questions relating to the case, in view of Section 161(2) Cr.P.C. Curiously, it is not the case of the petitioner that any summon under Section 160(1) Cr.P.C was served on him. It is not even the case of the petitioner that without serving

a summon under Section 160(1) Cr.P.C., he was taken to the police station.

15. It is not the case of the petitioner that he is implicated as one of the accused in the criminal cases against Sailesh Saxena. But nevertheless, the material papers filed by the petitioner disclose that he is fully aware of the nature of the cases filed against B.Sailesh Saxena. The petitioner has filed copies of all the FIRs in which Mr. Sailesh Saxena is implicated as an accused. It is not the pleading of the petitioner that he obtained copies of these FIRs against Mr. Sailesh Saxena in any manner stipulated by law. Therefore, it is so obvious that the petitioner is singing the very same song that is set to tune and also sung by Mr. Sailesh Saxena.

16. Be that as it may, the grievance of a person proposed to be used as a witness in a criminal case may fall under two categories. The first is when a witness is summoned by serving a notice under Section 160(1) Cr.P.C and the second is when he is summoned to the police station even without serving a notice under Section 160(1) Cr.P.C.

17. If the petitioner had been summoned to the police station after serving a notice under Section 160(1) Cr.P.C., the petitioner could not have had any grievance. This is in view of the fact that he is not obliged to sign any statement and hence if the Police Officer prepares a statement completely different from what the petitioner stated, it will be

open to the petitioner to speak the truth when he is in the witness box. Moreover, if the story had taken this particular route, the petitioner would not even have come to know about what was recorded, until he is confronted in the witness box, with a false statement prepared by the Police in his name under Section 161 Cr.P.C.

18. If the story had proceeded on the line indicated in the second alternative viz., that of being summoned without serving a notice on him, the petitioner should have sent a notice either by himself or through his lawyer to the Police refusing to appear before the Police Officer unless a notice under Section 160(1) Cr.P.C was served on him. The moment such a notice is served, any prudent Police Officer will avoid enlisting such a person as a witness, unless the Police Officer himself wants to derail the investigation. At least at the stage of Section 161 of the Code, no Police Officer would bet upon an unwilling horse. But the story created by the petitioner in this writ petition is that the Police Officers are bent upon compelling an unwilling horse to cooperate with them. Since a cooperation of this nature is always short lived and gets exposed in the course of trial by the witness turning hostile, no Police Officer would take this chance and hence the story with which the petitioner has come up, is unbelievable.

19. Apart from the fact that the story with which the petitioner has come up is unbelievable, the prayer made by him in the writ petition is also little tricky. The prayer in the

writ petition is to direct the Police to register a FIR against an officer who is the Investigating Officer in about 6 criminal complaints pending against one Mr. B.Sailesh Saxena. Once a FIR is registered against the I.O. in a criminal case, especially about the manner in which he was collecting evidence in the case, further investigation into the already registered case, cannot go on. Seeking the registration of a criminal complaint against the Investigation Officer, especially at the instance of a person sought to be made a witness, even during the course of investigation into another criminal complaint, would sabotage the investigation. If even during the course of investigation by an Investigating Officer, a criminal complaint is registered against the very same Investigating Officer about the manner in which he is collecting evidence, the same would derail the investigation into the criminal complaints. In fact, Mr. Sailesh Saxena had come up with a writ petition seeking an identical prayer and today we have dismissed the said writ petition on the ground that the writ petition was clearly an attempt at derailing the investigation into 6 criminal complaints for serious offences lodged against Mr. Sailesh Saxena. Therefore, if this writ petition is allowed, the benefit of the same would inure directly to Mr. Sailesh Saxena and that is why we are of the view that the present litigation is a proxy litigation, intended to benefit Mr. Sailesh Saxena. An investigation can be derailed in several ways and the present one appears to be a very novel one which we have not

come across so far. In cases of this nature, an order directing investigation under section 156(3) of the Code should not have been ordered by the learned Magistrate. In any case such an order cannot be construed as an order for the registration of a FIR.

20. The reliance placed by the petitioner on the judgment of the Supreme Court in *Mohd. Yousuf*, may not be of any assistance, since the said decision arose out of the judgment of the Allahabad High Court quashing a charge-sheet. The said case does not deal with a very peculiar situation where the result of directing the Police to register a FIR would be to abort the investigation into 6 other criminal complaints.

21. Therefore, the writ petition deserves to be dismissed, accordingly, it is dismissed. The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.

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V.RAMASUBRAMANIAN, J.

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J.UMA DEVI, J.

08<sup>th</sup> June, 2018.  
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Note:-  
L.R. Copy to be marked.  
(B/o)  
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.6703 of 2018  
[For Orders - per VRS, J.]



08<sup>th</sup> June, 2018.  
(Ak)