

BAIL SLIP

The accused namely Ramu, S/o.Ponnuvel, in S.C.No.56/08 on the file of the District and Sessions Judge, Mahila Court, Salem was directed to be released on bail in MP No.1/2010 in CRL A No.352 of 2010 dated 21.06.2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.352 of 2010

Ramu
Appellant

...

Vs

The State rep.by
Inspector of Police,
Kondalampatty Police Station,
Salem,
Crime No.697 of 2001.
Respondent

...

Prayer:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed in S.C.No.56 of 2008 on the file of the District and Sessions Judge, Mahila Court, Salem, dated 23.04.2010.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.K.Prabakar

Additional Public Prosecutor

JUDGEMENT

This Criminal Appeal has been filed, against the judgement of conviction and sentence, dated 23.04.2010 made in S.C.No.56 of 2008, on the file of the learned District and Sessions Judge, Mahila Court, Salem, finding the appellant/accused guilty and convicting him for the offence under Section 306 of IPC and sentencing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/- and in default, to undergo three months Rigorous Imprisonment.

2. The case of the prosecution in brief is as follows:-

(i) The appellant / accused is the husband of the deceased namely Santhi and that their marriage had taken place 17 years prior to the occurrence i.e. 15.06.2001 and from the date of marriage, both of them were living at the house of the appellant / accused situated at Andipatty Near Murugan Temple and that the appellant / accused and the deceased were flower vendors. The appellant / accused was a drunkard and ever since the marriage there used to be quarrel between him and his wife and that he used to scold her by saying "நீ அழிந்து போ XXXX நீ வேறு யாரையோவைச்சிக்கிட்டு இருக்கிற, சனியனே நீ ஒழிந்தால்தான் நாங்கள் நிம்மதியா இருப்போம்." and he also suspected her fidelity and that on 15.06.2001 at 12.30 p.m. the appellant / accused demanded money from the deceased and that the deceased refused to give money stating that she had kept it for paying electricity charges and that the appellant / accused scolded her by using filthy words and that the quarrel was compromised by the neighbours, later due to the ill treatment and abetment of the appellant/accused, the deceased committed suicide by hanging herself on 15.06.2001, between 12.30 p.m. and 2.00 p.m. at the house of the appellant/accused situated at Andipatty near Murugan Temple. After completion of the investigation, the respondent police filed a final report against the appellant / accused for the offence under Section 306 of IPC before the Judicial Magistrate No.5, Salem. Thereafter, on appearance of the accused the copies of the documents relied on by the prosecution were furnished to the accused under Section 207 of Cr.P.C., finding that the case was triable by the Court of Sessions, the learned Magistrate committed this case to the file of the Principal District Judge, Salem and the same was made over to the Mahila Court, Salem for trial.

(ii) On appearance of the appellant/accused, the substance of the allegation was put to the appellant /accused and he was questioned. He denied the offence and sought for trial. The charges under Section 306 of IPC were framed against the appellant / accused and were read over and explained to him in Tamil. Thereafter, summons were issued to the prosecution witnesses. In order to establish the guilt of the appellant/accused, the prosecution has examined 17 witnesses on its side and Exs.P1 to P16 were filed. No oral and documentary evidence were let in by the side of defence. The learned Trial Judge after hearing both sides and taking into consideration the evidence on record convicted the appellant / accused as stated above.

3. The learned counsel for the appellant / accused would submit that admittedly, the marriage between the appellant / accused and the deceased had taken place 17 years back and it

is the admitted case of the prosecution that there used to be constant and frequent quarrels between the appellant / accused and the deceased. He would further submit that the none of the witnesses have deposed that the petitioner abetted or instigated the deceased to commit suicide. He would further submit that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid the deceased in committing suicide and without any material to substantiate the same, the appellant/accused cannot be held liable for the offence of abetment to commit suicide and thereby the conviction imposed on the appellant / accused, cannot be sustained.

4. The learned counsel for the appellant / accused would further submit that the intention of the legislature and the ratio of the cases decided on the various judgements of the Apex Court as well as this Court are clear that in order to convict a person under Section 306 of IPC there has to be a clear mens rea to commit the offence to abet the victim to commit suicide. It also requires an active or direct act which leads the deceased to commit suicide seeing no other option and this act must have been intended to push the deceased into such a position that he or she committed suicide. He would further submit that taking into consideration the entire evidence, there is nothing on record to show that the petitioner either instigated or abetted the deceased to commit suicide. It is further stated that it is an admitted case that there were frequent quarrel between the appellant / accused and the deceased and that they were living together with their children compromising with each other despite several quarrels which was due to wear and tear of matrimonial life. He would further submit that without any materials on record, the Trial Judge wrongly convicted the accused relying on the evidence of P.W.4 and P.W.11, who are the neighbours, though having given statements under Section 164 Cr.P.C during investigation have not supported the case of the prosecution during trial. The learned counsel would submit that mere reprimanding or using abusive words does not amount to instigation. The words stated in a fit of anger will not amount to abetment and that casual remark of the husband towards his wife in the ordinary course of life will not amount to abetment to commit suicide.

5. The learned Additional Public Prosecutor would submit that initially the case was registered in Crime No.566 of 2001 before the Deevattipatty Police Station, for the offence under Section 302 of IPC, later, on point of jurisdiction, the same was transferred to Kondalampatti Police Station, Salem and that the case was registered in Crime No.697 of 2001, for the offence under Section 302 of IPC. He would further submit that

during the course of investigation and after receipt of opinion from the doctor, who conducted the post mortem, the respondent police altered the offence from Section 302 IPC to 306 IPC and that they had filed the final report for the offence under Section 306 of IPC. He would further submit that P.Ws.4 and 11, who are the neighbours have given statements under Section 164 of Cr.P.C before the learned Judicial Magistrate No.5, Salem and that they have supported the prosecution case that the appellant / accused abetted the deceased to commit suicide.

6. Per contra, the learned counsel for the appellant / accused would submit that though, P.Ws.4 and 11 have given statements under Section 164 of Cr.P.C before the learned Judicial Magistrate No.5, Salem, they have not supported the case of the prosecution at the time of giving evidence before the Court. He would further submit that P.W.11 has turned hostile and that the evidence of P.W.4 does not spell out that the appellant / accused abetted the deceased to commit suicide and even if reliance is placed on the statements recorded under Section 164 Cr.P.C. from P.W.4 and P.W.11 they only speak about the quarrel between the appellant/accused and the deceased and their statements do not point out that the appellant/accused abetted the suicide of his wife.

7. Now coming to the evidence, as per the evidence of P.W.8 and Ex.P.9, the death of the deceased is due to asphyxia by hanging and there is no doubt that the accused committed suicide by hanging herself. The next aspect is that whether the prosecution has let in the evidence to prove that the appellant/accused abetted the commission of suicide by the deceased.

8. P.W.1 is the son of the appellant/accused and the deceased, he was living along with his parents and sister at Andipatti and he and his sister were working in the Silver Pattarai of Thiru.Krishnan. It is the case of P.W.1 that there were frequent quarrels between his father and mother and that his father used to beat his mother in an inebriated condition. His further evidence is that during the year 2001, he came back after his uncle's marriage and on 15.06.2001 he and his sister came back to their house for lunch, after finishing their work. He has further stated that in the morning when he left his house to work there was a quarrel between his father and mother and that his father demanded money from his mother and she had refused to give the money stating that she had kept it for paying electricity bill and that he came back to home, his father was not at home and he had seen his mother having committed suicide by hanging with a Saree on her neck and that he informed his neighbours and they have also told him that

there was a quarrel between his father and mother and they were unable to prevent them. Thereafter, he had gone to brought his relatives and the body was taken to Kanjanaickanpatty through ambulance and that he went to Deevattipatty Police Station and lodged a complaint Ex.P1. The case was transferred to Kondalampatty Police Station.

9. P.W.2 in his evidence has deposed that his neighbours told him there was a quarrel between the deceased and the appellant/accused and that the evidence of P.W.2 is hear say evidence. P.W.3 has not directly seen the occurrence.

10. P.W.4 in her evidence has deposed that the appellant /accused and the deceased used to quarrel with each other and that P.W.4 asked to them as to why they were quarrelling and that the appellant/accused thereafter went out. She has further stated that P.W.1 and Kavitha came back to the house for lunch and they have informed that their mother was dead and that she went to the house of P.W.1. In the cross examination she has stated that she did not know that the deceased committed suicide by hanging herself.

11. P.W.11 in her evidence has deposed that the accused came to the house in an inebriated condition and that there was a quarrel between the appellant / accused and the deceased. P.W.4 and P.W.11 are neighbours and independent witnesses and they have corroborated the evidence of P.W.1.

12. P.W.14 the Sub Inspector of Police has recorded the statement of P.W.1 and that he has registered a case in Crime No.561 of 2001 for offence under Section 302 IPC and he handed over the case for investigation to P.W.15.

13. P.W.15 the Inspector of Police has took up the case for investigation went to the spot prepared an Observation Mahazar (Ex.P10) and Rough Sketch (Ex.P13) in the presence of P.W.9 and that he also arranged a photographer take photographs at the place of occurrence. Further, he had conducted inquest on the body of the deceased before the Panchayatars and prepared an inquest report (Ex.P14) and thereafter, the body was sent to Salem GMKMC hospital for post-mortem. He also examined the witnesses Mani, Govindhan and the photographer and recorded their statements and also seized the Saree, Jacket and Petty Coat. Thereafter, the case was transferred to Kondalampatty Police Station.

14. P.W.13 the Sub Inspector of Police at Kondalampatty Police Station has received the case bundle and he had registered the case in Crime No.697 of 2001 under Section 302 IPC and the First Information Report has been marked as Ex.P11 and that he had placed the case bundle before the Inspector of Police.

15. P.W.16 the Inspector of Police took up the case for investigation and visited the place of occurrence situated at Andipatty and prepared an Observation Mahazar (Ex.P6) and Rough Sketch (Ex.P15) before P.W.7 and that he had examined the witnesses Rojarani, Manga @ Mangammal, Veerapatran, Elumalai, Krishnan, Ramalingam, Shanmugam, Nalla Coundar, Marimuthu, Arunachalam, Shanmugam, Ramasamy and Ganesan and recorded their statements. On 19.6.2001 he had examined the witnesses Saravanan, Sankar, Sellammal, Elumalai, Mani, Govindhan, Vijayakumar and Dr.Vallinayagam and recorded their statements. Thereafter, he placed the case bundle to his successor for further investigation.

16. P.W.17, the Inspector of Police took up the case for further investigation and sent an alteration report to the Court and that he arrested the appellant/accused and sent him to the Court for remand. He also obtained chemical examination report along with the opinion of the doctor. After completion of the investigation he filed charge sheet against the appellant/accused under Section 306 IPC.

17. This Court consciously considered the rival submissions and perused the materials on record. Now what needs to be seen is that whether the prosecution has established the charge against the appellant/accused beyond reasonable doubt and whether the trial Judge has rightly appreciated and analysed the evidence on record on convicted the appellant / accused ?

18. In order to bring home the guilt of the accused the prosecution is bound to establish that the deceased committed suicide and that the accused abetted / instigated the deceased to commit suicide and thereby the essential ingredients for the offence under Section 306 IPC are i) the victim committed suicide ii) the accused abetted the suicide and iii) the intention of the accused to aid or instigate or abet the victim to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation or abetment to commit suicide the accused convicted under Section 306 IPC.

19. Admittedly, the prosecution through the evidence of P.W.8 and Ex.P9, the post mortem report, proved that the death of the deceased was due to suicide by hanging. Now going to the next limb, what is to be seen is as to whether the prosecution has proved by cogent evidence that the accused abetted the suicide and he had an intention to aid or instigate or abet the victim to commit suicide.

20. In Gurucharan Singh Vs State of Punjab, reported in

2017 (1) SCC 433, the Apex Court has held as follows :

"21. Section 306 of the Code prescribes the punishment for abetment of suicide and is designed thus:

"Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated on existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

Section 107 IPC defines abetment and is extracted hereunder:

"107. Abetment of a thing. - A person abets the doing of a thing, who - First - Instigates any person to do that thing; or Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 - A person, who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

23. Not only the acts and omissions defining the offence of abetment singularly or in combination are enumerated therein, the explanations adequately encompass all conceivable facets of the culpable conduct of the offender relatable thereto.

28. The pith and purport of Section 306 IPC has since been enunciated by this Court in *Randhir Singh vs. State of Punjab* (2004) 13 SCC 129, and the relevant excerpts therefrom are set out hereunder.

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In *State of W.B. Vs. Orilal Jaiswal* (1994) 1 SCC 73, this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

29. Significantly, this Court underlined by referring to its earlier pronouncement in *Orilal Jaiswal* (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced

the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in Amalendu Pal @ Jhantu vs. State of West Bengal(2010) 1 SCC 707.

30. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in S.S. Chheena vs. Vijay Kumar Mahajan (2010) 12 SCC 190."

21. Further the same view has been taken by the Apex Court in the recent decisions in M.Arjunan V. The State Rep.by its Inspector of Police (Crl.Appeal.No.1550 of 2018, dated 04.12.2018) and Rajesh Vs. State of Haryana (Crl.Appeal No.93 of 2019, dated 18.01.2019), wherein it has been held as follows :

(Crl.Appeal.No.1550 of 2018)

"8. The essential ingredients of the offence under Section 306 IPC are (i) the abetment : (ii) the intention of the accused to aid or instigate or abet the accused to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation / abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC."

(Crl.Appeal No.93 of 2019)

"8. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an

active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

9. The term instigation under Section 107 IPC has been explained in Chitresh Kumar Chopra V.State (Govt. of NCT of Delhi) as follows :

"16. Speaking for the three-judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], R.C.Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" ; "to keep irritating or annoying somebody until he reacts"

10. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation."

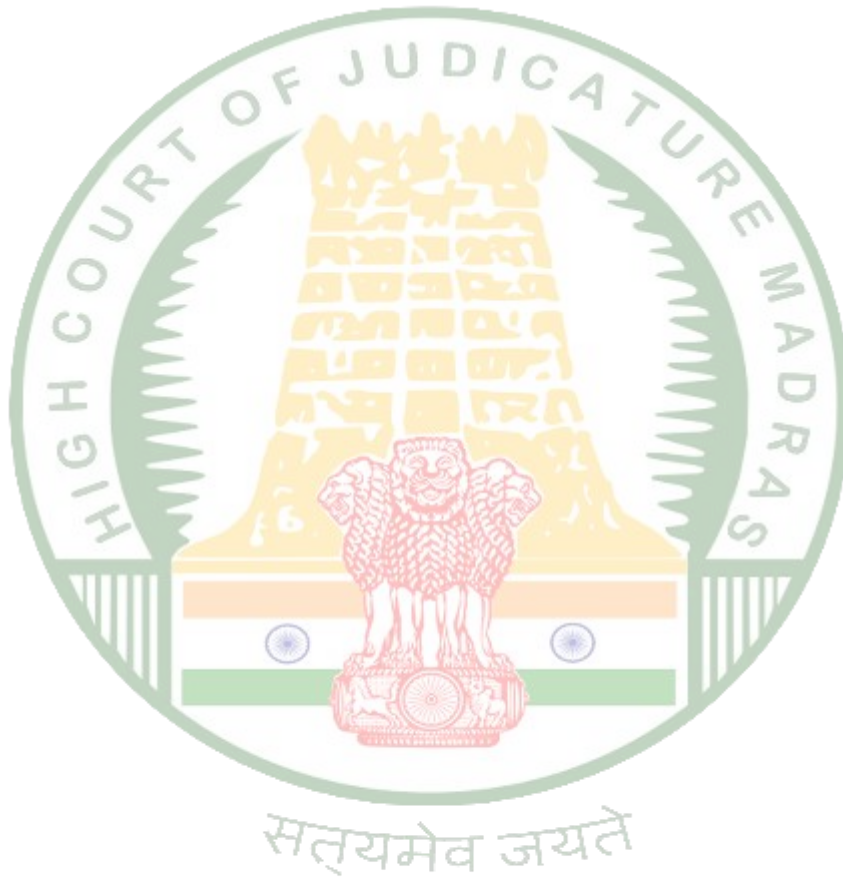
22. Now, this Court shall analyse the evidence in the case on hand, in the light of the decisions referred above. P.W.1 is the son of the appellant/ accused and he has deposed

that there used to be frequent quarrels between his father and mother and that his father used to beat his mother due to drunkenness. His further evidence is that on 15.06.2001 when he had left to his work, there was a quarrel between his father and mother and that his father demanded money from his mother and that she had refused to give the money stating that she had kept it for paying the electricity bill and that he came back home for lunch his father was not at home and he had seen his mother having committed suicide by hanging with a Saree on her neck and that he informed his neighbours. P.W.2 is a hear say witness. P.W.3 has not directly seen the occurrence. P.W.4 and P.W.11, who are the neighbours, have deposed that there was a quarrel between the appellant/accused and the victim and that P.W.4 had questioned them why there were quarreling and thereafter, the appellant/accused went out. Further, P.W.11 had also deposed that there was a quarrel between the appellant/accused prior to the occurrence. However, none of the witnesses have deposed that the appellant/accused abetted the suicide and that the appellant/accused had an intention to aid or instigate or abet the victim to commit suicide. Admittedly there used to be frequent quarrels between the appellant/accused and the deceased. From the above evidence it is seen that it had been a normal conduct between the appellant/accused and the deceased that they were having frequent quarrels. To convict a person for abetment, the prosecution should have adduced legal evidence to prove that the appellant/accused abetted or instigated the deceased with an intention to drive her to commit suicide. In this case admittedly P.W.1, P.W.4 and P.W.11 have spoken only about the quarrel that ensued between the appellant/accused and the deceased and none of the witnesses have stated that the appellant/accused either abetted or instigated the deceased to commit suicide.

23. In the light of the above decisions referred above, which are applicable to the facts of the case on hand and in the view of the discussions and reasons and other analyzing materials placed on record, this Court is of the opinion that the reasons assigned by the trial Court and the conclusion drawn by it by convicting the appellant/accused for abetment to commit suicide are not desirable and the prosecution has failed to prove the guilt of the accused beyond reasonable doubts. Therefore, the conviction and sentence recorded against the appellant/accused are liable to be set aside and consequently, the appellant/accused is entitled for acquittal.

24. In the result, this Criminal Appeal is allowed. The impugned judgment of conviction and sentence, dated 23.04.2010 made in S.C.No.56 of 2008, on the file of the District and

Sessions Judge, Mahila Court, Salem, is set aside. The Appellant is acquitted of the charges levelled against him. The



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bail bond, if any, executed by the Appellant, shall stand cancelled. The fine amount, if any, paid by the appellant is ordered to be refunded to him.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

ms

To:

- 1.The Judicial Magistrate, Mahila Court, Salem.
- 2.The Chief Judicial Magistrate, Salem.
- 3.The Superintendent, Central Prison, Salem.
- 4.The Sessions Judge, Mahila Court, Salem.
- 5.The District and Sessions Judge,
Mahila Court, Salem.
- 6.The Inspector of Police,
Kondalampatty Police Station, Salem.
- 7.The Public Prosecutor,
High Court, Madras

+1 cc to Mr.C.Prabakaran, Advocate, Sr.No. 15356

CSL/03.06.2019

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