

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.12.2018

PRONOUNCED ON : 01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.Nos.18080 & 23233 of 2010

and

M.P.Nos.1 & 1 of 2010

Neil Kingston Jasper ... Petitioner in Crl.O.P.No.18080/10

1.T.N.Venugopal

2.T.N.Sivananthan

3.R.Senguttuvan

4.G.M.K.Raju

5.K.Babu

6.K.Sivaraman

7.S.Venkataraman

8.Arunkumar Nair ... Petitioners in Crl.O.P.No.23233/10

Vs

S.Balasundaram ... Respondent in both petitions

COMMON PRAYER: Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.130 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Tiruvottriyur and to quash the same.

For Petitioners : Mr.C.Mani Shankar
Assisted by Mr.S.Arun Prasad

For Respondent : Mr.C.K.Chandrasekar
(In both petitions)

COMMON ORDER

Crl.O.P.No.18080 of 2010 is filed by the tenth accused in C.C.No.130 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Tiruvottriyur. Crl.O.P.No.23233 of 2010 is filed by accused 3 to 8, 11 & 12 in C.C.No.130 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Tiruvottriyur. They have filed these petitions to quash the proceedings pending as against them in C.C.No.130 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Tiruvottriyur.

2. Since the issue involved in both the petitions pertains to C.C.No.130 of 2006, they are heard together and are disposed of by way of this common order.

3. The facts that are necessary for the disposal of these Criminal Original Petitions, in nutshell, are as follows:

3.1. The petitioners before this Court are Management level staffs of M/s.ITC Limited, Thiruvottriyur, Chennai. The respondent / complainant was an employee in M/s.ITC Limited (PPD), Tiruvottriyur, Chennai. There was a labour dispute prevailing in the factory in the year 2001. The workers were involved in protest like not attending work and go slow on the production. The Management implemented wage cut in terms of the applicable regulations. On 13.01.2001, at about 3 pm, the complainant along with his colleagues requested the Personal Manager / first accused and the second accused and other management staffs to disburse the festival advance for Deepavali. It is alleged that the first accused had abused them that they could eke out their livelihood by begging. When the complainant protested the same, the second accused assaulted the complainant with a knife and caused grievous cut injury over his right forearm. When his co-employees attempted to save the complainant, the accused persons formed in a unlawful assembly and with a common object to kill the complainant, armed with deadly weapons, attacked the complainant. The complainant was admitted in a private Hospital, namely, Sugam Hospital, by his colleagues at about 03.20 pm and he took treatment as Inpatient till 12.12.2001.

3.2. In the meantime, the Management of M/s.ITC Limited registered a case on 13.11.2001, through one Sivananthan, in Crime No.566 of 2001 as against the complainant and 26 others. The complainant, on the other hand, has filed a counter complaint in Crime No.567 of 2001. At the request of the Inspector of Police, Ennore, the Additional District Judge cum Chief Judicial Magistrate, Chengalpattu, by his order dated 04.02.2002, directed the District Munsif cum Judicial Magistrate, Tiruvottriyur, to inspect the premises of M/s.ITC Limited and submit a report. Accordingly, the learned

Magistrate, Tiruvottriyur, had also inspected the factory at Ennore on 19.02.2002 and submitted a report on the damages therein. The Inspector of police, in conclusion of the investigation, though filed a final report in the complaint registered by the Management, has closed the complaint preferred by the complainant as mistake of facts. Therefore, the complainant has lodged a private complaint before the learned District Munsif cum Judicial Magistrate, Tiruvottriyur and the learned Magistrate has rejected the same. Aggrieved, the complainant has preferred Crl.O.P.No.2062 of 2005, which was allowed vide order dated 03.02.2005. Thereafter, the present private complaint was taken on file by the learned Magistrate in C.C.No.130 of 2006 under Sections 190 & 200 Cr.P.C., as against the petitioners herein and three others, for the offence punishable under Sections 147, 341, 324, 342, 506(ii) & 307 IPC.

4. Heard Mr.C.Mani Shankar, learned Counsel, assisted by Mr.S.Arun Prasad, learned Counsel for the petitioners / accused and Mr.C.K.Chandrasekar, learned Counsel for the respondent / defacto complainant. After hearing the Counsel on either side, in full, the respective Counsel were permitted to file their written submissions and accordingly, they have filed the same.

5. Sum and substance, the arguments advanced by the learned Counsel for the petitioners are as follows:

5.1. On 13.11.2001, the workmen, due to the wage cut as per the existing regulations, assembled inside the factory, attacked some of the Managers and also indulged in large scale violence, damaged the factory cars and machineries. In this regard, cases came to be registered and in conclusion of the investigation, the Inspector of Police, Ennore, had filed a final report in Crime No.566 of 2001 [filed by the Management] as against the respondent and 26 other workmen for the offence punishable under Sections 120(b), 147, 148, 323, 324, 341, 395, 427, 506(ii), 307 r/w 149 IPC and Section 31 of TNPPDL Act. The Inspector of Police had also closed the complaint of the respondent registered in Crime No.567 of 2001 as mistake of fact and the same was also accepted by the learned Magistrate. Without challenging this, the respondent, had filed the present private complaint on 13.07.2004, which is a clear abuse of process of law and the same was rightly rejected by the learned Magistrate in C.M.P.No.5295 of 2004. However, in Crl.O.P.No.2062 of 2005 filed by the respondent, this Court by order dated 03.02.2005, set aside the same, stating that the lower Court should have recorded the sworn statement of the complainant and should have found whether there is prima facie case to be proceeded with. Though the petitioners / accused were made as parties in Crl.O.P.No.2062 of 2005, without ordering any notice, the case was decided.

5.2. The Management had also initiated disciplinary proceedings as against the workers indulged in violence and several workers have been dismissed from service. The issue of

termination of service of workers is pending before the Industrial Tribunal. In the final report filed in Crime No.566 of 2001, the case was committed to the Court of Sessions and was pending in S.C.No.406 of 2006 before the Assistant Sessions Judge, Ponneri. In the meantime, the Government, vide G.O.RT.No.4814 dated 13.11.2006, decided to withdraw the case in S.C.No.406 of 2006 and accordingly, the learned Public Prosecutor had filed an application for withdrawal before the Sessions Court. The petitioners have objected the same and the learned Assistant Sessions Judge, by order dated 19.09.2007, rejected the request of the Public Prosecutor. As against that order, the workers have preferred CrI.R.C.No.613 of 2008 before this Court and the same was allowed on 13.02.2014. According to the petitioners, they have filed a recall petition, which was admitted and after elaborate arguments, orders were reserved and pending before this Court.

5.3. Taking in totality, the averments made in the complaint and the accompanying sworn statements of the complainant and the witnesses, it does not prima facie show that the petitioners committed any offence as alleged.

5.4. The present private complaint is filed on 13.07.2004, ie., after a period of 2 ½ years after the closure of the original complaint of the respondent by the police as mistake of fact.

5.5. Out of the 14 witnesses examined by the complainant, 4 witnesses have filed their respective evidence before the Industrial Tribunal in connection with the same incident in which they had denied that they were present physically inside the factory at the time of incident on 13.11.2001 and they had also stated that their evidence was on hearsay.

5.6. In the evidence tendered before the Industrial Tribunal, it has been admitted by the workmen that injuries were suffered by the Managers and properties of M/s.ITC Limited were damaged at the time of incident on 13.11.2001. Further, these are also matters investigated by the police, which culminated in the filing of the charge sheet pending in S.C.No.406 of 2006 on the file of the Assistant Sessions Judge, Ponneri. When this is the position and in the absence of any injury suffered by any of the workmen, other than the alleged injury suffered by the respondent, it is clear that the complaint was a concocted and filed as a counterblast to the complaint lodged by them.

5.7. A perusal of the allegations made in the complaint would ex facie show that there is no case made out under Section 146 IPC and the petitioners cannot be said to be in unlawful assembly, when they are inside their factory premises. Question of invoking Section 147 IPC is also misconceived and therefore, liable to be quashed.

5.8. The petitioners have been asked to stand trial in a criminal case, without any iota of evidence against them, particularly when the police investigation in respect of the same occurrence revealed no commission or omission on the part

of the petitioners, while the complainant and many of his witnesses have been charged with specific offences by the police. This only reiterates that the complaint filed is purely an afterthought and malafide. The police after a detailed investigation referred the case of the respondent as 'mistake of fact' and filed a report which was accepted by the learned Magistrate. The complaint now filed and pending in C.C.No.130 of 2006 is nothing but a duplication of the FIR in Crime No.567 of 2001 which was referred as mistake of fact. Hence, in the absence of any fresh material implicating the petitioners, taking cognizance and issuing summons is not sustainable.

5.9. The accident register issued by Sugam Hospital at the time of admitting the respondent, the discharge summary and the evidence given by the Doctor from Sugam Hospital, shows that there was only one cut injury in the forearm and there were no multiple injuries justifying the respondent's claim that he was attacked by 12 Managers with deadly weapons and the said Register also shows that he was stated to have been attacked by his officer with a knife. No other workmen were injured in the incident but several managers including the petitioners were injured in the incident which prima facie shows the allegations made by the respondent in his complaint are absurd and false.

5.10. The learned Counsel for the petitioners has also relied upon the following decisions, in support of his claim:

- 1998 (1) CTC 329 - A.Krishna Rao v. L.S.Kumar;
- 2015 (7) SCC 423 - Manik Taneja & another v. State of Karnataka & another;
- Unreported decision of this Court in CrI.O.P.(MD)No.16419 of 2015 dated 22.12.2015, in Dr.Parthasarathy v. Rukhmani;
- MANU/TN/0590/2003 - A.Dhanavathi Ammal v. State; and
- (2008) 14 SCC 1 - Rukmini Narvekar v. Vijaya Satardekar and others

6. Countering the submissions put forth by the learned Counsel for the petitioners, the learned Counsel for the respondent has argued as follows:

6.1. The complaint of the workman was taken on file only because of the intervention of this Court, otherwise the Police while taking the Management's complaint and also altering it by adding more workers as accused, strangely recorded the complaint of the victim / defacto complainant as mistake of fact and the learned Magistrate had also dismissed the private complaint in limini, without even taking the sworn statements of the witnesses present. On 03.02.2005, this Court after taking note of the strange actions of the concerned authorities, was pleased to issue a direction to take the complaint on file in CrI.O.P.Nos.1309 & 2062 of 2005 filed by the defacto complainant and it was only thereafter, the accused herein were arrayed to face the trial.

6.2. In August 2009, the Labour trial proceedings initiated in the Industrial Tribunal by the Management under

Section 33(2)(b) of the Industrial Disputes Act came to an end in favour of the workers. The petitioners / accused herein and some of the prosecution witnesses herein had deposed before the Industrial Tribunal. The Industrial Court disbelieved the evidences and the management's theory. Thereafter, the Industrial Tribunal, by an elaborate order, dismissed the petition filed by the management on merits. The management preferred W.P.No.23959 of 2009 and the same is pending before this Court.

6.3. The present Criminal Original Petitions, which are of the year 2010, to quash the private complaint was filed mainly by relying upon the contradictions in some of the evidences let in before the Criminal Court by PWs and the evidence let in before the Industrial Tribunal. The defacto complainant submits that the evidence of the prosecution witnesses prove the presence of the accused and overtacts have been attributed to them.

6.4. There is prima facie evidence to proceed with the complaint of the workman and to stalk it at the threshold, will result in grave prejudice to the complainant. The accused did not seek discharge, if really they had a case.

6.5. There is a finding of the High Court that the closing of the case by the police as mistake of fact was not proper as well as the rejection of private complaint without evidence was wrong. The unvaried judicial decision is binding on the co-ordinate bench, as a matter of judicial discipline.

6.6. Petition filed under Section 482 Cr.P.C. is not maintainable at this stage, as the trial Court is competent to adjudicate the case. The accused are presumed innocent till the final verdict and therefore, it cannot be presumed that it would be futile to even face the trial before the lawful Court, which is competent to decide the case on merits and in accordance with law. Letting them off by applying the theory of 'a possible view' at this stage will affect the trial process. The case cannot be closed on a probable view without there being a trial or by treating the oral evidence as final.

6.7. The complaint only explains the occurrence of an incident broadly and the same needs to be explained properly by the prosecution during trial, so as to bring it within the definition of crime, punishable under law.

6.8. There is a complaint and more than one eye witnesses had deposed about the acts of the accused. The credibility of the evidence can only be tested in the witness box and not before this Court straightaway. Once there is some evidence, the rule of law is for proceeding with the trial and not quashment ab-initio invoking powers under Section 482, on presumption or logical inferences or by invoking the useless formality theory.

7. Having heard the learned Counsel on either side, this Court is of the view that the question to be decided in the present criminal original petitions is as to the validity of the private complaint lying before the learned District Munsif cum

Judicial Magistrate, Tiruvottriyur in C.C.No.130 of 2006.

8. Admittedly, there was a riot on 13.11.2001, inside the premises of M/s.ITC Limited, out of which, alleging injuries, case and counter case were filed by the Management as well as workman, respectively. Though the case of the Management was culminated in a final report, the case preferred by the workman was closed as mistake of fact. Thereafter, the respondent has preferred a private complaint and the learned Magistrate has also rejected the complaint. This was challenged before this Court in Crl.O.P.No.2062 of 2015 and this Court, vide order dated 03.02.2005, has held as follows:

"8. ...But, the lower Court, without following the procedures as contemplated under the Criminal Procedure Code, has abruptly rejected the complaint, which the Court below, in the opinion of this Court, should not have done. The lower Court should have recorded the sworn statement of the complainant, the petitioner herein and should have found whether there is a prima facie case to be proceeded with. Since it is brought to the notice of the Court that the cases in Crime Nos.566 & 567 of 2001 have arisen from the same occurrence, for rendering proper justice and appreciation of evidence, both the cases have got to be taken up for trial by the lower Court at a time. Therefore, the order of the lower Court dated 22.09.2004 rejecting the private complaint, is set aside.

9. It is also brought to the notice of the Court that in the other case in Crime No.566 of 2001, a final report has been filed, and it has been taken in P.R.C.No.9 of 2002 by the District Munsif cum Judicial Magistrate, Tiruvottriyur. Hence, the lower Court is directed to keep that matter pending till it takes the private complaint preferred by the petitioner in C.M.P.5295/04, and decides whether there is a prima facie case to be proceeded against the opposite party. If the lower Court comes to the conclusion that there is a prima facie case made out in respect of the private complaint lodged by the petitioner, then, it should proceed with both the matters in accordance with law, and if it finds otherwise, there cannot be any legal impediment for the Court below to proceed with the other matter in its hands in P.R.C.No.9/2002 arising out of the Crime No.566/2001."

9. In fact, the Counsel for the respondent, by relying upon this order, has made his submission that this decision is binding on this bench and as a matter of judicial discipline, this Court cannot dwell into this issue. This order dated

03.02.2005 was passed, as against the order of rejection of the private complaint, summarily, by the learned Magistrate without even taking the sworn statement and in that view of the matter, this Court has entertained the same, that too, without any notice to the proposed accused / petitioners herein. Therefore, this Court is of the view that the order passed without any notice to the other side, cannot be a binding precedent, preventing this Court from considering the present petitions on its own merits and with the available documents.

10. The Counsel, who are submitting their arguments before the Court, also do have certain duty towards the Court to place the facts properly. When the Counsel for the respondent is taking a plea of judicial discipline in entertaining the present petitions in view of the order passed in CrI.O.P.No.2062 of 2015, he ought to have realise that the said order has been passed at the stage of admission itself, even without issuing any notice to the respondents therein / proposed accused / petitioners herein. Moreover, this Court, in CrI.O.P.No.2062 of 2015, had not dwell into the merits of the contentions raised by the respondent herein. All that this Court had held was without even recording the sworn statement, the learned Magistrate has mechanically rejected the complaint. This Court therefore fails to understand as to in what manner, this order dated 03.02.2005, will prevent this Court from deciding the present case on hand, on its own merits.

11. The respondent has originally lodged the complaint in Crime No.567 of 2001, as against 4 persons, whereas, in the present private complaint, he has mentioned 12 persons as accused. This private complaint was also lodged after a period of 2 ½ years from the closure report submitted by the police. In the original complaint, the respondent has stated that one Unnikumar / A2 has attacked him with a knife on his right forearm, due to which, the respondent sustained cut injury. It is his version before the Doctor at Sugam Hospital, where he took treatment. In the original complaint, the respondent further named three other persons as accused, stating that they also surrounded and attacked the complainant and his colleagues. But, in the private complaint, the respondent has made an allegation that the accused 1 to 12, with a common object of killing the complainant, formed into an unlawful assembly and attacked the complainant with deadly weapons. But, his original complaint; his statement before the Doctor, Sugam Hospital as well as the cut injury sustained by him runs contra to the same.

12. Though the Counsel for the respondent has been repeatedly requested to point out the overtact as against each of the petitioners and the corresponding injury from the complaint as well as the sworn statement, the learned Counsel

had relied upon the evidences adduced by the witnesses before the Industrial Tribunal. In fact, the Counsel for the petitioners had also placed reliance upon the evidences adduced before the Industrial Tribunal so as to establish the contradictions in the evidences adduced therein.

13. Under Section 482 Cr.P.C., this Court cannot re-appreciate / re-analyse the evidences that were adduced by the parties before the Industrial Tribunal, with regard to the present private complaint. But, in the case on hand, on a plain view, it is clear that the persons [A5 to A12], whose names were not included in the original complaint in Crime No.567 of 2001, were also roped-in in the private complaint, without any specific overtact against them and that too after 2 ½ years from the closure of Crime No.567 of 2001 by the police. Therefore, the only view that this Court can take is that in order to harass these persons, they are roped in and in such view of the matter, this Court is inclined to interfere with the private complaint lodged by the respondent / complainant.

14. Even according to the respondent / complainant, they went to meet the Management people seeking Deepavali bonus, whereas, according to the Management, there is no provision for Deepavali bonus as per the 12/3 settlement, as such, the respondent and the other workmen are aggressors for this incident. The report of the learned District Munsif cum Judicial Magistrate, Tiruvottriyur, pursuant to his visit to the premises of M/s.ITC Limited on 19.02.2002, after the riot, is also placed on record, which shows the damages caused to the factory machineries, cars, etc. But, it is an admitted position that as on date, no case is pending as against the workmen, who indulged in the riot on 13.11.2001. This is because of the decision of the Government, vide G.O.RT.No.4814 dated 13.11.2006, in and by which, the Government decided to withdraw S.C.No.406 of 2006 [against the workmen] on the file of the learned Assistant Sessions Judge, Ponneri. Of course, this issue is now pending consideration by this Court in the recall petition filed by the petitioners in CrI.R.C.No.613 of 2008.

15. The Hon'ble Supreme Court in State of Haryana and others. v. Bhajan Lal and others, reported in MANU/SC/0115/1992, had issued certain guidelines, by way of a rigid formula, where the inherent powers of this Court under Section 482 Cr.P.C., can be invoked to quash the First Information Report or a Complaint. For better appreciation, the same is extracted thus:

"105. ...

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. Considering the facts and circumstances of the present case, this Court is of the view that the guidelines enumerated in the aforesaid decision, under categories 3, 5 & 7, would squarely apply to the present case. In such view of the matter and in view of the foregoing discussions,

i) CrI.O.P.(MD)No.18080 of 2010 is allowed and the proceedings pending as against this petitioner in C.C.No.130 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Tiruvottriyur, is quashed;

ii) As regards CrI.O.P.No.23233 of 2010, the proceedings as against petitioners 3 to 8 in C.C.No.130 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Tiruvottriyur, is quashed. Since the names of the petitioners 1 & 2 are already found place in the original complaint in Crime No.567 of 2001, this petition stands dismissed as against them.

17. In fine, CrI.O.P.No.18080 of 2010 is allowed and CrI.O.P.No.23323 of 2010 is partly allowed. Considering the age

of the proceedings, the learned Magistrate is directed to expedite the trial and conclude the same, as expeditiously as possible. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

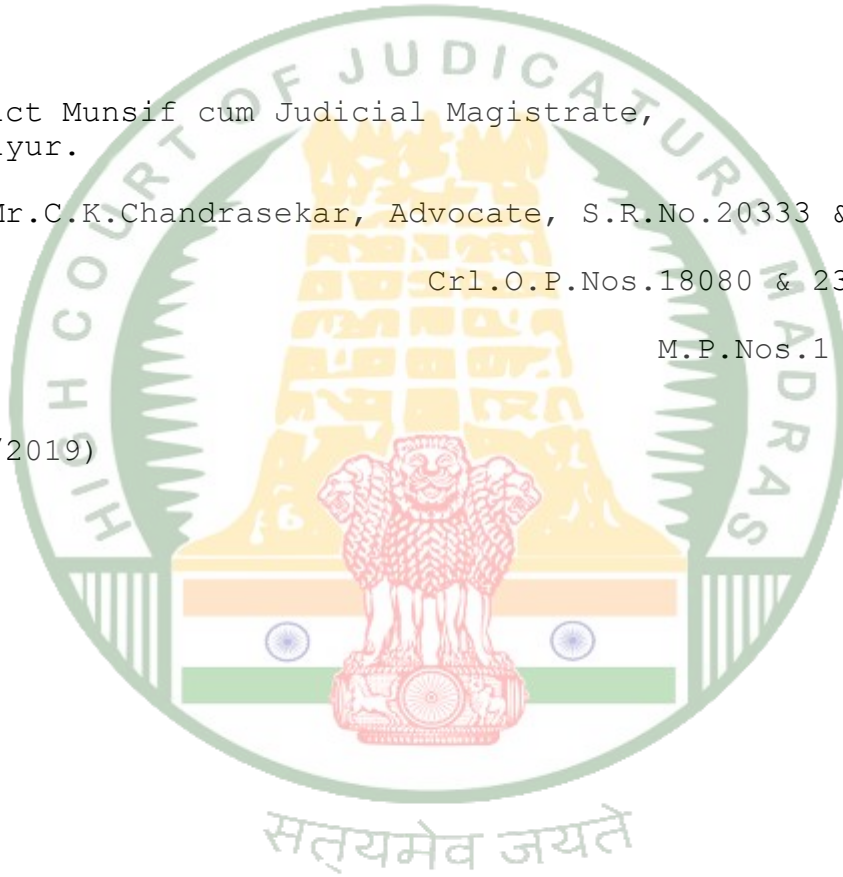
The District Munsif cum Judicial Magistrate,
Tiruvottriyur.

+2ccs to Mr.C.K.Chandrasekar, Advocate, S.R.No.20333 & 20334

CrI.O.P.Nos.18080 & 23233 of 2010
and
M.P.Nos.1 & 1 of 2010

GP (CO)

RRS (24/04/2019)



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