

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2018

Pronounced on : 08.01.2019

CORAM:
THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

CRL.OP.No.9610 of 2016
and
CRL.MP.Nos.4968/2016 and 1037/2017

1. Indu Dharmalingam
2. Vimala Dharmalingam
- 3.S. Dharmalingam

...Petitioners/A1 to 3

versus

1. The State by
Inspector of Police,
Central Crime Branch,
EDF-Team II, Egmore,
Chennai - 8.

...1st Respondents/ Complainant

2. Duraibabu

...2nd

Respondents/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in connection with the case in C.C.No.867 of 2012 on the file of the Metropolitan Magistrate No.XI, Saidapet, Chennai, and quash the charge sheet filed by the first respondent so far as petitioners concerned, in the same.

For Petitioners

:Mr. R.Srinivas

For Respondents

: Mr.T. Shanmugarajeswaran

Government

Advocate

(crl.Side) for R1

Mr. M.Aravind

Subramanian for R2

ORDER

This petition has been filed by the Accused Nos.1 to 3 to quash the proceedings against them in C.C.No.867 of 2012 on the file of the Metropolitan Magistrate No.XI , Saidapet,

Chennai.

2. The second respondent herein has lodged a complaint before the Commissioner of Police, Egmore, Chennai. The Commissioner of Police has forwarded the said complaint to the first respondent. On receipt of the said complaint, the first respondent has registered a case in Cr.217 of 2010 under Section 420 IPC and investigated the matter and filed a charge sheet against the petitioners herein and one Venkatachalam under Sections 420, 423, 448 r/w.34 IPC. Based on the said charge sheet, the learned Metropolitan Magistrate No.XI, Saidapet, Chennai, has taken the case on file in C.C.No.867 of 2012 and issued summons to the accused persons. After receipt of summons, the accused Nos.1 to 4 appeared before the trial court. The Accused No.1 has filed a discharge petition in CrI.M.P.No.3365 of 2013 and accused No.4 has filed a petition in CrI.M.P.No.1693 of 2013 to discharge him from the aforesaid case. The learned Metropolitan Magistrate by the common order dated 08.12.2014 has allowed the petition filed by the accused No.4 and discharged him. However, he dismissed the petition filed by the accused No.1. Thereafter, the accused Nos.1 to 3 have filed the present petition under Section 482 Cr.P.C., to quash the proceedings against them.

3. Heard Mr.R.Srinivas, learned counsel for the petitioners and Mr.T.Shanmugarajeswaran, Government Advocate (CrI.Side) for the first respondent and Mr.M.Aravind Subramanian, learned counsel for the second respondent.

4. Learned counsel for the petitioners has submitted that in respect of the same occurrence, already an FIR was registered against the petitioners herein in Cr.No.165 of 2009 and based on the said FIR, investigation has been done by the Sub-Inspector of Police, J-5, Shastri Nagar Police Station and filed a charge sheet and based on the said charge sheet, the Metropolitan Magistrate No.XI, Saidapet, Chennai, has taken the case on file in C.C.No.10029 of 2010 and after full trial, the learned Metropolitan Magistrate by the judgment dated 11.01.2016, acquitted the petitioners herein from all the offences. He further submitted that in respect of the same occurrence, the second respondent has lodged another complaint on 21.12.2009 and based on the said complaint, second FIR has been registered by the first respondent in Cr.No.217 of 2010 and after investigation, chargesheet also has been filed and the same is not permissible under the law and hence, he prayed to quash the proceedings against the petitioners herein. In support of the aforesaid contentions, the learned counsel for the petitioners has relied upon the decision of the Hon'ble Supreme Court in T.T.Antony Vs. State of Kerala and others (2001) 6 SCC 181.

5. Per contra, learned counsel for the second respondent/Defacto complainant has submitted that the occurrence and the facts stated in the second FIR are totally different from the facts and occurrence stated in the first FIR and hence there is no bar for registering a second FIR. He further submitted that since the discharge petition filed by the first petitioner was dismissed by the trial court, he has to file a criminal revision challenging the said order and instead of that, he cannot file a petition under Section 482 Cr.P.C., challenging the charge sheet. He further submitted that a prima facie case is made out against the petitioners and hence he prayed to dismiss the petition.

6. In support of the aforesaid contentions, the learned counsel for the second respondent has relied upon the following decisions:

1. Mohan Baitha and others Vs. State of Bihar and another (2001) 4 SCC 350;
2. Anju Chaudhary Vs. State of UP (2013) 6 SCC 384;
3. Surnder Kaushik & Others vs. State of Uttar Pradesh and Others (Crl.A. 305 of 2013) dated 14.02.2013;
4. Nayan Prasad and others Vs. State of Bihar and others (2018) SCC 713

7. Learned Government Advocate (Crl.Side), who is appearing for the first respondent has adopted the arguments advanced by the learned counsel for the second respondent/defacto complainant.

8. Learned counsel for the petitioners by way of reply has submitted that merely because the discharge petition filed by the first petitioner was dismissed and existence of remedy of revision not a bar to invoke jurisdiction of the High Court under Article 227 of the Constitution of India or under Section 482 Cr.P.C., In support of the said contention, he relied upon the following decisions:

- 1) Pepsi Foods Ltd, and another vs. Special Judicial Magistrate and Others (1998) 5 SCC 749;
2. G. Sagar Suri and another Vs. State of U.P. and others (2000) 2 SCC 636 another

9. In T.T.Antony Vs. State of Kerala and others, (supra) in paragraph Nos.19,20,27, the Hon'ble Supreme Court has observed as follows:

"19. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First

Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court.

However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution."

10. From the aforesaid decision, it is clear that there can be no second FIR and consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. It is also clear that a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR, either investigation is under way or final report under Section 173 (2) has been forwarded to the Magistrate, is a fit case to quash the same by exercising the power under Section 482 of Cr.P.C.

11. In this case, the second respondent herein has lodged a complaint on 04.04.2009 before the Inspector of Police (L & O), J-5, Shastri Nagar Police Station, stating that he had purchased the Flat No.A20, Yamuna Homes, III Floor, Parameswari Nagar IV Street, Adyar, Chennai -20 from one C.Venkatachalam. He further stated that he rented out the said flat in April, 2008 and the tenant vacated the same and subsequently, he leased out the said flat to the new tenant on 02.04.2009 and at that time, it was found that the petitioners herein had trespassed into the suit property and put a lock and when the same was questioned, they have assaulted them and also criminally intimidated them. Based on the said complaint, an FIR was registered in Cr.No.165 of 2009 before the J-5, Sastri Nagar, Police Station and after investigation, charge sheet was filed against the petitioners herein stating that they have committed offence punishable under

Sections 448, 341, 323, 506(ii) IPC r/w.34 IPC. On the basis of the said charge sheet, the XI Metropolitan Magistrate, Saidapet, Chennai, has taken the case on file in C.C.No.10029 of 2009 and tried the case and acquitted the petitioners herein from all the offences, by the judgment dated 11.01.2016.

12. During pendency of the said case, the second respondent herein has lodged a second complaint on 21.12.2009 before the Commissioner of Police and the same was forwarded to the first respondent herein. The first respondent, on 07.05.2010 has registered the second FIR in Cr.No.217 of 2010 under Section 420 IPC and investigated the matter and filed a charge sheet against the petitioners and one Venkatachalam. In the said charge sheet, it is stated that on 04.04.2009, the petitioners herein criminally trespassed into the second respondent's Flat bearing No.A20, III Floor, Yamuna Homes, IV street, Parameswari Nagar and caused damage to the wall and hence they are liable to be punished under Section 420, 120(b), 427, 448, r/w. 34 IPC and the fourth accused viz., Venkatachalam has sold the property by suppressing the earlier transaction and hence, he is liable to be punished u/s.420 IPC. So, it is clear that the second FIR has been registered in respect of the occurrence and facts stated in the first FIR and also in the first charge sheet. Therefore, in view of the aforesaid decision of the Hon'ble Supreme Court, fresh investigation based on the second or successive FIRs are is permissible.

13. In Mohan Baitha and others Vs. State of Bihar and another (supra), based on the complaint given by the father of the deceased, the FIR dated 04.07.1998 was registered at Nath Nagar police station in the District of Bhagalpur under Section 304-B/34/406 IPC. The father of the deceased also filed a complaint in the Court of Chief Judicial Magistrate, Bhagalpur, against five persons alleging commission of offence under Sections 304-B, 498-A, 120-B and 406 IPC. In the said complaint, he has narrated the chain of events starting from 09.06.1994. As the police did not proceed with the investigation in right earnest, the complainant had filed a writ petition in W.P.No.766 of 1998. However, the police on completion of investigation, ultimately filed a charge sheet on 03.04.1999. Before the Magistrate took any further action in the criminal proceedings, the accused persons filed an application in the High Court, seeking a direction to the Magistrate, not to proceed with the matter. One of the grounds taken before the High Court was that since the incident constituting the offence punishable u/s.304-B IPC had taken place at Jahanaganj in the State of Uttar Pradesh, the court at Bhagalpur lacks territorial jurisdiction to try the same. The High Court by the impugned judgment had dismissed the same. The accused persons had approached the Hon'ble Supreme Court. The Hon'ble Supreme Court after referring to Section 220

of Cr.P.C., held that the offences more than one committed by the same persons could be tried at one trial and ultimately dismissed the said appeal. But the facts in the present case are totally different. In this case, in respect of the same occurrence already FIR has been registered, investigated, charge sheet filed and after full trial, the petitioners herein were acquitted. With regard to the same occurrence, the second FIR has been registered, investigated and charge sheet also filed. Therefore, the aforesaid decision will not apply to the facts and circumstances of this case.

14. In *Anju Chaudhary Vs. State of UP*, (supra) also, the Honble Supreme Court has held that it is a settled principle that there cannot be two FIRs registered for the same offence. The Hon'ble Supreme Court in paragraph No.15 has observed as follows:

"15. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence.

The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code.

These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of

investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, maybe in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, reexamination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence.

If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. [Ref. Rita Nag v. State of West Bengal [(2009) 9 SCC 129] and Vinay Tyagi v. Irshad Ali @ Deepak & Ors. (SLP (Crl) No.9185-9186 of 2009 of the same date)."]

15. From the aforesaid decision also, it is clear that it is a settled principle that there cannot be two FIRs registered for the same offence. It is also clear that if such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. Therefore, the aforesaid decision will not help the second respondent. On the contrary, it is in favour of the case of the petitioners.

16. It is also relevant to refer to Section 300 of Cr.P.C., which reads thus:-

"300. Person once convicted or acquitted not to be tried for same offence:

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor

on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 , (10 of 1897) or of section 188 of this Code.

Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."

17. A plain reading of the aforesaid provision of law, would show that a person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221 or for which, he might have been convicted under Sub Section (2) thereof. The doctrine of autre fois acquit recognised by Section 300 of Cr.P.C., is that what a issue or fact has been tried by a competent court in

a former occasion and findings has been reached in favour of the accused, such findings would constitute an estoppel or resjudicata against the parties to that proceeding. It will operate as a bar for reception of evidence to disturb the findings of fact when the accused is tried subsequently even for a different offences.

18. In this case, as already pointed out that in respect of the alleged criminal trespass which took place on 04.04.2009, already charge sheet has been filed and trial has been conducted and acquitted by the competent court. Subsequently, in respect of the same offence and facts, the second FIR has been registered and charge sheet also filed. In view of the Section 300 (1) of Cr. P.C., the second trial is barred.

19. Let us now consider with regard to the objection raised by the learned counsel for the second respondent that since the discharge petition filed by the first petitioner/first accused was dismissed by the trial court, the first petitioner is not entitled to file the present petition under Section 482 Cr.P.C., In the decision cited by the learned counsel for the second respondent, i.e, in Nayan Prasad Vs. State of Bihar and others (supra), the accused persons filed a discharge petition before the trial court and the same was dismissed. The accused persons feeling aggrieved, filed an application under Section 482 of Cr.P.C., before the High Court and sought quashing the main complaint on several grounds including the ground that the court concerned has no territorial jurisdiction to entertain the complaint. The High Court dismissed the application. As against the same, the accused persons have filed an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court in paragraph No.7 has held as follows:-

"7. In our opinion, both the courts below were justified in dismissing the appellants' petition filed under Section 245 of the Code and the application filed under Section 482 of the Code. We also do not find any good ground to interfere in the impugned order. It is really unfortunate that the complaint filed in the year 2001 by Respondent 2 wife is not yet decided on merits and has remained pending for such a long time on a technical plea."

20. In the aforesaid decision, the Hon'ble Supreme Court after taking into consideration of the facts held that the courts below were justified in dismissing the application filed under Section 245 of Cr.P.C., has not held that since the discharge petition was dismissed, the accused persons are not entitled to file a petition under Section 482 Cr.P.C., to quash the main complaint itself. Therefore, the aforesaid decision will not help the second respondent herein.

21. In Pepsi Foods Ltd, and another vs. Special Judicial Magistrate and Others, (supra), a private complaint was filed against the appellants and they have filed a Writ Petition to quash the complaint. The High Court refused to entertain the writ petition on the ground that the appellants should approach the trial court for their discharge under Section 245 of Cr.P.C., As against the said order, an appeal was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that merely because the accused are having right to approach the trial court under Section 245 Cr.P.C., to discharge, that will not prevent them to approach the High Court under Articles 226 and 227 of the Constitution or under Section 482 Cr.P.C., In this case, the facts are totally different. In this case, the accused No.1 already filed a petition to discharge him and the same was dismissed against which he has not filed any revision and hence, the aforesaid decision will not apply to the present case.

22. In G. Sagar Suri and another Vs. State of U.P. and others (supra), the accused persons have filed a discharge petition before the trial court and during pendency of the said petition, they also filed a petition under Section 482 Cr.P.C., before the High court to quash the proceedings against them and the same was dismissed by the High Court. Appeal was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that there is no bar for entertaining the petition under Section 482 Cr.P.C., when the petition to discharge is pending before the trial court, but in this case, no petition is pending before the trial court. On the contrary, the discharge petition was dismissed. Therefore, the aforesaid decision will also not apply to the facts of this case.

23. In Mohit and Others Vs. State of U.P and Others (Crl.A.No.814 of 2013 dated 01.07.2013), the Hon'ble Supreme Court in paragraph No.23 has held as follows:-

"23. So far as the inherent power of the High Court as contained in Section 482 of Code of Criminal Procedure is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express

provision in the Code under which order impugned can be challenged."

The dismissal order passed in the discharge petition is not interlocutory in nature. So, in view of the aforesaid decision, the said order can be assailed only by filing revision under Section 397 Cr.P.C., and not through a petition under Section 482 Cr.P.C.

24. It is to be pointed out that in this case, in the discharge petition filed by the first petitioner, he has not raised the plea that the present proceedings are not maintainable in view of the bar for registering the second FIR. Further, he has not raised the plea that the present proceedings are barred under Section 300 (1) of Cr.P.C. The discharge petition was dismissed on other grounds. Therefore, this court is of the view that there is no bar for filing the present petition to challenge the second charge sheet on the ground of registering of second FIR on the same occurrence and also second trial is barred under Section 300 (1) of Cr.P.C. Once this court comes to the conclusion that the second trial is barred under Section 300 (1) of Cr.P.C., this court has to exercise the power under Section 482 of Cr.P.C., to prevent the abuse of process of the court. Hence this court is inclined to allow this petition.

25. In the result, this petition is allowed. The proceedings against the petitioners in C.C.No.867 of 2012 on the file of the Metropolitan Magistrate No.XI, Saidapet, Chennai, are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1. The Inspector of Police,
Central Crime Branch,
EDF-Team II, Egmore,
Chennai - 8.
2. XI Metropolitan Magistrate,
Saidapet, Chennai,

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3.-do-Thro' Chief Metropolitan Magistrate,
Egmore, Chennai-8

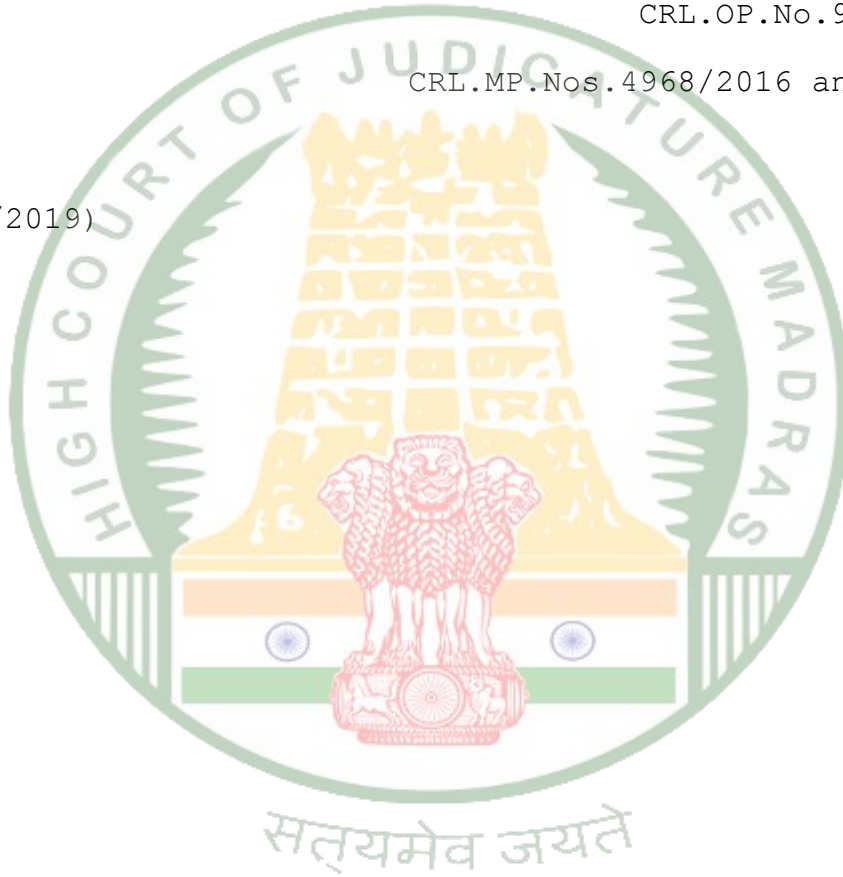
4. The public Prosecutor,
High Court, Madras.

+lcc to Mr.M.Aravind Subramanian, Advocate, S.R.No.2442

+lcc to Mr.R.Srinivas, Advocate, S.R.No.2939

CRL.OP.No.9610 of 2016
and
CRL.MP.Nos.4968/2016 and 1037/2017

SV(CO)
GSP(29/01/2019)



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