

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.07.2019

DELIVERED ON: 06.08.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.A. No.395 of 2018 & Crl.M.P. No.6549 of 2019

Sakthivel

Appellant/A1

vs.

State, D.S.P.
Namakkal Sub Division
(Sendamangalam P.S. Cr. No.665/2012)

Namakkal District

Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. seeking to set aside the judgment and order dated 19.06.2018 passed in S.C. No.35 of 2016 on the file of the Mahila Sessions Court (Fast Track Mahila Court), Namakkal.

For appellant Mr. A. Raghunathan, Sr. Counsel
for Mr. A. Padmanabhan

For respondent Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

JUDGMENT

This criminal appeal has been filed seeking to set aside the judgment and order of conviction and sentence dated 19.06.2018 passed in S.C. No.35 of 2016 on the file of the Mahila Sessions Court (Fast Track Mahila Court), Namakkal.

2 The facts leading to the institution of this criminal appeal are capsuled as under:

2.1 It is the case of the prosecution that the deceased Rajalakshmi and Sakthivel (A1), the appellant herein, loved each other, eloped, got married against the wishes of their families and later, both their families reconciled to their marriage; the couple begot a male child; after marriage, the appellant and his family members started demanding dowry from Rajalakshmi and subjected her to cruelty, unable to withstand which, in the early hours of 05.11.2012, Rajalakshmi consumed

organo phosphorous compound (insecticide) and hanged herself in a jack fruit tree nearby her matrimonial home.

2.2 On the written complaint (Ex.P.1) lodged by Rangasamy (P.W.1), Rajalakshmi's father, Chandran (P.W.8), Sub-Inspector of Police, registered a case in Cr. No.665 of 2012 on 05.11.2012 at 12.30 hrs. under Section 174 Cr.P.C. and prepared the printed FIR (Ex.P.5), which reached the jurisdictional Magistrate at 8.30 p.m. on 07.11.2012, as could be seen from the endorsement thereon.

2.3 Since the death of Rajalakshmi was within 7 years of marriage, the investigation of the case was taken over by Annamalai (P.W.14) who went to the place of occurrence and prepared the observation mahazar (Ex.P.3) and rough sketch (Ex.P.11).

2.4 It may be relevant to state here that on coming to know that Rajalakshmi was found hanging, the appellant, along with the other villagers, had lowered her body and taken it to his house, which was about 125 feet away from the jack fruit tree.

2.5 Annamalai (P.W.14) seized the rope (M.O.1) that was allegedly used by Rajalakshmi to hang under a mahazar (Ex.P.4) in the presence of witnesses Rathnasabapathy (P.W.6) and Kandasamy (not examined). The body was despatched to the Government Hospital, Namakkal, where, it was kept in the mortuary.

2.6 On the request of the police, Ajay Yadav (P.W.13), Sub-Collector, conducted inquest over the body of the deceased in the presence of panchayatdars and submitted the inquest report (Ex.P.9), in which, he has stated as follows:

"After enquiring the above mentioned persons whose statements are also enclosed along with this report, I came to the following conclusion that the deceased girl Rajalakshmi and her husband Thiru. Sakthivel got married on 03.06.2011 and since then they were not living smooth married life as there were frequent quarrels amongst them. After inquiring the neighbours of the deceased in law's house and parents of the deceased there is prima facie suspicion that the deceased was harassed mentally as well as physically. The

parents alleged that there was demand for dowry and harassment for dowry but the husband of the deceased Thiru. Sakthivel declined the allegations, whereas, the other relatives of the deceased husband Thiru. Sakthivel are absconding. Hence, I cannot come to any conclusion whether there was harassment for dowry or not but there is reasonable suspicion.

There is reasonable suspicion about the cause of death, but, I am not able to come to any specific conclusion."

2.7 Dr. Jayakumar (P.W.10) performed autopsy on the body of the deceased and sent the visceral samples to the Tamil Nadu Forensic Sciences Laboratory for chemical examination. Kolanjiappan (P.W.12), Chemical Examiner, in his evidence as well in his report (Ex.P.8), has stated that organo phosphorous compound was detected in the contents of the visceral organs. Based on the postmortem observations and viscera report, Dr.Jayakumar (P.W.10) gave final opinion that Rajalakshmi would have died of organo phosphorous poisoning.

2.8 Hence, Annamalai (P.W.14) filed alteration report (Ex.P.12) altering the case from one under Section 174 Cr.P.C. to one under Section 304-B IPC.

2.9 On the transfer of Annamalai (P.W.14), the investigation was continued by Rajendran (P.W.15), who completed the investigation and filed final report in P.R.C. No.34 of 2015 before Judicial Magistrate Court No.II, Namakkal for the offences under Sections 498-A and 304-B IPC and Section 4 of the Dowry Prohibition Act against Sakthivel (A1), his father Sathappan (A2), his mother Jayamani (A3) and his sister Kavitha (A4).

2.10 On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.35 of 2016 and was made over to the Mahila Sessions Court (Fast Track Mahila Court), Namakkal, for trial.

2.11 The Trial Court framed charges against the four accused as stated in paragraph 2.9 supra and when questioned, the appellant pleaded not guilty.

2.12 To prove its case, the prosecution examined 15 witnesses and marked 14 documents and 1 material object.

2.13 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On his side, no witness was examined nor was any document marked.

2.14 After considering the evidence on record and on hearing either side, the Trial Court by judgment and order dated 19.06.2018, acquitted Sathappan (A2), Jayamani (A3) and Kavitha (A4) and convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
S. 498-A IPC	Two years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment
S. 304-B IPC	Ten years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment
S. 4 of the Dowry Prohibition Act	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment

The aforesaid sentences were ordered to run concurrently.

2.15 Challenging the aforesaid conviction and sentences, the accused is before this Court.

3 Heard Mr. A. Raghunathan, learned Senior Counsel representing the learned counsel on record for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 Before advertng to the rival submissions, it may be relevant to catalogue the facts which have been proved beyond cavil.

- Rajalakshmi was the daughter of Rangasamy (P.W.1) and Bommayee (P.W.2) and they were living in Thammanaickenpatty Village in Namakkal District;
- The appellant was living in Sathanayakkanoor Village in Namakkal District and was working in Gnanamani College in Namakkal where Rajalakshmi was studying;
- The appellant was a divorcee;
- The appellant and Rajalakshmi fell in love and against the wishes of both families, they eloped and got married on 03.06.2011;
- The elders from both villages mediated between the two families, pursuant to which, a marriage reception was held sometime in 2012;
- The appellant's parents settled one acre of property in the joint name of the appellant and Rajalakshmi;
- Rajalakshmi delivered a male baby;
- Rajalakshmi's death was not a homicide, but was a suicide due to consumption of organo phosphorous compound and hanging.

5 The short question that arises for consideration of this Court is whether the suicide of Rajalakshmi was on account of dowry harassment.

6 Mr. A. Raghunathan, learned Senior Counsel appearing for the appellant submitted that the evidence of the prosecution witnesses, including that of Rangasamy (P.W.1), Rajalakshmi's father, Bommayee (P.W.2), Rajalakshmi's mother and Mani (P.W.3), Rajalakshmi's paternal uncle, unmistakably show that Rajalakshmi and the appellant were in love and they eloped and got married; in fact, Rajalakshmi had even lodged a police complaint against her parents and sought police protection to save herself from them; on the intervention of the village elders, both families reconciled to the marriage and the family of the appellant even settled one acre of land in the joint name of Rajalakshmi and the appellant; while that being so, the allegation that there was dowry demand by the appellant and his family members in connection with the marriage is highly improbable.

7 There appears to be sufficient force in the aforesaid submission of the learned Senior Counsel appearing for the appellant. The expression "dowry" used in Section 304-B IPC has its root in the definition of the word "dowry"

under Section 2 of the Dowry Prohibition Act, which reads as under:

"2. "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly:

1. by one party to a marriage to the other party to the marriage; or

2. by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

(emphasis supplied)

8 A conjoint reading of Section 304-B IPC and the definition of the word "dowry" extracted above, would show that the demand of dowry must be in connection with marriage. In this case, overwhelming materials show that the appellant's was an affluent family and the marriage was not performed by Rajalakshmi's family. As stated above, the prosecution witnesses themselves have explained that the appellant's family settled one acre of land in the joint name of Rajalakshmi and the appellant and a marriage reception was held much after the marriage after both sides buried the hatchet. Thus, in the facts and circumstances of this case, it cannot be stated that the death of Rajalakshmi was on account of dowry demand, albeit the presumption under Section 113-B of the Evidence Act.

9 However, the evidence of the witnesses, especially, the evidence of Rangasamy (P.W.1) and Bommayee (P.W.2) show that after the birth of the child, Rajalakshmi was subjected to cruelty; Rajalakshmi came to her natal home for delivery and after delivery, the appellant did not take her back immediately, because, he was demanding 5 sovereigns of gold, which was not honoured by Rajalakshmi's family. From the evidence of Rangasamy (P.W.1), it transpires that he had borrowed monies from Jayaraj (P.W.4) and Madheswaran (P.W.5) for purchasing some gold jewels to give them to Rajalakshmi. Jayaraj (P.W.4) and Madheswaran (P.W.5) have also corroborated the evidence of Rangasamy (P.W.1) on this aspect. Rangasamy (P.W.1) has stated that a day prior to the fateful day, Rajalakshmi called him over phone and cried to him saying that she is being harassed for not meeting the demand of 5 sovereigns of gold.

10 The learned Senior Counsel contended that the statement of Rajalakshmi to Rangasamy (P.W.1) is inadmissible in evidence. This Court is unable to countenance the said submission in the light of Illustration no.(j) to Sections 8 and 32 of the Evidence Act, which are profitably extracted as under:

"(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant,

as a dying declaration under Section 32, clause (1), or

as corroborative evidence under Section 157."

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant:

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death: - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

11 The above issue is no more res integra in the light of the authoritative pronouncement of the Supreme Court in

Balram Prasad vs. Agarwal vs. State of Bihar¹, wherein, it is held as under:

"8.His evidence about what his daughter told him earlier about her sufferings at the hands of the accused was clearly admissible under Section 32 of the Evidence Act, 1872." ("His" refers to the father of the deceased).

When the appellant was examined by Ajay Yadav (P.W.13), Sub-Collector, during inquest, he has given a statement which has been annexed to the inquest report (Ex.P.9). The learned Senior Counsel contended that this statement is inadmissible in evidence. Though such a statement is not a substantive evidence, yet, an admission in the said statement is relevant against the maker under Section 21 of the Evidence Act. Such a statement is not hit by Section 162 Cr.P.C. or Section 25 of the Evidence Act, because, the same has not been given to a police officer. In that statement, the appellant has admitted that Rajalakshmi was in her menstrual cycle and was sleeping outside the house and a quarrel ensued between them, during which, she ran away from the house carrying the child; she was brought back by his (appellant's) aunt. On that night, she consumed insecticide and to ensure that she dies, she also hanged herself in the nearby tree.

12 At this juncture, Section 113-A of the Evidence Act needs to be alluded to and the same reads as under:

"113-A. Presumption as to abetment of suicide by a married woman.

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

Rangasamy (P.W.1) and Bommayee (P.W.2) have stated that there was a demand of five sovereigns of gold after the birth of the child. Even in the complaint (Ex.P.1) and in the statement before Ajay Yadav (P.W.13), Sub-Collector during inquest, Rangasamy (P.W.1) has stated about the demand of five sovereigns of gold and the telephonic talk Rajalakshmi had with him on the previous night. The appellant has not offered any plausible explanation either during inquest or while he was examined under Section 313 Cr.P.C. for the suicide of Rajalakshmi. It must be borne in mind that Rajalakshmi had taken a conscious decision to ensure that she dies and that is

why, not stopping with consuming insecticide, she also hanged herself in the jack fruit tree near her matrimonial home. She has also left behind her 9 month old son. These circumstances do show that unless she had been pushed to the wall, she would not have resorted to such a drastic step.

13 The learned Senior Counsel contended that Rajalakshmi had propensity to commit suicide. Except making a bald suggestion to Bommayee (P.W.2), no material whatsoever has been placed before this Court to show that Rajalakshmi had suicidal tendencies.

14 The next contention of the learned Senior Counsel is that the appellant cannot be convicted of the offence under Section 306 IPC in the absence of a charge. To counter this submission, the learned Government Advocate (Crl. Side) placed reliance on the judgment of the Supreme Court in Gurnaub Singh vs. State of Punjab², of which, paragraph no.25 reads under:

"25. In the case at hand, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, we convert the conviction from one under Section 304-B IPC to that under Section 306 IPC. As the accused has spent almost five years in custody, we limit the period of sentence to the period already undergone."

15 In this case, the death of Rajalakshmi was not a homicide but a suicide. A death by suicide will fall both under Sections 306 and 304-B IPC. The charge under Section 498-A IPC that has been framed against the accused is that they had inflicted cruelty on Rajalakshmi by demanding jewels and also saying that, had the appellant been given in marriage to a girl of an affluent family, his life would have been different. The definition of the word "cruelty" in Section 498-A IPC has been telescoped into Section 113-A of the Evidence Act. In the instant case, the charges for the offences under Section 498-A and 304-B IPC and Section 4 of the Dowry Prohibition Act which were framed against the accused, contained the ingredients of cruelty that was inflicted on Rajalakshmi. Therefore, the accused were not taken by surprise and were aware as to what they were required to defend themselves against. Further, the appellant has not rebutted the presumption under Section 113-A IPC even by preponderance of probability.

16 In view of the foregoing discussion, the conviction and sentence slapped on the appellant under Section 304-B IPC and Section 4 of the Dowry Prohibition Act are set aside. The conviction and sentence slapped on the appellant under Section 498-A are sustained. Further, this Court convicts the appellant of the offence under Section 306 IPC and slaps the sentence of three years rigorous imprisonment and payment of fine of Rs.2,000/- on him, in default to undergo six months rigorous imprisonment. The sentences shall run concurrently.

In the upshot, this criminal appeal is allowed in part. Connected CrI.M.P. is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

cad

To

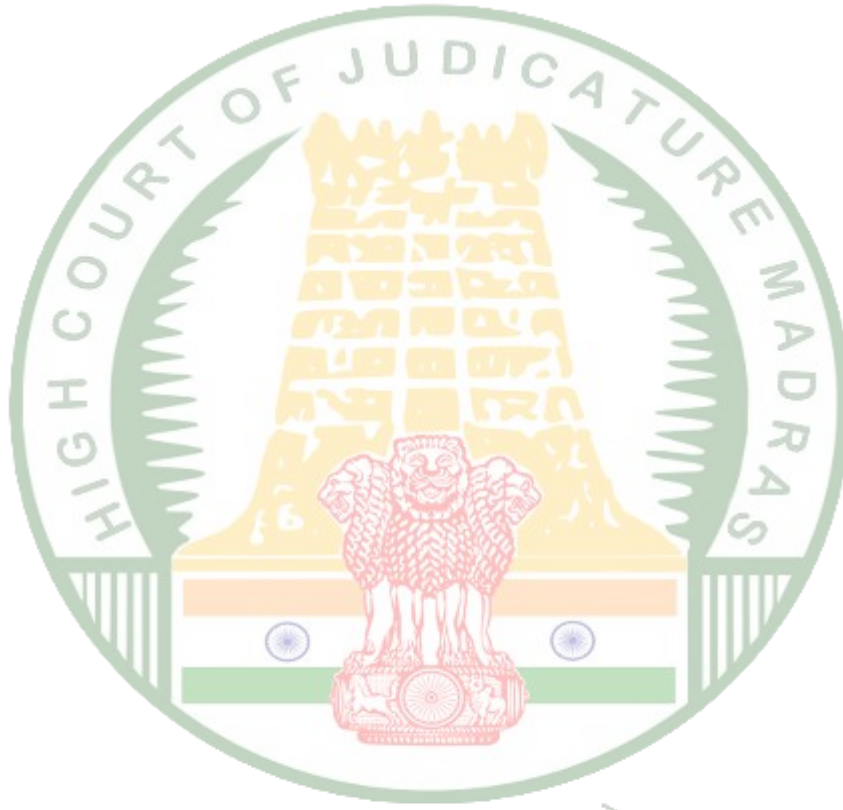
- 1 The Mahila Sessions Judge
(Fast Track Mahila Judge)
Namakkal
2. The Deputy Superintendent of Police
Namakkal Sub Division
(Sendamangalam P.S. Cr. No.665/2012)
Namakkal District
3. The Superintendent, Central Prison,
Coimbatore.
- 4 The Public Prosecutor
High Court of Madras
Chennai 600 104
5. The Judicial Magistrate-II, Namakkal

Copy to

The Deputy Registrar
Criminal Side
High Court
Chennai 600 104

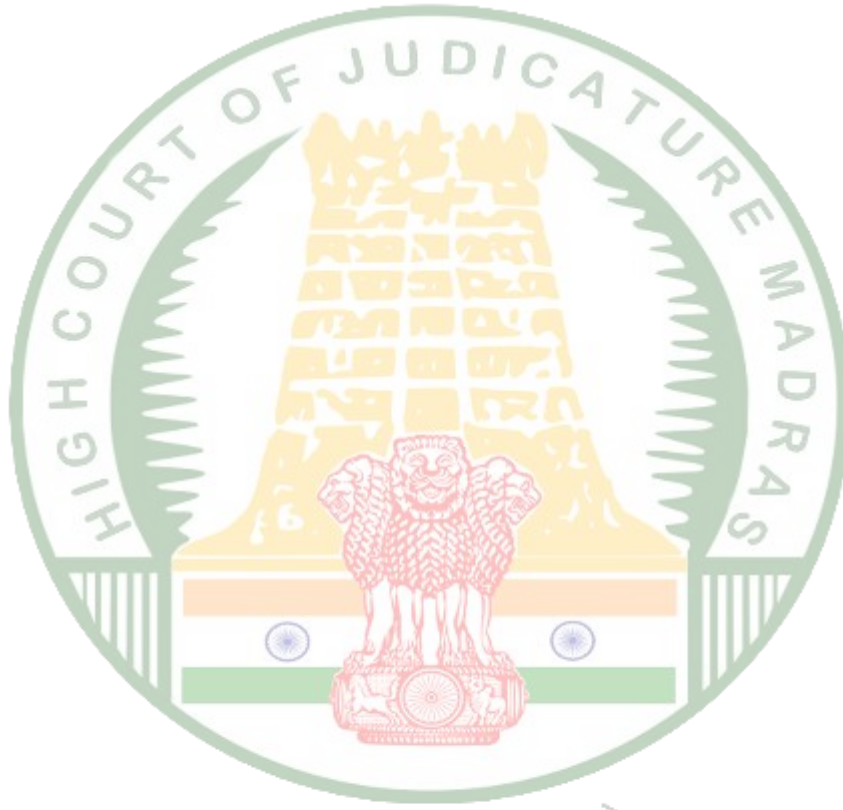
(with a direction to transmit the
original records to the Trial Court)

CrI.A. No.395 of 2018



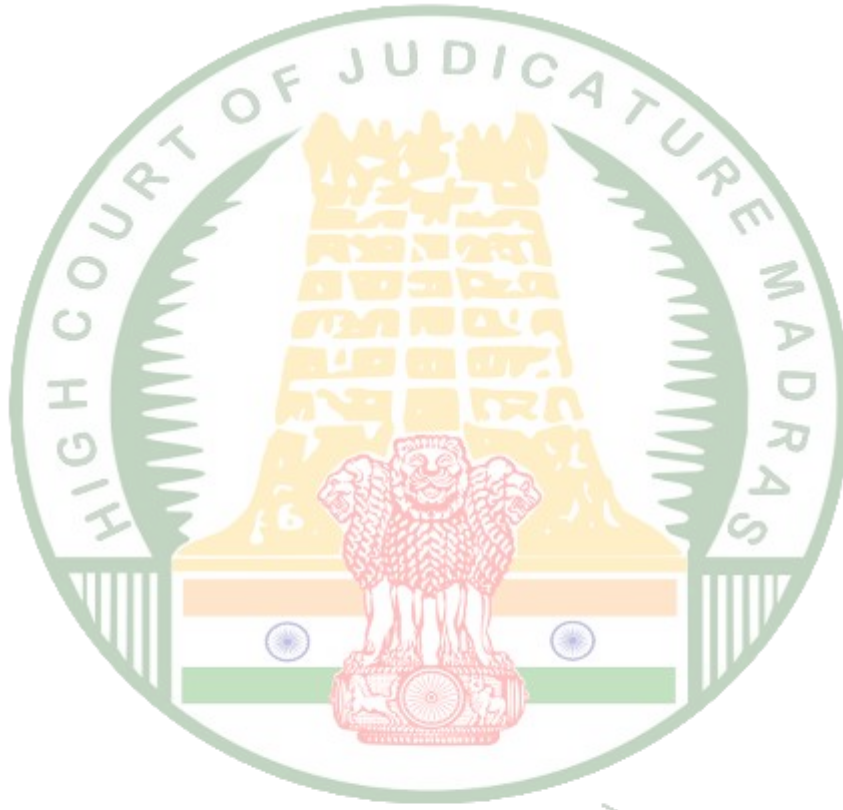
सत्यमेव जयते

WEB COPY



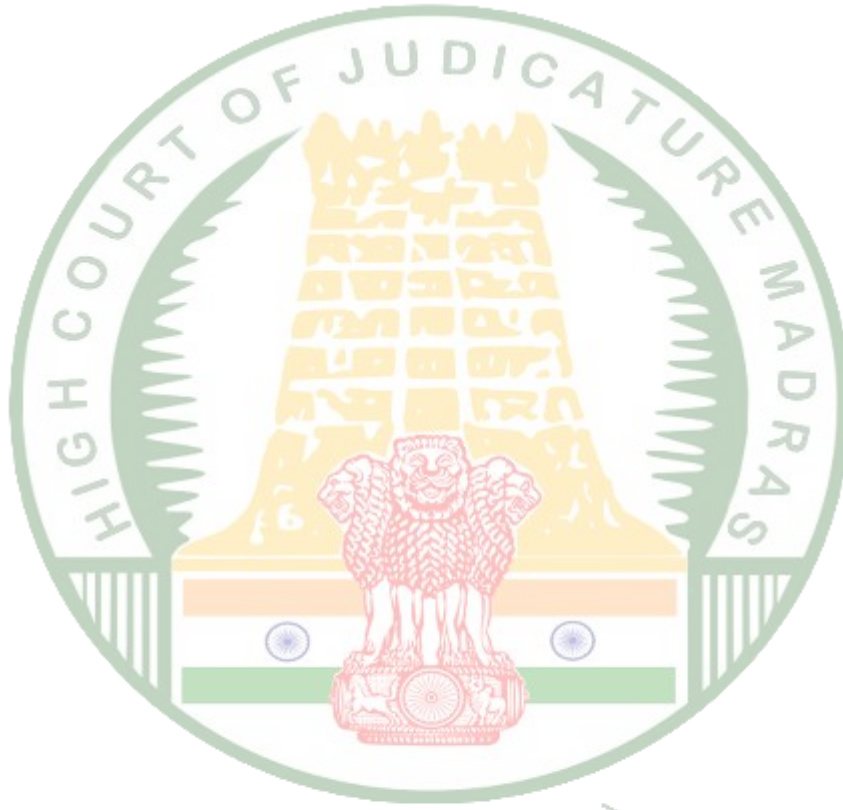
सत्यमेव जयते

WEB COPY



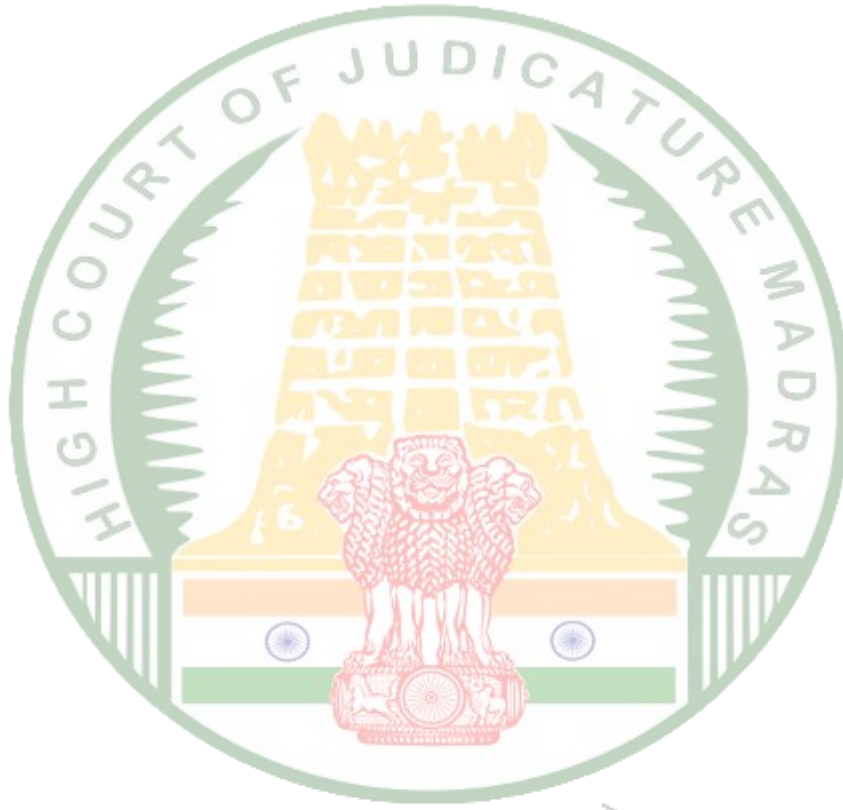
सत्यमेव जयते

WEB COPY



सत्यमेव जयते

WEB COPY



सत्यमेव जयते

WEB COPY