



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2019**

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)No.3168 of 2018

and

Cr.M.P (MD)No.1474 of 2018

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Sankaranarayanan

...Petitioner/Accused No.1

Vs.

1.State Rep. by

The Inspector of Police,
Sempatti Police Station,
Dindigul District.

...1st Respondent/Complainant

2.Ramu

...2nd Respondent/Defacto
Complainant

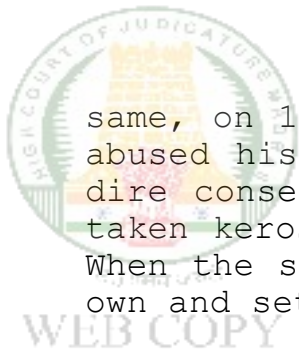
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for records relating to the Charge Sheet in P.R.C.No.20 of 2016 on the file of the Judicial Magistrate No.2, Dindigul and to quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Mr.R.Gandhi
For Respondent : Mr.K.Suyambulinga Bharathi
No.1 Government Advocate(Crl.Side)
For Respondent No.2 :Mr.T.Lajapathi Roy

O R D E R

This petition has been filed to quash the proceedings in P.R.C.No.20 of 2016 on the file of the learned Judicial Magistrate No.2, Dindigul and to quash the same as illegal insofar as the petitioner is concerned.

2. The learned counsel for the petitioner would submit that the second respondent lodged a complaint alleging that he approached the petitioner for purchasing a property in S.No.1497/38 which stands in the name of the petitioner. Accordingly, the petitioner accepted such proposal of the second respondent and agreed to sale the property for the total sale consideration of Rs.10 lakhs. The second respondent has paid a sum of Rs.15,000/- as advance to the petitioner. At this juncture, A2 to A6 approached the second respondent and compelled him to sale 0.5 cents in their favour in the said property. When the second respondent refused to do the



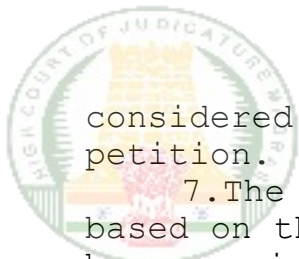
same, on 17.02.2015, the accused persons entered into his house and abused his wife with filthy language and also threatened them with dire consequences. On 19.07.2015 the wife of the 2nd respondent had taken kerosene and proceed towards the house of the second accused. When the second respondent followed her, she poured kerosene on her own and set ablaze and committed suicide. Hence, the complaint.

3.On receipt of the said complaint, the respondent / Police registered the case in Crime No.225 of 2015 for the offence under Sections 294(b), 306, 506(ii) IPC., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act r/w 511 of IPC. He further submitted that even according to the prosecution, no charge is made out as against the petitioner / first accused. The petitioner has neither insisted nor induced the deceased to commit suicide. He did not even see her at any point of time. He agreed to sell his land to the second respondent. Except the same, nothing has been done by the petitioner as alleged by the prosecution.

4.As against the other accused persons, on 17.07.2015, A2 to A5 went to the house of the second respondent and scolded the deceased with filthy language and also abused her. Therefore, no charge for the offence under Section 306 of IPC., is attracted. Insofar as the other offences are concerned, the petitioner has never gone to the house of the second respondent and never scolded and abused the deceased at any point of time.

5.The learned counsel for the petitioner relied upon the judgments reported in **2002 (5) SCC 371, 2009(13) SCC 548, 2010(8) SCC 628, 2011(3) SCC 626.**

6.Per contra, the learned counsel for the second respondent submitted that total extent of land is 81.2 cents owned by the first accused. The second accused intended to purchase the said land for the total sale consideration of Rs.10 lakhs, in which, he has also paid a sum of Rs.15,000/- as advance. While that being so, the other accused persons viz., A2 to A6 being the agent of the first accused compelled the second respondent to sell 0.5 cent in their favour. When the second respondent refused to do the same, they entered into the house of the second respondent on 17.02.2015 and abused the wife of the second respondent with filthy language and also compelled her to agree for the demand made by them or otherwise they will kill her and they also scolded as go and die. Therefore, on 19.07.2015 at about 9.30 a.m. she went to the house of the entrance of the house of the second respondent and poured kerosene herself and set ablaze. The first respondent has rightly registered the case and completed the investigation and filed a final report. Insofar as the petitioner is concerned, on his instructions, other accused entered into the house of the second respondent and threatened the wife of the second respondent. He further submitted that the points raised by the petitioner in this petition have to be



considered only during the trial. So he prayed to dismiss the quash petition.

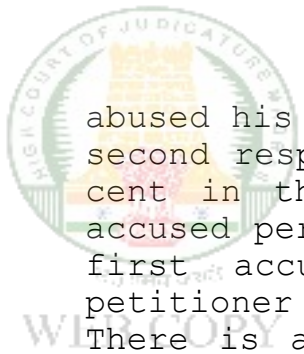
7.The learned Additional Public Prosecutor would submit that based on the complaint lodged by the second respondent, the case has been registered in Crime No.255 of 2015 for the offence under Sections 294(b), 306, 506(ii) IPC., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act r/w 511 of IPC. After completion of investigation, a final report as against the accused persons has been filed, in which, the petitioner is arrayed as the first accused. Now, the case is pending for committal in P.R.C.No.20 of 2016 before the learned Judicial Magistrate No.2, Dindigul. He further submitted that on 17.07.2015, based on the instruction of the other accused persons, they entered into the second respondent's house and scolded his wife with filthy language and also threatened her with dire consequences and scolded her as go and die. Therefore, on 19.07.2015, in front of the house of the second respondent, the wife of the 2nd respondent, poured kerosene on her own and set ablaze. Due to which, she sustained burn injuries and died. Therefore, all the charges levelled against the petitioner is in perfect and all the points raised in this petition may not be considered at this stage and the same can be considered only before the trial Court during the trial.

8.Heard the learned counsel for the petitioner, learned Government Advocate (Crl.side) appearing for the first respondent and the learned counsel appearing for the 2nd respondent.

9.There are totally six accused in this case. The petitioner is arrayed as the first accused. The crux of the complaint is that the petitioner / A1 agreed to sale his own land comprised in S.No.1494/38 to the second respondent herein for the sale consideration of Rs.10 lakhs. But the second respondent paid a sum of Rs.15,000/- as advance to the petitioner. While that being so, the other accused persons 2 to 6 compelled the second respondent to sell 0.5 cent in their favour in the said property, which was proposed to be purchased by the second respondent from the petitioner herein. When the second respondent refused to do the same, on 17.07.2015 the accused persons viz., A2 to A6 entered into the house of the second respondent and scolded his wife with filthy language and they also abused her and threatened her as go and die. Therefore, on 19.07.2015 in front of the house of the second respondent, the deceased poured kerosene and set ablaze on her own. Therefore, she sustained grievous injuries and died.

10.Even according to the case of the prosecution, the petitioner / first accused agreed to sale the property for the sale consideration of Rs.10 lakhs and thereby, a sum of Rs.15,000/- has been paid as a advance. Except the same, there is absolutely no material to connect the petitioner for the occurrence took place in front of the house of the second respondent. Further, on 17.07.2015

<https://hccservices.courts.gov.in/hccservices/>



abused his wife. The accused persons 2 to 6 alone have compelled the second respondent to sale the portion of the property measuring 0.5 cent in their favour. It is seen from the statements, all the accused persons viz., A2 to A6 are none other than the agent of the first accused. Only based on the instructions of the first petitioner / A1, they went to the house of the second respondent. There is absolutely no material to show that the accused persons ie., A2 to A6 are the agent of the petitioner herein and there is also no evidence to connect the petitioner along with other accused persons. He happened to be the land owned by the property comprised 1.495/38 and except the same he is nothing to do with the crime as alleged by the prosecution. Further other accused persons went to the house of the deceased and instigated the deceased to commit suicide and due to which, she committed suicide on 19.07.2015. Therefore, before her death, there was instigation by the accused persons to commit suicide by the deceased.

11.In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in **(2002) 5 Supreme Court Cases 371 - Sanju @ Sanjay Singh Sengar V. State of M.P.**, wherein, the Hon'ble Supreme Court of India has held as follows:

"6.Section 107 I.P.C defines abetment to mean that a person abets the doing of a thing if he firstly, 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.

7.Before we advert further, at this stage we may notice a few decisions of this Court, relevant for the purpose of disposal of this case.

8.In *Swamy Prahaladdas v. State of M.P. & Anr.*, 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

9.In *Mahendra Singh v. State of M.P.*, 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:



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"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

10.This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11.In Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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 for abetting the offence of suicide should be found guilty."

12.The learned counsel for the petitioner also relied upon the <https://hcservices.ecourts.gov.in/hcservices/>



judgment reported in **(2009) 13 Supreme Court Cases 548 - Kailashi Bai Vs. Aarti Arya and another**, wherein, the Hon'ble Supreme Court of India has held as follows:

'7. In R. P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

8. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* (1992 Supp (1)



335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

"(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 FIR 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 FIR 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 Act concerned (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 Act concerned, 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."



(9)As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S. Chowdhary (1992 (4) SCC 305), and Raghubir Saran (Dr.) v. State of Bihar (AIR 1964 SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.



When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.''

13.The learned counsel for the petitioner further relied upon the judgment reported **in (2010) 8 Supreme Court Cases 628 - Madan Mohan Singh Vs. State of Gujarat and another**, wherein, the Hon'ble Supreme Court of India has held as follows:

''10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306, IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11.In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.

12.In order to bring out an offence under Section 306, IPC specific abetment as



contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Dutta Vs. State of W.B.* [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused. ''

14. The learned counsel for the petitioner relied upon yet another judgment reported in **(2011) 3 Supreme Court Cases - 626 - Mohan Vs. State rep. by the Deputy Superintendent of Police**, wherein, the Hon'ble Supreme Court of India has held as follows:

'' 43. This court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 2009 (16) SCC 605, had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to



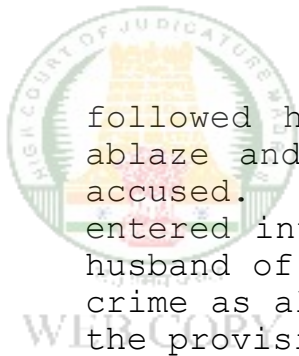
instances of this kind are not very uncommon. Human sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people behave differently in the same situation. It is unfortunate that such an episode of suicide had taken place in the family. But the question remains to be answered is whether the appellants can be connected with that unfortunate incident in any manner?

49. On a careful perusal of the entire material on record and the law, which has been declared by this Court, we can safely arrive at the conclusion that the appellants are not even remotely connected with the offence under Section 306 of the I.P.C.. It may be relevant to mention that criminal proceedings against husband of the deceased Anandraj (A-1) and Easwari (A-3) are pending adjudication.''

15.The Hon'ble Supreme Court of India dealt with the dictionary meaning of the word "instigation" and "goandding" and opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. 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 in committing suicide, conviction cannot be sustained.

16.The intention of the legislature and the decision of the Hon'ble Supreme Court of India 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. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

17.In the case on hand, the petitioner entered into a sale agreement with the second respondent. He also paid a sum of Rs.15,000/- as advance to the petitioner. At that juncture, the accused persons viz., A2 to A6 approached the second respondent and demanded him to sell 0.5 cent in their favour in the said property, which was agreed to sale by the petitioner. When the second respondent refused for the said demand made by A2 to A6, they went to the house of the second respondent on 17.07.2015 and abused the wife of the second respondent with filthy language and also threatened her with dire consequences. Therefore, on 19.07.2015 she had taken kerosene from her house and proceeded to the house of the second accused. The second respondent and his relatives were also



followed her and later the deceased poured kerosene and set her ablaze and committed suicide in front of the house of the second accused. As far as the role of the petitioner is concerned, he entered into the sale agreement with the second accused namely, the husband of the deceased. Except this, he has nothing to do with the crime as alleged by the prosecution. It is also relevant to extract the provision under Sections 306 and 107 of IPC.

18.Sections 306 and 107 of IPC read as under:-

'306. 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.'

'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.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.'

19.According to the prosecution, the petitioner neither insisted nor induced the deceased to commit suicide at any point of time. Even according to the prosecution, the accused persons viz., A2 to A6 abused the deceased with filthy language and also



threatened her with dire consequences on 17.07.2015. After two days, ie., on 19.07.2015 the deceased committed suicide by pouring kerosene and set her ablaze on her own. Therefore, the offence 306 of IPC is not attracted as against the petitioner. Insofar as the other offences under Sections 294 (b) and 506(ii) of IPC., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act r/w 511 of IPC are concerned, no allegations have been made against the petitioner to attract these offences. Except the agreement to sale his property in favour of the second respondent namely the husband of the deceased, the petitioner has nothing to do with these offences. He never went to the house of the second respondent and never scolded the deceased with filthy language and these offences are also not made out as against the petitioner. Therefore, the entire proceedings as against the petitioner is a clear abuse of process of law and as such the petitioner need not go for the ordeal of the trial.

20.In view of the above, the Criminal Original Petition stands allowed and the proceedings in P.R.C.No.20 of 2016 on the file of the learned Judicial Magistrate No.2, Dindigul, is hereby quashed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

1.The Judicial Magistrate No.2,
Dindigul.

2.The Inspector of Police,
Sempatti Police Station,
Dindigul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-89526[F] dated 26/09/2019)

Crl.O.P. (MD)No.3168 of 2018

and

Crl.M.P(MD)No.1474 of 2018

25.10.2019