



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on 14.08.2019

Orders Pronounced on 30.08.2019

CORAM

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Original Petition (MD) Nos.1246 and 1298 to 1300 of 2017
and
Crl.M.P.(MD) Nos.1040, 1041, 1095 to 1100, and 6100 to 6103 of 2017
.....

1.Sun Group

By its President,
Mr.Kalanithi Maran,
S/o Murasoli Maran,
No.4, Second Avenue,
Boat Club Road,
Chennai 600 028.

2.Sun News Television,

By its Director,
Mr.Kalanithi Maran,
S/o Murasoli Maran,
No.73, MRC Nagar Main Road,
MRC Nagar, Chennai 600 028.

... Petitioners in Crl.O.P. (MD) No.1246 of 2017

KAL Publications Pvt. Limited,
By its Managing Director,
Mr.R.M.R.Ramesh,
KAL Publications Pvt. Limited,
No.229, Kutchery Road,
Mylapore, Chennai 600004.

... Petitioner in Crl.O.P.(MD) No.1298 of 2017

Editor, Printer and Publisher,
Dinakaran Daily,
Mr.R.N.Murugan,
No.126/3-126/4A, South Bye-Pass Road,
Vannarapettai,
Tirunelveli 627 003.

... Petitioner in Crl.O.P.(MD) No.1299 of 2017

The Reporter,
Dinakaran Daily Tiruchendur,
Mr.Subbiaha,
No.26-A, Krishnan Koil Street,
Tiruchendur 628 215.... Petitioner in Crl.O.P.(MD) No.1300 of 2017



-Versus-

Mr.B.R.K.Aathithan

... Respondent in Crl.O.P.(MD) Nos.1246, 1298,
1299 and 1300 of 2017

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Prayer in Crl.O.P.(MD) No.1246 of 2017:- Petition under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in STC No.45 of 2017 on the file of the learned Judicial Magistrate, Tiruchendur and to quash the same against the petitioners.

Prayer in Crl.O.P.(MD) No.1298 of 2017:- Petition under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in S.T.C. No.45 of 2017 on the file of the learned Judicial Magistrate, Tiruchendur and to quash the same against the petitioner.

Prayer in Crl.O.P.(MD) No.1299 of 2017:- Petition under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in STC No.45 of 2017 on the file of the learned Judicial Magistrate, Tiruchendur and to quash the same against the petitioner.

Prayer in Crl.O.P.(MD) No.1300 of 2017:- Petition under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in STC No.45 of 2017 on the file of the learned Judicial Magistrate, Tiruchendur and to quash the same against the petitioner.

For Petitioner(s)

: Mr.J.Ravindran for
petitioners in Crl.O.P.
(MD) No.1246 of 2017 and
for Mr.V.Karthikeyan, on
record, for the
petitioners in Crl.O.P.
(MD) No.1298 to 1300 of
2017

For Respondent

Mr.T.Vadivelan for
respondent in Crl.O.P.(MD)
Nos.1246 and 1298 to 1300
of 2017

COMMON ORDER

The Criminal Original Petitions have been filed challenging the private complaints filed against the petitioners for the offences under Sections 34, 35, 499, 500, 501 and 502 of IPC, Section 7 of The Press and Registration of Books Act, 1867 and Section 2(31) of the Companies Act, 1956, in STC No.45 of 2017, pending on the



file of the learned Judicial Magistrate, Tiruchendur. The petitioners, who have been arrayed as A1 to A5 respectively, are before this Court with the instant petitions.

2. The petitioners in Crl.O.P.(MD) No.1246 of 2017 are A1 and A2, the Chairman of SUN Network. The petitioner in Crl.O.P.(MD) No.1298 of 2017 is the Managing Director of KAL Publication Private Limited arrayed as A-3. The petitioner in Crl.O.P.(MD) No.1299 of 2017, the Editor, Printer and Publisher of Dinakaran, a Tamil Daily Newspaper, is A-4. The petitioner in Crl.O.P.(MD) No.1300 of 2017, the Reporter of the Dinakaran Newspaper at Tiruchendur, is A-5.

3. The facts leading to the filing of the present petitions for quashing the criminal proceedings, in brief, are as follows:-

(i) The respondent herein filed a private complaint against the petitioners herein alleging that, A1 and A2 in the Complaint is the Chairman of SUN TV Network Limited; the petitioners in the other original petitions who have been arrayed as A3 to A5, are the Director, Editor and Reporter of Dinakaran, a Tamil Daily Newspaper.

(ii) A criminal case in Crime No.345 of 2013 has been registered against the respondent/complainant, on the file of the Inspector of Police, Tiruchendur, based on the complaint given by one C.Arun @ Arunachalam, a practicing Advocate in Madurai. The above FIR was registered on the allegations that, the respondent had collected huge money from number of persons by assuring them to get admission in various Law Colleges in nearby other States, and thereby committed offence punishable under Sections 468 of IPC, and he was arrested and remanded to judicial custody.

(iii) The above said news was telecasted in a TV Channel run by A1 and A2 and published in the Newspaper by A3 to A5. Alleging that the said news has been telecasted and published in the TV and Print Media by the petitioners only in order to defame the reputations of the respondent, the respondent has filed the private complaint against the petitioners. The learned Judicial Magistrate had taken cognizance of offences as stated supra, consequently, the learned Magistrate issued summons to the petitioners. Challenging the same, the petitioners are before this court with these petitions.

4. Mr. J.Ravindran, learned counsel for the petitioner would contend that, it is the second complaint filed by the respondent on the very same allegations. The respondent earlier filed a private



complaint before the very same Judicial Magistrate Court, and the learned Judicial Magistrate, after considering the entire materials, dismissed the private complaint under Section 203 of the Criminal Procedure Code [in short "the Code"] on 28.04.2015, holding that the contents of the complaint would fall under fourth exception to Section 499 of IPC, and no prima facie case is made out against the petitioners. Challenging the above said order, the respondent/complainant filed a revision in Crl.R.C.(MD) No.217 of 2015, before this Court. Subsequently, the said revision petition was dismissed as withdrawn on 10.06.2015. After the dismissal of the criminal revision, once again, the respondent filed the present private complaint with the very same set of facts. Pending the complaint, suppressing all the above facts, he has filed a petition before this Court, in Crl.O.P.(MD) No.4641 of 2016, under Section 482 of the Code, seeking a direction to dispose of the second private complaint filed by him. This court, by order dated 17.03.2016, issued a direction to the learned Judicial Magistrate either to take cognizance of offences or to dismiss the complaint, if the same does not disclose any cognizable offence. Thereafter, the learned Magistrate had taken cognizance of offence and issued summons on the ground that the earlier complaint has been dismissed on misunderstanding the nature of the complaint. According to the learned counsel for the petitioners, the learned Magistrate virtually reviewed the earlier order passed under Section 203 of the Code, which is not permissible in law. The second complaint on the very same allegations is not at all maintainable in absence of any new facts, and there is no exceptional circumstances available warranting entertainment of the second complaint, according to him, the very entertaining of the second complaint itself is bad in law.

5. The learned counsel for the petitioners would further submit that, even the allegations made in the complaint do not make out any prima facie case against the petitioners. So far as A1 and A2 are concerned, there is no company by name SUN Group and SUN News Television, and they are not legal entities. A1 is the Chairman of M/s.SUN TV Network Limited and M/s.SUN TV Network Limited is not at all a party to the proceedings. Therefore, the complaint itself is not maintainable as against A1 and A2.

6. That apart, the Chairman or the Managing Director of the Company cannot be made vicariously liable for the act of the company in a criminal proceedings, the complaint also does not disclose that the petitioners have any personal knowledge about telecasting the alleged defamatory news item. The alleged news was not only telecasted by SUN TV Network Limited, but also by several other TV Channels. The respondent singled out the petitioners and filed a complaint against them with a mala fide intention. Absolutely, there is no averment in the complaint about the role of A1 and A2 in the alleged telecast and the complaint also does not indicate that they had any criminal intention to telecast such a news item.



7. So far as A3 to A5 are concerned, the learned counsel for the petitioners would contend that they had only published the news item regarding the arrest and remand of the respondent, only the contents of the FIR and judicial remand of the respondent alone reported in the Newspaper, the news item has been published in good faith, and they had no mala fide intention to defame the reputations of the respondent.

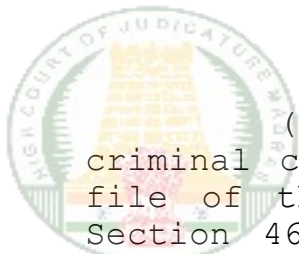
8. Per contra, the learned counsel for the respondent would contend that, there is no provision under the Criminal Procedure Code, debarring the respondent from filing second complaint on the very same allegations after the dismissal of the earlier complaint under Section 203 of the Code. The earlier complaint was dismissed only on a misunderstanding of the nature of the complaint and the dismissal was manifestly absurd. Under the said circumstance, the second complaint is maintainable. The learned Magistrate on considering the entire material and relying upon the judgement of the Hon'ble Supreme Court had come to a conclusion that the earlier complaint was dismissed on the total misunderstanding the nature of the complaint, therefore, took cognizance of offence, and issued summons to the accused.

9. So far as the telecast of the news item in the TV channel run by A1 and A2, they had telecasted the alleged defamatory news item in scrolling for more than 15 times, displaying that the respondent had been arrested for having cheated more than 200 persons by promising them to get admission in law colleges in the other States. That apart, A3 to A5 have also published the news item in their Newspaper, as if the respondent had cheated 244 persons by assuring them to get admission in various law colleges in the other States. The contents of the news per se defamatory and motivated, with ulterior motive, to attract undue publicity and to make gains.

10. The learned counsel for the respondent further submitted that the learned Magistrate, on being satisfied that a prima facie case has been made out against the petitioner, took cognizance of offence and issued summons to the petitioners. Whether the petitioners had telecast/published the defamatory material in good faith or not, is a matter for trial, which cannot be gone into in the quash petitions. A1 and A2 being the Managing Director of SUN TV Network Group are also vicariously liable for any telecast made in their TV Channel, and they cannot simply escape from their liability on the ground that they are not responsible for the telecast of news item in Television Channel and it was the duty of the Editor.

11. I have considered the rival submissions and perused the materials available on record carefully.

12. The admitted facts in this case are as follows:-



(i) The respondent was arrested in connection with a criminal case registered against him in Cr.No.345 of 2013, on the file of the Inspector of Police, Tiruchendur, for offence under Section 468 of IPC. The above said criminal case was registered based on a complaint given by a practicing Advocate. The allegation made in the above complaint was that, in Andhra Pradesh and Karnataka States without obtaining necessary permission from the Bar Council of India and other statutory authorities, number of law colleges have been established and some persons who have got Franchise agreement with their Law Colleges collected money from the aspiring students for getting admission in those unauthorized educational institutions. The respondent was also running a similar such organization at Tuticorin in the name and style 'Mahas' and gave advertisement in various News Dailies that, he would get admission in law colleges in the other States, and collected huge money. Pursuant to the said complaint, the respondent was arrested and remanded to judicial custody. That news was displayed in SUN TV channel in the form of scrolling, and it was also published in the daily Newspaper published by A3 to A5.

(ii) Alleging that, the above news item telecasted in the SUN TV Channel and the newspaper defamed his reputations, the respondent had filed a private complaint before the learned Judicial Magistrate, Tiruchendur. The above said complaint was dismissed, by order dated 28.04.2015, by the learned Magistrate under Section 203 of the Code. The relevant portion of the order of the learned Magistrate reads as follows:-

"28.04.2015: Heard perused. It is alleged by the petitioner that the respondents broadcasted and published defamation against the petitioner. On perusal of the available material which is revealed that the contend in the petition falls in the Fourth exception to Section 499 of IPC. Hence, there is no prima facie case made out against the respondents for the alleged offences. Hence, this petition stands dismissed."

(iii) Challenging the said order, the respondent filed a revision in CrI.R.C.(MD) No.217 of 2015, before this court, and the same was dismissed as withdrawn at the instance of the respondent on 10.06.2015, with liberty to work out his remedy in the manner known to law. The relevant portion of the order of this court reads as follows:-

"As per the endorsement made by the learned counsel appearing for the revision petitioner, this revision petition is dismissed as withdrawn with liberty to the petitioner to work out his remedy in the manner known to law."



(iv) Thereafter, the respondent filed the present complaint with the same averments on 04.09.2015. Since no action was taken thereof, the respondent moved a petition in Crl.O.P.(MD) No.4641 of 2016 before this court under Section 482 of the Code seeking a direction to the learned Judicial Magistrate, Tiruchendur, to dispose of the private complaint. This court, by order dated 17.03.2016, disposed of the criminal original petition, with a direction to the learned Magistrate either to take cognizance of offence or dismiss the complaint, if it does not disclose the commission of any cognizable offence, within a period of four weeks from the date of receipt of a copy of the order. The relevant portion of the order reads as follows:-

"4. It is the grievance of the petitioner that the learned Magistrate has not even recorded the sworn statement of the petitioner. The petitioner has also produced the Diary Extract, which shows that the petitioner was present on all hearing dates.

5. This Court directs the learned Judicial Magistrate, Tiruchendur, to pass orders in Crl.M.P.No.10884 of 2015 either taking cognizance or dismissing the complaint, if it does not disclose the commission of any cognizable offence, within a period of four weeks from the date of receipt of a copy of this order, if not already passed."

(v) Afterwards, the learned Magistrate recorded the sworn statement of the witnesses, and took cognizance of offence, stating that, the earlier complaint was dismissed on the ground that the contents of the complaint fall under fourth exception to Section 499 IPC, but the fourth exception, only deals with the proceedings before the court, and as such the earlier order was passed in total misunderstanding of the nature of the complaint, holding so, the learned Magistrate entertained second complaint. The relevant portion of the order of the learned Magistrate taking cognizance of the second complaint reads as follows:-

"The complainant present. Records perused. Heard the counsel for the complainant. Records reveals that this complainant has filed a complaint before this court previously and the same has been dismissed by this court by the predecessor on the 4th exception of section 499 of IPC. Subsequently, this complainant has approached the Hon'ble High Court and withdrawn the same. The Hon'ble High Court has given liberty to work out his remedy known to law. Hence, this complainant approached this court again by filing a subsequent complaint

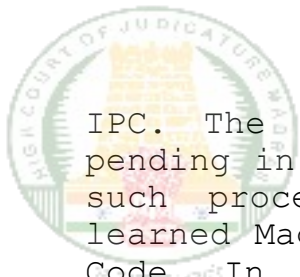


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on the same cause of action. This court questioned the maintainability of the second complainant on the same cause of action and the counsel for the complainant filed the decision of the Hon'ble Supreme Court of India in Mahesh Chand v. B.Janardhan Reddy and another in which the Hon'ble Supreme Court has quoted various judgement of the Hon'ble Supreme Court and decided that there is no bar in entertaining a second complaint on the facts but it will be entertained only in exceptional cases. The Hon'ble Supreme Court has also laid down some circumstances in Parmatha Math Talugdar case, in which it has laid down "Misunderstanding of the nature of the complaint" is also an exceptional circumstance. Therefore, this court is of the opinion that the 4th exception does include an FIR registered by the police, while the 4th exception deals only with respect to the proceedings of the court. Therefore, this court come to a conclusion that there is no bar in entertaining the second complaint and the dismissal of the previous complaint is based on the misunderstanding of the nature of the complaint. Hence, there is prima facie to take this case on file and the rest to be decided at the end of the trial. Therefore, this complaint is taken on file for the sections noted in the complaint under Section 200 of Cr.P.C. and ordered to issue summons to the Accused on payment of process fees and the matter is posted to 09.02.2017."

13. Now, the primordial contention of the learned counsel for the petitioner is that, once the complaint was dismissed under Section 203 of the Code, a second complaint on the same allegations is not at all maintainable. The learned Magistrate virtually reviewed the order passed under Section 203 of the Code, by his predecessor, and came to a conclusion that, the earlier order was passed in total misunderstanding of the nature of the complaint, which is not permissible in law. If at all the complainant has any grievance, the only option available to him is to challenge the order of the Judicial Magistrate, dismissing the complaint, before the appropriate forum, until such order is set aside by the competent court, the learned Magistrate cannot review the earlier order and entertain the subsequent complaint and issue summons.

14. The learned counsel appearing for the respondent, disputing that contention, submitted that, the earlier complaint was dismissed on the ground that the allegation regarding the publication of news item, would squarely fall under fourth exception to Section 499 of

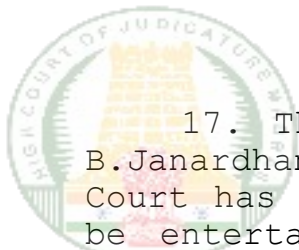


IPC. The above exception is applicable only to the proceedings pending in the court. But, the publication is not related to any of such proceedings of the court, in total misunderstanding, the learned Magistrate dismissed the complaint under Section 203 of the Code. In the above circumstances, the petitioner challenged the order by way of revision and withdrew the revision with liberty to workout his remedy in the manner known to law. Subsequently, the second complaint has been filed and the learned Magistrate also after considering the complaint and sworn-in statement had come to a conclusion that a prima facie case was made out against the petitioners and the earlier complaint was dismissed on total misunderstanding of the fact, therefore, the second complaint is maintainable and there is no illegality in the same.

15. The primary question that arise for consideration is as to whether the second complaint on the very same allegations is maintainable.

16. The Hon'ble Supreme Court in its earliest judgement on this issue reported in AIR 1962 SC 876 (Pramatha Nath Talukdar v. Saroj Ranjan Srkar) has held that after the dismissal of a complaint under Section 203 of the Code, a second complaint on the same set of fact can be entertained only in exceptional circumstances, namely, when the order was passed based on an incomplete record or on a misunderstanding of the nature of the complaint or manifestly absurd or where some new facts, which could not, with reasonable diligence despite reasonable diligence, have been brought on record in the previous proceedings. However, the Hon'ble Supreme Court has held that once a decision was taken upon full consideration of the case, a second opportunity need not be given. The relevant portion of the judgment reads as follows:-

"An order of dismissal under Section 203 of the Criminal Procedure Code, is however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into."



17. The above said judgment was followed in Mahesh Chand v. B.Janardhan Reddy, [(2003) 1 SCC 734], wherein the Hon'ble Supreme Court has held that, second complaint on the same set of facts can be entertained only on the exceptional circumstances as held in Pramatha Nath Talukdar case, cited supra, and further held that the second complaint should be dismissed where the decision was taken on full consideration of the case in the earlier complaint. The relevant portion of the judgement reads as follows:-

"19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Talukdar case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. ..."

18. Subsequently in Hira Lal v. State of Uttar Pradesh, (2009) 11 SCC 89, the Hon'ble Supreme Court has held that, when reason has been assigned for the dismissal of the earlier complaint, second complaint lies only on fresh facts or special case is made out for entertaining the complaint. The relevant portion of the judgement reads as follows:-

"19. The second complaint petition filed by the third respondent does not disclose any such exceptional case. It reiterated the same allegations as were made in the first complaint petition. No fresh fact was brought to the notice of the court. The core contention raised in both the complaint petitions was alleged execution of a forged will by Tika Ram Tyagi."



19. Keeping the above principles in mind, let me now consider the issue. The averments made in the first complaint filed by the respondent, coupled with the sworn in statements of the witnesses were fully considered by the learned Magistrate. On considering the entire materials, the learned Magistrate has come to a conclusion that, the complaint squarely fall under fourth exception to Section 499 of IPC, and there was no prima facie case made out against the accused therein and dismissed the same. On a perusal of the earlier order, it could be seen that the learned Magistrate had duly applied his mind and on being satisfied that no prima facie case was made out against the accused, as the allegations made in the complaint would only fall under Section 499 of IPC, and dismissed the complaint, and the order has been passed upon full consideration of the entire materials available on record, whether the order is correct or not is totally a different issue. Once a learned Magistrate applied his mind on the materials available on record and came to a conclusion that no prima facie case was made out against the accused and dismissed the complaint, another Judicial Magistrate cannot hold that the earlier order passed by his predecessor is not valid, it virtually amounts to reviewing the earlier order, which is barred under Section 362 Cr.P.C. The only remedy available to the complainant is to challenge the same before the appropriate forum and get that order set aside. In the instant case, the respondent/complainant has already challenged the order by way of a revision before this Court, but, subsequently, he has withdrawn the revision and the revision was also dismissed. In the above circumstances, after getting the revision dismissed, the respondent/complainant cannot maintain another complaint on the very same fact.

20. In Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169, the Hon'ble Supreme Court has held that once the matter was finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio, and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a competent court. The relevant portion of the judgement reads as follows:-

"10. Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment



the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error."

21. In another judgement in Surendra Singh v. State of Bihar, (2005) 12 SCC 361, the Hon'ble Supreme Court has held that, once a complaint has been dismissed, the very same court cannot re-consider its order which amounts to review of its own order which is impermissible in law the relevant paragraphs of the judgement reads as follows:-

"7. Surprisingly and for the reasons not noticeable in the subsequent order on the same date the learned Chief Judicial Magistrate proceeded to take cognizance of the offence referred to hereinabove. This as contended by the learned counsel appearing for the appellant amounts to review of its earlier order which is impermissible in law under Section 362 CrPC. Hence the subsequent order of taking cognizance is bad in law."

22. As already discussed above, the second complaint in the instant case is replica of the facts set out in the first complaint and no fresh facts have been set out in the second complaint. The core issue in both the complaints are one and the same. The second complaint also does not disclose any of the exceptional circumstances warranting the entertainment of the complaint. The earlier complaint was dismissed after full consideration of the entire materials available on record, unless the order dismissing the complaint under Section 203 of Cr.P.C. is set aside by a competent forum, a second complaint is not maintainable.

23. In the above circumstances, this Court is of the considered view that the instant second complaint on the very same set of fact, is not maintainable and the learned Magistrate without considering the case in a proper perspective has issued summons to the petitioners. Hence, the entire criminal proceedings is liable to be set aside as not maintainable in law. Since the complaint itself has been held as not maintainable, there is no necessity to go into the merits of the case.

24. In the result, the Criminal Original Petitions in CrI.O.P. (MD) Nos.1246 and 1298 to 1300 of 2017 are allowed and the entire criminal proceedings in STC No.45 of 2017 on the file of the learned Judicial Magistrate, Tiruchendur, are hereby quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



Crl.O.P.(MD) Nos.1246 of 2017, etc.

To
The Judicial Magistrate,
Tiruchendur,
Tuticorin District.

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-84665[F] dated
30/08/2019)

+1 CC to M/s.M. SILAMBARASAN, Advocate (SR-85018[F] dated
04/09/2019)

Common Order in
Criminal Original Petition (MD)
Nos.1246, 1298, 1299 and 1300 of 2017
30.08.2019
(½)

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MS/16.09.2019/13P.4C