BAIL SLIP

The Appellants/Accused Nos.3, 4 and 5 in CRL.A(MD)No.21 of 2013 and the Appellant/Accused No.1 in CRL.A(MD)No.27 of 2013 were directed to be released on bail, as per the orders of this Court dated 23.01.2013 made in MP(MD)No.1 of 2013 in CRL.A(MD).21 of 2013 and the order dated 29.01.2013 made in MP(MD)No.1 of 2013 in CRL.A (MD)No.27 of 2013 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.04.2019

Pronounced on : 30.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl. A.(MD)Nos.21 and 27 of 2013

1.A.Thiyagarajan
2.B.Thirumurthy @ Moorthy
3.N.Sukumaran .. Appellants/A3 to A5 in Crl.A(MD)No.21 of 2013

4.K.Kandasamy .. Appellant/A1 in Crl.A (MD)No.27 of 2013

Vs.

State rep. by
The Inspector of Police,
C.B.I. ACB,
Chennai .. Respondent/complainant in both appeals

Prayer in Crl.A.(MD) No.21 of 2013: This Criminal Appeal is filed under Section 374 of Cr.P.C. against the judgment and conviction passed by the II Additional District Judge for CBI Cases, Madurai in C.C.No.1 of 2009 dated 28.12.2012 convicting the appellants for the offences under Sections 120(B), 468, 420 r/w 511 of I.P.C. sentenced them to undergo three years R.I. and to pay a fine of Rs.3,000/- each in default of payment of fine to undergo two months simple imprisonment.

Prayer in Crl.A.(MD) No.27 of 2013: This Criminal Appeal is filed under Section 374 of Cr.P.C. to call for the records relating to the judgment passed in C.C.No.1 of 2009 dated 28.12.2012 on the file of the II Additional District Court for CBI Cases, Madurai and set aside the same and acquit the appellant/A1 from the charges levelled against him.

For Appellants : Mr.Veera.Kathiravan, senior counsel for M/S.P.N.Pandi Durai for appellants in Crl.A.No.21/2013

Mr.R.Shanmugasundaram, senior counsel for M/S.D.Sasikumar for appellant in Crl.A.No.27/2013

For Respondent : Mr.N.Nagendran, Spl.P.P. for CBI Cases in both appeal

Amicus Curiae : Mr.K.K.Ramakrishnan, APP

COMMON J U D G M E N T

Since both the appeals arising out a same judgment in C.C.No.1 of 2009 dated 28.12.2012 on the file of the II Additional District Court for CBI Cases, Madurai, both the appeals heard together and a common judgment is passed.

2.For the sake of convenience, the parties are referred to as per the rank mentioned in the trial Court. The gist of the charges framed against the appellants and A21 and findings/sentence of the trial Court are as noted below:

Rank of the Accused	**A1**	**A2**	**A3 to A5**
Charges	*Sections 120(B) r/w 468 r/w 420 r/w 511 of I.P.C. and Section 13(2) read with 13(1)(d) of P.C. Act, 1988.*	*Sections 120(B) r/w 468 r/w 420 r/w 511 of I.P.C. and Section 13(2) read with 13(1)(d) of P.C. Act, 1988.*	*Sections 120(B) r/w 468 r/w 420 r/w 511 of I.P.C. and Section 13(2) read with 13(1)(d) of P.C. Act, 1988.*
Findings	Found guilty under Sections 120B, 468, 420 of I.P.C. and Section 13(2) read with 13(1)(d) of P.C. Act, 1988.	Found Not guilty for all the offences	Found guilty under Sections 120B, 468, 420 read with 511 of I.P.C.

Sentence	Sentenced to undergo three years R.I. for each offence and to pay a fine of Rs.1,000/- in each offence in default to undergo two months S.I. each	acquitted	Sentenced to undergo three years R.I. for each offence and to pay a fine of Rs.1,000/- in each offence in default to undergo two months S.I. each

3. The brief facts, which are leading to this case are as follows:

(i)P.W.1 Periyasamy, S/o.Palaniappa Gounder, P.W.2 Malliga and P.W.35 Periyasamy are the residents of Muthucholipalayam. On 26.09.1999, when they were in their agricultural fields, in Coimbatore - Karur main road, at Muthucholipalayam village near VPG Prasath Nagar in evening at 6.00 p.m., three persons viz., Regupathy, Annadurai and Saravanan residents of Karur, who were travelling in Bajaj M80 motorcycle from East to West towards Coimbatore dashed by an unknown lorry travelling from West to East towards Coimbatore. After the accident, the lorry spread away without stopping in the place of occurrence. All the three persons died on the spot due to the said accident.

(ii)P.W.1 informed the accident to P.W.23, Eswaran, S.I. of Police, who registered the oral complaint of P.W.1 and reduced in writing in F.I.R. in crime No.104 of 1999 for the offence under Section 304(A) of I.P.C., which is marked as Ex.P.93. Thereafter, he went to the scene of occurrence at 07.15 p.m. and conducted a spot inspection and prepared a rough sketch and recorded the statement of P.W.1, who was the eye witness. P.W.1 gave an information as if a lorry bearing Registration No.TN 37 A 3898 has occurred the accident. Thereafter, P.W.23 recorded the statement of all the witnesses in crime No.104 of 1999 therein and the case was handed over to A1, who was the Inspector of Police Station, K.Paramathy Police Station at that time. He sent a letter to the Motor Vehicle Inspector to find place the lorry, which involved in the said accident. On search, it was found the the Registration No.TN 37 A 3898 was not belonging to a lorry and it belongs to a Hero Hondo Splendor, two wheeler. However, they found that the registration No.TN 37 Q 3898 belongs to a lorry.

(iii)Thereafter, A1 Kandasamay, who was the investigating officer conducted further inspection on that case. During his investigation he found that TN 37 Q 3898 did not involved any incident. P.W.2 Malliga and P.W.35 another Periyasamy were also available in the scene of occurrence and P.W.2 noted the registration number in sand and thereafter informed to P.W.1. Till 14.10.1999, the investigating officer did not find out the vehicle. Since A1 was pressurized to complete the investigation, he met A2, who is the Advocate to help him to complete the investigation. Accordingly, the lorry bearing Registration No.TNV 3355 was substituted on 16.10.1999 and P.W.1 was informed that the lorry bearing Registration No.TNV 3355 has caused the accident and accordingly, his statement was also recorded on the same day. Thereafter, on 04.11.1999, the lorry bearing Registration No.TNV 3355, was voluntarily produced before K.Paramathy Police Station by A3 to 5. A3 is the owner of vehicle, A5 in the driver of vehicle and A4 is the Advocate Clerk. Accordingly, A5 was produced before the Court. A1 recorded the statements of Periyasamy, Malliga, Naesan, Pandiyaraj, Palappan, Masilamani and another Periyasamy and after completion of investigation, A1 filed charge sheet against A5. The said case was taken on file in C.C.No.539 of 199 on the file of the learned Judicial Magistrate No.II, Karur, where, A5 Sukumaran admitted the offence on 19.11.1999 and paid a sum of Rs.9,100/- as fine by getting money from A4.

(iv)Thereafter, A1 having intention to cheat the Insurance Company entered into a criminal conspiracy along with other accused persons. Accordingly, A2 filed three MCOP cases viz., M.C.O.P.Nos.1341, 1342 and 1352 of 1999 before the Motor Accident Claims Tribunal at Dharapuram on 20.11.1999 on behalf of the dependants of the deceased persons, in which, the Tribunal awarded a sum of Rs.2,77,000/-, Rs.5,27,000/- and Rs.2,70,000/- as compensation to the respective claimants vide order dated 06.02.2003. Aggrieved over the said award, the Oriental Insurance Company Limited, Erode preferred appeals before this Court in CMASR Nos.80758, 80760 and 80762 of 2003 and those appeals were dismissed on 15.03.2007 in SR stage.

(v)Even on 26.02.2007, the Oriental Insurance Company Limited, Erode sent letters to the claimants of all the three MCOPs including the driver Sukumaran and lorry owner Thiyagarajan with a copy to Advocate K.Rajendran stating that the claims made by them are false and as per the order of this Division Bench dated 10.11.2006 made in W.P.No.7389 of 2005, all the cases were referred to CBI for investigation. After the receipt of the said letters, A2, using the signed blank green sheets of the claimants in the above MCOPs, prepared affidavit to not press the said MCOPs and filed the same before the Tribunal and accordingly, the said claim applications were dismissed after recording not pressed. However, on 19.07.2007, the Oriental Insurance Company Limited, Erode filed petitions before the Tribunal seeking to recall the orders made in the above said MCOPs. Accordingly, the orders were recalled on 22.7.2008. Thereby, the CBI found that the accused persons committed offence under Sections 120(B), 468, 420 read with 511 of I.P.C. and also Section 13(2) read with 13(1)(d) of P.C. Act. Accordingly, after completion of investigation, the Inspector of Police, CBI, ACB, Chennai filed final report as against the accused.

4. In order to substantiate charges against the accused in

the trial Court, prosecution examined 36 witnesses as PW1 to PW36 and marked 138 Exhibits as Ex.P.1-Ex.P.138 When the accused were questioned under incriminating circumstance under section 313 Cr.P.C. they denied them as false. For their defence they have marked one document namely Ex,D.1.

5. Upon consideration of evidence, the learned Special Judge found that 1st accused in criminal conspiracy with A2 to A5 substituted with lorry bearing Registration No.TNV 3355 and fabricated the further statement of P.W.1 and 161(3) Cr.P.C. statement of P.W.2 and filed the final report on the 5th accused, the driver of TNV 3355, thereby A1 and A3 to A5 cheated the Oriental Insurance Company Limited, Erode as the accident claim petitions were filed against the Oriental Insurance Company where the lorry TNV 3355 was insured and the 1st accused being a public servant had misused his official position in collusion with A3 to A and substituted the lorry TNV 3355, found the accused A1 guilty for the offence under Sections 120B, 468, 420 of I.P.C. and Section 13 (2) read with 13(1)(d) of P.C. Act, 1988 and found the accused A3 to A5 guilty for the offences under Sections 120B, 468, 420 read with 511 of I.P.C and convicted and sentenced them as stated above. However, the learned Judge found that since there is no evidence that A2 had given the lorry or produce the lorry to the police station and the same was substituted in this case and found him nor guilty for the offence under Sections 120B, 468, 420 read with 511 of I.P.C. and acquitted him under Section 235(1) of Cr.P.C.

6. Aggrieved against the same, A1 has filed Crl.A.(MD) No.27 of 2013 and A3 to A5 filed Crl.A.(MD) No.21 of 2013. However, the State has not preferred any appeal against acquittal of A2.

7. The learned counsel appearing for the 1st accused/Crl.A.(MD) No.27 of 2013 would submit that A1 is the Inspector of Police and based on the initial information given by P.W.1, a case has been registered by P.W.23, Eswaran, S.I. of Police and immediately after the registration of FIR, he went to the scene of occurrence at 7.15 p.m., and conducted a spot inspection and prepared rough sketch and recorded the statement of the witnesses. Initially, P.W.1, who is the eye witness furnished the information as if the lorry bearing Registration No.TN 37 A 3898 had caused the accident. Accordingly A1 sent letter to the Motor Vehicle Inspector to find out the lorry, which involved in the accident. However, it was found that the said registration number was not belong to a lorry, but belongs to a Hero Honda Splendor motorcycle. However, the vehicle bearing Registration No.TN 37 Q 3898 is a lorry. However, the lorry owner and the driver of the said lorry appeared before the police station and on investigation, it reveals that the said lorry also did not involved in the said accident. During the investigation, he found that during the occurrence, P.Ws.2 and 35 were also available in the scene of occurrence and P.W.2 Malliga informed that she noted the lorry number in sand and thereafter, he noted the same in a bit of paper and gave to P.W.1. Till

14.10.1999 no information was available about the lorry. On 16.10.1999, P.W.2 was informed that the accused had occurred by the lorry bearing Registration No.TNV 3355 and accordingly, her statement was recorded. Thereafter, the lorry driver voluntarily produced the lorry and appeared before the police station and after completing the investigation, A1 filed charge sheet against A5, the lorry driver and in the case in C.C.No.539 of 1999 on the file of the Judicial Magistrate No.II, Karur, he admitted his offence and paid the fine amount of Rs.9,100/- which was collected from A4, the Advocate Clerk, in which, he is not responsible.

8.The learned senior counsel would further submit that A1 has no intention to cheat the Insurance Company and he has not entered any criminal conspiracy with other accused persons and even there is no document produced before the trial Court in respect of forging the document and required ingredients to attract the offence under Sections 468, 420 and 120(B) of I.P.C. were not available in the present case. He would further submit that the allegation against A1 was that A1 by way of forged documents cheated the insurance company. In fact, all the statements recorded under Section 161(3) of Cr.P.C. were filed before the learned Judicial Magistrate, in which the learned Judicial Magistrate has passed an order. If at all A1 committed any offence for the offence under Section 120(B), 468 and 420 of I.P.C., the competent person is the Judicial Magistrate, who can take cognizance and file a private complaint against the accused persons under Section 195 of Cr.P.C. for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. However, without following the said procedure and without getting approval from the learned Judicial Magistrate, the CBI has registered a case against the first accused is unsustainable one. In fact, CBI committed mischief before the High Court, wherein, initially the Oriental Insurance Company Limited filed writ petition, implicating some other lorry owners, during the pendency of cases, the present lorry owner and other lorry owners were also implicated in the writ petition and got direction from the Hon'ble Division Bench of this Court and registered a case without giving opportunity to them is also unsustainable one.

9.The learned senior counsel further submitted that except the evidence of P.W.7 and P.W.46, the police officials worked along with the first accused, no other evidence or incriminating document available to implicate the first accused in the case. From the information furnished by P.W.2, the statement was recorded and hence, the offence has not been committed by the 1^{st} accused. Accordingly, he prayed for acquittal of the 1^{st} accused.

10.Though the trial Court framed charges against A1 along with other accused persons for the offence under Sections Sections 120(B) r/w 468 r/w 420 r/w 511 of I.P.C. and Section 13(2) read with 13(1)(d) of P.C. Act, 1988, the trial Court has not framed a specific charge as against A1. Further, the trial Court framed a charge against A1 for the offence under Section 120(B), 420 read with 511 of I.P.C. However, the charge is to attempt cheat the insurance company. However, A1 was convicted for the offence under Section 420 of I.P.C., which is a completed offence, whereas other accused were convicted for the offence under Section 420 read with 511 of I.P.C. When the charge is made as against A1 for attempt to cheat the insurance company, convicting the persons for the offence under Section 420 of I.P.c. is unsustainable one. Offence under Section 420 read with 511 of I.P.C. is a lesser offence and Section 420 of I.P.C. the completed offence is a major one. Both the offences are distinct offences and hence, the conviction against the first accused is bad in law.

11.In support of his contention, the learned senior counsel appearing for the 1st accused has relied on the following decisions:

1.***AIR 1956 Supreme Court 116 - Willie (William) Slaney V. State of Madhya Pradesh,*** wherein, para 77, 83, 84 and 85.

> "77.This conflict does not arise in the case before us where the offence charged against two brothers, William and Ronnie for the murder of Donald was under section 302, read with section 34 of the Indian Penal Code. Ronnie was acquitted. But William was found guilty and sentenced to transportation for life. As pointed out by Lord Sumner in his classic judgment in Barendra Kumar Ghosh v. The King-Emperor(1), there is much difference in the scope and applicability of sections 34 and 149, though they have some resemblance and are to some extent overlapping.
>
> The two sections are again compared and contrasted in Karnail Singh and another v. The State of Punjab(2). Section 34 does not by itself create any offence, whereas it has been held that section 149 does. In a charge under section 34, there is active participation in the commission of the criminal act; under section 149, the liability arises by reason of 'the membership of the unlawful assembly with a common object, and there may be no active participation at all in the perpetration or commission of the crime.
>
> The overlapping arises in those cases where two or more persons commit a murder in furtherance of the common intention, but it is not possible to say which of them was responsible for the fatal injury, or whether any one injury by itself was responsible for the death. There may also be a case where it is known that out of the assailants one in particular was responsible for the fatal injury and the others are sought to be made liable for the result owing to the common intention involved.
>
> But whereas in this case, the appellant has been individually charged with murder and there is proof that his band caused the injury, the fact that his brother was also sought to be made liable owing to the existence of a common intention, is neither here nor there, so far as the

legality of the conviction is concerned, as there has been no prejudice by way of failure of justice.

83.Let us now turn our attention to the relevant sections of the Code bearing on the requirement of a charge, the omission of a charge and the effect thereof. Section 233 provides as follows:-

"For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239".

A power to alter or add to a charge, at any time before judgment is pronounced, is conferred on a court under section 227. Sections 228 to 231 provide for the steps to be taken consequent on such alteration. Section 225 shows what would be the effect of any errors in the framing of a charge. It runs as follows:-

"No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice".

Section 232(1) of the Code of Criminal Procedure refers more specifically to the effect of such error where an appellate Court or the High Court in revision or in confirmation proceedings, notices such an error and is in the following terms:-

"If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit".

Then we have section 237, dealing with a case where an accused charged with one offence for which he might have been charged under the provisions of section 236 could be convicted of a different offence. This applies only to cases where it is doubtful which of several offences the facts which can be proved will constitute. Begu's case(1) is an example; the conviction was under section 201 of the Indian Penal Code for causing the disappearance of evidence relating to a murder, though the charge was under section 302 of the Indian Penal Code. Viscount Haldane observes:-

"........... A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made. That is what happened here. The three men who were sentenced to rigorous imprisonment were convicted of making away with the evidence of the crime by assisting in taking away the body. They were not charged with that formally, but they were tried on evidence which brings the case under section 237".

Finally, we come to sections 535 and 537 of the Code. The former is in these terms:-

" (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge".

The latter runs thus:-

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent Jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account-

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b)..................................

(c) of the omission to revise any list of jurors or assessors in accordance with section 324, or

(d) of any misdirection in any charge to a jury, unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice".

84.A case of complete absence of a charge is covered by section 535, whereas an error or omission in a charge is dealt with by section 537. The consequences seem to be slightly different. Where there is no charge, it is for the court to determine whether there is any failure of justice. But in the latter, where there is mere error or omission in the charge, the court is also bound to have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

85.The sections referred to indicate that in the generality of cases the omission to frame a charge is not per se fatal. We are unable, therefore, to accept as sound the very broad proposition advanced for the appellants by Mr. Umrigar that where there is no charge, the conviction would be illegal, prejudice or no prejudice. On the other hand, it is suggested that the wording of section 535 of the Code of Criminal Procedure is sufficiently wide to cover every case of 'no charge'. It is said that it applies also to the case of a trial in which there has been no charge of any kind even from the very outset.

We are unable to agree that section 535 of the Code of Criminal Procedure is to be construed in such an unlimited sense. It may be noticed that this group of sections relating to absence of a charge, namely, sections 225, 226 and 232 and the powers exercisable thereunder' are with reference to a trial which has already commenced or taken place. They would, therefore, normally relate to errors or omissions which occur in a trial that has validly commenced.

There is no reason to think that section 535 of the Code of Criminal Procedure is not also to be understood with reference to the same context. There may be cases where, a trial which proceeds without any kind of charge at the outset can be said to be a trial wholly contrary to what is prescribed by the Code. In such cases the trial would be illegal without the necessity of a positive finding of prejudice. By way of illustration the following classes of cases may be mentioned:-

(a) Where there is no charge at all as required by the Code from start to finish-from the Committing Magistrate's court to the end of the Sessions trial; the Code contemplates in section 226 the possibility of a committal without any charge and it is not impossible to conceive of an extreme case where the Sessions trial also proceeds without any formal charge which has to be in writing and read out and explained to the accused (section 210(2) and section 251 (A) (4) and section 227).

The Code requires that there should be a charge and it should be in writing. A deliberate breach of this basic requirement cannot be cured by the assertion that everything was orally explained to the accused and the assessors or jurors, and there was no possible or probable prejudice.

(b) Where the conviction is for a totally different offence from the one charged and not covered by sections 236 and 237 of the Code. On a charge for a minor offence, there can be no conviction for a major offence, e.g., grievous hurt or rioting and murder. The omission to frame a separate and- specific charge in such cases will be an incurable irregularity amounting to an illegality."

2.**AIR 1953 SC 293 – Basir-ul-Huq V. State of West Bengal,** wherein, this Court has held as follows:

"9.Section 195, Criminal Procedure Code, on which the question raised is grounded, provides, inter alia, that no court shall take cognizance of an offence punishable under sections 172 to 188, Indian Penal Code, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an of-fence under section 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the magistrate is debarred from taking cognizance in respect of those offences as well. The allegations made in a complaint may have a double aspect, that is, on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The section does not per se bar the cognizance by the magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made. It was however argued that if on the same facts anoffence of which no cognizance can be taken under the provisions of section 195 is disclosed and the same facts disclose another offence as well which is outside the purview of the section and prosecution for that other offence is taken cognizance of without the requirements of section 195 having been fulfilled, then the provisions of that section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible for the prosecution to ignore the provisions of this section by describing the offence as being punishable under some other section of the Penal Code.

11.As regards the charge under section 500, Indian Penal Code, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that other is not debarred by the provisions of section 195 from seeking redress for the offence committed against him. Section 499, Indian Penal Code, which mentions the ingredients of the offence of defamation gives within defined limits immunity to persons making depositions in court, but it is now well settled that immunity is a qualified one and is not absolute as it is in English law. Under section 198, Criminal Procedure Code, a complaint in respect of an offence under section 499, Indian Penal Code, can only be initiated at the instance of the person defamed, in like manner as cognizance for an offence under section 182 cannot be taken except at the complaint of the public -servant concerned. In view of these provisions there does not seem in principle any warrant for the proposition that a complaint under section 499 in such a situation cannot be taken cognizance of unless two persons join in making it, i.e., it can only be considered if both the public servant and the person defamed join in making it, otherwise the person defamed is without any redress. The statute has prescribed distinct procedure for the making of the complaints under these two provisions of the Indian Penal Code and when the prescribed procedure has been followed, the court is bound to take cognizance of the offence complained of.

12.The decided cases fully support this view and our attention has not been drawn to any case which has taken a contrary view as regards offences under section 500, Indian Penal Code. In Satish Chandra Chakravarti v. Ram Dayal De (1), five judges of the Calcutta High Court considered this question and held that where the maker of a single statement is guilty of two distinct offences, one under section 21 1, Indian Penal Code, which is an offence against public justice, and the other an offence under section 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the court concerned, as the Criminal Procedure Code has not provided for sanction of court for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in character is patent from the fact that the former is made non-compoundable, while the latter remains compoundable; in one for the the initiation of the proceedings the legislature requires the sanction

of the court under section 195, (1) Criminal Procedure Code, while in the other, Cognizance can be taken of the offence on the complaint of the person defamed. It could not be denied that the accused could be tried of charges under sections 182 and 500, Indian Penal Code, separately on the same facts provided the public servant as well as the person defamed made complaints. If that is so, there is no reason why one cannot be tried independently of the other so long as the requirements of each are satisfied. Harries C. J. while delivering the Full Bench decision in question examined all the earlier cases of the Calcutta High Court and observed that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of section-is 195 to 199 of the Code of Criminal Procedure. Sections 195 to 199 deal with the requisites for the prosecution of certain specified offences and the provisions of those sections must be limited to prosecutions for the offences actually indicated. If it was the intention of the legislature to make sanctions or complaints in a certain form necessary for the prosecution of all offences disclosed by facts which would give rise to any of the offences specifically indicated in these sections, the legislature could have said so but it did not."

12.The learned senior counsel appearing for the appellants/accused 3 to 5 in Crl.A.(MD) No.21 of 2013 would submit that A3 is the owner of the lorry and A5 is the driver of the lorry and A4 is the Advocate Clerk, who were implicated along with A2 Advocate. The case as against A2 ended in acquittal and no appeal has been preferred against A2. The entire allegation against the A3 and A5 is that their lorry was substituted in the above said crime No.104 of 1999, in which they were entered conspiracy with A2 and other accused persons, enabling the victims to get compensation against the insurance company by cheating the Oriental Insurance Company Limited, Erode.

13.He would further submit that in fact, the evidence available to implicate these accused persons is only P.W.7. Though A3 was arrayed as a party in M.C.O.P. applications filed by the victims against the insurance company and A5, who pleaded guilty in crime No.104 of 1999 in C.C.No.531 of 1999 for the offence under Section 304(A) of I.P.C., there is no allegation in respect of A4, who has simply accompanied A5 at the time of paying fine amount in C.C.No.531 of 1999. Accompanying with other accused does not make out any offence. The required ingredients to attract the offence under Sections 120(B), 468, 420 read with 511 are not available in this case. In the absence of material and evidence implicating A4 is unsustainable one. Therefore, he prayed for acquittal of A3 to A5. He would further submit that even the CBI also has not taken any steps to identify the vehicle, that was caused accident on 26.09.2009 so as to enable the legal heirs of the deceased to get compensation.

14.The learned Special Public Prosecutor appearing for CBI/respondent would submit that CBI had initiated prosecution against A1 and other accused persons based on the direction issued by the Hon'ble Division Bench of this Court in W.P.No.7389 of 2005. Therefore, the question of non compliance of 195 of Cr.P.C. does not arise in the present case on hand. The public servant did not commit any offence under Section 193 of I.P.C. and to attract the ingredient of Section 193 of I.P.C., a person whoever must intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding. In the present case, the Division Bench has already issued direction to CBI to initiate prosecution agaist the erred officials/accused persons, in which, there is no ne4cesssity for invoking provision under Section 195 of Cr.P.C. The very same issue has already been decided by the Apex Court in in ***Central Bureau of Investigation Vs. M.Sivamani reported in AIR 2017 SC 3583.***

*15.*He would further submit that in the present case, all of a sudden, A1 recorded the statement of P.W.2 Malliga without any cogent reasons that too even after 20 days from the date of occurrence. Further, initially, he sent the vehicle/lorry bearing Registration No.TN 37 A 3898 to the Regional Transport Officer and other officers. However, after recording the statement of P.W.2 Malliga, on 16.10.1999, immediately, he brought the lorry bearing Registration No.TNV 3355 and obtained Motor Vehicle Inspector's report from the transport authority and without any examination, the driver of the lorry admitted the guilt and paid the penalty, which is sufficient to prove that A1 and other accused persons conspired together to make loss to the insurance company and the charges framed against the accused persons are clearly proved by the prosecution. Accordingly, he prayed for dismissal of the appeals.

16.The points for consideration in these appeals are:

> "1.Whether the launching prosecution without invoking Section 195 of Cr.P.C. against A1 is sustainable or not?
>
> 2.Whether the trial Court is right in convicting the accused under Section 420 of I.P.C. or not?
>
> 3.Whether any evidence available to implicate A4 in this case or not?"

17.Perusal of the entire records would show that P.Ws.1 and

35 are eye witnesses to the accident occurred on 26.09.1999. P.W.2 claimed to be an eye witness, however, her statement was recorded after 20 days from the date of accident. P.Ws.3,4,5,7,23, 34 and 36 are the police officials. P.Ws.8,9 and 25 are the insurance officials. P.Ws.16, 17 and 19 to 21, 27 and 33 are the officials of Regional Transport Office. P.Ws.10, 13 and 14 are the doctors, who conducted postmortem of the deceased persons. P.Ws.18, 26 and 32 are the staffs of Judicial Magistrate No.II, Karur, where the trial in C.C.No.531 of 1999 was conducted.P.W.6 Village Assistant and P.W.22 is V.A.O. P.Ws.24 and 29 are the claimants in M.C.O.P. P.W.11 is the father of the owner of lorry bearing Registration No.TN Q 3938 P.W.12 is the Joint Secretary of Lorry Owners Association. P.W.15 was the Advocate, who filed advance hearing petition in C.C.No.531 of 199 on the file of the Judicial Magistrate No.2, Karur.

18.In the present case, the crucial witnesses are P.Ws.1 to 5, 7, 23 and 35. P.Ws.1 and 35 are the eye witnesses, who were available in the scene of occurrence at the time of occurrence. P.Ws.3 to 5, 7 and 23 are the police officials, who assisted A1 for investigation in crime No.104 of 1999 on the file of K.Paramathi P.S. Evidence of P.W.1 would reveal that When he was in his filed on the date of occurrence at 6.00 p.m. in evening near V.P.G. Nagar, Powthram village, a lorry came from West to East and a two wheeler came from East to West, in which, three persons were travelling and the lorry dashed against the motorcycle and three persons died on the spot and the lorry spread away without stopping and he went to police station and made a oral complaint, which was reduced in writing by a police. In support of the road accident, the evidence of P.W.2 would corroborate the evidence of P.W.1 and further stated that she noted the registration number of the lorry and the registration number is TNV 3355, however, her statement was recorded after 20 days from the date of accident. Perusal of the evidence of P.W.35 would reveal that he has also corroborated the evidence of P.Ws.1 and 2.

19.On a close perusal of the above evidence makes it clear that initially P.W.1 gave a complaint to P.W.23, Sub Inspector of Police and he specifically mentioned the registration number. Though his evidence does not disclose any lorry number, in his complaint, he mentioned the lorry number as TN 37 A 3898. Even in the FIR, the lorry number has been specifically mentioned as TN 37 A 3898. Perusal of the FIR in crime No.104 of 1999, name of P.W.2 Malliga was not mentioned. Even in the inquest report also, P.W.2's name was not mentioned as panchayatdar. However, A1 signed in the same in the capacity of investigating officer and he also prepared rough sketch and observation mahazer. Thereafter, the bodies were sent for postmortem. A1 recorded the statement of P.W.1 Periyasamy S/o.Palaniappan under Section 161(3) of Cr.P.C. and at that time, he informed the lorry number to A1. Similarly, he examined P.W.35 another Periyasamy, S/0.Karuppanan. Thereafter, he recorded 161(3) of Cr.P.C. statements of Natesan, Pandiyaraj, Palappan and Masilamani. However, he did not record the statement of P.W.2, Malliga. Thereafter, A1 sent a letter to the Regional Transport Officer on 28.09.1999 and made a request to furnish the particulars of the lorry bearing Registration No.TN 37 A 3938. Again on 01.10.1999, A1 sent reminder to the Regional Transport Officer and requested for the said particulars and he deputed HC Ramasamy, P.W.4 to secure the lorry and its driver. However, during investigation he received a negative report that the vehicle bearing Registration No.TN 37 A 3938 is not a lorry, it is a Hero Honda Splendor motorcycle. Therefore, after investigation with RTO, he fixed that the vehicle bearing Registration No.TN Q 3938 had occurred the said accident. Thereafter, one K.C.Mani, P.W.12, Joint Secretary of Lorry Owners Association produced a trip sheet and other things and established that the lorry bearing Registration No.TN 37 Q 3938 did not involve in the above said accident and the same was recorded by proceedings dated 14.10.1999. Thereafter, A1 on 16.10.1999 recorded the statement of P.W.2 Malliga based on the information given by P.W.1, in which he revealed that he did not know to read and write. However, the eye witnesses stated that initially P.W.2 noted the lorry number in the floor and thereafter in a chit. Accordingly, A1 recorded the statement of P.W.2 as if the lorry bearing registration No.TNV 3355 had involved in the said said accident and after securing the vehicle, he sent the vehicle to Motor Vehicle Inspector for inspection on 04.11.1999. Thereafter, he examined the other witnesses and laid a final report before the learned Judicial Magistrate No.II, Karur, in which, A5 Sukumaran pleaded guilty for the offence under Section 304 (A) of I.P.C and accordingly, fine was imposed.

20.Admittedly, the victims filed MCOPs before the Motor Accidents Claims Tribunal, Dharapuram in M.C.O.P.Nos.1341, 12342 and 1352 of 1999. A2 Advocate Rajendran has filed the said MCOPs on behalf of the victims. In that petitions, award has been passed and aggrieved over the same, the Oriental Insurance Company Limited preferred appeal in CMASR Nos.80758, 80760 and 80762 of 2003 and the said CMAs were also dismissed on 15.03.2017 in the SR stage itself.

21.Even prior to that, since there are large number of scandals in substituting the vehicles, which are not actually involved in any accident, the Insurance Company filed a Public Interest Litigation before the Division Bench of this Court. Similarly, National Insurance Company Limited, Coimbatore also filed a writ petition in W.P.(MD) No.7389 of 2005 and on 22.04.2208, during the argument, the learned counsel appearing on behalf of the Insurance Company therein submitted nine other cases are there for further entrustment to the CBI, in which, the crime No.104 of 1999 has been shown in Sl.No.7 and in that writ petition, the Division Bench has issued directions to examine the setting up of an Insurance Fraud Office Bureau in view of the proliferation of such economic offences, which results in huge loss of public money.

Therefore, the CBI conducted enquiry and thereby, the present criminal case was initiated against the accused persons and after investigation, CBI filed final report.

22.Perusal of the evidence of P.Ws.1 and 35 would show that they have categorically admitted that initially they have given the registration of the number, which involved in the accident and after 20 days, A1, the Inspector of Police has given another registration number as if the said vehicle had been involved in the accident. However, there is no record to show that how P.W.2 subsequently changed the lorry number and what steps taken by A1 to verify with RTO as to whether the said lorry involved in any accident. A perusal of P.W.7 would indicate that after one month from the accident, the counsel on record in M.C.O.P cases discussed with the Inspector of Police and A1 stated that the higher officials pressurised to find out the lorry involved in the above said accident, for which, A2 replied that he will fix a lorry and thereafter, he can close the case. Accordingly, A5 produced the lorry along with A4 and the same was sent to Motor Vehicle Inspector for inspection. He has specifically averred that A2 sent the lorry owner and driver viz., A3 and A5 to the police station on 04.11.1995 and A1 instructed P.W.7 to record in the station registers as if A5 brought the lorry driver. Thereafter, he sent the lorry for inspection and thereafter, A5 appeared before the Court and pleaded guilty for the offence under Section 304 (A) of I.P.C. In that case, A4 accompanied A5 and A5 paid the fine amount that was collected from A4. His evidence makes it clear that all the statements were recorded in A1 and without taking any steps for verifying the present lorry with the RTO department, secured A3 and A5 for the purpose of filing final report in crime No.104 of 1999 on the file of K.Parmathi P.S.

23.The prosecution has clearly established that A1 falsely investigate the case and laid a false charge sheet against A4 as if he has committed the road accident in order to cheat the insurance company for getting compensation to the victims. However, it is curious to note that after CBI instituted the prosecution case, the Insurance Company issued letter dated 26.02.2007 to the victims informing that the Insurance Company defending the claims on the premise that the claims are fabricated and the vehicle insured by them has been falsely implicated and they have conducted investigation and obtained evidence in support of their defence and requested them to give evidence. Thereafter, A2 filed affidavits before the Tribunal, Dharapuram seeking permission to permit the victims to withdraw their claims, by not pressing their claim and accordingly, permission was also granted. Though there is no loss to the insurance company and amount was not disbursed in favour of the victims, perusal of the evidence would show that the appellants have an intention to cheat the insurance company by fabricating false documents. Therefore, this Court is of the view that the charges framed against the A1, 3 and 5 are clearly established by the prosecution.

24.In respect of the charge framed against A4 is concerned, though A2 did not dispute the involvement of the lorry bearing Registration No.TNV 3355 before the MCOP Court, on a perusal of the evidence, this Court finds that based on the statement given by P.W.1, A1 falsely investigated the case and filed the final report and allowed A5 to plead guilty for the offence under Section 304(A) of I.P.C. The only allegation against A4 is that he has given money to A5 for paying the fine amount. A1 has malafide to record the statement of P.W.2 Malliga after 20 days from the date of recording her initial statement. Without conducting proper further investigation, A1 hurriedly filed the final report with the connivance of A3 and A5. In order to help the victims, based on the false information and fabrication of documents, A5 appeared before the learned Judicial Magistrate and pleaded guilty. Therefore, this Court have no hesitation to come to a conclusion that A1 substituting the vehicle, which was not involved in accident by colluding with A3 and A5 facilitating the victims to get the benefit of M.C.O.P award. The owner of the lorry has also been implicated as respondent in M.C.O.P. applications at the instigation of A1 entered with the conspiracy with A3 and A5. P.W.7 in his evidence deposed that A4 has handed over the money to A5 for paying the fine amount. Except the version of P.W.7, there is no other proof to show that A4 collected money from A2 and paid the fine amount on behalf of A5. Even in the judgment of C.C.No.531 of 1999 also, the involvement of A4 has not been mentioned. Even A2, under whose control A4 was working has been acquitted from the charges. From the above, this Court finds that the charges framed against A4 has not been established by the prosecution and hence, he is liable to be acquitted from the charges framed against him.

25.The learned senior counsel would argue that in respect of initiation of prosecution by CBI is contrary to the provision of Section 195 of Cr.P.C. Section 195 of Cr.P.C provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. In the present case, if at all, the learned Judicial Magistrate found to take cognizance, he can take cognizance only against the 1st accused in respect of 193 read with 211 of I.P.C. However, the present case has been registered against the first accused for the offences under Sections 420 read with 511 of I.P.C. If any false evidence given before a Count, the Judicial Officer shall take cognizance and upon satisfaction, issue direction to file a private complaint under Section 195 of Cr.P.C. However, in the present case, based on the direction of the Division Bench of this Court in W.P.No.7389 of 2005, CBI launched prosecution against the accused persons for the offences stated earlier. Otherwise, there is no necessity for the CBI or Insurance Company to launch the prosecution against the accused persons. Hence, the non application of Section 195 of Cr.P.C. in the present case is not vitiate the case of prosecution and the argument on this aspect is not hold good. The very same issue was decided by the Hon'ble Apex Court in ***Central Bureau of Investigation Vs. M.Sivamani reported in AIR 2017 SC 3583***, wherein, it has been stated as follows:

> "11. We have considered the rival submissions. We find merit in the contention raised on behalf of the appellant. While the bar against cognizance of a specified offence is mandatory, the same has to be understood in the context of the purpose for which such a bar is created. The bar is not intended to take away remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person. The expression "the public servant or his administrative superior" cannot exclude the High Court. It is clearly implicit in the direction of the High Court quoted above that it was necessary in the interest of justice to take cognizance of the offence in question. Direction of the High Court is at par with the direction of an administrative superior public servant to file a complaint in writing in terms of the statutory requirement. The protection intended by the Section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation. Once the High Court directs investigation into a specified offence mentioned in Section 195, bar under Section 195(1)(a) cannot be pressed into service. The view taken by the High Court will frustrate the object of law and cannot be sustained."

26.Further, in view of the decision of the Hon'ble Supreme Court in **AIR 1953 Supreme Court 293 - Basir-ul-Huq V. State of West Bengal**, stated earlier, it is clear that the allegations made in a false report disclose two distinct offences, one againt the public servant and the other against a private individual, that other is not debarred by the provisions of S.195 from seeking redress for the offence committed against him. In the present case, the Insurance Company had been cheated by the accused persons after entered into a conspiracy in order to cheat the insurance company by substituting a vehicle in a criminal case and hence, this Court of the view that there is no necessity for approval under Section 195 of Cr.P.C. from the Judicial Officer. Merely because A2 has been acquitted, it does not mean that A1 and other accused also are entitled for acquittal. In this regard, it is relevant to cite the decision of the Hon'ble Supreme Court in ***Nallabothu Venkaiah Vs. State of A.P.*** reported in (2002) 7 SCC 117 wherein, the Hon'ble Supreme Court has held as follows:

> "15. It must be borne in mind that criminal

justice system must be alive to the expectation of the people. The principle that no innocent man should be punished is equally applicable that no guilty man should be allowed to go unpunished. Wrong acquittal of the accused will send a wrong signal to the society. Wrong acquittal has its chain reactions, the law breakers would continue to break the law with impunity, people then would lose confidence in criminal justice system and would tend to settle their score on the street by exercising muscle power and if such situation is allowed to happen, woe would be the Rule of Law. What is apparent from the aforesaid discussion is that the acquittal of the accused recorded by the High Court was clearly contrary to the evidence on record and on the basis of mis-appreciation of eye witnesses account. It is unfortunate that acquittal appeals are not before us.

24.Analytical reading of catena of decisions of this Court, the following broad proposition of law clearly emerges: (a) the conviction under Section 302 simpliciter without aid of Section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in the ordinary course of nature to cause the death of the deceased and is supported by medical evidence; (b) wrongful acquittal recorded by the High Court, even if it stood, that circumstance would not impede the conviction of the appellant under Section 302 r/w Section 149 I.P.C. (c) charge under Section 302with the aid of Section 149 could be converted into one under Section 302 r/w Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved. ”

27.In view of the above decision, the contention of the learned counsel appearing for the appellants that the other accused had been acquitted and therefore, the appellants could not have been convicted relying upon the same evidence deserves to be rejected, since the prosecution has established the guilt of A1,A3 and A5 beyond reasonable doubt.

28.For the reasons stated above, this Court find that the prosecution has established the case beyond reasonable doubt as against A1, A3 and A5. However, this Court found A4 not guilty for the offence under Sections 120(B), 468 and 420 read with 511 of I.P.C. Accordingly partly allowed. The 2nd appellant/A4 in Crl.A.(MD) No.21 of 2013 is hereby acquitted from the charges framed as against him. However, considering the paucity of time and A1, A3 and A5 are more than 60 years, the judgment passed by the II Additional District Judge for CBI Cases, Madurai in C.C.No.1 of 2009 dated 28.12.2012 against A1, A3 and A5 are hereby confirmed as follows:

> The appellants/A1, A3 and A5, on each of the offence, are sentenced to undergo three years R.I. each and to pay a fine of Rs.1,000/- each in default of payment of fine to undergo two months simple imprisonment each for the offences under Sections 120 B, 468, 420 and 420 read with 511 of I.P.C. respectively. The bail bonds executed by A4, if any, shall stand cancelled.

29.It is very unfortunate case. Though admittedly three persons lost their lives in a road accident, believing A2 filed claim petitions before the Motor Accident Claims Tribunal with wrong particulars, thereby subsequently, withdrawn the cases. However, the victims, who lost the breadwinner of the family in the road accident unable to receive any compensation from the appropriate insurance company or from the owner of the lorry because of the failure of the investigation done by A1 and the wrong guidance of other accused persons. The respondent CBI also has not taken any steps to secure the lorry to enable the victims to get compensation, who lost their breadwinner in the road accident. Therefore, this Court appointed Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor as Amicus Curiae to assist the Court in this regard.

30.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor stated that this Court, while entertaining an appeal, have power to award compensation to the victims. In support of his contention, he relied on the decision of the Hon'ble Apex Court in ***Suresh Vs. State of Haryana reported in (2015) 2 Supreme Court Cases 227***, wherein the Apex Court has held as follows:

> "15. We are informed that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.
> 16. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an

application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. ”

He also relied on the decision in ***State of M.P. Vs. Mehtaab reported in 2015(2) Crimes 150 (SC)***, wherein, the Apex Court has held as follows:

“8. We find force in the submission. It is the duty of the Court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim. Unfortunately, these factors are missing in the impugned order. No cogent reason has been assigned for imposing only 10 days sentence when an innocent life has been lost. Award of unreasonable compensation has also not been considered. Apart from the sentence and fine/compensation to be paid by the accused, the Court has to award compensation by the State under Section 357A when the accused is not in a position to pay fair compensation as laid down by this Court in Suresh vs. State of Haryana (Criminal Appeal No.420 of 2012 decided on 28th November, 2014). This Court held :

"14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.""

31.He would further state that the Tamil Nadu Government also passed a Government order in G.O.(Ms.) No.1055, Home (Police XII) dated 30.11.2013 prepared a scheme called the Tamil Nadu Victim Compensation Scheme, 2013, in which, the State created victim compensation fund under the scheme provided for victims or their dependants, who are eligible for grant of compensation under the scheme, where the recommendation made by the Court under Sections 2 and 3 of 357-A of the Code of Criminal Procedure, 1973, the District Legal Services Authority shall award of compensation under Section 4(3) of 357-A of the Code of Criminal Procedure. In this aspect, the learned Special Public Prosecutor appearing for the CBI produced a report identifying the victims in crime No.104 of 1999 on the file of K.Paramathi Police Station.

32.In view of the above, this Court is inclined to issue a direction to the District Legal Services Authority, Karur District to conduct a preliminary enquiry and recommend them for proper compensation to the Government, after following the procedures for grant of compensation under clause 5 of the scheme. The said Legal Services Authority, after conducting enquiry, shall decide the quantum of compensation to be awarded to the victims/dependants within a period of 12 weeks from the date of receipt of a copy of this order and forward the same to the Secretary to the Government, Home, Prohibition and Excise Department, who in turn, shall sanction the compensation amount awarded by the District Legal Services Authority, within a period of 8 weeks from the date of receipt the recommendation from the District Legal Services Authority concerned. The District Collector, Karur shall draw and disburse the above compensation amount to the victims or their dependents within one month from the date of receipt of sanction order from the Home, Prohibition and Excise Department.

33.This Court records its appreciation the valuable assistance rendered by Mr.R.Shanmugasundaram, learned Senior counsel appearing for the appellants, who draw the attention of this Court to the award of compensation to the victims after 20 years and Mr.N.Nagendran, Special Public Prosecution for CBI Cases, who had taken effective steps to identify the legal heirs of the deceased persons and also Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, who had produced decision and Government Orders, to enable this Court to award compensation to the legal heir of the deceased/victims.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar(CS)

Arul

To

1.II Additional District Judge for CBI Cases, Madurai

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

3.The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court, Madurai.

COPY TO

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Secretariat, Chennai.

2.The Officer In Charge,
District Legal Services Authority,
Karur District.

3.The District Collector,
Karur District.

+1CC TO MR.D.SASI KUMAR, Advocate Sr. No. 64220

Judgment in
Crl. A.(MD)Nos.21 and 27 of 2013
30.04.2019

DKS(CO)
TR (22.05.2019) 25P 8C