

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 24872 OF 2013

AND

M.P. NO. 1 OF 2013

1. K.S.Ramachandran
2. V.Premalatha
3. P.Rajendran
4. S.Rangaraj
5. K.Palaniammal
6. P.Narayanasamy
7. P.Selvamani
8. P.Mariappan
9. V.Govindarajan
10. S.Venkatachalam

... Petitioners

- Vs -

T.Sakthivel

... Respondent

Criminal Original Petition filed u/s 482 Cr.P.C. praying this Court to call for the records and quash the proceedings in C.C. No. 147 of 2013 on the file of the Judicial Magistrate No.I, Coimbatore.

For Petitioners: Mr. N.Manokaran

For Respondent : No Appearance

ORDER

The present petition has been filed for the quashment of the the case on the file of the learned Judicial Magistrate No.I, Coimbatore, which has been taken on file pursuant to the complaint lodged by the respondent in the wake of the news item published in the Tamil Daily at the instance of the petitioners, averring that such a publication has defamed the respondent in the eyes of the public and caused much harm and prejudice to him.

2. It is the case of the petitioners that while the respondent is the President, the petitioners are the elected

members of the Thenkarai Town Panchayat. It is the case of the petitioners that due to the lackadaisical and corrupt act of the respondent in collusion with the then Executive Officer of the Town Panchayat by misusing the funds, more than 5 villages in the said panchayat have not been getting their rightful share of welfare measures. In this regard, the petitioners submitted a complaint/representation to the District Collector, Coimbatore and the Assistant Director of Panchayat and on the basis of their representation/complaint, enquiry was conducted by the Cell Inspection Officer and a report, which was against the respondent, was submitted. The petitioners gave a representation to move a 'No Confidence Motion' against the respondent against which the respondent filed a suit in O.S. No.1132/2013 and also sought for stay of convening of special meeting to see through the No Confidence Motion. However, inspite of non-grant of stay, the Assistant Director of Panchayat has not proceeded further with the representation for No Confidence Motion.

3. Pending the above, the petitioners and the respondent were pitted against each other in many legal battles before this court by filing writ petitions and impleading petitions for one relief or the other, which are pending before this Court.

4. It is the case of the petitioners that on 18.12.2012, the respondent caused legal notice to the petitioners alleging that they have harmed his name and reputation by giving the details of the representation to the media and, thereby, have defamed him. Reply was given to the said notice on 26.12.12. However, not satisfied with the reply, the respondent filed a private complaint before the Judicial Magistrate No.I, Coimbatore, on 20.02.2013 alleging that his name has been harmed and his reputation has been defamed due to the act of the petitioners placing their representation before the media, which has been published in the Tamil Daily 'Dinakaran' on 13.12.12. It is the allegation of the respondent that the contents of the news item are per se defamatory causing great harm and injury to the reputation of the respondent. The said private complaint of the respondent has been taken on file in C.C. No.147 of 2013 by the learned Judicial Magistrate No.I, Coimbatore, and summons have been issued, necessitating the petitioners to knock the doors of this Court to quash the said complaint.

5. Learned counsel appearing for the petitioners, at the outset, drew the attention of this Court to the complaint lodged by the petitioners before the District Collector and the Assistant Director of Panchayat and submitted that the act of the respondent in not discharging his duties as President, as is mandated under the Panchayat Act in collusion with the Executive Officer of the Town Panchayat, to the detriment of the villages

falling within the said Panchayat prompted the petitioners to go before the competent authorities. It is the further contention of the learned counsel that pursuant to the said representation, enquiry was caused which resulted in an adverse report against the respondent being filed prompting the respondent to file the suit seeking stay, though no stay was granted in the said suit.

6. It is the further contention of the learned counsel for the petitioners that the act of the respondent to the detriment of the post which he was holding had only prompted the petitioners to move the representation for No Confidence Motion, which is as per the provisions prescribed under the Panchayat Act and the Rules. Though the details of the representation have been flashed in the media, it cannot be said that the same is defamatory for the simple reason that the respondent is holding a public office and, therefore, he is accountable to the public/citizens of the said locality for all his acts. The petitioners, as elected members of the Panchayat, have only brought to light the inaction of the respondent and the collusive act of the respondent with the Executive Officer to the detriment of the villages and this act, by no means, could be termed as a calculated act to defame the respondent. Once the respondent has accepted the post, which is a public office, it is not open to the respondent to take umbrage under the defamation laws, more so, when the representation is only against the acts committed by the respondent holding the public office and in the discharge of such duties and not against the individual. It is the contention of the learned counsel for the petitioners that the said publication, which is alleged to be defamatory and derogatory in character, in no way could be termed as defamation or derogation to the respondent. Further, it is the contention of the learned counsel for the petitioners that the tenor of the material published would unequivocally show that what has been published is the happenings in the meeting of the elected representatives, where the petitioners, as elected representatives, highlighted the mala fide acts of the respondent in the discharge of public duties and also the non-furnishing of particulars relating to income and expenditure and no where, any allegation is made against person of the respondent, thereby, tarnishing his image in the public forum. It is the vehement submission of the learned counsel that there is not even a single iota of satisfaction of the ingredients of defamation, as codified u/s 499 IPC stands satisfied. The proceedings have been initiated only to put shackles on the right of the elected representatives to question the corrupt and mala fide acts of the respondent, which right cannot be curtailed, but should be exercised with reasonable restrictions. It is the submission of the learned counsel that allowing the trial to continue would be nothing but travesty of justice and this Court, in exercise of its inherent jurisdiction, should

strike down the prosecution and release the petitioners from the shackles of the malicious prosecution.

7. In spite of notice, none appears for the respondent. Considering the fact that the petition is of the year 2013 and that almost six years have passed since issuance of notice on the respondent and in spite of the matter being on board, the respondent has not chosen to appear either in person or through counsel to address the matter, this Court is constrained to proceed with the matter in the absence of representation for the respondent and to deal with the matter on merits on the basis of the materials available on record.

8. This Court bestowed its best attention to the contentions advanced by the learned counsel for the petitioners and also perused the materials available on record as also the various provisions of law to which this Court's attention was drawn.

9. The various quasi judicial proceedings before the concerned statutory authority culminating in an enquiry and submission of a report and the filing of the suit, the writ petition and various other legal battles fought between the petitioners and the respondent are matters of record on which there could be no dispute. The happenings in the meeting that took place in the Panchayat Office on 12.12.12, which has been taken to print in the Tamil Daily 'Dinakaran' in its edition on 13.12.12 is also not in dispute as that is the fulcrum of the case of the respondent before the court below in the private complaint instituted at his behest. However, the main dispute, which is harped upon by the respondent is that the said news item, at the instance of the petitioners, more so their representation given to the District Collector and the Assistant Director of Panchayat, has been carried to print, which is defamatory and derogatory and has tarnished the reputation of the respondent in the eyes of the public and, therefore, penal provisions relating to defamation stands attracted. On the basis of the said allegation, complaint was preferred before the learned Judicial Magistrate NoI, Coimbatore, which has been taken on file for the offences u/s 120 (B) and 500 IPC.

10. True it is that the Constitution has provided guarantee for freedom of speech and expression, which are part of the fundamental rights enshrined in the Constitution. Equally true it is that the said right of freedom of speech and expression are subject to reasonable restrictions as held by the Hon'ble Apex Court in Subramanian Swamy - Vs - Union of India (2016 (7) SCC 221). There can be no two different views on the above aspect, which has been well settled by a catena of decisions by the Hon'ble Supreme Court as well as this Court and, therefore,

this Court is not inclined to add to it any further, but to state that while right to freedom of speech and expression are guaranteed under the Constitution, but, however, the same are subject to reasonable restrictions.

11. Chapter XXI IPC deals with 'Defamation' and takes within its fold Sections 499, 500, 501 and 502 IPC. Section 499 IPC deals with 'Defamation', while Sections 500 and 501 IPC provides for punishment for defamation. To attract the punishment contemplated u/s 500 and 501 IPC, defamation u/s 499 IPC should be made out. For better clarity, Section 499 IPC is quoted hereunder :-

"499. Defamation -

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person."

12. Though Section 499 IPC deals with the acts that constitutes defamation, prosecution for defamation is envisaged u/s 199 Cr.P.C., which reads as under :-

"199. Prosecution for defamation. (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public

functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the caused of the offence alleged to have been committed by him.

(4) No complaint Under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction-

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government ;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

13. Prosecution, as is envisaged u/s 199 Cr.P.C., insofar as the offence u/s 499 IPC, clearly reveals that to attract the offence u/s 499 IPC, it is necessary that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

14. The law on defamation has been dealt with extensively by the Hon'ble Apex Court in Subramanian Swamy - Vs - Union of India (2016 (7) SCC 221), adverting to various facets of defamation. One of the main contention raised in the said case relates to 'Reasonable Restriction' found in Article 19 (1) of the Constitution and in that context, the Hon'ble Apex Court

held as under :-

"130. The principles as regards reasonable restriction as has been stated by this Court from time to time are that the restriction should not be excessive and in public interest. The legislation should not invade the rights and should not smack of arbitrariness. The test of reasonableness cannot be determined by laying down any abstract standard or general pattern. It would depend upon the nature of the right which has been infringed or sought to be infringed. The ultimate "impact", that is, effect on the right has to be determined. The "impact doctrine" or the principle of "inevitable effect" or "inevitable consequence" stands in contradistinction to abuse or misuse of a legislation or a statutory provision depending upon the circumstances of the case. The prevailing conditions of the time and the principles of proportionality of restraint are to be kept in mind by the court while adjudging the constitutionality of a provision regard being had to the nature of the right. The nature of social control which includes public interest has a role. The conception of social interest has to be borne in mind while considering reasonableness of the restriction imposed on a right. The social interest principle would include the felt needs of the society.

* * * * *

131. As the submissions would show, the stress is given on the right to freedom of speech and expression in the context of individual growth, progress of democracy, conceptual respect for a voice of dissent, tolerance for discordant note and acceptance of different voices. Right to say what may displease or annoy others cannot be throttled or garrotted. There can never be any cavil over the fact that the right to freedom of speech and expression is a right that has to get ascendance in a democratic body polity, but at the same time the limit has to be proportionate and not unlimited. It is urged that the defamation has been described as an offence under Section 499 IPC that protects an individual's perception of his own reputation which cannot be elevated to have the status of public interest. The argument is that to give a remedy by taking recourse to criminal jurisprudence to curb the constitutional right, that is, right to freedom

of speech and expression, is neither permissible nor justified. The provision possibly could have met the constitutional requirement had it been associated with law and order or breach of peace but the same is not the position. It is also canvassed that in the colonial era the defamation was conceived of to keep social peace and social order but with the changing climate of growing democracy, it is not permissible to keep alive such a restriction."

(Emphasis supplied)

15. From the above proposition of law, it is manifestly clear that the fundamental right to freedom of speech gets ascendance over individual's perception of his own reputation and that the constitutional right cannot be curtailed by taking recourse to criminal jurisprudence. The above decision of the Supreme Court was in the wake of individual's right vis-a-vis right to freedom of speech and expression as enshrined in the Constitution.

16. In the case on hand, the entirety of the case revolves around Section 499 IPC for which punishment is codified u/s 500 IPC. Further, as all the elected members have joined in chorus against the acts of the respondent, the offence u/s 120 (B) IPC has also been put into play against the petitioners. The case on hand is a private complaint by the individual, who was holding the post of President of the Town Panchayat. It is the allegation in the complaint that the act of the elected members of the Panchayat in having their representation published in the media has caused harm to his reputation and has defamed him in the eyes of the public.

17. This Court is first entrusted with the task of finding out whether the news item published, in any manner, tarnishes the image of the respondent and, thereby, causes defamation to his reputation.

18. A careful reading of the publication of news clearly reveals that certain irregularities are alleged to have been committed in the administration of the Town Panchayat, more so, corrupt practices in the award of contracts/tenders, for which complaint/representation has been given to the concerned authorities. It further transpires from the said publication that the meeting, which had taken place on the day before the date of publication, the elected members had walked out of the meeting demanding action and intimating collusion between the President of the Town Panchayat and the Executive Officer of the Town Panchayat. To the mind of this Court, a careful perusal of the above news item, in no way discloses any defamatory or

derogatory statement against the respondent. Rather, it would be trite to point out that the elected members of the Town Panchayat, viz., the petitioners, in their discharge of duties assigned to them as envisaged under the Panchayats Act, have thought it fit to raise their objections in the way in which the administration is being carried on, which was in detriment to the members of the electorate.

19. In *R. Rajagopal v. State of T.N.* (1994 (6) SCC 632), the Hon'ble Supreme Court has broadly summarised the principles that flow in cases relating to law of defamation and for better clarity, the same is quoted hereunder :-

"26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or

for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media."

(Emphasis supplied)

20. From the above proposition of law laid down by the Hon'ble Apex Court, it is implicitly clear that the citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters and none can publish anything concerning the above matters without his consent. But in the case on hand, it is crystal clear that it is not anything personally attributable to the respondent that has been given in the representation or aired in the meeting, which has been published in the media. Rather the functioning of the public office of the respondent has been questioned, that too, by the lawfully elected members,

who were discharging their duties as envisaged under the Panchayats Act. To be more precise, what had happened in the meeting, has been published in the media and no castigating or derogatory remarks, maligning the respondent has been carried on in the said publication. In fact, a careful perusal of the representation, which is alleged to have been given to the media for publication, but which is actually not reflected in the publication, also categorically speaks only about the administrative overreach perpetrated by the respondent in relation to his corrupt and mala fide activities and the said representation, in no way, castigates or casts any derogation on the individual's personality. The representation is only a clear expression of the administrative lacunae, which is faced by the Panchayat, which in turn affects the villages coming within its fold, due to which the villagers of the electorate were deprived of their rightful share in the Governmental schemes. The representation and the news item published, in no way, could be termed to be in derogation of the stature of the respondent and defames his reputation in the eyes of the public.

21. The other aspect, which this Court finds even more disturbing is that the offence u/s 120 (B) IPC has been fastened against the petitioners. The petitioners, being elected members of the Town Panchayat, in the discharge of their duties, have raised certain queries to be answered by the President, who is the respondent herein. In fact, it is the duty of the elected members to serve their electorate to the best of their ability and to bring to their electorate the best of the schemes and welfare measures so as to lift the standard of living of the villagers in the locality, and rightly so, the elected members have performed their part in the constitutional scheme. May be the majority of the elected members have raised the query as to the functioning of the respondent, but that would not be a ground to make out a case that the said members have conspired to act against the respondent to defame him in the eyes of the public to attract the offence of conspiracy u/s 120 (B) IPC. If such a charge is allowed to subsist, the intent and purpose of enactment of Section 120 (B) IPC would be at peril and the regular constitutional works discharged by the elected representatives at various levels of the Governmental hierarchy would be in doldrums as they would be left in lurch and would not be in a position to question any corrupt/mala fide act in the running of the constitutional machinery.

22. It is to be pointed out at this juncture that criticism is the hallmark of the proper functioning of any administrative setup. More so, in a public office, as one held by the respondent, criticisms are prone to be thrown from all corners and unmindful of such criticism, the person holding the public office has to function effectively, thereby, undermining the

slur cast on the said public office. The public office held by the respondent is one such office, which is an authority, entrusted with the social work to be carried out for the benefit of the general public. Brickbats thrown at the individual, in the course of discharge of his duties, unless they are on a personal level, cannot be made the basis for slapping defamation proceedings. Further, the said allegations should be made out of bona fide materials and in such a situation, it is open to the public office to deal with such criticism with iron hands, even on a personal level by initiation of defamation proceedings. However, such is not the case here. Further, the criticisms, which are alleged to be defamatory by the respondent, is also not been cast on a personal level so as to warrant maintaining of the private complaint. The trial court has clearly misdirected itself and not adverted to the materials placed before it before issuing summons and, therefore, the case on the file of the trial court deserves to be quashed.

23. True it is that it is the duty of the Courts to shield the individuals from the vagaries of the unscrupulous elements by invocation of its powers under the relevant provisions of law as found in the Criminal Procedure Code as also the Indian Penal Code. But such power is to be exercised in a just and reasonable manner on an in-depth analysis of the case, as exercise of such power puts the other person, against whom prosecution is initiated, in a calamitous situation to defend himself. It is the bounden duty of the Court to separate the grain from the chaff so as to arrive at a just and reasonable decision so that the interests of both sides is safeguarded and the majesty of law is upheld.

24. In *S.Santhanagopal & Ors. - Vs - Union of India* (W.P. Nos. 25562, 25563 & 28277/2014, vide order dated 4.2.2020), this Court has held as under :-

"35. The freedom of press to bring to the people the happenings in and around them forthwith is the fulcrum of a democratic functioning of the State. Clogging the said system by curtailing the right and freedom is nothing but a direct invasion on the freedom of speech and expression, which is enshrined in Article 19 (1) of the Constitution. The constitutional guarantees, as adumbrated in Article 19 (1) is only subject to exceptions when it concerns the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Defamation, being one of the exceptions

carved out in Article 19 (1), it is the duty of the Court to see to it that defamation is made out prima facie and it should not be an empty formality, thereby jeopardizing the said freedom. While it is the duty of the Court to safeguard the interests of those persons holding public office from being defamed for their discharge of their public functions, equally, the citizens have also to be safeguarded from the Governmental machinery against malicious prosecution, which, otherwise will whittle down actual intent of the Parliament in enacting the said law. The Court, as the ultimate arbiter, is clothed with the responsibility to surf through the materials to arrive at a fair and just reasoning, which will safeguard the constitutional values and uplift the morale of the democratic polity."

25. For the reasons aforesaid, this Court is of the considered view that the facts and circumstances of the case does not in any way make out a case for defamation and, accordingly, C.C. No. 147 of 2013 on the file of the learned Judicial Magistrate No.I, Coimbatore, are devoid of merits and are liable to be quashed.

26. In the result, the criminal original petition is allowed. The complaint in C.C. No.147 of 2013 on the file of the Judicial Magistrate No.I, Coimbatore, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I,
Coimbatore.
- 2.The Chief Judicial Magistrate,
Coimbatore.
- 3.The District Munsif,
Coimbatore.

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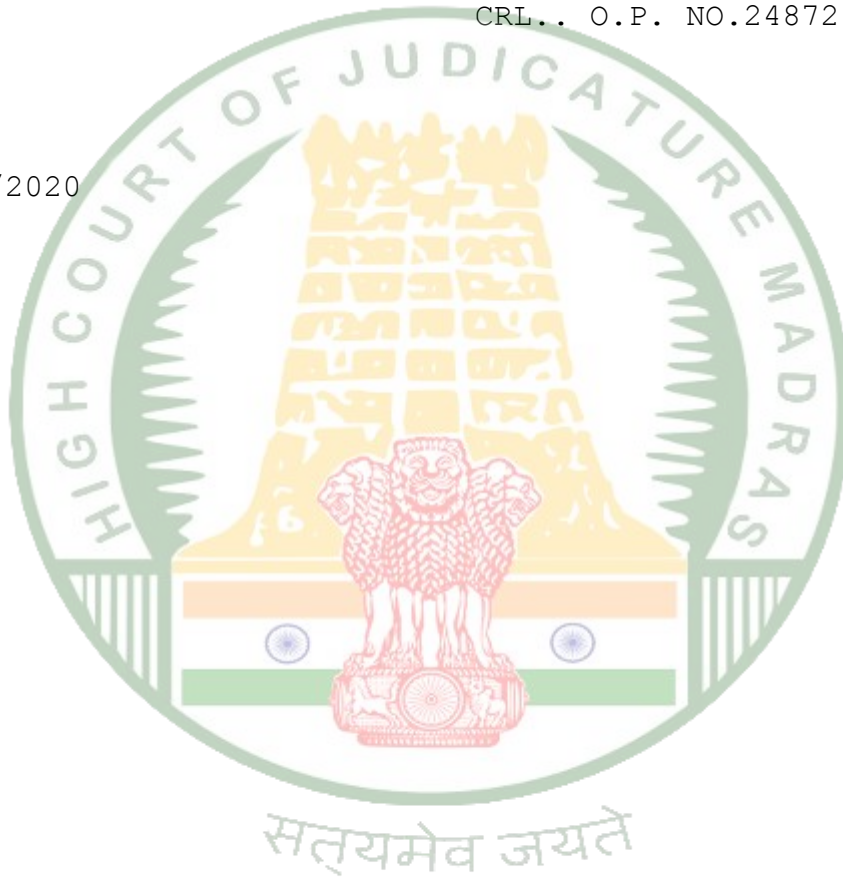
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The District Collector,
Coimbatore.

+lcc to Mr.N.Manokaran, Advocate Sr.8471

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