

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 586 OF 2008

Inspector of Police
ACB/CBI/Chennai.

.. Appellant/Respondent/Complainant

- Vs -

1. P.V.Bhupathi (A1)
 2. Shanthi Bhupathi (A2)
 3. Sengammal (A4)
 4. Rangaiyan (A7)
- .. Respondents/Appellant/Accused

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the judgment dated 24.03.08 passed by the learned V Addl. Sessions Judge, Chennai, in C.A. No.281 of 2006, acquitting the respondent herein under Section 120B/r/w 467, 467, r/w 471 and 193 I.P.C. Seeking aside the judgment of the Chief Metropolitan Magistrate, Egmore, Madras in C.C.No.3666/1999, dated 26/09/2006.

For Appellant : Mr. K.Srinivasan, Spl. PP (CBI Cases)

For Respondents: Mr. R.Shanmugasundaram, SC,
for Mr. M.N.Balakrishnan

JUDGMENT

The accused/respondents herein, along with six other accused, who were arrayed as A-1 and A-10, were charged and tried before the learned Chief Metropolitan Magistrate, Egmore, Chennai, in C.C. No.3666/99 for the for the offences u/s 467, 471 r/w 193, 471, 467 r/w 271 and 193 IPC and after trial, the trial court found the accused guilty, convicted and sentenced A-1, A-2, A-4, A-7 and A-8 to undergo imprisonment for various terms and to pay fine, while acquitting A-5, A-6, A-9 and A-10. A-3 died pending trial and, therefore, the charge against A-3 stood abated. Challenging the conviction and sentence imposed by the trial court, A-1, A-2, A-4, A-7 and A-8 filed appeal in C.A. Nos.281 and 282 of 2006 and the lower appellate court, after hearing and on considering the materials available on record, reversed the said conviction and sentence and, accordingly, acquitted the appellants therein. The respondent, aggrieved by the said order of acquittal in and by which the judgment of the trial court was reversed, has preferred the present appeal insofar as A-1, A-2, A-3 and A-7 are concerned. However, pending filing of the appeal before this Court, A-8

died and, therefore, no appeal has been filed against his acquittal. For the sake of convenience, the accused/respondents herein will be referred to as accused.

2. When the matter is taken up for hearing, it is brought to the notice of this Court by the learned counsel appearing for the parties that pending this appeal, A-4 , who is the 3rd respondent herein died on 6.1.16 and the death certificate certifying her death has been filed.

3. The facts, shorn of unnecessary details, could be stated thus :-

A-1 was a public servant on the date of registration of the case; A-2 is the wife of A-1; A-3 and A-4 are the father-in-law and mother-in-law of A-1; A-5 is the co-brother of A-1; A-6 is the son of A-5; A-7 is the brother-in-law of A-1 and son of A-3 and A-4; A-8 is a stamp vendor at Panruti; A-9 is the President of Coimbatore Stock Exchange and Director of DJS Stock & Shares and A-10 is the Joint Managing Director of Anugraha Jewellers Ltd., and the employer of the approver V.S.Sivan @ Sivalingam.

4. On 17.4.96, a case came to be registered in Crime No.RC.21/A/96 u/s 12 (3) r/w 13 (1) (e) of the Prevention of Corruption Act, 1988 (for short 'the Act') against A-1 by the respondent on the allegation that A-1 acquired movable and immovable assets in his name and in the name of his family members disproportionate to his known sources of income on the allegation that A-1 to A-10 along with the approver V.S.Sivan @ Sivalingam along with one Ramachari, since deceased, entered into a criminal conspiracy and, thereby, fabricated false and forged documents intending to use the same as evidence so as to explain the disproportionate assets amassed by A-1. It is the further allegation of the respondent that in pursuance to the said conspiracy, A-1 purchased non-judicial stamp papers, three in number, of denomination of Rs.5/- from A-8 showing the purchaser of the stamp papers as A-1. It is further alleged that one other stamp paper was also purchased by A-5 from deceased Ramachari indicating the name of the purchaser. On these stamp papers, it is alleged by the appellant that A-1 dishonestly and fraudulently fabricated false evidence in the abovesaid stamp papers by ante-dating it and, thereby, prepared, Exs.P-7 (affidavit of A-1), P-9 and P-10 (partial family partition) so as to screen the disproportionate assets accumulated by A-1. In furtherance of the conspiracy, many ante-dated bills were also prepared by the approver Sivan @ Sivalingam to the dictates of A-10 for the purpose of helping A-1. Accordingly, A-1 to A-10 with the help of the approver Sivan, fabricated the above evidence for using the same in the disproportionate assets case. Therefore, after investigation, a charge sheet was filed for the offences stated supra against A-1 to A-10 on which cognizance was taken.

5. The accused/respondents herein were furnished with the relied upon documents u/s 207 Cr.P.C. and the case was taken up for trial by the Chief Metropolitan Magistrate, Egmore, Chennai. When questioned, the accused pleaded not guilty.

6. To prove the case, the prosecution examined P.W.s 1 to 22 and marked Exs.P-1 to P-270. When the accused/respondents herein were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, convicted and sentenced A-1, A-2, A-4, A-7 and A-8 while acquitting A-2, A-6, A-9 and A-10.

7. Aggrieved by the said conviction and sentence, A-1, A-2, A-4, A-7 and A-8 filed appeals in C.A. Nos.281 and 282/06 before the lower appellate court. The lower appellate court, on consideration of the materials placed before it and on consideration of the impugned judgment as well as the arguments placed on behalf of the accused as well as the respondent, set aside the conviction and sentence recorded by the trial court and aggrieved by the same, the appellant has filed the present appeal.

8. Mr. K.Srinivasan, learned Special Public Prosecutor, appearing for the appellant, assailing the order of the lower appellate court, submitted that the lower appellate court has not properly appreciated the evidence, both oral and documentary, while setting aside the conviction recorded by the trial court. It is the submission of the learned Special Public Prosecutor that the lower appellate court has dwelled into the factual errors on record rather than on the legality of the conviction, which has led to the reversal of the conviction.

9. It is the contention of the learned Special Public Prosecutor that the crucial documents, which are alleged to be forged/fabricated, viz., Exs.P-7, P-9 and P-10 have been executed on stamp papers, much earlier in point of time before the issuance of such stamp papers, which aspect has been spoken to by P.W.18. It is the submission of the learned Special Public Prosecutor that Exs.P-7, P-9 and P-10 are alleged to have been executed on 9.6.1969, 5.8.1979 and 29.12.1973. However, the evidence of P.W.18 clearly reveals that the said stamps carrying the words "satyameva jayate" and "Rs.5" were issued only during the year 1977 and later and, therefore, Exs.P-7, P-9 and P-10 could not have come into existence on the date it is alleged to have been executed. It is therefore the contention of the learned Special Public Prosecutor that the above act of the accused clearly reveals their intention to fabricate documents to thwart the prosecution of A-1 in the disproportionate assets case.

10. It is contended by the learned Special Public Prosecutor that Ex.P-130 contains annexures A-1 to A-6, which have been furnished by A-1 to the Coal Ministry detailing his assets and giving the details of its acquisition, wherein A-1 has stated about how he had come into possession of those assets. In the said statement, the details as found in Exs.P-7, P-9 and P-10 finds place therein. It is the submission of the learned Special Public Prosecutor that requisition was made by the respondent to the Coal Ministry, whereupon, Coal Ministry, the employer of A-1 had asked A-1 to produce the originals pertaining to Exs.P-7, P-9 and P-10, to which A-1 had replied that the same is with his father-in-law A-3 and that he will get the same and produce it. However, inspite of repeated reminders, the originals have not been produced. After registration of the disproportionate assets case, the respondent had asked A-1 to produce the originals, but the same have not been produced. It is the submission of the learned Special Public Prosecutor that the stand taken by A-1 was that it was misplaced by A-3, who is aged and unwell and that he will get the same and produce. However, the same has not been produced.

11. It is the further submission of the learned Special Public Prosecutor that instead of producing the originals, A-1 had taken a stand that the copies, submitted with the Coal Ministry have been manipulated by one Singara Thiagarajan (since deceased). However, no material whatsoever has been adduced by A-1 in support of the said act of Singara Thiagarajan and in the absence of proving that it was Singara Thiagarajan, who had manipulated the documents, the probability of the defence projected by the accused cannot be sustained. It is the submission of the learned Special Public Prosecutor that once the defence places a theory, it is the duty of the accused to establish the said defence and failure to establish the same necessitates drawing an adverse inference against the said theory. Merely advancing a theory without there being any probability of it being true would in no way enure to the benefit of the accused. It is the submission of the learned Special Public Prosecutor that the defence put forth by the accused should be tested on the touchstone of probableness of the said defence and fanciful theories advanced without there being any probable chance for the said defence to be likely should be discarded and no weightage can be given to the said defence.

12. In fine, it is the submission of the learned Special Public Prosecutor that not only the prosecution has proved the manipulation in the stamps, but also the probability of the theory advanced by the defence not having been proved, the trial court misguided itself and erroneously came to the conclusion that the prosecution has not proved the case against the accused beyond reasonable doubt and, accordingly, acquitted the accused, which requires interference at the hands of this Court.

13. Mr. Shanmugasundaram, learned senior counsel, advancing his arguments in counter on behalf of the accused/respondents herein, submitted that The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented and, therefore, where two views are possible on the same set of evidence, in such cases, the trial court should favour the view that points to the innocence of the accused.

14. It is the submission of the learned senior counsel for the respondents herein that the matter in issue covers four exhibits, viz., Exs.P-7, P-9, P-10 and P-11. Of the above four exhibits, the prosecution of their own volition have accepted that Ex.P-11 is a genuine document. The case of the prosecution, therefore, hovers around the three documents, Exs.P-7, P-9 and P-10. It is the submission of the learned senior counsel that the three documents, viz., Exs.P-7, P-9 and P-11 are dated 9.6.1969, 5.8.1970 and 29.12.1973. The gist of the documents finds place in the statement furnished by A-1 to the Coal Ministry with regard to his assets. It is the submission of the learned senior counsel that, therein, in the said documents, finds place the details that are covered in Exs.P-7, P-9 and P-11. It is the submission of the learned senior counsel that those documents have been executed even prior to the same being called for by the Coal Ministry. It is the submission of the learned senior counsel even at the earliest point of time, when the originals were called for by the Coal Ministry, though it was at the behest of the investigation by the respondent, it was the stand of A-1 that the originals were with his father-in-law, viz., A-3 and since he is old aged and suffering from ailments, he will get the same from A-3 and place it to the Coal Ministry.

15. It is the further submission of the learned senior counsel that the disproportionate assets case was registered in April, 1996 and the search was conducted on 5.11.98. However, the statement was submitted by A-1 to the Coal Ministry on 27.6.97. It is not the case of the prosecution case that A-1, was aware of the prosecution initiated against him for disproportionate assets. There being no knowledge for A-1 about the disproportionate assets case, A-1 had submitted the statement to the Coal Ministry, wherein the details as found in Exs.P-7, P-9 and P-10 are found. Therefore, even at the very first instance, it is the case of A-1 that the details furnished to the Coal Ministry support the documents, viz., Exs.P-7, P-9 and P-10.

16. It is the further submission of the learned senior counsel that even at the first instance, on seeing the xerox

copies of the documents at the hands of the respondent, A-1, while admitted the contents in its entirety, however, has categorically denied the stamps to be identical or the same. In fact, A-1, even at the earliest point of time, had pointed a finger on Singara Thiagarajan as a person, who had manipulated the document but substituting the stamp portion alone while retaining the contents and submitted the same to the Coal Ministry. In the absence of the evidence of Singara Thiagarajan, who could not be examined, as he was no more, the substratum of the prosecution case gets shredded. It is the consistent case of the accused that it was Singara Thiagarajan, who had manipulated the documents to the detriment of A-1, but the prosecution had not taken any efforts to get his evidence or affidavit on record, though he was cited as a witness by the prosecution.

17. It is further submission of the learned senior counsel for the accused that P.W.22, the investigation officer, in cross examination has categorically deposed that P.W.5, the person, who had attested the documents had, in his statement at the time of investigation, stated that he verified the originals of Exs.P-7, P-9 and P-10 before attesting the same and that he made a thorough verification and comparison with the original. That being the case, it is submitted by the learned senior counsel that any manipulation in the stamps prior to attestation would have been noticed by P.W.5, therefore, it is the submission of the learned senior counsel that the documents have been fabricated by Singara Thiagarajan by some tricky means to the detriment of the respondents.

18. Learned senior counsel appearing for the respondents further submitted that all along the A-1 had assured the respondent that he will produce the originals from A-3 and to that end, the documents were placed before for the tax authorities for the purpose of establishing computation of tax and in that regard, the matter reached this Court and ended in favour of the respondents, meaning thereby, that this Court accepted the stand of the respondents insofar as the veracity of the documents is concerned. That being the case, the non presenting of the originals before the respondent, cannot be put against the accused, as the accused have been vindicated with regard to the genuinity of the documents.

19. It is the further submission of the learned senior counsel for the respondents that the deposition of P.W.1 will not in any way further the case of the prosecution as the deposition relating to the stamp numbers having been used by some other person and the one used in Exs.P-7, P-9 and P-10 are fabricated, cannot be accepted for the reason that the stamp numbers, said to have been used by some other person has not been placed before the court as evidence to support the deposition of P.W.1. Neither the papers bearing the original registration numbers nor the ledger have been placed before the

Court to corroborate the said deposition and, therefore, the said deposition cannot in any way come to the aid of the prosecution.

20. Learned senior counsel referred to the judgment of the lower appellate court and submitted that the lower appellate court, on a threadbare analysis of the judgment of the trial court, has come to a conclusion that the trial court has, in toto, misread the total evidence to the benefit of the prosecution, rather than reading it in the manner as it should have been read, which has lead to the erroneous decision, which has been appreciated in proper perspective by setting aside the said decision by the lower appellate court. It is further submitted that the lower appellate, not only on facts, but also on a clear reading of the materials available on record has come to the conclusion that the documents, alleged to have been manipulated, have not been established to have been manipulated by the accused and, accordingly, the evidence falling well short, has thought it fit to acquit the accused and this Court, unless there is perversity and illegality in the appreciation of evidence, should normally refrain from interfering with the order of acquittal passed by the lower appellate court and, therefore, prays for dismissing the present appeal.

21. Heard the learned Special Public Prosecutor appearing for the appellant, the learned senior counsel appearing for the respondents and perused the materials available on record as also the orders passed by the courts below to which this Court's attention was drawn.

22. In dealing with matters, where the acquittal rendered by the court below is put to test, it is trite that unless the order of the court below suffers from the vice of perversity, the High Court ought not to interfere with the said order. In *Shailendra Pratap & Anr. - Vs - State of U.P.* (2003 (1) SCC 761), the Supreme Court has categorically held that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants

recorded by the trial court as the same did not suffer from the vice of perversity."

23. Yet again, in Ram Kumar - Vs - State of Haryana (1995 Supp. (1) SCC 248), the Hon'ble Supreme Court has once again highlighted the need for the High Court to give proper weight and consideration to the view of the court below and has further held that if the view taken by the court below is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-

"15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

24. The Apex Court, in V.Sejappa - Vs - State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150) reiterating the principles to be followed in an appeal against acquittal, as has been laid down in a catena of judgments, held as under :-

"22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. Merely

because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In State v. K.Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41] , this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T.Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In Muralidhar v. State of Karnataka [Muralidhar v. State of Karnataka, (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690] , this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225], Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656], Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426], Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481], M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639], Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat,

(1978) 1 SCC 228 : 1978 SCC (Cri) 108], K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305], Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736], Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such

conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

25. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence and the materials on record to see whether the conclusions recorded by the lower appellate court below for acquitting the accused/respondents herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the lower appellate court are such which could not have been possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

26. The main issue that arise for consideration in the present appeal is :-

"Whether the appellant/prosecution has established that it was the accused/respondents herein who fabricated the documents, viz., Exs.P-7, P-9 and P-10, in order to obtain an undue advantage in the disproportionate assets case."

27. Before proceeding further to analyse the evidence available on record, it has to be pointed out that this Court is not in any way dealing with the veracity or the genuinty of the said documents, but is only concerned with appreciating the materials available on record to come to a conclusion with regard to the culpability of the accused in fabricating the documents, viz., Exs.P-7, P-9 and P-10 and whether the prosecution has proved that it was the accused who have fabricated the said documents, viz., Exs.P-7, P-9 and P-10.

28. No doubt, the prosecution, through the witness, P.W.s 2 and 18 have proved that the emblem in the stamp papers are not available prior to the year 1977 and, therefore, the documents, viz., Exs.P-7, P-9 and P-10 are fabricated. In this regard, the deposition of P.W.2 in chief examination assumes importance and the same is quoted hereunder for better appreciation :-

"In this case, DIG, CBI, Chennai, vide letter dt. 22nd January, 1999, along with 4 annexures and requested us to the following points.

1. The year of printing of the stamp papers described in the Annexure A, B, C & D.

2. Whether the above 4 stamp papers marked A to D are genuine or forged.

3. The words 'Sathyameva Jayathe' and below the Ashoka Emblem in Annexure A, B & C was printed by the Govt. of India in which year."

29. On the above deposition of P.W.2, the deposition of P.W.22, the investigating officer, assumes significance. In chief examination, P.W.22 has deposed that during the course of investigation, opinion was obtained from India Security Press, Nasik to the effect that the word 'Sathyameva Jayathe' underneath the Ashoka Emblem and the word 'Panch Rupeye' in Devanakari Script were incorporated by the Government of India in Indian Non-Judicial Stamp Paper only with effect from 23.11.1977. It is the further deposition of P.W.22 that the letter, Ex.P-267, was issued to the General Manager, India Security Press, Nasik, for getting general information about the word 'Sathyameva Jayathe' and the word 'Panch Rupeye' appearing in the Rs.5/- denomination non-judicial stamp paper. Ex.P-12 is the letter addressed by the Nasik Press annexing therewith their opinion with regard to the above query. Further, P.W.22 has deposed in chief that Exs.P-7, P-9 and P-10 are fabricated documents in order to explain the sources of income with regard to the disproportionate asset case. P.W.22, having deposed above that the documents are fabricated, which was revealed in his investigation, however, curiously, did not take any steps to interrogate P.W.1, the Sub-Registrar, by bringing to his notice the ledgers in this regard. In this regard, P.W.1, in cross examination, has categorically deposed that neither the investigating agency had interrogated him on the basis of the ledgers maintained in the office of the Sub Registrar, nor was the ledgers, in which the applications were maintained was brought to his notice while he was interrogated. On the whole, the investigating agency, did not bring to the notice of P.W.1 any document based on which it has arrived at a conclusion that the documents are fabricated.

30. In this backdrop, the Ex.P-267, the letter addressed by P.W.22 to the General Manager, India Security Press, Nasik, wherein three queries have been put for the expert opinion, assumes significance. More importantly, query No.3 relates to the word 'Sathyameva Jayathe' below the Ashoka Emblem and the period during which it was printed. The investigating procedure spoken to by P.W.22 did not, anywhere, reveal that doubt had arisen in the mind of the investigating agency after its enquiry with P.W.1 with regard to the veracity of the stamp papers, which had necessitated the investigating agency to address the India Security Press, Nasik, to offer its expert opinion.

31. It is the submission of the learned senior counsel appearing for the respondents herein that though it is the stand of the prosecution that Exs.P-7, P-9 and P-10 were fabricated by the accused for the purpose of using the same in the disproportionate assets case, however, curiously, for reasons best known to the prosecution, the same has not been used by the prosecution in the disproportionate assets case as exhibits. Such being the case, it is the stand of the respondents that it is not open to the prosecution to have the cake and eat it too and, therefore, the prosecution gets defeated by its own fallacy and short fall. In this regard, the categorical deposition of P.W.22 in chief is relied on to show that P.W.22 has deposed that Exs.P-7, P-9 and P-10 were fabricated by accused for the purpose of using the same in the disproportionate assets case. However, this Court is not inclined to look into the said issue, as this Court is not adjudicating on the genuinty of the document, but only to extent of finding out whether the prosecution has established that the documents have been fabricated. Further, it is to be pointed out that even if the prosecution is not establishing that the documents have been fabricated, yet that will not give a clean chit that the said document is a genuine document. The genuinty has to be proved in a manner known to law and not on the fallacy of the case of the prosecution.

32. P.W.5 is the person, who has attested all the documents, including Exs.P-7, P-9 and P-10. P.W.5, in chief has deposed that he does not know A-1. However, he has admitted that he attested the said exhibits along with other documents at his office and that while attesting the documents, he had verified the documents with the original. However, the said evidence of P.W.5 not knowing A-1 is not corroborated by P.W.22, the investigating officer. P.W.22, the investigating officer, in chief examination, has deposed that while he enquired P.W.5, P.W.5 had told him that he knows A-1 through his friends and that A-1 brought the documents to his residence and that he attested the same. However, the deposition of P.W.5 is diametrically opposite to the said evidence of P.W.22. P.W.5 has stated that he had attested the documents at his office. Therefore, the evidence of P.W.s 5 and 22 run counter to each other and, therefore, this Court is not inclined to rely on the evidence of P.W.5 to accept the prosecution version that A-1 had obtained the attestation from him for the purpose of submitting the said documents, alleged by the prosecution to be fabricated, to his employer, so as to wriggle himself out of the disproportionate assets case, which is under the scanner of the CBI.

33. The pivotal contention advanced by the learned Special Public Prosecutor pertains to the probableness of the theory projected by the accused and in the absence of the accused proving the said theory, which the accused has miserably failed

to, the case projected by the prosecution deserves acceptance and the prosecution is entitled to succeed.

34. However, the above contention of the appellant is countered by the defence by submitting that it is not necessary for the defence to prove its case beyond all reasonable doubt, as is the case of the prosecution, but it would suffice if the theory projected by the defence is probabalised on the materials available on record and in such a case, it is incumbent on the prosecution to demolish the theory probabalised by the defence in order to secure a conviction. The appellate court has carefully analysed all the aspects and has rightly interfered with the order of the trial court and acquitted the accused, which does not warrant any interference at the hands of this Court.

35. The Supreme Court in *Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190 has analysed the ambit and scope of the prosecution in proving the case against the accused. In that context, the Supreme Court held as under :-

"16. The phrase "burden of proof" is not defined in the Act. In respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. Section 105 of the Evidence Act is in the following terms:

"105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, 1860, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence for such circumstances."

The section to some extent places the onus of proving any exception in a penal statute on the accused. The burden of proving the existence of circumstances bringing the case within the exceptions mentioned therein is upon him. The section further lays down that the court shall presume non-existence of circumstances bringing the case within an exception. The words "burden of proving the existence of circumstances" occurring in the section are very significant. It is well settled that "this burden" which rests on the accused does not absolve the prosecution from discharging its initial burden of establishing the case beyond all reasonable doubts. It is also

well settled that the accused need not set up a specific plea of his offence and adduce evidence. That being so the question is : What is the nature of burden that lies on the accused under Section 105 if benefit of the general exception of private defence is claimed and how it can be discharged? In *Woolmington v. Director of Public Prosecutions* [1935 AC 462] , Viscount Sankey, L.C. observed:

"When evidence of death and malice has been given (this is a question for the jury) the prisoner is entitled to show, by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted."

It is further observed:

"Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence..."

Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

In Emperor v. U. Damapala [AIR 1937 Rang 83 : 14 Rang 666], a Full Bench of the Rangoon High Court following the Woolmington case [1935 AC 462] held that the ratio therein is not in any way inconsistent with the law in British India, and that indeed the principles there laid down form valuable guide to the correct interpretation of Section 105 of the Evidence Act and the Full Bench laid down that even if the evidence adduced by the accused fails to prove the existence of circumstances bringing the case within the exception or exceptions pleaded, the accused is entitled to be acquitted if upon a consideration of the evidence as a whole the court is left in a state of reasonable doubt as to whether the accused is or is not entitled to the benefit of the exception pleaded."

(Emphasis supplied)

36. The Supreme Court, in its recent decision in Khaleel Ahmed - Vs - State of Karnataka (2015) 16 SCC 350, on the question of rebuttable presumption, has held as under :-

"25. So far as the presumption raised under Section 20 for the offence under Section 7 is concerned, it is settled law that the presumption raised under Section 20 is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities. In C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1], this Court has held:

"21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. ...

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt."

26. In C.M. Girish Babu [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] this Court has referred to the decision in V.D. Jhingan v. State of U.P. [V.D. Jhingan v. State of U.P., AIR 1966 SC 1762 : 1966 Cri LJ 1357 : (1966) 3 SCR 736] , wherein this Court has held in the context of Section 4 of the Prevention of Corruption Act, 1947 which is in pari materia

with Section 20 of the PC Act: (C.M. Girish Babu case [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1]

"22. ... '4. ...It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e., that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.' (V.D. Jhingan case [V.D. Jhingan v. State of U.P., AIR 1966 SC 1762 : 1966 Cri LJ 1357 : (1966) 3 SCR 736]"

(Emphasis supplied)

37. From the principles enunciated time immemorial by the Supreme Court as well as the English Courts, it is aptly clear that the standard of proof insofar as the defence projected by the accused is only to extent of creating a reasonable doubt, i.e, a probable defence from the one projected by the prosecution and once the accused is able to lay a parallel to the prosecution version, which is probable on the evidence available on record, the accused is entitled for acquittal, lest the prosecution has to garner further evidence to counter the parallel thread projected by the accused.

38. In the case on hand, it is the version of the prosecution that Exs.P-7, P-9 and P-10 have been fabricated especially for the purpose of enabling the accused to squirm out of the disproportionate assets case, which has been initiated against the accused under the PC Act. However, it is the case of the accused right throughout, even at the very inception, that it was one Singara Thiagarajan, who was the culprit in manipulating the stamp papers and that the stamps alone are manipulated, while the contents have been admitted by the accused. It is the further case of the accused that the originals of Exs.P-7, P-9 and P-10 are with A-3 and that it will be produced as and when the same is retrieved as A-3 was unwell.

39. Whether the defence projected by the accused, could be accepted as probable, thereby rendering the prosecution theory a parallel to the defence and, if so, the accused would be entitled to an acquittal.

40. It is the case of the accused that the documents, which were given for the purpose of being sent to the employer of A-1, were manipulated by one Singara Thiagarajan, who was cited as a listed witness by the prosecution, but was not examined due to his untimely death. At that point of time, neither the

prosecution nor the defence would have expected the untimely demise of the said Singara Thiagarajan. Therefore, it cannot be said that the accused have utilised the demise of the said Singara Thiagarajan in propounding a theory, which could not be proved. Therefore, the stand being from the very inception, the said stand gets vindicated.

41. The abovesaid stand accrued to the benefit of the accused as it is their further case that certain documents, which were seized from the residence of the accused during the raids conducted in the disproportionate assets case substantiate the above stand, but for reasons best known, the prosecution have not placed those materials before the court during trial, which though detrimental to the prosecution, however, was beneficial to the accused in probabilising the theory put forth by them. Though it is not incumbent upon the prosecution to place all the materials seized and it is within the power of the Prosecutor to place before the Court such of those materials the prosecution feels best for probabilising their case, however, once a defence is raised by the accused by placing stress upon certain documents, which are in the custody of the prosecution, it is the duty of the prosecution to nip in the bud such doubts that may arise because of the probableness of the defence raised and in the absence of the prosecution placing those materials, definitely the said act of the prosecution would enure to the benefit of the accused.

42. The above view of this Court is further fortified by the act of the prosecution in not placing on record Exs.P-7, P-9 and P-10, which is the issue in the present case, as materials in the disproportionate assets case. It is the case of the prosecution that these documents were fabricated purely for the purpose of accounting the disproportionate assets accumulated by A-1 as a public servant. That being the case, these documents ought to have been placed before the court which was dealing with the disproportionate assets case. However, as stated supra, it is within the realm of the Prosecutor to decide the materials to be placed before the court in a particular case and, therefore, this Court is not inclined to amplify any further on this point except to state that the non-marking of these documents definitely places the prosecution at a very disadvantageous position and the accused derives the benefit from the above lapse.

43. One other contention that has been canvassed by learned senior counsel appearing for the accused is that the questioning u/s 313 Cr.P.C. is not an empty formality and in this regard, reliance was placed on the decision of the Apex Court in Reena Hazarika - Vs - State of Assam (2018 SCC OnLine SC 2281), wherein the Supreme Court has highlighted the importance of the questioning u/s 313 Cr.P.C. and the right conferred on the accused under the said provision. In that context, the Apex Court held thus :-

"18. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing."

44. However, the same is countered by the learned Special Public Prosecutor by placing reliance upon the decision of the Apex Court in Dehal Singh - Vs - State of H.P. (C.A. No.1215/2005), wherein the Supreme Court has held that the truthfulness or otherwise of the prosecution case cannot be decided based on the statement of the accused u/s 313 Cr.P.C., as the same is not recorded on oath. In that context, the Supreme Court held thus :-

"21. We do not find any substance in this submission of Mr. Mishra. Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, said

statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. Appellants have not chosen to examine any other witness to support this plea and in case none was available they were free to examine themselves in terms of Section 315 of the Code of Criminal Procedure which, inter alia, provides that a person accused of an offence is a competent witness of the defence and may give evidence on oath in disproof of the charges. There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence as the accused cannot be cross-examined, with reference to those statements. However, when an accused appears as witness in defence to disproof the charge, his version can be tested by his cross-examination. Therefore, in our opinion the plea of the appellant Dinesh Kumar that he had taken lift in the car is not fit to be accepted only on the basis of the statements of the appellants under Section 313 of the Code of Criminal Procedure."

45. As already pointed out above, right from inception, the accused have projected their theory that it was Singara Thiagarajan, who has manipulated the documents and have maintained the said stand in Section 313 questioning as well. This Court is not on the question of the truthfulness of the prosecution case, but rather than on the question of the probable defence projected by the accused in which case, duty is cast upon the prosecution to prove its case beyond reasonable doubt. That being the case, the decision of the Apex Court in Reena Hazarika's case (supra) squarely stands attracted to the case of the accused.

46. Though a contention has been advanced that the originals of the documents were placed before the income tax department for the purpose of assessment, leading to litigation, which ultimately reached this Court and this Court, had held in favour of the assessee/the respondents herein and, therefore, the genuineness of the documents stood established and the allegation of fabrication is only in line with the version projected by the accused that Singara Thiagarajan had fabricated the documents and submitted the same to the employer of A-1, however, the said contention cannot be stretched to its logical conclusion that the documents, viz., Exs.P-7, P-9 and P-10 are genuine for the reason that those documents were submitted for the purpose of assessment of tax by the tax authorities and the genuineness of the said documents were neither tested nor established in the said proceedings. More so, the genuineness of the documents was not a question that was the subject matter before the tax authorities, which ultimately culminated in the order passed by this Court in favour of the assessee/respondents

herein. Therefore, the order of this Court in the tax matter ending in favour of the assessee will not in any way advance the case of the assessee any further.

47. One other important piece of evidence that favours the accused is the deposition of P.W.5, the person, who attested the copies of the documents. P.W.5, in his evidence, has categorically deposed that he had verified the xerox copies with the originals and only thereafter he had attested the said documents. P.W.5 has further deposed that he does not know A-1 and that he verified the copies with the originals before attesting the documents. P.W.5 has further deposed that he does not remember the person who brought the documents to him for being attested. P.W.5 was treated as hostile and was cross examined by the prosecution and he has categorically deposed that he does not know A-1. The fact that P.W.5 has deposed that he does not know A-1 and the further evidence of P.W.5 that it was not A-1 who brought the documents to him for attestation and the further fact that he does not remember the person, who came and got the documents attested clearly puts the case of the prosecution in peril and definitely aids the accused.

48. On an overall appreciation of the evidence available on record, it is manifestly clear that since the inception of the case, the accused have pointed the finger at Singara Thiagarajan as the person, who had fabricated the documents for the purpose of implicating the accused. The depositions of the witnesses, as brought out in cross examination, also bring to light the said fact that the accused have stuck to the said version since the inception of the case and have not backtracked from the said stand, even at the time when the said Singara Thiagarajan was alive. Further, the evidence of P.W.5 not in anyway helping the prosecution, the accused have discharged their burden to displace the version projected by the prosecution by probalilising a theory in consonance with the evidence available on record.

49. The court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused are called upon to explain the fabricated documents and its ultimate end at the hands of the employer of A-1, the foundational facts must be established by the prosecution. Maybe, the allegation that the accused have fabricated the documents, viz., Exs.P-7, P-9 and P-10 is true, but the court cannot convict the accused only on such probability or suspicion, howsoever strong it may be. "Between may be true and must be true, there is a long distance to travel" and in this case the prosecution has failed to travel that distance through any unimpeachable evidence. The case of the prosecution has not been established beyond a reasonable doubt. The lower appellate court, on a cogent and reasonable reading of the evidence available on record, has

found it necessary to reverse the conviction awarded by the trial court by acquitting the accused.

50. The Apex Court, in its recent decision in Shailendra Rajdev Pasvan - Vs - State of Gujarat (2019 SCC OnLine SC 1616) has reiterated the ratio consistently laid down that unless the acquittals were vitiated by manifest illegality or such a conclusion could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, proper weight should be given to the presumption of innocence in favour of the accused. Therefore, on an overall conspectus of the materials available on record, both oral and documentary, this Court is led to the irrefutable conclusion that the acquittal of the respondents herein, ordered by the lower appellate court is based on just and reasonable findings and there being no materials available on record to dislodge the said findings, this Court is left with no other alternative, but to dismiss the appeals.

51. For the reasons aforesaid, this Court does not find any reason to differ from the findings recorded by the lower appellate court to acquit the respondents herein and, accordingly, this appeal is dismissed confirming the judgment and order dated 24.03.08 passed by the learned V Addl. Sessions Judge, Chennai, in C.A. No.281 of 2006.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

GLN

To

- 1) The V Addl. Sessions Judge, Chennai.
Chennai.
- 2) The Principal Sessions Judge, Chennai.
- 3) The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 4) The Inspector of Police,
ACB/CBI, Chennai.
- 5) The Special Public Prosecutor for CBI Cases,
High Court, Madras.

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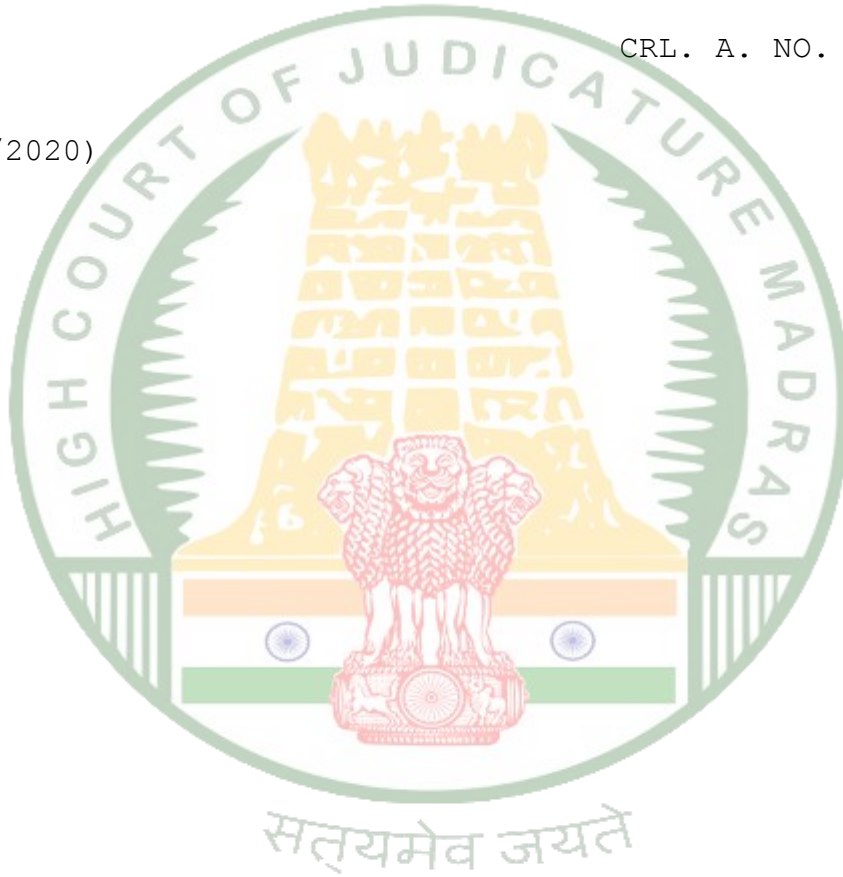
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.Srinivasan, Special Public Prosecutor for CBI
Cases, High Court, Madras SR.No.1559

+2cc to Mr.G.Jawaharlal, Advocate SR.No.1992

CRL. A. NO. 586 OF 2008

GJ(CO)
GMY(14/02/2020)



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