

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal Nos.767 & 768 of 2020

1.B.Ramamoorthy
2.J.Jayaprakash

... Appellants in
both Writ Appeals

vs.

1.The State of Tamil Nadu
Rep. by its Secretary, Legislative Assembly Secretariat
Fort St. George, Chennai - 600 009.

2.Chief Government Whip,
Tamil Nadu Legislative Assembly,
Fort St. George, Chennai - 600 009.

3.The Chief Minister
Government of Tamil Nadu, Fort St. George,
Secretariat, Chennai - 600 009.

4.K.C.Veeramani
Minister - Commercial Taxes and Registration,
Greenways Road, Raja Annamalaipuram,
Chennai - 600 028.

5.J.Sekar @ Sekar Reddy ... Respondents 1 to 5
in W.A.No.767 of 2020 and WA.768/20

6.The Director General of Income Tax (Investigation)
Income Tax Department, New Building 2nd Floor,
New No.46, Old No.108, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

...6th Respondent in WP.768/20

PRAYER in W.A.No.767/2020: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the common order dated 22.06.2020 made in W.P.No.29183 of 2018 on the file of this Court and thereby allow the writ appeal.

WP.No.29183 of 2018: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus and thereby directing the first and second respondents to consider

the presentation of the petitioners dated 27.07.2018 and conduct enquiry by following principles of natural justice and dispose the same in accordance with law, failing which forward the complaint of the petitioners in accordance with the prevention of Corruption Act against the fourth respondent.

PRAYER in W.A.No.768/2020: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the common order dated 22.06.2020 made in W.M.P.No.7494 of 2019 in W.P.No.29183 of 2018 on the file of this Court and thereby allow the writ appeal.

WP.No.29183 of 2018: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus and thereby directing the first and second respondents to consider the presentation of the petitioners dated 27.07.2018 and conduct enquiry by following principles of natural justice and dispose the same in accordance with law, failing which forward the complaint of the petitioners in accordance with the prevention of Corruption Act against the fourth respondent.

For Appellants : Mr.P.C.Harikumar for
(in both Was) M/s.P.C.Harikumar and Associates

For Respondents : Mr.V.Jayaprakash Narayanan
(in both Was) State G.P. for R1 to R3

COMMON JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

This writ appeal is directed against the order dated 22.06.2020 in W.P. No.29183 of 2018. The Appellants were the Petitioners before the learned single Judge and had prayed for a writ of mandamus to direct the first and second Respondents to consider the representation of the Petitioners dated 27.07.2018 and conduct an enquiry by following the principles of natural justice, failing which to forward the complaint to the third Respondent to take appropriate action on the complaint of the Petitioners in accordance with the Prevention of Corruption Act, 1988 (the PC Act).

2. The facts leading to the filing of this appeal are as follows. The Appellants took a property in Vellore Town ad measuring about 7.10 acres on lease by Lease Deed dated 09.08.2010, which was executed by B. Sundararajan as lessor, for the purpose of running a cycle stand. The lease was for a term of three years from 09.08.2010 till 08.08.2013 and an advance of Rs.1,00,000/- was paid at the time of execution. Thereafter, the lessor under the said Lease Deed filed a suit against I.Balasundaram for partition of the A & B schedule properties as per the schedule to the plaint in the said suit. By judgment and decree dated 27.04.2011, a preliminary decree

was pronounced in favour of the Plaintiff for the division of the suit schedule properties into two equal shares, and a declaration was issued to the effect that the Plaintiff therein is entitled to 1/2 share of the suit schedule property. Thereafter, the first Appellant entered into an agreement of sale dated 14.03.2014 (the Agreement of Sale) with a partnership firm under the name and style of M/s. Jyothirmaye Estates, represented by its Managing Partner, Mr.Brahmandam Danda. As per the terms of the Agreement of Sale, the first Appellant herein agreed to purchase two items of property, namely, (1) at T.S. No.175 Part of Block No.3 and Ward No.1 of Vada Vellore Town Village, Vellore Taluk, ad measuring 4 acres and 66 cents; and (2) the vacant lands comprised in T.S.No.158, T.S.No.172 and T.S.No.173, Block No.3 and Ward No.1 of Vada Vellore Town Village, Vellore Taluk, ad measuring 1 acre 34 cents for a total sale consideration of Rs.60 crores. At the time of execution of the Agreement of Sale, a sum of Rs.10,00,000/- was paid in cash as advance and it was stipulated in the Agreement of Sale that the sale transaction would be completed within one year from the date thereof. Subject to and upon receipt of the balance sale consideration, the vendor agreed to execute the sale deed in respect of the schedule mentioned property in favour of the purchaser or his nominees, which broadly corresponds to the property that was subject matter of lease.

3. Pursuant thereto, a memorandum of understanding dated 22.09.2017 (the MoU) was executed between Mr.J.Sekar, the 5th respondent herein, the Appellants herein, and Mr.Brahmandam Danda, the Managing Partner of M/s. Jyothirmaye Estates. The recitals state that the property was acquired from Mr. Sundararaman's family upon his demise by Mr. Brahmandam Danda under various sale deeds executed on 14.03.2014. As per the terms of the MoU, the 5th Respondent herein agreed to take over the assets and liabilities of the partnership firm, M/s.Jyothirmaye Estates, and proposed to acquire the 50% share in the said partnership firm from Mr.Brahmandam Danda. The Appellants herein agreed to survey and demarcate the land, provide all revenue records, FMB sketches and cause the owners of the land to execute necessary documents to vest the land in the names of persons nominated by the 5th Respondent herein. The 5th Respondent agreed to pay a sum of Rs.19 crores as development and commission charges and also to release all rights and claims over the schedule mentioned property to the Appellants herein. The transaction under the MoU was agreed to be concluded within one month from the date of execution thereof. The MoU also contains an arbitration clause in respect of dispute resolution.

4. The case of the Appellants is that they are in possession of the property. After the execution of the MoU, the 4th Respondent, who is the Minister of Commercial Taxes and

Registration, Government of Tamil Nadu, at the instance of the 5th Respondent, misused the police and local rowdies and endeavoured to illegally dispossess the Appellants from the property. In these circumstances, the Appellants lodged a police complaint on 02.07.2018 before the Deputy Inspector General of Police, Vellore, for suitable protection so as to retain possession and for criminal action against the 4th and 5th Respondents. Further, complaints were lodged on various dates in July 2018, including, significantly, a complaint to the 1st and 2nd Respondents on 27.07.2018 calling for action against the 4th Respondent. In these facts and circumstances, W.P. No.29183 of 2018 was filed. In addition, Crl. O.P.No.30367 of 2018 was also filed for a direction to the police not to harass the Appellants.

5. In the writ petition, the 4th Respondent filed a counter affidavit wherein he stated that the transaction between the Petitioners and the 5th Respondent is a real estate transaction and that the 4th Respondent has nothing to do with the same either in his personal or official capacity. He also expressly denied that he had used political influence in order to evict the Petitioner therein from the property or that any illegal gratification was fixed for the purpose of carrying out such eviction. While the writ petition was pending, the Appellants lodged a complaint dated 14.03.2019 against the 4th and 5th Respondents before the Deputy Inspector General of Police, Vellore Circle, for various offences committed under the Indian Penal Code, 1860 (the IPC), the PC Act, Prevention of Money Laundering Act, Income Tax Act, etc. It is alleged that no action was taken in respect of the said complaint. This complaint was presented under Section 154(1) of the Criminal Procedure Code, 1973 (the Cr.P.C.) and draws reference to the order passed in Crl. O.P.No.1290 of 2018.

6. It also appears that the second Appellant filed Crl. O.P. No.10280 of 2019 to direct the Deputy Inspector General of Police, Vellore to register the Petitioner's complaint dated 14.03.2019. By order dated 16.04.2019, the said petition was dismissed by relying upon the judgment of the Division Bench in Crl. O.P.(MD).No.13681 of 2018 wherein the Court held that Section 482 of the Cr.P.C. cannot be invoked in all circumstances and that it is not an alternative remedy to Section 156(3) Cr.P.C. and that if the police fail or refuse to register a complaint, the remedy to be availed is to make a request under Section 156(3) of the Cr.P.C. Without exhausting the said remedy, a petition under Section 482 is not maintainable. Thereafter, by order dated 07.06.2019, the Superintendent of Police, Vellore District concluded that the Police Department does not have jurisdiction to investigate the case, which is a civil dispute in respect of which O.S. No.603 of 2018 is pending on the file of the Hon'ble Sub Court, Vellore. The report of the Superintendent of Police

was challenged by filing Crl.O.P.No.22333 of 2019. Meanwhile, by the common order dated 22.06.2020, both W.P. No.29183 of 2018 and Crl.O.P.No.30367 of 2018 were dismissed. The present appeal is filed in these facts and circumstances.

7. We heard Mr.P.C.Harikumar, the learned counsel for the Appellants and Mr.V.Jayaprakash Narayanan, the learned Government Pleader on behalf of Respondents 1 to 3.

8. Mr. Harikumar reiterated the facts that are set out above. In particular, he pointed out that the learned single Judge completely misconstrued the relief claimed in the writ petition. The Appellants had lodged a complaint before the Deputy Inspector General of Police, Vellore on 02.07.2018 to take action against the 4th and 5th Respondents, whereas another complaint was lodged on 27.07.2018 with the 1st and 2nd Respondents to take action against the 4th Respondent, who is a Minister. On account of confusing the two complaints and treating them as the same, the learned single Judge came to the erroneous conclusion that the writ petition is not maintainable. The learned counsel further contended that a counter complaint was given by the 5th Respondent on the same set of facts and that Crime No.500 of 2018 and Crime No.946 of 2018 were registered on the basis of the said complaints. The learned counsel also pointed out that the learned Judge relied on the report dated 07.06.2019, which is the subject matter of an independent pending challenge by the Appellants in Crl.O.P.No.22333 of 2019. The Appellants were constrained to approach the Court by filing the writ petition on account of the fact that the third Respondent did not grant sanction to enquire into the offences against the 4th Respondent.

9. In reply, the learned Government Pleader submitted that the dispute pertains to a property transaction between the Appellants and the 5th Respondent. On account of differences that arose between the Appellants and the 5th Respondent, the parties concerned filed complaints against each other. In view of the fact that proceedings are already pending before the civil court in respect of the dispute, the Deputy Inspector General of Police, by order dated 07.06.2019, informed the Appellants that the police do not have jurisdiction because it is a civil dispute. The learned Government Pleader submitted that, in the facts and circumstances, the order of the learned single Judge holding that the writ petition is an abuse of process and is not maintainable cannot be faulted.

10. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

11. From the rival contentions before this Court, it is clear that the origin of the dispute may be traced to the Agreement of Sale between M/s.Jyothirmaye Estates and the first Appellant, and the MoU between the Managing Partner of M/s.Jyothirmaye Estates, the Appellants, and the 5th Respondent. These disputes resulted in the filing of police complaints on various dates by the Appellants against the 4th Respondent and others. Separately, it appears that the Appellants also lodged a complaint before the Government of Tamil Nadu and the Chief Government Whip of the Legislative Assembly to take action against the 4th Respondent, who is a Minister in the Government. The refusal/failure of the first and second Respondent in acting on the said complaint dated 27.07.2018 resulted in the filing of the writ petition. The allegation is that because several complaints were lodged, the learned single Judge failed to distinguish and differentiate the complaints made before the police on 02.07.2018 and 16.07.2018 from the complaint with the first and second Respondents as regards the alleged misuse of power by the 4th Respondent. Therefore, the question that arises for consideration is whether the relief prayed for in the writ petition should have been granted, which turns on whether sanction of the first and second Respondents is necessary for the conduct of an enquiry under the PC Act or under the IPC. This question is no longer res integra. In *Bharat Sanchar Nigam Limited and others v. Pramod V.Sawant and another* (2019) 16 SCC 63, the question that arose for consideration by the Court is whether the previous sanction of the Central Government is necessary under Section 197 of the Cr.P.C. in order to prosecute the employees of a public sector corporation. In that context, the Hon'ble Supreme Court held that the employees of the corporation do not qualify as public servants as per Section 21 of the Indian Penal Code, 1860 (the IPC), and therefore the previous sanction of the Central Government is not necessary as per Section 197 of the Cr.P.C. The next decision of relevance is the judgment in *Chandan Kumar Basu vs. State of Bihar* (2014) 13 SCC 70. Once again, the question that arose for consideration is whether the previous sanction of the Government is necessary under Section 197(1) of the Cr.P.C. in order to prosecute a member of the Indian Administrative Service who was serving on deputation as the Administrator-cum-Managing Director of the Bihar State Housing Corporative Federation Ltd. After examining Section 197, the Hon'ble Supreme Court set out the three mandatory requirements under Section 197 of the Code in paragraph 8 which reads as below:

'8. A reading of the provisions of Section 197(1) of the Code reveals that there are three mandatory requirements under Section 197(1) of the Code, namely:

(a) that the accused is a public servant;

(b) that the public servant can be removed from the post by or with the sanction either of the Central or the State Government, as the case may be;

(c) the act(s) giving rise to the alleged offence had been committed by the public servant in the actual or purported discharge of his official duties.'

Significantly, in paragraph 11, the Court considered the question as to whether sanction is required unless the alleged offences were committed in the actual or purported discharge of official duties. Upon such consideration, the Court concluded that sanction is not necessary unless the Act was done in the discharge of official duty, and the said paragraph 11 is as under:

'11. The above discussion will now require the Court to consider the question as to whether the acts giving rise to the alleged offences had been committed by the accused in the actual or purported discharge of his official duties. In a series of pronouncements commencing with K. Satwant Singh v. State of Punjab [AIR 1960 SC 266 : 1960 Cri LJ 410] ; Harihar Prasad v. State of Bihar [(1972) 3 SCC 89 : 1972 SCC (Cri) 409] and Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] it has been consistently held that it can be no part of the duty of a public servant or acting in the discharge of his official duties to commit any of the offences covered by Sections 406, 409, 420, etc. and the official status of the public servant can, at best, only provide an opportunity for commission of the offences. Therefore, no sanction for prosecution of the public servant for such offences would be required under Section 197 of the Code. Notwithstanding the above, the High Court had granted liberty to the appellant to raise the issue of sanction, if so required, depending on the evidence that may come on record in the course of the trial. Despite the view taken by this Court in the series of pronouncements referred to above, the opportunity that has been provided by the High Court to the benefit of the appellant need not be foreclosed by us inasmuch as in Matajog Dobey v. H.C. Bhari [AIR 1956 SC 44: 1956 Cri LJ 140], P.K. Pradhan v. State of Sikkim [(2001) 6 SCC 704 : 2001 SCC (Cri) 1234] and Parkash Singh Badal [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] this Court had

consistently held that the question of sanction under Section 197 of the Code can be raised at any time after cognizance had been taken and may have to be determined at different stages of the proceeding/trial. The observations of this Court in this regard may be usefully extracted below:

11.1.Matajog Dobey v. H.C. Bhari [AIR 1956 SC 44 : 1956 Cri LJ 140] (AIR p. 50, para 20)

"20. ... The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction.

Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

11.2.P.K. Pradhan v. State of Sikkim [(2001) 6 SCC 704 : 2001 SCC (Cri) 1234] (SCC pp. 712-13, para 15)

"15. ... It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

11.3.Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] (SCC p. 32, para 38)

"38. The question relating to the need of sanction under Section 197 of the Code is not

necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

12. Similarly, in Punjab State Warehousing Corporation vs. Bhushan Chander and Another (2016) 13 SCC 44, the Court surveyed the precedents on the requirement of prior sanction under Section 197 Cr.P.C. and held categorically, in paragraph 20, that no sanction is required unless there is a reasonable connection between the omission or commission and the discharge of official duty. The said paragraph 20 is as under:

"20. A survey of the precedents makes it absolutely clear that there has to be a reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the act (s), omission or commission of which is totally alien to the discharge of the official duty, question of invoking Section 197 CrPC does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939]. The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service. Perhaps the learned Judge has kept in his mind some kind of concept relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under Sections 467, 468 and 471 IPC may be of such nature that obtaining of sanction under Section 197 Cr.PC is not necessary but when the said offences are interlinked with an offence under Section 409 IPC sanction under Section 197 for launching the prosecution for

the offence under Section 409 is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. No official can put forth a claim that breach of trust is connected with his official duty. Be it noted the three-Judge Bench in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] has distinguished Shreekantiah Ramayya Munipalli [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287 : 1955 Cri LJ 857] keeping in view the facts of the case. It had also treated the ratio in Amrik Singh [Amrik Singh v. State of Pepsu, AIR 1955 SC 309 : 1955 Cri LJ 865] to be confined to its own peculiar facts. The test to be applied, is as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] which we have reproduced hereinbefore. The three-Judge Bench in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] applied the test laid down in Gill case [Gill v. R., (1948) 10 FCR 19 : AIR 1948 PC 128 : (1947-48) 75 IA 41 : 1948 SCC OnLine PC 10] wherein Lord Simonds has reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office.

13. The last decision that should be referred to is the judgment in Station House Officer, CBI/ACB/Bangalore v. B.A.Srinivasan and another (2020) 2 SCC 153, wherein, at paragraphs 14 & 15, the Court applied the integral nexus test to ascertain whether the act or omission was in discharge of official duties.

14. Upon applying the principles laid down in the aforesaid judgments of the Hon'ble Supreme Court, there is no doubt whatsoever that the allegations of the Appellants are undoubtedly with regard to the alleged private acts of the 4th Respondent relating to a property transaction. Therefore, as per the ratio laid down in the aforesaid judgments, there is certainly no necessity to obtain the prior permission of the first and second Respondents in order to initiate action in relation to the alleged offences by the 4th Respondent.

15. In addition, we find that the report dated 07.06.2019 of the Superintendent of Police, Vellore refers to

the fact that a civil suit in O.S.No.603 of 2018 is pending on the file of the Sub Court, Vellore. We also find that the MoU contains an arbitration clause for dispute resolution.

16. In light of the aforesaid, the Appellants do not require the prior sanction of the first and second Respondents to initiate action in respect of the alleged offences by the 4th Respondent. Likewise, as regards civil proceedings, it is always open to the Appellants to file a civil suit if it is intended to sue the 4th Respondent also. Otherwise, if the action is between parties to the MoU, there is an arbitration clause in the MoU.

17. In view of the facts set out above, the conclusion of the learned single Judge that a detailed enquiry was conducted prior to the issuance of the closure report is not correct. However, the conclusion that a mandamus cannot be issued, in the facts and circumstances, does not warrant interference. Accordingly, we dispose of these writ appeals with the observations in paragraph 16 supra and this paragraph. There shall be no order as to costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Secretary
Tamil Nadu State Legislative Assembly,
Secretariat, Fort St. George,
Chennai - 600 009.

2.Chief Government whip
Tamil Nadu State Legislative Assembly,
Fort St. George, Chennai - 600 009.

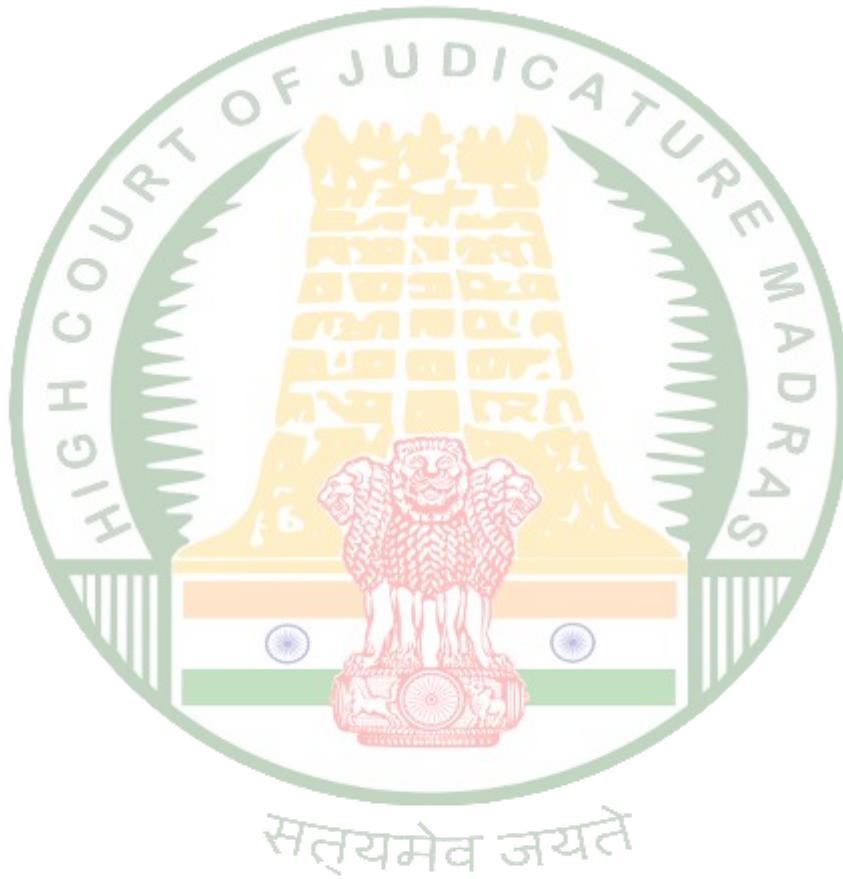
3.The Chief Minister
Government of Tamil Nadu,
Fort St. George, Secretariat,
Chennai - 600 009.

4.The Director General of
Income Tax(Investigation),
Income Tax Department,
New Building, 2nd Floor,
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+2cc to M/s.P.C.Harikumar&Associates, Advocate SR.30579 & 30580

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VD(CO)
CB(03/12/2020)



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