

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2020

PRONOUNCED ON : 28.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.21848 of 2014

AND

M.P.Nos.1 of 2014 & 1 of 2015

1.R.Ganesan

2.R.Murugesan

.. Petitioners

Vs.

Manipillai @ Govindassamy

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the proceedings in C.C.No.16 of 2014 on the file of the Court of Judicial Magistrate No.II, Karaikal and quash the same.

For Petitioners : Mr.T.M.Naveen

For Respondent : Mr.T.Sai Krishnan

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.16 of 2014 on the file of the Court of Judicial Magistrate No.II, Karaikal.

2. It is common knowledge that in Puducherry, ordinary Tamil names bear peculiar English spellings. For example, Kumar will be spelt as Coumour. In this order, this Court is adopting the ordinary spellings for proper nouns, for easy understanding.

3. R.Ganesan (R.Canessane) and R.Murugesan are the sons of one Rethinasamy and both of them were living in door No.41, Mariamman Koil West Street, Thiruvettakudy Village, Kottucherry Commune. Their paternal grandfather was one Kaliapillai (Caliapouille) @ Kalimuthupillai.

3.1. It is stated that Kaliapillai was a wealthy gentry and he died on 23.05.1974, leaving behind huge assets, mostly

immovable properties in Thiruvettakudy village, which naturally attracted the attention of some of his greedy heirs.

3.2. Ganesan filed a partition suit in O.S.No.52 of 2009 before the Additional District Court, Puducherry against his brother Murugesan, claiming that they are the sole legal heirs to the properties left by their grandfather Kaliapillai, since their father Rethinasamy who was the only heir of their grandfather, died intestate on 18.10.2007. The suit in O.S.No.52 of 2009 was filed through one Mr.A.Ahamed Ansari, Advocate, Karaikal. Murugesan entered appearance through Mr.A.Senthil Kumar, Advocate in O.S.No.52 of 2009 and filed a memo stating that the suit may be decreed and a preliminary decree be passed in terms thereof. Based on the memo, the learned Additional District Judge, Puducherry, passed preliminary decree in O.S.No.52 of 2009 on 12.10.2009, allotting $\frac{1}{2}$ share each to Ganesan and Murugesan in the properties mentioned in the suit schedule.

3.3. Ganesan filed I.A.No.445 of 2010 in O.S.No.52 of 2009 under Section 54 read with Order XXVI Rule 9 CPC for passing final decree, in which, Ganesan and Murugesan filed a joint memo of compromise dated 25.08.2011, which reads as follows :

"It is submitted that after the filing of final decree petition the parties hereto have amicably settled the matter between themselves on the following terms.

The parties hereto agree that the Plaintiff is hereby allotted item No.1,2 and 7 of the suit properties and the Defendant is hereby allotted item No.3,4,5,6 and 8 of the suit property. There is no threat or unlawful inducement for the compromise.

Hence it is humbly prayed that this Hon'ble Court may be pleased to pass a final decree for partition in terms of the compromise memo. The parties hereby agree that they will bear the respective cost of this suit.

Final decree may be passed in terms of this joint memo."

Based on this compromise memo, final decree was passed by the learned District Judge, Karaikal on 26.08.2011, allotting item Nos.1,2 and 7 of the suit schedule to Ganesan.

3.4. On coming to know of this, one Rajendran, a legal heir of Kaliapillai issued a notice dated 07.11.2011, through Mr.A.Thirumal Valavan, Advocate to Ganesan stating that Rethinasamy was not the sole legal heir of Kaliapillai and that, there are other brothers and sisters for Rethinasamy, who have

been left out deliberately in the partition suit and a collusive decree had been obtained by Ganesan - Murugesan duo. Ganesan issued a reply notice dated 14.11.2011, through his Advocate, Mr.Ahamed Ansari, denying the allegations and further alleging that the said Rajendran was a land grabber.

3.5. Be that as it may, one Mani Pillai @ Govindassamy, another legal heir of Kaliapillai filed a comprehensive partition suit in O.S.No.1 of 2012 in the Additional District Court, Karaikal against 31 defendants including Ganesan and Murugesan, contending that Ganesan and Murugesan are not the only legal heirs of Kaliapillai and that, the brothers filed a collusive suit in O.S.No.52 of 2009 and obtained a final decree, appropriating all the properties of Kaliapillai to themselves to the exclusion of other legal heirs. There is a further prayer in O.S.No.1 of 2012 to set aside the decree in O.S.No.52 of 2009.

3.6. In O.S.No.1 of 2012, Mani Pillai filed I.A.No.1 of 2012 to stay all further proceedings in O.S.No.52 of 2009. But, this petition was dismissed on 08.06.2012, on the ground that final decree had already been engrossed and there is nothing to be stayed. Against that order, C.R.P.No.184 of 2014 was filed by Mani Pillai, which was also dismissed by this Court.

3.7. While that being so, Mani Pillai filed a complaint in the Additional District Court, Karaikal against Ganesan and Murugesan for taking action against them for perjury under Section 193 IPC via Section 340(1) read with Section 195(b)(i) Cr.P.C. alleging that the brothers had suppressed the existence of other legal heirs in O.S.No.52 of 2009 and had obtained a collusive decree.

3.8. The learned Judge found prima facie materials in the complaint and by the impugned order dated 29.01.2014, granted permission to prosecute Ganesan and Murugesan under Section 193 read with Section 34 IPC. It may be relevant to extract the operative portion of the order dated 29.01.2014.

"The petitioner had made the prima facie case on record as against the respondents for an offence u/s.193 of IPC with available records before this Court. Hence the permission is granted to prosecute the respondents for the offence u/s.193 r/w.34 IPC and this complaint is hereby forwarded to J.M.II, Karaikal with direction to take the complaint on the file of the court and decide the case according to law."

The learned Judicial Magistrate No.II, Karaikal took the complaint on file as C.C.No.16 of 2014 and issued process to Ganesan and Murugesan, aggrieved by which, they are before this Court for quashing the order dated 29.01.2014 in CrI.M.P.No.33 of 2014 passed by the Additional Sessions Judge, Karaikal.

3.9. When Karaikal was part of Puducherry judicial district, Court was designated as Additional District Court. Now, Karaikal is a separate judicial unit and so, the Additional District Court is now called District Court, Karaikal.

4. Heard Mr.T.M.Naveen, learned counsel for Ganesan and Murugesan and Mr.T.Sai Krishnan, learned counsel for Mani Pillai.

5. Mr.Sai Krishnan submitted that Mani Pillai died on 10.10.2018.

6. Mr.Naveen contended that the paternal grandparents of Ganesan and Murugesan are Kaliapillai @ Kalimuthupillai and Marimuthuammal; that the father of Kaliapillai @ Kalimuthupillai is Kamalapillai, whereas in the notice dated 07.11.2011 issued by Rajendran, the father's name of Kaliapillai @ Kalimuthupillai has been stated as Kathapillai.

7. Countering this submission, Mr.Sai Krishnan submitted that in the 5th paragraph of the same notice, the father of Kaliapillai @ Kalimuthupillai has been given as Kamalapillai. He further contended that Ganesan and Murugesan were not the only legal heirs of their father Rethinasamy, as their mother Sarodja and sisters Maheswari @ Marimuthu Ammal, Vijaya and Latha are still alive.

8. Mr.Naveen assailed the impugned order by contending that the learned District Judge ought not to have given permission to Mani Pillai to prosecute the accused under Section 193 IPC, but, should have conducted an enquiry under Section 340 Cr.P.C. and thereafter, should have made a complaint in writing to the jurisdictional Magistrate.

9. There appears to be sufficient force in this submission of Mr.Naveen and on this short ground alone, the impugned order dated 29.01.2014 in CrI.M.P.No.33 of 2014 deserves to be set aside and is accordingly set aside.

10. However, can Ganesan and Murugesan be let off on this technicality. The problem of perjury and filing collusive civil litigations to create encumbrance on the property of others is not something new in India, but is endemic. Even during the administration of justice in colonial times, this malice was deeply entrenched in our society. Way back in 1872, Justice L.H.Bayley of Bombay High Court argued that fear of prompt corporal punishment "at the hand of man" was more suitable to India than fear of a perjury proceeding. He observed ;

"The amount of perjury committed before me week after week of the most transparent character is perfectly frightful, and I doubt if anything short of a knowledge that the Judge could then and there order

his imprisonment or the administration of fifty lashes or more with the cat-o'-nine-tails would deter a dishonest witness from telling his falsehoods to the Court. I don't think a mere admonition to tell the truth, in the language of the Code of 1827, would have any effect upon our Bombay witnesses, as it is well known that prosecutions for perjury are very rare, and that the cost, delay and uncertainty attending them are sufficient to deter almost everyone from instituting them."

(See page No.116 of Colonial Justice in British India by Elizabeth Kolsky, Cambridge University Press 2010)

11. The situation was no different in the Madras Presidency as could be seen from the following passage :

"The perceived problem of Indian untrustworthiness was not limited to Bengal. In 1831, Richard Clarke, registrar at the Sadr Diwani Adalat in Madras, informed a Parliamentary Select Committee that perjury prosecutions were quite frequent in Madras: "A native will in general give his evidence rather with reference to the consequences of what he may say to his own interest, than from any regard to its truth or falsehood." European members of the Madras Bar later observed that :

Witnesses in this country, as a rule, do not come forward to speak the truth, and it is rarer still to find witnesses who are prepared to tell the whole truth without exaggeration or extenuation. Most frequently they appear in the witness-box for the purpose of telling a story of concocted falsehood, and the elucidation of the real facts depends to a large extent on the right of cross-examination."

(See page No.110 of Colonial Justice in British India by Elizabeth Kolsky, Cambridge University Press 2010)

12. Post independence, when we have our own judicial system, can we afford to allow it to be undermined by kid gloving perjurers . The answer is an obvious "No". If we condone this now, tomorrow one 'A' will file a suit in the City Civil Court, Chennai for declaration against one 'B' for the lands over which our High Court stands; 'B' will enter appearance and submit to decree; in the anxiety to achieve the norms, the trial Judge will happily pass a decree; armed with the decree 'A' will even get a patta from the Tahsildar, plot out the lands and sell them to the thriving land mafia.

13. In this case, the sequence of events clearly show the existence of a prima facie material to order an inquiry against

Ganesan and Murugesan brothers. Ganesan and Murugesan were living in door No.41, Mariamman Koil West Street, Thiruvettakudy Village, Kottucherry Commune. Whereas, in the plaint in O.S.No.52 of 2009, the address of Ganesan is shown as Mariamman Koil West Street, Thiruvettakudy, Kottucherry Commune. The door number has not been given. The address of Murugesan has been shown as No.41, Mariammaon Koil Mela Veethi, Thiruvettakudy, Kottucherry Commune. The English translation of Melaveethi is West Street. To create confusion, Ganesan has given his address without door number and has given the name of the street as Mariamman Koil West Street and for Murugesan, the address has been given as No.41, Mariamman Koil Mela Veethi. In the plaint, it is stated that Rethinasamy, father of Ganesan and Murugesan had died on 18.10.2007. But, there is absolutely no mention as to whether, their mother is alive. Whereas, in the plaint in O.S.No.1 of 2012 that has been filed by Mani Pillai, the mother and sisters of Ganesan and Murugesan have been shown as parties. Thus, it appears that Sarodja, the mother of Ganesan - Murugesan and sisters Maheswari @ Marimuthu Ammal, Vijaya and Latha are alive, but, they have not been shown as defendants in O.S.No.52 of 2009.

14. Thus, it appears prima facie that the decree in O.S.No.52 of 2009 was obtained by Ganesan - Murugesan duo by deliberately pleading false particulars on oath and by fraudulently suppressing the existence of other legal heirs. The deployment of such murky and devious methods to pollute the steams of justice by hoodwinking the Courts must be dealt with sternly to protect the solemnity and sanctity of judicial proceedings.

15. In the opinion of this Court, the facts of this case, prima facie fall within the net of the offences under Section 193, 199 and 209 IPC. As the facts of this case disclose the commission of offences affecting the administration of justice, this Court is satisfied that an enquiry into the commission of these offences requires to be further probed.

16. Mr.Naveen took this Court to the cross-examination of Mani Pillai in O.S.No.1 of 2012 and contended that Mani Pillai has admitted that the father of Kaliapillai is Kathapillai and therefore, the suit in O.S.No.52 of 2009 was for the properties of Kaliapillai S/o.Kamalapillai and not Kaliapillai S/o.Kathapillai. This Court is of the view that this is a smokescreen because, the properties in the schedule for which partition was sought, belonged to Kaliapillai for whom, apart from Ganesan-Murugesan, there are around 30 legal heirs including the mother and sisters of Ganesan-Murugesan.

17. In the opinion of this Court, without the blessings of the members of the noble profession, litigants by themselves

are incapable of conceiving and prosecuting such dubious litigations. Sooner or later, we are going to lose the nobility in the legal profession and society will turn its ire against law professionals, if this trend continues. Delay in disposal of cases by civil Courts provides a fertile ground for criminal cases to sprout.

18. At this juncture, it may be relevant to extract Section 340(2) and (3) Cr.P.C.:

"340. Procedure in cases mentioned in section 195

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(emphasis supplied)

(3) A complaint made under this section shall be signed,

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court."

19. It is beyond cavil that the Additional District Court, Karaikal is a Court subordinate to the High Court. The Additional District Court at Karaikal has now been upgraded as a District Court. In this case, the District Judge, Karaikal has not made a complaint as required under Section 340(1)(b) Cr.P.C., but had only granted permission to Mani Pillai to prosecute. This Court has held that such permission is illegal and has set aside the order dated 29.01.2014, supra. Hence, it should be construed that the Additional District Court, Karaikal has neither made a complaint under sub-section (1) nor rejected the application of Mani Pillai.

20. However, the Additional District Court, Karaikal being a Court subordinate to this Court under Section 195(4) Cr.P.C, this Court is empowered to exercise jurisdiction under Section 340(2) Cr.P.C so as to protect the streams of justice from pollution. This has been emphasised by the Supreme Court in *Perumal Vs. Janaki* [(2014) 5 SCC 377] in the following passages :

"17. But the High Court, in our view, is not

justified in confining itself to the examination of the correctness of the order of the Magistrate dismissing the said private complaint. Both Section 195(1) and Section 340(2) CrPC authorise the exercise of the power conferred under Section 195(1) by any other court to which the court in respect of which the offence is committed is subordinate to.

19. ... The High Courts being constitutional courts invested with the powers of superintendence over all courts within the territory over which the High Court exercises its jurisdiction, in our view, is certainly a court which can exercise the jurisdiction under Section 195(1). In the absence of any specific constitutional limitation of prescription on the exercise of such powers, the High Courts may exercise such power either on an application made to it or suo motu whenever the interests of justice demand.

20. The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power in appropriate cases. Such obligation, in our opinion, flows from two factors –

- (1) the embargo created by Section 195 restricting the liberty of aggrieved persons to initiate criminal proceedings with respect to offences prescribed under Section 195;
- (2) such offences pertain to either the contempt of lawful authority of public servants or offences against public justice."

21. Before moving further, it may be appropriate to refer to the judgment of the Supreme Court in M.Narayan Das Vs. State of Karnataka and Others [AIR 2004 SC 555], wherein, the Supreme Court has clearly stated that even in respect of an offence that falls within the ambit of Section 195 Cr.P.C., police investigation can be conducted. Apposite it is to extract paragraph No.8 :

"8. We are unable to accept the submissions made on behalf of the respondents. Firstly, it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise, there is no substance in the submission. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh

[(1998) 2 SCC 391]. In this case it has been held as follows:

'2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b) (ii) CrPC prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 CrPC. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 CrPC. The judgment of this Court in Gopalakrishna Menon v. D. Raja Reddy [(1983) 4 SCC 240] on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 CrPC.'

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal Procedure

Code. Once investigation is completed then the embargo in Section 195 would come into play and the court would not be competent to take cognizance. However, that court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 of the Criminal Procedure Code is followed. Thus no right of the respondents, much less the right to file an appeal under Section 341, is affected."

22. Thus, it is crystal clear that, even a police investigation can be ordered, and based on the evidence collected and submitted by the police, the Court can direct the filing of a complaint. In this case, at this juncture, police investigation may not be necessary. However, after cognizance is taken, the learned Judicial Magistrate No.II, Karaikal can still order police investigation under Section 173(8) Cr.P.C., if required, for collecting more evidence, since the case will not be a case on a complaint, but, on a police report as laid down in Section 343(1) Cr.P.C. [See Vinubhai Haribhai Malaviya and Others Vs. State of Gujarat and Another (2019 SCC OnLine SC 1346)]. The trial will follow the procedure set out in Chapter XIX of the Code (Also see Pritish Vs. State of Maharashtra and Others [(2002)1 SCC 253]). Hence, this Court leaves this option open to the learned Judicial Magistrate No.II, Karaikal to take a call, if the situation warrants.

23. In fine, this Court directs the Deputy Registrar, Criminal Section to make a complaint to the Judicial Magistrate No.II, Karaikal against Ganesan and Murugesan/petitioners herein for the offences under Section 193, 199 and 209 IPC with the following averments, apart from the usual preamble and introductory passages :

"That Ganesan filed a suit in O.S.No.52 of 2009 for partition in the Additional District Court, Karaikal against his brother Murugesan for partitioning the properties of their grandfather Kaliapillai @ Kalimuthupillai, in which, he suppressed the names of his mother Sarodja and his sisters Maheswari @ Marimuthu Ammal, Vijaya, Latha and other legal heirs;

That though Ganesan and Murugesan were living in door No.41, Mariamman Koil West Street, Thiruvettakudy Village, Kottucherry Commune, in the plaint in O.S.No.52 of 2009, the address of Ganesan has been wantonly given as Mariamman Koil West Street and the address of Murugesan has been given as No.41, Mariamman Koil Mela Veethi;

That on receipt of summons in O.S.No.52 of

2009, Murugesan collusively filed a memo stating that the suit may be decreed, by wantonly suppressing from the Court the fact that his mother Sarodja and sisters Maheswari @ Marimuthu Ammal, Vijaya, Latha and others are also the legal heirs of Kaliapillai;

That both Ganesan and Murugesan deceived the Court to believe that they were the only legal heirs of the deceased Kaliapillai and obtained not only a preliminary decree, but also a final decree in O.S.No.52 of 2009;

Thereby, there are prima facie materials to show that they have committed offences punishable under Section 193, 199 and 209 IPC read with Section 34 IPC."

24. It is reported that the suit papers in O.S.No.52 of 2009 and the suit in O.S.No.1 of 2012 are now on the file of the Sub Court, Karaikal. O.S.No.1 of 2012 has been renumbered as O.S.No.19 of 2015.

25. The next step is to collect the documents in support of the complaint. This Court directs the Sub Judge, Karaikal to make certified copies of the following documents and forward the same to the Judicial Magistrate No.II, Karaikal :

- i. Complaint in O.S.No.52 of 2009;
- ii. Memo filed by the defendant that the suit may be decreed;
- iii. Judgment and decree in O.S.No.52 of 2009 dated 12.10.2009;
- iv. Petition in I.A.No.445 of 2010 in O.S.No.52 of 2009;
- v. Joint memo of compromise in I.A.No.445 of 2010 and
- vi. Final decree in I.A.No.445 of 2010 in O.S.No.52 of 2009
- vii. Complaint in O.S.No.19 of 2015 (Old O.S.No.1 of 2012)

The District Court, Karaikal shall also send the list of documents and documents if any, that was filed by Mani Pillai along with the petition in CrI.M.P.No.33 of 2014, to the Judicial Magistrate No.II, Karaikal. On receipt of those documents from the District Court and Sub Court, the Judicial Magistrate No.II, Karaikal shall prepare a comprehensive list of documents and append the same with the complaint filed by the Deputy Registrar, Criminal Section of this Court.

26. The Deputy Registrar, being a public servant and who is setting the criminal law in motion on the directions of this Court, in discharge of his official duties by filing the complaint, need not be examined either for recording the sworn statement or subsequently during trial because, the complaint need not be proved and only the facts alleged in the complaint

need to be proved through witnesses who are acquainted with the facts. The necessity to record the sworn statement of a non-official complainant arose during the times of the Faujdari Adalat (East India Company's Criminal Court), when the Judges found that complaints were given by one in the name of another, without the knowledge of the latter. That is why, they started insisting that the actual complainant should appear before them and his sworn statement should be recorded. This became the law subsequently and Section 200 Cr.P.C. insists upon recording the sworn statement of a complainant and his witnesses, exception being public servants. There is yet another reason for this procedure in that, when the sworn statement of a complainant is recorded, the Magistrate will be able to find out if he is speaking the truth. The following extract from the book "A book of South India" authored by J.Chartres Molony, I.C.S. (Retd.) in 1926 will make interesting reading :

"The second case was within my immediate personal knowledge. I was sitting in the Court room of an old and experienced magistrate, when there entered a complainant accompanied by his lawyer. The complainant undoubtedly had been most savagely beaten by someone. He brought a written charge against Mr.X, the local European Police Officer. The Indian law provides that a complainant must be questioned orally as to the truth of a written complaint. The magistrate proceeded to put some very clear questions, which could not possibly have been misunderstood. The complainant was absolutely sure as to the identity of his assailant. The present day was Thursday, and the date of the assault was Tuesday. Day and hour were established with the utmost precision. At the close of the examination the magistrate addressed an abrupt question to the lawyer : "Have your read to-day's paper ?" "No, Sir", replied the lawyer. The magistrate silently handed across the paper, pointing with his finger to a particular column. The lawyer read; whispered to his client; both left the Court. The magistrate handed the paper to me. During the whole of Tuesday Mr.X had been in the witness-box of a Court situated a hundred miles distant ! The true facts of the case were ultimately revealed : the complainant had threatened to assault a European woman, and had been thrashed mercilessly by an unexpected European man. The charge had been brought against Mr.X in pursuance of a private, and totally different, grudge.

The charge has been made that Indian lawyers aid and abet the perjury of their clients. I should hesitate long before lending ear to such an accusation. I have known many Indian lawyers who were

the soul of honour and probity. But I sometimes think that the rank and file of the legal profession in India do not always realize that they are "Officers of the Court", and that their duty is to see that justice is done, rather than to act blindly on instructions, the truth of which they, as intelligent men, must gravely suspect."

27. In view of Section 343 IPC and in the light of the judgment of the Supreme Court in State of Goa Vs. Jose Maria Albert Vales @ Robert Vales [(2018)11 SCC 659], the trial shall be conducted as laid down in Chapter XIX A-CASES INSTITUTED ON A POLICE REPORT. The Assistant Public Prosecutor attached to the Court of the Judicial Magistrate No.II, Karaikal or the Judicial Magistrate No.II, Karaikal can requisition the services of a competent Advocate from the Legal Services Authority, for conducting this case. If the learned Magistrate adopts the latter course, the prescribed remuneration shall be paid to the Advocate so nominated by the Legal Services Authority. Since Mani Pillai has died, other legal heirs like Rajendran can be examined as witness in this case. It is left to the best judgment of the learned Assistant Public Prosecutor or the Advocate nominated by the Legal Services Authority as the case may be, to decide who all to be examined in this case. As laid down by the Supreme Court in Banti @ Guddu Vs. State of M.P. [(2004)1 SCC 414], the Prosecutor can interview the witnesses before including them in the memo of evidence. The local police shall assist the Court in serving the summons on the witnesses. On appearance of the accused, the trial Court shall furnish a copy of the complaint, list of documents and memo of evidence filed by the Prosecutor to them.

28. This Court is aware about the pendency of the suit in O.S.No.19 of 2015 (Old O.S.No.1 of 2012), wherein, there is a prayer to set aside the decree in O.S.No.52 of 2009, on the ground that the said decree had been obtained by fraud. The pendency of that suit cannot be a bar for the prosecution of the accused for the offence under Section 193, 199 and 209 IPC because, the finding of the criminal Court will not be binding on the civil Court and that apart, the parties may arrive at a compromise and settle the matter amongst themselves in O.S.No.19 of 2015 (Old O.S.No.1 of 2012), in which event, the offences under Section 193, 199 and 209 IPC, which fall in Chapter XI - OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE, will go unpunished. That is the exact reason why the Code contemplates giving of the complaint by the Court and the trial of the case as if it is on a police report. Matters concerning administration of justice cannot be left in the hands of individual litigants.

In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.16 of 2014 on the file of the Court of Judicial Magistrate No.II, Karaikal is quashed, with the above directions to be complied with by (i) The Deputy Registrar, Criminal Section, High Court, Madras, (ii) District Court, Karaikal, (iii) Sub Court, Karaikal and (iv) The Judicial Magistrate No.II, Karaikal. Connected Miscellaneous Petitions are closed. This Court also directs the petitioners herein to appear before the Judicial Magistrate No.II, Karaikal on 07.12.2020 at 10.30 a.m. and execute a bond under Section 88 Cr.P.C. for Rs.10,000/- with two sureties each to the satisfaction of the trial Court. If the petitioners do not appear, their presence may be secured by issuance of warrant to be executed by the local police.

It is made clear that the trial Court shall proceed with the case, without in any manner being influenced by what is stated above.

Post the matter on 11.12.2020 'for reporting compliance'.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gya

To

1.The District Judge
Karaikal

2.The Sub Judge
Karaikal

3.The Judicial Magistrate No.II
Karaikal

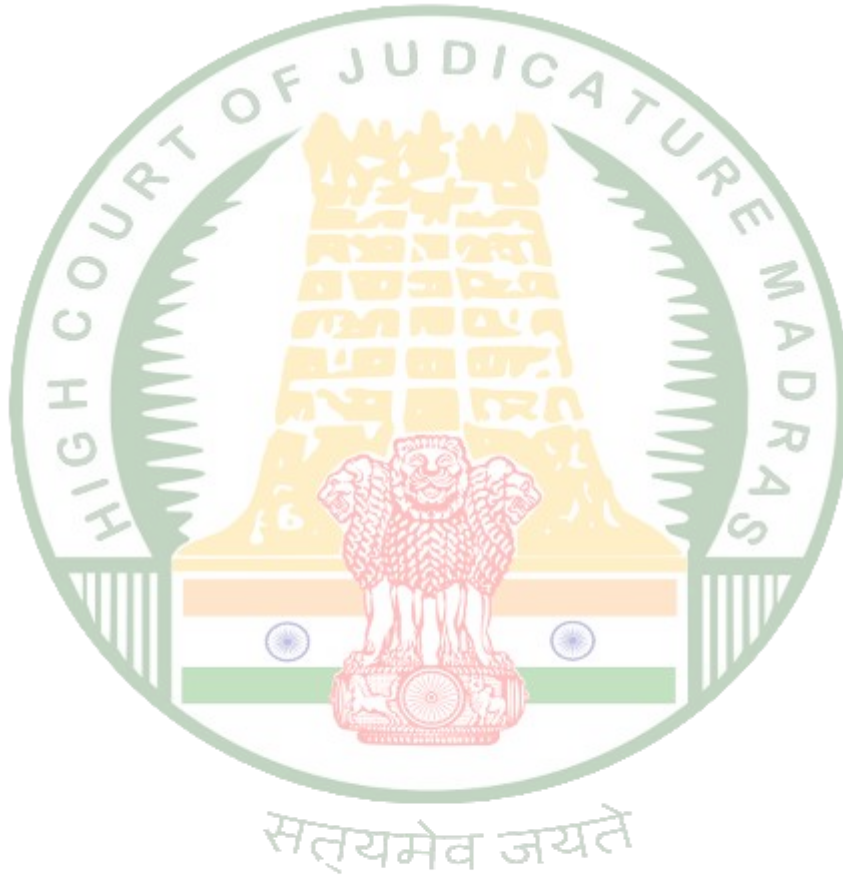
4.The Deputy Registrar
Criminal Section
High Court, Madras.
(2 copies)

5.The District Legal Services Authority
Karaikal.

6.The Chief Judicial Magistrate(For information)
Pondicherry.

CRL.O.P.No.21848 of 2014

SPD (CO)
CB (28/10/2020)



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