BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2020

Pronounced on : 17.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE **B.PUGALENDHI**

Crl.RC.(MD)No.35 of 2016

K.Venkateshwaran ... Petitioner

Vs.

1.S.Baskaran

2.B.Maragathamani

3.Palanichamy,
Branch Manager,
Indian Bank,
Kochadai Branch,
Madurai - 16.

4.The General Manager,
Indian Bank,
254 - 260, Avvai Shanmugam Salai,
Chennai - 600 014. ... Respondents

[Notice to respondents 1 & 2 is dispensed with, since summons have already been issued by the Court below.]

[R4 *suo-motu* impleaded vide order dated 31.07.2020]

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records in C.C.No.88 of 2015 dated 30.10.2015, on the file of the learned Judicial Magistrate No.I, Madurai and set aside the same, insofar as not taking cognizance as against the 3rd respondent and further direct the learned Judicial Magistrate No.I, Madurai, to take cognizance against the 3rd respondent and issue summons to him and to conduct trial in accordance with law.

For Petitioner : Mr.D.Sadiq Raja

For Respondents : Mr.M.Senthilkumar for R.3

Mr.B.Rajesh Saravanan for R.4

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O R D E R

This Criminal Revision Case is filed by the petitioner / complainant as against the order passed by the learned Judicial Magistrate No.I, Madurai, in C.C.No.88 of 2015, dated 30.10.2015, inasmuch as refusing to take cognizance as against the third respondent herein.

2. The case of the complainant, in brief, is as follows:

2.1. According to the complainant, he and his brother, Gopalakrishnan, were working at Chennai and their father, (late) Kalyanarama Iyer sold the ancestral property for a sum of Rs.40 lakh and deposited that amount with the help of Gopalakrishnan and the first respondent / first accused in the Indian Bank, Tallakulam Branch, Madurai in FD receipt Nos.6039643648, 6039643592, 6039643717 and 6039643808 as Rs.10 Lakh, each, on 02.06.2012, as Joint Account, in the names of Kalyanarama Iyer and his wife, Jeyalakshmi. The said Fixed Deposits got matured on 02.05.2015. The petitioner's father was 95 years old and his mother was 87 years old and since both the petitioner as well as his brother were residing away, the parents were depending upon the first respondent / first accused for certain personal needs.

2.2. The first respondent / first accused, taking advantage of the position, has advised the petitioner's father, Kalyaramana Iyer to transfer the accounts maintained in the Indian Bank, Tallakulam Branch to the Indian Bank, Kochadai Branch, where the third respondent / third accused was working as a Manager, stating that the Branch at Kochadai is near to his residence and that it would be convenient for him to collect the money on behalf of Kalayanarama Iyer. By representing so, he also made Kalayanarama Iyer and the petitioner's mother, Jeyalakshmi, to transfer their accounts to Kochadai Branch. Taking advantage of the immobility, the first accused has also retained the Fixed Deposit receipts with him. When the mother of the petitioner insisted for the same, he gave evasive answers and therefore, she informed her son / the petitioner about the conduct of the first accused and this petitioner, when he came to Madurai to see his parents, enquired with the third accused and found that the fixed deposits were foreclosed and the amount was also transferred to the account of the accused 1 & 2 and thereby, a sum of Rs.49,50,000/- has been swindled by the accused. The signature in the cheques would also disclose that all the accused conspired together and exploited a nonagenarian.

2.3. The petitioner / complainant filed a private complaint before the learned Judicial Magistrate No.I, Madurai, as against the respondents 1 to 3 that they have committed the offence under Sections 120(b), 406, 409, 420, 465, 467, 468 & 471 IPC. The learned Magistrate, though satisfied that a *prima facie* case is made out as against the respondents 1 & 2 / accused 1 & 2 and ordered to issue summons as against them, has declined to take cognizance as against the 3rd respondent / 3rd accused stating that no document is produced as against him. Aggrieved over the same, the petitioner has preferred the instant criminal revision case.

3. The learned Counsel appearing for the petitioner produced the original signature of (late) Kalayanarama Iyer in the Fixed Deposit receipts dated 02.06.2012 and by comparing the signatures

found in the cheques, drawn in favour of the accused 1 & 2 and on the requisition letters for foreclosure, demonstrated that even on a naked eye, a layman can find that the signatures found in the cheque as well as in the foreclosure applications are forged one. In this regard, the petitioner's mother, Jeyalakshmi, has made a complaint before the Crime Branch, Madurai, however, the Police has closed the complaint that there are no evidence to proceed further and therefore, the petitioner has lodged the private complaint.

4. The learned Counsel would further submit that the chain of events, viz., transferring the accounts from Indian Bank, Tallakulam Branch to Indian Bank, Kochadai Branch and within a short span, foreclosing the Fixed Deposit accounts and transferring huge amounts to some third parties' accounts itself would show that the third accused worked hand in glove with the other accused and he has passed the cheques, knowing very well that the signatures found in the instruments are forged. Therefore, the learned Counsel would contend that the learned Magistrate ought to have taken cognizance as against the third respondent / third accused also and prays for interference to this extent.

5. The learned Counsel appearing for the third respondent has filed a counter affidavit denying the allegations of conspiracy levelled against him and has narrated the operations of the Bank with regard to the issuance of cheque books, which, according to the Bank norms, cannot be left at the hands of third parties. The counter affidavit further narrates the procedure being followed in processing the instruments, ie., the Cheques or Fixed Deposit receipts were received by the clerical staff of the Bank, who will initially check and verify the instruments. If it is found correct, they will make an entry in the system and a 'Q' number will be generated and thereafter, the instrument will be forwarded to the Officer for passing. The practice of sending messages (SMS), whenever a transaction was made, to the customer's phone number from the Bank was also explained.

6. The learned Counsel appearing for the third respondent, relying upon the counter affidavit, further submitted that the Bank is situated in the first floor and since (late) Kalayanarama Iyer was an age old person, who could not climb the stairs, the third respondent personally came down and verified and only thereafter, passed the instruments, which were duly filled and signed. With regard to the deviations in the signatures, according to the third respondent, due to time lag, old age and health condition of the customer, normally, there may be some difference in the signatures. The learned Counsel further submitted that on 16.03.2015, the petitioner's mother, Jeyalakshmi, W/o.(late) Kalayanarama Iyer, made a complaint before the Zonal Office of the Bank, wherein, no allegations were made as against the officials of the Bank and only as an afterthought, the present complaint has been lodged roping-in the third respondent, who has done his duty.

7. On a perusal of the counter affidavit filed by the third respondent, it appears that the petitioner's father, (late) Kalyanarama Iyer, was a VIP customer for the third respondent, while he was working as the Manager. If a VIP customer's account is dealt with in such a manner, there cannot be any security for the common man, who deposits their money in the Bank. Therefore, this Court, by order dated 31.07.2020, *suo-motu*, impleaded the General Manager, Indian Bank, Chennai, as fourth respondent in this criminal revision case to ascertain the procedures that are in vogue in the banking system.

8. The General Manager, Indian Bank, Chennai / fourth respondent has also filed a counter affidavit along with a typedset of papers.

9. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

10. The case of the petitioner is that four Fixed Deposits were opened in the Indian Bank, Tallakulam Branch, Madurai in FD receipt Nos.6039643648, 6039643592, 6039643717 and 6039643808 as Rs.10 Lakh, each, on 02.06.2012, as Joint Account, in the petitioner's parents' name, ie., in the names of (late) Kalyanarama Iyer and his wife, Jeyalakshmi. The petitioner's father was a nonagenarian and his mother was a octogenarian and since both the petitioner as well as his brother were residing away, the parents were depending upon the first respondent / first accused, who happens to be a family friend of them, for certain personal needs. Taking advantage of the position, the first respondent / first accused advised the petitioner's father to transfer the accounts maintained in the Indian Bank, Tallakulam Branch to the Indian Bank, Kochadai Branch and within a short span of time, the fixed deposits were foreclosed and the amount was also transferred to the account of the accused 1 & 2 and thereby, a sum of Rs.49,50,000/- has been swindled.

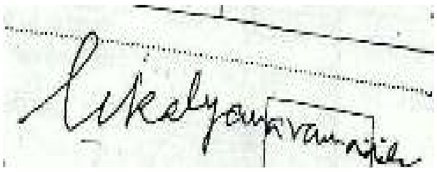
11. In this regard, the petitioner's mother has lodged a complaint before the Central Crime Branch, Madurai, however, the Sub-Inspector of Police, by proceedings dated 10.04.2015, has opined to close the complaint, since (late) Kalyanarama Iyer is no more to compare his signatures. This Court is not a position to appreciate the stand taken by the Sub-Inspector, for the reason that the admitted signatures of (late) Kalyanarama Iyer is very well available, which can be used for comparison with the disputed signatures. The investigation can also be carried out by verifying the CCTV footages as to whether (late) Kalyanarama Iyer has, in fact, visited the Bank, as claimed by the third respondent, at the time of foreclosure or at the time of depositing the cheques. Without doing so, the Sub-Inspector has opined to close the complaint, which, in the minds of this Court, is not proper.

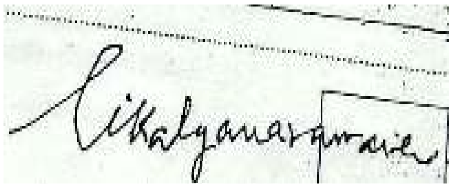
Aggrieved by the closure of the complaint, the complainant has moved a private complaint and the learned Magistrate has also rightly entertained the same.

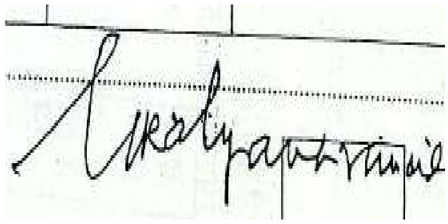
12. But, while entertaining the complaint, the learned Magistrate has took cognizance only as against the accused nos.1 & 2 / respondents 1 & 2 and left the third accused / third respondent stating that no material was produced as against him.

13. Section 73 of the Indian Evidence Act empowers the Court to compare any signature in any document with the original document. The fixed deposit receipts issued in the names of (late) Kalyanarama Iyer and his wife; the disputed cheques and the requisition letters for foreclosure alleged to be given by (late) Kalyanarama Iyer were placed before this Court, which contain the signatures of (late) Kalyanarama Iyer. For ready reference, the signatures, as found in the aforesaid documents, are extracted as under:

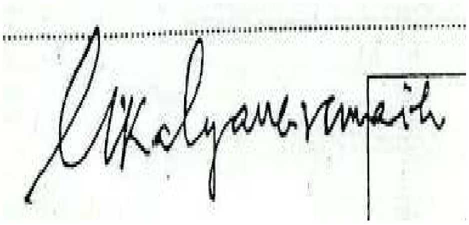
(Admitted) Signatures found in the Fixed Deposit Receipts:

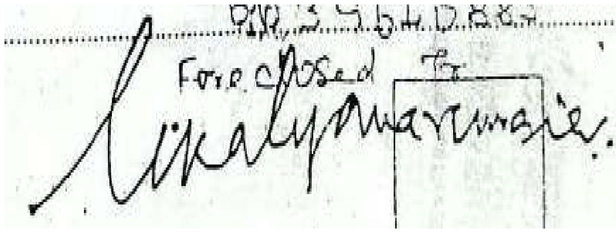






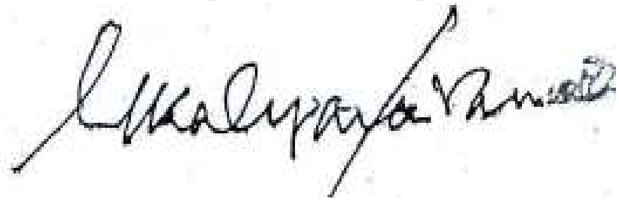
Dated 02.06.2012 Dated 02.06.2012 Dated 02.06.2012





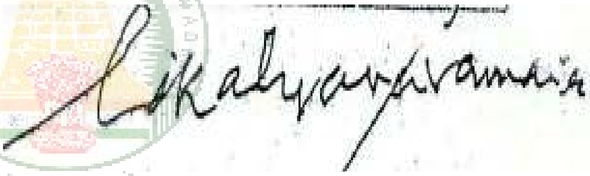
Dated 02.06.2012 Dated 13.06.2014

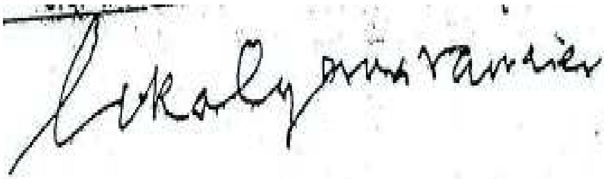
(Disputed) Signatures found in the Cheques alleged to be issued by (late) Kalyanarama Iyer:

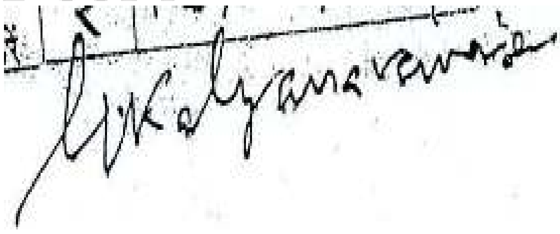


Dated 21.08.2014 Dated 21.08.2014

Dated 06.09.2014 Dated 04.10.2014





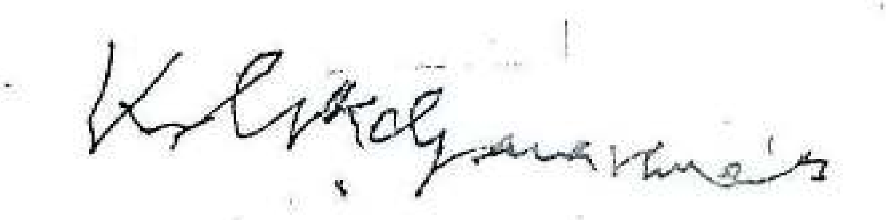


Dated 04.10.2014 Dated 03.12.2014

Dated 26.12.2014

(Disputed) Signatures found in the letters alleged to be issued by (late) Kalyanarama Iyer for foreclosing the Fixed Deposit accounts:

Dated 26.12.2014



Dated NIL

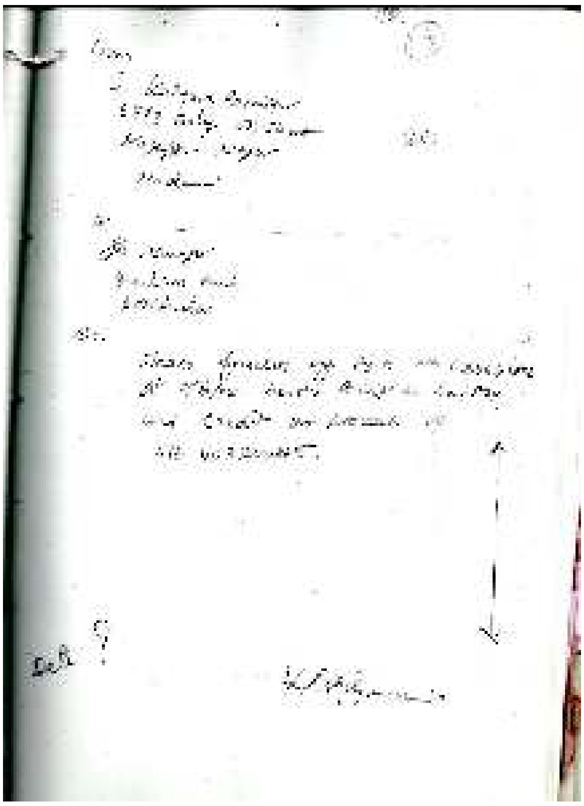
14. This Court, after a mere perusal of the above signatures, is, *prima facie*, of the view that the signatures vary drastically. As rightly contended by the learned Counsel for the petitioner, even a layman, with his naked eye, can opine that the signatures vary drastically.

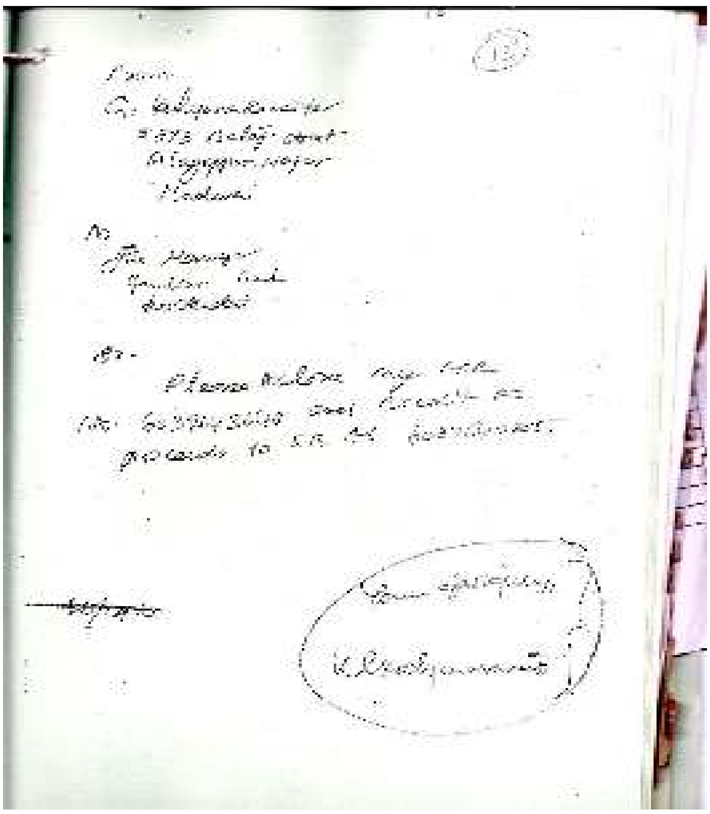
15. This Court is not satisfied with the reasonings offered by the Bank that this difference in signatures is due to old age,

time lag and health condition, for the reason that the signatures that were obtained even within very short duration also varies drastically. Of course, it is only a *prima facie* view of this Court and it is for the trial Court to give a finding in this regard, after following the due process of law.

16. It is the duty cast upon the Bank to verify the signature of the respective account holder and then to clear the instruments for encashment. In this case, *prima facie*, it is apparent and the variation of signatures in the cheques and in the requisition letter for foreclosure can easily be identified by a naked eye.

17. A foreclosure was made in this case, for four fixed deposit accounts, each Rs.10 Lakhs. It appears, without any verification from the Bank for foreclosing such huge fixed deposit amounts, the accounts were foreclosed. Though the signatures in the letters requesting for foreclosure and in the disputed cheques differed, it appears, there was no attempt from the Bank Manager to verify as to whether they have actually been issued by Kalyanarama Iyer. To be noted, in the requisition letters, the signatures were in the extreme right corner (bottom) leaving huge space between the contents, which also raises a doubt as to the veracity of the same, but, curiously, it does not raise any flag for the bank officials. For better appreciation, the photostat copies of the said letters, as enclosed in the typedset of papers, are reproduced as under:





18. Though the third respondent / Bank Manager claims that he personally verified with Kalyanarama Iyer, there is nothing on

record to substantiate the same, other than his oral pleading. Had there been any recording / endorsement or at least, the thumb impression of Kalyanarama Iyer, in addition to the signatures, the entire case would stand on a different footing, which, the 3rd respondent failed to do so.

19. Therefore, this Court is of the view that either the Bank officials colluded with the accused nos.1 & 2 or they exhibited lethargic attitude in verifying and passing the instruments, ie., dereliction of duty, which fact could see the light only upon the finalization of the process by the learned Judicial Magistrate, as against the third respondent / Bank Manager also. Therefore, this Court is of the view this criminal revision case deserves to be allowed.

20. When this Court posed a query as to the mechanism available, viz., nature of training imparted to the Bank officials for the purpose of verifying the signatures found in the instruments, etc., there is no proper response for the same and therefore, the fourth respondent / General Manager was *suo-motu* impleaded. The newly impleaded fourth respondent was asked to answer the following queries:

(i) how the system is functioning on the verification of signature of Account holders?

(ii) if there is any mistake, how the system can be upgraded in future, so that the mistake would not repeat?

(iii) in the event of such fraud taken place in the Bank, whether the Bank is going to take responsibility and is there any insurance available in the system of Banking to protect the interest of the Depositors? and

(iv) the proposed disciplinary action as against the erring officials.

21. The fourth respondent / General Manager has also filed a counter affidavit. But, instead of answering the queries raised by this Court, the affidavit filed by the fourth respondent speaks about some other issues.

22. The counter affidavit of the fourth respondent further reads that whenever dispute arises in lieu of difference in signatures of account holders, an expert opinion will be called for by referring the matter to forensic labs to ascertain the genuineness / legality / validity of the signatures. Since the complainant's mother has lodged a complaint with the Vigilance Cell of the Bank alleging forged signatures, the available admitted signatures of (late) Kalyanarama Iyer along with the disputed cheques and letters were sent to M/s.Truth Labs, Chennai, who, in turn, after examination, vide File No.TLC:QD:036/15, dated 01.06.2015, has opined that the disputed signatures were signed by the very same person, ie., (late) Kalyanarama Iyer.

23. Admittedly, the lab, viz., M/s.Truth Labs, Chennai, is a private lab and this Court fails to understand as to how a Nationalized Bank refers it's disputed documents to a private lab and places reliance upon the result of a private lab. The General Manager of the Bank has not even quoted the provisions of law, which enables them to refer their disputed cases to private labs. Such a practice needs to be deprecated and though it warrants serious observations, this Court refrains from observing any further, but, places on record its dissatisfaction over the manner in which the affidavit has been filed by the fourth respondent, who being the General Manager of a Nationalized Bank.

24. The concept of nationalization of Banks emerged in the year 1969 and the Government of India nationalized fourteen major commercial banks at that time, of which, the subject Bank, namely, Indian Bank, is one among them. The main object behind the nationalization of Banks is, apart from developing the society, to raise the public confidence in the system of banking. If such is the functioning of the Banks, definitely, the public would loose their confidence on the system of banking. This Court is constrained to observe so, at least, to correct the system, if there are any flaws, in future.

25. The Bank officials are not expected to verify the signatures like a Handwriting Expert. But, they are expected to verify the same with some technics, other than a normal citizen, for which, some training has to be imparted to them. Otherwise, the system would not function properly, because, the entire banking machinery runs mainly on the verification of signatures. The Bank should take responsibility in the event of fraud being taken place in their institution and there should be a mechanism of insurance facilities to protect the interest of their depositors.

26. Though this Court has asked the fourth respondent, being the General Manager, as to the aforesaid queries, no proper and direct response is forthcoming and the efforts taken by this Court by granting adjournments also ended in vein. It is for the authorities to take note of and come up with such mechanisms, viz., imparting periodical training, fixing responsibility not only on the customer but also on the officials, etc,. Since this Court exercises revisional jurisdiction under Sections 397 & 401 Cr.P.C., this Court refrains from issuing any directions in this regard, but, appeals the authorities to do the needful, in the interest of the public at large.

27. Insofar as the case of the petitioner is concerned, in view of the discussions supra, the order of the learned Judicial Magistrate No.1, Madurai, in not taking cognizance as against the 3rd respondent warrants interference. The learned Magistrate is directed to take cognizance and issue summons as against the 3rd respondent else and proceed further, in the manner known to law. It is made

clear that the findings of this Court in this proceedings is only a *prima facie* opinion and the trial Court is expected to appreciate the evidence, independently and proceed accordingly, uninfluenced by any of the findings of this Court.

28. In fine, this criminal revision case stands allowed. Pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Judicial Magistrate No.I,
Madurai.

2. The Chief Judicial Magistrate Madurai.

3.The Record Keeper / Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to:-

i) The Governor,
Reserve Bank of India,
Central Office Building,
Shahid Bhagat Sindh Marg,
Mumbai - 400 001.

ii) The Regional Director,
Fort Glacis, No.16, Rajaji Salai,
Chennai - 600 001.

iii) The Chairman cum Managing Director,
Indian Bank,
Corporate Office,
P.B.No.5555, 254-260, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-6011[F] dated 18/02/2021)

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-6200[F] dated 19/02/2021)

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17.02.2021

CN(19.05.2021) 11P 9C