



Crl.O.P.Nos.13487 and 11861 of 2016
and Crl.M.P.Nos.6092 and 6925 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.12.2022

Pronounced on : 12.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.13487 and 11861 of 2016
and Crl.M.P.Nos.6092 and 6925 of 2016

1.Latha Sharma

...Petitioner in
Crl.O.P.No.13487 of 2016

2.Mubeen Taj

...Petitioner in
Crl.O.P.No.11861 of 2016

Vs

1.State of Tamil Nadu Rep. By
Inspector of Police,
P-6 Kodungayur Police Station,
Chennai - 600 039.
(Cr.no.1092/2011).

...1st Respondent in
Crl.O.P.No.13487 of 2016

2.State Rep. By
The Assistant Commissioner of Police
MKB Nagar Range, Chennai – 600 039.
(Cr.No.1092 of 2011)

...1st Respondent in Crl.O.P.No.11861 of 2016



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and Crl.M.P.Nos.6092 and 6925 of 2016

3.Mr.B.A.Mahalingam

...Respondent in
both Crl.O.Ps

(R-2 impleaded as per order in Crl.M.P.Nos.9286 and 9288 of 2021 in Crl.O.P.Nos.11861 and 13487 of 2016 dated 14.09.2021)

PRAYER in Crl.O.P.No.13487 of 2016 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to S.C.No. 112 of 2016 pending on the file of the Mahila Court and quash the same insofar as the petitioner is concerned.

PRAYER in Crl.O.P.No.11861 of 2016 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the charge sheet in S.C.No.112 of 2016 pending on the file of Mahila Court at Chennai.

For Petitioners : Mr.T.Gowthaman
(in Crl.O.P.No.13487/2016)

Mr.S.Ashok Kumar
(in Crl.O.P.No.11861/2016)

For Respondents : Mr.S.Balaji,
Government Advocate (Crl. Side)
(for R1 in both petitions)

Mr.A.L.Nagarajan
for Mr.G.Ashokkumar



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(for R2 in both petitions)

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COMMON ORDER

The petitioners have filed the above quash petitions challenging the final report filed against them, which is now pending in S.C.No.112 of 2016 on the file of Mahila Court, Chennai.

2. For the sake of convenience, the petitioner in Crl.O.P.No.11861 of 2016 is referred to as first accused and the petitioner in Crl.O.P.No.13487 of 2016 is referred to as second accused.

3. The allegation in the final report is that the first accused was running an Educational Consultancy in the name of Blue Chip Services International Private Limited. The defacto complainant is the father of one Lavanya, the deceased. Lavanya approached the company run by the first accused and on the advice of the first accused, applied for UK Visa for admission into a college in London. The first accused instigated and compelled the deceased to apply for the college education. With great difficulty, the said Lavanya had paid Rs.3,60,000/-, to the first accused towards Visa processing charges besides several lakhs towards college fees in London. For the purposes of



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maintaining a minimum balance in the account, the first accused introduced the second accused who promised to deposit the minimum fund required to prove the financial worth of the candidate which is necessary for the purpose of getting Visa. The second accused accordingly deposited Rs.7,02,000/- in the account of the deceased Lavanya and her friend Kavitha who had also applied along with the deceased for admission in the College. Immediately after the Visa interview got over, the said second accused withdrew the cash deposited in the account of the deceased Lavanya on 28.04.2011. The United Kingdom Authorities found out that this illegal transaction done by the deceased Lavanya along with the accused herein and rejected the Visa of both the deceased Lavanaya and her friend Kavitha. Unable to bear the financial loss caused due to the rejection of Visa, the deceased Lavanya left a suicide note stating that she had spent huge amounts of money on the instigation of the first accused. Her father had to support four daughters. He had paid for the processing fee and the college education by borrowing money and he was put to hardship and that she was taking the extreme step of committing suicide. In the suicide note, the deceased Lavanya also mentioned that but for the instigation and wrong advice of the first accused,



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she would not have invested so much money which led to the rejection of her visa and also stated in the suicide note that it would be nice if the first accused returned the money that she had paid towards college fees and for United Kingdom processing fees. On the said allegations, the first accused was charged for the offence under Section 306 IPC for the abetment of suicide. The second accused was charged for the offence under Section 306 IPC and Section 420 IPC. The charge under Section 420 IPC was that she promised to help the deceased Lavanya with funds and immediately thereafter withdrew it after the interview which was found by United Kingdom Authorities and led to the rejection of the Visa.

4.The learned counsel for the first accused would submit that

a)In order to constitute the offence under Section 306 IPC, the Prosecution must be able to show as to how the accused abetted the commission of suicide. The suicide note does not specify as to how the accused abetted the commission of suicide. The deceased Lavanya out of depression committed suicide because of the family circumstances. The suicide note does not in any case allege that the acts of the accused



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constituted abetment.

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b)The first accused is in the field of Education Consultancy for several years and had advised the deceased Lavanya in her own interest. With good intention, she took into consideration the family circumstances of the deceased and the fact that after her studies in United Kingdom she could earn well which would benefit her family in future. What was done with good intention is sought to be now projected as an abetment of suicide. In order to obtain Visa, the applicant has to show that she had sufficient funds to take care of her expenses in United Kingdom. The deceased Lavanya was unable to procure funds to show her economic worth. She helped the deceased Lavanya by requesting the second accused to deposit money in the account of Lavanya. Since the interview was over they were under the Bonafide impression that the Visa would not be rejected. However, the authorities in the United Kingdom had found out that the deceased Lavanya had misrepresented in the application with regard to her financial status since the money was withdrawn immediately after the interview was over. A help rendered for the purpose of showing the financial worth cannot be said as abetment of suicide or cheating. In fact, after the United Kingdom Authorities



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had rejected the application, the deceased had applied for Coleman University, California for her higher studies in MBA. The alleged rejection took place on 23.08.2011. Thereafter, the deceased died on 09.10.2011. Even other wise there is no causa causans between the alleged act of the first accused and the commission of suicide by the deceased. It appears that the deceased had not obtained the US Visa also and therefore she was in a extreme frustrated mood. Hence her suicide cannot be attributed act of the first accused.

c)The learned counsel further submitted that the Hon'ble Supreme Court and this Court in several cases had held that for an offence under Section 306 IPC, the Prosecution has to establish that the acts of the accused amounted to instigation.

5.Mr.T.Gowthaman, learned counsel for the second accused would submit that her name is not found in the suicide note. She had helped the deceased in order to show her economic worth and immediately, after the interview was over she withdrew funds from the account. This was found out by the UK Authorities and she cannot be responsible for an act done to help



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the deceased Lavanya; though her act of attempting to mislead the UK

Authorities may not be a desirable act, she certainly did not cheat either the deceased Lavanya or her friend Kavitha; so far as the abetment of suicide was concerned, there is nothing in the suicide note to suggest that she was responsible for the acts committed by the deceased. Therefore, the learned counsel would submit that the charge sheet/final report is an abuse of process of law.

6. Mr.S.Balaji, learned Government Advocate (Crl.Side) would submit that the reading of the final report would show that an earlier investigation was conducted by the Inspector of Police, Kodungayur Police Station on the complaint given by the second respondent herein. The Inspector of Police had closed the FIR by filing a final report on 12.12.2013 treating the death of Lavanya as a case of suicide. Thereafter, the second respondent filed Crl.O.P.No.28941 of 2013 before this Court praying for re-investigation of the case since the Inspector of Police did not conduct the investigation in a fair manner. The inquest was not conducted by the learned Executive Magistrate and the Inspector of Police had violated the procedure prescribed under



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Section 174 Cr.P.C by conducting inquest by himself. The Inspector of Police had closed the case merely on the basis of the fact that the parties had settled the alleged dues to the second respondent. For the abovesaid reasons, this Court directed the first respondent herein to conduct further investigation and file a final report following the procedure prescribed under Chapter XII strictly. Thereafter, the respondent herein had conducted further investigation and filed the final report. The learned Government Advocate (Crl.Side) would further submit that reading of the suicide note of the deceased Lavanya would show that because of the acts committed by the accused, she committed suicide and the points raised by the petitioners can only be decided in a trial.

7. Mr.A.L.Nagarajan, learned counsel for the second respondent would submit that his daughter Lavanya committed suicide due to the acts of the accused and it was a great loss to the family. Her suicide note would clearly show that the petitioners have committed the offence under Section 306 IPC. The learned counsel further submitted that the matter has to be ultimately decided only in a trial and this Court may not entertain the quash petition under Section 482 Cr.P.C.



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8. This Court has gone through the allegations in the final report. This Court had castigated the earlier Investigating Officer for not conducting the Investigation as per the procedure prescribed under Chapter XII of the Cr.P.C. Unfortunately, the earlier Investigating Officer namely the Inspector of Police Kondungaiyur Police Station had not followed the procedure under Section 174 of Cr.P.C. The inquest report was conducted by the Inspector contrary to the said provision. The inquest ought to have been conducted by the Executive Magistrate, since admittedly the death was unnatural. The Inspector also was carried away by the fact that the first accused had repaid the money to the second respondent herein. Therefore, this Court directed further investigation by the first respondent and the further investigation has resulted in the Final Report. However, the question that remains is whether the final report discloses the offence under Sections 306 and 420 IPC. The Final Report has extracted the suicide note of the deceased Lavanya, which reads as follows.

“நான் வெளிநாடு போகனமனு நினைச்சேன் அப்பதான் *blue chip consultancy, Ragath plaza. Vadapalani* யை பத்தி கவிதா *Net – la search* பண்ணி சொனா, நானும் அவளும், அவங்க அப்பாவும் போய் விசாரிச்சோம். அங்க *Mubeentaj* என்ற *lady*



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எங்களுக்கு சென்னங்க UK – work with study in abroad) இது ஒரு நல்ல வாய்ப்பு நீங்க அங்க போன பல லட்சகணக்குல சம்பாதிக்கலாம். சில வருடத்தில் நீங்க நினைக்க முடியாத அளவுக்கு சம்பாதிச்சி உங்க வீட்டை பெரிய அளவுக்கு கொண்டு வரலாம். அதுக்கு நான் உங்களுக்கு help பண்ணன்று சென்னங்க.

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பணம் கட்ட செல்லியும், சிக்கிரம் கட்டுங்க அப்பதான் அங்க சீக்கரம் போக முடியும், வேலைய Readya இருக்கு இன்னும் என்ன பன்றீங்கனு நிறைகு தெல்லபணங்க, அவங்க பேசின வார்த்தைகள் ரெம்ப நம்பிக்கைய இருந்தது. அவங்கள நம்பி இத செய்ய தொடங்கினோம், நானும் என் friend Kavitha-vum First Spetember 2010 la 50,000 initial amount kudukka தொடங்கினோம். அதுக்கு அவங்க bill கூடுத்தாங்க அதுக்கு அப்பறம் counterpart Fees, tuition Fee, course Fees, Maintenance Amount, Visa Application amount, ticket இப்படி பல லட்சம் bill இல்லாம வாங்கிட்டாங்க.

XX

அந்த blue chip consultancy இந்த Amount ta எங்களுக்கு Refund panna நல்லா இருக்கும்.

XX

எங்க வேதனைக்கு காரணமான அவங்க நல்லாவே இருக்க மாட்டாங்க.”

The suicide note of the deceased Lavanya reveals that the first accused



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had made her believe that her future would be good if she had invested in a college education in United Kingdom and made her pay the college fee and the processing fee for the United Kingdom Visa. The first accused did not instruct her or advise her properly as regards the maintenance of minimum balance to show her financial worth which led the United Kingdom Authorities to reject the Visa. The suicide note further shows that her father had spent huge amounts to support four daughters. He had taken loan and was suffering to repay the loan and this is the cause for her committing suicide. Further, she would also state in the suicide note, it would be appropriate if the concerned persons refunded the amount to her. Because of the wrong advice of the first accused, their family has been put to extreme suffering. This Court is of the view that a person cannot be charged merely because there is a suicide note. It is well settled that the perception of the victim alone may not be relevant to determine whether the ingredients of an offence is made out.

9. The ingredients of the offence under Section 306 IPC has to be made out. Section 306 IPC reads as follows:



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“If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extended to ten years and shall also be liable to fine.”

It speaks about the abetment of the commission of suicide. Abetment is defined under Section 107 IPC, which reads as follows:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

(First) - Instigates any person to do that thing; or

(Secondly)—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of



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Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

A reading of the above provision would show that abetment can be made in three ways. The first way is to instigate any person to do that thing. The second way is engaging with one or more other person in any conspiracy for doing that thing. The third way is to intentionally aid by any act or illegal omission by doing of that thing. In a case of suicide very rarely we would come across a case where a person could engage in conspiracy and abetment is made out on the basis of engaging with another person in conspiracy. For instance, if two people jointly enter into a pact for committing suicide and in the process one person dies and the other person survives, then that could said to be falling under the part of Section 107 IPC. Again that would depend on facts and circumstances of the case. Similarly, intentional aiding is also a rare way of abetting an offence of commission of suicide which probably was



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used while prosecuting persons who had aided the unfortunate widow in the commission of Sati, which is since abolished. Therefore, intentional aiding also is a rare form of abetting a commission of suicide. What is commonly charged in a case of abetment of suicide is under the first clause mentioned in Section 107 IPC, which is instigating any person to do that thing. In normal circumstances, it would again be impossible for a person to directly instigate another person to commit suicide. The Hon'ble Supreme Court had held in several cases that instigation can be inferred if certain conditions are satisfied. Instigation has not been defined in the Indian Penal Code. In the case of **Ramesh Kumar v. State of Chhattisgarh**, reported in (2001) 9 SCC 618, the Hon'ble Supreme Court had held as under:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no



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other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

Following the same, the Hon'ble Supreme Court in the case of **Pawan Kumar v. State of H.P.**, reported in **(2017) 7 SCC 780** had held as under:

"36. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

37. The word "urge forward" means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood



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as “abetment”.

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.....43 . Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life."

Thus, from the above observations, the following principles emerge for appreciating “instigation” in the context of an offence under Section 306 IPC:

(i) To satisfy the requirement of instigation, the act of the accused must be such that it must necessarily and specifically be suggestive of the consequence. In other words, if the accused by his act or omission or by a continuous course of conduct created such circumstances that the deceased was left with no option except to commit suicide, then instigation can be inferred.

(ii) Instigation means to goad, urge forward, provoke, incite or



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encourage to do a thing.

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(iii)The allegation against the accused that his acts led to the commission of suicide by the deceased must be a proximate in the time of occurrence and had led the deceased to commit suicide.

(iv)If it transpires to the Court that the victim who committed suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged, such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, then instigation cannot be inferred.

10. Applying the above principles to the facts of the instant case, this Court finds in the instant case that the act of commission of suicide was not proximate to the alleged facts, which is said to have abetted the commission of suicide by the accused. That apart, the conduct of the accused on the entire reading of the charge sheet would not suggest that the conduct was such that the deceased had no other option except to commit suicide and therefore, we



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cannot infer instigation by the accused. In the present case, this Court finds that the allegations on the suicide note does not *prima facie* disclose the offence of Section 306 IPC. No prudent person would come to the conclusion that the allegations even if accepted to be true would constitute an offence of abetment of suicide punishable under Section 306 IPC. That apart, the causa causans, (i.e.) the immediate cause or proximate cause of the commission of the offence has to be seen. The Visa application was rejected in August 2011 and thereafter the records would show that the deceased had applied for US Visa and after the rejection unfortunately, committed suicide. This is certainly an unfortunate incident, but a prosecution for an offence under Section 306 IPC has to satisfy certain essential ingredients and it cannot be carried away by the unfortunate incident of suicide by the victim. The prosecution in a case under Section 306 IPC ought to show the intention of the accused to abet the offence of suicide. Mens rea to commit any other acts which led the deceased to commit suicide cannot constitute the offence under Section 306 IPC. Therefore, I am of the view that the offence under Section 306 IPC is not made out.



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11. The Hon'ble Supreme Court in a recent judgment in the case of ***Mahendra K.C. Vs. State of Karnataka and another*** reported in (2022) 2 SCC 129 had quoted with approval the observations of the three Judge Bench in the case of ***Ramesh Kumar Vs. State of Chhattisgarh*** reported in (2001) 9 SCC 618 (cited supra). The Hon'ble Supreme Court on the facts of the case had observed that the High Court had quashed the FIR by travelling beyond the parameters for exercise of jurisdiction under Section 482 CrPC. In that context, the Hon'ble Supreme Court had observed as follows:

"27. While adjudicating on an application under Section 482 CrPC, the High Court in the present case travelled far away from the parameters for the exercise of the jurisdiction. Essentially, the task before the High Court was to determine whether the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety did or did not prima facie constitute an offence or make out a case against the accused."

However, as stated earlier, the facts in this case are different and no *prima facie* has been made out.

12. Further, the Hon'ble Supreme Court in a judgment in the case of



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Shamnsaheb M. Multtani v. State of Karnataka, reported in ***(2001) 2 SCC***

577 had observed as follows:

“29. At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence.”

The above observations of the Hon'ble Supreme Court would show that this provision was practically of no use or a dead letter in the statute book till the introduction of Section 113A of the Evidence Act. Under Section 113A, a presumption offence can be made in the case of suicide committed by the wife within seven years of her marriage. From 1983, after the amendment it became a marriage related offence. As observed by the Hon'ble Apex Court till then it was of no use. The said provision got revived in 1983 and became a marriage related offence. Therefore the very fact that it was of no use till 1983 would show that Section 306 cannot be instituted in a routine manner,



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unless it is a case of wife committing suicide within seven years of marriage.

It is not ordinarily possible to abet suicide otherwise. In the facts of the instant case, the offence of Section 306 IPC has not been made out.

13. As regards the offence under Section 420 IPC as against the second accused, we see that the allegation is that the second accused promised to help the deceased by depositing money in her account to show her financial worth and after the interview, she withdrew that money by using certain blank cheques obtained from the deceased Lavanya. The allegation in my view has been made without understanding the fundamental Principles of Criminal Law besides misunderstanding the ingredients of the offence of cheating. In any offence against property including cheating, the essential ingredients of the offence is dishonestly or fraudulently which is defined under Section 24 and 25 of IPC. In this case, it is the money of the accused that was deposited into the account of the deceased Lavanya and it is farfetched to say that act constituted an offence of cheating. However, we may note that this conduct of the accused as well the deceased is not a desirable conduct. Both the deceased and the accused have attempted to mislead the UK Authorities. It is not as if



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the deceased was not aware of this transaction. It is an illegal contract. In this case, at best it is a breach of the said illegal contract. That apart, there is no wrongful gain to the accused. Therefore, the offence under Section 420 IPC is not made out.

14. For all the above reasons, the impugned charge sheet in S.C.No.112 of 2016 is liable to be quashed as against both the accused/petitioners. Accordingly, the Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

12.12.2022

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
dk/Lm



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To
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- 1.The Inspector of Police,
P-6 Kodungayur Police Station,
Chennai - 600 039.
- 2.The Assistant Commissioner of Police,
MKB Nagar Range, Chennai – 600 039.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai – 104.



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dk/Lm

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