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CRL.A.Nos.109 & 282 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2022

Pronounced on : 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.A.Nos.109 & 282 of 2020
and Crl.M.P.No.2108 of 2020

CRL.A.Nos.109 of 2020;

K.Annadurai

... Appellant

Vs.

1.The State Rep. by
The Deputy Superintendent of Police,
CBCID, OCU, Trichy,
CBCID Head Quarters,
Chennai.
(Crime No.1 of 2013)

2.K.Bharathi

... Respondents

[R2 impleaded vide order in
Crl.M.P.No.3063 of 2020 in
Crl.A.No.109 of 2020 dated
09.03.2020.]

Prayer: The Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the conviction imposed in judgment dated 28.01.2020 made in Spl.C.C.No.230 of 2014 on the file of the learned Principal Sessions Judge/Special Judge Under SC & ST (Prevention of Atrocities) Act, Chennai, by allowing this criminal appeal.



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CRL.A.Nos.109 & 282 of 2020

For Appellant : Mr.N.Manoharan

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : Mr.S.Ananthanarayana Senior Counsel
for Mr.S.M.Nandhidevan

CRL.A.Nos.282 of 2020;

K.Bharathi

... Appellant

Vs.

1.The State Rep. by
The Deputy Superintendent of Police,
CBCID, OCU, Trichy,
CBCID Head Quarters,
Chennai.
(Crime No.1 of 2013)

2.K.Annadurai

... Respondents

Prayer: The Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the order dated 28.01.2020 in Special S.C.No.230 of 2014 passed by the Special Principal Sessions Court, Chennai, in so far as it acquitted the accused under Section 3(1)(xii) of SC & ST (Prevention of Atrocities) Act, 1989 and u/s 249(b) and 506(ii) IPC.

For Appellant : Mr.S.Ananthanarayana, Senior Counsel

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)



CRL.A.Nos.109 & 282 of 2020

For R2 : Mr.N.Manoharan

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COMMON ORDER

The Criminal Appeal is directed as against the judgment passed in Spl.S.C.No.230 of 2014 dated 28.01.2020 on the file of the Principal Sessions Judge/Special Judge Under SC and ST (Prevention of Atrocities) Act, Chennai, thereby convicted the appellant for the offence under Sections 417 IPC and Section 4 of Dowry Prohibition Act.

2. The Criminal Appeal is directed as against the judgment passed in Spl.S.C.No.230 of 2014 dated 28.01.2020 on the file of the Principal Sessions Judge/Special Judge Under SC and ST (Prevention of Atrocities) Act, Chennai, thereby acquitted the second respondent for the offence under Sections 294(b) and 506(ii) IPC and Section 3(1)(xii) of SC/ST Act.

3. The case of the prosecution is that the victim fell in love with the accused namely the second respondent herein. In the year 2008, the accused had taken the victim to Palani Murugan Temple and tied Thali at Valli Sunai in the presence of four witnesses. Thereafter, they both lived together as husband and wife at Nariyankadu Police Quarters and Otteri Police Quarters. The



accused also assured her that he will marry her in the presence of all the family members and relatives after sometime. When the victim demanded him to marry her as he promised, the accused demanded 150 sovereigns of jewels and cash of Rs.10 lakhs. He was working as Sub-Inspector of Police, and he also said that the victim belongs to SC community therefore, he could not marry her and could not take her to his house. He also threatened her with dire consequences that he would pour acid on her face. He also abused her in filthy language and thereby cheated the victim by refusing to marry her. Hence the complaint.

4. On receipt of the complaint, the respondent registered FIR in Crime No.1 of 2013 for the offence under Sections 294(b), 417 and 506(ii) IPC and Section 4 of Dowry Prohibition Act r/w Section 3(1)(xii) of SC/ST Act. After completion of investigation the respondent filed final report and the same has been taken cognizance by the trial Court in Spl.S.C.No.230 of 2014.

5. On the side of the prosecution PWs1 to 24 were examined and Exs.P1 to 14 were marked and M.Os.1 to 4 were also produced and on the side of the appellant no one was examined and no document was marked.



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6. On perusal of oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 417 IPC and Section 4 of Dowry Prohibition Act and sentenced him to undergo one year simple imprisonment for the offence under Section 417 IPC and two years simple imprisonment and to pay fine of Rs.10,000/- in default to undergo three months simple imprisonment for the offence under Section 4 of Dowry Prohibition Act. Aggrieved by the same the present appeal.

7. The learned counsel for the appellant would submit that no offence is made out as against the appellant since the victim consented for all activities and she knows the consequences of physical relationship. Even according to the case of the prosecution they lived together as husband and wife for the past several years. Therefore, there is no question of false promise to marry her and having physical relationship. The victim is also working as a police constable and as such she knows about the seriousness of the issues. She projected her case that on the pretext of marriage which took place in the year 2008 at Palani, they lived together as husband and wife whereas the prosecution failed to even state the date of marriage except the place of marriage. The trial Court convicted the appellant on the strength of the secondary evidence. The



prosecution had purposely introduced a DVD containing 53 audio files which were fabricated and produced after conclusion of trial. The said DVD was not given to the appellant as contemplated under Section 207 of Cr.P.C that too without complying the provision under Section 65(B) of the Evidence Act. In order to prove the offence under Section 4 of Dowry Prohibition Act, the prosecution did not even produce any material evidence and only on the oral testimony, the appellant was convicted for the offence under Section 4 of Dowry Prohibition Act. No conviction can be imposed on the basis of photographs, which are not documents. However, even then they were not marked as material objects. M.Os.2 to 4 are liable to be rejected as inadmissible for want of a valid certificate under Section 65(B) of Indian Evidence Act. The prosecution also failed to produce any medical records to prove the disputed physical relationship between the victim and the appellant.

8. In support of his contention, he relied upon the following judgments;

1. 2019 (18) SCC 191 : (*Dr.Dhruvaram Murlidhar Sonar V. State of Maharashtra*)
2. 2019 (9) SCC 608 : (*Pramod Suryabhan Pawar V. State of Maharashtra & Another*)
3. 3.2016 (4) SCC 140 : (*Tilak Raj V. State of Himachar Pradesh*)
4. 2013 (7) SCC 675 : (*Deepak Gulati V. State of Haryana*)



5. 2003 (4) SCC 46 : (*Uday V. State of Karnataka*)
6. *Manu/TN/3053/2022=2022 (1) LW CRI 716 : (S.Senthilkumar V. State)*
7. *Manu/TN/4021/2021 : (Ramesh Vs. State)*
8. *Manu/TN/0920/2014 : (Kannan V. State)*
9. 2017 (3) MWN CRI 477 : (*G.Arun @ Arunkumar V. State*)

9. Mr.S.Ananthanarayana, the learned Senior Counsel appearing for the appellant submitted that in order to bring the charges to home, the prosecution had examined PWs1 to 24. The mother of the victim was examined as PW1, she categorically deposed that the accused demanded 150 sovereigns of jewels and cash of Rs.10 lakhs to marry the victim. When the victim demanded to marry her, the accused threatened her with dire consequences and also abused her by using her caste name. He also strangled her and threatened with dire consequences. The sister of the victim was examined as PW2, she also corroborated with the evidence of PW1. PWs4, 8 and 11 also supported the prosecution to prove the charges under Sections 294(b) and 506(ii) IPC and Section 3(1)(xii) of SC/ST Act. Even then the trial Court, without considering their deposition, acquitted the accused.

10. He further submitted that there was clinching evidence to attract the offence under Section 417 IPC. The accused had an intention to cheat the victim by inducing her to have physical relationship. When she insisted for



their marriage to have physical relationship, he had taken her to Palani temple to undergo a secret marriage. Thereafter, under the guise of marriage, constantly he had sexual relationship with the victim. In fact, they lived together as husband and wife therefore, after the secret marriage, the accused had exploited the victim and repeatedly had physical relationship. Thereafter, he avoided the victim and demanded huge dowry in order to refuse to marry her. Therefore, the trial Court rightly convicted the accused for the offence under Section 417 IPC and Section 4 of Dowry Prohibition Act.

11. Per contra, the learned Government Advocate (Crl. Side) for the first respondent submitted that the evidence of prosecutrix is trustworthy and reliable one. Her evidence is fatal to convict the accused since on the pretext of marriage he had physical relationship and they lived together as husband and wife and thereafter refused to get marry her. He also demanded huge dowry by abusing and using her caste name. Therefore, the conviction and sentence imposed by the trial Court does not warrant any interference by this Court.

12. Heard, the learned counsel on either side and perused the materials available on record.

13. The brief facts of the prosecution case is that the victim and the



accused are police personnels, both fell in love. The accused induced her to have sexual intercourse on the pretext of marriage. When the victim insisted for her marriage, the accused had taken her to Palani Temple and got married in the presence of four witnesses. Thereafter, they lived together as husband and wife and had repeated physical relationship. He also assured that he will marry her in the presence of his family members and his relatives. When the victim insisted to marry her in the manner known to law in the presence of their family members and relatives, the accused refused to marry her. He also threatened her with dire consequences and abused her by using her caste name and in order to avoid her he demanded huge dowry and refused to marry the victim by showing her caste.

14. The learned counsel for the appellant vehemently contended that when the prosecutrix consented for physical relationship for the past several years and when they had lived together as husband and wife, there is no question of cheating to attract the offence under Section 417 IPC since she knows the consequences of physical relationship and she knows very well that she belongs to SC/ST community and as such there is absolutely no possibility of getting marriage with the appellant. After knowing fully well about these facts she had consented to have physical relationship with the appellant.



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15. He relied upon the judgment reported in **(2019) 18 SCC 191** in the case of ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra***, wherein the Hon'ble Supreme Court of India held that in the case of rape that the accused is already a married man and the victim is a widow. She very well knows that the accused is already married person and fell in love with the accused and started residing together. They were in a relationship with each other for quite some time and enjoyed each other's company. Thereafter, lodged complaint that the accused married some other woman and refused to get marry the victim. It is not her case that she was forcibly raped by the accused. Therefore, there is tacit consent given by her was not the result of a misconception created in her mind. Therefore, there is no prima facie to attract the offences under Section 376 IPC.

16. He also cited the judgment reported in **2019 (9) SCC 608** in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Another***, wherein the Hon'ble Supreme Court of India held that the consent of a woman with respect to Section 375 IPC must involve an active and reasoned deliberation towards the proposed act. To establish whether the consent was vitiated by a misconception of fact arising out of a promise to marry, two



propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

17. He also relied upon the judgment reported in ***Manu/TN/3053/2022*** = ***2022 (1) LW CRI 716*** in the case of ***S.Senthilkumar Vs. State***, the relevant portion of the abovesaid judgment is extracted hereunder;

“ 7. A proof of an allegation treating what fundamentally is an apparent act of consensual physical relationship into rape has always been bristled with certain difficulties. A consensual intercourse between an adult male and a female, not yet spouses, unaffected by any impairment to their power of discernment or discretion, cannot constitute rape within the meaning of Sec.376 IPC. It , however, may amount to one, if the consensus of the woman to the sexual act is procured by an inducement of a promise of the man to marry her. This misrepresentation to marry, when acted upon, may blunt her ability for discernment and blur her vision to the consequences of a pre-marital sex. A voluntarily act of sexual adventure may turn into an offence in law



only when it is accompanied by the facts that are necessary to constitute an offence under Sec.417 IPC. In other words, what may well amount to no-offence under Sec.376 IPC will become an offence only if there is proof of the ingredients of Sec.417 IPC giving the sexual act a colour of consensual act, but dehors the latter, the former will continue to be a permissible act in law. Therefore, in fitness of things charge must be framed only for offences under Sec.417 r/w Sec.376 IPC and hence framing independent charges for both the offences is inappropriate.”

Thus, it is clear that a mere proof of alleged sexual act between a man and a woman will be of no consequence to the Court, if it is not proved beyond all reasonable doubts that the woman's consent for it is induced by a representation of the accused person to marry her.

18. He also relied upon the judgment reported in **2017 (3) MWN CRI 477** in the case of **G.Arun @ Arunkumar Vs. State** and the relevant portion of the above said judgment is extracted hereunder;

“7. The learned counsel for the petitioner has also relied upon an unreported Judgment of this Court passed in the case of Shammenul Islam and



Others V. The Inspector of Police, Special Investigation Team, CBCID, B-6, Kattur Police Station, Coimbatore, Crl.A.No.231 of 2004 dated 8.3.2011, to substantiate that the CD cannot be treated as a Material Object. The relevant portion of the said order reads as follows:

“4. The narration of the evidence adduced by the prosecution through Pws.1 to 17 need not be resorted to in this judgment in view of the following facts.

Admittedly, the entire case rests upon certain monthly journals said to have been published by these Accused containing certain materials which amount to offences as stated above. But, unfortunately, the said monthly journals which are said to have been collected during the course of investigation have not been proved properly as required under law as documents.

5. The learned Public Prosecutor would submit that though the documents were duly collected by the Investigating Officer and produced before the Court, the Trial Court exhibited the same as Material Objects instead of exhibiting the same as documents. The learned Public Prosecutor would further submit that there is a vast difference between a document and a Material Object.

6. Let me now analyse the law on the subject. What is document has been defined in Section 3 of the Evidence Act as follows:



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CRL.A.Nos.109 & 282 of 2020

"Document" Document means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter."

7. The term evidence is also defined in the same section which reads as follows:

"Evidence : Evidence means and includes-

(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry. Such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court. Such documents are called documentary evidence."

8. Section 5 of the Evidence Act states that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are declared to be relevant under the Act and of no others. A conjoint reading of the above provisions would make it clear that a document as defined in the Evidence Act is evidence and the same is admissible under Section 5 of the Evidence Act, provided, it relates to either a fact in issue or a relevant fact. Of course, the documents in question viz. the journals are relating to the fact in issue and therefore, they are admissible. But in this case, the said documents have not been exhibited as documents. In other words, they have not been proved as documents. It is needless to point out that



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CRL.A.Nos.109 & 282 of 2020

under Section 61 of the Evidence Act, the contents of the documents may be proved either by primary or secondary evidence. Section 62 of the Evidence Act defines Primary Evidence as follows:

"62. Primary Evidence : Primary Evidence means the document itself produced for the inspection of the Court."

9. Secondary evidence pertaining to a document can be let in only on satisfying the conditions enumerated in Section 65 of the Evidence Act. Section 64 of the Evidence Act mandates that documents must be proved by primary evidence except in the cases mentioned in Section 65 of the Evidence Act. There are certain other provisions in the Evidence Act which deal with the proof of signatures or the execution of the documents. Chapter VI of the Evidence Act relates to exclusion of evidence by documentary evidence. Under Sections 101 and 102 of the Evidence Act, the burden to prove the existence of the documents in question in this case heavily falls only upon the prosecution. The said burden has not been properly discharged by the prosecution. If the documents in question had been exhibited as documents in the legal sense as defined in Section 2 of the Evidence Act, certainly by mere production, the contents of the said documents will stand proved as per Section 63 of the Evidence Act. But in this case, the prosecution instead of proving the contents of the documents has produced the said documents as material objects. They are sought to be used by the prosecution only as material objects.



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CRL.A.Nos.109 & 282 of 2020

Then, undoubtedly, the contents of the documents will not stand proved and therefore, the court cannot rely on the contents of the said document for any purpose. Therefore, in my considered opinion, since the documents in question which allegedly make out the offence have not been properly proved as required under law, the conviction imposed on the appellants cannot be sustained."

8. In view of 65(b) of the Section of Indian Evidence Act read along with the above said two judgments, I am of the view of that the copies of the Compact Disc sought for by the petitioner cannot be deemed to be a material object and that the petitioner is entitled for a copy of the Compact Disc under Section 207 of Cr.P.C. "

19. This Court, in the order dated 08.03.2011 in CrI.A.No.231 of 2004, held that the copies of the Compact Disc cannot be treated to be a material object as per Section 65(b) of Indian Evidence Act.

20. The victim was examined as PW14, when she got gold medal in the shooting event held at Chengalpet, the accused wished her thereby he acquainted with the victim. Thereafter, they fell in love and he proposed to marry her for which she replied him that come and propose to her parents. At that juncture, PW2, the sister of the victim delivered a baby and the same was



informed to the accused. Taking that opportunity, he visited PW2 in hospital and introduced himself and she also expressed her willingness to marry the victim to her mother and her relatives. The victim's mother was examined as PW1 and she replied to him stating that come with parents. She also informed the accused to approach her maternal aunt and uncle at Neyveli. The accused also met them and expressed his willingness to marry her.

21. While being so, they roamed everywhere and the victim insisted for arranging her marriage. On 16.08.2008, the accused had taken her to Palani Temple, promised that after his brothers and sisters marriage he will marry her properly and register the same. He also induced her that it is a legal one under the Special Marriage Act and even exchange of garlands is sufficient. Therefore, she agreed for the same. Accordingly, in the presence of PWs3 and 6 and one Loganathan, he tied thali at Valli Sunai Temple. Thereafter, he acted as a husband and had physical relationship with her. They also lived together as husband and wife and when the victim's mother asked about their marriage, he stated that after marriage of his brother and sister he will marry her. In the year 2012, when the victim insisted for proper marriage, he refused to marry her for the reason that she belongs to SC/ST community as such his family members would not admit her into their house. He also demanded 150



sovereigns of jewels and Rs.10 lakhs to marry her. In order to avoid her, he insisted her for huge dowry. He also abused her in filthy language and by using her community name and threatened with dire consequences. Hence the complaint, which was marked as Ex.P2. It is also corroborated by PW2 and reiterated the same.

22. One of the eye witness was examined as PW3, who is running a fancy store at Palani Temple, he knows the victim. In the year 2005 the victim along with some other women constables came for police Bandobast duty in Thaipooosam Festival. In fact, the victim also attended his marriage at Palakat. Therefore, in the year 2008, the victim along with the accused came to his shop and informed that she is going to marry the accused and purchased all the things to marry the accused. In fact, he also asked about registration of their marriage and he assured that he will marry later in the presence of his family members. Another witness to the marriage was examined as PW6, he also reiterated the evidence of PW3 and in his shop the accused purchased Thali. He deposed that the marriage between the accused and the victim was held at Valli Sunai Temple. Thus, the prosecution proved that the victim got married with the accused in the month of February 2008 at Palani Valli Sunai Temple. The photograph, which were taken during their marriage was also marked as Ex.P14. However, the accused had chosen to deny the relationship with the



victim in total.

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23. In support of the case of the prosecution, the victim also produced 53 audio files in a form of DVD which was marked as M.O.2. The entire conversation between the accused and the victim revealed that they intentionally fell in love and after tied Thali they had physical relationship and lived together as husband and wife. When the victim insisted to marry her in front of their family members, the accused refused to marry her and demanded huge dowry and also abused her by using her caste name. Even assuming that the audio clips were not in proper form, it can be used for corroborating the evidence of PWs1, 2, 3, 6, 7 and 14. That apart, on production of Mobile phone and memory card by the victim, the respondent did not take any steps to conduct voice test. Subsequently, the trial Court allowed the prosecution to adduce further evidence and sent the audio recordings for voice test. Aggrieved by the same he preferred an appeal before this Court and the same was dismissed.

24. He also approached the Hon'ble Supreme Court of India by way of special petition wherein, the Hon'ble Supreme Court of India held that the conversation was prior to registration of FIR. In all fairness, the Investigating



Officer should have seized the mobile phone of the victim and should have obtained the voice samples of the accused and the victim and sent them to an expert opinion. This having not been done, it does not mean that the Court should throw its hands up in despair and plead helplessness. After all, a criminal trial is a voyage to unearth the truth and to bring the guilty to book. As stated by the Hon'ble Supreme Court of India, the audio clippings can be very well used for corroboration of other evidences on record.

25. On perusal of conversation between the victim and the accused above would go to show the relationship, sexual contact and visiting the house of the victim etc. Further, the accused knows very well about the victim and her background and had chosen to develop relationship by performing a secret marriage. They had knowledge of his family members as well as the family members of the victim and on such pretext he had physical relationship with her without any secrecy made the victim to believe that he will marry her in proper manner after the marriage of his brother and sister. Thereafter, when the victim insisted for her marriage, he refused to marry her and thereby cheated the victim. Now, he denied the entire relationship between the victim and the accused. Therefore, all the judgments cited by the learned counsel for the appellant are not helpful in the case on hand.



26. Further, the victim initially did not give her consent for physical relationship. However, the accused had taken her to Palani Temple and got secretly married in the presence of witnesses. Thereafter, she consented for physical relationship. He also promised to marry her in a proper manner in front of all elders. However, the accused refused to marry her and also demanded huge dowry to marry her. Therefore, from the very inception the promise given to marry the victim in a proper manner was a false promise. Hence, the Court below rightly convicted the accused for the offence under Section 417 IPC and Section 4 of Dowry Prohibition Act. This Court finds no infirmity or illegality in the judgment passed by the Court below. However, considering the age of the petitioner, this Court is inclined to reduce the sentence alone for both the offences.

27. Accordingly, the conviction imposed in judgment dated 28.01.2020, passed in Spl.C.C.No.230 of 2014 on the file of the learned Principal Sessions Judge/Special Judge under SC & ST (Prevention of Atrocities) Act, Chennai, is hereby confirmed and the sentence alone reduced from one year to nine months simple imprisonment for the offence under Section 417 IPC and also reduced from two years to nine months simple imprisonment for the offence under Section 4 of Dowry Prohibition Act. The trial Court is directed to take



CRL.A.Nos.109 & 282 of 2020

steps to secure the appellant for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant, if any, shall be given set off, as required under Section 428 Cr.P.C.

28. In so far as, the Criminal Appeal in Crl.A.No.282 of 2020 is concerned, the prosecution failed to prove the charges under Sections 294(b) and 506(ii) IPC and Section 3(1)(xii) of SC & ST (Prevention of Atrocities) Act, 1989. Hence, the Court below rightly acquitted the appellant/accused for the above said offences and this Court finds no infirmity or illegality in the judgment passed by the Court below.

29. In the result, the Criminal Appeal in Crl.A.No.109 of 2020 is partly allowed and the Criminal Appeal in Crl.A.No.282 of 2020 stands dismissed. Consequently, connected miscellaneous petition is closed.

.12.2022

Internet : Yes

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Speaking / Non Speaking order

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CRL.A.Nos.109 & 282 of 2020

G.K.ILANTHIRAIYAN, J.

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To

- 1.The Principal Sessions Judge/Special Judge Under SC & ST
(Prevention of Atrocities) Act, Chennai,
2. The Deputy Superintendent of Police,
CBCID, OCU, Trichy,
CBCID Head Quarters,
Chennai.
- 3.The Public Prosecutor,
Madras High Court.

Pre-delivery order made in
Crl.A.Nos.109 & 282 of 2020

08.12.2022