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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 25.01.2022

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CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

CRL.O.P. NOS.22869 & 24151 OF 2018
&
CONNECTED CRL.M.PS.

1. C.S.Meenakshi

2. C.Natesan ... Petitioners 1 & 2/Accused 1 & 2
in Crl.O.P.No.22869 of 2018

Ashok Bajaj ... Petitioner/3rd Accused
in Crl.O.P.No.24151 of 2018

.Vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Department of Revenue,
No.83 & 84, Murugesu Naicker Complex,
Greens Road,
Chennai - 600 006.

... Respondent/Complainant
in both Crl.O.P's

PRAYER:-

Criminal Original Petitions under Section 482 Cr.P.C.
seeking to call for the records relating to the complaint in
C.C. No.12 of 2017 on the file of the XIV Additional Court for
CBI Cases, Chennai and quash the same insofar as it relates to
the petitioners.

For petitioner in : Mr.P.Wilson
Crl.O.P.No.22869 Senior Counsel
of 2018 For M/s.Manivasagam Associates



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For petitioner in : Mr.Nithyaesh Natraj
Crl.O.P.No.24151 For M/s.Nithyaesh & Vaibhav
of 2018

For Respondent in : Mr.S.Sasikumar
both Crl.O.Ps. Special Public Prosecutor
For E.D.

COMMON ORDER

P.N. PRAKASH, J.

Since these criminal original petitions, of course, filed by different accused, seek to challenge the prosecution in C.C.No.12 of 2017 on the file of the XIV Additional Court for CBI Cases, Chennai, they are considered and decided by this common order.

2. For the sake of convenience, the parties will be referred to by their respective names.

3. To appreciate the rival contentions, it may be necessary to state the following facts admitted by either side:

3.1 The vacant land measuring 5.73 acres in Survey No.119 in Panangottur Village, Chengalpet, belonged to Surya Narayanan, Siva Nageswara Rao and Anjaneya Varaprasad (for brevity, "the seller trio"). This seller trio entered into an agreement of sale dated 26.09.2007 with Sai Prasad, Meenakshi and Shalini Vasan (for brevity "the buyer trio") and the said sale agreement was registered as Document No.12262 of 2007 in the office of the Joint Sub Registrar-II, Chengalpet.

3.2 As per the sale agreement, the buyer trio had agreed to purchase the property for a total sale consideration of Rs.1,14,60,000/- and had paid an advance of Rs.6 lakhs to the seller trio vide three separate cheques, each for a sum of Rs.2 lakhs, leaving a balance of Rs.1,08,60,000/- to be paid at the time of registration of the sale deed. The seller trio also agreed to execute the sale deed either in the name of the buyer trio or in the name of their nominees. In short, the buyer trio wanted to develop the property by either constructing apartments therein or making a layout of plots.

3.3 The seller trio also gave a general power of attorney to the buyer trio, which was registered as Document No.2045 of 2007 in the office of the Joint Sub Registrar-II, Chengalpet.



3.4 While so, on 09.04.2008, a private limited company by name Aashirwad Foundation Pvt. Ltd. (for short "AFPL"), was founded by four persons, viz., P.R.Balasubramanian, C.Ravindran, Kasturi Ravindran and Manikka Thyagarajan and the said company was incorporated on 09.04.2008 under the Companies Act, 1956, as could be seen from the certificate of incorporation. A perusal of the Memorandum of Association of AFPL shows that the main object of AFPL is to carry on real estate business. While so, on 12.04.2008, the said Meenakshi (one of the buyer trio) joined as a Director in AFPL.

3.5 As stated in paragraph 3.1 above, the buyer trio had agreed to purchase 5.73 acres of land by the sale agreement dated 26.09.2007. Admittedly, Meenakshi has 1/3 share in the property. Arithmetically, 1/3 share of 5.73 acres works out to 1.91 acres of undivided share, which can be construed as 1/3 share of Meenakshi. After Meenakshi joined AFPL as a Director, she pooled into the kitty of AFPL, her 1/3rd share, viz., 1.91 acres of undivided share, out of 5.73 acres. Thereafter, AFPL wanted to develop the property, but, needed funds for the said cause. In such a situation, they have seemingly approached a financier by name Ashok Bajaj, for finance. Ashok Bajaj agreed to give Rs.35 lakhs to AFPL, but, as a security, he wanted AFPL to give some immovable property. Therefore, AFPL entered into a sale agreement dated 20.07.2008 with Ashok Bajaj, for the sale of undivided 1.08 acres of land, being the share of Meenakshi, out of 5.73 acres of land, referred to in paragraph 3.1 above. The said agreement of sale dated 20.07.2008 states that on AFPL offering Rs.70 lakhs to Ashok Bajaj within 12 months, the latter would give up his claim for 1.08 acres and return it back to AFPL.

3.6 Noteworthy it is that Ashok Bajaj was aware of the fact that Meenakshi was only an agreement holder and that the original owners of the property were the seller trio.

3.7 When AFPL was not able to offer Rs.70 lakhs to Ashok Bajaj to get back the extent of 1.08 acres of land, at their (AFPL's) request, the seller trio conveyed the property measuring 1.08 acres by a sale deed dated 17.09.2008 registered as document no.8001/2008 on the file of the Joint Sub Registrar-II, Chengalpet, to Ashok Bajaj and in that sale deed, Sai Prasad, Meenakshi, Shalini Vasan and Govindarajulu Naidu were shown as confirming parties. Their signatures also find a place as confirming parties in the sale deed dated 17.09.2008.

3.8 We are told at the bar that Manikka Thyagarajan, one of the founders of AFPL, is a cousin of Meenakshi. Seemingly, some problems arose betwixt Manikka Thyagarajan, on the one hand, and Meenakshi and her husband Natesan, on the other, pursuant to



which, Manikka Thyagarajan gave a complaint dated 27.03.2012 addressed to the Commissioner of Police, Chennai City, which forms the fulcrum of the instant prosecution under the Prevention of Money Laundering Act (for brevity "the PML Act") against the petitioners. Ergo, Manikka Thyagarajan's complaint dated 27.03.2012 is extracted ad verbum:

"Sir,

I am an overseas citizen of India (OCI) and currently living in Canada. Mrs.Dr.C.S.Meenakshi and her husband Mr.C.Natesan met me during one of my trips to India and they explained that they were planning to float a real estate company based on their past experience. They convinced me that I can get very good returns on my investments and they also told me that they are looking for a NRI Director for the Company. So, convinced by their words, I paid Rs.45/- lakhs to Dr.C.S. Meenakshi through cheque and D.D. on various dates as detailed below:

- Rs.15 lakhs (CitiBank Cheque # 757035 (Rs.15 lakhs) dated 13.02.2008 drawn in favour of Dr.C.S.Meenakshi).
- Rs.5 lakhs (CitiBank DD # 899583 (Rs. 5 lakhs) dated 17.01.2009 drawn in favour of Dr.C.S. Meenakshi).
- Rs.5 lakhs (CitiBank DD # 899705 (Rs. 5 lakhs) dated 19.01.2009 drawn in favour of Dr.C.S. Meenakshi).
- Rs.5 lakhs (CitiBank DD # 899941 (Rs. 5 lakhs) dated 20.01.2009 drawn in favour of Dr.C.S. Meenakshi).
- Rs.4.75 lakhs (CitiBank DD # 915040 (Rs.4.75 lakhs) dated 21.01.2009 drawn in favour of Dr.C.S.Meenakshi).
- Rs.5 lakhs (CitiBank DD # 999961 (Rs. 5 lakhs) dated 24.09.2009 drawn in favour of Dr.C.S.Meenakshi).



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- Rs.3.75 lakhs (CitiBank DD # 942637 (Rs.3.75 lakhs) dated 01.10.2007 drawn in favour of Dr.C.S. Meenakshi).
- Rs.1.25 lakhs (CitiBank DD # 942638 (Rs. 1.25 lakhs) dated 01.10.2007 drawn in favour of Dr.C.S. Meenakshi).

TOTAL = Rs.44.75 lakhs

All above cheques and DD have been encashed by Dr.C.S.Meenakshi through her personal bank account. But for their promise and assurance, I would have not parted with the aforesaid amount.

Later, I was shocked to learn that Dr.C.S.Meenakshi had misappropriated my money for her personal expense and not invested the same in the said company, as promised by her and her husband. I have attached my CitiBank statement for the money which were given to Dr.C.S.Meenakshi and I have also attached Dr.C.S. Meenakshi's personal bank statement to prove that it has been used for her personal expenses. Therefore, it is clear that both of them had an intention of cheating me by making me part (as per details provided above) with Rs.20 lakhs first in late 2007 and early 2008 and later another Rs.24.75 lakhs in 2009.

When I went to their office at Natesan Colony, Alwarpet and demanded return of my hard earned money from Dr.C.S.Meenakshi and Mr.C.Natesan, they threatened to kill me and they said that they will implicate me in criminal case by way of their local influence.

I am an NRI living in Canada and have parted my hard earned money duped by Dr.C.S.Meenakshi and her husband Mr.C.Natesan. In such circumstances, I request your goodself to take appropriate criminal action against Mr.C.Natesan and Mrs. Dr.C.S.Meenakshi under Section 403,405,406,506, r/w 120-B, 420 of IPC and oblige."

3.9 Based on the aforesaid complaint, a case in E2, Royapettah P.S.Cr.No.972 of 2012 was registered on 19.08.2012 for the offences under Sections 406 and 420 IPC against Meenakshi and her husband Natesan and from 2012 to this date,



the police have not completed the investigation, perhaps, because of the civil nature of the transactions.

3.10 However, the Enforcement Directorate registered a case in ECIR No.4 of 2013 on 14.06.2013 against Meenakshi and Natesan as the FIR in E2 Royapettah P.S.Cr.No.972 of 2012 disclosed a scheduled offence, viz., Section 420 IPC.

3.11 The Enforcement Directorate identified the land measuring 1.08 acres in Survey No.119 in Panangottur Village, which is the subject matter of (i) the sale agreement dated 26.09.2007 entered into between the seller trio and the buyer trio, (ii) the sale agreement dated 20.07.2008 entered into between AFPL and Ashok Bajaj and (iii) the sale deed dated 17.09.2008 executed by the seller trio in favour of Ashok Bajaj, as proceeds of crime and this property was provisionally attached by the Enforcement Directorate and the same has also been confirmed by the Adjudicating Authority under Section 8(3) of the PML Act.

3.12 After completing the investigation, the Enforcement Directorate filed a complaint in C.C.No.12 of 2017 under Sections 3 and 4 of the PML Act against Meenakshi (A.1), Natesan (A.2) and Ashok Bajaj (A.3).

3.13 In the impugned complaint, the said extent of 1.08 acres of land has been shown as the proceeds of crime from the commission of the offence under Section 420 IPC allegedly committed by Meenakshi and her husband Natesan qua Manikka Thyagarajan covered by the FIR in E2 Royapettah P.S.Cr.No.972 of 2012.

3.14 For quashing the prosecution in C.C.No.12 of 2017, while Meenakshi (A.1) and Natesan (A.2) have filed CrI.O.P.No.22869 of 2018, Ashok Bajaj has preferred CrI.O.P.No.24151 of 2018.

4. Heard Mr.P.Wilson, learned Senior Counsel representing M/s.Manivasagam Associates, learned counsel on record for Meenakshi and Natesan, Mr.Nithyaesh Natraj, learned counsel representing M/s.Nityaesh and Vaibhav, learned counsel on record for Ashok Bajaj and Mr.S.Sasikumar learned Special Public Prosecutor for the Enforcement Directorate.

5. Mr.Sasikumar, learned Special Public Prosecutor, raised a preliminary objection by submitting that all the accused had filed discharge applications in the trial Court and the same were dismissed by the trial Court, after which, they had filed revision petitions also in the High Court, which they withdrew



and have now filed the present quash petitions, which are not maintainable.

6. We are unable to subscribe to this argument of Mr. Sasikumar for the reason that the petitioners have not suppressed the factum of filing of the discharge applications and the withdrawal of the revision petitions by them before this Court. Pertinent it is to note that the revision petitions were not dismissed by this Court on merits, but were merely withdrawn by the petitioners. Moreover, in the affidavits filed in support of the instant quash petitions, the petitioners have specifically averred about the dismissal of the discharge applications by the trial Court and the withdrawal of the revision petitions by them before this Court.

7. At this juncture, it may be appropriate to refer to the judgment of the Supreme Court in Umesh Kumar vs. State of Andhra Pradesh and another¹, wherein, it has been held that even during the pendency of a discharge petition, a quash petition can be maintained. This is because, in a quash application, the High Court has got wide powers even to look into documents of unimpeachable integrity like registered documents, etc. to decide the issue, which privilege is unavailable to a trial Court while dealing with a discharge application (See State of Orissa vs. Debendranath Padi² and Harshendra Kumar D. vs. Rebatilata Koley and Others³).

8. Mr. Wilson, learned Senior Counsel appearing for Meenakshi and Natesan, at the outset, took us through the memo of evidence appended to the impugned complaint and stated that J.X. Terrance Rodrigo, Assistant Director, Directorate of Enforcement, who has laid the complaint, has been shown as a witness, which is enough to quash the prosecution, in the light of the law laid down by the Supreme Court in Mohan Lal vs. State of Punjab⁴. He assiduously took us through the various paragraphs in the said judgment in support of his contention. This submission deserves only outright rejection, for, Mohan Lal (supra) has been overruled by a 5 Judge Bench of the Supreme Court in Mukesh Singh vs. State (Narcotic Branch of Delhi)⁵. Even assuming for a moment that Mohan Lal (supra) still holds the field, yet, it would have no application to a prosecution under the PML Act. In Mohan Lal (supra), a policeman gave a complaint, based on which, an FIR was registered and the same policeman acted as the Investigating Officer. This was frowned upon by the Supreme Court in Mohan Lal (supra). Whereas, in a case arising

¹ (2013) 10 SCC 591

² (2005) 1 SCC 568

³ (2011) 3 SCC 351

⁴ (2018) 17 SCC 627

⁵ (2020) 10 SCC 120



under the PML Act, the Enforcement Directorate does not register an FIR under Section 154 Cr.P.C. Rather, various Enforcement Officers collect evidence and one amongst them, collate the evidences so collected, in the form of a complaint, and file it in the Special Court for the purpose of the case being taken cognizance under the PML Act. He is colloquially referred to as the Investigating Officer. Hence, the examination of such an officer as a witness during trial is imperative.

9. Before going into the allegations in the impugned complaint against the three accused named therein who are the petitioners herein, we may first examine as to whether there was any criminal activity at all. In our considered opinion, the complaint dated 27.03.2012 given by Manikka Thyagarajan to the police, which has been extracted ad verbum in paragraph 3.8 (supra), merely discloses that there were many a transaction between Manikka Thyagarajan and Meenakshi and that all the monies have been paid to Meenakshi via cheques/demand drafts on various dates. Manikka Thyagarajan has not disclosed the fact that he was one of the founder-members of AFPL, which was incorporated on 09.04.2008, for the purpose of doing real estate business. Meenakshi became a Director in AFPL only on 12.04.2008 i.e., aftermath its incorporation on 09.04.2008.

10. According to the Enforcement Directorate, the proceeds of crime in this case is 1.08 acres of land in Survey No.119 of Panangottur Village, Chengalpet. According to Manikka Thyagarajan, the first two payments amounting to Rs.5 lakhs (Rs.3.75 lakhs and Rs.1.25 lakhs) via two demand drafts, were made to Meenakshi on 01.10.2007, whereas, Meenakshi appears to have entered into a registered sale agreement in respect of the whole property, along with Sai Prasad and Shalini Vasan, on 26.09.2007 itself, with the seller trio, for the purchase of 5.73 acres of land, in which, is subsumed 1.08 acres of land, which is alleged to be the proceeds of crime. After Meenakshi was inducted as a Director in AFPL, possibly by Manikka Thyagarajan, she has thrown into the hotchpotch of the company, her share of land in 5.73 acres, viz., 1.43 acres (According to this Court's calculation, 1/3 of 5.73 acres works out to 1.91 acres, whereas, according to the Enforcement Directorate, 1/3 of 5.73 acres is 1.43 acres. Therefore, we propose to proceed further with the calculation of the Enforcement Directorate in this order). The Enforcement Directorate is aware of the registered sale agreement dated 26.09.2007 as could be seen from paragraph 10(iv) of the impugned complaint, which reads as under:

"The money sent by Shri. Manikka Thiagarajan was partly utilized for payment of advances in connection with a sale agreement entered by Smt. C.S.Meenakshi (in her individual capacity) and two



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others for purchase of 5.73 acres of land @ Panangottur Village, Kancheepuram District, wherein, her share is 1/3rd of the total land i.e. 1.43 acres. The said agreement was registered vide Document No.12262/2007 dated 26.09.2007 in the office of the SRO, Chenglepet."

(emphasis supplied)

11. It is Ashok Bajaj's case that AFPL was hard pressed for funds to develop the property and therefore, when they (AFPL) approached him for a loan, he advanced Rs.35 lakhs to AFPL by bank transfers and, as a security, entered into a sale agreement dated 20.07.2008 in respect of 1.08 acres with AFPL in which it is stated that on AFPL returning a sum of Rs.70 lakhs within 12 months to Ashok Bajaj, he would re-convey 1.08 acres of land to AFPL. The Enforcement Directorate was aware of the sale agreement dated 20.07.2008, as could be seen from paragraph 10 (viii) of the complaint, but, of course, they have given a finding like a Civil Court that the said agreement is legally incorrect. Even if this Court extends the benefit of this doubt to the Enforcement Directorate, the subsequent developments in the transactions require to be stated. When AFPL was not able to make payments to Ashok Bajaj, the original owners of the land, viz., the seller trio, executed a sale deed dated 17.09.2008, registered as Document No.8001/2008 in respect of 1.08 acres of land, in favour of Ashok Bajaj, for a sum of Rs.32.70 lakhs, in which sale deed, the buyer trio has signed as confirming parties. In the said sale deed, the payments that were made by Ashok Bajaj towards the sale consideration have been clearly set out and all the payments have been made by way of cheques, either to a vendor or to Meenakshi or to the person nominated by them. The Enforcement Directorate is also aware of the sale deed dated 17.09.2008, as could be seen from paragraph no.10(vi) of the complaint.

12. Even according to the complaint dated 27.03.2012 extracted in paragraph 3.8 (supra) given by Manikka Thyagarajan to the police, upto the end of 2008, he had given to Meenakshi only Rs.20 lakhs (Rs.1.25 lakhs on 01.10.2007, Rs.3.75 lakhs on 01.10.2007 and Rs.15 lakhs on 13.02.2008), whereas, Meenakshi, as stated earlier, has thrown into the hotchpotch of AFPL her share of 5.73 acres of land, as early as 20.07.2008 and in order to get more money for the development work, a sum of Rs.35 lakhs was borrowed from Ashok Bajaj, for which, the land measuring 1.08 acres was given as security and later, since AFPL was unable to return the money, the land measuring 1.08 acres of land was sold to Ashok Bajaj by sale deed dated 17.09.2008. Therefore, this Court is unable to fathom as to how the land measuring 1.08 acres standing in the name of Ashok Bajaj be



termed as proceeds of crime. The Enforcement Directorate is aware that Ashok Bajaj has purchased 1.08 acres of land vide sale deed dated 17.09.2008, from the original owners, viz., the seller trio, as could be seen from paragraph 10(v) of the impugned complaint. For the sake of ready reference, paragraph 10(v), *ibid.*, is extracted hereunder:

"Smt.C.S.Meenakshi, while finally registering the 1/3rd share of land equivalent to 1.43 acres of land, paid the total consideration to the seller. However, she did not register the entire property either in her name or in the name of AFPL, but instead registered 0.35 cents in the name of AFPL vide Document No.7999/2008 dated 17.09.2008 with SRO, Chenglepet and registered the balance 1.08 acres of land was registered in the name of one Shri.Ashok Bajaj vide Document No.8001/2008 dated 17.09.2008. An amount of Rs.22.50 lakhs received from Manikka Thiagarajan was invested in the 1.08 acres which was registered to Shri. Ashok Bajaj as admitted by Smt. C.S. Meenakshi."

13. According to the Enforcement Directorate, a sum of Rs.22.50 lakhs was received by Meenakshi from Manikka Thyagarajan and invested in 1.08 acres of land which was registered in the name of Ashok Bajaj on 17.09.2008 and therefore, the land measuring 1.08 acres is proceeds of crime. There is a fundamental fallacy in this inference drawn by the Enforcement Directorate, because, even before Manikka Thyagarajan came into the picture, Meenakshi had entered into an agreement of sale as early as 26.09.2007 with the original owners of the land, viz., the seller trio, and the said agreement has been registered, as stated above, as Document No.12262 of 2007. Ashok Bajaj is able to demonstrate that he had lent Rs.35 lakhs to AFPL on 20.07.2008 and had obtained the land measuring 1.08 acres as a security for the loan. When AFPL defaulted, the original owners of the land, viz., the seller trio, have executed the sale deed dated 17.09.2008 (document no.8001 of 2008) in favour of Ashok Bajaj for a sale consideration of Rs.32,70,000/-. All these transactions are on record and are known to the Enforcement Directorate, as could be seen from the averments in the impugned complaint as well from the statements of the witnesses. Therefore, by no stretch of imagination, can it be said that the land measuring 1.08 acres is proceeds of crime that was generated by Meenakshi via a criminal activity perpetrated on Manikka Thyagarajan. In our opinion, rather, Manikka Thyagarajan has suppressed several facts. He has not stated that AFPL was founded by him on 09.04.2008, along with others, for the purpose of doing real estate business. Even before he coming into the picture by



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making the first two payments of Rs.3.75 lakhs and Rs.1.25 lakhs on 01.10.2007 to Meenakshi, the latter had cornered 1.43 acres of land (being her 1/3 share of the whole property) by entering into an agreement of sale on 26.09.2007 with the original owners, viz., the seller trio in respect of 5.73 acres.

14. Besides, be it noted, for attracting the penal provisions of the PML Act, there should be materials to show that the accused had committed a criminal activity via which he has generated proceeds of crime, which, he projects as untainted. In this case, even according to Manikka Thyagarajan, Meenakshi had taken monies from him for investing in real estate business. If Meenakshi, instead of investing the monies taken from Manikka Thyagarajan in some other activity, say opening of a beauty parlour, then, it can legitimately be inferred that she has cheated Manikka Thyagarajan and has projected the proceeds of crime as untainted property. That is not the case of the Enforcement Directorate either. The case of the Enforcement Directorate is that Meenakshi had taken a sum of Rs.22.50 lakhs from Manikka Thyagarajan for investing in real estate business and the proceeds of crime is 1.08 acres of land and not any other property. Thus, it is manifest and evident that the investment by Meenakshi has been only in real estate business, but, of course, there is a dispute with regard to this investment between Manikka Thyagarajan and Meenakshi, which can be resolved only by a Civil Court and not via a criminal prosecution by invoking Sections 3 and 4 of the PML Act. Further, the fact that from 2012 to this day, the police are grappling with the investigation of the case in E-2 Royapettah P.S.Cr.No.972 of 2012 without filing a final report itself shows that there is something wrong somewhere.

15. For all the reasons aforesaid, this Court is of the opinion that the prosecution of the petitioners in C.C. No.12 of 2017 on the file of the XIV Additional Court for CBI Cases, Chennai, is clearly an abuse of process of law and ex consequenti, the same is quashed.

In the upshot, these criminal original petitions are allowed. Connected Crl.M.Ps. stand closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad



To

1. The Assistant Director,
Directorate of Enforcement,
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Department of Revenue,
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Chennai - 600 006.
2. The XIV Additional Court for CBI Cases,
Chennai.
3. The Special Public Prosecutor (CBI cases),
Madras High Court,
Chennai - 600 104.

+2ccs to M/s.Manivasagam Associates, Advocate, S.R.No.10611
+1cc to M/s.Nithyaesh & Vaibhav, Advocate, S.R.No.10898

CRL.O.P.NOS.22869 &
24151 OF 2018

SSIV(CO)
PBS/08/03/2022