



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.11133 of 2020

and

Crl.M.P(MD)No.5068 of 2020

Chandramohan

... Petitioner/Accused No.3

Vs.

1.State Represented by,
The Inspector of Police,
District Crime Branch,
Thanjavur District.
Crime No.19 of 2020.

... 1st Respondent/
Complainant

2.R.Prabhakaran

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.19 of 2020 on the file of the first respondent police and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
for Mr.M.E.Ilango

For R - 1 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

For R - 2 : Mr.M.Karunanidhi

ORDER

This Criminal Original Petition has been filed to quash the F.I.R in Crime No.19 of 2020 on the file of the first respondent.

2.The second respondent lodged a complaint alleging that the second accused contacted through online the defacto complainant and represented that she is doing 3M Mask 8210 business and requested the defacto complainant to approach her if said masks are required. Hence, the defacto complainant contacted her for masks and she in turn introduced first accused. The defacto complainant and the first

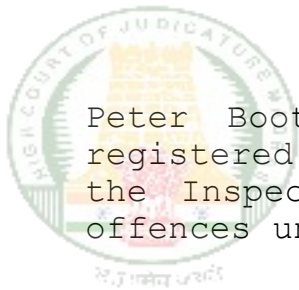


accused entered into the agreement for purchasing two lakhs masks on 06.06.2020. The rates of masks are fixed as 5.25 crores and 50% advance money is to be paid. Accordingly, the defacto complainant paid Rs.2,62,50,000/- to the account of the first accused firm on 06.06.2020. Since no masks came after four days as promised, the defacto complainant contacted the first accused, he informed that he deposited the amount with the third accused, since he is going to get masks from Netherlands. The petitioner also said that the masks would come within one week. In the meantime, the first accused gave SGS certificate. When the defacto complainant tested the same, he found that the said certificate is fraudulent one. When the defacto complainant demanded money from the first accused, he gave cheque, which was dishonoured. On the complaint given by the second respondent, a case in Crime No.19 of 2020 has been registered against the petitioner and other accused by the first respondent for the offences under Sections 120(b), 406, 409, 420, 467 and 474 of I.P.C.

3.Mr.Ajmal Khan, learned Senior Counsel appearing for the petitioner would submit that the petitioner is a Medical Practitioner running hospital in the name and style of 'Sri Kaligambal Hospital' in Vadipatti. He offered application for purchasing 3M 8210 N95 masks from 3M Netherland B.V.Company. One Patrick Van Dick contacted the petitioner and agreed to sell 5 lakhs pieces of masks. The Manager of the said company-Peter Booths had sent proforma invoices with payment terms. On believing the said proforma, the petitioner paid 20% advance of 1,60,000 US Dollar for five lakhs pieces of masks through his bank account on various dates. On receipt of the same, the company had sent Airway Bill and SGS report and requested another 30% of the money. When the petitioner tested the SGS certificate, he came to understand that it is a fraudulent one. Therefore, the petitioner demanded return of money.

4.Simultaneously, one Uday Shankar Parupalli from Hyderabad contacted the petitioner on 22.05.2020 and represented that he is having best relations with Duke company, Krygystan and promised to supply 3M 8210 masks and the petitioner also paid a sum of Rs.2,00,000/- through his bank account. Thereafter paid 20% to the tune of Rs.32,00,000/- of the total value as an advance. Thereafter one Surya Narayanan introduced himself as Commercial Director of Duke Company and contacted the petitioner and promised to supply masks, if 20% of the advance amount is paid. On believing his words, again the petitioner deposited a sum of Rs.37,34,824/-. Subsequently also he paid some amount. In total a sum of Rs.90,65,161/- was paid. When the petitioner demanded to supply of masks, the first accused/Uday Shankar Parupalli along with other accused threatened him with dire consequences.

5.The petitioner lodged a complaint in respect of the first
<https://hcservicesportal.in/hcservices/> against accused Nos.1 to 3 namely Patrick Van Dick,



Peter Booths and Neterland B.V Company and the same has been registered in Crime No.26 of 2020, dated 31.07.2020 on the file of the Inspector of Police, District Crime Branch, Madurai for the offences under Sections 120(b), 406, 420 and 34 of I.P.C.

6.The petitioner also lodged another complaint in respect of the second transaction against accused Nos.1 to 3, namely Uday Shankar Parupalli, Surya Narayan and Otorbaev Nurlan karatalovich and the same has been registered in Crime No.27 of 2020, dated 31.07.2020 on the file of the Inspector of Police, District Crime Branch, Madurai for the offences under Sections 120(b), 406, 420 and 34 of I.P.C.

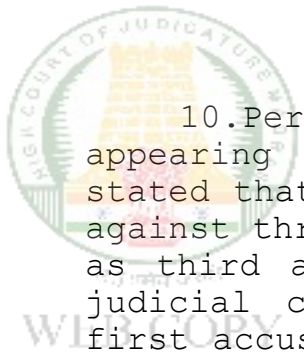
7.Accordingly, the petitioner paid a sum of Rs.1,24,16,000/- to the Netherland company and Rs.90,65,161/- to the Duke company. Now, the investigations are pending in both the crimes. However, the second respondent also lodged a complaint with the above said allegations and the same has been registered in Crime No.19 of 2020, dated 28.09.2020 on the file of the Inspector of Police, District Crime Branch, Thanjavur, in which the petitioner is arraigned as third accused.

8.The learned Senior Counsel further submitted that for the very same set of allegations, the petitioner lodged complaint against two companies and both were registered in Crime Nos.26 and 27 of 2020 on the file of the Inspector of Police, District Crime Branch, Madurai and subsequently, the same have been transferred to the Inspector of Police, District Crime Branch, Thanjavur and both are pending for investigation. Therefore, the present F.I.R is nothing but clear abuse of process of law, since for the single occurrence, one F.I.R can be registered and subsequent person, who lodged the complaint, will be added as witness.

9.The learned Senior Counsel appearing for the petitioner further submitted that the second respondent originally contacted the first accused for masks and entered into an agreement for purchasing of 2 lakhs masks Accordingly, the second respondent paid a sum of Rs.2,62,50,000/- to the first accused. In turn, the first accused had deposited the said amount to the petitioner herein, since he ordered masks from Netherland. Subsequently, the second respondent found that SGS certificate produced by Netherland company found to be fraudulent one and therefore, lodged the complaint. Therefore, any amount recovered from the Netherland Company and Duke Company, it can be realised in favour of the second respondent herein. In support of his contentions, he relied upon the following decisions:-

(i) T.T.Antony Vs. State of Kerala and Others reported in (2001) 6 SCC 181.

(ii) Amithbhai Anilchandra Shah Vs. Central Bureau of Investigation and another reported in (2013) 6 SCC 348.

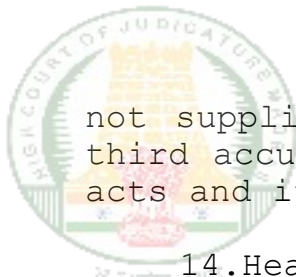


10.Per contra, the learned Additional Public Prosecutor appearing for the first respondent filed a counter-affidavit and stated that the F.I.R has been registered in Crime No.19 of 2020 as against three accused persons, in which, the petitioner is arraigned as third accused. The first accused was arrested and remanded to judicial custody. On the confession statement recorded from the first accused, the petitioner herein posted a video in his Facebook page and advertised that he would procure 3M brand masks at lesser price. On seeing the said advertisement, the first accused approached the petitioner herein for supply of 3M branded N95 masks. The petitioner also projected himself as if he and his wife are Government Doctors and also running a private hospital at Vadipatti. Further, the petitioner represented that they have been authorised to import 3M brand N95 masks. Further, the petitioner informed the first accused that 50 lakhs piece of 3M N95 masks are allotted for the Indian Medical Association and ready for shipping at Netherland. Believing the said words, the first accused entered into an agreement for supply of 2 lakhs pieces of N95 masks with the second respondent. Therefore, there are specific allegations as against the petitioner herein and F.I.R cannot be quashed on this threshold.

11.The learned Additional Public Prosecutor appearing for the first respondent also brought to the notice of this Court that in respect of the petition filed by the petitioner in Crl.O.P(MD) No.20069 of 2021, to withdraw the investigation in Crime Nos.26 & 27 of 2020 on the file of the third respondent therein and Crime No.19 of 2020 on the file of the fourth respondent therein and transfer the same to the file of the Central Bureau of Investigation, Chennai.

12.While pending the said petition, already investigations in Crime Nos.26 and 27 of 2020 on the file of the Inspector of Police, District Crime Branch, Madurai and Crime No.19 of 2020 on the file of the fourth respondent therein were transferred to the file of the Inspector of Police, District Crime Branch, Thanjavur and all the crimes are pending for investigation.

13.The learned counsel appearing for the second respondent filed a counter-affidavit and submitted that he is the sole proprietor of M/s.Veersun. During lock down period, one K.Shivashankari introduced herself as a staff nurse working in Stanley Hospital at Chennai. She introduced the first accused and informed that she is selling 3M Mask 8210 and requested for bulk orders. Since the customers of the second respondent requested to supply masks, he contacted Shivashankari and in turn, she introduced the first accused and entered into an agreement. Accordingly, placed orders to the tune of Rs.5,25,00,000/-. The second respondent paid a sum of Rs.2,62,50,000/- as an advance through Bank account in favour of the first accused. The first accused furnished SGS certificate which is a standard international certificate. While verifying the services, e-commerce, and government services that it was fabricated one and the masks also were

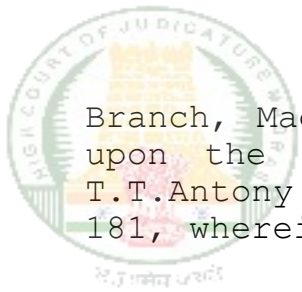


not supplied. In turn, the first accused placed orders before the third accused. Therefore, all the accused are having specific overt acts and it has to be investigated in depth to find out the truth.

14. Heard the learned Senior Counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

15. On a perusal of the records revealed that there are three accused in Crime No.19 of 2020 registered for the offences under Sections 120(b), 406, 409, 420, 467 and 474 of I.P.C. The petitioner herein is arraigned as third accused. The petitioner himself was cheated by a mask company, by name 3M Netherland and another person, namely Duke Group, Krygystan. For the very same allegations, the petitioner lodged complaints and the same have been registered in Crime Nos.26 and 27 of 2020 on the file of the District Crime Branch, Madurai and subsequently, the same have been transferred to the Inspector of Police, District Crime Branch, Thanjavur as against the Netherland company as well as Duke Group at Krygystan and the investigations are pending. It is true that the petitioner placed orders for purchase of N95 masks from 3M Netherland B.V company. He also placed orders through Uday Shankar Parupalli from Hyderabad with Duke Company, Krygsytan. Whatever the amount paid by the first accused, the petitioner paid both the companies through RTGS on various dates. Thereafter, both the companies cheated the petitioner and failed to supply masks. Therefore, the petitioner lodged complaint on 17.07.2020. On receipt of the same, the Inspector of Police, District Crime Branch, Madurai registered F.I.Rs in Crime Nos.26 and 27 of 2020 on 31.07.2020 for the offences under Sections 120(b), 406, 420 and 34 of I.P.C as against Patrick Van Dick, Peter Booths and Netherland B.V company and as against Uday Shankar Parupalli, Surya Narayanan, Duke Group, Otorbaev Nurlan Karatalovich, Duke Group, Kyrgystan. In fact, the petitioner also verified the SGS certificate produced by the accused companies and found to be fabricated one. Immediately, the petitioner lodged the complaint. The second respondent herein placed order for purchasing of masks before the first accused. In turn, the first accused entered into an agreement with the second respondent and placed orders before the petitioner herein. The petitioner placed orders before both the companies as mentioned above and paid the money whatever received from the first accused along with his own money around Rs.50,00,000/- to the accused persons. Therefore, for the very same allegations, there are three F.I.Rs have been registered. The present F.I.R in Crime No.19 of 2020 is registered as against the petitioner and two others on the file of the Inspector of Police, District Crime Branch, Thanjavur. Though the second respondent lodged complaint as early as on 15.07.2020, which has been registered only on 28.09.2020. Whereas the petitioner lodged complaints on 17.07.2020, which have been registered on 31.07.2020

<https://hccases.hccourts.gov.in/hccases/cases> file of the Inspector of Police, District Crime



Branch, Madurai. In this regard, the learned Senior Counsel relied upon the Judgment of the Honourable Supreme Court of India in T.T.Antony Vs. State of Kerala and Others reported in (2001) 6 SCC 181, wherein the Honourable Supreme Court has held as follows:-

“19.The scheme of Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

20.From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of Cr.P.C.

.....

27.A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to



investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Articles 226/227 of the Constitution."

16.The learned Senior Counsel appearing for the petitioner also relied on the Judgment of the Honourable Supreme Court of India in Amithbhai Anilchandra Shah Vs. Central Bureau of Investigation and another reported in (2013) 6 SCC 348, wherein the Honourable Supreme Court of India has held as follows:-

"58.As against this, Mr. Mahesh Jethmalani, learned senior counsel for the petitioner submitted that the CBI is not faced with any prejudice which is to be caused to it, if the relief as prayed for by the petitioner is granted. Admittedly, the petitioner is not praying for quashing of the charge sheet dated 04.09.2012. During the course of argument, when this Court specifically put a question to learned ASG appearing for the CBI as to what prejudice would be caused to the CBI if instead of treating the charge sheet dated 04.09.2012 to be fresh and independent charge sheet, the same will be treated as a supplementary charge sheet in the first charge sheet, there was no definite answer as to what prejudice would be caused to the CBI. For the sake of



order dated 08.04.2011 in Narmada Bai (supra), while disposing of the said writ petition, this Court directed the CBI to take up the investigation as prayed accepting their contention that killing of Tulsiram Prajapati is a part of the same series of acts in which Sohrabuddin and Kausarbi were killed and, therefore, Tulsiram Prajapati encounter should also be investigated by the CBI. Accepting the above assertion of the CBI, this Court directed to complete the investigation within six months.

Summary:

58.1. This Court accepting the plea of the CBI in Narmada Bai (supra) that killing of Tulsiram Prajapati is part of the same series of cognizable offence forming part of the first FIR directed the CBI to "take over" the investigation and did not grant the relief prayed for i.e., registration of a fresh FIR. Accordingly, filing of a fresh FIR by the CBI is contrary to various decisions of this Court.

58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the concerned Magistrate under Section 173 (2) of the Code.

58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or



incident giving rise to one or more cognizable offences.

58.4. Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

58.5. The First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

58.6. In the case on hand, as explained in the earlier paras, in our opinion, the second FIR was nothing but a consequence of the event which had taken place on 25/26.11.2005. We have already concluded that this Court having reposed faith in the CBI accepted their contention that Tulsiram Prajapati encounter is a part of the same chain of events in which Sohrabuddin and Kausarbi were killed and directed the CBI to "take up" the investigation.

58.7. For vivid understanding, let us consider a situation in which Mr. 'A' having killed 'B' with the aid of 'C', informs the police that unknown persons killed 'B'. During investigation, it revealed that 'A' was the real culprit and 'D' abetted 'A' to commit the murder. As a result, the police officer files the charge sheet under Section 173(2) of the



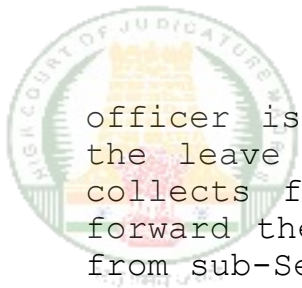
Code with the Magistrate. Although, in due course, it was discovered through further investigation that the person who abetted Mr. 'A' was 'C' and not 'D' as mentioned in the charge sheet filed under Section 173 of the Code. In such a scenario, uncovering of the later fact that 'C' is the real abettor will not demand a second FIR rather a supplementary charge sheet under section 173(8) of the Code will serve the purpose.

58.8. Likewise, in the case on hand, initially the CBI took a stand that the third person accompanying Sohrabbuddin and Kausarbi was Kalimuddin. However, with the aid of further investigation, it unveiled that the third person was Tulsiram Prajapati. Therefore, only as a result of further investigation, the CBI has gathered the information that the third person was Tulsiram Prajapati. Thus a second FIR in the given facts and circumstances is unwarranted; instead filing of a supplementary charge sheet in this regard will suffice the issue.

58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second F.I.R to meet the ends of justice.

58.10. The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same."

The Honourable Supreme Court of India held that even after filing final report if the police officer gets further information or material, there is no need to register a fresh F.I.R. The police



officer is empowered to make further investigation, normally with the leave of the Court and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-Section (8) of Section 173 of Cr.P.C.

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17. Thus, there can be no second F.I.R and there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offence.

18. In view of the above, the present F.I.R in Crime No.19 of 2020 registered by the first respondent/Inspector of Police, District Crime Branch, Thanjavur on the complaint lodged by the second respondent, subsequently, namely after registration of F.I.Rs on the complaints lodged by the petitioner for the very same occurrence. Though the petitioner is the complainant in those F.I.Rs registered in Crime Nos.26 and 27 on the file of the Inspector of Police, District Crime Branch, Madurai, and subsequently, the same have been transferred to the Inspector of Police, District Crime Branch, Thanjavur, if any crime committed by the petitioner, the Investigating Agency can very well add the petitioner as an accused in those crimes. The investigating Agency can add the second respondent as one of the witness in the said complaint. Therefore, the present impugned F.I.R in Crime No.19 of 2020 would not serve any purpose, since for the very same occurrence, already two F.I.Rs have been registered on the file of the Inspector of Police, District Crime Branch, Madurai, and subsequently, the same have been transferred to the Inspector of Police, District Crime Branch, Thanjavur and both are pending for investigation.

19. Accordingly, the FIR in Crime No.19 of 2020 on the file of the first respondent is quashed and this Criminal Original Petition is allowed. The Inspector of Police, District Crime Branch, Thanjavur is directed to complete the investigation in Crime Nos.26 and 27 of 2020 as expeditiously as possible. It is made clear that during investigation any offence committed by the petitioner, he can be added as one of the accused along with other accused persons and the second respondent can be added as one of the witness. Consequently, connected Miscellaneous Petition is closed.

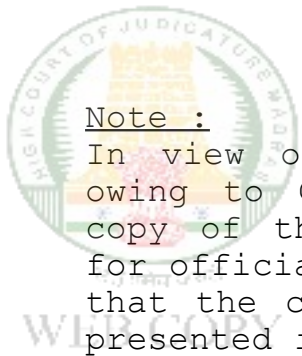
Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar (CS)



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 Inspector of Police,
District Crime Branch,
Thanjavur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-12016[F] dated 14/03/2022)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-12565[F] dated 16/03/2022)

Order made in
Crl.O.P (MD) No.11133 of 2020
14.03.2022

ps
MS/25.03.2022/12P.5C