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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 17.03.2022

Delivered on : 07.06.2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP (MD) No.9457 of 2021

in

CRL OP (MD) No.9381 of 2021

STATE REP.BY
THE INSPECTOR OF POLICE,
THIRUPPANANDAL POLICE STATION,
THANJAVUR DISTRICT.
CR.NO.559/2021

... PETITIONER/COMPLAINANT

Vs

1 A.DURAIMURUGAN PANDIYAN SATTAI @ DURAIMURUGAN

... RESPONDENT/ACCUSED

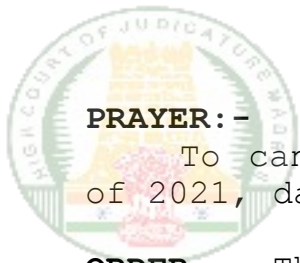
(*) 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
(CYBER CRIME WING),
POLICE TRAINING COLLEGE, No.3,
Dr.NATESAN ROAD,
ASHOK NAGAR,
CHENNAI-600 083.

(*) R2 IS SUO MOTU IMPEADED
VIDE COURT ORDER DATED
20.01.2022 IN CRL MP (MD)
No.9457 of 2021 IN CRL OP (MD)
No.9381 of 2021

... 2nd RESPONDENT

For Petitioner : Mr.T.Senthil Kumar
& R.2 Additional Public Prosecutor
For R.1 : Mr.N.Mohideen Basha
Amicus Curiae : Mr.K.K.Ramakrishnan

PETITION FOR CANCELLATION OF BAIL Under Sec.439(2) (3) of
Cr.P.C.



PRAYER: -

To cancel the Bail granted by this Court in Crl.OP(MD)No.9381 of 2021, dated 06.08.2021.

ORDER : The Court made the following order :-

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I invented the atomic energy for the upliftment of the human kind. I did not expect that the same would be used for disastrous effect. Had I anticipated the same, I would not have invented atomic energy. This was the anguish expressed by Dr.Albert Einstein after the exploitation of his invention in World War II at Hiroshima and Nagasaki during the year 1945.

2.Scientific inventions are made for the welfare of the mankind. At the same time, it is also being misused. Internet is one such wonderful invention in the 21st century, which has transformed the lives of many. YouTube is an online video sharing and social media platform, claiming to have more than one billion monthly users, who collectively watch more than one billion hours of videos each day. It is claimed by YouTube that they are providing sixty three lakh job opportunities in India alone. Even an ordinary man is uploading his day-to-day activities, skills, thoughts, travel experiences etc., on YouTube. In fact, in the modern society, in most of the families, everyday's meal is prepared using the videos uploaded in YouTube.

3.The present case on hand is an example as to how YouTube is being misused. The first respondent is an YouTuber and he has made certain derogatory remarks as against the former Chief Minister of the State of Tamil Nadu. On the complaint lodged by one P.Rajasekar, a case in Crime No.559 of 2021 was registered as against the first respondent, on the file of the petitioner, for the offence under Sections 153(A), 504 & 505(i)(b) IPC r/w Section 67 of the Information Technology (Amendment) Act, 2008 and he was also apprehended.

4.Seeking bail, the first respondent has moved Crl.OP(MD) No.9381 of 2021 and during the course of hearing in the said application, the first respondent has filed an affidavit of undertaking stating that he has realized his mistake and that he will not indulge in any such activities in future. By recording the undertaking affidavit filed by the first respondent, this Court, by order dated 06.08.2021, has granted bail.

5.According to the petitioner, the first respondent, despite the undertaking affidavit filed before this Court, is repeatedly involved in making derogatory statements as against the Hon'ble Chief Minister of Tamil Nadu. Hence, they have moved this application for cancellation of bail earlier granted by this Court to the first respondent in Crime No.559 of 2021.



6.Learned Additional Public Prosecutor appearing for the petitioner / police, has made his submissions as follows:-

6.1.YouTube pays money to the channels depending upon the number of views and the subscribers of the channels. That apart, YouTubers are also making money by allowing the advertisements to run amidst their videos.

6.2.The first respondent is repeating the offence of making derogatory remarks, intentionally, in order to induce the public to have more views for his YouTube videos, so that he could gain pecuniary remuneration from the YouTube.

6.3.In the case in Crime No.559 of 2021, the first respondent has made certain derogatory statements as against the former Chief Minister of Tamil Nadu and this Court has granted bail only based on the affidavit of undertaking filed by him. In that application, the first respondent has stated that he has realized his mistake and that he will not indulge in any such activities again. However, the first respondent continues to commit these kind of offences, which amounts to civil contempt and therefore, they have filed this application to cancel the bail.

7.Learned Additional Public Prosecutor has also filed the details of cases registered as against the first respondent, which reads as follows:-

i.Cr.No.309/2021, u/s.143, 147, 294(b), 447 & 506(ii) IPC, on the file of the Trichy K.K.Nagar Police Station;

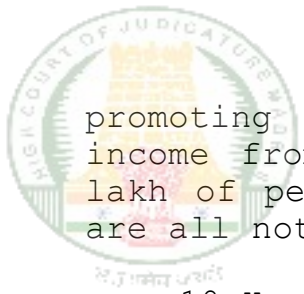
ii.Cr.No.2/2021, u/s.153, 505(i)(b) IPC, on the file of the Karur Cyber Crime Police Station;

iii.Cr.No.19/2021, u/s.153, 504, 505(i)(b), 505(ii) IPC r/w 67 of IT Act, on the file of Thanjavur Cyber Crime Police Station; and

iv.Cr.No.710/2021, u/s.143, 153, 153(A), 505(ii), 506(i), 269 IPC & 3 of the Epidemic Disease Act, 1987, r/w 67 of IT Act, on the file of the Thuckalay Police Station.

8.Learned Additional Public Prosecutor has also narrated the manner in which the first respondent / accused is spreading rumors in the social media. According to him, in one of the video clipping, the first respondent has stated that a private company provided contagious food to its staff and that it took the lives of nine female staff, who were working in the company. After investigation, the allegation in that video clipping was found to be false. However, based on the false statements, the reputation of the company got damaged and the company was thereafter, shut down. He also referred about other incidents of false and derogatory statements made by the first respondent in the social media.

9.Learned Counsel appearing for the first respondent / accused submitted that the first respondent has realized his mistake and that he will not repeat this offence again. He also claimed that not



promoting such kinds of activities and are getting substantial income from YouTube, depending upon the number of views. Several lakh of people are doing such kinds of publications and that they are all not reported.

10.He further submitted that YouTube is, in fact, encouraging these type of defamatory videos and depending upon the views, both YouTube as well as the channel holders are making money out of it. According to him, some of the channels are spreading false, derogatory, obscene and scandalous publications and by them, they are attracting more viewers and are earning money out of it.

11.Article 21 of the Constitution of India guarantees the right to life as a fundamental right of every citizen. As has been held by the Hon'ble Supreme Court in ***Maneka Gandhi vs. Union of India*** [AIR 1978 SC 597], right to life embodied in Article 21 of the Constitution of India, is not merely a physical right, but, also includes within its ambit, the right to live with human dignity. Right to life is therefore, the fundamental right and it is the duty of the state to protect it.

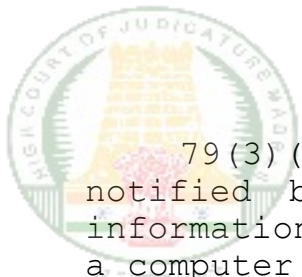
12.Due to scientific inventions, anyone can access the internet from any part of the world and the videos uploaded in YouTube can be accused by anyone in the world. In order to have a control, the Government of India has enacted the Information Technology Act, 2000, imposing certain functions and liabilities on the intermediaries under Sections 69A & 79(3)b and under Section 84B of the IT Act. For useful reference, the same are extracted as under:-

"69A - Power to issue directions for blocking for public access of any information through any computer resource.

(1) Where the Central Government or any of its officer specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2) for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine.



79(3)(b) - upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

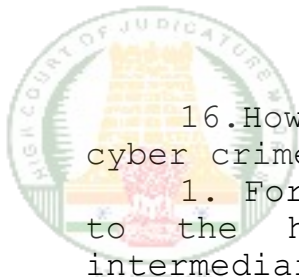
84B - Punishment for abetment of offences. - Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be punished with the punishment provided for the offence under this Act."

13.Though there are provisions in the Information Technology Act, 2000 and Rules, there is no implementation of the same by the concerned authorities and therefore the offences are growing rapidly under cyber crime. Some of the few recurrences are noted as follows:-

1. Pornographic contents
2. Making of a gun
3. Making of a bomb
4. Making of hooch
5. Derogatory statements
6. Horrific videos etc.

14.This Court can take judicial notice of the fact that these type of videos can be easily accessed even by the current generation kids, which would create chaos in their minds and affect their mental growth.

15.Learned Additional Public Prosecutor, on instructions, submitted that the Superintendent of Police, Cyber Crime Division - I has been nominated as the Nodal officer for the State of Tamil Nadu under the provisions of Information Technology (Procedure and Safe guards for Blocking for Access of Information by Public) Rules, 2009, vide G.O(D)No.20, Information Technology (B4) Department, dated 18.03.2020. As per Section 69A of the Act, whenever a request for blocking the content is made by the Central Government or by its Authorized Officer, it is the duty of the intermediary to block the content for public access. The request which has been made under Section 69A of the Act should be sent to the intermediaries and the intermediaries who fail to comply with such direction shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine. If the intermediaries acted as per Section 69A of the Act, then they are excepted from liability as per Section 79(3)(b) of the Act.



16. However, he has expressed certain difficulties faced by the cyber crime wing, as follows:-

1. For all complaints, FIR may not be able to be registered due to the hesitancy of the complainants. In such cases, the intermediaries may not block the content.

2. Even after registration of FIRs, some intermediaries, such as Facebook and Twitter, are asking for court orders for content blocking. In some cases, it might be difficult to obtain court order in a timely manner to block the contents.

3. Even after blocking the content, some intermediaries such as YouTube are requesting court order for providing the suspect details such as IP Address, associated mail IDs and other identifying details of the suspect.

4. The intermediaries are only temporarily blocking the content and are requesting for court orders for permanent blocking and to provide the suspect details.

5. Intermediaries headquartered in other countries are more oriented towards their country laws and some intermediaries does not respond to the request of the cyber wing.

6. The contents circulated through WhatsApp and other instant messaging platforms could not be blocked, since they are directly circulated between users.

7. It is very difficult to receive the creativity log and other details from WhatsApp, Facebook, Instagram, YouTube, etc., in a timely manner.

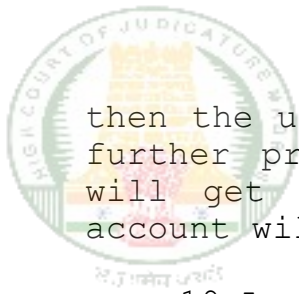
8. LED intervention into the private profiles (locked profile) of the suspects is difficult due to their privacy settings. Hence it is hard to investigate such cases.

9. YouTube is blocking only the specific videos and not the concerned YouTube Channel.

17. Considering the seriousness of the issue involved and its consequences, this Court appointed Mr.K.K.Ramakrishnan, Advocate, to act as an Amicus in this matter.

18. Learned Amicus Curiae, after some research, submitted that the main lacuna in the Act is that there is no provision for license for the intermediaries. The intermediaries operating from abroad are also bound by the law of the land. Realizing the same, YouTube has formulated 'The YouTube Community Guidelines'. As per the guidelines, if any user across the world find any content which contains,

1. Spam and deceptive practices or
2. Sensitive content including against the policy of child safety or
3. Violent or dangerous content or
4. Against any Firearm policy or
5. Misinformation content that can cause real-world harm or
6. Manipulated contents to mislead the users or
7. Manipulated content that can cause serious risk of egregious



then the user has to report the same to the YouTube. The guidelines further provides that if any one violates these guidelines, they will get a warning first and if not complied with, then their account will get terminated.

19. Learned Amicus has relied upon the decision of the Hon'ble Supreme Court in the case of **Pravasi Bhalai Sangathan v Union of India [(2014) 11 SCC 477]**, wherein it was observed as follows:-

"22. Be that as it may, this Court has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law, i.e. complete absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of the executive for whatsoever reason, the court has stepped in, in exercise of its constitutional obligations to enforce the law. In case of vacuum of legal regime to deal with a particular situation, the court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field. Thus, direction can be issued only in a situation where the will of the elected legislature has not yet been expressed."

20. He has also placed reliance on yet another decision of the Hon'ble Supreme Court in the case of **Google India (P) Ltd v. Visaka Industries [(2020) 4 SCC 162]**, wherein it was observed as follows:-

"98. The next question is proceeding on the basis that it is the appellant which is the intermediary within the meaning of the Act, whether the appellant could be foisted with liability in a case where appellant is being proceeded against in a criminal case for having committed the offence under Section 500 read with Section 120B of the IPC. In this regard, let us consider the contentions of the complainant. It is first contended that the appellant's role in the control of Google Groups as publisher is a question of fact. It is pointed out that Google has control on the content being uploaded by the authors. It has full freedom to remove any content without reference to anyone much less court orders. Google itself recognizes that defamation is not an accepted conduct and takes an undertaking from its users. Google cannot claim to be mere passive technology service provider which is promoting free speech. It provides various tools to create / edit / modify the content apart from uploading the content. It is contended that for the purpose of defamation, Google may have some defence till such time till they are not aware of the defamatory content. However, once they are made aware of the defamatory content, then, by allowing the same to continue, refusing to exercise control as platform provider, it becomes fully liable for the consequences of publishing defamatory material. Being a technology giant, is not a license to break laws. It does not provide immunity from the liability under the IPC.



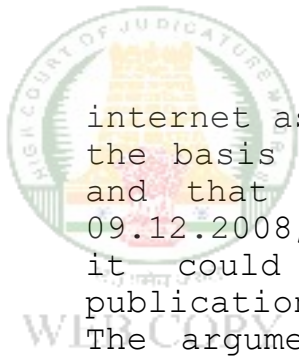
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140. In this case, the substantial complaint of the complainant appears to be based on the refusal by the appellant to remove the matter after being notified. Publication would be the result even in the context of a medium like the internet by the intermediary if it defies a court order and refuses to takedown the matter. This, undoubtedly, is the position even under the decision in *Shreya Singhal* (2015) 5 SCC 1 which has read down Section 79(3)(b) and the Intermediary Rules already noted.

.... .

147. As to whether there is justification for the Parent Company in requiring the complainant to provide the URL so that the offending post could be identified and dealt with and de hors it whether it could remove the post, is again a matter, which in our view, it may not be possible for the appellant to persuade us to hold, could be gone into the proceedings under Section 482 of the Cr.PC. This also is on the basis that the Parent Company is the intermediary. To make matters even more clear, even proceeding on the basis that the first accused is the originator, as defined in the Act, of the allegedly defamatory matter, and the first accused is not only the author but is also the publisher of allegedly defamatory matter, and again proceeding on the basis that it is the appellant, who is the intermediary and not its Parent Company, the refusal on the part of the appellant to remove the post, may amount to publication on the basis of the principle enunciated in *Bryne* (supra) and as applied to medium of internet in *Godfrey* (supra), as later explained, however, in *Bunt* (supra). In other words, there may be publication within the meaning of Section 499 of the IPC even in the case of an internet operator, if having the power and the right and the ability to remove a matter, upon being called upon to do so, there is a refusal to do so. This is, no doubt, subject to *Shreya Singhal* (supra) where it applies. It is also clear that to constitute the offence under Section 500 of the IPC, mere publication would not suffice. As we have noted, we cannot go into that aspect on the basis of the notice sent on 09.12.2008 by the complainant on account of the obstacles which we have pointed out earlier. In other words, the disowning of the liability to remove the post is inextricably intertwined with the appellant's denial of it being the intermediary. Also, the question as to whether the demand for the URL and justification for not removing, based on the same being questions essentially relating to the facts, cannot be gone into in Section 482 proceedings.

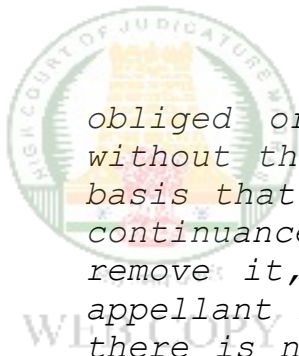
148. The only aspect, which really remains, is the aspect that even accepting that the appellant is an intermediary and it had the power otherwise to accede to the request of the appellant to remove the offending material, the so-called right or power of the appellant is really not a power and the right, but is nothing but a mere illusion as assuming such powers or exercising such a right would involve conferring of unilateral and impermissible adjudicatory power, contrary to the regime of fundamental right of



internet as an open democratic medium. In other words, proceeding on the basis of the assumption that the appellant is the intermediary and that it stood alerted by the complainant by letter dated 09.12.2008, the appellant has not removed the offensive posts though it could technically remove it, therefore, it amounted to publication and this publication attracts Section 499 of the IPC. The argument, however, is even in Section 482 of the Cr.PC, the court must qualify the right and the power of the appellant even assuming to be the intermediary to act freely as it would opposed to the principles which have been evolved in regard to the internet service provider that it is not open to it to unilaterally decide as to what matter should be removed and it can act so as to remove on the basis of the request only if there is a court order. Any other view would make it a despot strangling the free flow of ideas which is what the internet is all about.

149. The problem arises in this way however. It is while considering a challenge to Section 79 of the Act, after it was substituted with effect from 27.10.2009 and considering the Rules made in the year 2011 also, and a challenge to the same also, that in *Shreya Singhal* (supra), the provisions were read down to mean that Section 79(3)(b) of the Act and Rule 3(4) of the Rules, would require an internet service operator to takedown third-party information not on mere knowledge of objection to its continuance but after there has been an impartial adjudication as it were by a court. To focus more on the problem, it must be pointed out that in the facts of this case, the acts constituting the alleged offence under Section 499 of the IPC, were done not when Section 79, after its substitution, was in place. The Rules were enacted in the year 2011. In such circumstances, what we are asked to do is to import in the principles into the factual matrix when Section 79 was differently worded and in proceedings under Section 482 of the Cr.PC. It is, undoubtedly, true that Article 19(1)(a) and Article 19(2) of the Constitution of India were very much available in 2008 and 2009 though Section 79 was in its erstwhile avatar. In other words, will it not be open to the appellant, assuming it to be the intermediary, to contend that it cannot be called upon to remove, defamatory matter comprised in any third-party information without there being a court order?

150. *It is here that we would remind ourselves that we are called upon in this case to decide the correctness and legality of the order of the High Court passed in the proceedings under Section 482 of the Cr.PC. This contention, as such, has not been raised. We notice, in fact, that in the very first ground, however, before the High Court, it is contended that the appellant has no role. It has no control over the services provided on the website. Thereafter, it is contended that even the employees of the Parent Company do not have the ability to remove the content posted on the blog without an order from a court of competent jurisdiction. It is the further case before the High Court that under the law of United States of America which governed the functioning of the Parent Company, it is not*



obliged or required to remove any allegedly defamatory content without the court order. There was no contention taken that on the basis that even if appellant is assumed to be the intermediary, the continuance of the articles after a request by the complainant to remove it, would not constitute publication at the hands of the appellant for the reason that it will not constitute publication as there is no court order in India. It was also, no doubt, true that the decision of this Court in *Shreya Singhal* (supra) was rendered nearly five years after the impugned judgment of the High Court. As already noticed, what was laid down in *Shreya Singhal* (supra) was premised upon the challenge to Section 79(3)(b) which replaced the erstwhile avatar of Section 79 and also a challenge to the Intermediary Rules of 2011, both of which provisions came to be read down by the court."

21. According to the investigating agency, in most of the cases the affected persons are not coming forward to lodge complaint. On the other hand, whenever a request is made, the intermediaries are insisting for the FIR or the Court order, which, of course, could not be found fault with. However, as pointed out by the learned Amicus and the materials produced by him, the intermediaries operating in India are also governed by the Acts and Rules of the land. Realizing the same, the intermediaries have framed certain guidelines for its users. There is a contract between the intermediaries and the channels. In case of any violation of the conditions, it is the duty of the intermediaries to remove or block the channel as per the terms of their agreement. It is duty of the intermediaries to ascertain whether those videos are in accordance with their policies and guidelines and in terms of the contract and to block the channels if the videos are not in accordance with the terms and policies. The intermediaries are not expected to insist for FIR or any court orders to remove the videos which are in violation of their guidelines. If it is not blocked or removed even after it was brought to their knowledge, the intermediaries are committing the offence under Section 69A (3) of the Information Technology Act.

22. No doubt, the contents of the first appellant's video violates the terms and conditions of the intermediary and as such, the investigating agency ought to have brought the same to the knowledge of the intermediary. If the intermediary, even after bringing such violation to their knowledge, failed to remove the videos, then the investigating agency shall book them as well. At this juncture, this Court feels it appropriate to refer to the following observation made by the Hon'ble Supreme Court in ***Pravasi Bhalai Sangathan***'s case (supra):-

"27. As referred to hereinabove, the statutory provisions and particularly the penal law provide sufficient remedy to curb the menace of hate speeches. Thus, person aggrieved must resort to the



remedy provided under a particular statute. The root of the problem is not the absence of laws but rather a lack of effective execution. Therefore, the executive as well as civil society has to perform its role in enforcing the already existing legal regime. Effective regulation of 'hate speeches' at all levels is required as the authors of such speeches can be booked under the existing penal law and all the law enforcing agencies must ensure that the existing law is not rendered a dead letter. Enforcement of the aforesaid provisions is required being in consonance with the proposition *salus reipublicae suprema lex* (safety of the state is the supreme law)."

23. From the records, it appears that the first respondent is in the habit of committing the offences with an intention to have more views so as to earn money from the social media. Within few days after submitting an undertaking affidavit before this Court, based on which he was enlarged on bail, he has indulged in further offence by making derogatory remarks as against the Hon'ble Chief Minister of the State. This Court is satisfied that it is a clear violation of the terms and conditions stipulated in the earlier orders and as such, this Court is inclined to cancel the earlier bail granted to the first respondent vide order dated 06.08.2021 in Crl.OP(MD) No.9381 of 2021.

Accordingly, this criminal miscellaneous petition stands allowed and the bail granted by this Court to the first respondent in Crl.OP(MD)No.9381 of 2021, dated 06.08.2021, is hereby cancelled. The petitioner / investigating agency is to take necessary steps.

sd/-

07/06/2022

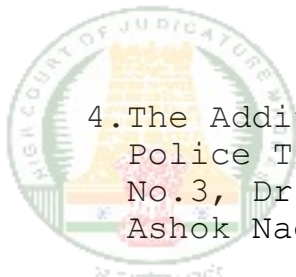
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08/06/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

To

- 1 The Judicial Magistrate,
Thiruvidaimarudur, Thanjavur District.
- 2 Do Through : The Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.
3. The Inspector of Police,
Thiruppanandal Police Station,
Thanjavur District.



4.The Additional Director General of Police(Cyber Crime Wing),
Police Training College,
No.3, Dr.Natesan Road,
Ashok Nagar, Chennai - 83.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
Mr.K.K.Ramakrishnan,
Advocate/Amicus Curiae,
Madurai Bench of Madras High Court,
Madurai.

ORDER
IN
CRL MP (MD) No.9457 of 2021
IN
CRL OP (MD) No.9381 of 2021
Date :07/06/2022

RS/JM/SAR.4 (08.06.2022) 12P-7C