



Crl.A.(MD)No.527 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

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1.Durairaj

2.Madhubalan

3.Kanagaraj

... Appellants / Accused Nos.1 to 3

Vs.

State Represented by
The Inspector of Police,
Siruganur Police Station,
Trichy District.
(Crime No.190 of 2015)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and order dated 26.09.2019 in S.C.No.44 of 2019 on the file of the learned I-Additional District and Sessions Court (PCR), Tiruchirappalli.



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For Appellants : Mr.S.Ashok Kumar
Senior Counsel
for Mr.N.Anandakumar

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

J.NISHA BANU, J.
and
N.ANAND VENKATESH, J.

This appeal has been filed against the judgment and order passed by the I-Additional District and Sessions Court(PCR), Tiruchirappalli, made in S.C.No.44 of 2019, dated 09.10.2019, convicting and sentencing the appellants for offence under Section 302 r/w 34 IPC (2 counts) and to undergo Life Imprisonment for each count and to pay a total fine of Rs.2000/-, in default, to undergo two years Simple Imprisonment.



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2. The case of the prosecution is that the deceased Arumugam(D1) and Tirupathi(D2) are brothers and there was a previous enmity due to an earlier incident, whereby the deceased along with Lakshmanan are said to have murdered Natarajan and Nagarajan, who are the relatives of the accused persons. That apart, there was also a land dispute between the family of the deceased and the family of the accused persons. On 27.05.2015 at about 11.30 a.m., when the deceased were engaged in putting up a temporary structure, the accused persons entered the property with M.O.1 to M.O.3 and abused the deceased and attacked them indiscriminately, resulting in the death of both D1 and D2 on the spot.

3. P.W-1, who was the wife of D2, went along with her daughter and informed the police about the incident and it was reduced to writing and a complaint(Ex.P1) was prepared. The FIR(Ex.P15) was registered by P.W-17 at about 12.30 p.m. on 27.05.2015.

4. The investigation was initially taken up by P.W-19 and subsequently, was taken over by P.W-20 and a final report was laid



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before the Judicial Magistrate, Lalgudi. After the copies were served on the accused persons under Section 207 Cr.P.C, the matter was committed to the Principal District and Sessions Court, Thiruchirapalli and it was made over to the Court below.

5. The Court below framed charges against the accused persons for offence under Section 302 r/w 34 of IPC (2 counts).The prosecution examined P.W-1 to P.W-20 and marked Ex.P1 to Ex.P19 besides M.O.1 to M.O.3. The defendants examined D.W-1 and marked Ex.D1 to Ex.D3. The incriminating materials that were gathered during the course of trial were put to the accused persons while questioning them under Section 313(1)(b) Cr.P.C and they individually gave the written statements in reply to the questions put to them.

6. The Court below, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, gave a finding that the prosecution has proved the case beyond reasonable doubts and thereby, convicted and sentenced the accused persons in the manner indicated above. Aggrieved by the same, these



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Criminal Appeals have been filed before this Court.

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7. Heard Mr.S.Ashok Kumar, learned Senior Counsel for Mr.N.Anandakumar, learned counsel for the appellants and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State.

8. The prosecution has relied upon the evidence of P.W-1, P.W-2, P.W-3, P.W-4 and P.W-18 by treating them as eyewitnesses. P.W-1 is the wife of D2. She was the one who had set the law in motion by giving the complaint(Ex.P1). In the complaint, she had projected a case as if the accused persons entered the property and attacked the deceased and caused their death. This complaint is said to have been given on 27.05.2015 at 12.30 noon. There is not even a whisper about the injuries sustained by A2 and A3. However, a line has been inserted at the end of the complaint with a different ink as if A2 and A3 sustained injuries. The body of the complaint does not state as to how they sustained injuries. It is therefore clear that this was an insertion which took place at a later point of time.



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9. P.W-1, during cross examination, has admitted that the police enquired her and prepared the complaint and she did not mention about the injuries sustained by A2 and A3 in the complaint and it was not written in the complaint and she feigns ignorance as to who inserted the name of A2 and A3 to have sustained injuries, in the complaint.

10. P.W-1, in the chief examination, has stated as if she went along with the deceased in the morning to the place of occurrence. However, in the cross examination, she has stated that she came along with P.W-18 at about 10.30 a.m. and the deceased had left to the place of occurrence at 8.00 a.m. itself. P.W-2, who was also examined as an eyewitness, does not even talk about the injuries sustained by A2 and A3 and in the cross examination, he states that he heard a sound and when he went to the scene of occurrence, he found A2 and A3 injured.

11. P.W-3 and P.W-4 are neighbours of P.W-1 and they state that they never went to the village where the occurrence took place earlier and they don't even know the accused persons and they did not



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name the accused persons even when their statements were recorded in the course of investigation. Surprisingly, the name of P.W-3 and P.W-4 does not even find place in the complaint(Ex.P1). These two witnesses were examined by the police and Section 161(3) Cr.P.C statements were recorded from them only on 01.06.2015, which is nearly five days after the incident.

12. P.W-18 is the daughter of D2. Even this witness does not state about the injuries sustained by the accused persons and she only talks about the accused persons attacking the deceased and causing their death.

13. On a careful reading of the evidence of the above witnesses, it is clear that they have suppressed the very genesis of the case, since none of them even spoke about the injuries sustained by the accused persons in their chief examination.

14. P.W-19 was the Inspector of Police who was in-charge of the Samayapuram Police Station and he specifically talks about the



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injuries sustained by A2 and A3 and the FIR registered in Crime No.191 of 2015. The FIR was registered based on the statement recorded from A2 and A3 in the General Hospital at Trichy. It is further clear from his evidence that A2 and A3 were taking treatment in the General Hospital till 01.06.2017.

15. Insofar as the injuries sustained by A2 and A3, the same has been substantiated by examining P.W-19 and marking Exs.D1 and D2 through him. The injury sustained by A2 as recorded in the discharge summary is as follows :

“Head- Laceration of size 6 x 2 x 2 cm over the left parietal region; Left forearm-Swelling of size 5 x 3cm; Right hand-tenderness in base of thumb laceration of size 1 x 0.5 x 0.5 cm seen in right index finger, distal pharynx.”

16. The injuries sustained by A3 as recorded in the discharge summary is extracted as follows:

“Head-Laceration of size (i) 4x0.5x0.5cm (ii) 7x0.5x0.5cm (iii) 4x0.5x0.5cm and (iv) 3x0.5x0.5cm over both parietal region. Left arm



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suturing done with 1° silk.”

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17. It is clear from the above that A2 had sustained one head injury and A3 had sustained nearly four head injuries.

18. P.W-20, who was the Investigation Officer, who laid the final report, in his evidence categorically admits that P.W-1, P.W-2 and P.W-18 did not state that P.W-3 and P.W-4 were present in the scene of crime. He further states that he is aware about the registration of FIR in Crime No.191 of 2015 for the injuries sustained by A2 and A3 and he completely feigns ignorance when he was asked as to whether A2 and A3 were attacked by D1 and D2 with M.O.1 to M.O.3. It is evident that there was absolutely no investigation in the FIR that was registered in Crime No.191 of 2015 and the injuries sustained by the accused persons were not explained by the Investigation Officer. This is yet another strong ground to come to a conclusion that the genesis of the occurrence has been suppressed.



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19. The FIR was registered on 27.05.2015 at about 12.30 noon and it reached the Court only at 10.45 p.m. P.W-14, who took the FIR to the Court, has stated that it will only take 1½ hours to reach the Court from the police station and there was absolutely no explanation as to why it took nearly 10 hours for the FIR to reach the Court. The delay in this case has a lot of significance since this Court finds that there has been a deliberate insertion at the end of the complaint(Ex.P1) and an FIR also came to be registered for the injuries sustained by A2 and A3 in Crime No.191 of 2015. Obviously, there was a deliberation to suit the case as projected by the prosecution and to conceal the origin of the occurrence.

20. When the incriminating materials were put to the accused persons, A1 to A3 gave separate written explanation about the incident and on carefully going through the same, it is seen that D1 and D2 had started attacking A2 and A3 and they sustained head injuries and hence, as a private defence, A1 grabbed M.O.2 and attacked D1 and D2 and they fell down. A2 in his explanation speaks about the injury sustained by him due to the attack by D1 and A3 speaks about the



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injuries sustained by him on the attack made by D1 and D2. It is therefore very clear that the prosecution has completely concealed the genesis of the case and the Investigation Officer did not even bother to investigate the Crime No.191 of 2015. The accused persons had to mark their discharge summary through P.W-19 and even this document was concealed by the prosecution.

21. The learned Additional Public Prosecutor submitted that even if the defence taken by the accused persons are taken to be true, the nature of injuries that were sustained by D1 and D2 as spoken by P.W-12 and P.W-15, through whom the postmortem certificates were marked as Ex.P11 and Ex.P13, shows that the accused persons had exceeded their right of private defence and hence, they are liable to be punished under Section 304(i) IPC.

22. It is now a settled law that if a man has a real justification to exercise his right of private defence, he cannot be held liable if he slightly exceeds his right of private defence, particularly when he is face to face with a murderous attack, for these things cannot



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be weighed in golden scales. A person, who is exercising his right of private defence, is not expected to modulate his defence step by step or tier by tier and the Court has to look into the overall circumstances and see if the right exercised by the accused is totally disproportionate to the injury sought to be averted.

23. In the present case, there is already an allegation that D1 and D2 along with one Lakshmanan, had caused the murder of one Natarajan and Nagarajan, who are the relatives of the accused persons due to the same property dispute. It is seen that there was exchange of words in the scene of crime and A2 and A3 had sustained head injuries after being attacked with M.O.2 and M.O.3. As a right of private defence, the accused persons retaliated and unfortunately, it ended in the demise of D1 and D2. In the light of a murderous attack faced by the accused persons, it cannot be held that they exceeded their right of private defence.

24. The Judgment relied upon by the learned Additional Public Prosecutor in *Ranbir Singh and Others vs State of Haryana*,



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reported in (2009) 16 SCC 193 and *State of Rajasthan vs Manoj Kumar*, reported in (2014) 5 SCC 744, will not apply to the facts of the present case since those were the cases, wherein, on the facts of the case, the Court found that the accused persons had exceeded their right of private defence.

25. It has been repeatedly held by the Apex Court that where the prosecution has suppressed the injuries sustained by the accused, the evidence of the eyewitness itself will become questionable and the accused persons will be entitled for acquittal on that ground alone. Useful reference can be made to the judgment of the Apex Court in *Lakshmi Singh and Ors. vs. State of Bihar*, reported in (1976) 4 SCC 394. The relevant portion in the judgment is extracted hereunder:

“12.PW.8 Dr.S.P.Jaiswal, who had examined Brahmdeo deceased and had conducted the post-mortem of the deceased had also examined the accused Dasrath Singh, whom he identified in the court, on April 22, 1966 and found the following injuries on his person:

“1.Bruise 3" × ½ " on the dorsal part of the right



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forearm about in the middle and there was compound fracture of the fibula bone about in the middle.

2.Incised wound 1" × 2 mm × skin subcutaneous deep on the lateral part of the left upper arm, near the shoulder joint.

3.Punctured wound 1/2" × 2 mm × 4 mm on the lateral side of the left thigh about 5 inches below the hip joint.

According to the doctor Injury 1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor is it believable. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries



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on the person of the accused. Indeed if the eyewitnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai v. State of Bihar [AIR 1968 SC 1281 : (1968) 3 SCR 525 : 1968 Cri LJ 1479] tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very doctor who



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examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows:

“The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of PW 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probalised. Under these circumstances the prosecution had a duty to explain those injuries ... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probalise the plea taken by the appellants.”

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probalise the plea taken by the



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appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. State of Punjab [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] which was also a murder case, this Court, while following an earlier case, observed as follows: [SCC p. 531 : SCC (Cri) p. 621, para 20]

“In State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] one of us (Untwalia, J.) speaking for the Court, observed as follows: [SCC p. 13 : SCC (Cri) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.*
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.*
- (3) It does not affect the prosecution case at all.*

The facts of the present case clearly fall within the



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four-corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.”

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the



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prosecution case.”

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the



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evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

26. It will also be useful to rely upon the Division Bench judgment of this Court in V.Mohan vs. State, reported in 2018 (2) MWN (Cr.) 429 (DB) and the relevant portions in the judgment are extracted hereunder:

“19.*In the judgment reported in AIR 1954 Mad 15 [In re Boya GajjiPeddaVenkatanna @ Bodenna and others Vs. State], a Division bench of this Court has held in paragraphs No.11 and 12 thus:-*

“11-*A question of procedure has been raised in this case and that is that the prosecution itself should have placed all the materials relating to the injuries on the person of DW2 and filed Ex.D.10 as an exhibit on the prosecution side. The case of the prosecution with regard to the injuries on D.W.2 and Ex.D10 seems to be from the arguments of the Public Prosecutor in the Lower Court, that these injuries were self-inflicted and Ex.D.10 was given to provide a defence for the accused. We do not find from the evidence any*



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suggestion to support the above arguments of the Public Prosecutor in the lower court. The Investigation officer if he had taken a little more trouble and investigated the case properly, would have found from the similarity of the injuries on the deceased and DW2 and from a consultation with the doctor, that these injuries were more likely to have been caused by the stones than by sticks, in which case he would have realised that the injuries on DW2 were caused at the same time and in the same occurrence in which the deceased was injured by stone. There would then be no charge sheet for murder but only for rioting and perhaps for culpable homicide not amounting to murder even if the view was taken that the injury on the deceased was caused by A1 exceeding his right of defence to DW2. We have remarked on more than one occasion that the police do not really investigate the case but merely content themselves with the evidence of witness readily provided by the complainant party.

12.In a complaint and counter-complaint such as this obviously arising out of the same transaction when the prosecution proceeds on the basis of the complaint, we think it is the duty of the prosecution to exhibit the counter-complaint through the police officer who recorded it and also to prove medical certificates of persons wounded on the opposite side also and place before the Court a definite case which they ask it to accept. We must deprecate the prosecution in such



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cases accepting in toto one complaint and examining only witnesses who support it and give no explanation at all for injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the court to enable it to arrive at the truth and a just decision. If in the present case, Ex.D.10 was in the opinion of the investigate police a false complaint laid for defence purposes and the injuries on DW2 self-inflicted, the prosecution should none the less, have file Ex.D.10 and DW2's medical certificate asking the court to reject them. The fact that a complaint Ex.D.10 was filed, that it was treated as false or undetectable and that DW2 did have injuries on his person are relevant facts which the prosecution itself should have placed before the Court in the first instance instead of waiting for the defence to disclose them.”

20. We are fully agreeable with the above judgment and in the instant case, the prosecution has not placed the true version before the Court as regards the accused sustaining injuries and the case in counter in the first instance and only cited some interested witnesses, who are supporting the prosecution case and the prosecution also had failed to show who are the aggressors and only from the evidence of the prosecution witnesses, it is revealed that only the prosecution party were the aggressors. In the absence



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of any materials for the Court to come to the conclusion that whether the accused have exercised right of defence and while exercising such right, had they exceeded the private defence or not and only on such consideration, the Court can come to the right conclusion whereas the prosecution has suppressed one version and projected the other. It is highly difficult to base a conviction on the accused based on one version of the prosecution. Therefore, we are of the view that the prosecution having failed to produce materials with regard to the counter case and that it failed to explain the injuries sustained by the accused, more particularly, on the basis of the homicidal death of the deceased, guilt cannot be inferred as against the accused on the basis of the interested witnesses and their evidence is also highly doubtful in view of the serious discrepancies noted above. Hence, the accused are entitled to benefit of doubt.”

27. In view of the above discussion, we have no hesitation in interfering with the judgment and order passed by the Court below and setting aside the same and acquitting the accused persons from all charges. It is brought to our notice that A1 died during the pendency of this appeal on 23.07.2021 and the death certificate was also produced before this Court. Hence, this appeal stands abated insofar as A1 is



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concerned. The present appeal confines itself only to A2 and A3.

28. In the result,

(i) This criminal appeal stands allowed.

(ii) The conviction and sentence passed by the learned I-Additional District and Sessions Court (PCR), Tiruchirappalli in S.C.No. 44 of 2019, dated 26.09.2019, is hereby set aside and the appellants/A2 and A3 are acquitted of all charges.

(iii) The bail bond executed by A2 & A3 shall stand cancelled and fine amount, if any paid by them shall be refunded to them.

[J.N.B, J.] & [N.A.V., J.]
18.10.2022

Index : Yes/No
Internet : Yes
PJJ

To

1. The I-Additional District and Sessions Judge (PCR),
Tiruchirappalli.

2. The Inspector of Police,



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Siruganur Police Station,
Trichy District.

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



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and

N.ANAND VENKATESH, J.

PJL

**Judgment made in
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18.10.2022