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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	20.06.2023
Date of Judgment	20.07.2023

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.M.P.No.17973 of 2022

in

Crl.R.C.No.1223 of 2022

and

W.P.No.5809 of 2023

Crl.M.P.No.17973 of 2022

S.Velusamy : Petitioner/Petitioner/Defacto complainant

Vs.

1.The Inspector of Police,
Avinashipalayam Police Station,
Avinashipalayam,
Tiruppur District.

: 1st Respondent/Respondent/
Investigating Officer

2.The Superintendent of Police,
Tiruppur District,
Palladam Road,
Tiruppur.

: 2nd Respondent/Respondent/
Superintending Officer

3.The Assistant Commissioner,
HR & CE Department,
Tiruppur.

: 3rd Respondent

[R3 suo-motu impleaded vide order dated 03.02.2023]



4.Mohan Karthik

5.Rajendran

6.Senthil Babu

7.Manoharan

8.Dharmalingam

9.P.Subramaniam

10.Gopalsamy

11.Selvaraj

12.Palanisamy

13.Ilamurugan

14.P.Sivanathan

15.S.Kumar

[4 to 15 suo-motu impleaded vide order dated 26.04.2023]

: Respondents

Prayer:

Criminal Miscellaneous Petition has been filed under Section 482 of Cr.P.C., to recall the order dated 29.08.2022 made in CrI.R.C.No.1223 of 2022 which has directed the first respondent to conduct Preliminary enquiry on the complaint of the petitioner, dated 09.06.2022, forwarded by the second respondent and may pass an order directing registration and investigation of the case by some other independent agency.



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For Petitioner : Mr.S.Lakshmanaswamy

For R1 & R2 : Mr.S.Subbiah
Government Advocate

For R3 : Mr.N.R.R.Arun Natarajan
Special Government Pleader
assisted by Mr.K.Karthikeyan

For R4 to R15 : Mr.S.Mukunth
Senior Counsel
Assisted by Mr.Sam Jayaraj Houston
for M/s.Sarvabhauman Associates

W.P.No.5809 of 2023 :

S.Velusamy : Petitioner
Vs.

1.The Inspector of Police,
Avinashipalayam Police Station,
Avinashipalayam,
Tiruppur District.

2.The Superintendent of Police,
Tiruppur District,
Palladam Road,
Tiruppur.

: Respondents

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the first respondent herein pertaining to the Closure Report, dated 17.12.2022, concerning the petitioner's complaint dated 09.06.2022



forwarded by the second respondent and quash the same and direct the CB-CID, Tirppur or any other independent agency to register the petitioner's complaint, dated 09.06.2022 and investigate the same.

For Petitioner : Mr.P.M.Duraisamy

For Respondents : Mr.S.Subbiah
Government Advocate

COMMON ORDER

The Petitions:

1. The Criminal Revision Petition in Crl.R.C.No.1223 of 2022 was filed to call for the records and set aside the order dated 10.08.2022 made in Crl.M.P.No.2879 of 2022 on the file of the learned Judicial Magistrate, Palladam and to further issue a direction to any other independent agency for registration and investigation of the petitioner's complaint, dated 09.06.2022. The said criminal revision case was disposed of by this Court by an order dated 29.08.2022 on the following directions:

“...5. In that view of the matter, this Criminal Revision is disposed of on the following terms:

(i) The order of the learned Judicial Magistrate, Palladam, dated 10.08.2022 made in Crl.M.P.No.2879 of 2022 is set aside.



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(ii) The complaint of the petitioner dated 09.06.2022 is forwarded to the 1st respondent police. The 1st respondent shall conduct the preliminary enquiry and follow the procedure as laid down by “Lalithakumari case” and depending upon the outcome of the preliminary enquiry, the 1st respondent shall register the case and investigate into the same and file the final report in accordance with law or shall give such intimation as mandated under law to the petitioner.”

1.1. Aggrieved thereof, the original revision petitioner filed CrI.M.P.No.17973 of 2022 to recall the above order inasmuch as it only gives a direction to conduct a preliminary enquiry and to issue a positive direction to register the First Information Report and proceed with the investigation.

1.2. Pending the recall petition, the respondent police, namely, the Inspector of Police, Avinashipalayam Police Station, conducted a preliminary enquiry and closed the complaint, vide his report, dated 17.12.2022 without registering any case and therefore, the petitioner



herein had filed W.P.No.5809 of 2023, challenging the said closure report and to forward the petitioner's complaint to CBCID, Tiruppur or any other independent agency to register a case and investigate into the same. Since the subsequent writ petition and the recall petition were interconnected, the writ petition was ordered to be posted along with the recall petition and as such both are taken up for disposal by way of this common order.

1.3. As a matter of fact, all the proposed accused have been impleaded as party respondents and they are also represented by their counsel. This Court also impleaded the Assistant Commissioner of HR & CE Department, Tiruppur also as a party respondent and the learned Special Government Pleader appeared on behalf of the Department and made submissions.

B. The Submissions:

2. Heard Mr.S.Lakshmanaswamy, learned counsel appearing for the petitioner in Crl.M.P.No.17973 of 2022 and Mr.P.M.Duraiswamy, learned counsel appearing for the petitioner in W.P.No.5809 of 2023;



Mr.S.Subbiah, learned Government Advocate (Criminal side) appearing for the State representing the Inspector of Police, Avinashipalayam Police Station; Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for HR & CE Department assisted by Mr.K.Karthikeyan, learned Government Advocate (HR & CE); and Mr.S.Mukunth, learned Senior Counsel for the respondents 4 to 15 assisted by Mr.Sam Jayaraj Houston for M/s.Sarvabhauman Associates.

2.1. Mr.S.Lakshmanaswamy, learned counsel would contend that when this Court had found that there are allegations in the complaint which disclosed a cognizable case, then the instant case being a case under Section 380 of IPC, namely, theft of temple's property and under Sections 3 and 4 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, ought not to have granted an order directing preliminary enquiry and the directions should have been to register the case. Therefore, when the order of this Court in CrI.R.C.No.1223 of 2022 is not in consonance with the directions of the Hon'ble Supreme Court of India in *Lalitakumari's case [2014 (2) SCC 1]*, it is a case for recalling the order and passing a fresh order granting positive direction.



2.2. Mr.P.M.Duraiswamy, learned counsel appearing for the writ petitioner, in W.P.No.5809 of 2023, would submit that when the very petition for recall has been entertained by this Court and the same is pending, hurriedly and hastily in a manner so as to show favoritism to the accused persons high-handedly the complaint has been closed. In the preliminary enquiry none of the necessary facts were ascertained and even the facts which were ascertained were over looked. The persons, who committed the mischief and the offence were not at all in charge of the temple as on the date, when the offence has took place. They were neither appointed as trustees nor as fit persons. Therefore, they were not at all entitled to pass any resolution as if it is the resolution of the board of trustees. Secondly, the HR & CE Department has categorically mentioned during the enquiry that it had not authorised the cutting of the said trees. Thirdly, the reason mentioned that the tree is causing damage to the compound wall and the adjacent Government building is false. Fourthly, there was no such letter, which was given on behalf of the said office. Further, there is yet another Peepal tree on the other side of the compound wall which is even more nearer to the compound wall and the building and they have not cut the said trees.



2.3. He would submit that the fact remains that without understanding the very concept of our ancestors planting two Banyan trees, one Peepal tree and one Neem tree which were considered to be sacrosanct in the context of the temple and the presiding Deity being the Neelakandiamman and the type of worship made in the temple, unauthorizedly such trees of age more than 60 years have been cut. Once the trees are cut, the wood becomes the property of the temple. The same was sold unauthorizedly and has not been accounted for. Therefore, without ascertaining any of the above facts and when the matter is pending before this Court, high-handedly the complaint is closed and therefore, the writ petition is liable to be allowed.

2.4. The learned counsel also relied upon certain other proceedings which are *inter se* disputes between the trustees pending and would submit that in the teeth of the said disputes, very high-handedly and unauthorizedly the offences were committed.

2.5. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader, placed a copy of the rules framed by the HR & CE Department



and would submit that there are two types of trees which are grown inside of our temples. One is called the *sthala vruksha*, which is the symbolic tree of the Deity and nobody can ever cut the same. As far as the other trees are concerned, even then as per the rules, any trustee or fit person or Executive Officer proposing to cut or uproot any tree have to get prior approval from the department. He would further submit that in this case, he would confirm the fact that as on date of the cutting of the trees, the respondents 4 to 15 were not the trustees and as a matter of fact, some of the respondents were appointed as trustees only by an order passed subsequently.

2.6. Mr.S.Subbiah, learned Government Advocate appearing on behalf of the respondents, in W.P.No.5809 of 2023, would submit that there was no high-handedness or any violation of the order of this Court in closing the complaint. As a matter of fact, this Court while disposing of the criminal revision case, directed the respondent to enquire into the matter and depending on the outcome of such enquiry and directed the registration of the case. In the preliminary enquiry conducted by the respondent police, the resolution which is passed in the temple on



30.04.2022, whereby, the persons concerned with the temple have met in the temple and have taken into consideration that the trees were causing cracks to the Panchayat Union compound wall and the shed used for parking cycles has become dilapidated and somebody has come forward to donate money to build a pukka construction and upon consulting engineers they were advised to remove the trees. This apart, some other person has come forward to lay tar on the entire front yard and if only the trees are removed, the tar topping can be maintained and the entire area can be maintained in a clean manner. It was also further resolved instead of cutting the trees, they can be uprooted and replanted in the land belonging to Muthukumaraswamy Temple. Accordingly, they have done so and replanted the trunk of the tree. This apart, the concerned persons were examined and according to the investigating officer no offence whatsoever is made out. Hence the complaint was closed after enquiry on 17.12.2022.

2.7. The learned Government Advocate would submit that eventhough the allegations of not obtaining permission etc., from the HR & CE Department is true, but the same does not make out any cognizable



offence and therefore, the complaint has rightly been closed. If at all, the petitioner has got any grievance, then he has to exhaust the remedy in the manner known to law as enunciated by the Hon'ble Supreme Court of India in *Lalitakumari's case*.

2.8. Mr.S.Mukunth, learned Senior Counsel appearing on behalf of the respondents 4 to 15 would submit that firstly inspite of the term being expired, still the respondents 4 to 15 were only the people being the devotees and the past trustees were defacto in charge of the affairs of the temple. It was not the personal decision of any person. Cutting across the devotee group, persons being the former trustees, donors and all other persons who had an interest over the affairs of the temple and who are regularly taking care of the temple assembled within the temple premises on 30.04.2022 and rightly or wrongly, for what they believed to be in the best interest of the temple, collectively took a decision and they indulged in uprooting the trees and replanting the same. The said facts were also subsequently known to the HR & CE authorities. As a matter of fact, only thereafter, some of the respondents were made a trustees to the temple. Therefore, there was no question of



any theft of the temple property. As a matter of fact, the present condition of the trees are demonstrated before this Court by replanting the trees and one Vanam India Foundation is taking care of the said trees. Further, the act done by the respondents 4 to 15 will not make out an offence punishable under Section 4 of the TNPPDL Act, as they did not remove or cause damage to the property of any other person and acting on behalf of the temple, they only cut the trees of the temple that too by uprooting and replanting only to facilitate further constructions and to avoid damage to the buildings and compound walls nearby.

C. THE POINTS FOR CONSIDERATION:

3. I have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for consideration in this case:

(1) Whether the order of this Court dated 29.08.2022 is liable to be recalled?

2) Whether the closure report of the first respondent, namely, the Inspector of Police, Avinashipalayam Police Station, dated 17.12.2022 is liable



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to be set aside and a further direction is to be given for registration of a case and to investigate into the matter ?

(3) What other reliefs to be granted ?

D. Point No. 1 :

4. There is no power of review for a criminal Court to revisit the order and to modify the same. But however, the power of the Criminal Court to recall its order and the circumstances in which it can be done is enunciated by the Hon'ble Supreme Court of India in the Judgments of,

(i)State of Punjab v. Davinder Pal Singh Bhullar [(2011) 14 SCC 770]:

“...46.If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 CrPC would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice.



The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.”

(ii) Ganesh Patel Vs. Umakant Rajoria:

*“...This application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review to which Section 362 of the Code of Criminal Procedure, 1973, would be attracted. [Grindlyas Bank Ltd. v. Central Government Industrial Tribunal and Ors. 1980 (supp) SCC 420]. On the aspect of the difference between recall and review and when an order of recall can be passed reference can be made to **Budhia Swain and Others v. Gopinath Deb and Others, (1999) 4 SCC 396.**”*

4.1. Therefore, it can be seen that only if the order is passed without hearing the party concerned or on abuse of process, the power of recalling can be exercised. Thus, the application to recall the order is not legally tenable in as much as it only points out a legal infirmity in the order. Even otherwise, in this case it is the contention of the petitioner



that their complaint discloses cognizable offence. In this regard, it must be seen that so as to decide whether the respondents 4 to 15 were acting on behalf of the temple or not and whether the trees which were cut and any part of it were sold in the open market or not and as to the nature of trees which were in existence etc., it necessitates further ascertainment of facts. Therefore, a perusal of the complaint given by the petitioner only indicates the commission of a cognizable offence, but did not contain all the facts which are necessary so as to disclose cognizable offences, thereby, necessitating conduct of a preliminary enquiry. Therefore, the order passed in CrI.R.C.No.1223 of 2022, dated 29.08.2022 is in terms of the dictum of the Hon'ble Supreme Court of India in Para No.111 of *Lalitakumari's case* and therefore, there are no merits in the application filed to recall the order and the point is answered accordingly.

E. POINT NO. 2:

5. The closure report of the respondent is challenged by way of writ petition in W.P.No.5809 of 2023 primarily on two grounds. Firstly, it is challenged on the ground that it is high-handed and when recall petition is already pending before this Court, without even considering the fact that this Court is in seisin of the matter such a report is farce and



therefore, it is high-handed and illegal. To appreciate the said contention,

it can be seen that when the application in Crl.M.P.No.17973 of 2022

was filed and entertained by this Court, this Court did not specifically restrain the first respondent not to proceed with the preliminary enquiry.

When the matter came up for hearing, this Court itself by order dated 02.12.2022 recorded the prayer of the Government Advocate requesting two weeks time to report about the development pursuant to the order of this Court and accordingly, the matter was adjourned to 16.12.2022.

Therefore, it cannot be said that the closure report is high-handed or in any manner violative of the orders of this Court.

5.1. Secondly, as far as merits of the report is concerned, the learned counsel, Mr.P.M.Duraiswamy, had pleaded several shortcomings in respect of the said report and requested the said report be set aside by this Court. In this regard, it can be seen that the petitioner has made a complaint on 09.06.2022. Thereafter, upon the orders of the Court, preliminary enquiry has been conducted by the first respondent and based on the outcome of his enquiry, the first respondent has concluded that no case is made out so as to register a case and investigate into the same and



has closed the complaint without even registering the First Information Report.

5.2. In such a case, the further course to be adopted by the complainant has already been delineated by the Hon'ble Supreme Court of India in Lalitakumari's case and by the Hon'ble Division Bench of this Court in ***G.Prabhakaran V. Superintendent of Police and Anr [2018 (4) MLJ (crl.) 513]***, which reads as follows:

“....35.Accordingly, we answer the references in the following manner, while giving certain directions:

(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.



(v) *No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.*

(vi) *An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the compliant or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, 74 the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.*

(vii) *The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.*

(viii) *The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.*

(ix) *This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.*

(x) *The judicial Magistrates, while dealing the*



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petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one. The references stands ordered accordingly.”

5.3. Therefore, the course open to the petitioner is only to file appropriate petition/complaint before the Jurisdictional Magistrate after due compliance of law and this Court cannot go into the merits of the closure report and set aside the same in exercise of the powers under Article 226 of the Constitution of India. Accordingly, I answer that the only remedy for the writ petitioner is follow the dictum of the Hon'ble Supreme Court of India in **Lalitha Kumari**(*cited supra*), as explained by



this Court in ***G. Prabhakaran***(*cited supra*). Therefore, this court at this stage cannot express any opinion as to whether any cognizable offence is made out or not.

F. Point No.3:

6. In this case, the pictures of the trees which are cut has been produced. It is admitted by both sides that the trees were more than 60 years old. The third respondent department has framed the rules under which even a trustee of the temple or the executive officer or the fit person as the case may be have to obtain prior permission before cutting or uprooting the trees.

6.1. In this case, the respondents 4 to 15 were not even officially in the administration of the temple. The respondent 7, 8 and 13 were appointed as Trustees, only subsequently, that is, on 25/01/2023. They not only acted in violation of the rules of the department, but more specifically a perusal of the resolution shows untenable reasons for cutting the trees. Firstly, no such letter from any Government official belonging to the adjacent Panchayat Union building is produced before this Court nor was produced in the preliminary enquiry. As rightly



pointed out by the learned counsel appearing on behalf of the writ petitioner, there is even a tree on the other side of the campus, which is even more close to the compound wall. The second reason which is mentioned is that for putting up a new construction, the trees have to be removed. Nowadays, the weight of the buildings rest on pillars and columns and it is not necessary to remove the trees for the purpose of putting up any construction. No such report of any engineer is placed before this Court. The third reason that they want to *Tar* top the entire ground so as to make the ground clean shows the complete ignorance of the respondents 4 to 15.

6.2. Traditionally, our forefathers in their wisdom, whenever they built any temple, always planted trees, not only religious purposes, but with the greater wisdom of giving importance to the nature and maintaining the eco-system. Thus temples are surrounded by trees and water bodies. Totally, disregarding the very basis of these important parts of the temple being the trees or the water body, many a times we see that the water body itself is erased for the expansion of the temple or the trees are cut for putting up the further structures. Thus, the respondents 4



to 14 neither have shown any *Bakthi* by taking the religious sentiments attached to the trees on the face value nor have shown any understanding as to the wisdom of the persons who maintained the temple in yesteryears. It is pertinent to note here that already a circular bearing Na.Ka.No.48995/2010 dated 23.08.2010 has been issued by the Commissioner, HR & CE Department, relating to cutting of trees and also implementing the earlier order of this Court in W.P. No.7811 of 2010. There is a specific ban of cutting the trees in Proceedings No. 39581/96 dated 20.06.1996.

6.3. A perusal of the photograph which shows the girth of the trees cut, which shocks the conscience of the Court. These trees were huge and the manner in which it is replanted as an eye-wash. The very idea of cutting these trees would itself show complete apathy and understanding exhibited by the respondents 4 to 14. In the teeth of such actions and violations, the third respondent herein has not only failed to take any action, but has also made three of these people as trustees to the temple. There is absolute non-application of mind and inaction on the part of the third respondent. Therefore, while disposing of the writ



petition as well as the petition to recall, it is just necessary to direct the third respondent to take action on the respondents 4 to 15 or any other person who has flagrantly violated the rules framed by the department for cutting of trees and also enquire into the fact as to what happened to the other parts of the tree and pass appropriate orders in accordance with law. In any event, the third respondent authority have to consider whether such persons who do not understand the basic idea of the temple, can be in the management of the temple. The respondents 4 to 15 would think that the temple premises covered by tar topping is only clean and the 60 year old Banyan, Peepal and Neem trees make it unclean. Therefore, the third respondent has to decide in accordance with law as to whether such persons are fit at all to administer the temple and its affairs. Apart from their complete indifference shown towards the religious purposes associated with the trees such as Banyan tree, Peepal tree and Neem tree which are in the premises of the Deity in Neelakandiamman Temple, they have exhibited their complete indifference to the general benefits and purposes of planting trees in the Temple Premises.

G. THE RESULT:



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7. In the result,

(i) CrI.M.P.No.17973 of 2022 stands dismissed;

(ii) W.P.No.5809 of 2023 is dismissed. However, with liberty to the petitioner to file a private complaint before the appropriate Magistrate in the manner known to law;

(iii) The third respondent is directed to conduct an enquiry and shall take appropriate action against the respondents 4 to 15 in accordance with law with regard to the entire episode of cutting the trees and based on the outcome of enquiry shall pass such further or other orders regarding their continuance of respondents 7,8 and 13 in the management of the temple and the third respondent shall also be entitled to forward complaint, if any, to the Law Enforcement Agencies based on the outcome of their enquiry;

(iv) In the places of the trees which are now removed, the third respondent shall ensure planting of new saplings of Banyan tree, Peepal tree and Neem tree within



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the premises of the temple in the same place from where the old trees were uprooted or at such other convenient places and the same shall be duly maintained;

(v) However, there shall be no order as to costs.

20.07.2023

NCC : Yes / No

Index: Yes/No

Index: Yes/No

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To:

1. The Inspector of Police,
Avinashipalayam Police Station,
Avinashipalayam,
Tiruppur District.
2. The Superintendent of Police,
Tiruppur District,
Palladam Road,
Tiruppur.
3. The Assistant Commissioner,
HR & CE Department,
Tiruppur.
4. The Additional Public Prosecutor,
Madras High Court, Madras.



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D.BHARATHA CHAKRAVARTHY,J.

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Pre-Delivery Order made in
Crl.M.P.No.17973 of 2022
in
Crl.R.C.No.1223 of 2022
and
W.P.No.5809 of 2023

20.07.2023