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Crl.A.No.95 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.06.2024

PRONOUNCED ON: 20.06.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.95 of 2020
and Crl.M.P.No.12478 of 2023

Siva @ Sivakumar

... Appellant/Accused No.1

vs.

State represented by
Inspector of Police,
D Nagar Police Station,
Puducherry.

(Crime No.96/2017)

... Respondent/Complainant

Criminal Appeal filed under Section 389 of Code of Criminal Procedure, 1973, to call for the entire records in connection with the S.C.No.32 of 2017 on the file of the learned Principal Sessions Judge, Puducherry, and set aside the Judgment dated 12.12.2019.

For Appellant : Mr.N.R.Elango, Sr. Counsel
for Mr.R.Vivekananthan



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For Respondent : Mr.K.S.Mohandas
Public Prosecutor (Puducherry)

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by Accused No.1, challenging the conviction and sentences imposed upon him vide judgment dated 12.12.2019 in S.C.No.32 of 2017, on the file of the learned Principal Sessions Judge, Puducherry.

2(i) It is the case of the prosecution that the appellant and his mother (A2) entered into a conspiracy to do away with his father Selvaraj (hereinafter referred to as 'D1'), who constantly quarrelled with A2, in whose name a property stood and compelled her to transfer the property in his name, so that it could be transferred to his grandson Bharath Kumar (hereinafter referred to as 'D2'), who was born to his daughter-PW1; that pursuant to the said conspiracy on 15.04.2017 at about 9.00 a.m., the appellant caused the death of D1, by stabbing him with a knife, on his chest and abdomen repeatedly and when D2, tried to prevent the attack, the



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appellant stabbed him also, on his chest and abdomen, with the same knife; that A2 caught hold of D2 while the appellant attacked; that on 18.04.2017, both the accused in order to screen the offence, cut the bodies of D1 and D2 into seven and eight pieces, respectively, by using three knives and a pair of scissors and kept those pieces in seven numbers of polythene bags and thereafter, in seven numbers of gunny bags and threw all the gunny bags in a dump-yard near Pattanur Village, Vanur Taluk, by taking it in D1's motorcycle.

(ii) PW1, the daughter of D1 and mother of D2, received a call from D Nagar Police Station stating that a foul smell emanated from her father's house and asked her to be there; that she went to her father's house and found the house locked; that the house was washed with bleaching powder and her father, mother, brother and her son were found missing; that when they broke open the lock of the room on the front side of the house, they found bloodstains and a grinding stone with bloodstains, in the said room; and hence, she gave a complaint to the police to find her missing parents, brother and son. The complaint dated 19.04.2017 was marked as Ex.P1. An



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FIR [Ex.P26] was registered as 'man missing' in Cr.No.96 of 2017 on the file of the respondent police by PW32, the Sub Inspector of Police. PW32 informed the finger print experts and the photographer and requested their presence. The photographer and the finger print expert came to the house at about 11.45 pm. At about 12.00 midnight, PW32 prepared the Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P27]. He also prepared Crime Details Form [Ex.P2]. He suspected that it would be a case of murder and informed the Inspector of Police.

(iii) PW33, the Inspector of Police, took up further investigation and examined the witnesses. According to him, on 20.04.2017 at about 10.40 a.m., he called A1 and A2 who were found in Ariyanguppam, Kaakayanthoppu, for an enquiry and during the enquiry, both the accused confessed to the crime. PW33 thereafter, arrested the appellant and A2. On the confession of the appellant, he seized three knives [M.O.1 to M.O.3] and a pair of scissors [M.O.4] from the pooja room in the appellant's house, besides, black-coloured polythene covers [M.O.7] and seized seven gunny bags containing human bodies at Pattanur Village and sent the same to the



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hospital. On 21.04.2017, the parts of the dead bodies were assembled and were identified by the complainant-PW1. PW33 conducted inquest on the dead bodies of D1 and D2 and the inquest reports were marked as Ex.P29 and Ex.P28, respectively. PW33 altered the offence from 'Man Missing' to Sections 302 and 201 of the IPC r/w 34 of the IPC. The alteration report is marked as Ex.P30. After the examination of other witnesses, he handed over the investigation to PW34 on 26.04.2017. PW34, the Inspector of Police, conducted further investigation and after obtaining the scientific reports, filed the final report on 29.01.2018 before the learned Judicial Magistrate No.1, Puducherry, against the appellant/A1 and A2.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.32 of 2017 and was made over to the learned Principal Sessions Judge, Puducherry, for trial. The trial Court framed charges under Sections 342 r/w 34 of the IPC, 302 r/w 34 of the IPC and 201 r/w 34 of the IPC (2 counts), against the appellant/A1 and under Sections 342 of the IPC



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and 302 r/w 34 of the IPC (2 counts), against A2 and when questioned, the accused pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 34 witnesses as P.W.1 to P.W.34, marked 32 exhibits as Exs.P1 to P32, and marked 7 Material Objects as M.O.1 to M.O.7. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. On the side of defence, A2-Vasanth, examined herself as DW1 and no documents were marked.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant/A1 guilty of offences under Sections 302 IPC (2 counts) and 201 IPC r/w 302 IPC (2 counts). Further, the trial Court by holding that the prosecution has failed to prove the charge levelled against A2, acquitted her. The appellant/A1 was convicted and sentenced as follows:



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<i>Offence under Section</i>	<i>Sentence imposed</i>
302 IPC (2 counts)	To undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for three months, for each count.
201 IPC r/w 302 IPC (2 counts)	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months, for each count.
The sentences were directed to run concurrently.	

Hence, A1 has preferred the appeal challenging the said conviction and sentences.

3. Heard, Mr.N.R.Elango, learned senior counsel appearing for the appellant/A1, and Mr.K.Mohandas, learned Public Prosecutor (Puducherry) appearing for the respondent/State.

4 (i) Mr.N.R.Elango, learned senior counsel for the appellant, submitted that the circumstances have not been conclusively established by the prosecution; that PW1, the mother of D2 and daughter of D1, who was examined to prove the motive, turned hostile; that the circumstance of taking the body in a gunny bag sought to be established through PW8, also has not been proved, since PW8's evidence does not inspire confidence; that the



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circumstance of cleaning the house spoken to by PW9 and PW10 also cannot be believed, in view of inherent contradictions in the evidence of PW9 and PW10; that the recovery of knives from the house, is falsified by the case of the prosecution, since the investigating officer admittedly had checked all the rooms after the door was broke open, pursuant to the complaint of PW1 and did not find any incriminating articles in the house; and that therefore, the recovery of knives in the house thereafter pursuant to A1's confession is an after thought and unbelievable.

(ii) As regards the recovery of gunny bags from Pattanur Village on the pointing out of the appellant, the learned senior counsel submitted that the evidence of the witnesses would suggest that the police knew that the gunny bags were found in the said place and therefore, it cannot be considered as a discovery of fact on the appellant's confession and that this circumstance also cannot be therefore, put against the accused.

(iii) The learned senior counsel also submitted that the trial Court having acquitted A2 ought not to have convicted A1 as evidence against both



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the accused was the same. In fact A2 examined herself as DW1 and had stated that she and her son/appellant herein went to Thiruvannamalai at the relevant point in time and that explains why A1 had not made a complaint about the disappearance of his father and nephew. Hence, the learned senior counsel prayed for acquittal of the appellant.

5 (i). Learned Public Prosecutor (Puducherry) *per contra* submitted that though PW1 turned hostile, the prosecution has established the motive through PW2, who was a neighbour; that the other circumstances, viz., the carrying of gunny bags from the house, spoken to by PW8, the cleaning of the house, spoken to by PW9 and PW10 and the recovery of the gunny bags containing the dead bodies, on A1's confession conclusively establish the involvement of the appellant in the murder of both the deceased.

(ii) The learned Public Prosecutor (Puducherry) further submitted that if A1 was really innocent he ought to have made a complaint about the disappearance of his father and nephew. The arrest of A1 and A2 at Puducherry in a different place confirmed that they were absconding and



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about their involvement.

(iii) The learned Public Prosecutor (Puducherry) also pointed out to Ex.P15, the Settlement Deed executed by A2 in favour of A1, which triggered the quarrel between D1 and the accused. Hence, he prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and perused all the relevant materials available on record.

7 (i). PW1 is the daughter and mother of D1 and D2, respectively, and also the sister of A1 and daughter of A2. She did not support the prosecution case and therefore, was treated as hostile.

(ii) PW2 is the neighbour, who speaks about the motive and about the rough sketch and seizure mahazar; PW3 is the child witness and a friend of D2 and has deposed that on 18.03.2017, when he went to A1's house to get a hammer, he found A1 in the house; PW4 is the sister of A2, who turned



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hostile; PW5 and PW6 are the witnesses in the inquest report; PW7 turned hostile; PW8 is the neighbour who deposed that she saw A1 carrying a gunny bag from his house; PW9 and PW10, were the construction workers, who worked in the appellant's house and have stated about their witnessing the appellant cleaning the house; PW11 is the Village Administrative Officer of Kalapet, who is the witness to the confession, recovery of knives and gunny bags and signed as witness in Ex.P9 to Ex.P12; PW12 is the gunny bag shop owner; and PW13 is the carry bag shop owner.

(iii) PW14 is the Thasildar of Vanur, who had marked the area sketch of Pattanur village- Ex.P13; PW15 is the Revenue Assistant, who speaks about the recovery of seven gunny bags; PW16 is the officer from Vanur Fire Station and given a report-Ex.P14; PW17 and PW18, are independent witnesses, who speak about the recovery of gunny bags from the dump-yard; PW19 is the owner of the land, from where the dead bodies were recovered and PW20 is the Sub Registrar, who deposed that the property stood in the name of A1, pursuant to the Settlement Deed-Ex.P15.



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(iv) PW21 is the photographer; PW22 is the Analyst in Forensic Unit, Kirumambakkam, who collected the bloodstains from the house and two wheeler; PW23 is the Sub Inspector of Police, who sent the case property from the hospital to the Forensic Lab; PW24 is the Constable who sent the case properties from the Court to the Forensic Lab; and PW25 and PW26 are the Constables who assisted the investigating officer in typing the confession.

(v) PW27 is the post-mortem doctor, who had issued Ex.P16-postmortem certificate and Ex.P18-final opinion, in respect of D1 and also the postmortem certificate and final opinion-Ex.P19, in respect of D2; PW28 is the Mahazar witness; PW29 is the ambulance driver; PW30 is the Forensic Science Officer; PW31 is the DNA Analyst, who issued the DNA Profiling Report-Ex.P25; PW32 is the Sub Inspector who registered the FIR; and PW33 and PW34 are the investigating officers, who conducted the investigation and filed the final report.

8 (i) As stated earlier, the case rests on circumstantial evidence.



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Though PW1 had lodged the complaint, she had deposed that there was no property dispute between her father (D1) and the accused i.e., appellant/A1 & A2, who are her brother and mother, respectively. She was therefore treated as hostile. PW2 the neighbour speaks about the quarrel on 15.04.2017 and about the property dispute. However, in the cross examination he would admit that he had no personal knowledge about any property dispute and on 15th April, 2017, he did not witness the quarrel, but, he heard some noise from the house. The reading of the evidence of PW2 would show that PW2 is not sure of any property dispute. Therefore, motive cannot be inferred from the evidence of PW2.

(ii) The document relied upon by the prosecution viz., Ex.P15 which is a Settlement Deed in favour of appellant/A1 executed by A2, does not establish the motive in any manner. The document would only suggest that the property has already been settled in favour A1 and there is no reason for A1 to be aggrieved. The quarrel between D1 and A2 cannot be inferred, merely from the fact that A2 had settled the property in favour of A1. Therefore, in our view, the most important circumstance in the case of



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circumstantial evidence viz., motive has not been established by the prosecution.

9. (i) The next circumstance relied upon by the prosecution is the appellant/A1 carrying the gunny bags from the house in D1's two wheeler, which is spoken to by PW8. Firstly, we find from the evidence of PW8 that she is not clear as to when she saw A1 carrying the gunny bags. She would only state that she saw A1 at 7.30 p.m., and that she did not remember the date and month of the incident. In her cross examination, she would admit that it was only the police who came and enquired her and at that time, she stated what she saw.

(ii) The evidence of PW8 does not inspire confidence for more than one reason. Firstly, she does not say the date on which she saw the accused, as stated earlier. Secondly, admittedly she had not gone to the police station to give this information. It is not known as to how the police discovered that PW8 was a witness to A1 carrying gunny bags. Thirdly, on perusal of the record, it is seen that though her statement under Section 161 Cr.P.C., is



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dated 24.04.2017, it was sent to the Magistrate on 12.06.2017. The belated examination and the despatch of the statement, besides, the above infirmities pointed out, throw a substantial doubt with regard to the evidence of PW8.

10 (i). The next circumstance is PW9 and PW10 witnessing the appellant cleaning the house with the bleaching powder. PW9 and PW10 are construction workers, who are said to have gone to the appellant's house to construct a compound wall. PW10 is the Mason, who had employed PW9. Even in respect of these two witnesses, it is now known as to how the investigating officer discovered that these two witnesses were employed in the appellant's house.

(ii) Be that as it may. Both these witnesses were examined to prove the circumstance of the appellant cleaning the house with the bleaching powder. PW9 does not specify as to when he saw the appellant cleaning the house. No date is mentioned. PW10 could however state that he went to the house on a Monday after 14.04.2017 and saw the appellant cleaning the portico of the house. However, in the cross examination it was brought out



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by the defence that he had written the dates in his hand. The relevant portion in the cross-examination reads as follows:

“நான் கையில் தேதியை எழுதி வைத்துக்கொண்டு, அதை பார்த்து தேதியை தெரிந்துக்கொண்டேனா என்றால் இல்லை. (சாட்சியிடம் இடது கையை விரித்து காட்டச்சொல்லி காண்பித்ததில், ஆதில் 14.04.2007 வெள்ளிக்கிழமை, 17.04.2017 திங்கட்கிழமை, 19.04.2017 புதன்கிழமை, 30.04.2017 என எழுதப்பட்டுள்ளதை சாட்சி படித்து காண்பித்தார்). மேற்படி தேதிகள் வழக்கு சம்பந்தப்பட்ட தேதிகள் என்றால் சரி. மேற்படி தேதிகளை யார் சொல்லி கொடுத்து எழுதினேன் என்றால் பாக்கெட் டைரியில் எழுதியுள்ளதை பார்த்து எழுதினேன். தற்போது பாக்கெட் டைரி உள்ளதா என்றால் இல்லை.”

(iii) The above evidence in our view, shows that PW10's version with regard to the date on which he saw the appellant cannot be believed. PW9 would state that he saw the appellant cleaning the staircase in the house, whereas PW10 would state that the appellant was cleaning the portico. However, the investigating officer-PW34 would state that when he first went to the house, he saw that the bedroom and the hall were alone, cleaned by bleaching powder. Besides that, both PW9 and PW10 give different versions as to the dress worn by the appellant when they saw him. This by



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itself may appear to be a minor contradiction. However, both these witnesses, according to the prosecution, were examined on 30.04.2017 but their statements were sent to the Court on 14.07.2017. When specifically asked about the delay, the investigating officer would state that he was overburdened with work. This explanation in our view, is unacceptable, as these two witnesses are vital to the prosecution, who speak about an important circumstance, and their statements ought to have been despatched to the Court immediately. The delay in despatch makes it highly doubtful as to the date of the examination of these two witnesses and their authenticity.

(iv) Considering the above infirmities, we have no hesitation in holding that both PW9 and PW10 cannot be relied upon to prove the circumstance of the appellant cleaning the house.

11. (i) The next important circumstance relied upon by the prosecution is the discovery of the gunny bags on the information given by the appellant at 5.00 p.m. on 20.04.2017. The prosecution seeks to rely upon the evidence of PW11, PW15, PW17, PW18 and PW33 to prove the



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said circumstance.

(ii) As stated earlier PW11 was working as a VAO and was witness to the confession and to the recovery of gunny bags and knives from the house of the appellant. PW15 is the Revenue Assistant who accompanied PW11 to the place where the gunny bags were recovered. PW17 and PW18 are the independent witnesses, who speak about the appellant's pointing out to the place where the gunny bags were found. PW33, is the investigating officer who speaks about the seizure.

(iii) It is the prosecution case, as stated earlier, that PW33 took the appellant to the dump-yard at Patttanur Village at 4.45 p.m. However PW15 the Revenue Assistant would state in the cross examination that he and PW11 went to the dump-yard on the orders of the Thasildar at about 2.00 p.m., and the body was taken around 3.30 p.m. PW17 would state that he went to the spot at about 3.00 p.m. PW33, the investigating officer would state that after the confession of the appellant was recorded, he informed the Tamil Nadu Police to be present at the spot. He also admits



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that the police were present even before he went along with the appellant to the place. Most importantly, the prosecution has marked the Crime Details Form-Ex.P12 to prove the place where the gunny bags were recovered. In the said report, it is mentioned that the place of the occurrence, which the prosecution refers to as a dump-yard where the gunny bags were found was shown by PW1. The investigating officer admits that there is nothing in Ex.P12 report to indicate that the gunny bags were recovered on the pointing out of the appellant.

(iv) Considering the discrepancies in the time mentioned by PW1-daughter of D1 and mother of D2, PW11-VAO and PW17-Sivakumar, an independent witness and the fact that the Tamil Nadu Police were present even before the appellant and the investigating officer could come to the place, it is difficult to infer that the gunny bags were recovered on the pointing out of the appellant. Therefore, it cannot be said that a fact was discovered on A1's confession. In any case in Ex.P12 it is stated that PW1 pointed out the place of occurrence viz., the dump-yard. In the light of these infirmities, it is not possible to hold this circumstance against the appellant.



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12. The prosecution relies upon the evidence of PW3 to show that the appellant was in his house on 18.03.2017 and when PW3 who was the friend of D2 asked the appellant about the whereabouts of D2, the appellant told that he had gone to Rajasthan to attend the marriage. However, PW3 could not definitely identify the appellant. The relevant portions in the evidence reads as follows:

“.....நான் சுத்தி வாங்கச்சென்றபோது பரக்குமார் வீட்டில் அவருடைய மாமா இருந்தார். அவர் பெயர் தெரியவில்லை. அந்த மாமாவை தற்போது என்னால் அடையாளம் காட்ட முடியாது.....

....(சாட்சியிடம் நீதிமன்றத்திலிருந்த எதரிகளை தெரியுமா என கேட்டபோது, 1-வது எதிரியை அவர் போல்தான் (பரக்குமாரின் மாமா) தெரிகிறது என கூறுகிறார்).”

That apart, we find that PW3 had stated that he met the accused on 18.03.2017 and this is contrary to the prosecution case. Since PW3 had not given definite evidence, the circumstance of the appellant being in the house and telling PW3, that D2 has gone for a marriage cannot be put against him.

13. Further, it is seen that though the appellant and his mother-A2



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were prosecuted, the trial Court found A2 not guilty of the offence. A2 examined herself as DW1. It is the case of the appellant and A2 that they both went to Thiruvannamalai on 13.04.2017 to visit the temple in the Tamil New Year's day and they were in Thiruvannamalai till 20.04.2017. The appellant has stated that he was not in station at the relevant point of time in his reply to the Section 313 Cr.P.C. questions. A2 who has deposed as DW1 had also stated that both, she and the appellant were in Thiruvannamalai between 13th and 20th April 2017. She had also explained that she went to Thiruvannamalai on the eve of Tamil New Year's day. It is true that apart from oral evidence, the accused have not produced any documents to suggest that they were not in station during the relevant time. If the accused claims alibi, he/she has to establish it by preponderance of probabilities. Even assuming DW1's evidence has to be discarded, the appellant has offered his explanation that he was not in station at the relevant point of time. Therefore, the circumstance of the appellant not complaining about the missing of his father and nephew by itself, in our view, cannot be put against the appellant. That apart, it is for the prosecution to establish all the circumstances, conclusively. The



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circumstances must form a complete chain and they must point out only to the guilt of the accused.

14. To sum up:

The motive has not been established by the prosecution as PW1, the mother of D2 herself disowned her earlier version. The evidence of PW2, a neighbour would be hardly sufficient to prove the motive, as pointed out above. The other circumstances have also not been proved conclusively, as discussed earlier. Therefore, we are of the view that though, there is a grave suspicion against the appellant, the prosecution had not established its case beyond reasonable doubt. It is well settled that suspicion, howsoever high, cannot take the place of proof. The prosecution, therefore, in our view failed to establish its case. Hence, the judgment of the trial Court, convicting the appellant is liable to be set aside.



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15. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/A1 in S.C.No.32 of 2017 dated 12.12.2019, on the file of the learned Principal Sessions Judge, Puducherry, are set aside. The appellant/A1 is acquitted of all charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

(M.S.R.,J.) (S.M.,J.)
20.06.2024

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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Copy to:

- 1.The Principal Sessions Judge,
Puducherry.
- 2.The Inspector of Police,
D Nagar Police Station,
Puducherry.
3. The Superintendent of Prisons,
Central Prison, Kalapet,
Pondicherry.
- 4.The Public Prosecutor
Pudhucherry.



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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Pre-delivery Judgment in
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20.06.2024