



Crl.O.P.No.22543 of 2023

In the High Court of Judicature at Madras

**Reserved On :
21.3.2024**

**Delivered on :
25.3.2024**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.22543 of 2023
& Crl.M.P.Nos.15732 & 15733 of 2023

1.Dr.G.V.Varadarajulu (a)
Sekar

2.Mrs.G.V.Geetha

...Petitioners

Vs

1.The State rep.by
The Inspector of Police,
16A, Central Crime Branch,
Vepery, Chennai-7.

2.Mrs.Jayanthi Kannappan

...Respondents

PETITION under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.5837 of 2023 pending on the file of the Chief Metropolitan Magistrate for Exclusive Trial of CCB Cases & CBCID Metro Cases, Egmore, Chennai and quash the same against the petitioners.

For Petitioners	:	Mr.K.Ravi, SC for Mr.G.A.Thiyagarajan
For R1	:	Mr.A.Gopinath, GA (Crl.Side)
For R2	:	Mr.P.Anandan for M/s.Majestic Law Firm



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ORDER

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The petitioners, who have been arrayed as A1 and A5 in the proceedings in C.C.No.5837 of 2023 on the file of the Chief Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to Cheating Cases in Chennai) & CBCID Metro Cases, Egmore, Chennai, have approached this Court seeking to quash the same under Section 482 of the Criminal Procedure Code.

2. The brief facts of this case are as follows :

(i) There is a valuable property at Ayanavaram, Chennai-600023 in T.S.Nos.76 to 86 and 87/1 to 13 with door Nos.294, 295, 296 & 298 at Konnur High Road. Two rival claims are made; one group is tracing title through a court auction sale; and the other through a private purchase. Suits are pending in this regard in C.S.No.273 of 2022 before this Court and O.S.No.13360 of 2010 before the City Civil Court, Chennai. The suit, which was pending before the City Civil Court, Chennai, has now been transferred to this Court to be tried along with C.S.No.273 of 2022.

(ii) The second respondent/defacto complainant gave a complaint before the Inspector of Police, K2 Ayanavaram Police



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Station, Chennai and it was investigated by the Central Crime Branch in Crime No.1624 of 2011. This complaint was given on the ground that one Mr.L.Kannappan impersonated himself as the husband of the second respondent taking advantage of the similarity in the name, executed a sale deed fraudulently and dealt with the subject property. This crime number was investigated and a closure report came to be filed before the Special Court for Exclusive Trial of Land Grabbing Cases No.1, Egmore @ Allikulam, Chennai-3 (for brevity, the Special Court) on 29.9.2020 on the ground that the entire dispute is civil in nature.

(iii) It is to be noted that the complaint in Crime No.1624 of 2011 was given only as against the said Mr.L.Kannappan and two other persons and that they alone were shown as the accused persons in the first information report. To the said closure report, the second respondent filed a protest petition before the Special Court in R.C.S. No.2 of 2022. The Special Court went into the grounds raised by the second respondent and decided to treat the protest petition as a private complaint. Accordingly, the negative final report was accepted and the said referred charge sheet case was closed by order dated 01.4.2022.



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(iv) Since the Special Court decided to treat the protest petition filed by the second respondent as the private complaint, it adopted the procedure adumbrated under Chapter XV of the Criminal Procedure Code (for short, the Code). Accordingly, the sworn statement of the second respondent was recorded on 04.4.2022. Recording of the sworn statement further continued on 07.4.2022 and on 11.4.2022. On the fourth occasion i.e on 12.4.2022, the second respondent made the following statement:

“அதற்கு கமலம்மாள் வழக்கு ஆவணங்கள் நீதிமன்றத்தில் இருப்பதாக பொய்யாக சொல்லி பதில் எழுதிக் கொடுத்துள்ளனர். அதை தாக்கல் செய்கிறேன். மேற்படி கமலம்மாள் மற்றும் வரதராஜ்னு என்கிற சேகரும் எங்கள் சொத்துக்கு போலியாவணங்கள் தயார் செய்து கொண்டு பொய்யான பாத்தியதை கொண்டாடி வருகிறார்கள். போலீசார் சரியாக புலன் விசாரணை செய்யாமல் ஒருதலைபட்சமாக இறுதி அறிக்கை தாக்கல் செய்துள்ளனர்.”

(v) Ultimately, the recording of the sworn statement was completed on 11.5.2022. The Special Court passed the cognizance order on 29.12.2022. By virtue of this order, the cognizance was taken for the first time against the petitioners, who were arrayed as A1 and A5 in the case on the ground of criminal conspiracy for offences under Sections 120B, 419, 465, 467, 468 and 471 read with Sections 465, 474, 423 and 447 of the Indian Penal Code and process was served on 4/24



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the petitioners. Aggrieved by the same, the petitioners are before this Court.

3. Heard the learned Senior Counsel appearing on behalf of the petitioners, the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel appearing on behalf of the second respondent.

4. In the instant case, no allegations were made by the second respondent against the petitioners either in the complaint that was given to the police or in the protest petition, which was converted into a private complaint. The petitioners were also not shown as the suspected accused in the case. It is also quite apparent from the records that there is a suit pending before this Court in C.S.No.273 of 2022, which has been filed by the petitioners and three others seeking for the relief of permanent injunction. In the said civil suit pending before this Court, the plaintiffs therein have claimed that many persons are attempting to trespass into the property and that therefore, apart from one named first defendant, the second defendant has been termed as John Doe (unknown and undisclosed person). The



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plaintiffs in the said civil suit, which is pending before this Court, are claiming their right by virtue of a court auction sale to the predecessors in title.

5. There is yet another substantive suit filed by the petitioners and four others against the second respondent and others seeking the relief of declaration of title and permanent injunction. This suit was initially filed before this Court in C.S.No.105 of 1995 and subsequently, it was transferred to the City Civil Court and renumbered as O.S.No. 13360 of 2010. It was again re-transferred to this Court to be tried along with C.S.No.273 of 2022. Thus, there is a substantive civil dispute pending between the petitioners and the second respondent with respect to the subject property.

6. This background has a lot of significance in this case added to the fact that the petitioners were never projected as the suspected accused persons either in the initial complaint given to the police or in the protest petition that was filed by the second respondent before the Special Court. The allegations that were made against the petitioners in the sworn statement given by the second respondent have been



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extracted supra. The allegations are general and vague and no particulars were given as to how the petitioners were involved in a criminal conspiracy with the other accused persons.

7. As stated supra, the complaint given by the petitioners was already investigated by the police namely the Central Crime Branch and a referred charge sheet was filed. While undertaking that exercise, the Investigating Officer recorded the statements of witnesses. Subsequently, the protest petition filed by the second respondent was treated as the private complaint and was taken on file.

8. On carefully reading the cognizance order dated 29.12.2022, it is seen that the Special Court has not applied its mind on (i) the initial complaint given by the second respondent to the police, (ii) the statements recorded by the Investigating Officer during the course of investigation in Crime NO.1624 of 2011, (iii) the closure report filed after the investigation and (iv) the protest petition filed by the second respondent, which was treated as the private complaint and that it has merely gone by the *ipse dixit* of the second respondent against the petitioners in the course of recording the sworn statement. In the



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considered view of this Court, taking cognizance of a complaint is a judicial act, which must reflect the application of mind.

9. I had an occasion to deal with a case where a similar protest petition was converted into a private complaint in the case of ***Narayanamma & Others. Vs. Chikka Venkateshaiah [reported in 2019 (2) LW (Crl.) 522]*** wherein the relevant portions read thus :

"16. The next issue that arises for consideration is whether the Court below was right in taking cognizance of the complaint after converting the protest petition into a private complaint, even without taking note of the closure report filed by the police and without taking note of the statements recorded by the police under Section 161 of Cr.P.C.

17. Useful reference can be made by the judgments cited by the learned counsel for the petitioners.

18. This Court in A. Rajendra and others vs. The State and others, referred (2019) 1 LW (Crl) 771; has held as follows:

'9. When the protest petition is filed by the second respondent questioning the closure report filed by the Deputy Superintendent of Police, Thiruchendur Division, the Court below is left with



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three options. The first option is to disregard the closure report and take cognizance of the final report and issue summons to the accused person. The second option is to accept the closure report and issue refer charge notice to the de facto complainant to enable him to file a protest petition and the third option that is available to the Court below is to order further investigation on the protest petition filed by the de facto complainant.

10. If the Court below wants to convert the protest petition into a private complaint, it is open to the Court to do so, provided that the Court below had considered the entire closure report filed by the Police and it had come to a conclusion that the materials placed by the de facto complainant was not considered by the respondent Police or the de facto complainant has come up with some further materials in order to substantiate his case. This exercise has not been done by the Court below, while converting the protest petition into a private complaint and taking cognizance of the same.

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14. The above two judgments squarely apply to the facts of the case. As held by this Court, the order taking cognizance of the private complaint, ought to have reflected the application of the mind of the Court below, in considering the closure



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report, which is already available before the Court. There is absolutely no reference to the closure report in the order taking cognizance of the private complaint by the Court below. The Court below must have also taken into consideration the fact that the second respondent was repeatedly attempting to improve his case at every stage and the Court below did not take this important aspect into consideration. The Court below also did not take into consideration the fact that the dispute between the parties is already pending before the Arbitrator. The most important factor, which the Court below did not take into consideration is that the entire dispute is purely civil in nature and the second respondent instead of pursuing the remedy before the civil forum has attempted to give the dispute a criminal colour and has managed to keep the criminal case pending for the last four years. Not once, but twice the Police have thoroughly investigated this case and have filed closure reports. Therefore, some credence must be given for these closure reports and the Court below cannot completely disregard these closure reports and take cognizance of the private complaint independently.'

19. The Hon'ble Supreme Court in a recent judgment has considered the same point in Vishnu Kumar Tiwari vs. State of Uttar Pradesh [reported



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in 2019 SCC Online SC 877], the relevant portions of the judgment are extracted hereunder:

'23. In fact, the case itself was decided by a Bench of three learned Judges of this Court in view of the divergence of opinion in the Court. The Court held as follows:

'6. It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the materials produced by the complainant make out an offence. This question has been raised and answered by this Court in the case of Gopal Vijay Verma v. Bhuneshwar Prasad Sinha [(1982) 3 SCC 510 : 1983 SCC (Cri) 110] where under the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar



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the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding.'

....

26. This is a case where following the First Information Report, the Investigating Officer conducted an investigation. Statements were taken from the complainant, his wife and his son. This is apart from the statements which were taken from the Doctors who treated the daughter of the second respondent/complainant. The Investigation Officer concluded that there is no material which would warrant the accused being sent for trial. When such a report is filed before the court, it is beyond the shade of doubt that the Magistrate may still choose to reject the final report and proceed to take cognizance of the offences, which in his view, are seen committed. He may, on the other hand, after pondering over the materials, which would include the statements of witnesses collected by the Investigating Officer, decide to accept the final report. He may entertain the view that it is a case where further investigation by the Officer is warranted before a decision is taken as to whether cognizance is to be taken or not.

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35. We have also gone through the protest petition along with the counter affidavit. No doubt,



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in paragraph 2, there is a general reference to demands for property from the deceased and father of the deceased and torture. Paragraphs 3 to 15 thereafter relate to the circumstances relating to the death of the daughter of the second respondent. In the said paragraphs, the case is sought to be made out that forged documents were produced before the Investigating Officer. Affidavits of the mother and brother of the deceased, inter alia, were also filed to project the case of forgery. For instance, in the affidavit of the mother of the deceased, she claims that she has not gone to the hospital on the 9th and 10th of October, 2007, whereas, according to the statement under Section 161 of the Code, she is alleged to have stated that on 09.10.2007, the deceased was admitted at Priti Hospital by them which apparently includes the mother. We have noticed that in regard to that no doubt the Chief Judicial Magistrate has relied upon judgment in Mohammed Yusuf and others v. State of Uttar Pradesh and others [reported in 2008 Cri.L.J. 493] and taken the view that if cognizance is taken on the basis of the protest petition and the documents annexed with, that is illegal. He also took the view that the Magistrate has to take cognizance on the basis of statements of witnesses recorded by the Investigating Officer, in the case diary and the



material collected during investigation.

36. A learned Single Judge of the High Court of Allahabad, in the aforesaid decision, had this to say in paragraph 11:

'11. Where the Magistrate decides to take cognizance under Section 190(1)(b) ignoring the conclusions reached at by the Investigating Officer and applying his mind independently, he can act only upon the statements of the witnesses recorded by the police in the case-diary and material collected during investigation. It is not permissible at that stage to consider any material other than that collected by the investigation Officer. In the instant case the cognizance was taken on the basis of the protest petition and accompanying affidavits. The Magistrate should have adopted the procedure of complaint case under Chapter XV of the Code of Criminal Procedure and recorded the statements of the complainant and the witnesses who had filed affidavits under Sections 200 and 202 Cr.P.C. The Magistrate could not take cognizance under Section 190(1)(b) Cr.P.C. on the basis of protest petition and affidavits filed in support thereof. The Magistrate having taken into account extraneous material i.e. protest petition and affidavits while taking cognizance under Section 190(1)(b) Cr.P.C. the impugned order is vitiated.'



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37. *The Chief Judicial Magistrate has adhered to the law laid down by the learned Single Judge. In fact, we may notice that in regard to this aspect, if the learned Single Judge, who has Tendered the impugned judgment in this case, had a different view, he ought to have referred the matter to a Larger Bench.*

38. *In H.S. Bains [reported in (1980) 4 SCC 631], there was a private complaint within the meaning of Section 190(1)(a) of the Code. The matter was referred to the Police under Section 156(3). The Investigating Officer filed a final report. Therein, the court took the view that apart from the power of the Magistrate to take cognizance notwithstanding the final report, under Section 190(1)(b), he could also fall back upon the private complaint which, was initially lodged but after examining the complainant and his witnesses, as contemplated under Sections 200 and 202 of the Code. In regard to taking cognizance under Section-190(1)(b) of the Code of a final report, undoubtedly, it is not necessary to examine the complainant or his witnesses though he may do so.*

39. *In Mahesh Chand Vs. B.Janardhan Reddy [reported in (2003) 1 SCC 734] no doubt the matter was commenced by a First Information Report and followed up by the complainant in the court under-Section 190(1)(a) of the Code. On the*



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First Information Report, after investigation, a final report was filed. The final report came to be accepted and it was closed. This is despite the fact that there was the protest petition. A third complaint, as it were, came to be filed by the complainant. This Court went on to hold that acceptance of the final report would not stand in the way of taking cognizance on a protest/complaint petition.

40. In Kishore Kumar Gyanchandani Vs. G.D.Mehrotra [reported in (2011) 15 SCC 513], after the final report was accepted on a protest petition which was treated as a complaint, evidence was taken within the meaning of Section 200 of the Code.

41. In Rakesh Kumar Vs. State of Uttar Pradesh [reported in 2014 (13) SCC 133], the final report was filed which was accepted by the Magistrate but he simultaneously directed the case to be proceeded as a complaint case and statements under Sections 200 and 202 of the Code came to be recorded.

42. In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161



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of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Sections 200 and 202 of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or



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Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In Mahabir Prasad Agarwala v. State [reported in AIR 1958 Orissa 11], a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with provisions of Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in Qasim and others v. The State and others [reported in 1984 Cri.L.J. 1677], a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows:

'4. In the case of Abhinandan Jha MANU/SC/0054/1967 also what was observed was 'it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint.' This observation would not mean that every protest petition must necessarily be treated as & complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete



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list of witnesses to be examined. A further examination of complainant is made under Section 200 Cr.P.C. If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case.'

44. We may also notice that in Veerappa and others v. Bhimareddappa [reported in 2002 Cri.LJ 2150 (Karnataka)], the High Court of Karnataka observed as follows:

'9. From the above, the position that emerges is this: Where initially the complainant has not filed any complaint before the Magistrate under Section 200 of the Cr.P.C., but, has approached the police only and where the police



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after investigation have filed the 'B' report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(a) of the Cr.P.C. on a complaint. If it were to be so, the protest petition that he files shall have to satisfy the requirements of a complaint as defined in Section 2(d) of the Cr.P.C., and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) of the Cr.P.C. Instead, if it is to be simply styled as a protest petition without containing all those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 of the Cr.P.C.'

45. Complaint is defined in Section 2(d) of the Code as follows:

'(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be



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deemed to be the complainant.'

46. If a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections the second respondent against the final report.'

20. It is clear from the above judgments that if the learned Magistrate wants to convert the protest petition into a private complaint, he has the jurisdiction to do so. However, at the time of taking cognizance, the learned Magistrate has to necessarily apply his mind on the closure report filed by the police and the statements recorded by the police during the course of investigation. This exercise has not been done by the Court below, while converting the protest petition in to a private complaint and taking cognizance of the same."



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10. It will also be relevant to take note of another judgment of a learned Single Judge of this Court in the case of ***Alaguthangamani Vs. Saravanan [reported in 2022 (4) MLJ (Crl.) 156]***.

11. It is clear from the above referred to judgments that where the learned Magistrate decides to convert a protest petition into a complaint, the Magistrate has to necessarily apply his mind on the closure report and the statements recorded by the police. This mandate has not been complied with in this case.

12. Apart from the illegality in taking cognizance of the offences against the petitioners without application of mind, the Special Court also failed to see that there is already a substantive dispute between the parties before the competent civil court touching upon the very the right and title over the subject property. Therefore, the genuineness/tenability of the documents relied upon by the petitioners is a matter to be gone into by the civil court where the matter is pending and such a civil dispute cannot be given a criminal colour by making a vague allegation against the petitioners in the course of recording the sworn statement.



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13. In the light of the above discussions, this Court has no hesitation to come to a conclusion that the continuation of the criminal proceedings as against the petitioners will result in abuse of process of law, which requires interference of this Court in exercise of its jurisdiction under Section 482 of the Code.

14. Ex consequenti, the above criminal original petition is allowed and the proceedings in C.C.No.5837 of 2023 pending on the file of the Chief Metropolitan Magistrate for Exclusive Trial of CCB Cases Cases (relating to Cheating Cases in Chennai) & CBCID Metro Cases, Egmore, Chennai is hereby quashed in so far as the petitioners are concerned. Consequently, the connected Crl.M.Ps. are closed.

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N.ANAND VENKATESH,J

RS

To

- 1.The Chief Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to Cheating Cases in Chennai) & CBCID Metro Cases at Egmore, Chennai.
- 2.The Special Court for Exclusive Trial of Land Grabbing Cases No.1, Egmore @ Allikulam, Chennai-3
- 3.The Inspector of Police, 16A, Central Crime Branch, Vepery, Chennai-7.
- 4.The Public Prosecutor, High Court, Madras.

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