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C.R.P.(PD)No.556 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.556 of 2024
and C.M.P.No.2764 of 2024

1. S.Anandaraj
2. Daisy Anandaraj
3. Ruth Jenifer

.. Petitioners

vs.

1. The State represented by
Inspector of Police
Crime Branch CID, Thiruvallur

(Mamallapuram Police Station Crime No.
422/2006 in which Mamallapuram Police
Station Crime Nos.272, 267, 420/2006
& Perambalur DCB Crime Nos.11,12,13,
15 to 17 & 18/2007 are clubbed with under
Section 120(B) IPC)

- 3.V.Suresh Kumar

- 4.Ruth Samuvel

.. Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 10.03.2017 in CrI.M.P.No.6929 of 2007 on the file of the learned Principal Sessions Judge, Kancheepuram District at Chengalpet.

For Petitioners : Mr.R.Sankarasubbu

For R1 : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

This civil revision petition arises against the order passed by the learned Principal Sessions Judge, Kanchipuram District at Chengalpet in CrI.M.P.No.6929 of 2007 dated 10.03.2017.

2.The civil revision petitioners are respondents 1 to 3 in CrI.M.P.No.8296 of 2007. The said petition was presented by the State of Tamil Nadu represented by the Inspector of Police, Crime Branch CID, Tiruvallur. The State invoked the provisions of Section 3(1) of the Criminal Law (Amendment) Ordinance, 1944 (hereinafter referred to as “the 1944 Ordinance”) seeking attachment of the petition mentioned properties.



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3. According to the State, the 1st civil revision petitioner claimed to be a Bishop of a Church. He, in conspiracy with the others, came up with a plan to cheat the public and building contractors. He had held out that he will award building contracts for construction of free houses and free hospital for the poor, with foreign funds, that had come into his hands.

4. Furtherance to the said conspiracy, the civil revision petitioners formed a Trust under the name and style of “Rural Resource Research and Development Agency”. The State pleaded that the petition mentioned, movable and immovable properties, had been acquired out of the monies that had been received from the several innocent contractors and the public. As the accused attempted to dispose of the said properties, which they had acquired from and out of the funds so collected, it filed the petition for attachment.

5. The 2nd civil revision petitioner namely, Daisy Anandaraj entered appearance and filed a counter. According to her, the six cases that had been referred to in the petition are all civil cases and cannot be treated as criminal ones attracting the provisions of Sections 406, 408, 409, 417



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and 420 of the Indian Penal Code. She pointed out that enormous movable properties had been recovered from them which included nine cars belonging to the civil revision petitioners. She pointed out that cash worth Rs.95 lakhs was seized by the Police. In addition, a property worth Rs.1 Crore, even in 2007 situated at Kovalam, together with a superstructure had been illegally alienated at the instance of one Mr.Somanathan, the then Inspector of Police, Ramanathapuram District. She undertook to settle all the dues payable to the public and the contractors. She pointed out that no victim had appeared before the Court demanding return of the money.

6.The 4th respondent in Crl.M.P.No.8296 of 2007 namely, V.Suresh Kumar appeared before the Court and stated that he has no objection to attach the Yamaha motorcycle that had been seized from him.

7.The learned Trial Judge ordered interim attachment of the properties, in and by way, of his order dated 29.01.2008.



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8.Challenging the same, a Civil Revision Petition came before this Court in C.R.P.No.3419 of 2008. When the said revision was taken up for disposal, Mr.R.Muniapparaj, learned Additional Public Prosecutor, then appearing for the respondent, pointed out that the attachment, which had been challenged in that revision, had been made absolute on 10.03.2017. Therefore, C.R.P.No.3419 of 2008 was dismissed as infructuous. After obtaining a certified copy of the order making the attachment absolute, this revision has been presented.

9.When this matter came up for admission, I requested Mr.R.Sankarasubbu to serve the entire typed set of papers on the office of the Public Prosecutor, High Court, Madras. Mr.R.Sankarasubbu also served the papers. Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, has entered appearance for the learned Public Prosecutor on behalf of the 1st respondent.

10.Mr.A.Gokulakrishnan filed an affidavit of the Deputy Superintendent of Police, CBCID, Kanchipuram stating that the value of the properties, which have been attached, would not exceed



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Rs.94,43,150/-, whereas the amounts due to the contractors and the innocent public is to the tune of Rs.9,04,37,900/- (Rupees Nine crores four lakhs thirty seven thousand and nine hundred only) Therefore, he sought for dismissal of the revision.

11.At that stage, Mr.R.Sankarasubbu pointed out that, the valuation that has been given for the immovable properties by the Deputy Superintendent of Police, CBCID, Kanchipuram is an outdated one. He pointed out that the valuation is of the year 2007. As 17 years have gone by, he argued the value of the properties has increased multi fold. Mr.R.Sankarasubbu had also pointed out that a sum of Rs.25 lakhs had been seized by the Police from the civil revision petitioners remains unaccounted for.

12.Considering these pleas, the learned Public Prosecutor was requested to produce the valuation report as of November 2024. As a Public Prosecutor's Office expressed difficulty to trace out where the money is currently lying, I also called for a report from the learned Judicial Magistrate No.I, Chengalpet, in whose custody the amounts had been deposited.



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13. When I took up the matter for hearing on 20.11.2024, the learned Judicial Magistrate No.I at Chengalpet pointed out that Rs.25 lakhs, that had been deposited by the Police to the credit of the criminal proceedings, had been kept in an interest bearing account. The report stated as of November 2024, the deposit is to a tune of Rs.36,43,736/-.

14. Mr.R.Sankarasubbu pleaded that the entire amount, in all the nine cases in which the civil revision petitioners have been accused, is only Rs.1,26,70,900/-. He pleaded that by alienating even one immovable property at Madhavaram, it will be sufficient to pay all the dues. In addition, he pleaded that there are nine accounts of the accused, which have been attached by the Police, in which, substantial amounts are available. He urged if those amounts are taken into consideration, then all the dues can be paid and the cases can be compounded. The details of the accounts at Indian Bank, Kovalam branch and UTI Bank, Annasalai were handed over to Mr.A.Gokulakrishnan for verification and to submit a report.

15. On verification, the Deputy Superintendent of Police submitted a report that out of the nine accounts, that had been given by



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Mr.R.Sankarasubbu, only three accounts belong to the 1st petitioner and his wife and the remaining accounts stand in the name of third parties, who are no way connected with the accused. Even in the accounts of the revision petitioners, no funds available for the purpose of adjustment.

16. Being a case of cheating, which involved a lot of public and innocent contractors, I called upon Mr.R.Sankarasubbu to come up with a scheme, so as to satisfy the demands of the victims. Unfortunately, no such scheme has come forth from the civil revision petitioners, despite, grant of time. Hence, I took up the revision for final disposal.

17. Mr.R.Sankarasubbu submitted that the purpose of the *1944 Ordinance* was to attach the properties, which had been acquired by malversation of the funds belonging to the British Government or Central or State Governments or Department or Authority connected therewith. Since in this case, no funds of any of the aforesaid entities are involved, it will not attract the provisions of the *1944 Ordinance*.

18. Relying upon Section 72 of the Government of India Act, 1935, Mr.R.Sankarasubbu urged that an ordinance can be valid only for a



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period of six months. As the *1944 Ordinance* had been promulgated nearly 60 years ago, it has lost its validity. Therefore, he argued the order of attachment passed by the learned Principal Sessions Judge requires to be revised.

19.Per contra, Mr.A.Gokulakrishnan argued that the Government of Tamil Nadu had passed the Criminal Law (Tamil Nadu Amendment) Act, 1997, whereby the words commencing from “where the property” till the words “department or authority” in clauses 2 & 4 of the schedule to the *1944 Ordinance* stood omitted. He pointed out that this amendment was placed for consideration before His Excellency The President of India and assent was also received in terms of Article 254(2) on 11.08.1997. He also pointed out that the plea of six months “Under Section 72 of the Government of India Act, 1935” had been raised before the Supreme Court in ***Hansraj Moolji v. State of Bombay, AIR 1957 SC 497*** and that the Court had specifically rejected the said argument. Therefore, he pleads that the revision is absolutely merit less and deserves only an order of dismissal.

20.I have considered the submissions of Mr.R.Sankarasubbu and Mr.A.Gokulakrishnan. I have carefully gone through the entire records.



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21. I shall deal with the second plea first. Section 72 of the 9th

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Governor General to issue ordinances. The provision read as hereunder:

“The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature: but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian Legislature to make laws: and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature, and may be controlled or superseded by any such Acts.”

22.The simple argument of Mr.R.Sankarasubbu is that 1944 Ordinance was promulgated on 23.10.1944. As it expired by April, 1945, the same could not be enforced in 2007. I would have agreed with Mr.R.Sankarasubbu, if not for the India and Burma (Emergency Provisions) Act, 1940. This enactment was made by the Imperial Parliament soon after the declaration of World War-II. This Act came into force on 27.06.1940. By virtue of Section 1(3) of the India and



Burma (Emergency Provisions) Act, 1940, the Government of India Act, 1935 stood amended. The said Section is extracted hereunder:

*“Section seventy-two of the Government of India Act (which as set out in the Ninth Schedule to the Government of India Act, 1935 confers on the Governor General power to make Ordinances in cases of emergency) shall, as respects Ordinances made during the period specified in section 3 of this Act, have effect as if the words 'for the space of not more than six months from its promulgation were omitted:
.....”*

23.In addition to Section 1(3), I have to refer to Section 3 of the said Act. Under Section 3, it was provided with the emergency period specified in the legislation commences with the date of passing of the Act and would end on such day, as His Majesty in England, may by an order in the Council declared that the emergency has ended. A declaration was given by His Majesty's Council on 01.04.1946. Therefore, the India and Burma (Emergency Provisions) Act was in force from 27.06.1940 till 01.04.1946. As seen supra, the *1944 Ordinance* had been passed in the interregnum between 27.06.1940 to 01.04.1946. At the time when the ordinance was issued, the limitation of six months under Section 72 of the 9th Schedule of the Government of India Act, 1935, stood eclipsed in statute.



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24.Hence, the ordinance that had validly been issued by the Governor General, is one without a time period and continued to have the force even after the period of six months. This is because under Section 72, it was made clear that ordinance issued for the peace and offences of the British India or any part thereof, will have the like force as an Act that had been passed by the Indian Legislature.

25.This is not the first time that this issue has arisen before the Courts. Proceedings had been initiated against several persons for contravening orders or regulations that had been made under the war emergency legislations. These proceedings were challenged before the respective High Courts. Finally, they wound up before the Federal Court.

26.Sir Partick Spens, CJ., speaking for Sir.Muhammad Zafarullah Khan and H.J.Kania., JJ., rendered a verdict in ***J.K.Gas Plant Manufacturing Company (Rampur) Limited and others Vs. King Emperor, 1947 (2) MLJ 402***. The issue that was presented before the Federal Court was whether ordinances issued during the emergency period continue to have operation, after the period of six months, from the date of their promulgation. The learned Chief Justice held that the



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Ordinances that has been issued before 01.04.1946 did not lose their validity on account of the expiry of the period specified under Section 3 of the India and Burma (Emergency Provisions) Act.

27.Yet again, the Issue of ordinances issued under Section 72 of the 9th Schedule of the Government of India Act and the India and Burma (Emergency Provisions) Act, came up for consideration before the Supreme Court in ***Hansraj Moolji Vs. State of Bombay, AIR 1957 SC 497***. The Supreme Court was dealing with a validity of the High Denomination Bank Notes (demonetization) Ordinance, 1946.

28.This Ordinance had been promulgated by the Governor General of India on 12.01.1946. On 11.07.1953, Hansraj Moolji, the appellant before the Supreme Court was charged of having committed an offense under Section 7 read with Section 4 of the said Ordinance. A preliminary objection was raised before the Chief Presidency Magistrate at Bombay. It was argued that on the date of which the alleged offence is said to have been committed, the Ordinance could not have been in operation due to the “six months” limitation under Section 72 of the Government of India Act, 1935. Therefore, the prosecution was not maintainable. The learned



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Chief Presidency Magistrate rejected this argument, proceeded with the trial and convicted Hansraj Moolji. Aggrieved by the conviction, Hansraj Moolji took the matter before the High Court of Judicature of Bombay by way of a Criminal Appeal. The Prosecuting Agency had also filed an application for enhancement of the sentence. Both the proceedings were taken up by a Division Bench of Bombay High Court. The plea that the ordinance had lapsed was yet again pressed before the Division Bench. It was rejected and the Criminal Appeal was dismissed. The appellant filed an application seeking leave under Article 134(1)(c) of the Constitution of India. The High Court rejected the same. Hence, he filed an appeal by way of Special Leave, invoking the Article 136 of the Constitution of India. Leave was granted by the Supreme Court.

29.The appeal was taken up for disposal by a Constitution Bench consisting of N.H.Bhagawati, B.Jagannadhadas, Syed Jaffer Imam, P.Govinda Menon and J.L.Kapur J.J. Speaking for the Bench, Justice N.H.Bhagwati after analyzing the scheme of the Government of India Act and the India and Burma (Emergency Provisions) Act of 1940, came to the conclusion that the view taken by Spens.J in ***J.K.Gas Plant***, cited supra, lays down the correct position of law. The Supreme Court held



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that as the High denomination Bank Notes (Demonetization) Ordinance of 1946 having been promulgated during the period between 27.06.1940 and 01.04.1946, it is perpetual in operation and would continue to be in force until it is repealed.

30.In the present case too, the *1944 Ordinance* was promulgated on 23.10.1944. This ordinance had been passed in the interregnum period from the date of promulgation of the Emergency Act of 1940 and the lifting of emergency by His Majesty's order in Council on 01.04.1946. Therefore, it will not attract the period of “six months” limitation under Section 72 of the 9th Schedule of the Government of India Act. This is because when the *1944 Ordinance* was promulgated, six months limitation was not in existence. I should add here I only echoing the view taken by a Division Bench of the Kerala High Court in ***Dr.V.K.Rajan and others Vs. State of Kerala, 2007 (4) ILR 636 (Kerala)***. In the light of this discussion, I am unable to agree with Mr.R.Sankarasubbu. I hold that the *1944 ordinance*, being a perpetual legislation, continues to be in force.



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31.The other plea of Mr.R.Sankarasubbu is that the 1944 ordinance is a pre-constitutional legislation and therefore, it would lose its vitality on coming into force of the Constitution of India with effect from 26.01.1950. I will consider it now.

32.India gained independence from the British by virtue of the Freedom Movement. The British did not leave the country abruptly. After several negotiations and discussions, it was agreed that India, as it stood then, would be bifurcated into two nations. Bifurcated India being one and the new nation of Pakistan being the other. Since this bifurcation required a formal legislation, the British Parliament passed the Indian Independence Act of 1947. It was passed on 18.07.1947. It was by virtue this Act, two new independent dominions of India and Pakistan were created. Pakistan was split into Pakistan and East Pakistan. The provision which dealt with existing laws was Section 18.

33.By virtue of Section 8(2) read with 18(3) of the Indian Independence Act of 1947, which came into force with effect from 15.08.1947, the laws of British India and of the several parts thereof existing immediately before the appointed date (15.08.1947) were



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declared to continue as law for each of the dominions. In plain words, it means that the *1944 Ordinance* continued to be full in force even after the two new dominions were created.

34.The Constitutional makers were not insensitive to the confusion that would prevail, in case, no provision is made for saving the existing laws. Under the present constitutional scheme, Article 372 declares that notwithstanding the repeal of the Indian Independence Act, 1947 and Government of India Act, 1935, by virtue of Article 395 of the Constitution, the laws in force in the territory of India immediately before the commencement of the Constitution, shall continue in force until altered or repealed or amended by a competent legislature or other competent authority. Therefore, a combined reading of Section 8(2), 18(3) of the Indian Independence Act, Article 372 & 395 of the Constitution of India, the *1944 Ordinance* continues to have effect unless it is repealed or replaced by the competent legislature.

35.To complete the narration, I have to refer to the 249th report submitted by the Law Commission of India. In that report, titled “*Obsolete Laws: Warranting Immediate Repeal*”, a separate Chapter



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was dedicated to Permanent Ordinances issued by the Governor-General

in exercise of the Section 72 of the Government of India Act. One such ordinance was the *1944 Ordinance*. The Law Commission noted that the *1944 ordinance* had been enacted to prevent the disposal or concealment of property procured from the funds generated on committing certain offences. The Commission recommended that the Prevention of Corruption Act, 1988, should be suitably amended so as to enable the attachment of the properties under the circumstances outlined in the ordinance. It is pertinent to note that the Parliament had earlier amended the schedule to the *1944 Ordinance* and omitted item No.1 and had included certain provisions under item Nos.2 & 4 of the Schedule annexed to the *1944 Ordinance* in terms of Section 29 of the Prevention of Corruption Act, 1988.

36.The next point of Mr.R.Sankarasubbu is that by virtue of the Schedule to the *1944 Ordinance*, a person who has malverised the properties belonging to the British Government or the Government of India or that of the State or its Departments alone can be proceeded under the ordinance. Since no such entity is involved in the present case, the order of attachment has to fail.



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37.I have to refer to the Tamil Nadu amendment made in the year 1997. Tamil Nadu enacted Act 47 of 1997. Under this amendment, the words which confined the *1944 Ordinance* to the properties belonging to the British Government, Central or State Government or their departments were omitted from the Schedule to the *1944 Ordinance*. For ready reference, Paragraph Nos.2 & 4 of the schedule as it stands under the Criminal Law amendment Ordinance of 1944 and as it originally stood under the *1944 Ordinance* is compared with the Ordinance as it stands in the Tamil Nadu as follows:

Central Ordinance of 1944	Tamil Nadu State Ordinance
(2) An offence punishable under Section 406 or under Section 408 or under Section 409 of the Indian Penal Code (45 of 1860), where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in United Kingdom or in any part of His Majesty's dominions or the Central or State Government or a Department of any such Government or a Local Authority or a Corporation established by or under a Central, provincial or State Act or an Authority or a Body owned or controlled or aided by Government or a Government Company as defined in Section 61 of the Companies Act, 1956 (1 of 1956), or Society aided by such Corporation, Authority, Body or Government Company or a person acting on behalf of any such Government or a Department or Authority (or Corporation or Body	An offence punishable under Section 406 or Section 408 or Section 409 of the Indian Penal Code.



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Central Ordinance of 1944	Tamil Nadu State Ordinance
or Company or Society).	
(4) An offence under Section 417 or 420 of the Indian Penal Code (45 of 1860), where the persons deceived is His Majesty's Government in the United Kingdom or in any part of his Majesty's dominions or a Central or State Government or a Department of any such Government or Local Body or Corporation established by or under a Central Provincial or State Act or an Authority or a Body owned or controlled or aided by the Government or a Government Company as defined in Section 61 of the Companies Act, 1956 (1 of 1956) or a Society aided by such Corporation, Authority, Body or Government Company or a person acting on behalf of any such Government or Department (or Authority or Corporation or Body or Company or Society).	An offence punishable under Section 417 or Section 420 of the Indian Penal Code.

38. Being a matter in the concurrent list and since this omission by the State Legislature would be repugnant to the *1944 Ordinance*, the law made by the legislature of the State of Tamil Nadu was reserved for consideration of His Excellency The President of India as required under Article 254(2) of the Constitution.

39. His Excellency granted assent to the legislation and therefore, on and from the date of assent, it is the amended law which will prevail in the State of Tamil Nadu. As the words have been omitted from 1997



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ordinance, the action of the respondents in filing Crl.M.P.No.8296 of 2007 before the Principal District and Sessions Judge, Kancheepuram at Chengalpet, cannot be said to be incompetent. To make things clear, after the assent had been granted by His Excellency The President, in the State of Tamil Nadu, a property of a person acquired by him / her from the proceeds of a crime falling under Sections 406, 408, 409, 417 & 420 of IPC can be a subject matter of proceedings under the *1944 Ordinance*. Since all the pleas of Mr.R.Sankarasubbu fail, I have no other option than to dismiss the revision.

40.At this stage, Mr.R.Sankarasubbu points out that he is entitled to file an appeal as against the final order of attachment that has been passed by the learned Sessions Judge. He is right that an appeal is maintainable under Section 11 of the *1944 Ordinance*. Unfortunately, for the civil revision petitioners, the appeal ought to have been filed within a period of 30 days from the date of the impugned order. Since the order under revision was passed in the year 2017, I am not inclined to grant a liberty to the petitioner to prefer an appeal under Section 11. This is because the civil revision petitioners preferred a revision against the very same order and I have dealt with the submissions on the merits. I



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have not relegated the parties to an alternate remedy. Law does not know of granting two remedies as against the same order before the same forum.

41.The plea of Mr.R.Sankarasubbu that the value of the property attached is more than the claim made in the complaints, requires some consideration. Under Section 8 of the *1944 Ordinance*, it is always open to the accused to approach the District Court either to furnish security to the amount which they are alleged to have cheated or take a plea before the said Court that the value of the properties that have been attached, is more than the claims made against them. It is for the civil revision petitioners to file an appropriate application invoking the said provision before the learned District Judge. On filing such application, the same shall be dealt with, on merits of the said application.

42.The learned Public Prosecutor has stated that he has taken steps for filing an application for splitting up of the cases against the civil revision petitioners and other accused on whom summons had not yet been served.



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43.Learned Judicial Magistrate No.1, Chengalpet shall expedite the proceedings. As the offences relate to the time period, at least 17 years ago, the learned Judicial Magistrate No.I at Chengalpet shall give it utmost priority and dispose of the matter at the earliest.

44.With the above observations, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

- 1.The Principal Sessions Judge,
Kancheepuram District at Chengalpet.
- 2.The Judicial Magistrate No.I,
Chengalpet.
- 3.The State represented by
Inspector of Police
Crime Branch CID, Thiruvallur.



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V. LAKSHMINARAYANAN,J.

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