



*Crl.R.C.(MD)No.643 of 2023*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

|               |   |            |
|---------------|---|------------|
| Reserved On   | : | 20.12.2023 |
| Pronounced On | : | .01.2024   |

**CORAM**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

Crl.R.C(MD)No.643 of 2023

Sivakumar

.. Petitioner / Petitioner

**Vs.**

1.P.Senthilkumar

2.S.Prancis

3.Pusparani,  
Branch Manager,  
Indian Bank,  
Perambalur Branch,  
Perambalur District.

4.Manokaran,  
Deputy Superintendent of Police,  
District Crime Branch,  
Thanjavur.

5.Ghanasundari,  
Inspector of Police,  
District Crime Branch,  
Thanjavur.

.. Respondents / Respondents



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**PRAYER:** Criminal Revision Petition has been filed under Section 397 (1) r/w 401 of Cr.P.C., to call for the records in Cr.M.P.No.08 of 2022 on the file of the learned Judicial Magistrate No.II, Thanjavur, Thanjavur District and set aside the order dated 13.12.2022.

|                |                                                                         |
|----------------|-------------------------------------------------------------------------|
| For Petitioner | : Mr.K.Chellapandian<br>Senior Counsel<br>for Mr.A.K.Baskarapandiyan    |
| For R1         | : Mr.K.P.S.Palanivel Rajan,<br>Senior Counsel<br>for Mr.A.Senthil Kumar |
| For R2 & R3    | : No Appearance                                                         |
| For R4 & R5    | : Mr.S.C.Herold Singh                                                   |

### **ORDER**

The petitioner filed this revision challenging the order passed in Cr.M.P.No.8 of 2022 dated 13.12.2022, by the learned Judicial Magistrate No-II, Thanjavur, Thanjavur District.

#### **2.The brief facts of the case.**

The petitioner is the partner of the partnership firm namely M/s.SS Impex. In the said partnership Firm, the first respondent is a partner.



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They entered into partnership agreement on 15.06.2015. The said partnership Firm was doing the export of cashewnut. The second respondent is the auditor of the said Company. The said company have the accounts in the third respondent Bank, namely, Indian Bank, Perambalur District. The first respondent, according to the petitioner, committed misappropriation of Rs.11,25,69,683/- by transferring the same to the name of his wife and other relative and friends without any loyalty and commitment. According to the petitioner, he further committed misappropriation after his resignation from the partnership Firm. Therefore, they made a complaint before the jurisdictional police on 06.01.2022. There was no action and hence he made another compliant to the higher officials and there was no action. Hence, he filed a petition under Section 156 Cr.P.C, before the learned Judicial Magistrate No.II, Thanjavur, to take action against the respondents 1 to 3 in Cr.M.P.No.8 of 2022. The learned Magistrate forwarded the said complaint on 11.05.2022 to DCB, Thanjavur and directed the respondent police/DCB, Thanjavur to conduct enquiry and file a report before the Magistrate. Thereafter, the respondent police/DCB filed the closure report dated 16.06.2022 before the learned Judicial Magistrate with the



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finding that the petitioner made a false complaint and the same was made as a counter-blast to the FIR registered in Crime No.13 of 2022 against the petitioner for the offence under Sections 406, 420 & 506(ii) IPC. The learned Judicial Magistrate accepted the report with the following findings:

*“On perusal of the report filed by the police, a counter complaint was filed by the 1<sup>st</sup> accused and a case in Cr.No.13 of 2022 had already been registered against the petitioner under Section 406, 420 and 506(i) IPC on 17.05.2022. On the complaint to the Superintendent of Police, Thanjavur vide order dated 12.04.2022. On perusal of records, this petition was filed on 25.04.2022 in this Court which clearly reveals that this petition has been filed as a counterblast to the FIR No.13 of 2022 filed against the petitioner.*

*Further in the petition averments, it has been stated that the day to day administration, the company was administered by the petitioner. Further, the petitioner had not produced any documents to prove that he had paid the deposit of Rs.1.32 crores of the 1<sup>st</sup> accused.*

*Further, the averment that the petitioner had not looked after the affairs of the company on the belief and faith on 1<sup>st</sup> and 2<sup>nd</sup> accused person is highly unbelievable.*

*No prudent man of ordinary senses would have a*



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*blind faith over the partner after investing huge amount of money which amount to several crores.*

*Further, this petitioner though alleges collusive of District Crime Branch police with the 1<sup>st</sup> and 2<sup>nd</sup> accused wish to forward his complaint for registration of crime.*

*This petition being initially filed for forwarding under Section 156(3) of Cr.P.C, and on filing report by the police that no offence committed as alleged in the complaint, it is not conducive forward the complaint again to the police.*

*The objections filed by the petitioner alleging the police cannot be accepted. Since the petitioner had not filed relevant documents before this Court for the offence which can culminated to cheating by the accused persons.*

*Hence, the objections filed by the petitioner is rejected and the petitioner is directed to work out his remedy by way of filing private complaint with appropriate documentary evidence.*

*In fine, the report of the police is accepted and the petitioner is closed.”*

Challenging the same, the petitioner has filed this revision petition.



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3. The learned Senior Counsel, Mr.K.Chellapandian, submitted that the learned Judicial Magistrate passed the order under Section 156(3) Cr.P.C, only on 11.05.2023. The finding of the Inspector of police, District Crime Branch, Thanjavur/respondent police that the petitioner has not produced any document is not correct and the petitioner filed this complaint to the counter blast of the FIR which was registered against him in Crime No.13 of 2022 dated 17.05.2022 is perverse for the reason that the petitioner made a complaint much earlier to the alleged FIR filed against him. The reason given by the respondent police/DCB that the petitioner has not filed any document is against the record. The petitioner filed all the documents along with the petition submitted to the respondent police/DCB, Thanjavur. The said report was accepted by the learned trial Judge by giving the above findings without independent application of mind. Hence, the learned Senior Counsel submitted that the order was passed only on 11.05.2022. The report of the respondent police dated 16.05.2022 in which it is stated that he called the petitioner by issuing notice on 08.02.2022 and conducted the enquiry on 09.02.2022, ie., is much prior to the direction of the learned Judicial Magistrate. Therefore, according to the learned Senior Counsel, no



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enquiry was conducted by the respondent police/DCB, Thanjavur. The contradiction in the report clearly shows that they acted in favour of the private respondents. Further, he submitted that the allegation made against them clearly constitute the offence under Sections 465, 473, 474, 406 and 420 IPC.

4. The learned Senior Counsel further submitted that after retirement ie., on 30.04.2022, he transferred money belonging to the petitioner's partnership Firm to the account in the name of his wife and other persons. The learned Senior Counsel further submitted that the FIR was registered only on the basis of the complaint dated 12.04.2022, ie., after the filing of the complaint by the petitioner before the jurisdictional Court.

5. On the other hand, the learned Senior Counsel for the defacto complainant submitted that the allegation that the petitioner retired from the partnership Firm is not correct. In the minutes of the partners meeting of M/s.SS Impex, Thanjavur, they entered into retirement deed dated 06.11.02021 with various clauses and agreed to retire only on



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30.04.2022. The liability also is fixed in the deed. As per the judgment of the Hon'ble Supreme Court, for the acceptance of the negative report, the learned Judicial Magistrate has three options; one is to accept the negative report after giving notice to the complainant, second is to order investigation under Section 173 (8) Cr.P.C and the third one is to take cognizance under Section 200 Cr.P.C. The learned trial Judge, after accepting the negative report, granted liberty to the complainant to file the private complaint. Hence, the order is in accordance with law. Further, he relied the judgement reported in 2019 (8) SCC 27 and stated that only remedy available to the petitioner is to file a private complaint by producing necessary documents to make out the case. Hence, he seeks for dismissal of the complaint.

6. The learned Senior Counsel relied the following judgement of the Hon'ble Supreme Court. He further submitted that he has not filed any affidavit as required under the law laid down by the Hon'ble Supreme Court in the judgement reported in **2015(6)SCC287** in the case of ***Priyanka Srivastava and anothers Vs. State of Uttar Pradesh and others.***



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7. This Court has considered the rival submissions made by both side counsel and perused the documents and the precedents relied upon by them.

8. It is admitted case that the petitioner is the partner of the partnership Firm namely M/s.SS.Impex. The first respondent has entered into partnership of the petitioner company and have entered into agreement to access the bank transaction on behalf of the partnership Firm. According to the petitioner, all bank transactions were done by the first respondent and using his power, he transferred the amount of Rs. 11,25,69,683/- to the accounts of number of persons, including his wife, without any liability. On perusal of the documents produced by the learned Senior Counsel for the petitioner, it is clear that some offence was made out. The allegation is that without any liability, he transferred the amount of Rs.11,25,69,683/- and after his retirement also, he transferred huge amount without any authorisation. He siphoned off the entrusted fund of firm to the tune of Rs.11,25,69,683/- The investigating officer has not made enquiry over the said serious diversion of the fund. When the complainant made serious allegation, the investigating agency



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has no authority to refuse to register the case. Once allegation discloses cognizable offence, it is the duty of the investigating agency to register the case and investigate the matter. The first respondent colluded together with the other accused persons siphoned off the huge amount of the partnership firm without any liability. Therefore, cognizable offence is made out on prima facie reading of the complaint. It is not necessary to prove the case beyond reasonable doubt at the time of preferring the complaint. The Hon'ble Supreme Court in *State of Haryana and others vs. Bhajanlal and others* reported in *1992(1)Suppl SCC 335*, wherein the Hon'ble Supreme Court has held as follows:

| <b>Paragraph No.32</b>                                                                                                                                                                                                                                                                                                                                                   | <b>Paragraph No.48</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>In other words, reasonableness or credibility of the said information is not a condition precedent for registration of a case. An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.</i> | <i>48. One should not lose sight of the fact that Section 157(1) requires the police officer to have reason to suspect only with regard to the commission of an offence which he is empowered under Section 156 to investigate, but not with regard to the involvement of an accused in the crime. Therefore, the expression “reason to suspect the commission of an offence” would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression “reason to suspect” has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise.</i> |



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9. The said view has also been reiterated by the Hon'ble Supreme Court in the Constitution Bench judgement of the Hon'ble Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh and others*** reported in ***2014(1)SCC(Cri)524*** in the following paragraphs:

*73.... the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.*

10. As per the above dictum of the Hon'ble Supreme Court, it is the duty of the investigating officer to register the case on the basis of the allegation which constitutes the cognizable offence. When the complaint itself disclosed the cognizable offence, it is not necessary for the investigating officer to conduct the enquiry by summoning the documents from the complainants. It is clearly demonstrated in the ***Lalita Kumari vs. Government of Uttar Pradesh and others*** reported in ***2014(1)SCC(Cri)524*** in paragraph Nos.19 and 23. Two material allegations according to the learned Senior Counsel is that he transferred



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the amount to various persons without any liability ie., the partnership Firm is not duty bound to transfer the amount. All the beneficiaries are the close relatives and friends of the fourth respondent. Further, as per the allegation, he transferred the amount even after his retirement as if he is authorised to transfer the same. Therefore, the said two allegations clearly constitute the offence under the relevant provisions of the IPC. In the said circumstances, the act of the investigation officer to close the case upon testing the veracity of the allegation and the documents is not in accordance with law.

**11.** The said investigation report was acted upon by the learned Judicial Magistrate and the learned Judicial Magistrate passed the impugned order. The impugned order, apparently suffers from perversity in the following aspects :

**11.1.** In the report, the investigation officer stated that on 09.02.2022, he called the petitioner to examine him. The learned Judicial Magistrate passed the order in the month of May, ie., on 11.05.2022. The same was not considered by the learned trial Judge. The learned trial Judge gave a finding that the petitioner made the complaint as a counter



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blast to the FIR registered against the petitioner in Crime No.13 of 2022 dated 17.05.2022.

**11.2.** The learned Judicial Magistrate forwarded the petition filed under Section 156(3) Cr.P.C, by the petitioner on 11.05.2022 to the respondent police/DCB, Thanjavur. In the said complaint, the petitioner stated that he gave the complaint much earlier to the registration of the FIR. In the said circumstances, this is the second perversity in the order.

**11.3.** Thirdly, the learned trial Judge further observed that the petitioner has not filed any document before that Court. The same is not correct. The petitioner earlier approached the same learned Judicial Magistrate under Section 156 of Cr.P.C., along with the documents. The learned Judicial Magistrate directed the investigating agency to make enquiry into the petitioner's complaint. Thereafter, the report was submitted with all documents. The documents list also was annexed. Therefore, the learned trial Judge's finding that no document was annexed amounts to perversity.

**12.** Therefore, this perversity was found in the finding of the learned trial Judge. Further, the reasoning given by the learned trial



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Judge, that no prudent man of ordinary sense would have blind faith over the partner, after investing huge amount to several crores, is without jurisdiction at this stage. The Hon'ble Constitution Bench has held that the truthfulness of the information and credibility of the information could not be assessed at the stage of Preliminary enquiry. The relevant Paragraph is as follows:

**In *Lalita Kumari v. Govt. of U.P.*, (2014) 1 SCC (Cri) 524 at page 61**

*120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

*120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

The amount transferred belongs to the partnership Firm. In the said circumstances, the learned trial Judge should have directed the investigation officer to register the case without accepting the negative report filed by them. Instead of that, he directed to file a private



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complaint which is in the considered view of this Court is not in accordance with law. In this case, huge amount was misappropriated with the active conspiracy between the respondents 1 to 3. Hence, this Court is inclined to set aside the order passed by the learned Judicial Magistrate and direct the DCB police officers to register the case and conduct the investigation as per law.

**13.** The learned Senior Counsel for the private respondents submitted that the present objection petition is not enclosed with any affidavit for which he made reliance of the judgement of the Hon'ble Supreme Court reported in **2015(6)SCC287** in the case of ***Priyanka Srivastava and another vs. State of Uttar Pradesh and others***. In the said judgement, the Hon'ble Supreme Court stated that at the time of issuing direction under Section 156(3) Cr.P.C, the complainant shall file the affidavit along with the petition in order to avoid misuse of the said provisions. In this case, the learned Judicial Magistrate already entertained this application on 11.05.2002. Hence, no such question arises in this case.



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14. The learned Senior Counsel for the respondent submitted that this Court has no jurisdiction to test the validity of the order passed by the learned Judicial Magistrate in accepting the negative report and directing the complainant to file the private complaint. The said submission of the learned Senior Counsel can not be accepted. Admittedly, serious allegations were made in the complaint. The learned Judicial Magistrate, at the time of issuing direction in the petition should have applied his mind and directed the jurisdictional police to enquire the matter as per the law laid down in the *Lalita Kumari* case and submit the report. He already applied his mind and directed the investigation officer to conduct the enquiry. In the said circumstances, without any finding, the said allegation is not constituting the offence alleged in the report of the investigating officer dated 16.06.2022 cannot be accepted. The learned Magistrate ought not to have accepted the report. This Court is duty-bound to see whether the report is in compliance with the direction of this Court. The Hon'ble Supreme Court in *Lalita Kumari* case clearly stated that if the allegation itself constitute the offence, he is duty-bound to register the case and investigate the matter, though he has no



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jurisdiction to enquire into the matter. Therefore, the submission made by the learned Senior Counsel deserves to be rejected.

**15.** The question regarding the follow-up action after the direction issued by the learned Judicial Magistrate under Section 156 Cr.P.C to submit the report is no longer *res integra*. As per the judgement of the Hon'ble Supreme Court reported in **2019(8)SCC27**, he is not bound by the report. The Hon'ble Supreme Court judgment in the case of **XYZ v. State of M.P., (2023) 9 SCC 705** has held as follows:

*14.First, we find it appropriate to reiterate the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. A Constitution Bench of this Court in Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] has laid out the position of law as summarised in the following extract of the decision : (SCC p. 60, para 119)*

*“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the*



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*police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”*

*15. We cannot help but note that the police's inaction in this case is most unfortunate. It is every*



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*police officer's bounden duty to carry out his or her functions in a public-spirited manner. The police must be cognizant of the fact that they are usually the first point of contact for a victim of a crime or a complainant. They must abide by the law and enable the smooth registration of an FIR. Needless to say, they must treat all members of the public in a fair and impartial manner. This is all the more essential in cases of sexual harassment or violence, where victims (who are usually women) face great societal stigma when they attempt to file a complaint. It is no secret that women's families often do not approve of initiating criminal proceedings in cases of sexual harassment. Various quarters of society attempt to persuade the survivor not to register a complaint or initiate other formal proceedings, and they often succeed. Finally, visiting the police station and interacting with police officers can be an intimidating experience for many. This discomfort is often compounded if the reason for visiting the police station is to complain of a sexual offence.*

**16.** *This being the case, the police ought not to create yet another obstacle by declining to register an FIR despite receiving a complaint regarding sexual*



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*harassment. Rather, they should put the complainant at ease and try to create an atmosphere free from fear. They ought to be sensitive to her mental state and the fact that she may have recently been subjected to a traumatic experience.*

*17. Whether or not the offence complained of is made out is to be determined at the stage of investigation and/or trial. If, after conducting the investigation, the police find that no offence is made out, they may file a B Report under Section 173CrPC. However, it is not open to them to decline to register an FIR. The law in this regard is clear — police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a cognizable offence.*

*18. Second, we deal with the issue of the discretion granted to a Magistrate vis-à-vis the exercise of powers under Section 156(3)CrPC. On this issue, the High Court has held that the JMFC was not under an obligation to direct the police to register the FIR and the use of the expression “may” in Section 156(3)CrPC indicated that the JMFC had the discretion to direct the complainant to examine witnesses under Sections 200*



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*and 202CrPC, instead of directing an investigation under Section 156(3).*

*22. It is true that the use of the word “may” implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. An important fact to take note of, which ought to have been, but has not been considered by either the trial court or the High Court, is that the appellant had sought the production of DVRs containing the audio-video recording of the CCTV footage of the then Vice-Chancellor's (i.e. the second respondent) chamber. As a matter of fact, the Institute itself had addressed communications to the second respondent directing the production of the recordings, noting that these recordings had been handed over on his oral direction by the then Registrar of the Institute as he was the Vice-Chancellor. Due to the lack of response despite multiple attempts, the Institute had even filed a complaint with PS Gole Ka Mandir on 29-10-2021 for registering an FIR against the second respondent for theft of the DVRs.*



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*23. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation.*

Since this case requires the custodial interrogation of the accused regarding huge amount of cheating, criminal breach of trust and criminal misappropriation said to have been committed by the accused, this Court hereby directs the investigating officer to register the case.

**16.** In the result, this Criminal Revision Petition stands allowed by setting aside the impugned order dated 13.12.2022, in Cr.M.P.No.08 of 2022, passed by the learned Judicial Magistrate No.II, Thanjavur,



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Thanjavur District and issues direction to the District Crime Branch/respondent police to register the case and conduct the investigation and the Superintendent of Police, Thanjavur, is directed to monitor the investigation.

**.01.2024**

NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
PJJ

To

- 1.The Judicial Magistrate No.II,  
Thanjavur,  
Thanjavur District.
2. The Section Officer,  
Criminal Section (Records),  
Madurai Bench of Madras High Court,  
Madurai.



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**K.K.RAMAKRISHNAN, J.**

PJL

**Predelivery Order made in  
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**01.2024**