



Crl.O.P.(MD)No.15357 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.10.2024

PRONOUNCED ON : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15357 of 2024

and

Crl.M.P.(MD)No.9611 of 2024

Anbuchelvan @ Anbuselvan

... Petitioner / Accused No.1

Vs.

1.The State of Tamil Nadu,
represented by
The Inspector of Police,
Thiruppuvanam Police Station,
Thiruppuvanam,
Sivagangai District.
Crime No.185/2024.

... 1st Respondent / Complainant

2. Muthumurugan
S/o Nalluchamy,
Assistant Zonal Officer and
Revenue Inspector,
Konthagai Firka,
Sivagangai

... 2nd Respondent/Defacto complainant



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PRAYER: Criminal Original Petition has been filed under Section 528 of BNSS, 2023, to call for the records connection in case in Crime No.185 of 2024, on the file of the first respondent police and quash the same as against the petitioner / Accused No.1.

For Petitioner : Mr.Niranjana S. Kumar

For Respondents : Mr.E.Antony Sahaya Prabakar
Additional Public Prosecutor
for R.1
: Mr.M.Pozhilan
for Mr.C.Arul Vadivel Associates
for R.2

ORDER

The petitioner has filed the above petition invoking Section 528 of BNSS seeking orders to call for the entire records pertaining to Cr.No.185 of 2024 pending on the file of the first respondent police and quash the same as against the petitioner.

2. On the basis of the complaint lodged by the second respondent, F.I.R., came to be registered in Cr.No.185 of 2024, dated 20.04.2024 against the petitioner and 15 persons belonging to Mankudi Village for the alleged offences under Sections 143, 341, 294(b) and 323 I.P.C. It is not in dispute that subsequently, the case was altered for the offences under Sections 143, 294(b), 341, 323, 353 and 506(i) I.P.C. It is also not in dispute that on the basis of the



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complaint lodged by the petitioner herein, F.I.R., came to be registered in Cr.No. 184 of 2024 dated 20.04.2024 against the second respondent – defacto complainant for the alleged offences under Sections 294(b), 324 and 506(ii) I.P.C.

3. The case of the prosecution is that the second respondent/defacto complainant is working as a Revenue Inspector, Konthagai, Sivagangai District, that he was assigned as Assistant Zonal Officer / Assistant Section Officer by the District Election Officer for the year 2024 parliamentary election, that on 19.04.2024 when the VVPAT (Voter Verified Paper Audit Trial) was placed for model polling and since the same was not functioning properly, the Engineers of BHEL were called for and once again the VVPAT was not properly functioning and hence, a new VVPAT which was kept under reserve was replaced and sent back, that the petitioner/accused at that point of time was staying inside the polling room and was directing the public and hence, the second respondent directed the petitioner to go out of the room and the petitioner went out of the room with anger, that the petitioner had earlier assumed that he had been posted to election duty as Booth Level Officer only at the instance of the second respondent/complainant and hence, developed motive as against the second



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respondent, that on 19.04.2024 after polling was over, the second respondent and others went to the concerned polling booth for collecting the Electronic Voting Machine (EVM) and the other election related articles, that the petitioner had demanded pay for election duty from the second respondent for which, the second respondent replied that he was having pay only for Polling Officers, that the petitioner/accused had quarrelled with the second respondent and abused him in filthy language and restrained him in proceeding with the election duty and the petitioner, his relatives and the villagers from Mankudi had committed murderous attack and caused injuries on his neck and face, that the police available in the polling booth had taken the second respondent and saved him from murderous attack, that the petitioner and other accused had restrained the vehicles with EVM from moving out of the polling station and they threatened to throw stones if the vehicles are allowed to move and subsequently the vehicles were taken with the help of the police and that therefore, on the basis of the complaint lodged by the second respondent, the present F.I.R., came to be registered.

4. The case of the petitioner is that he was appointed as Booth Level Officer in Mankudi in the parliamentary election held on 19.04.2024, that in



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view of the repair in the EVM machines, the election was started belatedly, that the responsible officers used to visit the booths as per Rules, that the officers have not provided any wheelchair to the disabled persons enabling them to vote and hence, the petitioner has shared his personal views regarding the above deficiency and not providing wheelchair through Whats App message to Taluk Admin-TPVM group to address the issue to higher officials, that the second respondent after seeing the message of the petitioner by violating the route chart map protocol, came to Mankudi booth directly neglecting Ambalathadi booth, that the second respondent is not having any power to distribute the salary to officials working in polling day, but he voluntarily brought the salary covers to the officials and distributing to them, that when the petitioner asked his salary, the second respondent assaulted the petitioner and caused grievous injury, that the petitioner had immediately informed about the occurrence to the higher officials and also to the first respondent police, that the first respondent conducted an enquiry and warned the second respondent, that the petitioner immediately admitted himself in the Government hospital, Thiruppuvanam as he had a severe fracture in his ring finger in the right arm and big swelling in his head, that the Medical Officer gave the First Aid treatment and advised him to go to Government Rajaji Hospital at Madurai or any other multi speciality hospital



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since the injury in the head and swelling might lead to any serious issues if not properly attended and the petitioner immediately admitted himself in Meenakshi Mission Hospital, Madurai on 20.04.2024 at about 02.00 a.m., and that on the basis of the complaint taken from the petitioner, F.I.R., came to be registered in Cr.No.184 of 2024 against the second respondent.

5. It is the further case of the petitioner that he alone was suspended on 03.05.2024 and a charge memo came to be issued to him on 07.05.2024, vide proceedings dated 06.05.2024, that the Tamil Nadu village Administrative Officers Association resisted the unfair action and sought for immediate action against the second respondent and thereafter they have issued a memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to the second respondent, that on the basis of the complaint given by the Village Administrative Officers Association, the Superintendent of Police, Sivagangai directed the Additional Superintendent of Police to conduct a detailed enquiry and in pursuance of the same, the Additional Superintendent of Police has conducted an elaborate enquiry by examining all the witnesses and gave a report wherein he gave his finding to the effect that the aggressor to the crime is found to be the second respondent, that the Additional Superintendent of Police has



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also given a finding that the vehicle carrying ballot box was not waylaid by anybody and no such occurrence had taken place, that the second respondent to wreck his vengeance, has lodged the complaint and without considering the same in proper perspective, the first respondent has registered the case and that the disciplinary action and the criminal case registered against the petitioner would amount to abuse of process of law.

6. The second respondent has filed a counter affidavit stating that since VVPAT was in fault, the BHEL engineers were called for, that since the petitioner who was standing near the voters and instructed them to vote, the Zonal Officer instructed the petitioner to sit in the assistance centre and since he did not go out, the second respondent asked him to go out and he angrily left the polling station, that when the second respondent went along with the Zonal Officer to get the voting machine and election materials, the petitioner argued with him to pay the salary of the polling station officers, that the second respondent told him that he is having the salary of Polling Officers and immediately an argument broke out, the petitioner spoke inappropriately and prevented him from doing election work and that the petitioner and his relatives along with 15 people from Mangudi Village attacked the second respondent



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violently and at that time, they waylaid the vehicles also, that the police officers protected the second respondent from the petitioner and his relatives and at that time, the petitioner and his relatives prevented the voting machines and Zonal Officer's vehicle from leaving the polling station centre and also threatened to throw stones if the vehicles carrying the voting machines are allowed to move and thereafter, the voting machines were sent to Karaikudi Centre without any damage and that he preferred a complaint before the first respondent police and on that basis F.I.R., came to be registered in Cr.No.185 of 2024, but the petitioner has preferred a false and frivolous complaint.

7. It is not in dispute that the petitioner has been working as Village Administrative Officer for the past 12 years and that the second respondent has been working as Revenue Inspector of Konthagai, Sivagangai District. It is also not in dispute that the petitioner has been appointed as Booth Level Officer and whereas the second respondent as the Assistant Zonal Officer in the Parliamentary election 2024.

8. The learned Counsel for the petitioner would mainly contend that the petitioner in their group – TPVM has sent a message on the night of the election



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day stating that despite his repeated requests, wheelchairs were not provided for physically challenged persons to vote conveniently and that the Assistant Zonal Officer or any other Officer had not visited the Mankudi group polling station. Upon seeing the said message, the second respondent violated the route chart map protocol to collect the EVM machines, came directly to the Mankudi booth, where he quarrelled with and attacked the petitioner, thereby attributing motive. Although the second respondent attributed motive to an earlier incident on April 19, 2024, during the Voter Verified Paper Audit Trial, when the petitioner was directed to leave the booth and did so angrily, the fact remains that the incident in question occurred after the message was posted at 10.24 pm.

9. It is not in dispute that the District Collector, based on the Revenue Divisional Officer's report, passed an order on 03.05.2024, suspending the petitioner from service and a charge memo dated 06.05.2024 came to be issued to the petitioner. It is also not in dispute that subsequently a charge memo under Section 17(a) the Tamil Nadu Civil Services (Discipline and Appeal) Rules, came to be issued against the second respondent. The petitioner challenged the suspension order and the charge memo before this Court in W.P.(MD)Nos.13209 and 13210 of 2024 and a learned Judge of this Court, taking note of the enquiry



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report submitted by the Additional Superintendent of Police, Sivagangai District, directed the respondent / District Collector, vide order dated 21.06.2024, to consider the petitioner's representation and pass appropriate orders before proceeding further or to reconsider the suspension order. It is also not in dispute that subsequent to the said order, the petitioner's suspension was revoked and he was transferred and posted to another Village.

10. It is pertinent to note that since the suspension order and the charge memo were issued only against the petitioner, the Village Administrative Officers Association, where the petitioner serves as Treasurer, opposed the District administration's biased action and sought action against the second respondent. In response to Association's letter, the Superintendent of Police, Sivagangai District has directed the Additional Superintendent of Police to conduct an enquiry and to submit a report. In pursuance of the said direction, the Additional Superintendent of Police visited the place of occurrence and examined all witnesses, and submitted a report. The report states that when the second respondent was disbursing the election pay, the petitioner demanded his pay, but the second respondent refused to acknowledge his claim, pushed him down and the two exchanged blows thereafter.



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11. As rightly contended by the learned Counsel for the petitioner, the second respondent's unwarranted attack on the petitioner occurred when he was rightfully demanding his election pay, which was being disbursed to other election duty personnel. Instead of providing a reasonable response, the second respondent pushed the petitioner down and assaulted him with an iron rod, causing severe injuries to his ring finger and head. The petitioner's complaint specifically alleges the second respondent's violent conduct. Furthermore, it is undisputed that the petitioner received medical attention at the Government Hospital, Thiruppuvanam, and was subsequently advised to seek treatment at a multispecialty hospital. He was then admitted to Meenakshi Mission Hospital, Madurai, at 2:00 a.m. on April 20, 2024. The petitioner underwent inpatient treatment for nearly five days, from April 20 to April 25, 2024, for a bone injury. The Senior Consultant and Head of the Department of Orthopaedics and Traumatology issued a certificate confirming that the petitioner suffered a closed right 4th finger distal phalanx fracture, which was treated conservatively.

12. It is the specific case of the second respondent that he was subjected to murderous attack, resulting in injuries to his face and neck. However, according



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to his own account, while transporting EVM machine to Karaikudi centre, he received first aid treatment at Poovanthi Government Hospital and after completing his election work, he lodged a complaint with the Thiruppuvanam police at 10.20a.m., and subsequently obtained an accident report from the Government Hospital, Thiruppuvanam, which he submitted to the police station and thereafter proceeded to Government Rajaji Hospital, Madurai, and got admitted as inpatient.

13. It is admitted that the second respondent sustained some abrasions, indicating that his injuries were minor in nature. As contended by the learned Counsel for the petitioner, the second respondent's complaint exaggerated the incident, portraying it as a murderous attack, whereas the nature of his injuries suggests otherwise. Furthermore, as pointed out by the learned Counsel for the petitioner, if the petitioner, his relatives, and 15 villagers from Mankudi had indeed launched a murderous attack on the second respondent, it is implausible that he would have sustained only minor abrasions. The second respondent's version of events is therefore difficult to believe.



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14. As already pointed out, the District Collector, on the basis of the report submitted by the Revenue Divisional Officer, has initiated proceedings against the petitioner. It is evident from the records that the petitioner has applied to the Public Information Officer / Deputy Tahsildhar seeking information with regard to the report submitted by the Tahsildar, Thiruppuvanam on 22.04.2024, the list of witnesses who came to be examined during the enquiry conducted by the Tahsildar and other relevant details. However, in response to the petitioner's request, a reply was sent on 15.07.2024 stating that the said file in question (Na.Ka.No.A6/664/2024) was missing. The petitioner subsequently preferred an appeal with the appellate authority / Tahsildhar, who provided information stating that the report sought by the petitioner had already been submitted by the Revenue Divisional Officer to the District Collector. Furthermore, the Tahsildar clarified that no enquiry was conducted by the Thiruppuvanam Tahsildar and neither the Tahsildar nor the Deputy Tahsildar visited the scene of occurrence.

15. As rightly contended by the learned Counsel for the petitioner, despite the petitioner's request for the report submitted by the Tahsildar, the revenue authorities failed to furnish the same, even at the appellate level. It is pertinent



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to note that the Revenue Divisional Officer in his report submitted to the District Collector has also referred about the report submitted by the Tahsildar. But according to the revenue people, that report and the file were found missing. Upon examining the entire records, it is clear, as rightly contended by the learned Counsel for the petitioner that the second respondent was the aggressor, initiating the attack on the petitioner and causing bone injuries.

16. No doubt, the learned Counsel for the second respondent would rely on the decision of the Full Bench judgment of this Court in ***T.Balaji and Others Vs. the State and Others*** reported in ***2024(5) CTC 1***, wherein guidelines came to be issued for the Courts and the police to follow in cases involving counter cases. No doubt, as per the above decision and settled legal principles, the Investigating Officer has a duty to identify the aggressor and subsequently file a charge sheet against the aggressor group. However, in the case on hand, as already pointed out, the second respondent, in collusion with higher revenue officials, has attempted to shield himself and unfairly portray the petitioner as the sole culprit for the entire incident.



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17. Notably, the second respondent has made another serious allegation against the petitioner, claiming that he and his associates restrained vehicles carrying ballot boxes from leaving the polling booths. However, as rightly pointed out by the learned Counsel for the petitioner, the Additional Superintendent of Police's enquiry, has conclusively determined that no such incident occurred and that the above aspect would go to prove the intention of the second respondent to implicate the petitioner in serious offences.

18. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bajan Lal and others*** reported in ***1992 SCC(Crl) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 Cr.P.C and the same are extracted hereunder;

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently



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channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on



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the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. Considering the facts, this Court has no hesitation to hold that the second respondent's exaggerated account of events, falsely portraying a case of waylaying election vehicles and the complaint's intent to retaliate against the petitioner, warrant the application of the guidelines set forth by the Hon'ble Supreme Court in **Bhajanlal's case**. Furthermore, since sufficient materials exist to identify the aggressor, directing the police to do so is unnecessary.



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20. The learned Counsel for the petitioner would submit that although the F.I.R., came to be registered for the offence under Section 294(b) I.P.C., the second respondent's complaint does not mention any abusive words or language allegedly used by the petitioner. In support of this contention, the learned Counsel would rely on the decision of this Court in **Rajendran and 2 others Vs. P.Natchiappan** reported in **2022(1) MWN (Cr.)442** and the relevant passages are extracted hereunder:

“10.Now turning to the offence under Section 294(b) IPC, the Kerala High Court in Latheef Vs. State of Kerala reported in 2014 (2) KLT 987 relying on the earlier judgements of Kerala High Court has held that abusive words or humiliating words or defamatory words will not as such amount to obscenity as envisaged in Section 292 and 294 (b) IPC and that to make it punishable under Section 294(b), the alleged words must be in a <https://www.mhc.tn.gov.in/judis> CRL.O.P.(MD).No.4538 of 2019 sense lascivious, or it must be appeal to the prurient interest, or will deprave and corrupt persons.

11.A learned Judge of this Court in K.Jayaramanuju Vs. Janakaraj and others reported in 1996 (1) CTC 470, has held that to prove the offence under Section 294 IPC, viz., uttering of obscene words are not sufficient, but there must be a further proof to establish that it was to the annoyance of others.



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13. *Considering the above, this Court has no hesitation to hold that the ingredients for the offence under Sections 294(b) and 506(ii) IPC are not made out and that therefore, permitting the prosecution to continue the proceedings would not serve any purpose and is unnecessary and unwarranted. Hence, this Court concludes that the proceedings in C.C.No. 14 of 2019 on the file of the Judicial Magistrate, Devakottai are liable to be quashed.”*

21. In the case of ***Ilamplraiyan Vs. the Inspector of Police, Rajapalayam South Police Station and another*** reported in ***2022(1) MWN (Cr.) 539*** relied on by the learned Counsel for the petitioner, wherein the F.I.R., as well as in the statements of the complainant and witnesses does not refer any filthy or abusive words alleged used by the accused and in that fact situation, this Court has held that the offence under Section 294(b) was not made out.

22. Similarly, in the present case, as already pointed out, the second respondent's complaint does not say anything about the filthy language or abusing words alleged to have been used by the petitioner.



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23. Now turning to the offence under Section 506(1) IPC, the Hon'ble Supreme Court in *Mohammad Wajid and another Vs. State of U.P., and others* (2023 Live Law 624) held that to establish criminal intimidation under Section 506 IPC, it must be proven that the accused intended to cause alarm to the complainant. In the present case, there is no evidence to suggest that the petitioner intended to cause alarm to the complainant or disrupt his duties. Moreover, the prosecution does not specifically allege that the de facto complainant was criminally intimidated.

24. Before entering into further discussion with regard to the offence under Section 353 I.P.C., it is necessary to refer the said section:

353. Assault or criminal force to deter public servant from discharge of his duty.—

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.



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25. The Hon'ble Supreme Court in ***Manik Taneja and another Vs. State of Karnataka*** reported in ***(2015)7 SCC 423*** has held that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty and the relevant passage is extracted hereunder:

“A reading of the above provision shows that the essential ingredients of the offence under [Section 353](#) IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under [Section 353](#) IPC are not made out.”

26. In the present case, the prosecution does not specifically allege that the petitioner assaulted or used criminal force against the second respondent with the intention of preventing or deterring him from discharging his duties. Even if



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there were preparations to use such force, it cannot be considered an assault or use of criminal force aimed at deterring him from performing his duties.

27. Regarding the offence under Section 143 IPC, it is necessary to refer the judgment of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in ***2018(2) LW (Crl.) 606***, and the relevant passage is extracted hereunder:-

“32.....

2. In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.”

28. Considering the above, this Court has no hesitation to hold that the prosecution has failed to provide sufficient material to establish a *prima facie* case for the alleged offences. Moreover, given the facts and circumstances, this



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Court is convinced that allowing the proceedings to continue would amount to an abuse of the legal process. Hence, this Court concludes that the proceedings in F.I.R. No.185 of 2024 are liable to be quashed.

29. In the result, the Criminal Original Petition is allowed and the proceedings in Crime No.185 of 2024 is quashed. Consequently, the connected Miscellaneous Petition is closed.

20.12.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1. The Inspector of Police,
Thiruppuvanam Police Station,
Thiruppuvanam,
Sivagangai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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