



Crl.A.Nos.516 of 2020 & 140 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.12.2025

PRONOUNCED ON: 19.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.A.Nos.516 of 2020 & 140 of 2021

Subramanian (A1)
S/o. Regasamy,
24/B, Baba Street, Venkatapuram,
Covai.

Appellant(s) in Crl.A.No.516 of 2020

Sridevi (A2)
W/o.Senthilkumar,
9/2, Mattukara Sami Kovil Street,
Sugunapuram South, Kuniamuthur,
Coimbatore.

Appellant(s) in Crl.A.No.140 of 2021

Vs

State represented by
Inspector of Police,
All Woman Police Station, Perur,
Coimbatore City. Crime No.16 of 2018

Respondent(s) in both cases



Crl.A.Nos.516 of 2020 & 140 of 2021

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Common Prayer: Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 23.11.2020 passed in Spl.C.C.No.34 of 2019 on the file of the Sessions Court, Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore and to set aside the same.

For Appellant(s) in Crl.A.No.516 of 2020:	Mr.B.Manibharathi for Mr.N.Chinnaraj
For Appellant(s) in Crl.A.No.140 of 2021:	Mr.E.Kannadasan for Mr.S.Sivakumar
For Respondent(s) in both cases:	Mr.A.Damodaran Additional Public Prosecutor assisted by Ms.Arifa Thasneem

COMMON JUDGMENT

M.JOTHIRAMAN, J.

Challenging the judgment dated 23.11.2020 passed in Spl.C.C.No.34 of 2019 on the file of the Sessions Court, Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore, the appellants have preferred the above appeals.



2. The brief case of the prosecution is as follows:

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2.1. “X” (PW1) deposed that she is residing with her father Senthil Kumar (PW2) along with her brother at No.9/2, Mattukaraswamy Koil Street, Sugunapuram West. In 2017, she resided jointly with A1 and A2 and at that time, she was studying X Standard. On 20.06.2017, when she was with A1 and A2, while she was sleeping alone, the first accused came to her room naked, closed her mouth, removed her dresses, pressed her chest, had penetrative sexual assault with her and “X” (PW1) could neither make any sound nor breathe.

2.2. When “X” (PW1) told A2 / mother about the incident, she (A2) told her that this will happen in every place and she should not reveal the incident to anyone and if she does so, she (A2) will die and she further said that there is no one to take care of her. When “X” (PW1) said that she is going out, the second accused threatened her by saying that she will die by consuming cow dung powder. Since the first accused continued the torture, “X” (PW1) could not tolerate the same and told her mother (A2) to die as her wish and she is not a mother at all and finally went to the house of her father (PW2). The first accused had sexually abused her two or three times a



week. “X” (PW1) went to her father’s (PW2’s) house on 29.08.2017 and after two weeks, she told the occurrence to PW2 and immediately PW2 asked “X” (PW1) to lodge a complaint. “X” (PW1) herself written the complaint (Ex.P2) and lodged the same before the All Women Police Station, Perur. “X” (PW1) was sent for medical examination and produced before the Judicial Magistrate for giving her statement. The statements under Section 164 Cr.P.C. was marked as Ex.P3, wherein, “X” (PW1) stated that her mother (A2) is affected by Epilepsy and she used to take tablets.

2.3 PW2- Senthilkumar is the father of “X” (PW1), who stated that the second accused is his wife and he saw the first accused at the first instance when he was hiding at his bathroom. The second accused ran a chit business and she left huge amount and he asked her not to run that business. Further she work as an agent in getting loan from Women’s Self-Help Groups and further, her health condition was not good. The second accused had illicit intimacy with the first accused. When PW2 questioned the same, the second accused said that she was only having a brotherly relationship with the first accused. On 08.02.2017, the second accused got separated from him, took a separate house at Nagarajapuram, Garden City and stayed



there. On 29.08.2017 “X” (PW1) came to him and after one week, “X” (PW1) told him that the first accused misbehaved with her by narrating the entire incident and she also informed him that the first accused threatened her by saying that if she tell the incident to anyone, he would throw acid on her face. Therefore, he (PW2) took “X” (PW1) to lodge the complaint (Ex.P2).

2.4 PW3 - Jayaraman deposed that the second accused was working in a Women’s Self-Help Groups and the first accused was running a hotel and he goes to work at 6.00 a.m. and return only at night. He (PW3) thought that they (A1 and A2) were husband and wife. The second accused asked his (PW3’s) house for rent and stayed there for three to four months along with the first accused and her daughter [“X” (PW1)].

2.5 PW5-Sadhasivam deposed that he has signed in the observation mahazar (Ex.P13) prepared by the police.

2.6. Dr.Peranantham (PW6) deposed that based on the requisition letter (Ex.P4), he examined the first accused and ascertained his potentiality



and on examination, he opined that there is nothing to suggest that the first accused is impotent and issued potential test report (Ex.P5).

2.7. PW7- Ravi, Headmaster of the Corporation Girls' Higher Secondary School, deposed that he had issued school certificate (Ex.P6) to "X" (PW1) and "X" (PW1) studied in XI Standard 'D' Section in the year 2018 and her date of birth is 08.08.2003. As per the movement register (Ex.P7), "X" (PW1) did not attend the school on 19.09.2018. During the cross-examination of PW7, the attendance register was marked as Ex.D1.

2.8. PW8 - Maheswari, Head Constable, deposed that she took PW1 for medical examination.

2.9. Dr.Saravanapriya (PW9) based on the medical memo (Ex.P10) conducted medical examination on "X" (PW1), found old healed hymen tears at 3 O' clock and 11.00 O' clock positions and there is no evidence of any foreign body or injuries noted anywhere in the body of "X" (PW1). Vulva swabs were taken and sent for medical examination and based on the medical report (Ex.P8), she (PW9) gave final opinion (Ex.P9) that there is



no evidence of any forcible violent vaginal sexual act and there is no physical injuries present in the body of “X” (PW1). “X” (PW1) was subjected to test after fifteen months from the last alleged sexual assault and hence, only old healed hymen tears were found.

2.10. PW10 -Iniyakarunakaran, Judicial Magistrate, Coimbatore, in her evidence stated that on 24.09.2018 as per the requisition of police, she recorded statements of “X” (PW1) under Section 164 Cr.P.C. The said statements recorded under Section 164 Cr.P.C. (Ex.P3) and statement of proceedings under Section 164 Cr.P.C. along with DVD & memory card (Ex.P11) were sent to the Mahila Court.

2.11. PW11 - Anbuselvi, Inspector of Police, deposed that on 18.09.2018 around 12.30 “X” (PW1) gave a written complaint (Ex.P2), pursuant to which, she registered an FIR (Ex.P12) in Crime No.16 of 2018 for the offences under Sections 3(a) and 4 of the POCSO Act. Then, she took the investigation and enquired “X” (PW1) and PW2 and recorded their statements. PW11 went to the place of occurrence and prepared observation mahazar (Ex.P13) and rough sketch (Ex.P14) in the presence of PW5 and



one Sudha. In continuation of the investigation, PW11 arrested the first accused on 18.09.2018 at 16.00 hours near Aavin booth opposite to Kovai railway station. On 19.09.2018 “X” (PW1) was sent for medical examination to Coimbatore Medical College and Hospital through a Constable Maheswari / PW8. PW11 enquired the witnesses and recorded their statements. PW11 also obtained birth certificate and school certificate of “X” (PW1) from the school authorities concerned.

2.12. Thereafter, on 28.10.2018, PW11, Inspector of Police, altered the case to one under Sections 6, 17, 21(1) and 5(l) of the POCSO Act and Sections 506(I) and 506(II) IPC under alteration report (Ex.P15).

2.13. After completing the investigation and based on the evidence collected, the Investigating Officer (PW11) filed a final report against the first accused for the offences under Sections 5(l) r/w 6 of the POCSO Act and Section 506(II) IPC and against the second accused for the offences under Sections 6 r/w 17 and 21 of the POCSO Act.



2.14. On appearance of the accused, the provisions of Section 207

Cr.P.C. were complied with and the case was committed to the Court of Session in Spl.C.C.No.44 of 2018 and was made over to the Magalir Neethimandram (Mahila Court), Coimbatore, for trial. Thereafter, the case was made over to the Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore, for trial.

2.15. The trial Court framed the following charges against the accused:

<i>Accused</i>	<i>Charges framed</i>
A1	Section 5(l) r/w 6 of the POCSO Act
	Section 506(I) IPC
A2	Section 17 r/w 21(l) of the POCSO Act

When questioned, the accused pleaded 'not guilty' and claimed to be tried.

2.16 To prove the guilt of the accused, the prosecution examined 11 witnesses and marked 15 exhibits. After completion of prosecution side evidence, when the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same stating that a false case has been foisted against them. No witness was examined on the side of the defence, however, marked one exhibit.



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2.17. After considering the oral and documentary evidence and upon hearing either side, the trial Court, by judgment dated 03.12.2019 in S.C.No.194 of 2016, has convicted and sentenced the accused as under:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1	Section 5(1) r/w 6 of the POCSO Act	Life imprisonment and fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment.
A2	Section 17 of the POCSO Act	Life imprisonment and fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment.
	Section 21(1) of the POCSO Act	Six months rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one month rigorous imprisonment.

The Trial Court also recommended the State Government to pay compensation to “X” (PW1).

2.18. Aggrieved over the same, the appellants/accused (A1 and A2) have preferred the above appeals, respectively.



3. The learned counsel appearing for the first accused would submit that there is a motive and enmity between PW2 and A1 and therefore, with an ill motive PW2 tutored “X” (PW1) and lodged the false complaint against the first accused. He would further submit that the trial Court failed to note that the date of complaint is suspicious, since on that date “X” (PW1) attended the school and did not leave the school according to the movement register marked through PW7 and hence, the benefit of doubt may be given to the accused. Further, the medical evidence shows that there is no evidence of foreign body or injuries noted anywhere in the body of “X” (PW1) and the doctor has opined that she has no evidence of any forcible violent vaginal sexual assault and there is no physical injuries present on the body of “X” (PW1). Further, he would submit that “X” exaggerated her statement before the Magistrate and further develops the same before the Court. “X” (PW1) informed the occurrence to her aunt, but, the prosecution for the reasons best known to them, not cited the aunt of “X” (PW1) as a witness and also not even enquired her to prove the veracity of the statement of “X” (PW1). Further, the prosecution has not collected the CCTV footage, where the second accused resided with “X” (PW1) and the same is fatal to the prosecution. The trial Court erred in convicting the



accused based on the interested and discrepant testimony of the witness *viz.* PW2, who is closely related to “X” (PW1). That apart, PW4 and PW5 turned hostile and therefore, their evidence in any way not supported the prosecution case. Therefore, when the complaint itself is false, then, the entire prosecution case is perverse and hence, the conviction and sentences imposed on the first accused is liable to be set aside.

4. The learned counsel appearing for the second accused would submit that the trial Court has committed error in convicting the accused for the offences under Sections 17 and 21(1) of the POCSO ACT without satisfying the foundational facts. Further, there is no evidence against A2 except the vague and insufficient testimony of “X” (PW1) and PW2, who are not only interested witnesses, but, animus towards the second accused. He would further submit that the evidence of the doctor, who examined “X” (PW1) more than 400 days after the date of alleged date of occurrence would serve no purpose. Moreover “X” (PW1) had left along with her father (PW2) by August 2017 itself and therefore, the time gap between the dates of occurrence, the date, on which, “X” (PW1) left the second accused and went to PW2's house, the delay in lodging the complaint (Ex.P2) *etc.* had



diluted the medical evidence. It is his further submission that the trial Court failed to appreciate the evidence of PW2 in his cross-examination that on 19.01.2017 he had taken the custody of “X” (PW1) from the second accused, which is more prior to the date of occurrence and the possibility for the child to have been taught when animosity prevailed between PW1 and the accused. Further, he would submit that the conviction is solely based on the testimonies of “X” (PW1) and PW2, which have to be weighed with utmost care and caution, which lacks in this case. Further, if there are two conclusions available, then, in criminal jurisprudence, the one which is benefiting the accused should be followed and therefore, the conviction and sentences imposed on the second accused is liable to be set aside.

5. *Per contra*, learned Additional Public Prosecutor would submit that even if the victim is the sole witness to the incident, a conviction can be sustained, if her testimony is found to be credible and reliable. The evidence of victim / PW1 and the medical evidence of PW9 fully corroborated the case of prosecution. The prosecution has proved the case beyond reasonable doubt. There is no infirmity in the judgment of the Trial Court.



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6. We have considered the submissions made on either side and also perused the entire records carefully.

7. According to the prosecution, PW2 and the second accused got separated due to difference of opinion. From 2017, “X” (PW1) lived with her mother (A2). At that time, PW1 studied X Standard and her DOB is 08.08.2003 and “X” was aged about 14 years. The first accused was working as tea master and the second accused had contact with A1, which, later changed into illegal relationship. The first accused used to go to the house of the second accused and the second accused used to a sleep by taking tablets for Epilepsy.

8. “X” (PW1), in her evidence, has stated that her mother (A2) lived with the first accused. In 2017, when she was with the accused (A1 and A2), on 20.06.2017 when she was sleeping, the first accused closed her mouth, removed her dresses and she could not breathe. A1 kept his hand at her private part and chest and pressed his hand there. Then, he placed his private part in her private part and pressed into it. She could neither make any sound



nor breathe. When “X” (PW1) told the same to the second accused A2 that A1 had sexually assaulted her, A2 simply said that if she tells the incident to anyone she will die and there is no one to take care of her. When “X” (PW1) told A2 that she is going out, A2 said that she will die by consuming cow dung powder. When A1 continuously sexually harassed “X” (PW1), unable to tolerate the same, “X” (PW1) told A2 that if she wants to die she can do so and went to her father's (PW2's) house.

9. “X” (PW1) further deposed that the first accused had sexually assaulted her two to three times a week. “X” (PW1) came out on 29.08.2017 and went to her father's house and after two weeks, she narrated the same to PW2 / father. Then, PW2 without tolerating the same, asked PW1 to lodge the complaint (Ex.P2).

10. PW2, father of “X” (PW1) deposed that A2 is his wife and he saw A1 at the first instance hiding at his bathroom. On 29.08.2017, his daughter PW1 came to his house and after one week she told that A1 had sexually assaulted her. She also informed him that A1 threatened her by saying that if she tells the incident to anyone, he would throw acid on her face. PW2 took



her daughter to Perur All Women Police Station on 16.09.2018 and his daughter gave a written complaint (Ex.P2) before PW11.

11. PW11, Investigating Officer, deposed that on 18.09.2018 around 12.30 hours “X” (PW1) given a written complaint and it was registered as Crime No.16 of 2018, then, she (PW11) examined PW1 and PW2 and recorded their statements.

12. PW7, Headmaster of the Corporation Girls’ Higher Secondary School deposed that on the requisition letter revived from the police, he had issued school certificate (Ex.P6) of “X” (PW1), who studied XI Standard ‘D’ Section in the year 2018 and her date of birth is 08.08.2003. As per the movement register (Ex.P7), “X” (PW1) did not attend school on 19.09.2018 and the attendance register was marked as Ex.D1 though PW7 in cross-examination.

13. As per the copy of the birth certificate (Ex.P1) of “X” (PW1), she was born to PW2 and A2 on 08.08.2003 and the certificate was issued by the Kuniyamuthur Town Panchayat Office. As per the school certificate (Ex.P6)



issued by the Headmaster (PW7), the date of birth of “X” (PW1) is 08.08.2003. Therefore, as per Exs.P1 and P6, it is clear that “X” (PW1) was born on 08.08.2003 and she was aged about 14 years as on 20.06.2017 *i.e.* on the date of occurrence she has not completed 14 years. “X” (PW1) completed 14 years in the month of August 2017.

14. PW9, who examined “X” (PW1) deposed that at the time of medical examination, she did not find any external injuries and on the examination of private part, she (PW9) found old healed hymen tears at 3 O’ and 11 O’ clock positions and taken vulva swab for test and she issued final opinion (Ex.P9), wherein, she has stated that the examined person has no forcible violent vaginal sexual assault and the vulva swab did not show any spermatozoa. In her chief examination, she deposed that if a girl is compelled to have sexual intercourse, there is a chance of old healed hymen tears and if the child washes her private part or passes urine immediately after intercourse, there is no chance of finding spermatozoa. The child *viz.* “X” (PW1) subjected to medical examination stated to have been sexually assaulted on 20.06.2017 and she was medically examined on 19.09.2018 *i.e.* after 14 months. From the evidence of PW9, it is clear that “X” (PW1) was



subjected to aggravated penetrative sexual assault continuously so many times, which causes old healed hymen tears.

15. The prosecution has proved that “X” (PW1) stayed with her mother (A2) during June and August 2017 from the evidence of PW1, PW3/neighbour of A2 and PW4/owner of the house, where A2 resided. “X” (PW1) categorically deposed that due to misunderstanding between her parents, they are separated and she went along with her mother / A2. “X” (PW1) herself stated that A1 is a paramour of her mother (A2) and he used to come to their house and stay with them.

16. The stay of A1 and A2 along with “X” (PW1) in the place of occurrence has been established through the evidence of “X” (PW1), PW3 and PW4. “X” (PW1) informed before PW9, on 19.09.2018 that she was sexually assaulted between 20.06.2017 and 16.08.2017 twenty times and she was lastly subjected for sexual assault on 16.08.2017.

17. The evidence of “X” (PW1) has clearly narrated the occurrence and the role of A2 in this case, however, it is the contention of the second



accused that “X” (PW1) had exaggerated the case as tutored to her by her father (PW2), since there is animosity between PW2 and A2 and A1. As per the evidence of “X” (PW1), PW2 and A2 got separated. The evidence of “X” (PW1) is very clear and cogent and not exaggerated. It is to be seen that as to how a child will say to her mother (A2) to die and go to her father (PW2). The statement of “X” (PW1) recorded under Section 164 Cr.P.C. and the evidence before the Court below clearly narrated about the sexual assault made by A1 and the same was informed to her mother (A2), who simply convinced “X” (PW1) by stating that if she reveals the incident to anyone, she (A2) will die by consuming cow dung power, which clearly shows that there is a life threat made by her mother / A2. The life threat made by near and dear will make silent even the elders. Here the victim is only 14 years kept silent and bear the torture without telling to anyone. After that she could not bear the torture, she told her mother to die, left her and joined her father/PW2. The mental agony gone through by the child that too without the moral support of her mother in this nature of offence and also the threat made by her mother (A2) by saying that she would commit suicide, is really a pathetic situation.



18. “X” (PW1) deposed that A1 inserted his index finger in her private part in the complaint and in the statement before the Judicial Magistrate, she deposed that A1 pressed his private part into her private part. PW9, doctor who examined “X” (PW1), clearly deposed that only in continuous aggravated sexual assault, such old healed hymen tear will occur.

19. It is true that the Court conducting the trial of offences under the POCSO Act can resort to the presumptions incorporated under the Act, *ibid*. They are contained in Sections 29 and 30 of the POCSO Act. The Hon’ble Supreme Court in case of ***Pappu vs. State of Uttar Pradesh [(2022) 10 SCC 321]***, while dealing with an appeal on facts observed thus:

“foundational facts of the offences are clearly established and the Appellant is liable to rebut the presumption”. On facts it is observed that “he has failed discharge this burden and as such presumption would lead to the finding of guilt against the appellant.” (para 108)

20. The Hon’ble Supreme Court, in yet another decision in ***Sambhubhai Raisangbhai Padiyar v. State of Gujarat [(2025) 2 SCC 3099]*** has held that Section 29 of POCSO Act comes into play once such



foundational facts are proved. It holds as follows:

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“35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the POCSO Act defines what penetrative sexual assault is....”

21. Keeping in mind the ratio laid down by the Hon’ble Apex Court in the aforecited decisions, in the case on hand, the prosecution has proved that the victim child / PW1 has consistently stated that the appellant / A1, who used to come to A2’s house in night hours while the victim child was sleeping. A1 closed her mouth, removed her dresses, pressed her chest, pressing his private part into her urinal part, at that time the victim child could neither make any sound nor breathe. When the victim child told to A2 about the Act of A1, A2 told that PW1 should not reveal the incident to anyone and if she does so, A2 will die by threatening the victim child, not once but several occasions.



22. As per the evidence of “X” (PW1) and PW9, the prosecution has established that A1 had committed aggravated penetrative sexual assault on “X” (PW1) continuously. “X” (PW1) in her complaint (Ex.P2) and in her statement under Section 164 Cr.P.C. and in her evidence before the Court below, has clearly deposed that she had told the occurrence of sexual assault committed by A1 to A2, but, A2 simply told her [“X” (PW1)] not to reveal the same to anyone and if she tells, she would die by consuming cow dung powder. Therefore, the evidence of “X” (PW1) clearly proves that A2 had abetted the sexual assault committed by A1 on “X” (PW1). If the mother of “X” (PW1) prevented A1 at the first instance, he would not have repeated the same again and again on “X” (PW1), which drove “X” (PW1) from A2. So, the act of A2 not preventing A1 from commission of offence, but threatening “X” (PW1) not to reveal the same to anybody, which makes “X” (PW1) subjected to sexual harassment by A1. Therefore, the act of A2 clearly comes under the abetment of offence committed by A1. The testimony of “X” (PW1) is vital and inspires confidence of this Court and found to be reliable, minor contradictions or significant discrepancies in the evidence of “X” (PW1) should not be a ground to disbelieve the reliable prosecution case. The evidence of “X” (PW1) is very clear and cogent and



the contradictions cited by the learned counsel for the appellants are not affecting the prosecution case.

23. Pertinently, the age of the victim child / PW1, being about 14 years on the date of the incident, was not disputed in trial and even in these appeals, no contentions have been addressed in this regard. The child victim / PW1 is thus held to be a “child” under POCSO Act.

24. It is needless to state that in our culture, mother occupies the first position higher than father, teacher and the divine, as expressed in the traditional saying “***Matha (mother), Pitha (father), Guru (Teacher), Deivam (God)***”. A mother’s paramount duty is to ensure the safety, emotional wellbeing, and moral upbringing of her children. When such a sacred responsibility is let down, it strikes at the very foundation of the family and Society. In the instant case on hand, A2 is mother of the victim child / PW1 and A1 / Paramour of A2.

25. In view of the foregoing discussions, we do not find any infirmity in the findings of the trial Court warranting interference in these appeals and the same are liable to be dismissed as devoid of merits.



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26. Accordingly, these criminal appeals are dismissed, confirming the judgment dated 23.11.2020 made in Spl.C.C.No.34/2019 passed by the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

**(P.V., J.) (M.J.R., J.)
19.12.2025**

nsd/Jvm
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1.The Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore.

2.The Superintendent, Central Prison, Coimbatore.

3.The Superintendent, Special Prison for Women, Central Prison, Coimbatore.

4.The Inspector of Police,
All Woman Police Station, Perur,
Coimbatore City.

5.The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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