



Crl.A.No.739 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-01-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 739 of 2017

K. Thiraviam

.. Appellant

Versus

P.K. Latha

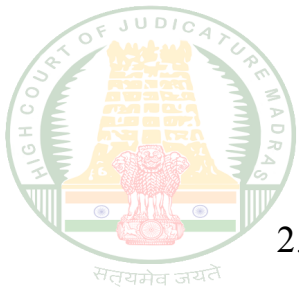
.. Respondent

Criminal Appeal filed under Section 378 (4) of Cr.P.C to set aside the judgment dated 02.02.2016 passed in Criminal Appeal No. 35 of 2015 on the file of the III Additional District and Sessions Judge, Salem and convict the Accused/Respondent with compensation by allowing this appeal.

For Appellant	:	Mr. R. Ezilarasan
For Respondent	:	Mr. Mohanraja for Mr. R. Nalliyappan

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment dated 02.02.2016 passed in Criminal Appeal No. 35 of 2015 on the file of the learned III Additional District and Sessions Judge, Salem and thereby convict the Accused/Respondent with payment of compensation to the Appellant.

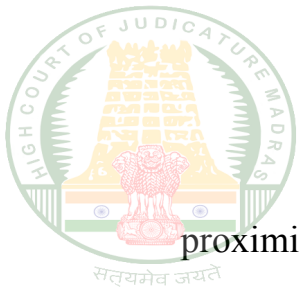


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2. The Appellant in this Appeal is the Complainant, who had instituted the complaint in C.C. No. 115 of 2010 on the file of the learned Judicial Magistrate-I, Sankari under Section 138 of The Negotiable Instruments Act, 1881.

3. Before proceeding with the merits of the Appeal, it must be stated that on 14.12.2023, when this Appeal was taken up for hearing, it was informed by the learned Counsel for the Appellant that the Appellant died and his legal heirs have to be impleaded. On that date, when this Appeal was reserved for pronouncing Judgment, the learned Counsel for the Appellant was also directed to take steps to bring the legal heirs on record by filing appropriate application. It is also to be observed that the death of the Appellant will not in any manner preclude this Court from dealing with this Appeal on merits. The challenge in this Appeal is as to the correctness and validity of the Judgment passed by the Appellate Court, reversing the Judgment of conviction recorded by the trial Court. Therefore, this Court proceeds to dispose of this Appeal on its own merits.

4. The Respondent/Accused is the wife of one Kannan (D.W-1). The said Kannan is the friend of the Complainant/Appellant. Owing to such



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proximity, it is stated that the Respondent/Accused requested the Complainant/Appellant to pay Rs.5 lakhs as loan and she would repay it in four months. Accordingly, the Complainant/Appellant paid Rs.5 lakhs on 18.03.2010 and on the same day, the Respondent/Accused issued a cheque bearing No.194219, drawn on ICICI Bank, Shevapet Branch, Salem but requested the Complainant/Appellant to present the cheque for collection after four months. On expiry of four months, the Respondent/Accused once again requested the Complainant/Appellant to present the cheque after 20 days. Accordingly, the Complainant/Appellant presented the cheque on 09.08.2010 with his banker Indian Overseas Bank, Sankari but it was dishonoured for the reasons “insufficient funds” on 10.08.2010. Therefore, on 20.08.2010, the Complainant/Appellant issued a statutory notice to the Respondent/Accused calling upon her to pay the cheque amount. However, the notice dated 20.08.2010 was returned with an endorsement “refused”. Thereafter, on 04.10.2010 the complaint in C.C. No. 115 of 2010 was filed before the learned Judicial Magistrate-I, Sankari.

5. The trial Court issued summons to the Respondent/Accused. On appearance of the Accused copies of the complaint was furnished to the Accused. When questioned, the Respondent/Accused denied the offences



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alleged against her. Therefore, trial in the complaint commenced. During the course of trial, the Complainant examined himself as P.W-1 and marked Ex.P-1 to Ex.P-5. Ex.P5 is the returned postal cover addressed to the Respondent/Accused. On behalf of the Accused, the husband of the Accused by name Krishnan was examined as D.W-1 and two other witnesses were examined as D.W-2 and D.W-3. However, no document was marked.

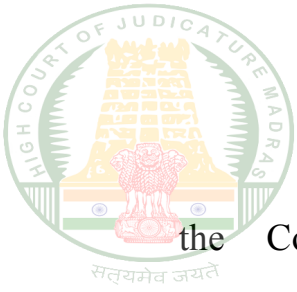
6. The trial Court, on considering the oral and documentary evidence, concluded that the Accused had admitted her signature in the cheque and she did not dispute it. Even D.W-1, husband of the Respondent/Accused confirmed that the cheque was signed by his wife. The trial Court also concluded that inspite of the statutory notice having been sent to the correct address, the Respondent/Accused refused to receive it and therefore, it cannot be said that the statutory notice has not been served on her. The trial Court also referred to the intimation having been delivered by the postman to the Respondent/Accused but she has not chosen to receive the statutory notice and consequently, she did not give any reply to the notice. Therefore, the trial Court concluded that the Respondent/Accused has issued the statutory notice, but she has not chosen to give any reply. Further, when the Respondent/Accused admits the signature in the cheque, the presumption



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raised by the Complainant/Appellant has to be considered by the Court and upon such consideration, the trial Court allowed the Complaint holding that the Respondent/Accused is guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and convicted her to undergo simple imprisonment for a period of one year with fine of Rs.5,000/- failing which to undergo six months simple imprisonment. The trial Court also directed the Respondent/Accused to pay twice the cheque amount to the Complainant/Appellant.

7. Assailing the Judgment dated 30.01.2015 passed in C.C. No. 115 of 2010, the Respondent/Accused filed Criminal Appeal No. 35 of 2010. Before the appellate Court, it was the fervent contention raised on behalf of the Appellant that the statutory notice has not been served and there was no opportunity for the Respondent/Accused to deny the issuance of the cheque at the earliest point of time. It was also contended that when the statutory notice has not been served in a manner required under law, the complaint itself is not maintainable. Therefore, it was contended on behalf of the Respondent/Accused that the conviction and sentence imposed on the Respondent/Accused is perverse and it is liable to be interfered with. It was also contended that the amount was borrowed by D.W-1, husband of the Respondent/Accused from



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the Complainant for which he has given the cheque of his wife/Respondent/Accused as a security. There was no legally enforceable debt and liability towards the Complainant/Appellant and therefore, the Judgment of the trial Court has to be set aside.

8. The Appellate Court, by the Judgment dated 02.02.2016 passed in Criminal Appeal No. 35 of 2015, accepted the submissions raised on behalf of the Respondent/Accused and held that cheque was issued for a legally enforceable debt and liability, however, it was held that the statutory notice has not been sent to the correct address of the Respondent/Accused and thereby she had lost an opportunity to rebut the initial presumption raised by the Complainant/Appellant through the legal notice. The Appellate Court noticed that the Door Number of the Respondent/Accused has not been mentioned in the legal notice and the failure to mention the correct door number has not been properly explained by the Complainant/Appellant. It was further pointed out that there is a material discrepancy in mentioning the name of the Village and therefore, the notice was returned on 31.08.2010 by the Postal Department. The Appellate Court also noticed that while returning the notice, in the postal cover, Ex.P-5, there is an endorsement made by stating that “door locked on 01.09.2010” with the initial of the Postman. Therefore,



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the Appellate Court held that there is serious doubt in the manner as to the service of the legal notice upon the Respondent/Accused. It was also stated that the Appellant has not chosen to summon the Postman to show as to what is the real reason for returning the postal cover. Accordingly, the Appellate Court held that the service of notice is not proper and consequently, the complaint itself is not maintainable and reversed the Judgment of conviction passed by the trial Court.

9. Challenging the Judgment dated 02.02.2016 passed in Criminal Appeal No. 35 of 2015, the present Criminal Appeal is filed by the Complainant/Appellant.

10. The learned Counsel for the Appellant/Complainant submitted that the village where the Respondent/Accused reside is Iveli. In English, the spelling is same. But in Tamil, it was wrongly mentioned as “இவலி” instead of “ஐவேலி”. But all other details were rightly mentioned such as Akkamapettai Post, Sankagiri Taluk, Salem District. Also in the address, it was mentioned as '*near the residence of Oor Goundar*'. Therefore the description mentioned in the statutory notice was correct but, still the Accused did not receive it. Therefore, the Postman who took the Registered post to the

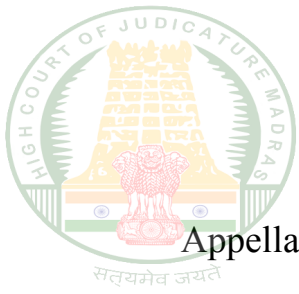


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address of the Accused had returned the registered cover with an endorsement as “refused”. The learned Counsel for the Respondent/Accused before the Appellate Court had argued that the service was not effected and therefore, there is no cause of action to maintain the complaint. It was also argued that as the statutory notice was not served on the Accused, she could not reply to the statutory notice and therefore, the Complaint itself is not maintainable. The learned Judicial Magistrate-I, Sankari, after hearing the arguments of the learned Counsel for the Complainant rejected the submission of the learned Counsel for the Accused stating that if the submission of the learned Counsel for the Accused is to be accepted, the postal cover addressed to the Accused ought to have been returned with an endorsement as “*Insufficient Address*”. But the postal cover was returned with an endorsement as “*refused to receive*”. Therefore, the learned Judicial Magistrate-I, Sankari held that the complaint is maintainable and convicted the Accused for offence under Section 138 of Negotiable Instruments Act, 1881.

11. The learned Counsel for the Appellant/Complainant further submitted that in the Appeal, the Appellate Judge, accepted the contention of the learned Counsel for the Accused/Appellant therein and held that the complaint itself is not maintainable and thereby acquitted the Accused. The



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Appellate Judge, failed to take note of the fact that the address was correctly mentioned in the postal cover, but wantonly, the Respondent/Accused refused to receive the statutory notice. While so, the presumption is that the notice had been served on the Respondent/Accused, which was lost sight of by the Appellate Court. The trial Court, upon proper analysis of the facts and circumstances, rightly convicted the Respondent/Accused but it was erroneously reversed by the Appellate Judge on technicalities. The learned Counsel for the Appellant therefore prayed for allowing this Appeal.

12. Per contra, the learned Counsel for the Respondent/Accused submitted that D.W-1 in his evidence has clearly stated that the amount was received by him and the cheque of his wife/Respondent was given only as a security. The deposition of D.W-1 was also supported by D.W-2, who is common friend of Complainant and D.W-1. Therefore, the complaint against the Respondent/Accused is not maintainable. Even otherwise, the statutory notice was sent without even mentioning the Door Number. The statutory notice was returned with an endorsement by the Postman. However, the Complainant/Appellant did not take steps to examine the Postman to prove as to whether intimation was delivered to the Respondent/Accused and the service of the notice is proper. When the service of notice is not proper, then,



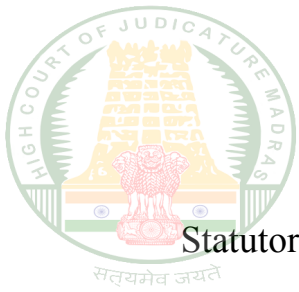
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the complaint itself is not maintainable. Taking note of the above facts, the Appellate Judge rightly reversed the Judgment of conviction passed by the trial Court and it does not call for any interference by this Court. Accordingly, the learned Counsel for the Respondent/Accused prayed for dismissal of this Appeal.

13. Heard the learned Counsel for the Complainant/Appellant as well as the learned Counsel for the Respondent/Accused and perused the materials placed on record.

14. The point for consideration in this appeal is whether the Judgment dated 02.02.2016 passed in Criminal Appeal No. 35 of 2015 on the file of the III Additional District and Sessions Judge, Salem is perverse and liable to be interfered with in this Appeal?

15. The Appellant before this Court is the Complainant, who has filed the complaint under Section 138 of Negotiable Instruments Act, 1881, against the Respondent/Accused seeking to punish the Accused for dishonour of the cheque. The Accused appeared before the learned Judicial Magistrate-I, Sankari and contested the case. It was the defence of the Accused that the



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Statutory notice under Section 138 of Negotiable Instruments Act, 1881 was not received by her, thereby she was precluded from sending a reply. It was also her defence that the cheque was given by her husband (D.W-1) for having received Rs.5 lakhs from the Complainant. The cheque was given only as a security and therefore, there is no legally enforceable debt or liability on her part.

16. The defence of the Accused was rejected by the learned Judicial Magistrate-I, Sankari and she was convicted for the offence under section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for one year with fine of Rs.5,000/- and also directed the Accused to pay twice the amount of cheque to the Complainant in C.C.No.115 of 2010. On appeal, the Appellate Court reversed the Judgment of conviction.

17. The main contention of the Appellant/Accused was that the statutory notice issued by the Complainant before filing the complaint was not served on her and she was precluded from giving a reply. Had it been served, she would have stated the circumstances in which the cheque was given and rebutted the presumption raised by the Complainant. This important opportunity was denied to her, she contended that the complaint itself is not



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maintainable. The learned III Additional District Judge, Salem on re-assessment of same set of evidence arrived at a conclusion that the complaint preferred by the Respondent in C.A. No. 35 of 2015 is not maintainable, as the Accused had not been served with the statutory notice and she was prevented from sending the reply to the statutory notice sent by the Appellant/Complainant.

18. The learned trial Judge rejected the contention of the Accused on the ground that the Accused evaded the statutory notice. The learned Judicial Magistrate-I, Sankari had in the judgment discussed the *modes operandi* of the Accused. The Accused was aware that the cheque issued by her to the Complainant was dishonoured for want of funds. However, she wantonly refused to receive the statutory notice, knowing fully well that the postal cover is addressed to her, referred her name only and not any other person in the Village. The address of the Accused is given as “இவ்லி” in Tamil. In English it is the same spelling Ivali and for further clarification, the Complainant had in the notice as well as the postal cover referred to the address of the Accused as '*near the residence of Oor Goundar*'. It is to be noted that the cause of action arose within Sankagiri Taluk which is not an Urban locality. The address of the Accused is a Village "Ivali" and it was correctly mentioned in the postal



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address. The Accused had cleverly evaded the notice sent to her through registered post. The Postman attempted to serve the notice on the Accused but could not. Therefore, he had made an endorsement on the registered postal cover as '*addressee refused*' and returned it to the sender. This part of the postal cover endorsement was taken into consideration by the learned Judicial Magistrate-I, Sankari and observed that if the notice had not been served, the registered notice would have been returned to the sender with an endorsement '*Address insufficient*'. Instead it was returned to the sender with an endorsement '*Addressee refused*'. Thus, it is clear that correct postal address has been mentioned in the statutory notice sent to the Respondent/Accused

19. In the reported ruling of the Hon'ble Supreme Court in the case of ***K.Bhaskaran -vs- Sankaran Vaidhyan Balan and another [1999 (7) SCC 510]***, His Lordship Justice K.T.Thomas had referred to the *modes operandi* normally adopted by the Accused in a case involving money dispute and thereby evade notice. In the reported judgment, it was observed that the Court can consider it as proper notice if the postal cover returned with an endorsement '*refused*'. In the light of the said judgment of the Hon'ble Supreme Court, the judgment of the learned Judicial Magistrate-I, Sankari, convicting the Accused is found reasonable and it is not perverse.



WEB COPY20. The judgment of the learned III Additional District and Sessions Judge, Salem in reversing the judgment of conviction and acquitting the Accused is found perverse in the light of the judgment of Hon'ble Supreme Court mentioned supra. It is to be noted that invariably in cases of this nature where the dispute involve money, where the Accused or defendant is called upon to pay the creditor, attempts will normally be made to evade notices sent on fictitious grounds in an attempt to wriggle out of the case. The said conduct of the Accused or the Defendant cannot be condoned. The person who refuses to receive notice is aware of the consequences that may befall on him/her, for which either the Plaintiff or Complainant or the Creditor cannot be punished.

21. In this case, the name of the village is ஐவேலி in Tamil. It is spelt in English as Iveli. It can also be translated in Tamil after writing it in English as இவேலி. Even assuming that the name of the village is ஐவேலி and it was wrongly given as இவேலி, the postal endorsement should have stated so in the returned postal cover as '*insufficient address*'. It is to be noted that the Complainant was clear about the address of the Accused. Therefore he had in the same postal address referred to the address of the Accused as '*near the residence of Oor Goundar*' which refers to Accused only. Her residence is near



the residence of Oor Goundar. The Postman who went to serve the postal cover is aware of the persons residing in the locality even by name. He can also clarify with the Oor Goundar if he entertains any doubt regarding the identity of the Accused with the addressee mentioned in the postal cover. After making all efforts, the Postman made an endorsement as '*refused*' meaning thereby the Accused evaded to receive the notice when it was delivered by the Postman.

22. As per Section 114 of the Indian Evidence Act, the conduct of the Postman has to be presumed to be true. The conduct of the Complainant in giving full address with specific identification as *near Oor Goundar residence* on the postal cover gives further indicate that the postal address has been correctly mentioned. The acts done by the Government Officials and servants has to be taken as true under Section 114 of the Negotiable Instruments Act. The Postman had taken efforts to serve the notice on the proper address. The addressee herein is the Accused and she is aware of the accountability or liability to the Complainant. She was expecting a statutory notice to be delivered to her and knowing fully well about it, she he had wantonly evaded to receive the notice. Since she had evaded to receive the registered postal cover, the same was returned by the Postman with an endorsement '*refused to*



receive'. As rightly pointed out by the learned Judicial Magistrate-I, Sankari,

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an adverse inference has to be drawn against the conduct of the Accused in refusing to receive the registered letter. For her own wrong doing, the Accused cannot expect the Court to dismiss the complaint as not maintainable thereby punishing the Complainant. She had taken the risk for her own conduct for which the Court cannot punish the Complainant. The Complainant has taken due care and caution in addressing the Accused while serving statutory notice.

23. For argument sake, if the defence of the Accused before the trial Court is to be taken for granted, on receipt of summons from the learned Judicial Magistrate-I, Sankagiri, the Accused had chance to appear before the learned Judicial Magistrate and to explain her defence. On appearance before the learned Judicial Magistrate-I, Sankagiri, she should have raised this point in which case, she can file reply to the statutory notice before proceeding with the trial. If she denies the contents of the statutory notice, she can proceed with the trial. On the other hand, if she sought time to settle the amount, she can seek time before the learned Judicial Magistrate-I, Sankari. In such circumstances, the cause of action arises from the date of appearance of the Accused before the learned Judicial Magistrate and sufficient time has to be granted to the Accused, either to settle the cheque amount or to proceed with



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the trial. Here in this case, her defence was there is no cause of action for the complaint as notice was not served on her. In cases of this nature, the Court cannot excuse or condone such conduct and thereby punish the Complainant who had knocked the doors of the Court for appropriate relief.

24. As per Section 142 of the Negotiable Instruments Act, the cause of action arises after receipt of statutory notice. The Accused has to be granted sufficient time of fifteen (15) days to respond to statutory notice. The Complainant can file complaint within one month from the date on which cause of action arises viz., the date of issue of statutory notice. This 45 days time can be availed by the Accused after the receipt of summon from the Court of the learned Judicial Magistrate-I, Sankari, either to reply to the statutory notice or to settle the dues. If she had not done so within 45 days, then she is presumed to have forfeited her right by her own act.

25. Before the learned Judicial Magistrate-I, Sankari, the Accused had taken the defence that the statutory notice was not served on her, therefore there is no cause of action for the Complainant to file the complaint. If that argument is to be accepted by the Court of law, then in no case, a private complaint under Section 138 of the Negotiable Instrument Act can be filed by



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the person who had advanced amount and such complaints have to be rejected

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on the ground that statutory notice has not been sent to proper address. If it is so, it will result in defeating the intent of the Parliament in enacting Section 138 of the Negotiable Instruments Act which made the offence of issuing of cheque without sufficient funds in the account as a criminal offence warranting sentence of imprisonment upto two years. Therefore the defence of the Accused in this case is a weak defence. It does not warrant any merit by interfering with the judgment of the Appellate Court.

26. The judgment of the learned III Additional District and Sessions Judge, Salem in reversing the judgment of the conviction recorded by the learned Judicial Magistrate-I, Sankari is found perverse as the Appellate Court did not take note of the conduct of the Accused to wriggle out of criminal cases and criminal liability under section 138 of the negotiable Instruments Act. The argument of the learned Counsel for the Appellant is found acceptable in the light of the provisions of Section 138 and Section 142 of the Negotiable Instruments Act. The argument of the learned Counsel for the Respondent that the judgment of the learned III Additional District and Sessions Judge, Salem reversing the finding of the conviction and acquitted the Accused is a well reasoned judgment that does not warrant any



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interference by the High Court exercising power of appeal will not hold good in the light of the reported ruling of the Hon'ble Supreme Court by Justice K.T.Thomas in the case of *K.Bhaskaran -vs- Sankaran Vaidhyan Balan and another* reported in *1999 (7) SCC 510*.

27. In the light of the above discussion and in the light of the said judgment of the Hon'ble Supreme Court, the point for consideration is answered in favour of the Appellant and against the Respondent. The judgment of the learned III Additional District and Sessions Judge, Salem is found perverse. Therefore, this Court has to necessarily interfere and restore the judgment of conviction recorded by the learned Judicial Magistrate-I Sankagiri. Accordingly, the judgment of acquittal recorded by the learned III Additional District and Sessions Judge, Salem in C.A.No.135 of 2015 dated 02.02.2016 is liable to be set aside.

In the result, **this Criminal Appeal is allowed** by setting aside the Judgment dated 02.02.2016 passed in Criminal Appeal No.135 of 2015 III Additional District and Sessions Judge, Salem and the Judgment dated 30.01.2015 passed in C.C. No.115 of 2010 on the file of the learned Judicial Magistrate-I Sankari is restored.



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WEB COPY The learned Judicial Magistrate-I, Sankari is directed to issue warrant to secure the Accused and detain her in prison to undergo the period of imprisonment. The legal heirs of the Appellant herein shall file appropriate application before the learned Judicial Magistrate-I Sankari, if the Accused evade the warrant of conviction. The learned Judicial Magistrate-I Sankari shall also pass appropriate orders to declare the Accused as Proclaimed Offender after directing the legal heirs of the Complainant to file appropriate petition to declare the Accused as Proclaimed Offender so that her movable and immovable properties shall be attached and brought to sale by public.

09-01-2025

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Internet : Yes / No

Index : Yes / No

Speaking/Non-speaking order



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To

- 1.The Judicial Magistrate-I,
Sankari.
- 2.The III Additional District and Sessions Judge,
Salem.
- 3.The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

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Judgment made in
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