

Crl.A.(MD)No.406 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.07.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

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K.Kaleeswaran

... Appellant/Sole Accused

versus

1.State rep., by

The Deputy Superintendent of Police,

Kamudhi Sub-Division,

In Crime No.55 of 2016

(on the file of the Perunali Police Station) ... 1st respondent/ Complainant

2.Kadarkarai

... 2nd respondent/ defacto
complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment of the learned Principal District and Sessions Judge, Ramanathapuram passed in Spl.S.C.No.31 of 2017 dated 02.08.2018 and acquit the appellant/accused herein from all the charges of the above case.

For Appellant : Mr.C.M.Arumugam

For R1 : Mr.K.Gnanasekaran
Government Advocate (Crl.side)



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JUDGMENT

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This criminal appeal has been preferred against the judgment of conviction and sentence, dated 02.08.2018 made in Spl.S.C.No.31 of 2017 by the learned Principal District and Sessions Judge, Ramanathapuram, thereby convicting and sentencing the appellant/sole accused to undergo one year of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month of simple imprisonment for the offence under Section 323 of IPC; to undergo five years of rigorous imprisonment and to pay a fine of Rs.15,000/-, in default to undergo 6 months rigorous imprisonment for the offence under Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014. Out of total fine amount, Rs.15,000/- was ordered to pay as compensation to P.W.1.

2. The prosecution case had arisen on the basis of the complaint, Ex.P6, given by the defacto complainant, and it was registered in Crime No. 55 of 2016 at the Perunazhi Police Station, for the offence under Sections 294(b) and 323 of IPC and Section 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 (hereinafter referred to as SC/ST (POA) Amendment Ordinance Act, 2014 for brevity), is as follows:



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(a) The defacto complainant, P.W.1, was working as daily wager in VB Mahal situated at Nethaji Bazaar, Perunazhi. On 29.05.2015, after completing his work, the defacto complainant approached the accused, who was working as Manager in the said Mahal, and requested payment of his wages. The accused responded by stating that he would pay the wages later. Subsequently, the defacto complainant returned to his residence and once again contacted the accused over the phone to inquire about his wages. In response, the accused has stated that he would come to meet the defacto complainant at his house. At around 05:30 p.m. on the same day, the accused arrived and stood in front of the defacto complainant's house. There, the accused abused the defacto complainant in filthy language by using humiliating words about his community, slapped him on his right cheek and trampled on him with his foot. As a result, the defacto complainant sustained injuries.

(b) After completion of investigation, charge sheet has been filed against the accused for the offences under Sections 294(b), 323 of IPC read with Section 3(1)(r)(s) of SC/ST (POA) Amendment Ordinance Act, 2014 before the District Munsif and Judicial Magistrate, Kamuthi.



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(c) Since the offences are triable by the Sessions Court, the case was committed to the Sessions Court. The trial Judge had taken cognizance of the case in Spl.S.C.No.31 of 2017 and after completing the legal mandate of furnishing copies and all other legal formalities, the trial Judge framed charges for the offences under Sections 294(b), 323 of IPC and Section 3(1)(r)(s) of SC/ST (POA) Amendment Ordinance Act, 2014. When the accused was questioned, he denied the same and claimed to be tried.

(d) During trial, on the side of the prosecution, P.W.1 to P.W.10 were examined and Exs.P1 to Ex.P8 were marked. On the side of the defence, D.W.1 and D.W.2 were examined and no documentary evidence was let in.

(e) After completion of trial, based on the oral and documentary evidence, the trial Judge acquitted the accused for the offence under Section 294(b) of IPC and has convicted and sentenced the appellant as supra.

3. Aggrieved over the same, this appeal has been preferred.

4. Heard both sides.



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5. The learned counsel for the appellant submitted that the learned trial Judge had failed to appreciate the materials contradictions in the evidence of the eyewitnesses including the defacto complainant; there is contradiction even in describing the place of the occurrence and even as per the case of the prosecution, the occurrence has not taken place in the public view in order to attract the penal provision under Section 3(1)(r)(s) of the SC/ST (POA) Amendment Ordinance Act, 2014. The evidence of P.W.1 and his statement before the Doctor would show that he was in the habit of exaggerating the events. P.W.4 has stated in his evidence that he was not even enquired with the police. All the witnesses have stated that the defacto complainant was in the habit of consuming alcohol. The learned trial Judge, without appreciating the material contradictions in respect of place of occurrence and other details, has chosen to convict the accused wrongly.

6. The learned Government Advocate (crl.side) submitted that the evidence of P.W.1 and other eyewitnesses have got incriminating substance against the accused and the trial Judge has rightly appreciated the same and convicted the accused for the aforesaid offences. He further submitted that FIR has been given shortly, after the occurrence and the evidence of eyewitnesses was corroborated with the other witnesses, who stood as observation mahazar witnesses. As the learned trial Judge has rightly found



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the accused guilty, the judgment of the trial Court does not require any interference.

7. On perusal of the complaint, which is the origin of the FIR for the present case, it is seen that it has been given by P.W.1, Kadarkarai. He has stated in his complaint that he was engaged to do certain work in VB Mahal by the accused on 29.05.2016. The accused was the Manager of the said Mahal and he did not give the wages, ever after the defacto complainant had completed the work. As the Manager did not give the wages, the defacto complainant came to his house and there, he called the accused through phone and once again asked the wages. In response, the accused came and stood in front of P.W.1's house and abused him in filthy language by making caste remarks. He also slapped P.W.1 on his right cheek and caused blood injury on the top right of his jaw. On seeing the occurrence, his wife and neighbours came to his rescue and thereafter, the accused went away.

8. Even though the complaint is elaborate and contain several facts, the evidence of P.W.1 before the Court is very short. In the complaint, he had stated that on 29.05.2016, he was working in the marriage mahal and after completion of the work, he asked wages from the accused. It appears



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from his evidence that himself and his wife had engaged in the mahal and they returned home, after waiting for two hours for wages. His evidence would further reveals that the accused had come to his house and abused him by making caste remarks and slapped him on his cheek. The above evidence of P.W.1 shows as though the accused had come to the house of P.W.1 by himself. In the complaint ,P.W.1 has stated that he called the accused through phone and demanded the wages once again and at that time only, the accused told that he would come to his house. In the evidence of P.W.1, he has not stated that the accused was standing in front of his house and abused him and slapped him. His evidence only shows that the accused had come inside his house, abused and slapped him. Hence, the evidence of P.W.1 is lacking of all material aspects, which form part of his complaint.

9. In the cross-examination of P.W.1, he has stated that sometime he had asked the owner of the mahal to pay more wages, than he agreed and sometimes, wages will be given by those persons, who had booked the mahal for conducting their functions.

10. The accused, who was working as the Manager would disburse the wages only on certain occasions and he is not a person, who always settle wages to the defacto complainant and other workers.



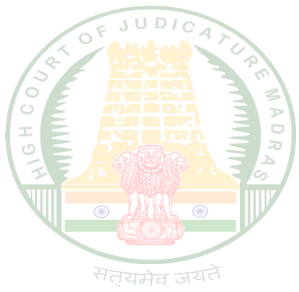
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11. P.W.2, Tahsildar has stated that he has issued a certificate stating that P.W.1 belongs to Scheduled Caste Community and the accused belongs to Most Backward Community.

12. The wife of P.W.1, who was examined as P.W.3, has stated that she had also worked along with her husband in the mahal and came home without receiving the wages. While they were at their house, the accused came and slapped her husband. Her evidence does not state that the accused had abused P.W.1 in filthy language and made caste remarks. There is material contradiction in the evidence of P.W.1 and P.W.3 themselves.

13. Since P.W.3 is cited as eyewitness, her evidence would have been enough more helpful, if it is consistent with the evidence of P.W.1.

14. P.W.4, who is the brother of P.W.1, has also been cited as a witness and he has deposed that on the date of occurrence on hearing the noise, he also came outside and enquired. But in the cross-examination, he has stated that he was not enquired by the police and he only received the summon directly.

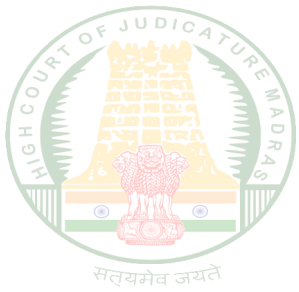


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15. Ex.P8, sketch, would show that it has got no reference to the marriage hall and the place of occurrence is shown as a place in front of P.W.1's house. But, the evidence of P.W.1 and P.W.3 has not specifically stated that the occurrence had taken place outside the house.

16. The Doctor, who has examined as P.W.6, has stated in his evidence that when he examined P.W.1 on 29.05.2016 at about 05.30 pm., he had stated that the occurrence has taken place at Indira Colony and a person, who can be identified, attacked him with hands and stick and pushed him down. The above statement is quite contradictory to what was stated by P.W.1 in his complaint and in his evidence. the Doctor had observed that the P.W.1 has aberration of 2x2 cm on his cheek.

17. P.W.7, who is also said to be an eyewitness, has stated in his evidence that he had seen that the accused slapped P.W.1 on his right cheek and abused him in filthy language by making caste remarks. But in the cross-examination, he has stated that he had only heard about the occurrence. Taking a hearsay witness as an eyewitness would only weaken the case of the prosecution.



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18. The Investigating Officer, who was examined as P.W.10, has stated in his evidence that he had identified the place of occurrence on seeing the FIR and went there along with the police party. The complainant, P.W.1 has not even identified the place of occurrence as per the evidence of the Investigating Officer.

19. The above narration of the evidence of prosecution witnesses would show that their evidence is not cogent, consistent and devoid of merits, even in the material aspect. There is no clarity as to the place of occurrence itself, even though essential ingredients to make out the offence under Section 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act. The witnesses, who have not witnessed the occurrence have been examined as eyewitnesses. Even the wife of P.W1 in her evidence has not stated that her husband was abused in filthy language by making caste remarks. But the learned trial Judge appears to have given 100% credence to the evidence of P.W.1, though his evidence is self-contradictory or mutually contradictory with other witnesses.

20. Most importantly, P.W.1 has not stated that the occurrence has taken place in a public view. It is trite law that in order to convict a person under Section 3(1)(r)(s) of the SC/ST (POA) Act, it is not sufficient to prove



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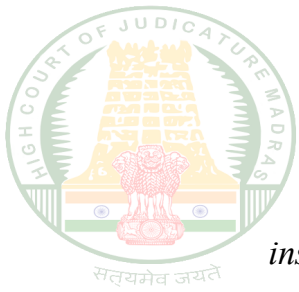
that the defacto complainant belongs to Scheduled Caste, but it should also be proved that the alleged insult or intimidation had taken place in a place, which is within the public view. In this aspect, it is essential to refer the judgment of the Supreme Court held in **Hitesh Verma Vs., State of Uttarakhand and another** reported in **AIR 2020 SC 5584**. In the said judgment, the Hon'ble Supreme Court had extracted the very provision of 3(1)(r) and have elaborated how the public view of the place of the occurrence is important in order to convict a person for the offence under Section 3(1)(r). For the sake of clarity, the relevant paragraphs are extracted hereunder:

*“11. It may be stated that the charge-sheet filed is for an offence under **Section 3(1)(x)** of the Act. The said section stands substituted by Act No. 1 of 2016 w.e.f. 26.1.2016. The substituted corresponding provision is **Section 3(1)(r)** which reads as under:*

“3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

*12. The basic ingredients of the offence under **Section 3(1)(r)** of the Act can be classified as “1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view”.*

*13. The offence under **Section 3(1)(r)** of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such*



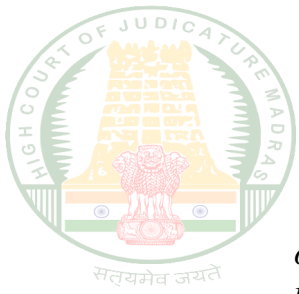
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insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as [Swaran Singh & Ors. v. State](#) through Standing Counsel & Ors.5. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen 5 (2008) 8 SCC 435 by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate



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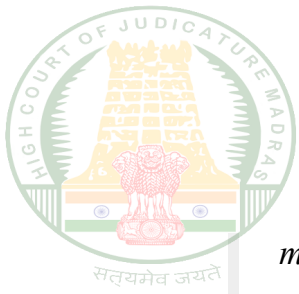


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of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the



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matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.”

21. In the recent judgment of the Hon'ble Supreme Court in the case of *Karuppudayar Vs., State rep., by the Deputy Superintendent of Police* reported in **2025 SCC onLine SC215**, in paragraph No.10, the same view has been reiterated by making reference to the judgment rendered in *Hitesh Verma's case*.

22. P.W.1 has stated before the Doctor that he was attacked with hand and stick, however, in his complaint and evidence, he has stated that he was slapped the accused on his right cheek. Hence, there are material contradictions in every aspect of the case and that was ignored by the learned trial Judge.

23. While the testimony of injured eyewitness generally carries weight, when such evidence is found to be exaggerated and riddled with contradictions, it raises serious doubt about its truthfulness and undermines the credibility of the case of the prosecution. Though the complaint of



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P.W.1 contains very essential details, his evidence is very short and lacks in many material aspect. The learned trial Judge appears to have relied on the same, for the purpose of convicting the accused for the offence under Section 3(1)(r)(s) of SC/ST (POA) Act.

24. When there is no clarity as to the place of occurrence whether it is a public place or inside the house or outside the house, the Court cannot presume that the occurrence had occurred only in public view, especially when the evidence of the defacto complainant and the other witnesses did not state that the occurrence had taken in public view. It is wrong on the part of the trial Judge to presume that the occurrence had taken place in public view. In this regard, I feel it is appropriate to refer the judgment of Hon'ble Supreme Court held in **SLP.Crl.No.6763 of 2023(Hutu Ansari @ Futu Ansar and others Vs., the State of Jharkhand)**. The relevant portion of the said judgment reads as follows:

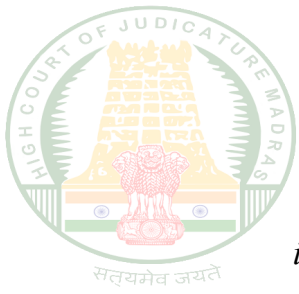
“9. There is no clarity as to the place of occurrence, whether it was at the residential building in the disputed land or at the house of PW-3. In this context, we once again look at the complaint filed, which spoke of the house trespass by breaking the lock of the house of the complainant. However none of the witnesses spoke of breaking a lock or trespass into the house and on the contrary, claimed that



the occurrence occurred in a field; obviously to make out a case of the insult levelled and abuses thrown, to be within public view. As we noticed, there is nothing to indicate that there was anybody present in the vicinity of the alleged scene of occurrence, other than family members of the complainant. When PW-1 categorically negated the presence of any other person except himself, his wife, brother and his nephew; at the scene of occurrence, it cannot be said to have occurred in public view; thus, absolving the accused of any offence under clause (r) or (s) of [Section 3](#) of the SC & ST Act. Insofar as clause (f) of [Section 3\(1\)](#) of the Act, there is no allegation in the complaint that the complainant and her family were forcefully evicted from the land.

10. PW-1 specifically says that the place of occurrence is at a distance of 1 km from his house. He also submitted that there is a residential house constructed in the disputed land by one of the accused 20 years ago which house was remaining deserted. With the above scenario in mind, we can only find that the de-facto complainant, in the FIR, had talked about the house in which she was residing while alleging trespass on the accused persons. However, no such allegation is even spoken of in the oral evidence; thus, putting to jeopardy the offence of house trespass too.

11. We cannot but find that there are gross inconsistencies insofar as the complaint and the oral evidence led by way of deposition before the Court. The place of occurrence was stated to be the house, in the complaint, while all the witnesses spoke of the alleged incident having occurred in the field, which was the disputed land. In any event, there is no scope for finding either clause (r) or (s) of [Section 3\(1\)](#) of the SC & ST Act since PW-1 has categorically stated that there was no member of the public present at the time the

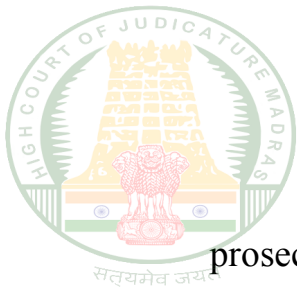


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incident occurred. Insofar as the allegation under clause (f) of Section 3(1) there is nothing to indicate that the complainant and her family were forcefully evicted from the disputed land or that the accused occupied it illegally after delivery was effected on 25.04.2005. As far as the house trespass is concerned, the oral evidence does not support it. On the above reasoning we find absolutely no reason to sustain the conviction as entered into by the Magistrate's Court confirmed by the High Court. We set aside the order of the Magistrate as confirmed by the High Court and acquit the appellants herein."

25. Though the criminal acts committed against the vulnerable sections of the society like a person belonging to scheduled caste and scheduled tribes community should be dealt with all due sensitivity and seriousness, when their evidence does not inspire confidence of the Court, the trial Judge should exercise caution not to convict the innocent under the draconian provision of the SC/ST Act. Despite the above mentioned infirmities and material inconsistencies are found in the case of the prosecution, the trial Judge had ignored the same and found the accused guilty for the offences under section 323 of IPC and Sections 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014. Since the fundamental facts themselves have not been proved beyond reasonable doubt and the evidence of the



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prosecution witnesses were also not helpful to prove its case, the appellant/sole accused is entitled to the benefit of doubt.

26. In view of the above stated reasons, the impugned judgment of conviction and sentence are liable to be set aside.

27. In result,

(i) This Criminal Appeal is allowed.

(ii) The conviction and sentence passed in Spl.S.C.No.31 of 2017 by the learned Principal District and Sessions Judge, Ramanathapuram, dated 02.08.2018, are set aside. The the appellant is acquitted of all the charges levelled against him. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

03.07.2025

Index : Yes/No

NCC : Yes/No.

Rmk

To

1.The Principal District and Sessions Judge, Ramanathapuram.

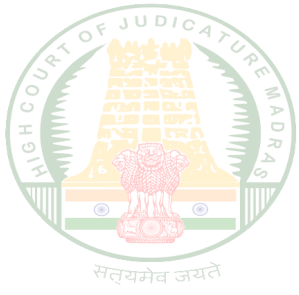
2.The Deputy Superintendent of Police,
Kamudhi Sub-Division,



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3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. VR Section,
Madurai Bench of Madras High Court, Madurai.



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DR.R.N.MANJULA, J.,

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