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CRL A.No.1635 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:	Pronounced On:
18.08.2026	01.09.2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

CRL A.No. 1635 of 2024

H.Raja (ex.MLA)
S/o.Harihara Sharma,
D-58, D Block, B-wing,
174, Dhoshi Gardens, Arcot Road,
Vadapalani, Chennai - 600 026.

Appellant

Vs

The State Represented By
The Sub Inspector Of Police,
Erode Town Police Station,
Erode, Erode District.
Crime No.848 Of 2018

Respondent

PRAYER

To set aside the Judgment dated 02.12.2024 passed in CC.No.5 of 2024 on the file of learned Special Judge Additional Special Court for Trial of Criminal Cases related to elected MPs and MLAs of Tamil Nadu, Chennai - 600 001.

For Appellant(s): Mr.N.Anandapadmanabhan
Senior Advocate
Mr.S.Ravi
Senior Advocate
for Mr.M.Ramamoorthi

For Respondent(s): Mr.Arun Anbumani
Additional Public Prosecutor



JUDGMENT

This criminal appeal arises against the judgment of conviction and sentence in CC.No.5 of 2024 on the file of the Assistant Sessions Judge / Special Judge, Additional Special Court for Trial of Criminal Cases related to elected MPs and MLAs of Tamil Nadu.

The case of the prosecution runs as follows:-

2.The appellant was a member of the Legislative Assembly of the State of Tamil Nadu. He was also the National Secretary of the Bharatiya Janata Party (hereinafter referred to as 'BJP'). He is alleged to have posted messages on social media (Twitter and Facebook) on 06.03.2018, which would incite unrest in the society.

3.The first complaint was lodged by one Mr.N.V.Kumaragurubaran, the District Secretary of the Thanthai Periyar Dravidar Kazhagam, Erode District, on 07.03.2018. It was lodged with the Inspector of Police, Town Police Station, Erode. It was the assertion in the complaint that the appellant had posted messages on his Twitter handle stating that the statues of Periyar (hereinafter referred to as 'EVR') would have to be broken, in the same manner as the statue of Lenin was broken in Tripura. It was further alleged that this message amounts



to provoking the public. Hence, he sought for appropriate action to be taken against the appellant.

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4. On the very same day, another complaint was lodged by one E.P.Ravi, District Head of the Erode District Congress Committee, Erode District, with the Superintendent of Police, Erode District. This complaint referred to an alleged Facebook posting which contained a speech said to have been made by the appellant. It was alleged that in the speech, the appellant had termed EVR as a caste supremacist and that his statutes, wherever they are situated in the State of Tamil Nadu, should be broken. It was also alleged that EVR is the son of the soil and a rationalist and one of the tall leaders of the State. EVR had brought about social and caste reforms in the State of Tamil Nadu. In this complaint too, it was alleged that the speech is one which will incite violence and therefore, action should be taken against the appellant.

5. The third complaint was lodged on 08.03.2018 by the District Head of Popular Front of India, Erode District. This complaint is said to have been handed over to the Superintendent of Police, Erode District. In this complaint too, it was alleged that the appellant, in order to provoke a riot, had made some social media postings on 06.03.2018. It was stated that in Tirupattur, a statue of EVR had been damaged. It was alleged that the appellant, H.Raja is habituated

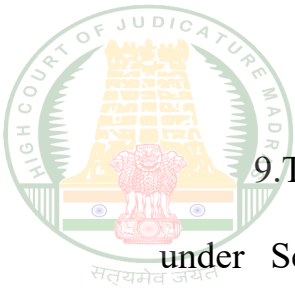


in making such provocative speeches and on account of his actions, a tense situation is prevailing in the State of Tamil Nadu. Therefore, the complainant requested action to be initiated against the appellant.

6.The complaint lodged by Ubaithulla was registered in Crime No.846 of 2018 and the complaint lodged by N.V.Kumaraguruparan was registered in Crime No.847 of 2018 on the file of the Erode Town Police Station, Erode District. The complaint lodged by Mr.E.P.Ravi resulted in FIR being registered in Crime No.512 of 2018 on the file of the Karungalpalayam Police Station, Erode District. All the complaints were registered on 20.09.2018. Crime Nos.846 of 2018 and 847 of 2018 were registered by one Arivendhiran and Crime No.512 of 2018 was registered by one Dhandapani, both being Sub-Inspectors of Police of their respective police stations.

7.Initially, the FIRs were registered for the offences attracting Sections 153 and 505(2) of IPC. Thereafter, an alteration report was filed and the case was altered to one attracting Sections 153 and 504 of IPC.

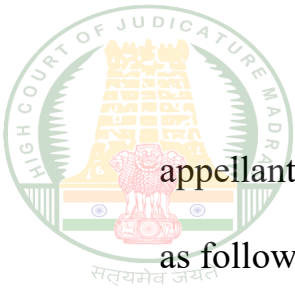
8.Post the investigation, final reports were presented before the learned Judicial Magistrate No.I, Erode. They were taken on file as STC.No.308 of 2021, STC.No.307 of 2021 and STC.No.201 of 2021 respectively.



9.The appellant had earlier approached this Court invoking its jurisdiction under Section 482 of the Code of Criminal Procedure to quash these proceedings. This was in Crl.O.P.No.5859 of 2022, Crl.O.P.No.8928 of 2022 and Crl.O.P.No.15419 of 2022. These petitions were dismissed by this Court on 29.08.2023. While dismissing the petitions, the cases, then pending before the learned Judicial Magistrate, Erode, were transferred to the Special Court for MP/MLA cases, Chennai, to be heard as a single case. A further direction was given, calling upon the Special Court to complete the proceedings within a period of three months after the charges were framed. Pursuant to this direction, the three STC cases, referred to above, were re-numbered as CC.No.5 of 2024.

10.To prove their case, the prosecution examined 18 witnesses in all. Ex.P1 to Ex.P15 were marked. When the appellant was questioned under Section 313 of CrPC, on the circumstances appearing against him, he denied the same. No witnesses were examined on the side of the appellant. The endorsement made by the learned Judicial Magistrate-II, Erode, on 23.10.2018 in the final report filed by the police was marked as Ex.D1 through PW17, the Investigating Officer in Crime Nos.846 of 2018 and 847 of 2018.

11.On the basis of the evidence on record and after hearing the arguments of the counsel, the Trial Court, by a judgment dated 02.12.2024, convicted the



appellant for the offences under Sections 153 and 504 of IPC and sentenced him as follows:-

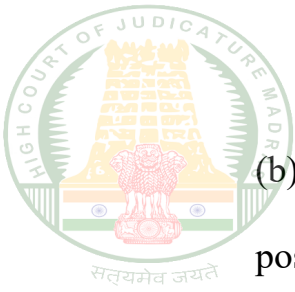
Sl. No.	Provision under which convicted	Details of sentence
1.	Section 153 of IPC	Six months of simple imprisonment and fine of Rs.1,000/-. In default of paying the fine, additional one month as simple imprisonment.
2.	Section 504 of IPC	Six months of simple imprisonment and fine of Rs.1,000/-. In default of paying the fine, additional one month as simple imprisonment.

12.As pointed out above, challenging the conviction and sentence, the appellant is before this Court.

13.I heard Mr.N.Anandapadmanabhan, Senior Advocate and Mr.S.Ravi, Senior Advocate for Mr.M.Ramamoorthi for the appellant and Mr.Arun Anbumani, Additional Public Prosecutor for the respondent.

14.Mr.N.Anandapadmanabhan, Senior Advocate and Mr.S.Ravi, Senior Advocate for the appellant submitted as follows:-

(a)The manner in which the complaint was received and as to how FIR was registered are not only suspicious but also not in the manner known to law.



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(b)The prosecution failed to prove that the Twitter and Facebook posts were at the instance of the appellant.

(c)The evidence of the witnesses are riddled with contradictions and the Trial Court failed to appreciate the same.

(d)There is no evidence of any sort of speech said to have been given by the appellant as alleged by the prosecution.

(e)The final report had been returned by the Court on 23.10.2018 and that the photocopy of the objectionable material had been produced for the first time on 07.10.2024. Even assuming the failure of the prosecution under Section 207 of CrPC in not providing a copy of the objectionable material is kept aside, on the face of it, Ex.P5 is not a social media posting on Facebook or Twitter, but a mere screenshot of a television news channel.

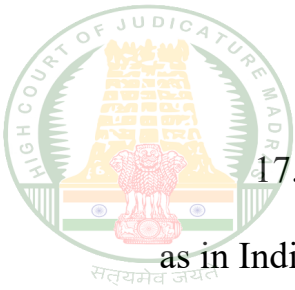
(f)Lastly, the learned Trial Judge seriously erred in convicting the accused on the basis of the order passed in the quash petition, when the same had not even been filed by the prosecution before the Court.



15. In support of their submissions, they relied upon the following judgments of the Supreme Court:-

- (i) *Sharad Vs. State, AIR 1984 SC 1622*;
- (ii) *Tukaram Vs. Manikrao, AIR 2010 SC 965*;
- (iii) *Anvar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473*;
- (iv) *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1*;
- (v) *Pune Bar Association Vs. Union of India, 2026 Supreme (Online) (SC) 1752*;
- (vi) *Thethavusamy Vs. Radhakrishnan, 2007 (1) KLT 226*;
- (vii) *Mathew Samuel Vs. State, 2019 Supreme (Mad) 1464*;
- (viii) *Himalayan Coop. Group Housing Society Vs. Balwan Singh and others, (2015) 7 SCC 373*.

16. Per contra, Mr. Arun Anbumani, Additional Public Prosecutor submitted that the Trial Court had carefully analysed the case presented by the prosecution and had concluded that the case has been proved against the appellant beyond reasonable doubt. He pointed out, even without a certificate under Section 65B of the Indian Evidence Act, a reading of PW1 and PW6 would show that they have seen the social media posting and therefore, reading their evidence, in the light of Section 60 of Indian Evidence Act, the conviction of the appellant requires to be sustained.



17.He added that EVR is a great leader in the State of Tamil Nadu as well as in India and on account of the provocative statement made by the appellant, it created waves instead of ripples in the society of his followers and hence, the finding that public peace and tranquillity had been disturbed stands proved.

18.He pointed out that it is not necessary for riots to take place to apply Section 153 of IPC. Mere disturbance, without a riot is sufficient, to satisfy the requirements of Section 153. He urged that there is no merits in the appeal and seeks its dismissal.

19.I have carefully considered the submissions of both counsel. I have gone through the records in detail.

20.It is the consistent case of the appellant before the Trial Court as well as before this Court that he did not post the comments dated 06.03.2018 on social media. He denied the authorship of the alleged posts said to have been made on Twitter and Facebook.

21.The prosecution, in order to substantiate that it is the appellant who had posted the material, have produced Ex.P3, Ex.P5, Ex.P9, Ex.P10, Ex.P12, Ex.P13 and Ex.P14. Ex.P3 is a photocopy sent as an attachment by G-mail. This



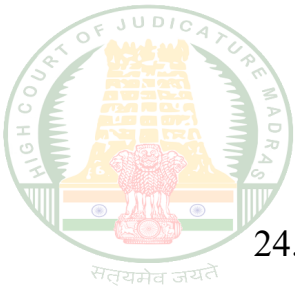
is clear from the print out that has been produced under Ex.P3. Ex.P5 is a photocopy of the screenshot of Tamil News channel named 'NEWS 7 TAMIL'.

Ex.P9 is yet again a photocopy sent as a mail attachment containing the screenshot of a News Agency named 'ANI'. Ex.P10 is again a screenshot of the Tamil News channel 'NEWS 7 TAMIL'. Ex.P12 is the screenshot of the synopsis of a Tamil programme title “காலத்தின் குரல்” aired by the Tamil News Channel “News-18 தமிழ்நாடு”. Ex.P13 is yet again screenshots of NEWS 7 TAMIL. Ex.P14 is the screenshot of synopsis of a Tamil programme title “காலத்தின் குரல்” aired by the Tamil News Channel “News-18 தமிழ்நாடு”.

22.I have referred to the nature and contents of the documents in detail for the purpose of showing that what have been produced are photocopies of screenshots that are reported by News channels like NEWS 7 TAMIL, News-18 தமிழ்நாடு and ANI. This requires some probe into two legislations, namely, the Information Technology Act and the Indian Evidence Act.

23.Under the Information Technology Act, 2000, two provisions have to be immediately taken note of. They are:-

- (i)Section 2(1)(o), which defines 'data' and
- (ii)Section 2(1)(t), which defines 'electronic record'.

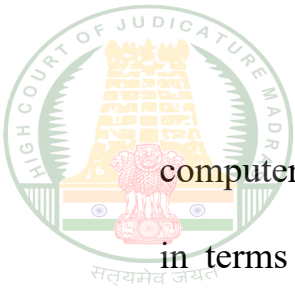


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24.Social media posts / messages fall under the category of electronic record within the meaning of Section 2(1)(t). When a Facebook or Twitter post is made, the maker generates data. This data is transmitted over the internet and is stored on computers maintained by Facebook or Twitter. Since the posts exist only in bits and bytes, it is covered by the aforesaid Section. Once it is covered by the Information Technology Act, 2000, the Indian Evidence Act, 1872, takes over.

25.Section 65A of the Indian Evidence Act, 1872, demands that contents of electronic records must be proved in accordance with Section 65B. Section 65B applies when secondary evidence in the form of computer printouts, digital records, etc, are sought to be introduced as secondary evidence. Section 65B applies when a copy is produced instead of the original device. If the original computer or the storage device itself is produced before the Court, Section 65B does not apply.

26.For a social media post or comment or message to be admissible in Court, it must strictly adhere to the requirements of Section 65B of the Indian Evidence Act. It demands that any information contained in an electronic record that is printed on a paper or copied in optical or magnetic media produced by a

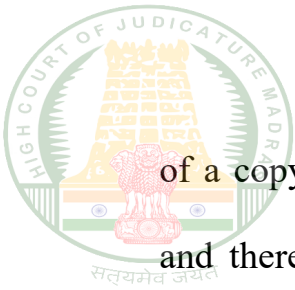


computer should be treated as a “document”. This document can be proved only in terms of Section 65A and Section 65B. A casual perusal of Section 65B shows that the record must come from a functional computer used in the ordinary course of activity and the document produced reflects what is stored.

27. Photocopies of screenshots of Facebook and Twitter posts that have been recorded on news websites cannot be treated as primary evidence. Hence, if they have to be proved, adherence to Section 65B is essential.

28. Section 65B(1) of the Indian Evidence Act commences with a non-obstante clause. Further, any information contained in an electronic record which has been stored, recorded or copied as a computer output shall be deemed to be a document. The said document is admissible as an evidence without further proof or production of the original, if and only if, the conditions specified therein are satisfied.

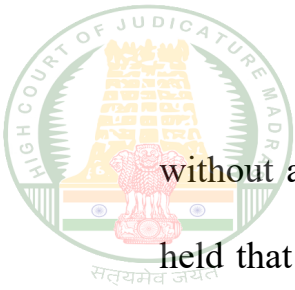
29. Section 65B(4) of the Indian Evidence Act demands a certificate from a responsible officer in relation to the operations of the device or its management stating the requirements of Section 65B(4)(a) to (c) have been complied with. Without such certification, the documents cannot be treated as admissible in evidence. Apart from that, the photocopy of a screenshot is a copy



of a copy. In other words, it is a secondary evidence of a secondary evidence and therefore, cannot be accepted in evidence. A screenshot of the post is a reproduction of the screen. A news reporting is a reproduction of that screenshot. A photocopy of the news reporting website is yet another a reproduction. Unless and until, the live URLs are produced before the Court, the chain of custody is snapped. It is here that I will look into several cases which have dealt with this issue.

30.The first of the judgments is *Anvar P.V. Vs. P.K.Basheer and others, (2014) 10 SCC 473*. The case arose due to an election dispute. The unsuccessful candidate produced certain compact discs as proof for the corrupt practices adopted by the returned candidate. The digital camera, recording the speeches, songs and announcements was not produced. However, he did not produce any certification as required by Section 65B. The High Court dismissed the election petition, holding that the corrupt practices have not been proved. Aggrieved by the same, he preferred a civil appeal before the Supreme Court. The matter was heard by a Bench consisting of three Judges.

31.The appellant relied upon the judgment of the Supreme Court itself in *State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600*, to urge that Section 63 and Section 65 permit secondary evidence to be received



without a Section 65B certification. Kurian Joseph J., speaking for the Bench, held that proof of an electronic record is a special provision introduced by the Information Technology Act, 2000, by amending the various provisions of Indian Evidence Act and that it is a complete code in itself. Once it is a complete code, Section 63 and Section 65 of the Indian Evidence Act have to yield to it. Having come to the said conclusion, they overruled that portion of the judgment in *Navjot Sandhu's* case which had held to the contra. This judgment was holding the field for about four years.

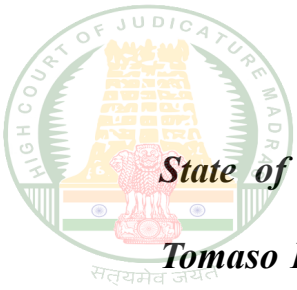
32. Then came the judgment in *Shafhi Mohammad Vs. State of Himachal Pradesh, (2018) 2 SCC 801*. The Supreme Court was called upon to answer whether the requirement of a certificate under Section 65B(4) of the Indian Evidence Act, 1872, can be relaxed, when a party was not in possession of the electronic device that generated the evidence. Justices A.K.Goyal and U.U.Lalit (as he then was), held that a party who is not in possession of the device from which the document is produced cannot be called upon to produce a certificate under Section 65B(4) of the Indian Evidence Act, 1872. Therefore, the requirement of a certificate being procedural, can be relaxed by the Court, whenever interest of justice so justifies. A similar view was taken in an earlier judgment of the Supreme Court in *Tomaso Bruno Vs. State of Uttar Pradesh, (2015) 7 SCC 178*.



33. In order to resolve the confusion that arose on account of the conflict namely, one holding Section 65B certificate is mandatory and other that it is procedural, a reference was made to a Bench of three Judges. This was in ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, 2020 INSC 453***. Justice R.F.Nariman, after a detailed analysis of the law, came to the following conclusion:-

(i) Section 65B(1) differentiates between “original electronic record” and “computer output containing such information”. If the original information contained in the computer itself is produced, no certification is necessary, whereas for the copies made therefrom, the certificate is mandatory for admissibility of such secondary electronic evidences.

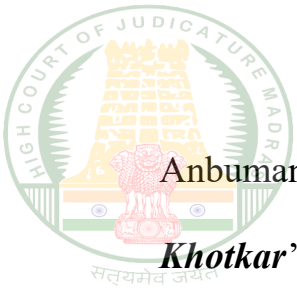
34. Applying the maxims of *lex non cogit ad impossibilia* and *impotentia excusat legem*, the Court concluded that, where a party had made a bonafide evidence, but is not able to obtain the certificate from a non cooperative third party, the Court is empowered to summon the certifying authority or otherwise, admitting the evidence in order to avoid injustice being caused in a litigation. Having come to this conclusion, the Court confirmed that the judgment in ***Anvar P.V. Vs. P.K.Basheer and others, (2014) 10 SCC 473*** has laid down the correct position of law and overruled the judgments in ***Shafhi Mohammad Vs.***



State of Himachal Pradesh, (2018) 2 SCC 801 and held the judgment in ***Tomaso Bruno and another Vs. State of Uttar Pradesh, (2015) 7 SCC 178*** is *per incuriam*.

35. In the light of the above discussion, it becomes clear that unless and until the original device is produced, a party relying upon the secondary evidence is duty bound to produce a certificate under Section 65B and that such a certificate under Section 65B is *sine qua non* for admissibility of such evidence. If the law laid down in ***Arjun Panditrao Khotkar's*** case is applied, then, this Court has to conclude that none of the exhibits are admissible and therefore, authorship of the social media post alleged to have been made by the appellant has not been proved in a manner known to law.

36. At this stage, I would refer to the argument of Mr. Arun Anbumani that this Court can rely upon the oral evidence and conclude that in fact, the appellant had made those statements. If I were to accede to the plea of Mr. Arun Anbumani, it will be as if this Court is ignoring to satisfy the declaration of law in ***Anvar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473*** wherein the Bench held that the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence, if requirements under Section 65B of the Indian Evidence Act are not complied with. Hence, this argument of Mr. Arun



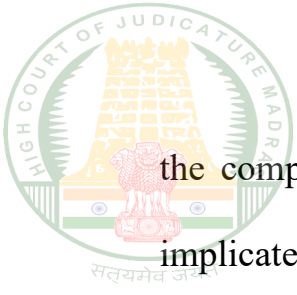
Anbumani, seeking to create an exception to the rule in *Arjun Panditrao Khotkar*'s case deserves rejection and is accordingly rejected.

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37. On this aspect, I will take support of the Division Bench of the Bombay High Court in *Mahesh Shivling Tilkari Vs. State of Maharashtra*, **2024 SCC OnLine Bom 3497**, wherein it was held that print out of screenshots of Facebook material will not at any stretch of imagination prove the said post.

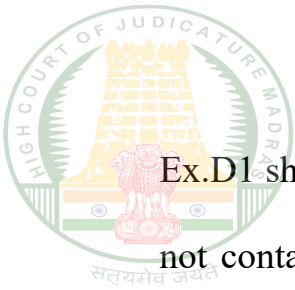
38. Turning to the other aspect of the case, I am entirely in agreement with Mr. N. Anandapadmanabhan, Senior Advocate that the delay in lodging the FIR has not been explained by the prosecution. I have pointed out that the complaints are said to have been lodged on 07.03.2018 and 08.03.2028. FIR themselves came to be registered on 20.09.2018. As to what happened to the complaints for a period of six and half months have not been explained. The printed FIR also does not contain any reasons for the delay. No explanation has also been forthcoming from the witnesses. In fact, they said they were not aware as to what happened from the time when the complaint is said to have been lodged till they were summoned by PW16 on 20.09.2018. A delay of more than six months remain unexplained.

39. The unexplained delay in filing of an FIR raises strong suspicion that



the complaint could have been manipulated or fabricated, in order to falsely implicate the accused. Delay in filing the FIR grants time for consultation / fabrication and introduces a concocted story. All the complaints were lodged with the Superintendent of Police either on 07.03.2018 or 08.03.2018. No endorsement of the Superintendent of Police or even a seal of that office is found therein. The complaints do contain an endorsement made by the officer in charge of the Special Branch. As to how the complaint reached his hands has not been explained. More importantly, had the prosecution produced the letters said to have been sent by the Deputy Superintendent of Police in न.क.ए.नं.:382/SDO/ET/CAMP/18, न.क.ए.नं.:383/SDO/ET/CAMP/18 and न.क.ए.नं.:384/SDO/ET/CAMP/18, this Court would have appreciated the delay. Unfortunately, neither of the proceedings were produced by the prosecution. The same situation prevails with respect to FIR No.512 of 2018. The Inspector of Police, Karungalpalayam Police Station, Erode District, though examined as PW18, had not produced the said letter in order to satisfy the Court as to where the complaints were pending for such a long period and also the reasons for the delay in FIR.

40.The other lacuna which remains unexplained is to when the final report came to be represented before the Judicial Magistrate Court No.II, Erode.



Ex.D1 shows on 23.10.2018, the final report was returned by that Court as it did not contain a copy of the crucial twitter post said to have been posted by the accused. It had been re-submitted to the Court. The date of re-submission is not found therein. This factor alone should not have made much difference to the case, but it does, because a copy of the posts have never been enclosed along with the original. The prosecution further has not explained as to why the electronic items on the basis of which these posts would have been generated by the accused have not been seized by them. Furthermore, the police did not examine the correspondents of the news agencies which had carried the alleged posts.

41. None of these aspects had been gone into by the learned Trial Judge. He came to a conclusion that as the accused had not issued a denial statement for the alleged post said to have been made by him, which had become viral then, a presumption arises that he would have sent the post. Such a finding vices the fundamentals of criminal law.

42. The learned Sessions Judge should have known that insofar as criminal trials are concerned, the evidentiary rule is proof beyond reasonable doubt. It is only in a civil case, the question of balancing of probabilities arises. It is the specific case of the prosecution that it was the accused, who had made



the post. Therefore, the burden was on it to substantiate and prove the same. It is unknown in criminal proceedings for a Court to assume the guilt on account of the fact that the accused had not issued a public statement denying the authorship of the post.

43. In addition, the learned Trial Judge seems to have been carried away by the orders passed by this Court in the petitions filed for quashment. The learned Judge had extensively referred to the said order to reject the arguments made by the counsel for defence. Here too, the learned Trial Judge has not appreciated what is the effect of an order passed under Section 482 of CrPC and its role at the time of final disposal.

44. When the High Court decides a petition under Section 482, it does not conduct a mini trial or evaluate the evidence. It only examines whether a *prima facie* case exists for the matter to proceed for trial. The dismissal of the quashment petition does not mean the accused is held to be guilty. The conclusions arrived at by this Court in a Section 482 proceeding are merely tentative and they are certainly not binding on the Trial Court at the time of final judgment.

45. At the time of final judgment, it is for the Trial Judge to decide the



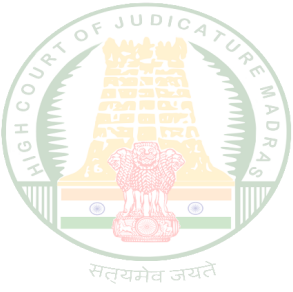
case on the basis of the age old principle of “proof beyond reasonable doubt”, marshalling the actual testimony, the cross examination and the evidence exhibited before him, in order to conclude if a crime had been proved or not. Unfortunately, the learned Trial Judge has failed to do so in this case. He had construed as if the findings rendered by this Court during the quash proceedings are binding on him.

46. Furthermore, there is absolutely no evidence to show that the statements said to have been made by the accused resulted in causing such a strong reflection in the society that it could have caused a riot. It is not the case of matter of evidence, but a case of no evidence on that aspect.

47. In the light of the above discussions,

(i) The conviction and sentence imposed on the appellant for the offences under Section 153 read with Section 504 of IPC by judgment dated 02.12.2024 passed in CC.No.5 of 2024 on the file of the learned Special Judge, Additional Special Court for Trial of Criminal Cases related to MPs and MLAs of Tamil Nadu, Chennai, are set aside.

(ii) The appellant is acquitted from all the said charges.



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(iii)The bail bond stands cancelled.

(iv)The fine amount paid shall be refunded to the appellant.

48.In the result, this Criminal Appeal is allowed.

01.09.2026
(1/2)

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Index:Yes/No

Speaking/Non-speaking order

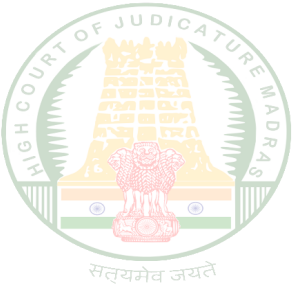
Internet:Yes

Neutral Citation:Yes/No

To

1.The Sub Inspector Of Police, Erode
Town Police Station, Erode, Erode
District. Crime No.848 Of 2018.

2.The Public Prosecutor,
High Court of Madras, Chennai.



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CRL A.No.1635 of 2024



V.LAKSHMINARAYANAN J.

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CRL A No. 1635 of 2024

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