

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

CrI.A(MD)No.39 of 2015

Balamurugan

... Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Thirupachethi Police Station,
Sivagangai District.
[Crime No.62 of 2010]

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to call for the records in S.C.No. 85 of 2011 dated 21.11.2014 on the file of the District and Sessions judge, Sivagangai, set aside the same, acquit the appellate/accused herein.

For Appellant : Mr.Mohideen Basha

For Respondent : Mr.A.Robinson,
Government Advocate [CrI Side]

J U D G M E N T

The Criminal Appeal is filed by the sole accused in S.C.No.85 of 2011 on the file of the learned Sessions Judge, Sivagangai.

2. The Inspector of Police, Thirupachethi Police Station/ respondent herein filed a final report as against this appellant on 21.10.2010 for the offence under Sections 341, 302 and 394 r/w 397 IPC. The trial Court has also framed charges for the said offences and in conclusion of the trial, found him not guilty for the offence under Section 394 r/w 397 IPC, but found him guilty for the offence under Section 341 and 304 (ii) IPC, convicted and sentenced him to undergo 5 years Rigorous imprisonment, with a fine of Rs.5000/- in default to undergo two months simple imprisonment for the offence under Section 304(ii) IPC and no separate sentence was imposed for the offence under Section 341 IPC.

3. The brief facts of the prosecution case are that the deceased Senthil is a native of Mathur village and there was a property dispute between him and the family of one Ponnusamy. The deceased Senthil sold one of his properties to some third party and on 06.05.2010, while on the way to register the documents at the Sub Registrar Office, Sivagangai, one Karuppasamy S/o.Ponnusamy; Ponnusamy's brothers Udayar and Jeyaraman; and one Sabarimalai have raised an issue with the deceased

that they are having right over Senthil's property. On 07.05.2010, the wife of Senthil, Annalakshmi [PW1] was suffering from fever and therefore, the deceased Senthil took his wife to the hospital at Kallloorani for treatment. After taking treatment, they were returning by walk near Anicut around 12.30pm, where the aforesaid Karuppasamy, S/o.Ponnusamy, Udayar, Jeyaraman and Sabarimalai surrounded the deceased Senthil and the said Karuppasamay by saying that if he is alive only, he will sell the property, stabbed the deceased Senthil on his chest, stomach and on elbow and at that time the accused Jeyaraman and Udayar caught hold of the deceased and the said Sabarimalai was holding him from back. Immediately, PW1 took the deceased with injuries to the house of one Jeyaraman and arranged for an Auto and also informed her mother-in-law [PW4]. All of them took the deceased to the Government Hospital, Sivagangai at about 1.45pm, but the Doctor, who attended the deceased reported he was brought dead.

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4. On the intimation from the Government Hospital, Sivagangai, the Sub Inspector of Police, Gurusamy [PW10] went to the Government Hospital at Sivagangai, recorded

the statement of the deceased's wife Annalakshmi [PW1] on 07.05.2010 at about 4.00pm, returned to Thirupachethi Police Station and registered a case in Crime No.62 of 2010 as against the above four named accused for the offence under Sections 342 and 302 IPC at about 5.30pm. The printed FIR [Exp9] was also despatched to the learned Judicial Magistrate, Manamadurai, who received the same at 10.50pm on 07.05.2010 itself.

5. N.Muthukumar [PW12], Inspector of Police, Thirupachethi Police Station, on receipt of the information, proceeded to the place of occurrence, prepared an observation mahazar [Exp2] at about 8.30pm in the presence of one Annadurai and Durairaj [PW5] and also recovered soil with and without blood [MO3 and MO4 respectively] under a cover of mahazar [Exp3] in the presence of the said witnesses. Thereafter, he proceeded to the Government Hospital, Sivagangai, where the dead body was lying, conducted an inquest in the presence of one Gopal, Panchyat President of Mathur, Nagaraj, S/o. Karupasamy Servai, Velusamy, S/o. Gandhi of Mathur Village, Kumar, S/o. Udayar on the same day and all these witnesses also informed the investigation officer [PW12]

that due to the property dispute there was an enmity between the deceased and the Ponnusamy's family and on account of which, he was murdered on 07.05.2010 at 12.30pm. PW12 also made a request to the Doctor, to conduct an autopsy and the Doctor Madhu [PW9], who conducted the postmortem on 08.05.2010 at about 10.10am noted down the following injuries in his postmortem certificate [Exp8]:-

" Injuries

1. There was a 4X2X20 Cm stab wound over Right chest were close to midline, which was continuous with a stab wound in the right lung measuring 3 X1X14 cm
2. There was another stab wound 1X1X4 cm over right lower chest wall
3. There was another stab wound 2X1X4Cm over left lower abdomen wall"

6. He also gave his final opinion that the deceased appears to have died due to the injury on the vital organ Lungs and Hemorrhage 18 to 24 hours prior to the autopsy. After the postmortem, a shirt [MO6] and a Lungi [MO5] worn by the deceased were also recovered by the investigation officer. Later on 17.07.2010 this appellant Balamurugan, appeared before the Kallangudi

Group Village Administrative Officer, Subramanian [PW6] and gave an extra judicial confession statement in the presence of the Village Assistant Rajangam that during the relevant point of time, he was sleeping near the place of occurrence and at that time he noticed the deceased and his wife were walking in the area, went and attempted to snatch the Mangal Sutra of the woman, at that time, the deceased Senthil attacked him. Therefore, he stabbed him with a knife and ran away from the place of occurrence. This extra judicial confession statement [Exp4] was recorded by the VAO [PW6] and was produced along with the accused before the Thirupachethi Police Station. Based on this extra judicial confession statement, the investigation officer arrested the appellant, recorded his confession statement and also recovered the knife [MO1] and a mobile phone [MO2] in the presence of VAO Thiruvengadam, Thirupachethi Village [PW7] and one Rajendiran, VAO [PW8].

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7. PW14, thereafter, made a request for conducting a test identification parade on 19.07.2010 to the learned Chief Judicial Magistrate, Sivagangai. Pursuant to the orders of the learned Chief Judicial Magistrate,

the Identification parade was conducted by the learned Judicial Magistrate, Ilayankudi on 28.07.2010 at the Central Prison, Madurai. PW12 recorded the further statement from PW1 Annalakshmi on 29.07.2010. Thereafter, as he was transferred to Chennai, the further investigation was taken over by another Inspector of Police, namely, Poun from 20.09.2010. He examined one Karuppasamy, Samayadurai and Senthilkumar on 20.09.2010 and one Selvaraj, Superintendent of Sakthi Sugar Mills and Subramanian and Dinakaran from Coimbatore on 25.09.2010. He also examined a land broker Raja Udayar on 02.10.2010 and recorded the further statement from Annalakshmi [PW1], Suresh [PW2], Malairaj [PW3] and Amaravathi Udayar, Auto Driver and recorded their statements on 05.10.2010 and examined one Veerapathiran and Ravi from Coimbatore on 06.10.2010 and Thangavel, Road Inspector on 08.10.2010 and examined the father of the appellant Ramar on 10.10.2010, Yuvaraj, Sub-Divisional Engineer BSNL, Sivagangai Division on 11.10.2010, one Anand, who sold the SIM Card to the appellant on 12.10.2010 and also examined other witnesses on 24.10.2010.

8. After completion of the investigation, he filed the final report as against this appellant for the offence under Sections 341 and 302, 394 r/w 397 IPC before the learned Judicial Magistrate, Manamadurai and the same was taken on file in PRC No.43 of 2010 and was committed to the Court of Sessions, Sivagangai and the Sessions Court has taken it on file in S.C.N.85 of 2011.

9. On the side of the prosecution 14 witnesses were examined and 17 documents were marked and 6 materials objects were produced.

10. Annalakshmi [PW1] is the wife of the deceased and an eye witness. She has stated about her complaint ExP1 and the occurrence. The brother of the deceased Suresh was examined as PW2, who attested the complaint ExP1. One Malairaj, who took the deceased to the hospital was examined as PW3. The mother of the deceased namely Muthurakku was examined as PW4. One Durairaj [PW5] was examined for the preparation of observation mahazar. PW6 is the VAO Subramaniam, who recorded the extra judicial confession statement of the appellant. PW7 Thiruvengadam and PW8 Rajendran are the Village

Administrative Officers and they were examined for the purpose of recovery of MO1 knife and MO2 mobile phone, but they were treated as hostile. Dr.Madhu, who conducted the postmortem was examined as PW9. The Sub Inspector of Police, who registered the case in Exp9 was examined as PW10. The then learned Judicial Magistrate, Ilayankudi who conducted the Test Identification Parade was examined as PW11. PW12 N.Muthukumar is the Inspector of Police, who conducted the preliminary investigation. PW14 Poun is the Inspector of Police, who conducted the further investigation and filed the final report. PW13 is a Staff from the Police Department, through him the call details of the appellant/accused were marked.

11. All the incriminating materials were put before the accused under Section 313 CrPC and the same was denied by the accused/appellant. Though the accused stated there are evidence in support of his case, he has not examined any witness or produced any documents.

12. In conclusion of the trial, the trial Court found this appellant guilty, convicted and sentenced him as stated supra. As against the same, the present appeal has been filed.

13. Heard Mr.Mohideen Basha, learned Counsel for the appellant and Mr. Robinson, learned Government Advocate [CrI Side].

14. Mr.Mohideen Basha, learned Counsel for the appellant submitted that the genesis of the prosecution case itself is doubtful. The case of the prosecution was proceeded based on the complaint [ExP1] that out of a property dispute, four named accused committed the offence on 07.05.2010 at about 12.30pm, whereas, this appellant is introduced as an accused through the extra judicial confession statement, which was recorded after two months from the date of occurrence. The evidence of PW1 cannot be trusted for the reason that in her complaint ExP1, she has stated a different version that four named persons committed the offence, whereas, in the Test Identification Parade, she has identified this appellant as an accused and also is now stating that this appellant has committed the offence.

15. The learned Counsel further submitted that leaving the evidence of PW1, the available evidence in this case are the extra judicial confession statement

recorded by the VAO [PW6] and the subsequent recoveries made from this appellant/accused. The extra judicial confession statement is a weak piece of evidence and even this extra judicial confession statement was recorded after two months from the date of occurrence in the midst of the investigation. More over, this appellant/accused is a resident of a different village, who is said to have chosen to give a statement before PW6, a complete stranger to him and that too after two months from the date of occurrence.

16. The learned Counsel also pointed out that in the extra judicial confession statement, PW6 has made an endorsement that the confession of the offence pertains to a case in Crime No.62 of 2010 on the file of the Tirupachethi Police Station and he produced the accused along with the extra judicial confession statement Exp4 before the respondent Police. It is strange as to how the VAO[PW6] came to know about the crime number of the Thirupachethi Police Station and the offences on which, the case was registered. Apart from this extra judicial confession statement, a knife [M01] and a mobile phone [M02] were recovered but the knife was not sent for

chemical examination and there is no record to substantiate that the mobile phone belongs to the appellant/accused. Though the Sub Divisional Engineer of BSNL was examined in this case, there is no materials to substantiate that this appellant has used the mobile phone. The Service provider of the mobile number used by this appellant was not examined. In the absence any tangible materials as against the appellant, the trial Court has mechanically found him guilty, convicted and sentenced and therefore, prayed that the conviction and sentence is liable to be set aside.

17. Per contra, Mr.A.Robinson, learned Government Advocate [CrI Side] submitted that though the property dispute originally stated by the PW1 is the cause for the commission of offence, during the course of investigation further materials were collected and this appellant / accused is fixed pursuant to the extra judicial confession statement. The final report is also filed after obtaining opinion from the Deputy Director of Prosecution. The recovery of the knife [M01] is stated by PW7. However, he did not refer the recovery of the mobile phone [M02] and therefore, he was treated as hostile witness and

similarly other recovery witness PW8 did not mention about the knife MO1 and therefore, he was also treated as hostile. The evidence of the Doctor and the Postmortem certificate would prove that the death was due to the injuries in vital organ Lungs and due to hemorrhage. Weapon MO1 and mobile phone MO2 were also recovered from the appellant. The possibility of the injuries sustained by the deceased by the weapon MO1 is also stated by the Doctor PW7. Therefore, the prosecution has proved its case beyond reasonable doubt and the trial Court also convicted the appellant only for the offence under Section 304(II) IPC and not under Section 302 IPC.

18. This Court paid its anxious consideration to the rival submission and also perused the available materials on record.

19. At the outset, this Court finds some *lacuna* in the investigation and therefore, called for the CD file and perused the same.

20. The occurrence in this case has taken place on 07.05.2010 at about 12.30pm near Mathur Anicut and the

deceased was taken to the Government Hospital, Sivagangai in an Auto at 1.45pm. Within 1 hour 15 minutes the deceased was taken to the hospital. According to PW1, it was a single foot road, near the Mathur tank. After the occurrence, with the injuries, she managed to take the deceased to a nearby house of one Jeyaraman and arranged for an Auto of one Udayar, S/o.Vallabar and took the deceased to the Government Hospital, Sivagangai. The deceased was attended by the Doctor one Palanikumar at Government Hospital, Sivagangai at about 1.45pm. Neither this Jeyaraman nor the Doctor Palanikumar was examined by the Inspector of Police. The said Auto Driver Udayar was examined by the Investigation Officer PW14, but he was not examined during the trial.

21. On receipt of the intimation from the Government Hospital, Gurusamy [PW10], Sub Inspector of Police, Thirupachethi Police Station went to the Government Hospital Sivagangai at about 4.00pm on 07.05.2010, recorded the statement of PW1, who was in the hospital, returned to the Thirupachethi Police Station and registered a case in ExP1 at about 5.030pm. The printed FIR has also reached the Court on the same day at about

10.50pm. The Doctor who conducted the postmortem on the next day at about 10.10am has also given the opinion in the postmortem certificate [Exp8] that the deceased appears to have died due to the injury to his vital organ [Right Lung] and hemorrhage, 18 to 24 hours prior to the autopsy. All these available materials show that the occurrence has taken place on 12.30 pm as alleged in the complaint Exp1.

22. In the complaint Exp1, PW1 has made a specific case that there was a property dispute between her husband Senthil [deceased] and one Ponnusamy's family. She also stated that on the previous day at about 06.05.2010, when the deceased was on the way to the Sub Registrar Office, Sivagangai, the Ponnusamy's family, i.e., the accused mentioned in the FIR have created problem and intimidated them and as a consequent, this incident has taken place on 07.05.2010.

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23. The following lapses / lacuna are noticed in the investigation in this case.

A. Though the complaint was lodged against four named accused, Karuppasamy, S/o.Ponnusamy, Ponnusamy's

brothers Udayar and Jeyaraman and Sabarimalai, no steps were taken to arrest them.

B. Statements were collected as if the first accused in FIR, Karuppasamy was working in a company at Coimbatore on 07.05.2010, the second accused Udayar shown in FIR was working under NGMRGS scheme on 02.10.2010. But even for this alibi, no records were collected and relied. The statements of witnesses were collected belatedly after sixty days.

C. There is a specific allegation in the complaint ExP1 that the named accused created a problem on the way to the Sub Registrar Office, Sivagangai on the previous day to the occurrence with the deceased;

- There is no investigation on this aspect, whether any document was registered by the deceased in the Sub Registrar Office, Sivagangai on 06.05.2010;
- There is no investigation at the Sub Registrar Office, Sivagangai or from the surrounding area that any incident had taken place on 06.05.2010 as alleged in the complaint;
- There is no investigation whether there was any

property dispute between the deceased and the family of Ponnusamy accused shown in ExP1.

D. The investigation agency relied on some statements for Alibi on 07.05.2010 to delete the name of the accused as mentioned in the FIR, from the final report. But there is no investigation on the whereabouts of the named accused in ExP1 on 06.05.2010, ie., the previous day to the occurrence, even though it is specifically stated in the complaint ExP1.

E. The investigation agency, which relied on the call details and the location of appellant's mobile phone through the cell phone Tower to fix him as an accused, but failed to

- ascertain in whose name the SIM Card recovered from the appellant stands;
- examine the service provider to ascertain the mobile number location from the tower location with IMEI number of the mobile phone recovered from the appellant;
- to collect any material for fixing the appellant/accused with the mobile phone recovered;

- take any steps to find out whether the named accused have used him as a hireling and whether the named accused have contacted to the mobile number, which is said to be recovered from the appellant;

F. A letter was made by the Superintendent of Police, to collect the details of certain phone numbers viz., 9965891886; 9942276673; 9698986749; 93630222805; 9698448389; 9655070680; 9626081358; 9626710231.

- Whether the said phone numbers belong to the named accused in the FIR or belong to any other suspect;
- Why the call details of those phone numbers were not collected and formed as a part of the CD file?

G. When the investigation agency attempted to fix this appellant/accused through the call details and mobile phone location through the cell phone tower, why the same mode of investigation was not adopted as against the named accused by collecting their call details and their location on 06.05.2010 and 07.10.2010.

H. It is the case of the complainant that after the occurrence, she managed to take her husband / the deceased upto one Jeyaraman's house and from there, arranged an auto and taken him to Government Hospital at Sivagangai.

- ◆ The said Jeyaraman or any other person from his house was not examined;
- ◆ There is no reference in the observation mahazar and the rough sketch about the distance between the place of the occurrence and the said Jeyaraman's house;
- ◆ The deceased had sustained 4 stab injuries and despite the same, there is no explanation as to how he was able to walk from the place of occurrence to Jeyaraman's house and the possibility for the same was not elicited by examining the Doctor, who attended him at Government Hospital.

I. The injuries are deep in nature and blood stains were found even from the place of occurrence. With the bleeding, if they could move upto the Jeyaraman's house, then there is every possibility of blood spilling over on the earth, but there is no reference about the same either in the observation mahazar [ExP2] or in the rough sketch [ExP15].

J. The presence of PW1 / wife of the deceased is confirmed by examining the Doctor, who treated her on that day. The case of the complainant is that she was suffering from fever on that day and therefore, her husband / the deceased took her for treatment and while returning after treatment, the occurrence had taken place on the way. To substantiate her presence, the examination of the Doctor, who treated her is essential and in this case, one Jayaludeen, a Homeopathy Practitioner, was also examined and his statement was also recorded. But, he was not examined as a witness before the trial Court.

K. This Court has a question that is it not the duty of the investigation officer and the prosecutor to examine the material witnesses. PW1 claims that after the occurrence, she took her husband up to Jeyaraman's house and from there by arranging an auto, took him to the Government Hospital, Sivagangai and in this course, her saree was also stained with blood, and the blood stained clothes were also handed over to the Police.

- But there is no Mahazar for recovery of this blood stained clothes from PW1 and it was neither referred for chemical analysis nor was placed before the court during the trial.

- The blood stained clothes of the deceased were recovered under a cover of mahazar, but was not sent for analysis to ascertain the blood group. Similarly, the blood stained soil was also recovered from the place of occurrence but no steps were taken to ascertain that it is a human blood.

L. The Auto Driver, who took the deceased and PW1 to the hospital is mentioned in the ExP1 itself, as son of Vallabar, but this Auto Driver was not examined as a witness during the trial.

M. One Dr. Palanikumar has examined the deceased at Government Hospital, Sivagangai and reported him as brought dead on 07.05.2010. He also issued a wound certificate, noting the injury and the time at which the deceased was brought to the hospital and by whom. Though the accident register was recovered and found in the C.D.file, it was not placed before the Court.

N. In the Accident Register an entry was made that at 1.45 pm on 07.05.2010 the PW1 informed the Doctor that

her husband deceased was assaulted with two unknown persons. Though it is not a requirement for an Accident Register entry, this is the first document, in which it is informed that the deceased was attacked by two unknown persons, but there is no investigation in this regard.

O. A petition was filed by the PW1 before this Court in Crl.O.P(MD)No.6538 of 2010 on 08.06.2010. Only after that the appellant is introduced as an accused and the manner in which the extra judicial confession statement [Exp4] recorded and produced before the Police exposes the manner in which he is introduced as an accused.

P. This Court by order dated 07.09.2010 condemned the manner in which different complaints were received by the Inspector of Police [PW12] after Exp1 and has also issued a direction to the Deputy Superintendent of Police, to monitor and, if necessary, transfer the investigation. Even then there is no reference whether the DSP has monitored the investigation. If he monitored as directed by this Court, why the above said lapses were not noted by him.

Q. An opinion was also obtained from the Deputy Director of Prosecution on 21.01.2010. But some of the witnesses were examined only on 24.10.2010 on the date of filing of the final report. Even without placing the entire materials, opinion was obtained from the Deputy Director of Prosecution and the Deputy Director of Prosecution has also given his opinion in a mechanical manner without any application of mind.

24. Though there were sufficient materials available to establish the case of the prosecution, the investigation was conducted in such a careless manner and therefore, this Court called the CD file to find out the manner in which the investigation was conducted .

25. The CD file refers that even on 08.06.2010 itself, PW1 filed a petition in Cr1.O.P(MD)No.6538 of 2010 with averments that the investigation is not conducted in a fair manner and the Inspector of Police, Thirupachethi Police Station has not acted properly and they have not arrested the real culprits and prayed for transfer of investigation of the case in Crime No.62 of 2010 from the file of the respondent Police to CBCID, Madurai District.

After filing of this petition for transfer, the Inspector of Police, Muthukumar [PW12] filed a status report before this Court that during the investigation, PW1 herself gave another complaint that three persons namely Ponnusamy, Satheesh and Durai were also involved in the said crime and also gave another complaint that an unknown person has stabbed her husband. He also stated that the unknown person gave voluntary confession before the VAO Soolakudi Village on 17.07.2010 that he had committed the above said murder, after a sudden quarrel arose between him and the deceased, wherein PW1 was also present. Further, he is also a theft offender and attempted to snatch the Mangal Sutra of PW1. A similar Counter was also filed by the Inspector of Police on 17.08.2010 and after hearing both sides, this Court disposed of the petition on 07.09.2010 in the following terms:

" 3. On hearing the representation of the learned Counsel for the petitioner, what I Could understand is that as per the copy obtained as many as two complaint subsequently from Annalakshmi, which alleged act of the IO was not contemplated as per Law. After registration of FIR, the question of entertaining another complaint would not arise. Recording the statement of witnesses under Section 161 CrPC, is the only solution available

under the CrPC after registration of FIR.

4.The learned Counsel for the petitioner also would submit that the IO has chosen to implicate only one accused leaving others and even though the petitioner herein want to implicate as many as four persons, who are all relatives of the decease, as the case itself emerged out of some property dispute among the family members.

5. At this juncture, I would like to point out that there is sufficient force in the argument put forth on the side of the petitioner. Hence, instead of straight away ordering transfer of the investigation, I would like to pass the following direction:

Within fifteen days from the date of receipt of a copy of this order, the petitioner or her representative with or without the assistance of the Advocate shall approach the Deputy Superintendent of Police, Sivagangai District and air her grievance, whereupon the Deputy Superintendent of Police, shall call for the files and scrutinise it in an unbiased manner and he should see that whether there is any flaw in the investigation. If he finds that so far proper investigation has not been conducted or in the interest justice further

investigation is necessary, he could order for change of the IO. It is for him to order so and see that he is supervising the further investigation properly. If there is any further grievance to the petitioner, she is at liberty to move this Court appropriately.

6. This petition stands disposed of accordingly."

26. There is no material on file to show whether this order of the Court in the said petition was complied with strictly. Though another investigation officer [PW14] has taken the investigation, there is no reference about the order of this Court either in the CD file or during the trial.

27. From the investigation agency, the Deputy Director of Prosecution upto the Assistant Public Prosecutor, everybody have acted in a casual manner, so as to burry the truth and the real accused, who committed the brutal murder on a poor man escape from the clutches of law.

28. In the light of the above lapses on the part of the investigation and also in view of the available circumstances and evidence, it may not be proper and safe to sustain the conviction imposed on the appellant. Accordingly, the appeal is allowed; the conviction and sentence imposed on the appellant in S.C.No.85 of 2011 dated 21.11.2014 by the learned District and Sessions judge, Sivagangai, is hereby set aside; the appellant is acquitted of the charges framed against him; fine amount if any paid by him shall be refunded and the bail bonds executed shall stand cancelled.

29. In view of the fact that this appeal is allowed because of the aforesaid lapses on the part of the prosecution, this Court is inclined to proceed further. In **Popular Muthiah v. State**, reported in (2006) 7 SCC 296, the Hon'ble Supreme Court has held as follows:

"26. Section 386 of the Code of Criminal Procedure provides for the power of the appellate court. Indisputably, stricto sensu in terms thereof the appellate court cannot direct a person to stand trial. Its jurisdiction is specified thereunder.

27. While exercising its appellate power, the jurisdiction of the High Court

although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of Parliament, while making the new law the emphasis of Parliament being "a case before the court" in contradistinction from "a person who is arrayed as an accused before it" when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.

... ..

29. The High Court while, thus, exercising its revisional or appellate

power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters."

30. Therefore, the High Court, while sitting in appellate jurisdiction in an appeal filed under Section 374(2) CrPC can exercise its inherent jurisdiction suo motu in the interest of justice.

31. In a case of murder, an Officer in the rank of Inspector of Police is conducting the investigation. The Inspector of Police is also having an assistance of the Sub-Inspector, Special Sub Inspector, Head Constable, Grade I Constable and Grade II Constable. There is a hierarchy of officials above him as well, such as, Deputy Superintendent of Police, Additional Superintendent of Police, Superintendent of Police, Deputy Inspector General of Police and Inspector of Police and such higher officials are expected to monitor the investigation. In this case, at the instance of PW1 / defacto complainant, this Court has also passed a detailed order, issuing a direction to the concerned Deputy Superintendent of Police, Sivagangai, to monitor the investigation and if

necessary, to change the investigation officer also. The final report has been filed as against this appellant in the strength of the opinion obtained from the Deputy Director of Prosecution. But, this opinion was also obtained on 21.10.2010, even before completion of the investigation. The manner in which the investigation was conducted in this case expose the biased attitude of the investigation agency. The Inspectors of Police, namely, PWs.12 & 14, have conducted the investigation in this case and as pointed out supra, a shabby investigation was conducted by them, without following the basic principles of investigation.

32.An impartial investigation is the basic requirement for any investigation. A fair investigation is also a part of constitutional right guaranteed under Articles 20 & 21 of the Constitution of India. The investigation must be unbiased, honest, just and in accordance with law. The purpose of investigation is to bring out the truth of the case before the Court of law. But, in this case, obviously, it has been obliterated and the investigation has proceeded in a causal manner as to the whims and fancies of the investigation agency.

33. One of the basic principles of the criminal justice system is that the benefit of doubt must always be extended in favour of the accused. 1000 culprits can escape, but, one innocent person should not be punished. The available materials in this case expose the perfunctory and designed investigation and therefore, this Court is left with no other option except to interfere with the judgment of conviction passed by the trial Court.

34. A Crime is a public wrong, which involves the public rights of the community as a whole and also harmful to the society in general. By observing so, the Hon'ble Supreme Court in **Dayal Singh v. State of Uttaranchal**, reported in **(2012) 8 SCC 263**, has held as follows:

"34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work

objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a "fair trial", the Court should leave no stone unturned to do justice and protect the interest of the society as well.

... ..

47.5. We hold, declare and direct that it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution. Further, the courts would be fully justified in directing the disciplinary authorities to take appropriate disciplinary or other action in accordance with law, whether such officer, expert or employee witness, is in service or has since retired."

35. Justice M.Karpagavinayagam, in **A.Somu Thevar v. Sivakumar and another**, reported in **1997 (1) CTC 57**, has observed as follows:

"23. ...Judiciary has to ensure the preservation of the public confidence in the judicial system. If reluctance is shown in the discharge, in discharging such a holy duty, the confidence of the public will be lost in the Courts. When the onus is cast upon the Judges, to render justice, without fear or favour, the converse of it would amount to dereliction of judicial duty."

36. The Hon'ble Supreme Court in **Awadh Bihari Yadav v. State of Bihar**, reported in **(1995) 6 SCC 31**, noticed that "if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcement agency but also in the administration of justice."

37. The investigation is the prerogative of the investigation agency. Not even the Court would interfere with the investigation or during the course of investigation and Court would not issue any direction to

the manner in which the investigation to be carried out, which would mean that from the lodging of the first information report till the filing of the final report, the right of investigation exclusively is vested with the investigation agency. Whoever high he may be, a victim of any crime has to depend upon the investigation agency. If the investigations are carried out in such a manner, then there cannot be any remedy for the affected victims. It is the responsibility of the State to protect the life and limb of every citizen. The affected victims must be ensured that they would get proper justice for the crime committed on them.

38.A fair justice can be done, only on the materials placed before the Court by the investigation agency. Therefore, the purpose of an investigation agency must be fair and proper, unbiased and honest. The duty of the Court is not only to protect the rights of an accused, but also to protect and render justice to the innocent victims. The responsibility of the investigation agency in the criminal justice system plays a major role and they are, in fact, the kingpins in the criminal investigation system. Only on a reliable investigation and with reliable evidence, a proper justice can be rendered.

39. We are taking pride that the Tamil Nadu State Police is one of the best investigation agencies in the World and it is because of the exemplary service rendered by our police officers. We cannot allow this reputation of the agency to be eroded by some irresponsible officers. It appears that the quality of the investigation in the State is considerably decreasing. The data available under the Crime Records Bureau for the years 2016 to 2018 disclose the following:

Year	Total	Conviction	Discharge	Acquittal
2016	184466	97039 (52.60%)	1163 (0.63%)	86264 (46.76%)
2017	207937	101008 (48.57%)	12505 (6.01%)	94424 (45.40%)
2018	210477	101548 (48.24%)	10528 (5.00%)	98401 (46.75%)

The conviction rate is slowly declining, while the combined acquittal and discharge rate is on the rise. Therefore, it appears that the quality of investigation is perfunctory not only in this case, but in almost 50 % of the cases. If the investigations are carried out in such a manner, the victims would definitely loose their faith in the system. The glaring example is that the majority of people are now hailing the police encounters and majority of people are now opting for other modes of redresses, like Kangaroo Courts, etc.

40.PSO 110(3) mandates the police to enforce the law, fairly and impartially, without fear or favour, malice or vindictiveness. As per PSO 566, the investigation officers are warned against prematurely committing themselves to any view of the facts for, or against a person. It is reiterated that in order to find out the truth, they should preserve an open mind throughout the inquiry. But, in this case, it *prima facie* appears that for favouring the real culprits, the appellant / accused has been made as Aunt Sally and the investigation proceeded in that direction.

41. In a murder case, if the trial ends in acquittal, a practice was in existence, not very long ago, to call for an explanation from the investigation officer and disciplinary proceedings were initiated, if it was found that the investigation was perfunctory. But, it appears, this practice is given a go by and the present day investigations are carried out by certain officers as to their whims and fancies.

42. It is not known whether the training imparted to the officers for conducting such investigation is

sufficient or not; and it is not known as to how the officers are qualified to conduct a investigation. It is not known whether any mechanism is available to conduct the investigation or to start the investigation and to deal with the same in a particular manner, for each type of cases. We are witnessing every day that in a case of theft, though fingerprints were available, they are not taken. Even if they are taken, they are not compared with the fingerprints of the accused. In murder cases, crucial call details were not collected, through the service providers and even if collected, they were not marked before the Court. In the present scientific age, there are several modes available to detect the real accused and to fix them, but, even then, it appears, the investigation agencies are not adopting the same, as is evident from the figures quoted supra from the Crime Records Bureau.

सत्यमेव जयते

43. The Hon'ble Supreme Court in **Prakash Singh and Others v. Union of India**, reported in **(2006) 8 SCC 1**, has analysed the issue to insulate police machinery from political / executive interference and to make it more efficient and effective and to strengthen and preserve the rule of law. In this view, the Hon'ble Supreme Court has

issued slew of directions, and one among such directions is separation of investigation, ie., the investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people.

44. The Government of Tamil Nadu has also passed Tamil Nadu Police (Reforms) Act, 2013 (Tamil Nadu Act 22 of 2013) to provide for a law to follow the directions in **Prakash Singh's** case (supra) and section 9 of the Act deals with separation of Law and Order wing and Criminal Investigation wing. For better appreciation, Section 9 is extracted as under:

"9. Law and Order and Criminal Investigation wings - separation.-

(1) In every Police Station, except those specifically designated as Crime Police Stations, there shall be a Law and Order Wing and an Investigation Wing, both working under the control of the Station House Officer, who shall ensure co-ordination between the two wings.

(2) The Investigation Wing shall be responsible for investigation and prosecution of all cases registered in the station, including cases detected by the Law and Order Wing.

(3) The Police Officers of the Investigation Wing may be called Detective Constables, Detective

Head Constables and Detective Sub-Inspectors. They shall not be diverted to any bandobust work except with the prior approval of the Zonal Inspector General of Police or Commissioner of Police.

(4) The Investigation Wing shall be provided with adequate staff to cope with the work load. The Board shall lay down norms for staff strength taking into account the volume of cases.

(5) Every Police Station shall have a Missing Person Liaison Officer in the rank of a Detective Sub-Inspector to co-ordinate and follow up the cases of missing persons.

(6) Within the Investigation Wing of each Police Station, at least one officer with aptitude and appropriate training and orientation shall be designated as the 'Juvenile or Child Welfare Officer' as required under sub-section (2) of section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Central Act 56 of 2000). This Officer will handle juveniles or children in co-ordination with other Police Officers. These officers together will be members of the Special Juvenile Police Unit of the District or City to co-ordinate and to upgrade the Police treatment of juveniles and children."

45. Though the Tamil Nadu Police Reforms Act (Act 22 of 2013) was enacted in the year 2013, it has not been implemented in letter and spirit. This Court, sitting in a

Division Bench, along with Hon'ble Mr. Justice M.SATHYANARAYANAN, in **R.Rajendran v. State of Tamil Nadu [W.P. (MD)No.15726 of 2019, decided on 16.07.2019]**, called for a report from the Director General of Police as to the implementation of the recommendations of the Hon'ble Supreme Court in **Prakash Singh's** case (supra) and directed a report to be filed. But, it is sorry to note that till date, no such report has been filed.

46. Another Division Bench of this Court, in **Satheesh Kumar and another v. State**, reported in **2019 [2] L.W. (Cr1.) 826**, taking cue of the fact that the list of hostile witnesses is getting bigger and bigger, resulting in acquittals, has taken every efforts to improve the criminal justice system to meet the present day scientific advancements and has passed a detailed order on 29.11.2019, after noting down several decisions of the Hon'ble Supreme Court as well as various other Courts of law around the Country, as to the present day scientific advancements and the lack of criminal justice system to meet the same. In the said order, the Division Bench noted that with the laudable object of recognizing the rights of a victim, the amendments to Sections 161, 164 &

275 Cr.P.C., came to be made in the year 2008 and though such provisions, paving ways and means to record the statements in audio-video mode, were in existence for about ten years, it remains to be a dead letter without being implemented.

47. The Division Bench has also sought for a report from the Government as to the action plan to implement the provision for using audio-video electronic means during the course of investigation and its fate is still unknown. It appears, even now, the statements under Section 161(3) Cr.P.C. are recorded in the police station, through a Constable, in the old method, that too, without even examining the witnesses. There are incidents that witnesses have come before this Court and filed affidavits that they have not given any such statements and we are also witnessing such affidavits often.

48. No doubt, the Director General of Police is also issuing circulars as and when the Courts are coming down heavily on the police. But, it is not known whether these circulars are strictly adhered to and if there is any deviation / violation to such circulars, whether any

disciplinary proceedings are initiated against the erring officials.

49. In **Dayal Singh's** case (supra), the Hon'ble Supreme Court has further observed as follows:

"21. The investigating officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the Police Manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution. It is possible that despite such default/omission, the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But, at the same time, the default and omission would have a reasonable chance of defeating the case of the prosecution in some events and the guilty could go scot-free. We may illustrate such kind of investigation with an example where a huge recovery of

opium or poppy husk is made from a vehicle and the investigating officer does not even investigate or make an attempt to find out as to who is the registered owner of the vehicle and whether such owner was involved in the commission of the crime or not. Instead, he merely apprehends a cleaner and projects him as the principal offender without even reference to the registered owner. Apparently, it would prima facie be difficult to believe that a cleaner of a truck would have the capacity to buy and be the owner, in possession of such a huge quantity i.e. hundreds of bags of poppy husk. The investigation projects the poor cleaner as the principal offender in the case without even reference to the registered owner.

.....

26. This results in shifting of avoidable burden and exercise of higher degree of caution and care on the courts. Dereliction of duty or carelessness is an abuse of discretion under a definite law and misconduct is a violation of indefinite law. Misconduct is a forbidden act whereas dereliction of duty is the forbidden quality of an act and is necessarily indefinite. One is a transgression of some established and definite rule of action, with least element of discretion, while the other is primarily an abuse of discretion. This Court in *State of Punjab v. Ram Singh* [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] stated that the ambit of these expressions had to be construed with reference to the subject-matter and the context where

the term occurs, regard being given to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires maintenance of strict discipline. The consequences of these defaults should normally be attributable to negligence. Police officers and doctors, by their profession, are required to maintain duty decorum of high standards. The standards of investigation and the prestige of the profession are dependent upon the action of such specialised persons. The Police Manual and even the provisions of CrPC require the investigation to be conducted in a particular manner and method which, in our opinion, stands clearly violated in the present case."

50. The investigation is not a mechanical work, which can be conducted in a causal manner. It requires an expertise, knowledge and technical skills to collect the materials, which could unearth the truth. In fact, investigation is an Art. It is a collection of information, which has to be examined, compared and collated, so that every clue must be followed up to its end, for which, it requires a great skill and patience. The Department has to provide necessary training and techniques in conducting the investigation. Though there are Training Colleges in the State, headed by an Officer,

in the cadre of Director General of Police, the conviction rate, as referred supra, is falling off and it does not satisfy the judicial conscious of this Court. This conviction rate expose that the investigation agencies are not successful in getting the relief for the victims of the crime, more than 50%. This may be due to the perfunctory investigation done by some dishonest or unqualified persons in the Department, but, it reflects upon the Department as a whole and ultimately, it would affect the morale of sincere and honest officers, on whose ability the Tamil Nadu Police maintained to get 48% conviction rate.

51. In *State of Gujarat v. Kishanbhai and Others*, reported in (2014) 5 SCC 108, in a case of rape and murder of six year old girl, the Hon'ble Supreme Court, while confirming the acquittal of the accused due to lapses in investigation and prosecution, with pain, has observed that the misery of the family of the victim remains unredressed and the perpetrators of a horrendous crime, involving extremely ruthless and savage treatment to the victim, have remained unpunished. The Court further observed that a heartless and merciless criminal, who has

committed an extremely heinous crime, has gone scot-free and that he must be now walking in the streets of the Country, without any fear, due to the perfunctory investigation. The Court does not stop with recording its grief, but has issued the following directions:

"21. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured that the evidence gathered during investigation is truly and faithfully utilised, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigours of criminal prosecution. By following the above procedure, in most criminal prosecutions, the agencies concerned will be able to successfully establish the guilt of the accused.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent

person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh

inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring

investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

52. In **Bharati Tamang v. Union of India**, reported in **(2013) 15 SCC 578**, the Hon'ble Supreme Court has held as follows:

"44. ...The submission that the murder took place due to political rivalry cannot be a ground for anyone, much less, the investigation agency to display any slackness or lethargic attitude in the process of investigation. Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial for being dealt with under the provisions of the criminal law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred

to in the earlier paragraphs, we find that it is our responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried on effectively and the perpetrators of crime are duly punished by the appropriate court of law."

53. The Hon'ble Supreme Court, in **Karnel Singh vs The State of M.P.**, reported in **1995 SCC (5) 518**, has held as follows:

"5....In cases of defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

54. The accused can be declared innocents and can be set at liberty, either on merits of the case or on the lapses committed by the Department. If it is on the lapses committed by the Department, steps should be taken on the side of the Department to avoid the same. But, if it is on merits and the accused was wrongfully prosecuted, his suffering is unfathomable. An innocent person does not

deserve to suffer the turmoil of a long drawn litigation, spanning over a decade or more. Not to forget the social and economic status, reputation, loss of time which could be spent with his family and the financial expenses incurred by him to defend him.

55.In the given facts and circumstances of the case, this Court deems necessary to call for a report from the State, by impleading the Secretary to the Government, Home, Prohibition and Excise Department, Secretariat, Chennai; The Director General of Police, No.601, Dr.Radhakrishnan Salai, Mylapore, Chennai; The Director General of Police (Training), Police Training College, No. 2, Natesan Salai, Ashok Nagar, Chennai, as party respondents to the proceedings. Accordingly, they are suo-motu impleaded as party respondents to this proceedings, in their official capacity and in addition to the same, the investigation officers in this case, namely, PW12, Thiru N.Muthukumar; and PW14, Thiru Poun and the concerned Deputy Superintendent of Police, Sivagangai, to whom a direction was given by this Court in Crl.OP(MD).No.6538 of 2010, dated 07.09.2010, are also suo-motu impleaded as party respondents to this proceedings, in their personal

capacity. The newly impleaded respondents shall give their response as to the following queries:

i) How the investigation officers are equipped with the knowledge and expertise in conducting criminal investigation and how it is ensured by the superior officials?

ii) Whether any disciplinary proceedings has been initiated as against the officials, who are responsible for acquittal because of their perfunctory investigation?

iii) How the superior officers, namely, the Deputy Superintendent of Police, Additional Superintendent of Police, Superintendent of Police, Deputy Inspector General of Police and Inspector General of Police are monitoring the investigation?

iv) In case of lapses in investigation, whether the investigation officer alone is responsible or the higher officials, who are expected to monitor the investigation, are also responsible?

v) The steps taken by the Government in fully implementing the decision of the Hon'ble Supreme Court in **Prakash Singh's** case (supra) and the Tamil Nadu Police Reforms Act, 2013, in letter and spirit, in all the police stations.

vi) The steps taken by the Government in implementing the decision of the Hon'ble Supreme Court in **Kishanbhai's** case (supra).

vii) The steps taken by the Government and the Department, to implement the amendments made to Sections 161, 164 and 275 Cr.P.C.?

viii) The steps taken by the Government and the Department, to implement the amendments to Sections 161, 164 and 275 Cr.P.C., pursuant to the direction of the Division Bench of this Court in **Satheesh Kumar's** case (supra).

ix) Whether the Circulars issued by the Director General of Police then and there are strictly complied with? In the event of non-compliance, whether any disciplinary proceedings are contemplated against them and if so, the details thereof.

x) Whether the circulars issued by the Director General of Police are readily available in all the police stations, in the form of a manual and whether they are available in the common platform, such as web-sites, so that, it can be accessed by the general public?

xi) The existing mechanism to enhance the quality of investigation among the investigation officers and the

ways and means to enhance the same as to the present day scientific advancements.

xii) The possibility of issuing a check list including the steps to be carried out by the investigation officers, step by step, depending upon the nature of crime and the applicability and training using advanced scientific techniques, like fixing the accused using call details and tower location, etc., and how such collected details be marked / produced before the Court.

xiii) Why not a compensation of Rs.10,00,000/- be awarded to the victim in this case, who suffered because of the perfunctory investigation, which could be recovered from the investigation officers, namely, PW12, Thiru N.Muthukumar; and PW14, Thiru Poun and the concerned Deputy Superintendent of Police, Sivagangai?

xiv) The Secretary to Government, Home, Excise and Prohibition Department; and the Director General of Police, Chennai, shall give their comments / proposal as to the present case and the further course of action, if any, in view of the fact that ten years have lapsed since the commission of offence.

xv) Ways and means to address the issue raised in paragraph no.47(supra) & to effectively overcome the same.

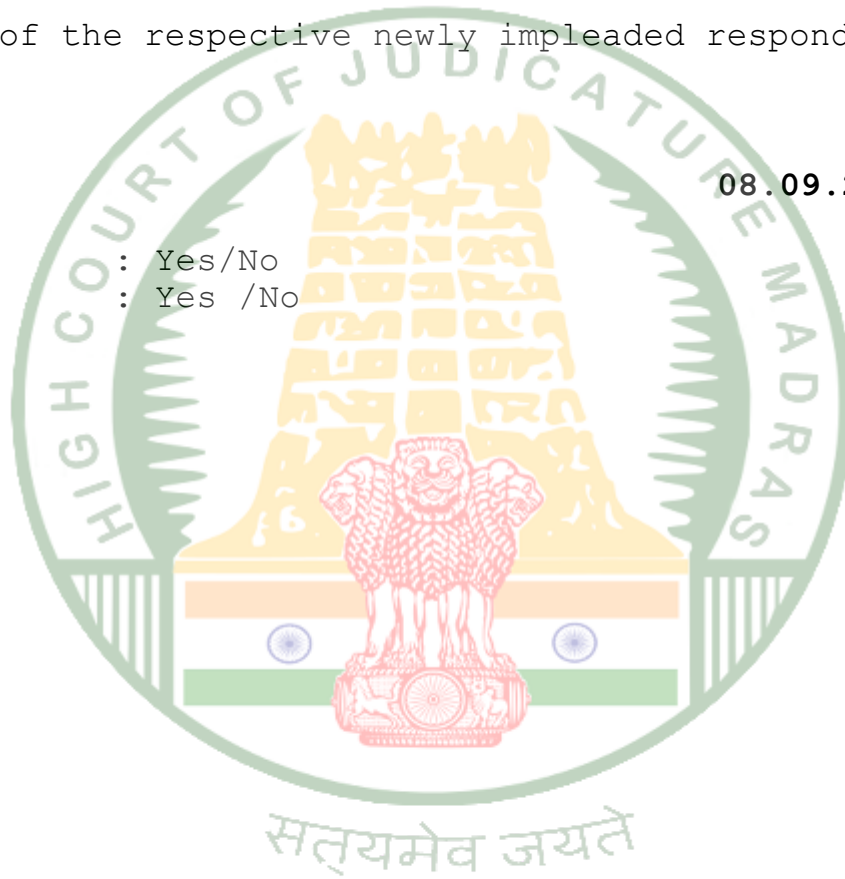
xvi) Any other suggestions to avoid the acquittals due to such perfunctory investigations, in future, so as to regain the losing glory of the Department.

56.Post this matter on 22.09.2020 for the reply / response of the respective newly impleaded respondents.

08.09.2020

Index : Yes/No
Internet : Yes /No

dsk/gk



WEB COPY

Cr1.A. (MD)No.39 of 2015

Reserved on : 01.10.2020

Delivered on : 06.11.2020

B. PUGALENDHI, J.

This Court, by judgment dated 08.09.2020, allowed the Criminal Appeal and set aside the conviction and sentence imposed by the learned District and Sessions Judge, Sivagangai, in S.C.No.85 of 2011, dated 21.11.2014. While allowing the Criminal Appeal, this Court has suo-motu impleaded the respondents 2 to 7 as party respondents and raised a series of queries to be answered by them.

2. In response to the same, an affidavit was filed by Thiru R.Thirunavukkarasu, I.P.S., Assistant Inspector General of Police, Law & Order, Chennai, on behalf of the third respondent / Director General of Police, Chennai and the fourth respondent / Director General of Police (Training), Police Training College, Chennai.

3. According to the respondents 3 & 4, necessary instructions are already in vogue in the Police Standing Orders and the Circulars issued then and there and necessary actions are also taken for perfunctory

investigation. It is further stated that disciplinary proceedings were initiated as against 201 police personnel throughout the State between 2016 and 2020. Daily DSR is given to the range Deputy Inspector General of Police and Zonal Inspector General of Police and the respective Superintendents of Police are also conducting monthly crime meetings. It is also stated that steps are being taken to separate police station into two different wings, i.e., Law and Order Wing and Investigation Wing and also for a nomination of a Detective (Crime) Sub-Inspector as 'Missing Person Liaison Officer' (MPLO), vide G.O.Ms.No. 640, dated 26.04.2007; G.O.Ms.No.59, dated 21.01.2011 and by a Memorandum of the Director General of Police, dated 23.03.2019.

4. For ensuring the quality of investigation based on the decisions of the Hon'ble Supreme Court in **State of Gujarat v. Kishanbhai and Others**, reported in **(2014) 5 SCC 108**, the Union Ministry of Home Affairs has sent a letter dated 24.03.2014 to the Home Department of all States and accordingly, a Memorandum was issued by the Director General of Police on 04.04.2014. A District / City Level Standing Committee for each District / City consisting of

Officers from the Police Department as well as from the Prosecution Department has been constituted as follows:

District / Special Units	Cities
1.Superintendent of Police.	1.Commissioner of Police.
2.Additional Superintendent of Police (Hqrs).	2.Deputy Commissioner of Police (Crime).
3.Assistant Director / Deputy Director of Prosecution.	3.Assistant Director / Deputy Director of Prosecution.

5. It is further stated in the affidavit that a letter has been addressed to the Government by the Director General of Police on 21.09.2020 for recording the statements of the witnesses and for the implementation of the amendments to Sections 161, 164 & 275 Cr.P.C., with the guidelines of the Hon'ble Supreme Court in **Shafhi Mohammad v. State of Himachal Pradesh.**

6. The affidavit further reads that for non-compliance of the Circulars issued by the Director General of Police relating to investigation, disciplinary proceedings were initiated as against 304 police personnel throughout the State from 2016 to 15.09.2020.

7. That apart, to update current knowledge and expertise, Tamil Nadu Police Academy is imparting various refresher courses and standard operating procedures for investigation, check-list for important cases, guidelines issued by various Courts of Law are also taught to the police personnel periodically and a 'Handbook of Investigation' is also provided to the training police officers to enhance their investigation skills by imbibing the nuances of investigation of various types of crimes. A Standard Operating Procedure prepared by CBCID on investigation has also been circulated to all police officers to enhance their investigation skills.

8. It is further stated that ten best Inspectors of Police are identified every year, depending upon their investigating ability, zeal and capacity for hard work and they were awarded with 'Tamil Nadu Chief Minister's Police Medal for Excellence in Investigation' from the year 2002 and so far, 175 police officers were awarded with this medal. Similarly, the Government of India has also instituted 'Union Home Minister's Medal for Excellence in Investigation' from the year 2018 and 18 police officers

were awarded with this medal from the State. Apart from this, cash awards are also sanctioned by the respective Unit Officers, as per PSO-58. The Rajasthan Model of Grading Police Stations is also followed and three police stations in the year 2018 and one police station in the year 2019 were adjudged as best police stations by the Union Ministry of Home Affairs.

9. The response affidavit filed by the respondents 3 & 4 is, of course, laudable and this Court places it's appreciation for the efforts taken by the Department to show the steps / measures taken by them to improve the quality of investigation; to preserve and improve the zeal among the police officers. But, they should not loose sight of the fact that a crime free society can be ensured only if the orders / circulars / instructions are implemented in its *stricto sensu*. जयते

10. It is the duty of the State to ensure that all the citizens are living under a legal system wherein their rights are protected and preserved. Rule of Law can be achieved only by implementing the same strictly, without any deviation. Though the respondents 3 & 4 claim that the

issues raised by this Court were already addressed and necessary instructions were also issued and that disciplinary proceedings were initiated as against the erring officials for perfunctory investigation, the fact remains that day-in and day-out we are witnessing the filing of several petitions seeking transfer of investigation; for compensation as against the police officials; and a handful of petitions under Section 156(3) Cr.P.C., for registering the complaints even though a Constitution Bench of the Hon'ble Supreme Court in **Lalitha Kumari v. Government of Uttar Pradesh [(2014) 2 SCC 1]** has elaborately dealt with the same and has also issued a slew of directions. That apart, the volume of cases quashed after the final report; the volume of cases where the accused were discharged after the final report was filed; and the volume of cases where the accused are acquitted speak otherwise. We are also witnessing several unwarranted arrests by police personnel unmindful of the decision of the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar and another [(2014) 8 SCC 273]**.

11. In **Lalita Kumari's** case (supra), the Hon'ble Supreme Court has issued the following directions:

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on

the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

12. In this regard, the third respondent / Director General of Police, Chennai, pursuant to the orders of this Court in CrI.OP.(MD)Nos.6493 of 2018 & 17119 of 2017, dated 19.07.2018, has also issued a Circular in Rc.No.226313/Crime.4(3)/2013, dated 26.07.2018.

13. In **Arnesh Kumar**'s case (supra), the Hon'ble Supreme Court has held as follows:

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while

forwarding/producing the accused before the Magistrate for further detention;

11.4. *The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*

11.5. *The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.6. *Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.7. *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*

11.8. *Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."*

14. With regard to the arrest of a person and issuance of a notice, the third respondent / Director General of Police, Chennai, pursuant to the orders of this Court in CrI.OP.No.26888 of 2018, dated 07.01.2019, has also issued a Circular in RC.No.000252/Crime 4(2)/2019, dated 30.01.2019.

15. If the Orders / Instructions / Rules / Circulars are strictly adhered to, the common man would not lose faith in the system; the Department would not lose their pride; and the conviction rate would also not be below 50%.

16. Witnesses may lie, but not the circumstances. Even the witnesses may turn hostile, but if the investigation officer collects necessary materials linking the chain of circumstances, the Court can decide the case on the available circumstantial evidence. The main object of investigation is to bring out the truth and only a fair and impartial investigation can attain the same, which would bring confidence on the minds of a common man.

17. Thiru N.Muthukumar / fifth respondent, who is the first investigation officer, in his response, has stated that on the next day itself, ie., on 08.05.2010, he attempted to arrest the named accused, but, they were absconding. He has recorded the statement from one Senthilkumar, S/o.Ramachandran, then Vice President of Puthukulam Panchayat that the first named accused, Karupasamy, was working under the 100 days employment scheme on 07.05.2010. Similarly, he has also recorded the statement from one Selvaraj, Deputy Manager in M/s.Sakthi Sugars for the availability of the fourth named accused, Sabarimalai, as a contract labour in the said company and obtained a statement from one Thangavel, Road Inspector, Highways Department, who has stated that the third named accused, Jeyaraman, was working as a Road Worker.

18. According to the fifth respondent, when he attempted to arrest the accused, they were absconding and therefore, he has recorded the statements from the employees. He has also filed the said statements dated 08.05.2010 in his typed set of papers. But, according to Thiru Poun / sixth respondent [PW9], the subsequent investigation officer, these witnesses for alibi were

examined on 25.09.2010. The statements dated 08.05.2010 recorded by the fifth respondent / first investigation officer, Muthukumar, is not available in the CD file. The subsequent investigation officer / sixth respondent has not recorded the statements on 25.09.2010 as further statements. Even according to them, the third accused absconded from 08.05.2010 and both the investigation officers have not taken any steps to ascertain the whereabouts of the named accused on 06.05.2010. Though a request was made for collecting the call details of the named accused, no steps were taken by either of the investigation officers to collect the same.

19. In fact, the respondents 5 to 7 in their response affidavits have shifted the blame from one to another. According to the second investigation officer, though the materials were available, the then investigation officer and the Public Prosecutor have not produced the materials before the trial Court and it is a lapse on their part and for that, he cannot be held responsible. Similarly, the seventh respondent / then Deputy Superintendent of Police has claimed that he is not the concerned Deputy Superintendent of Police. However, he

admits the receipt of the orders of this Court dated 07.09.2010 in CrI.OP.(MD)No.6538 of 2010. When he claims that he is not the jurisdictional Deputy Superintendent of Police, he neither informed the same before this Court for a clarification nor informed the same to the concerned Deputy Superintendent of Police.

20. Be that as it may, in view of the specific stand taken by the respondents 3 & 4 that necessary instructions are already in vogue to deal with perfunctory investigation and upon their undertaking that necessary disciplinary proceedings would be initiated in this case, this Court is not inclined to probe any further, but, deems it fit to direct the third respondent to order for an enquiry to ascertain the officials responsible for the perfunctory investigation and to take appropriate action as contemplated under the memorandums and circulars.

21. This is a clear case where the State has failed to nab the real culprits and to prosecute them. No purpose would be achieved even if a *denova* investigation is ordered, as ten years has lapsed since the occurrence. Therefore, this Court feels that the victim of the crime,

namely, Annalakshmi [PW1] / the complainant, who suffered a loss due to the crime, is entitled for a compensation of Rs.3,00,000/- [Rupees Three Lakh only] under the Victim Compensation Scheme.

22. Since this is a clear case of miscarriage of justice, this Court feels it appropriate to refer to certain provisions of law in this regard.

23. In the Indian Penal Code and in the Code of Criminal Procedure, a remedy for wrongful prosecution and for miscarriage of justice are laid down. Chapter IX of the Indian Penal Code deals with the offence by or relating to public servants. Section 166 IPC criminalises willful departure from the direction of the law by a public servant with an intent to cause injury to any person and that any disobedience of the directions of law is liable for a prosecution.

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24. Public servant disobeying the direction under law is an offence under Section 166A IPC. The kinds of dereliction of law by a public servant can be categorised as follows:

a) knowingly disobeys any direction of law prohibiting him from requiring attendance at any place of any person for the purpose of investigation into an offence or any other matter;

b) knowingly disobeys, to the prejudice of any person, any direction of law regulating the manner in which he is to conduct such investigation; and

c) fails to record FIR in relation to offence under certain Sections specified therein.

25. If a public officer abuses his office either by commission or omission and that results in an injury to any individual, an action may be maintained for an offence under Section 166(A) IPC.

26. A public servant knowingly framed or translated a document with the intent or with the knowledge that he would thereby cause injury is an offence under Section 167 IPC. The intention to cause injury to any person by perversion of official duty is a requirement under this Section.

27. In addition to the above provisions in Chapter IX, Sections 218 to 220 under Chapter XI also deal with disobedience on the part of public servants in respect of official duty.

28. Section 218 IPC, on the same line as that of Section 167 IPC, criminalises intentional preparation of a false / incorrect record by a public servant with an intent to cause or knowing it to be likely to cause loss or injury to any person.

29. Section 219 IPC deals with corrupt or malicious exercise of power by public servants engaged in the discharge of judicial function; criminalising corrupt or malicious making or pronouncing of any report, order, verdict etc., by a public servant in a judicial proceeding knowing it to be contrary to law. While Section 219 IPC is specific in application, extending only to judicial officers, its following Section, ie., Section 220 IPC is more general and applies to any person in an office which gives him the legal authority to commit persons for trial or to confinement, such as a Magistrate or a Police Officer. This Section criminalises corrupt or malicious

commitment for trial or confinement of any person by such an officer knowing that in so doing he is acting contrary to law. But, for the purpose of Section 220 IPC, unlawful commitment to confinement will not by itself warrant the legal interference of malice, it needs to be alleged and proved that the concerned officer corruptly and maliciously confined a person wrongfully.

30. In the case of **Perumal v. Janaki [(2014) 5 SCC 377]**, the Hon'ble Supreme Court, has *prima facie* observed that the investigation officer, despite the knowledge that a fact has not taken place, chosen to rely the same on the charge sheet, though it was not medically proved and the Court below, while condemning the case on wrongful prosecution, ought to have directed the investigation officer to be prosecuted under Section 211 IPC, instead of Section 193 IPC.

31. The Director General of Police and other higher officials have to sensitize the investigation officers on the available penal provisions and the consequences of a perfunctory investigation. Everybody has to discharge the duty in accordance with law and it is the

duty of the higher officials to ensure the same. Despite the availability of the aforesaid penal provisions, it appears, the same has not been invoked as against the erring officials. If the higher officials, who are expected to take action, are not acting upon, then they must also be made accountable for such dereliction.

32. A corruption free transparent administration alone can give confidence on the minds of a common citizen. In achieving this object, the Government of Tamil Nadu, vide Government Order in G.O.Ms.No.65, Personnel and Administrative Reforms (AR-I) Department, dated 09.03.2007, constituted an Administrative Reforms Committee under the Chairmanship of Dr. Justice A.K.Rajan, Retired Judge of Madras High Court to ensure corruption free and transparent administration. The Committee has also submitted its first report as early as on 25.04.2008 and the Government, after examining the recommendations of the Administrative Reforms Committee, has taken a policy decision to accept certain recommendations and has also passed a Government Order in G.O.Ms.No.24, Personnel and Administrative Reforms (AR-I) Department, dated 17.02.2010, in this regard.

33. Though in the said Government Order, the Government has taken decision in as many as 50 subjects, this Court is inclined to refer to the following decisions taken by the Government:

Paragraph No.	Recommendation of the Administrative Reforms Committee	Decision of the Government
04.02	The existing rules and Government Orders shall be followed and enforced strictly, in letter and spirit, by all the employees. (By that 70% to 90% of the delay will be reduced.)	This recommendation is accepted. All Departments of Secretariat are requested to issue necessary instructions to follow existing rules and Government Orders.
04.06	Decision making process should be decentralized. Powers and responsibilities should be delegated to various Hierarchical Officers.	This recommendation is accepted. All Secretaries to Government are requested to issue orders indicating the powers and responsibilities at various level of officers both in Secretariat and Heads of Departments and below, within three months.

09.01	Accountability shall be fixed on every Government Servant, at every stage and at every level.	This recommendation is accepted. All Departments of Secretariat are requested to issue necessary orders to this effect while issuing orders on delegation.
09.01	Supervisory Officers should not hesitate to take action, as provided by the rules, against erring staff, failing which action shall be initiated against the Supervisory Officer.	This recommendation is accepted. All Departments of Secretariat are requested to issue suitable orders in this regard.
10.01	When the Supervisory Officer initiates action against the subordinate for not responding to his directions, the action should not be hampered, by the higher ups.	This recommendation is accepted. All Departments of Secretariat are requested to issue necessary orders to that effect.

34. If this Government Order is implemented strictly, the object of corruption free transparent administration can be achieved. In this Government Order, the Government has accepted certain recommendations made by the Administrative Reforms Committee and has also issued directions to the Heads of the Departments / Secretaries to the Government to issue necessary orders in compliance of the same. But, from the available website,

this Court is not able to collect those instructions / orders / circulars issued either by the Secretary to the Government, Home Department / second respondent or by the Director General of Police / third respondent on the implementation of the same.

35. This Court hopes that the respondents 2 & 3 will look into this issue and pass necessary orders in this regard. This Court feels that it is also the responsibility of the higher officials to educate their subordinates as to the available provisions of law fixing accountability, consequences of perfunctory investigation, besides the Circulars / Memorandums / Orders. In the response affidavit filed by the respondents 3 & 4, it is stated that the Circulars / Memorandums issued already were readily available in every stations manually, however, they are not available in a common platform like website. This Court hopes and trust that they would take every action to create a dedicated portal (web-portal), where each and every Circulars / Memorandums issued by them, besides the important decisions of the Courts of law, as to the manner of investigation, to improve the quality of investigation, etc., are available so as to

educate the common people, particularly, the victims, who are at the mercy of the investigation agencies.

36. The respondents 2 & 3 are directed to take necessary steps to disburse the compensation amount of Rs.3,00,000/- [Rupees Three Lakh only] to the complainant, namely, Annalakshmi [PW1]. Upon completion of the departmental proceedings and after fixing the official responsible for the perfunctory investigation, it is for them to recover this compensation amount from the delinquent official, if they so advised, apart from other departmental action, if any.

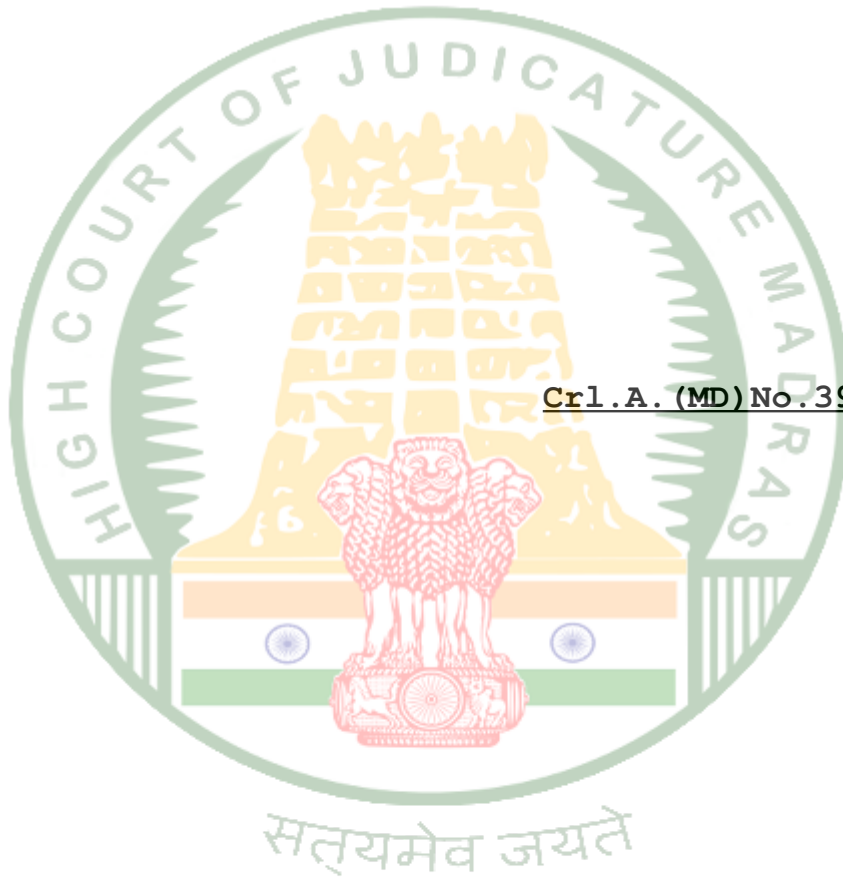
37. With the above observations and directions, this Criminal Appeal stands closed.

सत्यमेव जयते

06.11.2020

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Cr1.A.(MD)No.39 of 2015

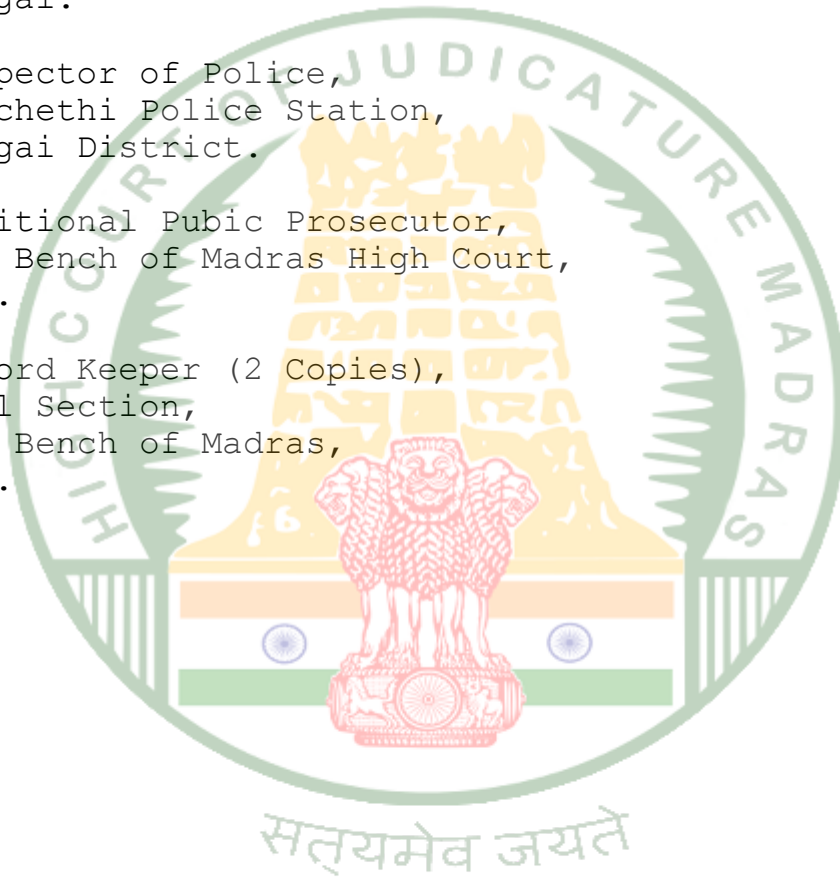
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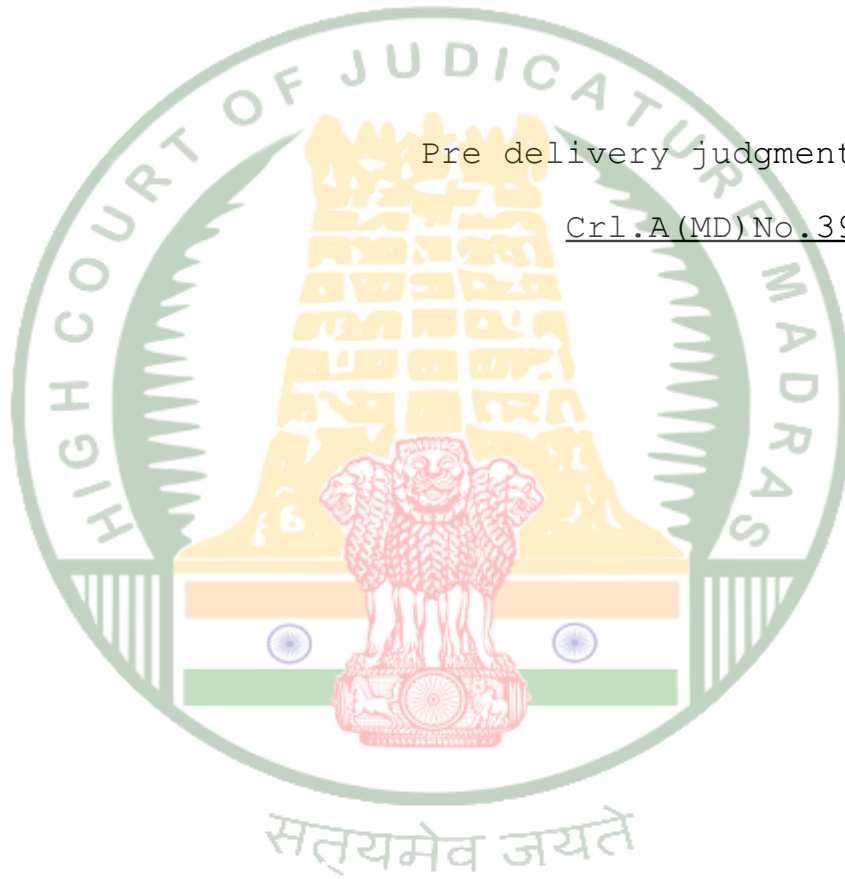
Note: Registry is directed to mark a copy of this order to all the newly impleaded respondents.

To

- 1.The District Sessions Judge,
Sivagangai.
- 2.The Inspector of Police,
Thirupachethi Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper (2 Copies),
Criminal Section,
Madurai Bench of Madras,
Madurai.



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CrI.A(MD)No.39 of 2015

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