

Crl.O.P.Nos.22136 and 22137 of 2019, 1526 and 1527 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2020

DATE OF DECISION : 12.05.2020

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

Criminal O.P.Nos.22136, 22137 of 2019,
1526 and 1527 of 2020

and

Crl.M.P.Nos.11481, 11482 of 2019, 944 and 946 of 2020

1.Srinidhi Karti Chidambaram.

2.Karti P.Chidambaram

.. Petitioners in

Crl.O.P.No.22136 of 2019

and

Crl.O.P.No.1527 of 2020

Karti P.Chidambaram

.. Petitioner in

Crl.O.P.No.22137 of 2019

and

Crl.O.P.No.1526 of 2020

Vs.

1.The Deputy Director of Income Tax (Investigation),
Unit-3(2),
Room No.120, 1st Floor, Investigation Wing Building,
No.45, Old No.108, Uthamar Gandhi Road,
Nungambakkam,
Chennai-600 034.

CrI.O.P.Nos.22136 and 22137 of 2019, 1526 and 1527 of 2020

2.The Registrar,

Hon'ble Special Court for Trial of Criminal Cases
related to MPs/MLAs of Tamil Nadu,
Singaravelan Maaligai, Chennai-600 001.
(R-2 stands deleted vide this order)

3.The State of Tamil Nadu

rep by Chief Secretary to Government,
Home Department,
Fort St. George, Chennai-600 009.

4.The Registrar General,

High Court, Madras
(4th respondent impleaded as per order
dated 21.8.2019 in CrI.M.P.Nos.11743 and
11746 of 2019 in CrI.O.P.Nos.22136 and
22137 of 2019)

.. Respondents in
CrI.O.P.Nos.22136 and
22137 of 2019

The Deputy Director of Income Tax (Investigation),
Unit-3(2),
Room No.120, 1st Floor, Investigation Wing Building,
No.45, Old No.108, Uthamar Gandhi Road,
Nungambakkam,
Chennai-600 034.

.. Respondent in
CrI.O.P.Nos.1526 and
1527 of 2020

Criminal Original Petition No.22136 of 2019 has been filed under
Section 482 of Criminal Procedure Code seeking to issue a direction that
the trial of the case in C.C.No.16 of 2019 before Special Court in the
cadre of Sessions Judge for Trial of Criminal cases related to Elected
MPs/MLAs of Tamil Nadu established by G.O.Ms.No.210 (Home Court

II) Department dated 26.04.2019 having Ref.No.II(2)/HO/2019 at Chennai is wholly without jurisdiction and consequently direct the said Special Court for Trial of Criminal cases related to Elected MPs/MLAs of Tamil Nadu at Chennai to return the case records in C.C.No.16 of 2019 to the Additional Chief Metropolitan Magistrate Court, EO-II, Egmore, Chennai to continue the trial in EO CC No.267 of 2018 in accordance with law and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

Criminal Original Petition No.22137 of 2019 has been filed under Section 482 of Criminal Procedure Code seeking to issue a direction that the trial of the case in C.C.No.15 of 2019 before Special Court in the cadre of Sessions Judge for Trial of Criminal cases related to Elected MPs/MLAs of Tamil Nadu established by G.O.Ms.No.210 (Home Court II) Department dated 26.04.2019 having Ref.No.II(2)/HO/2019 at Chennai is wholly without jurisdiction and consequently direct the said Special Court for Trial of Criminal cases related to Elected MPs/MLAs of Tamil Nadu at Chennai to return the case records in C.C.No.15 of 2019 to the Additional Chief Metropolitan Magistrate Court, EO-II, Egmore, Chennai to continue the trial in EO CC No.266 of 2018 in accordance with law and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

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Criminal Original Petition No.1526 of 2020 has been filed under Section 482 of Criminal Procedure Code to call for the records in Complaint dated 12.09.2018 filed by the respondent against the petitioner before the Additional Chief Metropolitan Magistrate, Egmore, Chennai in E.O.C.No.266 of 2018 and renumbered as C.C.No.15 of 2019 and pending in the Special Court for trial of Criminal Cases related to MPs/MLAs of Tamil Nadu, Singaravelan Maaligai, Chennai and quash the same and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice. (Prayer amended as per order in Crl.M.P.No.1565 of 2020 in Crl.O.P.No.1526 of 2020 dated 12.02.2020)

Criminal Original Petition No.1527 of 2020 has been filed under Section 482 of Criminal Procedure Code to call for the records in Complaint dated 12.09.2018 filed by the respondent against the petitioners before the Additional Chief Metropolitan Magistrate, Egmore, Chennai in E.O.C.No.267 of 2018 and renumbered as C.C.No.16 of 2019 and pending in the Special Court for trial of Criminal Cases related to MPs/MLAs of Tamil Nadu, Singaravelan Maaligai, Chennai and quash the same and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

(Prayer amended as per order in Crl.M.P.No.1568 of 2020 in Crl.O.P.No.1527 of 2020 dated 12.02.2020)

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For Petitioners : Mr.K.T.S.Tulsi, Senior Counsel
Mr.Amit Desi, Senior Counsel
Mr.Kunal Vajani
Mr.Gopalakrishna Shenoy
Mr.Kunal Mimani
for Ms.C.Uma and
Mr.N.R.R.Arun Natarajan
in Crl.O.P.Nos.22136 & 22137/2019
and
Crl.O.P.Nos.1526 & 1527/2020

For Respondents : Mr.N.Baskaran
and
Ms.M.Sheela,
Special Public Prosecutors (IT)
assisted by Mr.Siddarth for R-1
in Crl.O.P.Nos.22136 & 22137/2019
Mr.N.Baskaran
and
Ms.M.Sheela
Special Public Prosecutors (IT)
assisted by Mr.Siddarth
in Crl.O.P.Nos.1526 & 1527 of 2020

Mr.Harihara Arun Somasankar,
Govt. Advocate (Crl.Side) for R-3
in Crl.O.P.Nos.22136 & 22137/2019

Mr.B.Vijay for R-4
in Crl.O.P.Nos.22136 & 22137/2019

CrI.O.P.Nos.22136 and 22137 of 2019, 1526 and 1527 of 2020

COMMON ORDER

This common order will dispose of these four 'criminal original petitions' (hereinafter 'CrI.O.Ps' in plural and 'CrI.O.P' in singular for the sake of brevity) and all 'criminal miscellaneous petitions' therein.

2 CrI.O.P.Nos.22136 of 2019, 22137 of 2019, 1526 of 2020 and 1527 of 2020 shall be referred to as 'first CrI.O.P', 'second CrI.O.P', 'third CrI.O.P' and 'fourth CrI.O.P' respectively (wherever necessary and deemed appropriate) for the sake of convenience and clarity. There is no dispute or disagreement before this Court that there is no office and obviously no incumbent with regard to second respondent in first and second CrI.O.Ps. In other words, this court is informed without any dispute or disagreement that second respondent in first and second CrI.O.Ps has been wrongly described and that in any event, presence of any alternative respondents is not necessary. In view of this undisputed position, second respondent in first and second CrI.O.Ps stands deleted.

3 Central theme to these four CrI.O.Ps is prayers for quashing and assailing transfer of two criminal complaints being E.O.C.Nos.266

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and 267 of 2018 originally on the file of Additional Chief Metropolitan Magistrate's Court (E.O.-II), Egmore, Chennai, subsequently transferred to Special court for trial of criminal cases related to elected M.Ps/M.L.As of Tamil Nadu at Chennai, at Singaravelar Maligai, Chennai (presided over by a Sessions Judge), wherein the two criminal complaints were taken on file as C.C.Nos.15 and 16 of 2019 respectively. {To be noted, this Court is informed that 'E.O.' stands for 'Economic Offences' and 'M.P/M.L.A.' stands for Member of Parliament / Member of Legislative Assembly' respectively}. These two criminal complaints shall hereinafter be referred to as 'said criminal complaints' collectively for the sake of convenience / clarity, the same shall be referred to as 'first criminal complaint' and 'second criminal complaint' respectively (in the order in which they have been set out) where it is deemed necessary / appropriate.

4 As already mentioned supra, said criminal complaints and prayers pertaining to quash / assailing transfer of same is the central theme of instant four Crl.O.Ps. on hand. To be noted, while transfer of said criminal complaints from 'Additional Chief Metropolitan Magistrate Court, E.O.-II, Egmore, Chennai' (hereinafter referred to as 'EO Court' for convenience) to Special Court for trial of criminal cases related to

elected M.P / M.L.As of Tamil Nadu presided over by a Judicial Officer in the cadre of District Judge (hereinafter referred to as 'Sessions Court' and/or 'transferee court' for the sake of convenience) and challenge to the same is the central theme of first and second criminal O.Ps., central theme of third and fourth CrI.O.Ps is quashing said criminal complaints.

5 Said criminal complaints have been filed by the Deputy Director of Income Tax (Investigation) Unit-3(2), Nungambakkam, Chennai-34 under Section 200 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' (hereinafter 'Cr.P.C.' for the sake of brevity).

6 As already mentioned supra, said criminal complaints is a collective reference to aforementioned two complaints. While the first criminal complaint has been laid for alleged offences under section 276C(1) and 277 of 'The Income Tax Act, 1961' ('IT Act' for brevity), second criminal complaint has been laid for alleged offences under sections 276C(1) and 277 read with Section 278 of IT Act. In the first criminal complaint, there is a lone accused and in the second criminal complaint, he has been arrayed as accused along with his spouse. While first criminal complaint pertains to 'Assessment Year' (hereinafter 'AY'

for brevity) 2014-15, the relevant accounting year being accounting year ending 31.03.2015, the second criminal complaint pertains to AY 2015-16.

7 All the learned senior counsel and counsel for all parties before this court made a common request that all four Crl.O.Ps may please be heard out together. It has become necessary to mention this as consideration of first Crl.O.P / second Crl.O.P may become unnecessary if prayers in third and fourth Crl.O.Ps are acceded to. However, if prayers in third Crl.O.P / fourth Crl.O.P are not acceded to, it will thereafter become necessary to hear out first and second Crl.O.Ps. Therefore, this common request was acceded to, all four Crl.O.Ps were heard out together and this common order is being made.

8 Short facts shorn of details and particulars not imperative for appreciating this order are that the petitioners in instant four Crl.O.Ps who are assesseees under the IT Act, filed their returns for the aforesaid two AYs, returns filed included income received by petitioners by way of sale of immovable properties (lands) in Muttukadu village, Kancheepuram District, Tamil Nadu and sale consideration received for

the same. After returns were filed by petitioners, assessment orders were passed by 'Income Tax Department' (hereinafter 'IT Department' for the sake of brevity). Thereafter, IT Department issued notices inter-alia under section 148 of IT Act. Petitioners responded by refiling without changes, but petitioners requested the IT Department to disclose reasons for notices under section 148 of IT Act and this court is informed that this was inter-alia by placing reliance on **GKN Driveshafts** principle being the ratio laid down by Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and others** reported in (2003) 1 SCC 72. Even before reasons for issuing section 148 notices were disclosed in accordance with **GKN Driveshafts** principle, petitioners received notices from Magistrate Court for appearance in said criminal complaints. Thereafter, IT Department responded and gave reasons (in response to petitioners' request for reasons based on **GKN Driveshafts** principle) which are to the effect that petitioners allegedly received some part of consideration in cash for sale of immovable property mentioned herein above, but did not disclose the same. It is also the case of IT Department that searches were conducted in the office of a company in which one of the petitioners is a Director, some materials (soft copies)

were shared with IT Department by Enforcement Department, searches were conducted in the office of purchaser company, some small note books were recovered which as explained by Accountant of the purchaser company leads to the belief that petitioners have received part of consideration by cash (for sale of aforementioned immovable property) and have not disclosed the same in their returns.

9 Be that as it may, this Court is informed that Hon'ble Supreme Court passed orders in Ashwini Kumar Upadhyay case, a 'Public Interest Litigation', i.e., W.P.(C)No.699 of 2016 on 01.11.2017 and thereafter gave further directions on 14.12.2017. Ashwini Kumar Upadhyay case initially led to the establishment of a Special Court in Chennai (for entire Tamil Nadu) for offences concerning sitting and former 'elected members of Parliament and Legislative Assembly' {hereinafter 'MPs / MLAs' for brevity}. To be noted, this is vide G.O.Ms.No.1423 dated 06.09.2018.

10 Thereafter one of the petitioners (Mr.Karti P.Chidambaram) in these four CrI.O.Ps before this Court contested Parliamentary elections

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in the general election to 17th Lok Sabha held in May 2019 and was elected as a Member of Parliament from Sivaganga Parliamentary Constituency. To be noted, he was declared elected on 24.05.2019 and this Court is informed that he took oath as Member of Parliament in Lok Sabha on 18.6.2019. In the interregnum, the Registrar General of this Court issued two Office Memoranda both dated 07.06.2019 (both bearing same reference being Roc No.5745/2018/G4) followed by a letter to the Principal Judge of City Civil Court, Chennai being letter dated 09.07.2019 and a combined reading of contents of these memoranda and letter suggest that they pertain to transfer inter-alia of said criminal complaints from EO Court to designated court for trying offences against M.Ps/M.L.As. This led to first and second Crl.O.Ps being filed in August of 2019 (by petitioners) assailing such transfer inter-alia on the grounds that transferee court does not have original jurisdiction, that only one of the petitioners has become M.P, that he was also neither a sitting nor former M.P/M.L.A on the date of complaint and that petitioners have been deprived of one tier of remedy by transfer from EO Court to Sessions Court. To be precise, first and second Crl.O.Ps were filed on 06.08.2019. After more than one recusal, these Crl.O.Ps were placed

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before me (pursuant to orders of Hon'ble Chief Justice) as Specially Ordered matters on 21.01.2020. On 21.01.2020, when matters on hand were first listed before me as Specially Ordered matters, as it was after two prior Bench changes, this Court wanted to know whether there are any objections for this Court hearing the matter and all the counsel appearing on both sides unanimously requested me to take up and hear the matter. In other words, this Court took the consent of all the counsel on both sides (for hearing the matter) after making necessary disclosures and this has been recorded separately by way of proceedings on the same day which shall be treated as an integral part and parcel of this order. However, these proceedings (now forming part of case file) are not reproduced here to avoid prolixity and avert this order becoming verbose. On 21.01.2020, when these Crl.O.Ps were thus listed before me for the first time, this court was informed that said criminal complaints had progressed (in the transferee court) in the interregnum (pending first and second Crl.O.Ps) and this court was also informed that it had reached the stage of framing of charges. This Court was further informed that said criminal complaints were simultaneously listed before Sessions / transferee Court for framing charges on the same day, i.e., 21.01.2020

and therefore, as jurisdiction of Sessions Court, i.e., transferee court itself (pursuant to transfer that is being assailed) has been put in issue, this Court had put said criminal complaints on hold by way of interim orders. To be noted, this and other reasons have been articulated in the interim order itself.

11 This court now embarks upon the exercise of discussing and giving its dispositive reasoning in third and fourth Crl. O.Ps first as whether it is necessary to examine first and second Crl. O.Ps will depend upon the outcome of third and fourth Crl.O.Ps. For the purpose of clarity, it is set out again that third and fourth Crl. O.Ps seek to quash said criminal complaints which constitute the fulcrum of all four Crl.O.Ps now on hand. If quash prayers are acceded to, it will not be necessary to examine the Crl. O.Ps assailing transfer of said criminal complaints. Axiomatically, if quash prayers are negatived, it will become necessary to examine Crl. O.Ps assailing transfer and returning a verdict on the same.

12 Mr.K.T.S.Tulsi and Mr.Amit Desai, learned Senior counsel instructed by counsel on record for petitioners made submissions in third

and fourth Crl.O.Ps., summation of which is fourfold and the same is as follows :

(a) If Returns in response to notice under Section 148 of IT Act are treated as Returns under Section 139, then the original Returns cease to exist and consequently, said criminal complaints have to be quashed;

(b) Absent at least one Assessment Order, there can be no prosecution. In the instant case, even first assessment order has not been made and criminal complaints were launched on 12.09.2018 even before the reasons for issuing section 148 notices were disclosed;

(c) The entire prosecution is pivoted on statements given by third parties qua petitioners, i.e., Managing Director and Cashier of purchaser company and this is impermissible;

(d) Complaints sought to be quashed are clearly barred by limitation as the same have been launched after the cap in terms of time frame for reassessment under IT Act.

13 Though elaborate submissions were made, the aforementioned fourfold summation sets out those arguments which are germane and relevant to the quash prayer.

14 In response to the aforesaid arguments, submissions made by learned Prosecutors for IT Department are twofold and the same are as follows:

(a) The entire prosecution, i.e., said criminal complaints which is for alleged offences under Sections 276C(1), 277 of IT Act and same provisions read with Section 278 of IT Act is not based on assessments, but it is based on search and seizure;

(b) The said criminal complaints cannot be said to be barred by limitation as there is no limitation for economic offences under IT Act.

15 As limitation goes to the root of the matter, as a matter of first principle, this court deems it appropriate to deal with the limitation aspect first (fourth point in summation supra).

16 Normally for resolving the issue of limitation, whenever it is raised in a case, a chronicle of events becomes necessary. In this case, interestingly, the question of limitation can be decided without even advertent to chronicle of events and dates. The reason is fairly simple. There is no dispute or disagreement before this court that there is a special enactment which goes by the name 'The Economic Offences (Inapplicability of Limitation) Act, 1974 (Act No.12 of 1974)' {'Act No.12 of 1974' for brevity} and the Schedule to the enactment includes IT Act. As Mr.Amit Desai, learned senior counsel very fairly submitted that he does not enter upon any dispute or contestation on this aspect of the matter, the criminal complaints being complaints instituted otherwise than on police report for alleged offences under sections 276C(1), 277 of IT Act and same provisions read with section 278 of IT Act clearly do not have any limitation. Relevant provision of Act No.12 of 1974 is section 2 read with the Schedule and the same read as follows:

Section 2 :

‘2. Chapter XXXVI of the Code of Criminal Procedure, 1973, not to apply to certain offences

Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to-

- (i) any offence punishable under any of the enactments or provisions, if any, thereof, specified in the Schedule; or
- (ii) any other offence, which under the provisions of that Code, may be tried along with such offence,
- and every offence referred to in clause (i) or in clause (ii) may be taken cognizance of by the Court having jurisdiction as if the provisions of that Chapter were not enacted.’

Schedule :

THE SCHEDULE

(See section 2)

- 1.The Indian Income Tax Act, 1922 (11 of 1922).
[1A. Clause (a) of section 63 of the Copyright Act, 1957 (14 of 1957).]
- 2.The Income Tax Act, 1961 (43 of 1961).
[2A.The Interest-tax Act, 1974 (45 of 1974).]
[2B.The Hotel-Receipts Tax Act, 1980 (54 of 1980).]
[2C.The Expenditure-tax Act, 1987 (35 of 1987).]
- 3.The Companies (Profits) Surtax Act, 1964 (7 of 1964).
- 4.The Wealth-Tax Act, 1957 (27 of 1957).
- 5.The Gift-Tax Act, 1958 (18 of 1958).
- 6.The Central Sales Tax Act, 1956 (74 of 1956).
- 7.The Central Excises and Salt Act, 1944 (1 of 1994).
[7A.Chapter V of the Finance Act, 1994 (32 of 1994).]
- 8.The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
- 9.The Customs Act, 1962 (52 of 1962).
- 10.The Gold (Control) Act, 1968 (45 of 1968).
- 11.The Imports and Exports (Control) Act, 1947 (18 of 1947).
- 12.The Foreign Exchange Regulation Act, 1947 (7 of 1947).
- 13.The Foreign Exchange Regulation Act, 1973 (46 of 1973).
- 14.The Capital Issues (Control) Act, 1947 (29 of 1947).
- 15.The Indian Stamp Act, 1899 (2 of 1899).
- 16.The Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962).
- 17.The Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962).

- 18.The Emergency Risks (Goods) Insurance Act, 1971 (50 of 1971).
19.The Emergency Risks (Undertakings) Insurance Act, 1971 (51 of 1971).
20.The General Insurance Business (Nationalisation) Act, 1972 (57 of 1972).
[21.The Industries (Development and Regulation) Act, 1951 (65 of 1951).]

(Underlining made by this Court to highlight)

17 To be noted, Sl.No.2 in the schedule is Income Tax Act, 1961, i.e., IT Act and Chapter XXXVI of Cr.P.C pertains to Limitation for taking cognizance of certain offences.

18 Therefore, this court comes to the conclusion (as a matter of inevitable sequit) that said criminal complaints are not barred by limitation. To be noted, learned Prosecutors for IT Department submitted that time line set out in section 153 applies only to assessments and not for prosecution. However, in the light of 1974 special enactment, i.e., Act No.12 of 1974, it is not necessary to delve into this aspect of the matter any further.

19 This takes us to the next aspect of the matter touching upon assessment (first and second points in summation supra). The simple and straight reply of learned Prosecutors for IT Department is, said criminal complaints are not based on assessment/s. The sole and simple argument

of learned Prosecutors in this regard is said criminal complaints are based on search / seizure and not on assessments. It is also pointed out that Enforcement Directorate which conducted search and seizure in a company which goes by the name 'Advantage Strategic Consulting Pvt. Ltd.' in which (this Court is informed) one of the petitioners is a Director, yielded some soft copies that were shared by Enforcement Directorate with the IT Department, which thereafter conducted independent search / seizure on 5.7.2018 in the purchaser company which purchased land from petitioners and recovered about 163 small notebooks. To be noted, the original survey was under section 133A of IT Act and further Enforcement Directorate shared soft copies seized from the aforementioned company. Search and seizure in the purchaser company was done under section 132 of IT Act and 163 small note books were recovered. According to learned Prosecutors for IT Department, entries in the soft copies recovered by the Enforcement Directorate from the office of the aforementioned company (shared with IT Department) and the note books recovered from the purchaser company read in juxtaposition with the statement given by the Managing Director and Cashier of the purchaser company, corroborate each other, establish that

petitioners received a part of sale consideration by cash and suppressed the same in the Returns for evasion of tax, besides filing false Returns. This is the crux and gravamen of stated position of prosecution. Whether the recovered material corroborate each other and whether it establishes guilt on the part of accused are all clearly matters for trial. Senior counsel for petitioners submits on instructions that Managing Director of purchaser company has now retracted his statement in some collateral proceedings. All these aspects of said complaints are clearly matters for trial. Aforementioned one answer of the prosecution, i.e., answer that said criminal complaints are not based on assessment/s, but they are based on search and seizure defuses the first / second points urged on behalf of petitioners, namely the points touching upon original section 139 Returns ceasing to exist and prosecution absent even one assessment order. It is the stated position of the prosecution that both complaints are based on search / seizure and not on assessment.

20 It is well settled that lead case with regard to quashment of original complaints and principles in this regard is ***Bhajan Lal*** case being ***State of Haryana Vs. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335***, wherein seven principles (illustrative though) were laid down. The

law is also well settled that these principles are illustrative and not exhaustive. To be noted, **Bhajan Lal** case law itself says so. Be that as it may, time honoured principle that in matters seeking quashment of a criminal complaint, uncontroverted averments in the complaint without any addition or subtraction should be looked into to examine whether an offence can be made out or not (if proved) continues to operate as the basic and fundamental test. In this view of the matter, a careful granular analysis of Sections 276C(1), 277 and 278 of IT Act and the ingredients of the same leaves this court with the considered view that it is unable to persuade itself and believe that even if all the averments / allegations in complaints are proved to the hilt in the trial, an offence will not be made out, though the prosecution is based on search / seizure and not on returns. In other words, it all depends on what unfurls in the trial.

21 Further, prosecution (based on search / seizure and not assessment under IT Act) being by way of criminal complaints other than on a police report, i.e., said criminal complaints, a careful reading of two complaints, i.e., said criminal complaints inter-alia in the context of retraction (by purchaser company) submission of petitioners leaves no room for doubt or disputation that these are clearly matters for trial and

no ground for quash has been made out.

22 To be noted, a long line of authorities starting from ***P.Jayappan Vs. S.K.Perumal, First Income-Tax Officer, Tuticorin*** reported in ***1984 (Supp) SCC 437*** were read out to this Court. Owing to the stated position of the learned Prosecutors for IT Department that complaints are not based on assessment/s and that they are based on search / seizure, this Court deems it appropriate to not to discuss the same in great length, as it is a case of avoidable prolixity, which if not avoided will only make this order needlessly verbose.

23 This leaves us with the point regarding prosecution being launched on the basis of statement of third parties (third point in summation supra). Discussion supra regarding alleged corroboration between soft copies recovered from the company in which one of the petitioners is the Director (shared by Enforcement Directorate with IT Department) and small note books in the purchaser company becomes relevant in this regard. The third point raised by petitioners gets neutralized by stated position of prosecution that there is corroboration between soft copies seized from company in which one of the petitioners is a Director and purchaser. Besides being a matter for trial, it puts to rest

the ground that prosecution is based solely on statements of third parties (purchaser company). Therefore, in the light of the discussion supra regarding principles for quashment, facts and circumstances of this case, it cannot be gainsaid by petitioners that prosecution has been launched solely based on the statement made by some third parties.

24 The aforesaid narrative leaves this court with the considered view that issues that arise in said criminal complaints are matters for trial and no ground has been made out for quashing the same. Therefore, in third and fourth Crl.O.Ps, I find for IT Department, hold that they are liable to be dismissed and therefore, Crl.O.P.Nos.1526 and 1527 of 2020 fail.

25 As the prayers for quash qua said criminal complaints fail, it has now become necessary to embark upon the exercise of examining the petitioners' challenge to transfer of two criminal cases from EO court to Sessions Court.

26 Before setting out the rival submissions made in this regard and before embarking upon the exercise of discussing rival submissions and articulating the dispositive reasoning of this Court, it is necessary to give an adumbration of some facts (to be noted, most of these facts have

not been subjected to dispute / contestation) and the same (with dates wherever applicable) is as follows:

(a) Said criminal complaints, i.e., both criminal complaints were filed in the Court of Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai, i.e., EO Court on 12.09.2018. To be noted, it is urged by the petitioners that this is also a court constituted under section 280A of IT Act and is therefore constituted under a law (statute) other than Cr.P.C as described in section 6 of Cr.P.C. To be noted, this point is in the realm of dispute / contestation.

(b) The court to which said criminal complaints, i.e., two criminal complaints have now been transferred is a Special Court for trial of Criminal Cases related to elected M.Ps/M.L.As. of Tamil Nadu, Singaravelan Maligai, Chennai. To be noted, there is no dispute or disagreement that this transferee Court, i.e., Sessions court is a Court of Sessions within the meaning of section 6(i) of Cr.P.C. There is also no dispute or disagreement that

this is not a court constituted under any law other than Cr.P.C. within the meaning of section 6 of Cr.P.C.

(c) On the date of filing of said criminal complaints in aforementioned EO Court, both petitioners were neither M.P./M.L.A. nor former M.P./M.L.A.

(d) In the case on hand, said criminal complaints entail maximum punishment of seven years and therefore, they are magisterial offences.

(e) If said criminal complaints are tried by Economic Offence court-II, i.e., EO Court in which they were filed and if they are disposed of by said court, an appeal against conviction (if that be so) will lie to Principal Sessions Judge, City Civil Court, Chennai under section 374(3) of Cr.P.C. If offences are tried by the transferee court, i.e., Special Court for trial of Criminal Cases related to elected M.Ps/M.L.As. of Tamil Nadu and if it is disposed of by that court, an appeal will lie to this court (High Court) under section 374(2) of Cr.P.C.

(f) In the light of the aforesaid two points, post

disposal of appeal by Principal Judge, City Civil Court, Chennai, a revision will lie to this court under section 397 Cr.P.C., but that will obviously not be available if said criminal complaints are tried and disposed of by transferee court and an appeal is decided by this court in an appeal under section 374(2). In other words, to put it differently, if said criminal complaints are tried by Economic offences Court, i.e., EO court, then parties can prefer a revision under section 397 of Cr.P.C to this court post appeal, but the same will be unavailable if it is tried and disposed of by transferee court, i.e., Sessions court.

(g) While EO court has original jurisdiction, transferee court which is a Sessions court (within the meaning of section 6(i) of Cr.P.C.) does not have original jurisdiction. The Sessions court which does not have original jurisdiction cannot directly take cognizance of an offence unless there is committal.

(h) Vide G.O.Ms.No.1293 dated 24.05.1982, third respondent Government of Tamil Nadu constituted two

Additional Metropolitan Magistrate courts in the city of Chennai for speedy trial of economic offences in the State of Tamil Nadu. To be noted, EO Court we are concerned with is one of these two courts. (To be noted, G.O. denotes Government Order).

(i) Pursuant to directions given by Hon'ble Supreme Court in Ashwini Kumar Upadhyay case, G.O.Ms.No.1423 was made on 6.9.2018 constituting a Special Court at Chennai (for entire State of Tamil Nadu) to try criminal cases involving elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, followed by G.O.Ms.No.1568 dated 17.9.2018, whereby amendment notification has been issued to the effect that 'a Special Court in the cadre of Sessions Judge at Chennai' will stand substituted in place of the expression 'a Special Court at Chennai'. This was further followed by as many as five G.Os, namely G.O.Ms.No.209 to G.O.Ms.No.213, all dated 26.04.2019. Net / combined effect of these five G.Os is, Special Courts to try cases involving M.P/M.L.As

throughout Tamil Nadu (every Judicial District / Sessions Division) were created at both Sessions and Magisterial levels. In Chennai, such Courts became four in number and they are, two Special Courts in Sessions Cadre, one in Assistant Sessions Cadre and one Magistrate Court (To be noted, this Magistrate Court is II Metropolitan Magistrate Court, Egmore, Chennai) falling under section 6(ii) of Cr.P.C. To be noted, while it is Metropolitan Magistrate in Chennai, it is Judicial Magistrate in other Divisions / judicial Districts.

(j) This Court is informed that after as many as 14 hearings in the EO court between 19.9.2018 and 8.7.2019, said criminal complaints were transferred to transferee court. With regard to the date of transfer as mentioned elsewhere (supra in this order), a combined reading of two memoranda of fourth respondent (both dated 07.06.2019 and both bearing same reference being Roc No.5745/2018/G4) and a letter from fourth respondent to Principal Judge of City Civil Court, Chennai suggest that

they pertain inter-alia to transfer of said criminal complaints to designated court for trying offences against M.Ps/M.L.As., but it does not give the date of transfer with exactitude and specificity. This was put to learned counsel for 4th respondent. Learned counsel for 4th respondent after taking instructions, adverted to communications dated 10.7.2019 in Dis.No.174/2019 and Dis.No.173/2019 from the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai inter-alia to petitioners and submitted that the actual date of transfer is 10.7.2019. Therefore, from hereon, this order will proceed on the basis that the date of transfer of said criminal complaints from EO Court to transferee court is 10.7.2019.

(k) After transferring said criminal complaints which form subject matter of the cases on hand, Registrar General of this Court (fourth respondent in first and second Crl.O.Ps) vide proceedings dated 6.9.2019 bearing Roc No.5745/2018/G4 wrote to Government of Tamil Nadu, in other words, fourth respondent wrote to third respondent

for non designating II Metropolitan Magistrate Court citing workload.

(l) Pursuant to aforesaid 06.09.2019 proceedings of fourth respondent, Government issued G.O.Ms.No.535, dated 11.10.2019 non designating II Metropolitan Magistrate Court.

27 Having set out some of the most essential (mostly undisputed) facts regarding transfer of said criminal complaints from EO Court to Sessions Court, before proceeding further, i.e., before setting out rival submissions, embarking upon the exercise of examining the same and giving dispositive reasoning, this court deems it appropriate to give an adumbration of various provisions of law which are relevant to the discussions and dispositive reasoning to follow. Though referred to as an adumbration, this court deems it appropriate (for the sake of convenience, clarity and specificity) to set out the same as a narrative with short discussions wherever imperative and adumbration rolled into one, which is as follows:

(a) Chapters XXI and XXII of IT Act captioned

‘Penalty Imposable’ and ‘Offences and Prosecutions’ respectively containing sections 270 to 275 (Chapter XXI) and sections 275A to 280D (Chapter XXII) are of relevance. To be noted, said criminal complaints, as already alluded to supra, are under sections 276C(1), 277 of IT Act and said provisions read with 278 of IT Act. Therefore, the three main provisions of law qua said criminal complaints are contained in Chapter XXII of IT Act.

(b) Section 279A of IT Act captioned ‘Certain offences to be non-cognizable’ reads as follows :

‘279A. Certain offences to be non-cognizable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 276B or section 276C or section 276CC or section 277 or section 278 shall be deemed to be non-cognizable within the meaning of that Code.’

(c) A perusal of Section 279A of IT Act makes it clear that all the three provisions of IT Act which have been invoked qua said criminal complaints are deemed to be non cognizable

offences and there is a non obstante clause qua Cr.P.C., i.e., that it is notwithstanding anything contained in Cr.P.C.

(d) Section 292 of IT Act captioned ‘Cognizance of offences’ (to be noted, this is outside of Chapters XXI and XXII referred to supra) refers to offences under IT Act in general which reads as follows:

‘292. Cognizance of offences.—No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act.’

(e) A perusal of section 292 of IT Act makes it clear that all offences under IT Act including alleged offences under three provisions of law qua said criminal complaints shall not be tried by a court inferior to that of a Presidency Magistrate / Magistrate of the First Class Court which can now be read as Magistrate, as this court is informed without any disputation that the distinction between Magistrates of First and Second Classes have since been done away with.

(f) ‘Court of Session’ is defined, described and

explained including jurisdiction in section 9 of Cr.P.C. Likewise, 'Courts of Metropolitan Magistrates' is defined, described and explained including jurisdiction in section 16 of Cr.P.C. Sections 9 and 16 of Cr.P.C read as follows:

'9. Court of Session.—(1)The State Government shall establish a Court of Session for every sessions division.

(2)Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3)The High Court may also appoint Additional Sessions Judges and Assistant Session Judges to exercise jurisdiction in a Court of Session.

(4)The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5)Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every

such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6)The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation.—For the purposes of this Code, “appointment” does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.

16. Courts of Metropolitan Magistrates.—(1)In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

(2)The presiding officers of such Courts shall be appointed by the High Court.

(3)The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.’

(g) As far as said criminal complaints, which we are concerned with in the cases on hand, they fall under the category of offences under ‘other laws’. This takes us to section 4, more particularly sub-section (2) of section 4 of Cr.P.C. This court deems it appropriate to reproduce entire section 4 of Cr.P.C which reads as follows:

‘4.Trial of offences under the Indian Penal Code and other laws.—(1)All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2)All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.’

(h) While perusing sub section (2) of section 4 of Cr.P.C., one has to bear in mind that the terms ‘investigation’ and ‘inquiry’ occurring therein have been defined in sections 2(h) and 2(g) respectively of Cr.P.C. Sections 2(g) and 2(h) read as follows :

2.Definitions.—In this Code, unless the context otherwise requires,—

(a) to (f) * * * * *

(g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(i) Inter-alia with regard to definitions, Cr.P.C is dovetailed with ‘The Indian Penal Code,’ (‘IPC’ for brevity) and therefore, it is necessary to have a look at Section 2(y) of Cr.P.C also, which reads as follows:

‘(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.’

(j) Be that as it may, reverting to sub section (2) of section 4, as the cases on hand fall under offences under ‘any other law’ category, it becomes necessary to have a close look at Sections 280A and 280B of IT Act captioned ‘Special Courts’ and ‘Offences triable by Special Court’ respectively which read as follows :

‘280A. Special Courts.—(1) The Central Government, in consultation with the Chief Justice of the High Court, may, for trial of offences punishable under this Chapter, by notification, designate one or more courts of Magistrate of the first class as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification.

Explanation.—In this sub-section, “High Court” means the High Court of the State in which a Magistrate of first class designated as Special Court was functioning immediately before such

designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

280B. Offences triable by Special Court.—

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) the offences punishable under this Chapter shall be triable only by the Special Court, if so designated, for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed:

Provided that a court competent to try offences under section 292,—

(i) which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under this Act after such designation;

(ii) which has not been designated as a Special Court may continue to try such offence pending before it till its disposal;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the

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accused is committed for trial.’

*(Underlining and double underlining made by
me to supply emphasis and highlight)*

(k) There is no disputation or disagreement before this Court that the Central Government in consultation with Chief Justice of this Court has not notified and designated any one or more of Magisterial level Special Courts within the meaning of Section 280A of IT Act as far as Tamil Nadu is concerned. To be noted, this court is informed by learned Prosecutors on instructions albeit without any disagreement / disputation by petitioners that this has been done in some other States. Be that as it may, we have to necessarily revert to Cr.P.C. When we revert to Cr.P.C., with regard to Metropolitan areas, the same has been described in section 8 of Cr.P.C., which reads as follows:

‘8. Metropolitan areas.—(1) The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall

be a metropolitan area for the purposes of this Code.

(2) As from the commencement of this Code, each of the Presidency-towns of Bombay, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub-section (1) to be a metropolitan area.

(3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million.

(4) Where, after an area has been declared, or deemed to have been declared to be, a metropolitan area, the population of such area falls below one million, such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place.

(5) Where the State Government reduces or alters, under sub-section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court

or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place.

Explanation.—In this section, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.’

(l) As far as classes of Courts are concerned, the adumbration is in section 6 of Cr.P.C. which reads as follows:

‘**6.Classes of Criminal Courts.**—Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:--

- (i) Courts of Session;
- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class; and
- (iv) Executive Magistrates.’

(m) Having had a close look at the classes of Courts

and also having noticed that Special Court within the meaning of IT Act has not been designated, one has to examine by which

court, said criminal complaints are triable. For this, section 26 of Cr.P.C becomes relevant and the same reads as follows:

‘26.Courts by which offences are triable.—Subject to the other provisions of this Code,—

(a)any offence under the Indian Penal Code (45 of 1860) may be tried by--

- (i)the High Court, or
- (ii)the Court of Session, or
- (iii)any other Court by which such offence is shown in the First Schedule to be triable:

Provided that any offence under section 376, section 376-A, section 376-AB, section 376-B, section 376-C, section 376-D, section 376-DA, 376-DB or section 376-E of the Indian Penal Code (45 of 1860)] shall be tried as far as practicable by a Court presided over by a woman.

(b)any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—

- (i)the High Court, or
- (ii)any other Court by which such offence is shown in the First Schedule to be triable.’

(n) As no special court has been designated within

the meaning of section 280A of IT Act, it is clear that instant cases fall under section 26(b) of Cr.P.C. Section 26(b) in turn leads to First Schedule of Cr.P.C. First Schedule of Cr.P.C is in two parts, namely, Part-I and Part-II. While Part-I of First Schedule of Cr.P.C deals with offences under IPC, Part-II of First Schedule of Cr.P.C deals with classification of offences qua / against other laws. Considering the importance of such classification for cases on hand, this court deems it appropriate to extract and reproduce entire Part-II of First Schedule of Cr.P.C which is as follows:

II.—CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
In punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years	Ditto	Ditto	Magistrate of the first class.
If punishable with imprisonment for	Non-cognizable	Bailable	Any Magistrate.

less than 3 years or with fine only.			
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(o) A perusal of Part-II reveals that cases on hand fall under second Entry under Part-II of First Schedule.

(p) In this regard, it may be necessary to remind oneself about section 279A of IT Act (reproduced supra), whereby offences qua said criminal complaints have been made as non cognizable and therefore, in the second column with regard to second Entry which we are concerned with, 'cognizable' will have to be read as 'non cognizable' for the purpose of cases on hand.

28 In the aforesaid backdrop, adumbration of relevant provisions, trajectory of events and undisputed fact setting, broad summation of arguments made by petitioners assailing transfer is as follows :

(a) Said criminal complaints against petitioners being complaints of alleged offences under sections 276C(1),

277 of IT Act and said provisions read with section 278 of IT Act, the maximum punishment is seven years, owing to which they are magisterial offences and therefore, transfer of said criminal complaints to a Sessions Court is bad in law;

(b) Impugned transfer deprives petitioners the possibility of seeking revision in this court (High Court) under section 397 of Cr.P.C., if the need arises depending on the trajectory of said criminal complaints.

(c) The transferee court being Court of Sessions lacks jurisdiction as there is no committal. Absent committal, Sessions court, i.e., transferee court cannot hear the said criminal complaints as transferee court does not have original jurisdiction.

(d) EO Court, i.e., Economic Offence court-II, Egmore in which complaints were originally filed is a Special Court within the meaning of section 280A of IT Act, the alleged offences under sections 276C(1), 277 of IT Act and said provisions read with section 278 of IT Act are triable by such a Special Court and therefore, the transfer is

bad. To be noted, counsel for petitioners referring to
aforementioned G.O.Ms.No.1293 dated 24.05.1982
submitted that this should be construed as such a
notification.

(e) On the date of alleged offence as well as on the
date of filing of said criminal complaints, both petitioners
were neither M.Ps/M.L.As nor former M.Ps/M.L.As; even as
on the date of transfer, i.e., 10.7.2019, only one of the
petitioners had become a sitting M.P.

29 In response to aforesaid submissions, respondents, more
particularly, learned counsel for fourth respondent made submissions,
summation of which is as follows:

(a) Magisterial offence can be tried by a higher
court and there is no bar in law for such a course;

(b) The concept of committal and court of
Sessions lacking original jurisdiction cannot be pressed into
service as the same does not apply to cases of transfer;

(c) Petitioners are not deprived of any right of appeal owing to transfer, as, if the case had been disposed of by Economic Offence Court-II, i.e., EO Court, an appeal against conviction will lie to Principal Judge, City Civil Court, Chennai under section 374(3) of Cr.P.C and if the case is disposed of by transferee court, appeal will lie to High Court under section 374(2) of Cr.P.C. In other words, only Appellate forum will change and there can be no objection to this at the instance of petitioners;

(d) Revision under section 397 Cr.P.C. is a discretionary jurisdiction and it is not a legal right.

(e) As a corollary to preceding two submissions, it was argued that there can be no complaint of one tier being taken away, besides saying that taking one tier away is permissible;

(f) II Metropolitan Magistrate's court which was designated to try cases involving M.Ps./M.LAs had to be non designated only owing to the volume of cases / work load there and petitioners cannot object to the same;

(g) Transfer was done in deference to the direction given by Hon'ble Supreme Court in Ashwini Kumar Upadhyay case and therefore, petitioners cannot contest or find fault with the same.

(h) Relevant date for deciding whether a particular case involving M.Ps/M.L.As is the date of transfer and not date of launching of complaint or date of alleged offence.

30 To be noted, elaborate submissions touching upon very many aspects of the matter were advanced and those of the submissions which are germane to the issue on hand or in other words, those of the rival submissions which are relevant to the bone of contention, i.e., challenge to transfer have been set out as broad summations supra for the sake of clarity and specificity.

31 For the purpose of discussion on rival submissions and for the purpose of setting out and articulating dispositive reasoning, this court deems it pertinent to extract and reproduce relevant portions of four

orders of Hon'ble Supreme court in Ashwini Kumar Upadhyay case which are pivotal and significant qua transfer (being relevant portions of orders dated 01.11.2017, 14.12.2017, 04.12.2018 and 25.03.2019), which read as follows :

'Relevant portion of order dated 01.11.2017 :

4.Insofar as setting up of Special Courts are concerned, setting up of Special Courts and infrastructure would be dependent on the availability of finances with the States. Without going into the controversy raised on the aforesaid score, the problem can be resolved by having a Central Scheme for setting up of Courts exclusively to deal with criminal cases involving political persons on the lines of the Fast Track Courts which were set up by the Central Government for a period of five (05) years and extended further which Scheme has now been discontinued.

Relevant portion of order dated 14.12.2017 :

Immediately after such allocation is made and intimated to the respective State Governments, the State Governments in consultation with the High Courts will set up the Fast Track Courts (12 in all) to ensure that the said Courts start functioning from 01.03.2018. All necessary/required notification(s) shall be issued by the concerned/respective State Government(s). The High Court(s), acting through the various trial Courts, will trace out from the case records the

particular 5 case(s) pending in the files of the respective judicial officers under the jurisdiction of the High Court(s) which are required to be dealt with by the Special Courts under the Scheme and thereafter transfer the said cases to such Special Courts(s) for adjudication.

Relevant portion of order dated 04.12.2018 :

Having considered the matter we are of the view that the suggestions of the learned Amicus Curiae should be tried out with certain modifications and in a limited manner which is indicated below:

1. Instead of designating one Sessions Court and one Magisterial Court in each District we request each High Court to assign/allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the each High Court may consider proper, fit and expedient. This, according to us, would be a more effective step instead of concentrating all the cases involving former and sitting legislators in a Special Court(s) in the district.

(Underlining and double underlining made by this Court to highlight)

Relevant portion of order dated 25.03.2019 :

Having heard the learned counsel for the applicant, we deem it appropriate to ensure full compliance of our previous Order passed in Writ Petition (C) No. 699 of 2016.

We direct the Registrar General of the High Court of Judicature at Madras to transfer all criminal cases related to

MPs and MLAs pending under its jurisdiction to the Special Court for cases related to Elected MP and MLA of Tamil Nadu, Chennai.'

32 To be noted, it is the stated position of learned counsel for fourth respondent that transfer of said criminal complaints from EO Court to Sessions Court was done in accordance with the orders of Hon'ble Supreme Court in Ashwini Kumar Upadhyay case and more particularly, in accordance with the aforementioned orders. To be noted, besides aforementioned orders of Hon'ble Supreme Court, there is one more order of Hon'ble Supreme Court in Ashwini Kumar Upadhyay case being order dated 21.08.2018 which is of significance and relevant portion of the same reads as follows:

'We would like the Union of India to lay before the Court the following information:

- 1.Number of Special Courts set up pursuant to the order of this Court dated 14th December, 2017;
- 2.Whether the courts set up are Courts of Sessions or Magisterial Courts;
- 3.The territorial jurisdiction of each of these Courts;
- 4.Number of cases pending before each of these Courts, with break-up of Magisterial and Sessions triable cases;

5. Whether the Union of India intends to set up additional number of Courts over and above the Courts that may have already been set up pursuant to the order of this Court dated 14th December, 2017. The details in this regard may also be furnished.'

33 Directions of Hon'ble Supreme Court in Ashwini Kumar Upadhyay case, including aforementioned directions, sequence of letters, proceedings issued by fourth respondent and Government Orders issued by third respondent have been collated from different papers, typed sets forming part of case file and they are set out in chronological order and the same is as follows:

- (i) Hon'ble Supreme Court order dated 01.11.2017.
- (ii) Hon'ble Supreme Court order dated 14.12.2017.
- (iii) UOI Law Secretary letter dated 16.01.2018.
- (iv) D.O. Letter No.5745/2018/G4 dated 21.2.2018 issued by R-4.
- (v) G.O.Ms.No.697 dated 9.7.2018 issued by R-3.
- (vi) Hon'ble Supreme Court order dated 21.08.2018.
- (vii) G.O.Ms.No.1423 dated 6.9.2018 issued by R-3.
- (viii) Hon'ble Supreme Court order dated 12.09.2018.
- (ix) OM in Roc No.5745/2018/G4 dated 14.9.2018 issued by R-4.
- (x) Roc No.5745/2018/G4 dated 14.09.2018 issued by R-4.
- (xi) G.O.Ms.No.1568 dated 17.9.2018 by R-3.
- (xii) OM in Roc No.5745/2018/G4 dt.19.9.2018 issued by R-4.

- (xiii) Hon'ble Supreme Court order dated 04.12.2018.
- (xiv) Letter in Roc No.5745/2018/G4 dt.5.3.2019 issued by R-4.
- (xv) Hon'ble Supreme Court order dated 25.03.2019.
- (xvi) Letter in Roc No.5745/2018/G4 dt.12.4.2019 issued by R-4.
- (xvii) G.O.Ms.No.209, dated 26.04.2019 issued by R-3.
- (xviii) G.O.Ms.No.210, dated 26.04.2019 issued by R-3.
- (xix) G.O.Ms.No.211, dated 26.04.2019 issued by R-3.
- (xx) G.O.Ms.No.212, dated 26.04.2019 issued by R-3.
- (xxi) G.O.Ms.No.213, dated 26.04.2019 issued by R-3.
- (xxii) OM in Roc No.5745/2018/G4 dt.7.6.2019 by R-4.
- (xxiii) OM in Roc No.5745/2018/G4 dt.7.6.2019 by R-4.
- (xxiv) Letter in Roc No.5745/2018/G4 dt.9.7.2019 by R-4.
- (xxv) OM in Roc No.5745/2018/G4 dt.17.7.2019 by R-4.
- (xxvi) Letter in Roc No.5745/2018/G4 dt.6.9.2019 by R-4.
- (xxvii) G.O.Ms.No.535 dated 11.10.2019 issued by R-3.

34 Upto Serial No.(xxv) above, there is absolutely no difficulty.

However, sequence of one proceedings of fourth respondent and consequent Government order issued by third respondent thereafter being proceedings dated 06.09.2019 made by fourth respondent and G.O.Ms.No.535 dated 11.10.2019 by third respondent which have been given serial numbers (xxvi) and (xxvii) chronologically supra present

some problem and there will be discussion about this infra elsewhere in this order. In this regard, it may be necessary to have a birds eye view of aforementioned xxv proceedings, letters, orders, etc., upto which there is no difficulty.

35 Vide 01.11.2017 order, Hon'ble Supreme Court directed a central scheme on the line of fast track courts for five years, which was extended and thereafter, discontinued. Such a central scheme was proposed for fast tracking cases involving former and present M.Ps/ M.L.As and directives in this regard were given. Thereafter, vide 14.12.2017 order, Hon'ble Supreme Court noticed the position that all data are yet to be collected, but plans and financial sanction for 12 courts (pan India) have been put in place.

36 Thereafter, the Law Secretary of Union of India appears to have written a letter dated 16.01.2018 inter-alia to fourth respondent, but the same or copy of the same has not been placed before this Court. However, in proceedings of fourth respondent dated 21.02.2018 (cited as Sl.No.(iv) supra), this 16.01.2018 letter from the Law Secretary has been

cited as No.1 in reference and the 21.02.2018 proceedings say that the same have been made by 4th respondent inter-alia pursuant to this letter. Be that as it may, vide 21.02.2018 proceedings, fourth respondent requested third respondent for constitution of one Special Court in Chennai which shall be the XXI Additional District / Sessions Judge, as this Court is informed that there are already 20 Additional District /Sessions Judges in Chennai. Pursuant to 21.02.2018 letter from fourth respondent, third respondent issued G.O.Ms.No.697 on 09.7.2018, wherein sanction was accorded for constitution of one Special Court. Sanction of one District Judge and 13 staff was accorded and it was made clear that the same will be notified subsequently. Thereafter, Hon'ble Supreme Court noticed that 12 Special Courts Pan India have been constituted. What is of relevance is these 12 special courts constituted Pan India as noticed by Hon'ble Supreme Court includes the aforementioned one special court constituted in Tamil Nadu vide G.O.Ms.No.697 dated 9.7.2018. In this regard, points 2 and 4 of order dated 21.8.2018 made by Hon'ble Supreme Court (which have already been extracted and reproduced supra elsewhere in this order) are relevant.

37 Thereafter, third respondent issued a Government Order being G.O.Ms.No.1423 dated 06.09.2018 notifying the Special Court constituted vide G.O.Ms.No.697 dated 9.7.2018. Thereafter, Hon'ble Supreme Court passed one more order dated 12.09.2018 wherein after referring to earlier order dated 21.8.2018 and more particularly points 2 and 4 thereat (extracted and reproduced supra), Hon'ble Supreme Court wanted to know whether 12 Special Courts Pan India are sufficient or some more courts are required. When things stood as above, fourth respondent issued proceedings dated 14.9.2018 (Sl.No.(x) supra) saying that committal of cases to sessions Court, i.e., aforementioned Special Court constituted vide G.O.Ms.No.697 in Chennai shall not be done directly, but shall be done to respective jurisdictional courts and thereafter, the same shall be committed to the special court in Chennai. To be noted, upto this point of time, (as already mentioned supra), there was only one special court for trying cases involving former / present M.Ps / M.L.As, for the whole of Tamil Nadu and that one special court was constituted in Chennai vide G.O.Ms.No.697 dated 9.7.2018 (notified vide G.O.Ms.No.1423 dated 6.9.2018) which has also been referred to elsewhere supra in this order.

38 Thereafter, one more proceedings was made by fourth respondent on the same day, i.e., 14.9.2018. Fourth respondent wrote to third respondent saying that in G.O.Ms.No.697, it has been mentioned that the special court is in the cadre of Sessions Judge, but that has not been included in the notification vide G.O.Ms.No.1423 and made a request that the expression ‘in the cadre of Sessions Judge at Chennai’ shall be included in the notification. Pursuant to this letter, third respondent issued G.O.Ms.No.1568 dated 17.9.2018 (Sl.No.11) including the aforesaid expression in the notification vide G.O.Ms.No.1423. This was followed by 19.9.2018 proceedings / communication written by fourth respondent to all Principal District Judges in the Sessions Districts of Tamil Nadu saying that inauguration of sole special court in Chennai for trying criminal offences involving sitting / former M.Ps./M.L.As is scheduled to be held on 20.09.2018 and vide this letter, fourth respondent requested all Principal District Judges to transmit the records to this special Court.

39 Thereafter, the most important and crucial order came to be passed by Hon’ble Supreme Court and this order is dated 04.12.2018,

which has been extracted and reproduced supra. In and by this order, Hon'ble Supreme Court accepted the second report of amicus for designating sessions and magistrate courts, more particularly, as many Sessions courts and as many magistrate Courts as required in each District. Thereafter, 05.03.2019 letter of fourth respondent (Sl.No.xiv) came to be sent. Interestingly, in this letter, fourth respondent has observed that there are no magisterial offences involving present or former M.Ps / M.L.As in Chennai. Besides this, fourth respondent in this letter has referred to clubbing of both Sessions trial and Magisterial trial cases in one court and the relevant portion of this letter in this regard reads as follows:

'It is specifically suggested in paragraph 13 (3) of the report of the learned Amicus Curiae that some of the Courts where special Courts have been constituted appeared to have clubbed both the Sessions trial and Magisterial trial Cases in one Court, which is not permissible in law.'

It is under these circumstances that Hon'ble Supreme Court passed further directions in I.A.No.31721 of 2019 dated 25.03.2019. Vide this

directive, Hon'ble Supreme Court directed that all pending criminal cases relating to MPs and MLAs have to be transferred to the Special courts for fast tracking. Thereafter, fourth respondent appears to have written a letter dated 12.04.2019 (this letter was not placed before this Court, but there is a reference to this letter in G.O.Ms.No.209 dated 26.04.2019).

40 It is under these circumstances, third respondent issued abovementioned G.O.Ms.No.209 dated 26.04.2019. It is clear that this Government order is pursuant to fourth respondent's aforementioned letter dated 12.04.2019 and vide this G.O.Ms.No.209 dated 26.04.2019, one more special court in the cadre of sessions Judge, one more additional special court in the cadre of Assistant Sessions Judge were constituted and the same were notified vide G.O.Ms.No.210 dated 26.04.2019. Thereafter, G.O.Ms.Nos.211 and 212 also came to be issued on the same day, namely 26.04.2019. A combined reading of G.O.Ms.Nos.211 and 212 brings to light that all Principal District Judges in all Sessions Divisions (other than Chennai) in Tamil Nadu were designated as Special Courts to try cases involving sitting and former

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M.Ps / M.L.As and therefore, the notification made vide G.O.Ms.No.1423 dated 6.9.2018 and G.O.Ms.No.1568 dated 17.9.2018 stood modified to the effect that the Special Court in Chennai is not for entire Tamil Nadu, but only for Chennai. On the same day, i.e., on 26.04.2019, one more Government order being G.O.Ms.No.213 came to be made and this is all too critical / crucial for the cases on hand. Vide this G.O.Ms.No.213, one Metropolitan magistrate in Chennai and 31 Judicial Magistrates in 31 Judicial Districts came to be notified as designated Special courts for trying magisterial offences involving former and sitting M.Ps/ M.L.As. To be noted, II Metropolitan Magistrate, Chennai was designated for this purpose as far as Chennai District is concerned and it is further to be noted that we are concerned with Chennai District as said criminal complaints are in Chennai District.

41 Thereafter, two proceedings both dated 7.6.2019 (xxii and xxiii supra) came to be made by fourth respondent followed by a letter 9.7.2019 (xxiv supra) and another proceedings dated 17.7.2019 (xxv supra). Sum totality of these proceedings and letter are to the effect that these designated courts were directed to draw up calendars for day today

trial, besides directing Principal Judges and Chief Judicial /Metropolitan Magistrates to ensure equal distribution of work (transfer of cases from Economic Offences court also), besides saying that one more special court and additional special court referred to supra had started functioning in Chennai from 10.7.2019.

42 It is after all the above proceedings, letters and Government orders that fourth respondent wrote a letter dated 6.9.2019 to third respondent for non designating the II Metropolitan Magistrate Court citing work load and acting on the same, third respondent issued G.O.Ms.No.535 dated 11.10.2019 non designating the II Metropolitan Magistrate Court in Chennai. To be noted, these two events happened after the actual transfer (on 10.07.2019) of said criminal complaints from EO court, i.e., Economic Offences Court-II, Egmore, Chennai to Sessions Court, i.e., Special Court for trial of Criminal cases related to elected MPs/MLAs of Tamil Nadu, Singaravelan Maligai, Chennai. In other words, the actual transfer on 10.07.2019 took place when the II Metropolitan Magistrate which was designated for trying magisterial offences involving former / present M.Ps/M.L.As, was very much

functioning. As already alluded to supra, there will be more discussion about this infra.

43 Third and fourth respondents have understood the orders of Hon'ble Supreme Court as orders / directives to constitute / designate certain courts as Special Courts for the purpose of fast tracking cases involving former and present M.Ps / M.L.As. There are three very significant aspects of these directions of Hon'ble Supreme Court which have also been understood correctly (upto a point, i.e., upto proceedings of fourth respondent prior to 6.9.2019 proceedings, i.e., serial number (xxv) in adumbration supra) by third and fourth respondents. First significant aspect is, Hon'ble Supreme Court directed creation of two categories of Special Courts, i.e., Sessions Court and Magisterial Courts. The second more significant aspect of the orders of Hon'ble Supreme Court is, the directives were to create as many as Sessions Courts and as many as Magisterial Courts that are necessary (obviously depending on number of cases involving M.Ps / M.L.As and existing work load of courts). The third aspect is, all this was to fast track criminal cases involving present and former M.Ps/M.L.As. It is because of this clear

understanding upto aforementioned point that courts were designated in all the 32 judicial districts in Tamil Nadu, both at Sessions and Magisterial levels (to be noted, Judicial Magistrate in other Districts and Metropolitan Magistrate in the city of Chennai).

44 In the considered view of this Court, last two events post impugned transfer and after aforementioned point present some difficulties. Those two proceedings are Roc No.5745/2018/G4, dated 6.9.2019 being letter from fourth respondent to third respondent, the third respondent acting on the same and making Government Order being G.O.Ms.No.535 on 11.10.2019 regarding non designating II Metropolitan Magistrate's Court, which was the lone Special Court at Magisterial level for Chennai District. Owing to this 6.9.2019 proceedings of fourth respondent and consequential 11.10.2019 Government Order of third respondent being crucial and critical quibone of contention in instant cases (first and second Crl.O.Ps), this Court deems it appropriate to scan and reproduce the same. Scanned reproduction is as follows :

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Proceedings of 4th respondent dated 06.09.2019 :

<u>Roc.No.5745/2018/G4</u>	<u>By Special Messenger</u> <u>Dated: 06.09.2019</u>
 From C.Kumarappan, B.Sc., B.L., Registrar General, High Court, Madras -104 .	
 To The Additional Chief Secretary to Government, Home Department, Secretariat, Chennai-9.	
Sir,	
Sub:- Courts - Designating the II Metropolitan Magistrate Court, Egmore, Chennai as Special Court and appoints the concerned Metropolitan Magistrate as the Magistrate to try all the Magisterial cases involving elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu - Notification issued - Amendment to the G.O. - Requested - Regarding.	
Ref:- G.O.(Ms).No. 213, Home (Courts-II) Department, dated 26.04.2019.	
~~~~~   I am to state that based on the recommendations of the High Court, the Government in the G.O. cited, have issued orders designating the Court of Metropolitan Magistrate in Chennai and one Judicial Magistrate in all the Districts in the State of Tamil Nadu as the Special Courts and also appointed the concerned Metropolitan Magistrate and Judicial Magistrates as the Magistrate of the respective Special Courts to try all the Magisterial cases involving elected MP's and MLA's of Tamil Nadu. Accordingly, II Metropolitan Magistrate Court, Egmore, Chennai has been designated as Special Court for Chennai District.   In this connection, I am to state that as on date 1248 criminal cases involving IPC offences and other general offences and 14 criminal cases involving MPs/MLAs are pending before the II Metropolitan Magistrate Court, Egmore, Chennai. Considering such huge pendency of IPC and other Act cases, the II Metropolitan Magistrate Court, Egmore, Chennai may not be able to prioritize the cases involving MPs/MLAs for expeditious disposal of such cases.	

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.. 2 ..

In the above circumstances, considering the workload of the II Metropolitan Magistrate Court, Egmore, I am to state that the three Special Courts viz., Special Court No.I, Special Court No.II and Additional Special Court at Chennai are sufficient to try the pending criminal cases related to elected MPs/MLAs, in Chennai District.

I am further to state that at present the Metropolitan Magistrates Courts functioning at Chennai are in the cadre of Senior Civil Judge. Thus, both the II Metropolitan Magistrate Court, Egmore, Chennai, and the newly constituted Additional Special Court at Chennai to try the cases involving elected Members of Parliament and Members of Legislative Assembly, are in the cadre of Senior Civil Judge.

In view of the above, I am directed to request that necessary amendment to G.O.(Ms).No. 213, Home (Courts-II) Department, dated 26.04.2019 and to the Home Department Notification published in Issue No.22, Part-II Section -II, dated 29.05.2019, may be issued **by deleting**

- (i) the words **"Court of Metropolitan Magistrate"** in the fifth line of the Notification, after the word "following"
- (ii) the entire row of Sl.No.1 viz.,

1.	Chennai	II	Metropolitan	Magistrate	Egmore
			Court, Egmore, Chennai		

and consequently renumbering Sl.Nos. 2 to 32 as Sl.No.1 to 31.

- (iii) the words **"Metropolitan Magistrate and"** occurring after the word "concerned".

I am, therefore, to request that necessary amendment as stated supra, may kindly be issued and the same may be communicated to the High Court, immediately.

Yours faithfully,

Sd/-XXXX  
Registrar General.

WEB COPY



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**G.O.Ms.No.535, dated 11.10.2019 :**

2019 5:55 PM FAX

0001

GOVERNMENT OF TAMIL NADU

REGISTRAR GENERAL  
RECEIVED  
15 OCT 2019  
HIGH COURT, MADRAS

**ABSTRACT**

Courts - Designating the II Metropolitan Magistrate Court, Egmore, Chennai as Special Court and appoint the concerned Metropolitan Magistrate as the Magistrate to try all the Magisterial cases involving elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu - Notification - Issued - Amendment - Orders - Issued.

Home (Courts-II) Department

G.O.(Ms).No.535

Dated 11.10.2019  
விகாரி வருடம்,  
புரட்டாசி திங்கள் 24-ஆம் நாள்  
திருவள்ளூர் ஆண்டு, 2050.

Read:-

1. G.O.(Ms) No.213, Home (Courts II) Department, dated 26.04.2019.
2. From the Registrar General, High Court, Madras letter Roc.No.5745/A/2018/G4, dated 06.09.2019.

*****

**ORDER:-**

In the G.O. first read above, among others, orders were issued for designating the Court of II Metropolitan Magistrate, Egmore, Chennai and one Judicial Magistrate in all the Districts in the State of Tamil Nadu as the Special Courts and also appointed the concerned Metropolitan Magistrate and Judicial Magistrates as the Magistrate of the respective Special Courts to try all the Magistrates cases involving elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu.

2. The Registrar General, High Court, Madras in his letter second read above has stated that considering the work load of the II Metropolitan Magistrate Court, Egmore, Chennai, he may not be able to prioritize the cases involving Members of Parliament and Members of Legislative Assembly for expeditious disposal of such cases. Therefore, he has requested the Government to issue necessary amendment to the G.O. first read above.

3. The Government have decided to accept the recommendation of the Registrar General, High Court of Madras. Accordingly the following Notification will be published in the Tamil Nadu Government Gazette, namely:-

(p.t.o.)

2019 5:55 PM FAX

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NOTIFICATION

In exercise of the powers conferred by the proviso to sub-section (1) of section 16 and sub-section (1) of section 11 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Governor of Tamil Nadu, in consultation with the High Court, Madras hereby makes the following amendments to the Home Department Notification No.II(2)/HO/363/2019, Published at pages 473-474 of Part II-Section 2 of the Tamil Nadu Government Gazette, dated the 29th May 2019:-

AMENDMENTS.

In the said Notification,-

(i) the expressions "Court of Metropolitan Magistrate and" and "Metropolitan Magistrate and" wherever they occur shall be omitted;

(ii) in the tabular column, Sl.No.1 and the entries relating thereto shall be omitted.

(BY ORDER OF THE GOVERNOR)

NIRANJAN MARDI  
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

To

✓ The Registrar General, High Court of Madras, Chennai-104.  
The Director General of Police, Chennai-4.  
The Commissioner of Police, Chennai-7.  
All the District Collectors.  
All the Superintendents of Police.  
The Session Judge, Special Court for MPs & MLAs,  
O/o District Collector, Collectorate Campus, Chennai.  
The Director of Prosecution, Chennai-5.  
The Works Manager, Government Central Press, Chennai-79  
(for publication of Notification in Tamil Nadu Government Gazette and to send 15 copies to Government and 50 copies to the Registrar General, High Court, Madras.)

Copy to :-

The Chief Minister's office, Chennai-9.  
The Special P.A. to Minister (Law, Courts & Prisons), Chennai-9.  
The Private Secretary to Additional Chief Secretary to Government, Home, P & E. Department, Chennai-9.  
SF/SCs.

//Forwarded By Order//

Section Officer  
11-10-19



45 When there are directions with specificity from Hon'ble Supreme Court to constitute / designate courts at both Sessions and Magisterial levels (that too as many courts as required), after having understood the same correctly and after having constituted / designated courts also in the same manner, non designating the lone Metropolitan Magistrate Court in Chennai alone particularly when Hon'ble Supreme Court had made it clear that as many courts as necessary, deemed fit and expedient have to be constituted / designated at both levels deserves a closer examination. This court is constrained to make this observation as the lone reason for non designating the II Metropolitan Magistrate is work load and the perception that said court may not be able to allocate time to hear cases involving M.Ps / M.L.As on day to day basis. To be noted, as noticed supra, according to fourth respondent, there were no magisterial offences / cases in this category as of 05.03.2019. Be that as it may, a simple way out would have been to constitute / designate more courts at magisterial level, as Hon'ble Supreme Court has already given directives with specificity in this regard. To be noted, even today, it is submitted without any disputation that Courts of Judicial Magistrates which were designated / constituted in 31 judicial districts for trying

cases involving M.Ps / M.L.As are still functioning. Therefore, 6.9.2019 letter / communication of fourth respondent, third respondent acting on the same and making G.O.Ms.No.535 dated 11.10.2019 are presenting some difficulty. Notwithstanding clear / specific directives from Hon'ble Supreme Court, if and if at all non designating lone Metropolitan Magistrate Court in Chennai alone had become imperative / inevitable, ideally, third and fourth respondents could have approached Hon'ble Supreme Court and sought suitable directives. Admittedly, this was not done. In this context, this Court deems it pertinent to mention that there is no submission / explanation, much less material regarding why more Metropolitan Magistrates in Chennai were not designated (as per directives of Hon'ble Supreme Court, i.e., as many as deemed necessary at Sessions and magisterial levels) though this Court is informed that there are more than 20 Metropolitan Magistrates courts in Chennai. However, considering the scope of cases on hand, this court refrains itself from dilating further into this aspect of the matter.

46 There is one other important aspect of the matter. That is, on the date of actual transfer, i.e., 10.07.2019, vide Dis.No.174/2019 and Dis.No.173/2019 by the office of the Additional Chief Metropolitan

Magistrate, E.O.II, Egmore, Chennai, i.e., EO Court, II Metropolitan Magistrate in Chennai was very much available as a designated court for trying the offences involving past and present M.Ps / M.L.As. To put it differently, designation of II Metropolitan Magistrate vide G.O. Ms.No.213, dated 26.04.2019 was in vogue and was operating on the actual date of transfer. There is no explanation from fourth respondent as to why the case of the petitioners was not transferred to the file of II Metropolitan Magistrate on 10.7.2019. To be noted, the first step towards non designation itself was taken only thereafter, i.e., 06.09.2019 and actual non designation happened only on 11.10.2019 when G.O.Ms.No.535 came to be passed by third respondent. Therefore, it is clear that on the date of actual transfer, i.e., 10.7.2019, a designated court for trying the offences involving M.Ps / M.L.As at magisterial level, namely II Metropolitan Magistrate, Chennai was very much available, but the transfer was made to a Sessions Court. There is no explanation, much less even plausible explanation that is being put forth for not transferring the petitioners' cases to Court of II Metropolitan Magistrate. In this regard, it is pertinent to notice that counter affidavit of fourth respondent also does not throw light and / or explain these three aspects,

encapsulation of which is as follows:

(i) More Metropolitan Magistrate Courts could have been constituted / designated as Special Courts instead of seeking non designation of II Metropolitan Magistrate if it was overworked, as Hon'ble Supreme Court itself directs with specificity to create as many Courts as necessary at both Sessions and Magisterial levels.

(ii) On the date of transfer, II Metropolitan Magistrate was available, but transfer was not made to this court.

(iii) If II Metropolitan Magistrate was overburdened and if fourth respondent had taken a decision to non designate II Metropolitan Magistrate and not to designate any other court in Chennai, it should not have been done unilaterally, but ideally, Hon'ble Supreme Court should have been approached, as Hon'ble Supreme Court has directed creation of as many Special Courts as considered fit, proper and expedient at both Sessions and Magistrates levels.

47 Communication dated 06.09.2019 from 4th respondent to 3rd respondent (which has already been scanned and reproduced supra) and one of the two official memoranda dated 7.6.2019 bearing reference Roc No.5745/2018/G4 of 4th respondent inter-alia to Principal Judge of City Civil Court, Chennai brings to the fore another threefold flaws. One

pertains to hierarchy, second pertains to transfer and third pertains to transferee court. This comes to light from the 3rd, 4th and 5th paragraphs of the communication dated 6.9.2019 from 4th respondent to 3rd respondent. This communication in sum and substance says that II Metropolitan Magistrate Court is presided by a judicial officer in the cadre of Senior Civil Judge (like the Additional Special Court which is also presided by a judicial officer in the cadre of Senior Civil Judge). Cadre in service and hierarchy as in Cr.P.C are conceptually two separate aspects. In any event, without even going into this aspect, even if the matter is tested on a demurer the second flaw comes to fore. The transfer was ultimately made to Special Court No.1 presided by a Sessions Judge and not to Additional Special Court presided by a Senior Civil Judge. Third flaw is, this runs contrary to one of the aforementioned memoranda dated 7.6.2019 from fourth respondent. Therefore, the three flaws are (a) overlooking the subtle but certain difference between the cadre of a judicial officer (in service) presiding a Court and hierarchy / classes of courts as in Cr.P.C., (b) on a demurer, the transfer was ultimately not made to a court presided by a Judge in the same cadre as that of EO Court (though available) as transfer was made to Special Court No.1



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presided by a Sessions Judge and not to Additional Special Court presided by a judicial officer in the cadre of Senior Civil Judge and (c) in one of the two memoranda dated 7.6.2019 bearing reference Roc No.5745/2018/G4 addressed inter-alia to Principal Judge, City Civil Court, Chennai, 4th respondent has directed (in page Nos.2 and 3 of the memorandum) as follows:

'(4)The Principal Judge, City Civil Court, Chennai is further directed to instruct the Sessions Judge, Special Court No.I for trial of criminal cases against MPs/MLAs, Chennai;

(a)to transfer the cases pertaining to Chennai jurisdiction triable by the Assistant Sessions Judge, pending before the existing Special Court at Chennai to the Additional Special Court at Chennai in the cadre of Senior Civil Judge (on its constitution).'

Notwithstanding this, ultimately, said criminal complaints were transferred to Special Court-1 and not to Additional Special Court. This baffling and bewildering aspect of the matter remained unexplained throughout the hearing and there was no enlightenment in this regard in the hearing.

48 With regard to allocation of cases pan Tamil Nadu, learned counsel for fourth respondent has placed before this court a statement in

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tabular form which is as follows :

**DETAILS OF CRIMINAL CASES FILED AGAINST THE MP/MLAS IN THE STATE OF TAMIL NADU TRANSFERRED TO THE SPECIAL COURTS/DESIGNATED SPECIAL COURTS FOR TRIAL OF CRIMINAL CASES RELATED TO ELECTED MEMBERS OF PARLIAMENT AND MEMBERS OF LEGISLATIVE ASSEMBLY OF TAMIL NADU. (As on 31.12.2019)**

Sl. No.	Name of the District	Name of the Court	Category of Case (SC/CC/STC & others)	Opening Balance at the Beginning of the month	No. of Cases Instituted during the month	No. of Cases Instituted by Transfer	Number of cases disposed of during the month			Number of cases pending at the end of the month
							Convicted	Acquitted	Others	
			(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
	CHENNAI	Special Court No.1 for Trial of Criminal Cases Related to M.P.s and M.L.A.s	CC (Defamation)	7	0	0	0	0	2	5
	CHENNAI	Special Court No.1 for Trial of Criminal Cases Related to M.P.s and M.L.A.s	CC (Others)	6	0	0	0	0	0	6
	CHENNAI	Spl Court for Trial of Criminal Cases against MP, MLAs - Court No.II	CC (DEFAMATION)	34	0	0	0	0	0	34
	CHENNAI	Additional Spl Court for Trial of Criminal Cases against MP, MLAs	CC	19	0	3	3	0	0	22
2	ARIYALUR	Principal District Court, Ariyalur		66	0	3	3	0	2	57
	ARIYALUR	Judicial Magistrate Court No.1, Ariyalur	CC	2	0	0	0	0	0	0
	ARIYALUR	Judicial Magistrate Court No.1, Ariyalur	STC	6	0	0	0	0	0	2
	ARIYALUR Total			8	0	0	0	0	0	6
3	COIMBATORE	The Principal District and Sessions Court, Coimbatore	Spl CC No.90/2019	1	0	0	0	0	0	8
	COIMBATORE	Judicial Magistrate Court No.1, Coimbatore	CC-182/2019	1	0	0	0	0	0	1
	COIMBATORE Total			2	0	0	0	0	0	2
4	CUDDALORE	Principal District Sessions Court, Cuddalore	CC	1	0	0	0	0	1	0
	CUDDALORE	Judicial Magistrate No.1, Cuddalore	PRC	2	0	0	0	0	0	2
	CUDDALORE	Judicial Magistrate No.1, Cuddalore	CC	1	0	0	0	0	0	1
	CUDDALORE Total			4	0	0	0	0	1	3
5	DHARMAPURI	Principal District Court, Dharmapuri	CC	2	0	0	0	0	0	2

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Sl. No.	Name of the District	Name of the Court	Category of Case (SC/CC/STC & others)	Opening Balance at the beginning of the month	No. of Cases Instituted during the month	No. of Cases Instituted by Transfer	Total	Number of cases disposed of during the month	Number of cases pending at the end of the month		
			(b)	(c)	(d)	(e)	(d)-(e)	Convicted (f)	Acquitted (g)	Others (h)	(i)
	DHARMAPURI	Judicial Magistrate No.1 Court, Dharmapuri	CC	4	0	0	0	0	0	0	4
	DHARMAPURI	District Munsif cum Judicial Magistrate, Pettinagar	OTHERS	1	0	0	0	0	0	0	1
	<b>DHARMAPURI Total</b>			7	0	0	0	0	0	0	7
6	DINDIGUL	Principal District Court, Dindigul	CC	3	0	0	0	0	0	0	3
	DINDIGUL	Judicial Magistrate No.1, Dindigul	STC	5	0	0	0	0	0	0	5
	<b>DINDIGUL Total</b>			8	0	0	0	0	0	0	8
7	ERODE	Principal District Court, Erode	CC	2	0	0	0	0	0	0	2
	ERODE	Principal District Court, Erode	SC	2	0	0	0	0	0	0	2
	<b>ERODE Total</b>			6	0	0	0	0	0	0	6
8	KANCHEEPURAM	Principal District and Sessions Court, Chengalpattu	CC	2	0	0	0	0	0	0	2
	KANCHEEPURAM	Judicial Magistrate Court, Alandur	CC	2	0	0	0	0	0	0	2
	KANCHEEPURAM	District Munsif Cum Judicial Magistrate Court, Thirukazhukundam	CC/PRC	4	0	0	0	0	0	0	4
	<b>KANCHEEPURAM Total</b>			8	0	0	0	0	0	0	8
9	KANNIYAKUMARI	Principal District Court, Nagercoil	CC	4	0	0	0	0	0	0	4
	KANNIYAKUMARI	Principal District Court, Nagercoil	SPL CC	2	0	0	0	0	0	0	2
	KANNIYAKUMARI	Judicial Magistrate Court No.1, Nagercoil	STC	1	0	0	0	0	0	0	1
	KANNIYAKUMARI	Judicial Magistrate Court No.1, Nagercoil	CC	1	0	0	0	0	0	0	1
	KANNIYAKUMARI	Principal District Munsif – Cum-Judicial Magistrate Court, Eraniel	PRC	1	0	0	0	0	0	0	1
	<b>KANNIYAKUMARI Total</b>			9	0	0	0	0	0	0	9
10	KARUR	Principal District Court	CC	2	0	0	0	0	0	0	2
	KARUR	Judicial Magistrate No.1	STC	10	0	0	0	0	0	0	3
	<b>KARUR Total</b>			12	0	0	0	0	0	0	3



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Sl. No.	Name of the District	Name of the Court	Category of Case (SC/CC/STC & others)	Opening Balance at the beginning of the month	No. of Cases Instituted during the month	No. of Cases Instituted by Transfer	Total	Convicted	Acquitted	Others	Number of cases pending at the end of the month
			(b)	(c)	(d)	(e)	(d)+(e)	(f)	(g)	(h)	(i)
11	KRISHNAGIRI	Principal District Court, Krishnagiri	CC	2	0	0	0	0	0	0	2
	KRISHNAGIRI	Principal District Court, Krishnagiri	SC	6	0	0	0	0	0	0	6
	KRISHNAGIRI	DM-cum-JM No.I, Hosur	STC	1	0	0	0	0	0	0	1
	KRISHNAGIRI	Judicial Magistrate No.II, Krishnagiri	PRC	2	0	0	0	0	0	0	2
	KRISHNAGIRI	Judicial Magistrate No.II, Hosur	PRC	0	0	0	0	0	0	0	0
	KRISHNAGIRI	Fast Track Court, Hosur	CC	4	0	0	0	0	0	0	4
	KRISHNAGIRI Total			15	0	0	0	0	0	0	15
12	MADURAI	Principal District Court, Madurai	CC	2	0	0	0	0	0	0	2
	MADURAI	Principal District Court, Madurai	Spl. CC	1	0	0	0	0	0	0	1
	MADURAI	Principal District Court, Madurai	SC	1	0	0	0	0	0	0	1
	MADURAI	II Additional District Court, (CBI Cases), Madurai	CC	1	0	0	0	0	0	0	1
	MADURAI	J.M.No.I, Madurai	CC	4	0	0	0	0	0	0	4
	MADURAI	J.M.No.I, Madurai	CC	1	0	0	0	0	0	0	1
	MADURAI	J.M.No.V, Madurai	STC	1	0	0	0	0	0	0	1
	MADURAI	J.M. Melur	PRC	2	0	0	0	0	0	0	2
	MADURAI Total			13	0	0	0	0	0	0	13
13	NAGAPATTINAM	District and Sessions Court, Nagapattinam	STC	0	0	0	0	0	0	0	0
	NAGAPATTINAM	Judicial Magistrate No.1 Court, Nagapattinam	CC	15	0	0	0	0	0	0	15
	NAGAPATTINAM Total			15	0	0	0	0	0	0	15
14	NAMAKKAL	Principal District Court, Namakkal	CC	2	0	0	0	0	0	0	2
	NAMAKKAL	Chief Judicial Magistrate Court, Namakkal	FIR	1	0	0	0	0	0	0	1
	NAMAKKAL	Judicial Magistrate No.1 Court, Namakkal	STC	1	0	0	0	0	0	0	1
	NAMAKKAL	Judicial Magistrate No.1 Court, Namakkal	FIR	3	0	0	0	0	0	0	3

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Sl. No.	Name of the District	Name of the Court	Category of Case (SC/CC/STC & others)	Opening Balance at the Beginning of the month	No. of Cases Instituted during the month	No. of Cases Instituted by Transfer	Total	Number of cases disposed of during the month			Number of cases pending at the end of the month
			(b)	(c)	(d)	(e)	(d)+(e)	Convicted	Acquitted	Others	(i)
	<b>NAMAKKAL Total</b>			7	0	0	0	0	0	1	6
15	NILGIRIS	District Session Court Udhagamandalam	Session Cases	1	0	0	0	0	0	1	0
	NILGIRIS	Judicial Magistrate Court, Udhagamandalam	STC	4	0	0	0	0	0	0	4
	NILGIRIS	Judicial Magistrate Court, Udhagamandalam	CC	2	0	0	0	0	0	0	2
	<b>NILGIRIS Total</b>			7	0	0	0	0	0	1	6
16	PERAMBALUR	Principal District Court	CC 1/19	1	0	0	0	0	0	0	1
	PERAMBALUR	Principal District Court	CR 171/16	1	0	0	0	0	0	0	1
	<b>PERAMBALUR Total</b>			2	0	0	0	0	0	0	2
17	PUDUKKOTTAI	Principal District Court	CC	2	0	0	0	0	0	1	1
	PUDUKKOTTAI	Judicial Magistrate Court No.1	STC	5	0	0	0	0	0	0	5
	PUDUKKOTTAI	Judicial Magistrate Court No.1	CC	0	0	1	1	0	0	0	1
	<b>PUDUKKOTTAI Total</b>			7	0	1	1	0	0	1	7
18	RAMANATHAPURAM	Principal District & Sessions Court, Ramanathapuram	SC	1	0	0	0	0	0	0	1
	<b>RAMANATHAPURAM Total</b>			1	0	0	0	0	0	0	1
19	SALEM	Principal District Court Salem	SC	2	0	0	0	0	0	0	2
	SALEM	Principal District Court Salem	CC	6	0	1	1	0	0	0	7
	SALEM	Judicial Magistrate No 1, Salem	CC	1	0	0	0	0	0	0	1
	<b>SALEM Total</b>			9	0	1	1	0	0	0	10
20	SIVAGANGAI	Principal District Court, Sivagangai	SC	2	0	0	0	0	0	0	2
	SIVAGANGAI	Judicial Magistrate No.1 Court, Sivagangai	STC	19	0	0	0	0	0	0	19
	SIVAGANGAI	Judicial Magistrate No.1 Court, Sivagangai	CC	1	0	0	0	0	0	0	1
	<b>SIVAGANGAI Total</b>			22	0	0	0	0	0	0	22
21	THANJAVUR	Principal District Court	CC	2	0	0	0	0	1	1	0
	THANJAVUR	Judicial Magistrate No.1 Thanjavur	STC	6	0	0	0	0	0	0	6
	<b>THANJAVUR Total</b>			8	0	0	0	0	1	1	9
22	THENI	Principal District Court	CC 1/12	1	0	0	0	0	0	0	1



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Sl. No.	Name of the District	Name of the Court	Category of Case (SC/CC/STC & others)	Opening Balance at the beginning of the month	No. of Cases Instituted during the month	No. of Cases Instituted by Transfer	Total	Convicted	Acquitted	Others	Number of cases disposed of during the month	Number of cases pending at the end of the month
			(b)	(c)	(d)	(e)	(d)+(e)	(f)	(g)	(h)		(i)
23	THEM Total			1	0	0	0	0	0	0		1
	THOOTHUKUDI	Principal District Court	Spl.Case	3	0	0	0	0	0	0		3
	THOOTHUKUDI	Judicial Magistrate Court, Tiruchendur	Sessions Case	3	0	0	0	0	0	0		3
24	THOOTHUKUDI Total			6	0	0	0	0	0	0		6
	TRICHY	Principal District Court	CC	4	0	0	0	0	0	0		4
	TRICHY	Principal District Court	SC	1	0	0	0	0	0	0		1
	TRICHY	Principal District Court	Spl.Cc	1	0	0	0	0	0	0		1
	TRICHY	Judicial Magistrate No.1	cc	2	0	0	0	0	0	0		2
25	TRICHY Total			8	0	0	0	0	0	0		8
	TIRUNELVELI	Principal Sessions Court	Special Case	2	0	0	0	0	0	0		2
	TIRUNELVELI	Principal Sessions Court	SC	1	0	0	0	0	0	0		1
	TIRUNELVELI	Judicial Magistrate No.1	CC	3	0	0	0	0	0	0		3
	TIRUNELVELI	Judicial Magistrate No.1	STC	2	0	0	0	0	0	0		2
26	TIRUPPUR	Principal District Court	CC	8	0	0	0	0	0	0		8
	TIRUPPUR	Judicial Magistrate Court No.1, Tiruppur	STC	5	0	0	0	0	0	0		5
27	TIRUPPUR Total			13	0	0	0	0	0	0		13
	TIRUVALLUR	Principal District Court	SC	1	0	0	0	0	0	0		1
	TIRUVALLUR	Principal District Court	CC	1	0	0	0	0	0	0		1
28	TIRUVALLUR Total			2	0	0	0	0	0	0		2
	TIRUVANNAMALAI	Principal District Court	SC	1	0	0	0	0	0	0		1
	TIRUVANNAMALAI	Judicial Magistrate Court No.1, Tiruvannamalai	CC	1	0	0	0	0	0	0		1
	TIRUVANNAMALAI	Judicial Magistrate Court No.1, Tiruvannamalai	STC	1	0	3	3	0	0	0		4
29	TIRUVANMALAI Total			3	0	3	3	0	0	0		6
	TIRUVARUR	Judicial Magistrate Court, Tiruvavur	CC	1	0	0	0	0	0	0		1

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Sl. No.	Name of the District	Name of the Court	Category of Case (SC/CC/STC & others)	Opening Balance at the beginning of the month	No. of Cases Instituted during the month	No. of Cases Instituted by Transfer	Total	Convicted	Acquitted	Other	Number of cases pending at the end of the month
			(b)	(c)	(d)	(e)	(d)+(e)	(f)	(g)	(h)	(i)
	TIRUVARUR	Judicial Magistrate Court No. I, Mannargudi	STC	1	0	0	0	0	0	0	1
	TIRUVARUR	Judicial Magistrate Court No.II, Thiruvannamalai	FIR Stage	5	0	0	0	0	0	0	5
	<b>TIRUVARUR Total</b>			7	0	0	0	0	0	0	7
30	Vellore	Principal District Court	S.C.	8	0	0	0	0	0	0	8
	Vellore	Chief Judicial Magistrate Court, Vellore	Spl.SC	1	0	0	0	0	0	0	1
	Vellore	Judicial Magistrate No.II Court, Tirupattur	PRC	1	0	0	0	0	0	0	1
	Vellore	Judicial Magistrate, Sholinghur	CC	1	0	0	0	0	0	0	1
	<b>Vellore Total</b>			11	0	0	0	0	0	0	11
31	Villupuram	Principal District Sessions Court, Villupuram	CC	9	0	0	0	0	0	0	9
	Villupuram	Spl. Court for SC/ST (POA) Act, Villupuram	Spl.SC	1	0	0	0	0	0	0	1
	<b>Villupuram Total</b>			10	0	0	0	0	0	0	10
32	VIRUDHUNAGAR	Principal District Court, Srivilliputtur.	CC	14	0	0	0	0	0	0	14
	VIRUDHUNAGAR	CJM Court, Srivilliputtur.	CC	3	0	0	0	0	0	0	3
	VIRUDHUNAGAR	Judicial Magistrate II, Srivilliputtur	SPL.CC	0	0	0	0	0	0	0	0
	VIRUDHUNAGAR	Judicial Magistrate, Rajapalayam	STC	11	0	0	0	0	0	0	11
	VIRUDHUNAGAR	Judicial Magistrate, Aruppukottai	STC	0	0	0	0	0	0	0	0
	<b>VIRUDHUNAGAR Total</b>			28	0	0	0	0	0	0	28
33	PUDUCHERRY	Chief Judicial Magistrate, Puducherry	STC	2	0	0	0	0	0	0	2
	PUDUCHERRY	Judicial Magistrate No.I, Puducherry	STC	3	0	0	0	0	0	0	3
	PUDUCHERRY	Judicial Magistrate No.II, Puducherry	C.C.	1	0	0	0	0	0	0	1
	PUDUCHERRY	Judicial Magistrate No.III, Puducherry	STC	5	0	0	0	0	0	0	5
	PUDUCHERRY	Judicial Magistrate No.IV, Puducherry	C.C.	4	0	0	0	0	0	0	4
	PUDUCHERRY	Judicial Magistrate No.IV, Puducherry	STC	0	0	0	0	0	0	0	0
	PUDUCHERRY	Sub Court cum Judicial Magistrate Court, Yanam	CC	2	0	0	0	0	0	0	2

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SLN o.	Name of the District	Name of the Court	Category of Case (SC/CC/STC & others)	Opening Balance at the beginning of the month	No. of Cases Instituted during the month	No. of Cases Instituted by Transfer	Total	Number of cases disposed of during the month	Number of cases disposed of during the month	Number of cases pending at the end of the month
			(b)	(c)	(d)	(e)	(d)+(e)	Convicted	Acquitted	Other s
								(f)	(g)	(h)
										(i)
		Sub Court cum Judicial Magistrate Court, Yanam	STC	4	0	0	0	0	0	0
PUDUCHERRY		Judicial Magistrate No-II, Karaikal	STC	13	0	0	0	0	0	13
PUDUCHERRY		Judicial Magistrate No-II, Karaikal	C.C	2	0	0	0	0	0	2
PUDUCHERRY Total				36	0	0	0	0	1	35
Grand Total				352	0	8	8	0	2	19
										339

49 The statement of fourth respondent in tabular form (scanned and reproduced supra) makes it clear that if the complaint regarding the same alleged offences, i.e., alleged offences under sections 276C(1), 277 of IT Act / said provisions read with section 278 of IT Act, are to be tried in the adjoining Chengalpeta judicial District or for that matter in any one of the 31 judicial Districts in Tamil Nadu (other than Chennai District), the accused will stand trial before a Judicial Magistrate, whereas in Chennai alone, accused will stand trial in a Sessions Court. This is clearly a disparity / lack of parity, is learned petitioners' counsel's say, but this leads to the question as to what is the prejudice caused to petitioners.

50 This straightaway takes us to the aspect of the Court of Sessions not being a court having original jurisdiction and committal being imperative for a court of Sessions to take up the matter. The answer of fourth respondent qua this aspect of the matter is predicated on ***Ranbir Yadav*** and ***Classic Credit*** principles laid down by Hon'ble Supreme Court in ***Ranbir Yadav Vs. State of Bihar*** reported in (1995) 4



**SCC 392** and **Securities and Exchange Board of India Vs. Classic Credit Limited** reported in **(2018) 13 SCC 1**. Predicating and positing submissions on these case laws, it was argued that in cases of transfer, committal is not necessary. This court also notices that **Classic Credit** case is an authority for the broad principle that a revision under section 397 Cr.P.C. cannot be claimed as legal right.

51 To be noted, with regard to committal, for Court of Sessions taking cognizance of a case without committal by a Magistrate, there are only two exceptions. One exception is an express provision in Cr.P.C in this regard and the other is any express provision in this regard in any other law. An express provision if any can at best be considered to be one under Section 280B(a) of IT Act, which talks about Special Court. The question of cases on hand being heard by a special court will arise only if so designated as mentioned in section 280A of IT Act. A perusal of section 280B of IT Act makes it clear that offences become triable by Special Court 'if so designated', but, no such designation has been made as far as Tamil Nadu is concerned. Therefore, lack of original jurisdiction for Sessions Court argument is saved by **Ranbir Yadav** principle though



ideally, transfer could have been made to II Metropolitan Magistrate Court.

52 As already alluded to supra, a perusal of section 26 of Cr.P.C makes it clear that offences on hand are triable by Magistrate courts. Absent Special court under Section 280A of IT Act, section 26 of Cr.P.C operates and section 26 of Cr.P.C more particularly, subsection (b) of section 26 makes it clear that offences on hand which are 'offences under any other law' are triable in accordance with the First Schedule to Cr.P.C.

53 In this regard, this court deems it appropriate to deal with arguments advanced regarding all determinants qua First Schedule to Cr.P.C and exclusivity of jurisdiction. With regard to First Schedule to Cr.P.C., a submission was made by pressing into service a decision of Hon'ble Supreme Court in ***Kamlesh Kumar Vs. State of Jharkhand*** reported in ***(2013) 15 SCC 460***. This submission/ argument was to the effect that with regard to First Schedule to Cr.P.C, the court by which offences is triable will apply only if all the other columns remain unaltered. Extending this argument, it was submitted that instant cases which fall under Part-II of First Schedule of Cr.P.C is relatable to

cognizable offences in the second column, whereas Section 279A of IT Act has made the offences on hand non cognizable offences.

54 This Court examined this argument. **Kamlesh Kumar** case pertains to what is referred to as Fodder Scam case in Bihar. Children of former Director of Department of Animal Husbandry assailed trial of FERA case against them by Sessions Court. Hon'ble Supreme Court held that offences for which petitioners in **Kamlesh Kumar** case were tried had been held to be non cognizable under section 56 of erstwhile FERA and therefore, there is no exclusivity.

55 This takes us to yet another aspect of the submissions of learned counsel for fourth respondent. That aspect of submission is that transfer though made on administrative side is traceable to Article 227 of the Constitution and section 407 of Cr.P.C. This argument is also predicated on Kamlesh Kumar principle, the case law being **Kamlesh Kumar Vs. State of Jharkhand** reported in (2013) 15 SCC 460.

56 As the entire exercise we are concerned with in these matters is solely owing to the directions of Hon'ble Supreme court (even according to respondents), this Court deems it appropriate to set out an interesting consequence of events, in England. This is pertinent to

matters on hand as it pertains to unwavering loyalty when it comes to hierarchy of Courts. This trajectory pertains to Courts of Appeal and House of Lords in England. In 1971, in a case which came to be known as Cassell case (*Broome Vs. Cassell Co. Ltd.* {[1971] 2 QB 354}), the question as to whether exemplary damages could be awarded arose. It was believed that answer to this question lay in an earlier judgment rendered by House of Lords in *Rookes Vs. Barnard* {[1964] AC 1129}. However, Lord Denning writing for the Courts of Appeal in *Cassell* case held that *Rookes* case is per incuriam and therefore, is not binding. *Cassell* case was carried to House of Lords which held in no uncertain terms that Courts of Appeal cannot avoid an otherwise binding precedent of House of Lords by merely declaring it as per incuriam. House of Lords held that it is necessary for each tier in the hierarchy of Courts including the Court of Appeal to accept loyally the decisions of the higher tiers. In other words, unwavering hierarchical loyalty was considered to be more important than judicial individuality. To be noted, *Cassell* case penned by Lord Denning for the Courts of Appeal was in 1971 and after it was carried to House of Lord, the decision was rendered by House of Lords in 1972. Interestingly, three years later, i.e., 1975, in *Schorsch Meier* case

(*Schorsch Meier G.m.b.H Vs. Henning* reported in *[1975] 1 AB 416*), the question as to whether an English Court can make an award qua a judgment in foreign currency arose. The answer to this question was readily available as it was blessed with a precedent in the form of a verdict of House of Lords in *Re United Railways of the Havana and Regla Warehouses [1961] AC 1001*, wherein House of Lords had held that English Court cannot make an award in a judgment in foreign currency. However, in *Schorsch Meier* case, Lord Denning applied cessante ratione principle and held that the rule laid down by House of Lords in *United Railways* case had become obsolete as the situation and circumstances which existed in 1961 when *United Railways* case was decided ceased to exist owing to changed dynamics and dimensions of economic condition. However, this *Schorsch Meier* case was not carried to House of Lords. Though *Schorsch Meier* case was not carried to House of Lords, a similar issue arose before House of Lords a year later, i.e., 1976 in *Miliangos Vs. George Frank (Textiles) Ltd.* reported in *[1976] AC 443*. This *Miliangos* case was before House of Lords presided over by five Lords, namely Lords Wilberforce, Simon, Cross, Edmund-Davies and Fraser. Interestingly, all the five in House of Lords

unanimously held that the earlier rule in *Re United Railways* that English Court cannot award a judgment in foreign currency should be changed. This means that the view taken by Lord Denning in *Schorsch Meier* case that *United Railways* principle had become obsolete stood vindicated. What is of utmost significance is, though House of Lords also held that *United Railways* principle had become obsolete (in *Miliangos* case), it held that Courts of Appeal which are bound by the rule of precedents are not free to disregard the verdict of a higher Court. To put it differently, it was held that the changed position qua *United Railways* has to be made by House of Lords themselves and not by Courts of Appeal. Therefore, 4th respondent / 3rd respondent non designating lone II Metropolitan Magistrate without approaching Hon'ble Supreme Court and now making an effort to take umbrage under Article 227 and section 407 of Cr.P.C does not impress this Court. This is more so, as option for designating more number of Metropolitan Magistrate Courts (if one designated court is overburdened) was always there. To put it otherwise, when Hon'ble Supreme Court has not directed magisterial offences to be transferred to Sessions Court, the same cannot be done by 3rd and 4th respondents by citing workload of one court, particularly when more courts are available



for designation. To be noted, Hon'ble Supreme Court has directed as many Sessions and as many Magisterial courts to be constituted / designated.

57 Therefore, ideally, either more number of Magistrate Courts should have been designated or Hon'ble Supreme Court should have been approached for suitable directions. This turns on fundamental principle of discipline in hierarchy of Courts. Therefore, the argument that transfer has the trappings / is traceable to Article 227 and Section 407 Cr.P.C is an argument which not only does not impress this Court, but it is an argument which cannot even be countenanced. However, all this takes us back to the question of what is the prejudice that has been caused to petitioners owing to all this.

58 With regard to the argument that petitioners were neither M.Ps / M.L.As nor former M.Ps / M.L.As on the date of alleged offence or on the date of launching complaints, as Hon'ble Supreme Court has directed all pending cases to be transferred, this argument fails.

59 Likewise, the argument that only one of the petitioners has become an M.P is of no avail to petitioners, as Hon'ble Supreme Court has directed transfer of all cases involving sitting / former M.Ps /M.L.As.

60 In the light of the discussion thus far, in the considered view of this Court, the clincher in this matter is absence of prejudice to petitioners. I attempt to capture all salient aspects of narrative/discussion/dispositive reasoning thus far, make a summation and present it in a nutshell which is as follows :

(a) Ideally, 4th and 3rd respondents should have designated more Metropolitan Magistrate Courts in Chennai, if the already designated II Metropolitan Magistrate Court is overburdened as Hon'ble Supreme Court has made it clear that as many Courts as necessary, fit and expedient can be designated at both Sessions and Magisterial levels.

(b) The argument of petitioners that one tier, namely, revision under section 397 of Cr.P.C is taken away does not hold water as courts have repeatedly held that revision under Section 397 Cr.P.C is not a legal right

as it is a discretionary relief.

(c) Notwithstanding the above, no prejudice has been demonstrated by petitioners owing to being asked to stand trial in a Sessions Court;

(d) With regard to standing trial in a Magistrate Court and standing trial in a Sessions Court, the lone difference projected before this Court pertains to further revision under section 397 Cr.P.C post appeal against conviction, if that be so. As the law is clear that revision is not a right unlike an appeal, this lone difference being canvassed as a ground by petitioners gets obliterated. The result is, in the cases on hand, as far as petitioners are concerned, there is no difference in standing trial in a Magistrate Court and standing trial in Sessions Court.

(e) Whether Economic Offences Court in Egmore is a Special Court within the meaning of section 280A of IT Act (absent notification from Central Government as far as Tamil Nadu is concerned) becomes an academic debate (as far as instant cases are concerned),

as Hon'ble Supreme Court has directed transfer from Special court also.

(f) Lack of parity between accused in Chennai and similarly placed accused in other 31 judicial Districts, as there are designated Judicial Magistrates in all other judicial districts is a larger issue and this court refrains itself from entering into that arena as petitioners are unable to demonstrate any prejudice to them owing to this lack of parity.

(g) Though there was II Metropolitan Magistrate as designated court on the date of actual transfer on 10.7.2019, the transfer to Sessions Court does not infract the rights of petitioners owing to section 292 of IT Act.

(h) Sessions Court lacks original jurisdiction argument is neutralized by **Ranbir Yadav** principle which says that committal is not necessary in a case of transfer.

(i) Therefore, petitioners' challenge to transfer fails and CrI.O.P.Nos.22136 and 22137 of 2019 fails.

61 Before parting with the cases on hand, as instant cases are Crl.O.Ps under section 482 Cr.P.C., this Court reminds itself of ***Govind*** principle laid down by Hon'ble Delhi Court in ***Govind Vs. State (Govt. of NCT of Delhi)*** reported in ***(2003) 68 DRJ 446 (DB)*** and ***Pepsi Foods*** principle being law laid down by Hon'ble Supreme Court in ***Pepsi Foods Ltd. Vs. Special Judicial Magistrate*** reported in ***(1998) 5 SCC 749***. These two principles, i.e., ***Govind*** principle and ***Pepsi Foods*** principle pertain to scope of powers of a Court under Section 482 Cr.P.C qua powers under Article 226 of the Constitution of India. Relevant paragraphs in ***Govind*** case law rendered by Hon'ble Delhi High court are paragraphs 61, 62 and 76. Relevant paragraphs in ***Pepsi Foods*** case law rendered by Hon'ble Supreme Court are paragraphs 14, 21 to 26. These relevant paragraphs read as follows:

**Paragraphs 61, 62 and 76 in Govind case :**

'61.The powers of the Courts under Article 226 are extremely wide as laid down in *Keshvanand Bharti's*(supra) case that these powers cannot be taken away even by amendment of the Constitution. In *Minerva Mills* (supra) the Court has characterised that the power of judicial review conferred by Articles 32 and 226 as part of basic structure of the Constitution. The Court observed that judicial review is



a vital principle of our Constitution and it cannot be abrogated without effecting the basic structure of the Constitution. Therefore, as far as the existence of the power is concerned, it cannot be doubted and the power of the court under Article 226 of the Constitution cannot be abridged, abrogated or diluted even by the amendment of the Constitution. Neither the power can be taken away by judicial pronouncement, nor by legislative enactment or even by the amendment of the Constitution.

62. All concerned may clearly appreciate this fact that the learned Single Judge exercises the powers of the High Court. In conclusion, it can be safely concluded that the existence of the powers of the learned Single Judge under Section 482 and Article 226 to quash the proceedings cannot be disputed or questioned. However, those powers have to be exercised in consonance with the well recognised principles laid down in a catena of cases by the Supreme Court.

76. When an aggrieved person approaches the court in a petition under Article 226 read with Section 482 of the Code of Criminal Procedure then the court is possessed with enormous powers to do justice or remove injustice. The Court's vast powers are meant to prevent any abuse of the process or to secure the ends of justice, both under Section 482 Cr.P.C and Article 226 of the Constitution. These powers must be exercised for the advancement of justice. Ends of justice are always higher than the ends of mere law

and for accomplishing that noble goal the courts have rightly been invested with adequate powers. '

**Paragraphs 14, 21 to 26 in Pepsi Foods case :**

'14. Under Article 227 of the Constitution of India the High Court has power of superintendence over courts. Clause (1) provides that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The High Court has power to issue certain writs, orders and directions under Article 226 of the Constitution. Clause (1) of Article 226, which is relevant, is as under:

“226. (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including (writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose).”

21. The questions which arise for consideration are if in the circumstances of the case, the appellants rightly approached the High Court under Articles 226 and 227 of the Constitution and if so, was the High Court justified in

refusing to grant any relief to the appellants because of the view which it took of the law and the facts of the case. We have, thus, to examine the power of the High Court under Articles 226 and 227 of the Constitution and Section 482 of the Code.

**22.**It is settled that the High Court can exercise its power of judicial review in criminal matters. In *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial

nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

**23.**In *Waryam Singh v. Amarnath* [AIR 1954 SC 215 : 1954 SCR 565] this Court considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence. The Court approved the decision of the Calcutta High Court in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* [AIR 1951 Cal 193] where the High Court said that the power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and

it acted quite properly in doing so.

**24.** In *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* [(1975) 1 SCC 858 : AIR 1975 SC 1297] this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not, while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate court or tribunal and that its function was limited to seeing that the subordinate court or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, “as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings”. The Court referred with approval the dictum of Morris, L.J. In *R. v. Northumberland Compensation Appeal Tribunal* [(1952) 1 All ER 122] .

**25.** In *Nagendra Nath Bora v. Commr. of Hills Division* [AIR 1958 SC 398 : 1958 SCR 1240] this Court observed as under:

“It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of



interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.”

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution. '

62 In the light of the aforementioned ***Govind*** principle and ***Pepsi Foods*** principle, this Court deems it appropriate to make a parting observation that 4th and 3rd respondents in first and second Crl.O.Ps will

CrI.O.P.Nos.22136 and 22137 of 2019, 1526 and 1527 of 2020

do well to designate one or more Metropolitan Magistrate/s in Chennai for trying criminal cases related to elected M.Ps/M.L.As, in accordance with the directives of Hon'ble Supreme Court in Ashwini Kumar Upadhyay case which is the basis for this entire matter. Though obvious, it is made clear that this order will be an impetus to 4th and 3rd respondents for an exercise in this direction.

63 In the light of narrative, discussion and dispositive reasoning thus far, all four Criminal Original Petitions, namely CrI.O.P.Nos.22136 and 22137 of 2019, 1526 and 1527 of 2020 are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are dismissed.

12.05.2020

Index : Yes/No

Speaking Order

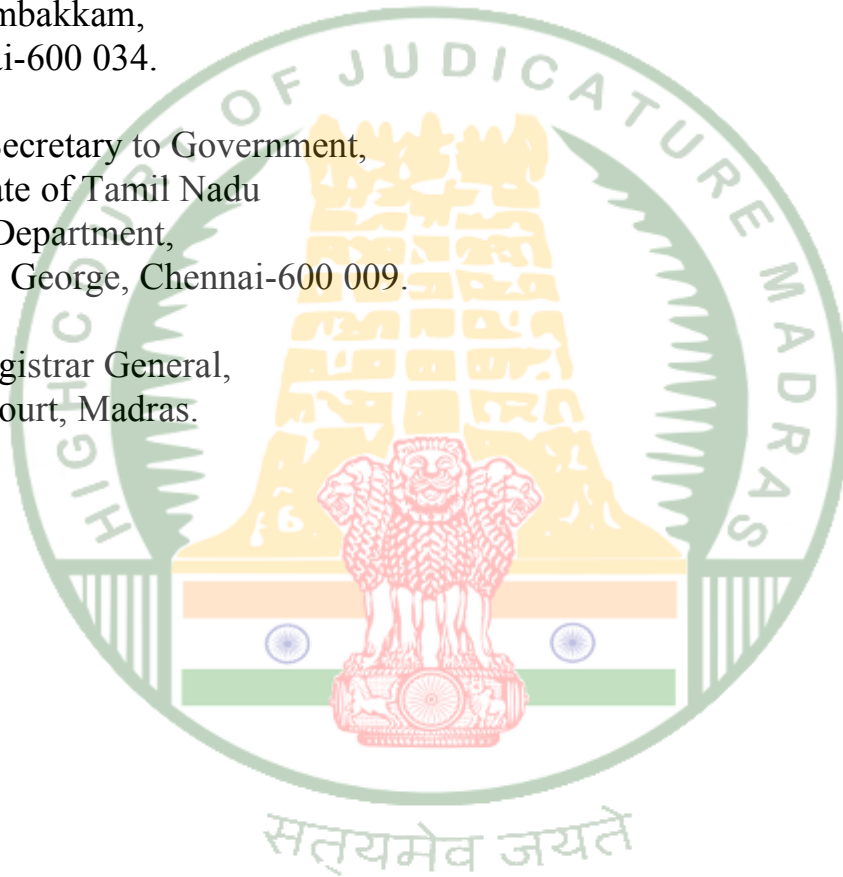
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**P.S.:**

This order was pronounced today through a video conferencing listing after due prior notification in the cause list under the caption 'FOR PRONOUNCING ORDERS'.

To

- 1.The Deputy Director of Income Tax (Investigation),  
Unit-3(2),  
Room No.120, 1st Floor, Investigation Wing Building,  
No.45, Old No.108, Uthamar Gandhi Road,  
Nungambakkam,  
Chennai-600 034.
- 2.Chief Secretary to Government,  
The State of Tamil Nadu  
Home Department,  
Fort St. George, Chennai-600 009.
- 3.The Registrar General,  
High Court, Madras.



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M.Sundar, J.

vvk



order in  
Criminal O.P.Nos.22136 and 22137 of 2019  
and 1526 and 1527 of 2020

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12.05.2020