

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.08.2020

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.O.P.(MD)Nos.7655 & 7656 of 2016
and
Cr1.A.(MD)Nos.373 & 374 of 2017

Cr1.OP.(MD)Nos.7655 & 7656 of 2016:

Anshul Mishra

.. Petitioner in both petitions

v.

1.The District Collector,
Madurai District,
Madurai.

2.P.Palanisamy

3.P.Suresh Kumar

.. Respondents in Cr1.OP(MD) 7655/16

1.The District Collector,
Madurai District,
Madurai.

2.Sahadeven

.. Respondents in Cr1.OP(MD) 7656/16

COMMON PRAYER: Petitions filed under Section 482 of the Criminal Procedure Code to expunge the remarks made against the petitioner by the learned Judicial Magistrate in C.C.Nos.82 & 83 of 2013, respectively, dated 29.03.2016.

For Petitioner : Mr.T.Antony Arulraj

For Respondents : Mr.A.Natarajan
State Public Prosecutor
Assisted by
Mr.Mohammed Muzzamil
Government Advocate (Crl. Side)
for R.1
(in both petitions)
Mr.P.Anbu Selvam
for R.2 & R.3
in Crl.OP (MD) .7655/16
Mr.M.Sivasankar
for R.2
in Crl.OP (MD) .7656/16

Crl.A. (MD)Nos.373 & 374 of 2017:

The District Collector,
Madurai District,
Madurai.

.. Appellant in both appeals

v.

1.P.Palanisamy

2.P.Suresh Kumar

.. Respondents in Crl.A(MD) 373/17

1.Sahadeven

.. Respondent in Crl.A(MD) 374/17

COMMON PRAYER: Appeals filed under Section 378 of the Criminal Procedure Code to call for the records in connection with the order passed by the learned Judicial Magistrate, Melur, in C.C.Nos.82 & 83 of 2013, respectively, dated 29.03.2016, and quash the same.

For Appellant : Mr.A.Natarajan
State Public Prosecutor
Assisted by
Mr.Mohammed Muzzamil
Government Advocate (Crl. Side)
(in both appeals)

For Respondents : Mr.K.P.S.Palanivel Rajan
(in Crl.A(MD).373/17)
Mr.R.Srinivasan
(in Crl.A(MD).374/17)

COMMON JUDGMENT

The Criminal Appeals in Crl.A(MD)Nos.373 & 374 of 2017 are filed by the State, under Section 378 Cr.P.C., as against the order passed by the learned Judicial Magistrate, Melur, under Section 256 Cr.P.C., in C.C.Nos.82 & 83 of 2013, dated 29.03.2016.

2. By the said orders dated 29.03.2016, the learned Magistrate, dismissed the complaints filed by the District Collector, Madurai, for his non-appearance under Section 256 Cr.P.C. and acquitted the respondents / accused from the charges under Sections 4(1-A) r/w 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. Apart from the aforesaid offence, the complaints were also filed

to confiscate the multi-colour granite blocks seized from the respondent's / accused's land in Keelayur Village, Melur Taluk; and to dispose of the granite blocks as provided under Section 21(4-A) of the Mines and Minerals (Development and Regulation) Act, 1957. Aggrieved over the same, the State has preferred the criminal appeals.

3. While dismissing the complaints, the learned Magistrate has also made certain observations that Mr. Anshul Mishra, I.A.S., the then District Collector, Madurai, has filed the complaints in his official capacity as District Collector, Madurai, but, as on the date of lodging of the complaint, he is not the District Collector, Madurai and thereby, committed the offence under Sections 181, 182, 193 & 199 IPC. The learned Magistrate further observed that the learned Special Public Prosecutors have also aided the complainant in the said offence and therefore, directed the Head Clerk to lodge a complaint under Section 197(1b) Cr.P.C., after getting appropriate orders from the Government.

4. Aggrieved over the aforesaid observations made by the learned Judicial Magistrate, Melur, in C.C.Nos.82 & 83 of 2013, dated 29.03.2016, Mr.Anshul Mishra, I.A.S., the then District Collector, Madurai, has filed CrI.OP.(MD)Nos. 7655 & 7656 of 2016, to expunge the remarks made against him.

5. When the appeals were listed for final hearing on 10.02.2020, a representation was made on behalf of the State about the pendency of the aforesaid connected criminal original petitions and sought to take them along with the appeals. Based on the said request, the matters were placed before the Hon'ble Administrative Judge of the Madurai Bench of Madras High Court and as per the orders of the Hon'ble Administrative Judge, the criminal original petitions were listed before this Court, as specially ordered case along with the appeals.

6. The grievance of the petitioner in the original petitions is that while he was discharging his duty as District Collector of Madurai District from 28.05.2012 to

06.07.2013, on receipt of complaints regarding illegal mining, transportation and storage of minerals in Madurai District, he formed a special team to conduct a comprehensive, scientific, systematic inspection in all the granite quarries in Madurai. In the said inspection, the special team noted several illegal quarry operations and submitted a report. Based on that report, the petitioner, as District Collector, has taken action in accordance with the Mines and Minerals (Development and Regulation) Act, by filing the complaints before the competent Court, namely, the learned Judicial Magistrate, Melur, as contemplated under Section 200 Cr.P.C., r/w 22 of Mines and Minerals (Development and Regulation) Act.

7. According to the petitioner in the original petitions, an office note along with the complaints was presented to him on 04.07.2013 and he has approved the note file and also sent the complaints for filing before the learned Judicial Magistrate, Melur. Thereafter, the papers were handed over to the learned Special Public Prosecutor and after collecting the necessary documents, the learned

Special Public Prosecutor presented the complaints before the Court only on 18.07.2013. In the meantime, the petitioner, the then District Collector of Madurai District was transferred and posted as Joint Commissioner, Commercial Tax on 06.07.2013. But, the learned Magistrate, in his order dated 29.03.2016, while dismissing the complaints for non-prosecution under Section 256 Cr.P.C., has also made certain observations as against this petitioner as well as the learned Special Public Prosecutors that the complaints were filed ante-dated and they have committed the offence under Sections 181, 182, 193 & 199 IPC.

8. In support of these petitions, Mr.Murali, learned Counsel representing Mr.T.Antony Arulraj, learned Counsel on record for the petitioner in the criminal original petitions, made his oral and written submissions. He submits that by referring the date of filing and the date of transfer, the learned Magistrate inferred as if the complaints were filed, ante-dated, after the transfer of the petitioner, that too, without providing an opportunity

to the petitioner. Moreover, this ground was not raised by the learned Magistrate at the time of taking cognizance of the complaint and it is not even the case of the respondents / accused. There is no material placed before the trial Court by any one, including the accused, to show that the petitioner never held the post of District Collector, Madurai or signed the complaints, ante-dated, after his transfer from the said post.

9. The learned Counsel has also relied upon the decisions of the Hon'ble Supreme Court in **State of U.P. v. Mohammad Naim**, reported in **AIR 1964 SC 703**; **Jage Ram, Inspector of Police v. Hans Raj Midha**, reported in **1972 1 SCC 181**; and **Dr. Dilip Kumar Deha v. State of Assam**, reported in **(1996) 6 SCC 234** and submitted that the observations of the learned Magistrate are unwarranted and uncalled for, without even providing the petitioner an opportunity of hearing.

10. When the matter came up for hearing on 07.08.2020, the learned State Public Prosecutor for the appellant as

well as the respective learned Counsel for the respondents / accused fairly conceded that the order of the learned Judicial Magistrate in C.C.Nos.82 & 83 of 2013, dated 29.03.2016, shall be set aside and the matter may be remanded back, by fixing a specific date and time for the examination of the complainant / District Collector. The respective learned Counsel for the respondents / accused further undertook that they would also complete their cross examinations on the date of examination of the complainant / District Collector, without fail. Mr.K.P.S.Palanivel Rajan, learned Counsel for the respondents / accused in Crl.A.(MD)No.373 of 2017 insisted that the complainant / District Collector, apart from his all other duties, must also pay some respect to the Court proceedings.

11. Insofar as the Criminal Original Petitions are concerned, the learned State Public Prosecutor submitted that if the appeals are allowed by setting aside the impugned judgment, then automatically the observations made therein would also be set aside.

12. Recording the submissions made by the respective learned Counsel, this Court posted the matter for judgment, to the next working day (today), as follows:

"Today, when the matters are taken up for hearing, the learned State Public Prosecutor appearing for the appellants in Crl.A(MD)Nos.373 and 374 of 2017 submits that these appeals are arising out of an order passed by the learned Judicial Magistrate under Section 256 CrPC that the District Collector failed to appear before the trial Court for two years. It is only due to the burden of his work, the then District Collector was not in a position to appear before the trial Court and sought indulgence of this Court to provide one more opportunity for the State to complete the evidence by examining the District Collector before the trial Court within a stipulated time as per the direction of this Court.

2.Mr.K.P.S.Palanivel Rajan, learned counsel for the respondents in Crl(MD)No.373 of 2017 has also agreed to the submission made by the learned State Public Prosecutor and requested that the District Collector shall also give importance to the legal proceedings and give his evidence within the stipulated time.

3.Mr.Srinivasan, learned counsel represents

that he has entered appearance for the respondent in Crl.A(MD)No.374 of 2017 and has filed his vakalath today. The learned Counsel Mr.Srivinasan submitted that he is adopting the arguments advanced by the learned counsel Mr.K.P.S.Palanivel Rajan.

4.Mr.Antony Arul Raj, learned counsel for the petitioner in the original petitions submitted that he has already filed his written submissions and the respondents in these cases are only formal parties. He also submits that even there is no material to show that the District Collector has signed the complaint ante dated, but the learned Judicial Magistrate has observed, as if the complaint was filed ante dated. He also submits that it is not even the case of the accused that the complaint was filed ante dated and not even a suggestion was made to the officers, who were examined as a prosecution witnesses in these cases.

5.In so far as the Criminal Original Petitions are concerned, the learned State Public Prosecutor, submits that if the appeals are remanded back to the trial Court for further trial, automatically the impugned orders will dissolve and there is no further order required in these petitions.

6.Mr.Anbu Selvam, learned counsel for the

respondent in Original Petitions submitted that though he is a formal party, he would like to bring to the knowledge of this Court the fact that the complaint in this case has been filed by the District Collector, in a mechanical manner, without even mentioning the date in the complaint and the learned Magistrate also took cognizance of the undated complaint.

7.This Court is of the view that if the argument of the learned Counsel Mr.Anbu Selvam is accepted, it is not only the responsibility of the District Collector, but it is also the responsibility of the learned Assistant Public Prosecutor, who has filed the complaint, the concerned Court Official, who has numbered it and the learned Judicial Magistrate, who has taken cognizance of the same. Therefore, this ground raised by Mr.Anbu Selvam, learned counsel could not be a reason to give findings against the then District Collector, as if the complaint has been filed as ante dated.

8.Heard both sides. Arguments concluded.
Post the matter 'for judgment' on 12.08.2020."

13. But, on 07.08.2020, after completion of the proceedings, this Court, at about 05.00 pm, received a

complaint placed by the Registrar (Judicial), Madurai Bench of Madras High Court, Madurai, received from one P.Sureshkumar, one of the respondents / accused in Crl.A. (MD)No.373 of 2017. The complaint is extracted hereunder:

"

Date 06.08.2020

From

P.Suresh Kumar,
S/o.P.Palanichamy,
379, Sarveshwarar Kovil Street,
Anna Nagar,
Madurai - 625 020.

To

The Registrar Judicial,
Madras High Court at Madurai Bench,
Madurai.

Respected Lordships,

Sub : Non refusal of Justice Shri
B.Pugalenthil, J in Crl.A.No.373 of 2017
(District Collector-Vs-PRP Granites) in spite of
appearing against us in a number of cases in the
capacity of Special Government Pleader and
Additional Advocate General. Further, addressing
in public forum that his elevation as Judgeship
was delayed by 5 years because of granite lobby.

We are writing this letter with much anguish,
reluctance and a deep sense of unease. We would like to
submit before lordships that we have absolute faith and
respect in this esteemed institution.

We own and operate a company in the name and style
of PRP Granites and PRP Exports, which are involved in

the business of mining and exporting granites. The said firms are in operation in compliance with all the provisions of law.

When the matter stood thus, a number of proceedings started from 2012 and initiated against our firm on the ground that we had indulged in illegal mining. We have been defending the same in different forums across the state. It is respectfully brought to your cognitive consideration that, Justice Shri B.Pugalenthiraj (then Special Government Pleader, Additional Advocate General) appeared against us in a number of cases. The details of the case are listed below:

Sl.No	Case No.	Subject	Respondents	Order Date
1	W.P. (MD)No. 12441 & 12442 of 2012	Declaring that the action of the Respondent s in sealing the petitioner factory and others	1.The Chief Secretary 2.The Industries Secretary 3.The District Collector, Madurai 4.The Superintendent of Police, Madurai	02.11.2012
2	W.P. (MD)No. 5040 & 5041 of 2013	To challenge the Suspension orders (2 Nos)	1.The Industries Secretary 2.The District Collector, Madurai	23.04.2013

3	SLP(C)No. 18662 & 18663 of 2013	SLP on sealing the petitioner factory and others	1.The Chief Secretary 2.The Industries Secretary 3.The District Collector, Madurai 4.The Superintendent of Police	09.12.2013
4	W.P. (MD)No. 3012 to 3017, 3427 to 3432, 6238 of 2013	To challenge the Show Cause Notices (13 Nos)	The District Collector, Madurai	02.09.2014
5	W.P. (MD)Nos. 5100 to 5112 of 2013 and 6232 to 6234 of 2013	To challenge the Deemed Lapse Notice (16 Nos)	1.The Industries Secretary 2.The District Collector, Madurai	02.09.2014
6	W.P. (MD)No. 20166 & 20167 of 2013 and 15584 & 15585 of 2014	Alleged unauthoriz ed storage of granite blocks	1.The Industries Secretary 2.The District Collector, Madurai	05.11.2014

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7	W.P. (MD)No. 20226 & 20227 of 2014	Directing the Respondent to Defreeze the bank accounts and lift cargo	The Deputy Superintendent of Police, PEW, Madurai	22.12.2014
8	W.A. (MD)No. 1505 to 1517 of 2014	To challenge writ order relating to Show Cause Notices (13 Nos)	The District Collector, Madurai	23.12.2014
9	W.A. (MD)No.4 & 5 of 2015	Directing the Respondent to Defreeze the bank accounts and lift cargo	The Deputy Superintendent of Police, PEW, Madurai	29.01.2015
10	W.P. (MD)No. 20226 & 20227 of 2014	Directing the Respondent to Defreeze the bank accounts and lift cargo	1.The Deputy Superintendent of Police, PEW, Madurai 2.The Commissioner of Geology and Mining, Chennai	16.03.2018

We humbly submit that the learned Judge had appeared against our firms in more than 200 occasions in the court and continued to appear in those cases

till his elevation as the Judge of the Hon'ble High Court of Madras.

Furthermore, the Hon'ble Judge in a public forum (Keren Public School, Madurai dated 08.02.2020) made shocking comments about Madurai granite quarrying operators.

In the said address, the learned Judge stated that his elevation to the Hon'ble High Court of Madras as Judgeship was delayed by a period of 5 years due to granite lobby.

The verbatim of the relevant portions of the speech is listed below:

"Natural resources are common to all,
it is natural gift given by God,
I fought so that those natural resources are
not taken

by any private persons.

If you fight against rich people you will face
problems.

I suffered a lot.

My name was recommended for Judgeship in the
year 2013, but I was elevated only in the year
2018.

5 years some people who have suffered at pain
at me they see to that I have not reached that
position for 5 years."

We humbly submit that your Lordships are well
aware that the above made assertion is an

impossibility. (The Video of the Speech is attached with this Letter).

When the factual matrix stood as stated above, a private complaint germane from the facts of the above mentioned Criminal Appeal was preferred by the District Collector, Madurai to the file of Judicial Magistrate, Melur for offence punishable u/s 4(1-A) of the Mines and Minerals (Development and Regulation) Act 1957 in C.C.No.82 of 2013 and that on 29.03.2016 we had been acquitted in the said case. The said acquittal order was challenged by the District Collector, Madurai before the Madurai Bench of Madras High Court in Crl.A.No.373 of 2017 and the same is pending. The said Appeal is posted on 22.07.2020 and at that time we mentioned that the Lordship had appeared earlier before High Court as many as 60 cases in more than 200 hearing and engaged in acting in aid, advise in defending the District Collector against us as a Government Pleader and Additional Advocate General. But, the learned Judge Shri Justice Shri B.Pugalenthai was pleased to post the matter on 30.07.2020 for hearing. That on 29.07.2020 we have filed a petition for seeking relief to adjourn the case sine die for the reasons stated that the Lordship have appeared against us and other reasons stated in the affidavit. That on 30.07.2020 the above case came up for hearing before the learned Judge and at that time on behalf of us it was informed that the adjournment petition filed and seeking relief the case

has to be adjourned sine die. However, the petition was not numbered.

At the time of hearing, the learned Judge in an unprecedented manner has refused to recusal himself and in insisting on deciding the appeal finally in contravention to the notification (Notification No.142 of 2020 dated 13.07.2020) issued by the Madras High Court, which mandated that final hearing matters is to be taken up only on the consent of the parties. The relevant portions of the notification is extracted below:

"It is further resolved to take up Final Hearing stage cases of all classification only upon consent from both side Advocates. The listing of cases with the above changes will come into effect from 14.07.2020."

We humbly submit that our consent in accordance with the said notification was never sought and we would not be in a position to mount an effective defense in the Criminal Appeal over video conference, in spite of the same, an unwavering insistence to conduct the case is placed on us by the learned Judge.

We humbly state that the fundamental basis of adversarial system of adjudication is that the opposing party has an opportunity to counter the allegations against the party (including the character of the accused). In the instant case, the learned Judge has received information and opinions from the complainant

under the attorney client privilege, thereby preventing the countering of the said allegations leveled against us. We have reasonable apprehension in the proceeding before this court would be in contravention to the principles of natural justice.

We humbly submit that there exists no pressing urgency mandating the adjudication of the Criminal Appeal against acquittal in such an expeditious manner.

Furthermore, the learned judge recused himself in another Criminal Original Petition in Crl.O.P.No.2928 of 2017 on 02-12-2019 (order enclosed), which had been preferred against us, to which he had directed that the case to be posted before some other court after getting necessary permission from the Administrative Judge. It is further submitted that, no prejudice will be caused to the complainant, if the same is adjudicated by any other Judge of the Hon'ble High Court.

We humbly state that today 06.08.2020, the above case were listed, in spite of drawing the attention of the Hon'ble Court regarding Notification No.142 dated 13.07.2020 request not to list final hearing case during the Pandemic period. However, the learned Judge had raised various questions as to why consent could not be given and was stating as to why the Court should wait to take these case.

We humbly state that the Hon'ble Court also been informed that we are working at our right before Apex Court, he has expressed that in respect of the

Notification he could hear and allow the appeal u/s.386 Cr.P.C.

We humbly state that when listing itself was in deviation of the circular, it could not be justified to list the case tomorrow for orders, implied by violation the procedure establish by law as per our Constitution of India.

We humbly state that the learned Judge attributes the delay in his elevation to Hon'ble High Court by the granite lobbies. In such a factual backdrop, it is an impossibility to get fair and unbiased adjudication of the Criminal Appeal. Hence, I pray for the interference by your esteemed office in ensuring a fair and unbiased adjudication and consequently direct the posting of the matter before any other Judge of the Hon'ble High Court.

Thanking you,

Yours faithfully

Sd/-

(P.Suresh Kumar)

Encl:

1.Cr1.O.P. (MD) No.2928 of 2017 Case order dated 02.12.2019.

2.Cr1.O.P. (MD) No.7655 of 2016 Case order dated 30.07.2020.

3.The Video clippings of the speech delivered by the Hon'ble Judge."

14. This is the third attempt made on behalf of the respondents / accused to intimidate this Court to get away from these cases. This complaint dated 06.08.2020 is also made with the very same averments raised on behalf of the respondents / accused on 30.07.2020 and 06.08.2020. But on those allegations, this Court passed detailed orders and for better understanding the earlier orders are annexed along with this order. In addition to the grounds raised earlier, the respondents / accused have referred to a speech addressed by me in an annual day programme in a school at Madurai on 08.02.2020. In fact, initially I refused to accept the meeting, but, since the request was made from a respectable member from the BAR, I accepted to give a speech in the meeting and gave a motivational speech to the students of the school. In the said function, while the Principal referring to my works in his introduction speech mentioned certain wrong particulars on the cases conducted by me and for correcting the same, I referred about the number of granite cases, I appeared before the Madurai Bench of the Madras High Court. As a Special

Government Pleader and as an Additional Advocate General, I appeared in a number of Writ Petitions on granite issues before the Madurai Bench as well as before the Principal Seat at Madras. The Madurai District Administration has not only initiated action as against the firms of the respondents / accused, but against almost all lessees. 185 granite leases were granted in Madurai District to various lessees and the respondents / accused is having more leases. Inspections were carried out by the special team constituted by the then District Collector and violations were noted in more than 90 quarries. As against those violations, the District Collector initiated action in accordance with law. I appeared as a Special Government Pleader and as an Additional Advocate General on a Government Order in the Writ Petitions filed before the High Court. To my remembrance, I did not appear in the criminal complaints filed by the District Collector before the learned Magistrate and on these appeals pending before this Court. I proceeded with this case only after ascertaining from the order sheet and after verifying with the respective Counsel to these cases that I never appeared

in the present proceedings pending before this Court.

15. As a Special Government Pleader and as an Additional Advocate General, I have not only dealt with the cases on granite issues, but also dealt with the cases arising out of Garnet Quarry, Sand Quarry etc., One way or the other, I would have appeared as a Government Counsel against almost all the mining lessees in the State of Tamil Nadu and therefore, on this ground, it is not proper to state that I should not discharge my duty as a Judge on the Mines and Mineral issues. [Emphasis may be given to the earlier order dated 30.07.2020].

16. Lord Krishna in Bagavat Gita has reminded the importance of duty to Arjuna as **"Do Your Duty, Don't Fret Over the Result.** In Tamil: கடிமையை செய், பலனை எதிர்பாராதே". These words are not for Arjuna alone, but for the entire mankind. Almost all the religions emphasise the duty of individuals. In discharging our duties, we face several difficulties and unmindful to the same, we must do our duty with due diligent. This is what I intended to convey in the

speech made before the students. I just reminded the gathering about the duties of the Students, Teachers and Parents and requested them to realise their duty and to discharge their duty with their utmost ability and sincerity and only then, we can expect a better society. This motivational speech given to the students has been doctored, by editing in such a way and projected as if this Court is against the respondents / accused.

17. Now a days, if anybody, reminds the duty, they are viewed differently. As an individual person, everybody expects their servants to be loyal and sincere to them, but, at the same time, if the Government servant does his duty sincerely and diligently, it is viewed in a different manner, as a sin. This is how our values have evolved.

18. I have not referred anything about these respondents / accused in that speech made in the school function and the speech has been edited in such a way and circulated to pressurize this Court to get away from these cases. This Court is not having any motive or ill-will

against the respondents / accused. If my remembrance is correct, in fact, I have conceded as a Government Counsel, as against the respondents / accused, in certain proceedings, where, the Government was not having a good case. Though the respondents / accused pointed out in their complaint that as a Government Counsel I appeared against these respondents / accused in certain proceedings for more than 200 occasions, they did not point out any single instance, where I misled or wrongly projected the case of the respondents / accused, in those proceedings.

19. As a Judge, we are expected to be aloof from the society. But at times, on the request of some respectable persons, we are accepting certain invitations and similarly I accepted and participated in that school annual day programme. Now I realise, how even this motivational speech can be doctored to the convenience of certain parties and can be projected in such a way.

20. Judicial independence is defined as a pre-requisite to the rule of law and a fundamental guarantee of a fair

proceedings. A Judge shall exercise the judicial function independently on the basis of the Judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

21. I am also reminded with the harsh criticism of Hon'ble Mr.Justice V.R.Krishna Iyer. His Lordship has addressed a letter to His Excellency the Governor of Kerala as well as the Hon'ble Chief Justice of Kerala High Court, on the recusal of three Judges of the Kerala High Court from hearing an appeal, stated that every Judge is obliged by his oath of his office to hear every case posted before him and do justice and that not to hear a case or decline to do justice is breach of the solemn obligation vested in them. In fact, His Lordship has also opined that such recusal should invite impeachment by Parliament or dismissal by the President.

22. It is relevant to refer to one more judgment of the

Hon'ble Supreme Court in **Trishala Vs M.V.Sundar Raj and another**, reported in **(2010) 15 SCC 714**, wherein the Hon'ble Supreme Court has held that simply because the learned Judge whilst at the Bar was a Standing Counsel for the Municipal Corporation, it cannot be held that he is precluded either in law or on propriety from hearing any case in which a Corporator is a party in his personal capacity; more so, when the relevant facts were not brought to his notice. So far as another RFA wherein the learned Judge has rescued himself is concerned, that has no relevance to that case. A Judge may not necessarily remember the cases in which he had appeared for a party whilst at the Bar and in all fairness to the Judge, the parties and the counsel owe a duty to bring to his notice such facts as would disable him from hearing a case placed before him. Observing such, the Hon'ble Supreme Court held that the attention of the learned Judge of the High Court should have been invited to the relevant facts and there is no reason to hold why the learned Judge would not have recused himself, if at all a ground for doing so would have been made out and if only he would have been alive or made

alive to such facts.

23. In the course of hearing, on 07.08.2020, the learned State Public Prosecutor and the respective learned Counsel for the respondents have agreed that the only remedy in these appeals is to remand back the matter for fresh consideration. The complaints were dismissed without even hearing the complainant / District Collector. A District Collector is in charge of the entire District. By his position, he is also serving as a District Magistrate. As a complainant before the Court of Law, no doubt, he is duty bound to give evidence. At the same time, the learned Judicial Magistrate ought to have considered his nature of work that he cannot avoid a public grievance day or any other law and order issue.

24. According to Mr.Murali, learned Counsel for the petitioner in the Criminal Original Petitions that these are the first complaints filed for confiscation of vehicles by invoking Section 21(4-A) of the Mines and Minerals (Development and Regulation) Act and the same is

also acknowledged by Mr. Anbu Selvam, one of the Counsel for the respondents / accused. Though I have not verified the same, in yet another proceedings before a Division Bench, where Myself sitting along with Hon'ble Mr. Justice M. SATHYANARAYANAN in a sand quarry issue, called for details on the number of complaints filed for confiscation of vehicles seized for illegal mining by filing complaints by the District Collectors under Section 21(4-A) of the Mines and Minerals (Development and Regulation) Act and it was replied that apart from the Madurai District, only in the year 2017-18, certain complaints were filed in Tiruchirappalli District. However, most of the District Collectors have not opted to file any complaint for confiscation of vehicles involved in illegal mining. Though Section 21(4-A) of the Mines and Minerals (Development and Regulation) Act mandates the competent authority / District Collector to file complaints before the competent Court for confiscation of vehicles, which were seized for illegal mining, most of the District Collectors have not complied with this mandate. The petitioner in the Criminal Original Petitions,

who acted diligently, as per law, as mandated in the Act, has also been slapped with allegations of perjury without any basis and driven to the extent of defending himself, by engaging a private counsel to prove his innocence, for having discharged his duties. Though he filed these complaints in his official capacity as a District Collector, on behalf of the State, as mandated under the Act, it is unfortunate even the State has not come in rescue of an Officer, who has discharged his duty diligently on behalf of the State.

25. Though there is no complicated legal issue involved in these cases, the appeals are pending for three years, wherein the complaints were dismissed that the District Collector did not appear for two years. The respondents / accused are enjoying the order of acquittal for three years, even without a trial and they may intend to retain this favourable order of acquittal for some more time. But the Advocates, being the Officers of the Court, owe certain duties not only to their clients, but also to the Court. No party to a litigation may stoop to this extent, without

the knowledge of his Advocate. The Advocates before throwing mud on the Judge, must realise that by doing so, they are attacking themselves and the Institution. As a Judge and an Advocate, we command certain respect and privileges in the society and the same are derived from this Institution and its judgments.

26. As discussed supra, the appeals are arising out of an order passed under Section 256 Cr.P.C. for the non-appearance of the complainant. The grievance of the State in the appeals is without providing an opportunity to adduce evidence, the learned Judicial Magistrate adopted a shortcut method to acquit the accused. The grievance of the petitioner in the Criminal Original Petitions is that without hearing him, certain wild allegations were made against him for having discharged his duty. *Audi Alteram Partem* is the basic principle of Law that the other side has to be heard before passing any adverse orders. In fact, most of the petitions are filed before this Court only on this principles of violation of natural justice. The appeals are pending for three years and the original

petitions are pending nearly for four years. The learned Counsel for the respondents / accused have fairly conceded before this Court to remand back the complaint for fresh consideration. They also admitted that they have availed 'N'-number of similar such reliefs in the complaints, initiated under Section 138 of Negotiable Instruments Act, which were dismissed for the absence of the complainant under Section 256 Cr.P.C. But, even then, in the original petitions and in the appeals, different Counsel were engaged by the respondents / accused though the issue in both matters are one and the same.

27. The rosters are changed every three months and if a particular day is convenient for the appellant's / petitioner's Counsel, it is not convenient for any one of the respondents' Counsel and thus, the cases are adjourned. The parties, who are enjoying favourable orders, will not come forward to proceed with the case and the other side are the ultimate sufferer. Even before this Court, the parties could have easily evaded from conducting the case by referring to the present COVID-19 Pandemic, or any other

reason. But instead, they have chosen to throw some baseless allegations and therefore, this Court proceeded by answering those allegations.

28. The District Collector / petitioner in Criminal Original Petitions is vindicated for having discharged his duty diligently. He is waiting for justice for the past four years. But the petitions could not be taken up for hearing, one way or the other. The order of the learned Judicial Magistrate has not followed the basic principles in deciding the issue. Allowing this order to survive even for a minute is a grave injustice to the petitioner in the criminal original petitions. The parties to the proceedings as well the learned Counsel know this very well. Even then, they are expecting this Court to shut its eyes and to adjourn the cases mechanically on their baseless allegations and to maintain the principle that justice not only to be done, but also seems to be done. The respondents are enjoying the order of acquittal without even a trial, and can stoop to any level to retain the order. But the learned Counsel should have advised them about the scope of

the litigation pending before this Court. This Institution is not only for the respondents / accused, but is also answerable to the petitioner, who is expecting justice from this Institution for the past four years.

29. Honesty and integrity became rare qualities now a days. Most of the Government servants lose their sincerity, since their salary is assured, even if they do not work. At present, very few officials are working with honesty, integrity and sincerity and even those officers are afraid of the consequences and avoid their duties. As pointed out by the learned Counsel for the petitioner as well as the learned Counsel for the respondents, this is the first complaint filed for confiscation of the vehicle as mandated under the Mines and Minerals (Development and Regulation) Act. Most of the District Collectors, it appears, have not acted in accordance with the Statute and the Governments are not serious in enforcing the provisions of the Act. I stick on to my words that natural resources are the gift of nature given to the entire mankind. In order to protect the environment, the Government has enacted several laws, like the Environmental Protection Act, the Mines and

Minerals (Development and Regulation) Act, etc., and established Green Tribunal. But, without implementing the law in its stricto sensu, the desired object cannot be achieved.

30. The object for which the amendments were made in the Mines and Minerals (Development and Regulation) Act, by introducing the provisions under Sections 4(1A), 21, 21(4A) and 23(C) by Act 38 of 1999 is only to curb the rampant illegal mining activities. It is for this object, the Tanton Committee was constituted and it also made its recommendations and based on those recommendations, the above provisions were introduced in the year 1999. Even though these provisions came into effect from the year 1999, it appears, not even a single vehicle has been confiscated, so far. Even this first complaint filed by the District Collector is facing these consequences and a fitting reply was given to him for having discharged his duty. Allowing these type of orders to survive even for a minute would demoralise the sincere officers.

31. While dismissing the complaints for the non

appearance of the complainant, as per Section 256 Cr.P.C., the learned Judicial Magistrate also decided the issue on merits by referring the provisions of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011. The complaint is filed for taking cognizance under the provisions of Mines and Minerals (Development and Regulations) Act, but without referring the provisions on which the complaints were filed, the learned Judicial Magistrate committed an error by referring the Rules for acquitting the accused, without following the basic principle of law that a Rule cannot override the provisions of an Act.

32. The Rule referred to by the learned Judicial Magistrate is framed by the State under the powers conferred under Section 23(C) of the Mines and Minerals (Development and Regulation) Act. The regulations and development in the subject of mines and minerals are vested with the Union Government as per Entry 54 of the Union List in List I. Subject to the provisions of List I, certain regulations of mines and minerals were provided to the

State vide Entry 23 of List II. The Mines and Mineral (Development and Regulation) Act is the Central Act enacted by the Parliament under Entry No.54 of List I. Vide Section 15 of the Act, certain powers were conferred to the State Governments to make Rules in respect of the minor minerals and with those powers, the Tamil Nadu Minor Mineral Concession Rules, were framed by the State in the year 1959. Though certain powers were conferred to the State vide Section 15 of the Act, the States have not prevented the illegal mining activities effectively and therefore, the Union Government appointed a High Level Committee headed by Mr. Tanton, for the purpose of controlling the rampant illegal mining activities and on the recommendations of the Committee, Sections 4(1-A), 21 and 23(C) of the Act were introduced through Act 38 of 1999 with effect from 20.12.1999. Only with the powers conferred under Section 23(C) of the Mines and Minerals (Development and Regulation) Act, the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, was also framed by the State.

33. For better understanding the provisions under Sections 4(1-A), 21(4), 21(4A), 21(5) and 23(C) of the Mines and Minerals (Development and Regulation) Act are extracted hereunder:

Section 4(1-A) :

"No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."

Section 21:

"21(4). Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other things, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

21(4A). Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

21(5). Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority."

Section 23(C) :

"23C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.—

(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections (1) and (2)."

34. The Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, was framed by the State only on the powers conferred under Section 23(C) and it cannot override the provisions under Section 4(1-A), 21 and 21(4-A) of the Act. It is relevant to extract the order of a Division Bench of this Court in **Muthu and Others v. District Collector, Pudukottai and Others**, in **W.P.(MD)No.19936 of 2017, etc.**, batch, dated 29.10.2018, wherein, it was held as follows:

"5.Now, the issue which has arisen for consideration is as to whether Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 still holds the field, notwithstanding the amendment made to Section 21 of the Central Act. We may note that the State Government draws its power from Section 23-C of the Central Act (hereinafter referred to as 'Act') along with Section 15.

6. Section 4(1-A) of the Act prohibits anyone to deal with any mineral, otherwise in accordance with the Acts and Rules. For the violation of the above, action is provided by way of penalty under Section 21. Though Section 21 speaks about penalties, it also deals with

the manner in which a prosecution can be launched for contravention of the provisions of the Act with specific reference to [Section 4\(1-A\)](#). Therefore, power of adjudicating a contravention is no longer available with the State authorities, but only with the Court.

7.[Section 21\(4\)](#) of the Act deals with the power to seize any vehicle, equipment or tool involved in illicit mining by an officer or an authority specially empowered. As per [Section 21\(4-A\)](#), such a vehicle, equipment, tool or mineral shall be liable to be confiscated by the order of the Court, competent to take cognizance. We may note [Section 21\(4-A\) of the Act](#) consciously uses the word 'shall' while dealing with confiscation. Therefore, if the Court concerned is of the view that any vehicle, mineral, tool, equipment or any other things seized, is involved with any violation, then, it has to be followed by confiscation and disposal.

8.[Section 30-B](#) of the Act specifies the Court which can take cognizance. Therefore, whenever a vehicle is seized for contravention and whenever mineral is also seized, the only option open to the authority is to file a private complaint as mandated under [Section 30-B](#). Therefore, there is no power or authority that lies with the revenue officials to release

the vehicle after seizure.

There is a difference between a power exercised for seizure and confiscation. While the statute provides for power to seize by a revenue authority, it does not provide so, for confiscation, which is specifically assigned to the jurisdictional Court, which assumes it on a complaint made by an authorised officer. As stated above, this position applied to all instruments, machineries, vehicle and the mineral.

9. Section 21 of the Act came to be inserted by Act 10 of 2015. Rule 36(A) has been in statute prior to that. This Rule has been introduced in exercise of the power under Section 15 r/w 23-C of the Act. The moment Section 21 has come into being, Rule 36-A lose its significance. In fact, it does not have any existence thereafter. After all, between rule which has been enacted in pursuant to the rule making power and substantive provision of the Act, the latter one would certainly prevail, for which, there will not be any quarrel. Therefore, in no case, any revenue official can invoke Rule 36-A, for the purpose of release of mineral, tool, machinery, instrument, vehicle etc.,

10. Section 23-A of the Act speaks about compounding of offences. This provision has been

in existence for quite some time. By implied overruling, this provision also loses its force. When once power of adjudication lies only with the Court, there is no way, the revenue officials can compound the same and thereafter, make a complaint to the Court. This is also for the reason that the power of confiscation is also not available to such authority. In other words, seizure is only for the purpose of assuming jurisdiction for making complaint before the jurisdictional Court. Once an authority seizes the vehicle, then, there is no role to be played with respect to the release, which is specifically assigned to the Court alone. Therefore, there is no way, a power of compounding can be exercised, since the very power of confiscation followed by adjudication itself is not available to an authority, other than the Court.

11. Having come to the aforesaid conclusion, we deem it appropriate to direct all the revenue officials to make a complaint after the seizure to the jurisdictional Court. A complaint has to be made immediately after seizure, preferably, within a period of one week. Thereafter, appropriate application can be made for confiscation, which might include a vehicle, said to have been involved.

12. As held by the Hon'ble Apex Court, which dictum is followed by this Court, there is no bar for the police to register a case for the offence under Section 379 IPC along with the offence under the Mines and Minerals (Development and Regulation) Act, 1957. Whenever an offence is registered under Section 379 IPC, it will not take away the power of the revenue officials to give a private complaint. As this position is settled, we direct the revenue officials to inform the police about the seizure made and in the same way, as and when a case is registered under Section 379 IPC, the police concerned shall inform it to the revenue officials. Therefore, a complaint has to be made by the revenue officials before the jurisdictional Court and on information, case has to be registered by the jurisdictional police. This procedure will have to be followed strictly."

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35. Therefore, the order of the learned Judicial Magistrate, Melur, by referring the provisions under The Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, when the complaint itself was filed for taking cognizance under

the Mines and Minerals (Development and Regulation) Act, is not proper. Therefore, both on merits and on violation of principles of natural justice, the impugned order cannot be sustained.

36. Insofar as the criminal original petitions are concerned, as rightly pointed out by the learned State Public Prosecutor, once the impugned order passed by the learned Judicial Magistrate, Melur, is set aside, then the observations made therein as regards the District Collector and the Special Public Prosecutors automatically goes.

37. Moreover, as rightly pointed out by the learned Counsel for the petitioner, the petitioner signed the complaint only in his official capacity and it was signed on 04.07.2013. Admittedly, on that date, the petitioner was the District Collector, Madurai. It is not even the case of the respondents / accused that the complaints were signed ante-dated. Not even a suggestion was made to the official witnesses, examined before the trial Court. While so, this Court is unable to understand on what basis and on what materials placed on record before the Court, the learned

Magistrate arrived at such a conclusion.

38. That apart, as discussed supra, such observations came to be made by the learned Magistrate without affording any opportunity to the petitioner. Condemnation of the petitioner without giving him an opportunity of being heard was a complete negation of the fundamental principle of natural justice, as has been held by the Hon'ble Supreme Court in **Dr.Dilip Kumar Deka and another v. State of Assam and another**, reported in (1996) 6 SCC 234.

39. The Hon'ble Supreme Court in **Jage Ram, Inspector of Police and another v. Hans Raj Midha**, reported in 1971 1 SCC 181, has held as follows:

"8.On the question whether the several remarks of the learned Judge are justified or not, we may refer in this connection to the observations of S.K.Das, J. in *State of U.P. v Mohamman Naim*, (1964) 2 SCR 363, as to the matters which have to be kept in view in considering whether the remarks made in judgments against authorities whose conduct comes into consideration before Courts of law in cases to be decided by them are

disparaging. These are : (a) whether the party whose conduct is in question is before the Court or has any opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature and should not normally depart from sobriety moderation and reserve."

40. In **S.Palani Velayutham v. District Collector**, reported in **(2009) 10 SCC 664**, the Hon'ble Supreme Court has held as follows:

"21. On several occasions, this Court has deprecated certain authoritarian practices which result in hardship and prejudice to litigants and even non-parties. The well-known instances are:

(1) passing adverse remarks against government officers or others who are not parties to the lis, without giving an opportunity to them to show cause or justify their action."

41. Therefore, the observations made by the learned

Magistrate as regards the petitioner / District Collector, Madurai, without affording him an opportunity, are unwarranted and uncalled for.

42. In view of the foregoing discussions and reasonings, this Court passes the following orders / directions:

i) The impugned orders dated 29.03.2016, passed by the learned Judicial Magistrate, Melur, in C.C.Nos.82 & 83 of 2013, dismissing the complaint under Section 256 Cr.P.C., thereby, acquitting the respondents / accused are set aside and the matter is remitted back to the trial Court, namely, the Principal Sessions Court, Special Court constituted under the Mines and Minerals (Development and Regulation) Act, Madurai, for the limited purpose of examining the complainant / District Collector, Madurai and to decide the issue.

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ii) Needless to say that the observations made by the learned Judicial Magistrate, Melur, in C.C.Nos.82 & 83 of

2013, dated 29.03.2016, as against the petitioner / District Collector and the learned Special Public Prosecutors also stand expunged.

iii) The complainant, namely, the present District Collector, Madurai shall appear before the trial Court within a period of two months from the date of receipt of a copy of this judgment, by informing the specific date to the respondents / accused through the learned Assistant Public Prosecutor, for enabling the respondents / accused to cross examine the complainant / District Collector, on the same day.

iv) Thereafter, the trial Court, after affording opportunity to both side, shall decide the case, on its own merits and in accordance with law, with the existing evidence, within a further period of two months.

44. The earlier orders passed by this Court dated 30.07.2020 and 06.08.2020 shall form part and parcel of this judgment.

45. Before parting, this Court express with pain that even for answering $1 + 1 = 2$, at times, we have to explain in detail.

46. In fine, both the criminal appeals and the criminal original petitions are allowed. Pending miscellaneous petitions, if any, are closed.

Index : Yes / No
Internet : Yes
gk/dsk

12.08.2020

Note:

i) Registry is to annex the earlier orders dated 30.07.2020 and 06.08.2020, along with this order dated 12.08.2020 and issue the order copy to the parties concerned.

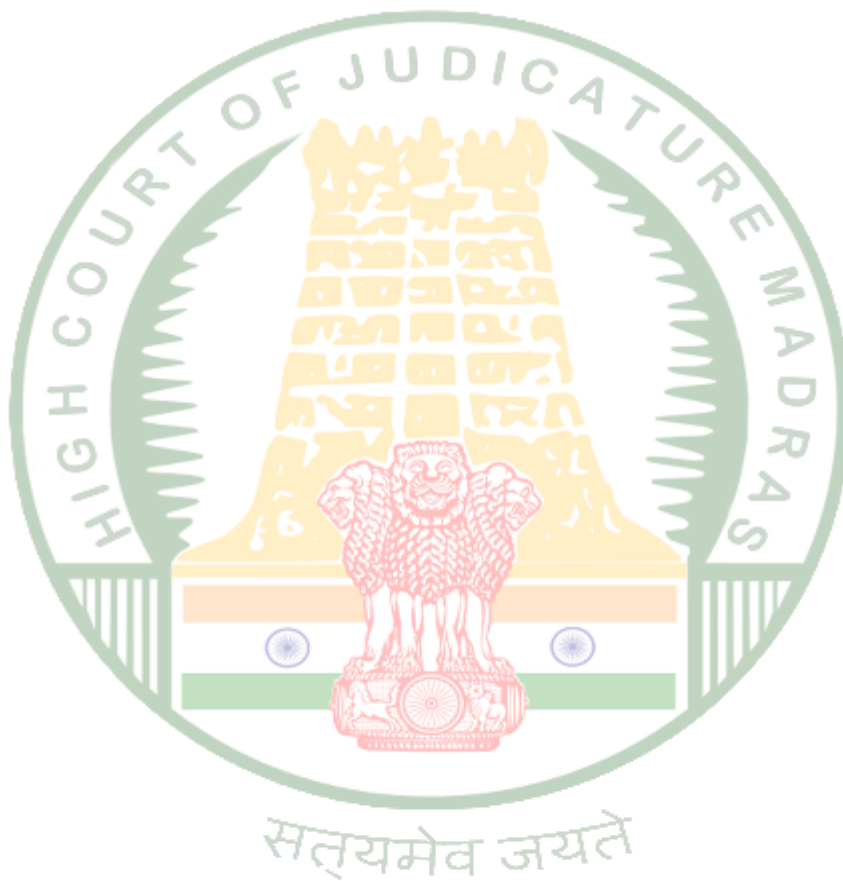
ii) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Sessions Judge,
Special Court constituted under
the Mines and Minerals (Development and Regulation) Act,
Madurai.

2.The Judicial Magistrate,
Melur.

3.The District Collector,
Madurai District.

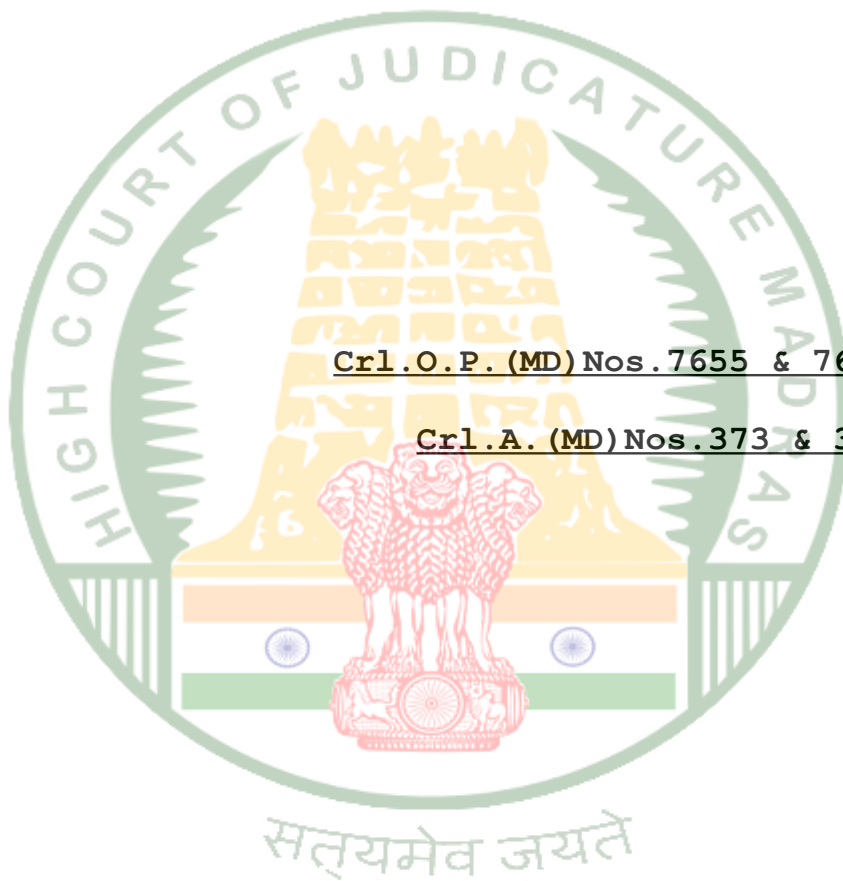


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Crl.O.P. (MD) Nos. 7655 & 7656 of 2016 and
Crl.A. (MD) Nos. 373 & 374 of 2017

B. PUGALENDHI, J.

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Crl.O.P. (MD) Nos. 7655 & 7656 of 2016
and
Crl.A. (MD) Nos. 373 & 374 of 2017

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