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*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

In the High Court of Judicature at Madras

Reserved on : 10.7.2023	Delivered on : 14.7.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

CrI.O.P.(MD) Nos.11494 & 12163 of 2018
CrI.O.P.Nos.5099 of 2019 & 6211 of 2021 &
all connected pending CrI.M.Ps.

S.Ve.Shekher

...Petitioner in
all the CrI.O.Ps.

Vs

1.Al.Gopalsamy, President,
Nellaipathirikaiyalar Mantram,
Tirunelveli

...Respondent in
CrI.O.P.(MD) No.
11494 of 2018

2.Dalit Pandiyan

...Respondent in
CrI.O.P.(MD) No.
12163 of 2018

3.S.Sekaran, Advisor for
Thiruvallur District Tamil Nadu
Reporter Press Protection
Welfare

...Respondent in
CrI.O.P.No.5099
of 2019

4.The Inspector of Police, Cyber
Crime Cell, Central Crime
Branch, No.132, Commissioner
Office Building, EVK Sampath Road,

1/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

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Vepery, Periyamet, Chennai-7.

5.A.Midhar Moideen
State General Secretary,
Tamil Nadu Journalist Protection
& Welfare Association, Chennai-87.

...Respondents
1 & 2 in CrI.O.P.
No.6211 of 2021

PETITIONS under Section 482 of the Criminal Procedure Code to
call for the records respectively in

(i) C.C.No.154 of 2018 on the file of the
Judicial Magistrate No.1, Tirunelveli (CrI.O.P.
(MD) No.11494 of 2018);

(ii) C.C.No.223 of 2018 on the file of the
Judicial Magistrate No.2, Karur (CrI.O.P.(MD)
No.12163 of 2018);

(iii) S.T.C.No.276 of 2018 pending on the
file of the Judicial Magistrate, Ambattur
(CrI.O.P.No.5099 of 2019); and

(iv) C.C.No.62 of 2019 on the file of the
Assistant Sessions Court, Additional Special
Court for Trial of Cases relating to MPs and
MLAs, Singaravelar Maligai, Chennai-1 (CrI.O.P.
No.6211 of 2021)

and quash the same as against the petitioner .

For Petitioner -

2/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

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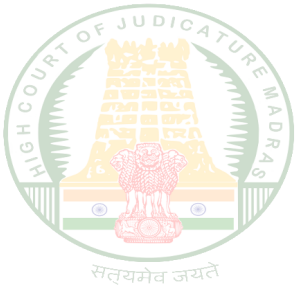
- (i) in CrI.O.P.(MD) Nos.11494 & 12163 of 2018 : Mr.AR.Jeya Rhuthran
- (ii) in CrI.O.P.Nos.5099 of 2019 & 6211 of 2021 : Mr.Venkatesh Mahadevan
- For Respondent in CrI.O.P.(MD) No.11494 of 2018 : Mr.S.Rajasekar
- For Respondent in CrI.O.P.(MD) No.12163 of 2018 : Mr.R.Narayanan
- For Respondent in CrI.O.P.No. 5099 of 2019 : Mr.R.Thirumoorthy
- For Respondent-1 in CrI.O.P.No. 6211 of 2021 : Mr.Babu Muthu Meeran,
Additional Public Prosecutor
- For Respondent-2 in CrI.O.P.No. 6211 of 2021 : served and no appearance

COMMON ORDER

The issue involved in all these criminal original petitions is common and hence, they are taken up together, heard and disposed of by this common order.

2. The brief facts leading to filing of these petitions are stated as hereunder :

(i) The petitioner in all these petitions is a past Member of the Legislative Assembly representing Mylapore Constituency during the



CrI.O.P.(MD) No.11494 of 2018
etc. cases

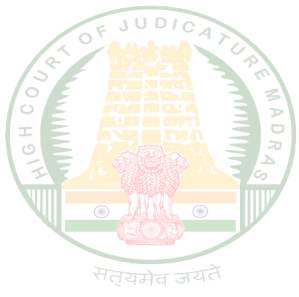
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years 2006-2011. The petitioner is said to have published/circulated an abusive, derogatory and vulgar comment in his facebook account on 19.4.2018.

(ii) The contents of the objectionable comment are extracted as hereunder :

"மதுரை யூனிவர்சிட்யும், கவர்னரும் பின்னே கன்னிப் பெண்ணின் கன்னமும்.

அந்த நிருபர் பெண்ணை கண்டால் பரிதாபமாக உள்ளது. அவருக்கு கவர்னர் தொட்டதால் அருவருப்பு ஏற்பட்டு விட்டதாம். அவரது நோக்கம் இதை வைத்து கவர்னர் மீதும் மோடி மீதும் அவதூறு கிளப்புவது மட்டுமே என்பது அவரது ட்வீட்களைப் படிக்கும்போது தெரிய வருகிறது. அவளை தொட்டதினால் கவர்னர்தான் தன்கைகளை பினாயில் விட்டுக் கழுவ வேண்டும். அசிங்கம் பிடித்த கேவலமான பிறவிகள் படிப்பறிவில்லாத கேவலமான பொது அறிவில்லாத பொறுக்கிகளே தமிழகத்தில் பெரும்பாலும் மீடியாவில் வேலைக்கு வருகிறார்கள். இந்த பெண்ணும் அதற்கு விதிவிலக்கல்ல என்பது தெரிகிறது. பல்கலைக் கழகங்களை விடவும் அதிக அளவில் செக்கவல் அப்யூஸ் நடப்பது மீடியாக்களில் தான். பெரிய ஆட்களுடன் படுக்காமல் அவர்களால் ஒரு ரிபோர்டராகவோ செய்தி வாசிப்பவராகவோ ஆகி விட முடியாது என்பது சமீபத்திய பல புகார்கள் மூலம் வெளியே வந்த அசிங்கம். இந்த மொகரகட்டைகள்தான் கவர்னரை கேள்வி கேட்க கிளம்பி விடுகிறார்கள். தமிழகத்தின் மிகக் கேவலமான ஈனமான அசிங்கமான அருவருப்பான ஆபாசமான இழிந்த ஈன பிறவிகள் அதன் பொரும்பாலான மீடியா ஆட்களே. ஒரு சில விதி விலக்குகள் இருக்கிறார்கள். நான் அவர்களை



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*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

*மட்டுமே மதிக்கிறேன். மற்றபடி பொதுவாக தமிழகத்தின்
ஓட்டு மொத்த மீடியாவுமே கிரிமினல்களின் பொறுக்கிகளின்
ப்ளாக்மெயில் பேர்வழிகளின் பிடிசளில் சிக்கி சீரழிந்து
கொண்டிருக்கின்றன."*

(iii) Pursuant to that, a complaint came to be given before the Commissioner of Police, Chennai to take action against the petitioner for having posted such a derogatory comment in his facebook account. Accordingly, a first information report was registered in Cr.No.148 of 2018 for offences under Sections 504, 505(1)(c) and 509 of the Indian Penal Code (hereinafter called the IPC) and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 on the file of the Inspector of Police, Cyber Crime Cell, Central Crime Branch, Chennai, who is none other than the first respondent in CrI.O.P.No.6211 of 2021. The first information report was investigated by the concerned Inspector of Police and on completion of the investigation, a final report came to be filed before the Assistant Sessions Court, Additional Special Court for Trial of Cases relating to MPs and MLAs, Singaravelar Maligai, Chennai-1 (for short, the Special Court) in C.C.No.62 of 2019 and it has been put to challenge by the petitioner in CrI.O.P.No.6211 of 2021.

(iv) For the same cause of action, private complaints were filed



*Crl.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

against the petitioner in various parts of Tamil Nadu. The complaint filed before the Judicial Magistrate No.2, Karur, which was taken on file in C.C.No.223 of 2018, has been put to challenge in Crl.O.P.(MD) No.12163 of 2018. The complaint filed before the Judicial Magistrate No.1, Tirunelveli, which was taken on file in C.C.No.154 of 2018, has been challenged in Crl.O.P.(MD) No.11494 of 2018. Similarly, The complaint filed before the Judicial Magistrate, Ambattur, which was taken on file in S.T.C.No.276 of 2018, has been put to challenge in Crl.O.P.No.5099 of 2019.

3. Heard the respective learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the State and the respective learned counsel appearing for the complainants in Crl.O.P.(MD) Nos.11494 and 12163 of 2018 and Crl.O.P.No.5099 of 2019. Though the complainant/second respondent in Crl.O.P.No.6211 of 2021 was served and his name printed in the cause list, he does not choose to appear either in person or through a counsel.

4. The petitioner had taken a stand to the effect that he was not



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

aware of the contents of the message that was sent to him by one Mr.Thirumalai Sa (a) Thirumalai Sadagopan from Bay Area, California, U.S.A., who was the author of the message, that he had merely forwarded the same from his facebook account, that immediately after coming to know of the derogatory remarks contained in the message, he removed the contents within a couple of hours on the same day i.e. 19.4.2018 and that thereafter, he followed it up with a letter dated 20.4.2018 whereby he tendered an unconditional apology to the concerned woman journalist and also to the Press and Media in Tamil Nadu at large. The petitioner also gave an interview in a television channel in Tamil Nadu expressing his unconditional apology and making it clear that he had inadvertently forwarded the message without reading its contents. The petitioner also reiterated the fact that he has highest respect for the Press and for women journalists and that he never intended to make any such derogatory remark against the Press.

5. The learned counsel appearing for the petitioner submitted that during the pendency of these criminal original petitions, the petitioner was directed by this Court to file an affidavit once again

7/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

tendering apology and accordingly, he filed an affidavit before this Court on 08.4.2022. The petitioner was also directed to attend for an enquiry before the Inspector of Police, Cyber Crime Cell, Central Crime Branch, Chennai, who, when the petitioner attended the enquiry, gave a questionnaire containing 22 questions and the petitioner answered all those questions clearly explaining that he was not the author of the message and that he had merely forwarded the message that was received from the said Mr.Thirumalai Sa (a) Thirumalai Sadagopan. In the light of the above stand taken by the petitioner, the learned counsel appearing for the petitioner seek to quash the criminal proceedings initiated against him based on the alleged derogatory message forwarded from the facebook account of the petitioner.

6. This Court has carefully considered the submissions made by the respective learned counsel on either side and perused the materials available on record.

7. The petitioner is an educated person and is a well known figure in the State of Tamil Nadu. He had also served as a Member of the Legislative Assembly during the years 2006-2011. The petitioner

8/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

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has a fan following and whatever is done or said by the petitioner has an impact. This important fact must be borne in mind while deciding these matters.

8. A careful reading of the contents of the message that was forwarded from the facebook account of the petitioner on 19.4.2018, showcases women journalists in a poor light. This Court is very hesitant to even translate the message that was forwarded by the petitioner since, to say the least, it is despicable. The contents are highly derogatory against the Press as a whole in Tamil Nadu.

9. There is no dispute with regard to the fact that the derogatory message was forwarded from the facebook account of the petitioner. The petitioner had taken a stand that he was not the author of the message and that he received the message from the said Mr.Thirumalai Sa (a) Thirumalai Sadagopan from U.S.A., and forwarded the same inadvertently without properly reading the message.

9/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

10. We live in an era where social media has virtually taken over the lives of every individual in the world. A message sent/forwarded in the social media can reach the nook and corner of the world in no time. The ability to communicate is one of the main reasons for the world being ruled by human beings. We are now suffering from a virtual information diarrhoea where everyone is bombarded with messages. Hence, what is exchanged as a message in the social media, can have a very big influence within a short time. That is the reason as to why a person must exercise social responsibility while creating or forwarding a message. This is more so when the person concerned, by virtue of his position, can really influence the minds of the general public. A message sent/forwarded becomes a permanent evidence and it is almost impossible to wriggle out of the consequence that falls out by sending or forwarding a message.

11. Considering the stature of the petitioner, he is expected to be more responsible while giving statements or forwarding messages. The petitioner himself had admitted that he has nearly 5000 followers for his facebook account. This means that the messages that are sent/forwarded by the petitioner will multiply, if those followers, in turn,

10/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

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keep forwarding those messages to others.

12. The stature of a person is directly proportional to what he communicates to the society and its consequences. Therefore, an information or a message sent by a normal citizen and the same information/message sent by a person with a stature having followers has a lot of difference. In the former, such message or information may not have an impact on the society. However, when it comes from a person with stature, its repercussions will be higher. In view of the same, such a person carries a lot of responsibility in what he says and does considering the impact it will have on the society or a particular group of persons, as the case may be.

13. Hence, a case of this nature cannot be decided by applying the same yardstick to everyone. The more a person is popular in the society, he also carries more responsibility in what he conveys to the society. The petitioner, in the instant case, falls under the category of a person of high stature with many followers and he ought to have exercised more caution before forwarding the message from his facebook account. If such a caution has been thrown to the winds and

11/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

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as a result, it has had a very serious impact, the petitioner has to necessarily face it and cannot try to run away from the consequences by merely tendering an unconditional apology.

14. A message that is sent or forwarded in the social media is like an arrow, which has already been shot from the bow. Till that message remains with the sender, it is within his control. Once it is sent, it is like the arrow, which has already been shot and the sender of the message must take the ownership for the consequences of the damage done by that arrow (message). Once the damage is done, it will become very difficult to wriggle out of the same by issuing an apology statement.

15. Every user of the social media must bear this in mind and must be extremely careful before sending or forwarding a message to others. There is a famous saying. Three things cannot be retrieved :

- (i) the arrow once sped from the bow;
- (ii) the word spoken in haste; and
- (iii) the missed opportunity.



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

16. A person, who forwards the message, must be construed to acknowledge the contents of the message and that is the main reason as to why he forwards that message to others. In other words, the recipient of a message, who wants others also to know about that message, forwards that message to others. Once that is done, he has to take the responsibility for having forwarded the message to others. A person, who gets a dopamine high by looking at the likes for the message forwarded by him, must also be equally prepared to face the consequence, if that message has a derogatory content.

17. The final report filed in Cr.No.148 of 2018 on the file of the Inspector of Police, Cyber Crime Cell, Central Crime Branch, Chennai has been taken cognizance by the Special Court for various offences including the one under Section 504 of the IPC.

18. Section 504 of the IPC deals with intentional insult with intent to provoke breach of peace. To attract this provision, the following ingredients must be satisfied and they are as follows :

- (a) the accused insulted some person;
- (b) he did so intentionally;

13/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

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(c) he thereby caused provocation to some person; and

(d) he intended or knew it to be likely that the provocation will cause him to break public peace or commit any other offence.

19. In the instant case, the message that was forwarded by the petitioner did cause insult to the journalists and more particularly the women journalists and it did provoke to break public peace since, after the message was circulated in the social media, there was a demonstration in front of the house of the petitioner and there was some violence. The same was pleaded by the petitioner in the quash petitions. Hence, prima facie, the offence under Section 504 of the IPC is made out.

20. The Special Court has also taken cognizance of the offence under Section 505(1)(c) of the IPC. This offence will be attracted where a person publishes or circulates a statement, which is likely to incite any class or community of persons to commit any offence against any other class or community.



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

21. The message that was forwarded by the petitioner did induce commission of offence against public tranquillity and there was a hue and cry across the State immediately after the incident. Hence, the offence under Section 505(1)(c) of the IPC is also prima facie made out.

22. The Special Court has further taken cognizance of the offence under Section 509 of the IPC. There is no doubt in the mind of this Court that the offence under Section 509 of the IPC is prima facie made out considering the fact that the content of the message virtually outrages the modesty of a woman and exposes her very indecently.

23. The Special Court has additionally taken cognizance of the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

24. The message forwarded by the petitioner contains indecent and vitriolic attack on a particular woman and other women Press Reporters. Hence, prima facie, the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 is also

15/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

made out.

25. It is true that the petitioner removed the derogatory message from his facebook account even on the same day and he also apologized for having forwarded the message. These acts, by themselves, do not help the petitioner from facing the consequences for forwarding a derogatory message. An offence has already been committed and the petitioner cannot now escape from the offence by merely coming up with an apology statement subsequently.

26. In cases involving a dispute between two individuals, if immediately the offender regrets and tenders his apology for his act, the Court may consider acting upon the same. However, in the instant case, it is not a dispute between two individuals and the act of the petitioner has virtually painted the entire Press and more particularly the women Reporters with vulgar comments and when such a large body is affected due to the act of the petitioner, he cannot be let away just because he tendered an apology. If such an easy route is adopted, anyone can make such statements, cause damage, subsequently apologize for his act and get away from the action taken against him.

16/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

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27. In view of the same, the apology tendered and the explanation given by the petitioner to the effect that he had forwarded the message inadvertently cannot be acted upon and the criminal proceedings cannot be quashed on that ground. For the present, the intention of the petitioner can be gathered only from the contents of the message that was forwarded by the petitioner. The issue as to whether the petitioner had forwarded the message inadvertently or not, is a matter for evidence and such a defence has to be established by the petitioner only during the course of trial. Therefore, this Court does not find any ground to interfere with the criminal proceedings initiated against the petitioner. The defence taken by the petitioner has to be established only before the Special Court, which has to decide the same on appreciation of evidence.

28. The respective respondent in CrI.O.P.(MD) Nos.11494 and 12163 of 2018 and CrI.O.P.No.5099 of 2019 filed private complaints against the petitioner on the ground that the petitioner defamed the entire Press in Tamil Nadu and particularly the women journalists. Hence, they are also prosecuting the petitioner mainly for the offence punishable under Section 500 of the IPC.

17/23



*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

WEB COPY

29. Explanation 2 to Section 499 of the IPC makes it explicit that it will amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Hence, if a well defined class is defamed, each and every member of that class can file a complaint.

30. Section 199 of the Criminal Procedure Code also provides that no Court shall take cognizance of defamation except upon a complaint made by '**some person aggrieved by the offence**'. Where a well defined class is defamed, each and every member of that class will become an aggrieved person and he can file a complaint. The complainants/respective respondent in CrI.O.P.(MD) Nos.11494 and 12163 of 2018 and CrI.O.P.No.5099 of 2019 claim to belong to the respective association working for the interest of the Press and Media. The issue as to how far they belong to the community of Press is a matter for evidence and it cannot be decided in quash petitions. Therefore, this Court does not find any ground to interfere with the private complaints initiated for defamation, which are the subject matter of challenge in CrI.O.P.(MD) Nos.11494 and 12163 of 2018 and CrI.O.P.No.5099 of 2019 and the petitioner has to necessarily face

18/23



CrI.O.P.(MD) No.11494 of 2018
etc. cases

WEB COPY

the proceedings and establish his defence.

31. A recent judgment of the Apex Court in the case of ***Kaushal Kishor Vs. State of Uttar Pradesh [reported in 2023 (4) SCC 1]*** resonates while deciding these cases. The Apex Court was dealing with a menace that adversely affects the equilibrium of this country namely hate speech. The Apex Court had gone into all the issues in detail and it will be relevant to extract paragraph 251 of the judgment as hereunder :

"Every citizen of India must consciously be restrained in speech, and exercise the right to freedom of speech and expression under Article 19(1)(a) only in the sense that it was intended by the Framers of the Constitution, to be exercised. This is the true content of Article 19(1)(a) which does not vest with citizens unbridled liberty to utter statements which are vitriolic, derogatory, unwarranted, have no redeeming purpose and which, in no way amount to a communication of ideas. Article 19(1)(a) vests a multi-faceted right, which protects several species of speech and expression from interference by the State. However, it is a no brainer that the right to freedom speech and expression, in a human-rights based democracy does not protect statements made by a citizen, which strike at the dignity of a fellow citizen. Fraternity and equality which lie at the very base of our Constitutional culture and upon



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*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

which the superstructure of rights are built, do not permit such rights to be employed in a manner so as to attack the rights of another."

32. The Apex Court, in the said judgment, by considering the fact that the hate speech is going beyond the control and it has a deleterious effect on the society, had gone to the extent of directing suo motu registration of the first information report without waiting for someone to file a complaint. The Courts must start analysing cases, which have an adverse impact on the society with more seriousness. The cases in hand are one such type where this Court does not want to handle them with kid gloves.

33. The petitioner cannot be made to move from one court to another to face the proceedings based on the very same cause of action. Hence, this Court is inclined to transfer the proceedings challenged in CrI.O.P.(MD) Nos.11494 and 12163 of 2018 and CrI.O.P. No.5099 of 2019 to the file of the Special Court namely the Assistant Sessions Court, Additional Special Court for Trial of Cases relating to MPs and MLAs, Singaravelar Maligai, Chennai-1 to be simultaneously taken up along with C.C.No.62 of 2019.

20/23



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*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

34. In the light of the above discussions,

(a) the proceedings in

(i) C.C.No.154 of 2018 on the file of the
Judicial Magistrate No.1, Tirunelveli,

(ii) C.C.No.223 of 2018 on the file of the
Judicial Magistrate No.2, Karur and

(iii) S.T.C.No.276 of 2018 on the file of
the Judicial Magistrate, Ambattur

are withdrawn and transferred to the file of the
Special Court namely the Assistant Sessions
Court, Additional Special Court for Trial of
Cases relating to MPs and MLAs, Singaravelar
Maligai, Chennai-1 to be simultaneously tried
along with C.C.No.62 of 2019.

(b) The findings rendered by this Court in
this common order will not have any bearing
on the Special Court while deciding the cases
and the petitioner is entitled to raise all the
grounds before the Special Court. The Special
Court shall decide the cases on their own
merits and in accordance with law. The Special
Court shall try to expeditiously complete the
trial and pass final orders in all the cases not
later than six months from the date of receipt
of a copy of this order.



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*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

- (c) The case bundles in
- (i) C.C.No.154 of 2018 on the file of the Judicial Magistrate No.1, Tirunelveli,
 - (ii) C.C.No.223 of 2018 on the file of the Judicial Magistrate No.2, Karur and
 - (iii) S.T.C.No.276 of 2018 on the file of the Judicial Magistrate, Ambattur, which are transferred to the file of the Special Court, shall be immediately forwarded by the respective Courts to the Special Court so as to enable the expeditious disposal of all the cases.

35. In the result, all the above criminal original petitions are dismissed in the above terms. Consequently, all connected pending CrI.M.Ps. are also dismissed.

14.7.2023

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

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22/23



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*CrI.O.P.(MD) No.11494 of 2018
etc. cases*

N.ANAND VENKATESH,J

RS

To

- 1.The Assistant Sessions Court, Additional Special Court for Trial of Cases relating to MPs and MLAs, Singaravelar Maligai, Chennai-1.
- 2.The Inspector of Police, Cyber Crime Cell, Central Crime Branch, No.132, Commissioner Office Building, EVK Sampath Road, Vepery, Periyamet, Chennai-7.
- 3.The Judicial Magistrate No.1, Tirunelveli.
- 4.The Judicial Magistrate No.2, Karur.
- 5.The Judicature Magistrate, Ambattur.
- 6.The Public Prosecutor, High Court, Madras.

P.D.COMMON ORDER IN
CrI.O.P.(MD) No.11494
of 2018 etc. cases

14.7.2023

23/23