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Crl.O.P.Nos.845, 850 & 852 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	<b>19.01.2023</b>
Pronounced on	<b>08.03.2023</b>

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.Nos.845, 850 & 852 of 2021 and  
Crl.M.P.Nos.517, 519, 521, 522, 524, 525 of 2021

1.S.Velraj

... Petitioner / third accused in  
Crl.O.P.No.845 of 2021

2.K.Murali

... Petitioner / first accused in  
Crl.O.P.No.850 of 2021

3.Subramania Kuttan

... Petitioner / second accused in  
Crl.O.P.No.852 of 2021

Vs.

1.State Rep by

The Assistant Commissioner of Police,  
Meenambakkam Range,  
Chennai 600 027.  
(Ref: Cr.No.38/2019 dated 30.03.2019)

2.Thiru.A.G.Vimal Rajasekaran

... Respondents in all Crl.O.Ps

**PRAYER in all Crl.O.Ps:** These Criminal Original Petitions have been filed under Section 482 of Cr.P.C., to call for the records in S.C.No.74 of 2020 on the file of the Principal Sessions Judge, Kancheepuram District at Chengalpattu and quash the proceedings in S.C.No.74 of 2020 on the file of



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the Principal Sessions Judge of Kancheepuram District at Chengalpattu as against the petitioners herein for the offences under Section 3(1)(q), 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506(i) of IPC.

**In all Crl.O.Ps**

For Petitioners : Mr.A.Ramesh, SC for  
Mr.B.A.Sujay Prasanna  
For Respondents : Mr.A.Gopinath,  
Government Advocate (Crl. Side) for R1  
: Ms.V.Gandhimathi for R2

**COMMON ORDER**

These Criminal Original Petitions have been filed to call for the records in S.C.No.74 of 2020 on the file of the Principal Sessions Judge, Kancheepuram District at Chengalpattu and quash the proceedings in S.C.No.74 of 2020 on the file of the Principal Sessions Judge of Kancheepuram District at Chengalpattu as against the petitioners herein for the offences under Section 3(1)(q), 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506(i) of IPC.



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**WEB COPY 2.** Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel for the second respondent in all Criminal Original Petitions.

**3.** The petitioners are the accused 1 to 3 and they have filed the above individual petitions seeking to quash the proceedings initiated against them. The petitioner in Crl.O.P.No.850 of 2021 / first accused K.Murali is the Assistant General Manager, Flight Dispatch, Operations Department, Air India Ltd. The petitioner in Crl.O.P.No.852 of 2021 / second accused in the Assistant General Manager, Administration, Operations Department, Air India Ltd. The petitioner in Crl.O.P.No.845 of 2021 / third accused S.Velraj is the General Manager(O) Coordinating, Operations Department, Air India Ltd.

**4.** The second respondent / defacto complainant was working as a Senior Manager, Flight Dispatch (Operations) Air India Ltd., Chennai. He belongs to SC Community and he was a Sub-ordinate Officer functioning under the control and directions of the petitioners 1 to 3 / accused 1 to 3. The petitioners are aware of the second respondent's caste. The third accused



harassed the second respondent by providing false and contra informations

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and caused a disciplinary action taken against the second respondent and that was with an intention to cause unwarranted annoyance and agony in the mind of the second respondent and this is punishable under Section 3(1)(q) of SC/ST Prevention of Atrocities Act, 1989, as amended by an Act of 1 of 2016.

5. On various occasions between 11.04.2018 to 05.02.2019 the accused 1 to 3 by taking advantage of their position as superior officers and who had the knowledge about the community of the second respondent had intentionally insulted and intimidated him. They also humiliated in public by committing caste abuse and that resulted in shivering and palpitation and hence they committed an offence punishable under Section 3(1)(r) of the Act. On the morning of 12.02.2019, when the second respondent was proceeding to the toilet situated at terminal side of the office, the second respondent was intimidated by holding out a threat that 'you are gone'. Hence, A2 committed an offence under Section 506(i) of IPC.

6. The learned counsel for the petitioners submitted that this is a typical example of how a disgruntled person can take his vengeance against his



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superior officers by misusing the SC/ST Prevention of Atrocities Act, 1989;

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despite SC/ST Liaison Officer of the Company had given a clean chit for the superior officers and that has been stated by her in the statement before the Investigation Officer, the charge sheet has been filed unminding the same; the allegations are vexatious, inherently improbable, absurd and do not constitute any offence; even 161 Statement of the witnesses do not reveal any commission of the offence for which the petitioners have been charged. The learned counsel for the petitioners raised the following grounds among the other submissions as his core submission:

(i) The charge sheet has been filed in violation of the mandates prescribed under Section 197 of Cr.P.C. The petitioners being public servants within the definition of Section 21 of IPC, should not have been charge sheeted without getting prior sanction under Section 197 Cr.P.C.

(ii) The allegations are very vague, improbable, absurd and they do not constitute any offence.

(iii) The occurrence said to have been occurred between 11.04.2018 to 05.02.2019. But the charge sheet has been filed with an inordinate delay. The unexplained delay itself is a ground to quash the proceedings.



**WEB COPY 6.1.** The incidents alleged against the petitioners are relating to the dates 05.02.2019, 12.02.2019 and 30.01.2019; though the alleged incidents are distinct transactions, they have been combined in one complaint and consequently, in one charge sheet and that too without any connected penal provisions like Section 34, 109 or 120(B) IPC.; the second respondent did not find favour with the superior officers in the departmental proceedings taken against him; just in order to wreak his vengeance, the SC/ST Act has been misused; the motive of the second respondent to lodge this complaint is apparent; the report does not disclose material facts; no information with regard to the findings arrived at the domestic enquiry proceedings pertaining to the allegations against the defacto complainant has been submitted to the Investigating Agency.

7. The learned Government Advocate (CrI.Side) submitted that the petitioners being the superior officers under whose control the second respondent was working, was subjected to harassment and they humiliated him on several occasions including the occasions mentioned in the complaint; the second respondent has given a clear statement as to how he was harassed



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and intimidated; the second respondent had videographed the humiliation made by the first accused and an earlier complaint has already been given against the first accused and the same was registered in Crime No.360 of 2017; after investigation, the charge sheet has also been filed against the first accused in S.C.No.133 of 2018; the petitioners were aware that the second respondent belongs to SC caste; just with a view to cause harassment on him, they have committed the offences and for which they have been charge sheeted; the second respondent is the victim of the offences committed against him under SC/ST Act; the materials available on record are sufficient enough to make out the charges and hence, the petitioners should be subjected to trial.

8. The learned counsel for the second respondent has adopted the same arguments in the line of the arguments of the learned Government Advocate (Crl.Side) and reasserted that the petitioners should be subjected to the process of trial. It is further submitted that the prosecution cannot be quashed for want of sanction and the sanction can be obtained any time during the pendency of the proceedings; though there is a delay in filing the complaint, that alone cannot be a reason to quash the proceedings initiated against the petitioners / accused.



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**9.** The second respondent and the petitioners are the officers of Air India

**WEB CLT.** The petitioners / accused 1 to 3 are superior in rank than the second respondent. It is alleged by the second respondent that he was put under humiliation on so many occasions and more specifically during those occasions mentioned by the second respondent and such harassments were intentionally caused by the accused who had the knowledge that the second respondent belonged to Scheduled Caste community.

**10.** The petitioners had filed original petitions in Crl.O.P.Nos.10117 & 10062 of 2019 to quash the FIR itself. Since the charge sheet has been filed in due course, the said petitions were disposed with a liberty to file a fresh petition by challenging the charge sheet. As against the first accused, the very same defacto complainant had given an another complaint by alleging that he was harassed by the first accused and the same was registered in FIR No.360 of 2017. After investigation, the charge sheet has been filed and the case has been taken on file in S.C.No.133 of 2018. The first accused has challenged the said charge sheet and prayed to quash the said proceedings by filing a petition in Crl.O.P.No.14230 of 2019. The said petition was allowed on 03.12.2021 and the proceedings in S.C.No.133 of 2018 were quashed.



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**11.** It is submitted by the learned counsel for the petitioners that the second respondent had abused the process of law by giving such false complaints by taking advantage of the fact that he belongs to SC community. He has further submitted that the Special Act to protect the people belonging to scheduled Caste and Scheduled Tribes has been brought with an avowed object of protecting vulnerable mass of that community and the same has been misused just in order to wreak the vengeance against the petitioners. It is seen in the order of this Court dated 03.12.2021 made in CrI.O.P.No.14230 of 2019 that the second respondent was in the habit of sending numerous petitions to the superior officers and outside authorities by alleging caste based discrimination and it has been observed that the second respondent had sent nearly 120 letters / e-mails in such a fashion. In order to ensure equal treatment and avoid caste based discrimination, Air India appears to have appointed SC/ST Liaison Officer and utilizing the services of SC/ST Liaison Officer. The Company's Liaison Officer is bound to make enquiries into such kind of allegations and give reports about the fact situation.

**12.** The said Liaison Officer had made enquiries and found that the allegations made by the second respondent are false. However, the petitioners have been charged for the offences under Section 3(1)(q), 3(1)(r) of SC/ST



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Prevention of Atrocities Act and Section 506(i) of IPC. Even though the FIR has been registered for the offences under Sections 8(b), 4(1), 3(1)(m), 3(1)(p), 3(1)(q) of SC/ST Prevention of Atrocities Act, Rule 10 and Rule 11 of Aircraft Act of India and Sections 504, 506, 469, 281 & 283 of IPC., the charge sheet has been filed only for the offences under Section 3(1)(q), 3(1)(r) of SC/ST Prevention of Atrocities Act and 506(i) of IPC. So the discussions in these Criminal Original Petitions can be only in the line of the offences for which the charge sheet has been laid.

**13.** Section 3(1)(r) speaks about the offence where a person intentionally insults or intimidates a member of the SC/ST with an intention to humiliate them in any place within public view. The other charge under Section 3(1)(q) speaks about giving false or frivolous information to any public servant and thereby causing such public servant to use his power to the injure or cause annoyance to the member of SC/ST. The charge under Section 3(1)(q) was based on the allegations that the first accused being the superior officer had given a false information of some lapses on the part of the second respondent and that resulted in the disciplinary proceedings against him.

**14.** The records would show that the disciplinary proceedings have been



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initiated against the second respondent for certain charges made against him

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and at the end of the disciplinary proceedings, the second respondent was found guilty and he was imposed with severe punishment of removal from service. The proceedings of the officiating General Manager, Operations, in this regard has been passed on 28.09.2021. After having got the order of removal from service, the second respondent has challenged the same by filing a Writ Petition in W.P.No.25032 of 2021 and the same is pending. After a detailed enquiry conducted by the Department, the second respondent was found guilty for the charges leveled against him and hence it cannot be said that some false information had been given against him to a public authority.

**15.** The public authority who had taken the disciplinary action is the department authority. The second respondent and all other employees of Air India comes under the disciplinary rules and hence actions taken by any of the superior authorities cannot be viewed as something falls under sec.3(1) (q) of SC/ST Act. The failure on the part of the superior officers to notice / report, take or cause to take disciplinary action would amount to lapse of duty on their part. Hence the transaction that had happened in the Company in accordance with the Company Rules cannot be called as information given with an intent



to cause injury or annoyance to the second respondent. Even if the second respondent has any scope for getting a positive result in his Writ Petition challenging the punishment imposed on him, the proceedings taken by the authorities are still departmental proceedings and hence that will not fall under the purview of Section 3(1)(q) of SC/ST Prevention of Atrocities Act, in the given situation involved in this case.

**16.** The next charge against the petitioners is for intentionally insulting and intimidating the second respondent in a place within public view in order to humiliate him because he belongs to SC community. In order to make out an offence under the above Section, the following three essential elements should be present.

- (i) The victim should be a member of SC/ST community.
- (ii) The offender ought to have insulted or intimidated the victim.
- (iii) Such insult and intimidation was made just with an intention to humiliate the victim who belonged to SC/ST community.

**17.** Now coming back to the specific allegations made by the second



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respondent in his complaint that the third accused called him through from a mobile to 044-22560088 at around 20.35 hours on 30.01.2019 and threatened. The motive attributed by the third accused for causing such a threat is because the second respondent had sent a complaint through e-mail directly to the Chairman and Managing Director about certain incident and due to which, a delay of 1 hour 30 minutes was caused for taking off the flight on a particular day. In fact the above incident has culminated into a charge against the second respondent and for which the second respondent has also been found guilty and punished.

**18.** The present allegation that has been made with regard to the above incident is that the second respondent had sent his version of facts to the Chairman and Managing Director through e-mail, by bypassing the proper channel. In this regard, the statement of L.W.11 Ms.Sathya Subramanian, SC/ST Liaison Officer is relevant. She had stated that the enquiry revealed that the allegations about the occurrence said to have taken place on 05.02.2019 at about 9 a.m., against the first accused are false. The Movement Controllers Sadacharam and Janakiraman were present at the place of occurrence and they had given statement that the first accused had left the place after speaking to



them and eventually the second respondent also left the place.

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**19.** Now coming back to the alleged call made by the second accused on 30.01.2019, it is stated that the second respondent has sent his e-mail at about 11:07 p.m. But the second respondent has stated that in continuance of the said mail, he was threatened and humiliated by the second accused through a call made to 044-22560088. Even according to the second respondent, the said call has been made at about 20:35 hours on 30.01.2019. If the e-mail itself has been sent only at 11:07 p.m., the alleged consequential incident could not have occurred at 20:35p.m. The inherent material contradictions seen from the complaint of the second respondent itself would make the allegation unbelievable and impractical. The telephone conversation did not last for more than a minute and that also made the allegations in this regard improbable.

**20.** The second respondent himself has stated that when he was threatened by the first accused on 05.02.2019 at about 9.25 a.m., the first accused had made whimsical smiling and threatening gestures to the second respondent at the movement control sections. It is further stated by the second respondent that the same was witnessed by Sadacharam and Janakiraman who were on duty at that time at control section. As stated already, L.W.11



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Ms.Sathya Subramanian, SC/ST Liaison Officer has stated in her statement

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that enquiry with Sadacharam and Janakiraman did not reveal any such occurrence.

**21.** Even for the sake of arguments, if it is accepted that the first accused had shown gestures causing threat to the second respondent, that cannot be considered as a threat which was made with an intention to humiliate the second respondent who is a member of SC community. However, it is submitted by the learned counsel for the second respondent that consequent to the alleged intimidation made by the first accused, the second respondent suffered shivering and palpitation and he immediately made a log entry and proceeded to see the Company's doctor and the doctor advised the second respondent to seek immediate medical attention. It is further stated that the Blood Pressure of the second respondent got shooted upto 200/130 on the alleged day due to anxiety and palpitation.

**22.** The Company's doctor who was enquired as L.W.9 has stated in his statement that the second respondent has got Blood Pressure and Diabetes and he is being under treatment from the year 2017. In the statement of the said doctor, he has stated that on 05.02.2019, the second respondent came for



treatment and at that time, he appeared to be abnormal and when the doctor

enquired whether he has fought with any one, the second respondent told that

A1 to A3 humiliated him by caste abuse.

**23.** But even the second respondent has not stated that on 05.02.2019, he was humiliated by caste abuse by A1 to A3. The second respondent has stated that on the alleged date and time, the first accused had made threatening gestures with whimsical smiles. Hence the statement of L.W.9 doctor appears to be in excessive of the statement of the complainant himself and seen to have been exaggerated. In fact, L.W.10 doctor has stated that he neither enquired the defacto complainant why he had high Blood Pressure nor the second respondent has stated any reasons for that.

**24.** The above materials are self- contradictory on the face of it and hence subjecting the petitioners to undergo the ordeal of trial would only waste the time of the Court or in other words, even the materials remain uncontroverted, that will not prove the guilt against the petitioners.



25. Since the petitioners fall within the purview of public servants, in

view of their employment with Air India Limited which is a Government Corporation, the mandates for Section 197 Cr.P.C., ought to have been complied before filing the charge sheet. Though during certain exceptional circumstances, failure to get sanction cannot vitiate the proceedings and sanction can be obtained any time during the trial, the sanction is mandate and ought to have been obtained before laying the charge sheet and only for any extraneous reasons, the sanction can be obtained any time later.

26. The primary submission of the department officers is that the second respondent had abused the process of law by taking advantage of the welfare legislation. Under such circumstances, sanction prior to filing the charge sheet is very much essential and the delay cannot be overlooked. The very object of getting sanction under Section 197 is to protect the public servants from false and frivolous complaints while they discharge their official duties. In the decision rendered in the case of *N.K.Ganguly Vs. Central Bureau of Investigation, New Delhi reported in (2016) 2 SCC 143*, it has been categorically held that obtaining sanction under Section 197 of Cr.P.C is imperative and without sanction, the Court cannot take cognizance. In the said



judgment, it is held as under in paragraph Nos.34 and 35:

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*“34. The learned senior counsel also placed reliance on the three judge bench decision of this Court rendered in the case of Shreekantiah Ramayya Munipalli, referred to supra, wherein it was held as under:*

*“18. ....If [Section 197](#) of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of ofcourse it is no part of an official’s duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act because an official act can be performed in the discharge of official duty as well as in dereliction of it....*

*19. Now an offence seldom consists of a single act. It is usually composed of several elements and as a rule a whole series of acts must be proved before it can be established.... Now it is evident that the entrustment and/ or domino here were in an official capacity and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity....”*

*35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining*



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*previous sanction from the appropriate government under [Section 197](#) of CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the Appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under [Section 197](#) of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.”*

**27.** All the allegations about the occurrence had taken place in the work place where both the petitioners and the second respondent are working as public servants. Hence the previous sanction is imperative. Further no acceptable reason is stated as to why the sanction could not be obtained before laying the charge sheet.



**WEB COPY 28.** The complaint contains three different occurrence involving the accused 1 to 3 separately. For every occurrence, individual complaints ought to have been made at the relevant point of time as against each accused and such allegations cannot be combined in one complaint and culminate into a single charge sheet.

**29.** There is a considerable delay in giving the complaint. It is right that the delay alone cannot be the reason to quash the proceedings but at the same time, the delay can also be one among the several factors which would be taken seriously when the other facts show that there is an abuse of the process. The delay would affect the spontaneity of the complainant's statement and there are chances of exaggerations. In view of the delay, the above possibility cannot be dispensed.

**30.** If a criminal proceedings is manifestly attended with *malafides* and it has been maliciously instituted with an ulterior motive for wreaking the vengeance due to any personal grudge, it is appropriate for the Courts to exercise its powers under Section 482 of Cr.P.C. The above principle of law



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was well settled in the case of *State of Haryana and Others Vs. Bhajan Lal*

**WEB COPY** *and Others, reported in 1992 Supp (1) Supreme Court Cases 335* and it has been followed in series of cases held by various High Courts including this Court.

31. The courts have got a duty to ensure that the inherent powers under Section 482 should not stumble a legitimate prosecution. At the same time, the Courts should not hesitate to use the said power in order to ensure that no one is burdened with any criminal prosecution by abusing the process for settling personal scores. Obviously in the case in hand, the second respondent was an employee of the Air India Company and he fell under the control and supervision of the accused 1 to 3. He was also subjected to disciplinary proceedings on account of certain lapse on his part as reported by the second accused.

32. In all possibilities the welfare legislation made for the benefit of the members of the SC/ST should be enforced sincerely. But, if the above provisions are misused, that cannot be viewed lightly. The possibility of misuse has been visualized by the Supreme Court in the case of *Union of India Vs. State of Maharashtra & Ors reported in (2020) 4 SCC 761* and the following



reflections have been made in the said judgment:

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*“52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceeding under Section 482 CrPC.”*

**33.** So far as the second respondent is concerned, he was found to be in the habit of sending various complaints and at least 120 complaints of that nature have been sent to the superior officers and outside authorities. Every little action or annoyance cannot be understood as an offence committed under



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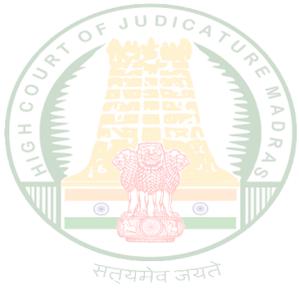
SC/ST Act, unless it was proved to be intentional and something done because

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of the caste of the victim. The petitioners as officers of the second respondent could have sometimes remarked about his lapse or the way he conducted himself in the office or while discharging the duties. That cannot be given with a criminal colour and portrayed as offences of intimidation, harassment or humiliation contemplated under the Special Act. The Court proceedings cannot be taken as a weapon to wreak the vengeance.

**34.** In all probabilities, the materials do not disclose any cognizable offence against the petitioners in respect of the charges leveled against them. In view of the holistic consideration of the materials, I feel the proceedings should be quashed in order to meet out the ends of justice and to prevent abuse of process of law.

**35.** In the result, the Criminal Original Petitions in Crl.O.P.Nos.845, 850 & 852 of 2021, are allowed and the proceedings initiated against the petitioners / accused 1 to 3 in S.C.No.74 of 2020 on the file of the Principal Sessions Judge, Chengalpattu, is quashed. Consequently, connected miscellaneous petitions are closed.



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08.03.2023

Speaking / Non Speaking Order

Neutral Citation : Yes/No

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To

1.The Principal Sessions Judge,  
Chengalpattu.

2.The Assistant Commissioner of Police,  
Meenambakkam Range,  
Chennai 600 027.

3.The Public Prosecutor,



High Court, Madras.

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**R.N.MANJULA, J**

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