

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.02.2020

Pronounced on : 05.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.9067 of 2016

and

Cr1 MP(MD)Nos.4493 & 4494 of 2016

- 1.Grievances Redressal Officer,
M/s.Economic Times Internet Ltd.,
Plot No.391, Udayak Vihar,
Gurgaon, Haryana – 122 302.
- 2.The Editor,
M/s.Economic Times Internet Ltd.,
Plot No.391, Udayak Vihar,
Gurgaon, Haryana – 122 302.
- 3.Mrs.Sandhya Ravishankar,
Journalist, M/s.Economic Times Internet Ltd.,
Plot No.391, Udayak Vihar,
Gurgaon, Haryana – 122 302.
- 4.Mr.V.Prem Ravishankar, सत्यमेव जयते
No.69/31, 7th Avenue,
Ashok Nagar, Chennai – 600 083.

...Petitioners / Accused No.1 – 4

Vs.

M/s.V.V.Minerals Pvt.Ltd.,
Keeraikaran Thattu,
Desiyanvilai, Tirunelveli District.
Rep.by its Manager & Power Agent,

S.Krishnamurthy

... Respondent / Complainant

Prayer : This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the complaint filed by the respondent in C.C No.37 of 2016 on the file of the Judicial Magistrate No.I, Tirunelveli and set aside the same.

For Petitioners : Mr.Anand Chandrasekar
for Mr.P.Muthuvijaya Pandian
For Respondent : Mr.V.Lakshminarayanan
for M/s.Kingsly Solomon

ORDER

Background facts :

The petitioners herein stand accused of having committed the offences under Section 500 r/w 109 of IPC in C.C No.37 of 2016 on the file of the Judicial Magistrate No.I, Tirunelveli. It is a private complaint filed by the respondent herein. The offending publication appeared in the February 1-7, 2015 issue of Economic Times Magazine. It was titled "Scam on the Shores". It alleged that illegal beach sand mining of atomic minerals like monazite was taking place along the southern coastline of Tamil Nadu. The scandal was said to be of monumental proportions. The third petitioner Mrs.Sandhya Ravishankar had written the article based on W.P No.1592 of 2015, a public interest litigation filed by one

Victor Rajamanickam before the Madras High Court. According to the report, the Tamil Nadu Government had authorised the respondent to mine and export monazite which is a prescribed substance. To mine monazite, approval of Department of Atomic Energy is necessary. The report further claimed that on account of the enormous illegal mining, the local villagers have been exposed to serious health hazards.

2.Immediately after the publication appeared, the respondent sent a legal notice dated 01.02.2015 controverting the aforesaid allegations. Another notice was issued on 09.02.2015 pointing out that the husband of the article-writer had earlier applied for employment in a news channel in which the complainant is having substantial stakes and that his request was rejected. The complainant directly alleged that Mrs.Sandhya Ravishankar wrote the article out of hatred and malice and to settle scores with the complainant for having declined to employ her husband. The complainant specifically demanded that the newspaper should retract the offending piece and also prominently publish an apology. Since the demand made by the complainant was not complied with, the impugned private complaint came to be lodged before the Judicial Magistrate No.1, Thirunelveli on 24.03.2015. The trial magistrate after recording the sworn statements of the complainant and the witnesses

under Section 200 of Cr.Pc found that prima facie case under Section 500 r/w 109 of IPC was made out. The complaint was taken on file. Summons were issued to the accused. Aggrieved by the same, the accused have filed this Criminal Original Petition for quashing the proceedings in C.C No.37 of 2016 on the file of the Judicial Magistrate No.I, Tirunelveli.

Rival submissions :

3.The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds and relying on a host of precedents argued that the impugned proceedings deserve to be quashed. Per contra, the learned counsel appearing for the respondent/complainant submitted that the offending publication is per se defamatory and that it has brought down the reputation of the complainant and had caused irreparable harm. He strongly emphasized that the writing was actuated by malice and that the unsuccessful job-applicant had instigated his journalist-wife to spread canards against the complainant. He would also point out that even though the first and second petitioners were given an opportunity to make amends, they did

not come forward to retract the article or publish their apology. His further contention is that even if this Court were to accept the petitioners' argument that their case will fall within one of the Exceptions to Section 499 of IPC, such defence being factual in nature cannot be gone into in these proceedings under Section 482 of Cr.Pc. He also pointed out that Thiru.Victor Rajamanickam, the petitioner in the PIL who has been described as a renowned Geologist by the third petitioner was actually acting at the bequest of a business rival of the complainant. When the said fact came to light, the Hon'ble First Bench warned him and made him to withdraw from the proceedings. It also extracted an affidavit of unconditional apology from him. The learned counsel took me through the court orders and strongly pressed for the dismissal of the quash petition filed by the petitioners herein.

Two apparent errors :

4. May be I should have titled this paragraph as 'Errors too apparent'. The petitioners 1 and 2 figure as the accused No.1 and 2 in the impugned complaint. They have been described in the complaint as follows :

1.Grievances Redressal Officer,
M/s.Economic Times Internet Ltd.,
Plot No.391, Udayak Vihar,
Gurgaon, Haryana – 122 302.

2.The Editor,
M/s.Economic Times Internet Ltd.,
Plot No.391, Udayak Vihar,
Gurgaon, Haryana – 122 302.

It can be seen from the above that Accused Nos.1 and 2 have been described not by names but only by designations. It is not as if A1 and A2 are corporate entities. As per Section 305 of Cr.PC, where a corporation or registered society is the accused person or one of the accused persons in an enquiry or trial, it may appoint a representative for the purpose of the enquiry or trial. Accused Nos.1 and 2 are obviously individuals who were holding the position of Grievance Redressal Officer and Editor respectively in the Economics Times Magazine which had published the offending article.

5.Section 476 of Cr.PC states that subject to the power conferred by Article 227 of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient. Section 61 speaks about the form of summons. Form No.1 in the Second Schedule is as follows :

“THE SECOND SCHEDULE

(See section 476)

FORM No. 1

SUMMONS TO AN ACCUSED PERSON

(See section 61)

To..... (name of accused) of (address) WHEREAS your attendance is necessary to answer to a charge of(state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of on the day of.....Herein fail not.

Dated, this day of 20.....

(Seal of the Court)

(Signature)”

6.It is trite to say that an accused in a criminal case can be either an individual or a corporate entity. The accused if an individual, will have to be named in person with appropriate description. If the accused is not named in person and is merely referred to by designation, the court ought to return the complaint as defective. In this case, the trial magistrate appears to have mechanically taken cognizance of the offences even without noting that the A1 and A2 have not been named in person at all. That apart, there is absolutely no allegation whatsoever against

the first petitioner. Merely because he has not redressed the grievance projected by the complainant, he cannot be accused of having committed the offence of defamation. Therefore, I have no hesitation to come to the conclusion that the impugned proceedings deserve to be quashed as regards the petitioners 1 and 2.

7.It has been held time and again that the trial magistrate has to keep in view the language employed in Section 202 Cr.Pc as regards the residence of the accused at a place beyond the area in which the magistrate exercises his jurisdiction. A mere look at the cause title would have revealed that the accused are not residing within the jurisdictional limits of Judicial Magistrate No.I, Tirunelveli. But without holding any enquiry, summons were issued. The learned trial magistrate has not taken note of the mandate set out in Section 202 of Cr.PC. Thus, there has been no application of mind while taking cognizance of the offences.

Wife-an independent personality :

8.The fourth petitioner has been roped in on the sole ground that he had abetted the commission of the offence. According to the complainant,

the third petitioner Mrs.Sandhya Ravishankar wrote the offending article at the instigation of her husband, the fourth petitioner herein. It is true that the fourth petitioner applied for a job in a news channel run by the complainant in the year 2013 and that his application was rejected.

9.Except setting forth the aforesaid circumstances, the complainant has not placed any other material before this Court. Admittedly, there is no correspondence between the third petitioner Mrs.Sandhya Ravishankar and the complainant. The third petitioner is an independent freelance journalist. If I accept the contention of the complainant's counsel, that would undermine the agency of the woman concerned. This concept of agency has considerable philosophical import and was evolved by the feminists during the last century. The complainant wants me to assume that the third petitioner lacks personal autonomy. The third petitioner definitely has the capacity to act independently and make her own free choice. I cannot assume that the third petitioner was a pawn or tool at the hands of her husband. Her innate dignity can be upheld only by deleting the fourth petitioner from the array of accused.

Media and the civil law of defamation :

10.The leading case on the subject is undoubtedly ***New York Times vs. Sullivan 376 U.S 254***. The essence of the said decision has been neatly distilled by Gautam Bhatia in his book “Offend, Shock or Disturb” in the following passage :

“New York Times v. Sullivan became a path-breaking case, which changed the future course of defamation law all over the world. In an opinion that has gone down in the annals of free speech, Justice Brennan began his substantive discussion by noting the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. What Justice Brennan understood was that in order to survive, free speech needed 'breathing space' – that is, the space to make mistakes. 'Erroneous statement', he pointed out, 'was inevitable in free debate'- and therefore, the very existence of free debate required the protection of such statements. On the other hand, under Alabama's (common law) defamation regime, 'the pall of fear and timidity imposed upon those who would give voice to

public criticism (creates) an atmosphere in which the First Amendment freedoms cannot survive' (a classic exposition of the chilling effect). And under the burden of proving truth, 'would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone'. Thus, Justice Brennan found that both the burden (proving truth) and the standards(no-fault liability) imposed upon defendants, were incompatible with a robust free speech regime. Consequently, he propounded an 'actual malice' test for defamation: liability could be imposed only if the maker of the statement either knew it was false, or published it with reckless disregard for its truth or falsity."

I cannot resist the temptation to shed some sidelight on this case. Just as caste is a festering issue in India, race has been a big challenge in the american society. When the civil rights movement led by Martin Luther King, Jr. was at its peak, they faced severe repression at the hands of the authorities, particularly, in Alabama State. In order to raise funds for the legal defence of the activists, a full page advertisement was published

in the New York Times signed by quite a few celebrities of the day. Some of the claims made in the advertisement were not true. The Alabama Police Commissioner claimed that he had been defamed and instituted libel action for a huge sum. He won the suit. The appeal before the Supreme Court not only had implications for press freedom but also the civil rights movement. In fact, when the oral arguments took place, Martin Luther King, Jr was himself present and one of the Judges on the Bench (Justice Goldberg) slyly passed on a copy of the King's book "Stride Toward Freedom" for his autograph. If one reads the biography of Justice Brennan by Seth Stern & Stephen Wermiel, one would know how he managed to ensure unanimity of opinion. Interestingly, Justice Brennan later regretted employing the term "malice" as the word is also associated with the idea of hatred or ill will. Even while celebrating Justice Brennan, one should not forget the stellar role played by Chief Justice Earl Warren. It was he who assigned the task to Justice Brennan. When a new interpretation is given in an appeal, the normal practice is to allow the appeal but remand the matter to the State court for rehearing as per the new interpretation. Sensing the danger involved, Chief Justice Warren ensured that the matter attained finality in the Supreme Court itself.

11.The above decision of the American Supreme Court was cited with approval by our Supreme Court in ***R.Rajagopal vs. State of Tamil Nadu (1994) 6 SCC 632.***

12.The Hon'ble Division Bench of the Madras High Court comprising their Lordships Chief Justice A.P.Shah and Justice Prabha Sridevan in ***R.Rajagopal vs. J.Jayalalitha (AIR 2006 Mad 312)*** laid down the principle as follows :

“Thus law is well settled that so far as Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them. In the case of public officials, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties and this is so even where the publication is based upon the facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true.”

13. After referring to a catena of decisions rendered by the Supreme Court as well as the foreign courts, a learned Judge of the Delhi High Court (Justice Ravindra Bhat as his lordship then was) extended the principle in the following terms in the decision reported in **(2009) 158 DLT 759 (Petronet Lng Ltd vs Indian Petro Group And Another)**.

“87. This Court, while recollecting the judgment of the Supreme Court in S. Rangarajan, Virendra, Rajgopal as well as that of the US Supreme Court in Sullivan, is of the opinion that the public interest in ensuring dissemination of news and free flow of ideas, is of paramount importance. The news or information disclosure of which may be uncomfortable to an individual or corporate entity but which otherwise fosters a debate and awareness about functioning of such individuals or bodies, particularly, if they are engaged in matters that affect people's lives, serve a vital public purpose. Very often, the subject of information or news - i.e the individual or corporation may disagree with the manner of its presentation. If it contends that such presentation tends to defame or libel, it is open for the entity or individual to sue for damages. In the case of a corporate entity, unless the news presented is of such a sensitive nature that its business or very existence is threatened or would gravely jeopardize a commercial venture, the Courts would be slow in interdicting such

publication. The Constitution's democratic framework, depends on a free commerce in ideas, which is its life blood. In the words of Walter Lippmann newspapers are "the bible of democracy". Justice Holmes (Abrams v. (1919) 250 US 616) characterized the discussion of public matters as essential to see that "the ultimate good desired is better reached by a free trade in ideas". Even more poignantly, one of the principal architects of the American Constitution, James Madison, (1751-1836) wisely stated that:

“Nothing could be more irrational than to give the people power, and to withhold from them information without which power is abused. A people who mean to be their own governors must arm themselves with power which knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both.”

88. Even though, on occasions, the press may be seen and may even be overstepping its limits, it functions as the eyes and ears for the people, throwing light into the unlit and unseen crabbled corners, of decisions and public policies which greatly want in public gaze, for the vibrancy as well as accountability of public institutions. Freedom of the press is not a privilege granted to the few controlling the press, or press institutions; it is "a right

granted to the people for their protection against the vicissitudes of government and all other sources of power and influence.... The newsman is but the surrogate for the people in a never-ending search to uncover the truth." (Stanford Smith, American Newspaper Publishers Association).”

Criminal law of defamation :

14. Unlike the civil law of defamation, the criminal law already stood codified in Section 499 and 500 of IPC. Their constitutionality has also been upheld by the Hon'ble Supreme Court in **Subramanian Swamy vs. Union of India (2016) 7 SCC 221**. The Hon'ble Supreme Court also clarified that the trial magistrate need not take note of the Exceptions to Section 499 of IPC as it is for the summoned accused to prove that his case comes within the Exception. However, a closer look at the Second Exception to Section 499 of IPC would indicate that it broadly resembles the Sullivan principle. The Second Exception reads as follows :

“Second Exception – Public conduct of public servants.- It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.”

The Third Exception is also relevant and it reads as follows :

“Conduct of any person touching any public question. - It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.”

Yet the occasion on hand demands that the law is clarified a little more. The Sullivan principle as amplified in ***Rajagopal vs. J.Jayalalitha (AIR 2006 Mad 312)*** and ***Petronet Lng Ltd vs Indian Petro Group And Another) (2009) 158 DLT 759 (Del)*** have to be necessarily read into the Exceptions to Section 499 whenever the freedom of the press is involved. There can always be a margin of error. The permissible width of the margin will depend on the facts and circumstances of each case. The media can avail this defence whether the complainant is a public official or a private entity. Mere inaccuracies in reporting cannot justify initiation of prosecution.

15.What must be seen is whether the subject matter is a public question or not. Exception No.3 to Section 499 IPC refers to public question. Of course, the said expression has not been defined anywhere

including the Law lexicons. But, one can safely understand it to mean an issue in which the public or the community at large has a stake or interest. Media ought to be relieved from any criminal prosecution once it is noted that its case falls within the Exception as delineated above.

Duty of the High Court in safeguarding the freedom of press :

16. The learned counsel for the petitioners contends that the case on hand attracts the Third Exception to Section 499 of IPC. But it has invited a strong response from the complainant's counsel who would point out that the Exception relied on by the petitioners envisages establishing "good faith" on their part. Section 52 of IPC defines good faith in negative terms as follows :

"Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention".

This is innately a factual aspect. Therefore the petition has to be dismissed relegating the petitioners to establish their defence before the trial court. Though this objection raised by the learned counsel is formidable, I am not inclined to adopt the course of action suggested by him.

17. Freedom of speech and expression enshrined in Article 19(1) (a) of the Constitution of India includes the right to publish and the freedom of press. As observed by the Hon'ble Delhi High Court in ***Khushwant Singh And Anr. vs Maneka Gandhi (AIR 2002 Delhi 58)***, this right is sacrosanct and cannot be violated by an individual or the State. The only parameters of restriction are provided in Article 19(2) of Constitution of India. Even recently, the Hon'ble Supreme Court in ***Yashwant Sinha v. CBI (2019) 6 SCC 1*** felt it appropriate to recall the eloquent views expressed by the court from time to time on the role played by the media.

18. I am clearly of the view that there is no point in merely singing paeans to freedom of press, if one cannot go to its rescue when the said right is faced with a serious threat. The Hon'ble Supreme Court in the decision reported in ***AIR 1952 SC 196 (State of Madras vs. V.G.Rao)*** described itself as sentinel on the qui vive. The use of this French expression is quite significant. The sentinel must ever be alert to danger and charge forth when required. The Court can never desert its duty when it comes to protection of fundamental rights. Those observations will apply to the entire higher judiciary.

19. When the media is accused in a criminal defamation proceeding in a trial court, one remedy open to it is to move the High Court under Section 482 of Cr.PC. This provision pertains to the inherent powers of the High Court to make such orders to prevent abuse of the process of any court or otherwise to secure the ends of justice. Most of the legal provisions conferring power are couched in a permissive language. But there is something called ethical imperative. It envisions that inherent powers go with implicit duties. Courts often nudge and remind the executive that possession of power is coupled with a duty to exercise the same. Judicial power can be no different. When freedom of press which is a fundamental right is at stake, higher judiciary is obliged to exercise not only its inherent power but also exert itself a bit. An unused power is a useless tinsel. There is no point in merely saying that press is the foundation of democracy.

सत्यमेव जयते

20. There is a game called "Parama Padham". The board will have snakes and ladders. When the dice is rolled and the counter lands at the bottom of the ladder, it moves to the top. If it lands on the head of the snake, it slides down to the bottom. Section 482 of Cr.Pc becomes the head of the snake when the petition is dismissed and the petitioner is

back to the trial court. Since the constitutional courts have been tasked with a duty to be proactive when it comes to protection of fundamental rights, I am obliged to examine the defence of the petitioners. The objection by the respondent that the petitioners' contentions revolve around facts cannot be a fig leaf for throwing out the petition. If a summary examination of the materials produced by the accused can bring their case within one of the Exceptions, I can give relief to the petitioners here itself instead of making them undergo the ordeal of trial. Such an activist role will have to be played by the higher judiciary because it is a matter of record that criminal defamation proceedings have become a tool of intimidation and before corporate bodies and powerful politicians whose pockets are tunnel deep and whose hands are long even media houses having good resources have capitulated.

Whether the petitioners' case falls within the Third Exception?

21. The article in question is based on a public interest litigation instituted by one Victor Rajamanickam. He alleged illicit mining of beach sand minerals. The complainant herein was shown as one of the respondents. The matter came up before the Hon'ble First Bench of the Madras High Court on 23.01.2015 and the Bench thought it fit to issue notice. The official respondents were directed to file their written

response within four weeks. The article in question appeared only on 01.02.2015. It is relevant to note here that the article also contains the response of Thiru.Vaikundarajan who runs the complainant entity. No doubt the report in question contained a few mistakes. But then, a clarification was later carried by the Magazine expressing its regret. It is true that the original petitioner turned out to be a person lacking in bonafides and that is why he was relieved from the proceedings. But then, the PIL did not get terminated or closed. The Hon'ble First Bench by order dated 21.10.2019, chose to convert the PIL into a suo motu PIL. It also appointed Dr.V.Suresh, Advocate, as an amicus to assist the court. The case is pending till date. A status quo order has also been passed. More than anything else, when the counsel for the complainant herein raised an objection that the scope of the proceedings should be confined only to monazite mining, the Hon'ble Division Bench overruled the objection and observed that the scope of the proceedings will encompass all the beach sand minerals. It also took cognizance of the allegation that illicit sand mining was still going on. It directed the authorities to intensify the patrolling and ensure that appropriate action is taken against the violators.

22.The fact that the Hon'ble Division Bench is actively seized of the matter is more than sufficient to indicate the importance of the issue raised by the third petitioner. Article 51(A)(i) of the Constitution states it shall be the duty of every citizen of India to safeguard public property. The national wealth of India including the beach sand minerals are obviously public properties. The article penned by the third petitioner raised an issue in which the people at large definitely have an interest. The article has been published only in the wake of the notice issued by the Hon'ble First Bench of the Madras High Court. When the Hon'ble First Bench thought it fit to issue notice based on the allegations made by a litigant and when it raised a public question, the media is certainly entitled to carry a story on it. This is something that would on the very face of it fall within Exception No.3 to Section 499 IPC. When a defence can be established in a summary manner and does not warrant a regular trial, relief ought to be granted in a petition under Section 482 of Cr.Pc. As already pointed out, the petitioners 2 and 3 have shown their bonafides by reaching out Thiru.Vaikundarajan and publishing his response in the very same article.

23.It is relevant to refer to the decision reported in **(1998) 4 SCC 112 (Jawaharlal Darda and others V. Manoharrao Ganpatrao Kapsikar)**. The accused in that case was an editor of a newspaper. He had published a news item disclosing what happened during an Assembly Debate. The matter concerned misappropriation of Government funds. The complainant was one of the officials named in the report. He filed a criminal defamation complaint. Summon was issued. The learned Sessions Judge had set aside the order issuing summons. The High Court was of the view that when the trial Magistrate had found a *prima facie* case against the accused and thought fit to issue process, the same cannot be interfered with. The Hon'ble Supreme Court however observed that if the accused bona fide believing the version of the Minister to be true published the report in good faith, it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. The news item was published for public good. So holding, the Hon'ble Supreme Court set aside the order of the High Court and restored the order passed by the learned Sessions Judge.

24.The petitioners 2 and 3 cannot be said to have defamed the complainant by publishing the article in question. The very institution of the impugned complaint is an abuse of the process of court. Quashing the same alone would secure the ends of justice. I have already held that there is absolutely no material whatsoever against the petitioners 1 and 4. The impugned proceedings are accordingly quashed and this criminal original petition stands allowed. Connected miscellaneous petitions are closed.

05.05.2020

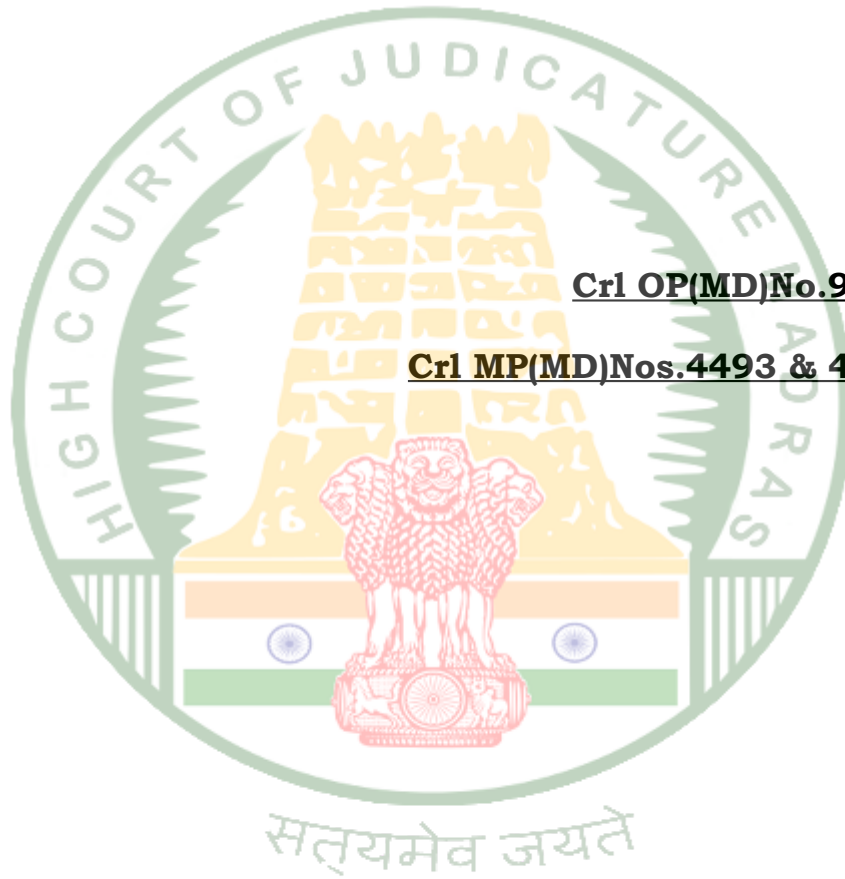
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