eyewitness, we are of the considered view that the prosecution has not proved its case beyond a reasonable doubt and therefore, the benefit of doubt has to be given to the Appellant.

27. It is also pertinent to point out that since the aged mother of the Appellant is dead, the Appellant has to look after his two children and considering their welfare, the benefit of doubt is given to the Appellant.

In fine, the Appeal is allowed setting aside the judgment of conviction and sentence passed in S.C. No.131 of 2007 on the file of the Sessions Court, Nagapattinam, dated. 4.10.2010. The Appellant is acquitted of all the charges. Since the Appellant is in jail, he is directed to be set at liberty forthwith unless he is required in connection with any other case. The fine amount paid by the Appellant shall be refunded to him.

2012 (2) MWN (Cr.) 354

IN THE HIGH COURT OF MADRAS

S. Nagamuthu, J.

Crl.O.P. Nos.29201 & 27638 of 2012, M.P. Nos.1 of 2011 & 1 of 2012 in Crl.O.P. Nos.29201 & 27638 of 2012

24.2.2012

Chief Education Officer, Salem. **2.** Jayaraman, Head Master, Government Hr. Sec. School, Thammampatti, Gengavalli Taluk, Salem [*Petitioners in Crl.O.P. No.29201 of 2011*]. **3.** R.C. Ramachandran. **4.** C. Selvaraj [*Petitioners in Crl.O.P. No.27638 of 2011.*] ***.....Petitioners***

Vs.

K.S. Palanichamy, S/o Subramani, President, Parent-Teachers' Association, 100, Railway Line North Street, Ponnammapettai, Salem-630 001 [*Respondent in both Crl.O.Ps.*] ***.....Respondent***

Quash Petition
IPC, Ss. 499, 500, 501 & 120-B

- Chief Educational Officer — An artificial/juristic person — Cannot be prosecuted under Section 500 — Artificial/juristic person cannot be attributed with malicious intention — Malicious intention can be attributed only to a living person.
- Chief Educational Officer constituting Committee in pursuance of Court direction — Committee Members holding enquiry as per order and submitting report — Act of Committee Members will not amount to conspiracy falling within ambit of Section 120-B, IPC.

INDIAN PENAL CODE, 1860 (45 of 1860), Section 11 — GENERAL CLAUSES ACT, 1897 (10 of 1897), Section 3(42) — "Person" — Definition of — If, includes Chief Educational Officer of State — Definition of "person" in Section 11, IPC is in *pari materia* with Section 3(42) of GC Act and an inclusive definition — "Person" includes any Company or association or body of persons, whether incorporated or

not — State and its instrumentalities are juristic persons — Supreme Court in *Common cause* followed — Therefore, Chief Educational Officer is an artificial and juristic person falling under Section 11, IPC. (Paras 11 & 12)

INDIAN PENAL CODE, 1860 (45 of 1860), Section 499 — "Defamation" — Essential Ingredients of — Imputation should have been intended to harm reputation of such person — Or, person making imputation should have had knowledge or reasons to believe that same will harm reputation of others — Essential ingredient to constitute offence of "defamation" therefore, is *mens rea*. (Para 13)

INDIAN PENAL CODE, 1860 (45 of 1860), Sections 499 & 500 — Defamation — Whether artificial person like Chief Educational Officer can be said to have *mens rea* of forming an intention to cause harm to reputation — Settled law that there can be prosecution of an artificial/juristic person in respect of any offence, except such crimes, which an artificial person is incapable of committing by reason of fact that they involve personal malicious intent — Defamation under Section 499 is an offence involving personal malicious intent — Therefore, an artificial/juristic person cannot be prosecuted for offence under Section 500, for such an artificial/juristic person cannot be attributed with any malicious intention — Malicious intention can be attributed only to a living person — Chief Educational Officer being an artificial/juristic person, prosecution against him under Section 500, therefore, cannot be maintained. (Paras 14 to 19)

INDIAN PENAL CODE, 1860 (45 of 1860), Sections 499(2), 500, 501 & 120-B — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 482 — Quash Petition — Respondent/Complainant, President of Parents-Teachers' Association (PTA) — In view of Complaints that PTA illegally collected huge sum as donation from parents of students, District Collector and Director of School Education directed Petitioner/A-1, Chief Educational Officer to take action on Complaints — A-1 dissolved PTA and directed to refund amounts to parents — In Writ Petition filed by PTA, High Court directed authorities to make fresh inquiries in allegations made against PTA — Petitioner/A-1, Chief Educational Officer, therefore, constituted a 3-Member Committee to hold enquiry into allegations and submit a report — A-2 to A-4 are members of said Committee constituted by A-1 — Committee held enquiry and submitted report, based on which A-1 issued notice to PTA — Respondent filed Private Complaint against Petitioners/A-1 to A-4 for offence under Sections 499(2), 500, 501 & 120-B, IPC — Magistrate after recording statement issued summons to Petitioners — Petition to quash said proceedings — In pursuance of direction of High Court in Writ Petition, A-1 constituted Committee and A-2 to A-4 held enquiry and submitted report stating that PTA illegally collected donations and

not accounted for more than ₹10 lakhs — Such an act of A-2 to A-4 in submitting report pursuant to order of Chief Educational Officer/A-1 and order of High Court will not amount to conspiracy within ambit of Section 120-B — Calling said report as a product of conspiracy is clear contempt of order of High Court and abuse of process of Court and law — Case as against A-2 to A-4, *held*, liable to be quashed — Further, constitution of Committee by A-1, enquiry held by A-2 to A-4 and report submitted by them and issuance of notice by A-1, all being in discharge of official duties, sanction should have been obtained under Section 197, Cr.P.C. — In absence of any sanction, cognizance taken by Magistrate held to be illegal and liable to be quashed — A-1/Chief Educational Officer being an artificial/juristic person, prosecution as against him for offence under Section 500 cannot be maintained — Further, absolutely no allegations in Complaint making out offence under Sections 500, 501 & 120-B — But, Magistrate issued summons stating that Accused are summoned to appear to answer charge under Section 200, Cr.P.C. — Non-application of mind into Complaint resulting in irreparable inconvenience and hardship to Petitioners — A clear abuse of process of law and Court — Impugned proceedings quashed. (Paras 2, 3, 20 to 26)

INDIAN PENAL CODE, 1860 (45 of 1860), Section 120-B — "Conspiracy" — What is not — First Accused/Chief Educational Officer, in pursuance of order passed by High Court in Writ Petition, constituted Committee consisting of Accused 2 to 4 to inquire into allegations and submit a report — A-2 to A-4 held inquiry and submitted report — Act of A-2 to A-4 will not constitute conspiracy falling within ambit of Section 120-B as against A-2 to A-4 — Calling said report as product of conspiracy is clear contempt of order passed by High Court as also abuse of process of Court & law. (Paras 20 & 21)

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 197 — INDIAN PENAL CODE, 1860 (45 of 1860), Sections 499, 500, 501 & 120-B — Acts done in discharge of official duties — Sanction under Section 197, Cr.P.C. necessary to prosecute Accused — In absence of sanction, cognizance taken by Magistrate held to be illegal. (Para 22)

PRACTICE AND PROCEDURE — Private Complaint — Case posted to 22.6.2011 for perusal of record — On 22.6.2011, Complainant examined under Section 200, Cr.P.C. — After recording statement, no order passed by Magistrate — But, matter taken up by Magistrate for hearing on 14.7.2011 and Complainant was present as per docket order — Not known as to how Complainant appeared when case was not posted on that day for hearing — Magistrate not even recorded as to what are offences upon which cognizance taken — Further, Magistrate simply ordered to issue summons to Accused even without mentioning date of hearing — Not proper. (Paras 23 & 24)

PRACTICE AND PROCEDURE — INDIAN PENAL CODE, 1860 (45 of 1860), Sections 499, 500, 501 & 120-B — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Sections 200 & 204 — Private Complaint — No allegations in Complaint to make out offence — However, Magistrate in summons issued to Accused, stated that Accused are summoned to appear to answer a charge under Section 200, Cr.P.C. — *Held*, Magistrate failed to apply his judicial mind into Complaint. (Para 25)

CASES REFERRED

Common Cause, A Registered Society *v.* Union of India, *1999 (6) SCC 667* 12
Iridium India Telecom Limited *v.* Motorola Incorporated, *2011 (2) MWN (Cr.) 195 (SC)* 17
Kalpnath Rai *v.* State, *1997 (8) SCC 732* 14, 17
Standard Chartered Bank *v.* Directorate of Enforcement, *2005 (3) CTC 39 (SC)* 15, 17

K. Marimuthu, Advocate for Petitioner in both Crl.O.Ps.

C.K.M. Appaji, Advocate for Respondent in both Crl.O.Ps.

I. Subramaniam, Public Prosecutor assisted by C. Iyyapparaj, Government Advocate for (Crl. side) as *Amicus Curiae.*

Finding — Cr.O.Ps. allowed.

Prayer : Criminal Original Petitions filed under Section 482, Cr.P.C., to call for the records pertaining to the proceedings in C.C. No.155 of 2011 on the file of the learned Judicial Magistrate No.5, Salem and quash the same as the same is made on dishonest, *mala fide* and illegal.

JUDGMENT

1. The Petitioners in Crl.O.P. No.29201 of 2011 are the Accused 1 & 2 and the Petitioners in Crl.O.P. No.27638 of 2011 are the Accused 3 & 4 in C.C. No.155 of 2011 on the file of the learned Judicial Magistrate No.5, Salem. Seeking to quash the said case, the Petitioners have come up with these two Petitions.

2. The facts of the case would be as follows:

The Respondent is the Complainant in the said case. He was the President of the "Parents-Teachers' Association" of "Kugai Municipal Girls Higher Secondary School" at Salem, during the academic year 2009-2010. There were Complaints to the District Collector, Salem and the Director of School Education from the public that the said Respondent Parents-Teachers' Association (Hereinafter referred to as "the PTA") illegally collected huge sum as donation from the parents of the students of the said School during the academic year 2009-2010. The District Collector, Salem and the Director of School Education directed the First Accused/the Chief Educational Officer, Salem to take action on the said Complaints. Based on the same, the Chief Educational Officer, Salem by order dated 22.6.2009 dissolved the PTA and directed the Association to refund the amount to the parents of the students. Challenging the same, the PTA filed a Writ Petition in W.P. No.13121 of 2009 before this Court. It was contended before this Court in the said Writ Petition that the said order came to be passed without affording

any opportunity to the PTA and thus, the said order was passed in gross violation of the Principles of Natural Justice. Accepting the said contention, this Court by order dated 15.10.2009, set aside the said order of the Chief Educational Officer and allowed the Writ Petition. However, this Court issued a specific direction to the authorities to make fresh enquiry with regard to the allegations made against the PTA after following the due process of law.

3. In pursuance of the said direction issued by this Court, the Chief Educational Officer, Salem by his proceedings in Na.Ka. No.5308/A2/09 dated 22.12.2009 constituted a Committee of three members to hold enquiry into the said allegations and to submit a report. The Second Accused-Mr. Jayaraman was then working as a Head Master of Government Higher Secondary School, Thammampatti, Salem District, the Third Accused Mr. C. Selvaraj was then working as a Head Master of Government Higher Secondary School, Ayodhyapattanam and the Fourth Accused Mr. R.C. Ramachandran was then working as a Head Master of Government Higher Secondary School, Dasanayakanpatti. These Three Accused herein namely Accused 2 to 4 were the members of the said Committee constituted by the Chief Educational Officer, Salem/the First Accused. The said Committee consisting of Accused 2 to 4 herein held enquiry and submitted a report on 24.12.2009 wherein the Committee reported that a sum of ₹13,08,890/- had been collected by the PTA from the parents of the students during the academic year 2009-2010, out of which, a sum of ₹2,65,125/- alone had been credited to the account of the PTA and the balance of ₹10,43,765/- had not been accounted for. Based on the said report, the First Accused issued notice to the PTA to appear along with the records for enquiry to be held on 8.2.2010. In the said notice, the details of the report of the Committee have also been furnished. The said notice was served on the Respondent herein and the other office bearers of the PTA. The Respondent/Complainant submitted a reply for the same on 5.2.2010. Similarly, the other office bearers also submitted their replies. Thereafter, the Respondent and one Mr. M.N. Manokaran, the then Treasurer of the Association, issued a legal notice on 8.4.2010 through a learned Counsel calling upon the First Accused to pay compensation to the tune of ₹30 lakhs for the alleged defamation caused by the First Accused in the above proceedings.

4. Thereafter, the Respondent filed a Private Complaint before the learned Judicial Magistrate No.5, Salem against the Petitioners herein alleging that they have committed offences punishable under Sections 499(2), 500, 501 and 120-B of I.P.C. (Extracted as stated in the Complaint). Further, according to the Complaint, the conduct of enquiry by the Committee and the report submitted by them amounts to conspiracy punishable under Section 120-B, I.P.C., and the notice issued by the First Respondent for personal hearing amounts to offence under Section 499(a),

500 & 501, I.P.C. The said Complaint was presented before the learned Judicial Magistrate on 3.6.2011.

5. On receipt of the Complaint, the records show, the learned Judicial Magistrate made the following endorsement:

> "Complainant present. Check and call on 22.6.2011"

Thereafter, on 22.6.2011, the learned Judicial Magistrate recorded the statement of the Respondent/Complainant under Section 200, Cr.P.C. Subsequently, on 14.7.2011, the matter was again taken up for hearing, during which, the learned Judicial Magistrate has passed the following order:

> "Complainant present. Sworn Statement recorded. Documents, Complaint perused. Issue summons to the Accused on payment of process on 30.8.2011."

6. In pursuance of the said order, the learned Judicial Magistrate has thereafter, issued summons to the Petitioners to appear on 25.11.2011. The summons states as follows:

> "Whereas your attendance is necessary to answer the *charge under Section 200 Cr.P.C.*, you are hereby required to appear in person by pleader before the learned Judicial Magistrate No.5, Salem at 10.00 am on 25.11.2011." (Emphasis supplied)

7. Aggrieved over the same, the Petitioners have approached this Court with these Criminal Original Petitions seeking to quash the said proceedings.

8. The learned Counsel for the Petitioner would submit that the entire proceeding is a clear abuse of process of law and therefore, the same is liable to be quashed. In order to substantiate the said contention, the learned Counsel has taken me through the records and has pointed out the infirmities, irregularities and illegalities committed in the matter by the Complainant and the lower Court.

9. But the learned Counsel for the Respondent would submit that the Petitioners have committed a serious offence of defamation as well as conspiracy and therefore, they are liable to be punished. According to him, neither there is any illegality nor irregularity committed and so, the proceeding is not liable to be quashed.

10. I have considered the rival submissions and also perused the records carefully.

11. At the outset, it needs to be pointed out that the First Accused is an artificial person *viz.*, the Chief Educational Officer, Salem. The enquiry into the Complaints and further action into the Complaints against the PTA were all taken by the then Chief Educational Officer, Salem - one Mr. P. Ramaraj. But when the Complaint was presented before the lower Court, the said Mr. P. Ramaraj had been transferred and some other person had taken charge as the Chief Educational Officer, Salem. Summons has been issued on the

present incumbent. As I have already pointed out herein above, the First Accused is not a natural person but it is Chief Educational Officer, Salem, who is an artificial person. Of course, such an artificial person is a juristic person.

12. The term 'person' has been defined in Section 11, I.P.C., and the same is in *pari materia* with Section 3(42) of the General Clause Act, 1897. Obviously, the definition is inclusive. As per the definition, the word 'person' includes any Company or association or body of persons, whether incorporated or not. While interpreting these provisions, the Courts have held that the State and its instrumentalities are juristic persons-vide ***Common Cause, A Registered Society v. Union of India,*** 1999 (6) SCC 667. In view of the above, there can be no doubt that the Chief Educational Officer is an artificial person/juristic person falling under Section 11 of I.P.C.

13. Nextly, to constitute defamation, as envisaged in Section 499, I.P.C., either the imputation should have been intended to harm the reputation of such person or atleast the person making the said imputation should have had knowledge or reasons to believe, that the same will harm the reputation of the other. This provision came to be interpreted on several occasions by various High Courts as well as the Hon'ble Supreme Court wherein, consistently, the Courts have taken the view that one of the essential ingredients to constitute an offence under Section 499, I.P.C. is "*mens rea*".

14. Now, the question is, *"Can an artificial person be said to have the mens rea of forming an intention to cause harm to the reputation ?"* To find an answer to this question, we may usefully refer to the judgment of the Hon'ble Supreme Court in ***Kalpnath Rai v. State,*** 1997 (8) SCC 732, wherein, while holding that '*mens rea*' is an essential ingredient for the offence envisaged in Section 3(4) of Terrorist and Disruptive Activities Act, (TADA Act), in paragraph No.57, the Hon'ble Supreme Court has held as follows:

> "57. On the above understanding of the legal position we may say at this stage that there is no question of A-12 — the Company to have had the *mens rea* even if any terrorist was allowed to occupy the rooms in Hotel Hans Plaza. The Company is not a natural person. We are aware that in many recent penal statutes, Companies or Corporations are deemed to be offenders on the strength of the acts committed by persons responsible for the management or affairs of such Company or corporations *e.g.* Essential Commodities Act, Prevention of Food Adulteration Act, etc. But there is no such provision in TADA which makes the Company liable for the acts of its officers. Hence, there is no scope whatsoever to prosecute a Company for the offence under Section 3(4) of TADA. The corollary is that the conviction passed against A-12 is liable to be set aside."

15. Subsequently, a Constitution Bench of the Hon'ble Supreme Court in ***Standard Chartered Bank v. Directorate of Enforcement,*** 2005 (3) CTC 39

(SC) : 2005 (4) SCC 530, 541, had to consider whether a body Corporate can be prosecuted and punished for criminal offences. In paragraph No.6 of the said judgment, the Constitution Bench has held as follows:

> *"6.* There is no dispute that a Company is liable to be prosecuted and punished for Criminal offences. Although there are earlier authorities to the effect that Corporations cannot commit a crime, *the generally accepted Modern Rule is that except for such crimes as a Corporation is held incapable of committing by reason of the fact that they involve personal malicious intent,* a Corporation may be subject to indictment or other Criminal process, although the Criminal act is committed through its agents." (Emphasis supplied)

16. The Constitution Bench further rejected the argument that a Company can avoid Criminal prosecution in cases where custodial sentence is mandatory. In paragraph Nos.27, 28, 30, 31 & 32, the Constitution Bench has held as follows:

> *"27.* In the case of Penal Code offences, for example under Section 420 of the Indian Penal Code, for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under Section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the Appellants' plea is accepted then for the offence under Section 417, I.P.C., which is an offence of minor nature, a Company could be prosecuted and punished with fine whereas for the offence under Section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the Company cannot be prosecuted as there is a mandatory sentence of imprisonment.
>
> *28.* So also there are several other offences in the Indian Penal Code which describe offences of serious nature whereunder a corporate body also may be found guilty, and the punishment prescribed is mandatory custodial sentence. There are a series of other offences under various statutes where the Accused are also liable to be punished with custodial sentence and fine.
>
> *29*.....
>
> *30.* As the Company cannot be sentenced to imprisonment, the Court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed for graver offences. If the Appellants' plea is accepted, no Company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences. The offences mentioned under Section 56(1) of the FERA Act, 1973, namely, those under Section 13; clause (a) of sub-section (1) of Section 18; Section 18-A; clause (a) of sub-section (1) of Section 19; sub-section (2) of Section 44, for which the minimum sentence of six months' imprisonment is prescribed, are serious offences and if committed would have serious financial consequences affecting the economy of the country.

All those offences could be committed by Company or corporate bodies. We do not think that the legislative intent is not to prosecute the companies for these serious offences, if these offences involve the amount or value of more than ₹ one lakh, and that they could be prosecuted only when the offences involve an amount or value less than ₹ one lakh.

31. As the Company cannot be sentenced to imprisonment, the Court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the Court can impose the punishment of fine which could be enforced against the Company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the Court cannot exercise the same discretion as regards a natural person. Then the Court would not be passing the sentence in accordance with law. As regards Company, the Court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a Company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any Company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or Company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the Corporation to a Criminal law is essential to have a peaceful society with stable economy.

32. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment (*sic* and fine). We overrule the views expressed by the majority in *Asstt. Commr. v. Velliappa Textiles Ltd.,* 2004 SCC (Cri.) 1214 : 2003 (11) SCC 405, on this point and answer the reference accordingly."

17. Very recently, in ***Iridium India Telecom Limited v. Motorola Incorporated,*** 2011 (2) MWN (Cr.) 195 (SC) : 2011 (1) SCC 74, 101, after having referred to the ***Kalpnath Rai v. State,*** 1997 (8) SCC 732 (cited supra), case and ***Standard Chartered Bank v. Directorate of Enforcement,*** 2005 (3) CTC 39 (SC) : 2005 (4) SCC 530, 541 (cited supra) case, the Hon'ble Supreme Court in paragraph No.66, has held as follows:

"66. These observations leave no manner of doubt that a Company/Corporation cannot escape liability for a Criminal offence merely because the punishment prescribed is that of imprisonment and fine. We are of the considered opinion that in view of the aforesaid judgment of this Court, the conclusion reached by the High Court that the Respondent could not have the necessary *mens rea* is clearly erroneous."

18. A close reading of the above judgments would make it abundantly clear that it is the settled law that there can be a prosecution of an artificial/juristic person, in respect of any offence, except such crimes which

an artificial person is incapable of committing by the reason of the fact that they involve *personal malicious intent.*

19. Applying the above principles, if we analyse the definition of defamation in Section 499, I.P.C., it will be crystal clear that it is an offence involving *personal malicious intent,* which is evident from the fact that one of the essential ingredients is either intention to harm or knowledge or reasons to believe that such imputation will harm the reputation of the other. Therefore, an artificial/juristic person cannot be prosecuted for an offence under Section 500, I.P.C., for such an artificial/juristic person cannot be attributed with any malicious intention because malicious intention can be attributed only to a living person. In the instant case, the Chief Educational Officer/the First Accused is an artificial/juristic person and therefore, as against him, the prosecution for offence under Section 500, I.P.C., cannot be maintained.

20. Now moving on to the facts of the case, in the Complaint itself the Respondent has stated about the order passed by this Court in W.P. No.13121 of 2009 dated 15.10.2009. In the said order, this Court specially directed the authorities to make fresh enquiry with regard to the allegations made against the PTA. It was only in pursuance of the said direction, the First Accused constituted the Committee consisting of Accused 2 to 4 to enquire into the allegations and to submit a report. As per the said order of the First Accused, the Accused 2 to 4 held enquiry and submitted a report to the First Accused stating that the PTA had illegally collected donation from the parents of the students and had not accounted for more than ₹10 lakhs. This according to the Complainant, constitutes conspiracy falling within the ambit of Section 120-B of I.P.C., as against the Accused 2 to 4.

21. The learned Counsel for the Respondent is not in a position to explain as to how the act of the Accused 2 to 4 in submitting a report in pursuance of the order of the Chief Educational Officer and the order of this Court will amount to conspiracy. If the Petitioner is aggrieved by the report, he can very well work out his remedy in the manner known to law. But calling the said report as a product of conspiracy, in my considered opinion, is a clear contempt of the order passed by this Court in W.P. No.13121 of 2009, besides being a clear abuse of process of Court as well as law. Thus, the case against the Accused 2 to 4 is liable to be quashed.

22. Nextly, the constitution of a Committee by the First Accused, enquiry held by the Accused 2 to 4, the report submitted by them to the First Accused and issuance of show cause notice by the First Accused are all in discharge of their official duties. Assuming that the above acts of the Accused constitute an offence, to prosecute them, undoubtedly, sanction should have been obtained under Section 197, Cr.P.C. Admittedly, in this case, there was no sanction obtained. Thus, the cognizance taken by the

learned Judicial Magistrate is illegal and therefore, the same is liable to be quashed.

23. As I have already pointed out, the Complaint alleges that offence under Sections 499(2), 500, 501 of I.P.C., have been committed by the First Accused and offence punishable under Section 120-B of I.P.C., has been committed by the Second Accused. The learned Judicial Magistrate, as I have pointed out earlier, posted the case to 22.6.2011 for perusal of the records. On 22.6.2011, the records show, the Respondent/Complaint was examined under Section 200, Cr.P.C. After recording the said statement, the learned Judicial Magistrate did not pass any order. Curiously, the matter was taken up by the learned Judicial Magistrate for hearing on 14.7.2011. As per the docket order of the learned Judicial Magistrate, the Complainant was present. It is not known as to how the Complainant appeared when the case was not posted on that day for hearing.

24. The learned Judicial Magistrate did not even record as to what are the offences upon which cognizance has been taken. Strangely, the learned Magistrate had simply ordered to issue summons to the Accused even without mentioning the date of hearing.

25. Admittedly, Section 499, I.P.C., is not a penal provision and absolutely, there are no allegations in the Complaint to make out an offence under Sections 500, 501 & 120-B, I.P.C. But in the summons issued to the Accused, the learned Magistrate has stated that the Accused are summoned to appear to answer a charge under Section 200, Cr.P.C. This shows that the learned Judicial Magistrate has failed to apply his judicial mind into the Complaint and the other materials which has obviously resulted in irreparable, inconvenience and hardship to the Petitioners. Three respectable Teachers who are considered as "Gurus" and the present Chief Educational Officer, who is not connected in any manner with the above proceedings have been unnecessarily dragged to the Court as Accused like any other criminal. Had the Magistrate been diligent in discharge of his judicial function, I am sure, the humiliation to the Petitioners would have been averted.

26. For all the reasons narrated above, I hold that the Complaint is nothing but a clear abuse of process of law as well as Court. By filing this Private Complaint, the Respondent has virtually wasted the precious judicial time of the learned Judicial Magistrate.

27. In the result, the Criminal Original Petitions are allowed and the case in C.C. No.155 of 2011 on the file of the learned Judicial Magistrate No.5, Salem is quashed.