

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2015

DATE OF DECISION : 16.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

W.A.Nos.857 to 861 of 2015

and

Connected miscellaneous petitions

1. The State of Tamil Nadu,
rep by its Principal Secretary to Government,
Home (Courts-II) Department,
Secretariat,
Fort St. George,
Chennai-9. ... 1st Appellant in all
writ appeals
2. The Deputy Superintendent of Police,
Special Investigation Team, CBCID,
Madurai, Tirumangalam Taluk Police Station,
Madurai District. 2nd Appellant in
W.A.No.857 of 2015
2. The Director General of Police,
Santhome High Road,
Chennai-4.
3. The Additional Superintendent of Police,
Special Investigation Division,
CBCID, Chennai. ... Appellants 2 and 3 in
W.A.Nos.858, 859/2015
4. The Inspector of Police,
Thirumangalam Police Station,
Thirumangalam, Madurai. ... 4th Appellant in
in W.A.No.858 of 2015

State,
rep by the Deputy Superintendent of Police,
CBCID, Head Quarters,
Chennai @ Vellore.

... 2nd appellant in
W.A.No.860 of 2015

State by the Inspector of Police,
O.C.U. CBCID, Tirunelveli City Police Station,
Tirunelveli.

... 2nd appellant in
W.A.No.861 of 2015

Vs.

S.Tharvees Maideen

... Respondent in
W.A.No.857 of 2015

Abdullah @ Abdul Rehman

... Respondent in
W.A.No.858 of 2015

Musthafa

... Respondent in
W.A.No.859 of 2015

Sameem Banu

... Respondent in
W.A.No.860 of 2015

Mohammed Thasin

... Respondent in
W.A.No.861 of 2015

W.A.No.857 to 861 of 2015 are preferred under Clause 15 of Letters Patent against the order dated 9.4.2015 passed in W.P. (MD) Nos.16935, 16986 and 17875 of 2014 and W.P. Nos. 33234 and 33235 of 2014.

W.P. (MD) Nos.16935, 16986 and 17875 of 2014 and W.P. Nos. 33234 and 33235 of 2014 : These Petitions under Article 226 of the Constitution of India, praying this Court for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records connected with G.O.Ms.No.534 dated 05.08.2014 passed by the first Respondent, quash the same as illegal.

For Appellants : Mr.AL.Somayaji, Advocate General
assisted by
Mr.T.N.Rajagopalan, Spl.G.P.
In all Writ Appeals

For Respondents : Mr.K.Thilageswaran
in W.A.No.857 of 2015
No appearance in
W.A.Nos.858 to 861 of 2015

COMMON JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant appeals arise from the common order dated 9.4.2015 passed in W.P.Nos.16935, 16986, 17875, 33234 and 33235 of 2014. Notwithstanding service of notice and also names printed in the cause list, none has chosen to appear, except the respondent in W.A. No.857 of 2015.

2. The writ petitioners filed the writ petitions separately, seeking to quash the G.O.Ms.No.534, Home (Courts II) Department dated 5th August, 2014, wherein by notification the State Government, exercising powers conferred by sub-section (1) of Section 22 of the National Investigation Agency Act, 2008 (Central Act 34 of 2008) read with sub-section (1) of section 11 of the said Act, constituted a Special Court at Chennai (Poonamallee) for the trial of the following cases :

"(i) Vellore North Police Station Crime
Number.599/2013 (Vellaiyappan murder case)

(ii) Hasthampatty (Salem City) Police Station
Crime Number.297/2013 (Auditor Ramesh murder case)

(iii) Tirunelveli Crime Branch CID, Crime
Number.01/2013.

(iv) Thideer Nagar Police Station Crime
Number.554/2013.

(v) Thirumangalam Taluk Police Station Crime
Number 237/2011. (Planting of pipe bomb in the
route of Tr.L.K.Advani).

(vi) Vellore South Police Station Crime Number.653/2012 (Dr.Aravind Reddy murder case).

(vii) Paramakudi Town Police Station Crime Number.90/2013 (Paramakudi Murugan murder case).

(viii) Gudiyattam Police Station Crime Number.408/2013 (Panchatcharam murder and robbery of Rs.1.50 lakhs case)."

3. In case of S.Tharveen Maideen in WP(MD) No.16935 of 2014, an offence was registered in Crime No.237 of 2011 on the file of the Inspector of Police, Thirumangalam Police Station, Madurai for the offences under Sections 307, 120B read with 109 of IPC read with Section 6(r) read with 4(1) of the Explosive Substances Act, 1908, Section 16(1)(a), 18 and 20 of the Unlawful Activities (Prevention) Act, 1967.

4. In case of Abdullah @ Abdul Rahman in WP(MD)No.16986 of 2014, a case in Crime No.237 of 2011 was registered on the file of the Inspector of Police, Thirumangalam Police Station for the offences under Sections 120B, 109, 307, 153A, 149 of IPC r/w 34 of IPC, Section 4(a), 4(b), 4(i), 4(ii) r/w Section 6 of the Explosive Substances Act, 1908 and Section 16(1)(a), 18 and 20 of the Unlawful Activities (Prevention) Act, 1967.

5. In respect of Musthafa in W.P.(MD)No.17875 of 2014, a case in Crime No.237 of 2011 on the file of the Thirumangalam Taluk Police Station was registered for the offence under Section 120B, 109, 307, 153 of IPC, Sections 4(a), 4(b), 4(i), 4(ii) and 5 of the Explosive Substance Act, 1908 and Section 16(1)(b), 18 and 20 of Unlawful Activities (Prevention) Act, 1967.

6. In case of Sameem Banu in W.P.No.33234 of 2014, a case in Crime No.599 of 2013 on the file of the Vellore North Police station was registered under the provisions of Section 302 of IPC, Section 5 of the Explosive Substances Act, 1908 and Sections 16(1)(a), 18 and 20 of the Unlawful Activities (Prevention) Act, 1967.

7. In respect of Mohammed Thasin in W.P.No.33235 of 2014, a case in Crime No.1 of 2013 on the file of the Inspector of Police, O.C.U., CBCID, Tirunelveli City Police Station was registered for the offence under Section 153A, 109, 120B IPC r/w

Section 5 of the Explosive Substances Act, 1908 and Section 18 of Unlawful Activities (Prevention) Act, 1967.

8. On constitution of the Special Court, as aforesaid, at Chennai (Poonamallee), all the aforesaid criminal cases were transferred to the said Special Court. The trial by the Special Court was assailed by the petitioners in different writ petitions. The learned Single Judge summarised the grounds, which were taken up by the writ petitioners before the Writ Court, as under:

"(i) the provisions of the NIA Act, 2008, are not applicable to the cases on hand, since these cases were not investigated by the National Investigation Agency;

(ii) the definition of the word "Court" in Section 2(1)(d) of the Unlawful Activities (Prevention) Act, 1967, does not include a Special Court constituted under Section 22 of the NIA Act, 2008;

(iii) the ordinary offences triable by the normal Courts of Sessions, cannot be taken to be acts of terrorism, so as to warrant trial by Special Courts and that by forcing the accused to engage a new counsel at the new place of trial, the valuable right of defence available to an accused is sought to be diluted;

(iv) cases pending before the normal Sessions Courts cannot be transferred, except in accordance with the procedure prescribed by Section 407(3) of the Code of Criminal Procedure;

(v) the constitution of Special Court only for the trial of eight criminal complaints is violative of Articles 14 and 21 of the Constitution and the secular fabric of the democratic polity; and

(vi) the offences cannot be tried in Special Court constituted outside the places within whose territorial jurisdiction the offences were allegedly committed."

9. The ground No.3 did not find favour with the writ court and was negatived. The Ground Nos.4,5 and 6 were also rejected. It is pertinent to mention that no objection/ reply in respect of the rejection of the aforestated contentions was filed in the instant appeals.

10. Primarily, the question which arises for consideration before us is whether the "court" as defined under Section 2(1) (d) of the Unlawful Activities (Prevention) Act, 1967 (for short "the UA Act"), does include the Special Court constituted under Section 22 of the National Investigation Agency Act, 2008 (for short "the NIA Act"). Secondly, whether the Special Court constituted by the impugned notification dated 5th August, 2014 was properly constituted for trial of the aforestated criminal cases.

11. The writ petitioners have also raised the contentions before the writ court that since these cases were not investigated by the National Investigation Agency under the provisions of the NIA Act, the said cases are not triable under the Special Court constituted in exercise of powers conferred under the NIA Act.

12. The learned Single Judge has examined the issue at length and came to the following conclusion :

"39. Therefore, the Scheme of the Act, as found in Chapters III and IV, makes it crystal clear that the first contention of the petitioners cannot hold water. It is not necessary that the investigation by the National Investigation Agency is a sine qua non for the trial of the scheduled offences by a Special Court. Since the National Investigation Agency has an option under Section 7(b) to transfer the case to the State Government for investigation and trial and also since Section 22(2)(ii) makes it clear that the reference to "Agency" appearing in Section 13(1) should be construed as a reference to the Investigation Agency of the State Government, it is clear that a Special Court could be constituted by the State Government under Section 22(1), even in cases where the Investigation Agency was only that of the State Government. Hence, the first contention of the petitioner deserves to be rejected."

13. There is no cavil to the said observations by the respondents herein / writ petitioners. Thus, we are not inclined to advert to the same. Both questions, as aforestated, are intertwined. Ergo, we are considering the same together.

14. Mr.A.L.Somayaji, learned Advocate General, appearing for the appellants, would contend that the definition of the "court", as prescribed under Section 2(1)(d) of the UA Act, wherein, by mistake Section 21 has been stated, does not dis-empower the State Government to exercise its power as conferred under Section 22 of the NIA Act. It is further contended that Section 21 of the NIA Act stipulates an appeal against the trial conducted by the Special Court. Thus, by no stretch of imagination, it may be presumed that the power conferred on the State Government is exercisable only under Section 21 of the NIA Act for treating the High Court as the Special Court.

15. It is also urged that from a reading of the definition of Section 2(1)(d) of the UA Act, it is manifest that the State Government has full competence to constitute a Special Court under the provisions of the NIA Act. The petitioners are facing trial under various offences along with several offences under UA Act, 1967, as amended by Act, 2008. The offence under UA Act is one of scheduled offence under the NIA Act and the trial would be only by the Special Court constituted either under Section 11 by the Central Government or Section 22 of the NIA Act by the State Government. It is also submitted that the State Government has created a Special Court, as aforestated, exercising its power under Section 22 of the NIA Act for trial of the offences specified under the UA Act.

16. It is next urged that a wrong mentioning of section will not nullify the Government order. Further, it is submitted that the strict rule of interpretation relating to the provisions are not applicable to Section 2(1)(d) of the UA Act, as the said provision does not constitute penal offence, as it does neither create an offence nor provide for imposition of any punishment.

17. The learned Advocate General relies on a decision of the Supreme Court in Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others¹ to garner support for his contention that the distinction between a strict consideration

¹ (2005) 4 SCC 530

and a more free one has disappeared in modern times and now mostly the question is what is true construction of the statute. The creation of the court is procedural law and the procedural law has to be construed liberally as held by the Supreme Court in Iqbal Singh Marwah Vs. Meenakshi Marwah and another ²and Mahadev Govind Gharge and others Vs. LAO³ .

18. The learned Advocate General also relies on a decision of the Kerala High Court in Ashruff Vs. State of Kerala⁴, wherein the learned Judge opined that reference to Section 21 in Section 2(a)(d) of the UA Act was obviously a typographical error.

19. On the other hand, Mr.K.Thilageswaran, the learned counsel, representing respondent in W.A.No.857 of 2015, submits in support of the impugned order, stating that all observations made by the learned Single Judge are deemed to be his submissions in the appeals.

20. Heard the learned Advocate General as well as Mr.K.Thilageswaran, learned counsel, perused the pleadings and documents appended thereto. As we have observed that the respondents have not chosen to file any objection or reply in respect of the observations and finding by the writ court, which were negatived by the learned Single Judge, we are not inclined to advert to the same. We proceed to consider the questions as framed herein-above.

21. The Unlawful Activities (Prevention) Act, 1967 was enacted by the Parliament and came into force in December, 1967 for the purpose of more effective prevention of certain unlawful activities of individuals and associations. Subsequently, by amendment, the word "dealing with terrorist activities" was substituted by the Act 29 of 2004 with effect from 21st September, 2004. Section 2(1)(d) of the UA Act defines the "court", which reads as under :

"(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a Special Court constituted under Section 11 or under Section 21 of the National Investigation Agency Act, 2008 (34 of

² (2005) 4 SCC 370

³ (2011) 6 SCC 321

⁴ 2011 CrL. L.J.1021 (Ker.)

2008);]"

22. Section 2(1)(o) of the UA Act defines "unlawful activity", as under:

"(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;"

23. Section 2(1)(p) of the UA Act defines "unlawful association", as under :

"(p) "unlawful association" means any association,-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity :

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;"

24. We are not concerned with the other provisions as the issue involved herein is the creation of the Court, as defined under Section 2(1)(d) of the UA Act.

25. The Parliament, by Act 34 of 2008 enacted the NIA Act aiming to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.

26. Section 2(1)(h) of the NIA Act defines "Special Court", which means a Special Court constituted under section 11 or, as the case may be, under Section 22. Section 11 of the NIA Act empowers the Central Government to constitute Special Courts.

27. Section 22 of the NIA Act empowers the State Government to constitute Special Courts, which reads as under :

"22. Power of State Government to constitute Special Courts.

(1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely—

(i) references to "Central Government" in Sections 11 and 15 shall be construed as references to State Government;

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(ii) reference to "Agency" in sub-section (1) of Section 13 shall be construed as a reference to the "investigation agency of the State Government";

(iii) reference to "Attorney-General for India" in sub-section (3) of Section 13 shall be construed as reference to "Advocate-General of the State".

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted."

28. Section 21 of the NIA Act prescribes for an appeal, which shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law. Needless to state that Section 21 does not contemplate creation of any special court as it provides for appeals before the High Court, as appellate court.

29. Section 13 of the NIA Act deals with the jurisdiction of the Special Courts. Under sub-section (1), every scheduled offence investigated by the agency shall be tried only by the Special Courts within whose local jurisdiction it was committed. Sub-section (2) provides that the Supreme Court may transfer any case pending before a Special court to any other Special court within that State or in any other State, if having regard to the exigencies of the situation prevailing in a State, if it is not possible to have a fair, impartial or speedy trial or it is not feasible to have the trial without occasioning the breach of

peace or grave risk to the safety of the accused, witnesses, the Public Prosecutor or a judge of the Special Court or any of them or it is not otherwise in the interests of justice. Under subsection (3), the Supreme Court or the High Court, as the case may be, are also authorised to act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation.

30. Section 14 of the NIA Act provides for trial of any offence, with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

31. All the cases for offences under the scheduled provisions of the NIA Act, are triable by the Special Court. The "Code" has been defined under Section 2(1)(b) of the NIA Act, as the Code of Criminal Procedure, 1973 (2 of 1974).

32. By the Amendment Act 34 of 2008, the term "Special Court" derives its meaning from the definition as prescribed under Section 2(1)(h) of the NIA Act. The Special Court is defined as a Court constituted either under Section 11 or Section 22 of the NIA Act. Thus, Section 22 of the NIA Act empowers the State Government to constitute a Special Court for the trial of offences under any or all the enactments specified in the schedule to the NIA Act. There is no dispute that the offences punishable under the provisions of the UA Act, as amended by Act 34 of 2008, was a specified act under the said schedule. Considering the legislative intent and the purpose sought to be achieved by the enactment i.e., the UA Act as well as the NIA Act, it is manifest that the intention of the legislature is luculent clear to confer power on the State Government under Section 22 to constitute a Special Court for trial of offences specified for offences punishable under the UA Act. Obviously, mentioning of Section 21 of the NIA Act in the definition clause, viz., Section 2(1)(d) of the UA Act was an error, inasmuch as under Section 21, no power is conferred on the State or under any other authority to constitute a Special Court. As aforesaid, the provisions of Section 21 of the NIA Act contemplate appellate jurisdiction against any judgment, sentence or order not being an interlocutory order of a Special Court to the High Court, both on facts and law. Under subsection (3) of Section 13 of the NIA Act dealing with the

jurisdiction of Special Courts, the power has been conferred on the Supreme Court or the High Court, as the case may be, to act under the said section on the application of the Central Government or the party interested. The said sub-section cannot be read to be empowering for constitution of a Special Court by the Central Government or the State Government.

33. Before amendment by Act 34 of 2008, the definition of "the Court" under Section 2(1)(d) of the UA Act specified a criminal court having jurisdiction, under the Code, to try offences under the said Act. The NIA Act came into force in 2008, wherein, a special Court was defined under Section 2(1)(h) as a Special Court constituted under Section 11 or, as the case may be, under Section 22. As a sequel, the definition clause under Section 2(1)(d) of the UA Act was amended by inserting the words "and includes a Special Court constituted under Section 11 or under Section 21 of the National Investigation Agency Act, 2008 (34 of 2008)".

34. On a plain reading of the aforestated insertion made in the definition clause, it is eloquent that a Special Court as defined in Section 2(1)(h) of the NIA Act was included. Ergo, we are of the considered opinion that Section 21 was mentioned in lieu of Section 22, erroneously, in the definition clause of the UA Act, viz., Section 2(1)(d). In view of the factual matrix and analysis hereinabove, we scarcely have any hesitation to hold that the impugned Government Order in G.O.Ms.No.534, Home (Courts II) Department dated 5th August, 2014, constituting the Special Court at Poonamallee under the provisions of the NIA Act is proper, legal and valid.

35. At this juncture, it is beneficial to refer to some observations made by the Supreme Court, wherein, wrong provisions have been mentioned and on that account, the action or notification was not held as invalid or illegal.

36. In Mohd. Shahabuddin Vs. State of Bihar and Others⁵, an argument was advanced by the accused/appellant that the notification dated 07 June 2006 issued by the State Government, apart from referring to the provisions of Section 9 Cr.P.C., also refers and relies upon the provisions of Section 14(1) of the Bengal, Assam and Agra Civil Courts Act, 1887. It was therefore submitted that since the aforestated reference was

⁵ (2010) 4 SCC 653

made in the notification, the same pin-points to the fact of non-application of mind by the competent authority and on that ground, the notification was illegal and void. Dr.M.K. Sharma, J., in the concurring judgment, observed as under:

"206. I am unable to accept the aforesaid submission for the simple reason that if the notification quotes a wrong section and refers to a wrong provision, the same cannot be held to be invalid if the validity of the same could be upheld on the basis of some other provision.

207. In N. Mani v. Sangeetha Theatre a three-Judge Bench of this Court succinctly observed as follows: (SCC p. 280, para 9)"

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

37. A learned Single Judge of the Kerala High Court in Ashruff (supra), while considering the bail application on 22 October 2010, dealing with the constitution of the Special Court by the State Government, observed that the mention of Section 21 of the NIA Act in the definition of "Court" under Section 2(1) of the UA Act is an obvious mistake for Section 22 of the NIA Act.

38. It is the duty of the Court to find out the legislative intent and the purpose of the enactment sought to be achieved. The general scope of the Act and the mischief sought to be achieved is deducible not only from a certain provision but on examination of all the provisions of the statute. Further, on an analysis of the entire enactment, as aforestated, it is eloquent that the general scope of the NIA Act is to expedite the trial in relation of the offences committed under the scheduled act to the NIA Act. For expeditious trial to remedy the mischief, constitution of a Special Court was contemplated.

39. In *Surjit Singh Kalra vs. Union of India and another*⁶, the Supreme Court held as under:

"19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies Statute Law, 7th edn., p. 109). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar* where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: *Sirajul Haq Khan v. Sunni Central Board of Waqf.*)

40. In *Principles of Statutory Interpretation*, (11 Edition, 2008), the celebrated author and jurist Justice G.P.Singh, observed as under:

"When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.

It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an "elementary rule" by VISCOUNT SIMONDS; a "compelling rule" by LORD SOMERVELL OF HARROW; and a "settled rule" by B.K.MUKHERJEE, J. "I agree", said LORD HALSBURY, "that you must look at the whole

⁶ (1991)2 SCC 87

instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it". And said LORD DAVEY: "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter". It is spoken of construction "ex visceribus actus". "It is the most natural and genuine exposition of a statute", laid down LORD COKE "to construe one part of a statute by another part of the same statute, for that best expreseth the meaning of the makers". To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself, and, "the method of construing statutes that I prefer", said LORD GREENE, M.R. "is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word?'" As stated by SINHA, C.J.I.: "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

41. Further, in Bennion on Statutory Interpretation, it is observed as under:

"It would not be right to allow such human mistakes to frustrate the will of Parliament. In 1977 an attempt was made by the Government to persuade Parliament to enact the Acts of Parliament (Correction of Mistakes) Bill. This would have provided a simple procedure for certain kinds of rectification, but was rejected. Parliament preferred to leave matters in the hands of the judiciary."

A flawed text has been promulgated as

expressing the legislative intention. This needs judicial correction. Yet those who have relied on it are entitled to protection. This raises a difficult conflict between literal and purposive construction. The courts tread a wary middle way between the extremes. The court must do the best it can to implement the legislative intention without being unfair to those who reasonably expect a predictable construction."

42. That apart, in the Construction of Statutes, the author Earl V. Crawford, has observed as under:

"201 Correction of Mistakes, Errors, Omissions and Misprints

As we have indicated in the preceding section, if the true meaning of the legislature appears from the entire enactment, errors, mistakes, omissions and misprints may be corrected by the Court, so that the legislative will may not be defeated. As a result, spelling, grammar, numbers, and even words, may be corrected. This as already stated, is simply making the strict letter of a statute yield to the obvious intent of the legislators. But it must clearly, or at least with reasonable certainty, appear that the error is in fact one before the court will be justified in making the proper correction or amendment or the court will invade the province of the legislature and exercise legislative power. But, when satisfied of the error, the court may make the necessary correction. x x x x x"

43. The learned Single Judge observed that it is a well settled proposition of interpretation of statutes that a penal provision has to be construed strictly. The Court cannot proceed on the basis that what is contained in the original text of the Act, is either a typographical or a clerical error. A court cannot proceed on logic, as the letter of the law need not always follow logic.

44. The constitution of a Court is not a penal provision. The constitution of a court is a procedural provision. Enacting an offence or imposing a penalty is a penal provision which is required to be construed strictly. Construction of even a penal provision may not also be strict. It depends on the nature of

the provision and also the intention of the legislature and the mischief sought to be remedied under the enactment.

45. In case of *M. Narayanan Nambiar vs. State of Kerala*⁷, a 4-Judge Bench of the Supreme Court, while examining the scope of Section 5(1)(d) of the Prevention of Corruption Act (2 of 1947), which reads as under:

"5.(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty --

a x x x x x x
b x x x x x x
c x x x x x

d if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage."

speaking through Subba Rao, J., held that the Prevention of Corruption Act was brought in to purify the public administration. When the legislature used comprehensive terminology to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the Statute is in accord with the word used therein. The relevant passage in this regard is usefully extracted as under:

"11. Coming to the spirit of the provision, there cannot be two views. As we have expressed earlier, the object of the Act was to make more effective provision for the prevention of bribery and corruption. Bribery means the conferring of benefit by one upon another, in cash or in kind, to procure an illegal or dishonest action in favour of the giver. Corruption includes bribery but has a wider connotation. It may take in the use of all kind of corrupt practices. The Act was brought in to purify public administration. When the Legislature used comprehensive terminology in Section 5(1)(d) to achieve the said purpose, it would be appropriate not to limit the content by

⁷ AIR 1963 SC 1116

construction when particularly the spirit of the Statute is in accord with the word used therein."

46. In *Balram Kumawat vs. Union of India and Others*⁸, the Supreme Court, held as under:

"23. Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so."

47. In this regard, it is apposite to refer to the observations made by a Constitution Bench of the Supreme Court in *Iqbal Singh Marwah (supra)*, wherein, when interpretation of Section 195(1)(b)(ii) of the Cr.P.C., 1973, which reads as follows:

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—

(1) No court shall take cognizance—

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

⁸ (2003) 7 SCC 628

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that court, or of some other court to which that court is subordinate."

was under consideration, it was held as under:

"31. That apart, the section which we are required to interpret is not a penal provision but is part of a procedural law, namely, the Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal Act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned counsel for the appellants can, therefore, have no application here."

48. Yet in another Constitution Bench judgment of the Supreme Court in Standard Chartered Bank and Others vs. Directorate of Enforcement and Others⁹, K.G. Balakrishnan, J. (as He then was), speaking on behalf of the majority, observed as

⁹ (2005) 4 SCC 530

under:

"23. The counsel for the appellant contended that the penal provision in the statute is to be strictly construed. Reference was made to Tolaram Relumal v. State of Bombay, SCR at p. 164 and Girdhari Lal Gupta v. D.H. Mehta. It is true that all penal statutes are to be strictly construed in the sense that the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment. Here, the legislative intent to prosecute corporate bodies for the offence committed by them is clear and explicit and the statute never intended to exonerate them from being prosecuted. It is sheer violence to common sense that the legislature intended to punish the corporate bodies for minor and silly offences and extended immunity of prosecution to major and grave economic crimes."

49. In the aforesaid judgment, D.M. Dharmadhikari, J., concurring with the majority, observed as under:

"36. The rule of interpretation requiring strict construction of penal statutes does not warrant a narrow and pedantic construction of a provision so as to leave loopholes for the offender to escape (see Murlidhar Meghraj Loya v. State of Maharashtra). A penal statute has to also be so construed as to avoid a lacuna and to suppress mischief and to advance a remedy in the light of the rule in Heydon's case. A common-sense approach for solving a question of applicability of a penal statute is not ruled out by the rule of strict construction. (See State of A.P. v. Bathu Prakasa Rao and also G.P. Singh on Principles of Statutory Interpretation, 9th Edn., 2004, Chapter 11, Synopsis 3 at pp. 754 to 756.)"

50. For the reasons and analysis hereinabove, the order of

the learned Single Judge to the extent of holding the constitution of the Special Court as without sanction of law and not legal, is set aside. The Government Order in G.O.Ms.No.534, Home (Courts II) Department dated 5th August, 2014, impugned before the learned Single Judge, as aforestated, is proper, legal and valid.

51. Resultantly, the writ appeals are, accordingly, allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vvk/cad

To

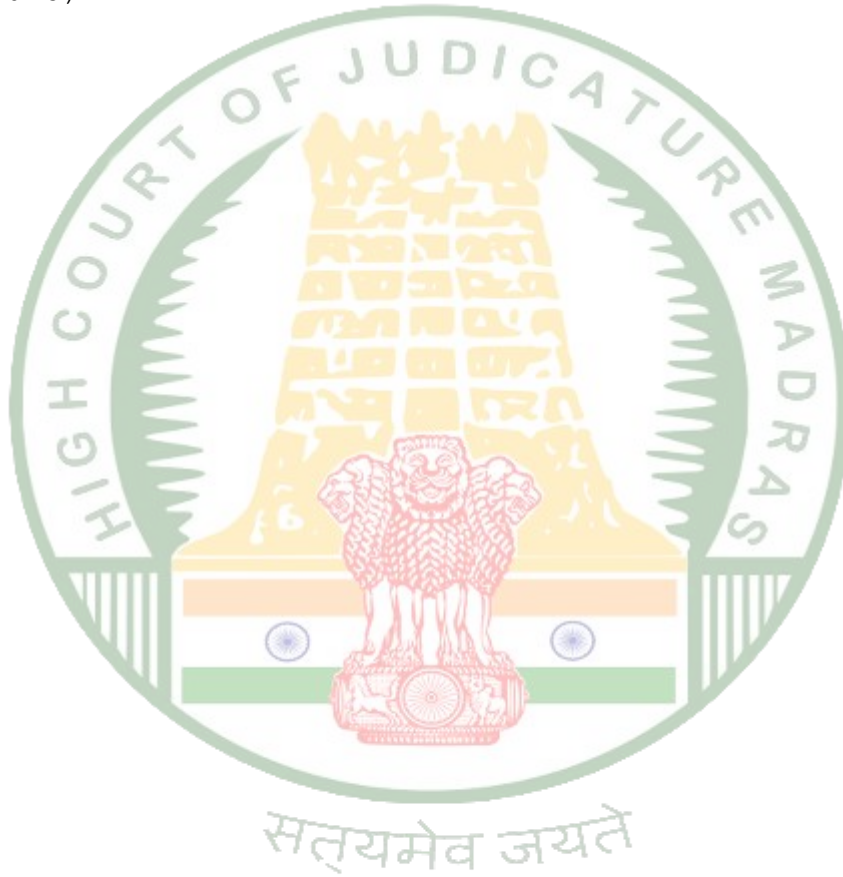
1. The Principal Secretary to Government,
Home (Courts-II) Department,
State of Tamil Nadu,
Secretariat,
Fort St. George, Chennai-9.
2. The Deputy Superintendent of Police,
Special Investigation Team, CBCID,
Madurai, Tirumangalam Taluk Police Station,
Madurai District.
3. The Director General of Police,
Santhome High Road, Chennai-4.
4. The Additional Superintendent of Police,
Special Investigation Division,
CBCID, Chennai.
5. The Inspector of Police,
Thirumangalam Police Station,
Thirumangalam, Madurai.
6. The Deputy Superintendent of Police,
CBCID, Head Quarters, Chennai @ Vellore.

7. The Inspector of Police,
O.C.U. CBCID, Tirunelveli City Police Station,
Tirunelveli.

+2cc's to Mr.K.K.Ramakrishnan, Advocate, S.R.No.57297 & 57298

W.A.Nos.857 to 861 of 2015

VGI (CO)
CA(27/10/2015)



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