

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.7.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP.No.19208 of 2015

The Superintendent of Customs,
Prosecution Unit - Air,
Custom House,
Rajaji Salai,
Chennai - 600 001.

... Petitioner/Complainant

Vs

Smt. Sareebdeen Juwairiya

... Respondent/Accused

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to direct the Additional Chief Metropolitan Magistrate (E.O.I & E.O.II) at Egmore, Chennai to receive the remand papers and the remand prisoners if brought to them by the Petitioner/Complainant and remand them irrespective of the place of occurrence of the offence if they have placed under arrest at Custom House, Chennai-1.

For Petitioner :Mr.N.P.Kumar Spl.P.P

For Respondents :Mr.C.Emalias

Additional Public Prosecutor

ORDER

This petition has been filed to direct the Additional Chief Metropolitan Magistrate (E.O.I & E.O.II) at Egmore, Chennai to receive the remand papers and the remand prisoners if brought to them by the Petitioner/Complainant and remand them irrespective of the place of occurrence of the offence if they have placed under arrest at Custom House, Chennai-1.

2. The respondent/accused was intercepted by customs officials on 15.7.2015 at about 21 hours on his arrival by flight from Sri Lanka and when he was passing through the green channel on suspicion that he was carrying some contraband. The baggage of the passenger

was checked and 1990 grams of gold was recovered from him. Summons was issued to him on the Customs Act and he accompanied the officers for further enquiry to the Customs House in the First Line Beach, Chennai. His statement was recorded by the officer and thereafter, he was formally placed under arrest on 16.7.2015, on the Customs House, Chennai after serving a copy of the arrest memo on him. Thereafter, the petitioner was produced before the learned Additional Chief Metropolitan Magistrate (E.O.I & E.O.II) at Egmore, Chennai for remand under Section 161 Cr.P.C and the learned Magistrate refused to remand the accused and has passed the following order:

"Order dated 16.7.2015

Accused produced at 7.30 p.m. on 16.7.2015 at my residence, Judicial Officers Quarters, Egmore, Chennai-8. No complaint of ill-treatment by the Complainant. Special Public Prosecutor Mr.N.Suresh Kumar present. He represented that this court is having jurisdiction to remand the accused. The offence is alleged to have been committed in the Chennai International Airport, Meenambakkam. However, the Spl.P.P. admitted that after filing of complaints case records are to be transferred to the Judicial Magistrate Court, Alandur for Trial. When the said court is having jurisdiction to conduct Trial and the said court having jurisdiction over the area where the occurrence took place, I am of the view that the said court alone is competent to remand the accused. Hence, the complainant is directed to produce the accused before the Judicial Magistrate, Alandur. For appropriate orders. "

Challenging the said order, the Superintendent of Customs is before this Court.

3. Since the accused/respondent is only a formal party, it may not be necessary to issue notice to him. An identical issue came for consideration way back in the year 1992 itself and has been settled by this Court in Senior Intelligence Officer, Directorate of Revenue Vs. M.G. Ranganathan reported in 1993 L.W. (Cr1.) Pg.261. After discussing various provisions of Code of Criminal Procedure, it is held in paragraph No.13 as follows:

"13. S. 57 of the Code prohibits detention in police custody of an accused beyond 24 hours without producing him before a Judicial Magistrate under Section 167(1). Both these provisions have been enacted in the larger interests of society, particularly in the interests of the accused. In

order to prevent resort to third degree methods and illegal detention, there is an absolute mandate on the police officer to produce the accused before a Judicial Magistrate within 24 hours of the arrest. Police custody without a judicial remand, cannot exceed 24 hours. Such a safeguard is absolutely necessary. The Officer arresting the accused has to produce the accused to the Judicial Magistrate nearest to the place of arrest and not the Magistrate nearest to the place of the commission of the offence, irrespective of the fact whether that Magistrate has jurisdiction to try the offence or not. For better enforcement of this statutory requirement, S. (2-A) has been added to S. 167 providing for production of the accused before the nearest Executive Magistrate, where a Judicial Magistrate is not available. While so, keeping in mind that a Judicial remand is the only safeguard against frivolous arrests, illegal detention, resort to third degree methods and custodial violence, the Judicial Magistrates should undertake this responsibility of receiving remand papers and the accused, whenever they are presented to him. In the case of a regular police arrest, along with the remand report, there should be an F.I.R. and if the case is registered only on the arrest and recovery a seizure mahazar, while in the case of arrest by officers of different departments like Customs, Narcotic Intelligence Bureau, there would not be any F.I.R. and only seizure mahazars would accompany the remand report. Whatever be the material that is placed before the learned Magistrate, it is for him to decide whether there are grounds for believing that the involvement of the accused is well found to warrant remand of the accused. All Judicial Magistrates and in metropolitan areas, all Metropolitan Magistrates, whatever cadre they might be and in places where there are no such Magistrates, Executive Magistrates are bound to receive remand papers and the accused for dealing with them under Section 167 of the Code."

4. The office of the Chief Metropolitan Magistrate has also issued an office order dated 18.10.1993 which reads as follows:

Office Order

Sub:Cases- Criminal-Remanding of persons
accused of under NDPS Act by Narcotics Control
Bureau,Madras - Attending of - Orders - Issued.

.....

It is hereby ordered that persons accused of
and arrested for Offences under N.D.P.S Act by
Narcotics Control Bureau, Madras shall be produced
before the

Additional Chief Metropolitan Magistrate (E.O.I and
E.O.II) for remand, according to their turn.

Sd/- T.Durairaj

Chief Metropolitan Magistrate

5. In view of the above, the learned Magistrate ought not to
have refused to remand the accused to custody. If the learned
Additional Chief Metropolitan Magistrate (E.O.I and E.O.II) is of the
opinion that the trial will be before the learned Judicial
Magistrate, Alandur, then it is open for him to direct the Jail
Authorities to cause production of the accused on the expiry of the
15 day period before the Judicial Magistrate, Alandur and in the
meantime, he should transmit the records there. In future, the
learned Magistrate is directed to adhere to the law laid down in the
above said Judgment of this Court.

6. With the above direction, this petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. Additional Chief Metropolitan Magistrate (E.O.I & E.O.II) at
Egmore, Chennai

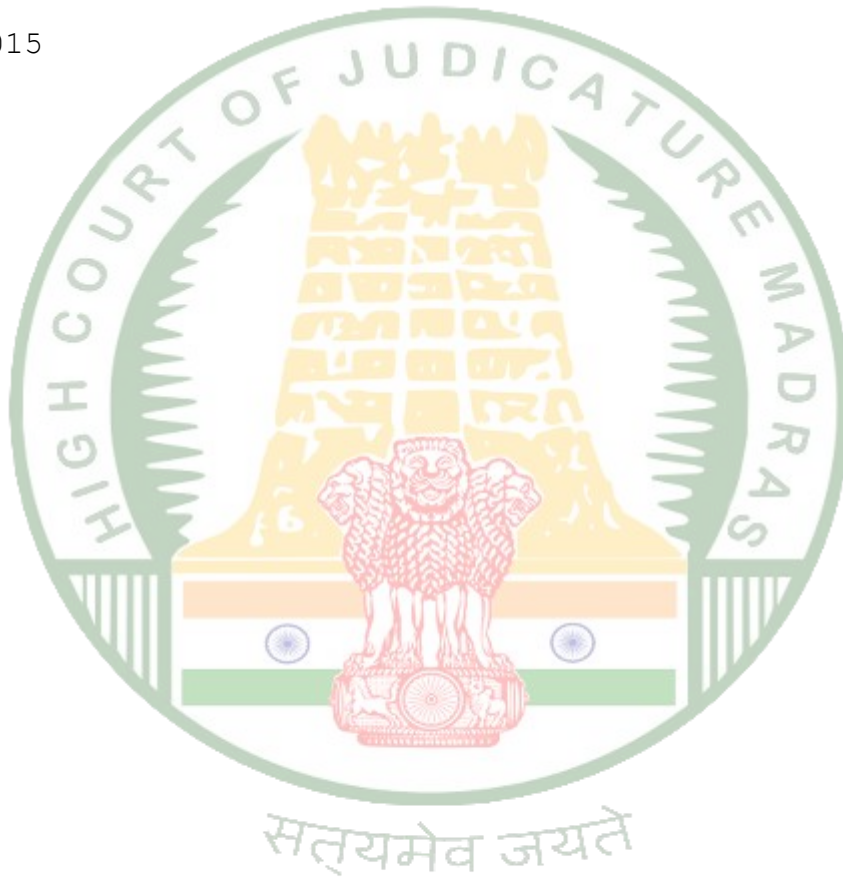
2.The Judicial Magistrate, Alandur

3.The Public Prosecutor
High Court Madras

+1 cc to Mr.N.P.Kumar Special Public Prosecutor
sr.no.38792

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ctk(co)
aa24/08/2015



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