

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP Nos.21004 and 21005 of 2015

and M.P.Nos.1 and 1 of 2015

The Superintendent of Prisons
Central Prison-II, Puzhal
Chennai 600 066.

... Petitioner in both Crl.OPs.

Vs

The Inspector of Police
Maduravoyal Police Station
Chennai.

... Respondent in both Crl.OPs.

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C. to set aside the order passed in D.Nos.155 and 169 of 2015, dated 21.01.2015 and 22.01.2015 respectively by the learned Judicial Magistrate-II, Poonamallee, Thiruvallur District.

Amicus Curiae : Mr.S.Suresh
For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

ORDER

This petition has been filed to set aside the order passed in D.Nos.155 and 169 of 2015 dated 21.01.2015 and 22.01.2015 respectively by the learned Judicial Magistrate-II, Poonamallee, Thiruvallur District.

2. Shorn of irrelevant facts, the case of the State is that the Judicial Magistrate has no authority to direct the Superintendent of Prison to transfer a prisoner from one prison to another prison at the time of remanding a prisoner under Section 167 Cr.P.C. The Inspector of Police, Maduravoyal Police Station arrested some accused in Cr.Nos.2376 of 2014, 2377 of 2014, 2378 of 2014 and 2380 of 2014 and they were produced before the learned Judicial Magistrate-II, Poonamallee, who remanded them to judicial custody under Section 167 Cr.P.C. At the request of the prisoners that they all be kept in Cuddalore, the learned Judicial Magistrate-II, Poonamallee passed orders on 21.01.2015 and 22.01.2015 directing the Superintendent of Prison, Central Prison, Puzhal to transfer the prisoners to Central Prison, Cuddalore. One of the orders passed by the learned Judicial Magistrate-II, Poonamallee is extracted:

"The accused concerned in 1) Cr.No.2380/2014, u/s 147, 148, 341, 392, 294(b), 427, 307 and 506(ii) IPC, 2) Cr.No.2378/2014, u/s 461, 380 IPC, 3) Cr.No.2377/2014, u/s 461, 380 IPC, 4) Cr.No.2376/2014 u/s 461, 380 IPC, accused namely 1. Sampath Kumar @ Sampath, A/28, S/o Mani, (2) Vignesh @ Vikki, A/23 S/o Kasinathan, (3) Ashok Kumar, A/35, S/o Kuppusamy, (4) Selvam, A/30, S/o Chinnadurai, 5) Bharathidhasan @ Bharthi @ Shakthivel, A/36, S/o Moorthy, 6) Abdul Samathu @ Abdul @ Samathu, A/36, S/o Ameer marakayar, 7) Dhandapani @ Kuzhi vetti Dhandapani, A/32, S/o Kaliyaperumal, 8) Sathyamoorthy, A/33, S/o Rajagopal, 9) Pandiyan @ Kozhi Pandiyan, A/28, S/o Kaliyaperumal, 10) Klinton Prabu, A/23, S/o Kaliyamoorthy, (11) Jani @ Anbudoss, A/23, S/o Arumugam were produced today and their remand was extended till 22.01.2015 and they jointly made a request to this court to transfer them to the Central Prison, Cuddalore as they all hailing from Cuddalore and other neighboring districts and their relatives feel very difficult to meet them at Central Prison, Puzhal at Chennai.

This Court has considered their request and this Court is of the opinion that they shall be lodged at Central Prison, Cuddalore from 22.01.2015 provided if they are not on bail and if their remand is extended on 22.01.2015.

Hence you are required to provide proper and necessary escort to the above mentioned persons on 22.01.2015 to transfer them from Central Prison, Puzhal to Central Prison, Cuddalore provided if they are not on bail and if their remand is extended on 22.01.2015."

3. Challenging the orders, this petition has been filed. This Court appointed Mr.S.Suresh as Amicus Curiae to assist. The answer to the question raised by the State is available in Section 29 of the Prisoners Act, 1900 as amended by the State of Tamil Nadu.

"Section 29, Removal of Prisoners:- (1) the State Government may by general or special order provides for the removal of any prisoner confined in a prison:-

- (a) Under sentence of death or
- (b) Under or in lieu of a sentence of imprisonment or transportation or
- (c) In default of payment of a fine or
- (d) In default of giving security of keeping the peace or for maintaining good behavior, to any other prison in the State.

(2) Subject to the orders and under the control of the State government the Inspector General of Prisons may in like manner provide for the removal of any prisoner confined as aforesaid in a prison in the state to any other prison in the state.

The state of Tamil Nadu made an amendment into the Section 29 of the Prisoners Act, 1900 through T.N.Act 14 of 1994, the said State amendment is as follows:

STATE AMENDMENT

Tamilnadu:

In its application to the State of Tamil Nadu in Section 29-

(i) In sub-section (1) in clause (b) for the words "or transportation" substitute the words or imprisonment for life

(ii) After sub-section (2) add the following sub-section namely, - (3) Subject to the orders and under the control of the state government any person who is detained in custody in a prison pending inquiry or trial under any writ warrant or order of any court may, by order, be directed to be removed (1) by the Superintendent Central Prison within his jurisdiction-

(i) from a Central jail to a district jail or a subsidiary jail or (ii) from a district jail to a central jail or subsidiary (iii) from one subsidiary jail to another subsidiary jail or a district jail or a central jail and (b) by the Inspector General of Prisons - (i) from one Central Jail to another Central jail or to a District jail or a subsidiary jail, (ii) From one district jail to another district jail or a Central jail or a subsidiary jail; or (iii) from one subsidiary jail to another subsidiary jail or to a district jail or a Central jail" -- Madras Act 11 of 1958, S.8 (4-6-1958).

(a) Substituted by T.N.Act 14 of 1994), S.2 (4-3-94)."

4. The State of Tamil Nadu has framed Prison Rules by virtue of the powers conferred under Section 39 of the Prisons Act, 1894. It may be apposite to quote Rule 568 and 570 :

"568. GROUNDS REASONS AND CIRCUMSTANCES OF TRANSFER:

Prisoners may be transferred from one prison to another for the following reasons- namely:

- (i) For custody and treatment in suitable institution in accordance with the classification, procedure;
- (ii) For attendance in court for the purpose of standing trial, or giving evidence.
- (iii) On medical grounds:
- (iv) On humanitarian grounds, in the interest of their rehabilitation;
- (v) For post-release vigilance by the police;
- (vi) For providing essential services;
- (viii) On grounds of security, expediency or any other grounds; and
- (viii) For other special reasons, if any.

The authority to transfer a prisoner from one prison to another within the state of such prisoners are referred in Section 29 of the Prisoners Act, 1900 (Central Act III of 1900) and the Rule 570 of the Tamil Nadu Prison Manual Vol-II. The said rule is as follows:

570. Powers of Inspector-General. (1) The Inspector of General subject to the order and under the control of the Government is authorized to sanction the transfer from one prison to another within the State of such prisoners as are referred to in Section 29 of the Prisons Act, 1900 (Central Act-II 1900) except those under sentence of death.

(2) The powers to transfer any prisoner under sentence of death from one prison to another shall vest with the State Government."

5. From a reading of the aforesaid legal provisions it is clear that, a Magistrate has no role to play in matters concerning detention of prisoners in a prison after he passes an order of remand under Section 167 Cr.P.C. and committing the prisoners to the nearest prison. Thereafter, it is the duty of the authorities referred to in Section 29 of the Prisoners Act, to transfer the prisoners taking into consideration the various factors referred to in Rule 568.

In the result, this petition is allowed and the orders dated 21.01.2015 and 22.01.2015 passed by the learned Judicial Magistrate-II, Poonamallee are set aside. Consequently, connected miscellaneous petitions are closed. This Court places on record its appreciation to Mr.S.Suresh, learned Amicus Curiae.

-s/d-

Assistant Registrar(CSV)

dt:25/09/2015

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Sub-Assistant Registrar

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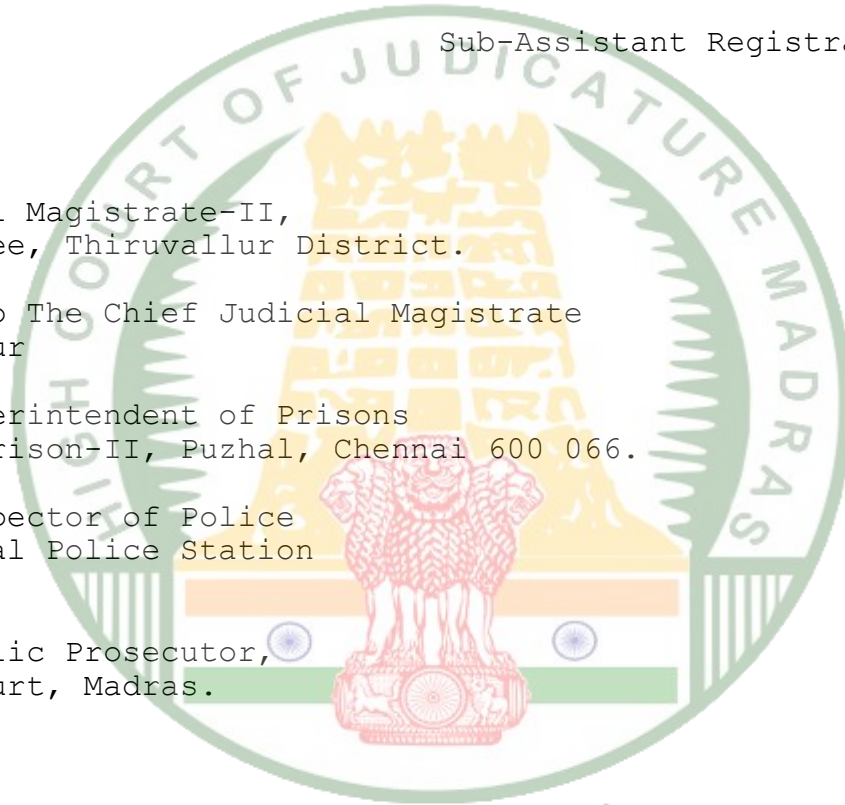
1.Judicial Magistrate-II,
Poonamallee, Thiruvallur District.

2.-do-Thro The Chief Judicial Magistrate
Thiruvallur

3.The Superintendent of Prisons
Central Prison-II, Puzhal, Chennai 600 066.

4.The Inspector of Police
Maduravoyal Police Station
Chennai.

5.The Public Prosecutor,
High Court, Madras.



सत्यमेव जयते

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