

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19-11-2015

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.7913 of 2015

- 1.Thiruselvam
- 2.Kalai @ Kalailingam
- 3.Thangaraj @ Tamilarasan
- 4.Kaviyarasan @ Raja
- 5.Johnmarteen @ John
- 6.Karthick @ Aathi

... Petitioners

Vs.

State by:

- 1.The Deputy Superintendent of Police,
Q Branch CID, Madurai Range
(Othakkadai P.S., Cr.No.47 of 2014)
- 2.The Deputy Superintendent of Police,
Q Branch CID, Ramanathapuram Range,
(Nachiyapuram Crime No.10 of 2014)
- 3.The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry)
(R.C.No.1/2014/NIA/HYD)

... Respondents

Prayer : Criminal Original Petition filed under Section 220 read with 482 of Cr.P.C. with a prayer to direct that the trial of (i) Crime No.47 of 2014 (Othakadai Police Station) which is pending before the Judicial Magistrate's Court, Melur for committal, (ii) S.C.No.133 of 2014, which is pending before the Principal Sessions Judge, Sivagangai, and (iii) Special S.C.No.5 of 2014, which is pending before the Sessions Judge (Special Court for NIA Cases), Puducherry, be transferred to the Special Court for Exclusive Trial of Bomb Blast Cases (NIA Cases), Poonamallee, Chennai.

For Petitioners : Mr.M.Radhakrishnan
for Mr.P.Pugalenth

For R1 to R3 : Mr.D.Simon,
CGSC (Puducherry)

O R D E R

(Order of the Court was made by R.SUDHAKAR, J.)

On 29.1.2014 explosives were noticed beneath the car of Mr.Narayanaswamy, Former Union Home Minister, which was parked near his residence in Puducherry, in connection with which a case in Odiyansalai Police Station Crime No.25 of 2014 under Section 4 of the Explosive Substances Act, 1908, was registered. This case was initially transferred to the file of CB,CID., Puducherry and Sections 307 IPC and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967, were added. When investigation was underway, the Ministry of Home Affairs, Government of India, IS-I Division, vide its order No.11011/10/2014-IS-IV, dated 31.1.2014, ordered the National Investigation Agency, Hyderabad to take over the investigation in Crime No.25 of 2014. In compliance with the orders of the Ministry of Home Affairs, the case was registered as Rc.No.1/2014 on the file of the National Investigation Agency, Hyderabad on 2.2.2014 and investigation was taken up.

2. On 11.2.2014, similar explosives were recovered at Reliance Mart, Uthangudi, Madurai, in connection with which a case in Othakadai Police Station Crime No.47 of 2014 under Sections 4 and 5 of the Explosive Substances Act, 1908 was registered.

3. On 25.2.2014 pamphlets containing incriminating contents against the Union Government were detected near the residence of Mr.P.Chidambaram, the then Union Minister at Managiri, Sivagangai District, in connection with which a case in Nachiyapuram Police Station Crime No.10 of 2014 under Section 153(A) (1) of IPC was registered.

4. On 10.3.2014, the Othakadai Police arrested A-1, A-2 and A-3 in connection with the case in Crime No.47 of 2014 and during the course of investigation, the involvement of six petitioners herein/accused in the offences at the aforesaid three places, came to light.

5. The cases in Madurai Othakadai P.S. Cr.No.47 of 2014 and Sivagangai Nachiyapuram P.S. Cr.No.10 of 2014 were transferred to 'Q' Branch CID, Tamil Nadu for further investigation.

6. Investigation by the 'Q' Branch CID revealed that the petitioners herein are Members of Tamil Nadu Liberation Army, an outfit, which has violence as its creed and believes in secession of Tamil Nadu from the Indian Union. According to the prosecution, the petitioners herein, who are Members of the outfit, had entered into a grand conspiracy to achieve their objective by resorting to violent methods, pursuant to which they were involved in planting explosives on various dates as aforesaid.

7. The 'Q' Branch CID, Madurai Range completed the investigation in Othakadai P.S. Cr.No.47 of 2014 in connection with Reliance Mart occurrence in Madurai and filed the Final Report against the petitioners herein for offences under Section 120B r/w 124A and 34 IPC and Sections 3(a), 4(b), 5(a) & 6 of the Explosive Substances Act, 1908, Section 109 IPC r/w Section 15, 15(1)(a)(ii) & 18, 20 of the Unlawful Activities (Prevention) Act, 1967, before the Judicial Magistrate, Melur, and the case has now been committed to the Court of Sessions, Madurai for further proceedings.

8. The 'Q' Branch CID, Ramanathapuram Range completed the investigation in Nachiyapuram P.S. Cr.No.10 of 2014 in connection with the incident that occurred near Mr.P.Chidambaram's residence and filed the Final Report against the petitioners herein for offences under Sections 120B r/w 124A IPC, Sections 3(a) & 5(a) of the Explosive Substances Act, 1908 and Section 15 r/w 16(b), 18 & 20 of the Unlawful Activities (Prevention) Act, 1967, before the Judicial Magistrate, Tirupathur, and the case has been committed to the Sessions Court, Sivagangai in S.C.No.133 of 2014, where the trial is pending.

9. The National Investigation Agency, Hyderabad completed the investigation in Rc.No.1/2014/NIA (earlier Odiyansalai P.S. Cr.No.25 of 2014) in connection with the recovery of explosives from beneath the car of Mr.Narayanaswamy in Puducherry, and filed Final Report before the Principal District and Sessions Court (Special Court for NIA Cases), Puducherry in S.C.No.5 of 2014.

10. In this fact situation, the petitioners/accused have now approached this Court with the prayer to direct that the trial of,

(i) Crime No.47 of 2014 (Othakadai Police Station) which is pending before the Judicial Magistrate's Court, Melur for committal,

(ii) S.C.No.133 of 2014, which is pending before the Principal Sessions Judge, Sivagangai, and

(iii) Special S.C.No.5 of 2014, which is pending before the Sessions Judge (Special Court for NIA Cases), Puducherry,

be transferred to the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai. In other words, the petitioners want all the three cases to be tried together before the said Court at Poonamallee, near Chennai.

11. The respondents 1 and 2 have not filed counter affidavit, perhaps because the main prayer is to transfer the case investigated by the National Investigation Agency from out of Puducherry.

12. The third respondent has filed a counter affidavit relying upon Section 13(1) of the NIA Act, 2008 and contended that only the Special Court at Puducherry has jurisdiction to try the case. The Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, which is in the State of Tamil Nadu, cannot try the above case.

13. Mr.M.Radhakrishnan, learned Counsel appearing for the petitioners/accused submitted that the petitioners herein are the accused in all the three cases, and that, it is the case of the prosecution that all the three offences were committed pursuant to the criminal conspiracy allegedly entered into by the petitioners, and therefore a joint trial of all the three cases will be in the interest of justice. He also relied upon section 220(1) of Cr.P.C., in support of his plea for joint trial. Mr.M.Radhakrishnan strongly placed reliance upon Section 13(2)(c) of the National Investigation Agency Act, 2008 (Act 34 of 2008) in support of his contention that a joint trial of the three cases before the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, would be in the interest of justice.

14. Mr.D.Simon, learned CGSC reiterated the contentions raised in the counter affidavit.

15. This Court carefully considered the submissions of Mr.M.Radhakrishnan, learned Counsel appearing for the petitioners/accused, and Mr.D.Simon, learned Central Government Standing Counsel appearing for the third respondent.

16. Though the petitioners, who are part of Tamil Nadu Liberation Army, may have a common intention on secession, each case in which they are involved is pursuant to specific conspiracy on specified target, as could be seen from the Final Reports. Section 220 of Cr.P.C. relates to different offences committed by one person in the course of the same transaction. In this case, six persons are involved, and therefore the provisions of Section 220 Cr.P.C. will have no application.

17. That apart, the cardinal principle underlying transfer of a case from one Court to another Court is the convenience of witnesses. There is no whisper in the petition on this aspect. On the contrary, witnesses differ as also the place of occurrence and the target.

18. Section 13 of the National Investigation Agency Act, 2008 (Act 34 of 2008) reads as follows:

"13. Jurisdiction of Special Courts.—(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) If, having regard to the exigencies of the situation prevailing in a State if,—

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a Judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice,

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 and the High Court may transfer

any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may 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."

The section starts with non-obstante clause, meaning thereby, it overrides the general provisions of the Code of Criminal Procedure. Clause (2) of Section 13 enables the High Court only to transfer any case pending before a Special Court situated in that State to any other Special Court within the State, having regard to the exigencies of the situation prevailing in a State and in the interest of justice.

19. Insofar as the two cases pending in Madurai and Sivagangai are concerned, they were investigated by the 'Q' Branch CID of the State of Tamil Nadu, whereas the Puducherry case was investigated by the National Investigation Agency, constituted by the Central Government under Section 3 of the National Investigation Agency Act, 2008, for investigation of offences enumerated in the schedule to the Act. Thus, the investigating agency differs. Section 13 of the National Investigation Agency Act, 2008 clearly provides that scheduled offences investigated by the Agency shall be tried only by the Special Court within whose jurisdiction it was committed. In the present case, insofar as offence in Puducherry is concerned, the investigation agency is the National Investigation Agency and, therefore, the case is taken up before the Sessions Judge (Special Court for NIA Cases), Puducherry. The other two cases are investigated by the 'Q' Branch CID of the State of Tamil Nadu and, therefore, the cases have been brought before the Sessions Courts in the State of Tamil Nadu. The investigation agency in respect of cases pending in the State of Tamil Nadu differs from that of the case in Puducherry. From a reading of Section 13 of the National Investigation Agency Act, 2008, we find that the scheduled offence investigated by the National Investigation Agency and tried by the Special Court at Puducherry cannot be transferred to the State of Tamil Nadu to be tried along with the cases investigated by the 'Q' Branch CID of the State of Tamil Nadu.

20. For the reasons stated above, the prayer for transferring the three cases to the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, cannot be acceded to and consequently this petition stands dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Vr/sasi

To

- 1.The Deputy Superintendent of Police,
Q Branch CID, Madurai Range
(Othakkadai P.S., Cr.No.47 of 2014)
- 2.The Deputy Superintendent of Police,
Q Branch CID, Ramanathapuram Range,
(Nachiyapuram Crime No.10 of 2014)
- 3.The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry)
(R.C.No.1/2014/NIA/HYD)
- 4.The Public Prosecutor,
High Court,
Madras.
- 5.The Public Prosecutor (Puducherry),
High Court,
Madras.
- 6.The Judicial Magistrate Court,
Melur.
- 7.- do - Through The Chief Judicial Magistrate,
Madurai.
- 8.Principal Sessions Judge,
Sivagangai.

9.The Sessions Judge,
(Special Court for NIA Cases),
Puducherry.

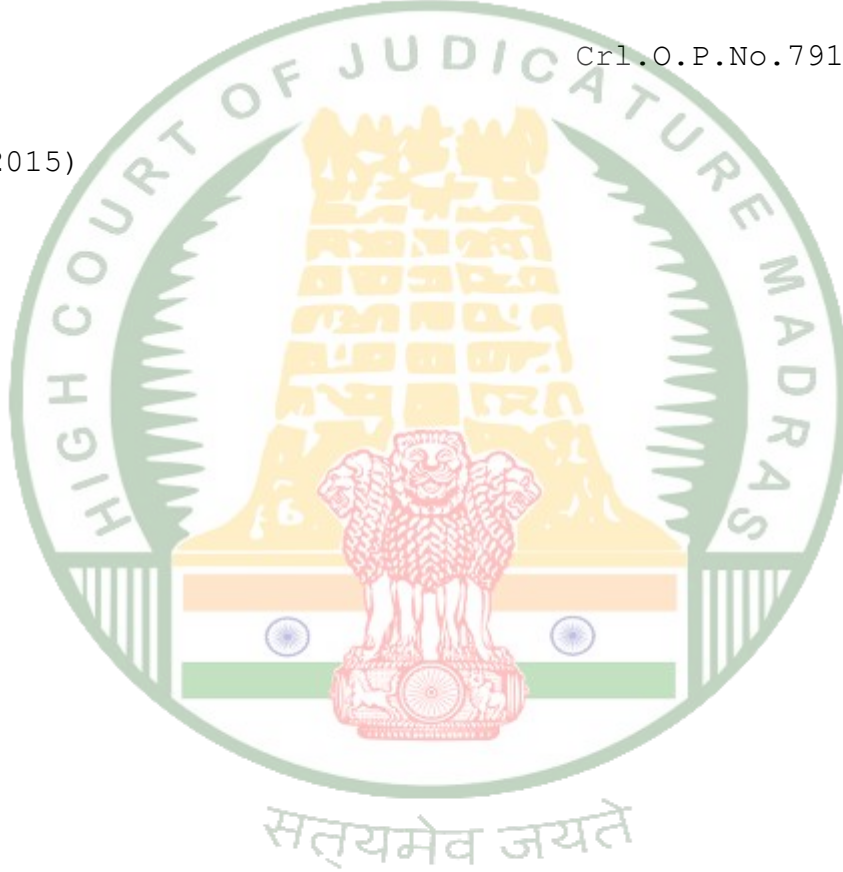
10.The Superintendent,
Central Prison,
Madurai.

+1cc to Mr.P.Pugalenth, Advocate, S.R.No.62820

+1cc to Mr.D.Simon, Advocate, S.R.No.63324

Cr1.O.P.No.7913 of 2015

SKV(CO)
CA(18/12/2015)



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