

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2016

CORAM

The Hon'ble Mr. Justice SATISH K.AGNIHOTRI
and
The Hon'ble Mr. Justice M. VENUGOPAL

W.A.No.856 of 2015

1. The State of Tamil Nadu
rep. By its Principal Secretary to Government,
Home (Courts-II) Department,
Secretariat, Fort St. George,
Chennai.9.
2. The Director General of Police,
Santhome High Road,
Chennai.4.
3. The Additional Superintendent of Police,
CBCID-SID, Madurai. Appellants

Vs.

A. Beema Dowlath ... Respondent

Writ Appeal filed against the order dated 09.04.2015 made in
W.P. No. 28468 of 2014.

Praying for the issuance of a writ of certiorarified mandamus
calling for the entire records connected with G.O(Ms) 534 dated
05.08.2014 passed by the 1st respondent and quash the same as
illegal and consequently direct the 3rd respondent to proceed
with the case in PRC No.13 of 2014 on the file of the learned
Judicial Magistrate No.IV Madurai in Crime No.554 of 2013 on the
file of the Inspector of Police C-1 Thideer Nagar Police
Station Madurai and conduct trial before the Court of the
Sessions Division Madurai.

For Appellants : Mr. T.N. Rajagopalan
Spl. Govt. Pleader

For Respondent No Appearance

JUDGMENT

(delivered by SATISH K.AGNIHOTRI, J.)

The instant intra-court appeal arises from the order
dated 09.04.2015 passed in W.P.No. 28468 of 2014.

2 Despite service of notice and the name being printed in the cause list, none appears nor is there any representation on behalf of the respondent. Thus, the respondent had chosen not to appear in the matter.

3 The instant writ petition is filed seeking to quash the Government Order in G.O.Ms.No.534, Home (Courts-II) Department, dated 5th August, 2014, whereby and whereunder, 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)."

4 The learned Single Judge, after analysing the issue at length, came to the conclusion as under:-

"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."

5 Questioning the aforestated decision, the present writ appeal was filed along with five other writ appeals. This writ appeal was de-linked from the connected batch in W.A.Nos. 857 to 861 of 2015 for want of effecting service on the respondent.

6 The question involved herein is as to whether the constitution of the Special Court at Chennai under the provisions of Section 11(1) of the National Investigation Agency Act, 2008 (Central Act 34 of 2008) was legal and on proper sanction of law.

7 The issue involved in this writ appeal came up for consideration before a Division Bench of this Court, wherein, one of us (Satish K. Agnihotri, J.) was a Member, in the State of Tamil Nadu, rep. by its Principal Secretary to Government, Home (Courts-II) Department, Secretariat, Fort St. George, Chennai and others vs. S.Tharvees Maideen and others¹. The Division Bench, examining the case from all angles, set aside the order passed by the learned Single Judge to the extent it held the constitution of the Special Court as without sanction of law and not legal and allowed the writ appeals to that extent. The operative portion of the said judgment reads thus:

" 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."

8 Inasmuch as the issue involved in the instant writ appeal has been decided in the aforesaid decision, this writ appeal is also allowed on the same line. No costs. Connected MP No. 1 of 2015 is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. Principal Secretary to Government of Tamilnadu
Home (Courts-II) Department,
Secretariat, Fort St. George,
Chennai.9.

2. The Director General of Police,
Santhome High Road,
Chennai.4.

3. The Additional Superintendent of Police,
CBCID-SID, Madurai.

1 cc to the Government Pleader, Sr. 8878

W.A.No.856 of 2015

PPA (CO)
kk 23/2



WEB COPY