

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.01.2016

Date of Verdict:11.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.Nos.253, 254, 270 and 271 of 2016

C.Guhamani ... Petitioner in
Crl.O.P.Nos.253&254 of 2016
N.Subramani ... Petitioner in
Crl.O.P.Nos.270&271 of 2016

Vs

1. State rep. by
Deputy Superintendent of Police,
Crime Branch CID,
Coimbatore.

2. Rasu @ Chandrasekaran

3. Muthusamy

... Respondents in
Crl.O.P.Nos.253&270 of 2016

1. State rep. by
Deputy Superintendent of Police,
Crime Branch CID,
Coimbatore.

2. R.Rangasamy

... Respondents 1 & 2 in
Crl.O.P.Nos.254&271 of 2016

Prayer: Criminal Original Petitions are filed under Section 482 Cr.P.C., praying to set aside the order passed by the Principal Sessions Court, Erode, 10.08.2015 in CMP Nos.920, 919, 924 and 923 of 2015 in S.C.Nos.25 and 26 of 2010.

For Petitioners : Mr.B.Kumar, SC for
for Mr.N.Chinnaraj

For Respondents : Mr.S.Shamugavelayutham,
Public Prosecutor for R1

Mr.N.Manokaran for R2 & R3 in
Crl.O.P.No.253 & 270 of 2016 and
for R2 in Crl.O.P.No.254&271/2016

COMMON ORDER

These petitions are filed, questioning the order, dated 10.08.2015 passed by the learned Principal Sessions Judge, Erode in CMP Nos.920, 919, 924 and 923 of 2015 in S.C.Nos.25 and 26 of 2010 respectively, in and by which, the learned Judge has ordered transfer of the Sessions Cases in S.C.Nos.25 and 26 of 2010 from his file to the file of Assistant Sessions Judge, Perundurai on the jurisdictional point.

2. The petitioners in these Criminal Original Petitions are the defacto-complainants. The private respondents in these Criminal Original Petitions are the accused, facing trial along with other accused, for the alleged offences punishable under Sections 120-B r/w 147, 148, 447, 448, 451, 452, 365, 354, 379, 380, 386, 506(ii) and 3(i) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 in S.C.Nos.25 and 26 of 2010 respectively on the file of Assistant Sessions Judge, Perundurai.

3. The brief facts, necessary for disposal of the present petitions, are stated as under:

3.1.The prosecution case is that prior to the date of offence, the defacto complainant and his family members were invited for 'katta panchayat' by the accused, but it was refused by the defacto complainant. Consequently, on 25.07.2008 at 06.00 hours, in order to grab the property and to take possession of the land situated in S.F.No.817/1-15, which is in possession and enjoyment of witness Guhamani and his brother Palanisamy, by illegal means, the accused formed into an unlawful assembly, trespassed into the above said land, demolished the house by using machineries, viz., JCBs, Dozers and stolen away a car and motor cycle belonging to Guhamani. Hence a case was registered against the accused persons in Crime Nos.658 and 671 of 2008 on the file of the Perundurai Police Station, for the alleged offences under Sections 147, 148, 447, 448, 477, 506(ii), 363, 379 IPC. On completion of the investigation, charge sheets were filed before the jurisdictional court, which later committed the same to the Principal Sessions Judge, Erode, which were taken on file vide S.C.Nos.25 and 26 of 2010 and trial was also commenced.

3.2. While so, one of the accused, R.Rangasamy, respondent 2 in CrI.O.P.Nos.254 & 271 of 2016 as well as one Rasu @ Chandrasekaran and Muthusamy, the respondents 2 and 3 in CrI.O.P.Nos.253 & 270 of 2016 have filed petitions under Section 10 r/w 408 Cr.P.C. in CMP Nos.919, 920 of 2015 in S.C.No.25 of 2010 and CMP Nos. 923 and 924 of 2015 in S.C.No.26 of 2010, seeking to transfer the above said session cases from the file of the Principal Sessions Court, Erode to the file of the

Assistant Sessions Judge, Perundurai.

3.3. According to the accused, the offences are exclusively triable by the jurisdictional Judge, i.e. Assistant Sessions Judge, Perundurai who is the subordinate to the Principal Sessions Judge and in the event the Assistant Sessions Judge convicts the accused for seven or below seven years, they can have appeal remedy before the Principal Sessions Judge as per Section 374(3) Cr.P.C. On the other hand, if the Principal Sessions Judge tried the cases and convicted the accused, they can prefer appeal only before the High Court and thereby, they would lose a stage of appeal remedy. Therefore, the accused prayed for transfer of the cases.

3.4. Opposing the above petitions, the State/first respondent in these criminal original petitions has filed counter affidavits, inter alia stating that already the cases were taken on file and trials were also commenced, wherein, PWs 1 to 7 were examined and at this stage, the accused/respondents have come forward with the petitions, seeking transfer of the cases, hence, not maintainable and liable to be dismissed.

3.5. The learned Principal Sessions Judge, on hearing both sides, by order, dated 10.8.2015, ordered transfer of the cases to the Assistant Sessions Judge, Perundurai, by observing as under:

"... the offences are triable by the Assistant Sessions Court and usually the case triable by the Assistant Sessions Judge Court would be transferred to that Court, but unfortunately, this case was kept on the file of this Court and by keeping the case in this Court, the valuable right of the accused if they are convicted within seven years, to prefer the appeal against the conviction before the Sessions Court would be curtailed. ..."

4. Aggrieved over the above, the petitioners have come forward with the present petitions.

5. Mr.B.Kumar, learned senior counsel appearing for the petitioners would submit that apart from the offences punishable under Indian Penal Code, the accused were also charged under Section 3(i) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 (in short, TNPPD Act) and as per Section 8 of the Act, power to try the offence punishable under this Act, is vested with the Court not inferior to that of a Chief Metropolitan Magistrate or a Court of Sessions and hence, the Assistant Sessions Court cannot be construed as a Sessions Court or Chief Metropolitan Magistrate so as to try the offence punishable under the TNPPD Act. In support of his submission, the learned counsel relied upon a decision reported in "AIR (36)

1949 Bombay 29 (Krishnaji Vithal versus Emperor)", for the preposition that "inferior criminal Court" must be construed to mean "judicially inferior". The learned senior counsel also pointed out that the learned Judge has ordered transfer of the cases to the Assistant Sessions Judge on the ground that if the Assistant Sessions Judge tried the case and in the event of punishing the accused with less than seven years, they can prefer appeal before the Sessions Court. But the said reason assigned by the learned Judge cannot be taken as a valid ground for ordering transfer of the cases to the file of the Assistant Sessions Judge. In support of his submission, the learned senior counsel relied upon a decision reported in "AIR 1960 SC 154 (Romesh Chandra Arora versus State)", wherein, it has been held as under:

"11. As to the last point that the procedure adopted had deprived the appellate of his right of getting first a decision from the Court of appeal and then another from the High Court in the exercise of its revisional jurisdiction, we do not think that there is any substance in it. The High Court had validly before it both the appeal and the rule for enhancement of sentence. It heard the appellant fully with regard to both. Therefore, no question arises for depriving the appellant of any of his rights under the Code of Criminal Procedure."

6. The learned senior counsel made further submission by inviting the attention of this Court to Section 9 and 10 of Cr.P.C., that the word "Court of Session" appears in Section 8 of the TNPPD Act would mean only Sessions Judge in view of Section 10 of Cr.P.C., which specifically denotes that the Assistant Sessions Judges are subordinate to the Sessions Judge.

7. On similar lines, the learned Public Prosecutor would submit that the TNPPD Act is a special Act which would prevail over the general Act and Section 8 of the Act specifically emphasizes that the offence punishable under the Act shall be tried by the Court not to inferior to that of a Chief Metropolitan Magistrate or a Court of Sessions, it has to be construed that the Court of Sessions means only a Principal Sessions Court and not an Assistant Sessions Court. In support of his submissions, the learned Public Prosecutor relied upon judgment of the Allahabad High Court reported in AIR 1962 ALL 450 (Municipal Board Vs. Bhim Singh) and submitted that the Assistant Sessions Court cannot be deemed as Sessions Court since it is inferior Court to the Sessions Court. Relevant portion of the above cited decision is extracted hereunder:

"18. To sum up, a Criminal Court 'A' is, for purposes of Section 35 Criminal Procedure Code,

inferior to another Criminal Court 'B', if 'A' is subordinate to 'B' or appeals against the decisions of 'A' lie to the Court 'B'. Farther, even though under Section 9 Criminal Procedure Code there is only one Court of Session for every sessions division, there are, for purposes of administration of justice, as many Courts as there are Sessions Judges including Additional Sessions Judges and Assistant Sessions Judges, and the Court of an Assistant Sessions Judge shall be regarded as distinct from the Court of the Session Judge or Additional Sessions Judge. An Assistant Sessions Judge is subordinate to the Sessions Judge (vide Section 17 (3) Criminal Procedure Code) and consequently, for the exercise of revisional jurisdiction the Court of an Assistant Sessions Judge is an inferior Criminal Court and the Sessions Judge can entertain revisions against the orders of the Assistant Sessions Judge even though passed in the exercise of appellate jurisdiction.

8. Therefore, the learned Public Prosecutor would submit that the order passed by the Principal Sessions Court, ordering transfer of the cases, cannot be sustained since the Assistant Sessions Court can not be considered as Sessions Court and it is liable to be set aside.

9. Countering the submissions made by the learned senior counsel for the petitioner and the learned Public Prosecutor, the learned counsel appearing for the respondents/accused submitted that since Section 8 of TNPPD Act does not contain a non-obstante clause excluding the applicability of Code of Criminal Procedure, it cannot be said Section 8 prohibits Assistant Sessions Court to try the offence punishable under the Act. He pointed out that as Section 8 of the Act specifically envisages that no Court inferior to that of a Chief Metropolitan Magistrate or a Court of Session shall try the offence, no infirmity can be found in the order of the learned Judge transferring the cases to the Assistant Sessions Judge inasmuch as Assistant Sessions Judge is not inferior to that of a Chief Metropolitan Magistrate. Therefore, the learned counsel would emphasize his argument that since the Act does not contain a non-obstante clause prohibiting the applicability of Code of Criminal Procedure, the words "Court of Sessions" employed in Section 8 of TNPPD Act not only means Sessions Judge appointed under Section 9(2) of Cr.P.C., but also Assistant Sessions, appointed under Section 9(3) of Cr.P.C. Hence, he would point out that the Assistant Sessions Judge is the appropriate authority to try the offence punishable under TNPPD Act. In this regard, he relied upon a decision reported in "1984 CrL.J.892 (DB) (T.S.Ramani versus The Superintendent of Prisons & others)"

, wherein, the this Court has held as under:

"13. The law of procedure is not different for the trial of cases under the Penal Code and those under other statutes, according to Section 4, Cr.P.C., except that in the case of offences under other statutes, the procedure laid down, by the Code is subject to any enactment for the time being in force for regulating the manner or place of investigation, inquiry or trial. The existence of a special law or local law by itself cannot be taken to exclude the operation of the Code of Criminal Procedure, unless such law prescribes a special procedure for the trial of an offence, thereby excluding, impliedly or expressly, the operation of the Code of Criminal Procedure in respect of such trial. In other words, if such special law or local law prescribes a special procedure for the trial of offences under that Act, the procedure laid down in the Criminal Procedure Code would be excluded in respect of such trials. As per Section 4(2), all offences under a law other than the Indian Penal Code shall be tried according to the provisions contained in the Criminal Procedure Code, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 5 provides that in the absence at any specific provision to the contrary nothing in the Criminal Procedure Code shall affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force. In other words, this section provides that nothing in the Code shall affect any special law in the absence of any specific provision to the contrary. Thus, this provision is an application of the maxim "generalia specialibus non derogant". For the complete exclusion of the application of the Code of Criminal Procedure, the law regarding the procedure to be followed in cases falling under the special Act must be found in the enactment itself conferring jurisdiction to try the cases, as contemplated in Section 4(2). A conjoint reading of Sections 4(2) and 5 of the Code would have the following effect :-

(1) All offences, whether under the Penal Code or under any other law, have to be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code.

(2) This rule is subject to the qualification that in respect of offences under other laws, that is to say, under laws other than the Indian Penal Code, if there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, such an enactment will prevail over the Code.

(3) The provisions of a special or local law will prevail over the provisions contained in the Code of Criminal Procedure unless there is a specific provision to the contrary."

Thus, by relying upon the above Judgments, the learned counsel for the respondent submitted that since Section 8 of TNPPD Act does not contain a non-obstante clause to specifically exclude the applicability of Criminal Procedure Court, there can not be any bar to try the offences under the provisions of TNPPD Act by the Assistant Sessions Judge.

10. The learned counsel for the respondents/accused would further submit that if the offence is committed within the city of Chennai Metropolitan, then as per Section 8 of the Act, the offence can be tried by the Chief Metropolitan Magistrate and in such event, the accused can file an appeal before the Sessions Court and when that being the situation, it cannot be said that if the offence is committed in the area other than Metropolitan, it should be tried only by the Principal Sessions Court. Further, by inviting attention of this Court to the Section 8 of the Act, the learned counsel would submit that the word deployed in Section 8 'a Sessions Court' alone and not 'the Sessions Court' and as such, article 'the' always denotes 'a particular thing' or a 'particular person'. But the Legislation has not chosen the article 'the', but only 'a' before Sessions Court, which shows that 'a Sessions Court' means any Sessions Court not to inferior to Chief Metropolitan and it will not refer only the 'Principal Sessions Court'. In support of his submission, the learned counsel relied upon a decision reported in "2001(3) SCC 609 (Shri Ishar Alloy Steels Ltd., versus Jayaswals Neco Ltd.)", wherein, the Hon'ble Supreme Court has held in para 9 as under:

"9. The use of the words "a bank" and "the bank" in the Section is indicator of the intention of the Legislature. The former is indirect article and the latter is pre-fixed by direct article. If the Legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is pre-fixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section

138 is pre-fixed by the definite article "the". The same Section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying of particularising effect opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in clause (a) to the proviso to Section 138 of the Act would mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued."

11. The learned counsel relying upon Section 6 Cr.P.C, which reads as under,

"6. Classes of Criminal Courts.-Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-

1. Courts of Session;
2. Judicial Magistrate of the first class and, in any Metropolitan area, Metropolitan Magistrate;
3. Judicial Magistrate of the second class; and
4. Executive Magistrates.

and submitted that if Assistant Sessions Court is an inferior Court, then it would have been mentioned as separate clause, whereas, after the Courts of Session, clause 2 classifies Judicial Magistrate of the First Class and Metropolitan Magistrate, which would go to show that Court of Sessions includes 'Assistant Sessions Court' also.

12. The learned counsel relied upon a judgment of the Hon'ble Supreme Court reported in "(1996) 1 SCC 665 (Abdul Mannan and others versus State of W.B.)," wherein, it has been held as under:

"4. Section 9 [1] of the Code of Criminal Procedure, 1973 [Act 21 of 1974] [for short, "the Code"] enjoins the State Governments to establish a Court of Session for every sessions division. It is made clear by sub-section [3] of Section 9 which provides that Additional Sessions Judges may be appointed by the High Court to exercise jurisdiction

in a Court of Session. Singular includes plural. Sessions Judge would include Additional Sessions Judge under the Code. Therefore, he gets all the power and the jurisdiction of the Sessions Judge to try the offences enumerated under the Code."

Therefore, according to the learned counsel, Court of Sessions also includes Additional Sessions Judge or Assistant Sessions Judge.

13. In view of the above submissions made by him, the learned counsel would urge that if the offence is tried by the Assistant Judge and in the event of conviction with seven years or below of it, the accused will have appeal remedy before the Sessions Court. Keeping in view of this, the learned Judge has rightly ordered transfer of the cases to the file of the Assistant Sessions Judge, Perundurai, which cannot be interfered.

14. The learned counsel for the respondents/accused would further submit that the contention of the petitioners that the reason assigned by the learned Judge in ordering transfer of the cases on the ground that the accused will be deprived of one stage of appeal if the offence is not tried by the Assistant Sessions Judge is not valid, cannot be accepted since according to the learned counsel for the respondents/accused, appeal or revision is a statutory right of the accused and any act affecting such a statutory right would ultimately amount to denial of the rights guaranteed by the Constitution of India. In support of his submission, the learned counsel for the respondents/accused relied upon a decision rendered by the Constitutional Bench of the Hon'ble Supreme Court, reported in "1988(2) SCC 602 (A.R.Antulay versus R.S.Nayak and another)".

15. He also relied upon a decision reported in AIR 1961 AP 471 (FB) (In re, Pasupathi Nanjappa)", wherein, it has been held as under:

"6. The learned Judges decided that the learned Assistant Sessions Judge had no power or authority to receive and admit the appeal, that his hearing was in contravention of the provisions of Sub-section (2) of Section 409 Cr. P. C. and that his order of acquittal was without jurisdiction and invalid and had to be set aside. Shai, J. after a careful consideration of the relevant provisions of the Code of Criminal Procedure, formulated four propositions as follows:

(1) There can be only one court of Session in a Sessions division and there can be only one Judge of

the Court, or, in other words, there can be only one Sessions Judge in a Sessions-division. But, there can be more than one Additional Sessions Judge to exercise jurisdiction in one Court of Session.

(2) A court presided over by an Additional or Assistant Sessions Judge is also a Court of Session and is a part or constituent of the same court of Session which is headed by the Sessions Judge.

(3) A Sessions Judge has complete jurisdiction by virtue of his position as Judge of the Court of Session to receive, hear and dispose of all matters such as applications, appeals or cases which are required by law to be submitted to, or filed in, the court of Session. An Additional or Assistant Sessions Judge however, is not competent by virtue of his office to receive, hear or dispose of any matter submitted to, or filed in, the Court of Session in which he exercises jurisdiction. He gets jurisdiction to deal with such a matter only when it is placed before him either under a general or special order of the State Government or a general or special order of the Sessions Judge of the division.

(4) An Additional or Assistant Sessions Judge exercises full powers of a Court of Sessions subject only to such limitations or restrictions as are expressly placed upon his powers by Law in respect of cases which are legally placed before him for disposal. An Additional Sessions Judge has, in cases within his seisin, the same powers as a Sessions Judge."

16. Therefore, the learned counsel for the respondents/accused would submit that a court presided over by an Additional or Assistant Sessions Judge is also a Court of Session and is a part or constituent of the same Court of Session which is headed by the Sessions Judge.

17. Heard the learned counsel appearing on both sides and learned Public Prosecutor and perused the entire materials available on record.

18. The following questions arise for consideration in these matters.

1. By virtue of Section 8 of the TNPPD Act, whether the Assistant Sessions Judge has jurisdiction to try the offence relating to TNPPD Act?
2. Whether the 'Court of Session' appears in Section 8 of the TNPPD Act includes 'Assistant Sessions Judge'?

19. The main submission of the learned senior counsel appearing for the petitioners is that when Section 8 of the Act has specifically denotes that no Court inferior to that of Chief Metropolitan Magistrate or a Court of Session shall try the offence punishable under the Act, Assistant Sessions Judge cannot be construed as 'Sessions Judge and as such, the Assistant Sessions Judge could not proceed with the trial. The learned senior counsel would submit that the learned Principal Sessions Judge ordered transfer of the cases to the file of the Assistant Sessions Judge, for the reason that if the cases is tried and the accused are convicted for less than seven years by the Assistant Sessions Judge, they could avail appeal remedy before the Sessions Court. The said reason assigned by the learned Judge cannot be a valid one.

20. It is useful to refer Section 8 of the TNPPD Act, which reads as under:

"8. Power to try offences: No Court inferior to that of a Chief Metropolitan Magistrate or a Court of Session shall try and offence punishable under this Act."

21. A bare reading of the above, it is simply explicit that no court inferior to that of Chief Metropolitan Magistrate, a Court of Session alone is appropriate to try the offence punishable under the Act. In this case, the respondents/accused were charged apart from the offences punishable under Indian Penal Code, but also for the offence under Section 3(i) of the TNPPD Act, which imposes punishment of imprisonment for a term which shall not be less than one year but which may extend to five years and with fine. According to the learned counsel for the respondent/accused in the absence of non-obstante clause contained in the Act excluding the applicability of Code of Criminal Procedure, it cannot be said that the Assistant Sessions Judge can not try the offence punishable under TNPPD Act and as per Section 374(3) Cr.P.C., if the accused is tried by the Assistant Sessions Judge, he can avail appeal remedy before the Principal Sessions Judge since as stated above, the offence punishable under Section 3(i) of the TNPPD Act carries with the punishment of of imprisonment for a term which shall not be less than one year but which may extend to five years and with fine. Therefore, the learned counsel for the respondent/accused would submit that the respondents/accused can avail appeal remedy before the Principal Sessions Judge as the maximum period of punishment is five years only. However, having regard to the term deployed in Section 8 of the Act, viz., 'no inferior Court' and 'a Court of Session', in my considered opinion, specifically prohibits to try the offence by the Court other than the Sessions Court. Therefore, except the Sessions Court, no other Court can try the offence punishable under Section 3 of the TNPPD Act. In such view of the matter,

I am of the view that the Assistant Sessions Judge is not having jurisdiction to try the offence relating to TNPPD Act.

22. Before dealing with the next question, whether the 'Court of Session' appears in Section 8 of the TNPPD Act includes 'Assistant Sessions Judge', it would be appropriate to refer Section 9 and 10 of Cr.P.C., and the same are extracted as under:

"9. Court of Session.

(1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

"10. Subordination of Assistant Sessions Judges.

(1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

(2) The Sessions Judge may, from time to time, make rules consistent with this Code, as to the

distribution of business among such Assistant

Sessions Judges.

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application."

23. A reading of the above would show that only the State Government shall establish a Court of Session for every sessions division. Every Court of Session shall be presided over by a Judge to be appointed by the High Court and High Court may also appoint additional Sessions Judges and Assistant Judges in a Court of Session. Therefore, it is explicit that there can be only one Session Court that could be established by the State Government. A reading of Section 10 also would reveal that all Assistant Sessions Judges shall be subordinate to the Sessions Judge.

24. It is also relevant to extract Section 194 Cr.P.C., which reads as under:

"194. Additional and Assistant Sessions Judges to try cases made over to them.- An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try."

25. Therefore, Assistant Session Judge can try the cases as the Sessions Judge make over to him for trial by general or special order.

26. In this regard, it is worthwhile to extract the judgment reported in "AIR (36) 1949 Bombay 29 (Krishnaji Vithal versus Emperor)", by that time, the High Court had original jurisdiction on criminal side. The factual aspect would show that the accused therein, was charged under Section 307 IPC and the learned single Judge, rendered a verdict finding him not guilty of the charge and acquitted him. When the said verdict was challenged, a question came up for consideration, whether the High Court acting in its original criminal jurisdiction, is not a Court subordinate to the appellate side of the High Court? A Division Bench of the Bombay High Court while dealing with the same, has held as under:

"4. ... But the expression used in Section 435 is not 'subordinate', but 'inferior'. 'Inferior'

does not carry with it any stigma or any suggestion that the Court is under the administrative orders of the superior Court. In our opinion, inferior criminal Court only means judicially inferior to the High Court. ..."

27. It is to be noted that as per Section 10 of Cr.P.C., all Assistant Sessions Judges are subordinate to the Sessions Judge in whose Court they exercise jurisdiction. Therefore, by virtue of Section 10 Cr.P.C., I am of the opinion, the present case stands even on better footing since all the Assistant Sessions Courts are subordinate to 'Sessions Court'.

28. It is relevant to refer the order relied upon by the learned Public Prosecutor, dated 28.6.1978 passed by the Division Bench of Calcutta High Court in the case of "Superintendent versus Mansur Ali and another", wherein, it has been held as under:

"5.From the reading of the provisions in Section 9 of the Cr.P.C., it is clear that there will be one Sessions Judge presiding over the Court of Session for every Sessions Division and that, if there be Additional Sessions Judges or Assistant Sessions Judges appointed by the High Court, they are so appointed only to exercise jurisdiction in the Court of Session. Any of the Additional Sessions Judges or the Assistant Sessions Judges cannot be the Sessions Judge as indicated in Section 9. Such Additional or Assistant Sessions Judges are only appointed to exercise jurisdiction in a Court of Session in respect of the cases made over to them for trial or for disposal by the Sessions Judge of the Sessions Division or as the High Court may, by special order, direct them to try according to Section 194 of the Code. Section 193 of the Code says:

193.Cognizance of offences by Courts of Sessions:- Except as otherwise expressly provided by this Code or any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

Clearly, therefore in the Sessions Division there will be only one Sessions Judge who presides over the Court of Session and the Additional Sessions Judge or the Assistant Sessions Judge, if there be any, cannot be Sessions Judge presiding over the Court of Session of the Division but is appointed simply to exercise the jurisdiction vested in the Court of Session of

the Sessions Division.

....

7. There should be only one Sessions Judge presiding over the Court of Session. Additional Sessions Judges and Assistant Sessions Judges are appointed only to exercise jurisdiction in a Court of Session. When the Sessions Judge of the Court of Session of a particular Sessions Division makes over a Sessions case for trial to an Additional Sessions Judge or an Assistant Sessions Judge, such Judge exercises the jurisdiction in the Court of Session presided over by the Sessions Judge and disposes of the case in exercise of such jurisdiction. The said Additional Sessions Judges or the Assistant Sessions Judges exercising jurisdiction of a Court of Session cannot be held to be Sessions Judges and their Courts cannot be regarded as Courts of Session. Such Additional Sessions Judge or Assistant Sessions Judges are simply vested, in particular, to exercise jurisdiction of a Court of Session in respect of cases made over to them.

"8. The term "Court" has not been defined in the Criminal Procedure Code. According to the Webster's Seventh New Collegiate Dictionary, "Court" means amongst other things, "a chamber or other place for the administration of justice" and "a Judge or Judges in session". In Oxford Dictionary the meaning of the word is given as "body with judicial powers, tribunal, the Judge of a Law Court, hall in which Court sits". In Osborn's The Concise Law Dictionary 4th Edn. we get the meaning of the word "Court" as (1) a place where the justice is administered (2) the Judge or Judges who sit in a Court. When a sessions case is disposed of on trial by an Additional Sessions Judge or an Assistant Sessions Judge in exercise of the jurisdiction of a Court of Session, it may be stated that such case has been disposed of by a Court of Additional Sessions Judge or the Court of Assistant Sessions Judge respectively in a general way. But that does not mean that in such a case the Additional Sessions Judge or the Assistant Sessions Judge would be regarded as the Sessions Judge or that his Court would be deemed as a Court of Session as defined and enumerated in Section 9 of the Cr. P.C."

29. When that being the legal situation, I am of the opinion that as Section 8 of the TNPPD Act specifically prohibits the other Courts from trying the case relating to TNPPD Act, the Assistant Sessions Court cannot try the case and there can be

only one Court of Session in each division sitting at different places. Therefore, by virtue of Section 8 of the TNPPD Act, I am of the considered view that the Sessions Court alone can try the cases relating to TNPPD Act and not the Assistant Sessions Court which is subordinate to the Principal Sessions Court. In such view of the matter, the submissions made by the learned senior counsel for the petitioners in regard to Section 374 Cr.P.C., that the accused persons will loose one stage of appeal have no significance and further since the Assistant Sessions Court is subordinate to the Sessions Court, the submission made by the learned senior counsel in regard to usage of article 'a' before 'Session Court' would also have no impact in coming to the conclusion that the Session Court alone is the appropriate to try the cases relating to TNPPD Act and not the Assistant Sessions Court.

30. Accordingly, both the questions are answered.

31. In the result, the both the Criminal Original Petitions are allowed, setting aside the orders passed by the Principal Sessions Court, Erode, 10.08.2015 in CMP Nos.920, 919, 924 and 923 of 2015 in S.C.Nos.25 and 26 of 2010 respectively.
suk

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

TO

1. THE PRINCIPAL SESSIONS COURT, ERODE.

+ 2 CCS TO PUBLIC PROSECUTOR, HIGH COURT, CHENNAI.
SR.NOS.9470, 9471.

+ 3 CCS TO MR.N.MANOKARAN, ADVOCATE SR.NOS.9335, 9332, 9333

+ 1 cc to M/s.N.Manokaran, Advocate Sr 9334 (7/3/16)

+ 1 CC TO N.CHINNARAJ, ADVOCATE SR 9205

KR/4/3/16

CrI.O.P.Nos.253, 254
270 and 271 of 2016