



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Monday, the Seventh day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and

The Hon`ble Mr.Justice M.V.MURALIDARAN

WMP(MD) No.14675 of 2016

IN

WP(MD) No.6106 of 2014

S.K.PONNUTHAI,
DISTRICT SECRETARY,
ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION,
24, SARVODHAYA NAGAR,
MAHABOOB PALAYAM, MADURAI 16.

... PETITIONER

Vs

1 THE STATE OF TAMIL NADU,
REP. BY THE HOME SECRETARY,
FORT ST. GEORGE, CHENNAI.

2 THE SUPERINTENDENT OF POLICE, MADURAI DISTRICT.

3 DEPUTY SUPERINTENDENT OF POLICE, SAMAYANALLUR,
MADURAI DISTRICT.

4 S. AROCKIASAMI,
NO.28, LOURDHU NAGAR, WEST MAIN ROAD, K.PUTHUR, MADURAI.

5 K. AMALI ROSE, W/O. A XAVIER KIRUBAI ILLAM,
RUMUNNI NAGAR, 1ST STREET, V. KARISAL KULAM,
MADURAI DISTRICT.

6 SHANMUGA KUMARASAMI,
S/O. S. KALLAPIRAN, NO.4, SHALININ STREET,
DURASAMI NAGAR, BYE PASS ROAD, MADURAI DISTRICT.

7 ANTHONY VICTOR S/O.GNANAPRAKASAM,
PAZHAIYA VILANGUDI, MADURAI.
(R7 IS IMPEADED VIDE COURT ORDER
DT.25/10/16 IN WMP(MD)14685/16
BY SNJ & MVMJ)

... RESPONDENTS

Prayer in WMP(MD). 14675/ 2016 : Pleased clarify the order passed in WP No.6106 of 2014 dated 04.07.14 mentioned in paragraph no.33 whether Additional District & Sessions Judge, Mahila Court, Madurai is empowered to try offences under Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989 contained in SC No. 51 of 2013 on file of the Mahila Court, Madurai.



ORDER : This petition coming on for hearing on this day and material papers petition and the affidavit filed in in support thereof on the file of the High Court and MR.G.R.SWAMINATHAN, Senior Counsel for M/S.U.NIRMALA RANI, Advocate for the petitioner herein and MR.M.GOVINDAN, Special Government Pleader on behalf of the Respondents Nos.1 to 3 and MR.J.SELVAM, Advocate for R4 and MR.K.SWAMIDURAI, Advocate for R5 & R6 and this Court made the following order:-

[Order of the Court was made by S.NAGAMUTHU, J.]

The petitioner herein had originally filed W.P.(MD)No.6106 of 2014 as a Public Interest Litigation seeking a direction to the Government of Tamil Nadu to issue guidelines regarding trial procedures to be followed in pending trials of child sexual abuse cases in tune with the Protection of Children from Sexual Offences Act and Rules, 2012 to the investigating and prosecuting agencies.

2. After a detailed discussion and after affording sufficient opportunity to all the parties concerned, this Court, by order dated 04.07.2014, issued certain directions. One such a direction is that the learned Principal District Judge, Madurai, shall assign the case in Crime No.331 of 2011 registered on the file of Koodal Nagar Police Station, to an Additional Sessions Court for trial, which is presided over by a woman Judicial Officer of great sensitivity to handle cases of this nature. Now, the petitioner has come up with this petition seeking clarification of the said order.

3. We have heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the official respondents, the learned counsel appearing for the fourth respondent and the learned counsel appearing for the respondents 5 and 6. The seventh respondent has not received the notice and he has not made appearance also.

4. It is brought to our notice that the alleged occurrence in this case was on 30.07.2011. The respondents 4 to 7 herein are the accused in this case. It is also brought to our notice that final report was filed against them for offences under Sections 354, 506 (i), 109 of the Indian Penal Code, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Sections 3(1)(ii)(x)(xi)(xii) and 3(2)(vii) of SC/ST (POA) Act, 1989 r/w 34 of the Indian Penal Code. The case was duly committed to the Court of Sessions, viz., the Special Court under SC/ST (POA) Act.

5. Now, in view of the direction issued by this Court in the above Writ Petition, the learned Principal District Judge has made over the case to the Mahila Sessions Court, Madurai, for trial. According to the petitioner, the said Court has got no jurisdiction to try the case.



6. In this regard, we have to emphasize that the offences said to have been committed against the children, who are the victims in this case, had occurred prior to coming into force of the Protection of Children from Sexual Offences Act, 2012. The main offence committed by the accused allegedly was under the SC/ST Act. Now, the question is whether the Special Court constituted under the SC/ST Act has got exclusive jurisdiction to try the case or the same could be tried by the Fast Track Mahila Court, which has been nominated as a children's Court under Section 25 of the Commissions for Protection of Child Rights Act, 2005.

7. In this regard, we may usefully refer to Section 25 of the said Act, which reads as follows:

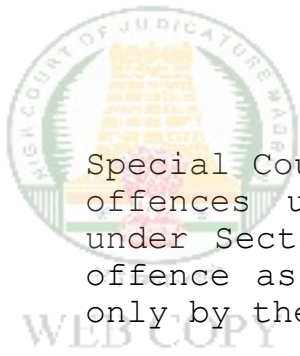
25. Children's Courts.- For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a Court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences:

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a special Court; or

(b) a special Court is already constituted, for such offences under any other law for the time being in force."

8. A plain reading of the proviso to Section 25 of the said Act would make it very clear that already if there is a Special Court constituted under any other law for trial of such offences under the said Act, then, the said Special Court has got jurisdiction to try the case. In the instant case, admittedly, the offences said to have been committed by the accused are under the SC/ST Act and to try such offences, there is a Special Court constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 and Section 20 of the SC/ST (POA) Act, 1989, states that provisions of the said Act shall have overriding effect on other laws, which were time being in force. A combined reading of these two provisions would make it very clear that Section 25 of the Commissions for Protection of Child Rights Act, 2005, gives way for the other Acts to prevail over the said Act, insofar as the trial of cases by the Special Courts are concerned. To repeat, we have to state that as per Section 25 of the Commissions for Protection of Child Rights Act, 2005, since



Special Court has been constituted under the SC/ST Act for trial of offences under the SC/ST Act, the Children's Court constituted under Section 25 of the Act shall have no jurisdiction to try the offence as the offences under the SC/ST (POA) Act are to be tried only by the Special Court constituted under the SC/ST Act.

9. It is brought to our notice that in the instant case, final report was filed before the learned Judicial Magistrate No.4, Madurai, who, after having followed the procedure contemplated in Section 209 of the Code of Criminal Procedure, committed the case to the Special Court constituted under the SC/ST Act. When the said case was pending before the Special Court, the learned Sessions Judge has assigned the said case to the Mahila Court. In our considered view, the learned Sessions Judge does not exercise any jurisdiction over the Special Court under the SC/ST Act. So far as the offences under the SC/ST Act are concerned, the said Court, being a Special Court, has got original jurisdiction to try the offence under the SC/ST Act and the said Special Court is not subordinate to the Principal Sessions Judge. If it is any other case made over by the Sessions Court to the Special Court under the SC/ST Act, in the capacity of an Additional Sessions Judge, in such an event, the Principal Judge may have power to withdraw the case already made over and to make over the same afresh to some other Court. Insofar as the cases involving the offences under the SC/ST Act are concerned, the learned Principal District Judge has got no power at all either to withdraw or to transfer any such case, which is pending trial before the SC/ST Court. Thus, the order of the Principal District Judge, assigning this case to the Mahila Court, is wholly without jurisdiction. In our considered view, the Principal District Judge, at the most, can have power either to withdraw a case already made over by him or to transfer a case from one subordinate Court to another subordinate Court and he has got no power to assign any case to anybody. The language used in the direction No.1 in the earlier order passed by this Court is to be construed as a direction for withdrawal of the case and to make over the same to some other Court. Since the offences under the SC/ST Act are triable only by the Special Court constituted under the SC/ST Act and since the learned Principal District Judge has got no power either to withdraw such case or to transfer such case, the order of the learned Principal District Judge transferring the present case to the Mahila Court, is liable to be set aside and consequently, this case shall stand restored to the Special Court under the SC/ST Act at Madurai. The Special Court shall try the case in accordance with law, by following the other directions issued in the earlier order.

10. Accordingly, the direction No.1 in the order dated 04.07.2014, in W.P.(MD)No.6106 of 2014, is clarified and the order of the learned Principal District Judge, Madurai, transferring S.C.No.31 of 2013 to the file of the Mahila Court, Madurai, is set aside and the said case shall stand restored to the file of the



Special Court constituted under the SC/ST Act at Madurai for trial in accordance with law. The Court, before whom the case records are presently available, shall immediately transmit the same to the Special Court under the SC/ST Act.

WEB COPY

sd/-

Assistant Registrar(Records)

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRINCIPAL DISTRICT JUDGE, MADURAI
- 2 THE MAHILA COURT, MADURAI.
- 3 THE SPECIAL COURT CONSTITUTED UNDER THE SC/ST ACT, MADURAI.
- 4 THE HOME SECRETARY, GOVERNMENT OF TAMIL NADU, FORT ST. GEORGE, CHENNAI.
- 5 THE SUPERINTENDENT OF POLICE, MADURAI DIST.
- 6 DEPUTY SUPERINTENDENT OF POLICE, SAMAYANALLUR, MADURAI DIST.
- 7 THE ADDL.PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO SPECIAL GOVERNMENT PLEADER IN SR.NO.66631.

ORDER DATED : 07.11.2016

ORDER

WMP(MD) No.14675 of 2016
IN
WP(MD) No.6106 of 2014

Giving directions etc.,
as stated within.

anr/mpa/sar3/10.11.16/p5/9c