



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Petition (MD)No.14014 of 2017
and
W.M.P (MD)No.10952 of 2017

Umapathy

... Petitioner

Vs.

1. The Registrar General
The Hon'ble Madras High Court,
Chennai.
2. The Sessions Judge,
The Hon'ble Special Court trial of Bomb Blast Case,
Poonamalli, Chennai.
3. The Principal Sessions Judge,
Pudukkottai.
4. The Inspector of Police,
Ponnamaravathy Police Station,
Pudukottai District.

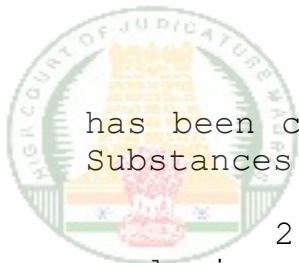
... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the third respondent herein in D.No.2206/2017, dated 21.06.2017 so far as S.C.No.174/2014 on the file of the Hon'ble Principal Sessions Court, Pudukottai and quash the same as illegal.

For Petitioner	: Mr.K.Balasundaram
For Respondents 1-3	: Mr.R.Aravindan
For 4 th Respondent	: Mr.T.R.Janarthanam, Additional Government Pleader.

ORDER

(Order of the Court was made by M.M.SUNDRESH,J)



has been charged for the offences under Section 5 of the Explosive Substances Act, 1908.

2. The allegation is that being a firer of licensee of explosive substances, he used them for the purpose of sinking wells belonging to third parties. Placing reliance upon the circular issued by the respondent on 03.04.2017 which in turn was passed on the basis of Government Order in G.O.Ms.No.414, Home (Courts II) Department, dated 20.04.2001. The aforesaid case was transferred to the Sessions Judge, Sub Court for exclusive trial of Bomb Blast cases, Poonamallee, Chennai. Challenging the same, the present writ petition has been filed. The operative portion of the Government Order passed in G.O.Ms.No.414, Home (Courts II) Department, dated 20.04.2001 is hereunder:-

"In the said notifications, for the expression "bomb blasts and seizure of bombs or explosive substances involving any fundamentalist organization", the expression "bomb blasts, seizure of bombs and explosive substances involving any fundamentalist organization as bomb blasts cases and police station attacks involving Tamil Nadu Liberation Army or Tamil Nadu Retrieval Troop or People War Group" shall, respectively, be substituted."

3. The circular does not indicate that all cases involving explosive substances will have to be transferred rather it has to be seen from case to case in the light of the Government Order referred above. The following relevant passage of the circular is as under:-

"8. Accordingly, all the Principal District and Sessions Judges/District and Sessions Judges are hereby directed to make over cases under the Explosive Substances Act to the Sessions Court or exclusive trial or Bomb Blast cases, Chennai at Poonamallee/Sessions Court for exclusive trial of Bomb Blast cases, at Coimbatore, under Section 194 of the Code of Criminal Procedure, depending upon the sensitive nature of the case, as per the jurisdiction of the said Special Courts."

9. All the Judicial Magistrates are hereby directed not to directly commit the cases to the Sessions Court for exclusive trial of Bomb Blast cases, Chennai at Poonamallee or Sessions Court for exclusive trial of Bomb Blast cases, Coimbatore and instead, commit the cases to the respective Principal District and Sessions Judge/District and Sessions Judge, who in turn make over the case under Section 194 of the Code of Criminal Procedure 1973, to the Sessions Court for exclusive trial of Bomb Blast cases, Chennai at Poonamallee or Sessions Court for exclusive trial of Bomb Blast cases, Coimbatore, as the case may be depending upon the jurisdiction."

10. The Principal Judge, City Civil Court, Chennai and the Principal District and Sessions



Judges/District and Sessions Judges at Cuddalore, Kancheepuram District at Chengalpattu, Vellore and Villupuram are further directed to make over murder cases, where explosives have been used, to the Sessions Court for exclusive trial of Bomb Blast cases, Chennai at Poonamallee under Section 194 of the Code of Criminal Procedure 1973.

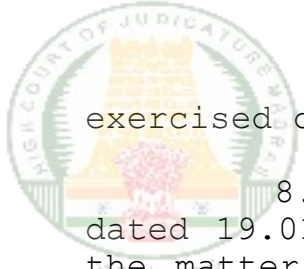
11. The discretion is left with the investigating agency and the Principal District and Sessions Judges/District and Sessions Judges concerned to take a call, on a case to case basis, with regard to making over of cases under the Explosive Substances Act to the Sessions Court for exclusive trial of Bomb Blast cases, Chennai at Poonamallee and Sessions Court for exclusive trial of Bomb Blast Cases, Coimbatore."

4. Learned counsel for the petitioner would submit that on a perusal of the circular and the Government Order would make it clear that all cases meant to be transferred to the file of the second respondent. In the case on hand, the facts would reveal that they would not come under the purview of contingencies mentioned in the Government Order referred supra. Even otherwise, the discretion to the Court's concerned which has not been exercised. Almost, the entire evidence is over except that of the Investigating Officer, a fair trial will have to be seen from the point of view of the accused also. As the petitioner being driver has to travel 900 kilometers to reach Chennai for conducting the case.

5. Learned counsel appearing for the respondents 1 to 3 would submit that perhaps the third respondent has acted as per the order of this Court passed in CrI.O.P.(MD).No.29340 of 2004, dated 19.01.2005 which has been confirmed by the Apex Court.

6. The Government Order dated 20.04.2001 referred supra is very clear. Earlier, the jurisdiction of second respondent is with respect to cases involving fundamentalist organization/ bomb blasts, seizure of bombs or explosives substances. This jurisdiction was extended to cases involving Tamil Nadu Liberation Army or Tamil Nadu Retrieval Troop or People War Group. This Government Order also states about the nature of cases involving police station attacks etc. Furthermore, the circular also gives discretion to the Principal District Court to take a decision case by case.

7. Therefore, looking from any perspective, the case on hand would not come under the purview of either the Government Order or the circular as the case may be. It is not as if all cases involving offences coming under the Explosives Substances Act will have to be transferred to the second respondent automatically. In fact, if we go by the Government Order, it will be applicable only to specified cases. The circular has to be read in consonance with the Government Order. Even in such cases discretion is given to the Principal District Judges concerned. Such discretion has to be



exercised depending upon sensitivity of the cases.

8.The order relied upon in Crl.O.P.(MD)No.29340 of 2004, dated 19.01.2005 has to be seen in its own context. In that case, the matter was pending right from the beginning before the second respondent herein and thereafter, an application was filed seeking to transfer the said case from the second respondent to some other Court.

9.It has been brought to the notice that circular itself has been issued as per the request made by the Public Prosecutor. Now, ground situation is different. There are very few cases pending before the second respondent. For the aforesaid purpose, there is no necessity to transfer all cases involving Explosives Substances Act pending from various districts to the second respondent. Perhaps, the alternative would be to take away the designation of the second respondent and give jurisdiction to respective cases in case of pendency is very few. In other words there may not be a need for a Special Court. Therefore, we are of the view that the first respondent may make an assessment of pendency of cases before the second respondent and take appropriate action in the light of discussion made above. This is for the reason that it will be a wasteful expenditure to keep a Court without adequate work which would also involve judicial time of the Judge and staff apart from wasteful expenditure. Such an assessment has to be made with respect to the cases covered under the circular of the first respondent as well as the Government Order with specific reference to the fundamentalist organization and others mentioned therein. Therefore, if other cases are pending, after being transferred from different parts of the State which otherwise would not come within the purview of circular or Government Order as indicated by us above, they can very well be sent back to the respective districts.

10.In the light of the above discussion, the writ petition stands allowed. Consequently, the second respondent is directed to transfer the case in S.C.No.174 of 2014 to the file of the Chief Judicial Magistrate Court, Pudukottai within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P(MD)No.10952 of 2017 is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar



1. The Registrar General,
Madras High Court, Chennai.

2. The Sessions Judge,
Special Court for trial of Bomb Blast Case,
Poonamalli, Chennai.

3. The Principal Sessions Judge,
Pudukkottai.

4. The Chief Judicial Magistrate,
Pudukkottai.

5. The Inspector of Police,
Ponnamaravathy Police Station,
Pudukkottai District.

+ 1 CC TO Mr.K.BAALASUNDHARAM, ADVOCATE IN SR No. 71973

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 72333

SMS

TE/JC/SAR-I : 31/08/2017 : 5P/8C

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W.M.P (MD)No.10952 of 2017
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