

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CrI.R.C.No.16 of 2018

1.Rehman alias Abang
2.N.Thiagarajan @ Simon
3.Praveen Kumar
4.V.Pandian
5.Nazar Nazir
6.Y.Shameer
7.R.Muthuraman
8.M.Aravind Kumar
9.P.Tamil Selvan
10.S.Ranjith Kumar

.. Petitioners

Vs.

The Intelligence Officer,
Directorate of Revenue Intelligence,
No.27, G.N.Chetty Road, T.Nagar,
Chennai 600 017.

.. Respondent

Prayer

Criminal Revision filed under Sections 397 and 401 Cr.P.C. praying to call for the entire records in CrI.M.P.No.3271 of 2017 in R.R.No.9 of 2017 in F.No.DRI/CZU/VIII/48/ENQ-a/INT-21/2017 on the file of the Hon'ble Principal Special Judge (NDPS Cases), City Civil Court, Chennai and set aside the order dt 15.12.17.

For Petitioners : Mr.VS.Venkatesh

For Respondent : Mr.N.P.Kumar

Spl.Public Prosecutor

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O R D E R

This revision has been filed to call for the entire records in CrI.M.P.No.3271 of 2017 in R.R.No.9 of 2017 in F.No.DRI/CZU/VIII/48/ENQ-a/INT-21/2017 on the file of the Hon'ble Principal Special Judge (NDPS Cases), City Civil Court, Chennai and set aside the same.

2. According to the petitioner, the respondent has filed an application for extension of the period of

investigation as contemplated under Section 36-A(4) of the NDPS Act, 1985 and the same was filed by the Intelligence Officer and not by the Special Public Prosecutor, as per law. The learned Special Public Prosecutor had filed a report on 08.12.2017 and the same was submitted before the Court on 11.12.2017. On 13.12.2017, the petitioners were produced before the Principal Judge for NDPS Cases, City Civil Court, Chennai and it was informed before the Court that it was 181 days from the date of remand i.e. on 16.06.2017 and no charge sheet was filed by the respondent and an application for statutory bail under the provisions of Section 167(2) of the Cr.P.c. Vide CrI.M.P.No.3271 of 2017 was filed before the trial Court and the same was accepted and directed the prosecution / respondent to file its counter on 15.12.2017 stating that the respondent had taken out an application for extending the time for investigation and the charge sheet was filed in application No.3437 of 2017 and posted both the applications on 15.12.2017 for counter and disposal. The respondent filed remand application for the alleged offences under section 8 C and 9(a) of the NDPS Act and Sections 21 to 23, 25A, 28 and 29 of the NDPS Act and no report was filed by the Special Public Prosecutor for the detention of the accused beyond the statutory period of 180 days. No order for extension of investigation was passed by the trial Court till 13.12.2017 and on the same day, the copies were served on the accused only after the expiry of 180 days. Therefore, the present criminal revision is before this Court.

3. The learned counsel for the respondent would submit that the petitioner has filed the petition in CrI.M.P.No.3271 of 2017 in R.R.No.09/2017 on the file of the learned Special Judge, Principal Special Court, Chennai and the same was dismissed, which reads as follows:

- i) (1994) 4 Supreme Court Cases 602, Hitendra Vishnu Thakur and Others vs. State of Maharashtra and Others
- ii) (1995) 4 Supreme Court Cases 190, Union of India vs. Intelligence Officer, Narcotics Control Bureau
- iii) Supreme Court of India, Appeal (Crl.) 611-612 of 1995 dated 01.05.1995 Union of India vs. Thamisharasi and Ors.
- iv) 2005(2) CTC 101, Radhakrishnan and anoyther vs. State by Inspector of Police, Kaniyakumari Police Station
- (v) 2010(2) ILR (Kerala) 356: Mohammed, T.A and another vs. State of Kerala
- vi) Criminal Misc.IInd Bail No.3665/2017, Kanaram vs. The State of Rajasthan
- vii) Special Leave to Appeal (Crl.)

No.2009 of 2017, Rakesh Kumar Paul vs. State of Assam

In all the above said authorities the Hon'ble High Courts as well as Honourable Supreme Court considered the validity of the petition filed by the Intelligence Officer as well as the report filed by the Special Public Prosecutor. Considering the same, this Court suggested to the learned petitioner's counsel to argue both the petitions (petition filed by the Special Public Prosecutor and this petition filed under Section 167(2) Cr.P.C., the learned counsel for some reasons insisted this Court to hear the 167(2) Cr.P.C. Petition today and not filed objection for the petition filed by the Special Public Prosecutor for extension of time. Since all the contentions raised by the learned petitioner's counsel pertains to extension of time petition, without passing orders on the petition filed by the Special Public Prosecutor, no orders can be passed in this petition, since earlier petition filed by the Special Public Prosecutor is pending. Therefore, this petition deserves to be dismissed at this stage and accordingly dismissed.

In the result, this petition is dismissed.

4. On bare reading of the above order, it is made clear that the learned Principal Special Judge, Special Court, Chennai dismissed the petition on the ground that without passing any orders on the petition filed by the special Public Prosecutor, no order can be passed in this petition .

5. Since the petitioner was in custody, even after the prescribed period under the Act, the learned Special Judge, considered the petition on merits but simply dismissed the petition on the ground of pendency of other petitions filed by the Special Public prosecutor.

6. Considering the above facts and circumstances of this case, this Court is inclined to pass the following orders:

i) The impugned order passed in CrI.M.P.No.3271 of 2017 in R.R.No.09/2017 on the file of the Principal Special Judge, Special Court, Chennai dated 15.12.2017 is hereby set aside and the same is remanded back to the said Court for fresh consideration.

ii) The learned Special Judge is directed to pass appropriate orders on merits and in accordance with law, within a period of one month, after giving notice to both parties.

With the above observation, this criminal revision is allowed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kkd

To

The Principal Special Judge (NDPS Cases),
City Civil Court, Chennai

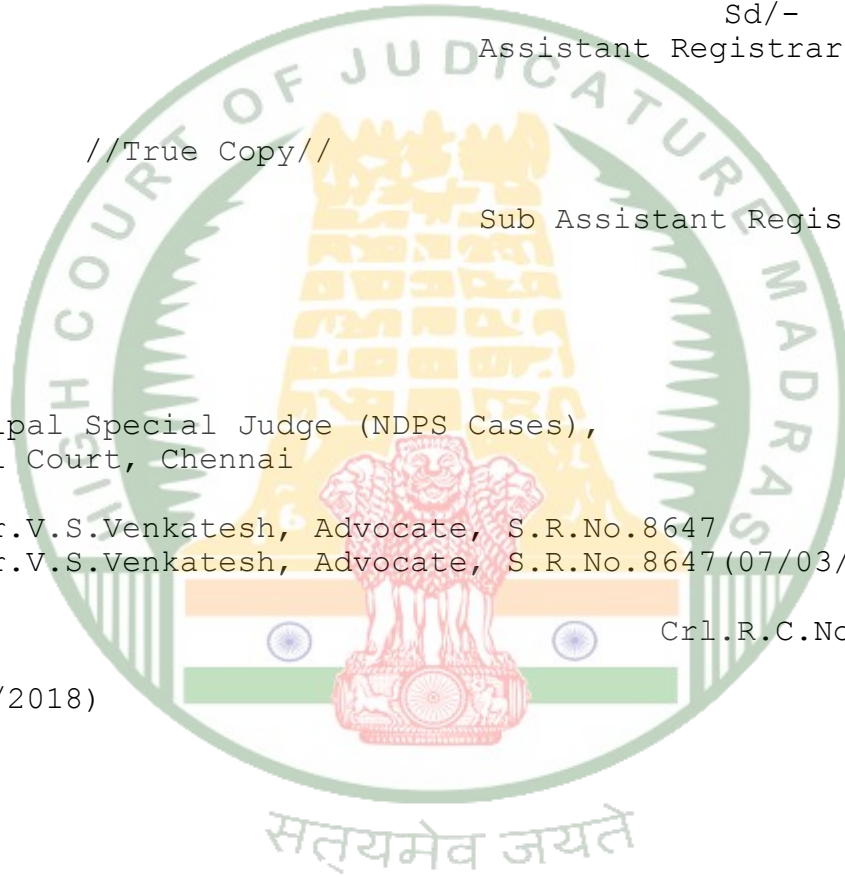
+1cc to Mr.V.S.Venkatesh, Advocate, S.R.No.8647

+1cc to Mr.V.S.Venkatesh, Advocate, S.R.No.8647(07/03/2018)

Crl.R.C.No.16 of 2018

MR (CO)

RRK (05/03/2018)



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