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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.02.2018

Pronounced on : 28.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.36 of 2018
and
Crl.M.P.No.219 of 2018

Sadhik Basha

... Petitioner

Vs.

1.State rep. by

The Assistant Commissioner of Police,
Ambattur Range,
T2-Ambattur Estate PS,
Crime No.746 of 2014.

2.The Registrar General,
High Court of Madras,
Madras - 104.

... Respondents

(R2 is suo motu impleaded as per the order
of this Court dated 18.01.2018 made in
Crl.RC.No.36/2018 and Crl.MP.No.219/2018)

Prayer: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C., to call for the records in Crl.M.P.No.223 of 2017 in C.C.No.1 of 2016 (on the file of Learned Special Court under the National Investigation Agency Act 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamalee and set aside the order dated 18.12.2017 in Crl.M.P.No.223 of 2017.

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.G.Harihara Arun Soma Sankar
Government Advocate (Criminal Side)

ORDER

The Petitioner/ Accused No.9 filed this Criminal Revision under Section 397 r/w 401 of Cr.P.C. praying this Hon'ble Court



to set aside the order passed in Crl.M.P.No.223 of 2017 in C.C.No.1 of 2016 dated 18.12.2017 on the file of the Learned Special Judge for Bomb Blast and NIA Cases, Poonamallee.

2.On 18.07.2014, one Suresh Kumar done to death by three persons, for which a case in Crime No.746 of 2014 registered by the respondent police under Sections 341, 307, and 302 of I.P.C on the file of the T2 Ambattur Estate Police Station, Chennai. The Petitioner who was arrayed as Accused No.9 arrested by the Respondent police on 07.08.2014 and on further investigation the FIR was altered in to Sections 341, 307, 302 r/w, 153-A and 120B of IPC and 16(1)(a), 17, 18 and 20 of Unlawful Activities (Prevention) Act (herein after referred as "UAP" Act). Totally sixteen accused were arrested and Final Report was filed before the learned Principal District Sessions Judge, Thiruvallur on 12.01.2015.

3.One Accused No.16 namely Abdulla moved bail application before the learned Principal District Sessions Judge, Thiruvallur and the same was dismissed in Crl.M.P.No.1021 of 2015 dated 30.04.2015. Against the order of dismissal, he moved bail before this Court wherein the learned Single Judge of this Court after hearing the arguments of both the parties, transferred the bail petition to the Hon'ble Division Bench of this Court on the ground that the offence involved in this case is a Scheduled offence mentioned in the Schedule appended to the National Investigation Agency Act (herein after referred as "NIA" Act) and therefore Appeal would be the option as per Section 21 of the NIA Act. Hence the bail application was converted in to Criminal Appeal and the Registry transferred the same before the Hon'ble Division Bench. In the meantime, other bail applications filed by some of the Accused also tagged along with Criminal Appeal Nos. 243, 340 and 524 of 2015. The Hon'ble Division Bench, suo moto impleaded the Union of India, Represented by its Secretary, Ministry of Home Affairs, New Delhi as 2nd Respondent.

In para 3 of the Counter affidavit filed by the 2nd Respondent stated as follows:-

"3. It is submitted that the Government of Tamil Nadu has informed the answering respondent as per section 6(2) of the NIA Act about invocation of the schedule offence in the case Crime No. 746 of 2014 registered in Ambattur Police Station vide letter No.40131 A/Pol. VII/2015-1 dated 24.06.2015 which was received by the answering respondent on 24.08.2015. After examination of the said report of the State Government, it is observed that sections 16(1) (a), 17, 18 & 20 of the UAPA have been invoked in the case which is schedule offences as per the NIA Act, 2008. Keeping in view the fact that Charge Sheet has already been filed in



this case by the State Government, the answering respondent is of opinion that the case should continue to be investigated and prosecuted by the Government of Tamil Nadu."

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4.The Learned Counsel for the Petitioner would further submits the Hon'ble Division Bench extensively heard the submission of both parties with regard to the applicability of NIA Act and UAPA Act including the power vested with the State Government as per Section 22 of the NIA Act and in its judgment, the Hon'ble Division Bench was pleased to hold that the provisions of the National Investigation Agency Act will not be applicable and Criminal Procedure Code alone is applicable. The Hon'ble Division Bench of the Madras High Court in its Order dated 01.09.2015 in Criminal Appeal Nos.243, 340 and 524 of 2015 stated as follows:

"5. First respondent/State Government has filed counter in all the cases. Second respondent/Central Government has filed counter in Crl.A.Nos. 243 and 340 of 2015. As all these appeals arise in respect of the same crime number, the counters filed in Crl.A.No. 243 and 340 of 2015 by Second Respondent, may be read as applicable in Crl.A.No. 524 of 2015 also. The same inform that though the case in Crime No. 746 of 2014 was registered on 18.06.2014, the report of State Government was received by second respondent/Central Government only on 24.08.2015. Counters proceed to inform that as charge sheet has already been filed in this case by State Government, the second respondent is of the opinion that the case should continue to be investigated and prosecuted by the Government of Tamil Nadu. The starting point for the application of the Act is the decision of Central Government to proceed there under. Once the second respondent has informed that the case is not being investigated under the Act, then the case in Crime No. 746 of 2014 on the file of first respondent, wherein appellants are accused, does not attract any of the provisions of the National Investigation Agency Act and will have to be proceeded with in keeping with the Criminal Procedure Code, 1973. In keeping with such Code, the remedy for an accused, who has suffered dismissal of a bail application at the hands of the Sessions Court, is to move a Criminal Original Petition before this Court. Such petition is to be heard by a Learned Single Judge of this Court. Accordingly, Registry is directed to re-number these appeals as Criminal Original Petitions and post the same before the concerned portfolio Judge."



5.The Learned Counsel for the Petitioner further submits that after the order pronounced by the Hon'ble Division Bench, the Bail applications filed by the Accused in this case was heard and decided by the Hon'ble Single Judge of this Court and no further objections were raised by the Respondent nor preferred any Appeal against the order of the Hon'ble Division Bench in CrI.A.Nos.243, 340 and 524 of 2015.

6.The Learned Counsel for the Petitioner would further submit that the case of the Petitioner was proceeding ripe for Trial before the Learned Principal District Sessions Judge, Tiruvallur in Sessions Case No.1 of 2015 and in the meantime, the Director General of Police, Tamil Nadu through his letter dated 08.08.2016, requested the Principal Secretary, Home Department to transfer the Petitioner's case to the Special Court, Poonamalee vide G.O.(Ms)No.722 dated 13.10.2016 without any reference about the order of the Hon'ble Division Bench made in CrI.A.Nos.243, 340 and 524 of 2015 dated 01.09.2015.

7.The further submission is that the case in hand was not investigated by the NIA nor the State Government entrusted the case to NIA following the procedures prescribed in the NIA Act and the Investigation Officer, Ambattur, informed the registration of the above said case to the Central Government only to cover up the issue raised in the bail application before the Hon'ble Division Bench. The Order passed by the Hon'ble Division Bench cannot be diluted in any manner by a mere issuance of a statutory notification or by an executive action. It is strenuously urged by learned counsel for Petitioner that once a dispute is before a court and parties are at issue on any question of fact, the decision on that question can be rendered only by the court and not by the legislature or the executive and in that context, he relied the Judgments of the Hon'ble Apex Court as follows:

- i. Order of the Hon'ble Division Bench in Criminal Appeal Nos.243,324 and 524 of 2015
- ii. Bahadur Kora and others Vs. State of Bihar reported in 2015 (2) MWN (Cri) 305 (FB) (Pat)
- iii. Cotton Mills Ltd. And v. Broach Borough Municipality and Ors. (1969) 2 SCC 283
- iv. People's Union for Civil Liberties (PUCL) v. Union of India and Anr. (2003) 4 SCC 399
- v.Cauvery Water Disputes Tribunal, Re 1993 Supp (1) SCC 96 (2)



8. The further submission of the Learned Counsel for the Petitioner is that the Petitioner has filed a Petition before the learned Special Court to transfer the case to Competent Jurisdictional Court for early hearing as per the order passed by the Hon'ble Division Bench of this Hon'ble court in Crl. Appeal Nos. 243, 340 and 524 of 2015. The Petitioner's application was numbered as Crl. M.P. No. 223 of 2017 and the Respondent police filed their counter. The learned Special Court dismissed the above said petition on 18.12.2017. Hence, this Criminal Revision is filed challenging the Order passed in Crl. M.P. No. 223 of 2017.

9. In reply, the learned Government Advocate (Criminal Side) submits that an appeal alone shall lie from any judgment, sentence or order, not being an interlocutory order of a Special Court to the High Court both on facts and on law. Such appeal shall lie before the bench of two as per Section 21(2) of the National Investigation Agency Act, 2008 (34 of 2008). It is further stated in Section 21(4) of the National Investigation Agency Act, 2008 (34 of 2008) that an appeal shall lie to Hon'ble High Court against the order passed by the Special Court granting or refusing bail. Therefore, the Counsel argued that only the interlocutory orders granting or refusing bail shall be appealable and not other interlocutory orders. The learned counsel relied the following authorities for substantiating his arguments:

(1). (2014) 1 Supreme Court Cases 258 (State of Andhra Pradesh Through Inspector General, National Investigation Agency v. Mohd. Hussain Alias Saleem & Pragya Singh Thakur v. National Investigation Agency)

"18. Section 21(2) of the NIA Act provides that every such appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court. This is because of the importance that is given by the Parliament to the prosecution concerning the Scheduled Offences. They are serious offences affecting the sovereignty and security of the State amongst other offences, for the investigation of which this special Act has been passed. If Parliament in its wisdom has desired that such appeals shall be heard only by a Bench of two Judges of the High Court, this Court cannot detract from the intention of Parliament. Therefore, the interpretation placed by Mr. Ram Jethmalani on Section 21(1) that all interlocutory orders are excluded from Section 21(1) cannot be accepted. If such an interpretation is accepted it will mean that there will be no appeal against an order granting or refusing bail. On the other hand, sub-Section (4) of Section 21 has made that specific provision, though sub-Section (1) otherwise excludes



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appeals from interlocutory orders. These appeals under sub-section (1) are to be heard by a Bench of two Judges as provided under sub-section (2). This being the position, there is no merit in the submission canvassed on behalf of the applicant that appeals against the orders granting or refusing bail need not be heard by a Bench of two Judges.

19. We cannot ignore that it is a well-settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety, and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the text of a section has to be read in the context of the statute. A few sub-sections of a section cannot be separated from other sub-sections, and read to convey something altogether different from the theme underlying the entire section. That is how a section is required to be read purposively and meaningfully."

(2). (2001) 7 SCC 401 (Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd. and Others)

"8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short "the Code") is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this; if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage."

3. 2011 Cri. L.J. 1044 (P. Thangaraju v. State)

"4. Per contra, Mr. A. Ramesh, the learned senior counsel appearing for the petitioner would submit that the order impugned is neither an interlocutory order nor a final order. But, it is an 'intermediate order' against which revision lies. To substantiate his contention, he would rely on a judgment of the Hon'ble Supreme Court in Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 followed by this court in V.R. Nedunchezian v. State, 2000 CrL.J. 2955. He would further submit that in Dharambir Khattar's case cited supra, the Delhi High Court has not decided the law correctly.

23. In the PCA, since there is no such total



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exclusion of the provisions of the Code of Criminal Procedure in respect of revision and since there is no conflict between Section 19(3)(c) of the PCA and Section 397(2) of the Code, I am of the view that simply because non-obstante clause is found both in S. 11(2) of the PCA and in S.19(3)(c) of the PCA, it cannot be held that both the provisions are in pari materia. And so, the natural meaning assigned to the expression "interlocutory order" in Section 11 of the SCA cannot be adopted to the said expression in Section 19(3)(c) of the PCA."

10.The Learned Counsel submits that an appeal against intermediate order shall lie only before the bench of two as mentioned in Section 21(2) r/w Section 21(1) of the National Investigation Agency Act, 2008 (34 of 2008). Therefore, this Revision petition filed by the petitioner challenging the intermediate order passed by the Special Court in CrI.M.P.No.223 of 2018 is not maintainable in law and prayed for dismissal of the Revision Petition.

11.The Learned Counsel for the Respondent refrain himself in making any submission against the Order passed by the Hon'ble Division Bench in Criminal Appeal Nos.243, 340 and 524 of 2015 either in writing or oral in spite of specific question raised by this Hon'ble Court.

12.In view of the rival submissions made on either side, coupled with the relevant statutory provisions, the issues, arising for determination in the present Criminal Revision Case, may be summarized as follows:

i. Whether the impugned order of the Learned Special Court is appealable under Section 21 of the NIA Act?

ii. Whether the proceedings being now carried through in the court of the Special Court (Bomb Blast and NIA Cases), Poonamallee at the instance of the Respondent, be permitted to continue there?

13.Issue No.I

Before I deal with the rival submissions made before me, it would be proper to understand the concept of Special law viz Unlawful Activities (Prevention) Act, 1967 as amended by Act of 2008 (herein after referred as "UAP" Act) and scheme of National Investigation Agency Act, 2008 (herein after referred as "NIA" Act).

14.The Mumbai terror attacks acted as a catalyst for the establishment of the NIA Act and UAP Act as amended by Act of 2008, the need for such an agency and stringent laws was



proposed as early as 1986-1989, when a draft Bill for a separate law for the Central Bureau of Investigation (CBI) enabling it to investigate 'federal crimes' was prepared. In subsequent years many committees had also advocated the setting up of a central nodal agency to investigate and prosecute certain offences with inter-State and international ramifications. Chief among these were the Padmanabhaiah Committee on Police Reforms in 2000 and the Justice V.S.Malimath Committee on Reforms in the Criminal Justice System in 2003.

15. In June 2007, the Second Administrative Reforms Commission (ARC) in its Fifth Report on Public Order also recommended the setting up of a federal agency to deal with offences that often impinge upon national security. Similarly, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 24th Report tabled in the Rajya Sabha in May 2008, proposed the "setting up of National-level Agency or reconstituting the CBI and developing it on the lines of the American agency, the Federal Bureau of Investigation (FBI), which handles all terror-related and nationally important cases." In its eighth report on 'Combating Terrorism' released in September 2008, the second ARC reiterated its earlier recommendation to establish a specialised wing of the CBI to deal with major offences such as terrorism. The result was that the Parliament passed two enactments simultaneously in 2008. One was the NIA Act, 2008 and the other was the Unlawful Activities (Prevention) Amendment Act, 2008. The essential difference between the 2 Acts was that while the UAP Act defined certain acts as offences and also provided machinery for their investigation and trial, the NIA Act, 2008, did not create any new offence but created only a separate agency for investigation and a special court for trial.

16. The Unlawful Activities (Prevention) Act, 1967, in its original form, contained only 21 sections divided into 4 chapters. It enabled the Central Government to declare certain associations as unlawful, prescribed penalties for being members of such associations and provided for a remedy to a Tribunal constituted under the Act. Consequently, the Act did not contemplate the creation of a Special court at all. Two major amendments were made to the Act, one under Amendment Act 29 of 2004 and another under Amendment Act 35 of 2008. It was under this amendment that a whole new set of definitions were incorporated and Chapter IV dealing with Punishment for Terrorist Activities was also inserted. In other words, the scope of the Act was enlarged under the 2004 amendment, from being a law merely dealing with unlawful associations, to law dealing both with unlawful associations and with terrorist



activities. For the first time, the word "court" was sought to be defined under section 2(d) to mean a criminal court having jurisdiction under the Code to try offences under the Act. Section 2(d) as follows:

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(1) In this Act, unless the context otherwise requires,

(a).....

(b).....

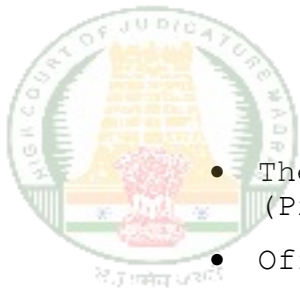
(c)

(d) "Court" means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a special court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008 (34 of 2008)]."

17. According to the NIA Act, the Agency is an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organizations and for matters connected therewith or incidental thereto for investigation and prosecution of offences affecting sovereignty, security and integrity of India.

18. The NIA was established in a concurrent jurisdiction framework, with provisions for taking up specific cases under specific Acts for investigation and prosecution [Section 3(1)]. In other words, it was "not an Agency to deal with offences under all the laws", but "with only eight laws":

- The Atomic Energy Act, 1962 (33 of 1962);
- The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
- The Anti-Hijacking Act, 1982 (65 of 1982);
- The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);
- The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
- The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);



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- The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
- Offences under—
 - Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
 - Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860).

19. Under two circumstances the NIA takes up a case "to investigate and prosecute offences". It could be on reference from the State where a Scheduled offence has taken place. On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within 15 days from the date of receipt of the report, whether the offence is a fit case to be investigated by the NIA [Section 6(3)]. The Central Government may also, suo motu, direct the Agency to investigate a Scheduled offence if it is of the opinion that the offence is required to be investigated under the NIA Act [Section 6(5)]. In that case any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency [Section 6(6)]. The Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence [Section 8]. It is mandatory for the State Government to extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences [Section 9]. The NIA may also ask the State Government to associate itself with the investigation. And, after investigating the matter, if the Agency finds that the matter is not so important, it may, with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence [Section 7(b)].

20. Both, the Agency of the Central Government as well as the investigating agency of the State Government are competent to investigate a scheduled offence, but when the National Investigation Agency, investigates a scheduled offence, the investigating agency of a State Government cannot investigate the scheduled offence.

21. In this case, the FIR under Section 302 and other IPC offences were altered and Section 16, 18 and 20 of the UAP Act were invoked by the Respondent upon further investigation. These offences were ordinarily triable by a Court of Session as per sub section (d) of Section 2 of UAP Act. In view of provisions



of Section 10, the powers of the State Government are saved as nothing shall affect the powers of the State Government to investigate and prosecute any scheduled offence or other offences under any law for the time being in force.

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22.The reading of both these enactments would show that unless the Central Government directs the NIA to take over the investigation, there is no power entrusted with the NIA to take over the investigation on its own. Therefore, the application of NIA Act would come into operation only in a case when the Central Government takes up the decision and issued any of the directions as mentioned under Section 6 of the NIA Act 2008. There is no embargo under the NIA Act, 2008 and the UAP Act of 1967 for the State Agencies to investigate till a decision is taken by the Central Government. The NIA independently is not given freedom to investigate any case of its choice. It is only when the Central Government entrusts such case to it, the NIA can investigate the said case, even if the case involved is a scheduled offence referable to the Acts mentioned in the schedule.

23.The basis of the issue raised by the Counsel for the Respondent started to bring the cases involving offence punishable under UAP Act under NIA Act quoting sub section (1) of section 22 of the Act. If it so, the Respondent who was put on notice on the very same issue raised by them before the Hon'ble Division Bench, ought to have filed appeal against the order of the Division Bench of this Court in Crl.A.Nos.243, 340 and 524 of 2015. Hence the Order of the Hon'ble Division Bench becomes final.

24.Further, I am of the view that, if this argument of the Respondent is to be accepted, all the cases registered under UAPA offences should automatically follow the provisions of the NIA Act, which may not be the object and scheme of the Act.

25.In this factual Context, there were many appeals of this nature which have been filed before the Patna High Court and other High Courts questioning the powers of the state government and transfer of bail applications to the Division Bench from the Single Judge of the High Court.

26.The Hon'ble Full Bench of the Patna High Court had the occasion to deal with this issue in Bahadur Kora and others Vs. State of Bihar reported in 2015 (2) MWN (Cri) 305 (FB) (Pat), overruled their Division Bench's order rendered in Aasif, P.K. V. The State of Bihar reported in 2015 (1) P.L.J.R. 1017 which



is much more similar that of the order passed by the Hon'ble Division Bench of this Hon'ble Court in Crl.A.Nos. 429 and 430 of 2014 dated 14.08.2014.

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27.The Hon'ble Full Bench of the Patna High Court summarized the issue as follows:

Section 6 of the National Investigation Agency Act is the basis to bring any particular case within the ambit of the Act and for entrustment of the case fixed to the NIA. Then only the Special Court comes into picture.

Section 7 of the National Investigation Agency Act is the only provision providing link between the NIA on the one hand and the Investigating Agency of the State on the other hand. Two functions are entrusted to the State Government under the NIA Act, the first is under section 6(2) and the second is under section 22 of the Act. Once the case is not entrusted to the NIA, the power of the State Government and its investigating agencies must be proceeded under the Criminal Procedure Code without any reference to any Act.

28.After considering the provisions of both the enactments and the Code of Criminal Procedure, I am of the considered view that as long as investigation of a case is not entrusted to NIA, the powers of the State Government and its investigating agencies are intact and therefore, the said agencies could proceed in accordance with the Cr.P.C.

29.Further it is seen from the records that the Respondent Police registered the FIR on 18.06.2014 and invoked UAP offences by filing the amended report before the concerned Jurisdictional Magistrate Court on 26.07.2014. Then the Case records were placed before the Principal District Sessions Judge as per Section 2(d) of UAP Act. After alteration of UAP offences, the Respondent Police ought to have informed the State Government about the invocation of UAP offences which was not done in this Case. The Central Government was also not informed by the State Government about the registration and investigation of UAP offences. The Respondent Police filed the Final Report on 12.01.2015 without following any of the procedures prescribed in Section 6 and 7 of the NIA Act. The jurisdictional court as defined in section 2(d) of the UAP Act took cognizance and posted the case for questioning. Then the Accused started to file their bail applications before the Hon'ble High Court. To defeat the claim of the accused, the Respondent Police started to interpretate the provisions contained in the NIA Act as per their wish in this case.



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30. Further the applicability of the provisions of NIA Act was once again raised before the Single Judge of this Hon'ble Court and all the bail applications were transferred to the Division Bench. The Hon'ble Division Bench of this Hon'ble Court vide its order dated 01.09.2015 in Criminal Appeal Nos.243, 340 and 524 of 2015 analysed the entire provisions of NIA Act including the powers of the State Government under section 22 of the NIA Act and categorically held that the special procedure under the NIA Act would attract only when the Central Government entrusted the investigation to the NIA and in turn, the NIA transfer the investigation to the State Investigation Agency as prescribed in section 6 and 7 of the NIA Act.

31. Further it is also seen from the records that after a gap of one year, the Respondent police through their Higher officials requested the Executive for transfer, without any reason, except quoting the provisions of NIA Act and thereafter, the case was transferred to the Special Court, Poonamalee vide G.O.(Ms)No.722 dated 13.10.2016 from its original jurisdiction as defined in section 2(d) of the UAP Act. This Court also issued notice to the Registrar General to verify "whether the Order of the Division Bench was placed by the Respondent before constituting Special Court and the answer was in the negative. This Court agrees with the submission made by the Counsel for the Petitioner that no proper consultation has been made with the High Court and the High Court was also misled in agreeing to the proposal sent by the State Government screening the Judgment passed by the Hon'ble Division Bench of this Court in CrI.A.nos.243, 340 and 524 of 2015.

32. Therefore, I am of the view that simply because an offence punishable under UAPA was alleged in the investigation, trial of this case cannot be brought under the purview of the NIA Act for the following reasons:

"Firstly, it cannot be said with any certainty that the offences are triable only by the Special Court constituted under Section 11 or 22 of the NIA Act.

Secondly, powers under the UAP Act should be exercised by 'Court' defined sub-section (d) of Section 2 as a criminal court having jurisdiction, to try offences.

Thirdly, merely because such court includes a Special Court constituted under the NIA Act, there is nothing in the UAP Act to prevent an ordinary criminal court, which could try the offences under the Code from exercising these powers.

Fourthly, the Unlawful Activities (Prevention) Act, 1967, which was amended after the passing of the NIA Act, 2008, also



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contains a non obstante clause in section 48. Under this section 48, the provisions of this Act will have effect notwithstanding anything to the contrary contained in any other law. This non obstante clause will cover even the NIA Act, since it was passed before the Unlawful Activities (Prevention) Amendment Act, 2008. Under section 45 of the UAPA, 1967, there are certain restrictions for a court to take cognizance of an offence under the Act. Hence the impugned order passed by the Special Court is without the sanction of law.

Fifthly, the "maintainability ground" raised by the Respondent in hearing this Revision Petition before this Court was directly answered by the Hon'ble Division Bench vide its Order dated 01.09.2015 and the same cannot be once again re-agitated before this Court.

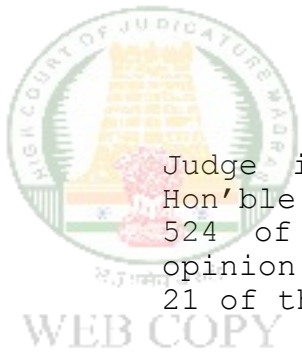
Sixthly, the exercise of Powers by the State Government by issuing a executive notification and transferring the case under the provision of the NIA Act to the Special Court from its original jurisdiction prescribed under UAP Act, is a clear violation of the procedure and the special procedure prescribed under the NIA Act attracts only when investigation entrusted by Central Government to the NIA and NIA transfers the same to the investigating agency of the State Government.

Seventhly, the conduct of the Respondent by raising the issue of jurisdiction under section 21(2) of NIA Act for the second time before this Hon'ble Court is nothing but despicable act and abuse of process of law and the issuance of Government notification on the request made by the Respondent Police amounts to usurpation of judicial power in as much as State Government has arrogated to itself the role of a judicial body and determined the questions regarding the applicability of the NIA Act and constituted the Court under section 22 of the NIA Act, when such questions fall exclusively within the domain of the judiciary and have already been determined and considered by the Hon'ble Division Bench of this Court in its judgment dated 01.09.2015.

Eighthly, the Hon'ble Division Bench of this Court categorically held that the provisions of NIA Act are not applicable to the case on hand and in spite of this Order, the issuance of Executive Notification for transferring the case in G.O.(Ms)No.722 dated 13.10.2016 is non est in the eye of law.

Ninthly, the Respondent Police never raised the issue of jurisdiction or maintainability in the similar bail applications heard and decided by the Hon'ble Single Judge of this Hon'ble Court in CrI.O.P.nos.22518 of 2106, 15479 of 2017 and 21483 of 2017 and the Government Notification made in G.O.(Ms)No.722 dated 13.10.2016 directly overrules the judgment of the Hon'ble Division Bench dated 01.09.2015 which is impermissible in law.

Tenthly, the impugned order passed by the Learned Special



Judge is without jurisdiction and against the order of the Hon'ble Division Bench of this Court in Crl.A.nos.243, 340 and 524 of 2015 dated 01.09.2015. Hence, I am of the considered opinion that the impugned order is not appealable under section 21 of the NIA Act.

33.Issue No.2:

It is seen from the records that the Respondent independently investigated the offence under UAP Act in this case and filed the Final Report before the jurisdictional Court namely the learned Principal District and Sessions Judge, Thiruvallur as defined in section 2(d) of the UAP Act. So, invoking single provision of NIA Act 2008 by the Respondent on the ground that UAP Act is included in the schedule of NIA Act 2008 would mean to rewrite the section 2(a) of NIA Act 2008 and the same is not permissible to add words in the definition clause of 2(a) of NIA Act 2008. The constitution of special court by impugned G.O. (Ms) No. 722 dated 13.10.2016 would offend the provision of substantive Act namely UAP Act 1967 and also without any power conferred under NIA Act for conducting trial of offence investigated by respondent as it is not an agency defined under 2(a) of NIA Act .

34.It is to be understood that the provisions of the NIA Act and UAP Act, both are distinct and different. The UAP Act namely substantive Act clearly confers the jurisdiction upon the jurisdictional court for deciding the offence under Chapter III & IV of the UAP Act with punishment. But the NIA Act is different and only authorized the investigation agency duly constituted under NIA Act into the offence of UAP Act. From the reading of the provision of the both UAP Act and NIA Act, it is clear that both are self containing Acts operating distinctly and differently. Under the circumstances merely because UAP Act included in the schedule of the NIA Act, the respondent cannot claim the power of jurisdiction to constitute the Special Court by equating them as an agency constitute under the NIA Act.

35.Again this Court reiterates that any notification issued by the State Government after the Judgment of the Hon'ble Division Bench in Crl.A.Nos.243, 340 and 524 of 2015 dated 01.09.2015, under the provisions of the NIA Act, violates the rule of law and fair procedure. The State Government has taken the law in its own hands after the declaration of law made by the Hon'ble Division Bench, considering the very same ground placed before this Hon'ble Court and the State cannot become a Judge on its own cause and seek to reverse the decision of this Court because it has gone against it.



36. The Learned Government Advocate for the Respondent relied the Judgment of the Hon'ble Supreme Court reported in (2014) 1 SCC 258 in support of his argument as follows:

"Para No.18: section 21(2) of the NIA Act provides that every such appeal under sub section (1) shall be heard by a Bench of two judges of the High Court. This is because of the importance that is given by parliament to the prosecution concerning the scheduled offences. They are serious offences affecting the sovereignty and security of the stage amongst other offences for the investigation of which this special Act has been passed. If parliament in its wisdom has desired that such appeals shall be heard only by a bench of two judges of the High Court, this court cannot detract from the intention of parliament.

"Para No.19: we cannot ignore that it is a well settle cannon of interpretation that when it comes to constitution of a section, it is to be read in its entirety, and its sub sections are to be read in relation to each other, and not disjunctively. Besides, the text of a section has to be read in the context of the statute. A few sub sections of a section cannot be separated from other sub section, and read to convey something altogether different from the theme underlying the entire section. That is how a section is required to be read purposively and meaningfully.

37. I am of the view that the provisions contained NIA Act has to be read and followed in its entirety and one section cannot be taken in support of claim, as done by the Respondent in this case. It is also to be noted that, even before constituting the Special Court as per section 22 of the NIA Act, the Respondent filed Criminal Appeal against the interlocutory order passed by the PDJ, Thiruvallur in CrI.M.P.Nos.3003 and 3017 which is impermissible under section 21 (3) of the NIA Act. I am unable to understand why the Respondent Police making different standards of approach as per their wish without following the purposive and meaningful interpretation of the NIA Act. Therefore, the Judgment relied by the Respondent in (2014) 1 SCC 258 squarely applies to the case of the Petitioner and the same is not in favour of the Respondent. The Judgment quoted by the Respondent relates to the case where the investigation was carried by the NIA and not by the State Investigation Agency. Hence the same cannot be applied to the facts and circumstances of this case.

38. The law is well settled through the catena of decisions rendered by the Hon'ble Apex Court in Cauvery Reference Case, PUCL Case and in other Cases that "the legislature cannot directly overrule the decision rendered by the Courts or make a direction against the scheme of any Act".



39. Suffice to use the expression of the Hon'ble Apex Court in I.N. Saksena case reported in (1976) 4 SCC 750 "drawing distinction between legislative and judicial acts and functions", held as follows in para 21 and 22:

"21. The distinction between a "legislative" act and a "judicial" act is well known, though in some specific instances the line which separates one category from the other may not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law, prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law.

22. While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based.

40. In fact, none of the judgments cited by learned counsel for the Respondent provide assistance on the issue, rather, legal provisions and the facts of these cases are quite clear and have been given interpretation as is coming out from the legislative intent and also from the Full Bench decision of the Patna High Court discussed above. Hence all the proceeding carried by the Learned Special Court is without jurisdiction.

41. With regard to next submission of the Learned Counsel for the Respondent regarding the maintainability of Revision, this Court once again considers the expression "interlocutory order" in the light of the interpretation made by the Counsel. In this regard it is useful to refer Section 397(2) of Cr.P.C, which provides that the power of revision conferred by sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.

42. In Amar Nath and Others Vs. State of Haryana & Another,



reported in (1977) 4 SCC 137, the Hon'ble Supreme Court considered the meaning of the said expression. In that context, the Hon'ble Supreme Court held that Section 397(2) has been incorporated with the paramount object of safeguarding the interests of the accused, by cutting short the delays resulting from challenge to all and sundry orders passed by the Trial Court during the trial proceedings. The Hon'ble Supreme Court observed as follows:

"The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

43. I may, at the outset, observe in this Criminal Revision that jurisdiction of this Court to issue appropriate orders or a direction for enforcement of fundamental rights is a basic feature of the Constitution. Right to fair trial has to be protected against any unreasonable procedure, even if it is enacted by way of Executive Order or legislature. The substantive as well as procedural laws must conform to Articles 14 and 21 of the Constitution of India. Any abrogation of the said rights has to be nullified by this Court by appropriate



orders or directions. The umbrageous conduct of the prosecution as well as abducting approach of the learned Special court leads to another round of litigation in spite of specific Order passed by the Hon'ble Division Bench of this Court categorically holding that the provisions of National Investigation Agency Act is not applicable to the facts and circumstances of the Case.

44. For the foregoing reasons and in the light of the judgments cited supra, I am of the view that the impugned order passed by the learned Special Court, Poonamallee is without jurisdiction and violates the fair procedure of trial. Hence, this Court has no hesitation to allow this Criminal Revision filed by the Petitioner, accordingly it is allowed.

45. In the result:

(a) this Criminal Revision Petition is allowed and the order passed by the Learned Special Court, Poonamallee, in CrI.M.P.No.223 of 2017 in C.C.No.1 of 2016 dated 18.12.2017 is hereby set aside;

(b) the entire case records pertaining to C.C.No.1 of 2016 pending on the file of the Learned Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast, Chennai at Poonamallee) shall be transferred to the Learned Principal District and Sessions Judge, Thiruvallur;

(c) the Learned Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast, Chennai at Poonamallee) is hereby directed to send all the case records in C.C.No.1 of 2016 to the file of the Learned Principal District and Sessions Judge, Thiruvallur within a period of two weeks from the date of receipt of this order;

(d) on receipt of the entire case records relates to C.C.No.1 of 2016, the Learned Principal District and Sessions Judge, Thiruvallur is hereby directed to expedite the case and dispose of the same within a period not exceeding six months thereafter;

(e) the parties are strictly directed to extend their full co-operation for the speedy disposal of the case without seeking any adjournment.



There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge for Bomb Blast and NIA Cases,
Poonamallee.

2.The Principal District and
Sessions Judge, Thiruvallur.

3.The Registrar General,
High Court, Madras

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Vivekananthan, Advocate sr.no.32629

Cr1.R.C.No.36 of 2018
and
Cr1.M.P.No.219 of 2018

ssi(co)
nr 23/05/2018