

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P.No. 2165 of 2017
and WMP 2145 of 2017

S.Viswanathan

.. Petitioner

Vs

The Inspector of Police,
C.C.I.W/C.I.D Tiruvannamalai P.S,
Tiruvannamalai

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari or orders or directions in the nature of writ calling for records in CC. No.3 of 2004 and consequential CC Nos.397,398/2016 in officer order dated 01.08.2016 on the file of the Judicial Magistrate II, Vellore and quash the same as without authority of law.

For Petitioner : Mr. A.Thiyagarajan, Senior Counsel
for S.Ramesh Kumar

For Respondent : Mr.D.Raja,
Additional Government Pleader

O R D E R

In CC No.3 of 2004, the respondent police had filed eight charge sheets which were taken on file in CC Nos. 3 to 10 of 2004. By a subsequent order dated 27.07.2006 passed under sections 220(1) and 220(2) of Cr.P.C, the learned Judicial Magistrate No.II, Vellore had clubbed all the CC's together and directed for single trial. Accordingly the CC Nos. 4 to 8 came to be clubbed along with CC No.3 of 2004 and the trial had commenced. In the mean time on 01.08.2016, the learned Judicial Magistrate No.II. Vellore had suo motto passed an office order whereby the case in CC. No. 3 of 2004 came to be ordered to be separated in eight distinct calendar cases with a further direction to assign new number to all the eight calendar cases. The said order is under challenge.

2. The learned Senior Counsel appearing for the petitioner submitted that such an office order is impermissible under law in view of the bar under section 352 of Cr.P.C. since the earlier order dated 27.07.2006 was a judicial order and that the Judicial Magistrate is debarred from reviewing the said order.

3. The learned Additional Government Pleader on the other hand submitted that the offence alleged to have been committed are at various period of time and by different persons in different transactions and hence, the cases are separated and tried separately.

4. I am unable to comprehend the submissions of the Additional Government Pleader for the simple reason that under section 220 of the Cr.P.C enables for one trial for several acts, the earlier order came to be passed by the Judicial Magistrate where by all the eight cases were clubbed into one case. As rightly pointed out by the learned Senior Counsel the said order is judicial order. The present impugned order is suo motto office order which intends to take away the altered earlier judicial order dated 27.07.2006. I am also unable to comprehend as to how a judicial order can be altered through an office order. Even otherwise, once a judicial order once has been passed, there is a bar under section 362 Cr.P.C from making any alteration to the said order by the same court. In view of the same, the present impugned order directing for separation of the cases into 8 distinct calendar cases is not in accordance with law.

5. According, the Writ Petition is allowed. The impugned order dated 01.08.20016 on the file of the learned Judicial Magistrate No.II, Vellore is quashed. Consequently all the 8 cases shall be clubbed into one case for the purpose of conducting trial. At this juncture, learned Additional Government Pleader had brought to the notice of the Court that by earlier order dated 08.01.2016 passed in CrI.R.C.No.439 of 2010, the trial court is directed to the dispose of the proceedings within a period of four months.

6. However, since the trial is yet to be completed, it would be appropriate to grant further time to the Court to expedite the trial.

7. The learned Judicial Magistrate No.II, Vellore is directed to complete the proceedings within a period of eight weeks from the date of receipt of this order. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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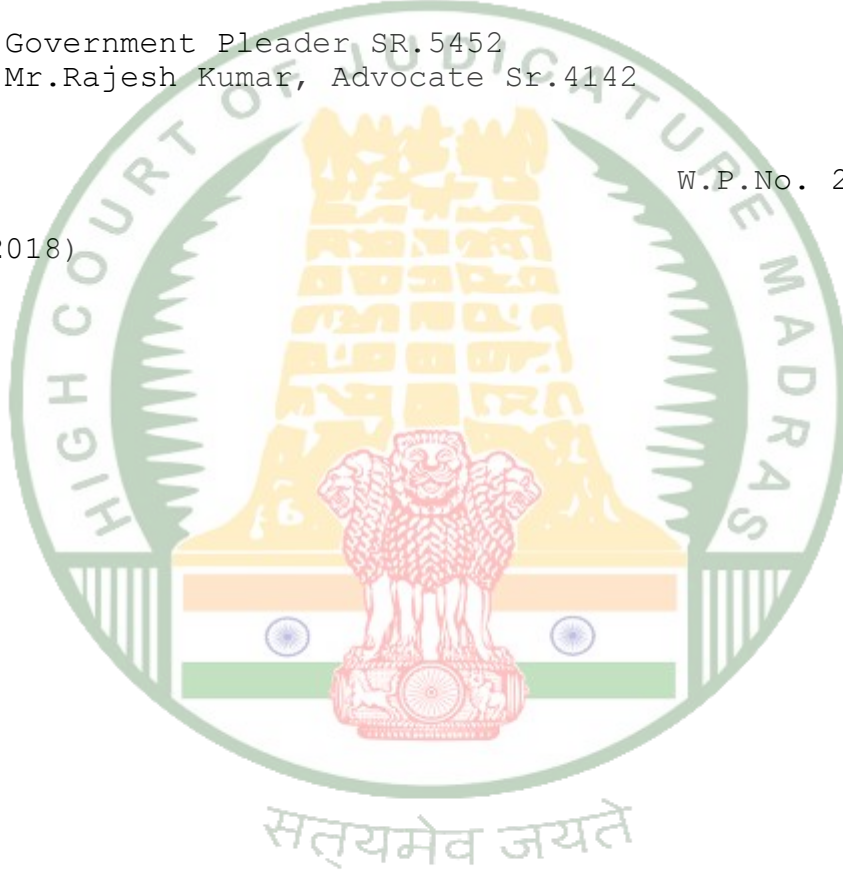
1. The Inspector of Police,
C.C.I.W/C.I.D Tiruvannamalai P.S,
Tiruvannamalai

2. The Additional Government Pleader
High Court, Madras

+ 1 cc to Government Pleader SR.5452
+ 1 cc to Mr.Rajesh Kumar, Advocate Sr.4142

W.P.No. 2165 of 2017

(CS-III)
EU(23/02/2018)



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