

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.04.2018

Pronounced on : 14-06-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE G. JAYACHANDRAN

Writ Petition (MD) Nos. 19496, 20796, 20863 of 2017

Writ Petition No. 26938 of 2017

Writ Petition (MD) Nos. 4155 and 7662 of 2018

and

W.M.P. Nos. 28723, 28724 of 2017

W.M.P. No. 5782 of 2018

W.M.P. (MD) No. 15802, 17081, 17082, 17083, 17152 of 2017

M.Manimuthu ...Petitioner in WP(MD) 19496/2017
C. Narayanan ...Petitioner in WP(MD) 20796/2017
Marianathan ...Petitioner in WP(MD) 20863/2017
P. Arumugam @ Selvakumar ...Petitioner in WP 26938/2017
M. Maruthur @ Lenin Kumar ...Petitioner in WP(MD) 4155/2018
A. Palanivel ...Petitioner in WP(MD) 7662/2018

-VS-

1. The Registrar General,
The Hon'ble
Madras High Court, Chennai.1st Respondent in WP (MD)
19496/17,20796/2017,
20863/2017,WP 26938/2017,
WP (MD) 4155/2018&7662/2018
2. The Sessions Judge,
The Hon'ble Special Court,
(Trial of Bomb blast cases)
Poonamalli, Chennai.2nd Respondent in WP(MD)
19496/17,20796/2017,
20863/2017
... 4th Respondent in WP 26938/2017

3. The Principal District and Sessions Judges, Sivagangai. ..3RD Respondent in WP(MD) 19496/17,20796/2017,20863/17,

4. The Inspector of Police, Sivagangai Town Police Station, Sivagangai. ..4th Respondents in WP(MD) 19496/17

The Inspector of Police, Thiruppachethi Police Station, Sivagangai District. ..4th Respondents in WP(MD) 20796/2017

The Inspector of Police, Kandavarayanpatti Police Station, Sivagangai District ..4th Respondents in WP (MD) 20863/2017

The Principal District & Sessions Judge, Virudhunagar District, at Srivilliputtur.

The Chief Judicial Magistrate, Virudhunagar District, at Srivilliputtur.

The Inspector of Police, North Police Station Circle, Rajapalayam. ... Respondents 2 ,3 & 5 in WP 26938/2017

The Sessions Judge, Special Court for Exclusive Trial of Bomb Blast Cases, Coimbatore.2nd Respondent in W.P.No.4155/2018 & 7662/2018

The Principal Sessions Judge, Theni. ..3rd Respondent in WP(MD) 4155/2018,7662/18

The Inspector of Police,
"Q" Branch CID, Theni,
Varusanadu Police Station.

...4th Respondent in WP(MD)
4155/2018

The Deputy Superintendent
of Police, "Q" Branch CID,
Theni,
Periyakulam Police Station,
Theni.

...4th Respondent in WP
(MD) 7662/2018

Prayer in WP(MD) 19496/2017:

Writ Petition filed under article 226 of the Constitution of India praying this Court for the issuance of Writ of Certiorari, calling for the records pertaining to the order passed by the 3rd Respondent herein in D.No.5695/2017 dated 26/07/2017 in so far as S.C.No.80/2009 on the file of the Principal District and Sessions Judge, Sivaganga is concern and quash the same as illegal.

Prayer in WP(MD) 20796/2017:

Writ Petition filed under article 226 of the Constitution of India praying this Court for the issuance of Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 3rd respondent vide proceedings Reference No. D.No. 5692/2017/S.C dated 26/07/2017, quash the same and consequently direct the 3rd Respondent to conduct the trial and dispose of the same at the earliest.

Prayer in WP(MD) 20863/2017:

Writ Petition filed under article 226 of the Constitution of India praying this Court for the issuance of Writ of Certiorari, calling for the records of the impugned order passed by the 3rd respondent in D.No.5689/2017/SC dated 26/07/2017 so far as in S.C.No.171/2016 on the file of the Sessions Judge, Sivagangai now in S.C.No.11/2017 on the file of the Sessions Judge, The Hon'ble Sessions for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai and quash the same.

Prayer in WP 26938/2017:

Writ Petition filed under article 226 of the Constitution of India praying this Court for the issuance of Writ of Certiorari, calling for the records of the case from the file of the fourth respondent in S.C.No.13 of 2017 and quash the communication of

the third respondent in D.No.1981 dated 03.08.2017 and order of the second respondent in D.No.4224/A1/2017 dated 21.07.2017 which were not properly appreciated or implemented the Circular issued by the first respondent in Roc.No.1999/C/2015/G1 dated 3.04.2017.

Prayer in WP(MD) 4155/2018:

Writ Petition filed under article 226 of the Constitution of India praying this Court for the issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 3rd respondent herein dated 02.08.2017 so far as transferring the S.C.No.93/2014 from the file of the Learned Assistant Sessions Court, Periyakulam to the 2nd Respondent and quash the same as illegal.

Prayer in WP(MD) 7662/2018:

Writ Petition filed under article 226 of the Constitution of India praying this Court for the issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 3rd respondent herein dated 14/09/2017 so far as transferring the S.C.No.184/2016 from the file of the Learned Assistant Sessions Court, Periyakulam to the 2nd Respondent and quash the same as illegal.

Mr.K.S.Karthick Raja for
Mr.K.Sundaravel : For Petitioner in WP(MD) 19496/2017

Mr. Niranjan S.Kumar- : For Petitioner in WP(MD) 20796/17

Mr. M. Subash Babu : For Petitioner in WP(MD) 20863/17

Mr. R. Sankarasubbu for
Mr.A.Jayaramachandran : For Petitioner in WP(MD) 4155/18 ,
7662/2018.

Mr.B. Sivaraman : For Petitioner in WP 26938/17

Mr. B. Vijay : For Respondents 1 to 3 WP(MD)
19496/2017, 20796/2017, 20863/2017,
4155/18, 7662/2018.

Mr.S.N. Parthasarathy,
Govt. Advocate : For 4th Respondent WP(MD)
19496/2017, 20796/2017, 20863/2017,
4155/18,7662/2018, 5th Respondent in
W.P. No. 26938/2017.

Mr. S. Thangavel

: For Respondents 1 to 4 in W.P.No.
26938/2017.

COMMON ORDER

R. Subbiah, J

All these writ petitions have been filed challenging the orders passed by the Principal District and Sessions Judges of various Districts, transferring the trial of the Sessions Case involving the offences punishable under the Explosive Substances Act to be tried by the Sessions Court for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee and at Coimbatore, as the case may be, by citing the Circular issued by the Registrar General of this Court bearing Roc.No.1999/C/2015/G1 dated 03.04.2017.

2. Among the six writ petitions before us, five writ petitions being Writ Petition (MD) Nos. 19496, 20796, 20863 of 2017 and Writ Petition (MD) Nos. 4155 and 7662 of 2018 were filed before the Madurai Bench of the Madras High Court, Madurai. Writ Petition No. 26938 of 2017 alone was filed before the Principal Bench of this Court. By an administrative order, the Honourable Chief Justice transferred all the writ petitions filed before the Madurai Bench of the Madras High Court, Madurai to the Principal seat. Pursuant to such transfer, this Special Bench was constituted by the Honourable Chief Justice to take up these writ petitions and to dispose of the same on merits.

3. The facts relating to the WP (MD) No. 19496 of 2017 are that the fourth respondent - Inspector of Police, Sivagangai Town Police Station registered a case against the petitioner in Crime No. 451 of 2007 on its file for the offences punishable under Sections 120 (B), 212, 302 read with Section 34 of IPC and Section 4 (b) (ii) and 6 of Explosive Substance Act. According to the fourth respondent, on 29.06.2007 at 13.30 hours, the deceased Murugan, who was travelling in a Scorpio Car, was killed by an explosive device. In the very same occurrence, one Pandi, who was the driver of the car, sustained injuries. After registration of the case, the fourth respondent carried out investigation and upon completion of investigation, the fourth respondent has filed a charge sheet before the Judicial Magistrate Court No.1, Sivagangai. Subsequently the learned Judicial Magistrate, Sivagangai has committed the case to the Court of Sessions viz., the learned Principal District and Sessions Judge, Sivagangai who has taken the Sessions Case on its file as S.C. No. 80 of 2009. During the course of trial in the Sessions Case, 28 witnesses have been examined and several

documentary evidence were marked. According to the petitioner, only certain official witnesses are required to be examined in connection with the confession and recovery of the material objects in the case. While so, by relying upon the Circular issued by the Registrar General of this Court in Roc.No.1999/C/2015/G1 dated 03.04.2017, the learned Principal District and Sessions Judge, Sivagangai passed an order dated 26.07.2017 transferring S.C. No. 80 of 2009 on it's file to the file of Special Court for Bomb Blast Cases, functioning at Poonamallee, Chennai. The said order dated 26.07.2017 of the learned Principal District and Sessions Judge, Sivagangai is challenged in this writ petition.

4. The writ petition in WP (MD) No. 20796 of 2017 has been filed by the petitioner by contending that the fourth respondent namely Inspector of Police, Thiruppachethi Police Station, Sivagangai District has registered a case in Crime No. 173 of 2003 and after investigation, filed the charge sheet before the learned Judicial Magistrate, Manamadurai which was taken on file as P.R.C. No. 37 of 2005. Subsequently, the learned Additional District Munsif cum Judicial Magistrate, Manamadurai committed the case to the file of District Sessions Court, Sivagangai and re-numbered as S.C. No. 139 of 2010. When the trial in S.C. No. 139 of 2010 was in progress, one of the accused in S.C. No. 139 of 2010 namely Dakshinamoorthi was murdered in retaliation. Thereafter, fearing for his life, the petitioner has filed a petition in Criminal Original Petition No. 5048 of 2016 before this Court seeking to transfer the case in S.C. No. 139 of 2010 from the file of the District and Sessions Judge, Sivagangai to the file of District and Sessions Court, Tuticorin. The said Petition in CrI.O.P. No. 5048 of 2016 was dismissed by this Court. Thereafter, the trial in the Criminal proceedings in S.C. No. 139 of 2010 proceeded and almost all the witnesses were examined during the course of trial. At this juncture, by citing the Circular dated 03.04.2017 passed by the Registrar General of this Court, by an order dated 26.07.2017, the learned Sessions Judge, Sivagangai transferred the case in S.C. No. 139 of 2010 for being tried by the Sessions Court for exclusive trial of Bomb Blast Cases at Poonamallee, Chennai. Aggrieved by the said order dated 26.07.2017, the present writ petition is filed.

5. As far as WP (MD) No. 20863 of 2017 is concerned, the petitioner and three others were arrayed as accused in Crime No. 24 of 2015 for the offence punishable under Section 4 and 5 of the Explosive Substances Act, 1908 read with Section 109 of IPC. The said case was registered on the file of the Inspector of Police, Kandavarayanpatti Police Station, Sivagangai District alleging that on 28.02.2015, when the police party were engaged in routine check up near Salaipatti Pappaiah Manimandapam, they

have intercepted the Tractor bearing Registration No. TN 59 E 5771 and on being searched, they found 40 gelatin sticks and 20 electric detonators concealed in a bag. On being questioned, the accused in that case have confessed that the said materials were handed over to them by the fourth accused in the case namely Raj @ Raja for the purpose of digging a well without the permission of the competent authority. It is the case of the petitioner that he was falsely implicated in this case inasmuch as he is a licenced holder to carry out explosive activities and he is carrying on such business at No.57/1, Maharajapuram third Street, Thirukokarnam, Pudukottai District vide Licence Number E/SC/TN/22/444 (E25277) which is valid upto 31.03.2018. Thus, according to the petitioner, he is doing business after getting licence under the Explosive Substances Act from the competent authority and therefore, he is unnecessarily being prosecuted. In spite of the same, the fourth respondent, after conclusion of investigation, filed a charge sheet before the Judicial Magistrate, Tirupattur and on committal to the Court of Sessions, it was taken on file by the learned Principal District and Sessions Judge, Sivagangai as S.C. No. 171 of 2016. During the course of trial in S.C. No. 171 of 2016, by order dated 26.07.2017, the learned Sessions Judge, Sivagangai transferred the said case in S.C. No. 171 of 2016 from it's file to the file of Sessions Court for exclusive trial of Bomb Blast Cases at Poonamallee, Chennai. Challenging the said order dated 26.07.2017, this writ petition is filed. Now, the Sessions Case is pending trial in S.C. No. 11 of 2017 before Sessions Court for Exclusive trial of Bomb Blast Cases at Poonamallee.

6. The facts leading to filing of Writ Petition No. 26938 of 2017 are that the fifth respondent - Inspector of Police, North Police Station, Rajapalayam has registered a case in Crime No. 205 of 2012 against the petitioner for the alleged offence under Section 286 of the Indian Penal Code read with Section 5 of the Explosive Substances Act, 1908. The said case was registered on the basis of the complaint given by the Village Administrative Officer, Mela Kula Raja Raman Village alleging that on information, he went to the Car shed belonged to the petitioner from where he seized Ammonium Nitrate Salt. After completion of the investigation, charge sheet was filed by the investigation officer, before the learned Judicial Magistrate, Rajapalayam which was subsequently committed to the file of learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur and taken on file as S.C. No. 47 of 2016. During the course of trial in the Sessions Case, 12 witnesses were examined on various dates and after completion of the witnesses, the accused was questioned as contemplated under Section 313 of the Code of Criminal Procedure and the case was posted for hearing the argument of the counsel for the parties. At this stage, on the basis of the Circular dated 03.04.2017 issued by the Registrar General of this Court, the Chief

Judicial Magistrate, Virudhunagar District at Srivilliputhur passed the order dated 03.08.2017 transferring S.C. No. 47 of 2016 on its file to the file of Sessions Judge, Sessions Court for Exclusive trial of Bomb Blast Cases, Poonamallee at Chennai. The same was re-numbered as S.C. No. 13 of 2017 and pending before the Sessions Judge, Sessions Court for Exclusive trial of Bomb Blast Cases, Poonamallee at Chennai.

7. W.P. (MD) No. 4155 of 2018 is filed by the petitioner contending that he was implicated in a case in Crime No. 111 of 2017 along with 4 others for the alleged offences punishable under Sections 13 (1) (a) (b) of Unlawful Activities (Prevention) Act, 1967, Section 17 (1), 17 (2) of Criminal Law Amendment Act, 1908 and Section 120 (b), 148, 121, 122, 124 (A), 307, 332 and Section 25 (1-B), 27 of Arms Act, 1959 and Section 9 (B) (1-B) and Section 3 and 4 of Explosive Substances Act, 1908 on the file of Varusanadu Police Station, Theni District. After completion of investigation in the case, a charge sheet was filed before the learned District Munsif cum Judicial Magistrate, Aundipatty and subsequently the case was committed to the file of learned Assistant Sessions Judge, Periyakulam. Since some of the co-accused in the case were absconding, the case was split up against the petitioner and 2 others and taken on file in S.C. No. 93 of 2014. During the course of trial in S.C. No. 93 of 2014, 47 witnesses out of 112 witnesses were examined on the side of the prosecution. At this stage, on the basis of the circular dated 03.04.2017 issued by the Registrar General of this Court, the Sessions Case in S.C. No. 93 of 2014 was transferred from the file of the learned Assistant Sessions Judge, Periyakulam to the file of the Sessions Court for Exclusive trial of Bomb Blast Cases, Coimbatore. Challenging the said order of transfer, dated 02.08.2017, the present writ petition is filed. The same was re-numbered as S.C. No. 209 of 2017 and pending before the Sessions Judge, Sessions Court for Exclusive trial of Bomb Blast Cases, Coimbatore.

8. The facts relating to filing of WP (MD) No. 7662 of 2018 are that the petitioner was arrayed as 2nd accused in Crime No. 232 of 2007 for the offences punishable under Sections 120 (b), 143, 144, 122, 124 (A), 216 read with Section 34 and 149 of IPC and Section 3 read with Section 25 (1) (b) (a) and 7 read with Section 25 (1) (a) of Arms Act, 1959 and Section 4 (a) and 5 of Explosive Substances Act and Section 17(1) and (2) of Criminal Law Amendment Act, 1908 registered on the file of Periyakulam Police Station, Theni. The case was investigated by the Deputy Superintendent of Police, Theni District, who, after completion of the investigation, has filed the charge sheet before the learned Judicial Magistrate, Periyakulam. Subsequently, the case was committed to the file of Assistant Sessions Judge, Periyakulam and it was taken on file as S.C. No.

184 of 2016. Since some of the co-accused were absconding in the case, the case was split up as against the petitioner and trial in the case had commenced. During the course of trial, 3 witnesses out of 84 witnesses were examined. While so, by relying upon the Circular dated 03.04.2017, the learned Principal Sessions Judge, Theni has passed an order dated 14.09.2017 transferring four Sessions cases on it's file, including the case in S.C. No. 184 of 2016, in which the petitioner is an accused, to be tried by the Sessions Court for exclusive trial of Bomb Blast Cases, Coimbatore. Aggrieved by the same, the present writ petition is filed.

9. The learned counsel appearing for the respective writ petitioners, in unison, would contend that the Sessions Cases have been transferred without properly looking into the object with which the Circular dated 03.04.2017 was issued by the Registrar General of this Court. The spirit with which the Circular dated 03.04.2017 has been issued by the Registrar General of this Court has not been considered while passing the orders of transfer, which are impugned in these writ petitions. The orders, which are impugned in these writ petitions are cryptic orders without any reasoning. Before passing the orders of transfer, the prejudice, that may be caused to the accused, has not been taken into account at all. According to the learned counsel for the respective writ petitioners, in most of the cases, trial had commenced and number of witnesses have been examined. In S.C. No. 47 of 2016, which is the subject matter of writ petition No. 26938 of 2017, all the witnesses were examined and the accused was also questioned under Section 313 of Code of Criminal Procedure. When the Sessions Case in S.C. No. 47 of 2016 was posted for argument, by merely relying upon the Circular dated 03.04.2017 issued by the Registrar General of this Court, the case in S.C. No. 47 of 2016 was transferred to the file of Sessions Judge, Sessions Court for Exclusive trial of Bomb Blast Cases, Poonamallee at Chennai. In other words, according to the learned counsel for the respective writ petitioners, there is no justification in passing the impugned orders of transfer and it would only prolong the trial in the Sessions Case and therefore, the learned Counsel for the respective writ petitioners prayed for allowing the writ petitions.

10. The learned standing counsel appearing for the Registrar General of this Court would submit that the Government issued G.O. Ms. No.1334, Home (Courts-II) Department dated 25.09.1998 by which two Additional Sessions Court, one each at Coimbatore and Chennai for exclusive trial of Bomb Blast Cases to be headed by District and Sessions Judges was constituted. Thereafter, the Government issued another order in G.O. Ms. No.568, Home (Courts-II) Department dated 29.04.1999 in exercise

of the powers conferred under Section 7 (1) of the Code of Criminal Procedure. In the said order, it was ordered that "a Court of Sessions with headquarters at Chennai to exercise jurisdiction over the Sessions Division comprising all Districts in Tamil Nadu shall be constituted except Coimbatore City, Coimbatore District, Erode District, The Nilgiris District, Dindigul District and Theni District, exclusively for trial of cases relating to Bomb Blast registered by the State police in the aforesaid Sessions Division. A similar notification was issued for establishment of such a Court of Sessions with headquarters at Coimbatore for the Districts of Coimbatore City, Coimbatore District, Erode District, The Nilgiris District, Dindigul District and Theni District. Subsequently, by G.O. Ms. No.700, Home (Courts-II) Department dated 03.07.2000 and G.O. Ms. No.414, Home (Courts-II) Department dated 20.04.2001, the earlier Government Orders were amended so as to enable those two Sessions Courts to also try the cases relating to Police Station attacks involving Tamil Nadu Liberation Army or Tamil Nadu Retrieval Troop or People's War Group registered by the State police in the aforesaid Sessions Division. By placing reliance on the aforesaid orders of the Government, the learned counsel for the Registrar General of this Court would contend that the Explosive Substance Act does not contemplate creation of special courts unlike Prevention of Corruption Act, SC & ST Atrocities Act, NDPS Act etc., The Special Courts were constituted by virtue of an executive order and not by operation of law. It is further contended that the Special Courts so constituted exclusively to try Bomb Blast Cases will not denude the jurisdiction of the ordinary Sessions Court to try those offences under the Explosive Substances Act. In other words, the Sessions Courts at Poonamallee, Chennai and at Coimbatore and the Sessions Courts of various other Districts have concurrent jurisdiction and trial of offences under Explosive Substances Act by either Courts is legally permissible.

11. As far as the Circular dated 03.04.2017 issued by the Registrar General of this Court is concerned, it is submitted by the learned counsel that all the Principal District Sessions Judge were directed to make over cases under the Explosive Substances Act to the Sessions Court for Exclusive trial of Bomb Blast Cases at Chennai or Coimbatore, under Section 194 of the Code of Criminal Procedure Code depending upon the sensitive nature of the case. Thus, according to the learned counsel, the transfer of the Sessions Case involving the offences punishable under Explosive Substances Act, have to be transferred by considering the sensitive nature of the offences involved in the case, which warrant the case to be transferred to the Sessions Court for Exclusive trial of Bomb Blast Cases at Chennai or Coimbatore. As per the Circular, a transfer of the Session Case can be made depending upon the sensitive nature of the case and

that the transfer of the Sessions Case can be considered on a case to case basis. However, in the orders, which are impugned in these writ petitions, the Sessions Cases have been transferred mechanically by misinterpreting the object with which the Circular dated 03.04.2017 has been issued by the Registrar General of this Court. The impugned orders of transfer have been passed without recording the sensitive nature of the case or the need for transfer of the Sessions Case to the Sessions Court for Exclusive trial of Bomb Blast Cases at Chennai or Coimbatore. In this context, the learned counsel for the Registrar General of this Court relied on decision rendered by a Division Bench of this Court in WP (MD) No. 14014 of 2017 dated 10.08.2017 to contend that not all the cases involving offences punishable under the Explosive Substances Act have to be transferred to the Special Court automatically, but reasons have to be assigned for such transfer indicating the specific nature and need to transfer the Sessions Case. In effect, the learned Counsel for the Registrar General of this Court, would only contend that the orders, which are impugned in these writ petitions, are not legally sustainable.

12. On the above contention, we have also heard the learned Government Advocate appearing for some of the respondents in these writ petitions.

13. Keeping the submissions made by the counsel on either side, we have carefully gone through the materials placed before us. The only question which arises for consideration in these writ petitions is as to whether the orders of transfer, which are impugned in these writ petitions, based on the Circular dated 03.04.2017 issued by the Registrar General of this Court, are legally sustainable or not.

14. Before traversing into the effect of the Circular dated 03.04.2017 issued by the Registrar General of this Court, it would be necessary to state that the Government, by an executive order, constituted two Sessions Courts to conduct exclusive trial of Bomb Blast Cases, one each at Chennai and Poonamallee. It may be relevant to extract the notification issued by the Government in G.O. Ms. No.1344, Home (Courts-II) Department dated 25.09.1998 verbatim

"The Additional Director General of Police, Chennai, in the letter first read above has sent proposals to Government for constitution of two Additional Sessions Courts one each at Coimbatore and Chennai for exclusive trial of bomb blast cases. The Government have decided to accept the proposal of the Additional Director General of Police keeping in view the importance and the need for the speedy trial and early disposal of bomb blast cases. They accordingly

requested the Registrar, High Court, Chennai to send necessary proposals to Government in this regard.

2. The Registrar, High Court, Chennai has stated that the High Court has examined the proposal for the constitution of two additional Sessions Courts, one each at Coimbatore and Chennai for exclusive trial of bomb blast cases and recommended for the constitution of the same. The Government have examined the proposals of the Registrar, High Court, Chennai and they sanction the constitution of the two Additional Sessions Courts one each at Coimbatore and Chennai for exclusive trial of bomb blast cases to be headed by District and Sessions Judges."

15. From a bare reading of the aforesaid order passed by the Government, it is apparent that the Government intended to create two additional Sessions Courts, because the Government should be presumed to be aware of the legal position that there can be only one Sessions Court for a Sessions division under Section 9 (1) of the Code of Criminal Procedure. Under Section 7 (1) of the Code of Criminal Procedure, the whole State can be a single Sessions Division or can consists of several Sessions Division. It is common knowledge that the State of Tamil Nadu consists of 32 Sessions division. The Sessions division in the State of Tamil Nadu are mostly co-extensive with the territorial limits of revenue Districts. Chennai and Coimbatore are revenue Districts and are also Sessions Divisions. The State Government followed it up with G.O. Ms. No.568, Home (Courts-II) Department dated 29.04.1999 issued under Section 9 (1) read with Section 7 (1) of the Code of Criminal Procedure prescribing the territorial limits of the two additional Sessions Courts that were constituted vide G.O. Ms. No.1344, Home (Courts-II) Department dated 25.09.1998. The notification in G.O. Ms. No. 568 dated 29.04.1999 is extracted hereunder:-

"Notification - I

"In exercise of the powers conferred by sub-section (1) of Section 9 read with Sub-section (1) of Section 7 of the Code of Criminal Procedure, 1973 (Centrla Act 2 of 1974), the Governor of Tamil Nadu hereby establish a Court of Session with headquarters at Chennai to exercise jurisdiction over the Sessions division comprising all Districts in Tamil Nadu, except Coimbatore City, Coimbatore District, Erode District, the Nilgiris District, Dindigul District and Theni District, exclusively for the trial of cases relating to Bomb Blasts registered by the State police in the aforesaid Sessions Division."

Notification-II

"In exercise of the powers conferred by sub-section (1) of Section 9 read with Sub-section (1) of

Section 7 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Governor of Tamil Nadu hereby establish a Court of Session with headquarters at Coimbatore to exercise jurisdiction over the Sessions Division, comprising the Districts of Coimbatore City (Commissionerate), Coimbatore District, Erode District, The Nilgiris District, Dindigul District and Theni District exclusively for the trial of cases relating to Bomb Blasts registered by the State police in the aforesaid Sessions Division."

16. On the suggestions of the Inspector General of Police (Crime), the Government issued another order in G.O. Ms. No.700, Home (Courts-II) Department dated 03.07.2000 amending the earlier notification in G.O. Ms. No.568, Home (Courts-II) Department dated 29.04.1999, which reads as follows:-

"Amendment

In the said notifications, for the expression 'Bomb Blasts' and 'bomb blasts' respectively, the expression 'bomb blasts and seizure of bombs and explosive substances involving any fundamentalist organisation shall, respectively, be substituted."

17. On the proposal submitted by the Director General of Police, the State Government issued a further amendment vide G.O. Ms. No.414 dated 20.04.2001 which reads as under:-

"Amendment

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

18. After incorporating the amendments extracted above, the operative portion of the two notifications in G.O. Ms. No.568, Home (Courts-II) Department dated 29.04.1999 can be read as under:-

....., exclusively for the trial of cases relating to bomb blast and seizure of bombs or explosive substances involving any fundamentalist organisation and bomb blast cases and police station attacks involving Tamil Nadu Liberation Army or Tamil Nadu Retrieval Tribes or People War Group registered by the State police in the aforesaid Sessions divisions."

19. Since there was no space available in the City of Chennai, the additional Sessions Court for Chennai has been

housed in Poonamallee and the same is popularly known as Special Court for bomb blast Cases, Poonamallee, though it is an adjunct of the Sessions Court, Chennai. As regards Coimbatore, the additional Sessions Court has been housed near the Central Prison, Coimbatore, for want of space within the District Court complex. Though the territorial jurisdiction of these two additional Sessions Courts covers more than one Sessions division, yet, these two Courts are not special Courts created under any special statute. For example, these two Courts are not akin to the Special Courts for NDPS cases, Special Court for SC/ST (Prevention of Atrocities) Act Cases etc., They are ordinary additional Sessions Courts, that have been created to lessen the burden of the existing Session Courts. They are similar to the Mahila Courts (Sessions level) that are functioning in various Districts to deal with offences against women. Though the Government has sanctioned separate staff and other infrastructure for these two Courts, they are not denuded of their power from trying other sessions cases that are made over to them by the District and Sessions Judges under Section 194 of the Code of Criminal Procedure. These two Courts do not have the original jurisdiction to take cognisance of an offence under Section 190 of the Code of Criminal Procedure. It is a trite law that there can be only one Session Judge for a Sessions Division, who, in some Districts is called as Principal District and Session Judge, as could be evident from Section 9 (1) of The Code of Criminal Procedure, which reads as follows:-

"9 (1) The State Government shall establish a court of Session for every sessions division". (emphasis supplied)

20. Therefore, it is clear that there cannot be two power centres in one sessions division. The word 'a' denoted in Section 9 (1) of The Code of Criminal Procedure clearly indicates that there can be only one sessions Court in a sessions division. Therefore, as required under Section 209 of the Code, a Magistrate is required to commit a sessions case to the jurisdictional Court of Session and he cannot commit a case directly to the Sessions Courts indicated in the Circular dated 03.04.2017 of the Registrar General of this Court.

21. The notifications cited supra have not been issued by the State Government in exercise of powers under any special statute and they have been issued only under the Code of Criminal Procedure. Just because the notifications refers to certain special crimes and criminals, it does not mean that the two Courts can try only the cases referred to in the notifications. An executive notification cannot abridge the powers conferred on the additional Sessions Court by the Code of Criminal Procedure. Nor can the State create a power centre parallel to the District and Session Judge as that could lead to confusion inasmuch as the Magistrates will not know as to where

the cases should be committed.

22. The following illustration will clear the air. If a case, referred to in the notification, occurs in Vellore District, the final report has to be filed by the investigation officer only before the jurisdictional Magistrate in Vellore District, who would be required to commit the case to the District and Sessions Court, Vellore and only thereafter, the said Case can be made over to the Special Court at Poonamallee by the District and Sessions Judge, Vellore under Section 194 of the Code of Criminal Procedure. Similarly, if a case referred to in the notification takes place in Theni District, police will have to perforce file the final report before the jurisdictional Magistrate at Theni, who in turn will have to commit the case to the District and Sessions Judge, Theni and thereafter, the case can be made over to the Special Court at Coimbatore under Section 194 of the Code.

23. When this being the position, it was brought to the notice of the High Court that several Magistrates are directly committing such cases to the Special Courts at Poonamallee and Coimbatore. Similarly, it also came to the notice of the High Court that the workload in the Special Courts at Poonamallee and Coimbatore is not heavy and therefore, the High Court, in the administrative side, thought it fit to direct the Session Judge to make over cases involving bomb blast to the Special Courts at Poonamallee and Coimbatore. Only under such circumstances, the notification dated 03.04.2017 was issued by the Registrar General of the High Court, which has been misconstrued by several Session Judges leading to indiscriminate transfer of pending cases to the Special Courts without application of mind resulting in the aggrieved filing these writ petitions. The relevant portion of the Circular dated 03.04.2017 reads as follows:-

"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 for exclusive trial of 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 Bomb Blast Cases, Coimbatore and instead, commit the cases to the respective Principal District

and Sessions Judges/ District and Sessions Judge, who in turn can 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 investigation 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.

24. On perusal of the Circular dated 03.04.2017, it is clear that a Sessions Case involving the offence under Explosive Substances Act can be made over to the Sessions Court for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore depending upon the sensitive nature of the cases (emphasis added). Further, as per the Circular dated 03.04.2017, the concerned Judicial Magistrates, before whom the Charge Sheet are filed by the investigation officer, are restrained from directly committing the cases involving Explosive Substances Act to those specially constituted Sessions Courts for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore. If a harmonious interpretation to the word 'sensitive cases' (emphasis added) is to be given, in our opinion, it would mean and include (i) those cases involving an offence which shook the collective conscience of the society and the outcome of such cases will have a profuse and far-reaching impact on the society (ii) those cases, whose result is eagerly awaited due to the nature of offence involved therein, by larger number of sections of the society other than the litigant to the case etc.,. Further, if cases that are investigated by premier investigating agencies like CB CID, Anti Terrorist Squad, National Investigation Agency, Central Bureau of Investigation etc., then those cases can be considered as

'sensitive cases' and they can be made over to the Sessions Court for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore. The two Sessions Courts for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore and the Sessions Court at various Districts cannot be equated to the Court of the District and Sessions Judge, being Additional Sessions Court, they will have concurrent jurisdiction and as such Bomb Blasts Court at Poonamallee, Chennai and at Coimbatore cannot be construed as Special Courts exclusively for trial of offences involving explosive substances. Those Courts are set up only to arrest the burgeoning docket explosion of the cases and with an avowed object to expeditiously dispose the cases involving the offences under Explosive Substances Act. In fact, they can even try other sessions cases not including Explosive Substances Act, if made over to them by the Principal Sessions Judge concerned. While so, we notice that in none of the orders, which are impugned in these writ petitions, reasons have been assigned as to why a particular Sessions Case is being transferred to the file of Sessions Court for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore. Thus, mechanically, the orders, which are impugned in these writ petitions, have been passed, transferring the Sessions Cases involving offences punishable under the Explosive Substances Act, Merely because an offence punishable under the Explosive Substance Act is involved in a Sessions Case, it will not be a reason to transfer such a Sessions Case to the Sessions Court for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore.

25. Above all, in the orders which are impugned in these cases, we find that in almost all the Sessions Cases, number of witnesses have been examined and few other witnesses were yet to be examined. At this stage, the Sessions Cases were ordered to be transferred to the Sessions Court for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore, as the case may be. It is needless to mention that the Judicial Officer who had recorded the deposition of a witness might have observed the demeanour and tenor with which a witness had deposed and he will be in a position to weigh the depth of such deposition at ease. While so, having recorded the deposition of several witnesses, there is no justification in transferring the Sessions Case to the Sessions Court for exclusive trial of Bomb Blast Cases, Chennai at Poonamallee or at Coimbatore, that too without assigning any reason as to the sensitive nature of the case. Therefore, we are of the opinion that a part-heard trial has to be concluded by the Judge who had commenced it or who has recorded the deposition in that case unless it gets naturally terminated or by operation of law. In the present cases, the official witness or the other witnesses to the case will be a resident of the locality and in case his or her deposition is required to be recorded, it can be recorded without any hassle.

On the other hand, by reason of the orders, which are impugned in these writ petitions, the official as well as other witnesses will have to travel quite a long distance to depose evidence in the Sessions Case. In such event, the witness will not evince any interest to depose in the Sessions Case by travelling a considerable length of distance, which would adversely affect none other than the accused in the case. It is well settled that right to speedy trial or early disposal of a Criminal Case is a sine qua non in the justice delivery system and it will also be a legitimate expectation on the part of the accused to get his or her case disposed of at an early date and such right cannot be deprived by the Courts merely because he stands trial as an accused.

26. In the present cases, by reason of enmasse transfer of Sessions Cases, merely because it involves offences punishable under the Explosive Substances Act, the accused in the Sessions Case will be gravely prejudiced. Such order of transfers were made only on the basis of the Circular dated 03.04.2017 of the Registrar General of this Court. The object with which the Circular dated 03.04.2017 was issued is to make over the Sessions Case to Additional Sessions Courts at Poonamallee, Chennai or Coimbatore based on jurisdiction indicated in the Circular dated 03.04.2017, of course, by considering the sensitive nature of the case and not to transfer the cases, as contemplated under Chapter XXXI of the Code of Criminal Procedure. The object of making over a case to the Session Judge is to distribute the work, which is not so while exercising the power of transfer contemplated under Chapter XXXI of the Code of Criminal Procedure. In the instant case, the respective Principal District and Sessions Judge/Session Judge/Chief Judicial Magistrate, as the case may be have transferred the sessions case pending on their respective file, contrary to the object with which the circular dated 03.04.2017 was issued by the Registrar General of this Court. For example, a Sessions case in respect of an offence against women such as the one punishable under Section 376 of the Indian Penal Code and other such offences can be made over to the Mahila Court which are exclusively established for trying those offences. The same yardstick has to be adopted in respect of an offence involving Explosive Substance Act by making over the case to the Additional Sessions Court at Poonamallee, Chennai or Coimbatore on the basis of the Circular dated 03.04.2017 of the Registrar General of this Court. This being the legal position, transferring the Sessions Cases mechanically without ascertaining the stage of the case or the sensitive nature of the case would defeat the object of the circular issued by the Registrar General of this Court besides prejudice the accused in getting his or her case disposed of at an early date.

27. In fine, we hold that

(i) Committal to the Sessions Court for Bomb Blast Cases in Chennai and Coimbatore cannot be directly made by a Magistrate. The Magistrate shall commit a Sessions Case involving an offence punishable under the Explosive Substance Act only to the Court of the District and Session Judge of his/her District.

(ii) After committal, it is open to the District and Session Judge to make over a case to the Sessions Court for Bomb Blast Cases at Chennai/Coimbatore provided the Special Court has territorial jurisdiction over that District also, taking into consideration the sensitive nature of the cases

(iii) All the writ petitions are allowed as prayed for and the Sessions Cases are directed to be re-transferred to the concerned Sessions Court, within a period of two weeks, from the date of receipt of a copy of this order. The accused shall be bound over by the Sessions Court Poonamallee/Coimbatore, to appear before the concerned Sessions Court on a given date.

(iv) The concerned Principal District Sessions Court/District Sessions Court/Chief Judicial Magistrates are directed to take back the Sessions Case on their file and dispose of the same as expeditiously as possible.

(v) No costs. All the miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh
To:

1. The Registrar General,
The Hon'ble
Madras High Court,
Chennai.
2. The Sessions Judge,
The Hon'ble Special Court,
(Trial of Bomb blast cases)
Poonamalli, Chennai.

3. The Principal District and Sessions Judges, Sivagangai.
4. The Inspector of Police, Sivagangai Town Police Station, Sivagangai.
5. The Inspector of Police, Thiruppachethi Police Station, Sivagangai District
6. The Inspector of Police, Kandavarayanpatti Police Station, Sivagangai District
7. The Principal District & Sessions Judge, Virudhunagar District, at Srivilliputtur.
8. The Chief Judicial Magistrate, Virudhunagar District, at Srivilliputtur.
9. The Inspector of Police, North Police Station Circle, Rajapalayam.
10. The Principal Sessions Judge, Theni.
11. The Inspector of Police, "Q" Branch CID, Theni, Varusanadu Police Station.
12. The Deputy Superintendent of Police, "Q" Branch CID, Theni, Periyakulam Police Station, Theni.
13. The Assistant Sessions Judge, Periyakulam.

14. The Judicial Magistrate No.I
Sivagangai.
15. The Judicial Magistrate,
Manamadurai.
16. The Additional District Munsif,
Cum Judicial Magistrate,
Manamadurai.
17. The District and Sessions Judge,
Tuticorin.
18. The Judicial Magistrate,
Tirupattur.
19. The Judicial Magistrate,
Rajapalayam.
20. The Inspector of Police,
Varusanadu Police Station,
Theni District.
21. The District Munsif cum
Judicial Magistrate,
Aundipatty.
22. The Sessions Judge,
Sessions Court for
(Trial of Bomb Blast Cases)
Coimbatore.
23. The Inspector of Police,
Periakulam Police Station,
Theni
24. The Deputy Superintendent of Police,
Theni.
25. The Judicial Magistrate,
Periakulam.
26. The Section Officer,
'B' Section,
High Court, Madras-104.
[for taking necessary steps in respect of operative portion
at Para 27]

27. The Section Officer,
F Section,
High Court,
High Court, Madras-104.

[for taking necessary steps in respect of operative portion
at Para-27]

28. The Registrar Judicial,
High Court, Madras-104

+2cc to M/S.B.Sivaraman, Advocate Sr.32563

+1cc to the Government Pleader Sr.37916

Writ Petition (MD) Nos. 19496,
20796, 20863 of 2017

Writ Petition No. 26938 of
2017

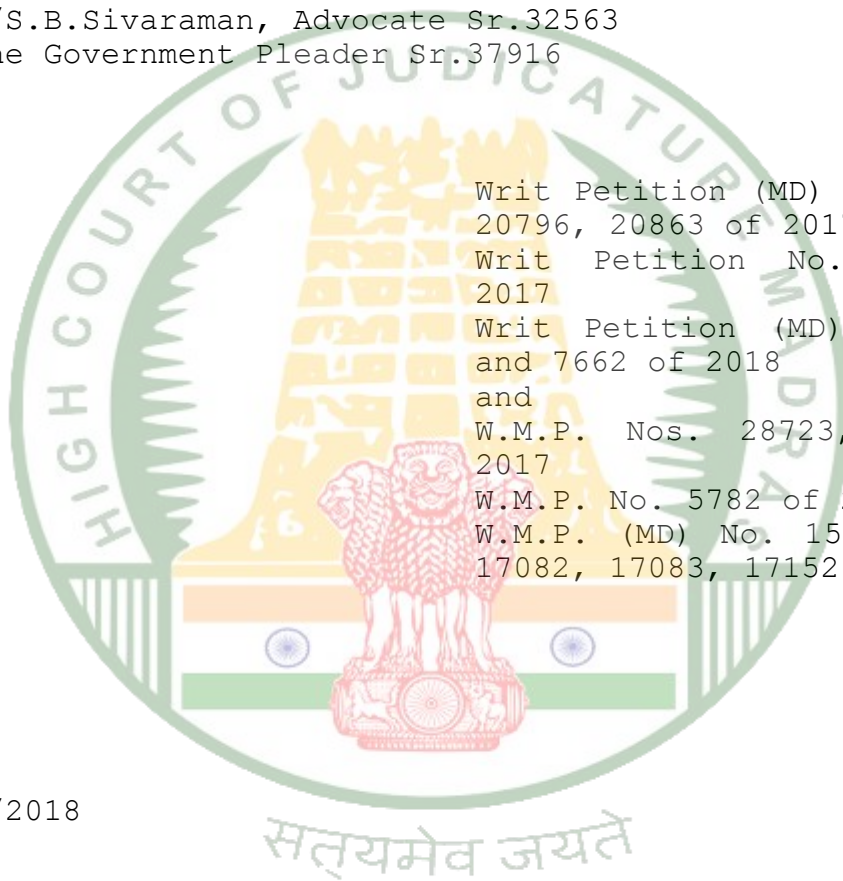
Writ Petition (MD) Nos. 4155
and 7662 of 2018

and
W.M.P. Nos. 28723, 28724 of
2017

W.M.P. No. 5782 of 2018

W.M.P. (MD) No. 15802, 17081,
17082, 17083, 17152 of 2017

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srg 28/06/2018



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