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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2018

Pronounced on : 28.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.223 of 2017
and
Crl.M.P.No.2166 of 2017

Abdulla @ Abdul Muthalif
@ Mannadi Abdullah ... Petitioner

Vs.

State represented by
The Assistant Commissioner of Police,
Ambattur Range,
Ambattur Estate PS,
Crime No.746 of 2014,
Chennai-53. ... Respondent

Prayer: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C., to call for the records from the Lower Court and set aside the Order passed in Crl.M.P.No.556 of 2016 in C.C.No.1 of 2016 on the file of the Learned Special Court under the National Investigation Agency Act, 2008, (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee dated 18.01.2017 by allowing this Revision.

For Petitioner : Mr.R.Vivekananthan

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

ORDER

This Criminal Revision is filed by Accused No.16 under Section 397 r/w 401 of Cr.P.C. challenging the order passed by the Learned Special Court for (Bomb Blast and NIA Cases) Poonamallee in Crl.M.P.No.556 of 2016 in C.C.No.1 of 2016 dated 18.01.2017.

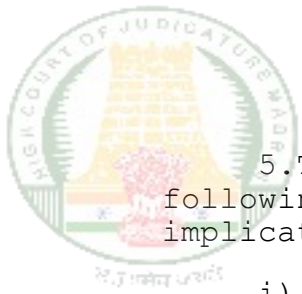
2.On 18.07.2014, one Sureshkumar done to death by the three persons for which a case in Crime No.746 of 2014 registered by



the respondent police under Sections 341, 307, 302 of I.P.C. Totally 16 persons were arrested in this case including the petitioner and final report was filed by the respondent on 12.01.2015 before the Learned Principal Sessions Court, Thiruvallur showing the petitioner as absconding accused. Later the petitioner was arrested in his house by the respondent police on 03.04.2015.

3.The petitioner have been charged for the offence under Sections 16(1) (A), 17, 18 and 20 of the Unlawful Activities Prevention Act, 1967, Sections 341, 307, 302 of the I.P.C. altered into 341, 307, 302, 153(A) under Sections 120B, 212, 109 of I.P.C. r/w 212 of I.P.C. 12.01.2015 and the same was taken on file by the learned Principal Sessions Court, Thiruvallur in S.C.No.1 of 2015. The petitioner filed the Discharge Petition before the Learned Principal District Judge, Thiruvallur in Crl.M.P.No.1156 of 2015. The respondent filed their counter against the discharge petition. During pendency, the petitioner's case was transferred to the Learned Special Court, (Bomb Blast and NIA Cases) Poonamallee, consequent to the executive order in G.O.Ms.No.722 dated 13.10.2016. The Learned Special Court for (Bomb Blast and NIA Cases), Poonamallee taken the case on file and posted for appearance of the accused on 25.10.2016. The discharge application filed by the petitioner was again re-numbered by the Learned Special Judge as Crl.M.P.No.556 of 2016 and the Sessions Case.No.1 of 2015 was also re-numbered as C.C.No.1 of 2016. The petitioner filed his objection for transfer of his case to this Hon'ble Court and against the Judgment of the Hon'ble Division Bench of this Court and filed the copy of the order passed by the Hon'ble Division Bench of the Madras High Court in Crl.A.Nos.243, 340 and 524 of 2015 dated 01.09.2015. The Learned Special Court without considering the jurisdictional issue dismissed the discharge petition on 18.01.2017. Hence, this Criminal Revision has been filed by the petitioner.

4.The learned Counsel for the petitioner submits that there is no prima facie material against the petitioner/accused No.16 except the 161 of Cr.P.C. statement of LW 67 namely Nithyanandakumar @ Farhan. Even the LW 67 did not whisper any incriminating materials enabling the Learned Trial Court for framing the charges against the Petitioner. The Learned Special Court without considering the case of the false implication and on the basis of the inadmissible confession statement dismissed the discharge petition. The Learned Counsel further argues that the Special Judge failed to appreciate the specific submission regarding the jurisdiction of the Learned Special Court in proceeding the case in view of the judgment passed by the Hon'ble Division Bench of the Madras High Court in Crl.A.Nos.243, 340 and 524 of 2015 dated 01.09.2015.



5.The Learned counsel for the petitioner filed the following documents for strengthening the ground of false implication of the Petitioner in this case:

- i) Complaint through Mail to DGP, dated 19.07.2014
- ii) Complaint through Mail to DGP, dated 21.07.2014
- iii) Affidavit in Habeas Corpus Petition No. 1935 of 2014 dated 21.07.2014
- iv) Order in Habeas Corpus Petition No. 1935 of 2014 dated 23.07.2014
- v) Representation made by the petitioner to the Home Secretary and others dated 30.07.2014
- vi)Representation made by the petitioner to the Home Secretary and others dated 19.01.2015
- vii) Affidavit in W.P.No. 1396 of 2015 dated 19.01.2015
- viii) Order passed in W.P.No. 1396 of 2015 dated 22.01.2015

6.The Learned counsel for the petitioner would further submits that the petitioner/accused No.16 was regularly appearing before the Learned Special Court, Poonamallee in S.C.No.3 of 2004 which was ended in acquittal on 23.02.2015. Hence the final report filed before the learned Principal District Judge, Thiruvallur showing the petitioner as absconding accused on 12.01.2015 is nothing but a concocted story. The respondent police falsely implicated the petitioner without following the order passed by the Hon'ble High Court of Madras in W.P.No.1396 of 2015.

7.The further submission of the learned counsel is that during the pendency of the criminal revision petition before this Hon'ble Court, the learned Special Court framed as many as 15 charges against the petitioner and other accused on 20.04.2017 and the same is without jurisdiction. The learned Counsel read out the charges framed by the Learned Trial Court and vehemently argued that the framing of Charges is without application of mind alleging material contradictions shaking the foundation of the case. There is no iota of any prima facie material or LW's statement in the final report supporting the charge No.12 framed against the petitioner/accused No.16. Further the actual allegations and the part played by the accused as alleged in the final report were not properly analyzed before framing charges. The contents of the charge vary from the averments mentioned in the final report and some of the specific allegations mentioned in the final report against some accused were not included and purposively omitted. Hence the petitioner/accused No.16 also filed the petition under Section



8. The further submission of the learned counsel 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. 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.

Nos. i. Order of the Hon'ble Division Bench in Criminal Appeal
243, 324 and 524 of 2015
ii. Bahadur Kora and others Vs. State of Bihar reported in
2015 (2) MWN (Cri) 305 (FB) (Pat)

(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)

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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 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



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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.L.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 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."

11. 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 CrL.M.P.No.556 of 2017 is not maintainable in law and prayed for dismissal of the Revision Petition and the learned Counsel 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 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 petition, may be summarized as follows:

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

ii. Whether the impugned order of the Special Court (Bomb Blast and NIA Cases), Poonamallee is without jurisdiction?

13. The basis of the issue raised by the Learned Counsel for



the Respondent started to bring the cases involving offence punishable under Unlawful Activities (Prevention) Amended Act (herein after referred as "UAP" Act) under National Investigation Agency Act (herein after referred as "NIA" Act) quoting sub section (1) of section 22 of the Act. It is to be understood that the provisions of the NIA Act and UAP Act 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 and 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. 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 constituted under the NIA Act. Any notification issued by the State Government after the pronouncement of the order 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.

14.The applicability of the provisions of NIA Act and UAPA Act including the power vested with the State Government as per Section 22 of the NIA Act have been elaborately discussed 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 to the facts of this case 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 was pleased to held 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.

15.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 SLP 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. Any notification issued by the State Government after the pronouncement of the order 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.

16.The Respondent have taken the law in their own hands after the declaration of law made by the Hon'be 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.

17.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. 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.

18. Further 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 the Order passed by the Hon'ble Division Bench, the issuance of Executive Notification for transferring the case vide G.O.(Ms)No.722 dated 13.10.2016 is non est in the eye of law. The Respondent Police never raised the issue of jurisdiction or maintainability in the similar bail applications which were heard and decided by the Hon'ble Single Judge of this Hon'ble Court in Crl.O.P.Nos.22518 of 2106, 15479 of 2017 and 21483 of 2017 and the Executive Notification issued by the State Government directly overrules the judgment of the Hon'ble Division Bench which is impermissible.

19. Therefore, the impugned order passed by the Learned Special Judge and the proceedings conducted 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, the Criminal Revision filed by the Petitioner is maintainable and I am of the considered opinion that the impugned order is not appealable under section 21 of the NIA Act and the provisions of Criminal Procedure Code alone will apply to the case on hand.

20. It is also seen from the records that the allegations mentioned by the Counsel for the petitioner/Accused No.16 cannot be brushed aside, since this Court comes to the conclusion in Issue no.I that all the proceedings conducted by the Learned Special Court without appreciating the judgment passed by this Hon'ble Division Bench in Crl.A.Nos.243, 340 and 524 of 2015 dated 01.09.2015 is unsustainable and without jurisdiction.

21. However, this Court need not go in to the merits of the case, since the above 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) is transferred by this Court vide order made in Crl.R.C.No.36 of 2018 to the Principal District and Sessions Judge, Thiruvallur, which is the original jurisdictional Court as defined in section 2(d) of UAP Act.

22. In the result, this Criminal Revision is dismissed, however, liberty is given to the petitioner to file fresh discharge application before the Learned Principal District and Sessions Judge, Thiruvallur, if so, he is advised and if any



such petition is filed the same shall be disposed of within a period of two weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

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

2 The Principal District and Sessions Judge,
Thiruvallur.

3 The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.K.K.Ramakrishnan, Advocate SR.No.32630

Pre-delivery order made in
CrI.R.C.No.223 of 2017
and
CrI.M.P.No.2166 of 2017

SDR 16.05.2018