

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.11.2018
DELIVERED ON: 22.11.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Cr1.O.P. No.25645 of 2018

C. Ganesan

...Petitioner/accused-2

vs.

State represented by
the Inspector of Police
Q-Branch CID
Chennai City
(Shankar Nagar P.S. Cr. No.741 of 2011)

...Respondent/Complainant

Criminal Original Petition filed under Section 407 Cr.P.C. seeking to direct that the trial of S.C. No.90 of 2013, which is pending before the Sub Court, Tambaram, Chennai, be transferred to the Special Court for exclusive trial of bomb blast cases, Poonamallee, Chennai.

For petitioner Mr. P. Pugalenthir

For respondent Mrs. M. Prabhavathi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been preferred seeking to direct that the trial of S.C. No.90 of 2013, which is pending before the Sub Court, Tambaram, Chennai, be transferred to the Special Court for exclusive trial of bomb blast cases, Poonamallee, Chennai.

2 The petitioner is facing prosecution in S.C. No.90 of 2013 before the Assistant Sessions Judge (Sub Judge), Tambaram, Chennai, for the offences under Section 120-B read with Section 20 Unlawful Activities (Prevention) Act, 1967 (for brevity "the ULPA") and Section 5 of the Explosive Substances Act, 1908 (for short "the ESA"). While so, this Criminal Original Petition has been preferred seeking the aforesaid relief.

3 At the outset, it is worth pointing out that this is the second round of petition filed before this Court in respect of transfer of S.C. No.90 of 2013 on the file of the Sub Court, Tambaram, Chennai, the first transfer application being Crl.O.P.No.3758 of 2017, filed by co-accused by name Jesuraja, which was dismissed by this Court on 06.07.2018. Strangely, the petitioner has not disclosed this fact in his petition.

4 Crl.O.P. No.3758 of 2017 was filed by co-accused Jesuraja on the premise that the trial in S.C. No.90 of 2013 was pending on the file of the Additional Sessions Court, Tambaram, Chennai, whereas, in reality, the case is pending on the file of the Assistant Sessions Court, Tambaram, Chennai, there being no Additional Sessions Court in Tambaram. The Registry, while numbering Crl.O.P. No.3758 of 2017, should have noticed that there is no Additional Sessions Court in Tambaram. Jesuraja, who is an accused in the case before the Assistant Sessions Judge, Tambaram, has misled the Registry and this Court by contending that the case is pending on the file of the Additional Sessions Court, Tambaram.

5 Mr. P. Pugalenth, learned counsel for the petitioner, taking this Court through Classification II of the First Schedule of the Code of Criminal Procedure, submitted that the trial for the offence under Section 20 of the ULPA and Section 5 of the ESA can be conducted only by the Court of Session and not by the Assistant Sessions Court and therefore, the trial by the Assistant Sessions Judge is without jurisdiction. He further contended that the case should be tried only by the Special Court for exclusive trial of bomb blast cases, Poonamallee, Chennai and prayed for transfer of S.C. No.90 of 2013 to the said Court.

6 Per contra, the learned Additional Public Prosecutor refuted the contentions put forth by the learned counsel for the petitioner.

7 At this juncture, it is apropos to point out that a Division Bench of this Court, in M. Manimuthu vs. The Registrar General, High Court, Chennai and Others [2018-2-LW (Crl.) 26], has traced the history of the Special Court for exclusive trial of bomb blast cases at Poonamallee and Coimbatore and has also considered the circular issued by the Registrar General in this regard. In the said judgment, the Division Bench has clearly held that a regular Sessions Court does have the jurisdiction to try such cases and that the Special Courts for exclusive trial of bomb blast cases at Poonamallee and Coimbatore are yet another Additional Sessions Court and cases can be made over by the Principal District and Sessions Judge under Section 194 Cr.P.C. immediately after the committal. Therefore, the second submission of Mr. Pugalenth that the Special Court for exclusive trial of

bomb blast cases only can try the case in S.C. No.90 of 2013, cannot be countenanced. In other words, the case in S.C. No.90 of 2013 can be tried by the Additional Sessions Court at Chengelpet as well by the Special Court for exclusive trial of bomb blast cases at Poonamallee.

8 In the case at hand, after investigation in Cr. No.741 of 2011, the Crime Branch CID filed a final report before the Judicial Magistrate, Tambaram, which was taken on file as P.R.C. No.6 of 2012. This cannot be faulted at all. The Judicial Magistrate, Tambaram, committed the case to the Court of Session at Chengelpet vide committal order dated 25.04.2013. The then Sessions Judge at Chengelpet should have perused the final report before making it over under Section 194 Cr.P.C. to the Assistant Sessions Court at Tambaram. Had he applied his mind, he would have realised that the maximum punishment for the offence under Section 20 of the ULPA is imprisonment for life and likewise, the maximum punishment for the offence under Sections 5(a) and 5(b) of the ESA is imprisonment for ten years and imprisonment for life, respectively.

9 Under Section 28(3) Cr.P.C., an Assistant Sessions Judge may pass any sentence authorised by law, except sentence of death or imprisonment for life or imprisonment of a term exceeding ten years. Thus, in short, quantum of sentence is the only limitation imposed upon by law on the powers of an Assistant Sessions Court. Dictates of common sense and prudence would have informed the then Principal District and Sessions Judge, Chengelpet, that if the offence is proved during trial, the Court can impose the maximum sentence of life imprisonment on the accused, because, the allegation against the accused is that they are members of the banned LTTE organisation and they were found making bombs. Strangely, the Principal District and Sessions Judge, Chengelpet, had failed to apply his mind on the gravity of the offence committed by the accused before making over the case under Section 194 Cr.P.C. to the Court of the Assistant Sessions Judge, Tambaram.

10 Mr. Pugalenthis contention that the Assistant Sessions Judge has no power to try the case lacks merit. In the First Schedule of the Code of Criminal Procedure, only two classes of Courts, viz., Magistrate and Court of Session, find place. One cannot find any reference to the Court of Chief Metropolitan Magistrate or Chief Judicial Magistrate or Additional Sessions Judge or Assistant Sessions Judge in the said schedule. Just because there is no specific reference to these Courts, it does not mean that these Courts are denuded of the power to try any case. In fact, day in and day out, we come across Sessions Judges making over cases under Section 307 IPC to the file of Assistant

Sessions Court, by taking into consideration, the nature of the attack, knowing full well that the maximum sentence for the said offence is imprisonment for life. Section 194 Cr.P.C. provides the answer to Mr.Pugalenthis submission. Therefore, it cannot be stated that the Assistant Sessions Judge, Tambaram, has no jurisdiction to try the offences in S.C.No.90 of 2013.

11 However, after taking into consideration the gravity of the allegation against the accused in S.C. No.90 of 2013, this Court is of the view that, in the fitness of things, a case of this nature should be tried by a Court of Session or an Additional Court of Session and not by the Assistant Court of Session. Though several witnesses have been examined in S.C. No.90 of 2013 before the Assistant Sessions Court, the evidence will not be vitiated, because, as alluded to above, the Assistant Sessions Judge, Tambaram, does have the jurisdiction to try the offences in S.C. No.90 of 2013, but, only lacks the jurisdiction to impose sentence exceeding ten years. That apart, the accused have not chosen to cross-examine those witnesses for the reasons best known to them. Hence, it is unnecessary to examine the prosecution witnesses in chief once again before the transferee Court and hence, it is made clear that the evidence recorded by the Assistant Sessions Judge so far, shall hold good.

12 Accordingly, this Court orders transfer of S.C. No.90 of 2013 not on the grounds urged by Mr. Pugalenthis, but, on the short ground that the gravity of the offence is so severe that the Trial Judge should be free to impose the deserving sentence without any legal hindrance, in the event of the prosecution proving the charges.

In the result, this transfer application is allowed and the case in S.C.No.90 of 2013 is transferred from the file of the Assistant Sessions Court, Tambaram, to the file of the Special Court for exclusive trial of bomb blast cases, Poonamallee, Chennai. The Assistant Sessions Judge, Tambaram, shall transmit all the records and case properties, forthwith, to the Special Court for exclusive trial of bomb blast cases, Poonamallee, Chennai, within a period of two weeks from the date of receipt of a copy of this order. The accused shall be bound over to appear before the Special Court for exclusive trial of bomb blast cases, Poonamallee, Chennai, on a given date. If the accused fail to appear before the Transferee Court, non-bailable warrant can be issued against them and their presence secured. If the accused abscond, fresh FIR can be registered against them under Section 229-A IPC. If the accused adopt any dilatory tactics, it is open to the Trial Court to remand them to custody, as laid down by the

Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh
[JT 2001 (4) SC 319].

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Inspector of Police
Q-Branch CID
Chennai City
- 2 The Principal District and Sessions Judge
Chengalpet
- 3 The Assistant Sessions Judge/Sub-Court,
Tambaram
- 4 The Special Court for exclusive trial of bomb blast cases
Poonamallee
Chennai
- 5 The Public Prosecutor
Madras High Court
Chennai 600 104
6. The Judicial Magistrate,
Tambaram.

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AD(CO)
GSP(22/11/2018)

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