



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.10037 of 2016

Suyambulinga Muthu

... Petitioner/Defacto Complainant

Vs.

The State rep.by
Inspector of Police,
Ovari Police Station,
Thirunelveli District.

...Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the orders made in PRC.No.18 of 2006 dated 30.04.2010 on the file of the Judicial Magistrate, Valliyoor in S.C.No.359 of 2012 and consequently, direct the trial Court to proceed with the case as against all the 123 accused as per the charge sheet filed by the respondent.

For Petitioner : Mr.M.Sureshkumar
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

This is a case, where the judicial Magistrate, Valliyoor, has adopted a very strange procedure, wherein a final report was filed by the respondent police for offences under Sections 147, 148, 450, 397, 324, 307, 435 and 427 IPC r/w Section 3 of Explosive Substance Act and Sections 3 and 4 of TNPPDL Act against 123 accused persons and the same was taken on file in PRC.No.18 of 2006 only insofar as 9 accused persons and all the other accused persons have been dropped.

2.Admittedly, the learned Judicial Magistrate, Valliyoor, is a committal Court and it is bound by the provisions of Section 209 Cr.P.C. In cases, where it appears that if offence is triable exclusively only by the Court of Sessions, the Magistrate need not, before committing the accused, make any elaborate preliminary enquiry and he shall commit the accused to the concerned Court, send the records of the case along with documents and articles, which are to be produced as evidence and notify the Public Prosecutor. The law is settled that the committal proceedings is neither an enquiry nor a trial and thus a committal Court does not have the power to add or delete any accused persons. In the old Code, a detailed



enquiry was contemplated before the committal of the case to the Sessions Court. However, after the amendment, when the accused appeared or brought before the Magistrate, if it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall commit the case to the Court of Sessions.

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3. It is well settled that the committal Court does not act like a post office and the process of committal is not a mechanical act and it involves an application of mind by the committal Court. However, the extent, to which the committal Court can exercise its power, is limited viz., to find that the materials, which are placed before it, are apparent on the face of the record and to find out if the offence involved is exclusively triable by the Court of Sessions. The committal Court cannot expand its jurisdiction and start adding or deleting the name of the accused found in the final report. At the risk of repetition, the enquiry made by the committal Court is only to find out if the offence in question is exclusively triable by the Court of Sessions and nothing more than that.

4. In this case, the committal Court has come to a categorical finding that the offence is exclusively triable by the Court of Sessions and in fact has committed the case to the file of the Assistant Sessions Judge, Valliyoor, which has been taken on file in S.C.No.359 of 2012. The committal Court should not have ventured into the process of deleting the names of the accused persons, which were found in the final report.

5. On the case being committed to the Court of Sessions, it is for the Sessions Court to decide under Sections 227 and 228 Cr.P.C. as to those persons against whom the charges will have to be framed and the persons, who have to be dropped or discharged from the proceedings. The committal Court is not expected to do this exercise. Therefore, the entire procedure followed by the committal Court is illegal and is in excess of its jurisdiction under Section 209 Cr.P.C.

6. In the result, the order of the learned Judicial Magistrate, Valliyoor, dated 29.04.2010 and 30.04.2010 is hereby set aside. The learned Magistrate has already issued summons to A1 to A9 and also has given copies to them as per Section 207 Cr.P.C. Subsequently, these 9 accused persons have also appeared before the Sessions Court after committal. The Judicial Magistrate, Valliyoor, is directed to issue summons to all the remaining accused persons namely, A-10 to A-123 and issue copies of documents to them under Section 207 Cr.P.C. and thereafter, commit those accused persons before the Assistant Sessions Court, Valliyoor. The original records may be sent back to the Judicial Magistrate, Valliyoor, immediately. Thereafter, the Assistant Sessions Court, Valliyoor, shall proceed against all the accused persons in accordance with law. This exercise shall be



completed by the learned Judicial Magistrate, Valliyoor, within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, this Criminal Original Petition is allowed with the above direction.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Assistant sessions Judge, valliyoor
2. The Judicial Magistrate, Valliyoor.
3. The Inspector of Police,
Ovari Police Station,
Thirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer/Record Keeper
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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