BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.858 of 2016
in
Crl.MP.(MD)No.12483 of 2016
and
Crl.RC(MD)No.83 of 2017
in
Crl.MP(MD)Nos.723 & 724 of 2017

S.Gandhi : Petitioner/Petitioner/5th Accused in both the Revisions

Vs.

State represented by
The Deputy Superintendent of Police,
Crime Branch C.I.D.
Tirunelveli. : Respondent/Respondent/Complainant in both the Revisions

Prayer in Crl.R.C.No.858 of 2016: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order dated 14.12.2016 made in Crl.M.P.No.3094 of 2016 in C.C.No.241 of 2010, on the file of the II Additional District and Sessions Judge, (For essential Commodities Act and NDPS Act), Madurai by allowing the present Criminal Revision Case.

Crl.RC(MD)No.83 of 2017: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order dated 15.12.2016 made in C.C.No.241 of 2010 on the file of the II Additional District and Sessions Judge, (For Essential Commodities Act and NDPS Act), Madurai, by allowing the present Criminal Revision Case.

For Petitioner : Mr.S.Nandakumar
(in Both the Revisions)
For Respondent : Mr.R.Prabhu Ramachandran
(in Both the Revisions) Addl.Govt.Pleader

COMMON ORDER

The Criminal Revisions Cases are filed praying to set aside the orders, dated 14.12.2016 & 15.12.2016 respectively made in Crl.M.P.No.3094 of 2016 in C.C.No.241 of 2010 and in C.C.No.241 of 2010, on the file of the learned II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai.

2. The petitioner herein is arrayed as A5 in the charge sheet filed by the respondent before the learned II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai, and was taken cognizance by the said Court and is pending as C.C.No.241 of 2010. The petitioner has been charged with for the offence punishable under Sections 15, 13(2) r/w Section 13 (1)(d) of Prevention of Corruption Act, 1988, apart from other offences punishable under NDPS Act and also IPC offences. It has been further stated in the charge sheet that sanction has also been accorded under Section 19(1)(c) of Prevention of Corruption Act, 1988 along with other offences by the Competent Authority to prosecute A4 to A6 in the Court of Law.

3. After taking cognizance of the case against the petitioner inclusively for the offences under the Prevention of Corruption Act, 1988, the petitioner filed Cr.M.P.No.500 of 2013 and other accused filed Cr.M.P.No.177 of 2012, before the Special Court for NDPS Act Cases, seeking transfer of the main case (C.C.241 of 2010) to the Special Court for Anti-corruption Cases, Madurai, stating that the psychotropic substance “Alprazolam” has been removed from Schedule-I with effect from 24.02.2003 by GSR/29(E), dated 26.02.2003 and hence, the accused have not committed any offence under the NDPS Act. The trial Court dismissed the above petitions on 14.05.2013 stating that the substance “Alprazolam” finds a place in Serial No.30 of the Schedule is a psychotropic substance and also as per Section 36(a)(2) of the Narcotic Drugs and Psychotropic Substances Act, the Special Court may also to try an offence other than the offence under the NDPS Act with which the accused may under the Code of Criminal Procedure, 1973 be charged at the same trial. Then, the second accused P.K.Muthukumar filed Crl.O.P(MD)No.17298 of 2014 before this Court under Section 482 of Cr.P.C., to quash the final report filed by the respondent in the above said case and it was also dismissed by this Court vide order, dated 01.09.2008, holding that the Rule cannot override the the main Act, as 'Alprazolam' is included in the Schedule of Act and the deletion of such substance from the Rule cannot prevent the prosecution from invoking NDPS Act and hence, the charge sheet cannot be quashed and the Special Court was directed to conduct the trial and dispose of the matter within six months from the date of receipt of a copy of that order. The charges under the Prevention of Corruption Act found in the charge sheet were not brought to the notice of this Court in the above quash proceedings.

4. Then the present petitioner filed Crl.M.P.No.3094 of 2016 questioning the jurisdiction of the Special Court for NDPS Act cases that Special Court for NDPS Act Cases is not competent to frame charges for the offences punishable under Prevention of Corruption

Act, 1988, in view of Sections 3 and 4 of the said Act and the said petition was dismissed by the said Court in its order dated 14.12.2016. After dismissal of the above petition, the Special Court for NDPS Act Cases framed charges on 15.12.2016 against A4 to A6, for the offences under Section 13(1)(d) of Prevention of Corruption Act apart from other charges under the NDPS Act and also IPC offences. Aggrieved by the order of dismissal order passed in Crl.M.P.No.3094 of 2016, dated 14.12.2016, the petitioner / A5 preferred Crl.R.C.(MD)No.858 of 2016 to set aside the impugned order of dismissal. Further, the petitioner / A5 preferred Crl.R.C(MD) No.83 of 2017 to set aside the charges framed under Prevention of Corruption Act, 1988 against the accused in this case. In both the criminal revisions a common question is involved as to "whether the Special Court for NDPS Act Cases is having jurisdiction to frame charges and try the case under the Prevention of Corruption Act, 1988 and also to take cognizance of the offence, in view of Sections 3 and 4 of Prevention of Corruption Act, 1988."

5. The learned counsel appearing for the Revision Petitioner would contend that once present trial Judge has no in jurisdiction either to take cognizance or to try the offence under the Prevention of Corruption Act, 1988 equally framing of the charge without conferring any powers by Notification under Section 3 of Prevention of Corruption Act, 1988. and the present trial Judge is having jurisdiction only to try NDPS Act Cases and as well as the Essential Commodities Act, that too, by virtue of the Notification of the above said Special Enactment and without application of judicial mind and lack of jurisdiction the cognizance taken in this case is not only nullity but also unsustainable in law and hence, the impugned orders, dated 14.12.2016 and 15.12.2016 are liable to be set aside. The learned counsel appearing for the Revision Petitioner relies the decision reported in ***(2013) 8 SCC 1 = CDJ 2013 SC 519 (Essar Teleholdings Ltd., and Others. Vs. Registrar General, Delhi High Court & Others).***

6. The learned Additional Additional Public Prosecutor appearing for the respondent has not chosen to file any written objection, though sufficient time was granted. But, at the time of hearing both the Revisions, written submissions were filed by both sides. It is contended in the written submission filed by the learned Additional Public Prosecutor that the respondent had produced the Notification of the Government of Tamil Nadu before the trial Court while the enquiry on the petition of the petitioner was in progress in Crl.M.P.No.3094 of 2016. The Notification authorized the trial Court to try the offences under the Prevention of corruption Act along with the main case for the offences under the NDPS Act and the learned Judge of the trial Court has accepted the Notification and after hearing both sides in Crl.M.P.No.3094 of 2016 had dismissed the said petition.

7.It is further contended that the offence of corruption could not be split from the offence of possession of contraband

'Alprazolam' and therefore, the trial of the Prevention of Corruption Act has to be done by the same Judge, who is trying the case for the possession of the contraband in the interest of justice and handling of the case under Prevention of Corruption Act along the case under the NDPS Act by the learned Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai, is justifiable and both the NDPS Act, 1985 and Prevention of Corruption Act, 1988 ratifies the trial by the learned Special Judge (For E.C.Act and NDPS Act) Cases, Madurai, in view of Section 223 of Cr.P.C.,persons accused of different offences in the course of the same transaction may be charged jointly and hence, these Revisions are liable to be dismissed.

8. Perused the materials on record. Heard and considered the rival submissions advanced by either side.

9. Admittedly, the learned trial Judge of the Special Court for E.C and NDPS Act Cases, Madurai constituted under Section 36 of the NDPS Act by the Notification took cognizance of the offences punishable under the Prevention of Corruption Act, 1988 with other offences punishable under the various Sections of NDPS Act and also IPC offences and framed charges under the Prevention of Corruption Act, 1988 against the accused A4 to A6 inclusively, the petitioner, in addition to the offences punishable under NDPS Act and IPC offences.

10. The learned Additional Public Prosecutor has categorically admitted in para 8 of the written argument that separate Notification is required to try the offences under the Prevention of Corruption Act, 1988. The impugned order does not reveal the fact that the Notification of the Government of Tamil Nadu Authorizing the Special Court for E.C & NDPS Act Cases, Madurai, to try the offences under the Prevention of Corruption Act, 1988 along with the main cases for the offences under the NDPS Act cases was produced by the respondent herein was accepted by the trial Court at the time of hearing the petitoiner in Crl.M.P.No.3094 of 2015, as contended in the written argument submitted by the learned Additional Public Prosecution before this Court.

11. The respondent has not chosen to produce any such Notification under the Prevention of Corruption Act 1988, in this Criminal Revision. Hence, the trial Judge viz., the learned II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai, has not been appointed under Section 3 of the Prevention of Corruption Act, which is mandatory and required by a Notification for appointment of the Special Judge to try the offences related to the Prevention of Corruption Act, 1988. The trial Court has decided the issue in Crl.M.P.No.177 of 2012 and 500 of 2012 for holding that the trial Judge is having powers to try the offence under the Prevention of Corruption Act, 1988, by virtue of Section 36(A)(2) of NDPS Act. Such a finding is not legally correct. Both the Prevention of Corruption Act, 1988

and the NDPS Act, 1985 are different self-contained Acts. Section 36 of the NDPS Act speaks about the constitution of the Special Court by Notification and Section 3 of Prevention of Corruption Act, 1988 speaks about the appointment of Special Judges by Notification in respect of the offences under the Prevention of Corruption Act. Section 3 of the Prevention of Corruption Act, 1988, reads as follows:-

> 3. Power to appoint special Judges.—
>
> (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely: —
>
> (a) any offence punishable under this Act; and
>
> (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

12. As per Section 3, a Notification of the Central Government or the State Government is necessary published in the official Gazette; and By virtue of the Notification appoint as many Special Judges as may be necessary to try the offences under the Prevention of Corruption Act, 1988.

13. Section 4(3) of Prevention of Corruption Act defines that

> (3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

14. Section 36(a) of NDPS Act, 1985 reads as follows:-

> (a) All offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;
>
> (b) ....
>
> (c) ....
>
> (d) ....
>
> 2. When trying an offence under this Act, a

Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

15. The trial Judge constituted under the NDPS Act relies Section 36(a)(2) for framing of charge for the offences of Prevention of Corruption Act. It is not so. It does not includes that the trial Judge is having a power to try an offence which falls under Prevention of Corruption Act. The trial Judge may have power to try an offence under the IPC offences which need not required a separate Notification for the offences charged under the Prevention of Corruption Act, 1988, was not brought to the notice of this Court when it dispose the quash petition in Crl.O.P(MD)No.17298 of 2014. Hence, it does not mean that the trial Court should not have the follow the legal principles and the mandates of Section 3 of Prevention of Corruption Act, 1988. The trial Judge / II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai, has not been appointed under Section 3 of the Prevention of Corruption Act, 1988. On the other hand, the above said Court constituted only under Section 36 of the NDPS Act.

16. Hence, the learned II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) , Madurai, has no jurisdiction to try the case falls under the Prevention of Corruption Act, 1988. The contention of the respondent that the trial Judge is having jurisdiction under Section 36(a)(2) of the NDPS Act, is misconceived and unsustainable in law. No records or authorization or Notification is filed to confer the powers of the Special Court under the Prevention of Corruption Act, 1988 to the Special Judge constituted under the NDPS Act. Hence, the trial Judge viz., II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai has no jurisdiction to take cognizance of the offences under the Prevention of Corruption Act, 1988 and also to frame charges for the offences punishable under the Prevention of Corruption Act, 1988.

17. Considering the above facts and circumstances of the case, this Court finds that the trial Judge viz., the learned II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai, has no power to take cognizance and try the cases of offences of the Prevention of Corruption Act, 1988, without any separate Notification conferring the powers under Section 3 of the Prevention of Corruption Act, 1988. The Special Judge for NDPS Act Cases, Madurai has taken cognizance and framed charges for the offence under the Prevention of Corruption Act, 1988, without any jurisdiction and the trial Judge can proceed the trial for other offences under NDPS Act and IPC offences.

18. In the result, the impugned orders, dated 14.12.2016 & 15.12.2016 respectively passed in Crl.M.P.No.3094 of 2016 in

C.C.No.241 of 2010 and in C.C.No.241 of 2010, by the learned II Additional District and Sessions Judge (For Essential Commodities Act and NDPS Act) Cases, Madurai, are set aside. The charges for the offences punishable under the Prevention of Corruption Act alone is deleted from the charges framed by the trial Judge / Special Judge for NDPS Act Cases, Madurai and the learned Special Judge can proceed the trial for other charges. Hence, the Criminal Revisions are ordered with the above observations. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional District and Sessions Judge
   (For Essential Commodities Act and NDPS Act) Cases,
   Madurai.

2. The Deputy Superintendent of Police,
   Crime Branch C.I.D.
   Tirunelveli.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

Copy To:-

The Record Keeper, Criminal Record Section
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.B.KUMARASAMY, ADVOCATE IN SR No. 42368

MPK
TE/SV-MMS/SAR-4 : 25/01/2018 : 7P/7C