

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

H.C.P. No. 1845 of 2018

Kaviarasan @ Raja

...Petitioner

Vs.

1. The Deputy Superintendent of Police,
Q Branch CID,
Madurai District Range,
Madurai.
 2. The Deputy Superintendent of Police,
Q-Branch CID,
Ramanathapuram and Sivagangai
District Range,
Ramanathapuram.
 3. The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry),
(R.C. No. 1/2014/NIA/HYD)
 4. The Superintendent of Prison,
Central Prison, Madurai 625 010.
- ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Habeas Corpus directing respondents 1 to 3 to take appropriate steps to try the petitioner at one trial before one Sessions Court in respect of the charge-sheet in S.C. No. 401 of 2015 on the file of the VI Additional Sessions Court, Madurai and S.C. No. 7 of 2017 on the file of the Special Court for Bomb Blast Cases (Special Court for NIA), Poonamallee and in Spl. S.C. No. 5 of 2014 on the file of the Special Court for NIA, Puducherry.

For Petitioner :: Mr. M.Radhakrishnan
for Mr.C. Pugalenthir

For Respondents:: Mr.C. Iyyaparaj
Addl. Public Prosecutor
(Puducherry)
for R1, R2 & R4
Mr.R. Karthikeyan
Special Public Prosecutor for R3

O R D E R

(Order of the Court was made by N. KIRUBAKARAN, J.)

1. This Habeas Corpus Petition has been filed seeking a different prayer from the usual one, namely, for a direction to respondents 1 to 3 to take appropriate steps to try the petitioner at one trial before one Sessions Court in respect of the charge-sheet in S.C. No. 401 of 2015 on the file of the VI Additional Sessions Court, Madurai and S.C. No. 7 of 2017 on the file of the Special Court for Bomb Blast Cases (Special Court for NIA), Poonamallee and in Spl. S.C. No. 5 of 2014 on the file of the Special Court for NIA, Puducherry.

2. The petitioner and others who are all members of "Tamil Nadu Liberation Army (TNLA)", which has been declared as a terrorist organisation as contemplated under Sections 2(1)(m) and 35 of the Unlawful Activities (Prevention) Act, 1967 and included in the first schedule of the above Act have issued pamphlets containing seditious materials.

3. It is alleged that on 01.01.2014, the members of "Tamil Nadu Liberation Army" including the petitioner assembled at Odaikkal Village in Ramanathapuram District and conspired to commit terrorist acts by planting bombs at the then Union Minister's houses and companies run by multi millionaires and strike terror into the people by using explosive substances and thereby to cause death or injury or loss or damage to the property. In pursuance of the general conspiracy, all the accused reassembled on 16.01.2014 at Manjuvirattu Pottal (Siravayal) situated on Thirupathur to Karaikudi Main Road in Sivagangai District to strike terror against the Central Government by planting bombs and cause death and damage to the properties and segregate Tamil Nadu from Union Sovereignty.

4. All the accused including the petitioner planted iron pipe bombs beneath the car belonging to former Union Minister Tr.Narayanasamy on 29.01.2014 at Puducherry and also blasted

iron pipe bomb at the farm house of former Union Minister Tr.P. Chidambaram on 04.02.2014 at Managiri near Karaikudi in Sivagangai District. Again, on 10.02.2014, all the accused including the petitioner planted iron pipe bombs at the backyard of Reliance Market building situated at Uthangudi, Madurai to Melur Main Road in order to cause heavy explosion and larger loss to life and property and threw pamphlets containing seditious matter near the scene of occurrence and the contents of the said pamphlets have been extracted in the beginning of this order. Thus, all the accused committed offences punishable under Sections 120-B, 124-A & 34 IPC and 18 & 20 of Unlawful Activities (Prevention) Act, 1967.

5. As far as the incident on 29.01.2014 at Puducherry is concerned, a case has been registered in Crime No. 25 of 2014 on the file of Odiansalai Police Station for the offence under Section 4 of Explosive Substances Act, 1908. The case was subsequently transferred to the file of CBCID, Puducherry, The CBCID added Section 307 IPC, Sections 16 & 18 of the Unlawful Activities (Prevention) Act, 1967 and amended Act, 2008 to the already existing Section 4 of the Explosive Substances Act, 1908. when the investigation by CBCID was underway, the Ministry of Home Affairs, Government of India by its proceedings dated 31.01.2014, ordered the National Investigation Agency, Hyderabad to take over the investigation in Crime No. 25 of 2014. Accordingly, the case was registered as RC No.1 of 2014 on the file of National Investigation Agency Police Station, Hyderabad on 02.02.2014.

6. With regard to the incident which occurred at Reliance Market Building, Uthangudi, Madurai, on 11.02.2014, a case has been registered in Crime No. 47 of 2014 on the file of Othakkadai Police Station under Sections 4 & 5 of Explosive Substances Act.

7. Regarding the detection of pamphlets containing incriminating contents against the Central Government found near the house of Central Minister Chidambaram at Managiri, Sivagangai District, a case has been registered in Crime No. 10 of 2014 on the file of Nachiyapuram Police Station under Section 153(A) (1) IPC.

8. On 10.03.2014, Othakkadai Police arrested A1, A2 and A3 in connection with the case in Crime No. 47 of 2014 and subsequently, A4 to A6 were also arrested. During the course of investigation, the involvement of all the six accused was revealed in the commission of offence. Later, this case and the case in Crime No. 10 of 2014 were transferred to "Q" Branch for further investigation.

9. Investigation by "Q" Branch CID revealed that the petitioner and others are members of "Tamil Nadu Liberation Army" and that the members of the outfit entered into a conspiracy to achieve their objective by resorting to violent methods. Pursuant to the same, they were involved in planting explosives on various dates in three places as aforesaid.

10. The "Q" Branch CID, Madurai Range completed the investigation in Crime No. 47 of 2014 on the file of Othakkadai Police Station in connection with Reliance Market incident and filed the final report against the petitioner and five others for offences under 120-B IPC r/w 121, 121-A, 124-A IPC and Sections 4 & 5 of Explosive Substances Act, 1908 and Section 15 r/w 16, 18, 20 of the Unlawful Activities (Prevention) Act 1967 altered into Section 120-B IPC r/w 124-A and 34 IPC and Sections 3(a), 4(b), 5(a) & 6 of Explosive Substances Act, 1908 Section 109 IPC r/w Section 15, 15(1)(a)(ii) & 18, 20 of Unlawful Activities (Prevention) Act, 1967 along with others.

11. The petitioner was arrested at Melur, Madurai District on 10.03.2014 by the 1st respondent in connection with the case registered in Crime No. 47 of 2014 on the file of Othakkadai Police Station and was remanded to judicial custody on 11.03.2014. Thereafter, on 09.04.2014, the 2nd respondent formally arrested the petitioner inside the prison and he was produced under P.T. Warrant before the District Munsif cum Judicial Magistrate's Court, Thirupathur, Sivagangai District and remanded to judicial custody in connection with Crime No. 10 of 2014 on the file of Nachiyapuram Police Station, Sivagangai District. Again on 09.04.2014, the 3rd respondent formally arrested the petitioner inside the prison and he was produced under P.T. Warrant before the Principal Sessions and District Court and Special Court for NIA, Puducherry and remanded to judicial custody in connection with Crime No. 25 of 2014 on the file of Odiansalai Police Station, Puducherry.

12. The first case in Crime No. 47 of 2014 on the file of Othakkadai Police Station is pending for trial before the VI Additional Sessions Court, Madurai in S.C. No. 401 of 2015. The second case, namely, Crime No. 10 of 2014 on the file of Nachiyapuram Police Station is pending for trial before the Special Court for Bomb Blast Cases (Special Court for NIA), Poonamallee, Chennai in S.C. No. 7 of 2017 and the third case, namely, Odiansalai Police Station case in Crime No. 25 of 2014 is pending for trial before the Special Court for NIA, Puducherry in Special S.C. No. 5 of 2014.

13. The present Habeas Corpus has been filed for clubbing all these three matters for trial of all the three cases before one Court.

14. Mr.M.Radhakrishnan, learned counsel for the petitioner would submit the following:

- (i) In all the three cases, the offences are said to have been committed by the very same accused;
- (ii) The offences are said to have been committed pursuant to a common conspiracy hatched by the accused.
- (iii) There is a single conspiracy by the same accused for commission of the offence in all the three cases;
- (iv) Witnesses in all the cases are going to be the same;
- (v) All the three occurrences occurred within 13 days namely from 01.01.2014 to 15.01.2014;
- (vi) Various acts/offences committed at different points of time could be subjected to single trial;
- (vii) Section 220(1) Cr.P.C. provides for one trial eventhough many offences are committed by the same person and it would form the same transaction.
- (viii) The accused should not be tried for the same offence by different Courts as it would amount to double jeopardy which is prohibited under Article 22 of the Constitution of India.

15. The learned counsel for the petitioner relied upon the judgment of the Honourable Supreme Court in Amitbhai Anilchandra Shah V. Central Bureau of Investigation and another reported in (2013) 6 SCC 348 to stress the point that series of acts committed, which are so connected together, arising out of the same conspiracy, will have to be tried in one trial under Section 220 Cr.P.C. Therefore, he would submit that as series of offences are said to have been committed by the petitioner and others at various points of time pursuant to common conspiracy, they could be tried by the very same Court otherwise it would amount to the very same accused tried by different Courts amounting to violation of Article 22 of the Constitution of India.

16. Mr.C. Iyyappa Raj, learned Additional Public Prosecutor appearing for respondents 1, 2 and 4 would submit that the accused are terrorists and many cases are pending against them and especially against the petitioner, four cases under Explosive Substances Act are pending. The first case, in connection with Reliance Market incident is pending trial before the VI Additional Sessions Court, Madurai in S.C. No. 401 of 2015. Twenty witnesses out of 118 witnesses have been examined. As far as the incident at Nachiyapuram, in Thirupattur at Sivagangai District is concerned, the same is pending in S.C. No. 7 of 2017 on the file of Special Court for Bomb Blast Cases

(Special Court for NIA), Poonamallee, Chennai. 95 witnesses have been shown in this case and the trial is yet to commence. The third case which is related to Puducherry is investigated by a different agency namely, National Investigation Agency and the said case is pending before Special Court for NIA, Puducherry in Special S.C. No. 5 of 2014.

17. The learned Additional Public Prosecutor would further submit that Section 220 Cr.P.C. does not apply in cases where many accused are involved and it could be invoked only if a single accused is involved. Though the offences are tried by Special Courts only, the stage of the cases differ and the number of witnesses in all the cases vary. With a similar prayer, petitioner and 5 others had earlier filed CrI.O.P. No. 9713 of 2014 and the same was dismissed by a Division Bench of this Court and therefore, the petitioner cannot re-agitate the matter.

18. Mr.R. Karthikeyan, learned Special Public Prosecutor appearing for the 3rd respondent would submit that when two different agencies are investigating, all the matters cannot be clubbed together and tried by the very same Court. He would rely upon the judgment of the Honourable Supreme Court in State of Jharkhand through SP, Central Bureau of Investigation V. Lalu Prasad Yadav @ Lalu Prasad reported in 2017 8 SCC Pg.1 to impress upon the point that eventhough the modus operandi is the same, it would not make it a single offence when the offences are separate. If conspiracy is furthered into several distinct offences, there have to be separate trials. He also relied upon the judgment of the Honourable Supreme Court in Kalyan Chandra Sarkar V. Rajesh Ranjan Alias Pappu Yadav and Another reported in (2005) 2 SCC 42 to submit that the issue which had been already canvassed earlier would not be permitted to be reagitated on the same grounds. By relying upon the said judgments, he would request that the petition may be dismissed.

19. Mr.M. Radhakrishnan, learned counsel for the petitioner, by way of reply, would submit that the earlier case filed was for transfer of the above said three cases and it was not for joint trial whereas in this case, all the three cases are sought to be transferred for one trial before one Court. Hence, the issue raised now is not covered by the earlier order.

20. Heard the parties and perused the records carefully.

21. It is the prosecution case that out of the very same conspiracy, series of offences is said to have been committed. In all the three cases, the conspiracy is one and the same and the act of purchasing explosives and preparation of pipe bombs would constitute series of acts involving the same transaction

pursuant to the conspiracy in the first meeting held on 31.12.2013 at Odaikkal Village, Ramanathapuram and the second one on 16.01.2014 at Siravoyal Pottal, Sivagangai District. The charge sheet would reveal that on 22.01.2014, they purchased explosives from one Dhanapackiam and prepared iron pipe bombs at Villapuram, Madurai District. Thereafter, in furtherance of the conspiracy, they planted pipe bombs at Reliance Market Building, Uthangudi, Madurai District, at Managiri, Sivagangai District and at Pondicherry. It is true that there are six accused involved in a series of offences in the same transaction. When the offences took place at three different places, whether all the cases could be tried together by way of a joint trial by the same Court, as pointed out by the learned counsel for the petitioner, is a question to be examined. In this context, it is useful to extract Section 220(1) Cr.P.C. which reads thus:

220. Trial for more than one offence:- (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

A perusal of Section 220(1) Cr.P.C. would reveal that it is in case of more offences committed, by one series of acts so connected together, committed by the very same person and in that event, the said accused can be charged with and tried at one trial for every such offence. The statute is very clear i.e, it speaks about same person and not persons. In this case, six accused including the petitioner are involved in three cases. Therefore, Section 220(1) Cr.P.C. cannot be invoked in this case.

22. That apart, the two cases, namely, offences committed at Uthangudi, Madurai District and the offence committed at Managiri, Sivagangai District are investigated by Special Police whereas the offence committed at Puducherry is investigated by National Investigation Agency, Hyderabad. When two agencies are involved, the cases cannot be clubbed together. Further, as rightly pointed out by Mr.Karthikeyan, Section 32 of National Investigation Agency Act, 2008 overrides the General Act, namely, Code of Criminal Procedure and the Special Court constituted under the NIA Act alone could try the offences investigated by National Investigation Agency.

23. As to whether the offences committed at Sivagangai District and Madurai District could be tried together by the very same Court as the investigation has been done by CBCID, Q Branch, the answer is in the negative as the stages of the cases are different. As far as Uthangudi Case, Madurai District is concerned, the same is pending in S.C. No. 401 of 2015 on the

file of VI Additional Sessions Court, Madurai and 20 witnesses out of 118 witnesses have already been examined. As far as the incident at Managiri, Sivagangai District is concerned, it is pending on the file of Special Court for Bomb Blast Cases (Special Court for NIA), Poonamallee in Special S.C. NO. 7 of 2017. In that case, 95 witnesses have been shown in the charge sheet and the trial is yet to commence. Though the accused are common, the stages of the cases are different. If both the cases are clubbed together, definitely, it will cause unnecessary delay in disposing of the cases. Moreover, the number of witnesses shown in each case are different and therefore, it is clear that all the witnesses are not connected in the above cases.

24. As far as the judgment relied on by the learned counsel for the petitioner is concerned, namely, 2013 6 SCC 348, in that case, the very same investigating agency CBI investigated the cases whereas in this case, two different agencies have conducted investigation. Therefore, the said judgment is not applicable to the facts of the present case.

25. As far as the judgment relied on by Mr. R. Karthikeyan, learned Special Prosecutor reported in 2017 8 SCC Pg.1 is concerned, the Honourable Supreme Court categorically held that if conspiracy is furthered into several distinct offences, there have to be separate trials and each trial has to be separately held and the accused to be punished separately for the offences committed in furtherance of conspiracy. In case, there is only one trial for such conspiracy for separate offences, it would enable the accused persons to go scot-free and commit a number of offences. In this regard, relevant paragraph No. 50 of the said judgment is extracted as follows:

"50. The modus operandi being the same would not make it a single offence when the offences are separate. Commission of offence pursuant to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case, there is only one trial for such conspiracy for separate offences, it would enable the accused persons to go scot-free and commit a number of offences, which is not the intendment of law. The concept is of "same offence" under Article 20(2) and Section 300 Cr.P.C.

In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in Section 219. One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus, we find no merit in the submissions made by the learned Senior counsel appearing on behalf of the accused persons."

26. As rightly pointed out by Mr.C. Iyyapparaj, learned Additional Public Prosecutor and Mr.R Karthikeyan, learned Special Public Prosecutor for R3, the issue was already decided by a Division Bench of this Court in CrI.O.P. No. 7913 of 2013 dated 19.11.2015. The said petition filed by the petitioner and 5 others, for transfer of all the three cases to the Special Court for exclusive trial of Bomb Blast Cases namely, National Investigation Agency, Poonamallee, Chennai, was dismissed holding that Section 220 Cr.P.C. cannot be applied as offences are committed by more than one person. Paragraphs 16 & 17 are extracted as follows:

"16. Though the petitioners, who are part of Tamil Nadu Liberation Army, may have a common intention on secession, each case in which they are involved is pursuant to specific conspiracy on specified target, as could be seen from the Final Reports. Section 220 of Cr.P.C. relates to different offences committed by one person in the course of the same transaction. In this case, six persons are involved, and therefore, the provisions of Section 220 Cr.P.C.will have no application.

17. That apart, the cardinal principle underlying transfer of a case from one Court to another court is the convenience of witnesses. There is no whisper in the petition on this aspect. On the contrary, witnesses differ as also the place of occurrence and the target."

27. From the judgment relied on by Mr. R.Karthikeyan, learned Special Public Prosecutor for the 3rd respondent in Kalyan Chandra Sarkar V. Rajesh Ranjan Alias Pappu Yadav and

Another reported in (2005) 2 SCC 42, it is clear that Courts are bound by doctrine of judicial discipline having regard to the hierarchical system prevailing in the country and the findings of a Higher Court or Co-ordinate Bench must receive serious consideration at hands of Court entertaining a bail application at a later stage when same had been rejected earlier. The relevant portion at paragraph No.19 is extracted hereunder:

"19. The principle of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a Higher Court or a Co-ordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or Higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."

28. Though Mr. M.Radhakrishnan would submit that the prayer sought for by the petitioner in this case is for one trial before one Sessions Court and that it is different from the earlier petition as the earlier one was for transfer only, the contentions raised by the petitioner in this case as well as in the other case are one and the same, i.e, with regard to Section 220 Cr.P.C. Therefore, the matter has already been decided by a Division Bench of this Court and the very same issue cannot be reagitated again.

29. As far as the concept of double jeopardy as contained in Article 22 of the Constitution of India is concerned, the same cannot be invoked as offences, distinct in nature, have been committed in various places. If the same offence is committed at different places, though they may be the result of a general conspiracy, and if the accused are tried for such acts of committing the offences, then Article 22 will not be of any help. The issue is already decided by the Honourable Supreme Court in State of Jharkhand through SP, Central Bureau of Investigation V. Lalu Prasad Yadav @ Lalu Prasad reported in 2017 8 SCC Pg.1 that if conspiracy is furthered into several

distinct offences, there have to be separate trials. Therefore, the contention of the petitioner regarding "double jeopardy" as prohibited under Article 22 of the Constitution of India is rejected.

30. For all the above reasons, the Habeas Corpus Petition is liable to be dismissed and accordingly, it is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Superintendent of Police,
Q Branch CID,
Madurai District Range,
Madurai.
2. The Deputy Superintendent of Police,
Q-Branch CID,
Ramanathapuram and Sivagangai
District Range,
Ramanathapuram.
3. The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry),
(R.C. No. 1/2014/NIA/HYD)
4. The Superintendent of Prison,
Central Prison, Madurai 625 010.

+lcc to Mr.P.Pugalenth, Advocate Sr.69016
+lcc to Mr.R.Karthikeyan, Advocate Sr.68285

H.C.P. No. 1845 of 2018

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