



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.12.2018
Pronounced on : 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P. (MD) No. 1489 of 2018

Tmt. P. Dhayal ... Petitioner
Vs.

1. The Inspector of Police,
C-2, Subramaniyapuram,
Madurai.
Crime No. 68/2013,
At present
the Inspector of Police,
CBCID, Madurai City,
Madurai,
Crime No. 11/2015.

2. The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, directing the respondents to produce the detenu V.P. Pandi @ Attack Pandi, son of Ponnusamy Dever, aged about 40 years, now confined at Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty by declaring the committal proceedings dated 25.09.2018 on the file of Judicial Magistrate Court No. IV, Madurai in P.R.C. No. 47 of 2015 as illegal.

For Petitioner : Mr. R. Sankara Subbu
For Respondents : Mr. K. Chellapandian
Additional Advocate General for
Mr. K. Dinesh Babu, Additional Public Prosecutor

O R D E R

[Order of the Court was made by **B. PUGALENDHI, J.**]

This writ petition is filed for issuance of writ of Habeas Corpus by the wife of an accused in P.R.C. No. 47 of 2015 pending on the file of the Judicial Magistrate Court No. IV, Madurai, that her husband V. P. Pandi @ Attack Pandi, S/o. Ponnusamy Dever, confined at Central Prison, Palayamkottai, Tirunelveli District, has to be produced before this Court and set at liberty by declaring the



committal proceedings of the learned Judicial Magistrate No.IV, Madurai in P.R.C.No.47 of 2015 as illegal.

2. The petitioner's husband is an accused in Crime No.68 of 2013 which was registered on 31.01.2013 for the offences punishable under Sections 147, 148, 341, 342, 212, 216, 302, 120(B), 109 r/w. 149 and 34 of I.P.C. and under Section 3(1) of TNPPDL Act. The case was committed to the Court of Sessions on 25.09.2018 and the committal proceedings was conducted by the learned Judicial Magistrate through video conference and therefore, according to the petitioner, the committal proceedings conducted through video conference is illegal. Moreover, when her husband has filed an application under Section 207 of Cr.P.C., in CrI.M.P.No.5240 of 2018, the proceedings of committal conducted by the learned Magistrate, unmindful of this petition, is also illegal and on that ground, the detention of the petitioner's husband has to be treated as illegal and he has to be set at liberty.

3. The learned counsel for the petitioner would submit that the petitioner's husband is languishing in jail in connection with this case in Crime No.68 of 2013 for more than three years and by referring the decisions rendered by the Hon'ble Supreme Court in the cases of **Madhav Hayawadanrao Hoskot v. State of Maharashtra** reported in (1978) 3 SCC 544; **Hussainara Khatoun v. State of Bihar** reported in AIR 1979 SC 1360; **Elumalai vs. State** reported in 1983 LW (CrI) 121, **Abdul Rehman Antulay vs. R.S.Nayak** reported in AIR 1992 SC; **Shaheen Welfare Association vs. Union of India** reported in (1996) 2 SCC 616; **Dataram Singh vs. State of Uttar Pradesh** reported in AIR 2018 SC 980; **Affiya vs. State** in H.C.P.No.801 of 2017; **Affiya vs. State** in CrI.M.P.No.6595 of 2018 in H.C.P.No.801 of 2017; **Prabhakaran vs. State** in H.C.P.No.750 of 2018 and **Tmt. Naziakhnum vs. State** in H.C.P.No.2449 of 2017, would submit that speedy trial is a matter of right guaranteed under Article 21 of the Constitution of India and therefore, the accused must be released.

4. Per contra, the learned Additional Advocate General would submit that the petitioner's husband is the main accused in Crime No.68 of 2013 and the occurrence was taken place on 31.01.2013 and for more than 2 ½ years, he was continuously absconding and he was declared as proclaimed offender under Section 82 of Cr.P.C. Therefore, his properties were also attached under Section 83 of Cr.P.C., on 10.09.2013. Even then he did not surrender and with great difficulty, the petitioner's husband was apprehended at Mumbai on 21.09.2015. He would further submit that the case is of a gruesome murder and considering the sensitive nature of the case, the investigation in Crime No.68 of 2013 on the file of the Inspector of Police, C2 Subramanipayuram Police Station was transferred to C.B.C.I.D., on 20.11.2015 and the C.B.C.I.D., has also filed their final report on 15.12.2015. It was also taken on file by the learned Judicial Magistrate No.IV, Madurai on

31.12.2015. The petitioner's husband had filed six bail petitions before this Court and all those petitions have been dismissed. The accused has also approached the Hon'ble Supreme Court in S.L.P.No.006340/2017 and the same was also dismissed as withdrawn on 04.09.2017. This Court, while dismissing the bail application in CrI.O.P.No.16789 of 2016, has issued the following directions:

"(i) The Committal Magistrate is directed to split up the case against the petitioner and other accused who are present before it and complete the committal proceedings against them at the earliest.

(ii) Upon committal, the concerned trial Court shall deal with the case expeditiously and dispose of the same, in any event not later than six months from the date of committal to it."

5. The accused in this case in one way or other have protracted the trial and the committal proceedings and therefore, this Court, dismissed the applications in CrI.O.P.Nos.6816 and 6817 of 2017, with the following observations:

"an orchestrated design to delay the committal proceedings is palpably seen from the attitude of the accused involved in this case. As directed by this Court, for the absconding accused the Committal Court has already split up the case to commit the case to the trial Court. However, the accused are not prepared to appear and get the copies to allow the Court to proceed further. Therefore, this Court finds no merit in the point canvassed by the petitioner's husband that there is a breach of direction given by this Court, dated 22.09.2016. Neither the committal Court nor the prosecution has delayed the committal process. It is the conduct of the accused involved in this case is causing delay."

6. The learned Additional Advocate General has also placed all the details of the petitions filed by the petitioner and her husband in the above matter. The details are also extracted as under:-

S.No.	Petition	Petition filed date	Counter filed by the Investigati on Officer	Relief sought in the petition by the petitioner	Status
1.	Cr.M.P.No. 3662/2015	30.10.2015	05.11.2015	Requested detachment of movable and immovable properties which have been attached u/s 85(3) Cr.P.C.	Dismissed on 10.11.2017

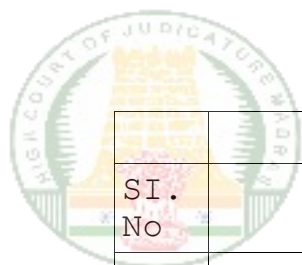


2.	Cr.M.P.No. 2269/2016	13.02.2016	26.09.2016	Request for provision of CCTV footages at Hotel Woodlands and DSK Lodge.	closed on 10.11.2017
3.	Cr.M.P.No. 3973/2016	23.09.2016	26.09.2016	Requesting JM to postpone the case for one month as per Section 309 Cr.P.C.	closed on 10.11.2017
4.	Cr.M.P.No. 4501/2016	19.10.2016	02.11.2016	Requested the Call details of complainant Manikandan, Thayanithi Alagiri b. Requested the statement recorded copy of the DSP who enquired in the Palayamkottai Jail.	disposed on 19.12.2017
5.	Cr.M.P.No. 4502/2016	19.10.2016	02.11.2016	Requested JM Madurai to conduct fresh investigation as per 159 Cr.P.C.	disposed on 19.12.2017
6.	Cr.M.P.No. 4503/2016	19.10.2016	02.11.2016	Requested for further investigation as per 159 Cr.P.C. & 173(8) Cr.P.C.	disposed on 19.12.2017
7.	C.M.P.No.3 533/2017	02.08.2017		Requested for investigation as per 340 Cr.P.C. & 156(3) Cr.P.C.	Dismissed on 10.11.2017
8.	Cr.M.P.No. 551/2018	01.02.2018	09.02.2018	Requested for movable and immovable properties return to the accused	disposed on 02.03.2018
9.	Cr.M.P.No. 552/2018	01.02.2018	09.02.2018	Requested for clear copy of charge sheet in page nos.110 and 119.	Clear copies were furnished on 02.03.2018



10.	Cr.M.P.No. 554/2018	01.02.2018	09.02.2018	Requested for Cr.P.C. 91 & 207, 76 IEA Petition submitted by the accused.	Dismissed on 23.03.2018
11.	Cr.M.P.No. 2031/2018	13.04.2018	27.04.2018	Requested clear copy of the statement petition submitted by the A1's advocate	Pending for orders
12.	Cr.M.P.No. 2032/2018	13.04.2018	27.04.2018	Requested clear copy of some pages in the charge sheet and statements petition submitted by the accused A1	Clear copies were furnished.
13.	Cr.M.P.No. 2033/2018	13.04.2018	27.04.2018	Requested call details of complainant Manikandan petition submitted by the accused.	Dismissed on 08.06.2018
14.	Cr.M.P.No. 2355/2018	27.04.2018	24.05.2018	Requested for not take any further proceedings	Dismissed on 08.06.2018
15.	Cr.M.P.No. 3298/2018	14.06.2018		Requested for translate the expert opinion	Dismissed
16.	Cr.M.P.No. 5240/2018	25.09.2018	25.09.2018	Requested for stop the committal proceedings.	Dismissed on 25.09.2018

7. It is further submitted that the petitioner's husband, while in judicial remand, attempted to murder the witness No.44 in this case and in this connection, a case was registered in Crime No.1017 of 2015 on the file of K.Pudur Police Station for the offences punishable under Sections 341, 294(b), 307 r/w. 109 of I.P.C. In this case, final report was also filed as against the petitioner's husband. The learned Additional Advocate General has also given a list of cases pending against the petitioner's husband. The details are as follows:

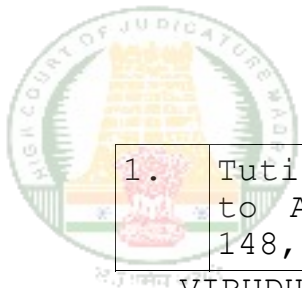


MADURAI CITY CASES		
SI. No	Case details	Stage
1.	B1 Vilakkuthoon Ps 721/01 u/s307IPC r/w 25(1)(B)(a) Arms act 1952 and 5 of Explosive substances Act	Acq.
2.	Madurai City, CCB Cr.No.78/09 u/s 406, 420 IPC case transferred to EOW Madurai	Discharged
3.	B3 Teppakulam Ps Cr.No.1991/09 u/s 147, 148, 342, 324, 364, 397, 307, 506 (ii) IPC	PT
4.	Madurai City, CCB Cr.No.53/11 u/s 406, 420, 427, 448, 468, 471, 506(i) IPC	PT
5.	Madurai City, CCB Cr.No.57/11 u/s 406, 420, 448, 387, 506 (ii) IPC	PT
6.	V2 Avaniapuram PS Cr.No.436/12 u/s 294(b), 506(ii) IPC	PT
7.	V2 Avaniapuram PS Cr.No.339/11, u/s 147, 148, 294(b), 323, 406, 506(ii) IPC r/w 407 Woman Harassment Act	UI
8.	V2 Avaniapuram PS Cr.No.639/12, u/s 147, 294(b), 506(ii) IPC	UI
9.	V2 Avaniapuram PS Cr.No.672/12, u/s 353, 506(i) IPC	UI
10.	V2 Avaniapuram PS Cr.No.747/12, u/s 147, 148, 294(b), 323, 506 (II) IPC	UI
11.	B4 Keerathurai P.S Cr.No.42/13 u/s 147, 148, 435, 506(ii) IPC r/w 3(1) of TNPPDL Act	PT
12.	C2 Subramaniyauram P.S. Cr.No.68/13 u/s 147, 148, 341, 342, 212, 216, 302, 120(B), 109 r/w 149, 34 IPC and 3(1) of TNPPDL Act	PT
13.	E1 K.Pudhur P.S. Cr.No.1017/2015 u/s 341, 294(b), 307 r/w 109 IPC	PT

MADURAI DISTRICT CASE:

1.	Madurai District, Othakadai PS Cr.No.226/07 u/s 147, 148, 449, 436, 302, 307, 332, 120(b) Ipc and 4 and 5 of IE Act and 4 of TNPPDL Act	Acq. Appealed by CBI
2.	Madurai District, Madurai Crime Branch Cr.No.30/12 u/s 120(B), 468, 471, 420 IPC	PT
3.	Madurai District (DCB) 67/12 u/s 147, 148, 341, 406, 420, 307, 506(ii) IPC	PT
4.	Madurai District, DCB, 88/12 u/s 120(B), 406, 468, 420, 506(i) IPC	PT
5.	Perungudi PS Cr.No.5/13 u/s 447, 379, 294(b), 506(i) IPC r/w 21,23 Mines and Minerals Development and Regulation Act	PT

TUTICORIN DISTRICT CASE



1.	Tuticorin District, Kulasekarapattinam PS Transfer to Athur PS, Dt: 13.08.12 Cr.No.283/09 u/s 147, 148, 324, 307 IPC 3 of TNDPL Act	AD 11.01.18
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VIRUDHUNAGAR DISTRICT CASE

1.	Virudhunagar District, Arupukottai Ps Cr.No.332/10, u/s 3 r/w 25(i) (B)(a) Arms Act and 120(b) IPC	PT
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8. Heard Mr.R.Sankara Subbu, learned counsel for the petitioner and Mr.K.Chellapandian, learned Additional Advocate General for the respondents and perused the materials placed on records.

9. The main contention of the petitioner is that the committal proceedings was conducted through video conference and unmindful of the application filed by the petitioner's husband in CrI.M.P.No.5240 of 2018. The order of the learned Judicial Magistrate No.IV, Madurai in P.R.C.No.47 of 2015, dated 25.09.2018, is extracted hereunder:-

A5, 10, 16, 18 present. For A3, 4, 8, 9 absent. Under Section 317 Cr.P.C., filed. A7, A17 produced on P.T.Warrant. Directed to appear before Court by 09.10.2018. A1 and A6 produced through Video conference. Remand extended till 09.10.2018. A12, 13, 14, 15 absent. Their counsel is present. For A2 Mr.Manikandan counsel is present. A-11 Mr.Sirpi Saravanan dead. So far death certificate filed. All other accused duly make their appearance. Already copies and additional copies furnished. Preliminary enquiry held. The offences are exclusively triable by Sessions Court. All accused are capable of engaging counsel. At this stage, this case ought to be committed. There is also an order of the Hon'ble High Court to commit this case as expeditiously as possible. A1 continuously in custody. Hence, it is decided to split up the case of A11. Assign separate PRC number. Case is committed to Hon'ble P.D.J Court, Madurai. All the accused are directed to appear before that Court on 09.10.2018. A1 and A6 are informed through V.C. Other absent accused are informed through counsels. CrI.M.P.5240 of 2018 filed and dismissed.

10. When a case is instituted on a police report, if it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, then the learned Magistrate is expected to commit a case to the Court of Sessions, after complying with the provisions of Section 207 of Cr.P.C. Under Section 207 of Cr.P.C., a Magistrate is expected to furnish the following documents:

- (i) the copy of the police report;
- (ii) the first information report recorded under Section 154;
- (iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-

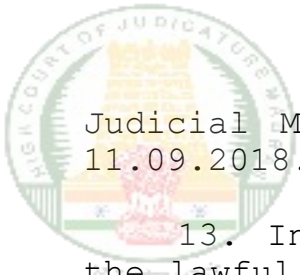
section (6) of Section 173;

(iv) the confessions and statements, if any, recorded under Section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section 5 of Section 173 and if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed only to inspect those documents either personally or through his counsel.

11. In this case, the final report was filed by the C.B.C.I.D., on 15.12.2015. But the committal proceedings was completed by the learned Judicial Magistrate only on 25.09.2018 and that too after the directions of this Court in CrI.M.P.No.16789 of 2016. The details of the petition filed by the accused No.1 before the learned Judicial Magistrate No.IV, Madurai reveals the attempt made by the accused to protract the trial. On 01.02.2018, a petition was filed for clean copy of the charge sheet in Page Nos.110 and 119 in Cr.M.P.No.552 of 2018 and the clean copies were furnished on 02.03.2018 and with regard to some other pages in the charge sheet, another application was filed in Cr.M.P.No.2032 of 2018, on 13.04.2018 and clean copies were furnished. Various other petitions were also filed after the arrest of the accused and the committal proceedings was completed only on 25.09.2018. The application filed under Section 207 of Cr.P.C., by the petitioner's husband in CrI.M.P.No.5240 of 2018 was dismissed by the learned Judicial Magistrate. As against that order, the petitioner's husband is having the remedy before the competent Court and therefore, it cannot be taken as one of the grounds to term the custody of the petitioner's husband as that of an illegal one to entertain this petition. Similarly, the petitioner's husband was produced before the Magistrate on video conference along with the accused No.6 and it is recorded by the learned Judicial Magistrate that A1 and A6 were informed through video conference. The questioning under the video conference is also permitted as per the Madras High Court Video Conference Rule 2018 and the Rule is applicable to the Subordinate Courts also.

12. Therefore, we are not able to accept the contention of the petitioner that without hearing him, the case was committed to the Court of Sessions. The learned Additional Advocate General has also pointed out that the accused has engaged several advocates and several senior counsels for his bail applications and also contested his bail application before the Hon'ble Supreme Court by engaging a senior advocate in the Supreme Court. He also submitted that one of the advocates viz., Mr.Vivek, who was representing the petitioner's husband right from the beginning before the learned Judicial Magistrate, for the purpose of dragging the committal proceedings, withdrawn his memo of appearance on 07.09.2018. But the learned



Judicial Magistrate dismissed the memo filed by the advocate, on 11.09.2018.

13. In view of the above, we do not find any ground to treat the lawful detention as that of a illegal detention to issue a writ of Habeas Corpus in this case. Though the learned counsel for the petitioner has contended vehemently by referring to various judgments on the delay in trial and requested the indulgence of this Court, we are not inclined to consider this ground also as it appears that the trial has been protracted at the instance of the accused and there is no delay on the part of the prosecution. Therefore, we are not inclined to entertain this petition. Accordingly, the Habeas Corpus Petition is dismissed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

Sub Assistant Registrar

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To

1.The Judicial Magistrate, IV, Madurai.

2. The Inspector of Police,
C-2, Subramaniyapuram, Madurai. Crime No.68/2013,

3. The Inspector of Police,
CBCID, Madurai City,
Madurai, (Crime No.11/2015).

4. The Superintendent, Central Prison, Palayamkottai,
Tirunelveli District.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+1CC to Mr.R.SANKARASUBBU , Advocate SR.No.54618.

Order made in
H.C.P. (MD) No.1489 of 2018

15.03.2019

DS/ /SAR- (28.03.2019) 9P 7C