



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.12.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Cr1.RC(MD)No.857 of 2019

A.D.Arun : Petitioner/Petitioner/Accused

Vs.

1.State the Intelligence Officer,
Narcotics Control Bureau,
Madurai.
(F.No.48/1/07/2018)

2.The Superintendent,
Central Prison, Madurai. : Respondents/Respondents

Prayer:

Criminal Revision Cases is filed under section 379 read with 401 of the Code of Criminal Procedure to set aside the order dated 27.08.2019 made in Cr.M.P.No.1498 of 2019 in C.C.No.20 of 2019 on the file of the I Additional Special Court for NDPS Act Cases, Madurai and consequently direct the 2nd respondent to classify the petitioner as 'A' Class Prisoner and further direct him to provide all sort of facilities to be provided for the said category of prisoner.

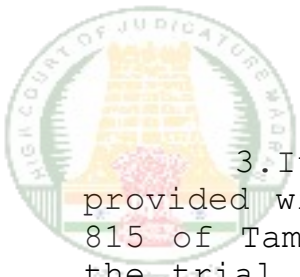
For Petitioner : Mr.R.Anand

For Respondents : Mr.AV.Neelakandan
Additional Public Prosecutor

J U D G M E N T

This Criminal Revision is filed against the order passed by the I Additional Special Court for NDPS Act Cases, Madurai, in Cr1.M.P.No.1498 of 2019, dated 27.08.2019.

2.According to the prosecution, on 11.06.2018 the petitioner along with two other accused is said to have transported Ganja weighing 251.500 kgs through TATA Safari TN-72-AJ-9000 and after intercepting the vehicle, the said contraband were seized and subsequently, the petitioner was arrested and remanded to judicial custody.



3. It is the grievance of the petitioner that he was not provided with right treatment as "A" Class prisoner and under Rule 815 of Tamil Nadu Prison Rules 1983, he asked for a prayer before the trial court by way of filing application in CrI.M.P.No.1498 of 2019 for allotment of 'A' Class. The said application was dismissed on 27.08.2019 on the ground that the offences alleged are against the society. Aggrieved over the same, the petitioner is before this court.

4. Heard both sides and perused the materials available on record.

5. The learned counsel appearing for the petitioner/A1 argued that it is the law of the land that the Government Orders which nullifying the Rules cannot have the force of law and in other-words, the executive instruction issued in the form of Government Order cannot either over-ride or amend the statutory provisions which are being made under an Act or Rules. For that, the learned counsel for the revision petitioner submitted a ruling reported in **(1979)4 SCC 507 (B.N.Nagarajan and others Vs. State of Karnataka and others)**, wherein it has been held that an Act done in the exercise of the executive power of the Government, cannot over ride rules framed under Article 309 of the Constitution.

6. On the other hand, it is argued on the side of the respondent/complainant that as per G.Os of the year 1951 and 1975, the offence alleged to be committed by the petitioner/accused is against the society and hence, the petitioner is not entitled to the relief as prayed for.

7. It is pertinent to note that G.Os. relied upon by the trial court were of the years 1951 and 1975, but the Tamil Nadu Prisoners Rule 1983 was come into force during the year 1983. Thus, it is very clear that the Rule, which is the latest one will prevail over the previous executive instructions, which are said to have been notified long back. Had the intention of the Legislator to give persistent effect, the said G.O certainly while at the time of framing the Tamil Nadu Prison Rules, 1983, the details mentioned in the said GO would also have been made as one of the Rule. At any event, the said G.Os cannot be treated as an impediment for considering the case of the petitioner.

8. Admittedly, in so far as the classification of remand prisoners are concerned, the Government of Tamil Nadu separately framed Rules by name Tamil Nadu Prison Rules, 1983. The said Rule admittedly does not contain any bar for a NDPS accused for seeking "A" Class facility in the prison. In such a case, the aforesaid G.Os cannot override the said Rules. More particularly, there is an enabling provision in Rule No.815 of the said Rule, which deals with the powers of the Courts with regard to the classification of remand prisoner.



9. Admittedly, the petitioner is the Assistant Public Relation Officer attached with the office of the Collectorate at Dindigul District, he is an MBA Graduate and he is also Income Tax Assessee and by virtue of the aforesaid qualifications, his habit of life have been accustomed to a superior mode of living and thereby he is entitled to be accommodated as "A" Class Prisoner with a special status under Rule No.815 of the Tamil Nadu Prison Rules 1983. Hence, it is held that the petitioner is entitled to get recommendation of the court to all the accounts in prison.

10. In the result, the criminal revision is **partly allowed**. The petitioner is entitled to get recommendation to avail "A" Class in prison by the District Magistrate by whom the recommendation shall be approved or reviewed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)

To

1. The I Additional Special Judge for NDPS Act Cases,
Madurai.

2. The Intelligence Officer,
Narcotics Control Bureau, Madurai.

3. The Superintendent,
Central Prison, Madurai.

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

+1 CC to M/s.R.ANAND, Advocate (SR-106468[F] dated 26/12/2019)

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20.12.2019

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