

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.07.2020

DELIVERED ON: 14.08.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.532 of 2020 & Crl.M.P. No.4198 of 2020

Shoba @ Savitha @ Srimathi

Petitioner/Accused

vs.

The State represented by
the Deputy Superintendent of Police
"Q" Branch Range
Coimbatore
(Cr. No.1 of 2020)
"Q" Branch CID, Coimbatore District

Respondent /Complainant

Prayer:Criminal Revision under Section 397(1) and 401 Cr.P.C. seeking to call for the records in Crl.M.P. No.1546 of 2020 in connection with the order dated 09.06.2020 on the file of the Principal District and Sessions Court, Coimbatore and set aside the same as illegal.

For petitioner Mr. R. Sankarasubbu

For respondent Mrs. P. Kritika Kamal

Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been filed challenging the legality and validity of the order dated 09.06.2020 passed by the Principal District and Sessions Judge, Coimbatore in Crl.M.P. No.1546 of 2020, in and by which, the report filed by the Public Prosecutor seeking extension of period of remand was accepted.

2 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent police.

3 To appreciate the rival contentions, it may be apposite to state the following minimum facts:

3.1 On 11.03.2020, the police registered a case in Cr. No.1 of 2020 against the petitioner for the offences under Section 505(1)(a) IPC and Sections 20 and 38 of the Unlawful Activities (Prevention) Act, 1967 (for brevity "the UAP Act") and produced her before the Principal District and Sessions Court, Coimbatore (for brevity "the trial Court") on 12.03.2020 for judicial remand.

3.2 The allegation against the petitioner is that, she is an active underground cadre of C.P.I. (Maoist), a banned outfit and that she had given training in arms to others for waging armed struggle against the State.

3.3 Her judicial custody was periodically extended at the request of the police and under normal circumstances, the maximum period to which she could have been kept in judicial custody pending investigation was upto 08.06.2020.

3.4 On 02.06.2020, the Public Prosecutor before the trial Court filed a report under the first proviso to Section 43-D(2) (b) of the UAP Act (for brevity "the special report") stating that the investigation cannot be completed before 08.06.2020 and sought extension of time for the detention of the petitioner beyond the period of 90 days.

3.5 The aforesaid petition was numbered as Crl.M.P. No.1546 of 2020 and notice was ordered on the petitioner and the learned counsel for the petitioner filed counter objection.

3.6 After hearing either side, the trial Court, by order dated 09.06.2020 in Crl.M.P. No.1546 of 2020 in Cr. No.1 of 2020, accepted the special report of the Public Prosecutor, assailing the correctness of which, the instant criminal revision has been preferred.

4 Mr. Sankarasubbu made the following submissions:

(a) As per the judgment of the Supreme Court in Hitendra Vishnu Thakur and others vs. State of Maharashtra¹, the Investigating Officer should have submitted himself to the scrutiny of the Public Prosecutor and only after the Public Prosecutor was satisfied with the bona fides in the request of the Investigating Officer, can the former file a special

¹ (1994) 4 SCC 602

report under Section 43-D of the UAP Act seeking extension of remand period.

(b) The Public Prosecutor should have appended the request letter of the Investigating Officer to his special report.

(c) The request given by the Public Prosecutor for the inability of the police to complete the investigation cannot hold water, especially in the light of the judgment of a learned single Judge of this Court in Settu vs. State represented by the Inspector of Police, Vallam Police Station, Thanjavur District² and the judgment of the Supreme Court in Kasi vs. State through the Inspector of Police, Samayanallur Police Station, Madurai District³.

(d) The report dated 02.06.2020 of the Public Prosecutor shows total non application of mind on his part. In this regard, strong reliance was placed on the Division Bench judgment of the Delhi High Court in Gautam Navlakha vs. State (NCT of Delhi) and others⁴.

(e) Since the order dated 11.05.2020 passed by a learned single Judge of this Court in Kasi vs. State through the Inspector of Police, Samayanallur Police Station, Madurai District⁵, which has been extracted by the police in paragraph no.6 of the counter dated 29.06.2020 filed by them in this criminal revision, has been reversed by the Supreme Court in Kasi (supra), the edifice of the prosecution case set out in the counter, falls.

(f) Extension of time cannot be granted for getting sanction for prosecution in the light of the authoritative pronouncement of the Supreme Court in Hitendra Vishnu Thakur (supra).

5 Per contra, the learned Government Advocate (Crl. Side) refuted each of the above contentions.

6 This Court gave its anxious consideration to the rival submissions.

² 2020 (4) CTC 533

³ 2020 (4) CTC 587

⁴ 2018 (253) DLT 392

⁵ Crl.O.P.(MD) No.5296 of 2020

7 The issue that has to be decided in this case lies in a very narrow compass, to appreciate which, it may be relevant to extract the first proviso to Section 43-D(2) (b) of the UAP Act and a few paragraphs from the special report filed by the Public Prosecutor before the trial Court:

First proviso to Section 43-D (2) (b) of the UAP Act:

"(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),--,

(a) the references to "fifteen days", "ninety days" and "sixty days" wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:"

Paragraph nos.8 and 10 from the report of the Public Prosecutor:

"8) It is respectfully submitted that, the investigation in this case is under initial stage and investigation regarding the arms training conducted by the accused, indulging of sedition conducting of demonstration condemning the Government and works at Bhavani Dhalam, Kabini Dhalam and Nadugani Dhalam within the forest jurisdictions of Kerala, Karnataka and Tamil Nadu in furtherance of the development works of their CPI (Moist) Organization and the plan if any to be executed in Tamil Nadu and the complicity in other cases registered in Tamil Nadu and other states are to be elicited.

10. It is respectfully submitted that, so far the petitioner/Investigating Officer had examined 21 witnesses and recorded their statements under Section 161(3) Cr.P.C. Several other witnesses are to be examined throughout the State and also in other States like Kerala and Karnakata. Further, after receipt of analysis reports from the TNFSL, Coimbatore and the call record details and other related details from the service provider of SIM card, further evidences are to be collected, including examination of further witnesses."

8 The importance of the special report has been emphasised in no uncertain terms in Hitendra Vishnu Thakur (supra), wherein, it has been held that the special report cannot be an empty formality and it should reflect that the Public Prosecutor has applied his mind on the request made by the Investigating Officer. Though in paragraph no.23 of the said judgment, the Supreme Court has held that the Public Prosecutor may attach the request of the Investigating Officer along with his request or application or report, be it noted that, it is also stated in the same paragraph that the request of the Investigating Officer for extension of time is no substitute for the report of the Public Prosecutor. The proviso to Section 43-D(2)(b) of the UAP Act extracted above contemplates only the report of the Public Prosecutor and it does not say that the Public Prosecutor should enclose the request letter of the Investigating Officer made to him along with his special report. This Court cannot read into the proviso to Section 43-D(2)(b) what is not contemplated therein and say that the request letter of the Investigating Officer should be mandatorily appended to the report of the Public Prosecutor.

9 This issue can be addressed from the angle of the practice that prevails in some Courts. The Public Prosecutor has a right to interview the Investigating Officer and during such interview, if the Investigating Officer convinces the Public Prosecutor that he will not be in a position to complete the investigation within a period of 90 days by giving valid reasons, it is always open to the Public Prosecutor to accept the reasons given by Investigating Officer and translate them into a special report and file the same before the Court. The law does not say that the Investigating Officer should make a written request to the Public Prosecutor for preparing a report under the proviso to Section 43-D(2)(b) of the UAP Act. The relationship between the Investigating Officer and Public Prosecutor is predicated on mutual trust and faith and the

communication between them is governed by Section 129 of the Evidence Act. There is no material placed before this Court to infer that the Public Prosecutor and the Investigating Officer never met each other for preparing the special report. In fact, in the light of Illustration (e) to Section 114 of the Evidence Act, this Court cannot draw a presumption that the Public Prosecutor had not performed his official act of preparing the special report properly without holding discussions with the Investigating Officer.

10 Now, it may be relevant to advert to Mr. Sankarasubbu's contention that the Public Prosecutor cannot take umbrage under the COVID-19 pandemic lock down. It is seen that in paragraph nos.4 and 5 of his special report, the Public Prosecutor has stated that the police had seized a sim card and memory card from the accused and those materials were forwarded to the trial Court on 12.03.2020 with a request to the trial Court to send them to the Tamil Nadu Forensic Sciences Laboratory for analysis and for the purpose of decoding them. It is also stated in the said special report that the trial Court has sent those materials on 17.03.2020 to the Forensic Science Department and on account of the COVID-19 lock down, the reports of the experts have not been obtained. The Public Prosecutor has further stated in paragraph no.5 of his special report that the police have addressed a letter dated 14.03.2020 to the service provider of the seized sim card to provide the call details, particulars of SMS, IMEI number, IMSI number, tower location particulars, etc. and that they have not received those details due to the COVID-19 lock down.

11 Mr. Sankarasubbu contended that when mobile networks are functional even during the ongoing lock down period, there is no justification for the service provider in not furnishing the details sought by the police, immediately.

12 The fact that there has been a lock down in Tamil Nadu since 24.03.2020 due to COVID-19 pandemic and there has been no public transport facility even till now, cannot be lost sight of and judicial notice of the same has to be taken by this Court (See Onkar Nath vs. Delhi Administration⁶). Every office, be it in Government or private, is now functioning only with skeleton staff. As is known, even this High Court is functioning only with 50% staff strength during this period of pandemic and the Courts take up only urgent cases, that too via video

6 (1977) 2 SCC 611

conferencing only. Therefore, to say that, just because mobile networks are functional, the service provider should have provided the call details albeit lock down is unfair. If an application for certified copy of an old record is made to the High Court now, this Court indeed doubts if the Registry would be able to comply with it expeditiously. We cannot preach to others what we cannot practise.

13 Now, coming to the judgments of this Court in Settu (supra) and Kasi (supra), the issue in those cases were, whether the order passed by the Supreme Court in In Re: Cognizance for Extension of Limitation⁷, would extend the period of limitation prescribed by Section 167 Cr.P.C. Noteworthy it is to point out that neither the High Court nor the Supreme Court was called upon to decide whether the request by the Investigating Officer via the Public Prosecutor for extension of remand period under the proviso to Section 43-D(2)(b) of the UAP Act for completing the investigation, on the ground that the COVID-19 lock down is impeding in collecting certain clue materials, was justified. On the contrary, in Settu (supra), the learned single Judge has clearly held as follows:

"15. Of course, the construction placed by me will have no application whatsoever in the case of certain offences under certain special laws, such as Unlawful Activities (Prevention) Act, 1967 and NDPS Act, 1985. For instance, Section 36-A(4) of the NDPS Act enables the Investigation Officer to apply to the Special Court for extending the period mentioned in the statute from 180 days to 1 year if it is not possible to complete the investigation. Thus, under certain statutes, the prosecution has a right to apply for extension of time. In those cases, the benefit of the direction of the Hon'ble Supreme Court made on 23.03.2020 in Suo Motu W.P. (Civil) No.3 of 2020 will apply. But, in respect of the other offences for which Section 167 of Cr.P.C. is applicable, the benefit of the said direction cannot be availed."

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⁷ *Suo Motu W.P. (C) No.3 of 2020* decided on 23.03.2020

Hence, this Court is of the view that the judgment of this Court in Settu (supra) and the judgment of the Supreme Court in Kasi (supra) will be of no avail to improve the case of the petitioner.

14 Coming to the judgment of the Delhi High Court in Gautam Navlakha (supra) relied on by Mr. Sankarasubbu, the said judgment was delivered in a habeas corpus petition on certain facts which were peculiar to that case and which is far removed from the facts obtaining in the case at hand.

15 Coming to submission 4 (e), supra, made by Mr. Sankarasubbu, in the opinion of this Court, the prosecution case does not rest nor stand on the counter filed by the police in this criminal revision petition, because, the prosecution cannot improve upon the special report filed by the Public Prosecutor under the proviso to Section 43-D(2)(b) of the UAP Act and they have to either stand or fall with it. At the risk of repetition, the deciding issue in this revision petition is the legality of the special report filed by the Public Prosecutor before the trial Court and the order passed by the trial Court accepting the report and not the counter filed by the police in this revision petition. In fact, there is no necessity to file any counter in a revision petition, because, what is decided by a superior Court in exercise of its revisional jurisdiction is only the propriety, legality and correctness of the order passed by the Court below.

16 It is true that in paragraph no.11 of the special report, the Public Prosecutor has stated about the need to obtain sanction for prosecution under the UAP Act. In Hitendra Vishnu Thakur (supra), the Supreme Court has held that, extension of time cannot be granted for obtaining sanction. In the special report at hand, the Public Prosecutor has not predicated his request only on the need to obtain sanction. He has given various cogent reasons for justifying extension of remand period for completing the investigation and together with them, in passing, has added in paragraph no.11 that, sanction should also have to be obtained from the Government for prosecuting the petitioner. If, for a moment, we close our eyes to paragraph no.11, still, the special report, proprio vigore, sets out sufficient reasons for justifying the request for extension of remand period beyond 90 days in this case.

Thus, in view of the aforemade discussion, this Court does not find any merit in this criminal revision and as a sequitur, this criminal revision stands dismissed. Connected Crl.M.P. stands closed.

-s/d-
Assistant Registrar

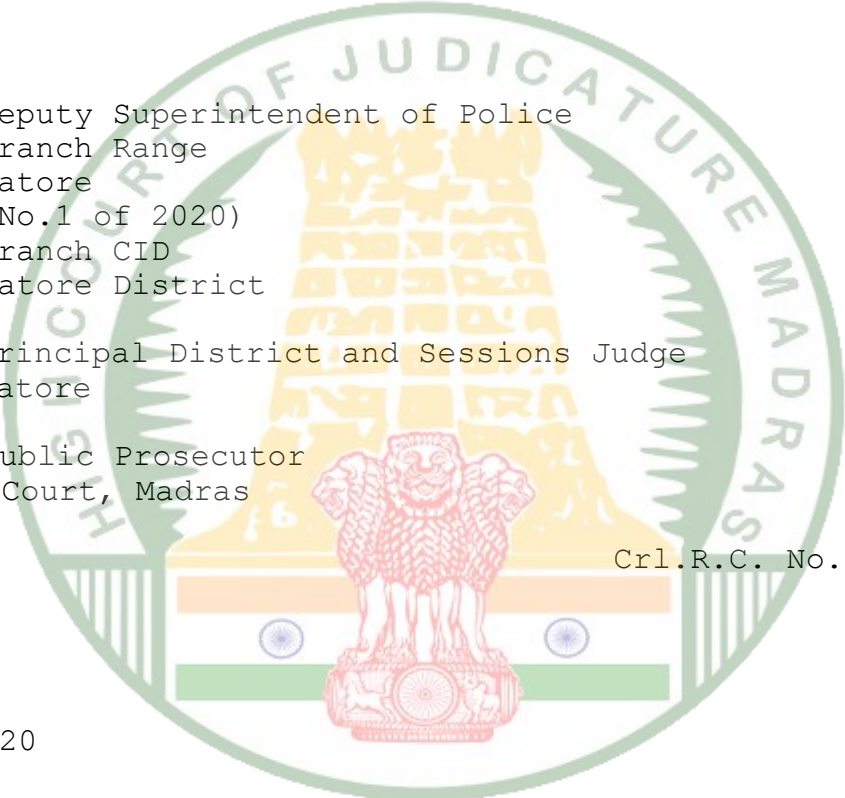
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Sub-Assistant Registrar

cad
To

- 1 The Deputy Superintendent of Police
"Q" Branch Range
Coimbatore
(Cr. No.1 of 2020)
"Q" Branch CID
Coimbatore District
- 2 The Principal District and Sessions Judge
Coimbatore
- 3 The Public Prosecutor
High Court, Madras

Crl.R.C. No.532 of 2020

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