

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2020

PRONOUNCED ON : 14.10.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.NO.3708 OF 2017

M.M.Hakim

.. Petitioner

Vs.

The Superintendent
Central Prison
Puzhal 1,
Chennai.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondent to return the warrant on execution of the sentence given by the Sessions Court (for exclusive trial of Bomb Blast cases), Coimbatore in S.C.No.2/2000.

For Petitioner : Mrs.S.Lakshmi
for Mr.S.Manoharan

For Respondents : Mr.L.Charles
Government Advocate [Crl. Side]

ORDER

This Criminal Original Petition is filed seeking a direction, to direct the respondent to return the warrant of execution of the sentence imposed by the Sessions Court (for exclusive trial of Bomb Blast cases), Coimbatore in S.C.No.2/2000.

2. Heard the learned counsel for the petitioner and the learned Government Advocate [Crl Side] for the respondent.

3. The prayer of the petitioner is that a direction may be issued to the jail authorities to return the warrant in S.C.No.2/2000 to the Special Court for Bomb Blast Cases [CBI], Coimbatore, since he had already undergone the sentence imposed on him in that case.

4. The Superintendent of Central Prison, Puzhal-I, Chennai has filed a counter affidavit opposing the prayer sought for by the petitioner.

5. The facts admitted by both sides have been set out in paragraph No.2 of the counter affidavit, which is as under :

2] With reference to the averments contained in Paragraph 1 and 2 of the affidavit, it is submitted that, the petitioner/Life Convict Prisoner No.4660, M.M.Hakim S/o.Mohammed Malangu was arrested and convicted in the following cases :-

i. Nagoor Police Station (SIT, CB-CID, Trichy) in connection with Cr.No.464/1996. In this case, on 07.04.2005, the learned Sessions Court, Nagapattinam in S.C.240/2003 has convicted the petitioner and sentenced to undergo Imprisonment for life for the offences U/s.302 r/w.109 of Indian Penal Code, for U/s.449 of IPC Rigorous Imprisonment for 5 years, for U/s.307 r/w.149 of IPC Rigorous Imprisonment for 3 years, for U/s.324 of IPC Rigorous imprisonment for 6 months, all the sentences are ordered to run concurrently. On appeal, the conviction and the sentences are confirmed by the Hon'ble High Court of Madras in C.A.No.359 of 2005 dated 23.07.2008. The Hon'ble Supreme Court of India dismissed the appeal in C.A.No.567/2012 dated 06.08.2014.

ii. In another case in connection with B.1, Bazaar Police Station, Coimbatore, Cr.No.151/1998. On 25.10.2007, the learned Sessions Court for Bomb Blast Cases - CBI, Coimbatore in S.C.No.2/2000 has convicted the petitioner and sentenced to undergo for the offence U/s.120-B(1), r/w.109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465, 468, 471 of IPC. Section 3,4(b), 5, 6 of Explosives Substances Act 1908, Sec.3 r/w. Sec.25(1-B) (a) of Arms Act 1959 and Sec.3(i), 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 and was sentenced to suffer R.I for 10 (ten) years. For Possession of Explosives punishable U/s.4(b) of Explosive Substance Act, 1908 and was sentence to suffer R.I. for 7 years. For creating disharmony among different communities punishable u/s.153 (a) (1) of I.P.C and was sentenced to suffer R.I

for 3 years. The above said 3 sentences are to run concurrently and period of detention already undergone, allowed to set off U/s.428 Cr.P.C (fine not imposed) and also to run concurrently along with the sentence of life imprisonment passed by the Sessions Judge, Nagapattinam in S.C.No.240 of 2003 on 07.04.2005."

6. To recapitulate the facts, the petitioner was sentenced to life imprisonment in S.C.No.240/2003 by the Sessions Court, Nagapattinam on 07.04.2005 and subsequently, on 25.10.2007, he was sentenced to various terms of imprisonment, the maximum being 10 years rigorous imprisonment in S.C.No.2/2000 by the Special Court for Bomb Blast Cases,[CBI] Coimbatore. In the second case (S.C.No.2/2000), the learned Judge has categorically stated that the sentences imposed by him run concurrently with the sentence of life imprisonment imposed by the Sessions Court, Nagapattinam in S.C.No.240/2003. While that being so, if the petitioner had already undergone the sentence in S.C.No.2/2000, this Court does not find any reason as to why the warrant of that case should not be returned to that Court especially, in the light of Section 430 Cr.P.C., and Rule 624 of the Tamil Nadu Prison Rules. It is relevant to extract Section 430 Cr.P.C. and Rule 624 of the Tamil Nadu Prison Rules.

(a) Section 430 of Criminal Procedure Code reads as follows :

Sec. 430. Return of warrant on execution of sentence :- When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

(b) Section 624 of Tamil Nadu Prison Rules reads as follows :

Sec. 624. Return of warrant of prisoners undergoing more than one sentence:- When a convict has to undergo two or more sentences under different warrants, each warrant shall except where an order under section 356 of the code of Criminal Procedure, 1973 (Central Act 2 of 1974) has been made against the convict, be returned to the court immediately on expiry of sentence to which it relates. The warrant of commitment on which an order under section 356 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) is entered shall not be returned to the committing

court until such time as the prisoner has undergone all the sentence under different warrants and has been served with the copy of the order of the Court for Notification of his residence and any change of, or absence from such residence under section 356 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)

7. A reading of Rule 624 of Tamil Nadu Prison Rules shows that the warrant in the second case can be retained only if the Court had passed an order under Section 356 Cr.P.C., No materials has been placed before this Court by the prison authorities to show that an order under Section 356 Cr.P.C., has been passed. Therefore, if once the petitioner had undergone the sentence in S.C.No.2/2000, as asserted by him, there is no justification to retain that warrant any more.

8. In the result, this petition is allowed and the respondent is directed to return the warrant in S.C.No.2/200 to the Special Court for Bomb Blast Cases [CBI], Coimbatore, immediately, if the petitioner has undergone the sentences in that case. The prison authorities may take a photocopy of that warrant and keep the same along with the warrant in S.C.No.240/2003.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1. The Superintendent of Prisons
Central Prison
Puzhal I,
Chennai.
2. The Judge
Special Court for Bomb Blast Cases [CBI],
Coimbatore.
3. The Sessions Judge,
Coimbatore.
4. The Sessions Judge,
Nagapattinam.

5.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.3708 of 2017

MTI (CO)
CS/06/11/2020



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