

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.33962 of 2019

M.Lawrence

... Petitioner

Vs

1.The Union of India,
Rep. by its Secretary,
Ministry of Railways,
Raj Bhavan, New Delhi - 1.

2.The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi - 1.

3.The General Manager,
Southern Railway,
Park Town, Chennai - 3

... Respondents

Prayer : Writ Petition filed under 226 of the Constitution of India to issue a writ of certiorarified mandamus or any other appropriate writ, order or direction to call for the records pertaining to the Central Government notification Regd.No.D.L.33004/99 dated 17.05.2004 and to quash the same and consequentially direct the respondent to include the Government Railway Police as the officer authorized under Section 179(2) of the Railways At, 1989.

For Petitioner : Mr.B.Prabhakaran

For Respondents : Mr.P.T.Ramkumar,
Standing Counsel for Railways

ORDER
(Order of the Court was made by M.M.SUNDRESH, J)

Seeking issuance a writ of certiorarified mandamus to call for the records pertaining to the Central Government notification Regd.No.D.L.33004/99 dated 17.05.2004 and to quash the same and consequentially direct the respondents to include the Government Railway Police as the officer authorized under Section 179(2) of the Railways At, 1989, the present petition has been filed.

2. There are two set of authorities dealing with the offence committed by the persons within the jurisdiction of the Railway Authorities. One is the Railway Protection Force (RPF) which comes under the jurisdiction of Ministry of Railways and the other is Government Railway Police (GRP) which obviously comes within the jurisdiction of the concerned State Government.

3. Section 179 of the Railways Act, 1989 as it stood earlier, prior to the amendment, speaks as follows:-

"Section 179.(1) If a person commits any offence mentioned in Sections 137, 141 to 147, 150 to 157, 160 to 162, 164, 166 168, 172 to 175, he may be arrested without warrant or other written authority by any railways servant or police officer not below the rank of a head constable .

(2)The railways servant or the police officer may call to his aid any other person to effect the arrest under sub-section (1).

(3) Any person so arrested under this Section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate."

4. In the year 2003, the amendments having been carried out to the aforesaid provision which are appositely referred hereunder:-

"Section 179. Arrest for offences under certain sections - (1) If any person commits any offence mentioned in sections 150 to 152, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head constable.

(2) If any person commits any offence mentioned in Sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176, he may be arrested,

without warrant or other written authority, by the office authorised by a notified order of the Central Government.

(3) The railway servant or the police officer or the officer authorised, as the case may be, may call to his aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be.

(4) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest under Court of the Magistrate."

5. Similarly, after Section 180, Section 180-A has been inserted, which is reproduced below:-

"Section 180-A. Inquiry by officer authorised to ascertain commission of offence.- For ascertaining facts and circumstances of a case, the officer authorised may make an inquiry into the commission of an offence mentioned in sub-section (2) of section 179 and may file a complaint in the competent Court if the offence is found to have been committed."

6. The object of this amendment is to facilitate the 'officer authorized' by the Central Government to enquire and launch prosecution against the persons who commit the offence in relation to the violation of Sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176. Accordingly, such an offender can be arrested without warrant or under the written authority by the 'officer authorized' by a notified order of the Central Government.

7. Accordingly, the notification has been issued on 17.04.2004 giving effect from 17.05.2004 in S.O. 593(E) by exercising the powers conferred under Section 179(2) of the Railways Act, 1989 notifying the officers all above the rank of Assistant Sub-Inspector in the Railway Protection Force as the 'officer authorized' for the purpose of the Act.

8. The sum and substance of the grievance as could be seen from the affidavit filed is that 'officer authorized' by way of notification under the Act may not be in a position to register First Information Report and proceed further.

9. The learned counsel appearing for the petitioner submitted that this position has been reiterated by the judgment of the Apex Court in State of U.P. v Durga Prasad, reported in AIR 1974 SC 2136.

10. The learned counsel appearing for the respondents submitted that Section 179 is very clear. Sub-section(2) only deals with the specified offence. This provision has gone through another amendment so as to facilitate the 'authorized officer' to proceed further and to file a complaint in the competent Court. That is the reason why the amendment has been brought forth under Section 179(2) while introducing Section 180A by way of insertion. Therefore, for the offences other than the one mentioned under Section 179(2) Government Railway Police (GRP) it is obviously the State Railway Police which is competent to take action. In any case, the petitioner cannot challenge the notification without making any challenge to Section 179(2) and 180A of the Railways Act, 1989.

11. We find, this writ petition has been filed on mere misconception. As stated by the learned counsel appearing for the respondents, a challenge to the subsequent notification issued in exercise of power under Section 179(2) of the Act cannot be maintained without allowing challenge to the main provisions, namely, Sections 179(2) and 180A. Secondly, the grievance of the petitioner has been well addressed as the aforesaid provision is only with respect to the offences mentioned under Section 179(2) of the Act. The procedure has also been adumbrated under Section 179(2) for the aforesaid purpose. Therefore, needless to state for the other offences it is only the Government Railway Police (GRP) which is competent to take action by registering FIR and thereafter proceed to file a final report.

12. With the above said observation and clarification, writ petition stands disposed of. No costs. Consequently, connected W.M.P.No.34548 of 2019 is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

ssm

To

1.The Secretary,
Union of India,
Ministry of Railways,
Raj Bhavan, New Delhi - 1.

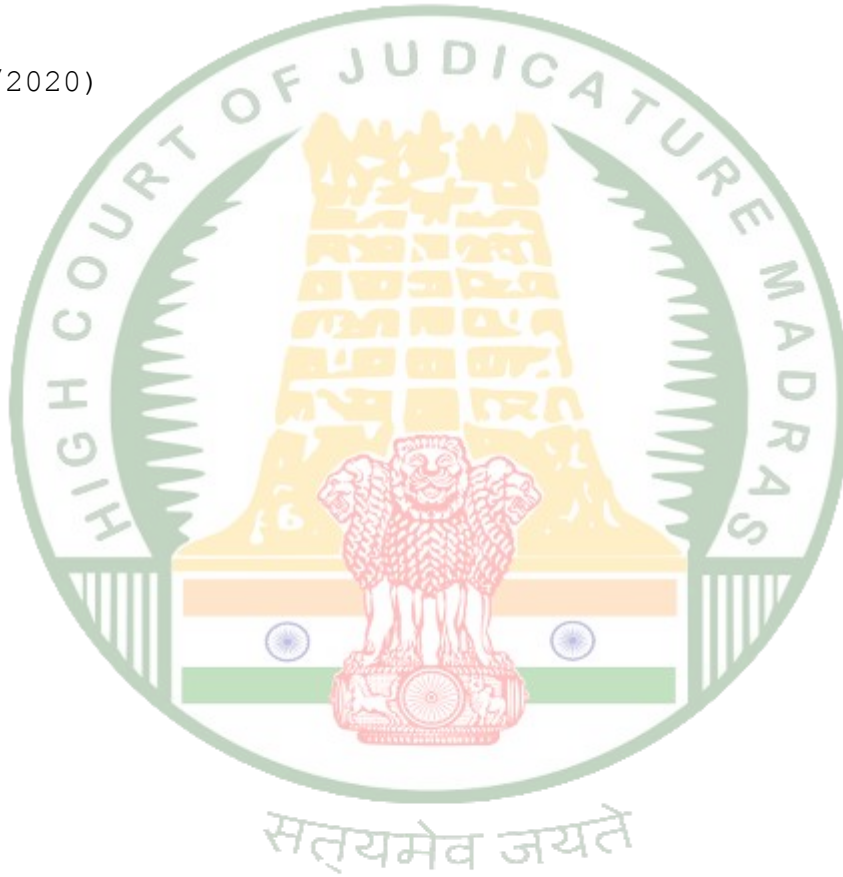
2.The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi - 1.

3.The General Manager,
Southern Railway,
Park Town, Chennai - 3

+lcc to Mr.P.T.Ramkumar, Advocate SR.No.19633

W.P.No.33962 of 2019

BR(CO)
GMY(10/06/2020)



WEB COPY