



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.09.2020

DELIVERED ON : 10.11.2020

CORAM:

**THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN**

Crl.Ref (MD)No.1 of 2020

The Additional Registrar General,
Madurai Bench of Madras High Court,
Madurai.

.. Petitioner

Vs.

1.The Central Bureau of Investigation,
rep. By Additional Superintendent of Police,
No.73, Athikulam Main Road,
Reserve Line Post, Madurai-625 014.

2.The Crime Branch Crime Investigation
Department (CBCID),
Represented by the Deputy Superintendent of Police,
Tirunelveli. .. Respondents

(R1 and R2 Suo Motu impleaded as per the order
of this Court dated 24.08.2020)

Prayer: Criminal Reference case under Section 395 of The Criminal Procedure Code, based on the letter of the Principal District Judge, Thoothukudi, in his letter in D.No.2326, dated 04.08.2020, has submitted that the Notification No.157/1976 dated 09.09.1976, of the Hon'ble High Court, Madras in not applicable to the facts of the case in Crime Nos.RC0502020S0008 of 2020 and RC0502020S0009 of 2020 on the file of the CBI (the case in Crime Nos.649 of 2020 and 650 of 2020 on the file of the Kovilpatti Police Station and Crime Nos.1 of 2020 and 2 of 2020 on the file of the CBCID, Thoothukudi District) and made a reference to the Hon'ble High Court under Section 395(2) of the Criminal Procedure Code.

For Petitioner : Mr.D.Sivaraman,
Standing Counsel for the High Court

For Respondents : Mr.S.Vijayan,
Special Public Prosecutor for the CBI



Mr.K.K.Ramakrishnan,
Additional Public Prosecutor
for the State of Tamil Nadu /
Amicus Curiae

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O R D E R

M. SATHYANARAYANAN, J.

The Principal District Judge, Thoothukudi, vide communication in D.No.2326 dated 04.08.2020, addressed to the Additional Registrar General, Madurai Bench of Madras High Court, Madurai, submitted a reference under Section 395(2) of the Criminal Procedure Code [in short "CrPC"].

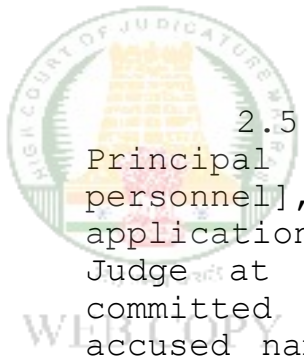
2. It is relevant to narrate the facts and circumstances, which led to the said reference made by the Principal District Judge, Thoothukudi.

2.1. A Division Bench consisting of Hon'ble Mr.Justice P.N.Prakash and Hon'ble Mr.Justice B.Pugalendhi had taken *Suo Motu* Writ Petition No.7042 / 2020 as to the alleged custodial torture and death of father and son, namely, Jeyaraj and Benniks in Sathankulam Police Station at Thoothukudi District. The said Division Bench, vide order dated 30.06.2020, had directed the transfer of investigation in Crime Nos.649 and 650 of 2020 on the file of the East Kovilpatti Police Station with regard to the said deaths to the file of the Crime Branch Crime Investigation Department [in short "CBCID"].

2.2. The *Suo Motu* W.P.No.7042 of 2020 was again listed for hearing on 02.07.2020 and on that day, the Division Bench had taken note of the fact that on transfer, CBCID has registered the cases in Crime No.1 of 2020 in respect of Benniks and Crime No.2 of 2020 in respect of Jeyaraj under Section 176(1)(1-A) CrPC and passed further orders.

2.3. Subsequently, the investigation of the cases registered by CBCID in Crime Nos.1 and 2 of 2020 were transferred to the file of the Central Bureau of Investigation [in short "CBI"], vide notification in G.O.(2D)No.150, Home (Police VIII) Department dated 29.06.2020, issued by the Government of Tamil Nadu and vide Notification No.228/16/2020-AVD.II dated 06.07.2020 issued by the Government of India.

2.4. CBI in-turn has re-registered the cases in Crime Nos. RC0502020S008 and RC0502020S0009 dated 07.07.2020 and nominated Thiru.V.K.Vijay Kumar Shukla, Additional Superintendent of Police, CBI, SC-II, New Delhi as the Investigating Officer.



2.5. In the reference made, it is pointed out by the learned Principal District Judge, Thoothukudi that the accused [police personnel], namely, Balakrishnan and Pauldurai filed bail applications before the Court of Principal District and Sessions Judge at Thoothukudi, in whose jurisdiction the offences were committed and those bail applications were dismissed. Another accused namely, Murugan [police personnel] filed bail application before the Court of Principal District Judge, Madurai and it was entertained and came to be dismissed.

2.6. In the applications filed for bail before the Principal District and Sessions Judge, Thoothukudi the learned Additional Public Prosecutor appeared for CBI has raised objection as to the jurisdiction of the said Court to entertain the bail application by placing reliance upon Notification No.157/1976 dated 09.09.1976 issued by the High Court of Madras, designating the Chief Judicial Magistrate, Madurai to try the cases investigated by CBI and it was also pointed out by the learned Additional Public Prosecutor for CBI that the entire case records were transferred from the file of the learned Chief Judicial Magistrate, Thoothukudi to the Court of Chief Judicial Magistrate, Madurai District.

2.7. The learned Principal District Judge, Thoothukudi pointed out Section 177 CrPC and submitted that admittedly, the offences took place within the jurisdiction of the Thoothukudi Sessions Division and in *Suo Motu* W.P.No.7042 of 2020, the Division Bench of this Court has also directed the learned Chief Judicial Magistrate, Thoothukudi to follow up the matter and accordingly, a Status Report has been filed. The learned Principal District Judge, Thoothukudi, has expressed doubt that the Notification No.157/1976 dated 09.09.1976 of the High Court of Madras is not in line with Section 177 CrPC and sought for reference under Section 395(2) CrPC to this Court.

2.8. The reference was placed before the Hon'ble Portfolio Judges for Thoothukudi District and the senior-most Portfolio Judge for Thoothukudi District, namely Hon'ble Mr.Justice V.Bharathidasan made an endorsement dated 07.08.2020 for placing it before the Hon'ble Administrative Judge, Madurai Bench of Madras High Court and accordingly, it was placed before the Administrative Judge, Madurai Bench of Madras High Court.

2.9. The Administrative Judge of the Madurai Bench of Madras High Court **[M.Sathyanarayanan, J.]** has directed to list the matter before the Special Bench consisting of myself **[M.Sathyanarayanan, J.] and Hon'ble Mr.Justice V.Bharathidasan** and accordingly, the reference was listed before this Special Bench.

3. This Court heard the submissions of Mr.S.Vijayan, learned Special Public Prosecutor appearing for CBI, Mr.D.Sivaraman, learned



Standing Counsel for High Court and for the purpose of rendering assistance, this Court also requested Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State of Tamil Nadu to act as an Amicus Curiae.

4. Wife of the deceased Jeyaraj and mother of the deceased Benniks, namely, Selvaranai was also permitted to intervene and Mr.T.Lajapat Roy, learned counsel who appeared for her and this Court heard his submissions also.

5. Mr.S.Vijayan, learned Special Public Prosecutor appearing for CBI has drawn the attention of this Court to Notification No.157 / 1976 dated 09.09.1976 issued by the High Court, Madras and would submit that in terms of the said notification, Additional Chief Judicial Magistrate was appointed to try the offences charged by the Special Police Establishment [SPE] other than those under Section 6 (1) of the Criminal Law Amendment Act, 1952 and it also refers to two Government Letters dated 29.07.1975 and 20.07.1976 and in terms of the said notification, the Chief Judicial Magistrate, Madurai was appointed as the Additional Chief Judicial Magistrate in respect of areas comprising of the districts of Ramanathapuram, Tirunelveli and Kanyakumari to try the offences charged by SPE other than those under Section 6(1) of the Criminal Law Amendment Act, 1952 and they also exercise powers of First Class Magistrates exclusively for the trial of SPE cases.

6. The learned Special Public Prosecutor for CBI has further drawn the attention of this Court to the Notification in D.No.1744 dated 09.04.2003 issued by the Chief Judicial Magistrate, Madurai, which in-turn refers to the Official Memorandum of the High Court, Madras in Roc.No.5/2003.Con.B2 dated 02.04.2003 and would submit that in exercise of powers conferred under sub-section(1) of Section 14 CrPC and in supercession of all the previous notification, the Chief Judicial Magistrate, Madurai has specified the local limits of the areas (jurisdiction) to be exercised by the Chief Judicial Magistrate, Madurai. In terms of the said notification, the Chief Judicial Magistrate, Madurai has been conferred with all or any of the powers of the Magistrate of the First Class vested with him under CrPC in respect of (1) Vigilance & Anti Corruption cases and all other cases exclusively triable by the Chief Judicial Magistrate, (2) Cases filed by the Inspector of Factories under Factories Act and allied offences arising out in respect of Madurai District, (3) Central Bureau of Investigation, Chennai, (4) State Bureau of Investigation, Chennai and (5) Economic Offences Wing-II, Madurai.

7. It is the further submission of the learned Special Public Prosecutor for CBI that insofar as the trial of offences committed under Prevention of Corruption Act, 1988 are concerned, jurisdiction vests with the District Judge (Entry Level) appointed and notified



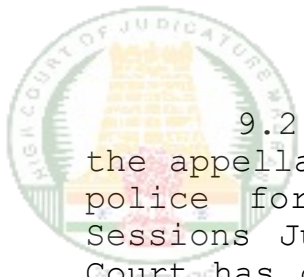
by the High Court and insofar as the cases pertaining to offences other than Prevention of Corruption Act, the Chief Judicial Magistrate, Madurai was originally vested with the jurisdiction and now the said power is exercised by the Additional Chief Judicial Magistrate, Madurai.

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8. The learned Special Public Prosecutor for CBI would further submit that subsequently, Ramanathapuram and Tirunelveli Districts were bifurcated and due to bifurcation of Tirunelveli District, Thoothukudi District came into being and in terms of the above said notification, CBI has to file Final Reports / Charge Sheets before the Court of Additional Chief Judicial Magistrate, Madurai and Final Reports / Charge Sheets have also been filed in respect of the present two cases in RC0502020S0008 and RC0502020S0009 registered by CBI and the said Court has to pass orders of committal, committing the said cases to the Court of the Principal District and Sessions Judge, Madurai and the said Court is having jurisdiction to entertain the applications for bail filed by the concerned accused in the above two crime numbers.

9. The learned Special Public Prosecutor for CBI has also drawn the attention of this Court to Sections 12, 13, 14 and 177 CrPC and also placed reliance on various decisions of the Hon'ble Apex Court as well as by various High Courts as under:

9.1. In **Purushottamdas Dalmia v. State of West Bengal [AIR 1961 SC 1589 = 1961-2-CrL.J. 728]**, dismissal of the appeal by the Division Bench of Calcutta High Court, confirming the conviction of the appellant by the learned Single Judge of the High Court of Calcutta for the commission of the offences under Sections 120-B r/w. 417 IPC and other allied offences, reached the portals of the Hon'ble Supreme Court by way of Criminal Appeal. The primordial point raised was that the offences of using forged documents as genuine were committed at Madras and therefore, the Courts at Calcutta had no jurisdiction to try the offences under Section 471 r/w. 466 IPC. The Hon'ble Supreme Court observed that there is no reason why the provisions of Sections 233 to 239 CrPC may not also provide exceptions to Section 177 CrPC, if they do permit the trial of a particular offence along with other in one Court. Though the said judgment has not answered the issue directly, in Para 13, the Hon'ble Supreme Court observed that **"... Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular Court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the Court. It is therefore that it is provided in S.177 that an offence would ordinarily be tried by a Court within the local limits of whose jurisdiction it is committed"**.



9.2. In **Nasiruddin Khan v. State of Bihar [AIR 1973 SC 186]**, the appellant who is a member of Uniform Force has deserted from the police force, for which he was tried by the Second Assistant Sessions Judge at Patna and was convicted and on appeal, the High Court has confirmed the conviction and sentence. Before the Hon'ble Supreme Court, it was contended on behalf of the appellant that the offence of desertion was committed at a place where the Act was not in force and therefore, it did not constitute the offence of desertion and in any event, this offence could not be tried at Patna in the light of Section 177 CrPC. The Hon'ble Apex Court after extracting Sections 177 and 531 CrPC of the Old Criminal Procedure Code, in para 7, after taking note of the decision in **Narumal v. State of Bombay [AIR 1960 SC 1329]** wherein it was observed that the word "ordinarily" used in Section 177 CrPC means "except where provided otherwise in that Code" and that though the State Legislature is competent to provide for trials of offences created by its Statutes otherwise than prescribed by Section 177, departure from the general principle prescribed by Section 177 must be clearly appear from the relevant provisions of the special Statute. The Hon'ble Apex Court has taken note that objection was not raised either in the committing Court or in the Court of Assistant Sessions Judge which tried and convicted the appellant and in the High Court, this objection was raised for the first time and according to that Court in view of Section 531 of the Code, the order of the Criminal Court convicting the appellant could not be set aside merely on he ground of the trial having taken place in a wrong Sessions Division, District Sub-Division or other local area unless such error had occasioned failure of justice.

9.3. In **Mohd. Mahir v. State of U.P. [(1986) 23 ACC 80]**, the petitioner was prosecuted for the offence under Section 135 of the Customs Act, 1962 and he was taken to the Court of Chief Judicial Magistrate, Gorakhpur, within whose jurisdiction the offence was committed, who in-turn directed that the accused be transferred to Allahabad for being produced before the Judicial Magistrate (Special) Economic Offences, Allahabad and he filed application for bail to the Court of Session, Allahabad and it was transferred to the First Additional Sessions Judge, Allahabad, who rejected the same on the ground that the jurisdiction to entertain the application vests with the Court of Session at Gorakhpur and it is relevant to extract para 4 of the said decision:

"4.The local jurisdiction of the Judicial Magistrate (Special) Economic Offences, Allahabad, extends in view of the notification dated 16th September, 1982 beyond the district of Allahabad in which this Court is directed to hold its sitting. The reference to the Court of Session mentioned in Section 14(3) aforementioned at the end, is to be construed as meaning the Court of Session exercising jurisdiction in relation to the district in which such Judicial Magistrate



ordinarily holds the Court. The express said district appearing in Section 14(3) denotes obviously the district referred to earlier, namely, the district in which the Judicial Magistrate thus appointed ordinarily holds the Court. The Court below has erred in overlooking this significance of the expression the said district appearing at the fag end of the sub-section. This expression in the context may not denote any district other than the district talked about in the opening portion of the sub-section, namely, the district in which the Judicial Magistrate concerned is ordinarily to hold the Court. There is nothing to suggest to the contrary in the notification mode under Section 11(1) under which this Court has been created. This appeal also to common sense. Where, as in this case, the case is triable before the Judicial Magistrate (Special) Economic Offences, Allahabad, the Legislature may not have intended that, upon the application being rejected by the Trial Court, the accused has to go round the State making his application to the Court of Session situate in far flung areas where he may have sought the remedy had there been no Special Court created. The Court of Session conferred with the powers in relation to such a case is the Court of Session of the district Allahabad where the Court thus created is ordinarily to have it sitting."

The High Court of Allahabad has allowed the appeal and directed the First Additional Sessions Judge, Allahabad to hear and dispose of the application on merits.

9.4. In **Prafulla Chandra Ghadei v. Union of Republic of India [1997 Cri LJ 201]**, facts of the case would disclose that the petitioner therein was arrested in connection with S.P.E. Case No.44/94 and he moved an application before the Additional Chief Judicial Magistrate, Bhubaneswar and it was rejected and therefore, he filed application for bail before the II Additional Sessions Judge, Bhubaneswar. During the course of hearing, objection as to the jurisdiction was raised and the II Additional Sessions Judge, Bhubaneswar held that since the occurrence took place within Tomka Police Station which comes within the jurisdiction of the Sessions Division of Cuttack, the II Additional Sessions Judge, Bhubaneswar has no territorial jurisdiction to try the case. The learned Single Judge has considered the scope of Sections 11, 14 and 177 CrPC and it is relevant to extract para 4 of the said decision:

"4. There is no dispute that the Additional Chief Judicial Magistrate, Bhubaneswar, in the district of Puri, has been established as a Special Court in exercise of power conferred by the Proviso to Sub-section (1) of



Section 11 of the Code for the purpose of trial of Delhi Special Police Establishment (C.B.I.) cases under the Delhi Special Police Establishment Act, 1946, having jurisdiction throughout the State. There is no dispute that the Additional Chief Judicial Magistrate, Bhubaneswar, comes within the purview of the Court of Session of Puri Sessions Division. In view of the notification under Section 11(1). Proviso, there cannot be any doubt that the Additional Chief Judicial Magistrate, Bhubaneswar, has the jurisdiction to try cases investigated under the Delhi Special Police Establishment Act, 1946, even in cases where the occurrence has taken place outside the ordinary territorial jurisdiction of the Additional Chief Judicial Magistrate, Bhubaneswar. The question arises as to which would be the competent Sessions Judge to try the offences and to which Sessions Court the case should be committed, where the offence investigated by the C.B.I. is exclusively triable by the Court of Sessions. There is no difficulty in relation to such offences committed within the territorial jurisdiction of Puri Sessions Division, but the difficulty arises in respect of such offences committed beyond the ordinary territorial jurisdiction of the Sessions Judge, Puri. In the present case, it is submitted by the learned Public Prosecutor appearing on behalf of the C.B.I, that in view of the provision contained in Section 177 of the Code, the Sessions Judge, Puri has no territorial jurisdiction to try the offences."

The Single Judge of Orissa High Court has taken note of the decision of the Madras High Court in **Valia Ambu Podaval v. Emperor [1907) ILR 30 Mad 136]** and subsequent decision of the Madras High Court in **Public Prosecutor v. Sadananda Patnaik [(1912) 13 Cri LJ 850]** and also taken note of the decision in **Babu Khan case** and after taking note of the various decisions as well as factual aspects held as follows:

"8. The interpretation given by the Division Bench decision of Patna High Court in ILR (1983) Pat 689 appears to be against the plain and ordinary meaning of Section 14(3) of the Code. For the purpose of facilitating construction omitting the unnecessary words for the purpose of this case, the relevant portions of Section 14(3) can be extracted as follows:-

... Where the local jurisdiction of a Magistrate...extends to an area beyond the district...i in which he ordinarily holds court, any reference in this Code to the Court of Session ...shall, in relation to such Magistrate throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of



Session...exercising jurisdiction in relation to the said district....

A plain reading of the aforesaid relevant provision clearly indicates in plain and simple terms the intention of the legislature. It is evident that the Court of Session as referred to in sub-section (3) referred to the Court of Session exercising jurisdiction in relation to the district in which the concerned Magistrate ordinarily holds Court. The expression "...exercising jurisdiction in relation to the said district" has reference to the expression "...the district in which he (meaning thereby, the Magistrate) ordinarily holds court". The emphasis is on the expression "said district" which is relatable to the expression "district" in the earlier part and not to "any area beyond the district" as construed by the Patna High Court. The interpretation of the Patna High Court would have been correct if the expression "such area" would have been used instead of the expression "such district". Having regard to the plain meaning of the expression used in sub-section (3) of Section 14, express my inability, with respect, to agree with the views expressed in the aforesaid Division Bench decision of the Patna High Court. To interpret otherwise, would be stretching the plain language of sub-section (3).

In the decision reported in 1995 Cri LJ 3394 (Raj) (supra), by referring to the expression "... unless the context otherwise requires", it was interpreted that reference to the Court of Session was in relation to the relevant Court of Session having territorial jurisdiction over the matter. In my opinion, the aforesaid construction put by the Rajasthan High Court is not acceptable. On the other hand, as clear from Section 177 of the Code itself, the provision contained therein is to be followed ordinarily. However, when exceptions are provided in some other provisions of the Code, the principle envisaged in Section 177 is not to govern the place of trial. In my considered opinion, Section 14(3) has carved out a niche for itself and should be considered as an exception to the provision contained in Chapter XIII including Section 177 of the Code. As already indicated, even when Section 14(3) was not there in the Statute Book, many High Courts had, while considering the question of appeal or revision, held that the appeal or revision should be filed before the Sessions Court within whose jurisdiction the Court of such Magistrate was situate. ***I am in respectful agreement with the views expressed on this score by the decisions reported in (1907) ILR 30 Mad 136; AIR 1918 Lah 196 : (1920 (19) Cri LJ 310); AIR 1952 All 193 : (1952 Cri LJ 387); AIR 1953 Madh Bha 156: (1953 Cri LJ 1027); 1962(1)***



Cri LJ 670 (Raj), (1973) 75 Punjab LR 541 and 1980 Jab LJ 586, as representing the correct law, which appears to have received the legislative sanction by introduction of Section 14(3) by Act 45 of 1978. If for the purpose of appeal or revision, such Magistrate is subject to the jurisdiction of the Sessions Court within whose territorial jurisdiction the Magistrate holds Court or is situate, the same principle should be extended to question of commitment to Court of Session for trial. It is difficult to envisage that it is the intention of the legislature that one Sessions Court would be trial Court to which the case will be committed by the Magistrate, whereas another Sessions Court would be the Revisional Court before which revisions against orders of such Magistrate (including the order of commitment, if need be) will be filed". (emphasis supplied.)

The Single Judge of Orissa High Court held that the District Court at Puri is the Court of Sessions in respect of the jurisdiction of the Additional Chief Judicial Magistrate is concerned and therefore, directed the II Additional Sessions Judge at Bhubaneswar to dispose of the application merits.

9.5. In yet another decision in **Shri Indrajeet Roy v. Republic of India [1998 II OLR 424]**, the case registered by Bidanasi Police Station in Crime No.64 of 1997 under Sections 498A, 307 r/w. 34 IPC was transferred to CBI, which registered a case and forwarded to the Court of Special Magistrate, CBI cum Additional Judicial Magistrate, Bhubaneswar and final report was filed. The primordial submission made was that since the occurrence took place at Cuttack (Town), the Courts at Bhubaneswar have no jurisdiction to try the case. After considering the elaborate arguments, in para 13, it was observed that **"Thus the above quoted provision in Section 14(3) CrPC stands as an exception to the provision in Section 177 CrPC. According to the above discussion the Court of Session at Bhubaneswar is the Sessions Court and any case required to be committed by the Special Magistrate is to be committed to the Court of Sessions Judge, Khudra of Bhubaneswar in accordance with the provision under Section 14(3) CrPC"**.

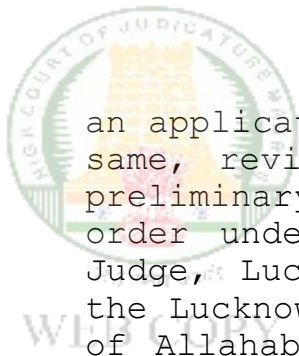
9.6. In **State v. Francis Mannaly [(1999) 2 KLJ 349]**, a criminal case was registered suo motu against the order passed by the Sessions Court at Palakkad. The facts of the case would disclose that the Court of Judicial Magistrate First Class, Tiruvananthapuram was appointed as the Special Court for trial of mark list cases and it was disposed of. Challenging the same, appeal was filed before the Sessions Court at Palakkad. A reference was sought whether the appeal could be preferred before the Court of Sessions, Palakkad, instead of Court of Session, Thiruvananthapuram.

It was argued that since a part of cause of action alleged has arisen within the jurisdiction of the Court of Session, Palakkad, the said Court has got jurisdiction to entertain and hear the appeal preferred against the judgment passed by the Special Court, Thiruvananthapuram. Reliance was also placed upon the decision in **Jalaluddin v. State of Bihar [ILR 1982 Vol. 62]**. The Single Judge of Kerala High Court after taking into consideration Sections 11, 13 and 14 CrPC, held as follows:

"9. In this case, it is the common case that the Special Magistrate held meeting and disposed of the case within the jurisdiction of the Court of Sessions, Thiruvananthapuram and not within the jurisdiction of the Court of Session, Palakkad. Therefore, the Sessions Court which has got jurisdiction to entertain and dispose of the appeal is the Sessions Court, Thiruvananthapuram and not the Sessions Court, Palakkad. Under the circumstances, the finding arrived at by the Sessions Court, Palakkad in this case that the Court of Session, Palakkad has got jurisdiction to entertain and dispose of the appeal is illegal and unsustainable.

11. Therefore, I find that the Court of Sessions, Palakkad has no jurisdiction under S.14(3) of the Cr.P.C. To entertain and dispose of the appeal preferred against the judgment passed by the Judicial First Class Magistrate's Court-V (Special Court for trial of mark list cases), Thiruvananthapuram by holding sitting within the jurisdiction of the Sessions Court, Thiruvananthapuram. But as the special case in the interests of justice and for the expeditious disposal of the Crl.Appeal No.123/93 now pending before the Sessions Court, Palakkad this Court confers Special Jurisdiction on the Sessions Court, Palakkad to hear and dispose of the appeal. The Sessions Court, Palakkad is directed to dispose of the appeal very expeditiously at any rate within two months from the date of receipt of the records from this Court."

9.7. In **Mukhtar Ansari v. Central Bureau of Investigation [2000 Cri LJ 68]**, the case which was registered by Bhelupur Police Station in Varanasi City was ordered to be transferred to CBI, which in-turn registered a case at Lucknow. Charge Sheet was also filed on the file of the Court of Special Judicial Magistrate (Environmental Protection and CBI), Lucknow. The Special Judicial Magistrate, Lucknow committed the case for trial to the Court of XIV Additional Sessions Judge, Lucknow and was pending in the Court of XIV Additional Sessions Judge, Lucknow. The accused therein filed



an application for discharge and it was rejected and challenging the same, revision was filed before the High Court of Allahabad. The preliminary objection raised by the Registry was that since the order under challenge has been passed by the Additional Sessions Judge, Lucknow, revision application is entertainable only before the Lucknow Bench of Allahabad High Court. The learned Single Judge of Allahabad High Court had considered the said issue elaborately and also taken note of Sections 11 and 177 CrPC and various decisions and it is useful to extract the following portions of the said judgment:

"14. Now, a pertinent question may arise as to which would be the Court of Session to which the case may be committed for trial in respect of an offence which has taken at Varanasi but the charge sheet after investigation has been submitted by the C.B.I, before the Special Magistrate at Lucknow. This aspect of the matter has not gone unnoticed by the Legislature. A specific provision has been made in Sub-section (3) of Section 14 of the Code. It provides that where the local jurisdiction of a Magistrate, appointed under Section 11, extends to an area beyond the district in which he ordinarily holds Court, any reference in the Code to the Court of Session, shall, in relation to such Magistrate, through the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, exercising jurisdiction in relation to the said district. Section 14(3) has carved out a niche for itself and should be considered as an exception to the provisions contained in Section 177 of the Code. See, Prafulla Chandra Ghadei v. Union of Republic of India 1997 Cri LJ 201 (Orissa H.C.) In view of this provision the Session Judge of Lucknow shall exercise all the powers in respect of Sessions Division, Varanasi as the Special Magistrate which is empowered to take cognizance of the offence is located/stationed at Lucknow. From the above provisions, therefore, it is clear that even though the offence in the instant case came to be committed at Varanasi which is not amongst one of the 12 districts over which Lucknow Bench of this Court has exclusive territorial jurisdiction, it shall have jurisdiction by reason of the fact that a Special Court in whose local jurisdiction Varanasi also falls is located at Lucknow. Of necessity, in view of provision of Section 14 (3) of the Code, the Special Magistrate has to commit the case for trial by the Court of Session at Lucknow. It is on account of the location of the Court of Special Magistrate at Lucknow, that the Sessions Judge, Lucknow is seized of the matter, even though it relates to another sessions division, outside his local jurisdiction.



19. In the conspectus of the analysis of facts and the legal position, I would constrict myself within the narrow parameters within which the issue arises and negative the plea taken by Sri Wali that the revision application is maintainable before this Court. In the backdrop of the legal position, mentioned above, my firm view of the matter is that an order passed by an inferior criminal Court stationed at Lucknow or in any one of the twelve districts, which exclusively come within the jurisdiction of the Lucknow Bench, shall lie to the Lucknow Bench and not before this Court. The revision application should have been presented before the Lucknow Bench. It is, therefore, directed that the Registry of this Court shall immediately transmit the record of this revision-application along with instant order to Lucknow for being placed before the appropriate Bench".

9.8. In **Mohan Baita and Ors. v. State of Bihar and Anr.** [AIR 2001 SC 1490], a case was registered by Nath Nagar Police Station in the district of Bhagalpur for the commission of offences under Sections 304-B, 498A, 120-B and 406 IPC and after investigation, it culminated into a Final Report. The accused therein had approached the High Court of Patna assailing the territorial jurisdiction to try the offence under Section 304-B IPC. It was argued on behalf of the appellant/accused that since the alleged offence under Section 304-B IPC took place at Jahanaganj in the State of Uttar Pradesh, the Court at Bhagalpur lacks territorial jurisdiction to try and same. The Hon'ble Apex Court having found that series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria and do not find any infirmity with the conclusion of the High Court in applying Section 220 CrPC and arrived at the conclusion that the jurisdiction of the Magistrate at Bhagalpur cannot be held to have been ousted for the offence under Section 304-B IPC.

9.9. In sum and substance, it is the submission of the learned Special Public Prosecutor for CBI that Section 14 CrPC carves out an exception to Section 177 CrPC and in the light of various pronouncements relied above, it is not mandate to hold the trial only in the place where the offence was committed and also drawn the attention of this Court to Sections 462 and 465 CrPC and would submit that unless the said error and opinion of the Court had resulted in failure of justice and in determining the same, where the objection should have been raised at the earliest stage not vitiated. It is also the submission of the learned Special Public Prosecutor for CBI that in the light of the fact that as per the notifications cited above, the Court of Additional Chief Judicial Magistrate, Madurai is entrusted with the case pertaining to Special Police Establishment other than Prevention of Corruption Act cases



and that the two cases for which Charge Sheets have been laid are exclusively triable by Sessions Court, the said Court is to commit the cases to the Principal District and Sessions Judge at Madurai and the said Court shall proceed further in accordance with law.

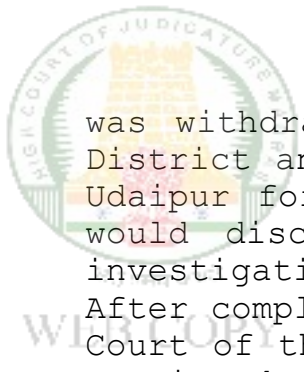
10. *Per contra*, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the second respondent / State of Tamil Nadu and also acting as Amicus Curiae would submit that the Additional Chief Judicial Magistrate, Madurai to try the offences charged by the Special Police Establishment cases and other than Prevention Act cases have not been constituted in terms of Proviso to Sub-Section (1) of Section 11 CrPC. The Additional Public Prosecutor has also drawn the attention of this Court to Section 12 and 14, especially Sub-Section 3 to Section 14 CrPC and would submit the term / word "relation to the said district" r/w. Section 177 CrPC which relatable to the district of Thoothukudi where the offences have been committed and in the light of the fact that the jurisdiction of the Additional Chief Judicial Magistrate, Madurai before whom Charge Sheets have been laid by CBC is also having jurisdiction in respect of Thoothukudi District there may not be any difficulty in committing the cases to the Court of Principal District and Sessions at Thoothukudi.

11. The learned Additional Public Prosecutor appearing for the State / Amicus Curiae has placed reliance upon the following judgments :

11.1. In **Jalaluddin @ Jalal v. The State of Bihar [1984 0 BBCJ 238]**, a Division Bench of Patna High Court has taken note of the fact in respect of the offences committed under Motor Vehicles Act, the Magistrate is power to try cases throughout the State and the appeal against the conviction will lie to the Sessions Judge, within whose jurisdiction the offence was committed and not to one where the Special Magistrate hold his seat.

11.2. A Single Judge of the High Court of Rajasthan, in the decision in **Ghanshyam Acharya v. State of Rajasthan [(1990) 1 RLW 484]** has followed the Division Bench judgments of Rajasthan High Court in the **State of Rajasthan v. Babu Khan (cited supra)** and **Bharat Singh v. State of Rajasthan [DB Cr.Revision Petition No.5 1980 of RHC]** and held that Sessions Judge has jurisdiction to hear the revision as the offence had been committed within his jurisdiction.

11.3. In **Radhesh Chandra v. The State of Rajasthan and Others [1995 Cri.L.J. 3394(Rajasthan)]** a petition under Section 482 CrPC r/w. Section 407(1) CrPC for recalling the High Court order dated 19.09.1994, passed in a miscellaneous petition, whereby the Sessions Case in FIR No.150/91, Amba Mata Police Station, Udaipur, which was committed by the learned Additional CJM, SPE Cases, Jaipur



was withdrawn from the file of the learned Sessions Judge, Jaipur District and transferred to the file of the learned Sessions Judge, Udaipur for trial in accordance with law. A perusal of the facts would disclose that a writ petition was filed for transfer of investigation and accordingly, it was transferred from CBCID to CBI. After completing the investigation, CBI has filed the challan in the Court of the learned Additional CJM, SPE Cases, Jaipur, who in-turn committed the case to learned Sessions Judge, Jaipur and challenge was to the said order. It was contended on behalf of CBI that since the Court of Additional CJM, Jaipur is conducting inquiry and trial in respect of the cases investigated by the Delhi Special Police Establishment having jurisdiction for whole of the Rajasthan and that under Section 14(3) CrPC, he did not commit any illegality in committing the case to the Court of the learned Sessions Judge, Jaipur District and it is relevant to extract Para 13 of the said judgment:

"13. Now, we come to the crucial controversy between the parties. Section 7(1) of the Code declares that every State shall be a sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts. In Rajasthan, the State Government has established sessions divisions in every revenue district and the Sessions Judge, Udaipur and the Sessions Judge, Jaipur District have their local jurisdiction, co-extensive with the revenue district of Udaipur and Jaipur District excluding the Jaipur city i.e. the Jaipur District (Rural) respectively. By a State Amendment vide Rajasthan Act 10 of 1977, Sub-section (1-A) has been inserted in Section 11 of the Code, which declares that the State Government may likewise establish as many Courts of Judicial Magistrates of the First Class and the Second Class in respect to particular cases or to a particular class or particular classes, or in regard to cases generally, in any local area. This amendment has come into effect from 5.3.1977. Section 14 Cr.P.C. deals the local jurisdiction of Judicial Magistrates. The State Government vide Notification No. F4717/Judl/76 dated 22.8.1978 in exercise of its powers under Section 11(1)(a) Cr.P.C. after consultation with the Rajasthan High Court has established a Court of A.C.J.M., Jaipur District, Jaipur for enquiry, trial and committing the cases to the Sessions Court in respect of the cases investigated under the Delhi Special Police Establishment Act having jurisdiction for whole of the Rajasthan State. It is needless to mention that C.B.I, is a creature of the Delhi Special Police Establishment Act. Thus, the A.C.J.M., S.P.E. cases, Jaipur District, Jaipur is a special Court of a Judicial Magistrate of a First Class to enquire, try or commit the case to the Sessions Court in respect of the



cases investigated under the Delhi Special Police Establishment Act having its local area extending to the whole of the Rajasthan State. Section 14(3), which has been inserted by Section 5 of Cr.P.C. Act 1973, runs as under :

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"Section 14(3)-Where the local jurisdiction of a Magistrate, appointed under Section 11 or Section 13 or Section 18, extends to an area beyond the district, or the Metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Sessions, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Sessions, Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or Metropolitan area."

The learned Single Judge has followed the Division Bench judgment rendered by the Rajasthan High Court in the **State of Rajasthan v. Babu Khan [D3 Cr.Ref.No.1 of 1981 of RHC]** and held that the Sessions Judge, Udaipur has the jurisdiction to try the case because the offence was admittedly committed within his local jurisdiction.

11.4. In **Premkumar and Others v. State of Kerala [(2008) 17 SCC 264]**, the Hon'ble Supreme Court of India has considered the factors required regarding the place of inquiry and trial. Facts of the case would disclose that an unnatural death was registered by the Courtallam Police Station in Crime No.64 of 2003 under Section 174 CrPC. The father of the deceased also lodged a complaint with Kadakkavoor Police Station in the State of Kerala, based on which an F.I.R. was registered for the commission of offences under Section 304-B r/w. 34 IPC. The appellant/accused filed an application under Section 482 CrPC before the High Court of Kerala by contending that Kadakkavoor Police Station in the State of Kerala has no jurisdiction to conduct investigation in view of Section 177 CrPC. The Hon'ble Supreme Court has considered the scope and purport of the word "ordinarily" occurring in Section 177 CrPC and observed as follows:

"11.The word, 'ordinarily' occurring in Section 177, Cr.P.C. must be given its natural meaning. The provisions contained in Section 178 and other provisions would be attracted when Section 177 cannot be given effect to. These provisions in the Code governing the field emanate from the doctrine that all crimes are local. Investigation into a crime, the witnesses who are required to be examined for the purpose of proving the commission



thereof and other relevant factors which are required to be taken for consideration thereof lead to the aforementioned inference. For the purpose of finding out in regard to the place, where the enquiry or trial should be conducted, would be that the offence has taken place wholly or partly in the jurisdiction of one police station or wholly or partly in the jurisdiction of another police station and, thus, would depend upon the fact situation obtaining in each case.

13. So far as the jurisdiction of Kadakkavoor Police Station vis-à-vis the provisions of Section 177, Cr.P.C. is concerned, we may notice that in the case of *Y. Abraham Ajith & Ors. v. Inspector of Police, Chennai & Anr. (2004) 8 SCC 100* this Court in a case arising under Sections 498A and 406 as well as Section 4 of the Dowry Prohibition Act, 1961 held as under :

"9. "All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the code. As observed by the Court in *Purushottamdas Dalmia v. State of W.B. AIR 1961 SC 1589 : (1962) 2 SCR 101*, *L.N. Mukherjee v. State of Madras AIR 1961 SC 1601 : (1962) 2 SCR 116*, *Banwarilal Jhunjhunwala v. Union of India AIR 1963 SC 1620 : 1963 Supp.(2) SCR 338* and *Mohan Baitha v. State of Bihar (2001) 4 SCC 350* exception implied by the word "ordinarily" need not be provided by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same court. No such exception is applicable to the case at hand."

The Hon'ble Supreme Court though held that the FIR registered by Kadakkavoor Police Station, State of Kerala is maintainable, has transferred the investigation to the file of Courtallam Police Station, Tamil Nadu, in the interest of justice with further directions.

12. The learned Additional Public Prosecutor appearing for the State by placing reliance on the above cited various pronouncements, mainly the decision rendered by the Rajasthan High Court in **Babu Khan case** (cited supra) would submit that in the light of the said pronouncements, the decisions relied on by him are distinguishable. It is the further submission of the learned



Additional Public Prosecutor that admittedly, the offences were committed in Thoothukudi District and all the prosecution witnesses are hailing in that district and therefore, it is most convenient to hold the trial before the Sessions Court at Thoothukudi and prays for appropriate orders.

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13. This Court has considered the submissions made and also perused the entire materials as well as the decisions relied on by the learned Special Public Prosecutor appearing for CBI and the learned Additional Public Prosecutor appearing for the State.

14. Let this Court deal with the preliminary submission made by the learned Additional Public Prosecutor appearing for the State / Amicus Curiae as to the non-compliance of proviso to Sub-Section (1) of Section 11.

15. It is relevant to extract Notification No.157/1976 dated 09.09.1976:

"ROC No.5890/1975 appointment of Chief Judicial Magistrate of the Dist. as Addl. C.J.M. of Another District.

Notification No.157/1996

Sub: Registrar - Apppointment of Addl. Chief Judicial Magistrate for trial of offences charged by the Special Police Establishment other than offences u/s.6(1) of the Crl.Law Amendment Act 1952 - Reg.

Ref: 1. Proceedings Roc.No.14874/74-B2 dt. 27.11.74
2. Govt's Letter No.80090/Cts.II/75-1, Home dated 29-7-75
3. Govt's Letter No.80090/Cts.II/75-16, Home dated 20-7-76.

In supercession of the orders issued in the proceedings of the High Court first cited, the following notification is issued.

In exercise of the powers conferred under Section 12(2) of the Code of Crl. Procedure 1973 (Act 2 of 1974) the High Court hereby appoints the Chief Judicial Magistrate mentioned in Column (i) of the Table below to be the Additional Chief Judicial Magistrates for the areas comprising of the districts mentioned in the corresponding entries in column (2) thereof, to try offences charged by Special Police Establishment other than those under Section 6(1) of the Criminal Law Amendment Act, 1952.

The Chief Judicial Magistrate, appointed as Additional Chief Judicial Magistrate for other than Districts shall exercise powers

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of First Class Magistrates exclusively for the trial of the Special Police Establishment cases as aforesaid and arising in those districts.

TABLE. I

1.The Chief Judicial Magistrate, Chingleput.	...South Arcot & North Arcot
2.The Chief Judicial Magistrate, Tiruchirappalli	...Thanjavur and Pudukottai
3.The Chief Judicial Magistrate, Madurai.	...Ramanathapuram, Tirunelveli and Kanyakumari.
4.The Chief Judicial Magistrate, Coimbatore.	...Salem and Dharmapuri.

The Tenth Metropolitan Magistrate, Egmore, Madras will continue to try the offences charged by the Delhi Special Police Establishment and arising within the Metropolitan area of Madras.

High Court of Judicature
at Madras.

Sd/- T.Perumal,
Registrar.

Dt. 9th Sept. 1976.

16. In terms of Notification No.157/1976 dated 09.09.1976, in reference column, two letters of the Government dated 29.07.1975 and 20.07.1976 had been referred. The Registry of the High Court of Madras, in exercise of powers conferred under Section 12(2) CrPC had appointed Chief Judicial Magistrate, Madurai as the Additional Chief Judicial Magistrate, exclusively for the trial of Special Police Establishment cases in respect of Ramanathapuram, Tirunelveli and Kanyakumari District. Ofcourse, the said notification also speaks about the appointment of Additional Chief Judicial Magistrate at Chingleput, Tiruchirappalli, Coimbatore for trial of cases in respect of South Arcot, North Arcot, Pudukottai, Salem and Dharmapuri District.

17. In the subsequent notification dated 09.04.2003, the Chief Judicial Magistrate, Madurai, in exercise of powers conferred by Sub-Section (1) of Section 14 CrPC, the Chief Judicial Magistrate had specified the local area in respect of the Court of Chief Judicial Magistrate, Madurai for trial of Vigilance and Anti Corruption cases and other cases which include CBI, Chennai. In the light of the Notification No.157/1976 which refers to the communication of the Government, it cannot be said that the State Government or High Court, without consultation had constituted the said Court. Therefore, the preliminary objection of the learned Additional Public Prosecutor / Amicus Curiae in this regard is liable to be rejected.



18. Now coming to the moot question, namely, Whether the committal of the cases in RC0502020S0008 and RC0502020S0009 on the file of CBI for which Charge Sheets / Final Reports have been laid on the file of the Court of Additional Chief Judicial Magistrate at Madurai, be committed to the Principal District and Sessions Court at Thoothukudi or the Principal District and Sessions Court at Madurai ? and in which Court, the Sessions Trial is to be held ?

19. The scope of Section 177 of the Criminal Procedure Code 1898 came up for consideration before the Division Bench of Punjab High Court in the decision in **Nikka Singh v. The State [1952 Cri. L.J. 775]**. Facts of the said case would disclose that there was a murder reference before the Division Bench of Punjab High Court, in the light of the fact that the Trial Court had convicted the concerned accused under Section 302 r/w. 149 and allied offences and also ordered that sentences were ordered to run concurrently. The primordial submission made was that the High Court has no jurisdiction to decide the appeal for the reason that the village Bhudar where the crime was committed ceased to form part of the Punjab State and has been included in the Patiala and East Punjab States Union, the Punjab High Court has also jurisdiction to decide the murder reference. The Division Bench of Punjab High Court, in that context, had dealt with the scope of Section 177 CrPC 1898 and in paragraphs 18 and 24 observed as follows:

"18. It is a general principle of law that all crimes are local. In other words, the jurisdiction to try a person for an offence depends upon the crime having been committed within the area of such jurisdiction. Section 177 of the Criminal P.C. Enacts:-

"Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed."

Section 177 of the Criminal P.C. embodies the ordinary or general rule of jurisdiction. The word "ordinarily" occurring in S.177 of the Criminal P.C. means "except in the cases provided hereinafter to the contrary." The rule in S.177 of the Criminal P.C. should, therefore, be read subject to any special provision of law which may modify it. Counsel agree that the exceptions contained in the Criminal P.C. do not govern the point in controversy in these proceedings.

.....
24. More recently this very point was examined by the Calcutta High Court in "EMPEROR V. SAYERUDDIN", ILR [1938] 2 Cal. 357. In that case it



invalidated by reason of the transfer of the place where the offence was committed to another District subsequent to the taking of cognizance but prior to the commitment.''

The Division Bench of Punjab High Court ultimately held that the said Court has jurisdiction to decide the appeal.

20. In **Jagannath Sonu Parkar and Others v. The State of Maharashtra and another [AIR 1963 SC 728 (CB)]**, the Government of Maharashtra promulgated a notification in exercise of the powers conferred by Section 14 of the Code of Criminal Procedure 1989 (as amended by Bombay Act XXIII of 1951 in its application to the State of Maharashtra) appointing a Special Judicial Magistrate having jurisdiction over the area comprising Greater Bombay and Ratnagiri District, where the offenders were alleged to have conspired and offences were committed and conferred upon him all the powers of a Presidency Magistrate in respect of the trial in a conspiracy case, commonly known as the **Deogad Gold Seizure Case**. The Government of Maharashtra also accorded sanction for initiation of criminal proceedings against the petitioners in the said case. The petitioners applied to the Sessions Magistrate that they be tried at Deogad or at Ratnagiri and it was rejected and then the petitioners/accused moved the High Court of Bombay praying for an order that the case against them be transferred for trial to the Court of some Judicial Magistrate at Deogad or at Ratnagiri competent to try the case; or in the alternative the petitioners prayed that the Special Magistrate be directed to try the said case either at Deogad or at Ratnagiri, at which place all facilities were available. The High Court dismissed their applications. Thereafter, the petitioners/accused moved the Hon'ble Supreme Court by filing a Writ Petition under Article 32 of the Constitution of India for quashing the notification issued by the Government of Maharashtra or in the alternative to declare Section 14 CrPC as amended by the Bombay Act 23 of 1951 ultra vires and void and for a consequential order that the case be heard at Deogad or at Ratnagiri in the State of Maharashtra. The Hon'ble Supreme Court, on an exhaustive analysis of the materials placed and arguments advanced, has taken note of the definition "case" occurs in Section 14 CrPC and in para 5 observed that "Under S.14 the State Government is competent to appoint a Special Judicial Magistrate in respect of 'any particular case or a particular class or classes of cases or in regard to cases generally in any local area'. The words used in S.14 must mean a case which is either pending or which may be instituted after the date of the constitution of the Special Magistrate". The Hon'ble Supreme Court had also dealt with the alternative prayer made by the petitioner for directing the Special Magistrate to hold the trial either in Deogad or at Rathnagiri and in Para 6 observed as follows:



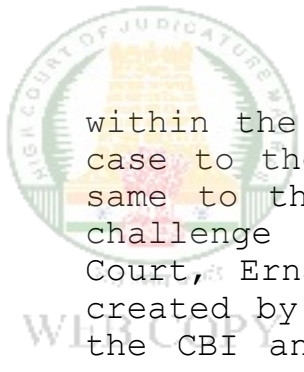
"6... Under S.9(2) of the Code of Criminal Procedure the State Government is required to direct at what place or places the Court of Sessions shall ordinarily hold its sitting, but if, in any particular case, the Court of Sessions is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the Sessions division, it may with the consent of the prosecution and the accused, sit at place for the disposal of the case or the examination of any witness or witnesses therein. There is, however, no similar provision in respect of the sittings to be held by Magistrates. The Special Judicial Magistrate Mr.Gehani having the power therefore to sit at any place within his local areas as defined by the terms of his appointment, this Court cannot speculate as to what place Mr.Gehani will function in the exercise of his jurisdiction. The question is one for his discretion."

It was further observed in the said paragraph that

"It cannot be urged by the petitioners that the trial at Bombay is inconvenient to them and may prejudice a fair trial. It is true that under the Code of Criminal Procedure "every offence shall ordinarily be enquired into and tried by a Magistrate of the local area in whose jurisdiction it was committed," but the charge in this case against the accused is in respect of a conspiracy..... and other places to commit offences under the Sea Customs Act and the Foreign Exchange Regulation Act..... The State has having regard to the special circumstances constituted a Special Magistrate, as it was entitled to and the Notification does not even suggest the place where the Magistrate is to hold his sittings. The ground of inconvenience in support of the plea of discrimination cannot therefore be sustained."

21. In the **Superintendent of Police v. Shri Firozuddin Basheeruddin [1993 Cri LJ 2775 (Kerala DB)]**, the facts of the case would read that a case in Crime No.229/89 was registered by Kasaragod Police Station. It is also known as "Hamsa Murder case". Subsequently, the case was investigated and Charge Sheeted by CBI in pursuant to the notification issued by the Government of India under Section 5 of the Delhi Special Police Establishment Act, 1946 with the consent of the State Government as provided in Section 6 of the said Act. The Charge Sheet was laid before the Court of Special Magistrate at Ernakulam in the State of Kerala and the said Court has been established for dealing with cases investigated by CBI

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within the State of Kerala. The Special Magistrate committed the case to the Sessions Court at Ernakulam, who in-turn made over the same to the II Additional Sessions Court, Ernakulam. CBI made a challenge by submitting that the 3rd and 4th Additional Sessions Court, Ernakulam are the two wings of the Special Sessions Court created by the State Government for trial of cases investigated by the CBI and as such, the 2nd Additional Sessions Court, Ernakulam cannot try the case. The Hon'ble Mr. Justice K.T. Thomas, (the Hon'ble Judge then was), authoring the verdict observed as follows:

"7. The special court of Judicial Magistrate of First Class has been established at Ernakulam by the State Government in consultation with the High Court as per its powers under Section 11(1A) of the Code in respect of cases charge sheeted by the CBI. The said court has statewide jurisdiction. The final report in this case was submitted by the CBI before that court and hence it was that court which held committal proceedings in the case.

8. Chapter XII of the Code consists of provisions relating to jurisdiction of the criminal courts. Normally, a case can be tried only by a court within whose local jurisdiction the offence was committed. This principle has been recognised in Section 177 of the Code. Sections 178 to 184 deal with different aspects of the said general rule, such as cases in which the offence was committed partly in one local area and partly in another etc. But the basic principle stands unaltered that ordinarily the case shall be tried by the court in whose local limits the offence was committed. The Supreme Court has observed in *Purushottamdas v. State of W.B.*, AIR 1961 SC 1589 : (1961) (2) Cri LJ 728):

"Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before court. It is therefore that it is provided in Section 177 that an offence would ordinarily be tried by a court within the local limits of whose jurisdiction it is committed."

10. Since it is not disputed that Government of Kerala has established the Special Sessions Court (3rd and 4th additional sessions courts at Ernakulam are the two wings of the said special court) with statewide jurisdiction for the trial of cases investigated by the CBI, it admits of no doubt that those additional courts have jurisdiction to try the present case. However, we are not now deciding the question whether, with the establishment of a court and by the issuance of a direction under Section 185 of the Code, the Kasaragod Sessions Court (within whose local limits the offence was committed) would



still have jurisdiction. It is not necessary to decide such a question in this context.

11. It follows from the above discussion that no sessions court, other than the 3rd and 4th additional sessions courts, Ernakulam has jurisdiction to try the cases investigated and charge sheeted by the CBI. (Without deciding the question whether courts having jurisdiction under Sections 177 to 184 of the Code would continue to have jurisdiction). Consequently, the 2nd additional sessions court, Ernakulam before which the case is now pending cannot try the "Hamsa murder case". The mere fact that the case was committed to the sessions court, Ernakulam is, therefore, insufficient to cloth the said sessions court with jurisdiction to try the case".

Ultimately, the Division Bench of Kerala High Court, in the said decision, had permitted transfer of the Sessions Case pending on the file of the 2nd Additional Sessions Court, Ernakulam be transferred to the Court of 4th Additional Sessions, Ernakulam for trial of the case as expeditiously as possible.

22. Now coming to the decisions relied on by the learned Special Public Prosecutor appearing for CBI, in the considered opinion of the Court, the judgment rendered by a Single Judge of Orissa High Court in **Prafulla Chandra Ghadei (cited supra)**, succinctly dealt with the very same issue. The Hon'ble Mr. Justice P.K. Mishra, (Hon'ble Judge then was), authoring the judgment, on an exhaustive analysis of statutory provisions and various pronouncements, had expressed disinclination to agree with the views of the Division Bench of Patna High Court in **Jalaluddin alias Jalal v. State of Bihar [ILR (1983) Pat 689]** as well as the decision rendered by Rajasthan High Court in **Radhesh Chandra v. State of Rajasthan [1995 Cri LJ 3394 (Raj)]**.

23. In **Premkumar and Others v. Stet of Kerala [(2008) 17 SCC 264]** (cited supra), the Hon'ble Supreme Court has taken note of it's earlier decisions in **Abraham Ajith v. Inspector of Police [(2004) 8 SCC 100]**, in para 9 observed as follows:

"9. 'All Crime is local, the jurisdiction over the crime belongs to the country where the crime is committed', as observed by Blackstone. A significant word used in Section 177 of the code is 'ordinarily'. Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in *Purushottamdas Dalmia v. State of West Bengal [AIR 1961 SC 1589]*, *L.N. Mukherjee v. State of Madras [AIR 1961 SC 1601]*, *Banwarilal Jhunjhunwala v. Union of India [AIR 1963 SC 1620]* and *Mohan Baitha v. State of Bihar [(2001) 4 SCC 350]*, exception implied by the word 'ordinarily' need not be limited to those specially provided for by the law and exceptions may be provided by



law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same Court. No such exception is applicable to the case at hand".

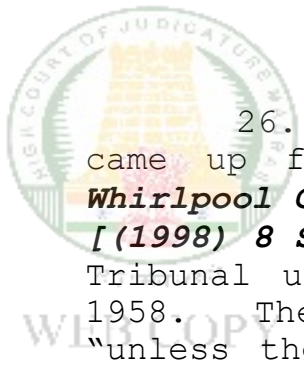
24. It is also to be noted that the jurisdiction of a Criminal Court to try cases normally relate to the offences committed. Useful reference can also be made to the decision rendered by the Hon'ble Supreme Court of India reported in **2020 [4] MLJ [Cri.] 169 [SC] : LNIND 2020 SC 423 [Kausjik Chatterjee V. State of Haryana and Others]**. Territorial jurisdictional issue is also dealt with in the said decision. It is relevant to extract paragraphs No.33 and 36 of the said decision:-

"33.In other words, the jurisdiction of a criminal Court is normally relatable to the offence and in some cases, to the offender, such as cases where the offender is a juvenile [Section 27] or where the victim is a women [the proviso to clause (a) of Section 26]. But Section 46[1] focuses on the offender and not on the offence.

....

36.It was specifically held by this Court in LNIND 1977 SC 87 [Raj Kumari Vijn V. Dev Raj Vijn [supra]] that the question of jurisdiction with respect to the power of the Court to try particular kinds of offences goes to the root of the matter and that any transgression of the same would make the entire trial void. However, territorial jurisdiction, according to this Court 'is a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused and the convenience of the witnesses who have to appear before the Court.'

25. The learned Additional Public Prosecutor for State / Amicus Curiae also drawn the attention of this Court to Section 2(j) CrPC which defines 'local jurisdiction' and would submit that Section 2 stipulates the term 'unless the context otherwise requires' and would submit that in the light of the said definition, local jurisdiction means the place in which the offence were committed and admittedly, the offences for which the accused were charged have been committed within the jurisdiction of the Sessions Division at Thoothukudi and in the light of the said notification, the Additional Chief Judicial Magistrate, Madurai for trial of SPE Cases, is having jurisdiction in respect of Thoothukudi District also and he can commit the case to the Court of Principal District and Sessions at Thoothukudi.



26. The phraseology 'unless the context otherwise requires' came up for consideration before the Hon'ble Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others [(1998) 8 SCC 1]** and it is relevant to extract the definition of the Tribunal under Section 2(1)(x) of the Trade and Merchandise Act, 1958. The said definition in its opening part uses the phrase "unless the context otherwise requires". In para 30 of the said decision, it was observed that "Unless the context otherwise requires" is meant to prevent a person from falling into the whirlpool of "definitions" and not to look to other provisions of the Act which, necessarily, has to be done as the meaning ascribed to a "definition" can be adopted only if the context does not otherwise require".

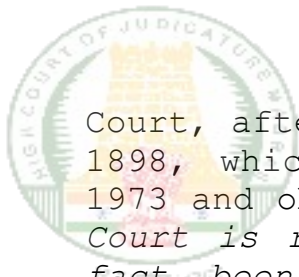
27. Now coming to the proviso to Sub-Section (1) to Section 11 r/w. Sub-Section (3) to Section 14 CrPC, it is not absolutely necessary rather a mandate that the cases be enquired into and tried in the local jurisdiction it was committed. The word / term "ordinarily" used in Section 177 CrPC is subject to proviso to Section 11(1) and Section 14(3) CrPC.

28. Under Section 15(1) CrPC, "Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate".

29. If the arguments of learned Additional Public Prosecutor /Amicus Curiae appearing for the State is accepted, then the Additional Chief Judicial Magistrate, Madurai, who is competent to try the cases pertaining to Special Police Establishment other than Prevention of Corruption Act, have to be under the general supervision and control of the Sessions Judge at Madurai, Viudhunagar, Tirunelveli, Thoothukudi and Kanyakumari. In the considered opinion of the Court, it is not the intention of the Legislature that the said official shall be under the control of very many Session Courts and it also lacks common sense and logic also.

30. Assuming for the sake of arguments that the trial of the cases came to be held in a wrong place, cannot affect the result of the same.

31. In **Bimal Chandra Banerjee v. Tez Chandra Banerjee [AIR 1918 Calcutta 305]**, pertaining to trial of a case in respect of Criminal Breach of Trust and a Rule was issued calling upon the District Magistrate to show case why the conviction and sentence should not be set aside on the ground that the Alipore Court had no jurisdiction to try the case. The Division Bench of Calcutta High



Court, after referring to Section 531 of the Criminal Procedure Code 1898, which is *parimateria* and equivalent to Section 464(1) CrPC 1973 and observed that "Section 531 CrPC 1898 is imperative and the Court is required to see in every such case whether there has in fact, been a failure of justice".

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32. In **Emperor v. Sayeruddin Pramanik [AIR 1989 Calcutta 159 (DB)]**, a reference was made by the Sessions Judge under Section 435 CrPC 1898 for quashing the commitment made to the Magistrate of Natore on the ground that since the place of occurrence is now within the local jurisdiction of the district of Patna and Bogra, he has no jurisdiction to try the case. It was held in the said decision that "subsequent transfer of territory did not deprive the Court in which the appeal had been filed of its jurisdiction to hear it". The Division Bench of Calcutta High Court having taken note of Section 531 CrPC 1898 observed that "Therefore, even if the committing Magistrate had not territorial jurisdiction at the time of the commitment and it were considered that he had on that account no jurisdiction to make the commitment, such want of jurisdiction would not be a good ground for setting aside the order of commitment". The reference was rejected and the trial will proceed from the stage which it has reached.

33. In **Nasiruddin Khan v. State of Bihar [AIR 1973 SC 186]**, similar view has been taken.

34. It is also useful to refer Section 465 CrPC:

"S.465. Finding or sentence when reversible by reason of error, omission irregularity.

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."



35. This Court, on an exhaustive analysis of the materials placed, arguments advanced and the decisions cited, is in respectful agreement with the decision of the Orissa High Court in **Prafulla Chandra Ghadei v. Union of Republic of India [1997 Cri LJ 201]**.

36. As already observed, there is no express mandate that the trial of the case shall always be held in whose jurisdiction the offence was committed. If it is the intention of the Legislature, then the provisions, namely, Sections 408 and 407 CrPC become otiose.

37. The Court place it on record, the valuable and effective assistance rendered by the learned counsels especially Mr.K.K.Ramakrishnan, Additional Public Prosecutor for the State as Amicus Curiae.

38. In the result, this Criminal Reference is answered as follows:

The Court of Additional Chief Judicial Magistrate, Madurai, before whom the CBI has filed Final Reports / Charge Sheets in respect of Crime Nos.RC0502020S0008 and RC0502020S0009, can commit the cases to the Court of Principal District and Sessions Judge at Madurai and after committal, the said Court shall proceed further in accordance with law.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Jvm

To

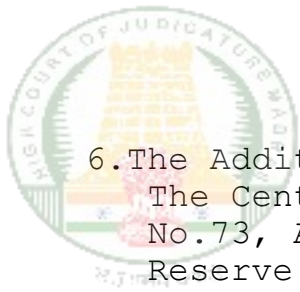
1.The Additional Registrar General,
Madurai Bench of Madras High Court, Madurai.

2.The Principal District and Sessions Judge, Madurai.

3.The Principal District and Sessions Judge,
Thoothukudi.

4.The Additional Chief Judicial Magistrate,
SPE Cases, Madurai.

5.The Chief Judicial Magistrate, Thoothukudi.



6.The Additional Superintendent of Police,
The Central Bureau of Investigation,
No.73, Athikulam Main Road,
Reserve Line Post, Madurai-625 014.

7.The Deputy Superintendent of Police,
The Crime Branch Crime Investigation Department (CBCID),
Tirunelveli.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-21857[F] dated
11/11/2020)

+1 CC to M/s.D. SIVARAMAN (RG) (SR-21951[F] dated 11/11/2020)

Order in
Crl.Ref (MD)No.1 of 2020
10.11.2020

SGS (CO)
TR(26.11.2020) 29P 10C