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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P. No. 9641 of 2018

Y.Humayun

... Petitioner

Vs.

1. The Registrar General
High Court of Madras
Chennai - 600 104.
 2. State of Tamil Nadu
Rep. By its Secretary to Government
Home Department
Fort St. George
Chennai - 600 009.
 3. The Chief Commissioner of Customs
Rajaji Salai
Chennai - 600 001.
 4. The Assistant Commissioner of Customs
Customs Divisional Office
No.4, First Lane Beach Road
Nagapattinam - 611 001.
- ...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus, directing the Respondents to implement the G.O. Ms. No. 1293 dated 24.05.1982 issued by the Second Respondent for conducting the trial of the Economic Offences before the Special Courts, Viz., Additional Chief Metropolitan Magistrate, EO-I and II, Egmore, Chennai and Additional Chief Judicial Magistrate, Madurai within a time frame.

For Petitioner : Mr. R.Sankarasubbu

For Respondents : Mr. B.Vijay (For R1)
Mrs. R.Anitha (For R2)
Mr. A.P.Srinivas (For R3 & R4)



ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

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The matter was heard through 'Video Conference'.

2. The Petitioner has come before this Court seeking to implement the Government Order in G.O. Ms. No. 1293, dated 24.05.1982 issued by the Home Department, Government of Tamil Nadu, by which three Special Courts, viz., two Additional Metropolitan Magistrates' Courts at Chennai (in the cadre of Chief Metropolitan Magistrate) and an Additional Court of Chief Judicial Metropolitan Magistrate at Madurai (in the cadre of Sub Judge) have been constituted.

3. The facts of the case is that the Petitioner was arrested at Pattukottai bus-stand and he is an accused for the offences said to have been committed under Sections 111(a) and 111(d) of the Customs Act, 1962 in C.C. No. 95 of 2017 on the file of the Judicial Magistrate-I, Thanjavur. Later, the Petitioner was released on bail and the matter is still pending before the Judicial Magistrate-I, Thanjavur.

4. At this juncture, the Petitioner has come before this Court stating that three Special Courts were constituted as per the G.O. Ms. No. 1293 dated 24.05.1982, and that the Judicial Magistrate, Thanjavur has got no jurisdiction and only Special Courts have got jurisdiction, which were constituted for effective and speedy prosecution of economic offences.

5. Heard Mr. R.Sankarasubbu, Learned Counsel for the Petitioner, Mr. B.Vijay, Learned Counsel appearing for the First Respondent, Mrs. R.Anitha, Learned State Government Counsel appearing for the Second Respondent, Mr. A.P.Srinivas, Learned Counsel appearing for the Third and Fourth Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

6. It is pointed out by Mr. R.Sankarasubbu, Learned Counsel for the Petitioner that for effective and speedy prosecution of economic offences, the Government of Tamil Nadu issued a G.O. Ms. No. 1293 dated 24.05.1982, by which three Courts have been constituted, two at Chennai and one at Madurai. In rest of the areas, no Special Court has been constituted to deal with economic offences. Therefore, the Judicial Magistrate Court, Thanjavur has got no jurisdiction and the case in C.C. No. 95 of 2017 filed against the Petitioner should be transferred to any Special Courts at Chennai, in view of the G.O. Ms. No. 1293 dated 24.05.1982.



7. However, Mr. B.Vijay, Learned Counsel appearing for the First Respondent submits that as per G.O.Ms. No. 1293 dated 24.05.1982, three Courts have been constituted and two Special Courts in the cadre of Chief Metropolitan Magistrate at Chennai and one Court in the cadre of Sub Judge at Madurai, apart from that, no other courts have been constituted. Therefore, Judicial Magistrate of concerned jurisdiction alone can entertain those cases to deal with the economic offences.

8. Mr. R.Sankarasubbu, Learned Counsel for the Petitioner submits that though the Government accepted the recommendations of the Law Commission for establishment of Special Courts for effective and speedy prosecution of the economic offences, only three Courts have been constituted and therefore, cases, which have been filed as economic offences, should be tried only by those Courts alone. Therefore, the case of the Petitioner has to be transferred to Special Courts at Chennai.

9. The said contentions of Mr. R.Sankarasubbu, Learned Counsel for the Petitioner is liable to be rejected, for the simple reason that the jurisdiction has been clearly defined in the notifications of the G.O.Ms. No. 1293 dated 24.05.1982.

10. It is evident from the documents that there is no dispute with regard to the arrest of the Petitioner under Customs Act, as the offences were said to have been committed at Pattukottai for smuggling gold bars. In this regard, the case in C.C. No. 95 of 2017 has been taken on file before the Judicial Magistrate-I, Thanjavur, which is pending for consideration.

11. A perusal of the G.O. Ms. No. 1293 dated 24.05.1982 no doubt makes it clear that in exercise of powers conferred by the Proviso to Sub Section (1) of Section 11 of the Code of Criminal Procedure, 1973 the Governor of Tamilnadu have examined the recommendation of the Law Commission in consultation with this Court and established a Special Court of Judicial Magistrate of the First Class at Madurai for the local area comprising the districts of Madurai, Ramanathapuram, Thirunelveli and Kanyakumari for trial of economic offences and Two Additional Chief Metropolitan Magistrate's Courts at Chennai. The relevant portion of the G.O.Ms. No. 1293 dated 24.05.1982 is usefully extracted hereunder:-

“ Notification - I

In exercise of the powers conferred by the Proviso to sub-section (1) of Section 11 of the Code of Criminal Procedure, 1973 (Contra Act 2 of 1974), the Governor of Tamil Nadu, after consultation with the High Court, Madras, hereby establishes a special Court of Judicial



Magistrate of First Class at Madurai for the local area comprising the districts of Madurai, Ramanathapuram, Tirunelveli and Kanniyakumar for trial of economic offences.

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Notification - II

In exercise of the powers conferred by Sub-section (1) of Section 16 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Governor of Tamil nadu, after consultation with the High Court, Madras, hereby establishes two Courts of Metropolitan Magistrates' at Madras."

12. Mr. R.Sankarasubbu, Learned Counsel for the Petitioner vehemently argued that when Law Commission in its 47th report recommended on the trial and punishment of social and economic offender, inter alia, recommended the establishment of Special Court for effective and speedy offences of economic offences, it is the duty of the Government to establish Special Courts in every jurisdiction and the recommendations of the Law Commission should be implemented effectively.

13. Though it is very pleasant surprise for this Court to hear such an argument from Mr. R.Sankarasubbu, Learned Counsel for the Petitioner that the Law Commission recommendations should be implemented, Mr. B.Vijay, Learned Counsel appearing for the First Respondent rightly contends that discretion to establish Special Courts to deal with economic offences, wherever it is necessary and feasible, has been left to the Government by the Law Commission in its recommendation. In any event, this Court appreciates the efforts taken by Mr. R.Sankarasubbu, Learned Counsel for the Petitioner in effective implementation of the Law Commission recommendations.

14. Though the Law Commission in its 47th Report recommended the establishment of Special Courts for the effective and speedy prosecution of economic offences, the Government of Tamil Nadu have examined the suggestion of the Government of India in consultation with this Court and constituted an Additional Court of Chief Judicial Magistrate at Madurai (in the cadre of Sub-Judge) and two Metropolitan Magistrates' Courts in the City of Madras (in the cadre of Chief Metropolitan Magistrate) for the speedy trial of economic offences with specified jurisdiction.

15. When things stand so, Special Court can attract cases, which are arising out within the jurisdiction specified and in the rest of the area, Judicial Magistrate of concerned jurisdiction alone has got jurisdiction, as rightly contended by Mr. B.Vijay, Learned Counsel appearing for the First Respondent.



16. In view of that, the Petitioner cannot misuse this forum in order to transfer of the case in C.C. No. 95 of 2017 pending before the Judicial Magistrate-I, Thanjavur to Chennai and the Writ Petition is liable to be rejected. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Registrar General
High Court of Madras
Chennai - 600 104.
2. The Secretary to Government
Home Department
Fort St. George
Chennai - 600 009.
3. The Chief Commissioner of Customs
Rajaji Salai
Chennai - 600 001.
4. The Assistant Commissioner of Customs
Customs Divisional Office
No.4, First Lane Beach Road
Nagapattinam - 611 001.

Copy To

1. The Section Officer
Legal Cell
High Court, Madras
2. The Judicial Magistrate I,
Thanjavur

W.P. No. 9641 of 2018

PCH(CO)
SB(06/08/2021)