



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P. (MD) . No. 12080 of 2019

and

W.M.P. (MD) No. 9082 of 2019

Mohamed Riswan

... Petitioner

-Vs-

1. The Under Secretary,
Ministry of Home Affairs,
Internal Security - I Division,
MHA Government of India,
North Block,
New Delhi - 110 001.
2. The Additional Superintendent of Police,
National Investigation Agency,
MHA Government of India,
New Delhi.
(In RC No.06/2019/NIA/DLI)
3. The Deputy superintendent of Police,
Thiruvudai Marudhur Division,
Thanjavur District.
(Crime No.17 of 2019)
4. The Inspector of Police,
Thiruvudai Marudhur Police Station,
Thanjavur District.
(Crime No.17 of 2019)

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to impugned order dated 05.03.2019 bearing File No.11011/08/2019/NIA issued by the first respondent is to set aside and subsequently quash the impugned FIR in RC No.06/2019/NIA/DLI registered dated 07.03.2019 on the file of the second respondent as illegal.

For Petitioner	: No appearance
For Respondents	: Mr.M.Rajendran Central Govt. Standing counsel for R1 Mr.P.Kottai Chamy Government Advocate for R2 to R4



O R D E R

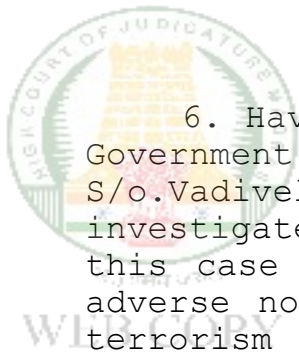
When the matter is taken up for hearing, there is no representation for the petitioner.

2. The Writ Petition is filed by the fifth accused. The criminal case initially registered by the State Police on 06.02.2019 for alleged offences under Sections 341, 294(b), 307 of IPC later altered into Sections 341, 294(b), 307, 120B, 143, 147, 148 and 302 r/w 149 of IPC and Sections 15(a)(i)(b) r/w 16, 18, 18B, 19 and 20 of UA(P) Act, 1967 on the death of the injured Ramalingam. Later considering the gravity and other facts, the matter was taken up for investigation by the National Investigation Agency and the case re-registered under R.C. No. 03/2018/NIA/DLI.

3. The brief facts of the case is that on 05.02.2019, there was quarrel between the deceased Ramalingam and a group of persons preaching for conversion to Islam. As a consequence, at about 11.35 pm, the said Ramalingam was done to death brutally by the group alleged to be fanatics of Islam. The case was initially registered on the complaint given by one Shyam Sundar the S/o. Ramalingam to the fourth respondent Police in Crime No.17 of 2019. Later by the virtue of the order passed by the first respondent dated 05.03.2019, the case under Unlawful Activities (Prevention) Act 1967 was invoked, since offence being a scheduled offence under National Investigation Agency Act, 2008.

4. The first respondent has requested the National Investigation Agency to take up the investigation. Accordingly, the second respondent has re-registered the case on 07.03.2019 for following offences under Sections 341, 294(b), 307, 120B, 143, 147, 148 and 302 r/w 149 of IPC and Sections 15 r/w 16, 18, 18B, 19 and 20 of UA(P) Act, 1967. The investigation has indicated larger gravity in the offence touching upon the national interest, so the investigation was conducted by the second respondent. While so, the present petition is filed by the fifth accused in the said case claiming that the murder of Said Ramalingam is not an act of terrorism and there is no act which constitutes offence under the provisions of Unlawful Activities (Prevention) Act 1967. The order of the first respondent recommending the National Investigation Agency to investigate the matter does not indicate any material facts which fall under definition of unlawful activities. Hence, the recommendation of the first respondent dated 05.03.2019 and consequential re-registration of the case by National Investigation Agency on 07.03.2019 is sought to be quashed.

5. The learned Central Government Standing counsel would submit that the information collected during the course of investigation had disclose facts, which falls within the definition of Unlawful Activities (Prevention) Act 1967.



6. Having been satisfied with the information received from the Government of Tamil Nadu regarding the murder of Ramalingam S/o.Vadivel, the first respondent had recommended the crime to be investigated by the National Investigation Agency. The accused in this case are members of certain communal outfit, which are under adverse notice of the Government for being involved in the act of terrorism and communal offence and therefore, the first respondent in his wisdom has rightly entrusted the investigation to the second respondent and the said decision is based on the materials collected during the investigation.

7. The third respondent herein, who is the Deputy Superintendent of Police, Thanjavur District has filed a status report, wherein the contents of the First Information Report given by Shyam Sundar S/o deceased Ramalingam is extracted and investigation conducted by the State Police is extracted. For better appreciation of the facts, the status report of the third respondent is extracted below:

"2. I respectfully submit that the prosecution case is that the de-facto complainant namely Shyam Sundar (who is the son of the deceased Ramalingam) preferred a complaint to the Thiruvidadaimarudhur Police Station on 06.02.2019, stating that on 05.02.2019 at about 08.20 am., when he and his father Ramalingam went to Pakkuvinaiyagam Gargen Street for recruiting workmen, they came across Tvl.Rasudeen, Sarbudeen, the petitioner herein was found preaching Quran and preaching the Ad-dravidar residences to convert to Islam religion and his father Ramalingam who was a divot Hindu raised a quarrel with them and prevented them from preaching by stating that implements of workers is "Allah" and that Hindus used to take Briyani in the house of Muslim, but Muslims will never eat the food given by Hindus and by saying he removed the cap from a Muslim, put the same on his head and secured "thiruneer" and placed the same on the forehead of a Muslim and so saying he left the place. On the same day around 11.35 hours, when they were returning home try passing thorough Thirubuvanam Muslim Street, some four persons who came on the face of Ramalingam and cut his father's right and left hands and took to their heels. Thereafter his father was admitted at Kumbakonam Government Hospital and then referred to the Government Medical College Hospital, Thanjavur. The complaint was reduced into First Information Report in Crime No. 17 of 2019 under Sections 294(b), 341, 307 IPC against the four accused persons on the file of the fourth respondent at Thiruvidadaimarudhur Police Station and taken up for investigation.



3. I humbly submit that after registering the case, the first investigation officer, i.e., the Inspector of Police, Thiruvidadaimarudhur Police Station took up the investigation and enquired the witnesses and obtained their statement under Section 161(3) Cr.P.C., and during the investigation the injured Ramalingam was died and hence the penal provision of the case altered into 341, 294(b) and 302 IPC and sent the alteration report to the concerned Court.

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6. I humbly submit that after transferring the case, the National Investigation Agency registered a case in FIR No.RC.No.06/2019/NIA/DLA, dated 07.03.2019 and after due and proper investigation the National Investigation Agency filed charge sheet against the accused persons before the NIA Special Court-cum-Bomb Blast Court, Poonthamalli, Chennai and the same was taken on file in C.C. No. 2 of 2019 and pending trial before the Court."

8. From the status report, it is clear that, based on the *prima facie* material, the first respondent has invoked Unlawful Activities (Prevention) Act and entrusted the investigation to National Investigation Agency. The National Investigation Agency in turn has completed the investigation and has filed final report against accused persons before the Special Court-cum-Bomb Blast Court, Poonthamalli, Chennai and the same has been taken on file in C.C. No. 2 of 2019 and the trial is pending. The relief sought for in the Writ Petition deserves to be rejected. Accordingly, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1. The Under Secretary,
Ministry of Home Affairs,
Internal Security - I Division,
MHA Government of India,
North Block,
New Delhi - 110 001.
2. The Additional Superintendent of Police,
National Investigation Agency,
MHA Government of India,
New Delhi.
3. The Deputy superintendent of Police,
Thiruvudai Marudhur Division,
Thanjavur District.
4. The Inspector of Police,
Thiruvudai Marudhur Police Station,
Thanjavur District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.RAJENDRAN, Advocate (SR-2322[F] dated 25/01/2022)

**W.P. (MD) . No. 12080 of 2019
and
W.M.P. (MD) No. 9082 of 2019
21.01.2022**

RK(17/02/2022) 5P 7C