



W.P.No.13992 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.11.2023

DELIVERED ON: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

and

THE HON'BLE MR.JUSTICE P.DHANABAL

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Kulandairaj @ Kulandai Royappan

.. Petitioner

Vs.

The Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Secretariat, Chennai-600 009.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pursuant to the notification issued by the respondent, vide Notification in G.O.Ms.No.611, Home Department (Cts.VIA) dated 19.08.2015 and to quash the same and consequently, direct the respondent to allow him to publish and release the book titled "Madurai Veeran Unmai Varalau" written by the petitioner which was published by Adhi Thamizhar Pervai.



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WEB COPY For Petitioner : Mr.R.Thirumoorthy

For Respondents : Mr.P.Muthukumar,
State Government Pleader
assisted by Mr.Veda Bhagath Singh
Special Government Pleader

ORDER

D.KRISHNAKUMAR, J.

This Writ Petition has been filed challenging the notification issued by the respondent in G.O.Ms.No.611, Home Department (Cts.VIA) dated 19.08.2015 and to quash the same and consequently, direct the respondent to allow the petitioner to publish and release the book titled "Madurai Veeran Unmai Varalau" written by the petitioner, which was published by Adhi Thamizhar Perevai.

2. According to the petitioner, the history of Madurai Veeran has largely remained part of oral history in Tamil Nadu and the book written by him titled "Madurai Veeran Unmai Varalau" speaks about the bravery of Madurai Veeran and there is nothing in the book was written with casteist tenancies. According to the petitioner, the said book was



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published by Adhi Tamizhar Peravai Trichy in the year 2013 and the book was in circulation and over 2000 copies have been sold out by the Adhi Thamizhar Peravai.

3. While that being so, to the shock and surprise of the petitioner, the respondent had issued G.O.Ms.No.611, Home Department dated 19.08.2015, declaring the forfeiture of the book by invoking Section 95 of the Code of Criminal Procedure [in short "CrPC"]. Challenging the aforesaid Government Order, the petitioner has filed the instant writ petition by invoking Article 226 of the Constitution of India.

4. The Writ Petition was listed before a learned Single Judge of this Court and a preliminary objection has been raised by the State as regards maintainability of the writ petition. The learned Judge, vide order dated 14.06.2023, taking into consideration that the order of forfeiture under Section 95 CrPC has an in-built remedy by way of Section 96 CrPC, which provides for challenge thereto within two months of the ban to the High Court and Section 96(2) CrPC requires any



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challenge under Section 96(1) CrPC to be placed before a Bench of the High Court consisting of not less than three Hon'ble Judges and in the light of the decision of the First Bench of this Court in ***S.Tamilselvan, Perumal Murugan v. The Government of Tamil Nadu [2016 (4) CTC 561]***, has directed the Registry to place the matter before the Hon'ble Chief Justice for constitution of an appropriate Bench for consideration of the same. In pursuant to the said order, an Office Note was placed before the Hon'ble Chief Justice and the present Larger Bench was constituted as per the orders of the Hon'ble Chief Justice dated 17.10.2023.

5. A preliminary objection has been raised by the respondent / State Government as to the maintainability of the writ petition and also on the ground of limitation.

6. *Per contra*, learned counsel for the petitioner submitted that the writ petition is maintainable under Article 226 of the Constitution of India and in support of his contentions has mainly placed reliance on the



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following decisions:

- (i) *Anand Chintamani Dighe and another v. State of Maharashtra and Others* [2002 (2) Mh.L.J.14]
- (ii) *Piara Singh Bhanjara v. State of Punjab and another* [CWP. No.8045 of 2002 date 11.11.2008]
- (iii) *P.K.Palanisamy v. N.Arumugham and another* [SLP(Civil) No.2308 of 2009 dated 23.07.2009].

7. The core question involved in this appeal is whether the challenge made under Article 226 of the Constitution of India without exhausting the alternative remedy by filing application under Section 96 CrPC is maintainable? In the light of the preliminary objection raised with regard to maintainability of the writ petition, let this Court shall consider the preliminary objection at the first instance.

8. Before proceeding to the maintainability of the writ petition, it is relevant to refer to the provisions under Sections 95 and 96 CrPC:

"95. Power to declare certain publications forfeited and to issue search-warrants for the same (1) Where—
(a) any newspaper, or book, or



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(b) any document, wherever printed appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be,

(2) In this section and in section 96,—

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867);

(b) "document" includes any painting, drawing or photograph, or other visible representation

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

96. Application to High Court to set aside declaration of forfeiture -

(1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is



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referred to in sub-section (1) of section 95.

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of section 95, set aside the declaration of forfeiture

(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges."

9. It appears from a bare perusal of the aforesaid Sections that the remedy under Section 96 CrPC is available where an interested person against whom a declaration of forfeiture has been made under Section 95 CrPC., claims that the publication of the book did not contain any such material as referred to in Sub-Section (1) of Section 95. This remedy is available only on the solitary grounds, specified in sub-section (1) of



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Section 96 CrPC. In the instant case, the petitioner has claimed violation of his Fundamental Rights guaranteed under Article 19(1)(a) of the Constitution of India, which guarantees freedom of speech and expression. Albeit, the provision under Section 96 CrPC clearly envisages that an application challenging the order of forfeiture passed under Section 95 CrPC shall be filed before the High Court within two months from the date of publication in the Official Gazette.

10. The High Court of Bombay in the decision in *Anand Chintamani Dighe and another v. State of Maharashtra and Others* [2002 Cri.L.J. 8] has observed as under:

"21.... The Special Bench noted in that case that under Section 29(2) of the Limitation Act of 1963, the position which obtained under the earlier Act of 1908 has undergone significant change because under the new provision, if the Special Law prescribes for an application, a period of limitation different from the period prescribed by the Schedule, then for the purposes of determining any period of limitation prescribed for an application by the special law, the provisions contained in Sections 4 to 24 of the Act of 1963 would apply to the extent to which they are not expressly excluded by the Special Law. The result is that while Section 5 of the Limitation Act, 1908 would have been inapplicable to an application under Section 99-B of the Criminal Procedure Code, 1898 Section 5 of the



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Act of 1963 would apply to it. The period of two months, it was held, can, therefore, be appropriately extended under Section 5 of the Limitation Act, 1963 in appropriate cases. In the present case, the petitioner has averred that though the notification was issued on 3rd December 1998, it was only on 15th May 2000 at a meeting held with the Commissioner of Police that a copy of the notification dated 3rd December 1998 together with a letter of the Commissioner of Police was served upon the petitioner. The notification was gazetted only on 5th August 1999. We are satisfied that a sufficient explanation is furnished in these proceedings for the delay, if any, in moving this Court. In any event, it must be noted that these proceedings have been initiated both under Article 226 of the Constitution and under the relevant provisions of the Code of Criminal Procedure, 1973. ***In a matter relating to fundamental rights of the petitioner, the Court would be averse to reject the petition filed before it on the ground of delay particularly when we are satisfied that the delay, if any, has been sufficiently explained.***

11. The High Court of Allahabad in the decision in ***Maulana Azizul Haq Kausar Naqvi and another v. State [1980 SCC Online All 77]*** has observed as under:

"3. As already stated, the notification under Section 95 Cr.P.C. is dated June 28, 1977 and was published in the Government Gazette on 23rd July, 1977. The application under Section 96 Cr.P.C. has been moved in May, 1978. Since sub-Section (1) of Sec.97 of the Code of Criminal Procedure lays down that an application for setting aside an order shall be moved by the person aggrieved by such notification within two months from the date of its



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publication in the official Gazette, *the applicants have also filed an application under Section 5 of the Limitation Act praying for the condonation of the delay. The application is supported by an affidavit of Inamul Haq Qadri.*

..

6....Under Section 29(2) of the Limitation Act of 1963, a significant change has been made. The said Section now lays down that Secs.4 to 24 of the Limitation Act would apply even in the case of a special or local law unless their application is expressly excluded by such special or local law. *The result, therefore, is that while under the Act of 1908 this Court would have been incapable of extending the period of limitation, in the instant case, by having recourse to the provisions of Sec.5 of the Limitation Act, 1963 position now is totally different and the period of limitation prescribed under Sec.96(1) of the Code of Criminal Procedure can now be extended by this Court in an appropriate case.*

7. The fact that the State Government did not execute its notification under Sec.95 of the Code of Criminal Procedure, by making actual seizure of the book, is a circumstance, which lends credence to the averments made in the affidavit accompanying the application under Sec.5 Limitation Act. In the circumstances of the case, we feel inclined to condone the delay in filing the application on the grounds stated in the affidavit."

12. In the case on hand, the impugned Gazette Notification came to be issued on 19.08.2015, whereas the petitioner has filed the instant writ petition challenging the notification issued under Section 95 CrPC in the year 2017, that too, by invoking Article 226 of the Constitution of India.



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The petitioner has not filed any petition under Section 96 CrPC along with a petition to condone the delay. The petitioner has not given any satisfactory reasons in the affidavit filed in support of this writ petition for the delay in challenging the notification under Section 95 CrPC. The present writ petition has neither been filed under Article 226 of the Constitution of India r/w. 96 CrPC nor any application has been filed to condone the delay in challenge the notification. Therefore, in the light of the decisions of the Hon'ble Supreme Court, the contention of the writ petitioner that the writ petition is maintainable is liable to be rejected.

13. Moreover, the petitioner has filed the present writ petition by invoking Article 226 of the Constitution of India and not under Section 96 CrPC. The language used in Section 96 CrPC is amply clear that any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under Section 95 CrPC, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration. It has not been expressly stated that the petition has to



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be filed only under Section 96 CrPC before the High Court.

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14. Alternative remedy is not a bar for proceeding under Article 226 of the Constitution of India where the protection of enforcement of Fundamental Rights is claimed or where there has been violation of principles of natural justice or where the order or proceedings are passed without jurisdiction or vires of the Act is challenged. In the Division Bench decision in *S.Tamilselvan v. The Government of Tamil Nadu [2016 (4) CTC 561]*, where challenge has been made to the order passed under Section 95 CrPC on the ground of violation of the principles of natural justice.

15. In the present case, notification has been issued under Section 95 CrPC and the petitioner is having alternative remedy under Section 96 CrPC and therefore, the petitioner has to seek his remedy in the particular manner as prescribed by the Statute and not under any other manner. The said proposition was pressed into service in the decision of the Hon'ble



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Supreme Court in the decision in *Union of India and Others v.*

Mahendra Singh [2022 SCC Online SC 909] wherein it was held as

under:

"14.... It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council in the *Nazir Ahmad v. King - Emperor [1936 SCC OnLine PC 41]*, wherein it was held that "that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

15. A three Judge Bench of this Court in a judgment reported in *Chandra Kishore jha v. Mahavir Prasad [(1999) 8 SCC 266]*, held as under:

"17.... It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner..."

16. The said principle has been followed by this Court in *Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh [(2015) 13 SCC 722]* wherein this Court held as under:

"14.Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure..."



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16. In the light of the aforesaid decision of the Hon'ble Supreme Court, when Section 96 CrPC prescribes filing of application before the High Court for challenging the order of forfeiture passed under Section 95 CrPC, the petitioner instead of doing so has filed the writ petition by invoking Article 226 of the Constitution of India.

17. In view of the aforesaid specific provision under Section 96 CrPC, the petitioner has to file an application to condone the delay in filing the petition to challenge the notification issued under Section 95 CrPC and without doing so, he has filed the present writ petition, which cannot be entertained. Therefore, we are of the view that the contention of the petitioner that the writ petition is maintainable is unacceptable and the same is liable to be dismissed as not maintainable.

18. In fine, the Writ Petition stands dismissed as not maintainable. It is for the petitioner to workout his remedy in the manner known to law and the period of pendency of the writ petition before this Court shall be excluded for the purpose of computing the period of limitation. No costs.



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Index:yes/no
Internet:yes
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&

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