



Crl.R.C.(MD).Nos.579, 580, 582, 584 and 585 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.09.2023

Pronounced on : 31.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)Nos.579, 580, 582, 584 and 585 of 2022

and

Crl.M.P.(MD)Nos.7156, 7158, 7182, 7190 and 7191 of 2022

R.Veeramani

... Petitioner in all the
petitions

Vs.

The District Collector,
Madurai District,
Madurai.

... Respondent in all the
petitions

COMMON PRAYER: Criminal Revision Petitions have been filed under Section 397 read with 401 of Cr.P.C., to call for the records pertaining to the orders passed in Unnumbered petitions in Spl.C.C.Nos.123, 179 and 128 of 2021 dated 30.05.2022 and Spl.C.C.Nos.80 and 140 of 2021 dated 09.06.2022 on the file of the Special Judge (Mines and Minerals (D & R) Act), Madurai and set aside the same and allow these Criminal Revision Petitions.



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For Petitioner : Mr.Ajmal Khan, Senior Counsel
for Mr.K.K.Senthil

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

COMMON ORDER

These Criminal Revisions are directed against the rejection orders dated 30.05.2022 and 09.06.2022 passed in the petitions filed under Section 244(1) of the Code of Criminal Procedure, on the file of the Special District Court to deal with the cases of offences in contravention of the Provisions of the Mines and Minerals (D&R) Act, Madurai.

2. The revision petitioner in all the cases is the second accused and that the first accused is a Company and the accused 2 to 5 are shown to be the Directors of the first accused Company.

3. The District Collector, Madurai-respondent herein filed private complaints under Section 200 Cr.P.C. before the learned Judicial



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Magistrate Court, Melur, that the same were taken cognizance in C.C.Nos. 60 of 2014, 3 of 2015, 46 of 2014, 67 of 2015 and 68 of 2015 for the offences under Sections 21(1) and 21(1-4A) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter will be referred to as MMDR Act), that after designating the Principal District Court as the Special Court for the offences under the MMDR Act, the above five cases along with other cases were transferred to the Principal District and Sessions Court, Madurai and the same were taken on file in C.C.Nos.143 of 2019, 151 of 2019, 155 of 2019, 22 of 2019 and 50 of 2019 and that after the constitution of a Special Court to deal with the cases of offences in contravention to the Provisions of the MMDR Act, at Madurai, the above cases and other cases were made over to the Special Court and the same were taken on file in Special Calendar Case Nos.123 of 2021, 179 of 2021, 128 of 2021, 80 of 2021 and 140 of 2021.

4. During the pendency of the above cases, the revision petitioner has filed petitions under Section 244(1) Cr.P.C. seeking orders directing the complainant and other witnesses mentioned in the list to be examined in the Court before framing of charges as contemplated under Section



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244(1) Cr.P.C. The learned Special Judge has returned the above petitions with the following endorsement,

“the punishment prescribed before the amendment vide Act 10 of 2015 had been only 2 years and hence the procedure adopted for the trial shall be the one prescribed under Chapter XX vide Section 251-259 of Cr.P.C. and further the procedure prescribed U/s.244(1) Cr.P.C. does relate to a warrant case. Whereas the procedure adopted for the case at hand is one of a summons case. Therefore, there is no question of either pre-charge evidence to be let in by the complainant as any charge. So, the procedure sought to be adopted under Section 244(1) Cr.P.C. in this summons case is unwarranted. Accordingly, the petition is returned.”

5. The revision petitioner's side has re-presented the above petitions requesting the Court to take up the petitions in the open Court so as to enable the counsels on record to submit their arguments with regard to the maintainability of the said petitions. The learned Special Judge, upon hearing the arguments of the learned counsel appearing for the revision petitioner and also the learned Special Public Prosecutor appearing for the



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State and on perusing the records available on record, has passed the impugned orders dated 30.05.2022 and 09.06.2022 rejecting the said petitions. Aggrieved by the rejections orders, the second accused has preferred the present Criminal Revision cases.

6. The main grounds raised by the revision petitioner in the petitions filed under Section 244(1) Cr.P.C. are,

1. The learned Special Judge, who is a Sessions Judge, had taken cognizance of the above cases without any committal as envisaged under Section 209 Cr.P.C., as the above cases were transferred to the Special Court as per the circular issued by the learned Principal Sessions Judge, Madurai.
2. Since the cases are now pending before the Special Court, which is now classified as a Sessions Court, has to try the cases as warrant cases as contemplated under Chapter XIX B Cr.P.C.

7. At the outset, it is pertinent to note that Section 30-B of the MMDR Act which speaks about the constitution of Special Courts and Section 30-C of the MMDR Act which says that Special Courts to have



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powers of Court of Session were inserted by amending the MMDR Act vide Act 10 of 2015 with effect from 12.01.2015.

8. It is not in dispute that the District Collector has filed the private complaints and when the said complaints were taken cognizance by the learned Magistrate, there was no Special Court having the powers of Court of Sessions to try the offences under the MMDR Act and as such, the learned Magistrate has received the private complaints and taken cognizance as ordinary Calender Cases and hence, the question of committing those cases at that time does not arise at all.

9. As rightly pointed out by the learned Senior Counsel appearing for the revision petitioner as well as the learned Additional Public Prosecutor appearing for the respondent, the Hon'ble Supreme Court in ***Pradeep S.Wodeyar Vs. State of Karnataka*** reported in ***2021 SCC OnLine SC 1140*** has specifically concluded that the Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 Cr.P.C. and the



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order of the Special Judge taking cognizance is therefore irregular. But at the same time, the Hon'ble Apex Court has further observed that the very object of Section 465 is to prevent the delay in the commencement and completion of trial and that even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 Cr.P.C.

10. Even assuming for arguments sake that committal is necessary as alleged by the revision petitioner, as per the dictum laid down by the Hon'ble Supreme Court in ***Pradeep S.Wodeyar's*** case, non-committal can only be considered as irregular and the same would not vitiate the proceedings.

11. In the State of Tamil Nadu, as per the Government order issued by the Government, authorized officers are empowered to file a private complaint before the Special Court. The Hon'ble Full Bench of this Court in ***S.Kumar Vs. The District Collector, Kokkirakulam, Tirunelveli District, Tirunelveli and others*** in ***W.P.(MD)No.14341 of 2022 dated 13.06.2023***, has reiterated the position that when the private complaints



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are filed and pending before the Special Court and final reports for the case registered under IPC are filed and pending before the Court of the concerned Judicial Magistrates, the police has to inform the concerned Magistrate about the filing and pending of the private complaint before the Special Court so that the Magistrate commits the case to the Special Court which could try the IPC offence along with the private complaint upon committal and on that basis, directed that the police case filed under Section 379 IPC and private complaint filed under Section 21 of the MMDR Act can be tried jointly in the light of Section 220 Cr.P.C. to ensure speedy trial of the cases and further directed the jurisdictional Special Court constituted under the MMDR Act shall jointly try the offences under the MMDR Act as well as the offence under Section 379 IPC so as to avoid any conflict in the decision, on the IPC offence being committed by the Magistrate to the Special Court. Considering the above, it is clear that the persons authorized under the MMDR Act have to file a private complaint under Section 21 of the MMDR Act before the Special Court and if the police case filed under Section 379 IPC is pending before the jurisdictional Magistrate Court then that case has to be committed to the Special Court for trying along with the private complaint. As clarified



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by the Full Bench of this Court, since the Special Court is having necessary jurisdiction to receive the private complaint filed under Section 21 of the MMDR Act directly, the question of committing the private complaint which was received prior to the constitution of the Special Court does not arise at all. Hence, the main objection of the revision petitioner's side with regard to the non-committing of the above cases is absolutely devoid of merit and the same is liable for rejection.

12. Now turning to the second objection, the learned Senior Counsel appearing for the revision petitioner would submit that as per Section 21(6) of the MMDR Act, the offences committed under the MMDR Act had been classified as cognizable and consequently, the procedure prescribed for the trial of warrant cases has to be followed, that since the cognizance was taken by the Special Court which is a Court of Session, the Special Court has no power to adopt summons procedures, that the offence under the Indian Penal Code shall be investigated, inquired into and tried in accordance with the provisions of Cr.P.C., but since the MMDR Act is a special statute, the provisions of the MMDR Act will prevail over the provisions of Cr.P.C., that the provisions of the Special



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Courts Act, 1979 which lays down the procedures and powers of the Special Court stipulates the procedure prescribed upon Court for the trial of warrant cases before a Magistrate, that though two years imprisonment was contemplated for the offence in question earlier, since the offences under the MMDR Act have been classified as cognizable offences, summons trial procedures cannot be adopted and that therefore, the revision petitioner was constrained to file the above petitions under Section 244(1) Cr.P.C. for examining the complainant and other witnesses before ever framing of charges.

13. No doubt, Section 21(6) of the MMDR Act classified the offence under the MMDR Act to be cognizable vide Amendment Act 37 of 1986 and the same is extracted hereunder:-

“21(6) : Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.”

14. Section 2(c) Cr.P.C. defines what is cognizable offence and the same reads as follows:-

“2(c) : “cognizable offence” means an offence for which,



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and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant."

15. As rightly contended by the learned Additional Public Prosecutor and also observed by the learned Special Judge, there is absolutely no connection between, treating an offence as cognizable offence and trying of a case under warrant trial procedure.

16. Section 2(w) Cr.P.C. defines summons case as a case relating to an offence, and not being a warrant case and whereas, Section 2(x) Cr.P.C. defines warrant case as a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

17. It is pertinent to note that some of the offences attract less than two years of imprisonment which are to be tried as a summons case, are classified as cognizable offences and whereas, some of the offences attract more than two years imprisonment, which are to be tried as a warrant case, are classified as non-cognizable offences. Hence, the contention of the



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revision petitioner's side that since the offence under the MMDR Act is classified as cognizable offence, consequently the offence has to be tried as warrant case, is without any basis and is liable for instant rejection.

18. The learned Senior Counsel appearing for the revision petitioner would submit that the Special Courts Act, 1979 was enacted by parliament in the year 1979 and as per Section 3 of the Special Court Act, Special Courts were constituted for trying cases under various special enactments like Prevention of Corruption Act, POTA Act, NDPS Act, TNPID Act, that Section 9 of the Special Courts Act lays down the procedure and powers of the Special Court and stipulates the procedure prescribed by the Code for the trial of warrant cases before a Magistrate, that as per the provisions of the Special Courts Act, the Special Court is deemed to be a Court of Session and that therefore, it has become clear that for the trial of private complaint cases before the Special Court, the procedure for trial of warrant cases has to be followed as envisaged under Chapter XIX B of the Code.

19. As per Section 3 of the Special Courts Act, 1979, a sitting Judge of the High Court has to be nominated as the Special Judge of that Court



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and the said Act was enacted to deal with the offences alleged to have been committed by the holders of high public officers. As rightly contended by the learned Additional Public Prosecutor, the Special Courts Act, 1979 cannot be applied to all the Special Courts constituted under the other enactments. The learned Special Judge has also observed that the Special Courts Act, 1979 has been repealed vide Act No.34 of 1982. Moreover, there is no reference of the Special Courts Act, 1979 in the MMDR Act. Considering the above, this Court has no hesitation to hold that the Special Courts Act, 1979 has absolutely no application to the Special Courts constituted under the MMDR Act.

20. At this juncture, it is necessary to refer Section 30-C of the MMDR Act hereunder for better appreciation;

“30-C : Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to the proceedings before the Special Court and for the purpose of the provisions of this Act, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a public prosecutor.”



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21. Admittedly, procedure to be followed in the Special Courts constituted under Section 30-B of the MMDR Act was nowhere contemplated in the said Act and consequently, as per Section 30-C of the MMDR Act, the Special Court has to necessarily follow the procedure contemplated under the Code of Criminal Procedure for trying the cases. Since the offence with which the revision petitioner is charged, attracts punishment of two years imprisonment, as per the scheme of the Code, it has to be tried as summons case and the procedure for trying the summons case has to be followed, in the Special Court also. The Hon'ble Supreme Court in ***Harshad S. Mehta and others Vs. The State of Maharashtra*** reported in ***2001 (8) SCC 257*** has specifically observed as follows:-

“22. The Special Court may not be a criminal court as postulated by Section 6 of the Code. All the same, it is a criminal court of original jurisdiction. On this count the doubt, if any, stands resolved by the decision of Constitution Bench of this Court in A.R. Antulay v. Ramdas Srinivas Nayak & Ant. ([1984] 2 SCC 500). In Antulay's case the Constitution Bench said that shorn of all embellishment, the Special Court is a court of original criminal jurisdiction and to make it functionally oriented some powers were conferred by the statute setting it up and except those specifically



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conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrates or a Court of Session. Under the Code, it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied.”

22. The Hon'ble Supreme Court has made it clear that the Special Court has to function as a Court of original criminal jurisdiction and as rightly contended by the learned Additional Public Prosecutor, calling the MMDR Court as a Special Court will not alter its original jurisdiction unless special procedure has been contemplated.

23. Considering the above, the orders of the learned Special Judge rejecting the petitions are perfectly in accordance with law and the same cannot be found fault with. Hence this Court concludes that the revision petitions are devoid of merits and the same are liable to be dismissed.

24. In the result, these Criminal Revision Petitions are dismissed. However, considering the fact that the above cases are pending from 2014 onwards, the learned Special Judge is hereby directed to proceed with the



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cases and dispose of the same within a period of four months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petitions are closed.

31.10.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

Note : Issue order copy on 17.11.2023

To

1. The Special District Court to deal with the cases of offences in contravention of the Provisions of the Mines and Minerals (D&R) Act, Madurai.
- 2.The District Collector,
Madurai District,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
Crl.R.C.(MD)Nos.579, 580, 582, 584 and 585 of 2022
and
Crl.M.P.(MD)Nos.7156, 7158, 7182, 7190 and 7191 of 2022

Dated : 31.10.2023