



WEB COPY



W.P.No.36218 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.No.36218 of 2025

and

W.M.P.Nos.40483 and 40485 of 2025

D.Duraimurugan

.. Petitioner

VS

State of Tamil Nadu
Rep.by its Secretary to Government,
Home (Courts -II) Department,
Secretariat, Fort St.George,
Chennai – 600 009.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent pertaining to G.O.Ms.No.390 Home (Courts -II) Department dated 01.08.2019 and quash the same.

For Petitioner : Mr.P.Wilson
Senior Counsel for
Mr.Richardson Wilson

For Respondent : Mr.L.S.M.Hasan Fizal
Additional Government Pleader



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ORDER

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This Writ Petition is filed for issuance of a Writ of Certiorari to call for the records of the respondent pertaining to G.O.Ms.No.390, Home (Courts -II) Department dated 01.08.2019, and quash the same.

2. When the matter was taken up for hearing, Mr.P.Wilson, learned Senior Counsel appearing for Mr.Richardson Wilson, for the petitioner submitted that, the order on the basis of which the trial had commenced in CrI.R.C.Nos.485 and 486 of 2017, dated 24.04.2025, had been kept in abeyance by the Supreme Court in SLP(Crl.) Diary Nos.50450 of 2025 and 50451 of 2025. He states that subsequently, the SLPs have been numbered as SLP (Crl.)Nos.15402 and 15403 of 2025. Hence, he seeks permission to withdraw this writ petition with liberty to file the same, subject to the outcome of SLP before the Supreme Court.

3. The cause of action for the writ petition is, the Notification issued by the Government, transferring the First Information Report from the file of the Special Judge-cum-Chief Judicial Magistrate, Vellore to the file of the X Additional District and Sessions Judge, Chennai. The



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cause of action in the Crl.R.Cs, was the order of discharge passed by the learned Special Judge-cum-Chief Judicial Magistrate, Vellore in Crl.M.P.Nos.205 and 206 of 2016 dated 31.01.2017. The Notification was issued subsequently on 01.08.2019.

4. The Supreme Court in ***Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P.Gwalior AIR 1987 SC 88*** has held that the provisions of Order XXIII Rule 1 of the Code of Civil Procedure applies to proceedings under Article 226 and Article 227 of Constitution of India also. A party always has discretion to withdraw or abandon any proceedings at any stage, as he or she may be advised. Yet, the grant of liberty to approach the Court, cannot on the same cause of action, is not a matter of right.

5. Under Order XXIII Rule 1, there must be a "formal defect" or "sufficient grounds". The grounds on which the writ petition is sought to be withdrawn is the pendency of the SLP referred in paragraph 2. This, in my view, is not a formal defect. A challenge to a notification, invoking Article 226 of Constitution of India, cannot be equated with a revision challenging an order of discharge, under Section 397 read with 401 of



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the Code of Criminal Procedure. Both arise out of separate cause of action. In ***Beniram and Ors. Vs. Gaiind and Ors. AIR 1982 SC 789***, the Supreme Court directed that a Court cannot grant permission straight away. The grounds on which liberty is granted are limited. There is no "formal defect" or "sufficient grounds" for me to grant liberty that the petitioner seeks for.

6. This Court places on record its appreciation for the ready presence of Mr. John Sathyan, learned Senior Counsel, who has been appointed as Amicus Curiae of this Court.

7. The petitioner is permitted to withdraw the Writ Petition. Liberty sought for is rejected. No costs.

23.10.2025

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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To

The Secretary to Government,
State of Tamil Nadu,
Home (Courts -II) Department,
Secretariat, Fort St.George,
Chennai – 600 009.



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V. LAKSHMINARAYANAN, J.

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