

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/05/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.18728 OF 2002

AND

Crl.M.P.No.7588 OF 2002.

1. K.Aravind
2. Ananthi
3. K.Krishnasamy
4. Ragunathan
5. D.Sathish Issac
6. R.Sathyamurthy
7. T.Mariadoss
8. K.Thirumaran
9. R.Suresh
- 10.R.Cheran
- 11.C.Rajasekaran
- 12.Mahendran
- 13.A.Balaji
- 14.P.Ramasamy
- 15.N.Usharani Shree
- 16.K.Sakthi Balaji
- 17.K.Ganesh Karthik
- 18.K.Lakshmanan @  
Lakshminarayanan
- 19.C.Arasu
- 20.S.Sivaramakr
- 21.A.R.Narayanan .. Petitioners

-Vs-

The Inspector of Police,  
Central Crime Branch,  
Chennai. .. Respondent

Petition filed under Section 482 of the Criminal Procedure Code,  
praying for the relief as stated therein.

For petitioners: Mr.Mohammed Rafi

For Respondents: Mr. O.Srinath

O R D E R

This petition has been filed praying to transfer the case in C.C. No.16 of 1998 from the Court of Special Judge, TNPID Act Cases, Chennai, to the Court of Chief Metropolitan Magistrate, Egmore, Chennai.

2. The averments of the petition are that the petitioners/accused have been charged for an offence punishable under Sections 120(B), 409 , 420, 506(ii) IPC r/w. Section 109 IPC and Sections 3, 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978; that the respondent police, upon receiving the complaint, registered the case under the above said Sections of law and after completing the investigation, they laid the charges against the petitioners/accused only under the above said provisions of law offences and on 05.12.1996 , the charge sheet was filed in C.C.No.8271 of 1996 before the Court of Chief Metropolitan Magistrate, Egmore, Chennai.

3. The further case of the petitioners are that the case in C.C. No.8271 of 1996 got transferred to the Special Judge, TNPID Act Cases, Chennai and it was renumbered as C.C.No.16 of 1998 without any information to the petitioners/accused and thereupon, the petitioners were regularly attending the above case before the Special Judge, TNPID Act Cases, Chennai; that Section 26 Cr.P.C. provides trial of the cases by the Special Court only if offences under special laws are included, whereas, in the above case, the respondent Police have filed the charge sheet only for the offences under IPC and Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and not under Section 5 of TNPID Act, which is triable by the Special Court for TNPID Act in Chennai.

4. The petitioners would further submit that as per Section 9 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, the Chief Metropolitan Magistrate alone shall try the offences and other IPC offences can be tried before the same Court, whereas, the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 came into force only on 7.8.1997 and the Special Court was constituted on 20.03.1998 to try the offences attracted under the TNPID Act through the notification in G.O.Ms.No.1687, Home (CourtsII) Department, dated 20.11.1997; that this Court has repeatedly and categorically held that in such cases, the cases shall be transferred to the concerned jurisdictional Courts and hence the order of taking cognizance by the Special Court for TNPID Act cases in C.C.No.16 of 19 98 without any charge u/sec.5 of the said Act is illegal, improper and not maintainable and the said case shall be transferred to the Court of Chief Metropolitan Magistrate, Egmore, Chennai.

5. Though no counter has been filed by the respondent, the learned Government Advocate on the criminal side representing the respondent would argue that as per Section 6 of the TNPID Act all pending cases should be transferred to the Special ing yet another provision of law under Section

13(1) and 13(2) the learned Government Advocate would point out that the punishment is made more stringent than what it has been contemplated before this new Act came into force and the higher punishment contemplated in the new Act only could not be inflicted even though there is no impediment for the trial of cases transferred to the Special Court which has been done only in accordance with the provisions of the Act and it cannot be said that the trial cannot be held by the Special Court constituted nor the competency of the Special Court in conducting the trial since such of the Acts are neither repugnant nor any illegality is involved in those cases being tried of the Special Court.

6. But, on the contrary, the learned counsel for the petitioner would attack the arguments of the learned Government Advocate stating that when there are specific charges framed and already a final report has been filed under the then existing laws, the Special Court could not have jurisdiction to try the case. The learned counsel would further argue that Sections 6(3) and 13 of the TNPID Act would lay down the procedures regarding the trial and no specific charge has been framed under the said Act and therefore the question of trying under the said Act does not arise. The learned counsel would also point out that the offence complained of since being one in the year 1996 long prior to the advent of the Act, which came to force only on 7.8.1997 and the Special Court itself came to be constituted on 20.3.1998, under Article 20(1) of the Constitution, no conviction could sustain under the subsequent Act that came into force to the date of commission of the offence charged nor could any person be subjected to a penalty greater than which, that might have been inflicted at the time of commission of offence.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both since to the facts and circumstances of the case in hand and the relief sought for by the petitioner the relevant provision of law is Article 20(1) of the Constitution of India and within the meaning, implications, and significance of which a decision has to be taken in the above Criminal Original Petition seeking retransfer of the case from the Special Court of TNPID Act cases to that of the Court in which the case lay at the time of registration of the FIR i.e. the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai and therefore, it is relevant to extract Article 20(1) of the Constitution of India.

"20. Protection in respect of conviction for offences:-(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

8. On a plain reading of the above Constitutional provision a person shall be convicted for any offence for the violation of the law in force at the time of commission of the act charged as an offence, nor he be subjected to a penalty greater than what could be inflicted under the law in force at the time of commission of the said offence. In short, it could be stated that the conviction could be only in accordance with the law in force at the time

of commission of the act charged and the penalty shall also be inflicted in accordance with law in force at the time of commission of the offence. Needless to mention that it is the time of commission of offence which is a relevant factor for consideration in order to ascertain the conviction and sentence to be inflicted particularly to decide whether it could be in accordance with the then prevailing laws or in accordance with the new Legislation or amendment introduced after the commission of the offence.

9. However, the learned Government Advocate on the Criminal side citing Sections 6, 13(1) and 13(2) of the TNPID Act, 1997 would submit that under Section 6(1) a Special Court in the cadre of a District and Sessions Judge shall be constituted by the Government with the concurrence of the Chief Justice of the High Court which has been constituted and is functioning and it is to this Court the case in hand has been transferred.

10. As per Section 6(2) of the TNPID Act, no Court other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply and Section 6(3) contemplates that any pending case in any other Court to which the provisions of this Act apply shall stand transferred to the Special Court.

11. Needless to mention that Sections 6(2) and 6(3) are mandatory in nature. So far as these sub-sections (2) and (3) of Section 6 are concerned as it has been well remarked by the learned Government Advocate they have to be complied with and in compliance of these mandatory provisions of law all the pending cases of such nature instituted in other Courts immediately after the advent of this Act got transferred to the Special Court having jurisdiction in respect of those matters and therefore, according to the Government Advocate the transfer effected to the Special Court is just and proper. The learned Government Advocate would further submit that added to these Sections, Section 13(1) and 13(2) would also specify the procedure to be adopted by the Special Court which is nothing but the procedure prescribed in the Code of Criminal Procedure, 1973 and therefore, the learned Government Advocate would seek no valid ground for the petitioner to offer, while the law is such and particularly as per Section 14 of the TNPID Act being the Special Act 'has got the over-writing effect notwithstanding anything contained in any other law for the time being in force or customary usage which is inconsistent with the provisions of this Act.' Learned Government Advocate during the course of his arguments would also point out that only the higher punishment contemplated in the new Act could not be inflicted and there is no impediment for the trial of cases transferred to the Special Court being conducted by the said Court itself since the same is going to be conducted only in accordance with the procedures prescribed by the Cr.P.C. and therefore, the learned Government Advocate would end up his arguments with the note to dismiss the above Criminal Original Petition filed by the petitioner.

12. Now the point for consideration is whether the transfer of the said case from the Court of original jurisdiction i.e. Additional Chief Metropolitan Magistrate to that of the Special Court constituted under the TNPID Act is violative of the Article 20(1) of the Constitution of India so as to order retransfer the case to the earlier Court for the conduct of trial as

it has been prayed for, on the part of the petitioner in the above Criminal Original Petition?

13. Even though as against the provisions of the general Acts such as the Cr.P.C. the provisions of the TNPID Act will definitely prevail, since it has got the overriding effect, not only being a Special Act but also very clearly and mandatorily providing for transferring cases of such nature to the jurisdiction of the Special Court constituted under the new Act as per Section 6 of the said Act, still, the test is whether those provisions of the Special Act the TNPID Act, 1997 could have anything to do with any of the Articles of the Law of the Land, the Constitution of India and the answer is certainly in the negative and therefore it is relevant to again focus the attention to Article 20(1) of the Constitution of India wherein it has been clearly spelt out that the case cannot be tried under any other law excepting the law in force at the time of commission of the act charged as an offence for such violation and therefore the arguments advanced on the part of the learned Government that as per Section 6(2) and 6(3) since the case has been transferred to the jurisdiction of the Special Court there is no impediment in conducting the trial in accordance with the procedures established by Cr.P.C. to only penalty cannot go beyond what has been contemplated by the law in force at the time of the commission of the act charged, falls to the ground since it is not only the sentence but the very conviction as well cannot be maintained and without arriving at the conviction, question of sentence cannot be arrived at all. While the Constitutional mandate is such that not only the conviction but the sentence as well cannot be arrived at and inflicted other than in accordance with the law in force at the time of commission of the offence charged, the provision of which are alleged to have been violated and therefore since being violative of Article 20(1) of the Constitution of India, no conviction or sentence could be maintained and therefore there is no point to permitting the trial to be held by the Special Court and in result the prayer of the petitioner to retransfer the case from the file of the Court of Special Judge for TNPID Act cases Chennai to the Court of Chief Metropolitan Magistrate, Egmore, Chennai has to be considered in the affirmative and hence the following order:

In result,

(i) the above Criminal Original Petition succeeds and the same is allowed;

(ii) the case in C.C.No.16 of 1998 pending on the file of the Court of Special Judge, TNPID Act cases, Chennai is ordered to be transferred to the Court of Chief Metropolitan Magistrate, Egmore, Chennai;

(iii) the matter is remitted back to the file of the Chief Metropolitan Magistrate, Egmore, Chennai to frame charges in accordance with the provisions of law which were in force at the time of commission of the offence on such materials placed before the said Court and to conduct the trial following the procedures so as to deliver the judgment on merits and in accordance with law.

iv) Consequently, Crl.M.P.No.7588 of 2002 is closed.

6.5.2003.

Index:Yes

Internet:Yes

gs/Rao

To

1. The Inspector of Police, Central Crime Branch, Egmore, Chennai.
2. The Special Court for TNPID Act Cases, Chennai.
3. The Chief Metropolitan Magistrate, Egmore, Chennai-8.
4. The Public Prosecutor, High Court, Madras.

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