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VERDICTUM.IN



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

SUO MOTU CrI.R.C.No.1419 of 2023

1.State rep.by
The Vigilance and Anti-Corruption Wing
Viluppuram.
(Crime No.4 of 2002)

2.Mr.K.Ponmudi (A1)
S/o.Kandasamy

3.Smt.P.Visalatchi (A2)
W/o.Mr.K.Ponmudi

... Respondents

(A1 and A2 residing at No.6A, Thirupan Azhvar Street,
East Shanmugapuram Colony, Viluppuram).

Criminal Revision case filed under Section 397 of Cr.P.C. to call for the records of the Principal District Judge, Vellore (Designated Special Court) passed in Spl.SC.No.3 of 2022, dt.28.06.2023 and set aside the same.

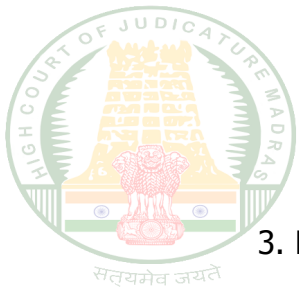


SUO MOTU CrI.R.C.No.1419 of 2023

WEB **N.ANAND VENKATESH., J.**

The notice of this Court was drawn to a recent judgment that was passed by the learned Principal District Court, Vellore in Special Case No.3 of 2022 based on a transfer order passed on the administrative side of the Madras High Court. The attention of this Court was also drawn to the fact that substantial proceedings were conducted by the Principal District Court, Villupuram and that at the fag end, the case came to be transferred to the file of the Principal District Court, Vellore. This Court felt that there is something seriously amiss about the procedure adopted in transferring the case to a different Court and that too at the fag end of the trial. To top it all, the attention of the Court was also drawn to the fact that final arguments were submitted by way of written submissions on 23.06.2023 and within a span of 4 days ie., on 28.06.2023 the Principal District Judge, Vellore had managed to write a 226-page judgment acquitting the accused. The learned Principal District Judge, Vellore demitted office shortly thereafter on 30.06.2023.

2.As a judge holding the portfolio for cases relating to MP/MLA's I thought it fit to call for the entire records of Special Case No.3 of 2022 from the Principal District Court, Vellore. On going through the same the doubts entertained by this Court on the strange procedure followed in this case was proved right. The factual backdrop and the sequence of events which ultimately led to the acquittal of the accused are as under:



3. Mr.K Ponmudi was the Minister of Transport and a Member of the Tamil Nadu Legislative Assembly between 13.05.1996 and 30.09.2001. During the said period, the Minister is alleged to have acquired and come into possession of properties and other pecuniary resources in his name and the names of his wife and sons, which were disproportionate to his known sources of income. An FIR in Crime No.4 of 2002 was registered by the Cuddalore Village, Anti-Corruption Department on 14.03.2002 under Section 109 IPC read with Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 against Ponmudi (A1), his wife Visalakshi (A2), his mother-in-law Mrs.P.Saraswathi (A3), A. Manivannan (A4) and A. Nandagopal (A5) who are the friends of A1.

4.After completion of the investigation the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Cuddalore laid a final report against the accused before the Chief Judicial Magistrate, Special Judge, Villupuram. The case was thereafter taken on file as Special Case.3 of 2003. The prosecution recorded the statements of 228 witnesses and collected 318 documents which were produced before the Special Judge.

5.On appearance, the accused filed CrI.M.P.Nos. 374, 375, 383 and 376 of 2004 under Section 239 Cr.P.C, to discharge them from the case. The learned Chief Judicial Magistrate, *vide* an order dated 21.07.2004, allowed these petitions. The State of Tamil Nadu assailed these orders before this Court in CrI.R.C.Nos.1317, 1318,1319 and 1320 of 2004. By a common order dated 11.08.2006, S. Ashok Kumar, J dismissed the



revisions and affirmed the orders of discharge. The matter was carried on appeal to the Supreme Court in Civil Appeals 22-23 & 26-28 of 2014 which is reported as **State of Tamil Nadu v N. Suresh Rajan and others** (2014 11 SCC 709). The common orders of S. Ashok Kumar, J were set aside by the Supreme Court with the following observations:

“32.4. While passing the impugned orders [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] , [State v. K. Ponmudi, (2007) 1 MLJ (Cri) 100] , the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification.”

Consequently, Special Case No.3 of 2003 stood revived and the accused were directed to appear before the said Court on 03.02.2014

6. It is seen from the records that on 31.03.2015 the Trial Court framed charges against A1, A2 and A4. A3 and A5 had passed away in the meantime. Hence, the ranks of A1, A2 and A4 were re-assigned as A1-A3, and charges were framed against them



for offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code. On 06.05.2015, examination of witnesses commenced before the Special Court for Prevention of Corruption Act Cases, Villupuram.

7. Pursuant to the directions of the Supreme Court in ***Ashwini Kumar Upadhyay v Union of India (W.P Civil 699 of 2016)***, the trial of cases relating to MP/MLA's were transferred to a Designated Special Court. The case was transferred to the file of the Principal District Judge, Villupuram (Designated Special Court for Trial of Criminal Cases relating to elected members of Parliament and members of the Legislative Assembly of Tamil Nadu) and renumbered as Special Case No.2 of 2019. Records further reveal by April 2022, the prosecution had examined as many as 169 witnesses.

8. When things stood thus, on 26.04.2022, the Principal District Judge, Villupuram wrote a letter to the High Court requesting permission to conduct a special sitting on 02.05.2022, 04.05.2022, 05.05.2022 and 06.05.2022 from 10:00 am to 12:00 noon for expeditious completion of the case in view of the directions issued by the Supreme Court in ***Ashwini Kumar Upadhyay v Union of India (WP Civil 699 of 2016)***. On 27.04.2022, PW-170 was examined on the side of the prosecution.

9. The request of the Principal District Judge, Villupuram was considered and



rejected by the High Court vide an official memorandum in R.O.C No 49596 -A-2022-B2 on 07.06.2022. Curiously and rather interestingly the High Court has refused permission *vide* communication dated 07.06.2022 when the dates for which permission had been sought had long expired. The official memorandum not only communicates the refusal of permission but also shockingly injuncts the Principal District Judge, Villupuram from exercising her judicial powers over the case by directing that the case should not be taken up until further orders.

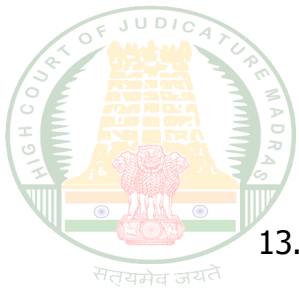
10.It is seen from the records that a month later in July 2022 the then Administrative Judges of Villupuram sent up a note dated 06.07.2022 & 07.07.2022 directing the case pending on the file of the Principal District Judge, Villupuram to be transferred to the file of the Principal District Judge, Vellore. This note was placed before the then Hon'ble Chief Justice who approved the note on 08.07.2022. On the basis of the aforesaid note, the High Court issued another Official Memorandum in R.O.C.No.49596-A-2022, dated 12.07.2022 directing the Principal District Judge, Villupuram to transfer the case to the file of the Principal District Judge, Vellore. On 16.07.2022, the Principal District Judge, Villupuram transferred the case files to the Principal District Judge, Vellore in obedience to the orders of the High Court.

11. On 20.10.2022, the Principal District Judge, Vellore wrote to the Registrar General of the High Court intimating that the case files had been received and that a new case number (Special Case No.3 of 2022) was assigned. On 23.01.2023, PW-171



was examined-in-chief on the side of the prosecution and was also cross-examined. On 20.02.2023, PW-172 was examined in chief and later cross-examined. On 10.04.2023, A1 and A2 were questioned under Section 313(1)(b) Cr.P.C. They denied the incriminating circumstances put to them and submitted a written statement under Section 313(5) of the Cr.P.C.

12. By 06.06.2023, a case which had thus far been lingering on for years started to move with great alacrity. Perhaps, the accused drew inspiration from Paulo Coelho who said that *"when you want something, all the universe conspires in helping you to achieve it"*. By the first week of June 2023, the celestial stars of the accused appeared to be lining up perfectly, with the blessings of judicial personages, including the Principal District Judge, Vellore who was set to demit office on 30.06.2023. DW-1 was quickly examined on the side of the defense on 06.06.2023. On 23.06.2023, written submissions were made on the side of the accused, and on 28.06.2023, ie., within 4 days, the Principal District, Vellore marshalled the evidence of 172 prosecution witnesses and 381 documents and managed (or rather stage-managed) to deliver a 226-page testament/judgment acquitting all the accused. This unique feat of industry on the part of the Principal District Judge, Vellore can find few parallels, and it may well be said is a feat that even judicial mortals in constitutional courts can only dream of. Two days thereafter, on 30.06.2023, the Principal District Judge, Vellore retired and cheerfully rode off into the sunset.



13. The narrative reveals a shocking and calculated attempt to manipulate and subvert the criminal justice system. Having examined the record, I find that there is not even a speck of legality on anything that has been done on and from 07.06.2022 when the High Court administration enjoined the Principal District Judge, Villupuram from proceeding with the case. The dubious and curious process of transfer followed by the trial and judgment of the Principal District Judge, Vellore are wholly illegal and are nullities in the eyes of law. These illegalities having come to my notice, I have decided to exercise my powers under Section 397 & 401 Cr.P.C and Article 227 of the Constitution *suo motu* as I find that there is a calculated attempt to undermine and thwart the administration of criminal justice.

14. There are several questions looming large. The first amongst these is: where did the High Court get the power to issue an Official Memorandum on 07.06.2022 enjoining the Principal District Judge, Villupuram from proceeding with the case? It will be recalled that vide her letter dated 26.04.2022, all that the Principal District Judge, Villupuram had done was to seek permission to sit on 02.05.2022, 04.05.2022, 05.05.2022 and 06.05.2022, which were Court holidays, from 10:00 am to 12:00 noon for expeditious completion of the case in view of the directions issued by the Supreme Court in ***Ashwini Kumar Upadhyay v Union of India*** (WP Civil 699 of 2016). It is strange that the High Court had taken exception to a request made by the learned judge to comply with the directives of the Supreme Court. In any event, by 07.06.2022, when the Official Memorandum was issued, the request had become infructuous. What



was the tearing hurry to restrain the Principal Judge, Villupuram from hearing a corruption case which had been pending for years? In any event, the use of an official memorandum to restrain a Principal District Court from exercising judicial functions is something unheard of. We have heard of Chief Justice Douglas Young staying proceedings before a Magistrate through a telegram while holidaying in Simla. This order was, however, set aside by the Privy Council in the celebrated case of the **Emperor v Khawaja Nazir Ahmed** (AIR 1945 PC 18). It may well be possible to interfere with judicial proceedings of a lower court on the judicial side. But to interfere with the same through official memorandums on the administrative side is palpably illegal and without any legal sanctity.

15. The second question is where did the Administrative Committee, comprising of two Hon'ble Judges, get the power on the administrative side to transfer a pending criminal case from one District to another and that too by way of a note? The power to transfer a criminal case from one District to another is a judicial power vested in a High Court under Section 407 Cr.P.C. In **Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460**, the Supreme Court has observed:

"21. The High Court does have the power to transfer the cases and appeals under Section 407 CrPC which is essentially a judicial power. Section 407(1)(c) CrPC lays down that, where it will tend to the general convenience of the parties or witnesses, or where it was expedient for the ends of justice, the High Court could transfer such a case for trial to a Court of Session."



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It is, therefore, clear that the power under Section 407 Cr.P.C is a judicial power which cannot be exercised by judges on the Administrative side and that too by way of an administrative note.

16. In ***Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460***, it was observed that the High Court also exercises the power to transfer cases on the administrative side under Article 227. Could it then be said that the two administrative judges were exercising powers under Article 227 by way of a note to transfer the case from PDJ, Villupuram to PDJ, Vellore? The power of administrative superintendence under Article 227 is vested in the High Court ie., the Full Court and not in any individual judge. If the facts of ***Kamlesh Kumar's case*** are carefully seen it would be apparent that an administrative order of transfer was passed pursuant to a resolution by a Full Court of the Jharkhand High Court on 25.04.2002. Similarly in ***Ajay Singh v. State of Chhattisgarh, (2017) 3 SCC 330***, the Supreme Court upheld an order of transfer passed on the Administrative side under Article 227 pursuant to a resolution passed by the Full Court of the High Court of Chhattisgarh. The aforesaid decisions would show that the administrative power of transfer under Article 227 can be exercised only by the Full Court and not by any one or more judges on the administrative side.

17. The following passage from the decision of the Division Bench of the High Court of Delhi in ***Delhi Chemicals and Pharmaceutical Works Private Limited v***



Hingiri Realtors Private Limited, 2021 SCC Online Del 3603, also fortifies the

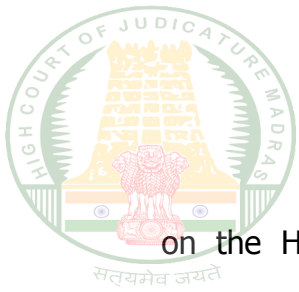
aforesaid view:

“54. The Court, in Bhandari Engineers & Builders Pvt. Ltd. supra has lastly drawn power from Article 227 of the Constitution of India, to issue the directions as issued therein. Article 227 vests in every High Court, the power of superintendence over all Courts and Tribunals throughout its territory, in relation to which it exercises jurisdiction and to make and issue general rules and prescribe format for regulating the practice and proceedings of such Court. It cannot be lost sight of, that the power thereunder is vested in the “High Court” and which, in our view, would mean the “Full Court” comprising of all the Judges of the High Court and not in individual Judges presiding over different benches as per the roster allocation by Hon’ble the Chief Justice.”

18. A Chartered High Court like the High Court of Madras is also vested with power under Clause 29 of its Letters Patent to transfer criminal cases. Clause 29 reads as follows:

“29. High Court may direct the transfer of a case from one Court to another: - And we do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other officer or Court.”

It would thus be apparent that Clause 29 is akin to Section 407 Cr.P.C and vests power



on the High Court, on the judicial side, to transfer a criminal case provided the transferee court is also competent to try it. This is true of the administrative power under Article 227 as well (See **Rite Hotels (Mysore) Ltd. v. State of Karnataka, 1984 SCC OnLine Kar 3 : AIR 1985 Kar 149**). In the present case, the transfer was made to PDJ, Vellore for no reason whatsoever. The jurisdiction of a criminal court for inquiries and trials is statutorily prescribed under Chapter XIII of the Cr.P.C. It is not open to the High Court either under Section 407 Cr.PC, or under Article 227 to cherry-pick cases and arbitrarily transfer them to any Court without any reason.

19. It is, therefore, clear that there is no authority either under the Constitution, the Letters Patent or any provision of law authorizing two judges to exercise powers, on the administrative side, to transfer a pending criminal case from one District to another and that too by way of a note. It follows that the note of the Administrative Judges dated 06.07.2022 and 07.07.2022 directing the transfer of the case from Principal District Court, Villupuram to Principal District Court, Vellore is ex-facie illegal and non-est in law.

20. The next question is whether the approval of Hon'ble Chief Justice on 08.07.2022 clothes the note of the Administrative judges with any legality? The legal position as regards the office of the Hon'ble Chief Justice is well settled. The Chief Justice, on the judicial side, is the first amongst equals. On the administrative side, the administrative control of the High Court vests in the Chief Justice alone. The Chief

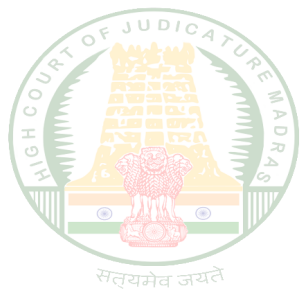


Justice is the master of the roster. He *alone* has the prerogative to constitute benches of the court and allocate cases to the benches so constituted. (See ***State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1***).

21. The Chief Justice is the Master of the Roster vis-à-vis the Benches in the High Court. It does not follow that the Chief Justice enjoys administrative power to transfer a criminal case pending in a District Court to another District. No such power exists or has been shown to exist either by law or by convention. Consequently, the approval of the Hon'ble Chief Justice on 08.07.2022 does not clothe the note order of the Administrative judges with any legality. Consequently, the Official Communication dated 12.07.2022 directing the transfer of the case from PDJ, Villupuram to PDJ, Vellore, the transfer to the PDJ, Vellore under the orders of the PDJ, Villupuram followed by the trial and the 226-page judgment delivered thereafter on 28.06.2023 are all coram-non-judice.

22. The next question is whether this Court should suo motu exercise its powers under Article 227 of the Constitution & Sections 397/401 Cr.P.C to interfere and set right the illegalities. The High Court cannot abjure its duty to prevent miscarriage of justice by interfering where interference is imperative. The principles governing the exercise of jurisdiction are no longer res integra. In ***Nadir Khan v. State (Delhi Admn.), (1975) 2 SCC 406***, the suo motu powers of the High Court were explained as under:

"4. It is well known and has been ever recognised that the High



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Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to suo motu act where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. The High Court in a given case of public importance e.g. in now too familiar cases of food adulteration, reacts to public concern over the problem and may act suo motu on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders. This position was true and extant in the old Code of 1898 and this salutary power has not been denied by Parliament under the new Code by rearrangement of the sections. It is true the new Code has expressly given a right to the State under Section 377 CrPC to appeal against inadequacy of sentence which was not there under the old Code. That however does not exclude revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court. This Court will be slow to interfere with exercise of such discretion under Article 136 of the Constitution."

23. In **Krishnan v. Krishnaveni, (1997) 4 SCC 241**, a three-judge bench of the Supreme Court has observed that it is the salutary duty of the High Court to interfere in a criminal proceeding where failure of justice has been occasioned. It was observed as follows:

"8. *The object of Section 483 and the purpose behind conferring*



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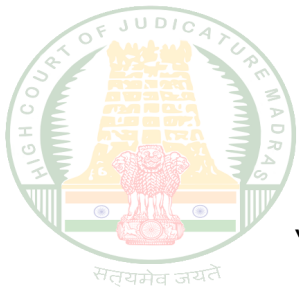


the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

In **Jagannath Choudhary v. Ramayan Singh, (2002) 5 SCC 659**, the Supreme Court went on to observe as under:

“11. The High Court possesses a general power of superintendence over the actions of courts subordinate to it. On its administrative side, the power is known as the power of superintendence. On the judicial side, it is known as the duty of revision. The High Court can at any stage even on its own motion, if it so desires, and certainly when illegalities or irregularities resulting in injustice are brought to its notice, call for the records and examine them. This right of the High Court is as much a part of the administration of justice as its duty to hear appeals and revisions and interlocutory applications — so also its right to exercise its powers of administrative superintendence.”

In **CBI v. Ashok Kumar Aggarwal, (2013) 15 SCC 222**, referring to Sections 397 & 401 Cr.P.C the Supreme Court observed:



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“These two sections in CrPC do not create any right in the favour of the litigant but only empower/enable the High Court to see that justice is done in accordance with recognised principles of criminal jurisprudence.”

From the aforesaid discussion, it is clear that where a manifest illegality by a criminal court resulting in gross failure of justice comes to the notice of the High Court, it is the bounden duty of the High Court as a constitutional court to set right the illegality and to ensure that public confidence in the criminal justice system is maintained. In **Y. Balaji v Karthik Desari**, 2023 SCC Online SC 645, the Hon'ble Supreme Court observed:

“the investigation and trial of a criminal case cannot be converted by the complainant and the accused into a friendly match. If they are allowed to do so, it is the Umpire who will lose his wicket.”

By the same token, the public must never get the impression that the Umpire is taking sides lest the whole game is reduced to a farce.

24. In view of the above, discussion the following directions are issued:

- (a) The Additional Public Prosecutor shall take notice on behalf of the State.
- (b) The Registry is directed to issue notice to the accused in Special Case No.3 of 2002, on the file of the Principal District Court, Vellore, who are the 2nd and 3rd respondents in this criminal revision, for the hearing on 07.09.2023.
- (c) The Registry is directed to place a copy of this order before the Hon'ble



Chief Justice for information.

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10.08.2023

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Internet: Yes

Index: Yes/No

Speaking Order/Non-Speaking Order

To

1.The Vigilance and Anti-Corruption Wing
Viluppuram.

2.Public Prosecutor
High Court, Madras.



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VERDICTUM.IN



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N.ANAND VENKATESH., J.

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