IN THE HIGH COURT FOR THE STATE OF TELANGANA
::HYDERABAD::
*** * ***
WRIT PETITION No.21912 of 2024

Between:

Smt. T. Ramadevi, W/o.T. Srinivas Goud

Petitioner

VERSUS

The State of Telangana,
rep. by its Principal Secretary and Others

Respondents

JUDGMENT PRONOUNCED ON: 26.09.2024

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HONOURABLE SRI JUSTICE P.SAM KOSHY**

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

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Respondents

! Counsel for Petitioner(s) :: Mr. Yemmiganur Soma Srinath Reddy
^Counsel for respondent(s) :: Mr. Swaroop Oorilla, learned Special Government Pleader, appearing on behalf of the learned Advocate General, for the respondents.

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> HEAD NOTE:

? Cases referred

1. 1990 SCC OnLineBom 3
2. 1996 (1) A.P.L.J. 370 (HC)
3. Order dated 29.02.2024 in Criminal Revision Case No.228 of 2024
4. (2010) 11 SCC 500
5. (1997) 9 SCC 132

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION No.21912 of 2024

ORDER: *(per the Hon'ble Sri Justice **P.SAM KOSHY**)*

Heard Mr. Yemmiganur Soma Srinath Reddy, learned counsel for the petitioner and Mr. Swaroop Oorilla, learned Special Government Pleader, appearing on behalf of the learned Advocate General, for the respondents.

2. The present is a second writ petition seeking for issuance of a Writ of Habeas Corpus by the same petitioner, and by way of the present writ petition the petitioner herein seeks for production of the four detenus viz., Thallapally Srinivas Goud,Thallapally Sai Sharath, Thallapally Sai Rohith and Palavalasa Siva Saran. This writ petition has been filed substantially on two questions of law, which are:-

a) Whether the period of apprehension by the police authorities before the official arrest being shown is also to be considered for the purpose of fulfilling the requirement of producing the so-called apprehended person before the Judicial Magistrate within 24 hours?

b) Whether an accused under the Telangana Protection of Depositors of Financial Establishments Act, 1996 (for short 'TSPDFE Act') can be produced for the first remand before the nearest Judicial Magistrate or he needs to be presented only before the concerned notified Special Court?

3. The aforesaid four detenus are said to be accused and arrested for the offences punishable under Section 406, 420 read with 120B of the Indian Penal Code, 1860 (for short 'IPC') and Section 5 of the TSPDFE Act. The petitioner on an earlier occasion had filed another writ petition seeking for issuance of a Writ in the nature of Habeas Corpus i.e. Writ Petition No.21034 of 2024. When the said writ petition was filed, the grounds raised in the present writ petition were not available and it was filed at the stage of their apprehension itself and subsequently when the matter came up for hearing, the said writ petition was disposed of in the light of the submissions made by the learned Government Counsel as regards the official arrest of the four detenus being made and they being sent on judicial remand vide order dated 02.08.2024. The said writ petition was rejected on the very same day i.e. on 02.08.2024 itself. That subsequently after obtaining necessary documents and records, the

present writ of Habeas Corpus has been filed raising two substantial questions of law which have been framed in the beginning of this order.

4. As regards the first question is concerned, the undisputed fact which is revealed from the order of first remand itself is that the accused Nos.3 and 4 were apprehended at 10:00 A.M. on 31.07.2024. From the Counter affidavit filed by respondent No.4 and which is not in dispute is that after having apprehended accused Nos.3 and 4 at around 10:00 A.M. on 31.07.2024, the police team proceeded to Beeramguda in search of the other accused. On 01.08.2024 at around 00:30 hours, accused No.1 Thallapally Sai Rohith, accused No.2 ThallaMamatha and accused No.6 Palavalasa Siva Saran were found at their residence at Beeramguda and the police apprehended them for questioning and at around 01:30 hours on 01.08.2024 they were brought to Central Crime Station, Hyderabad, and took them into custody and the arrest was shown on 01.08.2024 at 15:40 hours. That after completing all the formalities, all the alleged detenues were produced before the concerned Judicial Magistrate at his residence at Hasthinapuram on 02.08.2024 at 12:30 A.M. Thus, from the finding of facts as per the Counter

affidavit itself, the accused persons were officially apprehended and subsequently produced before the Judicial Magistrate as indicated in the table below :

Accused No.	Name	Time and Date of Apprehension	Time and Date of Arrest shown	Time of producing before the Judicial Magistrate	Number of hours spent in police detention
1.	Thallapally Sai Rohith	Time: 00:30 A.M. Date: 01.08.2024	Time: 15:40 hours Date: 01.08.2024	Time: 00:30 A.M. Date: 02.08.2024	24 hours
2.	ThallaMamatha	Time: 00:30 A.M. Date: 01.08.2024	Time: 15:40 hours Date: 01.08.2024	Time: 00:30 A.M. Date: 02.08.2024	24 hours
3.	Thallapally Sai Sharath	Time: 10:00 A.M. Date: 31.07.2024	Time: 15:40 hours Date: 01.08.2024	Time: 00:30 A.M. Date: 02.08.2024	38 hours
4.	Thallapally Srinivas Goud	Time: 10:00 A.M. Date: 31.07.2024	Time: 15:40 hours Date: 01.08.2024	Time: 00:30 A.M. Date: 02.08.2024	38 hours
6.	Palavalasa Siva Saran	Time: 00:30 A.M. Date: 01.08.2024	Time: 15:40 hours Date: 01.08.2024	Time: 00:30 A.M. Date: 02.08.2024	24 hours

5. It was the contention of the learned counsel for the petitioner that once when the alleged detenu / detenues are apprehended or taken into custody, it is mandatorily required that the so-called detenu is produced before the concerned Judicial Magistrate within 24 hours from the date of apprehension. It was also the contention that the period of 24 hours required to be produced before the Judicial Magistrate would start from the initial time of apprehension, which in the instant case for accused Nos.3 and 4 it starts from 10:00 A.M. on 01.08.2024. Therefore the respondent-authorities ought to have produced the so-called detenues within a period of 24

hours from the time they were first apprehended i.e. 24 hours starting from 10:00 A.M. on 31.08.2024. For accused Nos.1, 2 and 6 the period of 24 hours would start from 00:30 A.M. of 01.08.2024.

6. While dealing with the first question, it would be relevant at this juncture to take note of the provisions of Section 57 of Cr.P.C and Sub-Section (1) of Section 167 of Cr.P.C, which for ready reference are reproduced herein under:

> *"**57. Person arrested not to be detained more than twenty-four hours.**–No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."*
>
> ***167. Procedure when investigation cannot be completed in twenty-four hours.**–(1)Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary*

> *hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate."*

7. Keeping in view the aforesaid statutory provisions, it would be also relevant at this juncture to refer to a judgment of the Bombay High Court in the case of **Ashak Hussain Allah Detha @ Siddique and Another Vs. The Assistant Collector of Customs (P) Bombay and Another**[1] wherein at paragraph Nos.10 to 12, it has been held as under:

> *"**10.** It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences. [The Law Lexicon—P. RamanathaAiyar Reprint Edition 1987, page 85.] Whether a person is arrested or not does not depend on the legality of the act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases. [Section 37(1) of the N.O.P.S. Act.] It stands to reason, therefore, that what label the Investigating Officer affixes to his act of restraint is irrelevent. For the same reason, the record of the time of arrest is not an index to the actual time of arrest, The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers."*

[1] 1990 SCC OnLineBom 3

11. *The argument that the applicants were not arrested at the mid night of 19th July 1989 but were detained for interrogation is untenable. Since the offences under the N.D.P.S. Act are cognizable [R.V. Lemsatef (1977) 2 All E.R. 835."If the idea is getting around amongst either customs and excise officers or police officers that they can arrest or detain people, as the case may be, for this particular purpose, the sooner they disabuse themselves of that idea the better".] , the Investigating Officers possess the authority to arrest without warrant. They arrest a suspect or do not arrest at all. The "detention in custody for interrogation" is unknown to law. Interrogation is known. A person may be lawfully interrogated. But during such interrogation he is a freeman. If he is detained, not allowed to leave the office of the Respondent No. 1 and compelled to eat and sleep there, he is under detention. This restraint is in reality an arrest. In this case, the applicants were not allowed to leave the office of the Respondent No. 1 after the midnight of 19th July 1989. In the circumstances of this case, the applicants were arrested at the midnight of 19th July 1989.*

12. *The Investigating Officers may lawfully detain a suspect for an offence. But detention in custody for interrogation is not authorised by law. The Investigating Officers may detain for an offence only. In an English case where the Customs Officers detained a person "for helping with their inquiries", it was held that there was no authority in the Custom Officers to detain a person, except, for an offence. [R.V. Lemsatef (1977) 2 All E.R. 835."If the idea is getting around amongst either customs and excise officers or police officers that they can arrest or detain people, as the case may be, for this*

> *particular purpose, the sooner they disabuse themselves of that idea the better".] The principal that emerges is this: Any restrain on a person's liberty except for an offence is illegal. There is no authority in the Investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry.*

8. A similar view has been taken by the High Court of Judicature of Andhra Pradesh at Hyderabad in the case of **Mrs. Iqbal Kaur Kwatra Vs. The Dist. General of Police, Rajasthan State, Jaipur**[2] wherein the Andhra Pradesh High Court after dealing with a series of judgments on the issue, held as under:

> *"**19.** It is well settled that "police custody" does not necessarily mean custody after formal arrests. It also includes "some form of police surveillance and restriction on the movements of the person concerned by the police". The word "custody" does not necessarily mean detention or confinement. A person is in custody as soon as he comes into the hands of a police officer.*
>
> ***21.** On a reading of Section 57 of the Code of Criminal Procedure it is evident that no police officer can detain in custody a person arrested without warrant for a period longer than twenty-four hours besides the time taken for journey.*

[2] 1996 (1) A.P.L.J. 370 (HC)

22.*In the case of State v. Ram Autar Chaudhry (6) AIR 1955 Allahabad 138, a Division Bench of the Allahabad High Court has held that Sec. 61 of the Code of Criminal Procedure, 1898, equivalent to Sec. 57 of theCode of Criminal Procedure, 1973, does not empower a police officer to keep an arrested person in custody a minute longer than is necessary for the purpose of investigation and it does not give him an absolute right to keep a person in custody till twenty-four hours. It has further held that a police officer is not justified in detaining a person for one single hour except upon some reasonable ground justified by the circumstances of the case and under no circumstances can the period of such detention exceed twenty-four hours, without, a special order of a Magistrate. In this case, the inability of admission in jail was not found a justifying reason for delay. This case has been referred to in the case of Nabachandra v. Manipur Administration (7) AIR 1964 Manipur 39. A learned Single Judge of the Manipur High Court has observed that:*

> *"The Criminal Procedure Code does not authorise detention by the police for 24 hours after the arrest. Secs. 60 and 61, Cr. P.C., makes this quite dear, Section 60 provides that a police officer making an arrest without warrant shall, without unnecessary delay take or send the person arrested before a Magistrate. Section 61 repeats this by saying that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Sec. 167, exceed twenty-four hours exclusive of the time necessary for the*

journey from the place of arrest to the Magistrate's Court. Thus, the twenty-four hours prescribed under Sec. 61 is the outermost limit beyond which a person cannot be detained in police custody. It is certainly not an authorisation for the police to detain him for twenty four hours in their custody. It is only in a case where a police officer considers that the investigation can be completed within the period of twenty-four hours fixed by Section 61 that such detention for twenty-four hours is permitted. This is clear from Sec. 167(1) Crl. P.C. Thus, when the Police Officer knew in this case that he cannot complete the investigation within twenty-four hours, the detention of the petitioner in custody in the Imphal Police Station which is just opposite the Court where the Magistrate sits was totally illegal."

Thus it is held that on a construction of Sections 60, 61 and 167 of the Code of Criminal Procedure (old), equivalent to Sections 56, 57 and 167 of the Code of Criminal Procedure (new) that unless a police officer considers that he can complete the investigation within a period of twenty-four hours, it is his duty to produce the accused forthwith before a Magistrate.

23.*Thus it is seen that a police officer cannot detain any person in custody without arresting him and any such detention will amount to a wrongful confinement within the meaning of Sec. 340 of the Penal Code, 1860. Actual arrest and detention do not appear to be necessary, A person incustody cannot be detained without producing him before a Magistrate under the colourable pretension that no actual*

arrest is made and the burden of proving the reasonable ground is on the arrester that the time occupied in the journey was reasonable with reference to the distance traversed as also other circumstances and in case of continuation of detention for twenty four hours, particularly, when the police officer has reason to believe that the investigation cannot be completed within twenty-four hours, he must produce the accused forthwith before the magistrate and cannot wait for twenty-four hours."

9. Recently, this High Court in the case of **Vishal Manohar MandrekarVs. The State of Telangana, represented by its Public Prosecutor**[3] dealing with a similar issue had made the following observations, viz.,

"10. Article 22 (2) of the Constitution of India mandates that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours, excluding the time necessary for the journey from the place of the arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

11. Section 57 of Cr.P.C. was incorporated in accordance with the above Article. It mandates that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case was reasonable, and such period shall not, in the absence of

[3] Order dated 29.02.2024 in Criminal Revision Case No.228 of 2024

a special order of Magistrate under Section 167 Cr.P.C., exceed24 hours excluding the time necessary for the journey from the place of arrest to the Magistrate Court.

12. The above two provisions came up for consideration before theHon'ble Apex Court on several occasions and the Hon'ble Apex Court in certain terms held that without the authorization of the Magistrate, no accused can be detained in the custody of the police beyond 24 hours from the time of arrest excluding the time taken for the journey from the place of arrest to the court."

10. In the given factual backdrop and the judicial precedents referred to in the preceding paragraphs, what is evident and an admitted fact is that accused Nos.3 and 4 remained in police custody for a period of 38 hours before they were produced before the Judicial Magistrate under Section 57 of Cr.P.C. However, the accused Nos.1, 2 and 6 though remained in police custody, but were produced within 24hours before the Judicial Magistrate.

11. In the aforesaid backdrop, when we look into the provisions of Section 57of Cr.P.C, the very first line of the said provision refers to the term detention. It does not use the term "from the time of arrest", which further strengthens the case of the petitioner when they say that period of detention starts the moment they stand apprehended

by the police, as from that moment itself there is a restraint so far as personal liberty of the concerned person and there is also an arrest of his movement, as he remains under confines of police personnel. Thus, it would amount to a detention of a person right from the time he is apprehended by the police personnel. Thus, in terms of the judgment of the Bombay High Court in the case of **Ashak Hussain** (supra), the arrest of a person commences from the time restraint is placed on his liberty and not from the time of the arrest officially recorded by the arresting officers.

12. Accordingly, this Bench has no hesitation in reaching to the conclusion that question No.1 as regards the commencement of the period of apprehension is concerned, it is held that the period of apprehension is also to be taken into consideration for the purpose of calculating the period of 24 hours as is envisaged under Section 57 of Cr.P.C. In other words, 24 hours is not to be calculated from the time of the official arrest being shown by the police personnel in the arrest memo, but from the time he was initially apprehended or taken into custody. In view of the same, accused Nos.3 and 4 have been produced before the Judicial Magistrate only after completion of 24 hours from the time they were apprehended.Accused Nos.1, 2 and

6 were produced before the Judicial Magistrate before completion of 24 hours. Therefore, there is clear violation of the statutory requirement under Section 57 of Cr.P.C so far as accused Nos.3 and 4 are concerned, and they are accordingly liable to be given the benefit for the illegal act which the respondent-authorities have committed.

13. We now venture into the second question of law to be considered in the instant case i.e. whether the order of first remand passed by the Judicial Magistrate is proper and legal when in terms of Section 6, 13 and 14 of the TSPDFE Act which mandates the proceedings under the said Act to be exercised only by a special Court duly nominated?

14. In the instant case, the reason for the said dispute is that after the detenues were apprehended, and later arrested, they were produced before the nearest Judicial Magistrate which in the instant case is Hon'ble XIIAddl. Chief Metropolitan Magistrate at Nampally, Hyderabad and were not produced before the special Court notified and constituted under the TSPDFE Act.

15. It was the contention of the learned counsel for the petitioner that as per Section 6(1) and 6(2) of the TSPDFE Act, the Government shall by notification constitute a District and Sessions Court as the special Court to deal with matters under the TSPDFE Act. It was also contended by the learned counsel for the petitioner that as per Section 6(2) of the TSPDFE Act, no Court other than the special Court notified to hear TSPDFE Act cases shall have jurisdiction in respect of any matter to which the provisions of this Act applies.

16. Referring to the aforesaid provisions of Section 6(1) and 6(2) of the TSPDFE Act, the learned counsel for the petitioner contended that from the plain reading of Section 6(1) as also of Section 6(2), there is a clear exclusion of jurisdiction of all other Courts to deal with matters under the TSPDFE Act except the Court which has been duly notified under the special Act. Referring to the said provisions, it was further contended that once when there is a notified special Court to deal with matters pertaining to the said Act, the very initiation of proceedings for remand also should had been only before the notified Court and not before any other Court. Therefore, the proceedings of first remand before the Judicial

Magistrate which is under challenge in the present writ petition is bad in law and without jurisdiction.

17. Learned Special Government Pleader opposing the second question of law contended that the presentation of the detenues before the Judicial Magistrate was strictly in accordance with the provisions of Cr.P.C. The applicability of Cr.P.C has not been ousted under the TSPDFE Act, rather the special Act also prescribes that so far as the procedures are concerned, it would be the procedure of the Cr.P.C which would be applicable for the special Court while trying the matter under the said Act. Learned Special Government Pleader referred to Section 13(1) of the TSPDFE Act and contended that the framers of law had deliberately used the term 'may' in the said Sub-Section and therefore it has to be read in a harmonious way enabling the provisions of Cr.P.C as also the provisions of TSPDFE Act to be in sink while being in operation. It cannot be said that the provisions of TSPDFE Act totally ousts the applicability of Cr.P.C right from the inception stage itself.

18. According to the learned Special Government Pleader, the plain reading of Section 13(2) also gives a clear indication that the provisions of Cr.P.C 'shall', 'so far as may be' apply to the

proceedings under the TSPDFE Act and the special Courts constituted under the said Act. Referring to Sub-Section (1) of Section 3, the learned Special Government Pleader contended that the special Court can also directly take cognizance of an offence under the TSPDFE Act without the accused being committed to it for trial by any of the jurisdictional Magistrate. This in other words according to the learned Special Government Pleader also means that the powers vested under Sub-Section (2) of Section 167 continues to remain with the Judicial Magistrate. This in other words according to the learned Special Government Pleader also means that the jurisdictional Magistrate after taking cognizance under Section 167 of Cr.P.C also can commit the accused for trial under Section 209 before the notified special Court for the proceedings under the TSPDFE Act.

19. According to the learned Special Government Pleader, Sub-Section (2) of Section 167 is amply clear that the said provision so far as production of a person before a Judicial Magistrate within 24 hours from the time of apprehension can also be before a Judicial Magistrate who may or may not have jurisdiction to try the case and as such there is no illegality on the part of the respondent-

authorities in producing the detenues before the Judicial Magistrate and not having produced only before the notified special Court under the TSPDFE Act.

20. For all the aforesaid reasons, the learned Special Government Pleader contended that the second question of law to be considered by this Court needs to be answered in negative holding that it was permissible under the TSPDFE Act also for the detenues to be produced so far as first remand is concerned before the nearest Judicial Magistrate instead of the notified special Court alone.

21. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to take note of Section 167(2) of the Cr.P.C., which for ready reference is reproduced herein under:

> *"(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:"*

A plain reading of the said Sub-Section clearly indicates the power which is conferred upon the Judicial Magistrate under Section 167(2). While framing the said provision of law, it has been very emphatically taken note of by the law makers that the said provision of law needs to be taken care of in the process of subsequent acts being made and also taking note of the ground whether the Judicial Magistrate before whom the apprehended / detained person is being produced has the jurisdiction or not to deal with the offences upon which the detained person stands charged. When we read the provisions of Sub-Section (2) of Section 167 along with Section 13(1) and (2) of the TSPDFE Act, it will clearly give an indication that the TSPDFE Act has not completely ousted the applicability of Cr.P.C. Rather it is a case where the procedure to be adopted by the special Court notified under the said Act also follows the procedure laid down under Cr.P.C. We find sufficient force in the contentions of the learned Special Government Pleader that Sub-Section (1) of Section 13 of TSPDFE Act categorically envisages that the special Court may take cognizance of the offence even without the offence being committed to it. This does not mean that after a person is apprehended for an offence under the TSPDFE Act even for obtaining

the first remand under Section 167(1), it has to be only before the special Court notified under the said Act and not the nearest Judicial Magistrate as is envisaged under Cr.P.C. Reading Section 167 of Cr.P.C along with Section 13 and 14 of TSPDFE Act would clearly force us to reach to the conclusion that the word 'may' used in Sub-Section (1) of Section 13 is a discretionary power and not a mandatory direction.

22. What is also required to be noted, at this juncture, is that even Article 22(2) of the Constitution of India envisages that every person who is arrested and detained in custody ***"shall be produced before the nearest Judicial Magistrate"*** within 24 hours of such arrest and detention with exceptions carved out, those which are not applicable in the present case. Same is the provision that is reflected in Section 167 of Cr.P.C. as well and if we further read the provisions of Sub-Section (2) of Section 167, it also provides for the power upon the Judicial Magistrate to even entertain those applications / cases of accused persons produced before him irrespective of whether he has or does not have jurisdiction to try the case. In cases where the Judicial Magistrate does not have jurisdiction, under the said circumstances also Sub-Section (2) empowers the nearest Judicial

Magistrate to consider granting of judicial custody and order the accused to be forwarded before such Court which otherwise has the jurisdiction.

23. The Hon'ble Supreme Court in the case of **Dinesh Chandra Pandey Vs. High Court of Madhya Pradesh**[4] in paragraph No.15has held as under:

> *"**15.** The courts have taken a view that where the expression "shall" has been used it would not necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision. This Court in SarlaGoel v. Kishan Chand [(2009) 7 SCC 658], took the view that where the word "may" shall be read as "shall" would depend upon the intention of the legislature and it is not to be taken that once the word "may" is used, it per se would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in the light of the settled principles, and while ensuring that intent of the Rule is not frustrated."*

24. Likewise, in the case of **Mohan Singh Vs. International Airport Authority of India**[5] again the Hon'ble Supreme Court held

[4] (2010) 11 SCC 500

that the words 'may' and 'shall' in the legal context are synonymous and can be used interchangeably if the context requires such an interpretation. In paragraph No.26 of the said judgment, the Hon'ble Supreme Court held as under:

> *"**26.** Thus, this Court, keeping in view the objects of the Act, had considered whether the language in a particular section, clause or sentence is directory or mandatory. The word 'shall', though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word 'shall' is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory. If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to*

[5] (1997) 9 SCC 132

> *innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice."*

25. In the light of the aforesaid judicial precedents and upon reading of the two provisions of law, we have no hesitation in reaching to the conclusion that TSPDFE Act has not in any manner ousted the applicability of the provisions of Cr.P.C. so far as the mandatory requirement which includes the fundamental right of any person who stands apprehended or arrested to be produced before the nearest Judicial Magistrate. If the said interpretation is not accepted or followed; the very purpose, object and intention of the law makers at the first instance so far as the fundamental right guaranteed under Article 22(2) of the Constitution of India and secondly under the statute i.e. Section 167(1) and (2) of Cr.P.C. would render the two provisions redundant, which in the opinion of this Court would give rise to far more complications and repercussions and which perhaps is also not the intention of the law makers in the course of enacting the TSPDFE Act.

26. The second question of law so far as competence and jurisdiction of the Judicial Magistrate entertaining the first remand petition is answered in the affirmative holding that the Judicial Magistrate does have the competency and jurisdiction and there does not seem to be any jurisdictional error so committed by the Judicial Magistrate while passing the impugned order dated 02.08.2024 which is under challenge in the present writ petition.

27. However, as regards the first question of law being decided in favour of the detenues i.e. accused Nos.3 and 4 to the extent of the period of initial apprehension itself being the time from which the period of 24 hours commences within which the detenues had to be produced before the Judicial Magistrate. In view of the chart which is reflected in paragraph No.4 of this order, admittedly accused Nos.3 and 4 seem to have been under police custody for a period of more than 24 hours from the time they were initially apprehended. In the light of the judgment quoted in the case of **Ashak Hussain** (supra) that of the Bombay High Court and also in the case of **Mrs. Iqbal KaurKwatra** (supra) from the unified Andhra Pradesh High Court, the respondent-authorities seem to have clearly violated the provisions of Article 22(2) of the Constitution at the first instance

and also there is a clear violation of Section 167(1) of Cr.P.C. Thus, the accused Nos.3 and 4 in the instant case are entitled for relief of issuance of a Writ of Habeas Corpus and they are therefore ordered to be released from the custody forthwith. However, since the accused Nos.1, 2 and 6 have been produced before the Judicial Magistrate before completion of 24 hours; their claim for being released deserves to be and is accordingly dismissed.

28. In the result, the instant Habeas Corpus petition to the aforesaid extent so far as accused Nos.3 and 4 stands allowed, and so far as accused Nos.1, 2 and 6 are concerned, stands dismissed. No costs.

29. As a sequel, miscellaneous petitions pending if any, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 26.09.2024
Note : LR copy to be marked
B/o.
GSD