

CASE NO.:
Appeal (crl.) 1091-1093 of 2001

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
PARAMASIVA PANDIAN

DATE OF JUDGMENT: 30/10/2001

BENCH:
D.P. Mohapatra & K.G. Balakrishnan

JUDGMENT:

D.P. MOHAPATRA, J.

Leave granted.

The question that falls for determination in this case is whether the special court which ceased to be a special court under the Essential Commodities (Special Provisions) Act, 1981, but continued as such under the Narcotic Drugs and Psychotropic Substances Act, 1985 has the power to remand an accused who is implicated for an offence under the Essential Commodities Act, 1955 ?

The factual backdrop of the case leading to the present proceeding may be stated thus :

The three accused who are respondents herein were alleged to have committed offences under the Tamil Nadu Essential Trade Articles (Regulation of Trade) Order, 1984 read with section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (for short the EC Act) in the year 2000. In that connection crime Nos. 3 and 14 of 2000 were registered against the said accused. They were arrested and remanded to jail. Two of the accused persons were produced before the area magistrate who remanded them to police custody and subsequently they were produced before the special court at Madurai who passed successive remand orders for their custody in jail. The third accused was directly produced before the special court and was remanded to custody by orders passed by the said Court from time to time. After the enactment of the Essential Commodities (Special Provisions) Act, 1981 (for short the EC (Special Provisions) Act) the Government of Tamil Nadu in consultation with the High Court had issued a notification under section 12-A of the EC Act (Special Provision) constituting the special courts which were empowered to try cases under the Special Commodities Act pending in various courts in the State of Tamil Nadu. In pursuance of the said Government order a District and Sessions Judge was appointed as a Presiding Officer of the special court at Madurai for trial of cases under the EC Act. Subsequently, by another Government order issued in June, 1993 the Government of Tamil Nadu in consultation with the High Court empowered the Presiding Officer of the special courts for EC Act cases to deal with the cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS

Act). Accordingly, the special court for EC Act cases functioning at Madurai was also assigned to try the offences under the NDPS Act within the same territorial jurisdiction.

The EC(Special Provisions) Act which provided for special courts under section 12A came into force from 1.9.1982. The said Act was enforced initially for a period of 5 years and was extended for a further period of 5 years i.e. 1987 to 1992 and thereafter from 1992 to 1997. The Act was in force till 31.8.1997. Thereafter the Essential Commodities(Special Provisions) Ordinance 1997 (Central Ordinance 21 of 1997) was promulgated. As there was no enactment the Essential Commodities Amendment Ordinance, 1998 (Central Ordinance 13 of 1998) was promulgated by the President. The above two Ordinances lapsed since they were not replaced by enactments, as a result of which the special courts established for trial of EC Act cases ceased to function. The consequential position that followed was that the cases registered under the EC Act were to be tried before the Magistrate having jurisdiction as it was being done prior to enactment of EC(Special Provisions) Act, 1981.

The accused no.4 Esakiappan was arrested in connection with crime No.3/2000 on the file of the Inspector of Police, CID, Civil Supplies, Tirunelveli for the offence under section 7(1)(a)(ii) of the EC Act, 1955 for the contravention of clause 4(i) and 19(1) of the Tamil Nadu Essential Trade Articles (Regulation of Trade) Order, 1984 and Clause 6(4) of the Tamil Nadu Essential Commodities (Regulation of Distribution by card system) Order, 1982. He was produced on 9.2.2000 before the special court under the NDPS Act at Madurai which previously was dealing with EC Act cases and he was remanded to judicial custody.

The detenu K. Palaniselvan (Accused No.1) and Gopal @ Balagopal (accused No.2) were arrested on 9.2.2000 and produced before the judicial magistrate, Kovilpatti in connection with the above cases. After the initial remand by the Judicial Magistrate, Kovilpatti the said accused persons were periodically produced before the special court, Madurai and remanded to judicial custody. The aforementioned three accused persons are also the accused in another case, crime No.14/2000 on the file of the Inspector of Police Civil Supplies, CID Tirunelveli. The case was registered for similar offences as in crime No.3/2000 referred above. After completing the investigation in both the cases (crime Nos. 3 and 14/2000) charge-sheets were filed before the special court Madurai whereafter the accused were being periodically remanded by the Presiding Officer of the special court under section 309 Criminal Procedure Code.

The three accused persons filed habeas corpus petitions Nos.1401,1402 and 1403/2000 in the High Court of Madras challenging the validity of the remand orders passed by the special court at Madurai and questioned the legality of their detention in pursuance of the said order of remand. The case of the petitioners shortly stated was that after the EC(Special Provision) Act, 1981 lapsed by efflux of time in 1998, the special court constituted under section 12A of the said Act ceased to have jurisdiction to try cases under the EC Act, and therefore, the remand orders passed by the special court constituted for trial of cases under the NDPS Act had no jurisdiction to pass remand order in EC Act cases. Thus the successive orders of remand passed by the special court under the NDPS Act at Madurai being without jurisdiction were invalid and the detention of the petitioners on the basis of such orders was illegal. The petitioners prayed for being released from custody forthwith.

The case of the State of Tamil Nadu as appears from the discussions in the Judgment of the High Court was that though the special court at Madurai constituted for trial of EC Act cases ceased

to exist after 1998 when the EC(Special Provisions) Act lapsed by efflux of time, the Presiding Officer of the special court for trial of NDPS Act cases at Madurai who was also a Sessions Judge had power to pass the orders of remand under section 167 of the Cr.P.C. as he was also exercising powers of a Judicial Magistrate in respect of cases tried by him.

The High Court on a detailed discussion of the contentions raised by the counsel for the parties and referring to several decisions cited by them held that in the present case the crime allegedly committed by petitioners was in the first week of February 2000, long after the lapse of the Ordinance dated 24.10.1998 as a result of which the EC (Special Provisions) Act ceased to exist. The prosecution or penalty, if any, for alleged offences under the EC Act has to be in accordance with the statutory provisions of the said Act only and such a case could be proceeded with by the Court having jurisdiction, normally the area magistrate of the area where the offence was alleged to have been committed and not before the special court constituted for the EC Act cases or NDPS Act cases. The High Court also observed that the area magistrates were functioning in the area in which the offence was alleged to have been committed and further that no powers of a magistrate under the Code of Criminal Procedure has been conferred on a special court or the Presiding Officer of special Court at Madurai.

The High Court summed up its findings in the following words:

But in this case as already pointed out it is clear neither on the date of first remand nor on the date of subsequent extension, or taking cognizance, nor as on date there is legal order of remand or extension of remand at all by the Special Court for Essential Commodities Act cases Madurai which ceased to exist long ago and as it is not a validly constituted court or Magistrate its orders and proceedings are without jurisdiction. Hence, the reliance placed upon the above pronouncement is of no consequence or assistance, nor it could be considered as a mere irregularity as sought to be made out.

In the foregoing circumstances the order of remand and the extension of the remand of the detenus from time to time are without jurisdiction, such order cannot be continued and there should naturally be a direction to the respondent herein as well as the Superintendent of the concerned Jails namely Central Jail, Vellore, Central Jail, Palayamkottai, Central jail, Trichirapalli, to set the three detenus at liberty.

Though the detenus as already held are in remand which remand is being without jurisdiction ordinarily the detenus should be set at liberty. However, in the interest of justice and on the facts in the case instead of setting the detenus at liberty and thereafter allowing the respondent to go before the concerned Magistrate, to avoid delay and technical objections and to render substantial justice, we hold that this is imminently a fit case where this Court would be justified in enlarging the detenus on bail as in two cases initially there was a valid order of remand by the area Magistrate and in the third case even though there was no remand by the area Magistrate and

the remand was made by the Special Court at the first instance. But on that score it would not be proper for us to treat the third case as differently and to give a disposal differently.

Allowing the Habeas Corpus petition the High Court passed the following order :

On the facts of the case instead of issuing a writ of habeas corpus we are of the considered view that the detenus herein would very well be ordered to be released on bail which would subserve the interest of justice.

In the circumstances, while following the Supreme Court judgment in State of Bihar vs. Rambalak Singh reported in AIR 1966 SC 1441 we direct the three detenus namely (i) Isakkiappan (ii) Palani Selvam and (iii) Gopal @ Balagopal, respectively in remand at the Central Jail, Vellore, Central Jail, Palayamkottai and Central Jail, Trichirapalli shall be released on bail subject to the following conditions:-

Xxx xxx xxx

It is made clear that it is open to the detenus to attend the area Magistrate before which Courts the respondent may proceed with the prosecution of cases for violation of Essential Commodities Act."

The said judgment/order is under challenge in these appeals.

Shri T.L.V.Iyer, learned senior counsel appearing for the appellants contended that the Presiding Officer of the special Court at Madurai which was initially constituted for trial of cases under the EC Act and subsequently entrusted with the cases under the NDPS Act might have ceased for the purpose of trial of EC Act cases after the Ordinance lapsed in October, 1998 but the special court continued to exercise powers under the NDPS Act, and since the Presiding Officer of the said court was a Sessions Judge who was exercising powers of a judicial Magistrate he could pass the order of remand even when he had no jurisdiction to try cases under the EC Act. Alternatively, Shri Iyer contended that the defect, if any, in the remand order was curable and no writ of habeas corpus quashing the order of detention could be passed in the facts and circumstances of the case.

Per contra Mr. S.Sivasubramanian, learned senior counsel appearing for the respondents contended that in the facts and circumstances of the case the conclusion drawn by the High Court in the judgment under challenge that the remand order passed by the special court at Madurai was without jurisdiction, and therefore , illegal, is unassailable. The High Court according to Sri Sivasubramanian has given cogent reasons in support of its findings/conclusions.

The factual position which was not controverted before us was that the special court at Madurai constituted for trial of EC Act cases ceased to exist after October, 1998 when the last period of extension of EC(Special Provisions) Act lapsed. In the present case the offences under the EC Act were alleged to

have been committed by the respondents in February, 2000 long after the special court for EC Act cases had ceased to exist. The accused were arrested in the months of February and April, 2000. The cases registered against the accused were, therefore, to be dealt with in accordance with the provisions of the principal Act i.e. EC Act, 1955 and section 11 of the EC Act provides that no Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not. It is not disputed before us that prior to enforcement of the EC (Special Provisions) Act, 1981 which was enforced on 1.9.1982 cases under the EC Act were being tried by the area Magistrates within their respective territorial jurisdiction. As noted earlier, the special courts were constituted under section 12A of the EC (Special Provisions) Act. The said section provided, inter alia, that the State Government may for the purpose of providing speedy trial of the offence under the Act by notification in the official gazette constitute as many special courts as necessary for such areas as may be specified in the notification. A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government. A person shall not be qualified for appointment as a judge of a Special Court unless (a) he is qualified for appointment as a judge of a High Court, or (b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

On a fair reading of the above provisions it is clear that during the period the EC(Special Provisions) Act was in force the special court constituted for trial of offences under EC Act had exclusive jurisdiction to try such cases. The special court had also the power to pass order of remand under section 167 but the position changed after the EC(Special Provisions) Act lapsed by efflux of time. Thereafter, the position that used to prevail before the EC(Special Provisions) Act was enforced, stood restored and the judicial magistrates who were previously competent to try the EC Act cases got the jurisdiction to deal with such cases. The position is beyond any pale of doubt that the remand orders passed by the special court at Madurai, long after it had ceased to exercise jurisdiction in cases under the EC Act are incompetent.

Coming to the question whether the special Court constituted for trial of cases under the NDPS Act could exercise the power of remand of an accused in the EC Act case, which it was doing when the special court constituted for the EC Act cases was in existence, the answer to the question is in the negative; for the simple reason that the special court constituted for NDPS Act cases is a Court of exclusive jurisdiction for trial of the particular class of cases provided under the NDPS Act and it has not been vested with power of judicial Magistrate for the purpose of dealing with EC Act cases. To accept the contention raised on behalf of the appellant in this regard would in our view be contrary to the scheme of things under the Criminal Procedure Code which specifically vests the power of remand under section 167 in judicial magistrate. The High Court was, therefore, right in negating the contention raised on behalf of the State Government in this regard. It is relevant to note here that even after holding that the remand orders were passed by the Court not competent to pass such orders, the High Court has not granted the prayer of the writ petitioners for their release but has only ordered their release on conditions as

noted in the judgment.

The resultant position that emerges from the discussions in the foregoing paragraphs is that the judgment of the High Court under challenge is unassailable and accordingly the appeals are dismissed.

.J.
(D.P.MOHAPATRA)

J.
(K.G. BALAKRISHNAN)

October 30 2001

JUDIS