

(1999) 02 MAD CK 0043

In the Madras High Court

Case No : Criminal O.P. No. 21202 of 1998 and Cri M.P. No's. 10214 to 10216 of 1998

Habibul Kareem

APPELLANT

Vs

Asst. Director, Enforcement Directorate

RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 313, 317, 407, 407(2)
Foreign Exchange Regulation Act, 1973 — Section 57

Citation : (1999) CriLJ 2209 : (1999) 2 LW(Cri) 728

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : K.A. Jabber, for the Appellant; K. Senthil Kumar, Spl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Habibul Kareem of Panaikulam, Ramnad District, the petitioner herein, has filed this petition u/s 482, Cr.P.C.

seeking for the following prayer :-

The petitioner therefore prays that this Honorable Court may be pleased to transfer the Criminal Case E.O.C.C. No. 1242/90 from the learned

Addl. Chief Metropolitan Magistrate (E.O.II), Madras to the Addl. Chief Metropolitan Magistrate (E.O. I), Egmore, Madras or to any other

competent Court and render justice.

2. Mr. K. A. Jabber, the counsel appearing for the petitioner, in support of his prayer, brought out some instances in order to show that the

learned Addl. Chief Metropolitan Magistrate (E.O.II), Madras has developed hostile attitude towards the petitioner/accused, thereby the petitioner

has a reasonable apprehension that he cannot get justice and so, the transfer of the case from his Court is quite essential.

3. This petition is stoutly resisted by Mr. Senthil Kumar, the Special Public Prosecutor appearing for the respondent, on the strength of the counter affidavit filed by him.

4. Before going into the ""merits of the reasoning in support of their respective submissions, it is quite appropriate for this Court to recapitulate the chronological events which took place till the filing of this petition for transfer.

(a) On 8-7-97, the Officers of the Enforcement Directorate Madras, searched the premises of Habibul Kareem, the petitioner herein, in Door No.

51, Malayappan Street, 1st floor, Mannady, Madras. The search resulted in the recovery of US \$ 9,500/-, Indian currency of Rs. 4,000/- and

certain other incriminating documents. After search, the statement of the petitioner was recorded. He stated that on the request of one Abdul

Rahman of Singapore, he used to distribute the amount to various persons in India whose relatives are working in Dubai, Singapore and Ceylon

and the payments were made by them to the agents of Abdul Rahman of Singapore and that in India, he used to receive money from various

unknown persons as per the instructions of Abdul Rahman and used to distribute the same to various persons as per his instructions.

(b) He had also stated that he used to purchase US \$ from one Ilyas of Kasi Chetty Street and sell it to one Kina alias Kidru Mohamed of

Washermanpet. He was then arrested and produced before the Court. Thereafter he was released on bail.

(c) After show cause notice, enquiry was conducted. Ultimately, the adjudicating authority passed an order on 14-3-90 imposing penalty of Rs.

5,35,000/- on the petitioner for various offences punishable under the FERA Act, 1973. In the said order, the petitioner was directed to pay the

said amount within 45 days from the date of receipt of the order.

(d) Since the amount of penalty was not paid by the petitioner, the Enforcement Directorate, Chennai filed a complaint on 20-10-90 against the

petitioner u/s 57 of the FERA Act for having not paid the penalty amount within 45 days. After taking the case on file, the Additional Chief

Metropolitan Magistrate-E.O.I. made over the case to E.O.II for disposal according to law. On 22-11-90 the E.O.II received the records and

issued the summons to the accused to appear before the court on 14-12-90.

(e) On 14-12-90, the petitioner was present. After copies were furnished, he was questioned. The petitioner pleaded not guilty. Therefore, the

case was adjourned to 18-1-91 for trial. Subpoenas was issued to the first witness mentioned in the complaint.

(f) On 18-1-91, both the witness and the accused were present. But, the accused wanted some time to engage a counsel. Therefore, the case was

adjourned to 14-2-91 enabling him to engage a counsel. The witness was also asked to come on that date.

(g) On 11-1-91, the petitioner filed a Writ Petition in W.P. No. 1773/91 before this Court seeking for the issue of a Writ of Mandamus directing

the Foreign Exchange Regulation Appellate Board, New Delhi to dispose of the appeal filed by the petitioner against the adjudication Order and till

such time, the criminal proceedings pending before the Addl. Chief Metropolitan Magistrate (E.O.II) shall be stayed. This Court in W.P. No.

1773/91 stayed the criminal proceedings.

(h) When the criminal case was taken on 14-2-91, the counsel for the petitioner filed the stay order and an application for condonation of the

absence of the petitioner. The matter was posted on 14-3-91, 15-4-91, 15-7-91, 16-9-91, 14-10-91, 25-11-91, 26-12-91, 6-1-92, 3-2-92, 2-

3-92, 4-5-92, 6-7-92, 7-9-92, 9-11-92, 11-1-93, 26-3-93, 25-6-93 and 20-8-93. In all these days, the petitioner was absent and the petitions

filed in those days u/s 317 Cr.P.C. were allowed. It was informed to the Court that the said Writ Petition was pending before this Court.

(i) In the meantime, the Writ Petition was disposed of on 17-11-92 itself. This Court, while disposing of the said Writ Petition, passed an order

directing the Appellate Board to dispose of the application for stay and dispensing with the payment of penalty within two months from the date of

receipt of the copy of the said order.

(j) On production of the copy of the order before the trial Court, the criminal case was periodically adjourned from 8-9-93 to 4-10-93, 2-11-93,

24-12-93, 22-2-94, 22-4-94, 11-5-94, 27-6-94, 25-8-94, 27-9-94, 11-11-94, 9-1-95, 2-3-95, 18-4-95, 22-6-95, 27-8-95, 28-9-95, 13-

11-" 95, 15-12-95, 29-1-96, 8-3-96, 30-4-96, 28-6-96, 31-7-96, 27-9-96, 15-11-96, 17-1-97, 14-3-97, 30-4-97, 24-6-97 and 31-7-97. In all

those days, the accused was absent. Petitions u/s 317 Cr.P.C. were allowed on the ground that the interim orders by the Appellate Board were

yet to be passed. On the said day, E.O.II observed that the criminal Court has to decide the issue independently, as the finding of the Appellate

Board (FERA) would not be binding on the criminal Court. So, he directed the prosecution to produce the witness on 4-9-97.

(k) On 20-10-97, the Appellate Board (FERA), in the appeal filed by the petitioner against the adjudication order passed an order granting stay.

(l) In the meantime, on 23-10-97, the petitioner filed Crl. O.P. No. 14718/97 before this Court u/s 482 Cr.P.C. praying for a direction to the trial

Court not to proceed with the trial till the disposal of the main appeal pending before the FERA Board.

(m) On 20-1-98, Crl.O.P. No. 14718/97 came up to final disposal before this Court. Hon''ble Sidickk, J. (as he then was) having considered all

these aspects, dismissed the said application after taking into consideration the stay order granted by the FERA Board dated 20-10-97, by

concluding that the pendency of the appeal cannot come in the way of the criminal proceedings u/s 57 of the FERA Act, as the said offence is

already complete on non-payment of the penalty within 45 days and that the criminal prosecution is an independent proceeding and not dependent

upon the validity of the order of adjudication and also dismissed the stay and dispensing with applications in Crl. M.P. Nos. 5437 and 5438/97 by

order dated 20-1-98.

(n) Thereafter, the trial before the E.O.II commenced on 13-2-98. P.W. 1 was examined. Ex.P-1 to Ex.P-5 were marked on the side of the

prosecution. On the side of the defence, Ex.D-1 was marked. After the prosecution side was closed, the case was adjourned to 26-2-98 for

questioning u/s 313 Cr.P.C.

(o) On 26-2-98, the petitioner was present and he was questioned u/s 313 Cr.P.C. The case was posted for argument on the same day. The

petitioner filed an application u/s 311 Cr.P.C. and the case was posted on 5-3-98. He filed another application praying for adjournment of trial by

6 months in Crl. M.P. No. 480/98 before the trial court. The said application was dismissed on 5-3-98 by refusing to adjourn the trial.

(p) On 12-3-98, challenging the said order, the petitioner filed Crl.R.C. No.

260/98 before this Court. This Court by order dated 3-4-98 allowed the Revision by adjourning the case till 30-6-98 to enable the petitioner to get the appeal preferred by him before the FERA Appellate Board disposed off on condition that no further extension of time or adjournment of the trial shall be given on this ground.

(q) In the meantime, the trial Court periodically adjourned the case to 9-3-98,10-3-98 11-3-98,13-3-98,16-3-98,20-3-98,3-4-98 & 16-4-98

and on 16-4-98, the order of this Court dated 3-4-98 giving adjournment till 30-6-98 was informed. Accordingly the case was again adjourned to 14-5-98 and ultimately to 3-6-98.

(r) In the meantime, the petitioner filed another CrI.O.P. No. 11294/98 on 22-6-98 before this Court seeking for adjournment of the trial by 6

months. In this petition, the earlier order dated 3-4-98 giving 6 months time was not mentioned. On 16-7-98, stay order was passed in CrI. O.P.

No. 11294/98 by this Court.

(s) Apart from this petition, he also filed W.P. No. 8900/98 on 29-6-98 praying for the issue of a writ of mandamus directing the FERA Appellate

Board to dispose of the appeal and till such time, the criminal proceedings may be stayed. On 12-8-98, the writ petition was disposed of by

directing the Appellate Board to dispose of the appeal within 3 months and staying the trial of the lower Court for 3 months.

(t) On 13-8-98, the CrI. O.P. No. 11294/98 was dismissed as withdrawn by the petitioner. In view of the order of stay obtained from the Writ

Court for 3 months, the trial Court again periodically adjourned from 22-7-98 to 7-8-98,13-8-98, 20-8-98,11-9-98,16-10-98,19-M-98.27-11-

98," 17-12-98 and then to 31-12-98.

(u) The time of 3 months already granted by the writ Court by the order dated 12-8-98 expired on 12-11-98. Therefore on 18-11-98, the

petitioner filed another petition in CrI.O.P. No. 20376/ 98 u/s 482 Cr.P.C. praying for further direction to the trial Court to adjourn the trial by 3

months. This Court entertained the said petition u/s 482 Cr.P.C. on the same day and granted stay till 25-11-98.

(v) On intimation about the stay order, the case was again adjourned to various dates from 31-12-98 to 21-1-99,4-2-99,6-2-99 and then to 11-

2-99. In all these hearings, the personal appearance of the petitioner was

dispensed with.

(w) In the meantime on 27-11-98, the petitioner filed the instant petition in Crl.O.P. No. 21202/98 for .transfer of the trial from E.O.II to E.O.I or

to any other competent Court. This was admitted by this Court on 14-12-98 and stay was ordered for 6 weeks.

5. The events narrated above would give rise to the factors mentioned below :-

(a) Though the complaint against the petitioner u/s 57 of the FERA Act for nonpayment of the penalty was filed in November, 1990, the trial was

not allowed to be commenced till January, 1998 by the petitioner mainly on the reason that the appeal before the Appellate Board was pending, by

filing several Crl.O.Ps. and Writ Petitions before the High Court.

(b) On 13-2-98, P.W. 2 was examined in chief and cross. The accused, after closing of the prosecution, was questioned u/s 313 Cr.P.C. on 26-

2-96. Thereafter, the matter was posted for arguments. However, subsequently from February, 1998, the trial Court was not allowed to hear the

arguments till date by adopting the same method by filing several Crl. O.Ps. and Writ Petitions one after another before this Court and obtaining

stay.

(c) Despite the several hurdles in the trial, the trial Court had examined the prosecution witnesses and through whom Ex.P-1 to Ex.P-5 and Ex.D-1

were marked and questioned the accused u/s 313 Cr.P.C. in the interval period during which there was no stay by the High Court either in the

petition u/s 482 Cr.P.C. or in the Writ Petition.

6. The offence is non-payment of the penalty imposed upon the petitioner under various Sections of the FERA Act which is liable to be punished

u/s 57 of the Act. The order of penalty was passed on 14-3-90. The penalty was to be paid within 45 days from the date of receipt of the order.

The complaint was filed on 21-11-90. On receipt of summons on 14-12-90, the petitioner appeared before the Court, received the copies and

pleaded not guilty. So, the process of trial had begun as early as 14-12-90. In spite of filing a petition before the trial Court seeking for adjournment

on the ground that he already filed an appeal before the FERA Board against the adjudication order, the petitioner chose to file a writ petition in

W.P. No. 1773/91 before this Court on 11-1-91 for direction to the Board to dispose of the petition praying for stay of the adjudication order at

an early date. In this matter, the petitioner was able to obtain stay of the criminal proceedings.

7. On 12-2-91, the High Court in the Writ Petition granted stay of the criminal proceedings pending main writ petition. Ultimately, this writ petition was disposed of on 17-11 -92 by Hon"ble J. Kanakaraj, J. (as he then was). The order is as follows :-

If an application for stay and for dispensation of the payment of penalty had been filed as stated by the writ petitioner, the second respondent is

directed to dispose of the said interlocutory application within two months from the date of receipt of copy of this order. Till orders are passed, the

enforcement of the penalty under the original order dated 14-3-1990 shall be postponed. I make it clear, if no such application had been filed or if

such an application has been disposed of or to be disposed of in future, the parties will be governed by orders in such an application and the

enforcement of such an order need not be kept in abeyance any further.

8. In fact, this order was passed by the writ Court, since the first respondent Enforcement Directorate filed an application to vacate the stay

granted in the writ petition. On the basis of this order dated 17-11-1992, the trial Court periodically adjourned the trial for about 5 years. The

order in W.P. No. 1773/91 has not been complied with by the FERA Appellate Board within the stipulated time. The petitioner has also not taken

any steps to report the matter to the writ Court about the non-compliance. However, this order passed by the writ Court was used by the

petitioner to seek adjournment from the trial Court for about 5 years.

9. Even the said order in the writ petition would give a free hand to the parties after the said period is over, by observing that the enforcement of

such an order need not be kept in abeyance any further. Therefore, once the stay of two months is over, the trial ought to have been proceeded by

the trial Court. However, the case was periodically adjourned till July, 1997 probably no interest was shown by any of the parties including the trial

Court.

10. However, on 31-7-1997, the trial Court correctly observed that the Criminal Court to decide the matter independently and direct the

prosecution witnesses to be produced on 4-9-1997 to commence the examination of the witnesses.

11. At this stage, on 20-10-1997, the appellate Board granted stay of the adjudication order, since the trial Court was of the view that the

appellate Board's order would not bind on the Criminal Court. The petitioner filed Crl. O.P. No. 14718/97 before this Court for directing the trial

Court not to proceed with the trial till the disposal of the main appeal pending before the appellate Board. This aspect was elaborately discussed

by Hon"ble Sidickk, J. (as he then was) and he dismissed the said petition by order dated 20-1-1998.

12. As a matter of fact, the very same question was put before this Court. The Hon"ble Sidickk, J. passed a detailed order on the basis of the

judgments rendered by Pratap Singh, J., Arunachalam, J. and S. Natarajan, J. (as they then were), which is as follows:-

Mere expectation of success in some proceeding in appeal cannot come in the way of the institution of the criminal proceeding and Section 57 of

the FERA Act punishes the persons who failed to pay the penalty within 45 days prescribed. It is obvious that criminal prosecution is an

independent proceedings and not depending upon the validity of the order of adjudication nor was it a continuation of the adjudication proceeding.

Under the FERA Act, there is no prohibition which directly prohibits the filing of the complaint u/s 57 of the FERA Act during the pendency of the

appeal before the FERA Board. There is no rigid rule which make it necessary for the Criminal Court to postpone the hearing of the criminal case

before it indefinitely or for unduly long period only because the proceeding in the appeal, which may have some bearing on it, is pending elsewhere,

i.e., before FERA Board.... Merely because the petitioner herein filed an appeal before the FERA Board in Appeal No. 697/90 which is pending

adjudication for more than 8 years, it cannot be said that an order can be passed u/s 482, Cr. P.C. not to proceed with the trial in E.O.CC.

1242/90 till the disposal of the petitioner's appeal in Appeal No. 697/90 pending before the FERA Board.

13. The reading of the above observations would make it clear that the point urged by the petitioner consistently for a long number of years has

been already decided by this Court by order dated 20-1-1998. The petitioner, in my view, at least should have faced the proceedings in

obedience to are order of Hon"ble Sidickk, J. or at least he should have filed an appeal before the Apex Court challenging the said order. This

was not done.

14. In spite of adopting either one of the courses indicated above, he filed a petition before the trial Court seeking for the very same relief which

was rejected by the High Court earlier, in Crl. M.P. No. 480/98 seeking for the adjournment of the trial for 6 months. After getting it dismissed,

the petitioner chose to file a revision challenging that order in Crl. R. C. No. 260/98. On 3-4-1998, Hon"ble Rainamurthy, J. gave adjournment till

30-6-1998 and further specifically directed that there will be no further extension or adjournment of the trial on this ground.

15. The reading of this order would show that the earlier order passed by Hon"ble Sidickk, J. was not brought to his notice nor made any

reference about the grounds contained in the said order in the affidavit filed by the petitioner before this Court in Crl. R. C. No. 260/98. There is

no reason as to why this was not brought to the notice of this Court. Whatever, it may be. Hon"ble Ramamurthy, J., while disposing of the said

revision strictly observed that there would be no more extension or stay after 30-6-1998 on this ground by order dated 3-4-1998.

16. Without getting satisfaction even with this order since the adjournment given by Hon"ble Ramamurthy, J. was only till 30-6-1998, the petitioner

filed Crl. O.P. No. 11294/98 on 22-6-1998 u/s 482, Cr. P.C. seeking for the direction to the trial Court to adjourn the trial by 6 months and

asked for stay in this petition also. The order passed by Hon"ble Sidickk, J. was not referred to. But, however, it is mentioned about the order of

Hon"ble Ramamurthy, J. dated 3-4-1998. But, the specific direction given by Hon"ble Ramamurthy, J. not to grant any more extension or any

more adjournment was not mentioned in this petition for the reasons best known to the petitioner. This petition came up on 16-7-1998. Hon"ble

Raman, J. ordered notice of motion and granted stay for 2 weeks.

17. After filing the said petition in Crl. O.P. No. 11294/98 before this Court, the petitioner filed a writ petition also in W.P. No. 8900/98 on 29-6-

1998. The main prayer in this writ petition is to direct the appellate Board to dispose of the appeal against the adjudication order and to grant stay

of the criminal proceedings pending before the trial Court. By the order dated 12-8-1998, Hon"ble Sirpurkar, J. directed the FERA Board to

dispose of the appeal within 3 months from the date of the order in the writ

petition and granted stay of the criminal proceedings for 3 months.

18. It is relevant to note that before the writ Court, the orders passed by Sidickk, J. (as he then was) and Ramamurthy, J. were not brought to the

notice. So, this will make it clear that the petitioner was able to get the order of stay of criminal proceedings from both forums, one from Raman, J.

on 16-7-1998 in Crl. O.P. No. 11294/98 and the other from Hon''ble Sirpurkar, J. in W.P. No. 8900/98 obtaining the same relief by order dated

12-8-1998. However, it is noticed that Crl. O.P. No. 11284/98 Was withdrawn on 13-8-1998.

19. As per the order of Hon''ble Sirpurkar, J., the stay granted on 12-8-1998 expires on 12-11-1998. The petitioner, instead of seeking the

extension before the writ Court or filing a contempt application for non-compliance of the order of the writ Court against the authorities

concerned., the petitioner chose to file another application before this Court u/s 482, Cr. P.C. on 18-11-1998 in Crl. O.P. No. 20376/98 for a

direction to the trial Court to adjourn the trial by 3 months. Accordingly on 18-11-1998, this Court admitted the petition and granted stay till 25-

11-1998. In this petition also the contents of the earlier orders passed by Sidickk, J. and Ramamurthy, J. were not referred to.

20. At this stage, even after getting stay in Crl. O.P. No. 20376/98 on 18-11-1998, the petitioner has filed a separate petition in Crl. O.P. No.

21202/98 on 27-11 -1998 praying for the transfer of the case from E.O.II to E.O.I or to any other competent Court. In this petition also, this

Court by order dated 14-12-1998 ordered stay of the criminal proceedings. The reading of the transfer application would show that the order of

Hon''ble Sidickk, J. rejecting the very same prayer has not been mentioned.

21. This chequered history would reveal that that the petitioner has filed several applications one after another either before the writ jurisdiction or

before the criminal jurisdiction and obtained the stay of the proceedings and managed to drag on the criminal trial for about 9 years.

22. I am at a loss to understand as to why the contents of the order passed on this point by Sidickk, J. was suppressed in the subsequent

proceedings filed either in the writ jurisdiction or in the criminal jurisdiction, especially when this aspect has been considered in detail by interpreting

relevant sections and by following the earlier judgments of this Court on this

point.

23. Not only that, even when the stay order passed by the writ Court is in force, he has filed petition u/s 482, Cr. P.C. and obtained the stay in the criminal jurisdiction also. Similarly, even after he obtained stay in the criminal jurisdiction he had obtained stay of trial in the writ jurisdiction also under the garb of seeking direction to the FERA Board.

24. The sequence of events narrated earlier with much pain and agony would make me to feel that the petitioner has not only abused the process of Court to the core, but also treated the judiciary as mockery.

25. As indicated above, there are two judicial orders by this Court. Hon''ble Sidick, J. observed in categorical terms that the criminal proceedings

are entirely independent proceedings and that there is no rigid rule for the Criminal Court to wait till the appeal is disposed of by the appellate

Board, especially after 8 years. The next order is passed by Hon''ble Ramamurthy, J. by order dated 3-4-1998. This Court has given a specific

direction that there cannot be any more extension at any cost beyond 30-6-1998.

26. Despite this specific direction, the petitioner, has made the Department/complainant to be driven to pillar to post by invoking the writ

jurisdiction and criminal jurisdiction side by side and also one after another consecutively.

27. It is quite painful to see the sorry state of affairs in this case, as in my view, this case is a classic example to show as to how the proceedings

under summons cases could be delayed and protracted for nearly about a decade.

28. In the year 1992, Hon''ble Justice Kanakaraj, J. (as he then was) granted two months'' time and directed the authority to pass an order in the

appeal. If that direction has not been complied with, the petitioner ought to have taken steps to bring the notice of the writ jurisdiction about the

non-compliance. Instead, the counsel for the petitioner went on asking for adjournment up to 1997, i.e., for about 5 years showing the order in the

writ petition passed on 17-11-1992. The reason is obvious. The petitioner is really not interested in the disposal of the appeal and his interest is

only in protracting the criminal proceedings.

29. Hon''ble Sirpurkar, J. passed an order on 12-8-1998 directing the Board to dispose of the appeal within 3 months and stayed the trial for 3

months. The 3 months" period got expired on 12-11-1998. The petitioner ought to have taken steps to inform the writ Court about the non-

compliance of the order dated 12-8-1998 or he must have perused the Board to dispose of the appeal on or before 12-11-1998. Instead, the

petitioner filed a petition u/s 482, Cr. P.C. on 8-11-1998 and obtained a stay of the trial even without mentioning the earlier happenings.

30. The last straw on camel"s back is the instant transfer application. This application has been filed as indicated earlier, even after getting the stay

in Crl. O.P. No. 20376/98 on 18-11-1998. The present petition seeking for transfer is based upon the alleged hostile attitude shown by the trial

Court to the counsel for the petitioner on 16-3-1998 and 13-8-1998.

31. According to this petition, the Magistrate made some comments stating that the appellate Board"s order is not binding on him and that how can

the case be stayed by the High Court when the case was posted for judgment. The counsel for the petitioner would also submit that even after the

trial Court was brought to the notice of the fact that the revision petition is coming for admission in the High Court, the trial Court issued non-

bailable warrant.

32. Regarding the allegations against the Addl. Chief Metropolitan Magistrate (E.O.II), this Court called for the remarks from the said Magistrate

and also directed to send the adjudication proceedings. Before coming into the genuineness of the accusation made by the counsel for the

petitioner, I shall mention that in almost all the hearings from 1990 to 1997 except for a few hearings the accused was absent and the petitions u/s

317, Cr. P.C. were allowed. This also, in a way, would show the conduct of the party, who is not really interested either in the disposal of the

appeal before the Board or in the disposal of the criminal case.

33. The perusal of the remarks would also go to show that this accusation is not correct. The scrutiny of the adjudication proceedings would make

it clear that too much of indulgence was shown to the petitioner from 1990 to 31-7-1997. On that day only the present Judicial Officer took the

view that the Criminal Court has to decide independently irrespectively of the findings of the FERA Board, inasmuch as the offence was already

complete.

34. This view of the trial Court dated 31-7-1997 has been followed by the order

dated 20-10-1998 by Hon''ble Sidickk, J. in CrI. O.P. No.

14718/97. Therefore, the view expressed with reference to a particular question of law by the trial Court, in my view, would not be a ground for transfer.

35. Similarly, the issuance of the non-bailable warrant where the trial Court feels that his presence is essential, is also held to be correct, in view of the fact that almost in all the earlier hearings, too much of indulgence was shown by the trial Court by allowing the petitions for condoning the absence of the petitioner.

36. One more thing which is to be noticed in this case, is the question of maintainability of this, transfer petition.

37. Admittedly, this petition for transfer has been filed u/s 482, Cr. P.C. The prayer is to transfer the case from E.O.II to E.O.I, or to any other

competent Court. When a transfer is sought for from one jurisdiction to another jurisdiction, the petitioner has to first approach the Sessions

Division and only after it is being rejected, this Court could be approached. u/s 407(2), Cr. P.C, the High Court cannot entertain the transfer

petition from one Criminal Court to another Criminal Court in the same Sessions Division, unless an application for such transfer has been made to

the Sessions Judge and rejected by him.

38. In the instant case, the petitioner sought for the transfer of the case from E.O.II to E.O.I, on priority basis. If it is so, he must have moved

before the same Sessions Division which has not been done. Even assuming that he seeks transfer from one Sessions Division to some other

sessions division, the application must have been filed u/s 407, Cr. P.C. after compliance with the provisions of Section 407(5), Cr. P.C.

39. As per Section 407(5), Cr. P.C, every accused person making such application shall give notice to the Public Prosecutor in writing before 24

hours time before hearing the application in the High Court. These mandatory procedures have been contemplated in Sections 407(2) and 407(5),

Cr. P.C.

40. This Court is not able to understand the logic behind the attempt made by the petitioner to move this application u/s 482, Cr. P.C. straightway.

One thing is clear. The petitioner wanted to avoid the Sessions Court for filing an application u/s 408, Cr. P.C. Equally, he wanted to avoid service

of notice on the Public Prosecutor u/s 407(5), Cr. P.C. Probably, this may be the reason to invoke the inherent powers of this Court.

41. It is settled law that when there is a specific provision under which the relief could be sought by the parties, it is not permissible for those

parties to invoke Section 482, Cr. P.C. in order to overcome the procedural hurdles put in Sections 407(2) and 407(5), Cr. P.C.

42. In the instant case, the attempt made by the petitioner through his counsel seeking the relief of transfer under the inherent power, in my view, is

not only to hoodwink the Public Prosecutor, but also to get the order of stay behind his back, by avoiding service of notice u/s 407, Cr. P.C. I

cannot but express my strong displeasure over this act of the petitioner.

43. Admittedly, the entire trial was over and the case was posted for judgment in 1997 itself. Though non-bailable warrant was issued earlier,

subsequently, as seen in the remarks, the same was recalled without detaining the petitioner even for a day by the trial Court. This itself would

show that the learned Additional Chief Metropolitan Magistrate (E.O.II) has no hostile attitude towards the petitioner as well as his counsel.

44. Under these circumstances, I do not find any merit in the transfer petition, besides the same is not maintainable both under law and on merits.

Therefore, I dismiss this petition.

45. Since as I stated earlier, the petitioner has contributed his mite to abuse the process of Court to the core, I deem it necessary to impose costs

on the petitioner. The way in which the trial Court as well as the High Court both in the writ jurisdiction and in the criminal jurisdiction have been

treated would make me to think that the petitioner must be directed to pay suitable costs, in view of the damage caused by the petitioner to the

Institution. In my considered opinion, the interests of justice would be met, if the petitioner is directed to pay a cost of Rs. 7,500/- (Rupees seven

thousand and five hundred). Therefore, the petitioner shall pay the said amount of Rs. 7,500/- to the President of Madras High Court Advocates"

Association on or before 23-3-1999, who in turn would spend the said amount for noble purpose for the good of the said Association. The

petitioner shall obtain the receipt for the said payment from the said President of the Association and deposit the same before the trial Court.

46. Before parting with, I shall point out some of the observations made in the

remarks sent by the learned Additional Chief Metropolitan

Magistrate (E.O.II). It is quite strange to see that the learned Additional Chief Metropolitan Magistrate (E.O.II), instead of denying the said

allegations regarding some comments alleged to have been made, would state in several paragraphs like this :-

Such an observation I need not make. I need not make unwarranted remarks either against the petitioner/accused or against the accused in other cases.

In the last portion of his remarks, he has made the following observation :-

In spite of the above said remarks if the Hon"ble High Court is inclined to transfer the case to any other Magistrate, I have absolutely no objection

for transferring the case, as I am neither interested in the petitioner nor in the prosecution.

47. Apart from these observations, the learned Additional Chief Metropolitan Magistrate (E.O.II) has also indulged in the process of explaining to

this Court as to how this petition is not maintainable, in view of Section 407(2), Cr. P.C.

48. The learned Additional Chief Metropolitan Magistrate (E.O.II) shall realise that this Court asked for his remarks with reference to the

allegations only made against him. He is not called upon to teach this Court as to how this application is not maintainable. With judicial restraint, I

would say that the learned Additional Chief Metropolitan Magistrate E.O.II should not overstep his limit. He has gone to the extent of saying that

in spite of his remarks if this Court is inclined to transfer the case to any other Magistrate, he has absolutely no objection." The wordings "in spite

of his remarks" would indicate that he does not know how to address this Court through the remarks called for. This Court has not asked the trial

Court as to whether it has any objection or not.

49. This Court would definitely protect the interests of the subordinate judiciary so long as they act within the framework of law. If the Addl. Chief

Metropolitan Magistrate-E.O.II indulges to make such an unwarranted observation, it shall be stated that this Court expresses its displeasure over

the tone and tenor with which the wordings have been made by the learned E.O.II remarks. Strictness in the Court is quite essential, but that must

be done along with politeness. Merely showing the so-called knowledge of law

without showing politeness is nothing but impertinence.

50. This expression of mine is not only due to the wordings in the remarks sent to this Court by the concerned Judicial Officer, but also due to the

fact that various counsel appeared before the said Court would also bring to the notice of the Court about the harsh attitude being shown to the

Advocates and the parties. Whatever it is. Let the Addl. Chief Metropolitan Magistrate-E.O.II shall forget the past and begin a new era by

showing politeness and strictness in handling the case and treating the parties and the counsel.

51. The trial Court is directed to dispose of the matter by hearing the counsel for the petitioner, since he has not advanced any arguments so far.

Therefore, the trial Court is directed to give an opportunity to the counsel to advance his arguments in this matter and then to pronounce judgment

in accordance with law, uninfluenced by any of the accusations made by the petitioner in the transfer application or any of the observations made

by me in the earlier paragraphs.

52. With the above observations, the petition is dismissed as devoid of merits. Consequently, CrI. M.P. Nos. 10214 to 10216 of 1998 are

dismissed.

53. After the pronouncement of the order, Mr. K. A. Jabber, the learned counsel for the petitioner would submit that the appeal filed by the

petitioner before the PER A Board was allowed on 5-2-1999 and the same has been communicated to him on 22-2-1999. Whatever it is. The

trial Court will take into consideration the same also and hear the arguments of the counsel for the petitioner and pronounce the judgment, in the

light of the earlier decisions of this Court and the Apex Court on this aspect.