

(1994) 04 MAD CK 0009
In the Madras High Court
Case No : Criminal M.P. S.R.No.4231/94

M.V.Thomas

APPELLANT

Vs

S.I. T. (State) Special Investigation Team, Rajiv Gandhi
Murder case, Special Court, Poonamallee

RESPONDENT

Date of Decision : 21-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226(7)
Criminal Procedure Code, 1973 (CrPC) — Section 226, 227, 228, 237(2), 327
Penal Code, 1860 (IPC) — Section 376, 376.A, 376.B, 376.C, 376.D

Citation : (1994) 2 LW(Cri) 568

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : P.N. George, for the Appellant; P. Rajamanickam, Central Govt. Public Prosecutor and Mr. R. Raghupathi, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Arumugham, J.—Invoking the inherent of this Court under S.482 of the CrI.P.C. permission has been sought for by the petitioner to attend

the proceedings of the Court of Special Judge, Poonamallee, in which the trial is going on by virtue of Ss.482 and 329 of CrI.P.C.

2. The brief facts which lead to the filing of this petition may be stated as follows:- The petitioner Mr.M.V.Thomas who is a retired Director

General of Police of State of Andhra Pradesh has claimed certain facts known to him out of the personal enquiry and investigations conducted by

him voluntarily about the circumstances and the cause or reason by which the former Prime Ministers of India, Sri Lal Bahadur Sastri and Smt.

Indira Gandhi were assassinated and by so claiming he also expressed certain grievances about the investigation made in the assassination of the

former Prime Minister of India Thiru Rajiv Gandhi and the consequent investigation made thereon charge sheeted against several accused in the

Designated Special Court for the trial of the said case under the Terrorist and Disruptive Activities Act, following the commencement of the trial in

a specially constituted court at Poonamallee and accordingly the trial is going on.

3. The main grievance and prayer of the petitioner as identified from the affidavit filed by him and in the petition is that he is not allowed to be

present during the trial of the above proceedings, being conducted in the specially constituted Designated Court at Poonamallee. As a citizen of this

country and he a responsible top police Officer and having worked in the internal affairs of the Investigation Registry he claims that he is entitled to

know in what manner the proceedings are conducted and how the trial is being carried on in this regard in the light of the information and witnesses

available before the specially Designated Court. He would allege further that in view of the various provisions of Terrorist and Disruptive activities

act, shortly known as TADA Act, the proceedings are since going on in a specially constituted and Designated Court, the Rules framed hereunder

by presiding Judge of the court strictly prohibiting the attendance of other common public, including the petitioner and all members, reporters and

so on. In short, the trial of the said case is being carried on strictly in camera and not allowing any public in the interest of public safety, protection

and welfare of the citizens and country's safety and so on. With the result, he was not allowed even near the said court by the respondent, who is

conducting the prosecution. Therefore, as a citizen and as high ranking Police Officer, though retired, under Article 226(7) of the Constitution of

India the petitioner would claim that he is entitled to attend the proceedings of the specifically Designated Court.

3-A. While filing a counter affidavit on behalf of the respondent, namely, the Special Investigation Team, which not only investigated the

assassination of the former Prime Minister Shri Rajiv Gandhi and the assassination of Shri Lal Bahadur Shastri and Smt. Indira Gandhi, but also

conducted the trial before the Designated Court at Poonamallee, it was contended inter alia that the petitioner having been worked as the top rank

police officer of the State is expected to fully aware of the implication of the various enactments and the procedural lines, particularly the provisions

of section 16(3)(a) of the TADA Act as well as the procedural law laid down u/s 327 of the Code of Criminal Procedure coupled with the

extraordinary inherent power vested u/s 482 of the Code of Criminal Procedure. While denying the allegations pertaining to the facts and lapses of

the other cases it was contended that it is not proper for the petitioner to come forward with such insinuation in this petition against such of the

cases which were already disposed of by the highest court of this country. While doing so, it was contended that the petitioner is not entitled to

have any right of audience or presence before the proceeding going on in the Special Designated Court by virtue of the said procedure framed and

being adopted by the Designated Court under the TADA Act, 1987. It was also pointed out u/s 327 of the Code of Criminal Procedure and has

also incorporated in form and substance while the TADA Act, 1987 was amended by Act 43 of 1993, which came into force on 22.5.1993,

particularly section 10(I) of the Principal Act. By virtue of the said amended Act, since the Designated Court has passed specific orders in

Crl.M.P.No.306 of 1992 dt. 20.5.1992 u/s 16(3) of TADA Act and subsequent modification of the said order, the petitioner is not entitled to

claim any right of presence while the proceeding is going on in the Specially Designated Court.

4. The various case law and the Judicial pronouncements held in this regard clearly show that the Designated Court alone has got ample power to

regulate its proceedings and the petitioner like an ordinarily citizen in the regular trial before the court cannot claim any special right in watching or

attending the proceedings before the trial in question, which is now going on in the Designated Court. In short, the petition was resisted on the

ground that it is not at all maintainable u/s 482 of the Code of Criminal Procedure.

5. In the light of the above rival positions and circumstances the only point that arises for consideration in this case is : Whether the petitioner is

entitled to have a right of witnessing the trial, which is now going on before the Designated court under the TADA Act.

6. Before proceeding further and to discuss the facts in hand it has become necessary for me to advert it to the legal aspects involved in this case.

Section 16 of the Terrorist and Disruptive Activities (Prevention) Act 1987 prior to the amendment introduced thereto are read like this: ""16.

Protection of witness :-

(1) Notwithstanding anything contained in the Code, all proceedings before a Designated Court shall be conducted in camera:-

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(2) A Designated Court may, on an application made by a witness in any proceedings before it or by the public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub Section (2) the measures which a Designated Court may take

under that sub Section may include-

(a) the holding of the proceedings at a place to be decided by the Designated Court:-

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public.

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed:-

(d) That it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person who contravenes any direction issued under sub section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

7. This section of law by virtue of act 43 of 1993 dt. 22.5.1993, has been amended and the amended section is extracted as hereunder.

In Section 16 of the Principal Act, for sub section (1) the following Sub Section shall be subtitled, namely:-

Notwithstanding anything contained in the code, the proceedings under the act may be held in camera if the designated court so desires.

This principal Act as well as the amendment provided thereto is categorical and totally with regard to the power vested with the designated court to

conduct the trial before it in camera if so desires, which would mean clearly and clinchingly that the trial cannot be conducted in the public court

and that at the same time it is also imperative that the Designated court if so

desires can specifically regulate its mode of procedure as provided under sub clauses(2) and (3) of the Principal Act. It is pertinent to note that tins" Section 16 as amended starts with a non-obstante clause, by which the Criminal Procedure Code has been specifically excluded.

8. Now, I shall refer to section 327 of the Code; presumably on the basis of which, the petitioner is claiming his right to be present before the proceedings conducted in the Designated Court, which runs like this:-

(1) The place in which any Criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be on open court, to

which the public generally may have access, so far as the same can conveniently contain them.

Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case/that the

public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the court.

(2) Notwithstanding anything contained in sub section (1) the inquiry into the trial of rape or an offence u/s 376, section 376A section 376B section

376C or section 376D of the Indian Penal Code shall be conducted in camera.

Provided that the Presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have

access to or be or remain in, the room or building used by the court.

(3) Where any proceedings are held under sub section (2) it shall not be lawful for any person to print or publish any matter in relation to any

proceedings, except with the previous permission of the court.

9. A casual reading of this section of law merely shows that even during the sessions trial held before an ordinary court the mode of procedure to

be followed in the court shall be regulated by the presiding Judge though it was expected to go on with the trial in a public place providing general

access to the common man or the witnesses. A combined reading of the entire section clearly demonstrates the power vested with the Presiding

Judge that he is vested with the full power to restrict the persons or any one and regulate the procedure in a particular manner in the interest of

public and safety. If I may say so, even section 327 of the Code of Criminal Procedure applicable to the Sessions trials may not be available in

toto the petitioner in this case, for the simple reason that the power has been vested with the Judge, who regulates the procedure. However, there

is a vital distinction between this section of law and Section 16(3) (a) of the TADA Act. By amending the TADA Act, particularly to Section 16,

by Act, 43 of 1993, the rigour of the provisions of Criminal Procedure Code has been totally taken away by the provisions of the TADA Act.

Therefore, by virtue of the provisions of Section 16(3) (a) of the TADA Act, the Designated Judge is totally and absolutely entitled to regulate its

procedure and it cannot be challenged in this proceeding u/s 482 of the Code.

10. By virtue of the counter affidavit filed in this case, it has been brought to the notice of this Court on behalf of the respondent that Designated

Court in Criminal M.P. No. 306 of 1992 on 20.5.1992, by virtue of Section 16(3) of the TADA Act 1987, has passed the following Order:-

In the result the petition is allowed as prayed for. u/s 16(3) of TADA Act an order is passed to keep the addresses and identity of 179 witnesses

indicated in red ink as Code No.S.101 to S.279 in the list of witnesses enclosed to the final report as secret by avoiding the mentioning of the

names and addresses of the said witnesses in the orders or judgments of this Court or in any record of the case accessible to the public and a

direction is also issued to the effect that the identity and addresses of 179 witnesses indicated in red ink in the list of witnesses Code named in

S.101 to S. 279 are not to be disclosed and kept secret. It is further ordered to the effect that none of the proceedings pending before this Court

shall be disclosed by any of the parties or advocates representing them or any of the witnesses either to the press or to any unauthorised persons,

and in the public interest it is ordered that all or any of the proceedings pending before the Designated Court with regard to the trial of Rajiv

Gandhi assassination case shall not be published in any manner.

In partial modification of the order passed by the Designated Court in Crl.M.P.No.306 of 1992, dated 20.5.1992, the court in Crl.M.P.No.80 of

1992 filed by the Regional Manager, United News of India, Madras, has held as under:-

In the result the application in - Crl.M.P.No.80/93 is partly allowed. The order dated 20.5.1992. in Crl.M.P.No.306/92 of this Court is modified

to the following effect that with regard to the opening of the case u/s 226 of

Cr.P.C. and with regard to the arguments on the plea of discharge u/s 227 of Cr.P.C. and with regard to the arguments for framing of charges u/s 228 of Cr.P.C., which go together and which are interlinked and interconnected with one another, can be published on behalf of the United News of India on condition that the names addresses and identity of the witnesses, whether coded or general witnesses in this case, should not be published or disclosed. The authorised reporter of the United Trust of India as prayed for in the application in CrI.M.P.No.8/93 is permitted to cover the above said proceedings under Sections 226, 227, and 228 of Cr.P.C. only on the above said condition as and when those proceedings u/s 226, 227, and 228 of Cr.P.C. will be held in open session. In other respects the application filed by the United News of India in CrI.M.P.No.80/93 is dismissed.

11. It is to be noted that the petitioner had pleaded total ignorance and knowledge of passing of the above order. But however, in the counter affidavit filed on behalf of the respondent, the order passed by the Designated Court on par with Section 16(3) of the TADA Act has been enumerated. Therefore from the said aspect it is very clear that for the sake of public and in witness safety and in the interest of public and exercise of the powers conferred, the learned Designated Judge, has passed suitable orders and thereby regulated whole proceedings, which is going before me. If this is so, then in my considered view, the petitioner cannot have any grievance in this regard. In Kartar Singh Vs. State of Punjab, the Supreme Court in paragraphs 292 to 295 of its Judgment has held as follows:-

292. No doubt, the trials are traditionally open which is an indispensable attribute of the criminal justice. This characteristic flowed not merely from the public interest in seeing fairness and proper conduct in the administration of criminal trials, but, more important, the ""therapeutic value"" to the public of seeing its criminal laws in operation, purging the society of the outrage felt with the commission of many crimes, convincingly demonstrated why the tradition developed and is maintained. This is the accepted practice of guaranteeing a public trial to an accused as having its roots in the English Common Law heritage. But, however, though it is an indispensable attribute of the Criminal Justice, in exceptional circumstance

where cannot be any legal ban in having the trial in camera. Though the criminal justice prevailing in our country recognises and accepts the practice

of only open trial, there is an exception to such trial as contemplated u/s 237(2) of the Code of Criminal Procedure falling under Chapter XVIII

with caption "Trial Before a Court of Session" which provides an exemption to the general practice, The relevant sub section reads:-

Every trial under this section shall be held in camera if either party thereto so desires or if the Court thinks fit so to do.

293. Under the "General Provisions as to enquiries and trials" falling under Chapter XXIV there is a specific provision, namely, Section 327 with a

caption "Court to be open" according to which the inquiry and trial of any offence should be held in an open Court, to which general public may

have access. However, under the proviso the discretion is given to the presiding Judge or Magistrate to regulate the public generally, or any person

in particular in having access to, or be or remain in, the room or building used by the Court. An exemption is given for the open Court trial u/s

327(2) which is as follows:-

Notwithstanding anything contained in sub-Section (1) the inquiry into and trial of rape or an offence u/s 376, section 376.A Section 376.B,

Section 376.C, or Section 376.D of the Indian Penal Code (45 of 1860) shall be conducted in camera.

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access

to or be or remain in, the room or building used by the Court.

294. We feel that no detailed discussion against the challenge of Section 16(1) is required since a new sub section is substituted to the original

Section 16(1) of the Principal Act by the Amendment Act 43 of 1993. The new sub Section reads thus:

Notwithstanding anything contained in the code, the proceedings under this Act may be held in camera if the designated Court so desires.

295. By this new substituted sub-Section now the discretion is given to the Designated Court either to hold or not to hold the proceedings in camera.

12. In the light of the special extraordinary power vested with the Designated Court by the Legislature u/s 16 of the TADA Act and as amended

and the consequent confirming the validity of the same by the Supreme Court in the above referred case law, I find no difficulty at all to say that the

Designated Judge is duty bound to act only in accordance with the provisions and powers conferred upon him under the TADA Act alone and no

other Act. In short the amended Act, as I have observed already, contains a non obstante clause which excludes the applicability of the Code of

Criminal Procedure. If this is the position, one cannot dispute or is not expected to canvass that this Court can regulate the proceedings under the

TADA Act in a Designated Court by virtue of its inherent power under the Code. If that venture is being made by the Court concerned, I am

totally unable to persuade myself to countenance with the same for any reason. For the reasons aforesaid, I am fully satisfied to hold that this Court

finds every difficulty and bar to interfere in this case by way of giving directions to the petitioner to take part in the proceedings going on before the

Special Designated Court under the TADA Act. I do not find any merits in the petition nor any other legal aspect has been canvassed before me in

favour of the petitioner.

13. In the result, for all the reasons aforesaid, I am not in a position to accept the grievance entertained by the petitioner as genuine and accordingly

I hereby dismiss this petition.