
(1992) 02 MAD CK 0013
In the Madras High Court
Case No : Criminal O.P. No. 1908 of 1992

P.R. Muthu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 173(2), 19, 193
Penal Code, 1860 (IPC) — Section 2(y), 4, 41, 42, 5

Citation : (1992) LW(Cri) 134

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : M. Karpagavinayagam for Mr. M.B.S. Manian, for the Appellant; I. Subramanian, Additional Public Prosecutor, for the Respondent

Judgement

Janarthanam, J.—On 2-2-1992, the Inspector of Police, R-1 Police Station, Mambalam, Madras, along with other police personnel, was

available near the bus stand at Mambalam doing bandobust duty, in connection with some labour unrest, prevailing in that area. At about 17-20

hours, the petitioner herein, namely, P.R. Muthu, was stated to be found loitering near the bus stand under suspicious circumstances. The said

Inspector of Police, suspecting some foul-play, was stated to have interrogated him and also searched his person. Such a search, it is said,

revealed his having been found in possession of 750 grams of ganja. Immediately, it is said, he was taken into custody and a case in Cr.No.411/92

of R-1 Police Station, Mambalam had been registered for the alleged offence under S.20(b) of the Narcotic Drugs and Psychotropic Substances

Act, 1985 (in short the Act). Laterly, on the same day, it is said, he was remanded to judicial custody by the XVII Metropolitan Magistrate,

Saidapet, Madras for a total period of fifteen days that is to say, from 4th to 18th February, 1992.

2. On 5th February, 1992, it is said, he moved an application in CrI.M.P 463/92 for his release on bail before the Court of Sessions, Madras and

the same had been dismissed on the next day namely, 6th February, 1992.

3. On the evening of that date itself, it is said, an application is CrI.O.P.1442 of 1992 had been filed before this court for his release on bail and the

same came up before this court for enquiry on 7th February, 1992, on which date, after hearing the arguments of learned Government Advocate

as well as learned counsel for the petitioner, the court passed an order, the operative portion of which is to the following effect:

The petitioner is therefore ordered to be released on bail for a period of five days, on his executing a bond for a sum of Rs. 5,000/- (Rupees five

thousand only) with two sureties, each for a like sum to the satisfaction of the XVII Metropolitan Magistrate, Saidapet, Madras or any other

Magistrate, who is put in charge of the said court. It is however made clear that the petitioner must have to surrender before the said court on his

own accord at 4 p.m. on 13-2-92 (Thursday) without fail.

4. It is further said in that order thus:

If the prosecuting agency is impelled to file an application before the said Magistrate for the police custody of the petitioner and in fact if such an

application is filed, it is for learned Magistrate before whom such an application is to be filed, to decide about the desirability of police custody of

the petitioner.

5. The petitioner actually went on bail, by due execution of a bond on 8-2-1992 and pursuant to the direction made in the order of this court on

the application for bail, he surrendered before the XVII Metropolitan Magistrate, Saidapet, Madras on 13-2-92. On his surrender, the said

learned Magistrate remanded him to judicial custody upto 18th February, 1992, in accordance with the earlier order of remand made on 4-2-92.

6. The investigation agency, it is said, filed an application on 14-2-1992 before the said Magistrate, seeking police custody of the petitioner

accused and the said application was said to have been posted for enquiry on 18-2-92. On that day, learned Assistant Public Prosecutor

representing the prosecution made an endorsement in the application seeking for

police custody thus:

Records perused. First 15 days of remand period is over as on today. Hence I am not pressing this petition. Sd.App.II i/c of Prohibition Cases

18-2-92.

7. Pursuant to the endorsement so made, learned Magistrate passed the order thus

thereby meaning that the petition is dismissed, as the same is not pressed.

8. On the same day, the investigating agency, it is said, filed a petition before the said Magistrate seeking extension of remand for a further period

of fifteen days, inasmuch as the investigation in this case was not completed. It is better to reproduce the operative portion of the remand report in

the same language and it runs thus:

9. Learned Magistrate, on the said remand report, made the following endorsement:

Accused produced R.E. report filed. R.E. till 3-3-92 Sd.XVII M.M.

10. Even before the extension of the remand commencing from the 18th February, 1992, that is to say, on 17-2-1992, the petitioner filed the

present petition in CrI.O.P 1908 of 1992 praying for his release on bail and the same came up for hearing before this court on 19-2-1992.

11. The facts, as stated above, have been culled out from the case diary, produced by the investigating agency the records received from the court

below the bail petitions, verified petition and the memo filed by the petitioner in this case.

12. Arguments in piecemeal were heard on and from the 19th to 21st and 24th of February, 1992 and after completion of arguments, the matter

was posted for orders today, i.e., on 26-2-1992. Before the delivery of the order, learned Additional Public Prosecutor Mr. I. Subramanian

wanted to make few more submissions and his request had been complied with. Learned counsel for the petitioner Mr. M. Karpagavinayagam,

though given an opportunity to make a reply, did not in fact submit anything by way of a reply.

13. When the arguments were going on on 20-2-92, a verified petition had been filed craving leave of this court to treat the same as part and

parcel of this main petition. The averments in the said verified petition run as follows:

The petitioner submits that he was produced and remanded before the XVII M.M. on 4-2-92 for 15 days. This Honourable Court granted interim

bail for five days between 8-2-92 and 13-2-92. The petitioner on 13-2-92 at 4 p.m. surrendered before the XVII court and again remanded upto

18-2-92. On 18-2-92 the petition for police custody came up for enquiry. But APP made an endorsement withdrawing the petition as not

pressed. On that ground the petition was dismissed. However, the learned Magistrate extended the judicial remand for further period of 15 days

and posted to 3-3-1992 even without any requisition for the same from the police.

It is seen from the records sent for from file of the XVII Metropolitan Magistrate, Saidapet, Madras that in fact a requisition had been given by the

investigating agency seeking further extension of remand This is in contravention of the S.38(A) of the NDPS Act. Hence the present detention is

illegal and without authority of law. Hence, it is prayed that this Honourable court may be pleased to consider this additional ground also for the

disposal of the main petition in Crl.OP 1908 of 1992 and thus render justice.

14. On 24-2-1992, a memo had also been filed on behalf of the petitioner praying to treat the present petition in Crl.O.P.1908/92 as a petition

under S.482 of the Code of Criminal Procedure, (1973 Act No. II of 1974 - in short the code) and to invoke the inherent powers to set aside the

order dt. 18-2-92 by learned XVII Metropolitan Magistrate, Saidapet, Madras, authorising the detention of the petitioner for the second period of

15 days and direct the Central Prison at Madras to set him at liberty forthwith and thus render justice.

15. At the fag end of the argument of 24-2-92, learned Addl. Public Prosecutor drew my attention to the administrative instructions issued by the

Principal City Civil and Sessions Judge, Madras in Dis. No. 10288 dt. 16-9-89, in the purported exercise of issuance of administrative instructions

under S.19 of the Code. The instructions so issued read thus:

Heard the learned City Public Prosecutor and perused the written opinion given by him. The VII Metropolitan Magistrate, George Town, Madras-

1 in his letter cited No. 1 has submitted the remand records in Cr. Nos. 1187 and 1188 of 1989 of Harbour Police Station under S.21 of the ND

& PS Act stating that the Amended Act 2 of 1989 of ND & PS Act 1985 has come

into force on 29-5-89 and as per Amended Act (S.36A(1))

(d) no committal is necessary and the Judicial Magistrate is authorised to remand only for 15 days under S.36(A)(i)(b).

A plain reading of the said S.36(A) would clearly show that offences under the main Act as amended by Act 2 of 1989 are triable by a Special

Court. Such Special Court has not yet been established in the entire State of Tamil Nadu and particularly for Madras Sessions Division. It follows

from the above that S.36(A) can come into play/operation only when the Special Court is established. Inasmuch as that Special Court has not

been established, now the period is in between the two, viz. from the date of commencement of the Act or till the establishment of the Special

Court.

What is to be done during the said interregnum of the Special Court as per the Amended Act has not been established? During this interregnum,

viz., till such formation, the Sessions Court can only try the cases under the said Act and trial begins at the time of framing charge. It follows that

S.36(A) cannot come into play/operation now as Special Court has not yet been established. When the said Section cannot come into play

operation the normal procedure has to be followed. This is the correct and proper course to be followed during the abovesaid interregnum. Hence

the VII Metropolitan Magistrate. George Town, Madras is ordered to follow the normal course of remand, numbering the charge sheet on receipt

and committing the accused to the Court of Sessions, Madras Division. The first accused Jegan is ordered to be produced before the VII

Metropolitan Magistrate on 20th day of September, 1989, for further course. Sd. B. Krishnasamy Principal Sessions Judge.

16. The Metropolitan Magistrates in the City of Madras appeared to have followed implicitly the said administrative instruction and in the case on

hand also, the XVII Metropolitan Magistrate, not being an exception, followed the said administrative instructions in exercising the initial power of

remand for a total period of fifteen days as well as ordering further extension of remand, as if, he is empowered to do so.

17. It is on such extension of remand, heated arguments had been delved into both by Mr. M. Karpaga Vinayagam, learned Counsel appearing for

the petitioner as well as by Mr. I. Subramanian, learned Additional Public

Prosecutor.

18. The moot question that falls for consideration revolves on the question as to whether the Magistrate, who initially remanded the accused, who

was alleged to have committed an offence under the provisions of the Act, for a period of fifteen days as a whole, has any power to further extend

the remand and if he does so, what is the legal consequence to flow from such action.

19. In consideration of such a question, catena of authorities had been referred to by learned Counsel appearing on both sides. But none of the

authorities cited dealt with such a question as had arisen in this case and a decision given. All those authorities are referred to for the application of

the principles, deducible from those authorities by way of analogy, in the instant case. But I feel such a ritualistic exercise of making reference to the

various authorities is wholly unnecessary and the point arising as such in this case can very well be decided on the first principle and a decision

given thereon may perhaps be one of the first impression, in the sense of such a question, not having been decided elsewhere by any superior

courts of jurisdiction.

20. In such a backdrop and setting, let me enter into the arena of discussion in solving the tangle posed by the question so framed.

21. In the resolution of the tangle on the question so posed, a reference to various provisions adumbrated in the Code as well as the Act may be

necessary.

22. S.4 of the Code deals with the trial of offences under the Indian Penal Code and other laws. Sub.S(1) provides:

All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the

provisions hereinafter contained.

23. Sub-S.(2) prescribes,

All offences under any other law shall be Investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject

to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such

offences.

24. To put it in simple words, S.4 provides for the procedure to be followed in every investigation, inquiry or trial in regard to the offences under

the Indian Penal Code as well as under other laws. In the former, the procedure as laid down in the Code is to be followed. But in the latter, this is

subject to any enactment in force, which regulates the procedure in such case. In other words, the procedure in the two cases is the same, except

to the extent that the special enactment regulates the manner or place of investigating, inquiring, trying or otherwise dealing with such offences.

25. S.5 of the Code contains a saving clause and it prescribes,

Nothing contained in this Code, shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in

force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force.

The saving provisions thus in S.5 lay down that ordinarily the Code will not affect (1) any special law (2) any local law (3) any special Jurisdiction

or power and (4) any special form of procedure. But the existence of any specific contrary provision either in the Code itself or in the special or

local law will have a contrary effect. In other words, the Code shall be applicable.

26. The terminology such as special law or local law, as had been used in S.5 of the Code, had not at all been defined in the Code. But for finding

out the meaning of those expressions, specific provision had been in the Code traceable to S.2(y), which states,

Words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that

Code (45 of 1860).

27. S.41 of the Indian Penal Code States what a "special law" is and according to the said section,

A "special law" is a law applicable to a particular subject.

Likewise, S.42 of the Indian Penal Code states that a "local law" is and according to the said section.

A "local law is a law applicable only to a particular part of India.

28. In the instant case we are concerned with the special law. On the terms and tenor of S.41 of the Indian Penal Code, there can be no doubt

whatever that the Act is a special law and this is also made clear by the preamble appended to the said Act and it runs thus:

An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations

relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, (sic) used in illicit traffic in narcotic

drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances

and for matters connected therewith.

29. A survey of the various provisions adumbrated in the Act will give an indication as to the procedure to be adopted in the trial of offenders

under the Act, the powers of the Court in granting and extending the remand, powers of Court to take cognizance of the offences, special

provisions incorporated for the consideration of the release of persons accused of offences under this Act search and seizure provisions in case of

arrest made by various officer and other private individuals and what not.

30. This Act, being a "special law", various provisions incorporated in the Act regulating the procedure in the matter of trial, remand etc. alone will

be applicable to the exclusion of the provisions in the Code and such a conclusion is legally plausible. On the face of the provisions of Ss.4, 5 and

2(y) of the Code as well as the provisions adumbrated under Ss.41 and 42 of the Indian Penal Code, as referred to earlier.

31. The offences under this Act are triable by Special Courts constituted under S.36 of the Act. In the absence of a Special Court having been

constituted on and from the date of coming into force of the Act, transitional provisions has been made, as found traceable to S.36-D, which runs

thus:

(1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act,

1988, until a Special Court is constituted under S.36 shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of

1974), be tried by a Court of Session:

Provided that offences punishable under Ss.26, 27 and 32 may be tried summarily.

(2) Nothing in sub-S.(1) shall be construed to require the transfer to a Special court of any proceedings in relation to an offence taken cognizance

of by a court of Session under the said sub-S.(1) and the me shall be heard and

disposed of by the Court of Session.

32. It is represented at the bar and also verified from the Registry that Special Courts for the trial of offences under this Act had not so far been

constituted by the State Government of Tamil Nadu. In the absence of Special Courts, it goes without saying that under the transitional provisions,

the offences under this Act shall have to be tried by a Court of Session.

33. S.36-A of the Act deals with offences trouble by Special Courts. The said section runs thus:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where

there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

(b) Where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-S.(2) or

sub.S.(2-A) of S.167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such

custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the

whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers--

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause(b), the same power which a Magistrate having

jurisdiction to try a case may exercise under S.167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such

case who has been forwarded to him under that section;

(d) a special court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer

of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being committed

to it for trial

(2) when trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused

may, under the Code of Criminal Procedure 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under S.430 of the Code of

Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-S.(1) of that

Section as if the reference to "Magistrate" in that section included also a reference to a "special court" constituted under S.36

34. The section starts with a non-obstante clause couched in the following phraseology,

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) thereby indicting that the procedure contemplated in the

Code of Criminal Procedure of the trial of offences under this Act is not at all applicable. Immediately following the non-obstante clause, as

extracted above, clauses (a) and (b) of sub-S.(1) follows. Clause (a) of Sub-S. (1) mandates the trial under this Act only by a Special court

constituted for the area and if more courts are constituted for one area, then by any one of such court, as may be specified in this behalf of the

State Government.

35. Clause (b) of sub-S.(1) makes provision for remand of a person accused of or suspected of the commission of an offence under this Act.

According to the said clause, if the remanding Magistrate happens to be a Judicial Magistrate, he may authorise the detention of such person in

such custody as he thinks fit for period not exceeding fifteen days in the whole and in case the Magistrate happens to be an Executive Magistrate,

his power of remand extends only to seven days in the whole.

36. A Proviso appended to the said sub-S. makes it further crystal clear that when such person is produced before him, upon or at any time before

the expiry of the period of detention authorised by him and if he considers detention of such person is unnecessary, he shall order such person to

be forwarded to the Special Court having jurisdiction. To put it otherwise, the remanding Magistrate, whether Judicial or Executive, is given power

to make the initial remand only for the prescribed period, as stated earlier, and not beyond that period and in case an extension of remand is

necessary, such a feat can be performed by such Magistrate.

37. Clause (c) of sub-S.(1) circumstances the power of the special Court in the matter of remand. The power of the special court under the said

sub-s. is nothing more or less than that of the same power, which a Magistrate having jurisdiction to try a case may exercise under S.167 of the

Code in relation to an accused person in such case, who had been forwarded to him under that section. Such an express and explicit provision has

to be given its due meaning in the context of the non-obstante clause, namely,

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

having been incorporated at the very commencement of the section. To make the provision meaningful, a harmonious interpretation that could be

given to such a provision is that it controls or limits the operation of the non-obstante clause, in the sense or recognising the power of remand as

available to a Magistrate having jurisdiction to try a case under S.167 of the Code to a Special Court constituted under the Act. The meaning as

given will have the solidified support from the provisions adumbrated under clause (d) of sub-S.(1) of the said section, which recognised Special

Court as a court of Original Jurisdiction to take cognizance of the offence without the accused being committed to it for trial.

38. Admittedly, as stated earlier, no special courts had been constituted by the Government in the State of Tamil Nadu and the trial of persons,

accused of commission of offences under this Act, had been taking place before the respective court of Session, invoking the transitional provisions

under S.36-D of the Act. But what then is the position and power of the Court of Session for trial of offenders under this Act?

39. The first Schedule attached to the Code classifies the offences into two categories. Category I relates to offences under the Indian Penal Code

and Category II relates to classification of offences against other laws. In the classification of the offences in the said schedule, the first column

gives the section under which the offence is punishable while the last column

states by what court, such offence is triable. In the instant case, we are concerned with the classification of offences against other laws. It is specifically provided in such classification that if the offence is punishable with death, or imprisonment for life, or imprisonment for more than seven years, the same is triable exclusively by the Court of Session, Certain offences under Category I under the Indian Penal Code are also exclusively triable by the Court of Session and the same had also been indicated in the last column of the Schedule.

40. S.209 of the Code prescribes commitment of a case to Court of Session, when offence is triable exclusively by it, whether the case is instituted on a police report or otherwise.

41. S.193 of the Code prescribes as to when the Court of Session can take cognizance of offences. It provides:

Except as otherwise expressly provided by this Code or by any other law for time being in force, no court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code.

The opening part of the provision, as extracted above makes it crystal clear that there are plausibilities or possibilities of a Court of Session taking

cognizance of any offence as a court of original Jurisdiction, even in the absence of commitment by a Magistrate and that is discernible from the

usage of the expression, namely,

Except as otherwise expressly provided by this Code or by any other law for time being in force.

Thereby meaning that if there is any specific provision available in this Code, for taking cognizance of any offence by the Court of session, as a

court of original jurisdiction, even in the absence of a commitment, such a provision has to be given effect to or if there is any other provision in any

other law for the time being in force recognising such cognizance to be taken by the Court of Session of any offence, even in the absence of

commitment, such a provision alone must be given effect to.

42. As to a specific provision available in the Code, sub-S.(2) of S.199 of the Code dealing with the prosecution for defamation maybe cited as an

example. The said sub-Section provides thus.

Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code is alleged to have been

committed against a person, who, at the time of such commencement, is the President of India, the Vice-President of India, the Governor of a

Slate, Administrator of a Union territory, or a Minister of the union or of a State of a Union Territory, or any other public servant employed in

connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take

cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

43. The difficulty arises in the case of trial of an offence by a Court of session on other laws, say for instance, in the instant case, the trial of

offenders, alleged to have committed offences under the provisions of the Act. As already indicated, S.36-D of the Act relating to transitional

provision makes a provision of trial of such offenders by a Court of Session. The said provision, as extracted earlier, would point out in no

uncertain terms that the trial of such offenders by the Court of Session is to proceed, notwithstanding anything contained in the Code of Criminal

Procedure, 1973 (Act 2 of 1974). This non-obstante clause had been suffixed to the said section. The reason is obvious. As already indicated, a

trial before a court of session under the Code cannot proceed without there being a commitment. In order to indicate that such a procedure is not

contemplated for trial of offenders under this Act, in the Court of Session, the non-obstante clause had been specifically incorporated at the fag

end of the said section.

44. The pregnant meaning of the non-obstante clause can be very well understood in the light of the other provisions contained in the Code as well

as in the Act, As far as the offences against the other laws, as had been indicated earlier, unless such an offence is punishable with a minimum

sentence of imprisonment of seven years, the trial cannot be held by a Court of Session. Admittedly under the Act, there are very many offences,

which are punishable with imprisonment for below the level of seven years, but non-the-less such of the offences under the Act are to be tried by

the Special Court and in the absence of the constitution of a Special Court, by a Court of Session. As such, there is enough indication in the said

section to override the specific provisions contained in the Code as to the trial of offences under this Act by a Court of Session. The said provision

must be construed as a specific provision contained in a special law, as had been stated in S.193 of the Code.

45. Even Ss.36-B and 36-C of the Act gives enough indications that the Court of Session is put on par, for all practical purpose, with the Special

Court constituted under the Act. S.36-B makes provision for appeal and revision. The section prescribes,

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal

Procedure 1973 (2 of 1974), on a High Court as if a Special court within the local limits of the jurisdiction of the High court were a court of

Session trying cases within the local limits of the jurisdiction of the High Court.

46. S.36-C deals with the application of the Code to proceedings before a Special Court, the section runs thus:

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail

and bonds) shall apply to the proceedings before a Special Court and for the purpose of the said provisions, the special court shall be deemed to

be a court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

47. As adverted to earlier, as per the provisions adumbrated under S.36-A(1)(d), the Special Court had been given the power to take cognizance

of offences under the Act without the accused being committed to it for trial. Thus, in the nature of the construction and construing of the provisions

contained under the Code as well as under the Act, it goes without saying that for all practical purposes, a Court of Sessions is put on par with the

Special court and once this conclusion is reached, even in respect of offences committed under the provisions of this Act, there is no need for any

commitment for the Court of Session to take cognizance of the offence. To put it otherwise, on a final report being filed before a court of Session

under S.173(2) of the Code, it can very well take cognizance of the offence, as the court of original jurisdiction.

48. As already referred to, initial remand of persons accused of offences under the Act cannot at all be made for a period exceeding fifteen days in

the whole where such a Magistrate is a Judicial Magistrate and seven days in the whole, where such a Magistrate is an Executive Magistrate. If

such a person is forwarded to him, upon or at any time before the expiry of the period of detention authorised by him and if he considers that the

detention of such a person is unnecessary he shall order such person to be forwarded to the Special Court having jurisdiction and in the absence of

a Special Court, he has to necessarily forward such a person to a Court of Session, which occupies the position of a Special Court until its

constitution. The resultant position is the Special court mc Court of Session alone as a Court of original jurisdiction, can take cognizance of

offences under this Act and such courts alone are having the power to extend the remand, after the expiry of the initial period of remand made

either by the Judicial or the Executive Magistrate to the prescribed period and if the initial remand, either by a Judicial Magistrate or by an

Executive Magistrate goes beyond the period prescribed, as stated above, it goes without saying that such a remand is without jurisdiction.

49. In the instant case, to recapitulate, the petitioner accused, who had been produced before the XVII Metropolitan Magistrate, Saidapet,

Madras, on 4.2.1992 had been initially remanded for a period not exceeding fifteen days as a whole, in the sense of making a remand upto 18-2-

1992. On the face of the aforesaid constructions and interpretation of the various provisions of the Act and the Code, it follows that the XVII

Metropolitan Magistrate has no jurisdiction to extend the period of remand of the petitioner-accused far beyond 18-2-1992. But what had actually

happened was that the said Magistrate further extended the period of the remand of the petitioner on 18-2-1992 upto 3rd March, 1992.

50. If that alone happened, there may not be any difficulty to say that such extension of remand far beyond 18-2-1992 is without jurisdiction. But

the fact remains that the petitioner had been granted interim bail for a period of five days between 8th and 13th February, 1992, subsequent to the

initial remand order passed on 4th February, 1992, covering a total period of fifteen days upto 18-2-1992.

51. The moot question that arises for consideration is as to whether the interim bail period of five days is to be excluded in computing the period of

initial period of remand of fifteen days in the whole. If this interim bail period is to be excluded from the computation of the period of initial remand

of fifteen days in the whole, then the said XVII Metropolitan Magistrate, before whom the petitioner accused had been produced on the 18th

February, 1992, will be having the power to further extend the remand by five more days, that is to say, upto 23rd February, 1992 and the period

of remand for beyond 23-2-1992, shall have to be construed as being without jurisdiction. Such a question, in the actual state of affairs, is a

ritualistic academic exercise, inasmuch as the targeted date, namely, 23rd February, 1992 lapsed by the time the order is made in this case. But

that does not mean that such a question should not at all be considered and answered. Once a judicial order of remand is made, in exercise of the

power under the relevant provisions and if such a judicial order so made has subsequently been interfered with by an order emerging from a higher

forum, in the hierarchy of judicial administration, it cannot at all be stated that such judicial intervention by a competent higher forum shall not at all

affect the power of the lower forum and the lower forum will retain its original power in passing an order remanding an accused for the unexpired

portion of the period of earlier remand, which had been subsequently altered by a judicial intervention emerging from a higher forum. In this view of

the matter, the interim bail period of five day cannot at all be excluded for computation of the period of initial remand of fifteen days in the whole

and the extension of remand by learned XVII Metropolitan Magistrate far beyond 18th February, 1992 has to be construed as one passed without

jurisdiction. Such a construction, if not made, is likely to bring about an anomalous and irreconcilable situation leading to absurdities.

52. Leave alone the legal niceties involved in such a question, the factual situation available in this case points out that the prosecuting agency as

well as the remanding Magistrate understood the position that the initial remand for a period of fifteen days as a whole would come to an end once

the power is exercised and the period expired. This can very well be demonstrated by referring to the chronological events that had happened.

Such an exercise amounts to a repetition but the same cannot be avoided and this exercise has to be resorted to at the risk of repetition to bring

home the point.

53. The initial remand order has been passed on 4th February, 1992 for a total period of fifteen days till upto 18-2-1992. Interim bail had been

granted for a total period of five days from 8-2-1992 to 12-2-1992 while granting interim bail, this court directed the petitioner to surrender before

the said magistrate on the 13th February, 1992 at 4 p.m. and he also accordingly surrendered. On that date, the Magistrate did not further extend

the remand straightaway for a further period of fifteen days. But he did extend the period of remand from 13th to 18th February, 1992 in

accordance with the earlier order of remand. This shows that the Magistrate is quite conscious of his act in so doing, in the sense of himself

entertaining an opinion, reflected by the provisions in the Act, that his power cannot go far beyond a total period of fifteen days in the whole,

irrespective of any judicial intervention subsequent to the initial order of remand. That perhaps weighed with him to pass an order on the 13th

extending the remand up to 18th of February, 1992. It is also intriguing to note that on 14-2-1992, the investigating agency filed a petition praying

for police custody of the petitioner and the enquiry in the petition had been fixed on 18-2-1992. It is puzzling to note on that date, learned

Assistant Public Prosecutor representing the prosecution would make an endorsement on the petition so filed that since the initial period of remand

of fifteen days was over as on that date, he was not pressing the application for police custody. This also suggests that the investigating agency is

also quite conscious of the legal implications of the initial order of remand passed by the Magistrate.

54. But what then that impelled the prosecuting agency to file an application for further extension of remand beyond 18-2-1992 and also the

Magistrate to have passed the order, on such application, extending the period of remand further upto 3-3-1992? It is at this juncture, one has to

take note of the administrative instructions issued by learned Principal Sessions Judge (Mr. B. Krishnasamy, as he then was) in Dis. No. 10288,

dated 16-9-1989. A reading of those administrative instructions to be followed by the subordinate Magistrates reveals that it is but necessary for

those officers to resort to the procedure of committing the accused, alleged to have committed offence under the Act to the court of sessions and

also resorting to extend the period of remand, far beyond the period of initial remand of fifteen days, as a Magistrate having jurisdiction to commit

the accused and to extend remand from time to time according to the salient provisions contained under S.167(2) of the Code. It is perhaps those

administrative instructions could have stared at the face of not only the investigating agency but also the Magistrate remanding the petitioner-

accused and consequently, by way of a second-thought of the matter, the investigating agency could have filed an application for further extension

of the period of remand beyond 18-2-1992 and so also the Magistrate passed an order on such application extending the period of remand as

prayed for. The Magistrate would perhaps have been obsessed with the idea that the violation or refraction of the so-called administrative

instructions issued by the principal Sessions Judge would land him in trouble and therefore, he could have possibly chosen to obey those

instructions.

55. The igniting cause for the issuance of the administrative instructions by the Principal Sessions Judge appears to be the result of a Reference, in

the common parlance having been made to the Sessions Judge in a case in Crime Nos. 1187 and 188 of 1989 of Harbour Police Station under

S.21 of the Act stating that the amended Act II of 1989 has come into force on 29-5-1989 and as per the amended Act, no committal is

necessary and the Judicial Magistrate is authorised to remand only for fifteen days under S.36-A(1)(b) of the Act. Such a Reference, the Principal

Sessions Judge took it on his file and appeared to have issued notice to learned City Public Prosecutor and thereafter passed a judicial order and

this judicial order so passed is the basis for the administrative instructions, being issued. Learned Principal Sessions Judge, while issuing such

administrative instructions, was rather either oblivious of the sanguine legal provisions on the subject or because of himself wantonly assuming the

elevated position of a superior court of jurisdictions if the so-called order passed by him is binding on all subordinate Judicial officers working

under his jurisdiction. Whatever might have been the reason for the issuance of such administrative instructions, the fact remains that such

administrative instructions are contrary to the in built, express and explicit provisions contained in the Act as well as the Code. As and when the

VII Metropolitan Magistrate, George Town, Madras-1 referred the matter to the Principal Sessions Judge, the proper and the best course for him

was to have made a Reference to the High Court under the relevant provisions of the Code, seeking a decision so that a decision rendered by this

court on such a Reference is binding on all the subordinate courts. Unfortunately, such a course had not been resorted to by learned Principal

Sessions Judge.

56. Despite the issuance of such administrative instructions, it is legitimately permissible for the subordinate Judicial Officers in that Sessions

Division not to have given effect to the so-called administrative instructions as such instructions cannot at all serve as a binding precedent to be

followed by them in the interpretation of, the provisions of the statute. Learned Magistrate, in that view of the matter, might have opted to tread on

the correct path initially, when he has chosen in extending the period of remand from 13th to 18th of February, 1992. Thereafter he ought to have

forwarded the petitioner accused to the Sessions Judge, for further extension of remand and if he had done so, then his sturdy judicial

independence in the matter of interpretation of the provisions could have very well been appreciated. But such exhibition of sturdy judicial

independence is dead and gone and perhaps the said learned Magistrate could have thought in a worldly wise ashion, not to have purchased

trouble at the hands of leaned Principal Sessions Judge, who issued administrative instructions on the subject, whatever might have been the

reasons which impelled learned Magistrate to extend the remand period beyond 18-2-1992, the fact remains that such extension of period of

remand is clearly without jurisdiction and the custody of the petitioner far beyond 18-2-1992 cannot be stated to be a proper or a legal one.

57. It is to be recapitulated at this juncture that the petitioner resorted to the present action by labelling the petition as bail application on 17-2-

1992 Labelling of the petition as a "bail application" on that date isn't without any significance. The reasons so obvious is that on that day, the

remand of the petitioner was perfectly legal as not being done without jurisdiction. The extension of the remand beyond 18-2-1992 is an act

construed to be one as being done without jurisdiction and the custody of the petitioner thereafter becomes indisputably illegal.

58. Since that custody has become illegal, the petitioner filed a verified petition on 20-2-1992, allowed it by a memo on 24-2-1992 praying for

construing the bail petition as one filed under S.482 of the Code. These things apart arguments of learned counsel for the petitioner revolved only

on the question as to whether the custody of the petitioner beyond 18-2-1992 is illegal or otherwise and the consequence flowing therefrom. No

arguments on the merits of the cases as to the entitlement of the petitioner to be released on bail, taking into consideration the salient bail provisions

adumbrated under S.37 of the Act, had been pressed into service. If such an argument had been resorted to, different considerations would have

crept into discussion. In such an eventuality, this Court would be called upon to record a finding on the merits of the case that there are no

reasonable grounds for believing that he is not guilty of the offence with which he had been accused of and that he is not likely to commit any

offence in future while on bail. The question that was urged for consideration, as already indicated is a different one involving on the power of the

Magistrate to pass an order of remand for a further period far beyond the prescribed period of initial remand and the consequence flowing

therefrom. The discussion supra would reveal clearly that the 17th Metropolitan Magistrate, before whom the petitioner accused had been

produced for the purpose of making an initial remand on 4.2.1992, had not exceeded his power of such a remand, as had been provided for under

S.36-A(1)(b) by ordering remand for a period not exceeding fifteen days in the whole, in the sense of extending the remand upto 18.2.1992; but

the further extension of the remand thereafter is one done without jurisdiction and the custody of the petitioner from that date is therefore illegal.

59. In such circumstances, the prayer made by the petitioner in his memo for treating this bail petition as one filed under S.482 of the Code has to

be necessarily complied with and is accordingly complied with to pass an order setting aside the illegal order of remand by the Magistrate. I may

point out here that the label of the petition in a particular case is of no significance and consequence and the substance of the relief that is prayed

for is the deciding factor to construe the correct label of the petition. Even without a memo being filed by the petitioner for construing the petition as

one filed under S.482 of the Code, it is perfectly legitimate for this court to construe the petition as one filed under S.482 of the Code, it is

perfectly legitimate for this court to construe the petition as one filed under S.482 of the Code. When the remand becomes illegal beyond a

particular date, the detention of the petitioner becomes unlawful and the same deserves to be set aside and such a set-aside order can be made

either by resorting to the powers of revision recognised under S.401 or of the inherent powers of this court under S.482 of the Code.

60. These things apart it is also legitimately permissible for the affected person to knock at the doors of this Court under Article 226 of the

Constitution of India, by filing a Habeas Corpus petition for setting aside the unlawful detention. If a Habeas Corpus petition is filed, the writ court

can take into account the unlawful custody of the person on the date when the writ petition had been filed and the earlier unlawful detention is of no

consequence. But in proceedings under S.401 or under S.482 of the Code, the position is different. Under those sanguine provisions, once the

custody becomes illegal and unlawful, such a custody can be set aside, by resorting to the revisional or inherent jurisdiction of this court and that

perhaps would have been the reason for the petitioner to have filed a memo for treating the bail application as one filed under S.482 of the Code,

without rushing to the writ jurisdiction under Article 226 of the Constitution of India.

61. From the discussion supra, the following proposition would emerge in the case of trial of offenders accused of commission of the offences

under the Act:

(1) The initial remand cannot at all be made for a period beyond fifteen days in the whole, where such a Magistrate is a Judicial Magistrate and

seven days in the whole, where such a Magistrate is an Executive Magistrate.

(2) If such person is forwarded to such Magistrate, upon or at any time before the expiry of the period of detention authorised by him and if the

Magistrate feels that the detention of such person is unnecessary he shall order such person to be forwarded to the Special Court having

jurisdiction, if constituted; or otherwise to the Court of Session, until the constitution of a Special Court;

(3) A court of Session, for all practical purposes, would be placed on par with the Special Court having all the powers and functions of such a

court;

(4) No commitment is necessary and the court of Session can take cognizance of the offences under the Act as a court of original jurisdiction

without there being any commitment to it for trial; and

(5) Court of Session will have the same powers, which a Magistrate having

jurisdiction to try a case may exercise under S.167 of the Code in relation to an accused person in such a case, which has been forwarded to him under that section.

62. I am told at the Bar that the administrative instructions issued by learned Sessions Judge caused confounding confusions not only in Madras

Sessions Division but also in all the Sessions Division in the State of Tamil Nadu in the sense of the Magistrates ordering further extensions of the

remand of fifteen days as a whole, without forwarding the persons accused of offences under the Act and also resorting to commit such offenders

to the respective Court of Session for trial. Such a polluted atmosphere, as respects wrong application of law, in respect of persons accused of

offences under the Act, must have to be cleared by passing on a correct information to all those Magistrates and other Subordinate Judicial

Officers in the State.

63. Such an information, I feel, can be passed on thus: Instead of the Registry taking copies of this order and circulating the same to all the

Subordinate Judicial Officers in the State of Tamil Nadu, which in fact is a stupendous task, I feel such number of copies of the orders as there are

Sessions Judges and Chief Judicial Magistrates in the State of Tamil Nadu could be taken, which may not pose any serious problem to the

administration of this Court and circulate such of those copies to those Sessions Judge and the Chief Judicial Magistrates with a direction to them

that after receipt of a copy of the order they should take xerox copies of the order and circulate them to all the Subordinate Judicial Officers in

their respective Divisions/Units.

64. Ordering for taking copies of orders and circulating them to the Subordinate Judicial Officers, I feel, is a domain pertaining to administrative

power and function of My Lord, the Honourable Chief Justice. If straightaway, a direction is given by me for such circulation, it will tantamount to

encroaching upon such administrative functions of My Lord the Chief Justice. Therefore, the best course, I feel in the circumstances, would be for

the Registry to place a note before My Lord, the Chief Justice on this aspect of the matter and get My Lord the Chief Justice's approval and

thereafter, take such number of copies of the order and despatch the same to the intended Officers.

65. In fine, the remand order of the XVII Metropolitan Magistrate, Saidapet, Madras, extending the remand of the petitioner beyond the targeted date of the initial remand, namely, 18.2.1992 is held to be illegal and consequently, his detention is unlawful and the petitioner is ordered to be set at liberty forthwith. The release of the petitioner from prison should not at be the misconstrued as if the entire criminal proceedings initiated against him are, once and for all, set aside. However, he has to face trial before the Special Court, if constituted or the Court of Session in case find report under S.173(2) of the Code is filed by the investigating agency and such a report had been taken cognizance of by such court. In order to ensure that he should appear before the said court, it is further directed that he will appear before the competent court for facing trial on receipt of summons.

66. The petition is ordered accordingly.