

(1986) 04 MAD CK 0016

In the Madras High Court

Case No : Criminal M.P. No. 3994 of 1986

The Asst. Collector of Customs, (Prosecution) Preventive
Dept.

APPELLANT

Vs

Aroumougame

RESPONDENT

Date of Decision : 30-04-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 327, 352

Citation : (1986) 04 MAD CK 0016

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : P. Rajamanickam, Central Govt. Prosecutor, for the Appellant;

Judgement

David Annoussamy, J.—This is a petition to set aside the order passed by the Additional Chief Metropolitan Magistrate, Egmore, Madras,

in C.C. No. 1323 of 1985 and to direct the Magistrate to hold the sitting of the Court inside the premises of the Customs House, Madras.

2. The case of the petitioner who is the Assistant Collector of Customs, is that the trial of C.C. No. 1323 of 1985 could not be conducted in the

normal Court house. He prayed the concerned Magistrate to have the sitting inside the premises of the Customs House. That prayer was dismissed

by the concerned Magistrate on 27-2-1986 stating that the Court cannot have its sitting outside its premises unless directed by a competent

superior Court.

3. The provision of law in this connection is contained in S. 327, Cr.P.C. 1973. The same provision which was contained in S. 352, Cr.P.C. 1898

was considered in the decision of this Court in Ganesh v. State, 1950 MWN 104, where it was observed as follows -

The language of S. 352 clearly presupposes the power in the presiding Judge or Magistrate trying a criminal case to decide on the venue of trial

and once he decided the place, that place where the Court is held must be deemed to be an open Court. The Judge or Magistrate hearing a

criminal case has, therefore, to decide the place where the court ought to be held. The only condition imposed is that, just like all Courts of law, it

should be accessible to the public.

Therefore, as per law, the discretion to choose the place of sitting is entirely in the hands of the Magistrate.

4. Rule 4 of the Criminal Rules of Practice provides as follows :-

The attention of all criminal Courts is invited to the provisions of S. 352 of the Code, Judicial work so far as it relates to trials and enquiries shall

ordinarily be done in public court houses and not at the residence of the Judicial Officers, except when a Magistrate is on tour, or when exceptional

circumstances exist the conduct of public business elsewhere than at the Court house is not desirable.

It is only stated in the rules that normally the Court work will be done in Court houses and that it is not desirable to do it elsewhere when

exceptional circumstances do not exist. Therefore, it is clear that the Magistrate can decide to have place of the sitting outside the Court-house

taking into account the special nature of the case and it is not for the superior Court to decide on what should be the venue of the Court. If, of

course, the Magistrate decides on the merits of an application for having the sitting outside the public Court-house, and if his decision on merits is

highly capricious, it will be open to the aggrieved party to approach the superior Court to have the decision modified. But in the present case, the

Magistrate has not applied his mind as to whether circumstances exist to have the sitting elsewhere than the Court-house.

5. In the circumstances, the order of the Magistrate is set aside. The Magistrate is directed to consider the application of the petitioner on merits

and pass suitable orders.

6. Petition allowed.