

(1987) 03 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal M.P. No's. 1188 and 1189 of 1986

The Supdt. of Customs and Central Excise, Range II

APPELLANT

Vs

M. Krishnamachari, State of A.P. and Karamsetty Venkaiah,
State of A.P.

RESPONDENT

Date of Decision : 23-03-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 13, 14, 18, 2
Customs Act, 1962 — Section 135

Citation : (1989) 22 ECR 105

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G. Radhakrishna Rao, J.—The Superintendent, Customs & Central Excise, Range-II, Nellore Division, Nellore, is the petitioner in the two petitions. CrI. M.P. No. 1188/86 is filed to cancel the bail granted to Krishnamachary in CrI. M.P. No. 670/85 by the Sessions Judge, Nellore. Krishnamachary was arrested on 6.12.1985 and produced before the IInd Addl. Judl. 1st Class Magistrate, Nellore, on 7.12.1985, with a remand report that he is guilty of offence u/s 135 of the Customs Act and was liable to be punished for the said offence. The IInd Addl. Judl. 1st Class Magistrate, Nellore, remanded Krishnamachary to judicial custody on 7.12.1985. Krishnamachary filed a bail application before the Magistrate on 9.12.1985. That petition was dismissed on the ground that the Magistrate has no jurisdiction to grant bail, while holding that the Special Judge dealing with Economic Offences Cases, Hyderabad, alone has jurisdiction to entertain the application. On 11.12.1985, the Magistrate passed the orders, directing the transfer of the case to the court of the Special Judge for Economic Offences at Hyderabad as he has exclusive jurisdiction to try the offence and directed the Jail Superintendent to cause the production of the accused on 23.12.1985 before the Special Judge for Economic Offences at Hyderabad. The records were received by the Special Judge for Economic Offences on 16.12.1985. Mean-while,

Krishnamachary filed Crl. M.P. No. 670/85 before the Sessions Judge, Nellore, for grant of bail. In spite of the objection raised by the Public Prosecutor about the jurisdiction of the court to grant bail, the Sessions Judge granted the bail. It is against that order, this petition has been filed.

2. Karamsetti Venkaiah filed Crl. M.P. No. 673/85 before the Sessions Judge, Nellore, for grant of anticipatory bail. In spite of the objection raised by the Public Prosecutor about the Jurisdiction of the court and about the transfer of the case to the file of the Special Judge for Economic Offences, bail was granted on 16.12.1985. It is against that order, Crl. M.P. No. 1189/86 has been filed.

3. The contention of Shri Jagannadha Rao, learned Counsel for the petitioner is that the Sessions Judge, Nellore, has no jurisdiction to grant bail in respect of a case which is within the jurisdiction of the Special Judge for Economic Offences. His further contention is that the Special Judge for Economic Offences, Hyderabad, has exclusive jurisdiction in the matter of grant of bail. It is also contended that when the IInd Addl. Judl. 1st Class Magistrate, Nellore, rejected the grant of bail on the ground that he has no jurisdiction, the Sessions Judge, Nellore, who has got knowledge about the order that has been passed by the Magistrate, has no jurisdiction to entertain the petition. Krishnamachary was already apprehended and sent for judicial remand and when the case file was sent for the Special Judge for Economic Offences Court, the Sessions Judge, Nellore, granted the bail.

4. Shri Subrahmanya Narsu, learned Counsel appearing on behalf of Krishnamachary contended that as the accused was apprehended at Nellore and as the Sessions Judge, Nellore, has got concurrent jurisdiction as provided in Sections 437 and 439, Cr. P.C, he is entitled to grant the bail and there is no infirmity in the orders that have been passed by him. In support of his contention, he relied upon Gulam Mohd v. State AIR 1959 MP 147. The principle laid down in that case is as follows:

It is now well settled that the powers of the High Court and the Sessions Court u/s 498 are in no way controlled by Section 497, Cr.PC and it is open both to the High Court or to the Court of Sessions to admit a person to bail on good and sufficient cause in any case.

The decision in Ishwar Chand Vs. State of Himachal Pradesh, , considered the right of the High Court to grant bail in a case where the power of a subordinate criminal court to grant bail has been transferred in law to the Special Tribunal. It was also found that the jurisdiction of the High Court u/s 439 Cr. P.C. is not excluded. A further observation was also made that it is well accepted that an ouster of the jurisdiction of the ordinary courts should not be readily inferred and that such ouster must either be clearly expressed or necessarily implied. Seetharam Reddy, J. considered the scope of" Section 12AA of the Essential Commodities Act and the power of the High Court to grant anticipatory bail u/s 438, Cr.PC in Kuppu Naidu v. State of A.P. 1985 (3) Apl. J. S.N. 15.

5. In this case we have to see whether the jurisdiction of the Nellore Sessions Division has been expressly or impliedly taken away after the constitution of the Special Court for trying offences under the Economic Offences Cases.

6. In G.O.Ms. No. 202 Home (Courts-A) Department, dated 27th March, 1980, the Government established a Special Court for Economic Offences in Hyderabad to deal with certain economic offences under the 12 specified acts. The matter was first recommended by the Law Commission in its 47th report pursuant to which, the Central Government moved the State Government for setting up of a Special Court in the State of Andhra Pradesh. The State Government have accordingly, after consultation with the High Court, established the Special Court for Economic Offences at Hyderabad to deal with the 12 specified Central Acts. They are as under:

- (1) The Central Excises and Salt Act, 1944.
- (2) The Imports & Exports (Control) Act, 1947.
- (3) The Wealth Tax Act, 1957.
- (4) The Income Tax Act, 1961.
- (5) The Customs Act, 1962.
- (6) The Gold (Control) Act, 1968.
- (7) The Foreign Exchange Regulation Act, 1973.
- (8) The Companies Profits (Surtax) Act, 1964.
- (9) The Gift Tax Act, 1958,
- (10) The Export (Quality Control and Inspection) Act.
- (11) The Companies Act.
- (12) The Monopolies and Restrictive Trade Practices Act.

As the maximum punishment that can be imposed being seven years rigorous imprisonment under the statute, it has become necessary to Post a Presiding Officer in the cadre of a District and Sessions Judge as there is no separate cadre of Chief Judicial Magistrates. The Court has been invested with statewide jurisdiction in the notification issued under the proviso to Sub-section (1) of Section 11 read with Clause (j) of Section 2 of the Code of Criminal Procedure, 1973. The Notification reads as follows:

In exercise of the powers conferred by the proviso to Sub-section (1) of Section 11 read with Clause (j) of Section 2 of Code of Criminal Procedure. 1973 (Central Act 2 of 1974) and after consultation with the High Court of Andhra Pradesh and in supercession of the Notification issued by the Government of Andhra Pradesh in G.O. Rt. No. 1967, Home (Courts-A) Department, dated 4th August, 1980, the Governor of Andhra Pradesh hereby:

1. Specifies the whole of the State of Andhra Pradesh as the local area for the purpose of establishing a Special Court for the offences arising under the enactments mentioned in the annexure hereto ; and

2. Establishes a Special Court of Judicial Magistrate of the First Class to try cases, arising under the enactments mentioned in the annexure hereto, even if such cases include offences punishable under the Indian Penal Code, 1860 and any other enactments, if such offences form part of the same transaction and the said court shall be known, as the Court of the Special Judge for Economic Offences.

The Court of the Special Judge for Economic Offences is treated as a separate unit by itself.

7. The proviso to Sub-section (1) of Section 11 Cr.PC has been added by the Amendment Act, 1978, with a view to empower the State Government to establish, after consulting the High Court, Special Courts of Judicial Magistrates, having jurisdiction throughout any local area and to confer on such courts jurisdiction to try any particular case or particular class of cases. Section 2(j) reads as follows:

Local jurisdiction", in relation to a court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify:

8. In this context, we have to consider Section 14 Sub-clause (3) which reads as follows:

Where the local jurisdiction of a Magistrate, appointed u/s 11 or Section 13 or Section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.

The provisos to Sub-sections (1) and (3) to Section 14 have been added by the Amendment Act, 1978. The proviso to Sub-section (1) has been inserted to enable the Court of Special Judicial Magistrate to hold its sittings at any place within the local area for which it is established. It is intended to facilitate the holding of mobile courts. Sub-section (3) has been inserted to provide that where the local jurisdiction of a Magistrate extends beyond a district or a metropolitan area in which he ordinarily holds his court, reference in the Code to the Court of Session or Chief Judicial Magistrate or Chief Metropolitan Magistrate shall, in relation to the entire area in the local jurisdiction, be construed as

references to the Court of Session, Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction over the district in which he ordinarily holds the court

9. On a combined reading of Section 11 and Section 2(j) read with Section 14 with the latest provisions contained in the Amendment Act, 1978, we have to construe by means of the notification in G.O. Rt. No. 734 dated 13th March, 1981, that the Government has constituted a Special Court for the whole of the State of Andhra Pradesh and the person that was appointed to deal with cases is that of the cadre of a Sessions Judge. It is not a case where we are dealing with a case of a Magistrate's Court, it is a case where a Special Tribunal has been constituted for the whole of the State of Andhra Pradesh to deal with cases arising under the 12 Central Acts mentioned above. It is well accepted that an ouster of the jurisdiction of the ordinary courts should not be readily inferred and that such ouster must either be clearly expressed or necessarily implied. By virtue of the notification that has been issued by the State Government which was referred to above, the jurisdiction of the ordinary sessions courts has been impliedly ousted. The Magistrate's Court in Nellore Sessions Division was entrusted specially to entertain cases under the Act. The IInd Addl. Judl. 1st Class Magistrate who has got power to entertain matters, sent the accused for remand with a direction to produce him before the Special Judge for Economic Offences. By virtue of the order that has been passed by him, the Special Judge alone is competent and the Sessions Judge at Nellore who is having general jurisdiction, has no right to entertain the bail application either u/s 438 or 439 Cr. P.C. If we construe the powers that have been conferred on the Magistrate with a right to remand the accused for any of the offences under the 12 Acts specified above for which the Special Judge Court has been constituted under G.O. Rt. No. 734, it is only the Special Judge for Economic Offences alone that is competent to consider the application for bail. It is by implication, the jurisdiction of the Sessions Court has been taken away and the same has been conferred on the Special Judge who is entrusted to try cases arising under the Acts for the whole of the State of Andhra Pradesh. The right of appeal against the orders of the Special Judge is entirely a different aspect as it depends upon the quantum of sentence. In the State of Andhra Pradesh, the Additional District and Sessions Judges are designated as Chief Judicial Magistrates. Against (he orders of a Chief Judicial Magistrate, an appeal lies to the court of Sessions Judge, depending upon the quantum of sentence. In the Cr.PC it has been contemplated that the Chief Judicial Magistrate, though holding the cadre of a District and Sessions Judge, is inferior to Sessions Judge. But the Special Court now constituted under the provisions, is distinct and a different one. The District and Sessions Judge, Nellore, should not have entertained the application for bail, when it was brought to his notice that the IInd Addl. Judl. 1st Class Magistrate, Nellore, dismissed the applications with an observation that the Special Judge for Economic Offences alone has got jurisdiction to the cases. If we read the G.O. Rt. No. 734 dated 13.3.1981 along with the Proviso to Sub-section (1) of Section 11 and Clause (j)

of Section 2 and Section 14 of the Cr.PC it is clear that the jurisdiction of the Sessions Divisions in the State of Andhra Pradesh has been excluded and that the Special Judge for Economic Offences alone is competent to consider the application for grant of bail.

10. In the result, both the petitions are allowed.

Two weeks time is granted to enable the petitioner to approach the concerned authorities.