**(2011) 10 MAD CK 0012**

**In the Madras High Court**

**Case No :** Criminal R.C. No. 289 of 2011 and M.P. No''s. 1, 2 of 2011

T.T.V. Dhinakaran APPELLANT

Vs

The Assistant Director Enforcement Directorate Chennai RESPONDENT

**Date of Decision :** 11-10-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 166A, 173(2), 173(8), 218, 219
Foreign Exchange Management Act, 1999 — Section 49
Foreign Exchange Regulation Act, 1973 — Section 56, 8(1), 9(1)

**Citation :** (2011) 10 MAD CK 0012

**Hon'ble Judges :** C.T. Selvam, J

**Bench :** Single Bench

**Advocate :** B. Kumar, for Mr. A. Jinesanan, for the Appellant; M. Ravindran, Addl. Solicitor General for Mr. M. Dhandapani, Special Public Prosecutor, for the Respondent

## Judgement

The Honourable Mr. Justice C.T. Selvam

1. This revision arises against the order passed by learned Additional Chief Metropolitan Magistrate E.O.II, Egmore in Crl M.P. No. 2052/2010

in E.O.C.C. No. 84/2001 dated 27.01.2011.

2. Petitioner had moved this court by way of Crl.R.C. No. 216/2007 seeking revision of earlier order passed by the court below in S.R. No. 2 of

2006 in E.O.C.C. No. 84 of 2001. The facts giving rise thereto are that the respondent filed a complaint against the petitioner for offences under

sections 8(1) and 9(1)(a) of FERA, 1973 punishable u/s 56(1)(i) of the said Act r/w sub section (3) & (4) of Section 49 of FEMA, 1999. The

allegation against the petitioner was that the petitioner, who is the Director of M/s. Dipper Investments Ltd., M/s.Banyan Tree Enterprises Ltd.,

and M/s. Turnkey Industries Ltd., acquired foreign exchange of US $ 36,36,000 and on ï¿½ 1,00,000 during 1994-95 being not an authorised

dealer in foreign exchange and without the previous general or special permission of the Reserve Bank of India. Earlier to such complaint, one

other complaint was filed by the respondent against the revision petitioner which is pending before the same court in E.O.C.C. No. 27 of 1996.

The allegation in such complaint was that the accused, a resident of India, being not an authorised dealer in foreign exchange had acquired foreign

exchange totalling about US $ 1,04,93,313. During the pendency of the case in E.O.C.C. No. 27 of 1996, the respondent made an application u/s

166A of the Criminal Procedure Code which was allowed and pursuant thereto some documents were received by the complainant and

statements of witnesses were recorded. As it came to the knowledge of the respondent that the petitioner had acquired foreign exchange to the

tune of US $ 36,36,000 and ï¿½ 1,00,000, the second complaint in E.O.C.C. No. 84 of 2001 was filed. The petitioner moved an application

before the trial court u/s 173(2) and 173(8) Cr.P.C contending that as the second case arose owing to further investigation, it was to be

considered a supplementary complaint in C.C. No. 27/1996 and not a separate case. Such contention was repelled. Thus arose Crl.R.C. No.

216/2007.

3. This court held therein as follows:

9. On going through the materials, it appears that the offences alleged against the petitioner in both the complaints are similar in nature, whether the

offences in both cases are of similar transaction or of different transaction. The period during which the alleged offences are committed in both the

cases also relates to 1994-1995. The receipt of ï¿½ 90,000 on 17.08.1994 by the same party is the subject matter of E.O.C.C. No. 27 of 1996.

The earlier transaction had come to the knowledge of the respondent subsequently. Though these two cases can be tried separately, since they are

of same kind, it is open to the accused to seek for both cases to be tried together.

10. Section 218 of the Criminal Procedure Code reads as follows:

218. Separate charges for distinct offences.

(1) For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be

prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

11. As stated above, E.O.C.C. No. 84 of 2001 cannot be said to be not maintainable. But, there is nothing wrong in trying these cases, i.e.,

E.O.C.C. Nos. 84 of 2001 and 27 of 11996 together, though it is brought to the knowledge of this court by the learned Special counsel for the

respondent that already 15 witnesses were examined in C.C. No. 27 of 1996. It appears that charges are not yet framed and this being trial of

warrant cases instituted otherwise than on a police report, after framing the charges also, the accused may cross examine the witnesses and the

prosecution also may examine the other witnesses. In E.O.C.C No. 84 of 2001, as per the complaint, only 3 witnesses are cited.

12. Therefore, this court feels that at this stage, it is open to the petitioner/ accused to file an application before the Additional Chief Metropolitan

Magistrate, E.O.II, Egmore, Chennai seeking to try together both the cases, i.e., E.O.C.C. Nos. 27 of 1996 and 84 of 2001. If any such

application is filed by the revision petitioner, the learned Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai shall pass appropriate

orders. With the above observation, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous petition is closed.

Consequent to the orders in Crl.R.C. No. 216 of 2007, the petitioner moved Crl.M.P. No. 2052 of 2010 seeking that the respondent be directed

to take appropriate steps to consolidate both the complaints namely 27/1996 and 84/2001 as one case and one trial be conducted in the interest

of justice.

4. Clearly the above prayer was not in consonance with the direction of this court in Crl.R.C. No. 216 of 2007. Under orders dated 20.10.2010,

what this court in substance had permitted was moving of application to try E.O.C.C. No. 84 of 2001 and E.O.C.C. No. 27 of 1996 together.

This is a far cry from a prayer seeking that both cases be tried as one and the same. It is not now necessary to go into the reasons given by the court below in dismissing Crl.M.P. No. 2052 of 2010, since we have found that the very prayer therein is not in keeping with the directions of this

court in Crl. No. 216 of 2007.

5. We find that the case in E.O.C.C. No. 27 of 1996 has seen some progress as it is informed that the prosecution witnesses stand examined in

chief, while the trial in E.O.C.C. No. 84 of 2001 is yet to make a beginning. Therefore, it is still not too late in the day to follow the course

suggested under orders of this court in Crl.R.C. No. 217 of 2006.

6. Learned Senior counsel are in agreement with this court that towards avoidance of unnecessary petition and further protraction of proceedings

before the court below, this court may direct that the case in E.O.C.C. Nos. 27 of 1996 and 84 of 2001 be tried together.

7. In the above circumstances and in exercise of powers u/s 482 Cr.P.C, this court directs the Additional Chief Metropolitan Magistrate, E.O.II,

Egmore, Chennai to try together both cases, i.e., E.O.C.C. Nos. 27 of 1996 and 84 of 2001.

8. This court notices that proceedings in C.C. No. 27 of 1996 have not been completed till date despite the direction of this court requiring the

court below to expedite the trial in the case as expeditiously as possible and more particularly within a period of six months from the date of receipt

of a copy of the order in Crl.R.C. No. 717 of 1997 dated 12.09.2008.

9. Considering the above aspect, this court directs the court below to dispose of both E.O.C.C. Nos. 27 of 1996 and 84 of 2001 within a period

of six months from the next date of hearing i.e 28.10.2011. It is expected that the court below will dispose the cases without seeking further

extension of time for completion thereof. Connected miscellaneous petitions are closed. Criminal revision case is disposed of accordingly.