



CrI.R.C.(MD)No.957 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.09.2023

Pronounced on : 15.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.R.C(MD)No.957 of 2023

and

CrI.M.P(MD)No.12436 of 2023

State Rep. by,
The Sub-Inspector of Police,
Alangulam Police Station,
Tenkasi District.
(Cr.No.146 of 2023)

.. Revision Petitioner/Petitioner/
Complainant

Vs.

R.S.Rajeesh

.. Respondent / Petitioner /
3rd Accused

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and to set aside the order of the learned the learned Judicial Magistrate Court, Alangulam, Tenkasi District, dated 02.08.2023 in Cr.M.P.No.4751 of 2023.



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For Petitioner : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

For Respondent : Mr.S.Sundarapandian

ORDER

The petitioner filed a case against the respondent and other accused for the offence under Sections 294(b), 353, 506(ii), 269 & 270 IPC r/w Rule 4 of the Bio-medical Waste Management Rules, 2016 and Rule 8 of Plastic Waste Management Rules, 2016, with the allegation that on 27.05.2023 at 3.30 p.m, they transported the bio-medical waste in the vehicle bearing Registration No.KL21U3709 from Kerala State and dumped into the defacto complainant's village namely, Kuruvankottai in Alangulam-Tirunelveli Road, as against the Rule 8 of the Plastic Waste Management Rules, 2016 and Rule 4 of Bio-medical Waste Management Rules, 2016. The same was questioned by the defacto complainant namely, the Health Inspector. The respondent and other accused criminally intimidated and caused obstruction in discharge of his duties. After ascertaining the transportation of the said bio-medical waste, the defacto complainant seized the vehicle with the help of the public and entrusted the same with the respondent police. Thereafter, the case was



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registered for the above offences. They also seized the vehicle and produced the same before the jurisdictional Magistrate Court.

2. The respondent, owner of the said vehicle filed the Cr.M.P.No. 4751 of 2023 on the file of the learned Judicial Magistrate, Alangulam under Section 451 of Cr.P.C, to seek the interim custody of the said vehicle. The learned Judicial Magistrate allowed the application vide impugned order, dated 02.08.2023, by imposing condition. Challenging the same, the Inspector of Police filed this revision to set aside the order.

3. The learned Additional Public Prosecutor submitted that the bio-medical Waste Management Rules, 2016 prescribed a detailed procedure to dispose the bio-medical waste. The Rule further prohibited transportation of the bio-medical waste beyond 75 kms from the hospital. The Rule further prescribes the manner of collection of the disposal and management of the said bio-medical waste. The main object of the said Rule is to protect the environment and to stop the spreading of the multiple dangerous diseases due to the improper management of bio-medical waste like dumping the bio-medical waste in the open place etc.,



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The Rule clearly speaks about the generation, collection, reception, storage, transportation, treatment and disposal. The Rule also specifies procedure for segregation of the bio-medical waste and disposal of different variety of the bio-medical waste. Contrary to the same, there was frequent transportation of the bio-medical waste from Kerala State to Tamilnadu State. The same was brought to the knowledge of this Court in Public Interest Litigation in W.P(MD)No.24286 of 2018. During the hearing of the said writ petition, it was submitted that in the Tamilnadu-Kerala State border, both Revenue Officials of the Kerala as well as Tamilnadu State and the jurisdictional police officers did not allow the said bio-medical waste. Number of petty cases were registered against the carrier and also the drivers and the State Government strictly instructed the check-post officials not to allow any sort of transportation of the said bio-medical waste and also curb such activities which affect the environment of the Tamilnadu State.

4. Thereafter the Contempt Petition No.1847 of 2019 was filed. In the contempt petition also there is allegation that the bio-medical waste was illegally transported. In the said contempt, the Hon'ble Division



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Bench of this Court issued a direction to the Government not to allow any of the bio-medical waste transported from Kerala to Tamilnadu in all the check- post. In spite of that, the respondent transported huge quantity of bio-medical waste and dumped in the defacto complainant's area and the same was questioned by the defacto complainant, for which the respondent and the other accused abused and criminally intimidated them. In the said circumstances, release of the vehicle can not be permitted because of serious infraction of the Rules which not only harmed the environment but also caused the health hazards to the villagers. Thereby the learned trial Judge ought not to have granted interim custody to the respondent. Hence, he seeks to set aside the same.

5. The learned counsel for the respondent submitted that the respondent's vehicle involved in the said offence is for the first time. The learned trial Judge also imposed the condition to deposit 1/4th of the amount spent for the destruction of the bio-medical waste in the Aspetic Systems Bio-medical Waste Management Company. In the said circumstances, the order of the learned trial Judge is in accordance with the provisions of the Act. Hence, he prays for dismissal of this revision.



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6. This Court has considered the rival submissions made by both parties and perused the records and the impugned order and also the relevant provision of the Bio-medical Waste Management Rules, 2016.

7. The respondent's vehicle transported the bio-medical waste from the Kerala State and attempted to dump the said waste in a place of Kuruvankottai, Alangulam-Tirunelveli Road on 27.05.2023 at 3.30 p.m. The same was questioned by the village people and the defacto complainant. The defacto complainant is the Health Inspector of the said area. At that time, the respondent and other accused abused the defacto complainant and caused hindrance to the recovery of the said bio-medical waste and abused him and criminally intimidated him. Thereafter, the respondent and other accused were caught by the public and produced before the petitioner herein. The police registered the case for the above offences and seized the bio-medical waste and destructed the same in the Aspetic Systems Bio Medical Waste Management Company at the cost of Rs.2,67,211/-. Thereafter, the respondent's prayer seeking the interim custody of the vehicle was ordered by the learned trial Judge.



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8. The bio-medical waste must be properly managed and disposed of to protect the environment as well as the general public, who are at the risk of exposure to bio-medical waste. Considering the health hazard issue relating to the improper management of the bio-medical waste, the Bio-Medical Waste Management Rules, 2016 was introduced. They indirectly recognised the practice of the polluter pay principle. The main object of the Bio-medical Waste Management Rules, 2016 to segregate, transport, treatment and dispose of correctly. The above are as important as patient care.

9. Untreated bio-medical waste shall not be kept stored beyond a period of 48 hours. In said circumstances, transporting the same itself demands iron hand to stop the same. In spite of that restriction, the respondent transported the bio-medical waste with huge quantity and hence, the learned trial Judge committed error in granting the custody of the vehicle to the respondent. The Rule itself specifically prohibits transportation of the bio-medical waste beyond 75 kms from the hospitals. In the said circumstances, the respondent seriously violated the said Rule and transported the bio-medical waste with knowledge that the



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same would cause hazards to the public and the environment. This type of act should not be encouraged by releasing the vehicle involved. The respondent not only acted contrary to the Bio-medical Waste Rules, 2016 but also against the injunction order passed by the Hon'ble Division Bench of this Court. The learned trial Judge has not considered all the aspects and erroneously passed the impugned order to release the vehicle. Hence, this Court, on the above reasoning, set aside the impugned order dated 02.08.2023.

10. Considering the seriousness of this issue, the Hon'ble Division Bench of this Court, disposed the Public Interest Litigation in W.P(MD)No.24286 of 2018 recording the submission of the District Collector of Tirunelveli District that they have already removed the dumped medical waste and also periodical check-up was made. They also made an undertaking that they would ensure no dumping of bio-medical waste in the Tirunelveli District. The Hon'ble Division Bench also observed that only when the situation becomes abnormal, police and District administration take up the cause.



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11. Thereafter, the contempt petition was filed before this Court in the said writ petition in Contempt Petition No.1847 of 2019. This Court granted interim injunction restraining the transportation of the bio-medical waste in all the borders of the Tamilnadu. In the contempt petition, the Principal Secretary to the Government also averred that the Government has sought legal opinion as to whether the violator of the bio-medical Rules including the persons who dumped the medical waste unauthorisedly could be included in the definition of the 'Goonda' under the Tamilnadu Act 14 of 1982.

12. It is also stated in paragraph No.15 of the contempt affidavit that the District Collector of the Tenkasi and Coimbatore have been addressed to create awareness among the Lorry Transport owners about the stringent action (Seizure of Lorries, Cancellation of the Permit etc.,) to be taken against them on the unauthorised transportation and dumping of the bio-medical waste across the borders and to sensitize the public to inform the urban and rural local bodies about the unauthorised dumping of the bio-medical waste throughout the State vide Government Letter dated 23.01.2023. It is further stated that the Monitoring Team also has



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been appointed to monitor the medical and other waste from Kerala to the border area of the Tenkasi District.

13. According to the Hon'ble Supreme Court, the infringement of law is treated as worse state of affairs and held that it is worse than not enacting a law at all. The relevant portion of the judgment of the Hon'ble Supreme Court, in the case of ***Indian Council For Enviro-Legal Action v. Union of India, (1996) 5 SCC 281*** is extracted as under:

“25..... If the mere enactment of the laws relating to the protection of environment was to ensure a clean and pollution-free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern with environment protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years. Enactment of a law, relating to protection of environment, usually provides for what activity can or cannot be done by people. If the people were to voluntarily respect such a law, and abide by it, then



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it would result in law being able to achieve the object for which it was enacted. Where, however, there is a conflict between the provision of law and personal interest, then it often happens that self-discipline and respect for law disappears.

26.Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. ..

....The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and



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recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law. ..

42.The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States....”

14. The Hon'ble Supreme Court, in the above case, has also reminded the duty of the High Court to control the degradation of the environment and to stop illegal activities with great responsibilities to ensure the proper implementation of the environmental laws, as per the



provisions of the Act.

15. The Hon'ble Supreme Court specifically directed the High Court to monitor the implementation of the provisions of the Pollution Act in order to protect the environment and related health hazards.

16. The counter affidavit of the State Government in the Contempt Petition No.1827 of 2019 para 14 it is stated as follows:

“14. It is submitted that the Government has sought legal opinion on whether the violators, including persons who dump the Bio-medical waste unauthorizedly in the definition of 'Goonda' under the Tamil Nadu Act 14 of 1982 (Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest-offenders, Goondas, Immoral Traffic offenders, Slum-grabbers and Video Pirates Act, 1982) vide letter dated 20.01.2023. Further action will be taken based on the legal opinion.”

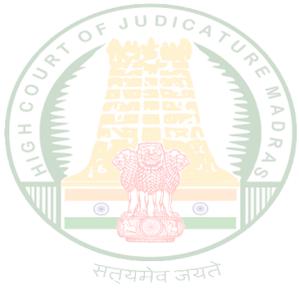
17. Now it is brought to the knowledge of this Court that the learned Advocate General of the State has given positive opinion to bring



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the violator of the bio-medical waste Management Rules, 2016 under the definition of 'Goonda' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest-offenders, Goondas, Immoral Traffic offenders, Slum-grabbers and Video Pirates Act, 1982. To implement the Bio-medical Waste Management Rules, 2016, steps are being taken by the Tamilnadu Government through appreciable, in the interest of the environment and to prevent the health hazard, the Government is expected to take necessary steps to bring amendment to suitably deal with the person transporting the medical waste from the Kerala State to the Tamilnadu State. Even in the counter filed by the Principal Secretary to Government, it is stated that more than 9 cases final report was filed, 45 petty cases were registered and number of vehicles were seized with the medical waste. Apart from that similar Public Interest Litigation was filed before the Principal Bench in W.P.No. 25717 of 2018 with prayer to remove the bio-medical waste which were dumped in Vallanadu Wildlife Sanctuary. Further, the petitioner police registered two more similar cases in recent past. Hence, it is right time to book the violators of the bio-medical waste under the Act 14 of 1982 by bringing proper amendment to the Act 14 of 1982.



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18. Accordingly, this Criminal Revision Petition is allowed with the above direction. Consequently, connected miscellaneous petition is closed.

15.11.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

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To

1. The Judicial Magistrate,
Alangulam,
Tenkasi District.
2. The Sub-Inspector of Police,
Alangulam Police Station,
Tenkasi District.



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3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

Pre-delivery Order made in
Crl.R.C(MD)No.957 of 2023
and
CrL.M.P(MD)No.12436 of 2023

15.11.2023