

**Crl.OP. (MD)Nos.7655 & 7656 of 2016
and
Crl.A. (MD)Nos.373 & 374 of 2017**

B.PUGALENDHI, J.

Today, when these matters are taken up for hearing Mr.K.P.S.Palanivel Rajan, learned Counsel for the respondents in Crl.A(MD)No.373 of 2017, by referring the Notification in No.142 dated 13.07.2020, issued by the Registry of this Court, made his submission that this Court is not supposed to take up the final hearing cases. The notification authorises MACT-OP and certain others cases to be taken up for final hearing and the final hearing in Criminal Appeals and Original Petitions are not referred. By reading the notification, he also insisted that the final hearing stage cases of all classification will be taken up only upon the consent from both side Advocates.

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2. This Court, politely and humbly, informed the learned Counsel that this notification dated 13.07.2020 is made based on the representations from the Bar that during the present COVID-19 situation, they are having certain practical difficulties in getting instructions from their

clients, who are residing in far away places and some of Counsel are also held up in their native places and remote places, where there is no connectivity. The reasoning, on which this notification was made, cannot be applicable to the present case on hand, since both the respondent as well as their counsel are in Madurai city and Madurai is well connected with internet facility. Fortunately in Tamil Nadu, we are having good internet connectivity facility in almost all places, including some remote villages.

3. In fact, in the past two months, this Court has also witnessed Counsel representing their cases sitting in Car. Even while travelling in their Car, Counsel are comfortable in placing their cases before the Court. Counsel, who are interested in their cases, even if they are staying in remote places, are reaching out to a place where they are having connectivity and are presenting their case comfortably. When this system of Virtual Courts are comfortable for admission for the learned Counsel, this Court fails to understand why it is difficult for them to conduct the final hearing cases.

4. This Court, politely and humbly, informed the learned Counsel for the respondents that The Hon'ble Chief Justice of the Madras High Court has assigned the portfolio - i) Criminal Appeals (including Appeals relating to Crime against Women and Children) and Criminal Revision - upto the year 2017 - (All Stages); and ii) CBI and Prevention of Corruption Act Cases (Except Bail and Anticipatory Bail Applications) - (All Stages) to this Court for this spell, w.e.f. 06.07.2020 and in the month of July, 2020 alone, this Court has disposed of 44 cases (Criminal Revision Cases - 21; Criminal Appeals - 10; Criminal Original Petitions - 10; Writ Petitions - 3). Not only this Court, but in the entire Madurai Bench of Madras High Court, 5020 cases (including 1971 Miscellaneous Petitions) were filed in the month of July, 2020 alone, of which, 4832 cases (including 1929 Miscellaneous Petitions) were heard and disposed, via virtual court hearings.

The details are as follows:

STATEMENT SHOWING THE INSTITUTIONS AND DISPOSALS FROM
01.07.2020 TO 31.07.2020

S.No.	CATEGORY OF CASES	INSTITUTIONS	DISPOSALS
	CIVIL CASES		
1	WP	1433	1363
2	SA	35	11
3	CRP	45	124
4	CMA	38	6
5	WA	39	40
6	CONT.PET	57	25
7	AS	9	0
8	REV APPL (C)	0	1
9	CMSA	2	0
10	REV.APPL (W)	1	0
11	CROSS OBJN.	1	0
	TOTAL	1660	1570
	CRIMINAL CASES		
12	CRL OP	1190	1135
13	CRL RC	43	52
14	CRL A	28	25
15	HCP	128	121
	TOTAL	1389	1333
	MISC. CASES		
16	MP (WRIT)	0	28
17	MP (CIVIL)	0	29
18	WMP	1333	990
19	CMP	229	442

20	CRL MP*	406	412
21	SUB A*	2	4
22	TR CMP*	1	24
	TOTAL	1971	1929
	GRAND TOTAL	5020	4832

5. This Virtual Court is a boon to the entire Legal Fraternity. Even a Mofussil Advocate residing in a remote village in Kanyakumari can comfortably present his case before this Court, the Principal Seat and even before the Hon'ble Supreme Court. In fact, in a writ petition in W.P. (MD)Nos.14750 of 2018, etc., batch, Myself sitting along with Hon'ble Mr.Justice P.N.Prakash, heard a final hearing matter from 11.20 am to 7.30 pm, of course, taking a break of half an hour for lunch. The learned Senior Counsel sitting in their offices at Chennai, comfortably presented their cases before the Division Bench at Madurai and the Division Bench, heard the matter in full and disposed of the same.

6. This Court, politely and humbly, informed Mr.K.P.S.Palanivel Rajan, learned Counsel for the respondents that even before they entered appearance in

Crl.A.(MD)No.373 of 2017, the learned Counsel for the petitioner in Crl.OP(MD)Nos.7655 & 7656 of 2016 has made his submissions and also filed a detail written notes of submissions, enclosing authorities, as well. These notes of submissions were also served upon the previous counsel who represented the respondents / accused. Only thereafter, the respondents have chosen to change their counsel and a new set of Counsel have entered their appearance. Even though the private respondents in Crl.O.P(MD)Nos.7655 & 7656 of 2016 and Crl.A(MD)Nos.373 & 374 of 2017 are one and the same, the respondents have engaged different set of Advocates to their convenience. Of course, it is their right to appoint Counsel of their choice, but none of their Counsel are prepared to proceed with the case.

7. Mr.R.Murali, learned Counsel for the petitioner in Crl.OP(MD)Nos.7655 & 7656 of 2016 pointed out to this Court that since the respondents / accused are enjoying an order of acquittal without even a trial, they are not prepared to proceed with the cases. But, on the other hand, the petitioner, for having discharged his duties as a District

Collector, Madurai, is facing an allegation of perjury committed by him. According to the Counsel for the petitioner, for having filed the complaint as against the respondents as mandated under the Act, he is slapped with the allegation of perjury that he signed the complaint ante-dated, after his transfer, as a District Collector, Madurai.

8. He further submits that Sections 22 and 22(4-A) of the Mines and Minerals (Development and Regulation) Act, 1957, mandates a complaint for the offence committed under the Act and for the confiscation of any vehicle, tool, instrument and other materials seized under the Act. The District Collector is the competent authority under Section 22 of the Act to file his complaint and though the law mandates the District Collector to file complaints, in our Country, no complaint was filed by any of the District Collectors as mandated under the Act. This is the first such complaint filed in this regard. But, for having acted under the law by filing a complaint, the petitioner is slapped with a fitting reply. The learned Counsel further

submitted that the learned Judicial Magistrate, who passed the order impugned in the Criminal Appeals, was also removed from service, pursuant to a departmental proceedings initiated against him.

9. According to the learned Counsel for the petitioner, the petitioner, as District Collector, Madurai, has signed the complaint on 04.07.2013, when the note file was placed before him. Thereafter, he was transferred by the Government on 06.07.2013, as Joint Commissioner, Commercial Tax. Though he signed the complaint on 04.07.2013, it was handed over to the learned Special Public Prosecutor and they filed the same on 18.07.2013. By referring the date of filing and the date of transfer, the learned Magistrate inferred as if the complaint was filed after the transfer of the petitioner. The learned Counsel has also emphasized that there is no material placed before the learned Judicial Magistrate by any one, including the accused, to the effect that the petitioner never held the post of District Collector, Madurai or signed the complaint after transfer from the said post.

10. As pointed out by the learned Counsel for the petitioner, the petitioner signed the complaint only in his official capacity and it was signed on 04.07.2013. Admittedly, on that date, the petitioner was the District Collector, Madurai. It is not even the case of the respondents / accused that the complaint was signed ante-dated. Not even a suggestion was made to the official witnesses, examined before the trial Court. While so, this Court is unable to understand on what basis and on what materials placed on record before the Court, the learned Magistrate arrived at such a conclusion. Moreover, it is also a settled position of law that no adverse remarks can be made by the Court against any officer, without providing him an opportunity and failure to do so, will be a clear abuse of process of law.

11. Mr.R.Murali, learned Counsel for the petitioner in Crl.OP.(MD)Nos.7655 & 7656 of 2016 further submitted that the impugned order, against the petitioner, is legally as well as factually wrong and against the well established legal principles and cannot be sustained even for a minute.

But, it holds the field, till date, by dragging the matter in one way or the other. Moreover, the private respondents / accused in this case are only formal parties and they do not have any say in this case.

12. Despite the oral and written submissions made on behalf of the petitioner, the respondents are insisting for an adjournment by referring the notification in No. 142/2020, dated 13.07.2020. This Court, once again, politely, humbly and firmly reminded the learned Counsel for the respondents that this Court is not for the respondents alone, but is also having a duty towards the petitioner, who knocked the doors of the Court in the year 2016 and waiting for Justice for the past four years. The learned Counsel for the respondents / accused though admit that they are a formal party to the proceedings in the Criminal Original Petitions, submits that any order passed in the Criminal Original Petition would have a bearing in the Criminal Appeals in Crl.A. (MD)Nos.373 & 374 of 2017.

13. The Criminal Appeals in Crl.A(MD)Nos.373 & 374 of 2017 are filed by the State, under Section 378 Cr.P.C., as against the order of acquittal passed by the learned

Judicial Magistrate, Melur, in C.C.Nos.82 & 83 of 2013, dated 29.03.2016, in and by which, the learned Magistrate has dismissed the complaint filed by the State, u/s 256 Cr.P.C.

14. The complaint was filed on 18.07.2013. The prosecution has examined Thiru Arumuga Nainar, then Assistant Director (Geology & Mining) [PW1]; Thiru Ganesan, then Deputy Tahsildar [PW2]; Thiru Perumal, then Deputy Director [PW3]; Thiru Sivakumar, then Public Relations Officer [PW4]; Thiru Akbar Seit, then Village Administrative Officer [PW5]; Thiru Chandrasekaran, then Sub-Inspector of Police [PW6]; Thiru Jeyapaul, then Sub-Inspector of Police [PW7] and has also marked certain documents. By expressing the burden of work on the District Collector, an application was filed for dispensing with his appearance. But the trial Court, by observing that the District Collector has not appeared for two years, dismissed the complaint under Section 256 Cr.P.C., for non-appearance of the complainant.

15. After perusing the order of the learned Magistrate

impugned in the appeals, this Court reminded the learned Counsel for the appellant and the respondents that the limited issue in the appeal is to test the order of dismissal of complaint and acquittal of accused, due to absence of complainant on the date of hearing, the circumstances in which the complainant failed to appear before the Court on the date of hearing.

16. This Court further reminded the learned Counsel that similar such orders passed in the proceedings initiated under Section 138 of the Negotiable Instruments Act were remanded back by this Court, after testing the circumstances. In fact, the complaint filed in the case is filed under Section 200 Cr.P.C., similar to that of a complaint filed under Section 138 of the Negotiable Instruments Act. In the event of an appeal filed as against similar orders passed under Section 256 Cr.P.C., this Court in 'n' number of cases, remanded back the matter to the trial Court for providing one more opportunity by fixing a date for evidence of the complainant, after testing the circumstances for non-appearance, in order to prevent the

interest of justice. Even the Counsel representing the respondents / accused in these appeals might have availed such orders. Therefore, the requirement of detailed legal submissions in a case like this nature is unwarranted and this Court fails to understand why the State as well as the Counsel for the respondent are repeatedly taking adjournments.

17. In fact, the learned Magistrate, while dismissing the complaint under Section 256 Cr.P.C., for non-appearance of the complainant, has also passed an order on merits by referring the provisions under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, despite the fact that the complaint was filed under the Mines and Minerals (Development and Regulation) Act, 1957. It is very unfortunate that without even knowing the basic principle that the Act will prevail over the Rules, the order came to be passed.

18. When this Court, once again, politely and humbly,

placed the facts and the position of law to the learned Counsel representing the appellant and the respondents, Mr.K.P.S.Palanivel Rajan, learned Counsel for the respondents in Crl.A.(MD)No.373 of 2017 made a further allegation as against this Court that when the Criminal Appeals of the year 2014 are still pending before the Court, what is the urgency for this Court to take up this Criminal Appeal filed in the year 2017. It is made clear that this Court is taking up the matters only on chronological basis and this appeal was also listed for hearing pursuant to the orders of the Hon'ble Administrative Judge dated 17.07.2020, tagging Crl.OP. (MD)Nos.7655 & 7656 of 2016 along with Crl.A.(MD)Nos.373 & 374 of 2017 and to post before this Court.

19. For this allegation made by a Member of the Bar that even appeals of the year 2014 are pending before the Court, this Court is duty bound to reply that it is because of the respective Counsel, who are taking time by one way or other and for having shown indulgence in certain appeals, we are facing the allegation that we are not

disposing the cases. In fact, the learned Counsel for the petitioner has also made a similar submission in a polished manner that a person, who approached this Court in the year 2016, is still waiting for Justice for the past four years.

20. In fact, the Media has also published a news that a Member of Bar at Sattur is selling Tea, since the Courts are not functioning. As pointed out supra, the Madurai Bench of Madras High Court alone has disposed of 4832 cases in the month of July, 2020, alone. All the Magistrate Courts in the State are also functioning through virtual hearing and therefore, it is not the case that Courts are sitting idle, shutting the doors. In fact, the notification in No.142, dated 13.07.2020, was made only pursuant to the representations from the Members of the Bar, expressing certain practical difficulties. But then, though such practical difficulty is not available for the respondents / accused in this case, they are taking shelter behind the notification dated 13.07.2020 and dictating the Court that this Court is not supposed to take up the appeal for final hearing.

21. Even though the Media has published the news item that a member of the Bar was driven to an extent of selling Tea due to the non-functioning of the Courts, none of the associations who have made the request before the Hon'ble Chief Justice that the final hearing matters shall not be taken for hearing, has come to the rescue of the Court. But, in contrary, they are participating in debates, tarnishing the image of this Institution that the Judges, sitting in Ivory Towers, are not inclined to conduct the cases. In fact, the decision to conduct the Courts through virtual hearing has been made by the Hon'ble Administrative Committee, taking into consideration of the welfare of all the stakeholders, including, Advocates, Litigants, Staff, etc., and this system of virtual hearing is proved to be success and the number of filing and disposal made in the last month alone is a proof for the same.

22. This case itself is a glaring example as to how the cases are being dragged on by the parties, who are enjoying favorable orders in their favour. This is the third time

these petitions are listed before this Court for hearing.

a) In the first instance, it was represented that this Court, while serving as Special Government Pleader / Additional Advocate General, has represented the Government against the respondents / accused in this proceedings and therefore, a plea for recusal was made. This Court dealt with the same and passed a detailed order on 22.07.2020.

b) Thereafter, when the matter was taken up for hearing in the second time, the very same plea but with a different colour and also by a different set of Counsel was made that this Court, while serving as Special Government Pleader / Additional Advocate General, has represented the Government against the respondents / accused in some other proceedings and sought for recusal of this Court, again. A further plea was also made to entertain a petition said to have been filed under Section 309 Cr.P.C. for adjournment. This Court took pains and passed a detailed order, meeting out all the points raised and rejected the plea for the second time.

c) Now, in this third hearing, a plea for adjournment was made based on the notification dated 13.07.2020.

23. The fact remains, the respondents / accused were acquitted by the trial Court, without even a trial, finding fault with the District Collector, who is burdened with 69 subjects, apart from the Law and Order of the entire District. But it appears the respondents / accused have dragged this matter by changing the Counsel and engaging different Counsel for the same proceedings for the past four years and are seeking adjournment without assigning any reasons.

24. The respondent / accused may not know the legal position involved in his case. But, the Counsel must be aware of the same and he should be fair to the Court. Though this Court has already relied upon the decision of a Full Bench of this Court in **First Grade Pleader, Vellore, [AIR 1931 Madras 422]**, in the earlier order dated 30.07.2020 itself, this Court feels it appropriate to be reminded of it, again, that it is not the duty of a legal practitioner blindly to follow every instruction of his client; he has not only got a duty towards his client but also towards the Court and it is his duty to see that the

case is fairly and honestly conducted.

25. In view of the consistent attitude shown on behalf of the respondents / accused in not proceeding with the appeal by changing the Counsel, making allegations against the Court for taking up the matter, this Court feels appropriate to refer to Section 386 Cr.P.C. For better appreciation, Section 386 Cr.P.C., is extracted as under:

"386. Powers of the Appellate Court.

After perusing such record and hearing the appellant or his pleader, **if he appears**, and the Public Prosecutor, **if he appears**, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;"

26. It is the legal obligation on the part of this Court, as per Section 386 Cr.P.C., to proceed with the

appeal based on the papers placed before the Court without expecting for the appearance of the appellant or the respondent. If they appear, this Court would definitely hear them, but, if they do not chose to appear, the Courts are not supposed to wait for their submissions. This is a clear mandate provided under Section 386 Cr.P.C.

27. In fact, in a criminal appeal filed by CBI, the CBI has taken several adjournments and in that proceedings, a Division Bench of this Court, where Myself was a party to the Bench, has passed an order appointing an Advocate in the place of the learned Special Public Prosecutor for CBI and taken up the hearing in that appeal. Only then, the learned Special Public Prosecutor for CBI came forward and proceeded with the case. In this case also, though the appeal has been filed by the State, even the State has not come forward to conduct the appeal.

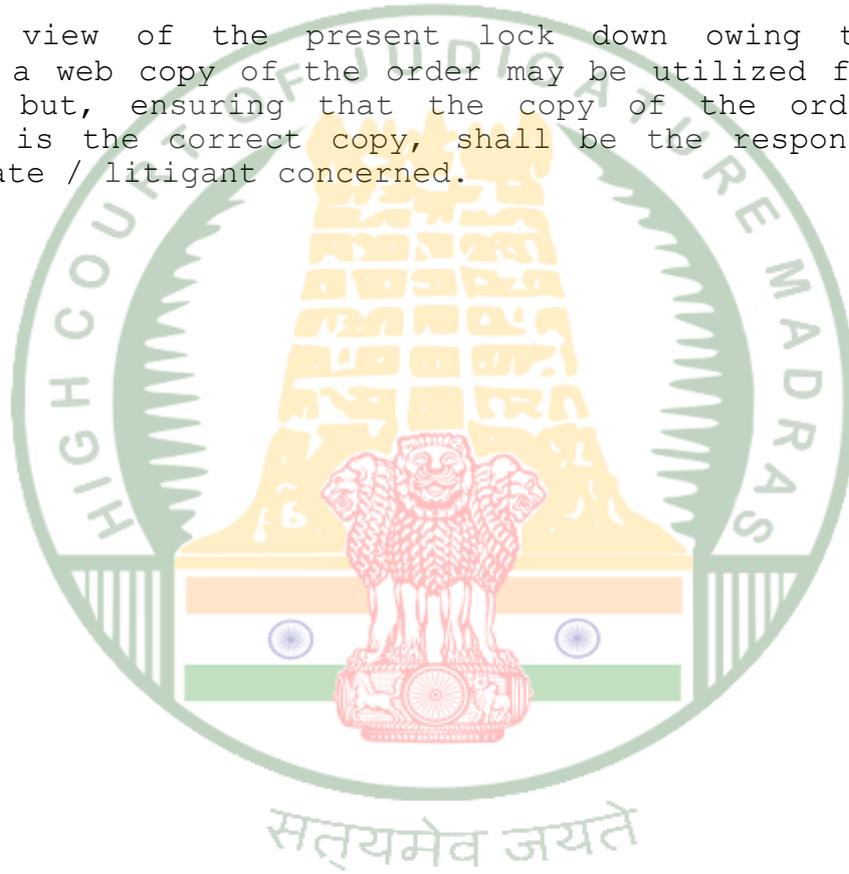
28. Therefore, this Court is inclined to provide one more opportunity. Post this matter on 07.08.2020, for orders. It is made clear that if the parties fail to make

their arguments, this Court would not hesitate to proceed further as contemplated under Section 386 Cr.P.C.

Index : Yes / No
Internet : Yes
gk

06.08.2020

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

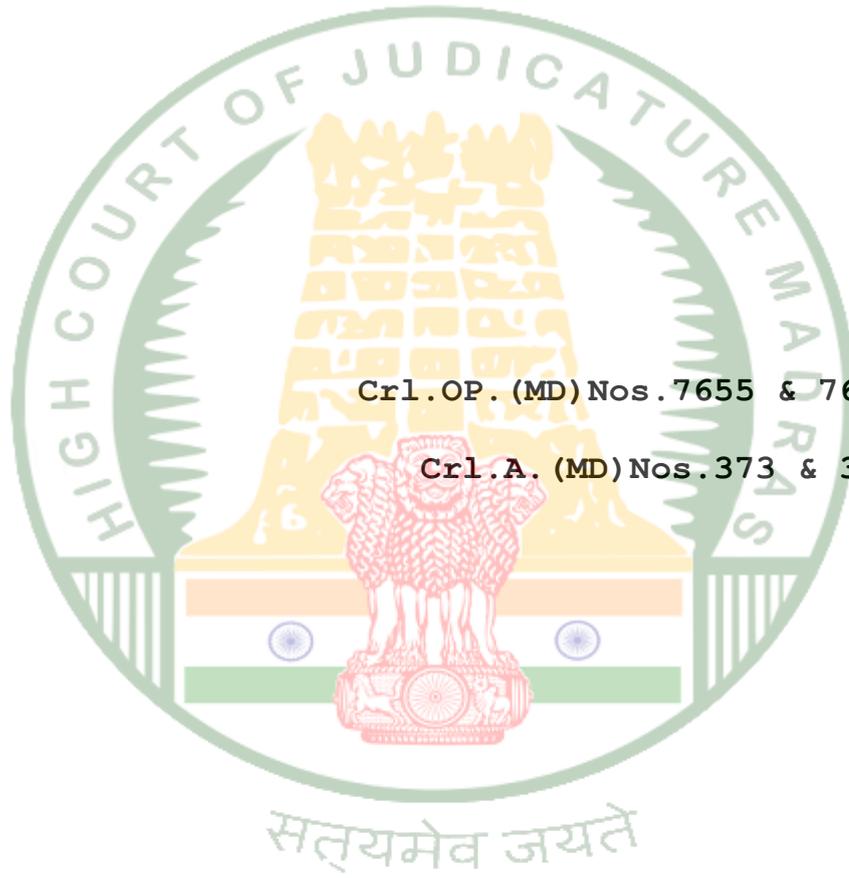


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