



Crl.OP.No.5577 of 2024

N.ANAND VENKATESH, J

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The State has preferred this petition questioning the order passed by the learned Judicial Magistrate, Sathyamangalam, accepting the surrender of four accused persons and remanding them to judicial custody till 6.3.2024, mainly on the ground that the learned Judicial Magistrate, Sathyamangalam did not have the territorial jurisdiction to entertain such a petition filed by accused persons by surrendering themselves before the Court.

2.The learned State Public Prosecutor (SPP) submitted that in the present case, a gory incident took place on 29.2.2024, wherein the Deputy Chairman of Kattankulathur Panchayat Union was waylaid by six identifiable men and he was brutally murdered by chopping his arms and legs and that apart, the accused persons also hurled country bomb on the Car and caused extensive damage to the vehicle and thereafter, they had fled the scene. The learned SPP submitted that the deceased was brought dead on the same day before the Chrompet Government Hospital.

3.The learned SPP further submitted that five persons surrendered before the learned Judicial Magistrate, Sathyamangalam and out of those five, one was a juvenile, aged about 17 years. The learned SPP submitted that the learned Judicial Magistrate, Sathyamangalam, without any jurisdiction, entertained the

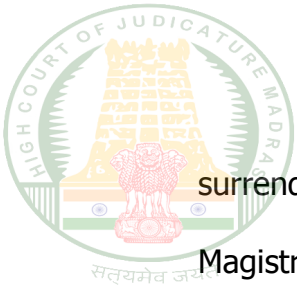


surrender petition of four persons who surrendered and remanded them to judicial custody till 6.3.2024. Insofar as the other accused person who was a juvenile, a direction was given to produce him before the Juvenile Justice Board, Chengalpattu.

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4.The learned SPP further submitted that four more persons surrendered today before the Judicial Magistrate, Srivilluputhur and their surrender petition was also accepted and they have also been remanded to judicial custody.

5.The learned SPP submitted that in many of the serious offences committed by habitual criminals, this tactic is adopted and thereby, the police are not able to effectively investigate the case and these hardened criminals ultimately manage to escape from the clutches of law. The learned SPP therefore requested this Court to evolve certain guidelines in cases of this nature. To substantiate his submissions, the learned SPP relied upon the judgment of the Himachal Pradesh High Court in **Ami Chand v.s. State of Himachal Pradesh** reported in **2020 SCC Online HP 1840**. He placed specific reliance upon paragraph Nos. 33 to 35 in this judgment. The learned SPP also placed reliance upon the judgment of Kerala High Court in **Joseph Thomas v. State of Kerala** reported in **2023 SCC Online Ker 3428**. The learned SPP also brought to the notice of this Court the Division Bench judgment of this Court in **Ayyappan and others v. State** reported in **2015 SCC Online Mad 11389**. The learned SPP submitted that

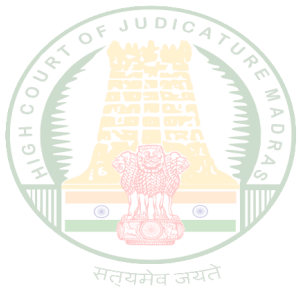


surrender in these cases takes place in a completely different jurisdictional Magistrate Court only by relying upon this judgment passed by the Division Bench of this Court.

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6.The learned SPP had mentioned before this Court at 10.30 am., today about this case and sought for permission of this Court to move lunch motion. Immediately thereafter, I directed the Registry to get the order passed by the learned Judicial Magistrate, Sathyamangalam from the concerned Court. Accordingly, the copy of the order dated 1.3.2024 made in CMP.No.1519 of 2024 was placed before this Court and the entire order is extracted hereunder:

The Petitioners are voluntarily surrender before this court. Copy of Aadhar Card produced. Identification of the accused are verified. On perusal of the copy of FIR produced by the petitioner in Cr.No.40/2024 registered on the file of Otteri Police Station, Tambaram, in column No. 7 of the said FIR, it is mentioned as "பார்த்தால் அடையாளம் காட்டக்கூடிய 6 நபர்கள்" he petitioners name were not reflected in FIR and when i enquired the same with the petitioners, the petitioners are represented that the police officials are searching them and they visited their respective homes and enquired the whereabouts of the petitioners with the family members of the petitioners when their absence and filed the affidavit. Head Clerk of this court directed to check with the concern Police Station and Head Clerk make an enquiry with the S.I of Police Namely Mr.Ravikumar through his mobile number 94981 33868 and filed an affidavit form stating that the police



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officials are investigating the case still. Based on the submissions made by the petitioners with affidavit and reply made by the concern Police Station this court prima facie satisfied that the detention of the 1-4 petitioners namely 1.Muneswaran S/o Nagu, 2.Sathyaseelan Basker, 3.Sampathkumar S/o Rajendran, 4.Manikandan S/o Subramani are necessary. Hence I accept the surrender of above said 1 4 petitioners and I remand the 1-4 petitioners to Judicial Custody till 06.03.2024. On physical examination A1 has old injury on his right side cheek when i enquired the same he replied that before one month he met with an accident and he has also injury on his right leg when i required the same he replied that “நேத்து கம்பி குத்தி காயம் ஆயிடுச்சு”. Jail Authority is directed to produce the 1-4 petitioners before Judicial Magistrate Court No.2, Chengalpattu On 06.03.2024. On perusal copy of the Aadhar Card produced by A5 namely Dhinesh S/o Ramamoorthy, he seems to be a Juvenile and the date of birth of juvenile is mentioned as 21.09.2006. Hence this court not accept the surrender of the said juvenile since this court is not Juvenile Justice Board. Hence, the petitioner Dhinesh S/o Ramamoorthy seems to be a juvenile, this court considered the safe of the said juvenile petitioner and in the interst of justice the juvenile is sent with AR Police PC 2988 S.Pandidurai and PC 1239 R.Anandhababu and directed to produce the juvenile before Juvenile Justice Board Chengalpattu forthwith with safe and proper care and caution for further proceedings known to law after due medical examination. The counsel appeared on behalf of juvenile filed an undertaking affidavit stating that he will inform the parents of juvenile and ask them to appear before Justice Juvenile Board, Chengalpattu during the production of said juvenile.



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7.It is further brought to the notice of this Court that the entire case records have now been transmitted to the file of the Judicial Magistrate-II, Chengalpattu.

8.In the considered view of this Court, a plain reading of Section 167 (1) and 167(2) Cr.PC shows that Section 167(2) Cr.PC cannot stand independently and it is only a consequence of the provision under Section 167(1) Cr.PC. A Magistrate can act upon the accused person only if he is forwarded by the police under Section 167(1) Cr.PC. There is absolutely no indication while reading Section 167(2) Cr.PC that an accused person can straight away surrender before any Magistrate Court without being forwarded by the Police under Section 167(1) Cr.PC. That apart, the judgment of the Hon'ble Apex Court in **State of W.B .vs. Dinesh Dalmia** reported in **2007 5 SCC 773** makes it abundantly clear that it is a condition precedent under Section 167 Cr.PC that the accused person must be in the custody of police and if the police officer finds that the investigation cannot be completed within a period of 24 hours fixed under Section 57 Cr.P and he is satisfied that the accusation or the information is well founded, the accused has to be forwarded to the Magistrate Court and the accused person thus forwarded can be detained and he can be remanded to judicial custody for a term not exceeding 15 days. The Hon'ble Apex Court in this judgment has made it very clear that a notorious criminal, who may have number of cases pending in various police stations may chose to notionally surrender before some Magistrate Court



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and adopt it as a device to avoid physical custody of the police and that such device adopted by the accused person cannot be permitted under Section 167 Cr.PC. It was made clear that the precondition under Section 167 Cr.PC is that the accused person must be in the custody of the police.

9.It is therefore pellucid that from the plain reading of Section 167 Cr.PC and the judgment of the Hon'ble Apex Court referred supra, will certainly have a bearing in the judgment passed by the Division Bench of this Court in Iyyappan case referred supra.

10.The concern that was raised by the learned SPP has to be attended since it has become a regular practice in this State for notorious criminals to commit serious offences and thereafter mislead the police by making some persons to surrender before different Magistrate Courts having no jurisdiction and invariably, one or two of those persons who surrender also happen to be juveniles. This Court must ensure that the criminal justice is not subverted by adopting these tactics and it is high time that the situation must be brought under control and some guidelines are issued by this Court.



WEB COPY Post this case under the caption 'for passing final orders" on 8.3.2024 at
10.30 am.

04.03.2024

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