Ramdoss and Others Vs. State of Tamil Nadu and Another

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Court : Chennai

Decided On : Sep-29-1992

Reported in : 1993CriLJ2147

Judge : Mishra and;Padmini Jesuddurai, JJ.

Appeal No. : Habeas Corpus Petn. No. 239 of 1992

Appellant : Ramdoss and Others

Respondent : State of Tamil Nadu and Another

Advocate for Def. : I. Subramanian, Addl. Public Prosecutor

Advocate for Pet/Ap. : V. Anantharaju, Adv.

Judgement :

Mishra, J.

1. On a report by the Assistant Commissioner of Police, Crime (General), Egmore, Madras-8, X Crime No. 1899/92 under sections 120-B, 124A, 153A(1)(a)(b), 505(1)(b) of the Indian Penal Code and Ss. 13(1) and 13(2) of the Unlawful Activities (Prevention) Act, 1967 has been registered. Petitioners herein were taken in custody in connection with the said case, and produced before the Additional Chief Metropolitan Magistrate, Egmore, Madras.

2. Mr. T. V. Subramaniyan, who is in charge of regular Court No. X, since the Court of the regular Additional Chief Metropolitan Magistrate was vacant, held the charge of the Court of Additional Chief Metropolitan Magistrate and ordered for remand of the petitioners on 18-9-1992. This order passed under sub-section (2) of S. 167 of the Code of Criminal Procedure was evidently on the report of the officer-in-charge of the police station concerned who, after arresting the petitioners herein and obtaining them into custody, was duty bound to produce them before a Magistrate as required under Art. 22(2) of the Constitution of India and under S. 167(1) of the Code of Criminal Procedure if it appeared to him that the investigation could not be completed within the period of twenty-four hours fixed by S. 57, Cr.P.C. (Art. 22(2) of the Constitution) and there were grounds for believing that the accusation or information was well-founded and that a further detention of the accused was necessary. Mr. T. V. Subramaniyan, the Magistrate, however, entertained at this stage a contention raised by the counsel for the accused that they were implicated on political grounds and that the Court should peruse the first information report as to whether the ingredients of the alleged offences were made out and they should be heard accordingly. He accordingly perused the first information report along with Sections 120B, 124(A), 153(A)(1)(a) and (b) and 505(1)(b), I.P.C. and Sections 13(1) and 13(2) of Unlawful Activities (Prevention) Act, 1967 and heard learned counsel for the parties. His order upon that is extracted after making as many corrections as possible :

'Section 120A, I.P.C. on perusal of commentary of 01 Edition Criminal Law of India by Dr. Sir Hari Singh Gour 120(A), I.P.C. read as follows : Page 1120 - the points requiring proof are : (1) the accused agreed with another, (2) to do an act or cause it to be done, (3) that such act was illegal or was done by illegal means, (4) An overt act if the agreement was not an agreement to commit an offence.'

'F.I.R. does not disclose any agreement between two or more to do an act or cause to be done. Hence S. 120(B) is not made out in the F.I.R.'

'I.P.C. 153(A) page 1378 - proof points requiring proof are : (1) that the accused wrote or spoke words or used signs or visible representation or employed means to promote or attempt thereby to promote, feeling of enmity or hatred between

different classes of citizens of India, (2) that he did so maliciously.'

'In this scope of explanation it is stated that the explanation of S. 153(A), I.P.C. protects honest criticism or any act of the person criticising a political party without a malicious intention.'

'On perusal of the F.I.R. S. 153(A), I.P.C. is not made out since promoting enmity between different groups on the ground of religion, place of birth, residence and language is not made out. Section 505(1)(b), I.P.C. page 4262 - statement conducting to public mischief - whoever makes publishes or circulates any statement, remour or report with intent to cause or which is likely to cause fear or alarm to the public or any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity. On perusal of the F.I.R. offence under S. 505(a) and (b), I.P.C. is not made out.'

'S. 124A, I.P.C. page 1174 - In Kedarnath Singh v. State of Bihar the Supreme Court was directly concerned to the question of how far the offence as defined in S. 124A, I.P.C. was consistent with the fundamental rights guaranteed by Art. 15(1)(c) of the Constitution. It was observed thus : It has not been questioned before us that the fundamental rights guaranteed by Art. 19(1)(c) freedom of speech and expression are not absolute rights.'

'It is common ground that the right is subject to such reasonable restriction as would come within the purview of (2) clause two of S. 124A, I.P.C. reads whoever by words either spoken or written or by signs or by visible representations or otherwise brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India.'

'On perusal of F.I.R., S. 124A, I.P.C. is made out. Section 13 of Unlawful Activities (Prevention) Act, 1967 : whoever takes part in or commits or advocates, abets, advises or incites the commission of any unlawful activities, shall be punishable. On perusal of the F.I.R. Sections 13(1), 13(2) are made out. Hence remanded for 14 days till 1-10-1992.'

3. Two of the petitioners herein, viz., D. S. Ramadoss and Panruti S. Ramachandran applied in M.P. No. 1057/92 and the otherwise, viz., Thiagarajan alias Thiyagu and Kadal Dhanasekaran applied in M.P. 1058/92 for bail, Mr. T. V. Subrabaniyan ordered as follows :

'Order dated 18-9-1992 (M.P. 1057/92) Heard PP. Common reply received. The accused are released on bail on their own bond for Rs. 1000/- each.'

'Order dated 18-9-1992 (M.P. 1058/92) Heard PP. Reply received. The accused are released on bail on their own bond on executing a bond for Rs. 1000/- each.'

Accordingly the petitioners executed bonds and were released on bail.

4. The case which has been initially registered in the Central Crime Branch of the police was transferred it appears, to Crime Branch C.I.D., Madras and a Deputy Superintendent of Police, representing the respondent-State of Tamil Nadu moved on 21-9-1992 a petition for cancellation of bail under S. 437(5), Cr.P.C. The main ground on which the cancellation was sought is stated in the petition as follows :

'It is submitted that the learned Magistrate having found that prima facie an offence under S. 124A I.P.C has been made against the accused, seriously erred in granting bail to the accused/respondents. The offence under S. 124A, I.P.C. is exclusively to be tried by the Sessions Court, since the offence is punishable with imprisonment for life.'

'The learned Magistrate has absolutely no jurisdiction to grant bail to accused/ respondents who even according to the learned Magistrate have committed offence under S. 124A, I.P.C. The Section 124A, I.P.C is triable exclusively by the Court of Sessions and is punishable with imprisonment for life in which case notice of the application for bail should have been issued to the Public Prosecutor or at least reasons are to have been recorded in writing, if it is practicable to give such notice. But this is not followed in this case.'

'It is submitted that the learned Magistrate having rightly refused bail for the accused in the forenoon but afternoon erred in granting bail to the accused/respondents without proper application of mind.'

5. Reference to the order refusing bail in the petition for cancellation of bail, we are informed, is with respect to the order that the learned Magistrate passed in the case of other co-accused of the petitioners in the forenoon. The order that he passed in the afternoon releasing the petitioners on bail, according to the petition, was absolutely without jurisdiction.

6. On 21-9-1992 Mr. T. V. Subramaniyan was not-in-charge of the Court of Additional Chief Metropolitan Magistrate and one Mr. A. K. Kandasamy Pandian, who is presently in the post of II Metropolitan Magistrate was in-charge Additional Chief Metropolitan Magistrate. The cancellation petition being M.P. No. 708 of 1992 was disposed of by him on the sworn statement of the petitioner therein, by order dated 21-9-1992, which reads as follows :

'21-9-1992. Sworn statement taken. Satisfied. Issue NBW against all the four accused in the petition returnable in a week'.

As a follows up the police arrested the petitioners on the same day, viz., 21-9-1992.

7. The petitioners moved for bail in Crl. O.P. Nos. 12365 to 12368 of 1992 which was listed before learned single Judge of this Court and that have since have been disposed of by order dated 24-9-1992), as well as the instant petition praying inter alia for a writ in the nature of habeas corpus.

8. Since petitioners have already been ordered to be released on bail by Janarthanam, J. in Crl. M.P. Nos. 12365 to 12368 of 1992 the purpose of the instant petition has been substantially achieved by the petitioners. We would have, for the said reason alone, stated no further in our judgment with respect to the case of the petitioners but for the incidents we have from the remand order and the order releasing the petitioners on bail followed by the order issuing warrant of arrest and consequent arrest of the petitioners.

9. Courts in India have maintained that the police have the exclusive jurisdiction to investigate a case and that in course of investigation they (Courts) have no role to play except when there is invasion of any of the fundamental rights of the accused

and in exceptional cases when the complaint or the information on which the action that is taken discloses no offence or is otherwise inflicted by the vice of malice of some kind. Section 154 of the Code of Criminal Procedure which is relatable to the procedure to be followed as respects information with respect to cognizable offences reads as follows :

'(1) Every information relating to the commission of a cognizable offence, if gives orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of costs, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.'

10. Sine qua non to recording first information report is that there has been an information and that information discloses a cognizable offence. Satisfaction, however, in this behalf that the information disclosed a cognizable offence is that of the officer incharge of the police station. In registering a case for investigation it is the duty of the officer-in-charge who has to exercise his discretion. For the purpose of investigating any cognizable case the officer-in-charge of the police station is not required to obtain any order of a Magistrate. Section 156(1) of the Code of Criminal Procedure which reads.

'Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limit of such station would have power to inquire into or try under the provisions of Chapter XIII.'

Clearly establishes that the Court's role is confined to enquiry or trial of the offence and not investigation thereof. Sub-section (2) of this section says that 'no proceeding of a police officer if any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate' and which puts a bar upon the jurisdiction of the Magistrate to enter into the satisfaction of the officer in charge of the police station and say that since he was not satisfied that the case should have been investigated by the officer-in-charge concerned, the officer-in-charge thus would have no jurisdiction to proceed. A limited role, however, has been preserved for the Magistrate under sub-section (3) of S. 156 which reads that 'any Magistrate empowered under S. 190 may order such an investigation as abovementioned'.

11. Dealing with the provisions in the Code of Criminal Procedure, 1908, as to the police powers which provisions have remained unaltered under the Code of Criminal Procedure, 1973, the Supreme Court in Abhinandan Jha v. Dinesh Mishra : 1968 CriLJ97 has stated as follows :

'In order, properly to appreciate the duties of the police, in the matter of investigation of offences, as well as their powers, it is necessary to refer to the provisions contained in Chapter XIV of the Code. That Chapter deals with 'information to the police and their powers to investigate', and it contains the group of sections beginning from S. 154, and ending with S. 176. Section 154 deals with information relating to the commission of a cognizable offences, and the procedure to be adopted in respect of the same. Section 155, similarly deals with information in respect of non-cognizable offences. Sub-section (2) of this section, prohibits a police officer from investigating a non-cognizable case, without the order of a Magistrate. Section 156 authorises a police officer, in-charge of a police station, to investigate any cognizable case, without the order of a Magistrate. Therefore, it will be seen that large powers are conferred on the police, in the matter of

investigation into a cognizable offence. Sub-section (3) of S. 156, provides for any Magistrate, empowered under S. 190, to order an investigation. In cases where a cognizable offence is suspected to have been committed, the officer in-charge of a police station, after sending a report to the Magistrate, is entitled under section 157 to investigate the facts and circumstances of the case and also to take steps for the discovery and arrest of the offender. Clause (b) of the proviso to S. 157(1), gives a discretion to the police officer not to investigate the case, if it appears to him that there is not sufficient ground for entering on an investigation. Section 158 deals with the procedure to be adopted in the matter of a report to be sent, under S. 157. Section 159 gives power to a Magistrate, on receiving a report under S. 157, either to direct an investigation or, himself or through another Magistrate subordinate to him, to hold a preliminary enquiry into the matter, or otherwise dispose of the case, in accordance with the Code. Sections 160 to 163 deal with the power of the police to require attendance of witnesses, examine witnesses and record statements. Sections 165 and 166 deal with the power of police officers, in the matter of conducting searches during an investigation, in the circumstances, mentioned therein S. 167 provides for the procedure to be adopted by the police, when investigation cannot be completed in 24 hours. Section 168 provides for a report being sent to the officer in-charge of a police station, about the result of an investigation, when such investigation has been made by a subordinate police officer, under Chapter XIV, S. 169 authorises a police officer to release a person from custody, on his executing a bond, to appear, if and when so required before a Magistrate, in cases when, on investigation under Chapter XIV, it appears to the officer, in-charge of the police station, or to the police officer making the investigation, that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170 empowers the officer, in-charge of a police station, after investigation under Chapter XIV, and if it appears to him that there is sufficient evidence, to forward the accused, under custody, to a competent Magistrate or to take security from the accused for his appearance before the Magistrate, in cases where the offence is bailable. Section 172 makes it obligatory on the police officer making an investigation to maintain a diary recording the various particulars therein and in the manner indicated in that section. Section 173 provides for an investigation, under Chapter XIV, to be

completed, without unnecessary delay and also makes it obligatory on the officer in-charge of the police station to send a report to the Magistrate concerned in the manner provided for therein, containing the necessary particulars.'

12. After saying as above and referring to S. 190 of the Old Code, a provision similar to S. 190 of the present Code, the Supreme Court has said : 1968 CriLJ97 :

'From the foregoing sections, occurring in Chapter XIV, it will be seen that very elaborate provisions have been made for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law, without causing any harassment to the accused and is also completed without unnecessary or undue delay. But the point to be noted is that the manner and methods of conducting the investigation, are let entirely to the police, and the Magistrate, so far as we can see, has no power under any of these provisions, to interfere with the same. If, on investigation, it appears to the officer making an investigation that there is no sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate, S. 169 says that the officer shall release the accused, if in custody, on his executing a bond to appear before the Magistrate. Similarly if on the other hand, it appears to the officer in-charge of a police station, or to the officer making the investigation, under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate, such an officer is required, under S. 170, to forward the accused to a Magistrate; or if the offence is bailable to take security from him for his appearance before such Magistrate. But, whether a case comes under S. 169, or under S. 170 of the Code, on the completion of the investigation, the police officer has to submit a report to the Magistrate under S. 173, in the manner indicated therein, containing the various details. The question as to whether the Magistrate has got power to direct the police to file a charge sheet on receipt of a report under S. 173 really depends upon the nature of the jurisdiction exercised by a Magistrate, on receiving a report.'

13. The judgment in Abhinandan Jha's case : 1968 CriLJ97 (supra) has mainly concentrated on the jurisdiction that the Magistrate may assume after receiving the final report under S. 173 of the Code of Criminal Procedure but has quoted with

approval once again the observations of the Judicial Committee in King-Emperor v. Nazir Ahmed , a view which has been reiterated many a times by the Supreme Court which runs as follows :

'Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance and law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case when moved under S. 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then'.

14. It has indeed been one of the salutary principles that the Courts in India have fully observed that the Court shall not interfere with the investigation of a case and thus shall not do anything that would inhibit the jurisdiction of the police to investigate the case except in so far as there is any injury to any of the fundamental rights on account of factors that vitiate or pollute police action such as the actions initiated for the reason of malice of any kind but even in such cases, the Courts exercise the prerogative under Art. 116 of the Constitution of India or the powers akin to it under section 482 of the Code of Criminal Procedure. In the latter case, courts have expressed doubt whether it would be only under Art. 226 of the Constitution and not S. 482, Criminal Procedure Code. See State of West Bengal v. Swapan Kumar : 1982 CriLJ819

15. When we have stated as above we have not intended to say that the police has got unfettered power as indeed unlimited discretion can become a ruthless destroyer of personal freedom. The Supreme Court in the case of Swapan Kumar : 1982 CriLJ819 (supra) has clarified this aspect in these words (para 21) :

'The position which emerges from these decisions and the other decisions which the discussed by brother A. N. Sen is that the condition precedent to the commencement of investigation under S. 57 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S. 57 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R. prima facie discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.'

16. Coming to the role thus the Magistrate is required to play while making the order of remand under S. 167 of the Code we have to see as to what are the grounds for seeking the remand, and as to what is the requirement of the satisfaction of the Magistrate for making the order of remand, the Magistrate to whom the accused is forwarded seeking authorisation for the detention of the accused is informed by the police of the grounds for believing that accusation or information is well-founded or only of the grounds why detention beyond 24 hours is asked for. There can be no doubt to the view that a remand order is a judicial order. This power has to be exercised by the Magistrate in accordance with the well settled norms of making a judicial order. He has for the said reason to see that there is a report of a cognizable offence and the case has been registered by the police for investigation and that there are allegations constituting the offence which is cognizable. But beyond that he does not have the jurisdiction to question why in the absence of materials any such allegation has been entertained by the

police. It is only for the reason that the investigation has not been completed and the police has yet to decide whether the forward a report under S. 169 of the Code of Criminal Procedure or a report under S. 170 thereof that it has decided to produce the accused before the Magistrate and seek a remand order. When we see the order passed by the learned Magistrate on receipt of information about the accused we notice that the Magistrate (Mr. T. V. Subramaniyan) started examination of the contents of the first information report to say as follows :

'F.I.R. does not disclose any agreement between two or more to do an act or cause to be done. Hence S. 120(B) is not made out in the F.I.R.'

'On perusal of the F.I.R. Section 153(A), I.P.C. is not made out since promoting enmity between different group on the ground of religion, place of birth, residence and language is not made out.'

'On perusal of the F.I.R. offence under S. 505(1)(b), I.P.C. is made out.'

'On perusal of the F.I.R. S. 124(A), I.P.C. is made out.'

'On perusal of the F.I.R. S. 13(1), 13(2) are made out.'

17. It appears that the learned Magistrate was prompted to do it by the accused or by the learned counsel who appeared on behalf of the accused as if the stage at which the Magistrate had reached was the stage at which he could make an order of discharge of the accused. We have already noticed that the jurisdiction of the Magistrate begins when investigation ends, in the enquiry before the regular trial or in the trial and the stage after the final report or charge-sheet under S. 173 of the Code of Criminal Procedure alone is the stage of enquiry after the cognizance of the offence is taken by the Court and continues when the trial starts. While the remand order under S. 167 is made in course of the investigation any remand is ordered in course of the enquiry or trial only under S. 309 of the Code of Criminal Procedure which reads as follows :

'309. Power to postpone or adjourn proceedings :-

(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, our adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same in such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody;

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time;

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing;

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Explanation (1) :- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation (2) :- The term on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.'

18. It is in course of the inquiry or trial that the Magistrate or the Sessions Court in case of Sessions trial will have the jurisdiction to decide whether the allegations constitute an offence and whether there is evidence to substantiate the charge and

if that evidence is not rebutted the accused can be convicted. It was, in our opinion, an act of indiscretion on the part of the Magistrate (Mr. T. V. Subramaniyan) thus to enter into the area which even the higher courts fear to tread. A first information report, we have already indicated, is quashed by the High Court under Art. 226 of the Constitution of India or under S. 482 of the Code of Criminal Procedure on the ground that no offence is disclosed or a proceeding is quashed on the ground that there is no legal evidence to substantiate the allegations and on no other ground whatever. Allegations of mala fide are entertained no doubt but in cases of mala fide in fact, the Courts know, the proof required is such that would show that the accused (sic) has been framed and the evidence has been concocted. We do not say much on this because a learned single Judge of this Court in Crl. O.P. Nos. 9283 etc. of 1992 (order dated 23-9-1992, State v. S. Thirunayukkarasu) has stated the law in this behalf in some details. We hold for the said reason that the Magistrate should have avoided his reliance on the commentaries in same law book and postponed his opinion on the merits of the case for the right moment, that is to say, when the report for cognizance and/or action in Court was placed before him.

19. Does it then mean that a Magistrate is powerless and has no occasion whatsoever to go into the merits of the allegations in course of the investigation of a case The answer obviously is in the negative. After all there is power given to the Magistrate under S. 437 of the Code of Criminal Procedure and has to grant bail or refuse to grant bail on the materials that are placed before him and for that purpose see how allegations have been made and how they are sought to be substantiated. Had the learned Magistrate taken notice of the nature of the offence at the stage of deciding whether to release the accused on bail and then found, as he has found that one or the other offence was not fully made out and stated accordingly for the purpose of bail, no serious fault could have been found in his order.

20. But when the reasons that are given by Mr. T. V. Subramaniyan in the first order (of remand) dated 18-9-1992 are incorporated or read in the order granting bail, it is obvious, the learned Magistrate exceeded his jurisdiction. Section 437 of the Code of Criminal Procedure reads as follows :

'437. When bail may be taken in case of non-bailable offence - (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but -

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence;

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or sick or infirm '.

21. The learned Magistrate has already noticed in his order of remand that the offence under S. 124A was made out on the allegations in the first information report. He would have still exercised the jurisdiction to grant bail to the petitioners only if they fell under any one of the categories of persons mentioned in the aforementioned proviso, if any one of them was under the age of sixteen years or was a woman or sick or infirm. We have no information whatsoever that any of the petitioners satisfied the requirements of the exceptions. There could thus be a legitimate grievance that the Magistrate Mr. T. V. Subramaniyan failed to exercise his judicial discretion in accordance with law. He failed to exercise the restraint that the law clearly imposed upon his jurisdiction, viz., 'such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life' and has, it appears, granted bail without there being any material for invoking the exceptions to the said rule.

22. The Magistrate (Mr. T. V. Subramaniyan), however, granted bail even though wrongly, and the petitioners were set at liberty under the orders of a competent court. Could the bail be cancelled as Mr. A. K. Kandasamy Pandian did by order, dated 21-9-1992 The order, which we have quoted above, does not show that the Magistrate Mr. A. K. Kandasamy Pandian applied his mind to the allegations in the petition for cancellation of bail and found any ground to cancel the bail granted by Mr. T. V. Subramaniyan on 18-9-1992. It also does not show that any opportunity was given to the petitioners to show cause why bail granted to them by Mr. T. V. Subramaniyan be not cancelled. A Magistrate derives his power to cancel the bail only under sub-section (5) of S. 437 of the Code of Criminal Procedure which runs as follows :

'Any Court which has released a person on bail under sub-section (1) of such section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.'

The significant words in this provision are, 'Court which has released a person on bail' and 'if it considers it necessary so to do'. Mr. T. V. Subramaniyan acted as the Additional Chief Metropolitan Magistrate when he granted bail because on that particular day, i.e., 18-9-1992 he was the incharge Additional Chief Metropolitan Magistrate. On 21-9-1992 came Mr. A. K. Kandasamy Pandian as the in-charge of the Court of the Additional Chief Metropolitan Magistrate. Technically on that day he was the successor-in-office of Mr. T. V. Subramaniyan, but obviously not the same Magistrate who had granted bail. There may not be any violation of the technical rule that the Court which had ordered for release on bail cancelled the bail, if the cancellation order is made by the successor-in-office but this was a case, in our opinion, in which Mr. A. K. Kandasamy Pandian should have paused before he passed the order to consider if it was possible to postpone the hearing of the cancellation application so that Mr. T. V. Subramaniyan could hear it or transfer it, if he had the power to do so or place the record of the case before the Chief Metropolitan Magistrate for such transfer to the Court of Mr. T. V. Subramaniyan. That would have been more appropriate for the reason that only Mr. T. V. Subramaniyan knew why he decided to grant bail and if he committed any mistake or such facts were brought to his notice which warranted cancellation

of bail, he would have justifiably decided to cancel the bail. The words 'if considers it necessary so to do' make it obligatory that there has to be reason necessitating the cancellation of bail. That there has been a reason stated in the petition for cancellation of bail alone may not justify a judicial order to cancel the bail because, the reason stated in the petition for cancellation may be true; may not be genuine. In any event one of the rules which has been always applied by the Courts it to state the reasons for the order that is made by the Court and if no reasons are stated and yet the order is made in a certain way, that order is not a judicial order.

23. Apart from what has been imperative in the language of Section 57 or Section 437 of the Code of Criminal Procedure another imperative is created by the fact that a person ordered to be released on bail acquires a right, the right which in our system of democracy is the fundamental of the fundamentals that no person shall be deprived of his life or personal liberty except according to procedure established by law. A procedure in this behalf has been established and that says that before cancelling the bail notice must be given to the person at liberty under the orders of bail and opportunity is afforded to him of being heard before any order cancelling the bail is passed.

24. Mr. A. K. Kandasamy Pandian's order has been more abhorrent for the reason of his not offering opportunity to the petitioners of being heard for without hearing them he heard only what the police version was with respect to the bail order by Mr. T. V. Subramaniyan. The law in this behalf is stated in a judgment of the Supreme Court in State v. Sanjay Gandhi : 1978 CriLJ952 these words :

'The considerations for cancellation of bail are slightly different from those for granting bail. Once an order for bail is passed, law immediately put a protective ring around it so that it will not be cancelled without giving an opportunity to the person for whose benefit it was made.'

and in another place in State through the Delhi Administration v. Sanjay Gandhi : 1978 CriLJ952 ,

'Rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable

case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can, by and large, be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

The power to take back to custody an accused who has been enlarged on bail has to be exercised with case and circumspection. But the power, though of an extra ordinary nature, it meant to be exercised in appropriate cases when, by a a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses, refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process.'

25. The State, it appears, thought that it was a case of subversion of judicial process that Mr. T. V. Subramaniyan granted bail although he himself had found in his earlier order that offence under section 124A Indian Penal Code was made out and had accordingly applied for cancellation of bail. But then the procedure in this behalf should have been one known to law and not one which created a history of a sort. Before proceeding to decide whether to cancel the bail granted to the petitioner it was incumbent upon the Magistrate concerned Mr. A. K. Kandasamy Pandian to peruse the petition, to take notice of the supervening circumstances and then to issue notice to the petitioners herein to afford opportunity to them of being heard. After the notice and after hearing the parties alone he should have thought of cancelling the bail and issuing any warrant of arrest.

26. We have noticed in some details all the relevant aspects of law and the orders that the two Magistrates passed to state to how Magistrates are expected to conduct proceedings in their courts for without it a Court of law will become either a tool in the hands of the prosecution or a tool in the hands of the accused who, for the reason of a willing Judge to oblige, get orders contrary to law in their favour. Judiciary, as any other wing or pillar of a democracy, has get a public accountability. Its success lies in administering justice without fear or favour with utmost imparitality. It can do good to the administration of the State by making it

follow the rule of law in letter and spirit and inspire confidence in the litigant public including the accused like the petitioners that they will get impartial justice at the hands of those involved in administration of justice. It is unfortunate, however, that in the instant case both Mr. T. V. Subramaniyan and Mr. A. K. Kandasamy, even though we have no reason to think that they acted with any motive, failed to live to the exacting standard of judicial conduct; Mr. T. V. Subramaniyan was more alarmed than usual when the accused were produced before him and a request to remand them was made that he entered into the analysis of the facts of the case in the light of his own ideas about the laws and granted bail without any serious application of mind to the facts of the case; Mr. A. K. Kandasamy Pandian forgot altogether that he had to deal with a case of persons who had already been released on bail and that merely because the accused had been released on bail the State could not ask for cancellation of bail unless there were supervening circumstances for such cancellation of bail or that the order granting bail was not perverse that interference with it was necessary. That he could do only by following the established procedure of law. He failed to do that. There have been many trying times and there shall be more trying times for the Courts and the Magistrate who are at the threshold, shall be required to exercise their judicial discretions more often in circumstances which are not ordinary. If they fail to adhere to the norms and disciplines which alone are hallmarks of the success of the judicial system in our country they may be creating circumstances in which doubts will be expressed about the genuineness of our judicial system. There may be alarms and situations when on release on bail of a certain person the State may find problems to its administration. It can overcome such situations by adhering to the rules of law and not by methods which do not have the sanction of law. It will do more harm to the State if it ignored laws than its obedience to law because by showing obedience to law it shall make others feel that if they do abide by law they shall have no fear from the State.

27. We are spared of any specific order in this case for the petitioners herein have already been released on bail by Janarthanam, J. in Crl. O.P. Nos. 12365 to 12368 of 1992, by order dated 24-9-1992. We have made certain observations in the hope that in future there shall be no occasions of this kind provided by our Magistrates and that they shall abide by the rules and procedures prescribed by

law whenever occasions of this kind arise.

28. With the observations as above petition is disposed of.

29. Order accordingly.