

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.3563 OF 2023  
(Arising out of S.L.P.(CrI.) No. 3663 of 2023)

S. MUJIBAR RAHMAN ... APPELLANT(S)

VS.

THE STATE REP. BY INSPECTOR OF  
POLICE & ANR. ... RESPONDENT(S)

O R D E R

Leave granted.

2. Heard the learned counsel appearing for the appellant and the learned senior counsel appearing for the respondents/State.

3. First Information Report was registered for the offences punishable under Sections 395, 397, 212, 120B and Section 3 of the Tamil Nadu Public Property Damages Act against 31 accused. As can be seen from the order dated 16<sup>th</sup> June, 2019 passed by the learned Judicial Magistrate that the presence of some of the accused could not be procured. The said order was passed on a petition filed by the second accused invoking sub-section 2 of Section 317 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The learned Magistrate observed that non-bailable warrants and summons have been sent through the police department but a report has not been filed by

the police department expressing inability to execute the non-bailable warrants or summons. Therefore, the learned Magistrate rejected the said prayer.

4. A Revision Application was filed before the High Court by the second accused for challenging he said order of the learned Magistrate. In the impugned judgment, the High Court observed that the case was pending from 2016 and the police could not serve summons and/or non-bailable warrant to certain accused persons. It is observed that only 20 out of 31 accused persons were attending the Court.

5. After having perused the impugned judgment, we find that the High Court has not even considered the reasons recorded by the learned Magistrate in the order dated 16<sup>th</sup> July, 2019. Secondly, the High Court has not noticed that the learned Judicial Magistrate on 13<sup>th</sup> February, 2019 had permitted further investigation. Therefore, when the High Court permitted splitting of the trial, two important aspects were not noted by the High Court. The first one was that the learned Magistrate was not satisfied that the police have made sufficient efforts to procure the presence of all the accused. The second factor which is more important is the order of further investigation passed on 13<sup>th</sup> February, 2019, Therefore, this was not the stage at which the High Court could have permitted splitting of the case.

6. The learned senior counsel representing the respondent-State pointed out that now the Deputy Superintendent of Police is the Investigating Officer. However, as far as the nature and quality of investigation is concerned, we will have to address the said issue in the companion petition i.e.SLP(Criminal)No.7378 of 2023.

7. Accordingly, the impugned judgment and order dated 23<sup>rd</sup> February, 2021 is set aside and the order dated 16<sup>th</sup> June, 2019 of the learned Judicial Magistrate is restored.

8. The appeal is accordingly allowed.

.....J.  
(ABHAY S.OKA)

.....J.  
(PANKAJ MITHAL)

NEW DELHI;  
November 21, 2023.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 3663/2023

(Arising out of impugned final judgment and order dated 23-02-2021 in CRLRC(MD) No. 17/2021 passed by the High Court of Judicature at Madras at Madurai)

S. MUJIBAR RAHMAN

Petitioner(s)

VERSUS

THE STATE REP. BY INSPECTOR OF POLICE & ANR.

Respondent(s)

WITH SLP(Cr1) No. 7378/2023

Date : 21-11-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s)

Mr. A Velan, AOR  
Ms. Navpreet Kaur, Adv.  
Mr. Mritunjay Pathak, Adv.  
Mr. Ts Nanda Kumar, Adv.

For Respondent(s)

Mr. V Krishnamurthy, Sr. Adv., A.A.G.  
Dr. Joseph Aristotle S., AOR  
Ms. Shubhi Bhardwaj, Adv.  
Ms. Richa Vishwakarma, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

SLP(Criminal)No.3663 of 2023

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any, also stands disposed  
of.

SLP(Criminal)No.7378 of 2023

We have perused the order dated 8<sup>th</sup> August, 2023. Though the learned senior counsel appearing for the respondent-State pointed out that the affidavit in terms of the order has been filed in the companion petition i.e. Criminal Appeal No.3563 of 2023 arising out of SLP(Cr1.)No.3663/2023 disposed of today, we expect the State to file a better affidavit, especially when 4½ years have gone by after the order dated 13<sup>th</sup> Feb, 2019 was passed by the learned Judicial Magistrate directing further investigation.

Before we consider the prayer made by the learned counsel appearing for the petitioner for transfer of investigation to another agency, we direct the State to file an exhaustive affidavit dealing with the steps taken in the matter of further investigation.

We grant time of one month to the State to do so. While we grant time to the State, we must record our dissatisfaction about the manner in which the investigation has been carried out, especially when time of 4½ years has elapsed from the date on which the Court permitted further investigation. Proper affidavit shall be filed along with necessary documents.

For considering the said affidavit and for hearing the petition, let it be listed on 9<sup>th</sup> January, 2024 on the top of the Cause List.

(ANITA MALHOTRA)  
AR-CUM-PS  
(Signed order in SLP(Cr1.)No.3663/2023 is placed on the file.)

(AVGV RAMU)  
COURT MASTER