

March 2013

Ganesan v. State
(DB) (M. Jaichandren, J.)

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2013 (1) MWN (Cr.) 457 (DB)

IN THE HIGH COURT OF MADRAS
(Madurai Bench)

M. Jaichandren & S. Nagamuthu, JJ.

CrI.O.P.(MD) No.14156 of 2011

21.12.2011

Ganesan. 2. Nallaiah

.....*Petitioners*

Vs.

State, rep. by the Inspector of Police, Illuppur Police Station (*Crime No.182 of 2011*), Pudukottai District

.....*Respondents*

Criminal Procedure Code, 1889 & 1973

IPC, S.506(i) — Criminal Law Amendment Act, 1932

Nature of offence under Section 506(i) — Whether “bailable” or “non-bailable” in State of T.N.
— Effect of G.O. issued under 1932 Act.

INDIAN PENAL CODE, 1860 (45 of 1860), Section 506(i) — CRIMINAL LAW AMENDMENT ACT, 1932 (23 of 1932), Section 10 — CRIMINAL PROCEDURE CODE, 1898 (5 of 1898) — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974) — G.O.Ms. No.5/4118-1/70, Public (SC), dated 3.8.1970 — Offence under Section 506(i) IPC, whether “bailable” or “non-bailable” — Validity and effect of Notification issued by Government of Tamil Nadu in G.O. dated 3.8.1970 in exercise of power conferred under Section 10 of Criminal Law Amendment Act, 1932 — Whether Notification issued, when repealed 1889 Code was in force, applicable in respect of 1973 Code — Offence under Section 506(i), classified as bailable both under 1898 Code and 1973 Code — However, in view of Notification issued under 1932 Act, same declared as “non-bailable” and cognizable — No local amendment made to 1898 Code — Said declaration under 1932 Act would hold good until same withdrawn by State Government — And, same would have overriding effect over 1973 Code, which classified offence under Section 506(i) as “bailable” — As such declaration in G.O. would have statutory effect — And, offence under Section 506(i) held to be “non-bailable” in nature as per declaration in G.O. (Paras 14 to 17, 19 & 20)

CONSTITUTION OF INDIA, Article 21 — CRIMINAL LAW AMENDMENT ACT, 1932 (23 of 1932), Section 10 — INDIAN PENAL CODE, 1860 (45 of 1860), Section 506(i) — G.O. issued by Government of Tamil Nadu under Section 10 of 1932 Act declaring offence under Section 506(i) as non-bailable and cognizable — Declaration having statutory force even after repeal of 1898 Code by 1973 Code — Would place fundamental right of life and personal liberty in substantial peril — It is for State Government to consider as to whether to keep G.O. in

force any further or to withdraw same — High Court of considered view that continuation of Notification/G.O. issued in 1970 calls for a review by State Government. (Paras 17 to 19)

- a. At this juncture, we may state that, in exercise of the powers conferred under the said Section, the Government of Tamil Nadu had issued G.O.Ms. No.S/4118-1/70 Public (S.C.), dated 3.8.1970, published in the Tamil Nadu Government Gazette No.260, Extraordinary Part II Section 1 Madras, dated 3rd August, 1970, thereby declaring that any offence punishable under Sections 188 & 506(i) of the Indian Penal Code, when committed in any place in the State of Tamil Nadu shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898, be cognizable and non-bailable. After the said Government Order had been issued, as per Section 10 of the Criminal Law Amendment Act, 1932, the Code of Criminal Procedure, 1898 was deemed to have been amended accordingly. [Para 14]
- b. When the Code of Criminal Procedure, 1973, was introduced, once again the offence under Section 506(i) of Indian Penal Code had been shown as bailable. However, no fresh Notification has been issued, under Section 10 of the Criminal Law Amendment Act, 1932. In such circumstances, a considerable amount of confusion had arisen as to whether the Notification issued earlier, when the repealed Code was in force, would be applicable, in respect of the present Code as well. [Para 15]
- c. It is needless to point out that the Code of Criminal Procedure, 1973, is a Central enactment relating to a subject in Entry 4 of List III of the Constitution of India. There can also be no controversy regarding the fact that the State Legislature is empowered to make local amendments, in respect of the provisions of the Code. The Constitutional requirement are that, after such amendment, it should get the assent of the President of India, so as to have an over-riding effect. Admittedly, the present case, neither the Code of Criminal Procedure, 1898, nor the Code of Criminal Procedure, 1973, was amended by State Legislature, by means of any amending Act, requiring the assent of the President of India. However, in the Code of Criminal Procedure, 1898, insofar as the classification of Section 506(i) of the Indian Penal Code, as bailable, is concerned, it was deemed to have been amended, as non-bailable, as per the Notification issued under the Criminal Law Amendment Act, 1932, which is a Central Legislation. Thus, it is not by actually amending the Code of Criminal Procedure, 1898, way of a local amendment, Section 506(i) of the Indian Penal Code was made non-bailable. If it had been the case of the Code of Criminal Procedure, 1898, being amended, the said amendment would have perished, along with the main Act, when the same was repealed by the Code of Criminal Procedure, 1973. In such an event, since, the Code of Criminal Procedure, 1973, classifies the offence, under Section 506(i) of the Indian Penal Code, as bailable, the same would have been in force in the State of Tamil Nadu. On the contrary, as we have already stated, the Code of Criminal Procedure, 1898, had not been amended. Instead, the offence falling under Section 506(i) of the Indian Penal Code had been declared to be non-bailable, in exercise of the powers conferred under Section 10 of the Criminal Law Amendment Act, 1932. The said declaration would hold good until the same is withdrawn by the Government of Tamil Nadu, under the said Act. Therefore, in spite of the fact that the offence falling under Section 506(i) of the Indian Penal Code has been classified as bailable, in the Code of Criminal

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Procedure, 1973, the Notification issued, under Section 10 of the Criminal Law Amendment Act, 1932, would hold good. As such, the declaration that the offence, under Section 506(i) of the Indian Penal Code, is non-bailable and cognizable shall have the necessary statutory force and the same shall have an over-riding effect over the Code of Criminal Procedure, 1973. [Para 16]

- d. It is an admitted fact that the Notification issued by the Government of Tamil Nadu, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, had not been challenged by the Petitioners. The said Notification has not been declared to be invalid, till date. Since, the said Notification is in force, an offence, under Section 506(i) of the Indian Penal Code would be non-bailable in nature. However, this Court is of the considered view that the continuation of the Notification, issued in the year, 1970, calls for a review. Therefore, it would be appropriate for the Government of Tamil Nadu to review the said Notification and to consider as to whether an offence committed, under Section 506(i) of the Indian Penal Code, is to continue as a non-bailable offence, especially, in view of the fact that the offences, under Sections 324 & 325 of the Indian Penal Code, are bailable in nature. The State Government shall also consider as to whether the liberty of a citizen, guaranteed under the provisions of the Constitution of India, is to be curtailed, by way of the Government Order, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, in the prevailing socio-legal scenario. [Para 17]
- e. As such, unless the situation really warrants the declaration of an offence, under Section 506(i) of the Indian Penal Code, as cognizable and non-bailable, by the state Government, by exercising its power, under Section 10 of the Criminal Law Amendment Act, 1932, any such declaration would place the fundamental right of life and personal liberty in substantial peril. Thus, we are of the opinion that it is for the state Government to consider as to whether to keep the Government order in force any further or to withdraw the same. [Para 19]
- f. In view of the above, this Court answers the reference, stating that the Government order, issued by the Government of Tamil Nadu, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, in exercise of the powers conferred, under Section 10 of the Criminal Law Amendment Act, 1932, continues to be in force. Therefore, an offence committed, under Section 506(i) of the Indian Penal Code, is non-bailable in nature, as per the said Government order. [Para 20]

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MADRAS WEEKLY NOTES (CRIMINAL)

2013 (1) MWN (Cr.)

R. Jegadeeswaran, Advocate for Petitioners.

R. Ramachandran, Additional Public Prosecutor for Respondent.

Finding — Reference answered — Cr.O.P. directed to be placed before appropriate Court.

Prayer : Petition filed under Section 438 of the Criminal Procedure Code to enlarge the Petitioners/ Accused on bail in the event of their arrest by the Inspector of Police, Illuppur Police Station, Pudukottai District in Cr. No.182 of 2011.

JUDGMENT

M. Jaichandren, J.

1. This matter has been placed before us, as per the order of the Hon'ble Administrative Judge, on a reference made by one of us (Justice S. Nagamuthu), to examine the following questions:

“(1) Whether the Notification issued by the Government of Tamil Nadu in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970 in exercise of the power conferred under Section 10 of the Criminal Law Amendment Act, 1932, is valid ? and

(2) Whether the offence under Section 506(i) Indian Penal Code is non-bailable insofar as the State of Tamil Nadu is concerned ?”

2. The Criminal Original Petition, in CrI.O.P.(MD) No.14156 of 2011, has been filed praying that this Court may be pleased to enlarge the Petitioners, who are the Accused Nos.1 & 3, in Crime No.182 of 2011, on the file of the Iluppur Police Station, Pudukkottai District, on bail, in the event of their arrest.

3. The Petitioners in the Criminal Original Petition had stated that they were apprehending arrest, by the Respondent Police, for the offences, said to have been committed by them, under Sections 294(b), 323 & 506(i) of the Indian Penal Code, 1860, in Crime No.182 of 2011, on the file of the Iluppur Police Station, Pudukkottai District. The Petitioners had contended that the offence punishable, under Section 506(i) of the Indian Penal Code, is non-bailable, as per the Government Order, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, issued in exercise of the power conferred, under Section 10 of the Criminal Law Amendment Act, 1932, whereas, the offences said to have been committed, under the other Sections of the Indian Penal Code, mentioned above, are bailable in nature.

4. In such circumstances, the Petitioners had moved this Court, by filing the present Criminal Original Petition, seeking ‘anticipatory bail’. Therefore, the question had arisen as to whether the offences, said to have been committed, under Section 506(i) of the Indian Penal Code, is bailable or non-bailable in nature.

5. The learned Counsel for the Petitioners had placed before the learned Single Judge, the decision, in *P. Ramakrishnan v. State*, 2010 (3) MWN

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(Crl.) 69 [Crl.O.P. Nos.7452, 8517 & 8747 of 2010, order dated 21.4.2010]. It had been contended that the Notification issued by the State Government, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, had declared the offence punishable, under Section 506(i) of the Indian Penal Code, as ‘non-bailable’. The decisions of the Delhi High Court, in *Sant Ram v. Delhi State*, 1980 (17) DLT 490, and *Narendra Kumar and others v. State*, 2004 Crl.L.J. 2594, had also been placed before the learned Single Judge of this Court. The Delhi High Court had held, in *Sant Ram v. Delhi State*, 1980 (17) DLT 490, that the offences punishable, under Section 506 of the Indian Penal Code are cognisable, as well as non-bailable, in the union territory of Delhi, as per the Notification 232 Home, Delhi, dated 11.1.1933, issued in exercise of the powers conferred by Section 10 of the Criminal Law Amendment Act, 1932. However, a Division Bench of the Allahabad High Court, in *Virendra Singh v. State of U.P.*, 2002 Crl.L.J. 4265, had held that the Notification issued by the State Government of Uttar Pradesh declaring that an offence punishable, under Section 506 of the Indian Penal Code, committed in any of the districts of Uttarpradesh, shall, notwithstanding anything contained in the code of Criminal procedure, 1973, (Act No.2 of 1974), be cognizable and non-bailable, is illegal. Paragraphs 6, 7 & 8 of the said decision reads as follows:

“6. Section 10 of the Criminal Law Amendment Act, 1932 gives power to the State Government to declare certain offences including Section 506, I.P.C. to be cognizable and non-bailable and on issuance of the said Notification the Code of Criminal Procedure, 1898 shall stand amended accordingly.

7. Section 10 of the Criminal Law Amendment Act, 1932 does not give power to the State Government to amend by a Notification any part of the Criminal Procedure Code, 1973. Since the Cr.P.C. of 1898 has been repealed by Section 484 of the Cr.P.C. Act, 1973 we are of the opinion that Section 10 of the Criminal Law Amendment Act, 1932 has become redundant and otiose. Hence, in our opinion no Notification can now be made under Section 10 of the Criminal Law Amendment Act, 1932. Any such Notification is illegal for the reason given above. Hence we declare Notification No.777/VIII-9 4(2)-87, dated July 31, 1989, published in the U.P. Gazette, Extra Part 4, Section (kha), dated 2nd August, 1989 by which Section 506, I.P.C. was made cognizable and non-bailable to be illegal. Section 506, I.P.C. has to be treated as bailable and non-cognizable offence.

8. There is another reason also why the aforesaid Notification of 1989 is illegal. The Cr.P.C. of 1973 is a Parliamentary enactment. An act can only be amended by another Act or by an Ordinance, not by a simple Notification. Moreover, a Central Act cannot be amended even by a U.P. Act unless the assent of the President is taken vide Article 254(2) of the Constitution. The notification of 1989 purports to amend a Central Act (the Cr.P.C. of 1973) even without the assent of the President.”

6. However, a Division Bench of the High Court of Gujarat, in *Vinod Rao v. State of Gujarat*, 1981 Crl.L.J. 232, had taken a different view

holding that an offence committed, under Section 506 of the Indian Penal Code, would be cognizable and non-bailable, as per the Notification, dated 15.11.1937, issued by the then Government of Bombay.

7. The learned Single Judge had noted that, in *K.M. Sundaram and another v. Inspector General of Police, Madras and others*, 1970 LW (Cr.) 299, the question as to whether an offence, said to have been committed, under Section 506 of the Indian Penal Code, is bailable or non-bailable, had been left open. The relevant portion of the judgment of the Division Bench reads as follows:

“The offence under Section 506 of Indian Penal Code is punishable with imprisonment for two years. But, it is non-cognizable according to Schedule II. By Notification under Section 10 of the Criminal Law Amendment Act, the offence under Section 506, Indian Penal Code was declared to be cognizable and non-bailable. Though the validity of this Notification was questioned in the Affidavit filed by the Petitioner, we do not think on the view that we are taking, in this case, that it is necessary to consider this question and we, therefore, leave it open....”

8. As such, on considering similar Notifications in various states, it has been found that the different High Courts have arrived at different conclusions, in their decisions relating to the question as to whether an offence, said to have been committed, under Section 506(i) of the Indian Penal Code, is bailable or non-bailable in nature. It is seen that conflicting views have been expressed by the various High Courts and therefore, there has been a necessity for a Division Bench of this Court to settle the issue, at least insofar as it relates to the State of Tamil Nadu, as it has been ambiguous, till date.

9. In such circumstances, this reference has been placed before this Court, to answer the questions referred to above.

10. The learned Counsel appearing on behalf of the Petitioners had placed before this Court a decision of the Goa Bench of the Bombay High Court, in *Vishwajit P. Rane v. State of Goa*, 2011 Cri.L.J. 1289, wherein, it had been held as follows:

“12. Now that brings us to the Notification dated 29th April/11th May, 2004 (Annexure A to the Writ Petition). Material part of the said Notification reads thus:

“In exercise of the power conferred by sub-sections (1) & (2) of Section 10 of the Criminal Law Amendment Act, 1932 (Act 23 of 1932) and in supersession of the Notification No.HD-44-104/73-A dated 27.6.1973, published in the Official Gazette, series 1 No.14, dated 5.7.1973, the Government of Goa hereby declares that:

(i) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974), any Offence punishable under Sections 186, 189, 228,

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298, 506 or 507 of the Indian Penal Code, 1860 (45 of 1860) when committed within the State of Goa shall be cognizable; and

(ii) any Offence punishable under Section 188 or 506 of the Indian Penal Code, 1860 shall be non-bailable when committed within the State of Goa.”

On a plain reading of Section 10 of Act of 1932 it reveals that the power conferred by the said section was to amend the said Code of 1898 by making certain offences cognizable and non-bailable. Section 10 of the Act of 1932 does not empower the State Government to amend the First Schedule to the said Code of 1973 by making the offence punishable under Section 506 of the Penal Code cognizable and non-bailable. Even Section 8 of the General Clauses Act, 1897 will have no application. The said Code of 1973 is the law enacted by the Parliament. The said Code of 1973 is covered by Item 2 of List III (the Concurrent List) of Seventh Schedule to the Constitution of India. The law made by the Parliament could have been amended only by an appropriate legislation by the State Government and no provision of the said Code of 1973 could have been amended only by issuing a Notification. There is no power vesting in the State Government to amend the First Schedule to the said Code of 1973 by issuing a Notification.

13. In any event, the admitted position is that the Notification dated 29th April /11th April, 2004 has not been published in the Official Gazette and, therefore, the said Notification cannot be a Notification contemplated by sub-section (1) of Section 10 of the said Act of 1932. Therefore, the clear legal position which emerges is that the offence punishable under Section 506 of the Penal Code, when committed within the State of Goa, is a non-cognizable offence.”

11. The learned Counsel appearing on behalf of the Petitioner had also placed before this Court a decision of the Supreme Court, in *Directorate of Enforcement v. Deepak Mahajan*, AIR 1994 SC 1775, wherein, it had been held as follows:

“32. True, normally Courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for Courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. In cases of this kind, the question is not what the words in the relevant provision mean but whether there are certain grounds for inferring that the legislature intended to exclude jurisdiction of the Courts from authorising the detention of an arrestee whose arrest was effected on the ground that there is reason to believe that the said person has been guilty of an offence punishable under the provisions of FERA or the Customs Act which kind of offences seriously create a dent on the economy of the nation and lead to hazardous consequences. Authorities, a few of which we have referred to above, show that in given circumstances, it is permissible for Courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and

to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

33. In the light of the above exposition of the principle of law, we have no reason to believe and in fact do not believe that the provisions of the FERA and Customs Act were passed for any other purpose rather than their ostensible purposes, the vital of which being the economic development of the country and augmentation of revenue.”

12. The learned Single Judge, while referring the matter to be placed before a Division Bench, had noted that, under the Code of Criminal Procedure, 1898, an offence under Section 506(i) of the Indian Penal Code had been shown as a ‘bailable offence’. However, in the year 1932, the Criminal Law Amendment Act, 1932, had been brought into force. Section 10 of the said Act reads as follows:

“10. Power of State Government to make certain offences cognizable and non-bailable.—

(1) The State Government may, by Notification in the Official Gazette, declare that any offence punishable under Sections 186, 189, 188, 190, 228, 295-A, 298, 505, 506 or 507 of the Indian Penal Code, (45 of 1860) when committed in any area specified in the Notification shall, notwithstanding anything contained in the Code of Criminal Procedure 1898, be cognizable, and thereupon the Code of Criminal Procedure, 1898 shall, while such Notification remains in force, be deemed to be amended accordingly.

(2) The State Government may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under Section 188 or Section 506 of the Indian Penal Code shall be non-bailable.”

13. It had also been noted that, in exercise of the powers conferred, under Section 10 of the Criminal Law Amendment Act, 1932, the Government of Tamil Nadu has issued G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970. The relevant portion of the Government order reads as follows:

“In exercise of the powers conferred by sub-section (2) of Section 10 of the Criminal Law Amendment Act, 1932 (Central Act 23 of 1932), the Governor of Tamil Nadu hereby declares that an offence punishable under Section 188 or Section 506 of the Indian Penal Code (Central Act 45 of 1860), when committed in any place in the State of Tamil Nadu shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), be non-bailable.”

14. At this juncture, we may state that, in exercise of the powers conferred under the said Section, the Government of Tamil Nadu had issued G.O.Ms. No.S/4118-1/70 Public (S.C.), dated 3.8.1970, published in the Tamil Nadu Government Gazette NO.260, Extraordinary Part II Section 1 Madras, dated 3rd August, 1970, thereby declaring that any offence punishable under Sections 188 & 506(i) of the Indian Penal Code, when committed in any place in the State of Tamil Nadu shall, notwithstanding

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anything contained in the Code of Criminal Procedure, 1898, be cognizable and non-bailable. After the said Government Order had been issued, as per Section 10 of the Criminal Law Amendment Act, 1932, the Code of Criminal Procedure, 1898 was deemed to have been amended accordingly.

15. When the Code of Criminal Procedure, 1973, was introduced, once again the offence under Section 506(i) of Indian Penal Code had been shown as bailable. However, no fresh Notification has been issued, under Section 10 of the Criminal Law Amendment Act, 1932. In such circumstances, a considerable amount of confusion had arisen as to whether the Notification issued earlier, when the repealed Code was in force, would be applicable, in respect of the present Code as well.

16. It is needless to point out that the Code of Criminal Procedure, 1973, is a Central enactment relating to a subject in Entry 4 of List III of the Constitution of India. There can also be no controversy regarding the fact that the State Legislature is empowered to make local amendments, in respect of the provisions of the Code. The Constitutional requirements are that, after such amendment, it should get the assent of the President of India, so as to have an over-riding effect. Admittedly, the present case, neither the Code of Criminal Procedure, 1898, nor the Code of Criminal Procedure, 1973, was amended by State Legislature, by means of any amending Act, requiring the assent of the President of India. However, in the Code of Criminal Procedure, 1898, insofar as the classification of Section 506(i) of the Indian Penal Code, as bailable, is concerned, it was deemed to have been amended, as non-bailable, as per the Notification issued under the Criminal Law Amendment Act, 1932, which is a Central Legislation. Thus, it is not by actually amending the Code of Criminal Procedure, 1898, way of a local amendment, Section 506(i) of the Indian Penal Code was made non-bailable. If it had been the case of the Code of Criminal Procedure, 1898, being amended, the said amendment would have perished, along with the main Act, when the same was repealed by the Code of Criminal Procedure, 1973. In such an event, since, the Code of Criminal Procedure, 1973, classifies the offence, under Section 506(i) of the Indian Penal Code, as bailable, the same would have been in force in the State of Tamil Nadu. On the contrary, as we have already stated, the Code of Criminal Procedure, 1898, had not been amended. Instead, the offence falling under Section 506 (i) of the Indian Penal Code had been declared to be non-bailable, in exercise of the powers conferred under Section 10 of the Criminal Law Amendment Act, 1932. The said declaration would hold good until the same is withdrawn by the Government of Tamil Nadu, under the said Act. Therefore, in spite of the fact that the offence falling under Section 506(i) of the Indian Penal Code has been classified as bailable, in the Code of Criminal Procedure, 1973, the Notification issued, under Section 10 of the Criminal Law Amendment Act, 1932, would hold good. As such, the declaration that the offence, under Section 506(i) of the Indian Penal Code, is non-bailable and cognizable shall

have the necessary statutory force and the same shall have an over-riding effect over the Code of Criminal Procedure, 1973.

17. It is an admitted fact that the Notification issued by the Government of Tamil Nadu, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, had not been challenged by the Petitioners. The said Notification has not been declared to be invalid, till date. Since, the said Notification is in force, an offence, under Section 506(i) of the Indian Penal Code would be non-bailable in nature. However, this Court is of the considered view that the continuation of the Notification, issued in the year, 1970, calls for a review. Therefore, it would be appropriate for the Government of Tamil Nadu to review the said Notification and to consider as to whether an offence committed, under Section 506(i) of the Indian Penal Code, is to continue as a non-bailable offence, especially, in view of the fact that the offences, under Sections 324 & 325 of the Indian Penal Code, are bailable in nature. The State Government shall also consider as to whether the liberty of a citizen, guaranteed under the provisions of the Constitution of India, is to be curtailed, by way of the Government Order, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, in the prevailing socio-legal scenario.

18. In a catena of cases, the Supreme Court of India, as well as the various High Courts, have declared the fundamental right of life and personal liberty of a person to be of paramount importance.

18.1. In *Siddharam Satlingappa Mhetre v. State of Maharashtra*, 2011 (1) MWN (Cr.) 15 (SC) : 2011 (1) SCC 694, the Supreme Court had held as follows:

“36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why “liberty” is called the very quintessence of civilized existence:

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.”

18.2. The importance of life and liberty was recognised in the following words by Pathak, C.J., in *Kehar Singh v. Union of India*, AIR 1989 SC 653:

“To any civilised society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the Courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order, and consequently the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence.”

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18.3. In *Meneka Gandhi v. Union of India*, 1978 (1) SCC 248, the Supreme Court had held as follows:

“Personal liberty makes for the worth of the human person. Travel makes liberty worthwhile. Life is a terrestrial opportunity for unfolding personality, rising to higher states, moving to fresh woods and reaching out to reality which makes our earthly journey a true fulfillment not a tale told by an idiot full of sound and fury signifying nothing, but a fine frenzy rolling between heaven and earth. The spirit of man is at the root of Article 21. Absent liberty, other freedoms are frozen.”

18.4. The Supreme Court, while reiterating the importance of the fundamental right of life and personal liberty, had held, in *Manjit Singh v. C.B.I.*, 2011 (11) SCC 578, that the people and the Constitution have vested their faith in the Supreme Court to keep vigil and see to it that these hallowed principles are not trampled upon by the necessities of the hour and vicissitudes of time.

19. As such, unless the situation really warrants the declaration of an offence, under Section 506(i) of the Indian Penal Code, as cognizable and non-bailable, by the state Government, by exercising its power, under Section 10 of the Criminal Law Amendment Act, 1932, any such declaration would place the fundamental right of life and personal liberty in substantial peril. Thus, we are of the opinion that it is for the state Government to consider as to whether to keep the Government order in force any further or to withdraw the same.

20. In view of the above, this Court answers the reference, stating that the Government Order, issued by the Government of Tamil Nadu, in G.O.Ms. No.S/4118-1/70, Public (S.C.), dated 3.8.1970, in exercise of the powers conferred, under Section 10 of the Criminal Law Amendment Act, 1932, continues to be in force. Therefore, an offence committed, under Section 506(i) of the Indian Penal Code, is non-bailable in nature, as per the said Government order.

21. The Criminal Original Petition is directed to be placed before the appropriate Court, for further orders, as it may find it necessary.
