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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/03/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP (MD) No.22235 of 2022

Gowtham @ Gowthaman : Petitioner/A2

Vs.

The State thro' Inspector of Police,
Velliyanai Police Station,
Karur District.

(Crime No.189 of 2020) : Respondent/Complainant

PRAYER:- This Criminal Original Petition has been filed under section 407 of the Criminal Procedure Code, to transfer SC No.38 of 2020 on the file of the Principal Sessions Judge, Karur to some other Sessions Judge either in Karur or in Trichy District and pass such other or further orders.

For Petitioner : Mr.R.Murugan

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

**ORDER**

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This criminal original petition has been filed seeking transfer of the case in SC No.38 of 2020 on the file of the Principal Sessions Judge, Karur to some other Sessions Judge, either in Karur or Trichy District.

2.The petitioner is facing the charges for the offences punishable under sections 449, 302, 506(i) and 120(B) IPC.

3.During the trial process, on the side of the prosecution, 13 witnesses were examined and the accused was also subjected to section 313 Cr.P.C. questioning. At this stage, this transfer petition is filed by the petitioner making some sort of grievance against the Presiding Officer.

4.When the matter was moved, interim stay was granted. A report has been called from the trial court with reference to the allegation made against the Presiding Officer by the petitioner. A detailed report has also been received.



5.Now the grievance of the petitioner is that PW13 was cross examined by the petitioner. When questions were put to him over the contents of Exs.C1 and C2, objection was raised by the trial court stating that he is not the competent to speak about the contents of the document. So further cross examination with regard to the contents were not permitted.

6.For better appreciating the facts, let me extract the relevant portion:-

“எதிரிகளிடமிருந்து கைப்பற்றிய
உடைகளை நான் கைப்பற்றவில்லை.
நீ.சா.ஆ.2 அறிக்கையில் முழுச்சட்டைவிவரம்
குறிப்பிடப்படவில்லை என்ற விவரம்
உங்களுக்கு தெரியுமா? நீ.சா.ஆ.2 அறிக்கை
சாட்சி அளிக்கவில்லை என்பதால்
மேற்சொன்ன கேள்வி தொடர அனுமதி
மறுக்கப்படுகிறது. நீ.சா.ஆ.2 அறிக்கையில்
முழு நீள கால்சட்டை விவரம்
குறிப்பிடப்படவில்லை என்றால் நீ.சா.2
அறிக்கை சாட்சி அளிக்கவில்லை என்பதால்
கேள்வி தொடர அனுமதி மறுக்கப்படுகிறது. ”



7.Exs.C1 and C2 are the reports received from the Forensic Science Laboratory. The above said Expert was not examined, since there is no necessity for examining him. So those documents were marked through PW13. When the documents were marked through PW13, the accused tried to extract the contents of the document by way of cross examination.

8.Whether rejection of the above said questions with reference to the contents of the document is proper or not cannot be a matter for consideration by this court. But the question, which raises for consideration is whether because of the rejection of the questions proposed to be put will indicate the biased attitude of the Presiding Officer.

9.With reference to the above said allegation, now let me extract the relevant portion from the report submitted by the Presiding Officer:-

"12.Further, I submit that the allegation that during the cross examination of each and every witnesses there were frequent interception by me



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is also denied as false and further, allegation that whenever there was an honest answer from the witness and the same was in favour of the accused, myself did not record it and in-turn questioned the witness and altered them an answer against the accused are all denied as false. Sufficient time was granted to the defence counsel to put forth their case. The examination of P.W.1 was commenced on 29.08.2022 and prosecution side evidence was closed on 30.11.2022. In the meantime, the defence counsel filed a petition in CrI.M.P No.1702/2022 u/s311 of Cr.PC to recall PW5 for further cross examination and the same was allowed on 27.09.2022. Further the defence counsel has filed an application u/s311 of Cr.P.C to recall of PW13, for further cross examination and the same was allowed on 17.10.2022. Further, the defence counsel has filed list of witness to examine the witness on their side to establish their probable defence and the same was also allowed and D.W.1 was examined on the side of the defence. Further, at the request of the defence counsel as well as the prosecution, the arguments of the case



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was adjourned from 06.12.2022 to 19.12.2022. Therefore, this Court has given sufficient time to the defence counsel to put forth their case and hence, the allegation that myself is proceeding with the trial swiftly and is making all attempts to conclude the same without giving him a fair chance are all denied as false. The deposition of prosecution witness P.W.1 to P.W. 13 and the defence side witness D.W.1 were uploaded in the E-Court Service then and there. Further, I hereby humbly submit the copy of the deposition of P.W.13 for kind perusal."

This portion of the report shows the issue and also indicate the unbiased nature of the Presiding Officer. The accused were given full liberty, time to examine witnesses in full, not only on their side to defend the case, but also cross examination. Now the case is posted for argument.

10. At this stage, all of a sudden, making such baseless grievance, this petition has been filed. If such sort of contention is accepted, then no case will be



7

completed in normal course. Facts do not indicate any biased nature of the Presiding Officer, rather it shows that he was very considerative and also free to the accused in granting adjournment for the purpose of making the cross examination.

11.Absolutely, I find no merit in this petition. The trial court is directed to dispose the case on its own merit as directed earlier.

12.With the above said direction, this criminal original petition is **dismissed**.

30/03/2023

Index:Yes/No
Internet:Yes/No

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To,



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- 1.The Principal Sessions Judge,
Karur.
- 2.The Inspector of Police,
Velliyanai Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J



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