



CrI.OP(MD)No.9199 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CrI.OP(MD)No.9199 of 2024

and

CrI.MP(MD)No.6286 of 2024

M.Somasundaram

: Petitioner

Vs.

1.The Revenue Divisional Officer,
Thoothukudi District,
Thoothukudi.

2.Jeyasekaran

3.Joseph Raj

4.Pitchaiyah

5.D.Celladurai

6.Veerababu

7.S.Sivasubramanian

8.Subbiah



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9.J.Rathinasamy

10.K.Balasubramanian

11.S.Ramakrishnan

: Respondents

PRAYER: Petition filed under Section 407 Cr.P.C to call for the records relating to the trial in S.C.No.223 of 2006 on the file of the learned Additional District and Sessions Judge No.I, Thoothukudi, withdraw the same and consequently, transfer the same to any other competent Court nearby the District.

For Petitioner : Mr.V.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu

For R.1 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

ORDER

The first accused in S.C.No.223 of 2006 on the file of the I Additional District and Sessions Court, Tuticorin, has filed this criminal original petition u/s.407 Cr.P.C. to transfer the proceedings from the file of the I Additional District and Sessions Court, Tuticorin, to some other Court.



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2.The petitioner is an Inspector of Police, working at K.V.Nallur Police Station, Tenkasi. When he was working as the Sub-Inspector of Police at Thalamuthu Nagar Police Station, Tuticorin, a case was registered in Cr.No.178 of 1999, as against one Muthu, Mariyadas and Vincent. The accused Vincent died during the course of investigation and it was enquired by the Revenue Divisional Officer, Tuticorin, u/s.145 Cr.P.C. Based on the report of the Revenue Divisional Officer that it is a case of custodial death and the concurrence given by the Government, prosecution has been initiated as against this petitioner / first accused and the respondents 2 to 11 / accused 2 to 11, for the offence u/s.302 IPC.

3.The complaint filed by the Revenue Divisional Officer, Tuticorin, u/s.200 Cr.P.C has been committed to the Court of Sessions and now pending for trial before the I Additional District and Sessions Court, Tuticorin, in S.C.No.223 of 2006 and adjourned to 25.06.2024 for the examination of LW1 to LW5.



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4.While so, this criminal original petition has been filed on 20.06.2024 seeking transfer of the proceedings, on the ground that the Presiding Officer has not considered the request made by the Public Prosecutor for adjournment; that the Presiding Officer has made a statement that he would take care of the entire case and that therefore, the petitioner / first accused, under the impression that there may not be a fair trial before the learned Additional District and Sessions Judge No.I, Tuticorin, has moved this application.

5.Learned Senior Counsel appearing for the petitioner submitted that the Presiding Officer of the I Additional District and Sessions Court, Tuticorin, has assumed Office only in the month of June, 2024 and the case was listed before him on 12.06.2024. On the same day, the Presiding Officer has posted the case for trial on 15.06.2024, within three days. On 15.06.2024, when the case was taken up for hearing, the Public Prosecutor informed the Court that he could not contact the complainant / Revenue Divisional Officer and he is not having sufficient instructions to lead the case. He has also submitted that he is not having any records with him, since the entire



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case is taken cognizance based on a private complaint preferred by the Revenue Divisional Officer. Therefore, the Public Prosecutor sought time to get along with the matter. However, the Presiding Officer has orally stated that there is no need for getting any instructions and that he would take care of the entire case. Only after the persuasion of the Advocates representing the accused, the case was adjourned to 25.06.2024.

6.Learned Senior Counsel further submitted that since the Presiding Officer has made an oral statement that he would take care of the case, on the production of the witnesses, the petitioner / first accused felt that he may not get a fair trial. Therefore, the learned Senior Counsel prayed for appropriate orders. He has also relied upon the decision of the Hon'ble Supreme Court in *Abdul Nazar Madani and Others v. State of Tamil Nadu and Others* [AIR 2000 SC 2293].

7.This Court considered the submissions made by the learned Senior Counsel for the petitioner and also perused the materials placed on record.



8. One Vincent died under suspicious circumstances on 18.09.1999 at about 10.30 pm. His wife, Krishnammal, made a telegram to the Revenue Divisional Officer, Tuticorin, alleging that the police personnel belonging to Thalamuthu Nagar police Station dragged her husband Vincent, beaten him up brutally and he succumbed to the injuries. In this regard, a case was registered in Cr.No.178 of 1999 on 18.09.1999 u/s.174 Cr.P.C.

9. The Revenue Divisional Officer, Tuticorin, submitted a preliminary report that the case, *prima facie*, appears to be of custodial death. The District Collector, Tuticorin, has therefore ordered for an enquiry into the cause of death of Vincent, as per Police Standing Order PSO-145. The Revenue Divisional Officer, Tuticorin, has conducted the enquiry and filed a report before the District Collector, Tuticorin, on 09.04.2000 that the deceased Vincent and two others, namely, Muthu and Mariyadas, were arrested by the Thalamuthu Nagar Police in the night of 17.09.1999. All the three have sustained injuries and were also taken to the Hospital. Vincent was declared dead. The other two persons were also found with injuries. As many as 39 injuries were found in the body of the deceased, Vincent.



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The Doctor, who conducted the postmortem, has also gave a opinion that the deceased appear to have died of cumulative effects of multiple injuries and respiratory distress. The Revenue Divisional Officer concluded his report that the brutal attack of torture by all the police personnel who were on duty on 17.09.1999 and 18.09.1999 in Thalamuthu Nagar Police Station are responsible for causing the death of Vincent.

10.The District Collector has forwarded the report of the Revenue Divisional Officer to the Government in the year 2000 itself. After careful examination of the enquiry report, the Government decided to initiate criminal prosecution and departmental action against the police personnel and instructed the Revenue Divisional Officer to launch the criminal prosecution, vide G.O.Ms.No.1284, Public (Law and Order) Department, dated 20.09.2000. Accordingly, a complaint was filed in the year 2000 and the same was committed to the Court of Sessions in the year 2006.

11.The Sessions Case of the year 2006 is ripe for trial only in the year 2024. There are totally eleven accused. The first accused / petitioner has



now approached this Court that the Presiding Officer has not considered the request of the Public Prosecutor for adjournment and has stated in the Open Court that he would take care of the trial and as such, he is not having the confidence with the Court that he would be getting a fair trial.

12.The fundamental principle in the justice delivery system is that Justice should not only be done, but must also be seen to be done. At the same time, fair trial is not only the right of the accused, but also the victims. The Courts are having a duty towards the victims also.

13.The incident is said to have taken place in the year 1999. After 25 years, the case is now ripe for trial. However, such a plea has been raised now to transfer the proceedings. For a nature of this incident, ie., custodial death, if the Courts could not deliver justice to the victim even after 25 years, it would be a disgrace for the Institution and the entire justice delivery system. Given the passage of time, it is not known as to how many witnesses are alive and the inordinate delay would also have shattered the moral of the witnesses.



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14. Judiciary alone is not having the responsibility in the dispensation of justice. The Advocates and the Public Prosecutors are also having equal responsibility and duty towards the justice delivery system. Without their assistance, the proceedings could not be concluded within a reasonable time. Early disposal of the litigations would boost the moral of the litigants and would also raise the confidence of the litigants on the Institution. Therefore, it is the responsibility of the learned Advocates and the learned Public Prosecutors to assist the Court to conclude the proceedings at the earliest.

15. The only grievance of the petitioner is that the trial Court has fixed the trial without providing sufficient time to the Public Prosecutor. An averment has been made in the petition that a request was made on behalf of the prosecution that they are not having any records and that the Public Prosecutor could not contact the complainant / Revenue Divisional Officer, Tuticorin. However, it was not considered by the Presiding Officer.



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16.It is the petitioner, who is raising such a plea and not the Prosecutor. Even otherwise, when this application was taken up for hearing on 26.06.2024, the PA to the Revenue Divisional Officer, Tuticorin, was present before this Court along with the files. This Court has collected the files from the Officer and also perused the same. The files are intact and bounded with all relevant records. While so, it is not known as to whether any such statement has been made by the Public Prosecutor, as claimed by the petitioner, before the trial Court. The Officer, who is present before this Court, has also denied this averment. It is also stated that the Office of the Revenue Divisional Officer, Tuticorin, is within few kilometers from the Sessions Court. While so, it is not known as to why the Public Prosecutor could not contact the Revenue Divisional Officer and could not peruse the documents.

17.If an adjournment has been sought by the prosecution, in a case which is pending from the year 2006, then it would be a sorry state of affairs. This Court has, therefore, directed the Registry to collect the



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applications filed before the I Additional District and Sessions Court, Tuticorin, in S.C.No.223 of 2006 and verified with the proceedings of the trial Court. There is no application or record that the prosecution has sought time, as claimed by the petitioner. All the accused in this case are police officials and the Sessions Case is also pending from the year 2006. It appears that all the accused have engaged their Counsel only on 15.06.2024, after the trial Court took some initiative to begin the trial, despite the case is pending from the year 2006. Therefore, this Court is not able to find any mistake on the part of the trial Court in giving priority to the case, which is pending for the past 19 years and as such, this Court is not inclined to entertain this application.

18.The trial Court has issued summons to the witnesses on 15.06.2024 and adjourned the case for trial on 25.06.2024. On 25.06.2024, it appears that LW1, then Revenue Divisional Officer of Tuticorin, was present and he was examined as PW1 in chief part. An application has been filed u/s.309 Cr.P.C on behalf of the petitioner before the trial Court, by referring this transfer application filed before this Court. Though the petitioner has not



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produced any order of stay preventing the trial Court from proceeding with the trial, the learned trial Judge has stopped the examination of PW1 and also adjourned the matter to 12.07.2024, directing the petitioner to produce the stay order copy on the next date of hearing.

19.LW1 is the then Revenue Divisional Officer, Tuticorin. He might have retired from service by this time. LW2 to LW5 are said to be the eye witnesses. They were summoned and were made to appear before the trial Court. The Hon'ble Supreme Court in *Mahender Chawla and Others v. Union of India and Others* [(2019) 14 SCC 615], has highlighted the importance of witnesses, particularly in a criminal trial, as follows:-

“3. ... Notwithstanding the same, the conditions of witnesses in Indian Legal System can be termed as ‘pathetic’. There are many threats faced by the witnesses at various stages of an investigation and then during the trial of a case. Apart from facing life threatening intimidation to himself and to his relatives, he may have to face the trauma of attending the court regularly. Because of the lack of Witness Protection Programme in India and the treatment that is meted out to them, there is a tendency of reluctance in coming forward and making statement during the investigation and/or testify in courts. These



witnesses neither have any legal remedy nor do they get suitably treated. The present legal system takes witnesses completely for granted. They are summoned to court regardless of their financial and personal conditions. Many times they are made to appear long after the incident of the alleged crime, which significantly hampers their ability to recall necessary details at the time of actual crime. They are not even suitably remunerated for the loss of time and the expenditure towards conveyance etc."

20. Though the witnesses in this case were present before the Court on 25.06.2024, they were not examined by the trial Court in full, in view of this application filed by the petitioner. This application is also filed based on a vague allegation. This conduct of the petitioner in preventing the trial from proceeding further by filing this application has to be deprecated and therefore, this Court is inclined to impose cost on the petitioner.

21. Accordingly, this criminal original petition is dismissed with a cost of Rs.25,000/- [Rupees Twenty Five Thousand only]. The petitioner is directed to pay this cost to the credit of S.C.No.223 of 2006 before the I Additional District and Sessions Court, Tuticorin, on or before 12.07.2024,



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ie., the next date of hearing before the trial Court. The learned trial Judge is directed to disburse this amount as Rs.5,000/- [Rupees Five Thousand only] to each of the witnesses, who were present before the Court on 25.06.2024 for the purpose of examination. The trial Court is also directed to proceed with the trial without any further delay on 12.07.2024.

22.Since an averment has been made by the petitioner that the Public Prosecutor sought time in a Sessions Case of the year 2006, this Court, in order to avoid any further delay in the proceedings, *suo-motu* appoints Advocate Mr.T.R.S.Ramamoorthy [Enrol.No.248/1987, Ph.No. 94868-84168], Former Director of Prosecution, as a Special Public Prosecutor to assist the Public Prosecutor in the I Additional District and Sessions Court, Tuticorin in connection with S.C.No.223 of 2006. The District Collector, Tuticorin, is directed to pass necessary proceedings in this regard and shall pay the applicable remuneration.

23.The first respondent is directed to ensure that all the witnesses are produced on the date of trial fixed by the trial Court. The trial Court is also



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directed to conduct the trial in S.C.No.223 of 2006 on a day-to-day basis and conclude the trial as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Internet : Yes
gk

28.06.2024

Note:

Mark a copy of this order to

1. The District Collector, Tuticorin.
2. Mr.T.R.S.Ramamoorthy [Enrol.No.248/1987]
Advocate / Former Director of Prosecution,
78/113, South Car Street,
Tiruchendur – 628 215.

To

- 1.The Revenue Divisional Officer,
Thoothukudi District,
Thoothukudi.
- 2.The Additional District and Sessions Judge No.I,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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