

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6-8-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.15123 of 2015

Ganesan

.. Petitioner

Vs.

State, rep.by

The Inspector of Police,

CCIW Police,

Dharmapuri Unit

(Crime No.8 of 1997)

.. Respondent

Criminal Original Petition filed under Section 407(2) of Code of Criminal Procedure with a prayer to direct the transfer of C.A.No.3 of 2015 on the file of the learned Principal Sessions Judge, Dharmapuri to this Court along with other co-accused's appeal (A2 - R.Kamaraj) in C.A.No.73 of 2015.

For Petitioner : Mr.L. Baskaran

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

O R D E R

It is seen that the petitioner herein was arrayed as A-1 in C.C.No.93 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Pappireddipatty, and on 31.12.2014 he was convicted for the offences under Sections 408 r/w 120B, 467, 471 and 477A IPC and sentenced to undergo imprisonment for the aggregate period of 11 years consecutively, and not concurrently.

2. Aggrieved by the said conviction and sentence, the petitioner has filed Crl.A.No.3 of 2015 on the file of the Principal Sessions Judge, Dharmapuri, and the sentence of imprisonment was suspended and the petitioner was released on bail. The co-accused in the same crime number, who was similarly convicted and sentenced, filed Crl.A.No.73 of 2015 before this Court and the same has been admitted and pending as on date. Whiles, the petitioner has come forward with this petition for transferring Crl.A.No.3 of 2015 from the file of Principal Sessions Court, Dharmapuri, to this Court on the ground that the appeal was wrongly filed before the Sessions Court, instead of filing before this Court.

3. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

4. On perusal of the judgment of the trial Court it could be seen that the petitioner herein has been convicted for the aforesaid offences and has been sentenced to imprisonment of various terms, which aggregates to 11 years. Section 31(3) of the CrI.P.C. reads as follows:

"Sec.31(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

Section 374(2) reads as follows:

"Sec.374(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court."

From the above statutory provisions it is clear that if a person has been sentenced to imprisonment for more than seven years in a trial conducted by any Court, which would include the Court of Magistrate, appeal can be filed only before this Court.

5. In this case, by virtue of Section 31(3), which has been extracted above, the aggregate sentence imposed upon the petitioner for various offences adds upto 11 years, and therefore the appeal against the judgment of the Magistrate should have been filed before this Court, and not before the Sessions Court, Dharmapuri.

6. In view of the above statutory provisions, this petition is allowed and CrI.A.No.3 of 2014 pending on the file of the Principal Sessions Judge, Dharmapuri, stands transferred to the file of this Court, to be heard along with CrI.A.No.73 of 2015, filed by the co-accused R.Kamaraj (A-2).

vr

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police, CCIW Police, Dharmapuri Unit
(Crime No.8 of 1997)
 2. The Principal Sessions Judge,
Dharmapuri.
 3. The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.L.Baskaran, Advocate SR 40800

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CrI.O.P.No.15123 of 2015



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