

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P.No.4004 of 2015 and
M.P.No.1 of 2015

S.S.Sakthivel

...Petitioner

Vs

1.V.Dharmalingam

2. The State by
The Sub Inspector of police,
Modakurichi Police station
Crime No.380 of 2004
Erode District.

3. The Deputy Superintendent of Police
Gobichettipalayam Sub Division,
Erode District

...Respondents

Prayer :- Criminal Original Petition filed under Section 482 of Cr.P.C. to withdraw the case in C.A.No.27 of 2014 on the tile of the learned Fourth Additional Sessions Court at Bhavani and to transfer the same to some other Principal Sessions Court either at Salem or at Coimbatore.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.M.Maharaja

Additional Public Prosecutor

सत्यमेव जयते
O R D E R

The petitioner seeks to withdraw the case in C.A.No.27 of 2014 on the tile of the learned Fourth Additional Sessions Court at Bhavani and to transfer the same to some other Principal Sessions Court either at Salem or at Coimbatore.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3. This Petition is filed by the defacto complainant seeking transfer of the C.A.No.27 of 2011 pending on the file of the learned 4th Additional Sessions Court at Bhavani to any other Sessions Court either at Salem or at Coimbatore.

4.It is submitted by the learned counsel for the petitioner that on the complaint given by the petitioner, the case was registered in Crime No.380 of 2004 and after investigation, the charge sheet was filed in S.C.No.22 of 2007 and the case was tried before the learned Assistant Sessions Judge/Principal Sub-Court, Erode and had ended in conviction. The accused/1st respondent filed the above appeal in C.A.No.27 of 2014 before the learned Sessions Judge, Erode and Sessions Judge, Erode transferred the case on administration ground to the learned 4th Additional Sessions Judge, Bhavani. He further submitted that appeal was adjourned for arguments on various dates and finally the case was listed for arguments on 11.02.2015. He further submitted the learned counsel appearing for the appellant did not evince any interest to argue the case. However, he engaged a new counsel on 12.01.2015 and the new counsel was prepared to argue the case and the petitioner's advocate's friend by name Mr.Gowrishankar has heard the conversation between the appellant namely, 1st respondent herein and his associate about the possible success in the appeal and therefore, the petitioner suspects that the change of the counsel was effected only with the motive and therefore, the petitioner has got un-necessary apprehension and suspicion that he will not get justice from the learned 4th Additional Sessions Judge, Bhavani and on the ground, the appeal has to be transferred.

4.The learned counsel for the petitioner also relied upon latest Judgment reported in 2015 (2) Scale 182, (Kanaklata Vs. State of (NCT) of Delhi & Others.

5.I am unable to accept the contention of the learned counsel for the petitioner. The reasons for transfer has been stated in Paragraph 11 of the affidavit and it is as follows:-

"11. I submit that till 10.12.2014, the counsel for the accused/1st respondent did not choose to argue the case for the reasons best known. While so, on change of appearance, a new counsel has come on record on 12.01.2015 and he was very hurry to argue the appeal which has created a strong suspicion in my mind. I submit that I did not expect the said situation while so, one of my advocate friend by name Mr.Gowrisankar has heard the conversation between the 1st respondent accused with his associate about the possible success in the appeal. From their conversation, my advocate friend came to know that the 1st respondent has changed his counsel for some oblique motive. Immediately, my friend has contacted me and informed about the said conversation....."

6.According to me, the case cannot be transferred on the basis of such allegation. Admittedly, no allegation has been made against the Judge, who is going to hear the case and merely because the appellant changed his counsel and the new counsel has evinced some interest in

arguing the case, that cannot be a ground for transfer the case. In the Judgment reported in 2015 (2) Scale 182, (Kanaklata Vs. State of (NCT) of Delhi & Others, the Hon'ble Supreme court has held as follows:-

"5..... We must hasten to add that we are not in the least suggesting that the Presiding Officer of the trial court is totally incapable of adopting a fair approach while passing a fresh order but then the question is not whether the Judge is biased or incapable of rising above the earlier observations made by her. The question is whether the apprehension of the complainant is reasonable for us to direct a transfer. Justice must not only be done but must seem to have been done. A lurking suspicion in the mind of the complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a preconceived notion about it. On that test we consider the present to be a case where the High Court ought to have directed a transfer. In as much as it did not so, we have no option but to interfere and direct transfer of the case to another Court....."

7. No doubt, having regard to the facts of that case, the Hon'ble Supreme Court held that the lurking suspicion in the mind of the complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a preconceived notion about it. The reasons for making such observation by the Supreme Court can be seen from the facts of the case and Sessions Case No. 1006 of 2009 was pending before the trial court and the accused filed an application for discharge and that application was allowed. The complainant challenged the discharge order passed by the trial court before the High Court and the same was allowed and the High Court directed the trial court to pass a fresh order after hearing both the parties. At that stage, the complainant expressed apprehension about the fairness of the approach the trial court may adopt. In that circumstances, the Hon'ble supreme Court has held above and here the facts are entirely different.

8. The learned 4th Additional Sessions Judge, Bhavani, before whom C.A.No.27 of 2014 is pending has not expressed any opinion nor passed any orders in that appeal either in favour of the appellant or against the complainant and therefore the Judgment relied upon the learned counsel for the petitioner cannot be applied to the facts of the case. However, if the case can be transferred on the allegation that the change of counsel was effected with a view to get some

favourable orders without making any allegation against the Presiding Officer, there would be no end to the trial. Hence I do not find any merits in the quash petition and hence the same is dismissed. Consequently, connected miscellaneous petition is closed.

ssd

-s/d-
Deputy Registrar(J)
Dt:2/3/2015

True Copy

Sub-Assistant Registrar

To

- 1.The State by
The Sub Inspector of police,
Modakurichi Police station
Crime No.380 of 2004
Erode District.
 - 2.The Deputy Superintendent of Police
Gobichettipalayam Sub Division,
Erode District.
 - 3.The Public Prosecutor,
High Court, Madras
 - 4.The Fourth Additional Sessions Judge,
Bhavani.
- + 1 cc to Mr.N.Manokaran, Advocate SR 9579

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