



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Cr1.O.P (MD) No.22759 of 2015

WEB COPY

Manimaran

: Petitioner

Vs.

The State rep.by
The Inspector of Police,
Amathur Police Station,
Soolakarai Circle,
Virudhunagar District.
(In Crime No.20 of 2013)

: Respondent

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., praying to direct the learned Judicial Magistrate No.2, Virudhunagar to commit the case in P.R.C.No.33 of 2015 to the file of Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and to order for joint trial along with the case in S.C.No.135 of 2015 pending on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

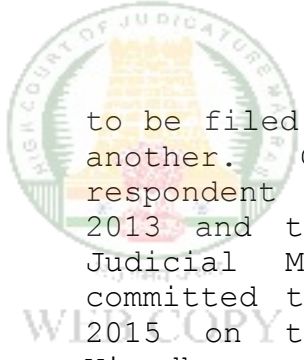
For Petitioner : Mr.R.Gandhi

For Respondent : Mr.A.P.Balasubramani
Government Advocate (Cr1.Side).

O R D E R

The petitioner has come forward with this petition, praying to direct the Judicial Magistrate No.2, Virudhunagar, to commit the case in P.R.C.No.33 of 2015, to the file of Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and to order for joint trial along with the case in S.C.No.135 of 2015 pending on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

2. Mr.R.Gandhi, learned counsel appearing for the petitioner would submit that the petitioner is the defacto complainant in Crime No.20 of 2013 on the file of the respondent police, which is pending for committal proceedings in P.R.C.No.33 of 2015, on the file of Judicial Magistrate No.2, Virudhunagar. He would further submit that the petitioner is arrayed as one of the accused in a counter case registered in Crime No.19 of 2013. In Crime No.20 of 2013, on completion of charge sheet, the respondent police has filed a charge sheet, which is pending for committal proceedings in P.R.C.No.33 of 2013, on the file of Judicial Magistrate No.2, Virudhunagar. Adding further, the learned counsel would submit that the case in Crime No. 19 of 2013 and Crime No.20 of 2013 are same and counter cases. Since the motive as well as the place of occurrence are one and the same, it is the duty of the respondent police to investigate both the cases simultaneously and the charge sheets have



to be filed before the trial Court to enable it to try the case one after another. Continuing his argument, the counsel would submit that the respondent has chosen to file the charge sheet only in Crime No.19 of 2013 and the same was taken on file in P.R.C.No.18 of 2014 by the Judicial Magistrate No.2, Virudhunagar, thereafter, the case was committed to the Court of Sessions and taken on file in S.C.No.135 of 2015 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and now, the case is posted for framing charges. The counsel would also submit that the proceedings in P.R.C.No.33 of 2015 and the proceedings in S.C.No.135 of 2015 are triable by the Court of Sessions and therefore, both the cases must be tried together. Inviting the attention of this Court, the counsel for the petitioner referred to a decision of the Hon'ble Apex Court in *Nathi Lal v. State of U.P.* reported in (1990 Supp SCC 145) wherein the Apex Court held as follows:-

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgement. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgement in that case. The same learned Judge must thereafter dispose of the matters by two separate judgements. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or to the sturdy reasons why it should be so. Hence arguments urged in the cross case. But both the the magistrate can exercise the special power on judgements must be pronounced by the same referred on him by virtue of Section 323 of the Code"

3. I have heard the counsel appearing on either side and perused the materials available on record.

4. It is not in dispute that a case and counter case have been registered in Crime Nos. 19 and 20 of 2013 on the file of the respondent police and the case in Crime No.19 of 2013 has been taken on file in P.R.C.No.18 of 2014 and the Judicial Magistrate No.2, Virudhunagar, has committed the same to the Court of Sessions and the same has been taken on file in S.C.No.135 of 2015. In so far as the case in Crime No.20 of 2013 is concerned, it is taken on file in P.R.C.No.33 of 2015 on the file of Judicial Magistrate No.2, Virudhunagar, but the same has not been committed to the Court of Sessions, till now. In similar circumstances, the Principal Bench of this Court in the Judgment reported in 2011-1-L.W. (Crl.) 709 (*Ganesan and Another Vs. State*), has held as follows:-



"In cross cases, where one of the cases involves offences exclusively triable by a Court of Sessions and in the other case none of the offence is exclusively triable by a Court of Sessions, then, as provided in Section 323 of Cr.P.C. the jurisdictional Magistrate should commit both the cases for trial to the Court of Sessions."

5. The aforesaid two judgments have been referred to by this Court in a Judgment reported in 2014-1-L.W.(Crl.)385 (*T.Selvakumar V. The State*) and this Court held as follows:-

25. Explaining the need to try the counter-cases by one and the same Judge and the benefit of it, in *Sudhir Vs. State of M.P.*, [2001(2)SCC 688], the Hon'ble Supreme Court observed as under:-

"8. It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter-case" by some High Courts and "cross cases" by some other High Courts." "The practical reasons for adopting a procedure that such cross-cases shall be tried by the same court, can be summarised thus: (1) It staves off the danger of an accused being convicted before his whole case is before the court. (2) It deters conflicting judgments being delivered upon similar facts. (3) In reality the case and the counter-case are, to all intents and purposes, different or conflicting versions of one incident."

26. In *Nathi Lal v. State of UP.* [1990 SCC 145], as regards trial of counter-cases, the Hon'ble Apex Court advocated the following procedure:-

"We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned Judge one after the other."



33. In view of the foregoing ordered as under:

(i) The learned Vth Metropolitan Magistrate, Egmore, Chennai, shall take further action on the final report filed by the respondent police in Crime No.565 of 2011 in accordance with law and send the case to the learned Xth Metropolitan Magistrate, Egmore, Chennai.

(ii) The learned Xth Metropolitan Magistrate, Chennai after complying the legal formalities, shall invoke Section 323 Cr.P.C. and commit the calendar case to the Court of learned Principal Sessions Judge, Chennai, who will made over the case to the Court of learned III Additional Sessions Judge, Chennai.

(iii) Till the calendar case is received, the learned III Additional Sessions Judge, Chennai shall defer conducting trial in the sessions case in S.C.No.131 of 2013.

(iv) The learned III Additional Sessions Judge, Chennai will take steps through proper channel for the appointment of a separate prosecutor to conduct prosecution in the calendar case.

(v) The learned III Additional Sessions Judge, Chennai will try the calendar case and the Sessions Case simultaneously and pronounce judgments on the same day one after the other."

6. Considering the facts and circumstances of the case and in view of the decisions of the Hon'ble Apex Court as well as this Court (referred to supra), this Criminal Original Petition is allowed and the Judicial Magistrate No.2, Virudhunagar is directed to commit the case in P.R.C.No.33 of 2015 to the file of Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur. The Principal District and Sessions Judge, Virudhunagar is directed to conduct a joint trial along with the case in S.C.No.135 of 2015, pending on his file, and decide the same in accordance with law, as expeditiously as possible. It is made clear that the matter shall not be adjourned beyond seven working days, at any point of time.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Srivilliputhur

Virudhunagar District



2. The Judicial Magistrate No.2,
Virudhunagar

3. The Inspector of Police,
Amathur Police Station,
Soolakarai Circle,
Virudhunagar District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.Gandhi, Advocate, SR No.68960

ORDER MADE IN
Cr1.O.P (MD) No.22759 of 2015
02.12.2015

MPK

SH/SK-SKN:05.01.2016:5P/6C