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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 14.12.2015

ORDERS DELIVERED ON: 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.O.P. (MD) .Nos.22803 & 22820 of 2015

and

M.P. (MD) Nos.1 and 1 of 2015

Jothindra Geeth Prakash : Petitioner(in both the Crl.O.Ps.)/Accused

Vs.

State Rep. By
The Inspector of Police,
Vigilance and Anti-Corruption,
Kanyakumari District Detachment,
at Nagercoi. : Respondent ((in Crl.O.P(MD)No.22803/15)/Complainant

State rep by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Kanyakumari District Detachment,
At Nagercoil. : Respondent(in Crl.O.P(MD)No.22820/Complainant

Common Prayer: Criminal Original petitions are filed under Section 482 of Criminal Procedure Code, to withdraw the case in Special Case Nos.4 of 2014 and 3 of 2008, on the file of the Chief Judicial Magistrate cum Special Judge, Kanyakumari District, Nagercoil and Transfer the same to the file of the Chief Judicial Magistrate cum Special Judge, Tirunelveli.

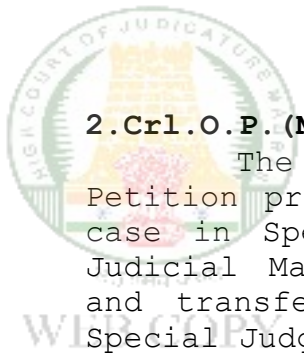
For Petitioner in
both the Crl.O.Ps. : Mr.N.Mohideen Basha

For Respondent in
both the Crl.O.Ps. : Mr.P.Kandasamy
Government Advocate
(crl.side)

COMMON ORDER

1.Crl.O.P. (MD)No.22820 of 2015:

The Petitioner/Accused has preferred the instant Criminal Original Petition praying for passing of an order by this Court to withdraw the case in Special Case No.3 of 2008 on the file of the Learned Chief Judicial Magistrate cum Special Judge, Kanyakumari District, Nagercoil and transfer the same to the file of Chief Judicial Magistrate cum Special Judge, Tirunelveli.



2.Crl.O.P. (MD)No.22803 of 2015:

The Petitioner/Accused has preferred the instant Criminal Original Petition praying for passing of an order by this Court to withdraw the case in Special Case No.4 of 2014 on the file of the Learned Chief Judicial Magistrate cum Special Judge, Kanyakumari District, Nagercoil and transfer the same to the file of Chief Judicial Magistrate cum Special Judge, Tirunelveli.

3.According to the Learned counsel for the Petitioner/Accused he is facing trial in Special Case No.3 of 2008 and Special Case No.4 of 2014 on the file of the Learned Chief Judicial Magistrate cum Special Judge, Kanyakumari District at Nagercoil and that he prays for transferring the said two cases to the neighbouring Tirunelveli District on medical grounds.

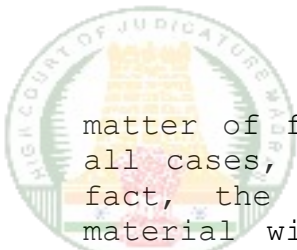
4.The Learned counsel for the Petitioner submits that the Petitioner/Accused is suffering from loss of vision in both the eyes to nearly 99% and further he is nearly blind. Moreover, the Petitioner/Accused had L2 Burst fracture due to which he was fixed with Titanium Pedicle Screws and Rods in the vertebra. Added further, he suffers from a 'right shoulder dislocation' due to slip and fall and on account of the ailments and therefore, he is unable to travel.

5.On behalf of the Petitioner/Accused, it is brought to the notice of this Court that the Petitioner/Accused had filed a 'Petition for Discharge' and the same was posted for arguments on 01.12.2015. The grievance of the Petitioner/Accused is that because of his health ailments and agedness, without the support of his daughter, he cannot take part in the Trial and defend himself in Special Case Nos.3 of 2008 and 4 of 2014 on the file of Trial Court.

6.In response, the Learned Government Advocate (crl. side) for the Respondent/complainant (in both the Criminal Original Petitions) submits that in Special Case No.4 of 2014 on the file of the Learned Chief Judicial Magistrate cum Special Judge, Nagercoil, for examination of the trap laying officer Justin Raj, the matter was posted to 11.12.2015 and that the Petitioner/Accused can proceed with the trial of the case before the High Court by filing necessary petition under Section 205 of Cr.P.C. Further, the Petitioner/Accused can conduct a trial of the pending case with the help of his Learned counsel.

7.Added further in Special Case No.3 of 2008 pending on the file of the Learned Chief Judicial Magistrate at Nagercoil, the matter is pending for examination of Trap Laying Officer and Investigating Officer. Finally it is the plea of the Respondent that most of the witnesses are from Kanyakumari District and bringing those witnesses from Kanyakumari to Tirunelveli District would cause financial loss to the Government and their personal work definitely would get affected, if the cases are transferred to Special Court for Vigilance and Anti-Corruption Cases at Tirunelveli.

8.It is to be pointed out that exemption from personal appearance under Section 205 of Cr.P.C. cannot be claimed by a person as a matter of right. However, while dealing with the petition for exemption, the discretion of the Court is to be applied in a judicious manner. As a



matter of fact, the power to grant exemption should not be exercised in all cases, wherein serious allegations are made against the Accused. In fact, the Accused should be present on all the hearings, when the material witnesses are examined as per decision in **LILY BEGUM v. JOY CHANDRA NAGBANSHI** reported in **1994 SCC (Cri) 303**.

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9. It is borne in mind that Section 205 of Cr.P.C. gives a discretion to the Court to exempt a person from personal appearance, till such time his personal appearance was essential for the trial. But, Section 317 of Cr.P.C. is a provision, where, on any certain day, where an Accused is required to be present in person, he is unable to come or appear, he may seek leave and be absent and for this he is to approach the Court under Section 317 Cr.P.C., in the considered opinion of this Court. In short, the ingredients of Sections 205 and 317 of Cr.P.C. are not only different but also distinct, as opined by this Court.

10. The power to grant exemption from personal appearance is discretionary, facts and circumstances of each case are to be looked into by the Court. Ordinarily, the discretion to grant exemption from personal appearance is to be exercised by a Court of Law judiciously and after examining the reasonableness, genuineness and legitimacy of the cause shown. In an appropriate case, a Court of Law can grant exemption for the personal appearance of an Accused. Indeed, Section 317 of Cr.P.C. will be applicable to a stage, after the commencement of enquiries or trial thereby pointing out that for proper reasons, the presence of an Accused could be dispensed with right from the initiation stage. A Court of Law while deciding an application of the Accused for exemption from personal appearance, should pass a speaking and reasoned order. But the rejection of an application without ascribing the reason is not proper and the same is liable to be set aside in the eye of Law.

11. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in **BALJIT SINGH AND ANOTHER v. STATE OF J. & K. AND OTHERS** reported in **AIR 1982 SC 1558**, whereby and where under, it is observed and held as follows:-

"A case under Ss.302 and 392 of the Indian Penal Code has been transferred from Jammu to Srinagar by the High Court through the impugned order on the sole ground that most of the witnesses who belong to Jammu have already been examined by the trial Court and that only witnesses from Kashmir division or Delhi remain to be examined. We feel that in the circumstances of the case this is not at all a proper approach to the matter specially when another application for transfer of the case had already been rejected by the same Hon'ble Judge of the High Court although even at that stage the same ground for the transfer was put forward before him. Nor do we find that it would be a correct principle to apply to the transfer of criminal cases that they should be heard at the place from where a large number of witnesses are to be examined. The normal course of things should not have been lightly interfered with and the case should have been allowed to be tried by the Court which had territorial jurisdiction. Accepting the appeal, therefore, we set aside the impugned order and direct that the case shall continue to be tried at Jammu by the Court which has dealt with it so far.



2.Learned counsel for Respondent No.2 prays for a direction from this Court in regard to production of the car in question before the trial Court, which, it is stated, has enjoined that the vehicle be made available in Court on all dates of hearing. We see no reason to accept the prayer which should be made to the trial Court."

12.It cannot be forgotten that the discretion of a Magistrate under Section 205 of Cr.P.C. cannot be circumscribed by prescribing any general directions in that regard, by a Court of Law. No wonder, the learned Judicial Magistrate is the master in so far as the progress of trial of a case concerned as opined by this Court. However, the Court must ensure that exemption from personal appearance granted to an Accused is not abused by him to delay the trial. If any endeavour was made to elongate the proceedings taking advantage with the said order, it is always open to the Court to pass such further order as it deems fit and proper based on the facts and circumstances of the case which float on the surface

13.After all, the primary concern of the Court is the administration of criminal justice and for that object, the Court proceedings should register progress. But, discretion to dispense with the personal attendance of a person/party should be exercised in rare cases due to distance or any physical discomfort/physical infirmity/physical disability or for any other good reason, to prevent an aberration of justice.

14.On a careful consideration of respective contentions, and in view of the fact that the Petitioner/Accused is suffering from loss of vision in both the eyes to nearly 99% and further that he is nearly blind etc. and further that the Special Case No.3 of 2008 is pending in part-Heard stage and Special Case No.4 of 2014, where discharge petition in C.M.P.No.614 of 2015 filed by the Petitioner, is pending, this Court opines that it is not desirable/palatable for this Court to pass an order to transfer the said cases from the file of the Learned Chief Judicial Magistrate cum Special Judge, Kanyakumari District, Nagercoil and to the file of the Learned Chief Judicial Magistrate cum Special Judge, Tirunelveli and negatives the plea of the Petitioner in this regard. Viewed in that perspective, the Criminal Revision Petitions fail.

15.In the result, the Criminal Revision Petitions are dismissed. It is made clear that the dismissal of the Criminal Revision Petition Nos.22803 & 22820 of 2015 will not preclude the revision Petitioner to invoke the ingredients of either Section 205 of Cr.P.C. or Section 317 of Cr.P.C. and to avail the benefits of the same, before the trial Court in Special Case No.3 of 2008 and Special Case No.4 of 2014 pending on its file, in the manner known to Law and in accordance with Law, if he so desires/advised. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(RTI)



To

1.The Chief Judicial Magistrate
cum Special Judge,
Kanyakumari District,
Nagercoil.

2.The Chief Judicial Magistrate Cum Special Judge,
Tirunelveli.

3.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Kanyakumari District Detachment,
At Nagercoil.

4.The Inspector of Police,
Vigilance and Anti-Corruption,
Kanyakumari District Detachment,
At Nagercoil.

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

+1cc to Mr.N.Mohideen Basha, Advocate SR.No.76092

Pre-Delivery Order made in
Crl.O.P. (MD).Nos.22803 &
22820 of 2015
and
M.P. (MD) Nos.1 and 1 of 2015

22.12.2015

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NS/PM-MP/05.02.2016 : 5P/7C