



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.R.C.(MD)NO.94 of 2015

and M.P.No.1 of 2015

1.Jaya  
2.Muthu  
3.Alagarsamy  
4.Sarguru  
5.Ramasamy  
6.Vignesh  
7.Ramesh  
8.Alagesan  
9.Dhanabalan  
10.Marichamy  
11.Perumalsamy  
12.Duccker Subburaj  
13.Duccker Seeniraj  
14.Kumar  
15.Sankar  
16.Rajasekar  
17.Subbalammal @ Subbulakshmi

.. Revision Petitioners/  
Accused 1 to 17

Vs.

State through  
the Inspector of Police  
Kalugumalai Police Station  
Thoothukudi District.

..Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate, No.I, Kovilpatti in Cr.M.P.No.3833/2014 dated 03.09.2014 in P.R.C.No.8 of 2014 on the file of the Judicial Magistrate No.I, Kovilpatti.

For Petitioners :: Mr.M.Saravanan  
For Respondent :: Mr.P.Kannithevan  
Government Advocate(Crl. Side)

#### ORDER

The petitioners are witnesses in C.C.No.87 of 2014 on the file of the learned Judicial Magistrate No.I, Kovilpatti. In that case, there are four accused by name, Sivagurunathan, Vivekanandhan, Raja and Ganeshkumar. The petitioners have filed Cr.M.P.No.3833 of 2014 before the lower Court under Section 323 Cr.P.C. requesting the lower Court to commit the said case to the Court of Sessions for trial, as it is the counter case to the case in P.R.C.No.8 of 2014. The trial Court by order dated 03.09.2014 has dismissed the said petition. Challenging the same, the petitioners are before this Court with this revision petition.



2. I have heard the learned counsel for the petitioner.

3. In my considered opinion, the lower Court was in error in entertaining the petition and disposing of the same without affording an opportunity to the accused in C.C.No.87 of 2014. The trial Court ought to have considered the scope of Section 323 Cr.P.C., after affording opportunity to the accused to take a decision whether to commit the case or not. Probably, the trial Court was under the mistaken impression that only a counter case can be committed to the Court of Sessions under Section 323 Cr.P.C. Even two cases arising out of the same transaction can also be committed. This is very obvious from the very language of Section 323 Cr.P.C. and a number of judgments on this subject. At any rate, this Court is not in a position to grant leave as prayed for, because, the accused are not before this Court, as the accused are not parties before the lower Court in the Criminal Miscellaneous Petition.

4. In view of the same, this petition is allowed and the order dated 03.09.2014 made in Cr.M.P.No.3833 of 2014 is set aside and accordingly, the same is remitted back to the file of the learned Judicial Magistrate No.I, Kovilpatti, who shall afford an opportunity to the accused in C.C.No.87 of 2014 as well as to the petitioners and then pass appropriate orders in accordance with law. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I, Kovilpatti.
- 2.-do-thro'The Chief Judicial Magistrate, Tuticorin.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

Copy to:                   The Section Officer, Criminal Section,  
                                  Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.M.Saravanan, Advocate in SR.17039

CrI.R.C.(MD)NO.94 of 2015  
and M.P.No.1 of 2015  
06.04.2015

rr.

PBK       22/04/2015   ::2P-6C: