

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.Nos.1584 & 1585 of 2016

and

C.M.P.Nos.745 & 746 of 2016

1.P.Yuvaprakash  
2.S.Karthikeyan  
3.N.Rasu @ Velayutham  
4.N.Duraisamy  
5.R.Manickam @ Thirunavukkarasu  
6.N.Paramasivam  
7.P.Nirmaladevi

.... Petitioners in Crl OPs  
1584 & 1585/16

Vs.

State rep. by the  
Inspector of Police,  
Erode South Police Station,  
Crime No.22 of 2015,  
Erode District.

.... Respondent in Crl.OP.NO  
1584 & 1585/16

Prayer Crl.O.P.No.1584 of 2016: Petition filed under Section 482 of Cr.P.C., praying to withdraw the case in Spl.S.C.No.26 of 2015 on the file of the learned Session's Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, Erode District and to transfer the same to any other Mahila Court at Tirupur, Salem or Namakkal.

Prayer Crl.O.P.No.1585 of 2016: Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 29.12.2015 made in Spl.S.C.No.26 of 2015 on the file of the learned Session's Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, Erode District.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.C.Emalias, APP.

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## COMMON ORDER

Crl.O.P.No.1584 of 2016 has been filed by the petitioners praying to transfer the case in Spl.S.C.No.26 of 2015 from the file of the learned Session's Judge (Magalir Neethi Mandram - Fast Track Mahila Court), Erode, to any other Mahila Court at Tirupur, Salem or Namakkal.

2.Crl.O.P.No.1585 of 2016 has been filed praying to set aside the order dated 29.12.2015 made in Spl.S.C.No.26 of 2015 on the file of the learned Session's Judge (Magalir Neethi Mandram - Fast Track Mahila Court), Erode, Erode District.

3.Since both the criminal original petitions are inter-related to each other, they are disposed of by way of this common order.

4.The brief facts, which are necessary to dispose of these petition, are as follows:-

4-1.The petitioners herein are accused in Spl.S.C.No.26 of 2015 pending on the file of the learned Session's Judge (Magalir Neethi Mandram - Fast Track Mahila Court), Erode. The case of the prosecution is that the defacto-complainant viz., one Tr.Abdual Hameed lodged a complaint to the respondent-Police stating that he has two female children and his younger daughter Madheena is aged 17 years (running 18 years). On 13.01.2015, the defacto-complainant went to Karur for some work, and at that time, his daughter Madheena had stomach pain. Hence, his elder daughter Wahitha and his younger sister Ameena had taken Madheena to hospital and while they were returning to home, near Rita School, Shasthri Nagar, at about 2.30 hours, one Yuvaprakash along with two others came to the spot and kidnapped Madheena and escaped from the spot by two wheeler. Immediately, the same was informed to the defacto-complainant through his elder daughter over phone. Thereafter, they searched Madheena in the nearby areas, but it ended in vain. Hence, the defacto-complainant lodged the complaint and the same was registered in Crime No.22 of 2015 under Section 366(A) IPC & under Sections 6 & 7 of the Protection of Children from Sexual Offences Act, 2012, by the respondent-Police.

4-2.On completion of investigation, the respondent-Police filed charge-sheet before the Magali Court, Erode and the same was taken on file as Spl.S.C.No.26 of 2015 on the file of the Mahila Court, Erode on 10.08.2015. Thereafter, charges were framed and the petitioners/accused stoutly denied their complicity in the offence. During the course of the trial, the prosecution has examined 16 witnesses besides marking voluminous documents. The petitioners/accused have defended the case stating that the daughter of the defacto-complainant, who was

examined as P.W.3, was a major as evident from the deposition of the Doctor (P.W.9). According to the petitioners, the prosecution under the POCSO Act is not at all permissible in view of the fact that the victim girl/P.W.3 was not a minor as on the date of the alleged occurrence and that the prosecution has not let in any other evidence to prove that the victim girl was minor as on 14.01.2015. After the examination of the witnesses, arguments were heard on 21.12.2015 and the case was posted for judgment on 29.12.2015. When the case was listed on 29.12.2015, the petitioners/accused were present in the Court. But, on that day, the Trial Court, instead of pronouncing the judgment, has passed the following order\_

"A1 to A9 present. On perusal of the records, it is noticed that the school transfer certificate Xerox copy of the girl who is said to have victim in this case by name Mathina filed by the I.O. But, the name and address of the witness who issued the certificate not mentioned and the documents not marked in this case through proper witness. Hence, judgment cannot be delivered today.

The examination of custodian of original records connected with the school transfer certificate of Mathina.A shall be examined for the just decision of this case. Hence, the evidence in this case is suo moto re-opened. The transfer certificate was issued by the Head Master, Girls Higher Secondary School, Vellore, Namakkal District, Tamil Nadu.

Issue summons to the above Head Master to produce the original records through the custodian of the records to let evidence and to mark the document. Enclose the Xerox copy of the Transfer Certificate along with the summons which is to be issued to the Head Master and intimate this to the S.P., Erode. Call on 08.01.2016."

Aggrieved over the said order, the petitioner has filed the present petitions before this Court, one for setting aside the said order passed by the Trial Court and another for transfer the case from the file to any other (Magalir Neethi Mandram - Fast Track Mahila Court), Erode, to any other Mahila Court at Tirupur, Salem or Namakkal.

5.The learned counsel for the petitioners submitted that during the course of investigation by the respondent-Police, one Dr.Thenmozhi has given a statement on 15.05.2015 that she had conducted ossification test on the victim girl and found that the age of the victim girl should be above 18 years. The said Dr.Themmozhi was examined as P.W.9 before the Trial Court. Even in the chief-examination, the said Dr.Thenmozhi (P.W.9) had

stated that the age of the victim girl should be 19 years. During the course of trial, the prosecution neither produced the birth certificate of the victim girl nor any other documentary evidence to prove the age of the victim girl. Further, the prosecution has not taken any step to secure the Birth Registrar Extract of the victim girl during the course of investigation. After trial was over and arguments were completed, the Trial Court has passed the impugned order, suo motu reopening the evidence. In view of the suo motu order passed by the Trial Court, the petitioners are having strong apprehension in their mind that the Trial Court has predetermined to convict the petitioners. The order passed by the Trial Court is so strongly worded which would show that there is every likelihood to affect the petitioners.

6. In this regard, the learned counsel for the petitioners has also relied upon the judgment of the Hon'ble Supreme Court reported in (2015) 6 SCC 617 [Kanaklata Vs. State (NCT of Delhi) and others] and submitted that in that case, while discharging the accused persons therein under the SC & ST Act, the Trial Court had made some observations about the alleged misuse of provisions of said Act by unscrupulous elements and suggestions for remedying that situation. On revision petition, the High Court set aside the discharge order and remanded the matter to the Trial Court with a direction to decide the matter afresh without being influenced by observations made earlier. Thereafter, the complainant therein moved transfer petitions before the District Sessions Judge and High Court, but, both the petitions were dismissed vide orders dated 22.05.2015 and 29.08.2013 respectively. Aggrieved over the same, the complainant filed the appeal by way of Special Leave seeking transfer of the case, expressing apprehension that in spite of the direction of the High Court, the Trial Court might proceed on a preconceived notion. By majority of judgment, the said transfer petition was allowed by the Hon'ble Supreme Court.

7. By relying the judgment of the Hon'ble Supreme Court, the learned counsel for the petitioners submitted that the present case is also standing on the similar footing. Thus, the learned counsel for the petitioners prayed for setting aside the impugned order passed by the Trial Court and to transfer the case to some other court.

8. Per contra, the learned Additional Public Prosecutor, by filing detailed counter, contended that after completion of trial and arguments, Trial Court had posted the case for pronouncing judgment and at that time, it came to light that School Transfer Certificate of the victim girl/P.W.3 was not marked by the prosecution by oversight. It is an important document to be marked for the just decision of the Court. The said Transfer Certificate of the victim girl/P.W.3 had been sent

to the Trial Court by the Investigating Officer along with the charge-sheet, showing Item No.10 in the list of documents. On perusal of the certificate, the Trial Court found that it is only a xerox copy; therefore, the Trial Court re-opened the evidence, suo motu, and issued summons to the concerned Head Master to attend the Court on 08.01.2016 with original transfer certificate. Accordingly, the Head Master namely Tr.Marudhupandian appeared before the Court with original Transfer Certificate on 08.01.2016 and he was examined as C.W.1 and the Transfer Certificates were marked as Ex.C.1 & Ex.C.2. Later, the case was posted on 19.01.2016 for 313(1)(b) Cr.P.C. for questioning the accused with regard to the examination of the said Head Master. At that stage, the defence counsel represented before the Trial Court that the present criminal original petition is pending before this Court. Then, the case was adjourned by the Trial Court. Thus, the learned Additional Public Prosecutor submitted that the Trial Court has scrupulously followed the procedures laid down under law; hence, the judgment relied upon by the learned counsel for the petitioner cannot be made applicable to the present facts of the case.

9.Heard both sides. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record. As contended by the learned Additional Public Prosecutor, the Transfer Certificate of the victim girl was already sent by the Investigating Officer to the Trial Court, showing as Item No.10 in the list of documents. But, oversight, it was not marked by the prosecution. Since it was only a xerox copy, the Trial Court re-opened the case suo motu and ordered for issuance of summons to the concerned School Head Master and thereafter, the transfer certificates of the victim girl were marked as Ex.C.1 & Ex.C.2 through the Head Master who was examined as C.W.1. Even as per Section 311 of Cr.P.C., the Court may at any stage of any enquiry, trial or other proceeding under the Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined. The Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. In the present case, since the Transfer Certificate available in the case bundle was only xerox copy, Trial Court issued summons to the concerned witness to produce the original certificate and after the appearance of such witness, the Trial Court has examined the witness as C.W.1 and marked the documents as Ex.C.1 & Ex.C.2. Under such circumstances, I do not find any infirmity in the impugned order passed by the Trial Court. In fact, in the judgment relied upon by the learned counsel for the petitioners, while discharging the accused therein, the Trial Court made some observations about the alleged misuse of provisions of SC & ST Act by

unscrupulous elements and suggestions for remedying that situation; that is why, the Hon'ble Supreme Court had allowed the transfer application in that case. But, in the instant case, absolutely there is no such observation made by the trial Court. Therefore, the judgment relied upon by the learned counsel for the petitioners cannot be made applicable to the present facts of the case. I do not find any merit in both the present petitions and the same are liable to be dismissed.

In fine, the criminal original petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssv

To,

1. The Session's Judge,  
Magalir Neethi Mandram  
(Fast Track Mahila Court),  
Erode, Erode District

2. The Inspector of Police,  
Erode South Police Station,  
Erode District.  
(Crime No.22 of 2015).

3. The Public Prosecutor,  
Madras High Court, Madras.

+2 ccs to Mr.N.Manokaran Advocate sr.6842 & 6843/16

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