

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.08.2016

PRONOUNCED ON : 11.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.16961 of 2016

&

Crl.M.P. No.8148 of 2016

P. Pandithurai

... Petitioner

Vs.

State
represented by
the Deputy Superintendent of Police
Udumalpet
Tiruppur District

... Respondent

Criminal Original Petition filed under Section 407, Cr.P.C. to withdraw the case in Spl. S.C. No.19 of 2016 on the file of the Principal Sessions Court, Tiruppur and transfer the same to any other Sessions Court competent to hear the same.

For Petitioner : Mr. D. Selvaraju

For Respondent : Mr. C. Emalias
Additional Public Prosecutor

सत्यमेव जयते
ORDER

This Criminal Original Petition has been filed to withdraw the case in Spl. S.C. No.19 of 2016 on the file of the Principal District and Sessions Court, Tiruppur and transfer the same to any other Sessions Court competent to hear the same.

2. A gory incident took place in full public view in the afternoon of 13.03.2016 near the busy Central Bus Stand, Udumalpet, where, a Dalit boy was hacked to death for the sin of having married an upper caste Thevar girl.

3. The incident appears to have been captured in a video camera and it went viral in the social media shocking the

collective conscience of the citizens. The police registered a case in Crime No.194 of 2016 and arrested 11 accused, including the parents of the Thevar girl and the alleged hirelings set up by them for conspiring to execute an honour killing. Investigation was completed and final report was filed before the jurisdictional Magistrate and the case now stands trial in S.C. No.19 of 2016 on the file of the Principal District and Sessions Court, Thiruppur for offences u/s 120(b), 147, 148, 302 r/w 149, 302 r/w 120(b) and 109, 307 r/w 149, 307 r/w 120(b) and 109, 307 r/w 149, 307 r/w 120(b) r/w 109 IPC and u/s 3(1)(r)(s) r/w 3(2)(Va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and u/s 3(2)(Va), ibid. Except one accused, all the accused are in custody, bail having been refused for them. Charges were framed against the accused and on their pleading "not guilty", the Trial Court commenced with the examination of witnesses from 27.06.2016 onwards. Now, P. Pandithurai (A3) has filed the present petition for transferring the case in Spl.S.C. No.19 of 2016 from the file of the Principal District and Sessions Court, Thiruppur, to any other Court.

4. Mr. D. Selvaraju, learned counsel for the accused submitted that the trial is proceeding in a break neck speed and that the Trial Judge is not giving sufficient opportunity for the accused to set up his defence. He submitted that advocates in Thiruppur District are boycotting courts against the rules framed by the High Court under Section 34 of the Advocates Act, on account of which, the accused were not able to avail of the services of lawyers to defend them. That apart, the learned counsel submitted that the Trial Judge has sent a communication dated 17.06.2016 to the accused in jail, intimating them that the trial would commence on 27.06.2016 and that L.W.1 and L.W.2 will be examined. He also submitted that the CDs containing the video footage were furnished to the accused only on 12.07.2016. In short, it is the submission of the learned counsel that the trial Judge is not giving the petitioner, sufficient opportunity for effective defence in a case for which capital sentence is one of the punishments.

5. Mr. C. Emalias, learned Additional Public Prosecutor appearing for the State refuted the allegations and submitted that the Trial Judge has been directed by this Court by order dated 14.06.2016 in CrI.O.P. No.10984 of 2016 to conduct the trial on a day-to-day basis and only in compliance of the directions of this Court, the Trial Court was forced to post the case for short dates. He also submitted that one Prasanna @ Prasanna Kumar (A10) had filed an application in CrI.O.P. No.13382 of 2016 before this Court for a direction to the trial Judge to frame charges afresh and that the said petition was

dismissed on 29.06.2016. It is his submission that the accused are taking advantage of the boycott of Courts in order to protract the trial.

6. This Court gave its serious consideration to the rival submissions of the learned counsel.

7. Prasanna @ Prasanna Kumar filed Crl. O.P. No. 10984 of 2016 for bail and this Court, after dismissing the bail application on 14.06.2016, has issued the following direction:

"12. As the matter is pending before the Trial Court, the Court below is directed to take up the matter on a day-to-day basis and shall not adjourn it beyond two working days at any point of time, to bring the issue to a logical conclusion."

Only on account of the aforesaid direction, the Trial Judge had adjourned the case on a day-to-day basis.

8. It is true that the accused have a fundamental right under Article 21 of the Constitution of India to be defended by an advocate in a criminal trial. The Trial Judge has asked the accused as to whether they need the services of an advocate, for which, they had informed the Trial Judge that they have the means to engage their own lawyer. The Supreme Court, in Harish Uppal [Ex.Capt.] Vs Union of India, [(2003) 2 SCC 45], has held in unequivocal terms that the advocates have no right to boycott Courts and has declared boycott of Courts as illegal. Therefore, neither this Court nor the Trial Court can show indulgence to any litigant and adjourn the case on the ground of boycott of Courts. In fact, Section 309, Cr.P.C. clearly states that when a witness appears to give evidence, the Court has to necessarily examine the said witness and cannot adjourn the case.

9. In Crl.O.P. No.13382 of 2016 filed by Prasanna @ Prasanna Kumar (A10), this Court had passed the following order on 29.06.2016.

"4. In the considered opinion of this Court, such a direction cannot be issued, especially in view of the fact that when charges were framed and the accused were questioned, they did not raise any serious objection before the trial court and only thereafter, the present application has been filed to frame the charges afresh. The accused cannot be permitted to adopt delaying tactics in a case of this nature. Hence, this petition is dismissed with a direction to the trial Court to complete the trial

expeditiously. Consequently, connected Miscellaneous Petition is closed."

10. Thus, on a conspectus of the facts obtaining in this case, this Court has to strike a harmonious balance between the right of the accused to have a fair trial, vis-a-vis, their proclivity to protract the criminal proceedings on the ground of boycott of Courts.

11. Admittedly, except one, all the other accused are in judicial custody. If not for the directions issued by this Court in Crl.O.P. No.10984 of 2016 to conduct the trial on a day-to-day basis, there was no reason for the Trial Judge to hurry up the trial. Therefore, this Court relaxes the condition imposed by this Court in Crl.O.P. No.10984 of 2016 to conduct the trial on a day-to-day basis and instead, directs the Trial Court to conduct the trial expeditiously, bearing in mind, the right of the accused to have a fair trial. It is felicitous to point out at this juncture that hurried justice is also buried justice. If any application is filed by the accused for recall of witnesses, who have not been cross-examined by them, under Section 311, Cr.P.C., the Trial Court may consider the same in the proper perspective, so that the accused may not feel that they have been denied justice.

12. The other allegations made against the Trial Judge with a view to seeking transfer of the case, are trivial in nature and do not warrant any serious consideration. There is no wrong in the Trial Judge sending the communication dated 17.06.2016 to the accused who are in prison informing them that the trial would begin on 27.06.2016, so that they are not taken by surprise.

With the above directions, this Criminal Original Petition stands dismissed as being devoid of merits. Connected Crl.M.P is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cad

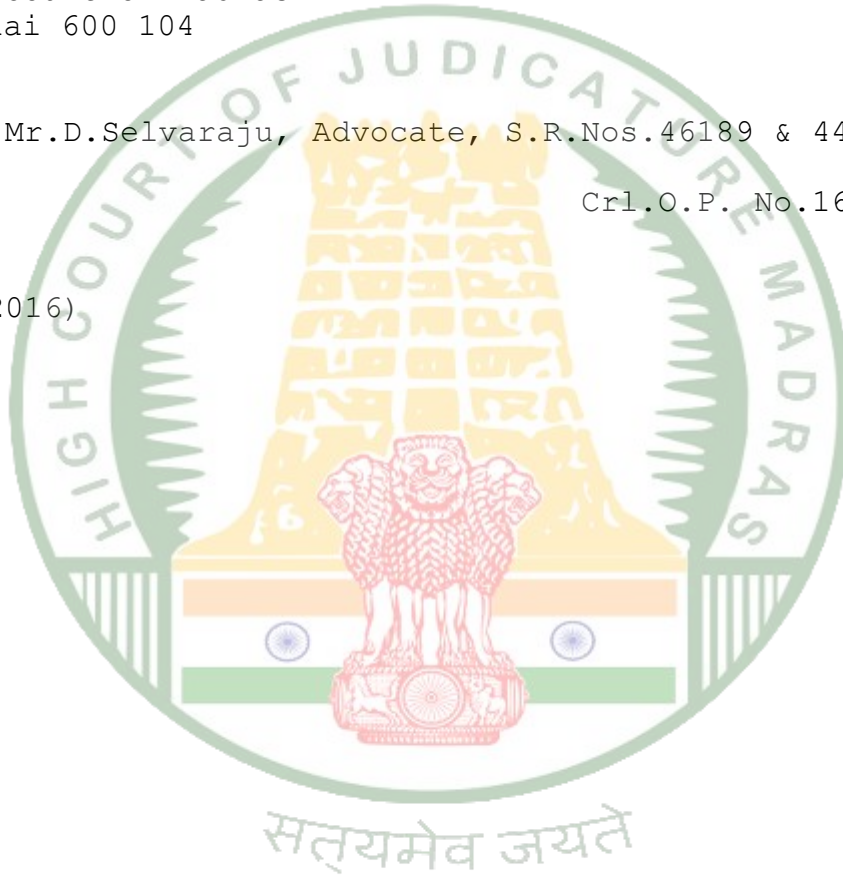
To

1. The Deputy Superintendent of Police
Udumalpet
Tiruppur District
2. The Principal District and Sessions Court
Tiruppur
3. The Public Prosecutor
High Court of Madras
Chennai 600 104

+2cc's to Mr.D.Selvaraju, Advocate, S.R.Nos.46189 & 44271

Crl.O.P. No.16961 of 2016

GJ II(CO)
CA(29/08/2016)



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