

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.19218 of 2016

and

Crl.M.P.No.9035 of 2016

Sivakumar .. Petitioner/Accused

Vs

State by
The Sub Inspector of Police,
Mecherry Police Station,
Mecherry, Salem District. ..Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 407 Cr.P.C. to withdraw and transfer the entire trial in so far relates to C.C.No.99 of 2009 from the Court of Judicial Magistrate - II, Mettur, Salem District to some other Judicial Magistrate, Erode, Erode District.

For Petitioner : Mr.C.Prakasam
For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

O R D E R

This petition has been filed seeking a direction to withdraw and transfer the entire trial insofar as it relates to C.C.No.99 of 2009 from the Court of Judicial Magistrate - II, Mettur, Salem District to some other Judicial Magistrate, Erode, Erode District.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. It is seen that on the complaint given by the petitioner, the respondent police registered a case in Crime No.384 of 2009 and after completing the investigation, has filed a final report in C.C.No.99 of 2009 against eight accused before the learned Judicial Magistrate II, Mettur, Salem.

4. On the complaint given by the opposite party a case in Crime No.385 of 2009 has been registered against this petitioner and after completing the investigation, the police have filed a final report in C.C.No.110 of 2009, which is pending before the learned Judicial Magistrate II, Mettur, Salem. Thus, the case and the counter case, namely C.C.No.99 of 2009 and C.C.No.110 of 2009 are pending trial before the learned Judicial Magistrate II, Mettur, Salem. While so, the petitioner has come up with this petition to transfer the case in C.C.No.99 of 2009, in which he is the defacto Complainant from the file of the Judicial Magistrate II, Mettur to the file of any other Court, on the ground that the son of one of the accused is practicing as an Advocate in Mettur Bar.

5. In the considered opinion of this Court, that cannot be a reason to transfer the case. It is seen that the incident had taken place in the year 2009 and till 2016 there has been no progress in the trial. That apart, the petitioner has not even made the accused in C.C.No.99 of 2009 as respondents in this petition and without making them as accused, this petition has been filed.

6. In the result, this petition is dismissed as devoid of merits. However, the Trial Court is directed to complete the trial in C.C.No.99 of 2009 and C.C.No.110 of 2009 within a period of 6 months from the date of receipt of a copy of this order. The accused shall cross examine the witnesses on the same day they are examined-in-chief as held by the Supreme Court in Vinoth Kumar v. State of Punjab [2015(1) MLJ (Cr1) 288]. In the event of the accused adopting any dilatory tactics, the trial Court shall remand him to custody as held by the Supreme Court in State of Uttar Pradesh v. Shambu Nath Singh [JT 2001 (4) SC 319].

Consequently, connected miscellaneous petition is closed.

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To

1 The Sub Inspector of Police,
Mecherry Police Station,
Mecherry, Salem District.

2 The Judicial Magistrate II,
Mettur, Salem District.

3 The Judicial Magistrate,
Erode, Erode District

4. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr. C. Prakasam, Advocate Sr.No.49393

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NRJK (CO)
MD : 12/09/2016



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