

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 07.09.2016
CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.OP No.20276 of 2016

Uma .. Petitioner
Vs

State Rep. by its
1.The Inspector of Police,
All Women Police Station, Puducherry.

2. Muniyan @ Ashok,

3. Hedrive @ Vanathammal

4. Ananthi .. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to transfer the case in C.C.No.144 of 2015 on the file of the Chief Judicial Magistrate Court, Puducherry to any Judicial Magistrate Court-II, Tindivanam.

For Petitioner : Mr.M.Kalaiyaran

For R1 : Mr.Thangavel
Additional Public Prosecutor
Pondicherry

ORDER

This Criminal Original Petition has been filed to transfer the case in C.C.No.144 of 2015 on the file of the Chief Judicial Magistrate Court, Puducherry to any Judicial Magistrate Court-II, Tindivanam.

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

3. On the complaint lodged by the petitioner, the respondent police registered a case in Cr.No.5 of 2013 and after completing the investigation, filed a final report in C.C.No.144 of 2015 before the Chief Metropolitan Magistrate Court, Puducherry, u/s 498-A r/w 34 IPC and Section 4 of Dowry Prohibition Act 1961 against the respondents 2, 3 and 4 and the trial is pending.

4. In the meantime, the petitioner has launched proceedings under the Domestic Violence Act in M.C.No.17 of 2015 for the offence u/s 125 Cr.P.C. against her husband Munian @ Ashok before the Judicial Magistrate Court No.II, Tindivanam where the petitioner is presently living with her parents.

5. Under such circumstances, the petitioner has come up with this petition for transferring the case in C.C.No.144 of 2015 from the file of the Chief Judicial Magistrate Court, Pondicherry to the file of any Judicial Magistrate Court in Tindivanam on the ground that all the witnesses in C.C.No.144 of 2015 hail from Tindivanam.

6. The learned counsel for the petitioner took this Court through the memo of evidence appended to the final report which shows that the prosecution has cited seven persons as witnesses, out of which six respondents are living in Tindivanam and the 7th respondent is the Investigating Officer.

7. Per contra, learned Additional Public Prosecutor submitted that if the case is transferred from the Union Territory of Pondicherry to any other Court in Tindivanam, the question of appointment of Public Prosecutor for the case and fees to be paid to the said Prosecutor will arise.

8. This Court gave its anxious consideration to the rival submissions.

9. Though these witnesses are from Tindivanam, yet, the offence had taken place within the jurisdiction of The Chief Judicial Magistrate Court, Pondicherry and it is not only the convenience of the prosecution witnesses that should be borne in mind, but also the convenience of the accused and defence witnesses whom the accused will produce in his defence during trial. Those witnesses will probably be from Pondicherry and it will cause undue prejudice to the accused if the case is shifted from Pondicherry to Tindivanam.

10. Under such circumstances, the plea of the petitioner for transferring the case to Tindivanam stands negatived. However, the police shall ensure that sufficient protection is given to the prosecution witnesses when they come for giving evidence before the trial Court. The trial court shall ensure that the prosecution witnesses are cross-examined by the accused on the day they are examined-in-chief as directed by the Supreme Court in Vinoth Kumar Vs.State of Punjab [2015 (i) MLJ (Crl.) 288]. If the accused adopts any dilatory tactics by not cross-examining the prosecution witnesses, it is open to the trial court to remand the accused in custody as held by the Supreme Court in State of Uttar Pradesh Vs. Shambhu Nath Singh [JT 2001 (4) SC 319].

11. In the considered opinion of this Court, the aforesaid directions will provide a sufficient safeguard for the prosecution witnesses to come from Tindivanam and appear before the trial court in Pondicherry.

With the above directions, the petition is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police,
All Women Police Station,
Puducherry.

2.The Chief Judicial Magistrate Court,
Puducherry

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.M.Kalaiyaran Advocate sr 50736

+1 cc to Government pleader puducherry sr 50834

सत्यमेव जयते

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