

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No. 21186 of 2016
and Crl.MP.No. 9808 of 2016

1. Saraswathi
2. P.Manimekalai ... Petitioners

Vs

State by
Inspector of Police,
Rasipuram Police Station,
Namakkal District. ... Respondent

Prayer:- Criminal Original Petition filed under Section 407 of Cr.P.C., to withdraw and transfer the C.C.No. 119/2015 from the file of Judicial Magistrate -III, Rasipuram to the file of any Court at Namakkal or Tirupur which this Hon'ble Court may deem fit and proper.

For Petitioners : Mr.V.S.Gurusamy

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

O R D E R

This petition has been filed to withdraw and transfer C.C.No. 119/2015 from the file of the Judicial Magistrate Court-III, Rasipuram to the file of any Court at Namakkal or Tirupur.

2. When the matter was taken up for hearing Mr.V.S.Gurusamy, learned counsel entered appearance for the petitioners. He stated that he is a lawyer from the Mofussil Bar and that he has been espousing the case of the petitioners before the trial Court.

3. It is seen that on the complaint given by one Chitra, the respondent police registered a case in Crime No. 463 of 2014 on 20.07.2014 for offences under Sections 147, 294(b), 323, 354 & 506(i) IPC against Saraswathi and four others.

4. On the complaint given by one Jayaraman, the respondent police registered a case in Crime No. 464/2014 on 20.07.2014 for offences under Sections 147, 294(b), 323, 354, 355 & 506(ii) IPC against Senguttuvan and nine others .

5. After completing the investigation in Crime No. 463/2014, the respondent police had filed a final report in CC. No. 119 of 2015 before the Judicial Magistrate, Rasipuram for offences under Sections 147, 294(b), 323, 354 & 506(i) IPC against Saraswathi, Jayaraman, Yogarajan, Manimegalai and Dinesh.

6. Similarly, after completing the investigation in Crime No. 464/2014, the respondent police closed the case as "Mistake of fact".

7. While so, the petitioners filed CrI.OP. No. 15229 of 2016 to quash CC. No. 119/2015 and the same has been dismissed by this Court on 27.07.2016.

8. Now, the petitioners have filed the present petition to transfer CC.NO. 119/2015 from the file of the Judicial Magistrate Court No.III, Rasipuram, Namakkal District to any other Court, on the ground that the de facto complainant Chitra and her family members are powerful and that they are preventing the petitioners from going to Court.

9. Heard Mr.V.S.Gurusamy, learned counsel for the petitioners and Mr.C.Emalias, learned Additional Public Prosecutor for the respondent, who submitted that Non-Bailable Warrant is pending against the petitioners.

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

11. The petitioners are ladies and they have alleged that one Sampath, Deputy Superintendent of Police, Prohibition Enforcement Wing, who is said to be a relative of Chitra, is causing harassment to them and on his influence the respondent police are acting.

12. On a reading of the memo of evidence, it is seen that all the prosecution witnesses are in Rasipuram area and the case cannot be transferred from the file of the Judicial Magistrate Court No.III, Rasipuram to any other Court, as that will cause serious inconvenience to the prosecution witnesses.

13. The learned Additional Public Prosecutor submitted that one Jayaraman (A2) in CC. No. 119/2015 along with 4 others, had filed CrI.OP. No. 29088 of 2015 seeking a direction to transfer the case from the file of the Judicial Magistrate Court No.III, Rasipuram, to any other Court, which

was negatived by this Court by order dated 15.12.2015 with the following direction:-

"In view of the above submissions, I am of the opinion that though OP was filed to transfer CC.No. 119/2015 from the file of the Judicial Magistrate, Rasipuram, there is no need to transfer the case in CC. No. 119/2015 pending trial on the file of the Judicial Magistrate, Rasipuram and I feel it appropriate to direct the petitioner to approach the Deputy Superintendent of Police, Rasipuram, if any threat persists and the Deputy Superintendent of Police, Rasipuram is directed to consider the request of the petitioner with regard to providing police protection to him."

14. The learned Additional Public Prosecutor also submitted that the case is posted to 05.10.2016 before the Judicial Magistrate Court III, Rasipuram, Namakkal District.

15. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that this is not a fit case to transfer CC.No. 119 of 2015 out of Rasipuram and it would suffice if certain directions are issued.

16. Accordingly, the petitioners are directed to appear before the trial Court on 05.10.2016 and on their appearance, NBWs issued against them shall be recalled, on they executing a fresh bond for Rs.5,000/- (Rupees five thousand only) each, without sureties under Section 88 Cr.P.C.

17. The Deputy Superintendent of Police, Rasipuram is directed to ensure that sufficient police protection is given to the petitioners, when they appear before the Judicial Magistrate Court No.III, Rasipuram on 05.10.2016.

18. The petitioners shall engage an Advocate of their choice to defend themselves. The petitioners shall appear before the trial Court, on the date of receiving Section 207 Cr.P.C papers, on the date of framing charges, at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment. For the other days, the presence of the petitioners before the trial Court in CC. No. 119 of 2015 is dispensed with, on the petitioners giving an affidavit of undertaking before the trial Court that the Advocate engaged by them will cross-examine the prosecution witnesses on the day they are examined-in-chief and that they will not adopt dilatory tactics. If the petitioners adopt any dilatory tactics, the trial Court can insist on their presence.

18. With the above direction, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad/rts

To

1. The Judicial Magistrate Court No.III,
Rasipuram, Namakkal District.
 - 2.-do- Through The Chief Judicial Magistrate,
Namakkal.
 3. The Inspector of Police,
Rasipuram Police Station,
Namakkal District.
 4. The Deputy Superintendent of Police,
Rasipuram, Namakkal District.
 5. The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr. J. Saraswathi, Advocate Sr.53009

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RJ(CO)
Eu 03.10.16

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