

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.10.2016

DELIVERED ON: 25.10.2016

CORAM:

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

Crl.O.P. No.23216 of 2016 & Crl.M.P. No.10852 of 2016

Muthu @ Patchamuthu

Petitioner

vs.

1 The State represented by
the Inspector of Police
Kumarapalayam Police Station
Namakkal District

2 Veerappan

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to transfer the case in S.C. No.25 of 2003 on the file of the District and Sessions Judge, Namakkal, to some other Sessions Division, Salem, to secure the ends of justice.

For petitioner : Mr. R. Sankarasubbu

For R1 : Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to transfer the case in S.C.No.25 of 2003 on the file of the District and Sessions Court, Namakkal, to some other Sessions Division, Salem, to secure the ends of justice.

2 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mr.C. Emalias, learned Additional Public Prosecutor appearing for the first respondent State.

3 On 10.04.2000, around 8.30 p.m., one Thangavel was murdered, in connection with which, the first respondent police registered a case in Crime No.228 of 2000 and after completing the investigation, filed a final report in S.C. No.25 of 2003 which is now pending on the file of the Additional Sessions Court, Namakkal against Veerappan (A1) and Muthu @ Patchamuthu

(A2), challenging which, Muthu @ Pachamuthu (A2) has filed this Criminal Original Petition seeking the aforestated relief.

4 It may be interesting to extract verbatim, the allegations made by Muthu @ Pachamuthu (A2), the petitioner herein, against the Public Prosecutor in the Trial Court and the Trial Judge.

"3. I submit that I suffered untold sufferings over 16 years and the case could not be prosecuted due to poverty and my criminal case left me in lurch. I pleaded with the Presiding Officer to conduct the case by party in person and I needed time but the Presiding Officer unmindful of my request dated 12.09.2016, returned the petition to file it before property forum. The Presiding Officer is very close to Public Prosecutor. The Public Prosecutor is very close to the owner of a powerloom mill owner Thangavel and on 12.09.2016, the said Thangavel closetted in room of Public Prosecutor and the Public Prosecutor assured to complaint that the accused would be convicted in the above case. The Presiding Officer is rendering judgment on extraneous consideration as the Public Prosecutor assured that the accused would be convicted taking into confidence of the Presiding Officer, who has got many adverse records to his credit. The Presiding Officer would convict me as I am hailing from working class and the complainant is a mill owner and the Public Prosecutor is acting as an agent of the Presiding Officer and my fate is already sealed as the Public Prosecutor assured the complainant that the justice would be purchased from the complainant. Hence, justice suffered in the hands of the Presiding Officer and I strongly apprehend that I will not get fair justice in the hands of Presiding Officer who is very close to Public Prosecutor in turn complainant and powerful complainant purchased Public Prosecutor who would manage to get a favourable judgment in favour of complainant, who is economically sound... ."

5 The learned counsel for the petitioner submitted that the petitioner has lost faith in the Presiding Officer and for securing the ends of justice, the case should be transferred to some other Court, inasmuch as the Presiding Officer has refused to even permit the petitioner to proceed with his case as a party-in-person. He further submitted that this Court should call for a report from the Presiding Officer concerned about the allegations made by the petitioner.

6 Per contra, the learned Additional Public Prosecutor refuted the allegations made by the petitioner and submitted that the offence is of the year 2000 and till 2016, trial has not reached its finality, because, the matter had come once to the High Court and thereafter, it has been remanded.

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

8 The allegation made by the petitioner, which is extracted above, does not inspire the confidence of this Court even for the purpose of calling for a report from the Presiding Officer. The petitioner's allegation that the Presiding Officer is very close to the Public Prosecutor and the Public Prosecutor is close to the complainant and therefore, the petitioner would not get justice, sounds incredible. No material worth the salt has been produced before this Court in support of this allegation. Even assuming for a moment, but, without conceding that the Public Prosecutor, on account of his long practice in the said Court, is close to the Presiding Judge, can an inference be drawn that the Presiding Judge will be biased towards the Public Prosecutor? Will it not militate against Illustration (e) of Section 114 of the Evidence Act which reads as follows?

"That judicial and official acts have been regularly performed."

9 On such reckless allegations, if a report is called for from the Presiding Judge, it will undoubtedly demoralise him. In the considered opinion of this Court, this is yet another attempt by the petitioner to browbeat the Presiding Officer for protracting the trial.

In the result, this Criminal Original Petition is dismissed with a direction to the Presiding Officer to proceed with the trial expeditiously. If the petitioner does not cooperate in the trial, it is open to the police to remand him to custody in the light of the law laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the petitioner absconds, a fresh FIR can be registered against him under Section 229-A IPC. Connected CrI.M.P. is closed.

Sd/-

Asst. Registrar

/ true copy /

Sub Assistant Registrar

cad

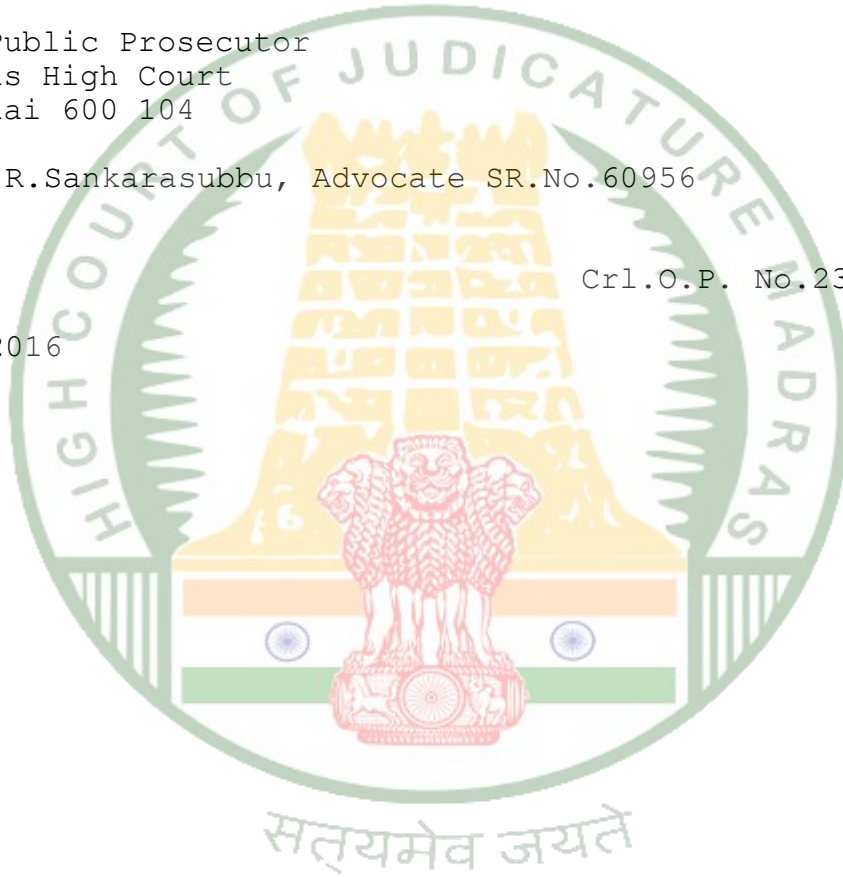
To

- 1 The Inspector of Police
Kumarapalayam Police Station
Namakkal District
- 2 The District and Sessions Judge
Namakkal
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104

1CC to Mr.R.Sankarasubbu, Advocate SR.No.60956

CrI.O.P. No.23216 of 2016

NM(CO)
CS 12/11/2016



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