

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.Nos.5106 to 5108 of 2016
and
Crl.M.P.No.3908 of 2016

J.Rajkumar Petitioner in all Crl.O.Ps.
/Respondent

Vs.

1.Daniel Dhanapaul
2.Deborah
3.State rep. by
The Sub-Inspector of Police
District Crime Branch
Kancheepuram.
Crime No.52 of 2009

... Respondents in all Crl.O.Ps.
/Appellants & Complainants

Prayer:-Criminal Original Petitions are filed under Section 407 Cr.P.C., to withdraw and transfer Crl.A.No.28 of 2015, Crl.R.C.No.7 of 2015 and Crl.A.No.25 of 2015 on the file of the Sessions Court, Kancheepuram to the Principal Sessions Court, Chennai or Tiruvallur.

For Petitioner : Mr.S.Yves Joseph

For R1 and R2 : Mr.S.Udhayakumar

For R3 : Mr.C.Emalias
Additional Public Prosecutor

COMMON ORDER

The petitions are filed to withdraw and transfer Crl.A.No.28 of 2015, Crl.R.C.No.7 of 2015 and Crl.A.No.25 of 2015 on the file of the Sessions Court, Kancheepuram to the Principal Sessions Court, Chennai or Tiruvallur.

2.Learned counsel for the petitioner submits that the petitioner, who is the defacto complainant, has preferred a

complaint and on that basis, a case in Crime No.52 of 2009 has been registered for an offence under Section 420 IPC against the respondents 1 and 2 herein. After investigation, a charge sheet has been filed for the offences under Sections 420, 406, 448, 506(i) and 109 IPC, a case has been taken on file in C.C.No.209 of 2011 and the same was ended in conviction. Against the said conviction, the respondents 1 and 2 have preferred Crl.A.No.25 of 2015, which is pending before the Sessions Court, Kancheepuram. Further, the defacto complainant has filed an application in CMP.No.1853 of 2015 under Section 456 Cr.P.C. to order restoration of possession and also for police protection. The said application was allowed and possession has been given to the petitioner. Challenging the same, the accused have preferred Crl.A.No.28 of 2015 stating that without giving notice to the accused, police aid has been given to the petitioner and the said appeal has been pending. Further, the petitioner has filed a petition in Crl.M.P.No.1933 of 2015 on 10.09.2015 and obtained an order of police protection to break open the lock put up by the accused. Challenging the same, the respondents 1 and 2 have preferred Crl.R.C.No.7 of 2015 before the Sessions Court, Kancheepuram, which is also pending.

3.It is also submitted that when the case was posted on 18.01.2016, the trial Court has ordered for joint trial of Crl.A.No.28 of 2015, Crl.R.C.No.7 of 2015 and Crl.A.No.25 of 2015. The petitioner apprehending that he will not get justice before the Sessions Court, Kancheepuram, has come forward with these petitions for transfer Crl.A.No.28 of 2015, Crl.R.C.No.7 of 2015 and Crl.A.No.25 of 2015 pending on the file of the Sessions Court, Kancheepuram to the file of the Principal Sessions Court, Chennai or Tiruvallur. He further submitted that as per Section 456 Cr.P.C., possession has been taken within 30 days from the date of conviction, if the possession is not taken within 30 days, he ought to file a civil suit. Hence, he prays for transfer.

4.Resisting the same, learned counsel for the respondents 1 and 2 submits that in C.C.No.209 of 2011, the respondents were convicted. Challenging the conviction and sentence passed by the District Munsif-cum-Judicial Magistrate's Court, Sriperumbudur, the respondents 1 and 2 preferred Crl.A.No.25 of 2015, which is pending before the Sessions Court, Kancheepuram. If Crl.A.No.25 of 2015 would be dismissed, Crl.A.No.28 of 2015 and Crl.R.C.No.7 of 2015 also stand dismissed automatically. If Crl.A.No.25 of 2015 would be allowed, Crl.A.No.28 of 2015 and Crl.R.C.No.7 of 2015 also stand allowed automatically. Hence, there is no necessity for transfer these cases and thus he prays for dismissal.

5.Learned Additional Public Prosecutor submits that the trial Court has considered all the aspects in proper

perspective and rightly passed the order for joint trial of Crl.A.No.28 of 2015, Crl.R.C.No.7 of 2015 and Crl.A.No.25 of 2015. Hence, he prays for dismissal.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.On the basis of the complaint lodged by the petitioner/defacto complainant, a case has been registered in Crime No.52 of 2009 for an offence under Section 420 IPC against the respondents 1 and 2 herein. After due investigation, a charge sheet has been filed for the offences under Sections 420, 406, 448, 506(i) and 109 IPC, a case has been taken on file in C.C.No.209 of 2011 and the same was ended in conviction. Challenging the said conviction and sentence, the respondents 1 and 2 have preferred Crl.A.No.25 of 2015, which is pending before the Sessions Court, Kancheepuram. Further, the defacto complainant has filed an application in CMP.No.1853 of 2015 under Section 456 Cr.P.C. to order restoration of possession. The said application was allowed and possession has been given to the petitioner. Challenging the same, the respondents 1 and 2/accused have preferred Crl.A.No.28 of 2015 stating that without giving notice to them, possession has been given to the petitioner and the said appeal has also been pending before the same Court. Further, the petitioner has filed a petition in Crl.M.P.No.1933 of 2015 on 10.09.2015 and obtained an order of police protection to break open the lock put up by the accused. Challenging the same, the respondents 1 and 2 have preferred Crl.R.C.No.7 of 2015 before the Sessions Court, Kancheepuram, which is also pending.

8.The point to be decided is that whether any sufficient cause available for transfer Crl.A.No.28 of 2015, Crl.R.C.No.7 of 2015 and Crl.A.No.25 of 2015 pending on the file of the Sessions Court, Kancheepuram to the file of the Principal Sessions Court, Chennai or Tiruvallur? As already stated that Crl.A.No.25 of 2015 arises out of conviction and sentence passed in C.C.No.209 of 2011. Crl.A.No.28 of 2015 arises out of the order passed under Section 456 Cr.P.C. for taking possession by the petitioner. Crl.R.C.No.7 of 2015 arises out of the order for granting police protection to the petitioner for taking possession, after breaking open the lock. Once Crl.A.No.25 of 2015, which is a consequential relief, is disposed of, Crl.A.No.28 of 2015 and Crl.R.C.No.7 of 2015 are automatically disposed. In such circumstances, I am of the view, merely because the appellate Court has ordered joint trial for argument, it is not a sufficient cause for transfer. So I do not find any reason to allow these petitions. Accordingly, the Criminal Original Petitions stand dismissed. However, a direction is given to the learned Sessions Judge, Kancheepuram, to dispose of Crl.A.No.25 of 2015, Crl.A.No.28

of 2015 and CrI.R.C.No.7 of 2015 within a period of two months from the date of receipt of a copy of this order, after affording fair opportunity to both sides. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Kancheepuram.
- 2.The Sub-Inspector of Police
District Crime Branch
Kancheepuram.
- 3.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.S.Udhayakumar, Advocate, S.R.No.22285

+3cc's to Mr.S.Yves Joseph, Advocate,
S.R.Nos.21472, 21473 & 22104

CrI.O.P.Nos.5106 to 5108 of 2016
and
CrI.M.P.No.3908 of 2016

MSM(CO)
CA(22/04/2016)

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