



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P. (MD) .No.11784 of 2016

C.Pappa

... Petitioner

-vs-

1.The Superintendent of Police,
Kanyakumari District,
at Nagercoil.

2.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 407 of Cr.P.C. praying to Transfer the case in C.C.No.231 of 2015 on the file of the Learned Judicial Magistrate No.I, Kuzhithurai to the Learned Judicial Magistrate, Valliyoor.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.A.P.Balasubramani,
Govt. Advocate (Crl.Side)

O R D E R

The petitioner herein is the defacto complainant. This petition has been filed praying to transfer the case in C.C.No.231 of 2015 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai to the file of the learned Judicial Magistrate, Valliyoor.

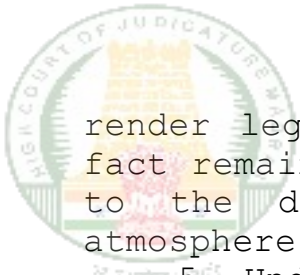
2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondents.

3.The second respondent has filed a charge sheet against the accused persons under Sections 447, 448, 323, 324 and 506(ii) IPC, which has been taken on file by the Judicial Magistrate No.I, Kuzhithurai in C.C.No.231 of 2015.

4.It is represented by the learned counsel for the petitioner that the first accused is a practising Advocate in Judicial Magistrate No.I, Kuzhithurai and as he is a member of the same bar, the other Advocates have refrained from entering appearance on behalf of the defacto complainant. The learned counsel also represented that there is also a resolution by the Bar Association stating that no Advocate should appear on behalf of the petitioner herein and there is a threat in the Court campus itself by the first accused.

<https://hcservices.ecourts.gov.in/hcservices/>

4.1. No material has been produced to show that resolution has been passed by the Bar Association, stating that they will not



render legal assistance to the defacto complainant. However, the fact remains that there is an allegation regarding physical threat to the defacto complainant and that there is no conducive atmosphere for her to get along with the trial.

5. Under normal circumstances, an Advocate is bound to accept any brief in the Court or tribunal or before any other authority in or before which the Lawyer proposes to practise, unless special circumstances justify his refusal to accept a particular brief. In the absence of copy of the resolution being produced, it is not proper to make any comments on that issue.

6. Fair trial requires that there must be a free atmosphere, i.e. freedom from fear and a satisfaction that there was full opportunity for the defacto complainant to present her evidence or evidence on her behalf to the Court. When that is alleged to be lacking, it is proper that the case must be transferred. These allegations regarding the charged atmosphere so far as the case of the defacto complainant is concerned, is not disputed by the other side.

7. Since the 1st accused is stated to be a practising lawyer, the Court before which the case is transferred may be liberal in allowing petition seeking to condone his absence and unless the presence of the 1st accused is indispensable, the Court need not insist upon the personal presence of the 1st accused. This indulgence will take care of the interest of the 1st accused.

8. Under such circumstances, C.C.No.231 of 2015 is ordered to be withdrawn from the file of the Judicial Magistrate No.I, Kuzhithurai and transferred to the file of the Judicial Magistrate, Valliyoor, with the aforesaid observation.

In the result, this Criminal Original Petition is ordered accordingly. Connected CrI.M.P.(MD)5643 of 2016 is closed.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To:

- 1.The Judicial Magistrate No.I Kuzhithurai.
- 2.The Judicial Magistrate, Valliyoor.
- 3.The Superintendent of Police,
Kanyakumari District at Nagercoil.
- 4.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.S.C.HEROLD SINGH,ADVOCATE SR.NO. 37204

<https://hccas.mca.gov.in/2016/2P:7C>

CrI.O.P(MD) No.11784 of 2016