

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 12.08.2016****CORAM:****THE HONOURABLE DR.JUSTICE P.DEVADASS****Crl.O.P. (MD) No.14616 of 2016****and****Crl.M.P.(MD) No.6853 of 2016**

Viswam

... Petitioner / Accused

vs.

State, rep.by

The Inspector of Police

Vigilance and Anti-Corruption

Sivagangai

(Crime No.4 of 2007)

... Respondent / Complainant

PRAYER : Petition is filed under Section 407 Cr.P.C., to withdraw and transfer C.C.No.29 of 2014, pending on the file of learned Special Court under Prevention of Corruption Act, Sivagangai, to the file of the learned Special Court under Prevention of Corruption Act, Chennai.

For Petitioner : Mr.M.Saravana Kumar

For Respondent : Mr.P.Kandasamy,

Government Advocate(Crl.Side)

O R D E R

Viswam / sole accused in C.C.No.29 of 2014, on the file of the learned Special Judge under Prevention of Corruption Act, Sivagangai, seeks transfer of the said Calender Case from Sivagangai to any other Court under the Prevention of Corruption Act in Chennai.

2. The petitioner is being prosecuted in the said case before the said Court for his alleged commission of certain offences under the said Act.

3. According to the learned counsel for the petitioner, the petitioner is aged, now he is in Poonamallee near Chennai, for every hearing he is travelling for about 1000 kms., to attend the hearing in the said Court in Sivagangai, which causes him much mental agony, expenses and hardship. He is not interested in drag on the proceedings. He is ready to participate in the trial proceedings. Only on account of the inconvenience, he seeks



transfer of the case from the Court in Sivagangai to a Court in Chennai.

4. On the other hand, the learned Government Advocate (Criminal Side) submitted that the case has become part-heard. Some witnesses have been examined. Some more witnesses are going to be produced in the next hearing date. No valid and acceptable reason has been given for transfer of the case. In such circumstances, his plea for transfer need not be accepted.

5. I have anxiously considered the rival submissions and perused the averments in the affidavit filed by the petitioner.

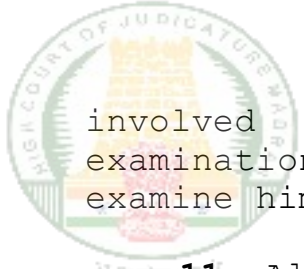
6. The petitioner is accused of having committed a white-collar offence, while he was serving in a place and now the case is being tried before the learned Special Judge under the Prevention of Corruption Act @ Sivagangai. The case has become part-heard.

7. So far as a transfer plea is concerned, valid and acceptable reasons have to be demonstrated. In the present case, transfer is sought for on the ground of inconvenience of the petitioner on account of his age as well as his present place of residence.

8. Of course, it is quite natural in the present set up, he has to undergo some inconvenience. But, the Court has to see whether by this his defence is prejudiced. He has engaged a counsel to defend himself. Except the stated inconvenience, there is no bottleneck for defending himself as against the charges levelled against him. On account of the said inconvenience, we cannot transfer the case, because it does not appear to be a valid ground.

9. But, at the same time, it is to be noted that the petitioner is now not in service. He is not an young man. He is an old man. But, case is there. He has to face it. After having out of service, he has become out of mind of others. In such circumstances, it is quite natural he has to undergo some agony. It will be unavoidable one. But, there are ample provisions in the Code of Criminal Procedure, which will enable him to escape from such kind of inconveniences.

10. Trial must go. But, at the same time, his inconvenience to extent possible must also go. Therefore, he can file a petition before the learned Special Judge for dispensing with his personal appearance when really his attendance is not required. If such a petition is filed, the learned Special Judge can liberally consider it. However, there is no bar on the part of the learned Special Judge to direct him to attend the Court for any 'effective hearing date' that is to say, when his identity is



involved (in a corruption case it is very rare), for his examination under Section 313 Cr.P.C., incase need arises to examine him under Section 248 Cr.P.C., for hearing the Judgment.

11. Although he is involved in a corruption case, it is also a criminal case. When his presence is really not necessary for making progress in the case, why should we trouble him. Therefore, we are of the view that when the case is posted only for ordinary hearing, even for examination of witnesses when his counsel is present, why we should trouble the accused. These considerations shall weigh in the mind of the learned Special Judge when a petition is filed for dispensing with his personal appearance.

12. In the circumstances, this criminal original petition is dismissed with the above observations and liberty. Consequently, connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Special Judge,
under Prevention of Corruption Act,
@ Sivagangai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Inspector of Police,
Vigilance and Anti-Corruption,
Sivagangai.

4.The Special Judge,
under Prevention of Corruption Act,
Chennai.

+1 CC to Mr.M.SARAVANA KUMAR, Advocate, SR No.44397

Cr1.O.P. (MD) No.14616 of 2016
and

Cr1.M.P.(MD) No.6853 of 2016
12.08.2016