



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD)No.1898 of 2016

and

Crl.M.P. (MD)No.983 of 2016

Bose

..Petitioner

Vs

The State represented by
The Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.
Crime NO.358 of 2009.

..Respondent

Prayer:- Criminal Original Petition filed under Section 407 Cr.P.C., to withdraw case in S.C.No.56 of 2012 on the file of the learned Additional District Sessions Court (Mahila Neethi Mandram), Madurai and transfer the same to any other Court near by Madurai District.

For Petitioner :Mr.R.Karunanithi
For Respondent :Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

O R D E R

This petition has been filed to withdraw case in S.C.No.56 of 2012 on the file of the learned Additional District Sessions Court (Mahila Neethi Mandram), Madurai and transfer the same to any other Court near by Madurai District.

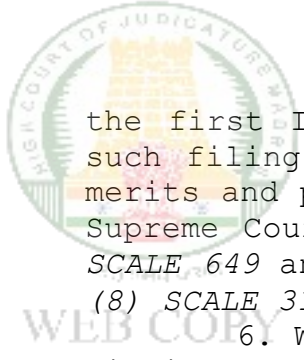
2. When the matter was taken up for hearing, the learned Additional Public Prosecutor submitted that the trial in this case is almost completed and only the Investigating Officer has to be examined.

3. While so, the learned Counsel appearing for the petitioner submitted that two of the prosecution witnesses were examined in the absence of the Senior Counsel, even though the Junior Counsel was asking for adjournment and therefore, the trial Judge prejudices against the accused and hence, he sought transfer of the case.

4. Section 309(b) of the Code of Criminal Procedure Code reads as follows:

"309(2) (b): the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

5. In view of the above, the trial Court cannot be faulted for getting along with the examination of witnesses in the absence of Senior Counsel and on that ground, the transfer cannot be ordered. However, it is open to the petitioner to file an application under Section 311 of the Code of Criminal Procedure, if he has not properly cross-examined the said two witnesses viz., the District Revenue Officer - 19th witness and



the first Investigating Officer - 20th witness on payment of costs. On such filing of the petition, the trial Court shall consider the same on merits and pass orders in accordance with law laid down by the Honourable Supreme Court in *AG Vs. Shir Kumar Yadav and Others* reported in 2015(9) SCALE 649 and in *Rajaram Prasad Yadav Vs. State of Bihar* reported in 2013 (8) SCALE 316.

6. With the above observations, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS)

To

1. The learned Additional District Sessions Court
(Mahila Neethi Mandram), Madurai.

2.The Inspector of Police, Nagamalai Pudukottai Police Station,
Madurai District.

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

+1cc to M/s.R.Karunanithi, Advocate in SR.6645

Cr1.O.P. (MD) No.1898 of 2016
03.02.2016

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