



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2016

CORAM

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

Crl.O.P.(MD) No.3118 of 2016

Murugan

... Petitioner/Single Accused

-vs-

State represented by
The Inspector of Police,
Mootradaippu Police Station,
Tirunelveli District

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to withdraw the case in S.C.No.10/2013 on the file of the IV Additional Sessions Judge, Tirunelveli and transfer the same to any other competent court in other district.

For Petitioner : Mr.N.Mohideen Basha

For Respondent : Mrs.S.Prabha

Govt. Advocate (Crl. side)

ORDER

This petition has been filed seeking to withdraw the case in S.C.No.10/2013 on the file of the IV Additional Sessions Judge, Tirunelveli and transfer the same to any other competent court in other district.

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

3. The respondent police registered a case under Section 302 IPC in connection with an incident that took place on 02.09.2010 and after completing the investigation, filed a final report before the concerned Magistrate. The case was committed to the Court of Sessions in S.C.No.10 of 2013 and trial was taken up before the IV Additional Sessions Judge, Tirunelveli. It appears that the incident had taken place in this case on 02.09.2010 and in the final report that was filed by the police, the date of actual murder is written as 03.09.2010 instead of 02.09.2010. Based on this, mechanically the Sessions Court appears to have framed a charge by noting the date of murder as 03.09.2010, which was not noticed by any one, at that point of time. In fact, the Sessions Court should have followed the procedure adumbrated under Sections 225, 226 and 227 of the Code of Criminal Procedure before framing charges by calling upon the Public Prosecutor to open the case and state as to how he proposes to prove the charges against the accused. This exercise is not being done in our Courts and the charges are framed merely on the basis of the averments found in the final report of the police.



4. Be that as it may, the prosecution examined 13 witnesses including two eye witnesses, namely, P.Ws.1 and 2, who are none other than the wife and brother-in-law of the deceased, respectively. P.W.1 in her chief examination has clearly stated that the incident had taken place on 02.09.2010, as could be seen from her deposition. After the examination of the Investigating Officer, the learned Judge seems to have noted that the date in the charge has been erroneously stated as 03.09.2010. Therefore, he corrected the date as 02.09.2010. Such a correction cannot be said to be faulted and it will also not fall within the meaning of Section 216 of the Code of Criminal Procedure, because Section 216 of the Code deals with alteration of charges and not alteration of a particular fact in a charge. However, since the typographical error that was not noticed in the final report, which has crept in the charges framed by the Court, the trial Court deemed it fit to alter the date from 03.09.2010 to 02.09.2010. This cannot be faulted because, it has caused no prejudice to the case inasmuch as all the witnesses have uniformly stated that the incident had taken place on 02.09.2010. However, the learned Judge has permitted the defence to recall P.Ws.1 and 2 for further cross examination under Section 217 of the Code of Criminal Procedure.

5. Mr.N.Mohideen Basha, learned counsel, submitted that during the cross examination, when a particular suggestion was put to P.W.2, the learned Judge is said to have intervened and reminded the witness as to what he had stated in the earlier deposition.

6. In the considered opinion of this Court, the trial Court need not have even recalled the witness under Section 217 Cr.P.C. because, the charges were not altered as stated above, but only the date, which has erroneously noted in the charge, was altered. The Hon'ble Supreme Court in **Ranbir Yadav v. State of Bihar** reported in **1995 (4) SCC 392** has stated that in every case of alteration of charge, it is not necessary that the witnesses have to be recalled. That apart, the grievance that is complained of by Mr.N.Mohideen Basha, learned counsel for the petitioner, is not that serious, inasmuch as the substratum of evidence of P.W.2, who had given evidence twice before the Court, has not in any way been destroyed. This Court cannot countenance the allegations made against the Presiding Officer. A trial Judge today is in an unenviable position. In fact, the trial Court was very fair enough in recalling the witness under Section 217 Cr.P.C. and permitting the defence to cross examine the witnesses.

7. In the result, there is no merit in the petition. Accordingly, this petition is dismissed. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

/True Copy/



To

1. The Inspector of Police,
Mootradaippu Police Station,
Tirunelveli District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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TE/SKS-RR/ : 11/03/2016 : 3P/3C

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