

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2016

PRONOUNCED ON : 08.03.2017

C O R A M :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CrI.O.P.No. 16028 of 2016

and CrI.M.P. 7835 of 2016

Smt. Sulo C. Daniel

... Petitioner

Vs.

1. The State represented by Inspector of Police
Central Bureau of Investigation and
Shastri Bhavan, Chennai – 6.

2. Dr. Paulson Yesudian

... Respondents

PRAYER : Petition is filed under Section 407 r/w. 482 of Cr.PC to
withdraw and transfer CC.No. 2 of 2008 on the file of the Chief Judicial
Magistrate, Coimbatore to any Court in and around Chennai.

For Petitioner : Mr.R. Shanmugasundaram, Sr.Counsel
for Ms. S. Buvaneswari.

For Respondents : Mr.K. Srinivasan, Spl.PP for CBI – R1
Ms. V. Revathy for R2 – No appearance

O R D E R

The Criminal petition is filed to withdraw and transfer the C.C.No 2 of 2008 pending on the file of the Chief Judicial Magistrate, Coimbatore to any Court in and around Chennai.

2. The case of the petitioner is that CBI has filed charge sheet against the petitioner and one Dr. Paulson Yesudian/A1 under Section 120 B r/w 406 IPC and Section 23(1) and 25 r/w. Section 4, 6 and 13 of the Foreign Contribution Regulation Act, 1976. The petitioner filed discharge petition in CMP.No.186 of 2009 in C.C.No. 2008 to discharge her from the charges, the same was dismissed by the learned Chief Judicial Magistrate, Coimbatore on 11.10.2010. Aggrieved against the said order of dismissal, the petitioner preferred CrI.RC.No. 1326 of 2010 before this Court, the said revision was also dismissed by this court by an order dated 06.02.2017. During the pendency of the criminal revision, the trial court issued NBW against the petitioner, against the said order CrI.OP.No. 14037 of 2016 was filed to recall the said warrant. This Court, by an order dated 05.07.2016,

pleased to allow the petition and the NBW was recalled and adjourned the case to 20.07.2016. On 20.07.2016, the trial court once again issued NBW against the petitioner in a vindictive manner and with no valid reason. It is further stated that the trial judge is biased in conducting the case and the petitioner is apprehended in getting fair and reasonable justice. The case records relating to the CC.No. 2 of 2008 along with 12 files and 3 books were sent to this Court and the trial judge ought not to have proceed with the further proceedings of the case.

3. It is further stated that the petitioner settled at Chennai and the other accused are not residing at Coimbatore. Furthermore, the registered office of “ Reach in the Nilgiris”, the Society where the alleged offence took place is at Tambaram. The contributions received through the Bank is also at Tambaram and 7 out of 16 prosecution witnesses are also residing at Chennai, hence, there is a valid reason for transferring the CC.No.2 of 2008 on the file of the Chief Judicial Magistrate, Coimbatore.

4. It is averred in the counter that the Chief Judicial Magistrate,

Coimbatore had rightly issued the NBW against the petitioner/A2 for the second time, neither the petitioner nor her counsel appeared before the trial Court on the said date of hearing nor ie, 20.07.2016. The Chief Judicial Magistrate, Coimbatore is the jurisdictional Court as M/s. Reach in the Nilgiris, the Society where the foreign contributions are diverted not for the benefit of the Society, the functioning of the Society at Ottupattarai, Coonoor, Nilgiris, Tamil Nadu. The cause of the action arose at Nilgiris, from there the funds were diverted and the contentions raised by the petitioner cannot be accepted and prays for dismissal of the petition.

5. Heard the rival submissions made on both sides and perused the records.

6. Admittedly, the C.C.No. 2 of 2008 is pending on the file of the Chief Judicial Magistrate, Coimbatore and the petitioner is one of the accused. The discharge petition filed by the petitioner and the other accused was dismissed by the trial Court on 11.10.2010. Against the said order, the petitioner and co – accused preferred Crl.RC.No. 1326 and 1179

of 2010, this Court by an order dated: 06.02.2017 dismissed both the revision petitions. The cause of action arose at Nilgiris, merely because the accused and few witnesses are residing in Chennai, the above said CC can not be transferred to Chennai.

7. The learned counsel for the petitioner in support of his contention relied on the following judgments.

1. (1996) 2 SCR 678 – Gurcharan Dass Chadha v

State of Rajasthan.

2. (2012) 5 SCC 706 – Mrudul M. Damle and

**another v. Central Bureau of Investigation, New
Delhil.**

3. Order of this Court date 31.08.2009 in

CrI.Op.No. 12726 of 2009 etc batch - M.

**Gopalakrishnan and others v. The Inspector of
Police, CBI/ACB/Chennai.**

8. Insofar as the authorities submitted by the learned counsel for the petitioner, where the majority of the witnesses are away from the State and ordered transfer of case. Whereas in the case on hand, except one witnesses all the other witnesses belong to State of Tamil Nadu and some of the witnesses are in and around the District of Coimbatore and only one witness is from Delhi. Therefore, the authorities cited by the petitioner is not applicable to the present case on hand.

9. Earlier, this Court has dispensed with the personal appearance of the petitioner in CMP.No.7835 of 2016 on 19.08.2016 and directed to appear the petitioner before the trial Court as and when required. Once, the personal appearance of the accused is dispensed with, for all the hearings the appearance of the accused is not required except the compelling circumstances like for framing of charges, proceedings under Section 313 and question of sentence. Since, because the trial court issued NBW against the petitioner, it cannot be said that the Chief Judicial Magistrate issued NBW in a vindictive manner and is biased in conducting case. Mere apprehension is not sufficient for ordering transfer, unless

some valid material are being shown. The petitioner has not made out any special circumstances warranting for transfer of the case from Coimbatore to Chennai, hence, the petition is liable to be dismissed and the same is hereby dismissed.

10. In fine, the criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

08.03.2017

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Index: Yes/No

Internet: Yes/No

To

The Chief Judicial Magistrate, Coimbatore.

The Special Public Prosecutor, CBI Cases, High Court, Madras.

P. VELMURUGAN, J.
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Pre – Delivery order in
CrI.O P.No.16028 of 2016.

08.03.2017

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