

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-12-2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Crl.OP.No.5601 of 2013 and
M.P.Nos.1 and 2 of 2013

E.Subbu Muthuramalingam
S/o.P.Essakimuthu, Advocate,
17C, Masilamanipuram 2nd Street,
Tuticorin, Tuticorin District. ... PETITIONER

Vs

1.The Superintendent of Police,
Tuticorin District, Tuticorin.

2.The Inspector of Police,
All Women Police Station,
Tiruchendur, Tuticorin District.

3.Soundararaj

4.Jebastin Christopher

5.Udayabalan Jebaseelan ... RESPONDENTS

Criminal Original Petition filed under Article 482 of Criminal Procedure Code to withdraw the case in S.C.No.226 of 2011 pending on the file of the learned learned Principal District and Sessions Court, Tuticorin and transfer the same to the file of the learned learned Principal District and Sessions Judge, Krishnagiri.

For Petitioner : Mr.T.Mohan
for Ms.D.Geetha

For Respondents: Mr.R.Ravichandran,
Government Advocate (Crl. side)

ORDER

The guardians are said to have turned as monsters by abusing orphan children sexually, who took asylum under them. The facts of the case would reveal that the accused are running an orphanage, accommodating orphan, poor children in Tuticorin. Based on specific information, the District Collector directed the Social Welfare Officer to inquire about the sexual assault and harassment of the children in the orphanage, which is

unapproved and unlicensed. After enquiry, the Social Welfare Officer lodged a complaint on 25.09.2010, by getting complaint from one of the child victims and statements of victims were recorded by the learned Judicial Magistrate II, Tuticorin u/s.164 Cr.P.C on 11.10.2010. The Second respondent/Inspector of Police, Tiruchendur Police station examined, as many as 50 witnesses and after investigation filed final report on 15.12.2010 before the learned Judicial Magistrate, Sathankulam and the same was taken on file as PRC.No.1/2011.

2.After that the case was committed to the Principal District and Sessions Court, Tuticorin, which is designated as competent Court to try offences against children. On 28.09.2011, the Principal Sessions Court took over the case on its file as SC.No.226/2011. However, the learned Principal District and Sessions Judge, transferred the case to the learned Assistant Sessions Judge on 16.07.2012. The accused appeared before the Court on 26.07.2012, charges were framed on 16.08.2012 and summons were issued to the witnesses.

3.On 08.11.2012, PW1 was examined in part. On 14.12.2012, L.W.2 to L.W.10 were examined and 9 other witnesses were produced without summons and they were also examined. On 11.01.2013, all the witnesses upto L.W.32 were examined. On representation to the 1st respondent on 09.01.2013, the learned Principal District and Sessions Judge passed an order to withdraw the case. The learned Principal District and Sessions judge on 04.02.2013 framed charges and posted the case to 02.03.2013 for trial and issued summons to PW1 to PW5. At this stage only, the petitioner who is an activist Advocate has approached this Court by way of filing transfer petition to transfer the case from Tuticorin to Krishnagiri Court, where most of the witnesses namely victims are residing.

4.Mr.T.Mohan, learned Counsel appearing for the petitioner would submit that as per Sec.23 of the Commission for Protection of Child Rights Act 2005, notified Courts alone would have jurisdiction to try offences against children, one such notified Court is Tuticorin Principal Sessions Court, whereas without any regard to such provision, the learned Principal District and Sessions Judge transferred the case to the Assistant Sessions Court, which has got no jurisdiction to try the case. Therefore, he would submit that right from the framing of charges, the entire proceedings are vitiated. Further, he would submit that the case needs to be transferred to Krishnagiri, where most of the witnesses are residing. Apart from that, some other witnesses are also living near Krishnagiri. Therefore, he seeks to transfer the above case.

5.Mr.R.Ravichandran, learned Government Advocate (Crl. Side) would submit that the case has been re-transferred to the Sessions Court. Moreover, a new Principal Judge has been posted. Therefore, the case could remain with the Tuticorin Court.

6.Heard learned counsel for the parties and perused the records.

7.From the facts narrated above, it is seen that the offences have been committed on the children, while they were in the orphanage run by the accused. Offences u/s.376, 377, 506 (ii), r/w Sec.511, 342, 354, 370 of IPC and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act 2002 and Section 23 of Juvenile Justice Care and Protection Children Act 2000 have been registered against the accused. The 2nd respondent after enquiry filed the complaint and final report has been filed before the learned Judicial Magistrate, Sathankulam and thereafter it was committed to Principal District and Sessions Court, Tuticorin. By transferring it to learned Assistant Sessions Judge, the learned Principal District and Sessions Judge committed a grave error. Before the Assistant Sessions Court, charges were framed, witnesses from L.W.2 to L.W.10, PW1 and 9 other witnesses were examined. Subsequently, upto L.W.32 was also examined. On 09.01.2013, the petitioner sent a representation to the Hon'ble Chief Justice and thereafter only the learned Principal Sessions Judge, realising the error, withdrew the case on 11.01.2013. He re-framed the charges and posted the case on 02.03.2013 for trial and issued summons to PW1 to PW5. At that stage only, the petitioner filed this transfer petition on 25.02.2013.

8.From the facts narrated above, it is very clear that the Assistant Sessions Court had examined L.W.2 to L.W.10, PW1, upto L.W.32 and 9 other witnesses were examined without issuance of summons. There are allegations against the Public Prosecutor. That apart, the child witnesses were examined in open Court, contrary to procedure of in-camera proceedings. The above facts would go to show that the proceedings before the Tuticorin Court was not at all done according to law. The victim witnesses, namely, children, were examined in open Court, which is prohibited. The victims, who are children, are vulnerable witnesses and the offences said to have been committed against them are sexual offences. The witnesses would feel very delicate to state the facts in open Court, where the third parties would be witnessing the proceedings. Therefore, it is appropriate even in the absence of any provision for in-camera proceedings to have the examination of the child victims only through in-camera proceedings. This is a basic procedure to be

followed by the Judicial Officer, which has not been followed. Therefore, the Court at Tuticorin would not be conducive for having a fair trial.

9. That apart, as rightly pointed out by Mr. T. Mohan, learned counsel for the petitioner that the witnesses L.W.1, L.W.3 to L.W.8, L.W.18 to L.W.20, L.W.22 and L.W.33 are all residing in Hosur. L.W.2 and L.W.16 are located in Avadi, Chennai, L.W.11 is residing at Tiruchengode. Except a few witnesses in Tuticorin and Tirunelveli, others are residing only in and around Krishnagiri. Therefore, it is appropriate to have the trial in Krishnagiri District Court, which is also a notified Court.

10. In view of the above reasoning, the charges framed by learned Principal District and Sessions Court, Tuticorin, are set aside and the matter is transferred to learned Principal Sessions Judge, Krishnagiri, where the learned Principal Sessions Judge, Krishnagiri shall frame charges for a de novo trial. The trial Court is directed to conduct the trial and complete the same as expeditiously as possible on or before 30.04.2018.

11. The observations and reasons given in this order is only for the purpose of ordering this case and do not have any bearing on the merits of the case. With the above direction this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District and Sessions Court,
Tuticorin.

2. The Principal District and Sessions Court,
Krishnagiri.

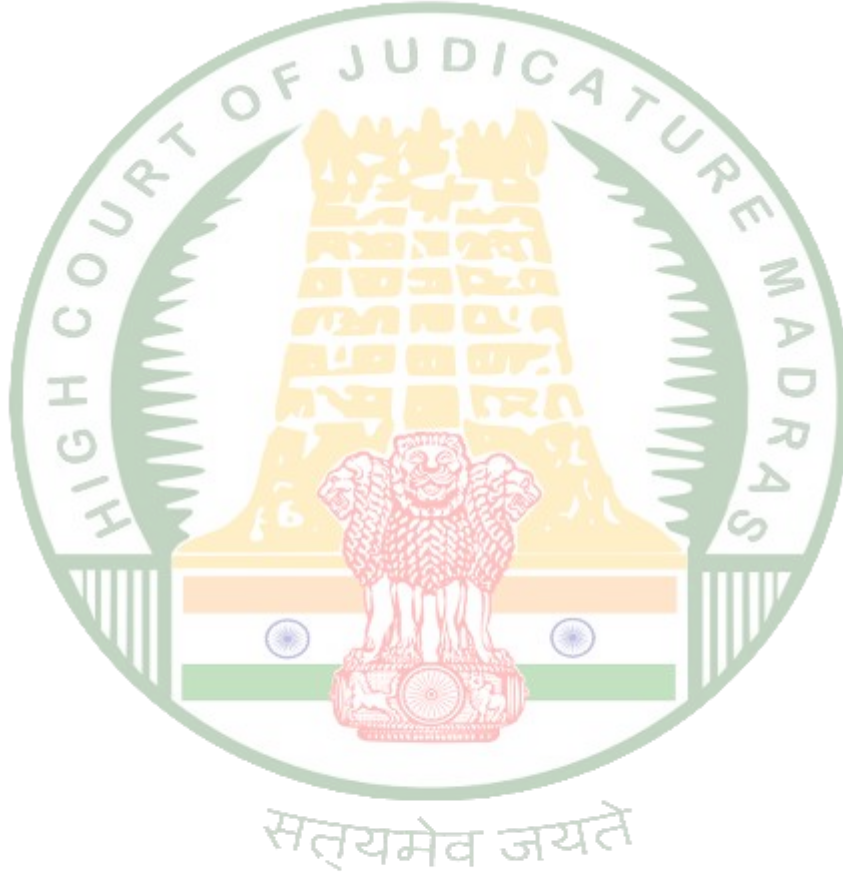
3. The Superintendent of Police,
Tuticorin District,
Tuticorin.

4.The Inspector of Police,
All Women Police Station,
Tiruchendur,
Tuticorin District.

+1 CC to Ms.D. Geetha, Advocate sr 88257.
+1 CC to Mr.R. Ganeshkuamr, advocate sr 89728.

Cr1.OP.No.5601 of 2013

SP(11/01/2018)



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