

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.26289 of 2016

and

CRL.M.P.No.13099 of 2016

1. Dr.R.Radhakrishnan

2.Smt.Amirtha Sanjivi

... Petitioners

Vs.

State represented by
Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.
(Crime No.15/2009)

... Respondent

Prayer : Criminal Original Petition is filed under Section 407 r/w 482 Cr.P.C. to withdraw the Spl. C.C.No.9 of 2013, on the file of the Special Judge, Prevention of Corruption Act(Chief Judicial Magistrate), Coimbatore and transfer the same to the file of any other Court of District Judge.

For Petitioners : Mr.M.L.Ramesh

For Respondent : Mr.E.Raja
Additional Public Prosecutor

ORDER

Invoking the provisions of Section 407 r/w. Section 482 Cr.P.C., this petition is filed by the petitioners to

withdraw the Spl.C.C.No.9 of 2013, from the file of the learned Special Judge, Prevention of Corruption Act (Chief Judicial Magistrate), Coimbatore and transfer the same to any other Court having competent jurisdiction for the disposal of the petition in accordance with the manner known to law.

2. The petitioners have been facing the charges under Section 109 I.P.C. r/w. 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988 in Spl.C.C.No.9 of 2013, pending on the file of the learned Special Judge, for trying corruption cases (Chief Judicial Magistrate), Coimbatore. It is alleged that against the order of suspension passed against the 1st petitioner, he had filed a Writ Petition before this Court. That writ petition was disposed of as against the 1st petitioner. Challenging the order passed in the writ petition, he had filed an appeal before the Division Bench of this Court. While disposing the said appeal, the Division Bench had directed the trial court to complete the trial of the case in C.C.No.10 of 2012 within a specified period. Since the Trial Court did not complete the trial within the stipulated time, it ought to have sought an extension of time from this Court. But, the learned trial judge had not got extension of time from this

Court. In the interregnum, the 1st petitioner was not able to appear before the trial court and therefore, a Non-Bailable Warrant was issued. This was questioned by the 1st petitioner before the trial court about the validity of issuance of non-bailable warrant and on account of this reason, there was heated argument between the Presiding Officer and the 1st petitioner while he was arrested.

3. The trial in C.C.No.10 of 2012 was completed and subsequently, the 1st petitioner being the accused in C.C.No.10 of 2012 was convicted. Against which, an appeal is pending in CrI.A.No.771 of 2016. Under this circumstance, the 1st petitioner has filed two contempt petitions in Cont.P.Nos.1485 and 1495 of 2016 before this Court as against the trial Judge for not having complied with the direction of this Court. Fortunately or unfortunately, the contempt petitions are still pending.

4. Now, the petitioners have stated in the petition that the Presiding Officer, at present, may try the trial case as against the 1st petitioner and therefore, even in the present case, the Presiding Officer is showing in different attitude against him, while attending the Court. Therefore, he happened to engage another counsel, as the

trial court had not given sufficient time to go through the voluminous document.

5. It is understood that the case stood posted on 24.11.2016 for examination of witnesses. Under this circumstance, the petitioners have come forward with this petition to withdraw the above said case in Spl.C.C.No.9 of 2013 from the file of the learned Special Judge, Prevention of Corruption Act (Chief Judicial Magistrate), Coimbatore and transfer the same to some other Court, having competent jurisdiction to try the case.

6. Heard Mr.M.L.Ramesh, learned counsel for the petitioners and Mr.E.Raja, learned Additional Public Prosecutor for the respondent/Police and perused the grounds of this petition and other relevant records along with the counter filed by the respondent.

7. It is understood that no specific allegation is made out as against the petitioner as argued by Mr.M.L.Ramesh, learned counsel for the petitioners. The 1st petitioner is having apprehension in his mind that he cannot get fair justice at the hands of the Presiding Officer. In this connection, a report was called for from

the learned Trial Judge, wherein, he has stated that the previous Presiding Officer, who was presiding over the Court had voluntarily written a letter in D.No.217 of 2015 dated 06.10.2015 to transfer the case in Spl.C.C.No.9 of 2013 from his file as he happened to record the statement of witnesses under Section 164(1) Cr.P.C. Subsequently, he was transferred and the present Officer viz., Chief Judicial Magistrate has been placed in additional in-charge by the order of this Court and subsequently, a special power was conferred on him by the proceedings of this Court in R.O.C.No.14/2016/Con.B.2 under Notification No.115/2016 dated 11.08.2016.

8. Now, under this circumstance, it is understood that when the case stood posted for trial, both the petitioners had been absenting to attend the trial from 15.03.2016 to 25.07.2016 (i.e.,) for nearly 10 hearings and therefore, a non-bailable warrant was issued against both the accused. Thereafter, the 1st petitioner was arrested and produced before the trial court and later he was enlarged on bail by the order of this Court dated 12.01.2017. Subsequently, the 2nd petitioner had surrendered before the Special Court along with the order of this Court in CrI.O.P.No.19304 of 2016 dated 19.09.2016 and subsequently, warrant as against

her was also recalled by the learned Special Judge.

9. It is also brought to the notice of this Court that the connected case in Spl.C.C.No.10 of 2012 was disposed of by the Special Court on 05.11.2016. Under this circumstance, it is revealed from the counter statement filed by the respondent/Police that no adequate ground is made out for withdrawal and transfer of the Special Case as requested by the petitioners.

10. Mr.M.L.Ramesh, learned counsel for the petitioners, in support of his argument has placed reliance upon the decision of this Court in **M.Gopalakrishnan and Others v. Inspector of Police, CBI/ACB/Chennai and Others** reported in **(2009) 4 MLJ (Cr1)1088** wherein, paragraph No.21 is relevant which is extracted as under:

"27. The petitioners have come forward with these petitions seeking transfer of the cases pending before the XI Additional Sessions Judge (Special Judge for CBI cases) on the ground that they reasonably apprehend denial of impartial and fair trial as they believe the trial judge to be biased against them. The petitioners have cited the fact that they were convicted in a similar case, namely

C.C.No.66/2001 and sentenced them to undergo seven years rigorous imprisonment for each one of the charges framed against them in the said case besides imposing a fine of Rs.80,00,000/- (at the rate of Rs.10,00,000/- per charge) on each one of the convicted persons in the said case as a ground for their belief that the trial judge is biased against them. The fact that in a previous case, the accused were convicted by the trial Court alone shall not be the ground on which they can seek a transfer of the case from the said Court stating that they have reasonable apprehension that the judge, who had already taken a view in the former case, would be prejudiced against them or would be not in a position to consider the case in an unbiased manner. If such a contention is accepted, then a person having a number of cases shall have to be either tried simultaneously or in different Courts. But, there must be clear averments to the effect that there are reasonable grounds for entertaining an apprehension that there won't be fair and impartial trial.'

11. It is to be noted that in 4th line from the bottom in paragraph 27 of the above cited judgment, a learned Single Judge of this Court has observed that ''But, there must be clear averments to the effect that there are

reasonable grounds for entertaining an apprehension that there won't be fair and impartial justice''. Even Sub-section 6 of Section 407 of Cr.P.C., envisages that :

''Where the application is for the transfer of a case of appeal from any subordinate court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate court shall be stayed, on such terms as the High Court may think fit to impose''

12. On coming to the instant case on hand, this Court does not see any satisfactory reason for the withdrawal of the above said case. Therefore, this Court feels that this petition is devoid of any merits.

13. In the result, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

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Index: Yes / No

Internet : Yes / No

ssn

To

1. The Special Judge,
Prevention of Corruption Act,
(Chief Judicial Magistrate),
Coimbatore

2. The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.

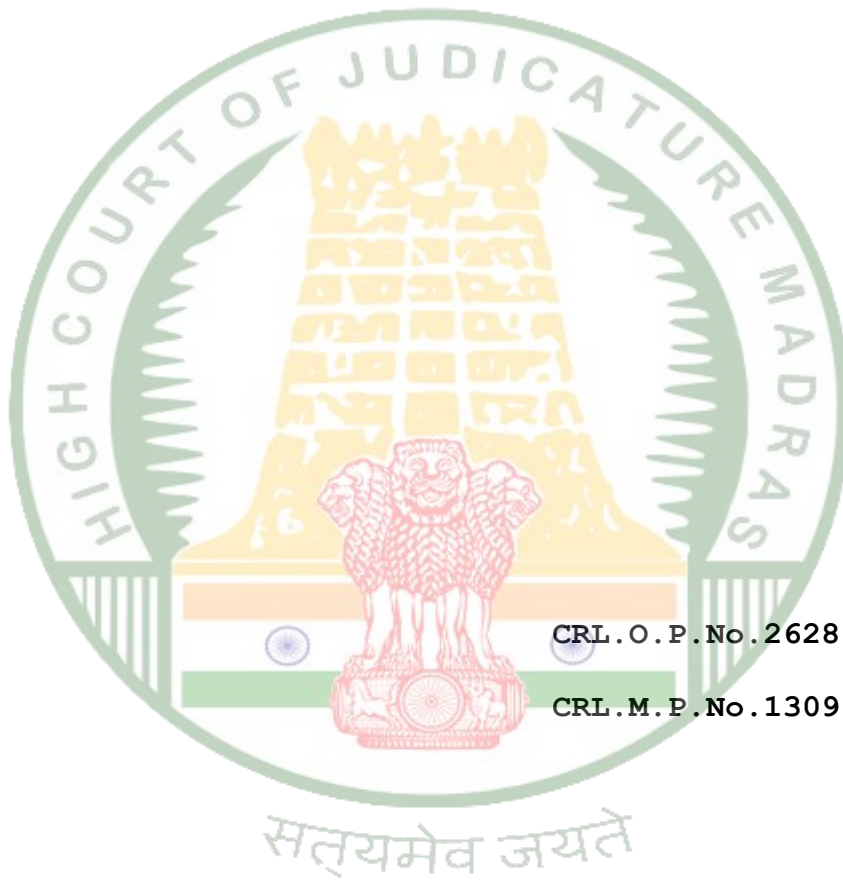
3. The Public Prosecutor,
High Court, Madras.



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T.MATHIVANAN, J. ,

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