

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.08.2017

PRONOUNCED ON : 22.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

**Crl.OP Nos.21628 and 18026 of 2013
and
M.P.Nos.1 and 1 of 2013**

Mrs.Indiragandhi

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Petitioners in both Crl.O.Ps

Vs

1.Ramadoss
2.Deenadhayan
3.Sakthivel
4.Udhayachandran
5.Station House Officer,
Kiliyanur Police Station,
Kiliyanur

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Respondents in Crl.O.P.No.21628 of 2013

1.Ramadoss
2.Sengani
3.Senthilkumar
4.Sakthivel
5.Deena@Deenadhayan
6.Station House Officer,
Kiliyanur Police Station,
Kiliyanur

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Respondents in Crl.O.P.No.18026 of 2013

Prayer in Crl.O.P.No.21628 of 2013:- Criminal Original Petition filed under Section 482 Cr.P.C., to transfer C.C.No.9 of 2011 from the file of Judicial Magistrate Vanur, Villupuram District to any other Judicial Magistrate's Court at Cuddalore for trial and disposal.

Prayer in Crl.O.P.No.18026 of 2013:-Criminal Original Petition filed under Section 482 Cr.P.C., to transfer C.C.No.9 of 2013 from the file of Judicial Magistrate Vanur, Villupuram District to any other Judicial Magistrate's Court at Cuddalore for trial and disposal.

For Petitioners :Mr.K.Radhakrishnan
 For R5 :Mr.B.Ramesh Babu,
 Govt.Advocate(Crl.side) inCrl.O.P.21628/13
 For R6 :Mr.B.Ramesh Babu,
 Govt.Advocate(Crl.side) in Crl.O.P.18026/13

COMMON ORDER

The petitioners and the contesting respondents in both Crl.O.Ps are one and the same and hence, they are taken together and after hearing the common arguments common order is passed hereunder.

2. In Crl.O.P.No.21628 of 2013,the defacto/complainant filed this application under 401 of Cr.P.C seeking transfer of the case in C.C.No.9 of 2011, Judicial Magistrate, Vanur to Cuddalore District on the ground that he was subjected to physical fear and he has unable to attend Court in Vanur.`

3. According to the petitioner, the first respondent is her husband's younger brother 2nd and 4th respondents are first respondents close relatives, 3rd respondent is 1st respondent's son. She registered a complaint before the 5th respondent herein against respondents 1 to 4 herein for the offences under Sec.147,148,294(b),447,323&506 (II) of I.P.C.

4. The 5th respondent has taken the complaint on file as Crime No.435/10 and after investigation has filed charge sheet as against

respondents 1 to 4 before the Judicial Magistrate, Vanur. Subsequently, the 5th respondent altered the charges U/s.294(b),447 and 506(ii) of I.P.C. The charge sheet has been taken on file by the Judicial Magistrate Vanur as C.C.No.9 of 2011 and the matter is pending. The respondents 1 to 4 are very influential persons in the area and the 5th respondent-police are not at all taking any action against 1 to 4. The ancestral property has already been partitioned among the brothers of the petitioner's husband and the petitioner's husband is in possession of his portion in the ancestral properties of the petitioner's husband, are giving all sorts of hindrance and threat to the petitioner and her family. Petitioner's husband fell down and fractured his legs and because of his chronic diabetic, he could not recover fully, inspite of operation and also he is almost bedridden.

5. The petitioner being old lady, could not attend the Court at Vanur and moreover, her husband's evidence is also very essential in the trial. It is further stated that the respondents 1 to 4 and wife of the 1st respondent and his other son are openly challenging this petitioner and her husband that they would kill the petitioner and her family if they attend the court. The petitioner filed CrI.M.P.No.159 of 2012 on the file of Chief Judicial Magistrate, Villupuram narrating all the incidents and her inability and as well as her husband's physical condition to attend the Judicial Magistrate's Court, vanur and prayed for transfer of C.C.No.9 of 2011 from the file of Judicial Magistrate, Vanur to any other Judicial Magistrate Court at Villupuram but the learned Chief Judicial Magistrate did not consider her plea and said

Crl.M.P.No.159 of 2012 was dismissed.

6. When this petitioner and her family went to their native place as 15.01.13 for offering Pooja to their family deity. They were attacked by the private respondent herein and hence, the petitioner lodged complaint with the 5th respondent police. The 5th respondent has taken the complaint on file and charge sheet has been filed against respondents 1 to 3 and against 1st respondent wife and his another son in C.C.No.9 of 2013 pending on the file of Judicial Magistrate, Vanur.

7. It is further represented that when the above two cases and other complaints are pending, the respondents 1 to 4 and with other relatives of the 1st respondent illegally demolished the portion of the ancestral property. When this was questioned by the petitioner and her elder daughter, the 1st respondent 3rd respondent and first respondent's wife and his another son and his relatives chased this petitioner and her daughter with crow bars, using filthy language. Against this also the petitioner lodged complaint with the 5th respondent police. The petitioner being a lady and her husband is bedridden and there is no one to support her at Vanur and also because of the the threat to her life she is not in a position to attend the Court at Vanur, and therefore, in the interest of justice the above C.C.No.9 has to be transferred.

8. After the dismissal of the transfer both Crl.M.P.No.159 of 2012

by the Chief Judicial Magistrate, vanur on a erroneous consideration and hence, prayed for transfer. The Inspector of Police/R5 herein have filed counter stating regarding the receipt of the complaint and investigation thereon and filing of the charge sheet, the respondent 1 to 5 have not contested the case by entering appearance.

9. In Crl.O.P.No.18026 of 2013, the same petitioner has alleged that during the pendency of the C.C.No.9 of 2011, Judicial Magistrate, Vanur when she along with her relatives went to the native place to offering Pooja to their family deity on 15.1.13. The respondent 1 to 4 have alleged to attack with weapons and cause injury to the defacto/complainant and her husband and her daughter and her son and they have been admitted in Government Hospital and subsequently lodged complaint in Kiliyanur Police Station in Crime No.30 of 2011 for alleged offence under Section 147,294(b),323 and 506(ii) I.P.C and after investigation, by the Investigation Officer in R5 Final Report has been filed and same was taken as C.C.No.9 of 2013 and posted for trial. The Inspector of Police has filed the counter narrating the receipt of the complaint and investigation carried on and filing of the charge sheet.

10. Contesting 1 to 4 have not entered appearance.

11. After hearing the both the parties and after going through the affidavit, it is seen that in connection with the ancestral property of the

petitioner/defacto-complainant herein in her native place, there was a dispute between her husband and his brother and when the brother of the husband of the defacto-complainant ploughing the land. Questioning the same, the defacto-complainant and by her husband are attacked with deadly weapon and caused injury and case was registered and when the matter was pending before the JM, Vanur in C.C.No.9 of 2011 when the petitioner/defacto-complainant who is residing with family members went to native place to offer Pooja to deity again there was a similar incident of physical assault on family members of the petitioner/defacto-complainant was subjected to physical injury and she was threatened with the dire consequences for life.

12. The petitioner also filed Medical Certificate for husband to the effect that, he could not move around due to the bone fracture and severe right knee pain. Admittedly, the petitioner and family members and the occurrence have taken place in her native place within the jurisdiction of the Vanur Police Station and Judicial Magistrate, Vanur. However, from the records, it is clearly demonstrated that whenever the defacto-complainant and her family members enters the native place in Vanur, they have been subjected to criminal assault and body injury and hence, the apprehension expressed by the petitioner is well found. Besides the health condition, petitioner's husband who is the prime witness in both the criminal cases in C.C.No.9 of 2011 and C.C.No.9 of 2013. In order to ensure a fair trial which is an essence of criminal justice delivery system, I am of the considered view that, both the cases has to be shifted from the present Magistrate Court.

13. In the interest of justice, both the C.C.No.9 of 2011 and C.C.No.9 of 2013 on the file of Judicial Magistrate, Vanur is withdrawn and shall stand transferred to Chief Judicial Magistrate, Villupuram and the Chief Judicial Magistrate, Villupuram is hereby directed to complete the trial within a period of twelve weeks from the date of receipt of a copy of this order.

14. In the result,

i) CrI.O.P.No.21628 of 2013 is allowed and CrI.O.P.No.18026 of 2013 also allowed

ii) C.C.No.9 of 2011 and C.C.No.9 of 2013, Judicial Magistrate, Vanur is required to transfer the case bundle to the Chief Judicial Magistrate, Villupuram District within a period of twelve weeks from the date of receipt of a copy of this order.

iii) The Chief Judicial Magistrate, Villupuram is received on the receipt of the copy of the order shall assign a new number on its and dispose of it within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

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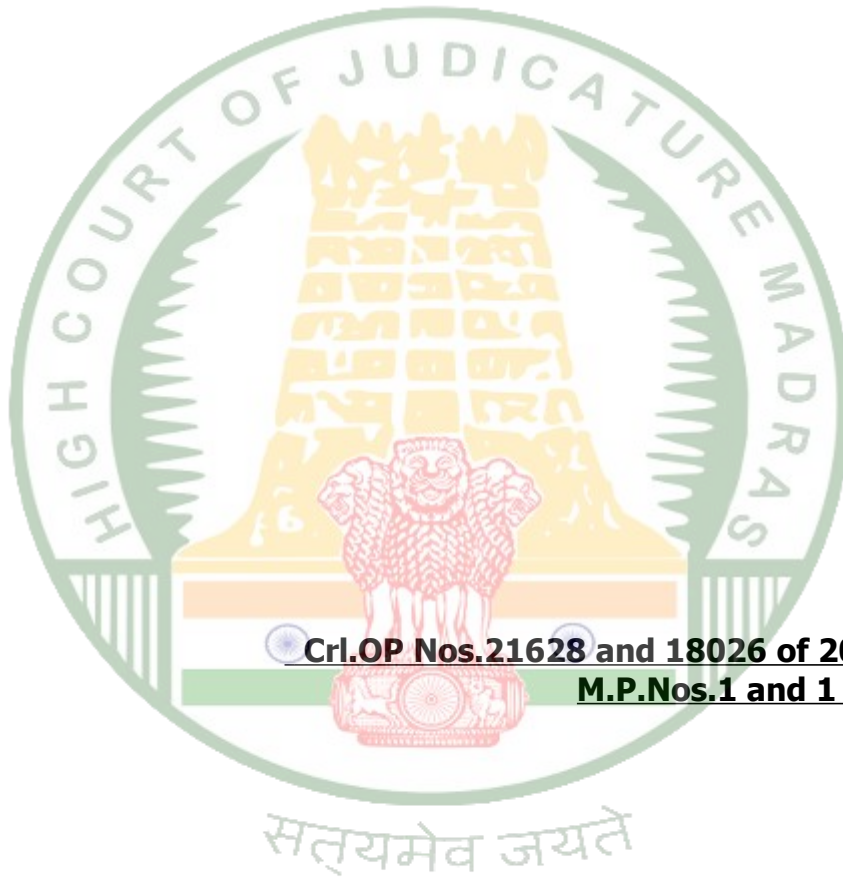
1. The Public Prosecutor,
High Court, Madras.

2. The Chief Judicial Magistrate, Villupuram

3. The Judicial Magistrate, Vanur, Villupuram District.

RMT.TEEKAA RAMAN,J.,

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Order in
Cri.OP Nos.21628 and 18026 of 2013 and
M.P.Nos.1 and 1 of 2013

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