



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL OP (MD) No.10238 of 2017
and
CRL MP (MD) Nos.6996 & 7157 of 2017

1.V.Mohan
2.M.Maheswari
3.P.Manoharan
4.M.Durai Raj
5.S.Venkata Narashimman : Petitioners/Accused Nos.1 to 5

Vs.

1.State Rep by Inspector of Police,
Vengamedu Police Station,
Karur,
Karur District,
(Crime No.1566 of 2004) : 1st Respondent/Complainant
2.B.Shanmugam, : 2nd Respondent / De-facto
complainant

(Respondent No.2 / De-facto complainant, impleaded, by order of this Court dated 28.08.2017)

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the order passed by the Chief Judicial Magistrate, Karur in Cr.M.P.No.1111 of 2017, dated 24.07.2017 in C.C.No.120 of 2009 and set aside the same.

For Petitioners : Mr.T.Lajapathi Roy
For R1 : Mr.K.Anbarasan,
Government Advocate (Crl. Side).
For R2 : Mr.Veera Kathiravan
Senior Counsel
for Mr.C.Jeganathan

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to the order passed by the Chief Judicial Magistrate, Karur in Cr.M.P.No.1111 of 2017, dated 24.07.2017 in C.C.No.120 of 2009 and set aside the same.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the



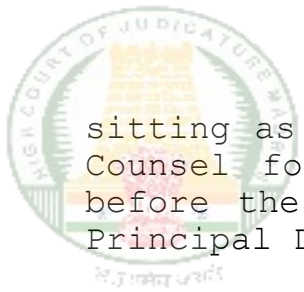
petitioners, the learned Government Advocate(Criminal side) appearing for the first respondent and Mr.Veera Kathiravan, learned Senior Counsel appearing for the second respondent.

3.The petitioners in this case are accused 1 to 5 in C.C.No.120 of 2009, pending before the learned Judicial Magistrate No.1, Karur. The petitioners have filed a transfer petition in CrI.M.P.(MD)No.1111 of 2017 before the learned Chief Judicial Magistrate, Karur, under Section 410 of Cr.P.C., seeking to withdraw the case in C.C.No.120 of 2009 on the file of learned Judicial Magistrate No.1, Karur and to transfer the same to any other Judicial Magistrate. Since the petition was dismissed, by order dated 24.07.2017, the petitioners have preferred the above original petition, challenging the order passed by the Chief Judicial Magistrate, Karur.

4.It is seen that the only ground that is raised by the petitioners in this present proceedings is that the Presiding Officer, namely, the Judicial Magistrate No.I, Karur, sometime back, was practicing under the Counsel for the petitioners when she was practicing before the appointment of learned Judicial Magistrate in Judicial Service.

5.The learned Counsel for the petitioners submitted that in our country it is one of our cherished principles that justice is not only done but also seems to be done. It is true, in our adversarial system, the necessity to get the public confidence is crucial. The learned Counsel for the petitioners submitted that whether the Judicial Magistrate is biased or not, the apprehension of the complainant is sufficient. First of all, the contention of the learned Counsel for the petitioner is self contradictory. The Counsel appearing for the petitioners in the case before the Lower Court may of course was a senior of the Presiding Officer. It may be open to any one of the litigant who is on the other side to raise the issue and submit that he has an apprehension about a biased view or decision on merits and that the same may be a good reason to transfer the case. Surprisingly, in this case, the petitioners have come forward with the case that the case should be transferred to some other Court. Certainly the petitioners have not given any reason for doubting something against their interest or any reasonable apprehension that the result would be unfavourable to them.

6.The learned Senior Counsel appearing for the second respondent / de-facto complainant, who was also impleaded as a party, pointed out that the Counsel for the petitioners before the Lower Court conducted the trial all these years without any demur. It is stated that the Counsel for the petitioners, has cross-examined P.W.5 on 15.05.2017 and appeared before the Court, even when an application filed by the petitioner under Section 311 Cr.P.C is argued before the same Judge. The learned Senior Counsel also produced before this Court, the judgment rendered by the same Judge



sitting as Principle District Munsif, at Erode, wherein the present Counsel for the petitioners before the Lower Court, has appeared before the same Judicial Officer, when she was presiding over the Principal District Munsif Court, at Erode.

7.The learned Counsel for the petitioner has filed before this Court, the affidavit of Mr.V.Mohan, learned Counsel for the petitioners before the lower Court. In this affidavit the advocate has denied the submissions of learned Senior Counsel for the second respondent that he appeared before the Magistrate concerned on different occasions in different cases. The learned Counsel also stated in the affidavit that he filed vakalat in the criminal case long time before the Magistrate came to the present station and that he had never appeared before the Judicial Magistrate concerned in any other case. Further, he also stated that the transfer of case to any other Magistrate will not cause any prejudice to the prosecution.

8.The learned Government Advocate submitted that on the persecution side, the Investigation Officer, has examined the all other witnesses.

9.The contention of the learned Counsel for the petitioners or the affidavit filed by the Counsel appearing for the petitioners before the lower Court, do not impress this Court. First of all, the principle that was cited and reiterated by the learned Counsel for the petitioners has no application to the facts of the present case. It is true that in our judicial system, we have the motto that justice is not only done but also seems to be done, to protect or to secure the public confidence and public faith and trust in our judicial system. Therefore, in order to secure the public confidence and trust, the Judge has to refrain himself from hearing a case in which he has personal interest or personal bias and a litigant who has reasonable apprehension that he may not get a fair judgment can seek transfer of the case to some other Judge. Only in a case where he has a legitimate apprehension that due to personal prejudices of the learned Judge, he is not likely to get a fair justice, he can move for transfer. However, the petitioners have come forward with the case for transfer by stating that the Counsel engaged by him was once, the Senior Advocate of the Presiding Officer. The petitioners cannot have any grievance as long as the other side of the petitioners have any grievance about hearing of the case by the learned Judicial Magistrate.

10.Secondly the Counsel for the petitioners had appeared earlier before the Presiding Officer, when she was the Principal District Munsif at Erode. The same Counsel has cross-examined the witnesses before the same Presiding Officer. Having regard to the statement of the facts recorded, the order rejecting the petitioners application for transfer is perfectly valid and the reason or grounds that were argued before this Court are unacceptable going by admitted facts. Hence, the Criminal Original Petition is dismissed



with a cost of Rs.10,000/- (Rupees Ten Thousand only) payable to the credit of the Hon'ble the Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai. Consequently, the connected miscellaneous petitions are closed.

(*)11." It is stated that C.C.No.120 of 2009 is not taken up for hearing, due to the pendency of this petition, this Court directs the learned Judicial Magistrate No.1, Karur to dispose of C.C.No.120 of 2009 within a period of three months from the date of receipt of a copy of this order, if it is yet to be disposed of".

Sd/-

Assistant Registrar(T&P)

(*)AMENDED AS PER ORDER OF
THIS COURT HON'BLE COURT DATED
31.01.2018

/True copy/

Sub Assistant Registrar

(*)TO BE SUBSTITUTED ORDER ALREADY DESPATCHED ON 13.09.2017
To

1. The Inspector of Police,
Vengamedu Police Station,
Karur,
Karur District.
2. The Judicial Magistrate No.1,
Karur.

Copy to:

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.T.Lajapathi Roy , Advocate in SR.No. 75207
+1 cc to M/S.Veera Associates , Advocate in SR.No. 74967

dss/cmr

AE/JC/SAR3/13.09.2017/5P/6C

RL/6C/4P/SV/MMS/SAR2/19/2/2018

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