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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.15685 of 2016

and

Crl.OP(MD)Nos.7476 of 2016 and 840 of 2017

C.Anuradha

... Petitioner/LW1

-vs-

1. The State Rep. by
The Inspector of Police,
All Women Police Station,
Ambasamudram,
Tirunelveli District.
(Crime No.7 of 2014)

... Respondent/Complainant

2. Navin

... Respondents/Accused

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to transfer the case in S.C.No.29 of 2015 from the file of the learned Additional District and Sessions Judge, Mahila Court, Tirunelveli, Tirunelveli District to any other district court having competent jurisdiction to try the same for further adjudication.

For Petitioner	:	Mr.R.Anand
For R1	:	Mr.K.Anbarasan Govt. Advocate (Crl.Side)
For R2	:	Mr.T.Lenin Kumar

Reserved on	Pronounced on
08.03.2017	13.03.2017

O R D E R

This petition has been filed to transfer the case in S.C.No.29 of 2015 from the file of the learned Additional District and Sessions Judge, Mahila Court, Tirunelveli, Tirunelveli District to any other District Court having competent jurisdiction to try the same for further adjudication.

<https://hcservices.courts.tn.in/hcservices/> This petitioner is the defacto complainant in S.C.No.29 of 2015 that is pending on the file of learned Additional District and Sessions Judge, Mahila Court, Tirunelveli, wherein the



respondent, who is the sole accused, is facing prosecution for offences under Sections 417, 376 and 506(i) IPC. For the sake of convenience, the parties should be referred to as defacto complainant and accused.

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3. Admittedly, the defacto complainant and the accused were working as Village Administrative Officers. It is the case of the defacto complainant that she is a divorcee and that the accused promised to marry her and after having physical relationship with her, reneged. On the complaint given by the defacto complainant, the Police registered a case in Crime No.7 of 2014 and after completing the investigation, a charge sheet has been filed and the case is on trial in S.C.No.29 of 2015 before the Mahila Court, Tirunelveli.

4. The Trial Judge issued summons to the defacto complainant for examining her as P.W.1 on 04.08.2016. On that date, the defacto complainant did not appear before the Court and therefore, the Trial Judge issued a bailable witness warrant for securing her presence. The Police returned the bailable warrant un-executed with a report that the defacto complainant threatened them, when they went to execute the warrant. The Trial Judge addressed a communication dated 10.08.2016 to the District Collector with a copy marked to the Tahsildar, informing them about the conduct of the defacto complainant and requesting them to ensure the presence of the defacto complainant for being examined as witness. Aggrieved by that, the defacto complainant has filed the present petition for transfer of the case from the file of Mahila Court to any other Court.

5. Heard Mr.Anand, learned counsel for the petitioner, learned Government Advocate (Crl.Side) appearing for R1 and Mr.T.Lenin Kumar, learned counsel for R2.

6. Learned counsel for the petitioner contended that the defacto complainant was admitted in the Government Hospital, Ambasamudram on 03.08.2016 at 4.45pm and she was inpatient till 04.08.2016 and therefore, she was not able to appear before the Trial Court on 04.08.2016 for giving her evidence.

7. According to the defacto complainant, she had engaged a Lawyer, who represented to the Judge that the defacto complainant is sick, despite which, the Judge had issued the bailable witness warrant for her presence. He further contended that the Judge had issued the communication dated 10.08.2016 to the District Collector, asking him to ensure the presence of the defacto complainant for trial, which is unknown to criminal law and ~~the defacto complainant has a reasonable ground to believe that she will not get justice at the hands of the said Judge. He also placed strong reliance on the judgment of the~~



Hon'ble Supreme Court in the case of **Satish Jaggi vs. State of Chhattisgarh and others**, reported in **(2007) 3 SCC 62** in support of his submission.

8. Per contra, Mr.T.Lenin Kumar, learned counsel for the accused submitted that the defacto complainant represented that she was a divorcee, but it later came to light that she was not a divorcee and that she has filed divorce proceedings against her estranged husband only now. The defacto complainant had lodged a false complaint, based on which the accused was placed under suspension. He contended that the defacto complainant came to III Additional District Judge, Tirunelveli in S.C.No.654 of 2015 and gave her evidence in that case on 03.08.2016, but strangely she did not choose to appear before the Trial Court in this case on 04.08.2016. Therefore, he contended that the Trial Judge had issued a bailable witness warrant, which cannot be said to be illegal.

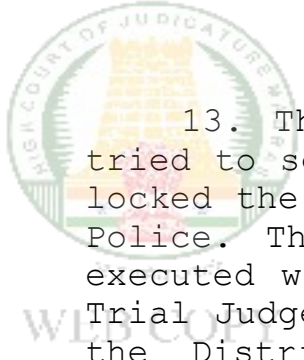
9. This Court gave its anxious consideration to the rival submissions made on either side.

10. The fact remains that the defacto complainant is not a child. She is a 39 year old lady, who is in a responsible position, working as a Village Administrative Officer. The adjudication of the Trial Court does not show that the defacto complainant had engaged a Lawyer to represent to the Judge that she was hospitalized on 04.08.2016. It is a normal practice that witness would inform the Public Prosecutor in-charge of the Court to represent such inconveniences, if any, and seek adjournment. In this case, the Public Prosecutor in-charge of the case was not informed about the illness of the defacto complainant. The adjudication for 04.08.2016 reads as follows:

"Accused present. Summon served upon L.W.1, L.W.3, L.W.5 and LW.6 but called absent and hence issue witness warrant against them. Further P.Ws. by 05.08.2016."

11. From the above, it is clear that witness summons were served on four witnesses, including the defacto complainant and all the four witnesses did not appear before the Trial Court and therefore, the Trial Judge issued witness warrants against all the four witnesses. Hence, it cannot be said that the Trial Judge has acted in a biased manner in issuing witness warrant only as against the defacto complainant.

12. Even according to the defacto complainant, she was discharged from the hospital on 04.08.2016. It is not known what prevented her from appearing before the Trial Judge on a subsequent date? and have the witness warrant recalled. After all, it is a common knowledge that Courts are very liberal in even recalling Non-Bailable Warrants issued against the accused and the witness is on a better footing.



13. The Police report dated 10.08.2016 shows that when they tried to serve the witness warrant on the defacto complainant, she locked the door from insider her house and started threatening the Police. Therefore, the Police returned the bailable warrant un-executed with their report. Only in those dire circumstances, the Trial Judge had no other option, but to address a communication to the District Collector and Tahsildar under whom the defacto complainant was employed, requesting them to take steps for producing the defacto complainant for examination as witness. After all, procedure is only a handmaid of justice and not its master.

14. In the given circumstances, when the Police pleaded helplessness, proactive steps taken by the Sessions Judge in addressing the communication to the District Collector and Tahsildar, informing them about the attitude of the defacto complainant in not obeying the witness summon, cannot be said to be incorrect. Trial Courts have been directed to complete cases against women expeditiously.

15. Learned counsel for the petitioner contended that in the communication dated 10.08.2016, sent by the Trial Judge to the District Collector, he has stated that the act of the defacto complainant would attract the provisions of Section 174 IPC and this is indeed a veiled threat.

16. To appreciate his contention, it may be necessary to extract the relevant paragraph of the communication dated 10.08.2016 as under:

"In pursuant of the proceedings, summon was served upon the Ms.Anuradha, who is the defacto complainant, well in advance. However, when the case came up for hearing on 04.08.2016, the Ms.Anuradha, who is listed as witness no.1 failed to appear before this Court to let in evidence. Therefore, this Court has issued a witness warrant against the witnesses including Ms.Anuradha. Inspite of many adjournment, this Court unable to examine Ms.Anuradha. It is further informed by the concern police that Ms.Anuradha is refusing to appear before this Court for want of order from your esteemed office. The said act would attract the provision of section 174 of Indian Penal Code.

In the facts and circumstances, you are hereby requested to cause the production of witness Ms.Anuradha, Village Administrative Officer, Brahmadhesam, Ambasamudram before this Court for hearing 23.08.2016, in order to examine her touching Sessions Case No.29 of 2015, without fail, It is pertinent to note that witness Ms.Anuradha is pending against the above said witness Ms.Anuradha.



Note: The Tahsildhar, Ambasamudram is further hereby directed to report with true copy of attendance register stating whether Ms. Anuradha, Village Administrative Officer, Brahmadhesam, Ambasamudram has attended her duty on 04.08.2016 or not?"

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17. In the considered opinion of this Court, if a witness does not appear to do his or her public duty after receipt of summons from a Court, he or she is liable for prosecution under Section 174 of IPC. The Trial Judge has only referred to Section 174 IPC as a caution. This Court does not find anything obnoxious in the communication dated 10.08.2016 addressed by the Trial Judge to the District Collector.

18. Learned counsel for the petitioner placed strong reliance on Paragraph No.5 of the judgment of the Hon'ble Supreme Court in the case of **Satish Jaggi vs. State of Chhattisgarh and others** (cited supra), wherein it has been held as under:

"5. The law with regard to transfer of cases is well settled. This Court in Gurcharan Das Chadha v. State of Rajasthan held that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. This Court said that a petition is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. This Court further held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. The court has further to see whether the apprehension is reasonable or not. This Court also said that to judge the reasonableness of the apprehension, the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension."

19. This Court can have no quarrel with the aforesaid proposition of law laid down by the Supreme Court. However, the Supreme Court has very clearly stated that the apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension. The Supreme Court has also stated in the same judgment that no universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case.

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

20. As stated above, in the facts and circumstances of this case, when the defacto complainant has been dodging to appear



before the Trial Court, the action taken by the Trial Judge to secure her presence, that too, in a sensitive case of this nature, cannot be found fault with.

21. In the result, this Criminal Original petition is devoid of merits and the same is accordingly dismissed.

22. The petitioner / defacto complainant is directed to appear before the Trial Judge within a period of two weeks from the date of receipt of a copy of this order and on such appearance, the witness warrant shall stand recalled. The petitioner is directed to furnish a bond under Section 88 Cr.P.C. without sureties to the satisfaction of the Trial Judge. On the day fixed by the Trial Judge, the petitioner/defacto complainant shall appear before the Trial Judge for giving her evidence. At the time of giving evidence, the Trial Judge shall ensure that a screen is placed and the accused is made to stand behind the screen at the hearing distance and only his counsel should be permitted to see her, while her deposition is recorded. The accused shall ensure that his counsel cross examines the defacto complainant on the same date on which she is examined in chief. If the cross examination is not completed before the Court hours, the same can continue on the subsequent dates, as decided by the Trial Judge. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

1. The Additional District and Sessions Judge,
Mahila Court, Tirunelveli, Tirunelveli District.
2. The Inspector of Police,
All Women Police Station,
Ambasamudram, Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.T.Lenin Kumar, Advocate in SR.No. 14267

+1 cc to M/s.R.Anand, Advocate in SR.No. 14581

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CSL/BS/16.03.2017 : 6P/6C

ORDER IN

Crl.O.P.(MD)No.15685 of 2016

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