



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2017

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WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P. (MD)No.5023 of 2017

1.B.Nagoor Kani

2.Masthan Beevi

: Petitioners / Accused No.2 & 3

Vs.

1.State Rep. By

The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindigul District.

(Crime No.1 of 2011)

: 1st Respondent / Complainant

2.Meharaj Begam @ Meharah Banu

: 2nd Respondent / Defacto
Complainant

Prayer:Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to withdraw and transfer the proceeding in CC.No.63 of 2011 from the Learned Judicial Magistrate No.III, Dindigul to Learned Judicial Magistrate, Melur, Madurai District.

For Petitioner : Mr.C.Gunasekaran

For Respondents : Mr.K.Anbarsan
Government Advocate (Crl.side)

O R D E R

The petitioners are facing prosecution in C.C.No.63 of 2011 before the Judicial Magistrate No.III, Dindigul for the offences under Sections 498A of IPC r/w Section 4 of Dowry Prohibition Act. While so, it is alleged by the petitioners that when they go to Court for hearing, they have been harassed by the defacto complainant and her family members. In this regard, on the complaint given by the petitioners, a case in, Melur Police Station, Cr.No.388 of 2017, has been registered for the offences under Sections 294(b) and 506(i) of IPC against Meharakbanu and Pousiya. Therefore, the petitioners have filed the present transfer application for transferring the case in C.C.No.63 of 2011 on the file of the Judicial Magistrate No.III, Dindigul to any other court.



2. Heard the learned counsel for the petitioners; learned Government Advocate (Criminal side) appearing for the respondents and perused the materials placed on record.

3. The learned Government Advocate (Crl.side) submitted that trial in this case has began and two witnesses were examined but they have not been cross-examined by the accused.

4. In such circumstances, this Court is of the view that the accused is adopting dilatory tactics by not cross-examining the witnesses produced by the prosecution and filed the present petition for transfer of trial, which cannot be sustained. In **Vinod Kumar v. State of Punjab** reported in (2015) 3 SCC 220, the Supreme Court has stated that the prosecution witnesses should be cross-examined on the date of their examination in chief.

5. The learned counsel for the petitioners submitted that the presence of the petitioners before the trial Court may be dispensed with.

6. Taking into consideration the age of the petitioners, the presence of the petitioners before the trial Court is dispensed with on condition that they appoint an Advocate and they give a special vakalat to an Advocate and give an undertaking to the trial Court that they will not be disputed the identity and that the Advocate appointed by them shall cross-examine the witnesses on the date of their examination in chief and they would not adopt the dilatory tactics. The petitioners on such undertaking being given, the presence of the petitioners can be dispensed with on the Advocate filing an application under Section 317 Cr.P.C. The petitioners shall be present for questioning under Section 313 Cr.P.C., and on the date of judgment. If the petitioners adopted any dilatory tactics, the Trial Court can insist upon the presence of the petitioners. Any notice in any petition before the trial Court is required to be served on the petitioners, the same can also be served on the counsel appointed by them and that there shall be an effective stand. If the petitioners are absconding, fresh FIR can be registered against the petitioners and secure them.

7. With the above directions, this petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.III,

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



2.The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindugul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.C.Gunasekaran , Advocate in SR.No. 54084

am/tsg

AE/JC/10.05.2017/3P/5C

Order made in
CRL.O.P. (MD) No.5023 of 2017

Dated:-
25.04.2017