



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2017

CORAM:

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

Crl.O.P.(MD)Nos.5181 and 5182 of 2017
and Crl.M.P.(MD) Nos.3661 and 3662 of 2017

Jemini

Petitioner in both Crl.O.Ps.

vs.

State rep by
The Inspector of Police
NIB CID
Theni

Respondent in both Crl.O.Ps.

Criminal Original Petitions filed under Section 407 Cr.P.C. to set aside the order of the learned Special Sessions Court passed in Crl.M.P.Nos.983 and 984 of 2017 dated 04.04.2017 and withdraw and transfer the cases in C.C.Nos.103 and 105 of 2014 pending on the file of the learned II Additional Special Sessions Judge (NDPS Act) Madurai to the competent Court at Pudukottai.

For petitioner	Mr.M.Jegadeesh Pandian
For Respondent	Mr.A.P.Balasubramani Government Advocate

ORDER

The petitioner is facing trial in C.C.Nos.103 and 105 of 2014 before the II Additional Special Judge (NDPS Act), Madurai and is admittedly in incarceration. While so, the petitioner preferred applications in CMP Nos.983 and 984 of 2017 before the Principal Special Judge, NDPS Act cases, Madurai for transferring the cases in CC Nos.103 and 105 of 2014 from the file of the II Additional Special Court to any other Court, which was dismissed by the Principal Special Judge on 04.04.2017, aggrieved by which, the petitioner is before this Court.

2. Heard Mr.M.Jegadeesh Pandian, learned counsel for the petitioner and Mr. A.P.Balasubramani, learned Government Advocate appearing for the State.

3. The allegation of the petitioner against the Presiding



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"1.The petitioner respectfully states that he was produced before the above Special Court/Trial Court under PT Warrant on 03.03.2017, on that day his counsel requested the Hon'ble Court for time to cross examine the witnesses, since the Senior Counsel engaged by me was not available on that day and made request only to adjourn the matter tomorrow. Immediately the Learned Judge got provoked and shouted Junior Counsel in open Court and threatened that he will punish me without providing an opportunity and further threatened he will going to close the evidence, on seeing this petitioner begged the Presiding Judge in open Court, immediately the petitioner was directed to sent out of Court, later he came to know the case was adjourned to 07.02.2017. Hence the above case is liable to be transferred.

2. The petitioner further submits that on 07.03.2017, the Learned Presiding Judge similarly uttered very same work as against the petitioner and threatened him in the open Court that he will definitely convict the petitioner in the above two cases. Whereas in other cases the Learned Trial Judge did not express his opinion in the open Court, in contrary to the petitioner case he threatened him and the same violates the fair trial guaranteed under the Constitution of India."

4. The learned counsel reiterated the submissions and further added that a complaint has been given by the petitioner against the II Additional Special Judge to the Registrar (Vigilance) for appropriate action and therefore, the cases should be transferred.

5. Information called for by this Court from the trial Court shows that the prosecution have examined the following witnesses in C.C.Nos.103 and 105 of 2014.

C.C.No.103 of 2014			C.C.No.105 of 2014		
Rank of witness	Name of witness	Date of examination	Rank of witnesses	Name of witness	Date of examination
P.W.1	Sivanesan	17.09.2016	P.W.1	Sivanesan	17.09.2016
P.W.2	Baskaran	20.09.2016	P.W.2	Kamaraaj	17.09.2016
P.W.3	Suresh Kumar	20.09.2016	P.W.3	Ramachandran	20.09.2016
P.W.4	Seemaichamy	21.10.2017	P.W.4	Jawahar Lal Nehru	20.09.2016
P.W.5	Ilangovan	04.11.2016	P.W.5	Ilangovan	04.11.2016



6. The petitioner has not chosen to cross-examine any of the witnesses. In fact, under Section 309 Cr.P.C., it is clearly stated that when a witness is present, no adjournment can be granted. At this juncture, it is apposite to refer to the last proviso to Section 309(2) Cr.P.C. which reads as under:

"Provided also that--

a no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

7. In **Vinod Kumar vs. State of Punjab [2015 (1) MLJ (Cr1.) 288]**, the Supreme Court has deprecated the practice of accused not cross-examining the witnesses on the day they are examined-in-chief and recalling the witnesses by filing petitions under Section 311 Cr.P.C., after a long lapse of time. In fact, in **A.G. Vs. Shiv Kumar Yadav and another [(2015) 9 Scale 649]**, the Supreme Court has noted that even if the accused is in judicial custody, that cannot be a reason to allow a petition under Section 311 Cr.P.C. This Court is referring to the aforesaid views of the Supreme Court only to show that accused today, whether they are in judicial custody or otherwise, are adopting every possible trick under the sun to prevent the cases from being tried expeditiously by trial Judges. One such strategy is to file transfer applications by making reckless allegations against the trial Judges. If such applications are entertained and ordered, the morale of the subordinate judiciary will be ruined. Sending complaints against Judicial Officers to the Registrar (Vigilance) is also one other technique to instil fear in the mind of the Presiding Officer.



In the result, the petitions are dismissed as being devoid of merits. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1. The II Additional Special Sessions Judge (NDPS Act)
Madurai.
2. The Inspector of Police
NIB CID, Theni
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

sm:BS:SAR 3:11.5.2017:4p/4c

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