



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.6860 of 2017
and Crl.M.P.(MD) No.4608 of 2017

Otchubalu

... Petitioner

-vs-

The State rep. by
The Inspector of Police,
C3, S.S. Colony Police Station,
Madurai,
Madurai District.

.. Respondent

Prayer: Criminal Original Petition filed under Section 407 of Cr.P.C., praying to withdraw and transfer the case bearing Spl.S.C. No.3 of 2014 on the file of the Learned III Additional District and Sessions Judge (PCR), Madurai to any other competent court in the nearby District forthwith in the interest of justice.

For Petitioner : Mr.S.Palani Velayutham

For Respondent : Mr.K.Anbarasan
Government Advocate (Criminal side)

O R D E R

The petitioner is facing trial in Special S.C. No.3 of 2014, before the III Additional District and Sessions Judge (PCR), Madurai District, Madurai, for offences under Sections 406, 420 and 506(i) I.P.C. and Section 3(1)(X) of SC/ST (POA) Act, 1989 . It is the contention of the petitioner that he belongs to D.M.K. party and that the Presiding Officer of the Court had earlier contested as an M.D.M.K. candidate in the 2001 Assembly Elections and therefore, the learned Judge would be biased against the petitioner. Hence, the petitioner has filed the present transfer application.

2.Heard Mr.S.Palani Velayutham, the learned counsel for the petitioner and Mr.K.Anbarasan, the learned Government Advocate (Criminal side) for the respondent.

3.Mr.S.Palani Velayutham, the learned counsel for the petitioner contended that since the Presiding Officer had contested the election in the year 2001 in the M.D.M.K. ticket and that the petitioner belongs to the rival D.M.K. Party, the



petitioner will not get justice at the hands of the learned Presiding Officer.

4. Mr. T. Pandi, the Special Sub-Inspector of Police, C3, S.S. Colony Police Station, Madurai City is present. Mr. K. Anbarasan, the learned Government Advocate (Criminal side) on instruction would submit that all the witnesses in this case have been examined and when the case is posted for arguments by the trial Court, in order to protract the trial, this transfer application has been filed.

5. This Court gave its anxious consideration to the rival submissions.

6. Mr. M. Palani Velayutham, the learned counsel appearing for the petitioner relied upon a copy of the list of candidates who contested in Tirunelveli Assembly Constituency in the year 2001 and submitted that the first candidate in the list who contested on the MDMK ticket was the Presiding Judge. The candidates of other political parties, namely, D.M.K., AIADMK, CPI (ML) (L), SP and Independents have also contested the said election.

7. In the opinion of the Court, it is absolutely not necessary even to call for a report from the learned Presiding Judge in order to find out whether he had contested the election in the year 2001 on the MDMK ticket, for the following reasons:

In a republican democracy like that of ours, political parties are essential components and being a member of a political party and contesting elections is not a sin. It is not the case of the petitioner that he had contested the election against the Presiding Officer in the said constituency on D.M.K. Ticket. Whereas, it is his case that he is a political activists of the D.M.K. Party. When the Presiding Officer was an advocate, he might have contested the election to the Tirunelveli Constituency in the year 2001 in MDMK ticket. Thereafter, the Presiding Officer had written the Judicial Services Examinations and has cleared the same. Based on the marks secured by him in the written examination and interview, he was selected to the post of District Judge some time in the year 2013. Before approving his selection, Police verification report has also been obtained. Just because the Judge was earlier belonging to a political party, it cannot mean that he will be biased against those belonging to other political parties. If this yardstick is accepted then the Late Lamented Justice Krishna Iyer, one of the greatest Judges of this Country, would also have been under a cloud.

8. Under such circumstances, this Court is of the view that this ground cannot be countenanced and accordingly, this Criminal Services Board's decision is dismissed as devoid of merits. However, whatever observations made herein are only limited for the decision taken in this petition. This Court hopes the learned



Trial Judge will deal with the case of the petitioner without in any manner influenced by the fact that the petitioner has filed the present transfer application. Consequently, connected Miscellaneous Petition is also dismissed.

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Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The III Additional District and Sessions Judge (PCR),
Madurai District,
Madurai.

2.The Inspector of Police,
C3, S.S. Colony Police Station,
Madurai,
Madurai District.

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

+One cc to Mr.S.Palani Velayutham, Advocate, SR.No.59293

sj

RL/5C/3P/SKN/RSK/SAR1/15.6.2017

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