



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WEB COPY

Cr1.O.P. (MD) No.778 of 2017**and****Cr1.M.P. (MD) No.673 of 2017**

1.M.Veeraiya @Karuppiah

2.V.Shankar

3.A.Marimuthu

: Petitioners / Accused 1,2 and 6

Vs.

1.The Inspector of Police,
Ganesh Nagar Police Station,
Pudukottai District,
(Crime No.173 of 2014).

: 1st Respondent / Complainant

2.Mr.Murugesan

: 2nd Respondent / Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to direct the Learned Sessions Judge, Mahila Court, Pudukottai, to keep the proceedings pending in S.C.No.21 of 2015 on the file of the District Sessions Judge, Mahila Court, Pudukottai in Crime No.174 of 2014 on the file of the Respondent No.1 in abeyance till the commencing of trial in P.R.C.No.32 of 2015 in Crime No.173 of 2014 on the file of the Judicial Magistrate, Pudukottai in Crime No.174 of 2014 dated 25.05.2014 on the file of the Respondent No.2 and both the cases may be tried and heard jointly.

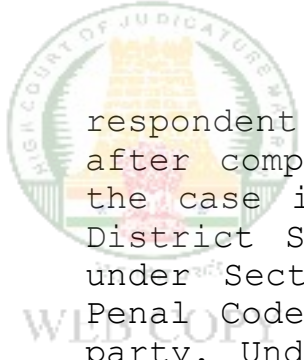
[Prayer amended as per the order of this Court dated 14.03.2017, in Cr1.M.P. (MD) No.1208 of 2017].

For Petitioners : Mr.T.Lajapathi Roy

For Respondent No.1 : Mr.A.P.Balasubramani,
Government Advocate (Cr1.side)

O R D E R

On the complaint lodged by one Murugesan, the respondent police registered a case in Crime No.173 of 2014 against the petitioners and seven others and after completing the investigation, filed a final report and the case is now pending as S.C.No.7 of 2017 on the file of the learned Principal District Judge, Pudukkottai, for offences under Sections 147, 148, 294(b), 324, 354, 307 of the Indian Penal Code and Section 3(1)(r)(s) and 3(2)(VA) of SC/ST Act. Similarly, on the complaint of one Mrs.Devi, who is a relative of the first petitioner, the



respondent police registered a case in Crime No.174 of 2014 and after completing the investigation, has filed a final report and the case is now pending in S.C.No.21 of 2015 before the learned District Sessions Judge, Mahila Court, Pudukkottai, for offences under Sections 147, 148, 324, 294(b) and 506(ii) of the Indian Penal Code r/w Section 3 of the TNPPDL Act against the opposite party. Under such circumstances, this petition has been filed by the accused in S.C.No.21 of 2015 for joint trial of this case with S.C.No.7 of 2017 on the ground that both the cases are case and counter.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal side) appearing for the first respondent.

3. Mr.S.Manoharan, Sub-Inspector of Police, Ganesh Nagar Police Station, Pudukkottai District, is present in Court today. Mr.A.P.Balasubramani, learned Government Advocate (Criminal side), on instructions, submitted that the trial in S.C.No.21 of 2015 has commenced with the examination of three witnesses, who have also been cross-examined by the accused.

4. Per contra, the learned counsel for the petitioners placed strong reliance on the judgments of the Supreme Court in **Nathi Lal v. State of U.P. [1990(Supp) SCC 145]** and **State of M.P. v. Mishrilal [2003(9) SCC 426]**, wherein the Supreme Court has laid down the procedure for trial of case and counter case.

5. In **Nathi Lal's** case, the Supreme Court has stated as follows:

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the



judgments must be pronounced by the same learned Judge one after the other."

6. Since the offences under the SC/ST Act have been included in S.C.No.7 of 2017, the same can be tried only by the learned Principal District Judge, which is the Special Court under the said Act and not by any other Court. Therefore, this Court directs the transfer of S.C.No.21 of 2015 on the file of the learned District Sessions Judge, Mahila Court, Pudukkottai, to the learned Principal District and Sessions Judge, Pudukkottai, to be tried along with S.C.No.7 of 2017, as laid down by the Supreme Court in the aforesaid judgments. The learned District Sessions Judge, Mahila Court, Pudukkottai, is directed to transfer the records to the Court of the Principal District and Sessions Judge, within a period of two weeks from the date of receipt of a copy of this order. The accused should be bound over to appear before the learned Principal District and Sessions Judge, Pudukkottai, on a given date, so that, fresh summons need not be issued to the accused.

7. This Criminal Original Petition is disposed of in the above terms. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal District and Sessions Judge,
Pudukkottai.
- 2.The District Sessions Judge,
Mahila Court, Pudukkottai.
- 3.The Judicial Magistrate,
Pudukkottai.
- 4.The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SML

PSM/SKN-RSK/28.03.2017/3P/6C

Order made in
Crl.O.P. (MD) No.778 of 2017
14.03.2017