

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.04.2018

DELIVERED ON: 20.04.2018

CORAM:

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

Crl.O.P. No.8122 of 2018 & Crl.M.P. Nos.4171 & 5779 of 2018

1 V.Vinoth Kumar
2 K. Murugan
3 Vignesh @ Vigneshkumar

Petitioners

vs.

State represented by
Inspector of Police
Roshnai Police Station
Tindivanam
(Cr. No.260 of 2016)

Respondent

Criminal Original Petition filed under Section 407 Cr.P.C. seeking to withdraw the case in S.C. No.102 of 2017 pending trial on the file of the I Additional District and Sessions Judge, Tindivanam and transfer the same to the neighbouring District Court.

For petitioner : Mr. C.D. Johnson

For respondent : Mrs. Kritika Kamal P.
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been preferred seeking to withdraw the case in S.C. No.102 of 2017 pending trial on the file of the I Additional District and Sessions Judge, Tindivanam and transfer the same to the neighbouring District Court.

2 The petitioners are facing prosecution in S.C. No.102 of 2017 for the offence under Section 302 IPC before the I Additional District and Sessions Court, Tindivanam. The prosecution have so far examined 32 witnesses and at that juncture, the petitioners / accused have filed the present transfer application making allegations against the Presiding Officer.

3 Heard Mr. C.D. Johnson, learned counsel for the petitioners/accused and Mrs. Kritika Kamal P., learned Government Advocate (Crl. Side) appearing for the respondent State.

4 The learned counsel for the petitioners made the following allegations against the Presiding Officer:

- The Presiding Officer had fixed a time table for the examination of the witness; however, the prosecution did not adhere to the said time table which was taken very lightly by the Presiding Officer. When the defence counsel sought strict action against the prosecution, the Presiding Officer has remarked that even his father was an Inspector of Police and he (the Presiding Officer) was also an Additional Public Prosecutor and that the police will be like that only.
- When Dr. Geethanjali (P.W.31) was being cross-examined by the defence, the Presiding Officer made unnecessary interventions and when the same was objected to by the defence counsel, the Presiding Officer lost his cool and got agitated and told the counsel for the accused that if he (counsel for the accused) is not interested in conducting the case before him (Presiding Officer), he can get the case transferred out of his Court.
- One Kumaravel, Head Clerk of the Committal Court was examined as P.W.32 for marking the weapons, viz., knives that were seized by the police during investigation. In the seizure memo, the weapon was shown as "knife with iron handle", whereas, in the Court, "knife with wooden handle" was produced and when this was brought to the notice of the Presiding Officer, he did not initiate any departmental action against the Court staff concerned.

5 Lastly, the learned counsel for the petitioners/accused vehemently contended that justice should not only be done but should also be seen to be done and therefore, when once the petitioners/accused have come to this Court seeking transfer of the case to another Court, this Court should not send them back to the same Presiding Officer, as that would undoubtedly cause prejudice in the mind of the Presiding Officer.

6 As regards the first submission, though a time table is fixed, it is common knowledge that police fail to produce the witnesses on account of multifarious reasons. When such is the scenario, can the Trial Court take it seriously as demanded by the learned counsel for the petitioners/accused and recommend departmental action against the Prosecutor and the police? It is also common knowledge that when witnesses come, the accused are made to abscond or if they are examined in chief, cross-

examination is not done on the same day. This sorry state of affairs has been lamented by the Supreme Court in Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220]. Assuming for a moment that the Presiding Officer had casually uttered that his father was an Inspector of Police and he (Presiding Officer) was an Additional Public Prosecutor, can that mean that he is biased towards police? He would have made such a statement casually to assuage the defence.

7 As regards the contention that the Presiding Officer had intervened during the examination of Dr. Geethanjali (P.W.31) and other witnesses, the Supreme Court has clearly held in State of Rajasthan vs. Ani, [JT 1997 1 SC 460] as under:

"12. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence-collecting process. It is a useful exercise for trial Judge to remain active and alert so that errors can be minimised."

(emphasis supplied)

8 As regards the contention that the Presiding Officer did not take any action against Kumaravel (P.W.32), Head Clerk, for the alleged change in the description of the weapon, the Presiding Officer cannot be expected to take action in the middle of the trial. The Presiding Officer should give an opportunity to the Inspector of Police in order to explain the discrepancy and only thereafter, in the final judgment, a

finding should be given on this aspect. If the Presiding Officer gives a finding in the middle of the trial that the weapon has been substituted, it will lead to disastrous consequences.

9 As regards the last contention that since the accused have approached this Court for transfer by making allegations against the Presiding Officer, they should not be asked to go back and face trial before the same Judge as that would be a great embarrassment for both the Presiding Officer and the accused, the said ground is stated only to be rejected. If the High Court adopts this as a first principle, then, every accused in a criminal case will file some transfer application or the other making reckless allegations against the Presiding Officer and even if those allegations are found to be untrue, the Court would have to perforce transfer the case to any other Court. If that Presiding Officer to the file of whose Court the case is transferred, is a strict person, once again, a petition will be filed making personal allegations against him and the same routine will continue endlessly. The High Court cannot be a party to subversion of justice.

In the ultimate analysis, this Criminal Original Petition is liable to be dismissed and is accordingly dismissed. Crl.M.P. No.4171 of 2018 is closed. Since this Court has dismissed the main petition for transfer, Crl.M.P. No.5779 of 2018 is dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector of Police
Roshnai Police Station
Tindivanam
- 2 The I Additional District and Sessions Judge
Tindivanam
- 3 The Public Prosecutor, Madras High Court, Chennai 600 104

+1cc to Mr.C.D.JOHNSON, Advocate, S.R.No. 29401
Crl.O.P. No.8122 of 2018

NM(CO)
TR(26/04/2018)