

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.16311 & 16312 of 2010
and
M.P.Nos.1 & 1 of 2010

Tmt.Selvamani,
W/o.Subramani.

... Petitioner in both Crl.O.P.Nos.
Vs.

State Rep. by the
Inspector of Police,
Nallipalayam Police Station,
Namakkal District,
Crime Nos.356 & 357 of 2008. ...Respondent in both Crl.O.P.Nos.

COMMON PRAYER: Criminal Original Petition is filed under
Section 482 of the Code of Criminal Procedure, to transfer the
case in Crime Nos.356 & 357 of 2008 respectively from the file
of the Respondent-Police to the file of the Crime Branch, CID
and direct them to conduct a thorough investigation and file
final reports in accordance with the law.

For Petitioner : Mr.A.M.Amutha Ganesh

For Respondent : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]

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सत्यमेव जयते
C O M M O N O R D E R

The petitioner, who is A2 in S.C.No.56 of 2010 pending on
the file of the I Additional Sessions Judge, Fast Track Court,
Namakkal District has filed this Crl.O.P.No.16311 of 2010, the
petitioner is A2 in Cr.No.356 of 2008, which is pending trial in
C.C.No.555 of 2009 pending on the file of the Judicial
Magistrate No.I, Namakkal District.

2.The petitioner has filed the above Criminal Original
Petitions seeking transfer of Cr.Nos.356 and 357 of 2008 from
the file of the Inspector of Police, Nalliyampalayam Police

Station, Namakkal District and the investigation to be transferred to Crime Branch, CID.

3. According to the petitioner, the Cr.No.356 of 2008 is based on the complaint of one Pappayee that she was attacked by Marappan (A1), Selvamani (A2) petitioner herein and their family members, for which F.I.R. under Sections 147, 148, 323, 324 and 506 (ii) of the Indian Penal Code was registered.

4. Crime No.357 of 2008 is based on the complaint given by Selvamani, the petitioner herein for causing the death of her grandfather Karuppa Gounder and for assaulting her by Pappayee and her family members, for which F.I.R. under Sections 341, 324, 506(ii) and 302 of the Indian Penal Code was registered. Both these complaints were received by one Tmt.V.Kavitha, Sub-Inspector of Police. Thereafter on completion of investigation the respondent/police had filed two charge sheets.

5. The petitioner now submits that in C.C.No.555 of 2009 trial has commenced before the Judicial Magistrate No.I, Namakkal District and majority of the witnesses have been examined except the Investigating Officer. The petitioner filed a petition under Section 311 of the Code of Criminal Procedure. The petitioner has chosen not to cross examine the witnesses since, the petitioner's defence would be exposed in the Sessions case in S.C.No.56 of 2010 in which the trial is yet to commence. It is further submitted that a petition filed before the Judicial Magistrate No.I, Namakkal stating that the occurrence in both the case are out of the same incident and it is appropriate that the case pending before the Judicial Magistrate No.I, Namakkal is to be transferred and tried along with the Sessions case, despite, the petition filed by the petitioner, the Judicial Magistrate No.I, Namakkal has not passed any orders under Section 323 of the Code of Criminal Procedure instead proceeded with the trial and now the petitioner is in a predicament situation unable to cross-examine the witnesses. Hence, prayed that the case in C.C.No.555 of 2009 transferred to the file of the I Additional Sessions Judge, Fast Track Court, Namakkal to be tried along with S.C.No.56 of 2010.

6. Further submitted by the learned counsel for the petitioner that 161 statements in both the cases are identical and it is the same Investigating Officer, who had investigated both the cases. In such circumstances, it would be appropriate that both the cases are tried together simultaneously, otherwise great prejudice would be caused to the petitioner.

7. Further, the learned counsel for the petitioner relied upon the citations of the Hon'ble Apex Court of India in a case of Sudhir Vs. State of M.P. Reported in CDJ 2001 SC 074. Though, the citation is about the case and counter. The

principle laid down in the citation is that "when two criminal cases relate to the same incident, they are tried and disposed of by the same Court by pronouncing Judgments on the same day would be appropriate."

8.The relevant 11th paragraph of the above citation is extracted here under:

"11.We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross cases shall be tried by the same Court, can be summarised thus: (1) It staves off the danger of an accused being convicted before this whole case is before the Court; (2) It deters conflicting Judgments being delivered upon similar facts; and (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident."

9.The observations are appropriate in the case of this nature. In view of the above, this Court directs the Judicial Magistrate No.I, Namakkal not to proceed further and precipitate. The Judicial Magistrate No.I, Namakkal has to forward the C.C.No.555 of 2009 to the file of the I Additional Sessions Judge, Fast Track Court, Namakkal forthwith. The I Additional Sessions Judge, Fast Track Court, Namakkal is directed to try both C.C.No.555 of 2009 together with S.C.No.56 of 2010 simultaneously and thereafter, disposed of both the cases by two separate Judgments.

10.With the above said observations, these Criminal Original Petitions are disposed of. Consequently, the connected Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional Sessions Judge,
Fast Track Court,
Namakkal.

2.The Judicial Magistrate No.I,
Namakkal.

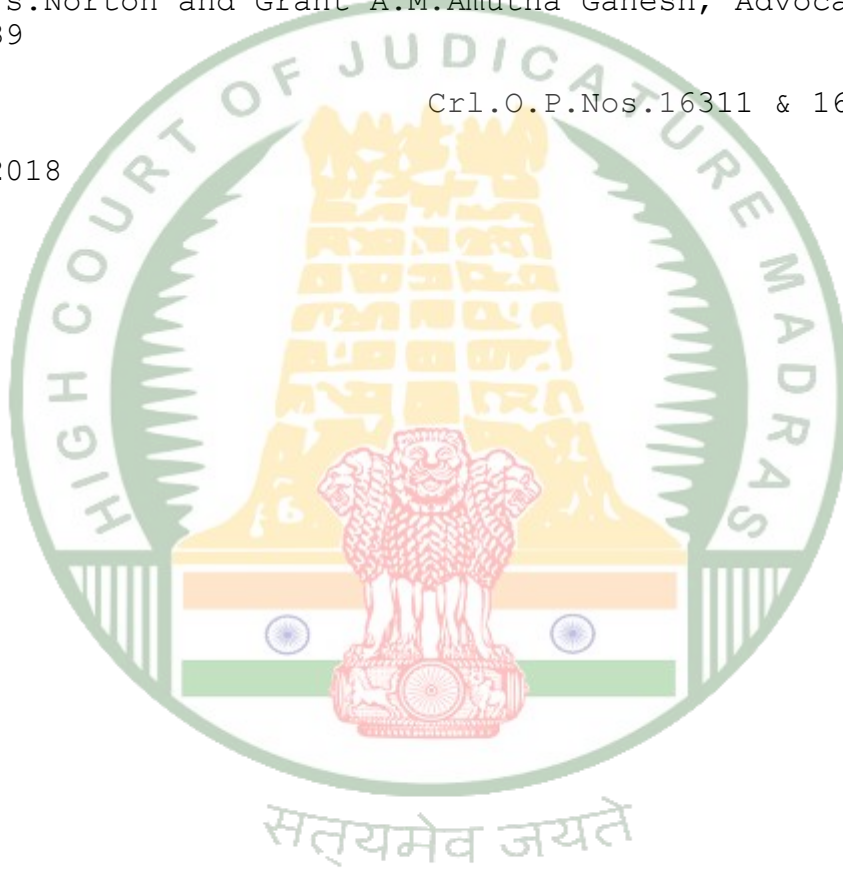
3.The Inspector of Police,
Nallipalayam Police Station,
Namakkal District,
Crime Nos.356 & 357 of 2008.

4.The Public Prosecutor,
High Court, Madras.

+2cc to M/s.Norton and Grant A.M.Amutha Ganesh, Advocate
sr.no.67539

Crl.O.P.Nos.16311 & 16312 of 2010

nr 04/10/2018



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