

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.12.2018

CORAM :
THE HON'BLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.340 of 2018
and
Crl.M.P.No.4182 of 2018

1.Swaminathan
2.Navaneetham
3.Somu Thevar
4.Latha
5.Balaiya

... Petitioners

Vs.

1.The Inspector of Police,
A.W.P.S.,
Papanasam,
Cr.No.5/2015

2.The Public Prosecutor,
Thiruvarur.

... Respondents

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order passed in Tr.Cr.M.P.No.2 of 2017 on the file of Principal District and Session Judge, Thiruvarur dated 30.01.2018 by dismissing the petitioner's application to transfer the case in C.C.No.24 of 2016 pending on the file of the District Munsif cum Judicial Magistrate, Needamangalam and transfer the same to any other Criminal Court within the jurisdiction of Tiruvarur District.

For Petitioners : M/s.K.M.Vijayan Associates

For Respondents : Mr.G.Harihara Arun Somasankar,
Government Advocate (Crl.Side)

O R D E R

The present criminal revision case has been filed against the order passed in Tr.Cr.M.P.No.2 of 2017 on the file of Principal District and Session Judge, Thiruvarur dated 30.01.2018, dismissing the petitioners' application to transfer the case in C.C.No.24 of 2016 pending on the file of the District Munsif cum Judicial Magistrate, Needamangalam to any other Criminal Court within the jurisdiction of Tiruvarur District.

2. According to the revision petitioners herein, they were charged for the alleged offence under Section 498(A) of I.P.C. and Section 4 of Dowry Prohibition Act r/w Section 109 of I.P.C. in C.C.No.24/2016, pending before the Needamangalam District Munsif-cum-Judicial Magistrate Court. According to the petitioners/accused, the learned Magistrate was acting in favour of the prosecution and therefore, these petitioners would not get a fair trial and hence, moved the above transfer Cr.M.P. before the Principal District and Sessions Court, Thiruvavur District.

3. According to these petitioners, one Ramesh, observation mahazar witness got into the witness box and was being examined. After few questions were put to the witness and the witness was not supporting the case of the prosecution, the prosecutor hurriedly ordered the witness to get down from the witness box, informing the Court that he was dispensing with the said witness. When it was objected by the defence viz., the petitioners herein, the learned Magistrate did not take it seriously and only warned the prosecutor not to do it again. According to these petitioners, a strange procedure was adopted by the prosecutor and it was approved by the learned Magistrate. Instead of treating the said witness as hostile, the prosecutor was allowed to withdraw the witness and the objection raised on behalf of the defence viz., the petitioners herein, was dismissed and was not seriously considered.

4. It was also the case of the petitioners herein that when P.W.6 was being examined in chief and in the course of the examination, he had read out three names which were written in his left palm and that was immediately brought to the knowledge of the learned Magistrate. Instead of admonishing the witness for his demeanor, the learned Magistrate has concluded that there was nothing wrong for a witness to refresh his memory. Likewise, an another instance that the defence pleaded to defer examination in view of the arrival of the counsel after 10 minutes. The learned Magistrate proceeded to complete the examination in chief of two witnesses viz., P.W.6 and P.W.7 in the absence of defence counsel who reached the Court ultimately with few minutes delay. All these instances would point out the fact that the learned Magistrate was biased in favour of the prosecution. All the above instances were dealt with by the learned Principal District and Sessions Court and by a detailed order, the transfer Cr.M.P. was dismissed.

5. The Lower Court has held that the allegations against the learned Judicial Magistrate were bald. There was no strong case made out for transfer of case from the learned Magistrate concerned. The Court has also held that there was no basis at all for the allegation and such transfer petition was filed only to drag the proceedings. As against the order, the present

revision case has been filed.

6. The learned counsel for the petitioners would reiterate the same submissions made before the learned Principal District and Sessions Judge, Thiruvavarur.

7. From the instances as pointed out by the learned counsel for the revision petitioners which were also dealt with by the learned Principal District and Sessions Court, they were too minor in nature and such things could happen in any trial but which cannot be the basis for accusing that the learned Magistrate was being biased and partial. In order to prove bias or likelihood of bias, a strong case has to be made out by the defence and only in such event, any transfer application could be considered favourably, but, not on the basis of flimsy and bald allegations of bias or likelihood of bias on the part of the learned Judicial Magistrate concerned.

8. The Lower Court has given correct reasons for not accepting the transfer petition, which according to this Court does not call for any interference. In cases of transfer petition, the manner in which the learned Magistrate conducts day-to-day proceedings, cannot be questioned on the ground that the same was not to the liking of the accused, unless the conduct of the learned Magistrate was completely unacceptable and refusing to follow the procedure established by law. The instances which were pointed out by the petitioners herein, which have been highlighted by the learned counsel for the petitioners, do not even remotely point out any element of bias and it is likely to impact the proceedings before the learned Magistrate.

9. In the said circumstances, the learned Principal District and Sessions Court has correctly dealt with the matter as it deserved and this Court does not find any infirmity in the order of dismissing the transfer petition. Therefore, this Court finds that the revision case against the order passed in Tr.Cr.M.P.No.2 of 2017 on the file of Principal District and Session Judge, Thiruvavarur dated 30.01.2018, is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Principal District and Session Judge,
Thiruvarur.

2.The learned District Munsif cum Judicial Magistrate,
Needamangalam.

3.The Inspector of Police,
A.W.P.S.,
Papanasam.

4.The Public Prosecutor,
Thiruvarur.

+1cc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.86907

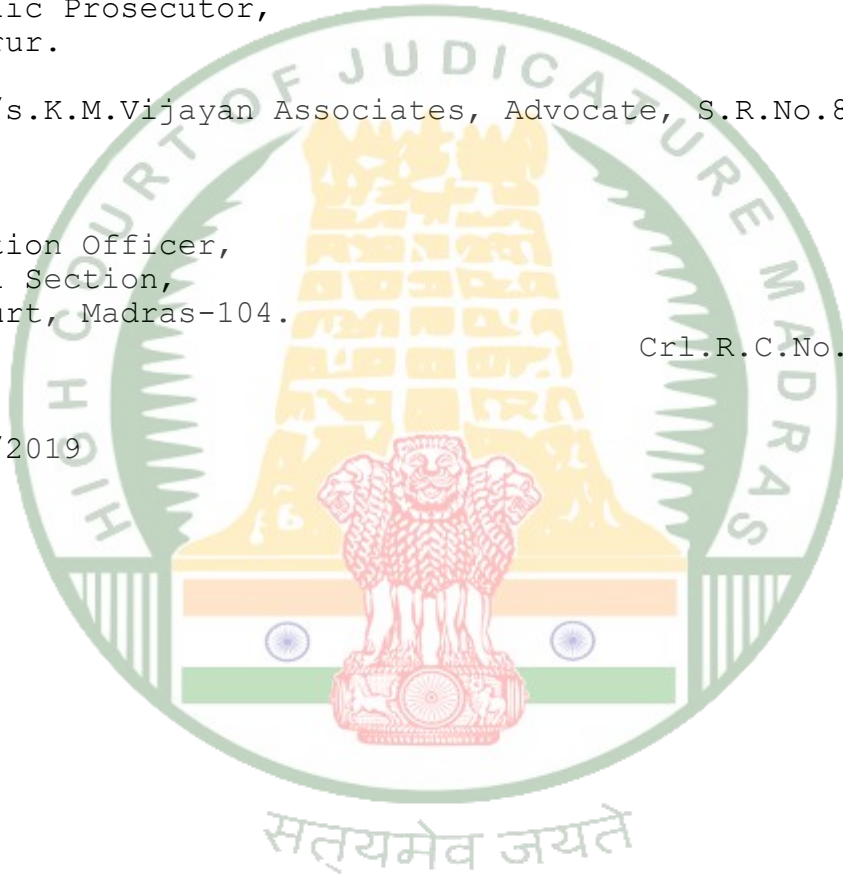
Copy To:

The Section Officer,
Criminal Section,
High Court, Madras-104.

Cr1.R.C.No.340 of 2018

SS(CO)

rrs 25/01/2019



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