

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.588 of 2018

and

Crl.M.P.No.181 of 2018

M.Murugesan

... Petitioner

Vs

1. State by

The Inspector of Police,  
Mulanur Police Station,  
Mulanur, Dharapuram Taluk,  
Tiruppur District.

2. Tamilarasu @ Kuppusamy

(R2 is impleaded as per the  
order of this Court dated 08.02.2018  
made in Crl.M.P.No.1366 of 2018 in  
Crl.O.P.No.588 of 2018)

... Respondents

Prayer: Criminal Original Petition filed under Section 407 Cr.P.C. to withdraw the criminal case in S.C.No.108 of 2017 on the file of learned Assistant Sessions Judge (Sub Court) Dharapuram and to transfer the same to learned Mahila Court, Tiruppur so as to try along with S.C.No.66 of 2016.

For Petitioner : M/s.C.D.Johnson

For Respondents : Mrs.Kritika Kamal.P

Government Advocate (Crl. Side) for R1

: Mr.M.Guruprasad for R2

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ORDER

The brief facts of the case is that the complaint in Cr.No.192 of 2015 dated 26.04.2015, at the instance of the petitioner herein culminated into two charge sheets, one is taken on file is S.C.No.66 of 2016 on the file of the learned Mahila Court, Tiruppur and another in Cr.No.192 of 2015 dated 26.04.2015, in two charges in S.C.No.108 of 2017 on the file of the learned Assistant Sessions Judge (Sub Court), Dharapuram.

2. The prayer in the present petition is for transfer of the case in S.C.No.108 of 2017 to the file of learned Mahila Court, Tiruppur for the purpose of trying it along with the S.C.No.66 of 2016.

3. Heard, Mr.C.D.Johnson, learned counsel appearing for the petitioner, Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the first respondent and Mr.M.Guruprasad appearing for the second respondent.

4. The learned counsel for the petitioner submitted that since the offence laid down in S.C.Nos.108 of 2017 and 66 of 2016 arises out of the same incident and therefore two cases should be tried jointly. He further submitted that the witnesses in both the cases are one and the same and in order to have a fair and just trial, it would be appropriate that both the trials are conducted before the same Court.

5. The learned counsel for the second respondent on the other hand submitted that by transferring the trial from the learned Mahila Court, Tiruppur to the learned Assistant Sessions Judge, Dharapuram, he would lose an opportunity of an appeal and as such it would affect his statutory right. As such, the learned counsel submitted that both the occurrences are not one and the same and in view of the cases being distinct in nature, such a transfer was not warranted.

6. The learned Government Advocate (Crl. Side) on the other hand submitted that the first incident had occurred on 23.04.2015 at 4.30 p.m, between the petitioner and the second respondent and the subsequent incident on 25.04.2015 at 10.00 p.m was an incident wherein the petitioner is alleged to have committed murder of his mother. Though the incidents are totally different, since the offence committed in connection with the same transaction, it would be appropriate to have it tried by the same Court.

7. Before considering the statement made by the representing counsel, it would be appropriate to refer to Section 223 of the Criminal Procedure Code which reads hereunder:

223. What persons may be charged jointly

—

The following persons may be charged and tried together, namely:—

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- (c) persons accused of more than one offence of the

same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the [Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and [if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

10. A similar situation, akin to the facts of the present case, came up for consideration before the Hon'ble Supreme Court judgment reported in (2000) 1 Supreme Court Cases 285 (Before K.T.Thomas, A.P.Misra and Syed Shah Mohammed Quadri,JJ) and while the Hon'ble Apex Court held that when offences are committed during the course of the same transaction, the trial Court should try the two cases separately one after another and the judgment could be pronounced separately.

11. The relevant portion of the said judgment reads as follows:

According to Shri D.D. Thakur the case against the appellant and the case against Guria should have been consolidated together for a joint trial. He made on

endeavour to show that two cases in respect of the murder of one person could be brought within the ambit of Section 223 of the Code (which corresponds to Section 239 of the old Code of 1898). As per that provision, all persons falling under any one of the seven categories enumerated therein can be charged and tried together. Out of those seven categories enumerated in the section we need not even advert to those categories indicated with placitum (b), (c), (d), (e), (f) of the Section as they are not relevant in this context. We would, therefore, extract clauses (a) and

(d) in Section 223 as under:

"The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course of the same transaction;

(d) persons accused of different offences committed in the course of the same transaction."

In both the aforesaid clauses the primary condition is that persons should have been accused either of the same offence or of different offences "committed in the course of the same transaction". The expression advisedly used is "in the course of the same transaction". That expression is not akin to saying "in respect of the same subject matter". It is pertinent to point out that the same expression is employed in Section 220(1) of the Code also (corresponding to Section 235(1) of the old Code). The meaning of the expression "in the course of the same transaction" used in Section 223 is not materially different from that expression used in Section 223(1). It is so understood by this Court in *State of Andhra Pradesh v. Cheemalapati Ganeswara Rao & Anr.*, [1964] 3 SCR, 297. The following observation in the said judgment is contextually quotable:

"The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in S.235 (1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression 'same transaction' occurring in cls. (a), (c) and (d) of S.239 as well as that occurring in S,235(1) ought to be given the same meaning according to the normal rule of construction

of statutes."

For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is commonality of purpose or design, where there is continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction,"

But if in one case the accused is alleged to have killed a person without any junction with the accused in the other case, then it cannot be treated as the same offence or even different offences "committed in the course of the same transaction". If such two diametrically opposite versions are put to joint trial the confusion which it can cause in the trial would be incalculable. It would then be a mess and then there would be no scope for a fair trial. Hence the attempt to bring the two cases under the umbrella of Section 223 of the Code has only to be foiled as untenable.

The above judgment is self explanatory.

12. In view of the fact that the occurrence arise out of same transaction and also taking into account that the offences laid down in both cases are one and the same, it would not be proper to have two different courts to try the matter separately. The further aspect that needs to be considered is that the occurrence arises out of the same transaction and therefore if these two courts are permitted to pass two different judgments, the same may result in causing prejudice to the rights of either one of the parties. Insofar as the objections of the learned counsel for the second respondent that he loses an opportunity of the appeal is concerned, what the Court would weigh at this point of time is to the prejudice that would be caused to the entire case. As such, if the trial is ordered be conducted separately for each of the cases, the petitioner has to be tried separately for the offences wherein the witnesses and other evidences are predominantly one and the same in both the cases. While that being so, it would be appropriate to weigh the necessity to render substantial justice to both the parties and therefore, it would be just and necessary that the trial be conducted by the same Sessions Court.

13. In the result, the proceedings in S.C.No.108 of 2015 on the file of the learned Assistant Sessions Judge (Sub Court) Dharapuram is directed to be transferred to the file of the learned

Mahila Court, Tiruppur and the learned Mahila Judge, Tiruppur shall try both the cases namely S.C.Nos.108 of 2015 and 66 of 2017, one after the other and separate judgments shall be pronounced. Such an exercise of transferring the cases shall be done within a period of two weeks from the date of receipt of a copy of this order.

14. With the above observations, the Criminal Original Petition stands allowed. Consequently connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar (CS IX )

/true copy/

Sub Asst. Registrar

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To

- 1.The Assistant Sessions Judge,  
Sub Court, Dharapuram.
  - 2.The Mahila Judge,  
Tiruppur.
  3. The Inspector of Police,  
Mulanur Police Station,  
Mulanur, Dharapuram Taluk,  
Tiruppur District.
  - 4.The Public Prosecutor,  
High Court, Madras.
- + 1 cc to Mr.M.Guruprasad, Advocate,SR.22431
- + 1 cc to M/s.N.Ponraj Advocate,SR.22100

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