

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.12166,12167,16018,16019 of 2018

Crl.O.P.No.12166 of 2018:

- 1.Kethra Mohan Manthan
- 2.Gagan Bihari Senapathy @ Gagan
- 3.Anandarao
- 4.Kantha Rao
- 5.Srinivasa Rao
- 6.Subashkumar Doss
- 7.Kumar
- 8.Ravikumar
- 9.Subramanian
- 10.Sridharraj @ Balan
- 11.Gnanam @ Gnanasekaran
- 12.Suresh
- 13.Ramesh
- 14.Anbu
- 15.Rangaraj
- 16.Vivekanandan
- 17.Boopesh
- 18.Arun
- 19.Sureshkumar

...Petitioners

1. State Represented by
Deputy Superintendent of Police,
Crime Branch C.I.D., सत्यमेव जयते
Coimbatore
2. Hrishikesh Kundu
3. Ramesh @ Sathya Ramesh
4. Sivaguru
5. Venkat @ Venkatji @ Venkatesan
6. Senthilkumar
7. Thiagarajan
8. Mohanasundaram @ Mohan @ Ilayaraja
9. Praveenkumar
10. Deva @ Devanand
11. Kumar @ Karthik @ Karthikeyan
12. Balaji

...Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Learned Judicial Magistrate No.III Erode to expedite the trial of the case in C.C.No.153 of 2017 on day to day basis and conclude the same expeditiously, preferably within a period of six months from the next date fixed before the Trial Court.

For Petitioners : Mr.S.Manuraj

For R1 : Mrs.. Prabhavathi
Additional Public Prosecutor

Cr1.O.P.No.12167 of 2018:

- 1.Kethra Mohan Manthan
- 2.Gagan Bihari Senapathy @ Gagan
- 3.Anandarao
- 4.Kantha Rao
- 5.Srinivasa Rao
- 6.Subashkumar
- 7.Kumar
- 8.Ravikumar
- 9.Dhayanidhi
- 10.Murugan @ Kosu Murugan
- 11.Subramanian
- 12.Selvam @ Thunikadai Selvam
- 13.Sridharraj @ Balan
- 14.Gnanam @ Gnanasekaran
- 15.Mohanbabu
- 16.Sathish Kumar
- 17.Varatharaj
- 18.Selvarasu
- 19.Sudhakar
- 20.Senthil
- 21.Dhanakodi
- ..Petitioners

Vs

1. State Represented by
Deputy Superintendent of Police,
Crime Branch C.I.D.,
Coimbatore
2. Hrishikesh Kundu
3. Ramesh @ Sathya Ramesh
4. Sivaguru
5. Dhavamani
6. Venkat @ Venkatji @ Venkatesan

7. Senthilkumar
8. Thiagarajan
9. Kumar @ Karthik @ Karthikeyan

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Learned Judicial Magistrate No.III Erode to expedite the trial of the case in C.C.No.14 of 2014 on day to day basis and conclude the same expeditiously, preferably within a period of six months from the next date fixed before the Trial Court.

For Petitioners : Mr.S.Manuraj
For R1 : Mrs.M. Prabhavathi
Additional Public Prosecutor

CrI.O.P.No. 16018 of 2018:
Hrishikesh Kundu

..Petitioner

Vs

1. State Through by
Deputy Superintendent of Police,
Crime Branch C.I.D.,
Coimbatore
2. Kethra Mohan Manthan
3. Gagan Bihari Senapathy
4. Anandarao
5. Kantha Rao
6. Srinivasa Rao
7. Subashkumar Doss
8. Ramesh @ Sathya Ramesh
9. Kumar
10. Sivaguru
11. Ravikumar
12. Subramanian
13. Venkat @ Venkatji @ Venkatesan
14. Senthilkumar
15. Thiagarajan
16. Mohana Sundaram @ Mohan @ Ilayaraja
17. Sridharraj @ Balan
18. Gnanam @ Gnanasekaran
19. Kumar @ Karthik @ Karthikeyan
20. Praveen Kumar
21. Deva @ Devanand
22. Suresh
23. Ramesh
24. Anbu
25. Prabakaran
26. Balaji
27. Rangaraj @ Ranarajan

28.Vivekanandhan
29.Boopesh
30.Arun
31.Sureshkumar

..Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Learned Judicial Magistrate No.III Erode to expedite the trial of the case in C.C.No.153 of 2017 on day to day basis and conclude the same expeditiously, preferably within a period of six months from the next date fixed before the Trial Court.

For Petitioners : Mr.M.Deivanandam

For R1 : Mrs.M. Prabhavathi
Additional Public Prosecutor

Cr1.O.P.No. 16019 of 2018:

Hrishikesh Kundu

..Petitioner

Vs

1. State Represented by
Deputy Superintendent of Police,
Crime Branch C.I.D.,
Coimbatore.
2. Kethra Mohan Manthan
3. Gagan Bihari Senapathy @ Gagan
4. Anandarao
5. Kantha Rao
6. Srinivasa Rao
7. Subashkumar
8. Ramesh @ Sathya Ramesh
9. Kumar
- 10.Sivaguru
11. Ravikumar
- 12.Dhayanidhi
- 13.Murugan @ Kosu Murugan
- 14.Subramanian
- 15.Dhavamani
- 16.Selvam @ Thunikadai Selvam
- 17.Venkat @ Venkatji @ Venkatesan
- 18.Senthilkumar
- 19.Thiagarajan
- 20.Sridharraj @ Balan
- 21.Gnanam @ Gnanasekaran
- 22.Kumar @ Karthik @ Karthikeyan
- 23.Mohanbabu

24.Sathishkumar
25.Varatharaj
26.Selvarasu
27.Sudhakar
28.Senthil
29.Dhanakodi

...Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Learned Judicial Magistrate No.III Erode to expedite the trial of the case in C.C.No.14 of 2014 on day to day basis and conclude the same expeditiously, preferably within a period of six months from the next date fixed before the Trial Court.

For Petitioners : Mr.M.Deivanandam
For R1 : Mrs.M. Prabhavathi
Additional Public Prosecutor

C O M M O N O R D E R

On 23.07.2018, this Court passed the following order:

"1. While CrI. O.P. Nos.12166 and 16018 of 2018 have been preferred seeking a direction to the Judicial Magistrate No.III, Erode, to expedite the trial of the case in C.C. No.153 of 2017 on a day-to-day basis and conclude the same as expeditiously as possible, preferably within a period of six months from the next date fixed before the Trial Court, CrI.O.P. No.12167 of 2018 and 16019 of 2018 have been preferred seeking the identical relief, but, qua, C.C. No.14 of 2014 before the Judicial Magistrate No.III, Erode.

2. On the complaint given by the Deputy Tahsildar, Special Projects, Harur, the Kambainallur police registered a case in Cr. No.277 of 2012 on 12.08.2012 under Sections 120-B, 417,420,465 and 468 IPC against Suresh Kumar and others. The crux of the allegation in the FIR is that on 12.08.2012, when the examinations for TNPSC Group II were going on at various centres in Kambainallur, the Deputy Tahsildar, Special Projects, Harur, who was in charge of the examinations, on intelligence that, questions papers were found to be leaked, seized the copies of the same outside the examination hall. Hence, the FIR.

3. Similarly, on the complaint lodged by one

Liyakath Ali, the Special Tahsildar, Civil Supplies, Erode District, the Erode Town Police Station registered a case in Cr.No.1423 of 2012 on 13.08.2012 for the offences under Sections 120-B, 406 and 420 IPC against one Senthil and others. The crux of the allegation in the FIR is that during the Tamil Nadu Public Service Commission Group-II examinations, the Special Tahsildar, who was in charge of the said examinations, found leaked question papers in the examination centres in Erode. Hence, the FIR.

4. Thus, for the leakage of the question papers in Dharmapuri District, a case in Kambainallur P.S. Cr. No.277 of 2012 was registered and for the leakage of the same question papers in Erode District, the Erode Town Police Station registered a case in Cr. No.1423 of 2012.

5. Based on the orders of the Director General of Police, the case in Kambainallur P.S. Cr. No.277 of 2012 and the case in Erode Town P.S. Cr. No.1423 of 2012 were transferred to the CB-CID, Coimbatore, for investigation and accordingly, the Deputy Superintendent of Police, CB-CID, Coimbatore, took up investigation of both the cases.

6. While the investigation in Kambainallur P.S. Cr. No.277 of 2012 culminated in C.C. No. 11 of 2014 before the Judicial Magistrate No.I, Dharmapuri, the investigation in Erode Town P.S. Cr. No.1423 of 2012 culminated in C.C. No.14 of 2014 before the Judicial Magistrate No.III, Erode.

7. At this juncture, it may be necessary to point out that during the investigation by the CB-CID in Kambainallur P.S. Cr. No.277 of 2012, one person by name Prabakaran was given tender of pardon by the Chief Judicial Magistrate, Dharmapuri and he has been shown as a witness in the final report in C.C. No.11 of 2014.

8. Likewise, during the investigation by the CB-CID in Erode Town P.S. Cr. No. 1423 of 2012, one person by name Jainivasan was given tender of pardon and he has been shown as a witness in the final report in C.C. No.14 of 2014. It may also be relevant to state here that some of the accused are common in both C.C. No.11 of 2014 and C.C. No.14 of 2014.

9. While so, some of the accused filed Crl.O.P. No.22837 of 2016 before this Court with the following prayer:

"Criminal Original Petition filed under Section 482, Cr.P.C. seeking to issue a direction to either club both cases try at one trial in C.C. No.11 of 2014 pending before the Judicial Magistrate No.1, Dharmapuri along with C.C. No.14 of 2014, pending before the Judicial Magistrate No.III, Erode or both the cases may be clubbed and tried together at Erode."

10. On 08.11.2016, after hearing all the parties, this Court passed the following order:

"7. Heard Mr. Shanmugasundaram, learned Senior Counsel appearing for the petitioners/accused, Mr. C.Emalias, learned Additional Public Prosecutor for respondents 1 to 3 and Mr. B. Kumar, learned Senior Counsel appearing for the fourth respondent. Mr. R. Muthusamy, Deputy Superintendent of Police, CB-CID, Coimbatore is present.

8. The learned Additional Public Prosecutor submitted that the State has no serious objection for transfer of both the cases to one of the Courts for simultaneous trial.

9. The other accused who are not parties to the petition have been arrayed as respondents and the learned counsel representing them also submitted that they have no objection in transfer.

10. On a perusal of the final reports in both the cases, this Court finds that most of the witnesses in both the cases are common and most of the witnesses hail from in and around Erode.

11. Ergo, in the interest of justice, this Court is of the considered view that it will be in the fitness of things, if C.C. No.11 of 2014 is transferred from the file of the Judicial Magistrate Court No.I, Dharmapuri, to the file of the Judicial Magistrate Court

No.III, Erode, to be tried simultaneously.

12. Accordingly, this Court directs the Judicial Magistrate No.I, Dharmapuri, to transfer all the records in C.C. No.11 of 2014 to the file of the Judicial Magistrate Court No.III, Erode, within a period of four weeks from the date of receipt of a copy of this order. The Judicial Magistrate No.I, Dharmapuri, is further directed to obtain necessary muchalika from all the accused to appear before the Judicial Magistrate No.III, Erode, on a specific date and send the muchalika to the said Court in advance, so that fresh summons need not be issued to the accused by the Judicial Magistrate No.III, Erode. Bail bonds and property fee deposited if any, shall also be transferred along with the records to the Judicial Magistrate No.III, Erode.

Both these Criminal Original Petitions stand ordered accordingly."

11. Pursuant to the aforesaid order passed by this Court, C.C. No.11 of 2014 was transferred from the file of the Judicial Magistrate No.I, Dharmapuri, to the file of the Judicial Magistrate No.III, Erode and re-numbered as C.C.No.153 of 2017.

12. Under such circumstances, the accused have preferred the present four petitions seeking a direction, as aforesated.

13. This Court called for a report from the Judicial Magistrate No.III, Erode, explaining the delay in completion of the two trials. The Judicial Magistrate No.III, Erode, has submitted a detailed report dated 08.06.2018.

14. Today, when the matter was taken up for hearing, it was brought to the notice of this Court that charges have been framed in both the cases by the Judicial Magistrate No.III, Erode, on 08.06.2018 and that, in C.C. No. 153 of 2017, five witnesses have been examined. At that juncture, the learned Assistant Public Prosecutor in charge of the case, appears to have filed a memo before the Judicial Magistrate No.III, Erode, stating that the trial in these cases should have to be conducted by the Chief Judicial Magistrate and not

by the regular Judicial Magistrate in view of Section 306(5) Cr.P.C. as two persons have been taken as approvers and have been given tenders of pardon. On account of the memo filed by the learned Assistant Public Prosecutor, there has not been any further progress in the trial.

15. Heard Mr. R. Shanmugasundaram, learned Senior Counsel appearing for the petitioners in CrI.O.P. No.12166 and 12167 of 2018, Mr.M.Deivanandam, learned counsel for the petitioners in CrI.O.P. Nos.16018 and 16019 of 2018 and Mr. C. Raghavan, learned Government Advocate (CrI.Side) appearing for the respondent police.

16 At this juncture, it may be apposite to quote Section 306 (4 and 5) Cr.P.C.:

"306. Tender of pardon to accomplice:

(4) Every person accepting a tender of pardon made under sub-section (1)--

a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

b) shall, unless he is already on bail, be detained in custody until the termination of the trial

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,--

a) commit it for trial--

i to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

ii to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court:

b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself."

17 . From a reading of the above provisions, it is limpid that the approver should be examined, once before the Magistrate taking cognizance and should be examined for the second time, by the Trial Court and that in a case, where, tender of pardon has been given to an accused, trial has to be conducted by the Chief Judicial Magistrate in terms of Section 306(5-b) Cr.P.C. and not by the regular Magistrate.

18 Section 461(1) Cr.P.C. reads as under:
"461.Irregularities which vitiate proceedings:

(1)tries an offender:"
Thus, if the trial is conducted by a Judicial Magistrate, other than the Chief Judicial Magistrate, the entire trial will stand vitiated.

19. But, unfortunately, while passing orders in CrI.O.P. No.22837 of 2016, this Court had failed to notice the fact that tenders of pardon have been given to two persons. Now, the wrong committed by this Court has to be set right.

20 Accordingly, in exercise of powers under Sections 482 and 483 Cr.P.C., this Court directs making over of C.C. Nos.14 of 2014 and 153 of 2017 to the Chief Judicial Magistrate Court, Erode, for trial. Before making over, the Judicial Magistrate No.III, Erode, is directed to examine the approvers in terms of Section 306(4) Cr.P.C. It is made clear that at that juncture, the accused do not have a right to cross-examine the approvers as held by the Supreme Court in Ranadhir Basu vs. State of West Bengal [(2000) 3 SCC 161]. However, when they are cross-examined again during trial, the accused will have the right to cross-examine the approvers. The evidence of the five witnesses recorded cannot be eschewed in the light of the law laid down by the Supreme Court in Satyajit Banerjee and others vs. State of West Bengal and others [(2005) 1 SCC 115]. It can be used as a previous statement, that is all and not as substantive evidence. In other words, the Chief Judicial Magistrate, Erode, will

have to once again frame charges in both the cases and question the accused and once again examine the five witnesses. After examining the approvers, the accused shall be bound over by the Judicial Magistrate No.III, Erode, with a direction to appear before the Chief Judicial Magistrate, Erode, on a particular date.

21 The aforesaid exercise shall be completed by the Judicial Magistrate No.III, Erode, within a period of four weeks from the date of receipt of a copy of this order.

Post on 20.08.2018."

2. Today, the learned counsel for the accused submitted that the approvers were examined before the Judicial Magistrate No.III and the cases have now been transferred to the Chief Judicial Magistrate, Erode, and re-numbered as C.C.Nos.91 and 92 of 2018.

Recording the same, these petitions are closed with liberty to the petitioners to file a fresh application, after the charges are framed.

Sd/-

Assistant Registrar(CS-CO)

//True copy//

Sub Assistant Registrar

vji/gms

To

1.The Deputy Superintendent of Police, Crime Branch C.I.D., Coimbatore.

2. The Public Prosecutor, High Court, Madras.

3.The Judicial Magistrate No.III, Erode

4.The Chief Judicial Magistrate, Erode

+2cc to Mr.M.Deivanandan*, Advocate SR.No.57614, 57615

+2cc to Mr.S. Manuraj, Advocate SR.No.57558, 57559

CrI.O.P.Nos.12166,12167,16018 & 16019 of 2018
GMY(06/09/2018)