

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.07.2018

PRONOUNCED ON: 10.07.2018

CORAM:

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

Crl.O.P. No.14370 of 2018 and Crl.M.P. No.7314 of 2018

C. Srinivasan

Petitioner /Accused

vs.

The State
represented by the Inspector of Police
T-11, Thirunindravur Police Station
Thirunindravur
Chennai 602 024

Respondent/Petitioner

Criminal Original Petition filed under Section 407 Cr.P.C. seeking to withdraw and transfer the case in S.C. No.98 of 2017 from the file of the I Additional District and Sessions Court at Thiruvallur, to the file of the District and Sessions Court at Chennai.

For petitioner Mr. G. Mohanakrishnan

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

ORDER

On the complaint lodged by one Lakshmi Devi, the respondent police registered a case in Cr. No.998 of 2016 on 09.10.2016 under Sections 302 and 506(2) IPC against the petitioner herein and after completing the investigation, have filed a charge sheet and the case now stands trial in S.C.No.98 of 2017 before the I Additional District and Sessions Court, Thiruvallur, for seeking transfer of which, to the District and Sessions Court at Chennai, the petitioner/accused is before this Court.

2 The petitioner/accused is a practising advocate. It is alleged in the final report that the petitioner/accused used to urinate publicly on the compound wall of the de facto complainant's house; when the de facto complainant, who is a widow, questioned him on 02.10.2016, a quarrel ensued; on 09.10.2016, the petitioner/accused once again urinated in broad day light on the compound wall of the de facto complainant's house, which was questioned by the de facto complainant, for

which, the petitioner/accused is said to have abused her and asked her to vacate the house; while so, when the de facto complainant's son Nagarajan interceded, the petitioner/accused assaulted him with an iron rod ruthlessly causing his death. Hence, the FIR and the consequent charge sheet.

3 Mr. G. Mohanakrishnan, learned counsel for the petitioner/accused submitted that the petitioner/accused will not get a fair trial in Thiruvallur District since the family of the de facto complainant is influential there. He further contended that there may not be proper legal assistance for the petitioner/accused, if the trial is conducted in Thiruvallur District. It is his further contention that the police have not conducted a fair investigation and they were biased against the petitioner/accused. Lastly, he contended that most of the witnesses on behalf of the defence hail from Chennai and therefore, the case should be transferred from and out of Thiruvallur District.

4 Per contra, the learned Government Advocate (Crl. Side) submitted that the petitioner/accused is a practising lawyer in Chennai and that he absconded on 12.02.2018 and non-bailable warrant was issued against him and it was recalled only on 04.06.2018. She further contended that, out of 20 prosecution witnesses, 13 witnesses, including the eye witnesses who had seen the incident, are from Thiruvallur District and therefore, undue prejudice will be caused to the prosecution, if the case is transferred out of Thiruvallur District.

5 This Court gave its anxious consideration to the rival submissions.

6 The power of this Court to transfer a case from one district to another district can be exercised only on the grounds enumerated in Section 407 Cr.P.C. Admittedly, the petitioner/accused is a practising advocate and his place of practice is not Thiruvallur, but, Chennai. On a reading of the charge, it is seen that the de facto complainant's family does not belong to Thiruvallur District, but, they have migrated from the neighbouring Andhra Pradesh State. In fact, the de facto complainant is a widow and she lost her only son in the attack made by the petitioner/accused. That apart, the de facto complainant's family was living in a rented house and it is on the compound wall of that rented house, the petitioner/accused was allegedly urinating publicly. The fact that the petitioner/accused absconded from 12.02.2018 to 04.06.2018 cannot be brushed aside. The contention of Mr. Mohanakrishnan, learned counsel for the petitioner/accused that there may not be a fair trial in Thiruvallur District does not cut ice with this Court. In fact, undue prejudice will be caused to the

prosecution witnesses, if the case is transferred out of Thiruvallur District, because, it will become very difficult for the witnesses to go to a far away place and depose there without fear. Further, to say that no advocate came forward to appear for the petitioner/accused may not be correct, because, the petitioner/accused had not made any such complaint before the Trial Judge. In fact, he has filed an application to recall the non-bailable warrant issued against him by engaging a counsel before the Trial Court. In the opinion of this Court, this is once again a dilatory tactics that has been adopted by the petitioner/accused to frustrate the progress of trial.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. The Trial Court is directed to proceed with the trial expeditiously. If the petitioner/accused absconds, a fresh FIR can be registered against him under Section 229-A IPC. Connected CrI.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector of Police
T-11, Thirunindravur Police Station
Thirunindravur
Chennai 602 024
- 2 The I Additional District and Sessions Court
Thiruvallur
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr. G. Mohanakrishnan, Advocate sr.no.44635

CrI.O.P. No.14370 of 2018

rj(co)
nr 17/07/2018