

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.11.2018

CORAM
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.1815 & 3641 of 2017
and Crl.M.P.Nos.1306, 1307,2641 & 3266 of 2017

1.G.Devasagayam ..Petitioner in Crl.O.P.Nos.1815 & 3641/2017
2.D.Mythili
3.V.Banumathy
4.K.Chandrakala
5.V.Velan
6.K.Karthikeyan ..Petitioners 1 to 6 in Crl.O.P.No.3641/18

Vs

1.States,
Inspector of Police,
All Women Police Station Gudiyatham,
Gudiyatham,
Vellore District. ..Respondent in both Crl.O.Ps

2.K.Maheswari ..2nd Respondent in Crl.O.P.No.1815/18

(2nd Respondent impleaded as per the order the order of this
Court dt.28.2.17 in Crl.MP 3025/17 in Crl.OP 1815/17)

Prayer in Crl.O.P.No.1815/18: Criminal Original Petition filed
under Section 482 Cr.P.C. praying

(a) to dispense with the personal appearance of the
petitioner/s in C.C.No.70 of 2010 on the file of the Learned
Judicial Magistrates Court, Gudiyatham and thus render justice.

(b) to stay all further proceedings C.C.No.70 of 2010 on
the file of the Learned Judicial Magistrates Court, Gudiyatham,
and thus render justice.

(c) to be set aside the learned Chief Judicial Magistrate,
Vellore order passed on 14.12.2016 in Tr.O.P CMA No.414/2016 in
C.C.No.70 of 2010 and may be transferred in C.C.No.70/2010 from
Judicial Magistrate Court Gudiyatham, at Vellore district to
Judicial Magistrate Arakonam at Vellore district.

Prayer in Crl.O.P.No.3641/18: (a) to stay all further
proceedings in CMP No.5565 of 2016 in CC.No.70 of 2010 on the
file of the Learned Judicial Magistrates Court, Gudiyatham;

(b) to stay further proceedings of to take chief
examination of the private witness after allowing the respondent
petition in CMP No.5565 of 2016 in CC.No.70 of 2010, the case is
pending before the judicial Magistrate at Gudiyatham;

(c) to be set aside the learned Judicial Magistrate passed
order dated on 04.01.2017 in CMP No.5565 of 2016 in CC.No.70 of

2010 filed by the respondent and the matter is pending before the Judicial Magistrate at Gudiyatham, Vellore and thus render justice.

For Petitioners : Mr.B.N.Chandrasekar
For 1st Respondent : Mr.M.Mohamed Riyaz
in both Crl.O.Ps. Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Chief Judicial Magistrate, Vellore dismissing the transfer application filed by the petitioner in the pending proceedings in C.C.No.70 of 2010 and also allowing the Section 311 petition filed by the prosecution in C.M.P.No.5565 of 2016.

2. It is seen from the records that the petitioner has been arrayed as A1 and is facing trial for an alleged offence under section 341, 294(b) 494,506(II) r/w 109 IPC.

3. The petition was filed before the Chief Judicial Magistrate at Vellore seeking for transferring the proceedings on the ground that the petitioner did not get sufficient opportunity to conduct the case before the learned Judicial Magistrate Court, Gudiyatham.

4. It will be useful to extract the findings given by the Learned Chief Judicial Magistrate, Vellore while dismissing the transfer petition, which reads as follows:

"8. Remarks were obtained from the concerned Judicial Magistrate. On perusal of the case proceedings before the lower court it can be noted that one Chandrakala, Velan and Karthikeyan ranked as A5 to A7 in C.C.No.70/2010 had filed Crl.O.P. No.12119/2016 before the Honorable High Court, Madras for quashing the criminal proceedings against them. The same was dismissed by the Honorable High Court on 29.06.2016, with a direction to dispose the case within SIX months. While dismissing the petition Honorable Justice P.N.Prakash, had observed from the report dated 27.06.2016 sent by the Judicial Magistrate Gudiyatham, that there was no bias or partiality in handling the case by the office. As reported by the Judicial Magistrate his remarks is as follows:

" I further humbly submit that this Court received the entire material records in C.C.No.70/2010 on the file of this Court on 10.06.2013, after disposal of the above said Crl.O.P.No.13836/2011. Further, this Court issued witness summon to the accused after receipt of the material records. In the mean while, the

counsel for accused filed the petition u/s 205 of Cr.P.C. To dispose with accused 2 & 4. On 13.10.2014 in C.M.P.No.9760/2014 and this petition is allowed by this Court on 23.11.2015. Subsequently, the defacto complainant counsel filed the petition u/s 301(2) of Cr.P.C., on 28.03.2016 before this Court to assist the prosecution along with the Assistant Public Prosecutor. The prosecution counsel, APP filed the counter on 23.06.2016. Hence, this case posted to 27.06.2016 for enquiry in CMP No.2860.2016."

9. The main allegation of the petitioner is that Judicial Magistrate, Gudiyatham, without giving an opportunity to hear his case is insisting to proceed with the trial. Remarks obtained from the concerned Judicial Magistrate shows fair opportunity was given to the petitioner to present his case. When there is a specific direction from the Honorable High Court, Madras to complete the case within six months, the officer has to conduct the case on day to day basis. The petitioner had suppressed the order of the Honorable High Court, Madras and trying to surpass the order through this transfer petition. There is no impediment for the petitioners to proceed with the case. I do not find any reason to transfer the case."

5. The Court below has considered the entire facts of the case and has also found that the petition filed under Section 311 of Cr.P.C. by the prosecution in C.M.P.NO.5565 of 2016 deserves to be allowed. This Court does not find any illegality or infirmity in the order passed by the Court below. Therefore, there is no ground to interfere with the order passed by the Court below in allowing the application filed by the prosecution under Section 311 of Cr.P.C.

6. It is seen from the records that there is already a direction given by this Court to dispose of the case within a period of six months and the concerned Judicial Officer has been directed to conduct the case on a day to day basis. This order has been suppressed and a transfer petition has been filed before the court below on the ground that the petitioner has not given an opportunity to conduct his case.

7. This Court does not find any illegality or infirmity in the order passed by the court below. This Court does not find any ground to transfer the pending proceedings.

8. In the result, the Criminal Original Petition is dismissed and the learned Judicial Magistrate, Gudiyatham is directed to complete the proceedings in C.C.No.70 of 2010,

within a period of three months from the date of receipt of a copy of this order and file a compliance report before this Court after the completion of the proceedings.

9. With the above direction, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb/rpl

To

1.The Judicial Magistrate at Gudiyatham,
Vellore.

2.-Do- thro The Chief Judicial Magistrate,
Vellore.

3.The Inspector of Police,
All Women Police Station Gudiyatham,
Gudiyatham,
Vellore District.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr. B.N.Chandrasekar, Advocate, S.R.No.76987(04/01/2019)

Cr1.O.P.Nos. 1815 & 3641 of 2017

SV(CO)

rrs 06/12/2018

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