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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.10.2018

PRONOUNCED ON: 26.10.2018

CORAM:

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

CrI.O.P. No.24906 of 2018

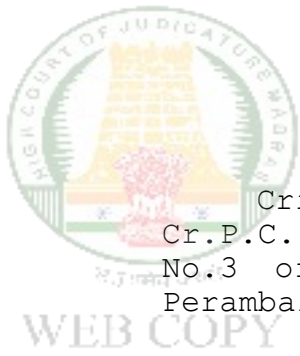
Dhanam

Petitioner

vs.

- 1 The Deputy Superintendent of Police
CB-CID
Perambalur
Perambalur District
- 2 Ramiahan
Panchayat President
Thungapuram Village Panchayat
Kunnam Taluk
Perambalur District
- 3 Subbiah
Inspector of Police
(Now under suspension)
Kunnam Police Station
Perambalur District
- 4 Neelamegam
Sub-Inspector of Police
(Now under suspension)
Kunnam Police Station
Perambalur District
- 5 Indirani
Head Constable
(Now under suspension)
Kunnam Police Station
Perambalur District
- 6 Veeramani
Head Constable
(Now under suspension)
Kunnam Police Station
Perambalur District
- 7 Malarkodi
(Now under suspension)
Kunnam Police Station
Perambalur District

Respondents



Criminal Original Petition filed under Section 407 Cr.P.C. seeking an order to re-transfer the case in Spl. S.C. No.3 of 2017 to the Special Court under the SC/ST Act, Perambalur, from the Special Court, Tiruchirapalli.

For petitioner Mr. R. Sankara Subbu
For R1 Mrs. M. Prabhavathi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been preferred seeking an order to re-transfer the case in Spl. S.C. No.3 of 2017 to the file of the Special Court under the SC/ST Act, Perambalur, from the file of the Special Court under the SC/ST Act, Trichy, to secure the ends of justice.

2 The factual matrix of the case is as under:

2.1 One Vasuki, a Dalit, committed suicide on 30.06.2012, pursuant to which, a case in Kunnam P.S. Cr. No.299 of 2012 was registered under Section 174 Cr.P.C. Her suicide generated public outcry in the locality and therefore, the case was transferred from the file of Kunnam Police Station to the CB-CID for fair investigation.

2.2 The CB-CID re-registered the case as Cr. No.1 of 2015 and after completing the investigation, filed a charge sheet in Special S.C. No.3 of 2017 before the Principal District and Sessions Court (Special Court for SC/ST Act Cases), Perambalur, against six accused for the offences under Sections 147, 348, 294(b), 323, 325, 355, 354, 114, 166, 167, 218, 506(i), 306 and 201 IPC read with Section 3(1)(x), 3(1)(xi) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for brevity "the SC/ST Act"). The first accused in that case is a local Panchayat President and other accused are police officers.

2.3 It is the case of the CB-CID that the deceased Vasuki was taken to the police station for interrogation in connection with a case and after her release from custody, she committed suicide due to the harassment meted out to her at the hands of the accused. In other words, it is alleged that the accused had abetted the suicide of Vasuki and therefore, the offence under Section 306 IPC has also been clamped in the charge sheet, along with other offences.

2.4 While that being so, the accused filed Cr1.O.P. No.11904 of 2018 before this Court for transfer of the case from Perambalur District to any other District, except Ariyalur District, on the ground that since the case had generated so much of public ire and adverse publicity, they



will not get fair trial. Yet another ground that was urged in the transfer application was that one Valluvan Nambi, advocate, appearing for Dhanam, the mother of Vasuki, is repeatedly making untenable allegations against the Public Prosecutor in the Trial Court and is instigating Dhanam to file petitions frequently to change the Public Prosecutor.

2.5 In CrI.O.P. No.11904 of 2018, Dhanam was arrayed as the first respondent. This Court ordered notice to Dhanam and private notice was also served on her. Since Dhanam did not enter appearance, this Court proceeded to hear the accused and the police and by order dated 19.06.2018, transferred the case from Perambalur District to Trichy District, which is about 60 kms. from Perambalur District.

2.6 Now, Dhanam has filed the present petition seeking re-transfer of the case back to Perambalur District on the ground that she was not heard in CrI.O.P. No.11904 of 2018.

3 Heard Mr. R. Sankara Subbu, learned counsel for Dhanam and Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the first respondent police.

4 Mr. R. Sankara Subbu, learned counsel for Dhanam submitted that no private notice was served on Dhanam in CrI.O.P. No.11904 of 2018 and therefore, this Court should re-transfer the case back to Perambalur District. He further contended that Valluvan Nambi has been appointed as Special Public Prosecutor in the said case and that has been suppressed by the accused in CrI.O.P. No.11904 of 2018 and an order has been obtained by misrepresentation. It is his further contention that this Court has no power to transfer the case from Perambalur District to Trichy District, because, Trichy District falls within the territorial jurisdiction of the Madurai Bench of the Madras High Court.

5 As regards the bar under Section 362 Cr.P.C, Mr. Sankara Subbu placed strong reliance upon paragraph no.51 of a Constitution Bench judgment of the Supreme Court in Rupa Ashok Hurra vs. Ashok Hurra and another [(2002) 4 SCC 388] which reads as under:

"51. Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of the principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice, and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner."



In this regard, he placed further reliance upon the judgment of a learned Single Judge of this Court in E. Sami vs. The Inspector of Police, Thallakulam Police Station, Madurai District and another [(2018 2 LW (Crl.) 53)].

6 Mr. Sankara Subbu also took this Court through the provisions of the SC/ST Act and Rules to contend that the victim's side has a say in various proceedings, including bail hearings, etc. and therefore, the order passed by this Court in Crl.O.P. No.11904 of 2018 deserves to be recalled.

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

8 It is true that under the SC/ST Act and the amended Code of Criminal Procedure, the victim of a crime has a say and he/she is no more an orphan. Had Dhanam not been arraigned as a party in the earlier transfer application in Crl.O.P. No.11904 of 2018, then, there can be sufficient force in Mr. Sankara Subbu's contention. Whereas, Dhanam was arraigned as first respondent in Crl.O.P. No.11904 of 2018 and this Court, while passing orders in the said petition on 19.06.2018, has observed as under:

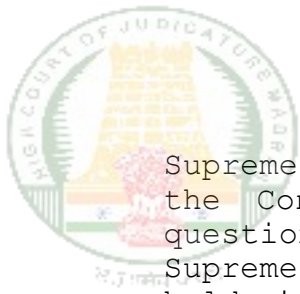
"2. Notice was sent to the first respondent/de facto complainant; private notice has been served on the de facto complainant and proof of service has been filed. However, there is no representation for the first respondent/de facto complainant."

Hence, this is not a case where orders were passed without reference to Dhanam. After notice was served on Dhanam, she did not enter appearance and therefore, this Court proceeded to pass orders on 19.06.2018.

9 As regards the contention of Mr. Sankara Subbu that in Crl.O.P.No.11904 of 2018, the accused had obtained the order on misrepresentation, a reading of the order dated 19.06.2018 passed in the said petition would show that the case was transferred out of Perambalur, principally on the ground that the incident had generated so much of public ire, that this Court felt that interests of justice would be served, if the trial is held outside Perambalur District. This is apparent from paragraph no.6 of the order dated 19.06.2018, which reads as under:

"6. Ramiahan [A1] has filed an affidavit in support of the transfer application. Thus, the grievance of the accused is not against the Presiding Officer, but the vitiated atmosphere in which they are required to face the trial in Perambalur District."

10 As regards the law laid down in Rupa Ashok Hurra (supra), the question which fell for consideration before the



Supreme Court was, whether a writ petition under Article 32 of the Constitution of India can be maintained, to call in question the legality and validity of a judgment of the Supreme Court. Only in that context, the Supreme Court had held in paragraph no.51 that the Constitutional Court is empowered to recall its order on the ground of violation of principles of natural justice. Distinguishably, in the case at hand, there is no violation of principles of natural justice, because, notice was served on Dhanam and she had not chosen to enter appearance.

11 Coming to the judgment of this Court in E. Sami (supra), the learned Single Judge relied upon various judgments to recall the earlier order. Further, the order in E. Sami (supra) was passed on 09.02.2018 and subsequent to that, the Supreme Court, vide order dated 23.07.2018, in Mohammed Zakir vs. Shabana [2018 SCC Online SC 819], has held as follows:

"4. The High Court should not have exercised the power under Section 362 Cr.P.C. for a correction on merits. However, patently erroneous the earlier order be, it can only be corrected in the process known to law and not under Section 362 Cr.P.C. The whole purpose of Section 362 Cr.P.C. is only to correct a clerical or arithmetical error. What the High Court sought to do in the impugned order is not to correct a clerical or arithmetical error; it sought to re-hear the matter on merits, since, according to the learned Judge, the earlier order was patently erroneous. That is impermissible under law. Accordingly, we set aside the impugned order dated 28.04.2017."

12 In view of the above categorical pronouncement of the Supreme Court, the instant second transfer petition which virtually seeks to recall the earlier order dated 19.06.2018 passed in Crl.O.P. No.11904 of 2018, cannot be maintained.

13 As regards the jurisdiction of this Court to transfer the case from Perambalur District to Trichy District, Mr. Sankara Subbu placed reliance upon a Full Bench judgment of this Court in B. Stalin vs. The Registrar, Supreme Court of India and 3 others [2012 (4) CTC 113], wherein, the Full Bench has approved the law laid down by a Division Bench of this Court in E. Mary Oliviya vs. E. Jsohua Milton [2008 (7) MLJ 1012], wherein, it has been held as under:

"42 (5) A proceeding for transfer under Sections 22 to 24 of the CPC, partakes the character of an original proceeding and can be filed before the Principal Bench or the Permanent Bench depending upon the "cause of action" or "the reason" for filing such transfer petition. In order to avoid any possible confusion in such matter relating to filing of



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transfer position, we make it clear that where a person seeks transfer of a case from a place to another place coming within the jurisdiction of one Bench, such transfer petition has to be filed before the very same Bench. On the other hand, where transfer is sought from a Court coming within the jurisdiction of the other Bench, such transfer petition can be filed before either Bench, obviously depending upon the cause of action for such transfer petition and the convenience of the petitioner."

Admittedly, Perambalur District falls within the territorial jurisdiction of the Principal Seat of the Madras High Court and therefore, it cannot be stated that the Principal Seat lacks jurisdiction to transfer the case since Trichy District falls within the territorial limits of the Madurai Bench.

14 Mr. Sankara Subbu contended that he would have no objection, if the case is transferred out of Perambalur District to any other district like Villupuram, Cuddalore, etc.

15 If this Court concedes to the aforesaid request of Mr. Sankara Subbu, it would mean that this Court is overlooking the provisions of Section 362 Cr.P.C. by transferring the case from Trichy to another district, which cannot be done, because, as held by the Supreme Court in Mohammed Zakir (supra), the whole purpose of Section 362 Cr.P.C. is only to correct a clerical or arithmetical error and nothing more than that.

Thus, in the ultimate analysis, this Court is of the view that this Criminal Original Petition is liable to be dismissed as being devoid of merits and it is accordingly dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Deputy Superintendent of Police
CB-CID, Perambalur, Perambalur District

2 The Special Court under the SC/ST Act, Perambalur



4 The Public Prosecutor
High Court of Madras, Chennai 600 104

Cr1.O.P. No.24906 of 2018

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