



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 07.03.2018

Delivered on: 16. 05 .2018

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAMCrI.O.P.(MD)No.22271 of 2015andMP(MD).No.1 of 2015&CrI.M.P.(MD).No.10767 of 2017

S.Sathish Kumar

... Petitioner

Vs.

1.State Rep.by its
Inspector of Police
Arimalam P.S.,
Cr.No.9 of 2011
Pudukottai District.

2.Satham Hussain
3.Siva @ Palanisamy
4.Sundaraj
R2 to R4 impleaded as per
order of this Court made in
CrI.M.P(MD).No.9298 of 2016
in CrI.O.P.(MD).No.22271 of 2015
dated 09.11.2017 by SSSRJ.

...Respondents

PRAYER: Criminal Original Petition filed under Section 407 of Cr.P.C., to withdraw the case in S.C.No.93 of 2011 on the file of the Additional District and Sessions Judge, Pudukottai and transfer the same to any other District and Session Court or equal cader to the Additional District and Session Judge.

For Petitioner : Mr.K.Gokul

For R1 : Mr.A.P.G.OHM Chairma Prabhu
Government Advocate (CrI.Side)

For R2 and R3 : Mr.G.Mathavan

For R4 : No Appearance

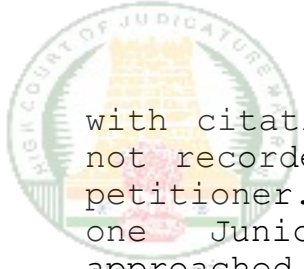
**ORDER**

This petition has been filed by one Mr.A.Sathishkumar, Son of one of the deceased persons under Section 407 of Cr.P.C., to transfer the case in S.C.No.93 of 2011 from the file of the Additional District and Sessions Judge, Pudukottai, to any other District and Session Court or equal carder to the Additional District and Session Judge.

2. Heard, Mr.K.Gokul, learned counsel for the petitioner and Mr.A.P.G.OHM Chairma Prabhu, learned Government Advocate (Crl.Side) for the 1st respondent and Mr.G.Mathavan, learned counsel for respondents 2 and 3. No Representation for the 4th respondent.

3. The learned counsel for the petitioner has submitted that the petitioner's father Mr.C.Sekar and his paternal uncle Mr.C.Vellaisamy were brutally attacked and murdered by the accused persons due to political vengeance on 13.01.2011 at about 2.30 a.m. He further submitted that the petitioner's grand father viz., Chinnaiya gave a complaint with regard to the aforesaid occurrence and based on the said complaint, the first respondent has originally registered a case under Section 174 of Cr.P.C., in Cr.No.9 of 2011 and subsequently, the case was altered into Sections 147, 148, 302, 120(b) and 506(ii) IPC r/w Section 34 of IPC. He further submitted that after investigation, the charge sheet was laid and the case was committed to the Court of Sessions at Pudukottai and the case was taken on file as S.C.No.93 of 2011 and made over to the Additional District and Sessions Judge, Pudukottai, for trial. He further submitted that during trial, on the side of the prosecution, 26 witnesses were examined and exhibits and material objects were marked. After closing the evidence on the side of the prosecution, the matter was posted for examination of witness on the side of the accused. The accused persons wantonly dragged on the proceedings for several hearings and after appointing the Regular Judge in the month of June 2015, the accused closed their evidence without examining any witnesses.

4. The learned counsel for the petitioner further submitted that on 24.07.2015, the matter was posted for argument and in the meanwhile, the defacto complainant filed an application to assist the prosecution and the same was allowed. He further submitted that on 24.07.2015, to the petitioner's utter shock and surprise, the Public Prosecutor did not argue and he has simply said that he is leaving the matter to the Court. He further submitted that on behalf of the defacto complainant written argument was filed after serving copies to the Counsels who are appearing for the accused. Though the learned Trial Judge received the written arguments, the same was not recorded and the said fact was known to the petitioner only in the evening when he verified the Court Diary. The matter was adjourned to 31.07.2015 for judgment. Though written argument was filed along

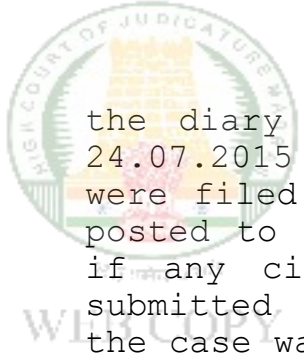


with citations on behalf of the defacto complainant, the same was not recorded by the trial Judge and this created suspicion to the petitioner. He further submitted that the petitioner heard through one Junior Advocate of the accused No.5 that they have already approached the Public Prosecutor as well as the Presiding Officer. He further submitted that though the matter was adjourned to 31.07.2015, there was an insertion in the docket order that the matter is posted to 28.07.2015.

5. The learned counsel for the petitioner further submitted that in the absence of the defacto complainant, the arguments on the side of the accused was once again heard on 28.07.2015 and it causes prejudice to the petitioner and his family members. He further submitted that in the above circumstances, the petitioner and his family members are having apprehension in their mind that they may not get justice from the present Presiding Officer/ the Additional District and Sessions Court, Pudukottai, and therefore, the case in S.C.No.93 of 2011 may be transferred to some other Court.

6. The learned Government Advocate (Crl.Side) has submitted that the allegation that the learned Public Prosecutor who is conducting the case before the trial Court did not argue the case is false. He further submitted that the learned Public Prosecutor has conducted the trial and examined as many as 26 witnesses without any bias and at that time neither the petitioner nor his family members have raised any objection with regard to the manner of conducting the case by the learned Public Prosecutor. He further submitted that the learned trial Judge has recorded the written arguments submitted by the defacto complainant and therefore, the allegation made against the trial Judge also false and hence, he prayed to dismiss the petition.

7. The learned counsel who is appearing for the respondents 2 and 3 submitted that the petitioner, has no locus standi to file the present petition because he is neither the witness nor the complainant. He further submitted that the petitioner's grandfather alone lodged the compliant and he has also filed a petition to assist the prosecution before the trial Court and the same was allowed and he is assisting the prosecution by engaging a Counsel. He further submitted that it is the discretion of the accused to examine the witnesses on their side and they cannot be compelled to examine any witness and hence, they have made an endorsement as they are not examining any witness on their side and for that no motive can be attributed. He further submitted that the learned Public Prosecutor has argued the case and the defacto complainant has filed written arguments. He further submitted that though the petitioner has initially stated that the trial Judge did not record the written arguments submitted by his grandfather, subsequently, he has admitted that the trial Judge has accepted the written arguments and recorded the same. He further submitted that



the diary extract of the trial Court would clearly show that on 24.07.2015 both sides advanced their arguments and written arguments were filed on behalf of the defacto complainant and the matter was posted to 31.07.2015 for judgment. Further, it was mentioned that if any citation to be submitted by both sides that should be submitted on or before 28.07.2015. Therefore, the allegation that the case was taken up for hearing on 28.07.2015 and arguments on the side of the accused were heard are totally false. He further submitted that the accused were facing trial for very serious charges from the year 2011 and after full trial, when the case is posted for judgment, the petitioner with a view to drag on the proceedings has filed this petition with false allegations and hence, he prayed to dismiss the petition.

8. Since the petitioner has filed this transfer petition, by making allegations against the Presiding Officer, this Court has called for remarks from the trial Judge. The trial Judge has submitted her remarks denying the allegations made by the petitioner against her. She further stated that on 24.07.2015, the case was posted for defence side evidence as finally and on that date the learned counsel for the accused has stated that there is no witness on the side of the defence and hence, the arguments on the side of the prosecution and the accused were heard. She also stated that on the same day on behalf of the Assisting prosecution, written arguments filed with several citations and after recording the same, the case was posted for judgment on 31.07.2015 and permission was given to both sides for submitting the citations on their support if any. She further stated that she has received a copy of the affidavit of the petitioner dated 29.07.2015 addressed to the Registrar General, High Court, Madras and hence, she ordered to "lie over till any instructions received from the High Court." She further stated that the above case may be transferred to any other Court, since a false allegation was leveled against her.

9. The respondents 2 and 3 have filed a Xerox copy of the B-Diary extract in the typed set of papers. In the Diary extract dated 24.07.2015 of the trial Court, it is stated as follows:-

"24.07.2015:

Accused A2, A4 and A5 present. Defence witness closed. Prosecution side arguments heard. A2, A4 and A5 side defence counsels heard. On behalf of prosecution written arguments along with several citations submitted. For judgement by 31.07.2015.

Sd/- 24.07.2015

N.B.

<https://hcservices.ecourts.gov.in/hcservices/> If any citations to be submitted in both side utmost be submitted on or before 28.07.2015."

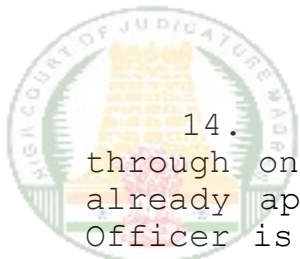


10. From the reading of the aforesaid diary extract what we could understand is that on 24.07.2015 defence side evidence was closed; that the arguments on the side of the prosecution and also on the side of the accused were heard and that written argument was filed on behalf of the prosecution with several citations and case was posted to 31.07.2015 for judgment. But, it appears that the learned trial Judge omitted to mention in the notes paper (Diary) that the written arguments have been filed by the defacto complainant. In the typed set of papers filed by the petitioner herein, the petitioner has enclosed copies of two written arguments; one is in English version and another one is in Tamil version. In the written arguments which is in English version, it is stated that "memorandum of arguments, humbly submitted by the prosecution." In the written arguments, which is submitted in Tamil version it is stated that "மீர்ப்பு 314ன் கீழ் அரசு தரப்பில் தாக்கல் செய்யப்படும் வாதரை"

11. In the aforesaid two written arguments, it is not stated that the aforesaid written arguments were filed on behalf of the defacto complainant. Since in both the written arguments it is mentioned as that they were filed on behalf of the prosecution, it appears that the trial judge has mentioned in the case diary that the written arguments have been filed by the prosecution. Therefore, no motive can be attributed against the trial Court Judge for not recording in the case diary that the written arguments have been filed by the defacto complainant.

12. In the case diary, the Trial Judge has added a note that the parties should file the citations if any on or before 28.07.2015 and that does not mean that she posted the matter to 28.07.2015 for hearing arguments on the side of the accused. Further, there is no material to show that on 28.07.2015 the case was taken up for hearing and arguments on the side of the accused was heard. It appears that the Trial Judge has committed a mistake while writing the case diary i.e., she wrote that the prosecution has filed written arguments instead of defacto-complainant has filed written arguments. The said mistake crept due to the mistake committed by the defacto-complainant. He has mentioned in the written arguments that they were filed on behalf of the prosecution. He should not have mentioned like that. Since the defacto-complainant has wrongly mentioned in the written arguments as they were filed on behalf of the prosecution, it appears that the same mistake occurred in the order passed by the Trial Judge also.

13. Insofar as the contention of the learned counsel for the respondents 2 and 3 that the petitioner has no locus standi to file this petition is concerned, this court is of the view that since the petitioner is the son of one of the deceased persons, he is entitled to file this petition.



14. Insofar as the allegation that the petitioner heard through one of the Junior Advocates of the accused No.5 that they already approached the Public Prosecutor as well as the Presiding Officer is concerned, except the bald and vague allegations no other materials produced. Not even the name of the Junior Advocate mentioned. So, the said contentions cannot be accepted. Anyhow, the petitioner who is being son of one of the deceased persons has made allegations against the Presiding Officer. The Presiding Officer also in her remarks has stated that the case may be transferred to some other Court. So, in order to avoid embarrassment to the present Judicial Officer, this Court is inclined to transfer the case in S.C.No.93 of 2011 to some other Court.

15. In the result, this petition is allowed. The case in SC.No.93 of 2011 is ordered to be withdrawn from the file of the Additional District and Sessions Judge, Pudukottai and transferred to the Principal District and Sessions Judge, Pudukottai, for disposal in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge,
Pudukottai.

2.The Additional District and Sessions Judge,
Pudukottai.

3.The Inspector of Police
Arimalam P.S., Cr.No.9 of 2011
Pudukottai District.

Copy to
Additional Public Prosecutor,
Madurai Bench Of Madras High Court,
Madurai.

DNA/VS
DS/SV/MMS/SAR-2 :07.06.2018: 6P/5C

Order in
Cr1.O.P.(MD).No.22271 of 2015 and
MP(MD).No.1 of 2015
and
Cr1.M.P.(MD).No.10767 of 2017
16.05.2018