



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.5436 of 2018

and

Crl.M.P.(MD)No.2625 of 2018

Syed Jameel

... Petitioner / P.W.18

Vs.

1.The Superintendent of Police,
CBCID,
Vishalakshi Road,
Tabalthanthi Nagar, Madurai.

2.The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.

...Respondents / Complainants

3.Sahul @ Rasil Khan
4.Mohamed Harshath @ Lala
5.Manivannan
6.Sheik Thagashath @ Soodani
7.Thammemul Ansari
8.Shanavas
9.Nagoor Hussain
10.Muniasamy
11.Pakeerammal
12.Ramjan Beevi
13.Jeilani
14.Avul Hameed Yasin

... Respondents / Accused Nos.1 to 7,
9 to 13

PRAYER:- Petition - filed under Section 407 r/w 482 of the Criminal Procedure Code, to withdraw the Sessions Case in S.C.No.137 of 2015 pending on the file of the learned Additional Sessions Mahila (Fast Track) Judge, Ramanathapuram and transfer the same to any other competent Court in other districts of Tamil Nadu and consequently direct the learned trial Court to conduct denovo trial.

For Petitioner : Mr.S.M.A.Jinnah

For R-1 & R-2 : Mr.K.Suyambulinga Bharathi

Government Advocate (Crl. Side)

ORDER

This Court passed the following order on 16.08.2018:

"This Court had passed an order, while dismissing Criminal Original Petition against the discharge petition to conduct the trial on day today basis without adjourning the case beyond three working days at any point of time. This order was passed in Crl.O.P.No.17292 of 2014 on 21.01.2014. Subsequently further order came to be passed, directing the Principal District and Sessions Judge (FAC) / Fast Track Mahila Court, Ramanathapuram to dispose of the sessions case in S.C.No.137 of 2015 within a period of one month.

2.Subsequent to the directions issue by this Court, 39 witnesses have been examined and 313 questioning has also been completed and the case is in the stage of final arguments. The learned Government Advocate (Crl.side) appearing for the respondent Police submitted that written arguments have been submitted on 04.04.2018 and the case is in the stage of pronouncing judgment.

3.The present Criminal Original Petition has been filed by P.W.18, who is the brother of the first deceased person. In this petition, the petitioner had brought to the notice of this Court that there was continuous threat to the witnesses from one Shahul Hameed, who is A1 in this case. In order to substantiate the same, the learned counsel appearing for the petitioner brought to the notice of this Court, First Information Report that has been registered in Crime No.240 of 2016 based on the complaint given by one Haja Mohideen, who was examined as P.W.16 in this case.

4.A reading of the First Information Report, it is seen that the witness was attacked by the said Shahul Hameed and others before they could give evidence in the Court. In spite of registering FIR, no steps were taken by the first respondent to file a petition to cancel the bail of said Shahul Hameed and he was allowed to go freely.

5.The learned counsel appearing for the petitioner also brought to the notice of this Court that similar threat was made to P.W.6, Muniyasamy. Due to the threat, P.W.6 has turned hostile.

6.The learned counsel appearing for the petitioner would submit that due to the threat to the witnesses, the same has vitiated the entire proceedings. The learned counsel for the



petitioner was not able to produce any materials to show about such threat being brought to the notice of the learned Judge of the Mahila Court.

7. This Court has given its careful consideration with regard to the allegations, more particularly, the First Information Report that has been registered against A1 on the complaint given by P.W.16 and therefore, it is important for this Court to satisfy itself that the proceedings have been conducted in a fair manner. While this Court directed the Mahila Court to dispose of the sessions case, within a fixed time, the above said facts were not brought to the notice of this Court. Therefore this Court did not know about the said facts while passing earlier orders. The learned Principal District and Sessions Judge (FAC) / Fast Track Mahila Court, Ramanathapuram is directed to keep the proceedings in abeyance and further directed to submit a report before this Court as to whether threat to the witnesses was brought to the notice of the Court at any point of time.

8. The first respondent is directed to file a status report before this Court with regard to the stage of the case registered in Crime No.240 of 2016. The first respondent is further directed to inform this Court as to how many witnesses were originally shown in the list of witnesses and how many witnesses were actually examined and out of it, how many have turned hostile in this case.

9. Post this case on 29.08.2018. In the meantime, the Registry is directed to forward this order copy to the learned Principal District and Sessions Judge (FAC) / Fast Track Mahila Court, Ramanathapuram and also a report shall be called for. The first respondent is also directed to file his report by then."

2. The Inspector of Police, CBCID, Ramanathapuram District has filed a status report dated 29.08.2018. The following paragraphs are extracted for an easy understanding.

7) It is submitted that 39 witnesses were examined by the Additional Sessions Mahila (Fast Track) Court, Ramanathapuram, from 21.06.2011 to 12.03.2018. Out of 39 witnesses 13 witnesses turned hostile. 26 of them have proved positive witnesses. Of 39 witnesses cross-examined 26 witnesses have witnessed favorably in the case.

8) It is submitted that the deceased Adila Banu is the sister of the petitioner Jameel. The two



children of Adila Banu were in-laws of the petitioner in this case. Syed Jameel is added as the 18th Prosecution witness and gave evidence in favour of the prosecution.

9) It is further submitted that the Accused No.8 of this case, Jeyakumar met with a road accident on 16.09.2016 and he was died. For this a case was registered in Kenikkarai Police Station Cr.No. 676/16 under section 304(A) IPC

10) It is further submitted that one Vasu, the elder brother of Muthusamy, had fallen in love with the younger sister of Seenikatti and the enmity between the Seenikatti and Muthusamy grew deeper. Vying with vengeance by the culmination of deceit and betrayals, the accused No.1 in the case, Shahul Hameed, Son-in-law of Seenikatti, with his associates attacked Muthusamy in Malaysia and had broken his finger expressing their protest to have turned as a hostile witness. The Adila Banu wife of Muthusamy challenged that she would take revenge by breaking the hand of Sahul Hameed while he return to native place and this had developed into further hostility.

11) It is submitted that the accused Shahul Hameed attacked one Haja Maideen who is witness in this case and a case was registered against Shahul Hameed in Ramanathapuram Bazaar Police Station Crime no.240/2016, under sections 294(b), 324, 323, 506(ii) IPC. The case was investigated by Inspector of Police, Ramanthapuram Bazaar Police Station. After the completion of investigation Charge Sheet was filed and the same was pending before the court.

12) It is further submitted that the witness No.6 Muniyasamy was threatened by the accused, even though he turned hostile. The witness Muniyasamy recorded the above incident and copied in the CD. He was not produce the CD before the Court and the Police. For this Incident the Muniyasamy was not filed a complaint in the Police Station and also in the Court.

13) It is further submitted that 39 witnesses were produced before the trial court and all of them were examined. Bothe side argument were completed. 26 witnesses were deposed favour to the prosecution. All the material evidence and documents were marked favour to the prosecution. The reckless and inappropriate compliant of the Petitioner in the case against the police is baseless without an iota of truth and it is condemned with every humility. When all the witnesses were examined by the Additional Sessions Judge, Additional Sessions (Mahila) Fast Track Court with case No.137/2015 would be carried out based on the orders of the Court.



Therefore It is respectively prayed that this Hon'ble Court may be please to accept this Status Report filed by the Investigating Officer and pass any orders or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice Respondent and thus render justice."

3. From the status report, it is seen that 39 witnesses have been examined in this case, out of which, 26 witnesses have spoken in favour of the prosecution. The status report further reveals the fact that P.W.16, who was attacked by A1, has also deposed in favour of the prosecution before the Court and the complaint given by him is being investigated by the concerned police. Only issue that remains to be resolved is with regard to P.W.6.

4. In the status report, it has been mentioned that P.W.6 has not submitted any CD either before the Court or before the Police and he has not even filed a complaint with regard to the threat issued by A1 either before the Court or before the Investigating Officer.

5. The learned counsel appearing for the petitioner would submit that the accused persons are so powerful with money and muscle power that P.W.6 is hesitating to go before the Court to give a complaint in this regard and he had also submitted the written version of the conversation that took place between P.W.18 and P.W.6.

6. The learned Government Advocate (Crl. Side) would submit that if at all there is a CD available, the same can be handed over to the Investigating Officer, CBCID and the said Officer will take immediate action, if he finds that P.W.6 has been threatened and has been made to become a hostile witness in this case.

7. The learned Government Advocate (Crl. Side) would further submit that it is the duty of the prosecution to safeguard the interest of the witness and to bring out the real culprits.

8. In view of the same, the petitioner is directed to immediately hand over the CD containing the conversation between P.W.6 and the petitioner on 05.09.2018 before the Inspector of Police, CBCID. Immediately, on receipt of the CD, the Inspector of Police, CBCID, shall satisfy himself about the contents of the CD and thereafter, shall take necessary steps to enquire with P.W.6. If ultimately the Inspector of Police, CBCID, is convinced about the fact that P.W.6 was in fact threatened by the accused persons and was forced to become a hostile witness, the Inspector of Police, CBCID, will take appropriate action in accordance with law and file necessary petition before the Court, in which, the case is presently pending. The entire exercise must be completed within a period of two weeks from today.



9. It is made clear that there must be no more delay in this case, since the case has already reached the stage of final arguments.

10. This Criminal Original Petition is disposed of with the above directions. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Superintendent of Police,
CBCID, Vishalakshi Road,
Tabalthanthi Nagar, Madurai.

2.The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.

3.The Inspector of Police,
CBCID,
Ramanathapuram District.

4.The Additional Sessions Mahila (Fast Track) Judge, Ramanathapuram.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.M.A.Jinnah, Advocate SR.No. 81715

Crl.O.P.(MD)No.5436 of 2018
31.08.2018

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JM/KAK/SAR 1/03.09.2018/6P/7C