



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.R.C.(MD) No.950 of 2017

and

Cr1.M.P.(MD) No.11654 of 2017

1.K.Valliraj
2.Kannan
3.Kalirajan
4.Ramesh

... Petitioners / Respondents / A1 to A4

vs.

1.Palani
2.Kartheesh
3.Manikandan
4.Mariappan
5.Murugan @ Thampattaiyan

... Respondents / Respondents /
A1 to A5 in S.C.No.231 of 2016

6.The Inspector of Police
Tiruchendur Temple Police Station
Thoothukudi District

... Respondent / Respondent /
Complainant

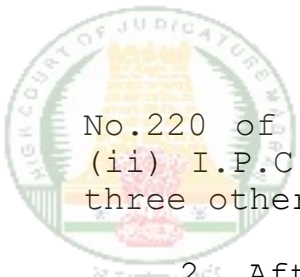
PRAYER: Criminal original petition filed, under Section 397 and 401 Cr.P.C., to call for the records of the impugned order, dated 17.11.2017, passed by the learned Principal Sessions Judge, Thoothukudi, in Cr.M.P.No.2962 of 2016 and set aside the same.

For Petitioner : Mr.C.Arul Vadivel @ Sekar

For Respondents : Mr.A.Muthu Karuppan
Additional Government Pleader for R6

O R D E R

On 07.08.2013, around 03.00 p.m., two groups one led by Palani and four others and the other led by Valliraj and three others clashed and in which, both sides sustained injuries. On the complaint given by Valliraj, the respondent - Police registered a case in Crime No.219 of 2013, under Sections 147, 148, 294(b), 323, 307 and 506(ii) I.P.C., and Section 3 of T.N.P.P.D.L.Act, against Palani and four others. Similarly, on the complaint given by one Ellaiammal, the respondent - Police registered a case in Crime



No.220 of 2013, under Sections 147, 148, 452, 294(b), 354 and 506 (ii) I.P.C., and Section 3 of T.N.P.P.D.L.Act, against Valliraj and three others.

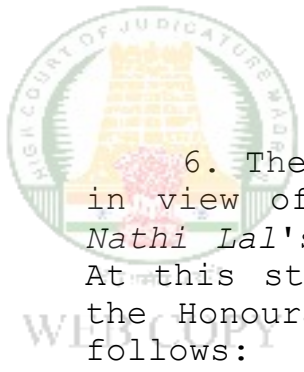
2. After completion of investigation in Crime Nos.219 of 2013 and 220 of 2013, the respondent - Police filed two separate final reports before the learned Judicial Magistrate, Tiruchendur and both the cases were committed to the Court of Sessions. The case in Crime No.219 of 2013 was numbered as S.C.No.234 of 2016 and the case in Crime No.220 of 2013 was numbered as S.C.No.231 of 2016. Since both the cases arise out of the same occurrence, they should have been treated as a case and cross case and the learned Sessions Judge should have tried both the cases himself or should have made over both the cases to the same Court. Instead, the learned Principal Sessions Judge, Thoothukudi, made over the case in S.C.No.234 of 2016 to the file of the learned II Additional Sessions Judge, Thoothukudi and made over the case in S.C.No.231 of 2016 to the Mahila Court (Sessions Court), Thoothukudi.

3. The petitioners, who are the accused in S.C.No.231 of 2016, filed an application in Cr.M.P.No.2962 of 2016, before the learned Principal Sessions Judge, Thoothukudi, seeking for a direction to make over both the cases, namely, S.C.Nos.231 of 2016 and 234 of 2016, to one Court in view of the law laid down by the Honourable Supreme Court in *Nathi Lal vs. State of U.P.*, reported in 1990 (Supp) SCC 145 and *State of M.P. vs. Mishrilal*, reported in 2003 (9) SCC 426. However, the learned Principal Sessions Judge, Thoothukudi, by order dated 17.11.2017, dismissed the petition filed by the petitioners holding that since the trial of the case in S.C.No.234 of 2016 had commenced before the II Additional Sessions Judge, Thoothukudi and four witnesses have been examined on the side of the prosecution, the prayer cannot be considered. As regards the case in Crime No.231 of 2016, the learned Principal Sessions Judge, Thoothukudi, has stated in Para No.11 of the order as follows:

"11) As far as the case in S.C.No.231 / 2016 is concerned, it has been pending before the Special Court, I.e., Fast Track Mahila Court. Mahila Court is a Special Court to try the offences committed against the women and for speedy trial, and where any such Special Court is established, no other court in the local area shall have jurisdiction to try the said offences committed against the women."

4. Aggrieved by the order, dated 17.11.2017, made in Cr.M.P.No.2962 of 2016, by the learned Principal Sessions Judge, Thoothukudi, the petitioners, who are the accused in S.C.No.231 of 2016, are before this Court.

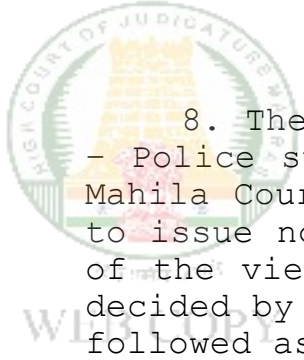
5. Heard Mr.C.Arul Vadivel @ Sekar, learned counsel for the petitioners and Mr.A.Muthu Karuppan, learned Additional Government Pleader, for the respondent - Police.



6. The petition filed by the petitioners deserves to be allowed in view of the law laid down by the Honourable Supreme Court in *Nathi Lal's* case (cited supra) and *Mishrilal's* case (cited supra). At this stage, it would be more relevant to refer the findings of the Honourable Supreme Court in *Nathi Lal's* case, which reads as follows:

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence, which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But, both the judgments must be pronounced by the same learned Judge one after the other."

7. When this is a legal position, undue prejudice would be caused to the accused in both the cases, namely, S.C.Nos.231 of 2016 and 234 of 2016, if the trial is held in two different Courts in the same Sessions Division. The reason given by the learned Principal Sessions Judge, Thoothukudi, with regard to the transfer of S.C.No.234 of 2016 cannot be found fault with. The learned Judge was right in saying that once trial has begun, he has no jurisdiction to withdraw the case and make it over to another Court. However, the reason given by the learned Judge with regard to S.C.No.231 of 2016, which has been extracted above, may not be correct, because the Mahila Court is not a creature of statute. In other words, it is not a Special Court like Special Courts constituted under SC/ST Act or N.D.P.S.Act or Prevention of Corruption Act etc. Mahila Courts are Additional Sessions Courts, which have been sanctioned by the Government for expediting the trial relating to women. This does not mean that all the other Sessions Courts in the Sessions Division will lose its jurisdiction relating to women, if Mahila Courts have been constituted.



8. The learned Additional Government Pleader for the respondent - Police submitted that the trial in S.C.No.231 of 2016 before the Mahila Court, Thoothukudi, has not begun. As regards the necessity to issue notice to the accused in S.C.No.231 of 2016, this Court is of the view that this is purely a question of law, which has been decided by the Honourable Supreme Court authoritatively and has been followed as a procedure in our State. The learned Public Prosecutor before the Sessions Court should have brought to the notice of the Principal Sessions Judge that there are two cases, namely, Crime Nos.219 of 2013 and 220 of 2013 and in that event, the learned Principal Sessions Judge would have made over both the cases to one Court. This anomaly can be rectified by this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. No prejudice would be caused to the accused in S.C.No.231 of 2016, because they can also have a fair trial as the truth will come out as to who are the real aggressors, if both the cases are tried by the same Judge. Furthermore, if notice is ordered to the accused in S.C.No.231 of 2016, it will only further prolong the trial before the Court below and in the meantime, there is every possibility of the witnesses being tampered with. In such view of the matter, the petition filed by the petitioners is liable to be allowed.

9. In the result,

- (i) The criminal revision is allowed.
- (ii) The order, dated 17.11.2017, made in Cr.M.P.No.2962 of 2016, by the learned Principal Sessions Judge, Thoothukudi, is hereby set aside.
- (iii) The learned Sessions Judge, Mahila Court, Thoothukudi, is directed to bind over the accused in S.C.No.231 of 2016 and direct them to appear before the learned II Additional Sessions Judge, Thoothukudi, on a particular date and in the meantime, the records in S.C.No.231 of 2016 shall be transferred expeditiously to the file of the learned II Additional Sessions Judge, Thoothukudi, who after completion of simultaneous trial (not as a joint trial), shall pass two separate Judgments.
- (iv) The transfer of S.C.No.231 of 2016 will not give any fresh cause of action for the accused in S.C.No.234 of 2016 to recall the prosecution witnesses under Section 311 Cr.P.C.
- (vi) The accused in both the cases are directed to co-operate with the trial by cross-examining the witnesses on the date of their examination in chief as held by the Honourable Supreme Court in *Vinod Kumar vs. State of Punjab*, reported in 2015 (1) Scale 542.
- (vii) In the event of the accused adopting dilatory tactics, they can be remanded to custody, under Section 309 Cr.P.C., as laid down by the Honourable Supreme Court in *State of U.P. vs. Shambu Nath Singh*, reported in 2001 (4) SCC 667.



(viii) If any of the accused absconds, a fresh F.I.R., will be registered against them under Section 229-A I.P.C., and they will be remanded to custody.

(ix) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Principal Sessions Judge,
Thoothukudi.
- 2.The Sessions Judge, Mahila Court, Tuticorin
- 3.The II Additional Sessions Judge, Tuticorin
- 4.The Inspector of Police,
Tiruchendur Temple Police Station,
Thoothukudi District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.C.Arul Vaidel & Sekar, Advocate, SR.No.40172

krk
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