



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.R.C.(MD) No.953 of 2017
and
CrI.M.P.(MD) No.11708 of 2017

Gnanasekaran

... Petitioner / Petitioner / A3

vs.

State of Tamil Nadu
rep.by its Deputy Superintendent of Police
Gantharvakottai
Pudukkottai District

... Respondent / Respondent /
Complainant

PRAYER: Criminal original petition filed, under Section 397 Cr.P.C., to set aside the order passed by the Principal District and Sessions Judge, Pudukkottai, in Cr.M.P.No.1801 of 2016 in S.C.No.42 of 2014, dated 26.10.2017.

For Petitioner : Mr.K.Baalasundharam

For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

O R D E R

On 17.01.2012, around 12.00 Noon, sports events were held in connection with Pongal Festival in Pisanathur Village, Pudukkottai District. After the sports events were over, it appears that a clash ensued between the members of the Schedule Caste Community and Caste Hindus, in which persons on both sides had suffered injuries. One Karunanithi belonging to the Dalit Community and one Gnanasekaran, a Caste Hindu, were admitted in the Government Hospital, Pudukkottai for treatment. The Police recorded the statement of Karunanithi at the Hospital and registered a case in Crime No.14 of 2012, under Sections 147, 148, 341, 323, 294(b), 324 and 307 I.P.C., r/w 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, against eighteen Caste Hindus, including Gnanasekaran. It appears that one of the injured, by name, Uthaman succumbed to the



injuries and therefore, Section 302 I.P.C., was included by filing an alteration report. Similarly, the Police recorded the statement of Gnanasekaran, a Caste Hindu and based on his statement, registered a case in Crime No.15 of 2012 under Sections 147, 148, 341, 294(b), 323, 324 and 506(II) I.P.C., against nine members of Dalit Community, including Karunanithi.

2. After completion of the investigation in Crime Nos.14 of 2012 and 15 of 2012, the Police filed two separate final reports before the learned Judicial Magistrate, Pudukottai. Since the offence involved in Crime No.14 of 2012 being triable exclusively by the Court of Sessions, it was committed to the Court of Sessions and the same is pending in S.C.No.42 of 2014, before the learned Principal District and Sessions Judge, Pudukkottai. However, the offence involved in Crime No.15 of 2012 being triable by Magistrate, it is pending in C.C.No.50 of 2015, before the learned Judicial Magistrate, Pudukkottai. Under such circumstances, Gnanasekaran, third accused in S.C.No.42 of 2014 and *de facto* complainant in C.C.No.50 of 2015, filed a miscellaneous petition in Crl.M.P.No.1801 of 2016, before the learned Principal District and Sessions Judge, Pudukkottai, seeking for a direction to transfer the case in C.C.No.50 of 2015 from the file of the learned Judicial Magistrate, Pudukkottai, to be tried along with S.C.No.42 of 2014. The learned Principal District and Sessions Judge, Pudukkottai, by order dated 26.10.2017, dismissed the said petition. Aggrieved over the same, Gnanasekaran is before this Court.

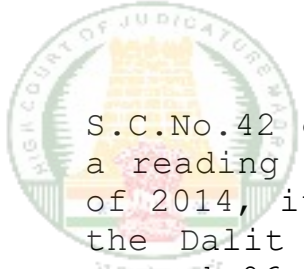
3. Heard Mr.K.Baalasundharam, learned counsel for the petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the respondent - Police and perused the materials available on record.

4. Mr.K.Baalasundharam, learned counsel for the petitioner, placed strong reliance upon the decision of 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 Cri.L.J.2312.

5. Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the respondent - Police, fairly conceded the position and submitted that in a case of this nature, though there cannot be a joint trial, interest of justice would be served, if the trial is held simultaneously by the same Court.

6. This Court gave anxious consideration to the rival submissions.

<https://hcservices.courts.gov.in/hcservices/> was informed to this Court by the learned Additional Public Prosecutor that though charges have been framed in

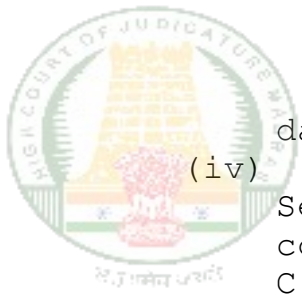


S.C.No.42 of 2014 and C.C.No.50 of 2015, trial has not begun. On a reading of the charge sheets in C.C.No.50 of 2015 and S.C.No.42 of 2014, it is seen that a clash had ensued between the members of the Dalit Community and Caste Hindu near Draupadi Amman Temple, around 06.30 p.m., on 17.01.2012 and in which, persons from both sides had suffered injuries. Thus, it *prima facie* appears that this is a case and cross case. Under such circumstances, the law laid down by the Honourable Supreme Court in *Nathi Lal's* case (cited *supra*) requires to be followed. This Court in *Ganesan and another vs. State*, reported in (2011) 4 MLJ(Cr1) 820 has vividly set out the procedure for dealing with such situation after relying upon various Judgments of the Supreme Court. It may not be out of place to extract the following passage from *Nathi Lal's* case:

"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."

8. In the result,

- (i) The criminal revision is allowed.
- (ii) The order, dated 26.10.2017, made in Cr.M.P.No.1801 of 2016 in S.C.No.42 of 2014, by the learned Principal District and Sessions Judge, Pudukkottai, is hereby set aside.
- (iii) The learned Judicial Magistrate, Pudukkottai, is directed to commit the case in C.C.No.50 of 2015 to the file of the learned Principal District and Sessions Judge, Pudukkottai, as provided under Section 323 Cr.P.C., within a period of two weeks from the



date of receipt of a copy of this Order.

- (iv) The learned Principal District and Sessions Judge, Pudukkottai, is directed to conduct the trial in S.C.No.42 of 2014 and C.C.No.50 of 2015 simultaneously and after completion of trial, pass two separate Judgments, within a period of six months from the date of the case in C.C.No.50 of 2015 being transferred, if there is no other legal impediment. There shall not be clubbing of the two cases.
- (v) 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.
- (vi) 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.
- (vii) 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.
- (viii) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar

To:

- 1.The Principal District and Sessions Judge,
Pudukkottai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Deputy Superintendent of Police,
Gantharvakottai,
Pudukkottai District.

+1cc to Mr.K.BAALASUNDHARAM, Advocate, SR.40007

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