



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.14734 of 2018

and

Crl.M.P (MD) No.6543 of 2018

1. Sathaiah

2. Arjunan

... Petitioners/A1 & A2

Vs

State through

The Inspector of Police

Madhagupatti Police Station

Sivagangai District

(Crime No. 216 of 2014)

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to transfer the case in C.C.No.42 of 2017 on the file of the learned Chief Judicial Magistrate, Sivagangai to some other Judicial Magistrate Court within the jurisdiction of the learned Chief Judicial Magistrate, Sivagangai and pass other order as this court deem fit and proper otherwise this petitioners will put into the irreparable loss and hardship.

For Petitioners

: Mr.P.Aju Tagore

For Respondent

: Mrs.S. Bharathi

Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking for a transfer of the case in C.C.No.42 of 2017 which is presently pending on the file of the learned Chief Judicial Magistrate, Sivagangai to the file of any other Judicial Magistrate Court at Sivagangai.

2.The petitioners are A1 and A2 who are facing trial for a charge under sections 394 and 454 of IPC. The prosecution had examined 13 witnesses and questioning under Section 313 of CrPC was also over. At this stage the petitioners filed an application under section 311 of Cr.P.C to recall and cross examine PW's.6,7,11 and 12. It is the case of the petitioners that the trial court refused to accept the recall petition and proceeded with questioning under Section 313 of CrPC. It is the further case of the petitioners that A2 had filed an application under section 317 of Cr.P.C to dispense his appearance sine he was suffering from chicken pox, but however application was dismissed and Non Bailable Warrant was issued against him.

3. The petitioners aggrieved by the same filed an application before the learned Principal District and Sessions Judge, Sivagangai



seeking for a transfer of the case on the ground that the petitioners did not have confidence in conducting the case before the Chief Judicial Magistrate Court, Sivagangai

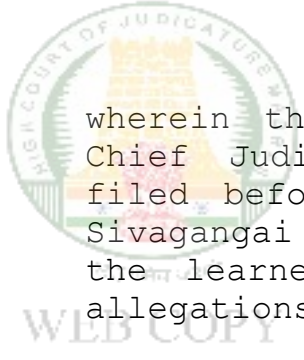
4. The learned Principal District and Sessions Judge, Sivagangai passed a detailed order in transfer C.M.P.No.1018 of 2018 dated 25.07.2018 wherein after getting a report from the Chief Judicial Magistrate, Sivagangai and after considering the entire facts and circumstances of the case, the learned Principal District and Sessions Judge, Sivagangai has come to the conclusion that there are no grounds for transfer. But, however in order to afford an opportunity to the petitioners, permitted the petitioners to file an application to recall PW's 6,7,11 and 12 which was directed to be considered by the learned Chief Judicial Magistrate, Sivagangai.

5. The learned counsel for the petitioners would submit that the petitioners have lost their confidence in conducting the case before the learned Chief Judicial Magistrate, Sivagangai more particularly due to the fact that the petitioner was cooperating with the entire proceedings and were cross examining the witnesses on the very same day when they were examined in chief and when an opportunity was sought to recall and cross examine certain witnesses the same was denied even without numbering the application. He would further submit that during the pendency of the transfer C.M.P before the learned Principal District and Sessions Judge, Sivagangai, report was called for by the Sessions Judge from the Chief Judicial Magistrate, Sivagangai and that has further aggravated the situation. He would also further submit that the intention of the petitioner is not to drag on the proceedings and infact the petitioners do not want to recall PW's 6 and 7 and they only want to recall and cross examine PW's 11 and 12 and the petitioners are willing to comply with the any direction that may be given by this court for the completion of the proceedings within the time limit that may be fixed by this Court.

6. The learned Government Advocate (Crl.Side) would submit that there is absolutely no ground to transfer the case from the file of the learned Chief Judicial Magistrate, Sivagangai. He would further submit that the petitioner has been given enough opportunities to recall and cross examine PW's 6,7,11 and 12, therefore no prejudice will be caused to the petitioners if the case is conducted before the learned Chief Judicial Magistrate, Sivagangai. He would also further submit that the petitioners are filing one petition after another only with the intention to drag on the proceedings.

7. This Court has considered the submissions made on either side.

8. This Court is not able to find any illegality or infirmity in the order passed by the learned Principal District and Sessions Judge, Sivagangai. However, the petitioners have created a situation



wherein they have made certain allegations against the learned Chief Judicial Magistrate, Sivagangai in the transfer petition filed before the learned Principal District and Sessions Judge, Sivagangai and the District Court has also called for a report from the learned Chief Judicial Magistrate, Sivagangai based on the allegations made by the petitioners.

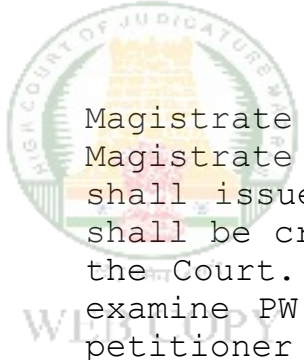
9. The assurance of the fair trial is the main criteria for the exercise of powers under section 407 by this Court and the mere apprehension is not a ground to transfer the case and a litigant cannot be allowed to have a forum of his choice. To transfer the case from one court to another directly casts doubt on the competence and integrity of the Judge from whom the case is sought to be transferred. In the absence of any justified reasons it is not appropriate and legal to exercise the powers under Section 407 of Cr.P.C and transfer the case from one Court to another.

10. The test to be complied by this Court in exercise of its jurisdiction under Section 407 of Cr.P.C is to see whether there is a reasonable apprehension in the mind of the petitioners that a fair and impartial enquiry cannot be had before the particular Judge. The apprehension will have a reasonable character, notwithstanding that there may not be any real bias in the matter. The fact that certain incidents have been taken place will also give rise to such reasonable apprehension and also the same can also be taken as a ground for allowing the transfer.

11. In the instant case the events that have been happened subsequent to the learned Chief Judicial Magistrate, Sivagangai not entertaining the application filed under section 311 of Cr.P.C, which resulted in a petition for transfer filed before the Sessions Court, Sivagangai and a report being called for in the said proceedings, would have created a situation where the petitioners have reasonable apprehension that they will not be fairly treated at the trial. Ofcourse this situation was brought in only due to attitude of the petitioners themselves.

12. In order to remove this apprehension from the mind of the petitioners and in order to ensure that the petitioners get a fair and impartial trial, this Court deems it fit to transfer C.C.No 42 of 2017 from the file of the learned Chief Judicial Magistrate, Sivagangai to the file of the learned Judicial Magistrate No.II, Sivagangai. It is made clear that this order of transfer does not in any way reflect upon the manner in which trial was conducted by the learned Chief Judicial Magistrate, Sivagangai and this order should not be construed to cast any aspersions on the learned Chief Judicial Magistrate, Sivagangai.

13. The entire case bundle in C.C.No.42 of 2017 is directed to be transferred from the file of the learned Chief Judicial Magistrate, Sivagangai to the file of the learned Judicial



Magistrate No.II, Sivagangai immediately. The learned Judicial Magistrate No.II, Sivagangai immediately on receipt of case bundles shall issue summons for the appearance of PW's 11 and 12 and they shall be cross examined on the very same day when they appear before the Court. If for in any reason, if the petitioners fails to cross examine PW's 11 and 12 on the very same day when they appear, the petitioner will forfeit their right to cross examine the said witnesses. The learned Judicial Magistrate No.II, Sivagangai is directed to complete the proceedings in C.C. No.42 of 2017 within a period of two months from the date of receipt of a copy of this order.

14. The Criminal Original Petition is allowed with the above directions. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

1. The Principal District and Sessions Court
Sivagangai.
2. The Chief Judicial Magistrate
Sivagangai.
3. The Judicial Magistrate No.II, Sivagangai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.P.Aju Tagore, Advocate Sr.No.15845

AAV

VB/SV/SAR2/19.09.2018/4P/6C

Cr1.O.P.(MD)No.14734 of 2018
21.08.2018