



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2018

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P. (MD) .No.20470 of 2018

and

Crl.M.P. (MD) .No.9454 of 2018

Nainammal

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Sivagangai,
Sivagangai District.

... Respondent

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code to transfer the Special S.C.No.45/2018 on the file of the learned Fast Track Mahila Court, Sivagangai to any other Fast Track Mahila Court in nearer District for recording the evidence and decide the same on merits and in accordance with law.

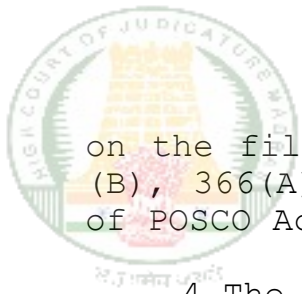
For Petitioner : Mr.Veera Kathiravan, Sr. Counsel
for M/s.Veera Associates
For Respondents : Mr.R.Anandharaj
Additional Government Pleader

ORDER

This petition has been filed seeking to transfer Special S.C.No.45/2018 on the file of the learned Fast Track Mahila Court, Sivagangai to any other Fast Track Mahila Court in nearer District for recording the evidence and decide the same on merits and in accordance with law.

2.Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3.The learned Senior Counsel appearing for the petitioner would submit that the petitioner is P.W.2 and mother of the victim P.W.1, who was raped by the accused. After completion of the investigation, the final report has been filed and the case has been committed to the Sessions Court and pending in Spl.S.C.No.45 of 2018



on the file of the trial Court for the offences under Sections 120 (B), 366(A), 294(b), 323, 506(ii) IPC and 5(g) r/w 6, 9 r/w 10, 17 of POSCO Act, 2012 and 34 IPC.

4.The learned Senior Counsel appearing for the petitioner would further submit that the occurrence had taken place on 10.02.2018 at about 11.15 p.m, where the accused forcibly kidnapped the victim P.W.1 and gang-raped her. He would submit that the victim has given a statement under Section 164 of Cr.P.C before the learned Judicial Magistrate, Sivagangai, which was immediately recorded on 15.02.2018. He would submit that the accused have been denied bail through out the investigation and thereafter, they were detained under Act, 14 and the last bail application filed by the accused was rejected on 18.07.2018. While, this Court disposed of the bail application, protection was given to the family members including the victim and a direction was given to the Special Court to conduct the trial on day-to-day basis.

5.The learned Senior Counsel would further submit that though 50 witnesses were listed in the final report, the respondent has examined 22 witnesses on the side of the prosecution. Out of which, evidence of 21 witnesses have been recorded and the accused have also completed cross examination. He would further submit that P.W.22 is the Investigation Officer and she has been examined in chief and the accused have not cross-examined her and the accused have filed petition under Section 311 Cr.P.C for recalling P.W.22 for cross-examination and it is pending.

6.The learned Senior Counsel would further submit that during the examination of witnesses and recording of evidence, the learned trial Judge had behaved in the rude manner with the victim, the petitioner and the other witnesses thereby creating an apprehension in the minds of the victims that they may not get justice. The learned counsel would submit that the learned Judge had put unwarranted questions to the victim agonising her and thereby the petition had been filed seeking for transfer. He would further submit that the trial Judge had also shown disinclination to conduct the case any further and that he had also recorded in the Court diary that he wants to transfer the case and that he has been waiting for a direction from the High Court for such transfer.

7.Earlier, based on the representation made by the learned Senior Counsel, this Court had called for a report from the learned Judge. The learned trial Judge has sent a report in D.No.823/18 dated 26.11.2018.

8.I have gone through the report. The learned Judge has given a detailed explanation. The explanation of the learned Judge is accepted and this Court in the interest of justice and in the interest of all parties does not want to express anything more about the report in this order. However, this Court is able to sense that the atmosphere in the trial court is charged and is not conducive



for conducting a fair trial. Without casting any aspersion on the trial Judge or on the petitioner, this Court is of the opinion that the case in S.C.No.45 of 2018 has to be transferred to any other Court in the interest of justice.

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9. In view of the above, in the interest of the justice, this Court directs the learned Judge, Fast Track Court Mahila Court, Sivagangai to forward the entire file in Special S.C.No.45/2018 to the Registry of this Court and the Registry shall immediately forward the entire files to the Fast Track Mahila Court, Madurai and the learned Judge shall afford opportunity to the accused to cross-examine P.W.22 and conclude the trial and pass judgment in accordance with the earlier order of this Court made in Crl.O.P. (MD).No.12123 of 2018, dated 18.07.2018 by conducting the case on day today basis.

10. Accordingly, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

SD

ASSISTANT REGISTRAR (CS III)

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SUB ASSISTANT REGISTRAR (CS III)

vs

To

1. The Judge,
Fast Track Mahila Court, Sivagangai.

2. The Judge,
Fast Track Mahila Court, Madurai.

3. The Inspector of Police,
All Women Police Station,
Sivagangai, Sivagangai District.

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

COPY TO: THE SUPERINTENDENT OF CENTRAL PRISON, MADURAI.

1CC TO M/S. VEERA. ASSOCIATES ADVOCATES SR 100453

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