



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 11.10.2018

ORDERS PRONOUNCED ON : 22 .10.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.17515 of 2018

and

Crl.MP (MD) Nos.7754 and 7755 of 2018

Ganagavalli

...petitioner / Accused No.1

Vs

1. The State Represented by
The Inspector of Police,
Kalakadu Police Station,
Tirunelveli District.
(Crime No.274 of 2017)

... Respondent/Complainant

2.Ramkumar

... Respondent/Defacto
Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to transfer the case in S.C.No.220/2018 from the court of Learned IV Additional District and Sessions Judge, Tirunelveli to any other direct court having competent jurisdiction for the purpose of further adjudication of the said case.

For Petitioner : Mr.R.Anand
For respondent No.1 : M/s.S.Bhagawathi,
Government Advocate

ORDER

This criminal original petition has been filed seeking for transfer of the case in SC No.220 of 2018 from the file of the IV Additional District and Sessions Judge, Tirunelveli to any other Court.

2.The grounds on which the transfer has been sought for by the petitioner is extracted hereunder from the affidavit filed by the petitioner:-

"a. The learned trial Judge, while putting PW4 Maruthoni in the witness box, when she was about to tell the truth and has started deposing the same, the learned trial Judge has stopped recording her version and straightaway put a question to her by saying that since she is working as a Surveyor at Government Department, is she does not support the case of the prosecution, she will have



to face departmental action. In view of the said prosecution, she will have to face departmental action. In view of the said implied threatening, she, under the apprehension, has deposed the tutored version of the prosecution. All those conversations can be seen if the CC TV footage dated 23.08.2018 is called for.

b. Likewise, when the examination of PW.5 child witness was posted on 23.08.2018, before examining him while holding apple test so as to find out his mental maturity, the learned trial Judge has asked the question in the nature of threatening such child witness in which by asking a specific question, he has made the said child witness to have an impression unless he supports case of the prosecution, he will be sent to prison. Because of such threatened atmosphere PW.5 has deposed whatever he was coached to depose. The said event also, if the CCTV footage dated 23.08.2018 is sent for, can be found.

c. On 24.08.2018, the PW.10 VAO who is said to have recorded my extra judicial confession statement was being examined in Chief, originally he has not supported the case of the prosecution and started deposing the real truth which was in my favour and he has also not said anything with regard to the recovery. On hearing the same, the learned Trial Judge has called the investigating officer and asked him to send a report to the PW.10's superior for the purpose of taking action as against him. The said direction was given by the learned Judge, when the PW.10 was in witness box. On seeing the same, under the afraidness, without there being any option, he deposed the tutored version of the prosecution. The said happening also could be seen if the CCTV footage dated 24.08.2018 is seen.

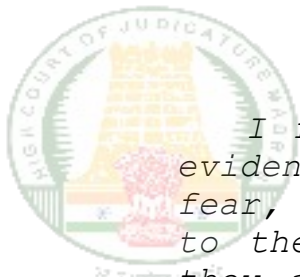
d. That apart, on 28.08.2018, when PW19, the Postmortem doctor examined, in chief examination, he deposed that in case in the event of deceased rolling himself in the plain surface, the injuries No.1 and 2 could have been caused. In fact the said statement is in favour of the defence. The learned Trial Judge, after recording the same has found that it would support the defence, and hence immediately he has asked the typist to delete the said sentence, as a result of which, it was deleted. However, my counsel has insisted at least no mention the reason for such deleting. As my counsel has strongly objected for the same, the learned trial Judge has once again asked the typist to type the said sentence. The above happenings were also being recorded in the CCTV footage on the said day."



I further submit that, as per the prosecution case, the occurrence happened inside the house PW.4 Tmt.Maruthani. I never threatened the witness that if she does not support the prosecution case, she has to face departmental enquiry. This PW.4.Tmt.Maruthani, is not an official witness. She was said to have stated many matters, in the statement recorded under Section 161(3) CrPC, but she has not stated most of those vital matters in her evidence. She omitted many matters in her evidence and not fully supported the prosecution case. In her evidence PW.4 only stated that on 27.06.2017 at 8.4 pm, when she came to her house, she found one person lying in front of her house, on the street and the 1st accused was standing near him and when she enquired, the 1st accused informed that, that person is in ill health.

I submit that I never threatened, directly or impliedly, either PW.4 or PW.5 or PW.10 to support the prosecution case. Nothing happened, as alleged in the affidavit. P.W.4 supported the prosecution case, only in minor matters. PW.5 completely gave evidence against the prosecution. Only PW.10, the Village Administrative Officer, a government official, gave evidence supporting the prosecution.

I submit that PW.19 Dr.Selva Murugan was examined in chief, in part on 28.08.2018. On that day, only a duplicate copy of postmortem report, given to the Police, was available in the file. The original postmortem report was not submitted by the committal Court. Therefore, I stopped the evidence of P.W.19 in the midway and gave a requisition to the committal Court to send the original postmortem report. After receipt of the original postmortem report, PW.19 Doctor, was examined on 11.09.2018. On 11.09.2018, when this Doctor P.W.19 was examined in chief, the Additional Public Prosecutor, put a suggestion to this Doctor that injuries numbers 1 and 2 sustained by the deceased, are possible by rolling on the ground, in a death struggle. I asked the reason to the Additional Public Prosecutor, for putting this suggestion. In the meantime, the question put by the Additional Public Prosecutor, was typewritten in the computer. The Additional Public Prosecutor gave up this suggestion and skipped to the next question. Only in this circumstances, I asked the typist to delete the question, typewritten in the Computer. Accordingly, the question was deleted. This happened, not with any intention. For this, the defence counsel shouted, as if I am supporting the prosecution and insisted the Court to record the question. Accordingly, the suggestion put by the Additional Public Prosecutor was again typewritten in the Computer and I asked the Doctor to give reply. The Doctor said yes to the suggestion put by the Additional Public Prosecutor.



I further submit that, whenever, I start recording the evidence of any witnesses, to remove the Court atmosphere fear, in the mind of the witness, I would put few questions to the witnesses, his or her name, the place from where they are coming, how long is the distance of their place and their avocation etc. My endeavour has been to create a witness friendly atmosphere in the trial. Only with this purpose, I asked PW.4 Tmt.Maruthani that where she is working and what is her job.

I most humbly submit that it is not my habit to threaten any witness, to depose in favour of the prosecution or of the evidence, ever in my career. The deceased is priest in a Hindu temple. I do not have any interest in the case.

I most humbly submit that to my conscience, I have not committed any mistake in the trial. Since the accused feels that she cannot get justice in my court, I request that SC No.220 of 2018 on the file of this Court may kindly transferred to any other Court.

5.The report extracted herein above clearly demolishes the grounds taken by the petitioner seeking for transfer. The Indian Evidence Act, 1872, specifically gives power to the Judge of a Court to put questions, under Section 165 of the Act. This provision confers vast and unrestricted powers on the trial Court to put any questions. The Court has the right to raise any objection or interject with a view to ascertain the correct position. It is always better to have a participating judge during trial. In fact when the trial judges attend refresher courses in the Judicial Academy, they are repeatedly told to be more interactive and participative at the time of conducting trial. Every human being reacts differently to a given situation. A Judge is after all a human being and therefore, each Judge reacts differently to a given situation.

6.In this case, the trial Judge seems to have participated in the proceedings with more vigour. This has been misinterpreted by the petitioner and the present transfer petition has been filed before this Court. This Court finds no ground to transfer the case from the file of the IV Additional District and Sessions Judge, Tirunelveli. If transfer petitions are entertained in cases of this nature, trial Judges will stop engaging themselves at the time of trial and the same will go against the spirit of Section 165 of the Indian Evidence Act. It will also discourage the Judges in the Subordinate Judiciary and make them get into a cocoon.

7. In this case even though the trial Judge has volunteered to get the case transferred to some other Court, this Court does not want to transfer the case from the IV Additional District and Sessions Judge, Tirunelveli. The learned trial Judge shall continue to conduct the proceedings in accordance with law and shall not be influenced by the filing of this transfer petition before this Court.



8. In the result, this criminal original petition is dismissed. Consequently, CrI MP (MD) Nos. 7754 and 7755 of 2018 are closed.

Sd/-

Assistant Registrar (RTI)

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Sub Assistant Registrar (CS-I)

To

1. The IV Additional District and Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
Kalakadu Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Dsk

VB/SV/SAR1/13.12.2018/6P/4C

order made in
CrI.O.P. (MD) No. 17515 of 2018
and
CrI.MP (MD) Nos. 7754 and 7755 of 2018
22.10.2018