

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.18818 of 2015
and M.P.No.1 of 2015

Mahendran

.. Petitioner

/versus/

1.State, Rep by Inspector of Police,
Sithode Police Station, Erode District.

2.D.Suresh

3.Jothi Manoharan

4.Kandasami

5.Vijay @ Dharman @ Dharmalingam

6.Viji @ Vijayakumar

7.Karunanidhi

8.Gunasekaran

9.Sekar@ Balasubramani

.. Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct transfer of C.C.No.47 of 2014(in Crime No.117 of 2010, Chithode Police Station, Erode) pending before the Court of the learned Judicial Magistrate No.III, Erode, to be tried along with S.C.No.149 of 2014 (in Crime No.116 of 2010, Chithode Police Station, Erode) on the file of the learned III Additional Assistant Sessions Judge, Erode.

For Petitioner :M/s.Dr.V.Suresh

For Respondents :Mr.C.Raghavan

Government Advocate (Crl.side)
for R1

Mr.I.C.Vasudevan
for R2 to R4 and R6 to R9

O R D E R

This petition has been filed seeking for transfer of the proceedings in C.C.No.47 of 2014, pending on the file of the learned Judicial Magistrate No.III, Erode, to be tried along with S.C.No.149 of 2014, on the file of the learned III Additional Assistant Sessions Judge, Erode.

2. It is seen from records that there was a case in counter and two FIRs were registered in Crime Nos.116 and 117 of 2010. Both the FIRs were investigated in accordance with PSO 588 by the same Investigating Officer. The FIR in Crime No.116 of 2017, resulted in S.C.No.149 of 2014. The FIR in Crime No.117 of 2010, resulted in C.C.No.47 of 2014. Since both the cases arises out of the same incident, this petition has been filed seeking for the transfer of the case in C.C.No.47 of 2014, to be tried along with the sessions case.

3. Heard, the learned counsel for the petitioner and the learned counsel appearing for the respondents 2 to 9 and also the learned Government Advocate appearing for the respondent police.

4. There is no dispute with regard to the fact that both the cases have arisen due to the same incident. Both the cases were investigated by the same Investigating Officer and both the cases resulted in a final report. Therefore, both the cases will have to be necessarily heard only before one Court and it cannot be heard by different Courts, since there is a possibility of contradictory judgments.

5. The manner in which a case in counter will have to be dealt with has been spelt out by the Hon'ble Supreme Court in Nathilal and others Vs. State of U.P and another reported in 1990 SCC (Cr1) page 638 and this Court in 1.Ganesan (A1) (Appellant in Cr1.A.No.263 of 2011, 2.Vijayasanthi (A2) (Appellant in Cr1.A.No.57 of 2004) reported in 2011(5) CTC 747.

6. The case pending in C.C.No.47 of 2014, on the file of the learned Judicial Magistrate No.III, Erode, has to be necessarily transferred to be heard along with the sessions case by the same Judge. However, different Public Prosecutor 's will have to prosecute both the cases.

7. In the result, the proceedings in C.C.No.47 of 2014, pending before the learned Judicial Magistrate No.III, Erode, is withdrawn and transferred to the file of the learned III Additional Assistant Sessions Judge, Erode, to be tried along with S.C.No.149 of 2014. The Sessions Court shall keep in mind the principles of law enunciated in the above said judgments. The learned Judicial Magistrate No.III, Erode, shall transfer the entire case records within a period of two weeks from the date of receipt of copy of this order.

8. The learned III Additional Assistant Sessions Judge, Erode, shall complete the proceedings within a period of six months and the trial shall be conducted on a day today basis.

9. Accordingly, this Criminal Original Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No. III,
Erode.

2. The III Additional Assistant Sessions Judge, Erode.

3. The Inspector of Police,
Sithode Police Station, Erode District.

4. The Public Prosecutor,
High Court of Madras.

+1 CC to Mr. I. C. Vasudevan, Advocate sr 68697

+1 CC to Mr. V. Suresh, Advocate sr 68255

CrI.O.P.No.18818 of 2015

NMI (CO)
SP (12/09/2019)

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