

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.01.2019

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.NO.2004 of 2019

and

CRL.M.P.No.1299 of 2019

1.Ravikumar
2.Suresh,
3.Raja @ Rajasekaran
4.Eral brass
5.Abishek
6.Sukumaran
7.Murugesan
8.Paramasivam
9.N.Babu
10.Palani
11.Raja
12.Gunasekaran
13.Jayaraman
14.Umapathy

...Petitioners/Accused

Vs

State represented by
The Inspector of Police,
W 6 All Women Police Station,
Ayanavaram,
Chennai - 600 023.
Crime No.6/2018.

..Respondent/Complainant

Prayer:This Criminal Original Petition filed under Section 482 of Cr.P.C, praying to withdraw the S.C.No.407 of 2018, on the file of the Learned Mahila Sessions Judge, Chennai and transfer the same to any other Mahila Sessions Judge and may also be pleased to pass any other order as deemed fit and proper in the circumstances of the case.

For Petitioners: Mr.S.R.Sankarasubu

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed seeking for a transfer of proceedings pending before the Mahila Court, Chennai in SC No.407 of 2018. The petitioners are shown as accused persons in the final report and they are facing trial before the Court below for an offence under Section 6, 10 & 12 of POCSO Act and 307 & 506 (ii) IPC and 376(AB), 376 (DB) IPC.

2. This transfer petition has been filed mainly on the ground that the Court below is rushing through with the trial and the accused persons have not been given sufficient opportunity to prepare their defence. A further ground has been taken stating that the sister of the victim is sitting near the victim girl who is aged about 12 years and is prompting her at the time of giving evidence. The petitioners were not properly given the copies of the documents and they had to approach this Court even for the purpose of getting the documents and only after the orders were passed by this Court, the petitioners got the entire set of documents. The Presiding Officer is pre-conceived and the petitioners will not get a fair trial before the Court below.

3. This Court has heard Mr. R.Sankarasubbu, learned Counsel appearing for the petitioner in detail. None of the grounds raised by the learned counsel for the petitioner convinces this Court to order for a transfer in this case.

4. The learned counsel for the petitioner relied upon the following judgments:-

i. [Mohammed Hussain Alias Zulfikar Ali Vs. The State (Government of NCT of Delhi) reported in (2012) 2 SCC 594.

ii. [Mohammed Iqbal M.Shaikh and others Vs. The State of Maharashtra] reported in (1998) 4 SCC 494.

iii. [Sri Jayendra Saraswathy Swamigal (II), Tamil Nadu Vs. State of Tamil Nadu and others] reported in (2006) 1 SCC (Cri).

iv. [Imtiyaz Ramzan Khan Vs. State of Maharashtra] reported in (2018) 3 SCC (Cri 721).

5. The judgments relied upon by the learned counsel for the petitioner will have no relevance to the case on hand.

6. It is true that the petitioners are facing a grave charge before the Court below. However, the facts of this case virtually shocked the conscience of the entire society, where the victim girl who was aged about 12 years was physically abused for a long period of time by the inmates of a flat premises and the matter came to light only when the victim's sister came to know about the incident. The Court below has merely followed the dictates of the POCSO Act which contemplates an expeditious completion of the trial involving POCSO offences. Therefore, just because the Trial Judge is proceeding further with the case on a day to day basis, that does not mean that the Court below is rushing through with the trial, with a pre-conceived notion.

7. It is true that the human rights of the petitioners will have to be safeguarded by ensuring that a fair trial is conducted in this case. At the same time, this Court cannot shut its eyes to the facts of the present case, which is equally, if not more a plunder into the human rights of a poor victim girl aged about 12 years. It is high time that human rights are properly balanced and Courts also start looking at the flagrant manner in which human rights of victims are being violated. Human rights can never be one sided in favour of the accused persons.

8. The Court below shall proceed further with the trial on a day to day basis and the Court below shall ensure that sufficient opportunity is given to all the accused persons in order to cross-examine the witnesses.

9. This Criminal Original Petition is dismissed with a direction to the Court below to complete the proceedings in SC No.407 of 2018 on the file of the learned Mahila Sessions Judge, Chennai, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

rka

To

1. The Inspector of Police,
W 6 All Women Police Station,
Ayanavaram,

Chennai - 600 023.

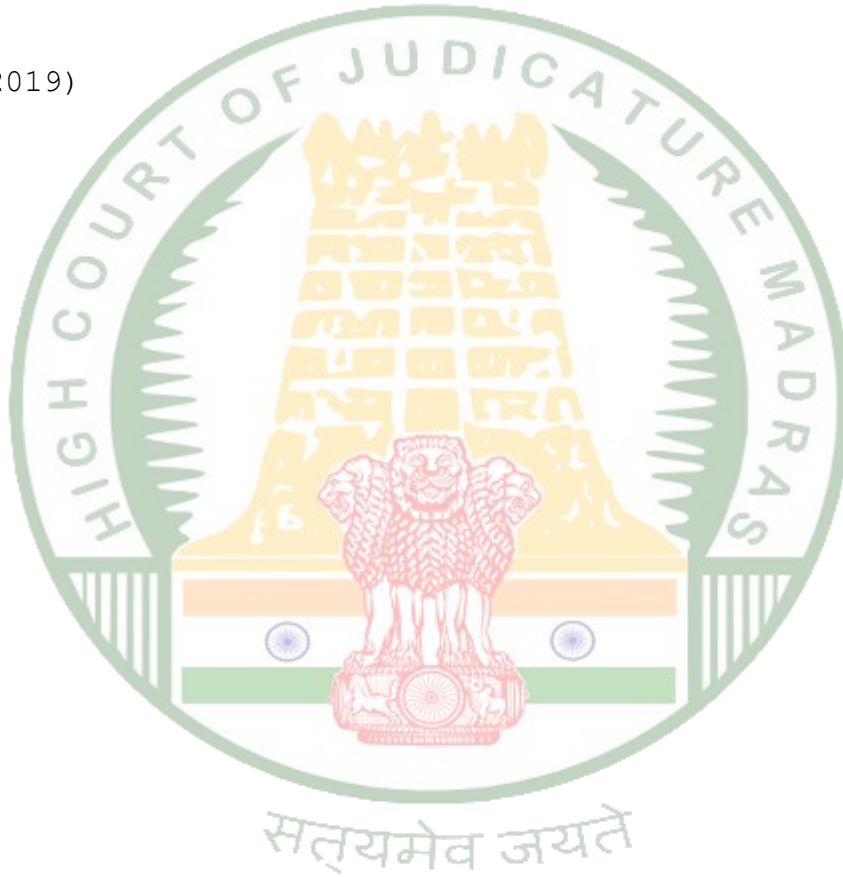
2.Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Ramesh Advocate, S.R.No. 7540

+1cc to Mr.Shankaran Subbu Advocate, S.R.No. 7281

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PVS (CO)
GN(31/01/2019)



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