

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.No.20340 of 2019
and Crl.M.P.No.10454 of 2019

Sowkath Ali

... Petitioner/Accused

vs.

State by
Inspector of Police,
Krishnagiri Taluk Police Station,
Krishnagiri District.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to transfer the case in S.C.No.218 of 2018 from the file of Additional Sessions Judge, Krishnagiri to the file of any other Sessions Judge, Dharmapuri or Hosur.

For Petitioner : Mr.Jothimanian M.R
For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This petition has been filed seeking for a transfer of the case in

S.C.No.218 of 2018, pending on the file of the Additional Sessions Judge, Krishnagiri.

2. The petitioner is facing trial before the Court below for an offence under Section 302 of IPC.

3. The main ground that has been raised by the petitioner to seek for the transfer of the case from Krishnagiri to Some other Court nearby, is that there is a serious life threat to the petitioner at Krishnagiri. Even when the petitioner was released on bail, he was directed to sign before the respondent police at Krishnagiri District. The petitioner was not able to comply with this condition, since there was a life threat to the petitioner. Therefore, the petitioner filed a petition for modification before this Court in Crl OP No.15744 of 2018. This Court summoned the Inspector of Police to be present before the Court and had enquired him. This Court found that there was some threat to the petitioner at Krishnagiri. Therefore, this Court thought it fit to modify the condition and directed the petitioner to report before the learned Judicial Magistrate, Pallacode for a period of one month.

4. On 22.07.2019, when the petitioner appeared before the Court

below during trial, he is said to have been attacked by the family members of the deceased in the Court. This incident was brought to the notice of the Trial Court and the Trial Court had directed a complaint to be given to the respondent police for taking suitable action.

5. This Court had called for a report from the Additional District Judge, Krishnagiri, in order to verify, if any such incident took place in the Court on 22.07.2019. A report has been sent by the Additional District Judge, Krishnagiri. The relevant portion in the report is extracted hereunder:-

"I further submit that on 22.07.2019 the case was called in open Court and it was passed over for examination of witnesses. After calling work when this case was taken up for trial the defense counsel reported before this Court that the accused was slapped by the wife of the deceased (PW3 Thabasum @ Thamana). This Court called her she is a Muslim Lady and this Court enquired her. She stated that when she came to this Court entrance the accused crossed her and the accused raised his collar and raised his thumb. So due to angry, she slapped him. This Court directed the

defence counsel to give complaint before the concerned police station for proper action.

6. It is clear from the above that the incident that took place on 22.07.2019 has been confirmed by the Additional District Judge, Krishnagiri.

7. The learned counsel for the petitioner submitted that the petitioner will not be able to effectively participate during trial, since he has been facing life threat from the family members of the deceased right from the beginning. The learned counsel further submitted that it has been brought to the notice of the respondent police several times and in spite of the same, no protection has been given to the petitioner. The learned counsel therefore submitted that the petitioner will not get a fair trial before the Court below and hence, the proceedings may be transferred to the concerned Sessions Court at Hosur or at Dharmapuri.

8. The learned Additional Public Prosecutor on instructions submitted that prosecution has already examined 15 witnesses and none these witnesses were cross-examined by the petitioner. The learned counsel further submitted that when further witnesses Viz., LW21, LW24, LW25 were

summoned by the Court below, the pendency of this Criminal Original petition was brought to the notice of the Court and therefore, these witnesses were not examined. The learned Additional Public Prosecutor therefore submitted that protection can be given to the petitioner and some time limit can be fixed for completion of the trial.

9. This Court has carefully considered the submissions made on either side and the materials placed on record.

10. There is no dispute with regard to the fact that there is a threat perspective faced by the petitioner right from the beginning. This is the 2nd occasion, the petitioner is complaining about the same before this Court. During the first occasion, this Court modified the condition and directed the petitioner to report before the concerned Judicial Magistrate, Pallacode. This direction was given after taking into consideration the fact that the petitioner faced a threat at Krishnagiri.

11. The incident that is said to have been taken place on 22.07.2019, is confirmed by the report filed by the Additional District Judge, Krishnagiri. It is therefore clear that the petitioner is in fact facing a threat

at Krishnagiri.

12. The Hon'ble Supreme Court has made it clear that at the time when the transfer of proceedings is considered by this Court under Section 407 of Cr.PC, this Court will have to take into consideration the fairness and speedy trial and the convenience of the parties and witnesses, before transferring a case. Fair trial is guaranteed under Article 21 of Constitution of India. One of the important requirement for a fair trial is that the accused must be ensured that he will be able to effectively defend himself in a criminal case without being put to any threat or without exposing him to any adverse situation, which will prevent the accused from effectively participating in the trial.

13. In the instant case, since there is a threat to the petitioner, the petitioner is not in a position to focus on the trial and in the meantime, the prosecution has already examined 15 witnesses. The petitioner rather than cross-examining the witnesses, is now trying to protect himself from the threat and therefore, none of the witnesses have been cross-examined till now.

14. In the facts and circumstances of the case, in order to ensure that the petitioner is given a fair opportunity to defend himself and to have a fair trial, this Court deems it fit to transfer the proceedings in S.C.No.218 of 2018 pending on the file of the Additional District Judge, Krishnagiri to the file of the Additional Sessions Court, Hosur.

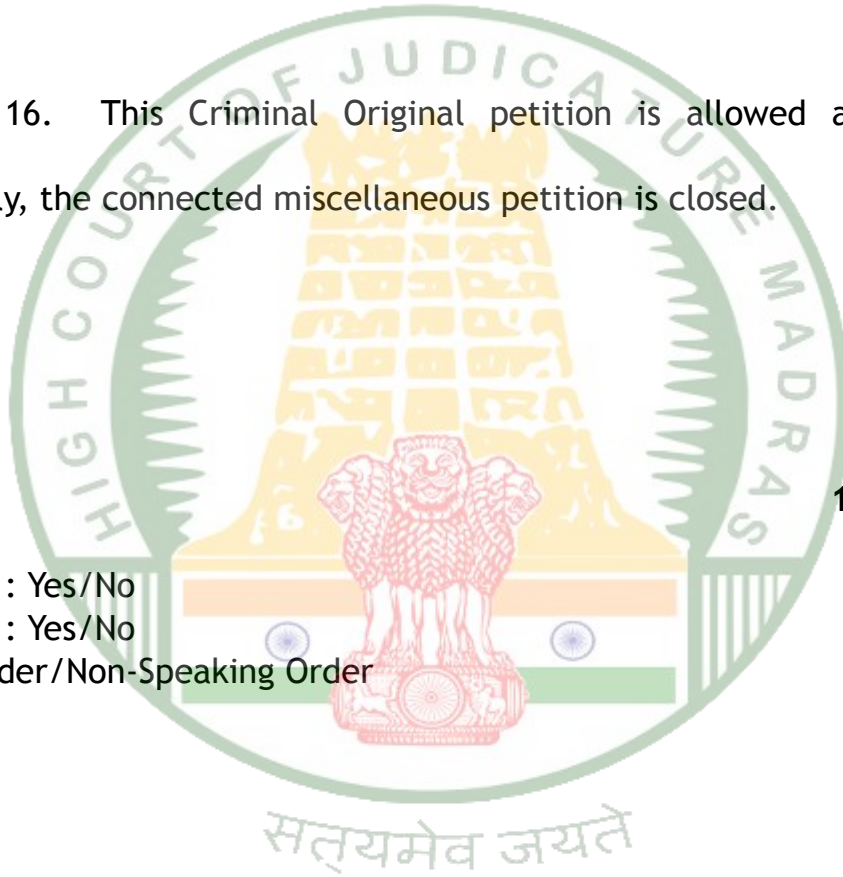
15. In the result, the proceedings in SC No.218 of 2018, pending on the file of the Additional District Judge, Krishnagiri, is withdrawn and transferred to the file of the Additional Sessions Court, Hosur. The Additional District Judge, Krishnagiri shall send the entire case papers to the Additional Sessions Judge, Hosur, within a period of two weeks from the date of receipt of copy of this order. The Additional Sessions Court, Hosur, immediately on receipt of the case papers, shall renumber the case and shall proceed further with the examination of the witnesses. An opportunity shall be given to the petitioner to recall and cross-examine the witnesses, who have been examined in chief, by the prosecution. It is made clear that the petitioner shall cross-examine the witnesses on the same day, they appear before the Court and he shall not seek any adjournment in this regard. The Additional Sessions Court, Hosur, shall ensure that the

petitioner does not face any threat during the proceedings and a fair trial is conducted. The Additional Sessions Judge, Hosur shall complete the proceedings, within a period of six months from the date of receipt of copy of this order.

16. This Criminal Original petition is allowed accordingly. Consequently, the connected miscellaneous petition is closed.

14.08.2019

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Additional District Judge,
Krishnagiri.
2. The Additional Sessions Judge,
Hosur.
2. The Public Prosecutor,
High Court of Madras,
Madras.



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Crl.OP No.20340 of 2019

N. ANAND VENKATESH, J.,
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