

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.02.2019

CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.23021 of 2018
and Crl.M.P.No.12853 of 2018

Jahir Hussain

...Petitioner

Vs.

State by
The Inspector of Police,
E-2, Royapetta Police Station,
Chennai.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to withdraw and transfer the case in C.C.No.7225 of 2014 pending on the file of the XVIII Metropolitan Magistrate Court Saidapet, to any other Court within Chennai District.

For Petitioner : Mr.C.Rajan

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

O R D E R

This Criminal Original Petition has been filed to transfer the case in C.C.No.7225 of 2014, pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai to any other Court within Chennai District.

2.The learned counsel for the petitioner would submit that while cross examination of the PW1/defacto complainant in respect of the complaint lodged by her dated 23.05.2012, the defacto complainant deposed that she has no knowledge about the said complaint. She admitted her signature and the contents made in the complaint. Even then, the petitioner/accused is not permitted to mark the said complaint in the trial. Further, she alleged that the witness admitted in cross examination that the complaint is the first one given as against the accused. The learned counsel for the petitioner pointing out at this juncture has shown a true copy of the complaint to the police station given by the said PW1. For which, the PW1/the defacto complainant admitted the complaint given. But, at that point of time, the public prosecutor interrupted and made the witness state that "she does not remember the complaint". The learned

counsel further submitted that another question being put up on the PW1/defacto complainant clearly admitted the title mentioned in the complaint.

3. Whatever the question asked by the learned counsel for the petitioner, the defacto complainant/ PW1 admitted. The prosecution and the Court intervened and created stumbling block to put further questions in respect of the two documents admitted by PW1. Therefore, he could not cross examine further as such the matter has been adjourned. Further submitted that there is absolutely reasonable apprehension on the part of a party in this case that Justice will not be done. Therefore, the petitioner seeking to transfer the trial from the said Court to another Court.

4. The learned Additional Public Prosecutor submitted that the case has been posted for cross examination of PW1. But for the past 1 ½ years, the PW1 has not present before the court. The learned counsel for the petitioner could not cross examine her. Further, he would submit that the same Court could not complete the trial and sought for speedy disposal of trial within stipulated time.

5. Mr. C. Rajan learned counsel appearing on behalf of the petitioner submitted that the trial Judge was not at all permitted the petitioner to cross-examine the PW.1, Which is contemplated as under Evidence Act. Further, it is also seen that the cross-examination partly done by the learned counsel for the petitioner, thereafter stopped. It is also seen from the record that

6. As directed by this Court by its order dated 26.09.2018, the learned XVIII Metropolitan Magistrate, Saidapet has sent a report dated 16.10.2018. The report revealed that at the time of cross examination of PW1, the prosecutor intervened and objected the cross examination of PW1 regarding to the e-mail complaint as pointed out by the learned counsel for the petitioner. Further revealed that the e-mail complaint could be marked through Mythri Murali in none other the sister of the defacto complainant.

7. Considering the above facts and circumstances, to transfer the case in C.C.No.7225 of 2014 from the file of the XVIII Metropolitan Magistrate Court, Saidapet to any other Court would not be served any purpose. However, the learned Magistrate is directed to permit the learned counsel for the petitioner to mark both the complaints sent by PW.1 dated 23.05.2012 as well as e-mail complaint as their documents.

8. Further it is also seen from the adjournment proceedings on the file of the XVIII Metropolitan Magistrate Court,

Saidapet, the PW.1 was not present for cross-examination from 26.09.2017 till today. This is also recorded by the learned Magistrate on 07.08.2018. Therefore, the respondent is directed to produce the witness PW.1 for further cross-examination on next hearing date. If the prosecution fails to produce the PW.1 for cross-examination, the learned Magistrate is directed to expunge the evidence of PW.1 and proceed the trial further in accordance with law.

9. The Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in C.C.No.7225 of 2014 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

mpa/rpl

To

- 1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai
- 2.The Inspector of Police,
E-2, Royapetta Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court of Madras.

+2ccs to Mr.C.Rajan, Advocate, S.R.No.10852

AK (CO)

RRS (09/04/2019)

Cr1.O.P.No.23021 of 2018

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