



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.02.2019

PRONOUNCED ON : 15.03.2019

WEB COPY

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THE HONOURABLE MR. JUSTICE **N.SESHASAYEE**

Crl.O.P. (MD) No.190 of 2019

Pandi @ Attack Pandi ... Petitioner/7th Accused
Vs.
The Inspector of Police,
E-1, K.Pudur Police Station,
Madurai, Crime No.1017 of 2015. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 407 of the Code of Criminal Procedure, to transfer the case in S.C.No.456 of 2016 on the file of the VI Additional Sessions Judge, Madurai to any other Assistant Sessions Court, at Trichy or Tanjavur or Pudukkottai or Karur or any other court to secure the ends of justice.

For Petitioner : Mr.Sankara Subbu
for Mr.Ilayaraja Kandasamy
For Respondent : Mr.K.Chellapandian
Additional Advocate General
Asst.by Mr.A.P.G.OHM Chairman Prabhu
Government Advocate(Crl.side)

O R D E R

This Criminal Original Petition has been filed to transfer the case in S.C.No.456 of 2016 on the file of the VI Additional Sessions Judge, Madurai to any other Assistant Sessions Court, at Trichy or Tanjavur or Pudukkottai or Karur or any other court.

2.Heard the learned counsel for the petitioner and the learned Government Advocate(Crl.side) appearing for the respondent.

3. The petitioner faces trial in S.C.456 of 2016 *inter alia* for offenses under section 307 IPC. Originally it was pending before the Assistant Sessions court, but it was transferred to Principal Sessions Court, Madurai and then to the VI Additional Sessions Judge, Madurai. Since the case is one triable by Assistant Sessions Judge, it is necessary that the it must be reverted back to the said court, as holding a trial by a Sessions Judge would deny him a right of appeal. He relied on the authority of the Hon'ble supreme court in **A.R.Antulay Vs R.S.Nayak & another**

<https://hccs.courts.gov.in/courts> [1988] 2 SCR 602].

4. As per the Penal Code, an offense under Sec.307 carries a



punishment of imprisonment for ten years, and as per the Procedure code, it is triable by a sessions Court. Under Sec.28(3) of the Code, the power to sentence by an Assistant Sessions Judge should not exceed ten years. The embargo caps and limits the sentencing power of the Assistant Sessions court, but does not take away the power of the Sessions Court to try an offence which is also triable by an Assistant Sessions Court. Secondly, nowhere in the code it is stated that any offense for which the Penal code has prescribed a punishment for ten years imprisonment is triable exclusively by an Assistant sessions Court. In terms of Section 374 Cr.P.C. right of appeal is not denied to one convicted of an offense under Section 307 IPC. Depending on the period of sentence for imprisonment the Court where appeal may lie alone will change.

5. In the backdrop of what is stated herein above, it is fallacious to contend that merely because a case is transferred from an Assistant Sessions Court to an Additional Sessions Court, both situated in the same campus, any failure of justice would visit the petitioner vis a vis his right of appeal.

6. In the result, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The VI Additional Sessions Judge, Madurai

2. The Inspector of Police,
E-1, K. Pudur Police Station,
Madurai

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s. ILAYARAJA KANDASAMY, Advocate (SR-54617[F] dated
18/03/2019)
cm|

order made in
Cr1.O.P. (MD) No.190 of 2019
15.03.2019