



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Crl.O.P(MD)Nos.6039 and 6051 of 2015
and
M.P.(MD)Nos.1 and 1 of 2015

1.Ebenezer
S.Devadhasan(Died)

2.A.Retnaraj ... Petitioners in both Crl.O.Ps.

Vs

1.The State of Tamil Nadu,
Rep. by the Public Prosecutor,
Kanyakumari District,
At Nagercoil.

2.S.Cyril Christu Raj
rep. By the power holder S.Nagarajan
... Respondents in both Crl.O.Ps.

Prayer in Crl.O.P.(MD)No.6039 of 2015: Petition filed under Section 482 Code of Criminal Procedure, to call for the records and set aside the order passed in Cr.M.P.No.5027 of 2013 in C.C.No.991 of 2012, dated 27.09.2013 on the file of the Fast Track Court (Magisterial Level) No.1, Nagercoil, conforming in Crl.R.C.No.27 of 2013, dated 27.11.2014 on the file of the Sessions Court, Kanyakumari Division, Nagercoil.

Prayer in Crl.O.P.(MD)No.6051 of 2015: Petition filed under Section 482 Code of Criminal Procedure, to call for the records and set aside the order passed in Cr.M.P.No.5026 of 2013 in C.C.No.991 of 2012, dated 27.09.2013 on the file of the Fast Track Court (Magisterial Level) No.1, Nagercoil, conforming in Crl.R.C.No.28 of 2013, dated 27.11.2014 on the file of the Sessions Court, Kanyakumari Division, Nagercoil.

For Petitioners : Mr.S.C.Herold Singh (in both)
For R1 : Mr.A.Robinson
Government Advocate (Crl.side)
(in both)
For R2 : Mr.C.T.Perumal
(in both Crl.O.Ps.)



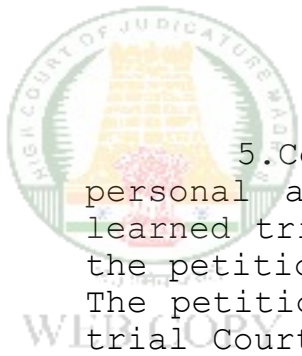
COMMON ORDER

The petitioners are facing prosecution in C.C.No.991 of 2012 on the file of the Fast Track Court (Magisterial Level No.1), Nagercoil. Earlier, the complaint was pending on the file of the Judicial Magistrate Court, Nagercoil in S.T.C.No.223 of 2009. The complaint was filed through the power agent Thiru S.Nagarajan who adduced evidence on behalf of his principal. Thereafter, the case was transferred to the Fast Track Court (Magisterial Level No.1), Nagercoil. After transfer of the case, Crl.M.P.No.5027 of 2013 came to be filed by the petitioners herein for forbearing the examination of the principal namely S.Cyril Christuraj, as the succeeding Court made it clear that it would hold denovo trial. Crl.M.P.No.5026 of 2013 was filed by the complainant for examining the principal namely S.Cyril Christuraj. While Crl.M.P.No.5026 of 2013 was allowed, Crl.M.P.No.5027 of 2013 was dismissed. Challenging the said orders, the accused/petitioners herein filed Crl.R.C.Nos.27 and 28 of 2013, before the Sessions Court, Kanyakumari Division at Nagercoil. These criminal revision cases were dismissed. Challenging the same, this criminal original petitions have been filed.

2. The learned counsel appearing for the accused/petitioners submitted that as per Section 326 of Cr.P.C., whenever the Court ceases to have the jurisdiction and is succeeded by another Judge or Magistrate, the succeeding Judge may act on the evidence already recorded by his predecessor. He therefore submitted that the proposal of the succeeding Magistrate to hold denovo trial is not appropriate.

3. I would agree with the said submission. Denovo trial need not be ordered. But then, there cannot be any objection taken for examining the principal namely Thiru.S.Cyril Christuraj. A greater impediment also comes in the way of the petitioners herein. The order passed by the trial Magistrate was challenged by the accused by filing the revision petitions before the Sessions Court.

4. Having lost in the revisions, the petitioners cannot obviously file a second petition, because of the bar set out in Section 397 (3) of Cr.P.C. To overcome this statutory bar, the inherent power of this Court under Section 482 of Cr.P.C., cannot be invoked. The statutory bar against the second revision can be overcome by permitting the petitioner to file Criminal original petition under Section 482 of Cr.P.C., only under certain exceptional circumstances. Such circumstances have not been shown to exist in this case. Therefore, I am of the view that no interference is called for. These criminal original petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.



5.Considering the facts and circumstances of the case, the personal appearance of the petitioners are dispensed with. The learned trial Magistrate shall insist on the personal appearance of the petitioners only when it is absolutely necessary and imperative. The petitioners shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioners can be represented through their counsel. It is made clear that this Court has not gone into the merits of the matter. Since the case is of the year 2012, the trial Magistrate is directed to conclude the proceedings on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Sessions Judge,
Kanyakumari Division, Nagercoil.
- 2.The Fast Track Court (Magisterial Level) No.1,
Nagercoil.
3. The Public Prosecutor,
Kanyakumari District,
At Nagercoil.
4. The Additional Public Prosecutor,
Madurai Bench of Madras high Court, Madurai

+2 CC to Mr .S.C.HEROLD SINGH, Advocate SR-92734, 92733
+1.CC. To Mr.C.T.Perumal, Advocate in SR No.92238

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MK (20.02.2020) 3P 8C