

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Cr1.O.P.No.1263 of 2020

D.Radha @ Radha Krishnan . ..Petitioner

-Vs-

The Inspector of Police
Hasthampatty Police Station
Salem District.
(Crime No.142 of 2011) ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the learned Additional District and Sessions Judge for FTC-I, Salem to split up the case in SC.No.58 of 2013.

For Petitioner : Mr.M.Mohamed Saifulla

For Respondent : M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed by accused No.14 to direct the learned Additional District and Sessions Judge, (FTC No.I), Salem to split up the case in SC.No.58 of 2013, insofar as absconding accused are concerned and dispose of the case with regard to the petitioner and other accused persons, who are regularly appearing before the trial Court.

2. The learned counsel for the petitioner has submitted that the petitioner was convicted in Sessions Case No.206 of 2010 on the file of the I Additional Sessions Judge, Salem for the alleged offences under Sections 341 and 302 IPC and he is in custody for the past 5 years in the said case. He further submitted that subsequently, the petitioner was remanded in S.C.No.58 of 2013 on the file of the Additional District and Sessions Judge (FTC No.I) Salem and he is in custody for the past 5 years in that case also. He further submitted that since Non-Bailable Warrants are pending against A1 and A9, the trial Court has not commenced the trial. He further submitted that since the petitioner is in custody, the trial Court may be directed to split up the case against the absconding accused persons and conduct trial in respect of the accused persons, who are regularly appearing before the trial Court.

3. The learned counsel for the petitioner has submitted that this Court in H.Aarun Basha Vs. The Inspector of Police, Salem Police Station 2019 (1) MWN (Criminal) 108 has issued guidelines to split up the case with regard to the absconding accused and hence, he requested to direct the trial Court to follow the aforesaid guidelines.

4. The learned Additional Public Prosecutor has submitted that Non Bailable Warrants are pending against A1 and A9 and effective steps have been taken to secure the said accused, but, the police could not secure them and under the said circumstances, he requested to pass an appropriate order.

5. In H.Aarun Basha Vs. The Inspector of Police, Salem Police Station, (cited supra), this Court has issued certain guidelines in respect of the cases wherein accused are absconding in paragraph No.6 which runs as follows:-

"6. The following guidelines can be kept in mind while dealing with cases of absconding accused:

(i) Where the Court has issued process for the appearance of an accused and the same could not be served and if the Court is satisfied that the accused is in absconding, the Court may, after having waited for a reasonable time, proceed under Section 82 of the Cr.P.C.

(ii) If the case involves a single accused against whom proceedings have been initiated under Section 82 of the Code, the Court shall shift the case from relevant register to the register of long pending cases.

(iii) When there are several accused persons in a case and only some of them have appeared or have been produced before the Court and if the Court is satisfied that the presence of other accused cannot be secured within a reasonable time, having due regard to the right of such of the accused in attendance to have the case against them, enquired into or tried without delay, the Court may split up the case if it is satisfied that such splitting up will cause no prejudice either to the prosecution or to the accused in attendance and proceed with the enquiry or trial as regards the accused who are in attendance.

(iv) While splitting up the case as referred to in (iii), the Court shall assign a fresh number to the split up case relating to the absconding accused and enter the same in the relevant register of the current year.

(v) In a case exclusively triable by a Court of session, when there are several accused persons and only some of them have appeared or have been produced before the Court, the Magistrate Court shall follow the same procedure mutatis mutandis till the stage of splitting up of case, as provided in Clauses (i) to (iv).

(vi) The Magistrate Court shall thereafter comply with the provisions of Section 207 or Section 208, as the case may be, insofar as the accused in attendance and commit the case to the Court of Session.

(vii) The Sessions Court shall be reported about the split up of the case and the Sessions Court shall assign a number to the split up case, enter the same in the sessions Register and communicate the number to the Magistrate Court forthwith. The Magistrate Court shall also indicate this number in brackets along with the fresh number assigned to the split up case relating to the absconding accused.

(viii) As and when the absconding accused appears and is produced before the Magistrate Court, the Magistrate Court shall comply with Clause (vi) and while committing the case to the Court of Sessions shall indicate the number assigned by the Sessions Court for the split up case.

(ix) Clauses (i) to (vii) above shall apply, as far as may be to cases, where an accused person has appeared, but has subsequently absconded.

(x) If the accused has absconded after committal of the case, the Sessions Judge shall follow the same procedure under Clauses (ii) to (iv)."

6. Considering the aforesaid submissions, the trial Court is directed to follow the guidelines issued by this Court in the aforesaid decision.

7. With the above directions, this Criminal Original petition is disposed of.

Sd/-
Assistant Registrar(CS)

//True Copy//
<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

dna
To

1.The Inspector of Police
Hasthampatty Police Station
Salem District.
(Crime No.142 of 2011)

2.The Public Prosecutor,
High Court, Madras.

3.The Judicial Magistrate No.III,Salem.

4. The Additional District and Sessions Judge for FTC-I, Salem

Crl.O.P.No.1263 of 2020

A.SK(26/02/2020)



WEB COPY