

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.3141 of 2020
and
Crl.M.P.No. 1847 of 2020

Sureshkumar Kochar

...Petitioner/Accused-3

-Vs-

1.The Inspector of Police,
J-9, Thoraipaakam Police Station,
Crime No.815/2006.

2. Dhanraj Kochar

3. Inderchand D.Kochar

4. Rameshkumar Kochar

5. Jitesh Kumar

6. Rajkumari

7. Anitha

8. Sarala

... Respondents

Prayer: Criminal Original petition filed under Section 407 r/w 482 of Code of Criminal Procedure, to pass an order to transfer the criminal appeal in Crl.Appeal No.82 of 2017 pending on the file of the learned Principal District and Sessions Judge, Chengalpet to any other near court.

For Petitioner : Mr.R.Bakyaraj
For RR1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the accused No.3 under section 407 r/w 482 of Cr.p.c to withdraw the Criminal Appeal No.82 of 2017 from the file of the Principal

District and Sessions Judge of Kancheepuram at Chengalpet and transfer the same to any other Court.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

3. The main grievance of the petitioner is that he filed a petition under section 391 Crpc, before the appellate court seeking permission to adduce additional documentary evidence and the said petition has been numbered as Crl.M.P.No.3658 of 2018, but, the learned Appellate Court Judge without disposing of the said petition, she proceeded to hear the arguments in the main Appeal. This Court is of the view that the Criminal Appeal need not be transferred on the ground that the learned Appellate Court Judge refused to dispose the petition filed under section 391 of Crpc separately.

4. Recently, the Hon'ble Supreme Court of India in Asim @ Munmun @ Asif Abdulkarim Solanki Vs. The State of Gujarath (Criminal Appeal No.184 of 2020, Special Leave Petition (Crl) No.8087 of 2019 dated 28.01.2020), has held as follows:

"Section 391 of the Cr.P.C does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under section 391 should be heard immediately after it is filed without waiting for the appeal to be finally heard."

5. In view of the aforesaid decision of the Hon'ble Apex Court, the petition filed under section 391 of Crpc shall be disposed of separately at the earliest without waiting for the appeal to be finally heard. Hence this Court feels that it is suffice to direct the learned Appellate Court Judge to dispose of the petition filed by the petitioner under section 391 of Crpc at the earliest.

6. In the result, the learned Principal District and Sessions Judge of Kancheepuram at Chengalpet is directed to dispose of the petition filed by the petitioner under section 391 Crpc in Crl.M.P.No.3658 of 2018 separately at the earliest without waiting for the appeal to be finally heard. Further considering the submissions made by the learned counsel for the petitioner, learned Principal District and Sessions Judge of Kancheepuram at Chengalpet is directed not to insist the personal appearance of the petitioner in all the hearings before the appellate court unless his personal appearance is absolutely necessary.

7. With the aforesaid directions, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal District and Sessions Judge of Kancheepuram at Chengalpet.
2. The Inspector of Police,
J-9, Thoraipaakam Police Station.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Bakayaraj, Advocate, SR.No.12116.

CrI.O.P.No.3141 of 2020
and
CrI.M.P.No. 1847 of 2020

NMI (CO)
CSR: 10.03.2020

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