

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.4606 of 2018
in Crl.M.P.No.2251 of 2018

Venkatraman,
S/o.Late Subbaiyan

... Petitioner

Versus

1. The State rep. by
The Sub-Inspector of Police,
Anaikarachathiram Police Station,
Seerkazhi Taluk,
Nagapattinam.

2. Munishkumar,
S/o.Late Subbaiyan

... Respondents

Prayer: Criminal Original Petition filed under Section 407 of the Code of Criminal Procedure, to pass an order of withdrawal and transfer the case in S.C.No.93 of 2017, pending on the file of learned Additional District and Sessions Judge, Mayiladuthurai.

For Petitioner : Mr.S.Deepika
For R1 : Mr.C.Iyyappa Raj
Additional Public Prosecutor
For R2 : No Appearance

ORDER

The petitioner/accused in S.C.No.93 of 2017 facing trial for the offence under Section 307 IPC before the Additional District and Sessions Judge, Mayiladuthurai has filed this transfer petitioner.

2. Private notice was served to the defacto complainant / Second respondent and one Mr.V.Parthiban (Enrolment No.2963 of 2011) learned counsel appeared on 28.09.2010 and undertook to file vakalat for the second respondent and copy of the typed set of papers were served to him. On earlier occasion the learned counsel for the petitioner was directed to inform about the hearing of the present case to Mr.V.Parthiban. The learned

counsel for the petitioner appeared and submitted that he informed the same and Mr.V.Parthiban who assured to appear before the Court, but he failed to do so. Keeping S.C.No.93 of 2017 pending without any progress would only further delay the proceedings. The second respondent knowing about the pendency of the above petition had failed to appear. Thereby on hearing the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and on perusal of the materials, this Court proceeded to dispose of the case.

3. The gist of the case is that the defacto complainant / second respondent is the elder brother of the petitioner. Second elder brother Anand Sathiyar working in Qatar, Middle East. The defacto complainant is an Advocate by profession. On 01.06.2017, the defacto complainant lodged a complaint stating that his father passed away five years before. When his father was alive the partition of properties was made in the presence of the elders. On 31.05.2017 at about 2.30 p.m., when the defacto complainant went to his land for watering, he saw the petitioner ploughing the defacto complainant's land using the tractor, which was questioned by the defacto complainant and a wordy altercation took place. The petitioner attacked the defacto complainant sustained with a wooden log due to which the defacto complainant sustained injury on his ribs, right wrist and on his back. Thereafter, he attempted to hit him on his head. The assault was witnessed by three other ladies who were working in the field. Later his wife took the defacto complainant to the Government Hospital, Sirkazhi, where he took treatment as in-patient.

4. The first respondent Sub-Inspector of Police on receipt of the information had gone to the hospital recorded the statement of defacto complainant and registered an FIR in Crime No.187 of 2017. Thereafter, the first respondent Police arrested the accused and recorded the confession. Based on his confession, wooden log was recovered. On completion of investigation, charge sheet filed listing L.W.1 To L.W.13 as witnesses, the documents and the properties were also marked. Later, the case was taken on the file of the Additional District and Sessions Judge, Mayiladuthurai in S.C.No.93 of 2017, which is at the stage of pending trial.

5. The contention of the learned counsel for the petitioner is that the defacto complainant taking advantage of the being an elder brother and also an advocate enjoying the entire family property. He is not letting his siblings enjoy their respective shares. The alleged eye witness to the occurrence are the workers employed by the defacto complainant in the field. The petitioner had not committed any offence and the entire case is fabricated against the petitioner. The defacto complainant

being an Advocate having influence over the first respondent Police. The petitioner was arrested and recoveries were made on the next day of the occurrence. Thereafter, he was remanded to custody and within 21 days the charge sheet filed on 22.06.2017. Even during the bail proceedings, no advocate came forward to appear on behalf of the petitioner. Thereafter with great difficulty the petitioner engaged an Advocate and obtained bail. The petitioner on receipt on summons from the Court appeared on 14.12.2017. The defacto complainant and his companion advocates threatened the petitioner and the advocate who represented the petitioner. The same continued on the next date of hearing on 21.01.2018 and on the subsequent hearing days. The defacto complainant is an influential person in the District of Nagapattinam and thus entire Advocates of the District are refusing to defend the petitioner in during the trial and thereby, the petitioner has been denied his fundamental right. The petitioner sent representation to the presiding officer and others. The petitioner is facing threat and physical harm whenever he appear before the trial Court and the petitioner is in a helpless situation without any legal assistance.

6.He further submitted that the Hon'ble Apex Court as well as this Court have held that the right of having Advocate to defend is a fundamental right, which the petitioner is deprived of. Further, the petitioner apprehends there are every chance for a serious life threat for him by the defacto complainant. The trial in S.C.No.93 of 2017 are kept pending without any progress since the defacto complainant and the witnesses are not appearing before the trial Court. Hence, the petitioner seeks transfer of case to some other District other than Mayiladhuthurai, Nagapattinam, Thiruvavarur District and other neary District, since the defacto complainant is influential in the neighbouring districts also.

7.The learned Additional Public Prosecutor submitted that on receipt of the complaint by the defacto complainant, LW13/Special Sub Inspector of Police visited the hospital, recorded the statement and registered an FIR. Thereafter, investigation was taken over by LW13, who visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch in the presence of the independent witnesses and examined the witnesses in the scene of occurrence. On completion of investigation, charge sheet was filed before the trial Court. In this case, there are four eye-witnesses LW1 to LW4. LW1 is the injured witness. LW5 is the wife of LW1 who had taken LW1 to the hospital. LW10 and LW11 are the Doctors who treated LW1, had given copy of the Accident Register and Wound Certificate. LW6 and LW7 are the witnesses for the arrest, confession and recovery. LW8 and LW9 are the witnesses to the Observation Mahazar. The proceedings in S.C.No.93 of 2017 before the lower

Court is pending for the past three years without any progress.

8.He further submitted that it is true that the defacto complainant is an Advocate practising in Mayiladhuthurai and Nagapattinam District Courts. There is family dispute between the petitioner and the defacto complainant, who are blood brothers. There is dispute between them over the enjoyment of the family property. Except the official witnesses, all the other witnesses hail from Seeyalam Village and taking witnesses to the far away place for trial would cause great difficulty to the witnesses. However, he undertook that proper protection would be given to the petitioner whenever he appears before the trial Court. As regards the allegations that advocates not coming forward to the defence the petitioner, the first respondent is not in a position to answer the same. Further he submits that the petitioner can always make representation before the concerned Court and also legal service authority who would be in a position to engage an Advocate for the petitioner.

9.Considering the rival submissions and on perusal of the materials, it is seen that in this case, the occurrence took place on 31.05.2017 at about 02.30 hours. The complaint was lodged on the next day i.e., on 01.06.2017 at about 12 noon. LW12/Special Sub Inspector of Police received information from Government Hospital, Sirkazhi. Thereafter, he visited hospital, recorded the statements of the defacto complainant and registered an FIR. LW10 and LW11 are the Doctors who treated the petitioner on 31.05.2017 at about 02.30 p.m. The eye witnesses were working in the field of the defacto complainant. The investigation in this case is completed, charge sheet filed on 22.06.2017 within a short period. The alacrity in completing the investigation and filing charge sheet does not happen in normal course. At the same time, the 2nd respondent police carrying out their investigation and filing the charge sheet within a period of 21 days cannot be faulted but it defies normal conduct.

10.Further the petitioner by way of affidavit had made averments that he is facing life threat. The 2nd respondent having entered appearance and being an advocate chosen to show wait and watch attitude which cause some doubt, leading to infer that the apprehension of the petitioner may be real. The allegation may or may not be true. The apprehension of the petitioner is well founded, every person has got his right of defence by having an advocate of his choice and no person to be proceeded against without giving right of being defended by an Advocate of his choice which the Hon'ble Apex Court and this Court consistently hold.

11.In view of the same, this Court is inclined to transfer the case in S.C.No.93 of 2017 on the file of the Additional District and Sessions Judge, Mayiladhuthurai to the file of the Principal District Court, Villupuram.

12.Accordingly, the case in S.C.No.93 of 2017, pending on the file of the Additional District and Sessions Court, Mayiladhuthurai and the same is transferred to the Principal District Court, Villupuram.

13.The Additional District and Sessions Judge, Mayiladhuthurai is directed to send the records relating to S.C.No.93 of 2017 to the Principal District Court, Villupuram forthwith and the Principal District Court, Villupuram is directed to dispose of S.C.No.93 of 2017 expeditiously within stipulated time.

14.With the above direction, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Mayiladhuthurai.

2.The Principal District Judge,
Villupuram.

3.The Sub-Inspector of Police,
Anaikarachathiram Police Station,
Seerkazhi Taluk, Nagapattinam.

4.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.S.Deepika, Advocate, sr no.36646

CRL.O.P.No.4606 of 2018

MP(CO)
RMP(08/12/2020)