

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2020

CORAM

THE HONOURABLE MR. JUSTICE. M. NIRMAL KUMAR

Crl. O.P. No.10869 of 2017
and
Crl.M.P.No.7164 of 2017

R. Kalaimani,
W/o. Ramalingam

...Petitioner

Vs.

1. The Inspector of Police,
Malayampalayam Police Station,
Erode Taluk,
Erode District.
Crime No.205 of 2008

2. Chinnasamy @ Jaganathan,
S/o. Rasappan ...Respondents

Prayer: Criminal Original Petition filed under Section 407 of Cr.P.C, to transfer the un-numbered case pending for trial on the file of the District Munsif cum Judicial Magistrate, Kodumudi in Crime No.205 of 2008 on the file of the first respondent herein to the Judicial Magistrate Court No.I, Erode, Erode District in joint trial in C.C.No.31 of 2010.

For Petitioner : Mr. R. Sankarasubbu
For R-1 : Mr. K. Prabakar,
Additional Public Prosecutor

सत्यमेव जयते
ORDER

(This case has been heard through video conferencing)

The petitioner who is accused in C.C.No.31 of 2010 in Crime No.205 of 2008 has filed this petition seeking to transfer of the unnumbered case dated 09.12.2008 and the protest petition which was filed on 09.11.2009 in S.R.No.5438 from the file of the District Munsif Cum Judicial Magistrate, Kodumudi to the Judicial Magistrate No.I, Erode to be tried along with C.C.No.31 of 2010.

2. The learned counsel for the petitioner submits that there are two crime numbers i.e., Crime No.205 and 206 those crime

numbers are case in counter hence it would be appropriate that both the cases to be tried together. Crime No.205 came to be registered on the complaint given by one Chinnasamy @ Jegannathan against the petitioner and others on 22.09.2008. According to this case occurrence took place on 21.09.2008 at about 17 hours both the cases occurrence taken at the same time. He further submits that he had filed a direction petition before this Court in Crl.O.P.No.6535 of 2009 seeking for transfer of investigation in Crime No.206 of 2008 from the file of the Malayampalayam Police, Erode District to the CBCID, Erode District.

3. At that time, the learned Additional Public Prosecutor informed the Court that the case was closed as mistake of fact on 22.09.2009 and the Crl.O.P.No.6535 of 2009 was disposed on 06.10.2009. On coming to know about the case closed as mistake of fact, the petitioner filed protest petition on 09.11.2009 before the Judicial Magistrate, Kodumudi which is taken on SR. No.5438 according to the petitioner, the protest petition is still pending.

4. The learned Additional Public Prosecutor submits that Crime No.205 was investigated by the Malayampalayam Police Station and charge sheet be filed before the District Munsif Cum Judicial Magistrate, Kodumudi. Thereafter, the petitioner filed transfer petition seeking to transfer the case to some other Magistrate Court, Erode and the case was transferred to the file of the Judicial Magistrate No.I, Erode and taken on file in C.C.No.31 of 2010. He would further submit that the petitioner keeping silent for years together, when the trial was about to commence in C.C.No.31 of 2010 the petitioner filed this petition seeking to transfer unnumbered protest petition to be taken along with C.C.No.31 of 2010 and tried together. Therefore the petitioner indirectly stalling the trial in C.C.No.31 of 2010 and sought for dismissal of this petition and further submitted that if at all the petitioner is aggrieved by the closure of Crime No. 206 of 2010 it is for the petitioner to agitate by way of protest petition before the District Munsif Cum Judicial Magistrate, Kodumudi.

5. Considering the facts and rival submissions of the learned counsel, this Court directs the learned District Munsif Cum Judicial Magistrate, Kodumudi to dispose of the protest petition filed by the petitioner dated 09.11.2009 in S.R.No.5438 if it is not disposed sofar. The learned counsel for the petitioner on instruction submits that the protest petition and the connected papers are not available in the Trial Court. In such case, the Trial Court is directed to get the concerned case papers and documents from the counsel for the petitioner, reconstruct the case bundle and proceed further and to dispose

of the same as per law within a period of three months from the date of receipt of a copy of this order. Ofcourse, after lifting of the lockdown and normal functioning of the Court commence.

6. With the above direction, this Criminal Original Petition is disposed of. Consequently, Connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

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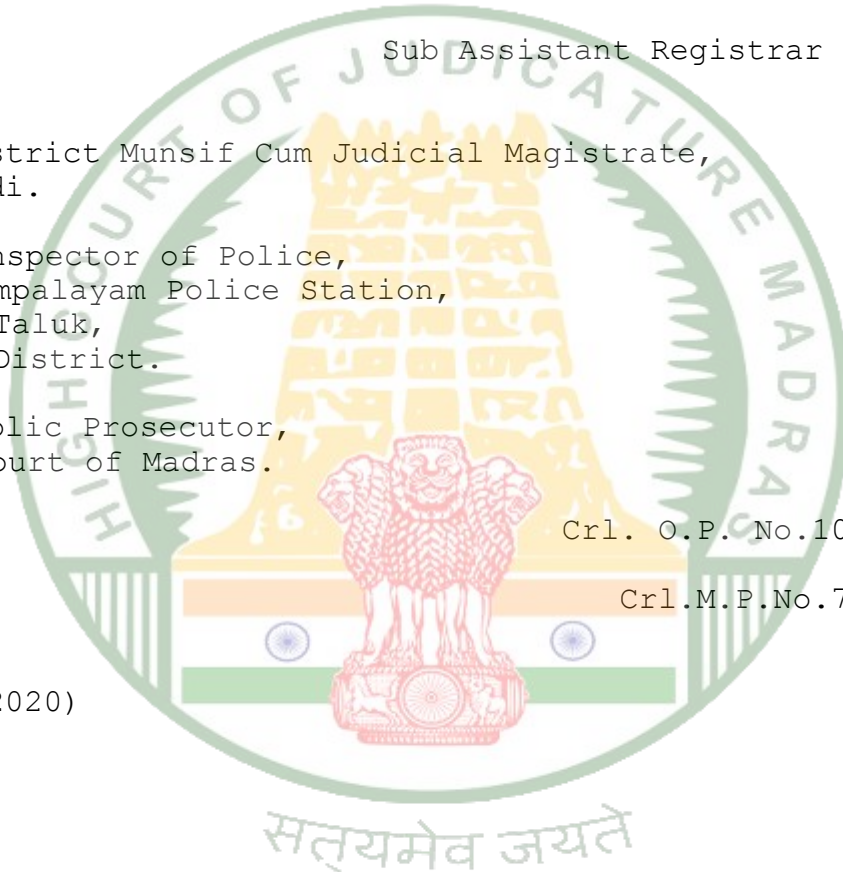
Sub Assistant Registrar

To

1. The District Munsif Cum Judicial Magistrate,
Kodumudi.
2. The Inspector of Police,
Malayampalayam Police Station,
Erode Taluk,
Erode District.
3. The Public Prosecutor,
High Court of Madras.

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SSD(CO)
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