

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.10.2020 / 15.10.2020
Pronounced on : 04.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.Nos.28133, 27309, 27706, 28137, 27035,
27304, 27308, 28138, 27704 and 26021 of 2019
and

Crl.M.P.Nos.14498, 14506, 14491, 14443, 14504,
14442, 14495, 14489, 13830 and 13831 of 2019

Crl.O.P.Nos.28133, 27706, 28137, 28138 and 27704 of 2019

Thangasekar,
S/o.Thangavel

...

Petitioner /
Complainant

versus

C.M.Balagopal,
S/o.C.R.Munusamy Nayudu

...

Respondent /
Accused

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., praying to issue suitable direction to the learned Judicial Magistrate No.I, Villupuram to complete the trial of the case in C.C.Nos.172, 173, 174, 171 and 175 of 2016 respectively at the earliest.

For Petitioner

:

Mr.Vidhusan
for Mr.K.Ramani

For Respondent

:

Mr.S.Ilamvaludhi

Crl.O.P.Nos.27309, 27035, 27304, 27308 and 26021 of 2019

C.M.Balagopal,
S/o.C.R.Munisamy

...

Petitioner /
Respondent

versus

T.Thanga Sekar,
S/o.Thangavel

...

Respondent /
Complainant

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., read with Section 407 Cr.P.C. praying to withdraw the C.C.Nos.171 to 175 of 2016 respectively on the file of the learned Judicial Magistrate No.I, Villupuram and transfer to the file of the learned Metropolitan Magistrate at Egmore, Chennai.

For Petitioner : Mr.S.Ilamvaludhi
For Respondent : Mr.Vidhusan
for Mr.K.Ramani

C O M M O N O R D E R

The petitioner / T.Thanga Sekar in Crl.O.P.Nos.28133, 27706, 28137, 28138 and 27704 of 2019 is the complainant in C.C.Nos.171 to 175 of 2016 respectively, pending on the file of the learned Judicial Magistrate No.I, Villupuram.

2. All the cases referred above are instituted against the respondent / C.M.Balagopal in the year 2016. Now, on considering the delay in disposal of the above referred cases, the petitioner is before this Court for the relief of direction, to direct the learned Judicial Magistrate No.I, Villupuram, to complete the trial in the above referred cases, within a time as stipulated by this Court.

3. On the other hand, the respondent / C.M.Balagopal has filed Crl.O.P.Nos.27309, 27035, 27304, 27308 and 26021 of 2019 praying to transfer the above referred cases from the file of the learned Judicial Magistrate No.I, Villupuram, to any one of the learned Metropolitan Magistrate.

4. In the above referred Criminal Original Petitions, since the parties to the proceedings and the prayer sought for by the petitioner are interlinked one, for deciding the above referred 10 Criminal Original Petitions, the following common order is passed.

5. In respect to the early disposal, which required by the complainant / T.Thanga Sekar, it is admitted on either side that the petition mentioned cases had been filed in the year of 2016 that too under Section 138 of Negotiable Instruments Act, 1881. Now, on going through the affidavits filed by the petitioner in support of these petitions, it was stated that after examining the petitioner as P.W.1 on 12.10.2017, till now, on behalf of the respondent / C.M.Balagopal, cross examination of P.W.1 has not been completed. When at the time the cases were

posted for cross examination of P.W.1, the respondent / C.M.Balagopal made request before the trial Court for referring all the cases for mediation. The learned trial Judge has also considered the said request and referred the cases to mediation.

6. Though the matters were taken up in the mediation repeatedly 5 times, the settlement had not been arrived at and therefore, again the cases were returned to the learned Judicial Magistrate No.I, Villupuram, for the purpose of completing the proceedings. In fact, it was alleged on the side of the petitioner as during the relevant point of time, the respondent / C.M.Balagopal had issued cheques to the petitioner for, so many lakhs of rupees. In the said circumstances, ordering speedy trial is necessary to safeguard the fundamental right guaranteed to the petitioner under Constitution.

7. On considering the said contention with the related records, the constitutional guarantee of a speedy trial is an important safeguard to prevent undue and oppressive incarceration, in a case of *HUSSAINARA KHATOON & ORS. vs. HOME SECRETARY, STATE OF BIHAR, PATNA* reported in AIR 1979 SC 1360, which involved the basis of the concept of speedy trial. Fundamental rights are not teasing illusions but are meant to be enforced effectively. On a number of matters cases were adjourned or delayed but now the Court has a right to quash the case or the proceedings to meet ends of justice. In the case of *KATAR SINGH vs. STATE OF PUNJAB* it was declared that right to speedy trial is an essential part of fundamental right to life and liberty.

8. Therefore, this Court has a constitutional duty to protect the right having by the petitioner in respect to the early disposal of the case. Accordingly, the prayer sought for by the petitioner is entertainable.

9. In respect to the Criminal Original Petitions filed by the respondent / C.M.Balagopal is concerned, the learned counsel appearing for him made submissions as, if the respondent / C.M.Balagopal attend the Court proceedings at Villupuram, there may be a danger to his life. In otherwise, he is ready to face the trial before any Court except the Court situated at Villupuram. He has also conceded for the early disposal of the cases as prayed for by the petitioner / T.Thanga Sekar.

10. Now, on going through the averments found in the affidavits filed in support of these petitions, the respondent has specifically stated in paragraph No.10 as due to the threats posed by the petitioner / T.Thanga Sekar, the learned counsel appearing for the respondent is refused to participate in the

trial proceedings. More than that for attending the Court proceedings, the respondent / C.M.Balagopal has to travel 160 kms and as of now, being an old man, he is not in a position to attend the Court proceedings at Villupuram.

11. Though in the affidavits filed by the respondent / C.M.Balagopal, it was stated as above, in order to substantiate the same, particularly in respect to the threats posed by the petitioner / T.Thanga Sekar, the respondent / C.M.Balagopal has not produced any relevant document. The said attitude shows that without any substantial evidence, the learned counsel for the respondent would contend that the petitioner / T.Thanga Sekar posed the threats against the respondent / C.M.Balagopal.

12. However, the high court is similarly enriched with the near pros to move a case from one court of its sub-law to another court of its sub-rule or the high court may even the endeavour the case without any other individual. The ground on which an application to move the case could be made to the high court are:

- At the moment that the court could reasonably make sure that the respectability of the way would be one-sided by the way at whatever point coordinated with a comparable court that has been endeavoring the case starting at now.
- Right when the high court is of the conclusion that the way of the case may incorporate the decision of specific requests which are an impressive request of law and must be overseen by the high court accelerating way.
- The High Court may think about the comfort of the gatherings for such to get together the finish of justice and towards the convenience of justice for both the gatherings.

The High Court in the wake of accepting any such application from the candidate the court may regardless of whether require direct an inquiry and afterward choose whether such exchange is in light of a legitimate concern for justice or it is documented with a goal to crush the justice. On the off chance that the grounds of recording such applications are seen as bogus, unimportant or vexatious the court would excuse the application.

13. Accordingly, the prayer sought for by the petitioner is an impressive request. However, if the case is transferred to the nearest station with a direction to dispose of the same within a stipulated period, nobody cause prejudice.

14. Therefore, on considering the facts and circumstances of the case, this Court is inclined to pass the following orders;

(i) All the petition mentioned cases, for example C.C.Nos.171 to 175 of 2016 respectively, is transferred from the file of the learned Judicial Magistrate No.I, Villupuram to the file of the learned Judicial Magistrate No.I, Dindivanam.

(ii) The learned Judicial Magistrate No.I, Villupuram, is directed to transfer the petition mentioned cases to the file of the learned Judicial Magistrate No.I, Dindivanam, within a period of two weeks from the date of receipt of a copy of this order.

(iii) On receipt of the same, the learned Judicial Magistrate No.I, Dindivanam, is directed to dispose of the petition mentioned cases, within a period of three (3) months thereafter.

(iv) The parties to the proceedings shall co-operate in the early disposal.

15. With the above directions, all these Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sri

To

1.The Judicial Magistrate No.I, Villupuram.

2.The Judicial Magistrate No.I, Dindivanam.

3.The Public Prosecutor,
High Court, Madras.

+2 ccs to Mr.A.Sathasivam Advocate sr35999

Pre-delivery Common Order in

Cr1.O.P.Nos.28133, 27309, 27706, 28137, 27035,
27304, 27308, 28138, 27704 and 26021 of 2019
and
Cr1.M.P.Nos.14498, 14506, 14491, 14443, 14504,
14442, 14495, 14489, 13830 and 13831 of 2019

aa10/11/2020