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CrI.O.P.(MD)Nos.989, 4180 and 4181 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P (MD) Nos.989, 4180 and 4181 of 2020

and

CrI.M.P. (MD) No.436 of 2020 in

CrI.O.P. (MD) No.989 of 2020

In CrI.O.P. (MD) No.989 of 2020

Selvakumar

... Petitioner/14th Accused

Vs

1.State represented by,

The Deputy Superintendent of Police,

Thoothukudi City,

Thoothukudi South PS,

Thoothukudi District.

(Crime No.533 of 2019)

... 1st Respondent/Complainant

2.Rajesh @ Rajeshwaran

3.Peter @ Anthony Peter

4.Sankaramurthy

5.Bupes Kannan

6.Maruthavel @ Pappadai

7.Vikki @ Vigneswaran

8.Sathyaraj

9.Balasubramanian S/o.Karuppusamy

10.Vel Sankar

11.Balasubramanian S/o. Ponmurugan

12.Kandavel



14.Vikki @ Vignesh

15.Dinesh

16.Pon Saravana Perumal

17.Ramesh

18.Jesubalan @ Kurumbur Bala

19.Thangam

20.Periadurai

21.Murugesan ... Respondents 2 to 21/Accused

22.P.K.Ramkumar ... 22nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in S.C.No.187 of 2019 pending on the file of the learned second Additional District Judge, Tirunelveli and to transfer the case to any other competent Court out of Tirunelveli District.

For Petitioner	: Mr.R.Vivekananthan
For R1	: Mr.A.Robinson
	Government Advocate (Crl.side)
For R2 to R22	: Mr.G.Thalaimutharasu

In Crl.O.P.(MD)No.4180 of 2020
P.K.Ram Kumar ... Petitioner/Defacto Complainant

Vs

The State Represented throguh
The Deputy Superintendent of Police,
Thoothukudi South Police Station,
(Crime No.533 of 2019) ... Respondent/Investigatinon Officer

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to direct the respondent police to execute the non bailable warrant issued against A21 Murugesan dated 20.01.2020 so as to enable the trial Court to conclude the trial proceedings as enumerated in Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015.



For Petitioner : Mr.G.Thalaimutharasu
For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

In Crl.O.P. (MD) No.4181 of 2020
P.K.Ram Kumar ... Petitioner/Defacto Complainant

Vs

The State Represented through
The Deputy Superintendent of Police,
Thoothukudi South Police Station,
(Crime No.533 of 2019) ... Respondent/Investigation Officer

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to issue direction to the learned II Additional Sessions Judge (Special Court for SC/ST (Prevention of Atrocities) Act), Tirunelveli to complete the trial proceedings of S.C.No.187 of 2019, within a specific time frame.

For Petitioner : Mr.G.Thalaimutharasu
For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

COMMON ORDER

Heard the learned counsel on either side.

2.One Siva Kumar was done to death on 21.08.2019 at about 10.00 a.m. It is not in dispute that Siva Kumar belongs to scheduled caste community. In this regard, Crime No.533 of 2019 was registered on the file of the Thoothukudi South Police Station. Since the case arose under Section SC/ST Act, it was investigated by the Deputy Superintendant of Police. After investigation, final report was laid against as many as 21 persons and it was also taken on file and cognizance of the offences under Sections 147, 148, 341, 294(b), 302 and 506(ii) of IPC r/w Section 3(2)(v) of SC/ST (POA) Act, 1989, was taken. The case was taken on file in S.C.No.187 of 2019. Since the 21st accused absconded, the case was split up. Seeking speedy disposal, Crl.O.P.(MD)No.4181 of 2020 has been filed. Seeking apprehension of A21, Crl.O.P.(MD)No.4180 of 2020 has been filed. Seeking transfer of the case, one of the accused has filed Crl.O.P.(MD) No.989 of 2020.

3.The learned counsel appearing for the accused/A14 Thiru.M.Selva Kumar, submitted that the brothers of the deceased <https://hcservices.ecourts.gov.in/hcservices/> happen to be practising lawyers. One brother practises at



Tirunelveli, while the other practises at Thoothukudi. He would also contend that on behalf of the defacto complainant, the Bar President himself is appearing.

4.The learned counsel appearing for the accused A14 placed reliance on the order dated 19.06.20218 made in CrI.O.P.(MD) No.11904 of 2018 in this regard and the decision reported in **(2011) 1 SCC 307 (Nahar Singh Yadav Vs. Union of India and others)** .

5.I am unable to agree with the contentions urged by the learned counsel appearing for A14. The Hon'ble Supreme Court, in the decision, reported in **(2011) 1 SCC 307**, laid down broad guidelines. That should be kept in mind, while considering an application for transfer of the trial. They are as follows:-

"29.Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 of Cr.P.C., should be exercised, it is manifest from a bare reading of sub-sections (2) and (3) of the said Section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

(I) when it appears that the State Machinery or prosecution is acting hand in glove with the accused, and there is likelihood or miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and



(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice".

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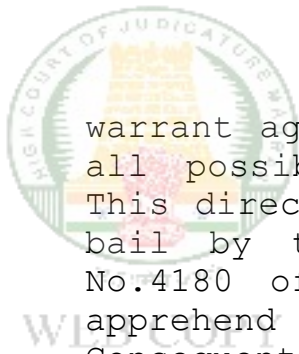
6.I am of the view that none of these circumstances obtain in the case on hand. Merely because, the brothers of the deceased are practising lawyers and merely because, the Bar President is representing them, that is not a ground to direct transfer of the trial. I decline to believe that the presiding Judge will be swayed by these situations.

7.The learned counsel appearing for the complainant points out that as per Section 14(3) of the SC & ST (Prevention of Atrocities) Act, 1989, in every trial, the proceedings should be continued from day to day, until all the witnesses in attendance have been examined and endeavour shall be made to complete the trial, within a period of two months from the date of receipt of filing of the charge sheet.

8.The learned counsel appearing for the complainant would also draw my attention to the direction made in CrI.O.P.(MD) No.18762 of 2019 dated 19.12.2019. The learned Judge of this Court, in the said order, passed a following direction:-

"5.Taking into consideration the apprehension of the petitioner that there is possibility of the witnesses being threatened in the event of there being delay, direction is issued to the learned II Additional Sessions Judge, the Special Court for SC/ST(Prevention of Atrocities Act), Tirunelveli, to split up the case against the available accused and proceed with the trial on day to day basis and complete the trial, within a period of three months, from the date of examination of the first witness."

9.In view of the specific statutory mandate laid down in Section 15A(10) of the Act, the proceedings shall be duly video recorded. In this view of the matter, CrI.O.P.(MD)No.989 of 2020 is dismissed. CrI.O.P.(MD)No.4181 of 2020 is disposed of and the learned trial Judge is directed to conclude the trial as expeditiously as possible. I am conscious of the fact that there are as many as 57 witnesses to be examined in this case. It is easy for this Court to lay down any outer time limit. But then, the ground reality will have to be taken note of. At the same time, the learned Special Judge will bear in mind not only the statutory mandate but also the earlier direction given by this Court. It is specifically directed that trial will be held on a day to day basis. As regards the execution of non bailable



warrant against A21 Murugesan, the respondent is directed to take all possible steps to apprehend him and secure his presence. This direction is issued against A19 because A19 who was granted bail by this Court, also absconded. Therefore, CrI.O.P.(MD) No.4180 of 2020 is allowed and the respondent is directed to apprehend not only A21 Murugesan but also A19 Ramesh. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CrI side)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The II Additional Sessions Judge (Special Court for SC/ST (Prevention of Atrocities) Act), Tirunelveli.

2.The second Additional District Judge, Tirunelveli.

3.The Deputy Superintendent of Police,
Thoothukudi South Police Station,
Thoothukudi.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.VIVEKANANTHAN, Advocate SR-11969[F]
+1CC TO MR.G.THALAIMUTHARASU, Advocate Sr. No. 11973

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16.03.2020

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