



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE **A.D. JAGADISH CHANDIRA**

Crl.O.P.(MD) .No.3467 of 2020

and

Crl.MP.(MD)No.1859 of 2020

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Vinsent Raj

...Petitioner/
Defacto complainant

Vs.

1. The Superintendent of Police
Kanyakumari District
at Nagercoil

2. The Inspector of Police
Eraniel Police Station
Kanyakumari District

....Respondents/complainants

PRAYER: This Criminal Original Petitions has been filed under Section 482 of Criminal Procedure Code, to withdraw the case in C.C.No.104 of 2019 pending on the file of the learned Judicial Magsitrate, Eraniel to the file of the learned Judicial Magistrate, Tirunelveli

For Petitioner
For Respondents

: Mr.M.R.Sreenivasan
: Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

This petition has been filed to withdraw the case in C.C.No.104 of 2019 pending on the file of the learned Judicial Magsitrate, Eraniel to the file of the learned Judicial Magistrate, Tirunelveli

2. The case of the prosecution is that on 15.10.2012 at 6.30 p.m., due to previous enmity the accused along with three other persons came to the Paris Priest room and pulled the cutting bell and when he came out and saw that who pulled the bell, the accused persons abused him and by using their belt tried to strangulate his neck and other persons attempted to stab him. On seeing the same, when the staff members raised hue and cry, the accused persons abused them in filthy language and also threatened them to do away. Thereafter the staff members caught hold of the accused person and informed to the second respondent police and made a complaint before the second respondent. Based on which the second respondent police registered a case in Crime No.736 of 2012 for the offence under



Sections 352,323 and 506(ii) of IPC. As a counter blast, the second accused in Crime No.736 of 2012 gave a false complaint before the second respondent against Kalister the Paris Preist and 14 others, based on which a case in Crime No. 737 of 2012 was registered for the offences under Sections 147,342,324,323,294(b), 379(NP), 307 of IPC and Section 3 of TNPPDL Act. After completing investigation in both cases in Crime Nos 736 of 2012 and 737 of 2012 the second respondent filed final reports before the concerned court. Though both are counter cases , since the offences in Crime No. 736 of 2012 are triable by the Magistrate it has been taken on file in C.C.No.104 of 2019 by the learned Judicial Magistrate, Eraniel. Since the offences in Crime No.737 of 2012 are triable by the Court of Sessions it was taken in PRC No.23 of 2013 by the Judicial Magistrate, Eraniel and the same was committed to the Chief Judicial Magistrate, Court and taken up in S.C.No. 04 of 2019. Later since it is a case involving an advocate it has been transferred to the file of Chief Judicial Magistrate Court, Tirunelveli as per the order of this Court dated 09.12.2019 in Crl.O.P(MD) No.8131 of 2019.

3. He would further submit that both cases arises out of one and the same transaction and that they are either case and counter cases or cross cases. In cross cases when one of the case involves offence exclusively triable by the Court of sessions, then under Section 323 of Cr.P.C the jurisdictional Magistrate should commit both cases for trial to the Court of Sessions. The fair procedure to adopt in matter like the present case is the same Judge himself should try both the cross cases one after another and that after recording the evidence of one case is completed he must hear arguments and he must reserve judgments. In this case one case is pending before the learned Judicial Magistrate,Eraniel and the counter case is pending on the file of the Chief Judicial Magistrate Court, Tirunelveli. Fair procedure requires that both the cases have to be tried by the same judge and thereby would seek for transfer of the case. Thereafter he may proceed to hear cross case and after recording of the evidence he must hear arguments to reserve judgments in that case. The same Judge must thereafter dispose of matter by two separate judgments. In Support of his contention he relied on the judgment of the Honourable Supreme Court in the case of **Nathi Lal and other Vs. State of U.P and another** reported in **1990 (Supp) SCC 145** and also the judgement of this Court in **Ganesan and another -vs- The Inspector of Police, Chennai** reported in **2011(5) CTC 747** .

4. The learned Additional Public Prosecutor would submit that both the cases are cross cases and they can be tried together. He would submit that the Sessions Case in S.C.No.04 of 2019 is pending on the file of the Chief Judicial Magistrate Court, Tirunelveli and C.C.No.104 of 2019 is pending on the file of the learned Judicial



Magistrate, Eraniel and the case in C.C.No.104 of 2019 stands posted on 17.03.2020 for examination of LW.1 to 3.

5.This Court has gone through the materials available on records.

6.Admittedly, S.C.No.4 of 2019 is pending on the file of the Chief Judicial Magistrate Court, Tirunelveli and C.C.No.104 of 2019 is pending on the file of the learned Judicial Magistrate, Eraniel. Both the cases are case and counter case arising out of same occurrence. The Honourable Supreme Court in the case of **Nathi Lal and other Vs. State of U.P and another** reported in **1990 (Supp) SCC 145** had held as follows:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But, both the judgments must be pronounced by the same learned Judge one after the other."

7. Further this Court in the case of **Ganesan and Another -vs- The Inspector of Police, Chennai** reported in **2011 (5) CTC 747**, It is relevant to extract para 42 and para 58 which reads as follows:

" 42 . A close reading of the above Judgment of the Hon'ble Supreme Court would make it manifestly clear that in cross cases, though in one of the cases none of the offences is exclusively triable by a Court of Sessions still, under Section 323 of Code of Criminal



Procedure a Magistrate has got a legal duty to commit such cross case also to the court of sessions for being tried in the manner stated in Nathi Lal's case cited supra by the Court of Sessions.

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58.To sum up the legal issues involved in the case:

(i) No Court of Sessions shall take cognizance of any offence unless the case has been committed to it by the jurisdictional Magistrate.

(ii) The Court of Sessions has no power to direct a Magistrate to commit any case to his file nor can a Court of Sessions withdraw a case from a Magistrate to his file.

(iii)

(iv) In cross cases, where one of the cases involves offences exclusively triable by a Court of Sessions and in the other case none of the offence is exclusively triable by a Court of Sessions, then, as provided in Section 323 of Code of Criminal Procedure the jurisdictional Magistrate should commit both the cases for trial to the Court of Sessions.

(v) On such committal of cross cases arising out of the same occurrence, the Sessions Court shall scrupulously follow the procedure laid down by the Hon'ble Supreme Court in Nathi Lal v. State of U.P. : 1990 Supp. SCC 145.

(vi)

(vii) In any event, the trial court shall not record common evidence or substitute the evidence recorded in one case as evidence in the other case and shall not consider the evidence recorded in one case in the other case.

(viii) In no case, the trial court shall deliver a common Judgment in two or more cases [vide Nathi Lal's case cited supra].

(ix)

(x) In respect of cross cases, for each case there has to be a separate public prosecutor to conduct the prosecution".

8. In view of the same this Court is of the opinion that the case in C.C.No.104 of 2019 is pending on the file of the learned Judicial Magistrate, Eraniel is to be committed to the file of the Chief Judicial Magistrate Court, Tirunelveli to be tried along with SC No. 4 of 2019

9. Hence, the learned Judicial Magistrate, Eraniel is directed to commit the case in CC No. 104 of 2019 to the file of the

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Chief Judicial Magistrate Court, Tirunelveli within a period of one month from the date of receipt of a copy of this order and the learned Chief Judicial Magistrate Court, Tirunelveli is directed to stop the proceedings in SC No.4 of 2019 till the case bundles in CC No. 104 of 2019 is transferred to its file. On receipt of case records, the Chief Judicial Magistrate Court, Tirunelveli shall scrupulously follow the procedure laid down the Honourable Supreme Court of India in the case of **Nathi Lal and other Vs. State of U.P and another** reported in **1990 (Supp) SCC 145** and the judgment of this Court in the case of **Ganesan and Another -vs- The Inspector of Police, Chennai reported in 2011 (5) CTC 747.**

10. The Chief Judicial Magistrate Court, Tirunelveli shall not record common evidence or substitute evidence in one case as evidence in other case and in no case shall deliver common judgment and there should be separate Public Prosecutors to conduct prosecution in both cases. After the receipt of case records in C.C.No. 104 of 2012 from the learned Judicial Magistrate, Eraniel, the Chief Judicial Magistrate Court, Tirunelveli shall endeavour to complete trial in both cases and render judgments within a period of four months. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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To

1. The Chief Judicial Magistrate Court, Tirunelveli

2.The Judicial Magistrate, Eraniel, Kanyakumari District.

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

+1 CC to Mr.M.R.SREENIVASAN, Advocate (SR-8878[F] dated
27/02/2020)

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