



CRL OP(MD) No.6937 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Tenth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice N.SESHASAYEE

CRL OP(MD). No.6937,3167,4728 of 2018

AND

CRL MP(MD)NO.1088,1473,2319,2320,3295,4798 OF 2019

1. P.Paramasivan, ... Petitioner in CRL OP(MD)6937 of 2018

1. P.Paramasivan ... Petitioner in CRL OP(MD)3167 of 2018

1. Sathyraj

2. Lakshmana raj .. .Petitioners/ Accused No. 7 &10 in
CRL OP(MD).Noi.4728 of 2018

Vs

1 M.Devadass,

2 Rathinasamy,

3 Baskaran,

4 Micheal Chandran,

5 Muthu,



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6 Stephen,
7 Sathiyaraj,

8 Madasamy, S/o.Balaiah,

9 Murugan,

10 Lakshmanaraj,

11 Prathapsingh,

12 I.Eswaran,

13 M.Chandrapaul,

14 Durai Lakshmana Raj,

15 Rathinasamy,

.. . Respondents in CRL OP(MD)6937/2018

1. M.Devadass

2. M.Asanammmal

..Respondents in CRL OP(MD)3167/2018

(R2 impleaded as per order of this dated 23.01.2019 made in CRL MP(MD) 4798 of 2018 in CRL OP(MD)3167 of 2018)

1. M.Devadass

..Respondent in CRL OP(MD)..4728/2019

Prayer in CRL OP(MD).NO.6937 of 2018 :-

This Criminal Original Petition is filed Under Section 407 of Cr.P.C., to issue a direction to transfer the case in C.C.No.77 of 2012 on the file of the District Munsif cum Judicial Magistrate, Bhoothapandi, Kanyakumari District to the file of the Additional District Judge, Tenkasi, Tirunelveli District wherein the connected S.C.No.195 of 2011 is pending for conducting joint trial of both the said cases.



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Prayer in CRL OP(MD).NO.3167 of 2018 :-

This Criminal Original Petition is filed Under Section 482 of Cr.P.C., to direct the District Munsif cum Judicial Magistrate, Boothapandi to defer the proceedings in C.C.No.77 of 2012 until the trial on the file of Additional District Court, Tenkasi in S.C.NO.195 of 2011 is completed .

Prayer in CRL OP(MD).NO.4728 of 2018 :-

This Criminal Original Petition is filed Under Section 482 of Cr.P.C., to Call for records pertaining to the case in C.C.No.77 of 2012 on the file of the Judicial Magistrate, Boothapandi, Kanniyakumari District and quash the same.

ORDER:- These Criminal Original Petitions coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and none having appeared for the petitioners and upon hearing the arguments of Mr.S.Sureshkumar For R4, M/s.C.S.S.Pillai for M/s.D.Saravanan for R11 and Mr.Hasan Mohammed Jinnah State Public Prosecutor Assisted by Mr.N.Muthuvel Government Advocate (Criminal Side), this Court made the following order:

"This matter is listed under the caption 'for clarification' at the instance of the counsel for 11th respondent in Crl.OP(MD) No.6937 of 2018.

2. The petitioner is a certain Paramasivan, and his status vis-a-vis the crime involved in S.C.No.195/2011 is ambiguous. The issue involves an alleged custodial torture, followed by disappearance of one Mohammed Masood of Kadayanallur. He was stated to have been arrested in Tenkasi, and he finally landed in Keeriparai P.S. in Kanyakumari District. The alleged custodial torture is said to have taken place at Keeriparai police station, and Paramasivan, the petitioner in Crl.OP(MD)



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No.6937 of 2018 is a constable. This resulted in an enquiry by the RDO at the directions of the Government, that resulted in a private complaint laid by RDO, which later was taken cognizance in C.C.No.77/2012 by the Judicial Magistrate, Boothapandi, which is the jurisdictional Court vis-a-vis Keeriparai police station. In this case, Paramasivan was arrayed as an accused.

3. In the meantime, the wife of the alleged victim had moved the Madurai Bench of this Court in Crl.OP(MD) No.31854 of 2007, which ultimately registered in a case for man missing, and it is now pending in S.C.No.195 of 2011 before the Additional Sessions Court, Tenkasi. This case was since charge sheeted and committed to Sessions, where it is pending trial in S.C.No.195 of 2011. In the final report of the Investigating Agency, Paramasivan who was arrayed as an accused in C.C.No.77/2012, was cited as a witness for the prosecution. Besides, the private complaint of the RDO, that led to the registration of C.C.No.77/2012, he was listed as a witness and his enquiry report is also produced as a document. This has created ambiguity. The issue then was to ascertain whether Paramasivan should be treated as a witness or as an accused.

4. It is in this circumstances, this Court passed an order dated 19.02.2020,



wherein paragraph No.9 reads as follows :

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"9. The Sessions Court will still have a tricky situation. The Code has provided distinct procedures to the trial Court trying different kinds of criminal cases. And within the statutory space provided, the trial Court has its discretion and space to conduct a trial. This Court therefore, in exercise of the residual power granted to it under Sec.482 Cr.P.C. cannot and should not remote-control trial procedure and restrict the statutory space granted to the trial court with its directives. Hence, this court instead of directing the Sessions Court on what to do, intends only to suggest what is herein below indicated :

a) Notwithstanding the fact that the prosecution has the prerogative to examine the witness of its choice, the learned Sessions Judge may within the powers it has under Sec.311 Cr.P.C., require the RDO - the complainant in C.C.No.77/2012 to be examined earlier during the trial in S.C.No.195/2011, even as the first witness, to ascertain if Paramasivan is an accused person.

b) Since the RDO is not an eye witness, the Court may next examine such witness/witnesses who may have spoken about the



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role of Paramasivan to the complainant in C.C.77/2012. This will enable the Sessions Judge to consider if Paramasivan needs to be arrayed as an accused person in exercise of his power under Sec.319 Cr.P.C.,

c) At any rate Paramasivan should not be examined, till the Sessions Court takes a decision on how to treat Paramasivan - as an accused, or as a witness."

5. The learned counsel for the 11th respondent now before the Court submits that the learned Sessions Judge has *suo motu* opened CrI.MP. No.48/2023 vide office note dated 10.11.2022, and is holding enquiry in it, instead of examining the witness in the order mentioned in S.C.No.195/2011. He merely seeks a clarification whether the procedure adopted by the learned Judge is contemplated within the directions given in paragraph 9(a) of the order of this Court dated 19.02.2020.

6. Heard the learned State Public Prosecutor. It is clarified that this Court does not intend a supplemental enquiry by opening CrI.MP. No.48/2023, but only required that the RDO be examined first as the opening witness in S.C.No.195/2011.



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This means the procedure adopted by the learned Sessions Judge is not consistent with what this Court intended. In view of the same, this Court merely directs the learned Sessions Judge to treat the evidence of the two witnesses that the learned Judge has examined in CrI.MP. No.48/2023, as evidence in S.C.No.195/2011, and to proceed with the case.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

11/10/2023

Sub Assistant Registrar(CS)

ds

TO

1. The Judicial Magistrate, Boothapandi,
Kanyakumari District.
2. The Additional District Judge, Tenkasi.
3. The Executive Magistrate cum Revenue Divisional Officer,
Padmanabapuram, Kanyakumari District.



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

+1 CC to M/s.D.Saravanan, Advocate in CA SR.NO.47039 of 2023

ORDER DATED : 10/10/2023

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ORDER

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CRL OP(MD). No.6937 of 2018

AND

CRL OP(MD). No.3167 of 2018

AND

CRL OP(MD). No.4728 of 2018

Giving direction and etc.

as stated within.



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AMS/11.10.2023 9P 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023