



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2020

CORAM:

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

Crl.O.P.(MD).No.16990 of 2019
and
Crl.MP.(MD)No.10063 of 2019

Raju @ Subba Reddiyar ... Petitioner/defacto complainant

Vs.

1. The State rep.by
The Inspector of Police
Lalapet Police Station
Lalapet, Karur District .. 1st respondent /complainant
(Crime No.158/2016)

2. Anbalagan
3. Vasudevan
4. Pappathi
5. Chitradevi .. respondents 2 to 5 /accused 1 to 4

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to direct the Judicial magistrate No.1 Kulithalai to commit CC No.82 of 2016 on his file to the file of the Assistant Sessions Cum Subordinate Judge, Kulithalai and order Joint trial along with SC No.83 of 2016 pending on the file of the Assistant Sessions Judge cum Subordinate Judge, Kulithalai.

For Petitioner : Mr.N.Sivakumar
for RM.Sivakumar

For Respondents: Mr.S.Chandrasekar
No.1 Additional Public Prosecutor
No.2 : Mrs.Chinna Ponnu
for Mr.M.Saravanan

O R D E R

This petition has been filed to direct the learned Judicial Magistrate No.1, Kulithalai to commit the case in CC No.82 of 2016 on his file to the file of the learned Assistant Sessions Cum Subordinate Judge, Kulithalai and order for Joint trial along with SC No.83 of 2016.



2. The case of the prosecution is that on 30.05.2016 the respondents 2 to 5 herein abused the petitioner in filthy language, assaulted him and also threatened him with dire consequences. Due to this occurrence the petitioner lodged a complaint before the respondent police and based on which the respondent police registered a case in Crime No. 158 of 2016 for the offence under Sections 294(b), 323,324 and 506(ii) of IPC. Thereafter the respondent police completed investigation and also filed final report before the learned Judicial Magistrate No.I, Kulithalai and the same has been taken cognizance in CC No. 82 of 2016 and it is pending trial.

3. The learned counsel for the petitioner would further submit that based on the complaint given by the second respondent against the petitioner, the respondent police registered a case in Crime No. 157 of 2016 for the offences under Sections 294 (b) and 307 of IPC against the petitioner and others. Since the offences are triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions and the case is pending trial in S.C.No. 83 of 2016 before the learned Assistant Sessions Judge, Kulithalai. The learned counsel for the petitioner 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. 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 i**

4. The learned counsel for the respondents 2 to 5 submitted that both the cases arises out of one and the same occurrence and that they are cross cases and that he has no objection in both the cases being tried by the same Judge.

5. 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 is posted on 23.01.2020 for examination of the investigating officer and C.C.No.82 of 2016 is



pending on the file of the learned Judicial Magistrate No.I, Kulithalai right for trial.

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

7.Admittedly, S.C.No.83 of 2016 is pending on the file of the learned Assistant Sessions Judge, Kulithalai and C.C.No.82 of 2016 is pending on the file of the learned Judicial Magistrate No.I, Kulithalai. 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."

8. 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.



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".

9. In view of the same this Court is of the opinion that the case in CC No. 82 of 2016 pending on the file of the learned Judicial Magistrate No.I, Kulithalai is to be committed to the file of the learned Assistant Sessions Judge, Kulithalai to be tried along with SC No. 83 of 2016.

10. Hence, the learned Judicial Magistrate No.I, Kulithalai is directed to commit the case in CC No. 82 of 2016 to the file of the learned Assistant Sessions Judge, Kulithalai within a period of two weeks from the date of receipt of a copy of this order and the learned Assistant Sessions Judge, Kulithalai is directed to stop the proceedings in SC No.83 of 2016 till the case bundles in CC No. 82 of 2016 is transferred to its file. On receipt of case records,



the learned Assistant Sessions Judge, Kulithalai 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.**

11. The learned Assistant Sessions Judge, Kulithalai 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. Since most of the witnesses in SC No. 83 of 2016 have been examined, the trial in CC No. 82 of 2016 shall be conducted by a different prosecutor. After the receipt of case records the learned Assistant Sessions Judge, Kulithalai shall endeavour to complete trial in both cases and render judgments within a period of four months from the receipt of case records in CC No. 82 of 2016 from the file of the learned Judicial Magistrate No.I, Kulithalai. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

To

1. The Assistant Sessions Cum Subordinate Judge,
Kulithalai

2.The Judicial Magistrate No.I, Kulithalai.

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

+1 CC to M/s.M/S.RM.SIVAKUMAR, Advocate (SR-2089[F] 21/01/2020)

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and

Crl.MP. (MD)No.10063 of 2019

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