

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CrI.OP.No.933 of 2021

Mr.J.Ajith Kumar

...Petitioner

.Vs.

The State rep.by
Inspector of Police (Law and Order),
Tiruppur Police Station (South),
Tiruppur District.

..Respondent

PRAYER: Criminal Original Petition filed under Section 407 of the Code of Criminal Procedure, to direct the respondent to transfer C.C.No.108/2019, on the file of Chief Judicial Magistrate, Tiruppur.

For Petitioner : Mr.C.Umashankar

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking for the transfer of proceedings in C.C.No.108 of 2019, pending on the file of the Chief Judicial Magistrate, Tiruppur.

2.When the matter came up for hearing on 25.01.2021, this Court passed the following order:

"The learned Additional Public Prosecutor on instructions submitted that out of 23 prosecution witnesses, 17 witnesses have already been examined in this case.

2.The learned counsel for the petitioner seeks time to get instructions in this case.

3.The learned Chief Judicial Magistrate is directed to submit a report with regard to the stage of the proceedings and also with regard to the allegations made by the

petitioner that no advocate from Tiruppur, Coimbatore and Erode Bar is willing to appear on his side and hence he is not able to effectively defend himself before the Court below.

4.The report shall reach this Court by 01.02.201. Post this case under the caption 'for orders' on 03.02.2021.

3.The learned Additional Sub Judge, Tiruppur, who is the incharge Judge for the Chief Judicial Magistrate, Tiruppur has submitted a report. It is stated in the report that one Mr.C.P.Subramaniam, Advocate from Tiruppur had filed a vakalat on behalf of the petitioner on 21.02.2020. Thereafter, 17 witnesses have been examined in chief and none of them were cross examined. Thereafter, the case is under at the stage of examination of LW 22 and LW 23. It is also stated in the report that the learned Judge is not aware about the complaint made by the petitioner to the effect that advocates from Tiruppur, Coimbatore and Erode are not willing to appear for him.

4.The learned counsel for the petitioner submitted that initially vakalat was filed by Mr.C.P.Subramaniam. Later he had given change of vakalt and no advocate from Tiruppur, Coimbatore and Erode bar are willing to represent the petitioner. As a result of the same, the petitioner was not able to cross examine any of the witnesses who were examined on the side of the prosecution.

5.The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the police will give sufficient security and will ensure that no threat is exerted against the petitioner. The learned Additional Public Prosecutor further submitted that the petitioner can have an advocate of his choice and considering the fact that already 17 witnesses have been examined in chief, it will cause undue hardship if the case is transferred to some other District and make those witnesses to travel to the transferee District for the purpose of cross examination.

6.It is not clear from the report of the Court below as to whether the complaint made by the petitioner that no advocate from Tiruppur, Coimbatore and Erode bar are willing to appear for him, is correct or not. There are nearly 17 witnesses who are already examined in chief on the side of the prosecution. It will not be proper to transfer the case to some other District since it will cause undue hardship to the witnesses. It will be open to the petitioner to engage an advocate of his choice from any other District and the Court below shall ensure that the petitioner is given sufficient opportunity to cross examine all the witnesses. If and when there is any threat or any influence is exerted against the

petitioner, a complaint can be given to the Court below and the Court below shall ensure that sufficient protection is given and the petitioner is allowed to defend himself effectively.

7.The above safeguards will protect the interest of the petitioner to defend himself effectively before the Court below. This Court does not deem it fit to transfer the case to any other District.

8.This Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Inspector of Police (Law and Order),
Tiruppur Police Station (South),
Tiruppur District.
- 2.Chief Judicial Magistrate,
Tiruppur.
- 2.The Public Prosecutor,
High Court, Madras.

KV(CO)
SM/02/03/2021



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