



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2021

DELIVERED ON : 30.04.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.Rc.No.952 of 2020
and Crl.M.P.No.6612 of 2020

Dr.G.Ilangovan ...Petitioner/Defacto Complainant

Versus

1. Gokul @ Gokulakrishnan
2. Alex @ William Alexander
3. Arivazhagan @ Arun
4. Hari @ Hariharan
5. Dinesh
6. Sathish @ Sathishkumar
7. Ganeshprabhu

8. Jeyakanth @ Jayaprakash ...Respondents 1to8/Accused

9. State Rep. By
The Inspector of Police,
R-7, K.K.Nagar Police Station,
Chennai - 78. ...9th Respondent/Complainant

PRAYER: Criminal Revision Petition is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and set aside the order made in Crl.M.P.No.3488 of 2020 dated 20.07.2020 in S.C.No.288 of 2019 on the file of the I Additional Sessions Judge, Chennai.

For Petitioner : Mr.Singaravelan
Senior Counsel for C.Muthusaravanan

For Respondents : Mr.Kumar Talraja for R1
: Mr.K.Madhan
Government Advocate (Crl.Side) for R9



O R D E R

This Criminal Revision Petition is filed against the order dated 20.07.2020 in Crl.M.P.No.3488 of 2020 in S.C.No.288 of 2019 on the file of the learned I Additional Sessions Judge, Chennai.

2. The ninth respondent Police registered a case against the respondents 1 to 8 herein based on the complaint lodged by the petitioner herein for the offences under Sections 147, 148, 448, 341, 323, 506(ii) IPC r/w. 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, [hereinafter called as TNPHW Act] & 3 of TNPPDL Act. After completion of investigation, he laid charge sheet before the learned Chief Metropolitan Magistrate, Egmore. The learned Magistrate taken the charge sheet on file in C.C.No. 1298 of 2015 for the offences under Sections 147, 448, 352, 323, 506 (ii) of IPC r/w. 149 IPC, Section 3 of TN Medical Service Persons and Medicare Service Institution (Prevention of Violence and Damage or Loss to Property) Act, 2008 and Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (hereinafter called as TNPPDL Act]. Subsequently, after framing charges, during the trial, the learned Magistrate found that the offence under Section 3 of TN Medical Service Persons and Medicare Service Institution (Prevention of Violence and Damage or Loss to Property) Act, 2008 warrants a punishment which shall not be less than 3 years but which may extend to 10 years and with fine. Therefore he has committed the case to the learned Sessions Judge. Challenging the said order passed by the learned Metropolitan Magistrate, the respondents 1 to 8 filed Criminal Revision before this Court in Crl.RC.No.823 of 2017. This Court dismissed the said revision on 27.03.2018 and the challenging the said order, the respondents 1 to 8 filed SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court also dismissed the said SLP. Subsequently, the first respondent herein filed the petition before this Court in Crl.O.P.No.10344 of 2019 under Section 482 Cr.P.C to quash the Calender Case in C.C.No.1298 of 2015, this Court dismissed the same on 16.04.2019. In the mean time, the Principal Sessions Judge taken the case on file in S.C.No.288 of 2019 and made over to the I Additional Sessions Judge, Chennai for disposal. When the matter is pending before the I Additional Sessions Judge, the ninth respondent/State filed a petition under Section 326 Cr.P.C to act on evidence already recorded by the learned Chief Metropolitan Magistrate and the said petition was dismissed by the learned Sessions Judge. Challenging the said order, this Criminal revision case is filed before this Court.

3. Mr.Singaravelan, learned Senior Counsel appearing for the petitioner would submit that this Court dismissed the petition



filed by the petitioner in CrI.O.P.No.24036 of 2019 dated 19.11.2019. However, this Court fixed the time limit for disposal (i.e., 3 months). Aggrieved by the said order, the petitioner filed SLP in SLA (CrI) No.387 of 2020 before the Hon'ble Supreme Court. While dismissing the SLP, the Hon'ble Supreme Court observed that the prosecution/aggrieved party can well file an application under Section 326 of Cr.P.C before the transferee Sessions Court. Therefore, the ninth respondent/State filed a petition before the learned I Additional Sessions Judge under Section 326 Cr.P.C in CrI.M.P.No.3488 of 2020. The learned Judge dismissed the petition without considering the observation made by the Hon'ble Supreme Court in SLP. Aggrieved with the same, this Criminal Revision is filed by the defacto complainant. He would further submit that Section 326 Cr.P.C clearly says that whenever any Judge or Magistrate after having heard and recorded the whole or any part of the evidence in an enquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself. The learned Sessions Judge failed to understand that the word "succeeded by another Judge" must get wide amplitude. In this case, the learned Chief Metropolitan Magistrate is also an Assistant Sessions Judge and evidence recorded by the learned Chief Metropolitan Magistrate can be considered by the Sessions Judge. He would further submit that before the Chief Metropolitan Magistrate, on the side of prosecution, as many as 13 witnesses were examined out of which except P.W.6, P.W.7, P.W.8, P.W.9, P.W.10 and P.W.13 other witnesses were cross examined by the defence side. Thereafter, defence adopted dilatory tactics and to curtail the same, the petitioner approached this Court praying to expedite the trial by filing petitions in CrI.O.P.No.28121 of 2015, 17864 of 2016, 6726 of 2019 and by its orders dated 25.11.2015, 12.08.2016 and 13.03.2019 respectively, directed the trial Court to complete the trial within a period of three months from the date of receipt of the order. The trial Judge failed to consider the said directions and also failed to consider the reason for which the directions given and he wanted to start from the beginning by issuing summons to all the witnesses and examine in fresh by conducting fresh trial which is highly deprecated. The respondents 1 to 8 also filed Criminal Revision before this Court in CrI.RC.No.823 of 2017 against the order passed by the learned Chief Metropolitan Magistrate. He would further submit that the learned Sessions Judge failed to appreciate that Section 326 in new Code 1973, was amended to vest the power and discretion exercisable thereunder by a Magistrate to a Judge. The learned Sessions Judge failed to take note of the comparative reading of Sub Section (1) of Section 350 of 1898



Code wherein the Magistrate could re-summon the witnesses and recommence the enquiry or trial, which necessarily meant a de novo trial, now after the amendment under Section 326 Cr.P.C the Judge/Magistrate can only re-summon a witness who has already been examined for further examination and re-examination if any. He also placed reliance on the judgment of the Hon'ble Supreme Court reported in 1995 SCC (Cr1) 728 (Ranbir Yadav Vs. State of Bihar). As per the said decision, the Magistrate or Judge can exercise his judicial discretion only for further examination of a witness already examined and not for fresh examination of witnesses for a fresh trial. The learned Sessions Judge failed to appreciate Section 273 of the Cr.P.C requires that the evidence shall be taken only in the presence of the Accused. The object of this provision is to ensure that the accused must be put on notice as to what was being spoken by the witness and what are the contents of the documents proved by the said witness. This provision has been held to be mandatory in a catena of judgments of the Hon'ble Supreme Court. If the presence of the accused is dispensed with, an exception has been carved out that it can take in the presence of his advocate. The learned Sessions Judge failed to consider the law that the Provision under Sections 275 and 276 Cr.P.C recording of evidence in Warrant case and Sessions case are like and there is no substantial difference between both the provisions. As per Section 275 Cr.P.C., in all warrant-cases, the evidence of each witness shall be taken down in writing either by the Magistrate himself or by his dictation in open Court. The Magistrate shall at the end sign the deposition and evidence shall form part of the record. So far as the recordings of evidence in a trial before a Court of Session is concerned similar procedure like that of the procedure in a warrant case is provided in Section 276 of Cr.P.C. He would further submit that the evidence recorded by the Judge or Magistrate can be acted upon by the successor Judge or Magistrate. The object of this provision is that since the evidence has been recorded by the predecessor in the presence of the accused and the same has been recorded verbatim, there is no need to record evidence afresh by the successor Judge or a Magistrate. Thus, Section 326 Cr.P.C is only clarificatory and it is not a substantive provision. Further submits that Section 326 Cr.P.C is only clarificatory in nature that too in respect of a simple procedure, it should receive wide interpretation and not a narrow interpretation. The evidence so recorded holds good and form part of the record unless and otherwise the same were struck down/expunged by the higher Courts. In the present case there is no order passed by any of the higher courts nor any higher court had passed an order of de novo trial. Therefore, the impugned order passed by the Sessions Court is not in consonance with the provision of Section 326 Cr.P.C. In the instant case the evidence recorded by the Metropolitan Magistrate can be acted upon by the Sessions



Judge. The expressions "Succeeded by another" as employed in Section 326 of Cr.P.C should be understood in the context of the present case that the Sessions Judge is the successor of the Magistrate so far as this case is concerned. The evidence already recorded in the present case would not cause any prejudice to the accused and so the order of the learned Sessions Judge needs to be set aside. The reason given by the Sessions Judge for dismissing the petition filed by the ninth respondent/State is highly technical one. It is actually wasting the precious time of the Court; if the evidence recorded by the Magistrate is taken and the trial continues further where the Magistrate stopped, no prejudice would be caused to the respondents. The learned trial Judge failed to understand the importance of the order of this Court to expedite the trial in a fixed time. Therefore, the order passed by the learned Sessions Judge is liable to be set aside. The learned Senior counsel relied on the following Judgments:

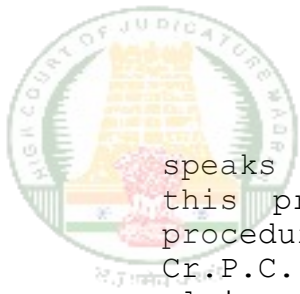
(i) Bhaskar Alias Prabaskar and others Vs. State of Tamil Nadu reported in 2000 SCC (CrI) 425

(ii) Ranbir Yadav Vs. State of Bihar reported in 1995 (4) SCC 728

(iii) Santosh Lakhichand Patil & Anr. Vs. The State of Maharashtra (CrI.W.P.No.945 of 2019)

(iv) Vijaya Sinhar Vs. State of Maharashtra reported in Laws (Bom) 2020-8.71

4. The learned counsel for the respondent filed counter. It is stated that the core issue herein is as to whether the provision under Section 326 is applicable to the present case before the Sessions Court or not. As per Section 326 of Cr.P.C the evidence already recorded in the course of trial can be used as per the proviso and the same cannot be extended beyond that. He would further submit that the words employed in Section 326 (1) and 326 (2) of Cr.P.C are "Succeeding" and "Predecessor" says that in a particular Court where the trial is underway and the presiding officer is transferred or retired and the new presiding officer takes charge, then the succeeding presiding officer can continue the trial from where it was stopped by the predecessor. The above said sections are no way applicable to the present case. Section 326 (3) of Cr.P.C specifically states that this proviso is not applicable to the cases in which proceedings have been submitted to a superior Magistrate under Section 325 of Cr.P.C. The revision petitioner failed to consider the fact that the issue is not on the recording of the evidence and on the other hand the powers of the Sessions Court and the Magistrate Court. So when after committal to the Sessions Court, a separate procedure is provided under Cr.P.C and the same has to be followed. Therefore, the petitioner cannot interpret on his own by equating the presiding officer of the Magistrate Court and the Sessions Court. Chapter XVIII



speaks about the trial before a Court of Session. So, as per this proviso, the learned Sessions Judge has to follow the procedure envisaged under Chapter XVIII from Section 225 to 237 Cr.P.C. It is submitted that under the said circumstances, the claim of the revision petitioner for continuing the trial from where it is stopped by the learned Chief Metropolitan Magistrate is not in accordance with law.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the petitioner filed a complaint against the respondents 1 to 8/accused before the ninth respondent/Inspector of Police. After completion of investigation, he laid charge sheet for the offence under Sections 147, 148, 448, 341, 323, 506(ii) IPC, Section 3 of Tamil Nadu Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2008 and Section 3 of TNPPDL Act before the learned Chief Metropolitan Magistrate, Egmore, Chennai. The learned Chief Metropolitan Magistrate has taken the case on file in C.C.No.1298 of 2015 for the above said offences. Subsequently, he issued summons to the respondents 1 to 8 / accused and proceeded with the trial. During the trial, in order to prove the charges, on the side of prosecution, as many as 13 witnesses were examined out of which on the side of defence, as many as 6 witnesses were cross-examined. Almost all witnesses were examined in chief except two witnesses who are Investigating Officers. At this stage, the learned Chief Metropolitan Magistrate found that the offence under Section 3 of Tamil Nadu Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2008, warrants a punishment which shall not be less than 3 years but which may extend to 10 years and with fine. Therefore, the learned Chief Metropolitan Magistrate committed the case to the learned Sessions Judge. The said order was challenged by the respondents 1 to 8 before this Court. This Court also dismissed the Criminal Original Petition No.24036/2019 by order dated 19.11.2019. They filed SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court also dismissed the same.

7. Ninth Respondent herein/State filed a petition in CrI.M.P.No.3488 of 2020 in S.C.No.288 of 2019 before the I Additional Sessions Judge, Chennai, under Section 326 Cr.P.C., to act on the evidence already recorded by the learned Chief Metropolitan Magistrate, Chennai, in C.C.No.1298 of 2015. However, the I Additional Sessions Judge, held that the case had been ceased of the jurisdiction of the Chief Metropolitan Magistrate and had been committed to the Court of Session. Accordingly, holding that the claim of the petitioner is



untenable, dismissed the said petition. Challenging the said order, present Revision is filed before this Court.

8. The main contention of the learned Senior Counsel appearing for the petitioner is that though this Court granted fixed time for the disposal of the case and in order to expedite the case, the learned Sessions Judge can continue the trial, where the Magistrate left, but the learned Sessions Judge strictly adopted the technical view and that the learned Chief Metropolitan Magistrate committed the case. The trial Court has to start the proceedings as contemplated under Chapter XVIII of Cr.P.C., which is nothing but futile exercise and also wasting the precious time of the Court. When the Code permits successors to continue the trial when the predecessor has left, even as per the amended Code, the Magistrate includes Judge. Therefore, the hyper technical interpretation could be avoided. The learned Senior counsel further submitted that no prejudice would be caused in such continuation of the trial.

9. On the other hand, the learned counsel for the respondent would submit that the core issue involved in this Revision is as to whether the provision under Section 326 Cr.P.C., is applicable to the present case before the Sessions Court or not. As per Section 326 of Cr.P.C, the evidence already recorded in the course of trial can be used as per the proviso and the same cannot be extended beyond that. He would further submit that the words employed in Section 326 (1) and 326 (2) of Cr.P.C are "Succeeding" and " Predecessor" says that in a particular Court where the trial is underway and the presiding officer is transferred or retired or a case transferred from one Magistrate to another Magistrate or one Sessions Court to another Sessions Court and the new presiding officer takes charge then the succeeding presiding officer can continue the trial from where it was stopped by the predecessor. The above said sections are no way applicable to the present case. Section 326 (3) of Cr.P.C specifically states that this proviso is not applicable to the cases in which proceedings have been submitted to a superior Magistrate under Section 325 of Cr.P.C. The revision petitioner failed to consider the fact that the issue is not on the recording of the evidence and on the other hand the powers of the Sessions Court and the Magistrate Court. So after committal to the Sessions Court, a separate procedure is provided under Chapter XVIII Cr.P.C and the same has to be followed. Therefore, the petitioner cannot interpret on his own way by equating the presiding officer of the Magistrate Court and the Sessions Court.

10. In order to give finality, it is relevant to refer relevant provisions of Code of Criminal Procedure. Section 26, 28, 29, 209, 323 and 326 Cr.P.C read as follows :



WEB COPY

Section 26:-

26. Courts by which offences are triable.—
Subject to the other provisions of this Code,—

(a) any offence under the Indian Penal Code (45 of 1860) may be tried by

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other Court by which such offence is shown in the First Schedule to be triable:

[Provided that any 2 [offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860)] shall be tried as far as practicable by a Court presided over by a woman.]

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable:

Section 28 :-

28. Sentences which High Courts and Sessions Judges may pass.—

(1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years

Section 329 :-

29. Sentences which Magistrates may pass.—

(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding 1 [ten thousand rupees], or of both.

(3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not



WEB COPY

exceeding one year, or of fine not exceeding 2 [five thousand rupees], or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

Section 209 :-

209. Commitment of case to Court of Session when offence is triable exclusively by it.—When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

[(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;]

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

Section 323 :-

323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.—

If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained 1 [and thereupon the provisions of Chapter XVIII shall apply to the commitment so made].

326. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.—

(1) Whenever any [Judge or Magistrate], after having heard and recorded the whole or any part of



WEB COPY

the evidence in any enquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another [Judge or Magistrate] who has and who exercises such jurisdiction, the [Judge or Magistrate] so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding [Judge or Magistrate] is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of Justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code [from one judge to another Judge or from one Magistrate to another Magistrate], the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

11. Section 3 of Tamil Nadu Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage Or Loss to Property) Act, 2008, reads as follows :

3. Punishment for committing violence - Any person either by himself or as a member or as a leader of a group of persons or organization, commits or attempts to commit or abets or incites the commission of any act of violence shall be punished with imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.

As per Section 29 of Cr.P.C., Chief Metropolitan Magistrate can pass a sentence of imprisonment for a term not exceeding 7 years. Therefore, he has committed the case to the Court of Session under section 323 Cr.P.C. and not under section 209 Cr.P.C. As per Section 323 Cr.P.C., once the case is committed to Sessions Judge, it has to follow Chapter XVIII of Cr.P.C.



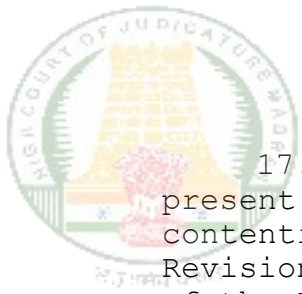
12. On a careful reading of Sections 323 and 326 Cr.P.C and also Section 28 and 29 of Cr.P.C., it is clear that the learned Chief Metropolitan Magistrate or learned Chief Judicial Magistrate cannot be equated as a Judge for the purpose of Section 326 Cr.P.C. Section 28 Cr.P.C clearly says that the High Court and Sessions Court may pass sentence and Section 29 says that the Chief Judicial Magistrate and other Magistrate may pass sentence.

13. A reading of Sections 323 of Cr.P.C clearly shows that if any enquiry into an offence or a trial before the learned Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions therein. Thereupon provisions of Chapter XVIII of Cr.P.C shall apply to the committal so made. Chapter XVIII of Cr.P.C. starts from Section 225 Cr.P.C to 237 Cr.P.C. Therefore, any Magistrate or Metropolitan Magistrate cannot be equated with the Sessions Judge and language employed is committal. Though the abovesaid provisions says that if the case is triable by the Sessions Judge, the case has to be committed by the Magistrate. The Magistrate includes Chief Metropolitan Magistrate and Chief Judicial Magistrate. Once the case is committed, the committal Court (Sessions Court) follows the procedure as contemplated under Sections 225 to 237 Cr.P.C.

14. The language employed in Section 323 Cr.P.C., is that "at any stage of proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court". Once it committed the case, Chapter XVIII shall apply to the commitment so made and the Sessions Court to proceed further as per the provisions of Chapter XVIII Cr.P.C.

15. The intention of the legislator is that at any stage of the case, even after examining the witnesses, during pronouncement of judgment before signing even after preparation of judgment, if the Magistrate comes to the conclusion that if the case is triable by the Court of Session, they can commit. So further language employed in the section is, once it is committed, the provisions of Chapter XVIII Cr.P.C., shall apply. Therefore, even after examining the witnesses, if the Magistrate commit the case to Sessions Court, the Sessions Court has to follow Chapter XVIII Cr.P.C.,

16. The language employed in Section 326(2) Cr.P.C., is very clear that when a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter.



WEB COPY

17. As per language employed in Section 323 Cr.P.C., in the present case, Section 326 will not apply. In support of the contention raised, the learned Senior counsel appearing for the Revision Petitioner placed reliance on the following decisions of the Hon'ble Supreme Court.

1) 2000 Supreme Court Cases (Cr1) 425

[Bhaskar Alias Prabaskar and others Vs. State Rep. by Inspector of Police] . 2. (1995) 4 Supreme Court Cases 728

[Ranbir Yadav Vs. State of Bihar]

3. (1995) 4 Supreme Court Cases 753

[Shamshul Kanwar vs. State of U.P.]

However, the above said decisions will not be applicable to the case on hand. In the above referred to cases, it is not committal from Magistrate to Sessions Court. It is either from one Magistrate to another Magistrate or one Sessions to another Sessions. The word predecessor and successor to be interpreted as one Magistrate to another Magistrate who was transferred or retired or cases are transferred from one Magistrate to other Magistrate or one Sessions Judge to another Sessions Judge by the order of any superior Courts. The successor Magistrate can proceed with the work of predecessor Magistrate who has left. Likewise, in Sessions Case, if cases transferred from one Sessions to another Sessions Judge, the successor Sessions Judge can continue the work of the predecessor Sessions Judge who starts from the stage of successor Sessions Judge can continue.

18. The language employed in both Sections 323 and 326 Cr.P.C., is very clear. In this case, since Chief Metropolitan Magistrate has no jurisdiction to try as he has got power only to pass sentence for a term upto 7 years, he has committed the case to Court of Session. Therefore, once the case is committed to Sessions Court, as per section 323 Cr.P.C., provisions of Chapter XVIII has to be followed. In such view of the matter, the Chief Metropolitan Magistrate cannot be treated as Predecessor of the Sessions Court and the Sessions Court cannot be stated as Successor of Chief Metropolitan Magistrate. As per Section 323 Cr.P.C., the procedure when after commencement of inquiry or trial, if the Magistrate finds case should be committed, if any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court and thereupon provisions of Chapter XVIII shall apply. Therefore, Section 326 Cr.P.C., regarding evidence partly recorded by one Judge or Magistrate and partly by another cannot be applied herein.

19. Therefore, even though the purpose of examining the evidence as stated in the procedure and continuation of evidence



WEB COPY

as stated by the learned Senior Counsel for the petitioner as per Sections 275 and 276 of Cr.P.C. are similar, the Court cannot bypass the committal procedure. Particularly the last portion of Section 323 Cr.P.C says that Chapter XVIII of the Code of Criminal Procedure shall apply. Therefore, the Code itself has designed the summary trial, summons case, warrant case and sessions case. Even though, the trial proceedings of the warrant case on Police report and Sessions case are similar, however, the Code of Criminal Procedure has given separate provisions and procedures on how the summons case has to be tried and also the warrant case on police report has to be tried. Therefore, under these circumstances, this court cannot accept the submissions put forth by the learned Senior Counsel for the petitioner.

20. The Hon'ble Supreme Court while dismissing the Special Leave Petition passed the order as follows :

'Since the prosecution/aggrieved party can well file an application under Section 326 of the Code of Criminal Procedure, 1973, before the transferee Sessions Court also, we are not inclined to interfere in the matter. The Special Leave Petition is, accordingly, dismissed.

Needless to state that any application under Section 326 Cr.P.C has to be considered on its own merits without being influenced by our reluctance to entertain this Special Leave Petition.

Pending application(s), if any, shall stand disposed of.'

While dismissing the SLP, the Hon'ble Supreme Court also observed that any application files under Section 326 Cr.P.C has to be considered on its own merits without being influenced by the reluctance of Hon'ble Supreme Court to entertain the SLP. Therefore, the Hon'ble Supreme Court is very conscious of fact that the Chief Metropolitan Magistrate committed the case to the Sessions Judge and the said order was challenged by the respondents 1 to 8 and this Court also dismissed the same against which they preferred the SLP. The Hon'ble Supreme Court also has taken into consideration of the fact that the Chief Judicial Magistrate after examining 13 witnesses, only two eye witnesses were left to be examined, has committed the case to the Sessions Judge. If the Hon'ble Supreme Court really wants to give relief to the petitioner herein, certainly would have made observation that the transferee Court should continue with the trial, at the stage, where the Chief Metropolitan Magistrate committed the case to the Sessions Court. Therefore, once the case is committed to the Sessions Court and the Sessions Court taken cognizance of the case, then it has to follow the procedures as contemplated under Chapter XVIII of the Code of



Criminal Procedure which is mandatory as per the language used in Section 323 Cr.P.C. Therefore, this Court does not find any perversity in the order passed by the I Additional Sessions Judge, Chennai. However, the learned Sessions Judge is directed to frame the charges and conduct the trial in day to day basis and complete the trial within a period of three months from the date of receipt of a copy of this order.

21. In the result, this Criminal Revision is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

dh/nvsri

To

1. The I Additional Sessions Judge,
City Civil Court, Chennai.
2. The Principal Session Judge, Chennai.
3. The Chief Metropolitan Magistrate,
Egmore, Chennai
4. The Inspector of Police,
R-7, K.K.Nagar Police Station, Chennai - 78.
5. The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer,
Criminal Section
High Court, Madras - 104.

+1cc to Mr.C.Muthusaravanan, Advocate, S.R.No.26881
+1cc to Mr.Kadiyaran, Advocate, S.R.No.26666

Cr1.RC.No.952 of 2020

SV(CO)
RGA(13/08/2021)