



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)Nos.316 and 321 of 2021
and
Crl.M.P.(MD)Nos.10601 and 10602 of 2021

Suji @ Kasi .. Petitioner in Crl.R.C.(MD)No.316/2021

Thangapandiyan .. Petitioner in Crl.R.C.(MD)No.321/2021

Vs.

The Inspector of Police,
CBCID Nagercoil,
Kanyakumari District.

CBCID Cr.No.4 of 2020.. .. Respondent in both Crl.R.C.s

Common Prayer : These Revision Cases are filed under Section 397 (1) r/w. Section 401 of Cr.P.C., to call for the records pertaining to the order in Crl.M.P.Nos.808 and 809 of 2021 in C.C.No.28 of 2021 on the file of the Judicial Magistrate Court No.III, at Nagercoil dated 03.03.2021 and set aside the same.

(In both Crl.R.Cs)

For Petitioner

: Mr.V.Kathirvel, Senior Counsel
for Mr.S.Seenivasan

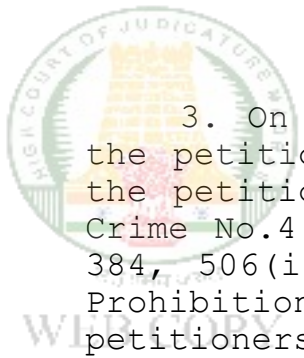
For Respondent

: Mr.S.Ravi
Additional Public Prosecutor

COMMON ORDER

These Criminal Revisions have been filed to set aside the order in Crl.MP.Nos.808 and 809 of 2021 in C.C.No.28 of 2021 on the file of the Judicial Magistrate Court No.III, Nagercoil, dated 03.03.2021.

2. A case in Crime No.4 of 2020 was registered against the petitioners and the case was taken on file as C.C.No.28 of 2021, on the file of the Judicial Magistrate No.III, Nagercoil. The petitioners filed petitions for a relief of *de novo* trial in Crl.M.P.Nos.808 and 809 of 2021. That petitions were dismissed by the trial Court. Against the same, the petitioners have approached this Court by way of these Revisions.

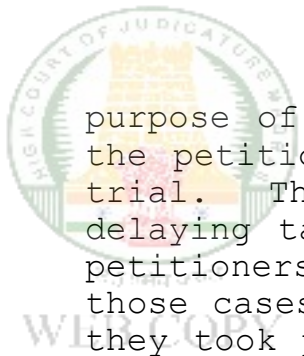


3. On the side of the revision petitioners, it is stated that the petitioner in Crl.R.C.(MD)No.316 of 2021 was arrayed as A1 and the petitioner in Crl.R.C.(MD)No.321 of 2021 was arrayed as A2, in Crime No.4 of 2020, under Sections 420, 406, 120-B, 465, 467, 471, 384, 506(i), 468, 419, 294(b) I.P.C. and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. The petitioners in both the revisions are father and son. The charge sheet was filed during the lock down period, ie.02.08.2020 and the same was taken on file on 06.08.2020, taken up for trial on 12.08.2020. P.W.1 and P.W.2 were examined on 24.08.2020, P.W.3 to P.W.5 were examined on 26.08.2020, P.W.6 to P.W.10 were examined on 07.09.2020, P.W.11 to P.W.15 were examined on 14.09.2020, P.W.16 to P.W.21 were examined on 21.09.2020, P.W.22 to P.W.28 were examined on 23.09.2020, P.W.29 to P.W.35 were examined on 28.02.2020, through video conference mode. The petitioners filed petitions in Crl.O.P. (MD)No.9988 and 1046 of 2020, before this Court, for transfer of the case and the case was transferred and an order of stay was granted. The first accused cross examined some of the witnesses, there was absolutely no cross examination on the side of the second accused. The case was transferred to the file of the Judicial Magistrate No.III, Nagercoil, by the order of this Court, dated 15.10.2020. Without any legal assistance on the side of the defence, the case was taken up for trial in a hurried manner. The petitioners are to be given an opportunity to cross examine the witnesses. The right of fair trial is granted under the Constitution of India and under Section 326 of Cr.P.C. Since the case was transferred from one Court to another Court, an opportunity to cross examine the witnesses to be given and an order of *de novo* trial is necessary.

4. To substantiate this claim, a judgment of the Hon'ble Supreme Court in **Criminal Appeal No.886 of 2020 [Subedar V. State of Uttar Pradesh]**, dated 18.12.2020, is cited, wherein, it is stated as follows:-

"It is well accepted that right of being represented through a counsel is part of due process clause and is referable to the right guaranteed under Article 21 of the Constitution of India".

5. On the side of the respondent, it is stated that out of the 45 witnesses mentioned in the list of witnesses, the prosecution has examined 35 witnesses and other witnesses were dispensed with by the prosecution. 313 Question was over. Only P.W.1 to P.W.5 were examined through video conference system. The petitioner has appointed three different Advocates. After withdrawing the appearance of one of the Advocates, the petitioners sought for legal aid. After the appointment of a legal aid counsel, the petitioners withdraw the memo and they engaged another Advocate. Only as a delaying tactics, the petitioners filed various petitions before this Court,. In Crl.O.P.(MD)No.9988 and 10462 of 2020, this Court permitted the petitioners to apply for recall of witnesses for the



purpose of cross examination. Instead of recalling the witnesses, the petitioners have come forward with these petitions for de novo trial. There is no such provision in warrant cases. Only as a delaying tactics, the petitioners have filed these petitions. The petitioners are father and son. They had four previous cases in those cases, there was an allegation of harassment to 105 women and they took photographs and black mailed them and hence bail was not granted to the petitioners in the previous case. The right for speedy trial is available for complainant also. The third accused has cross examined the witnesses. Only with a motive to drag on the case, the petitioners failed to cross examine the witnesses and prayed the petitions to be dismissed.

6. It is seen that out of the three accused involved in the offence, A3 has already cross examined all the witnesses. 35 witnesses were already examined and on the petition filed by the petitioners the case was transferred from one Court to another Court. There is no bar in Cr.P.C for continuation of a trial, by the subsequent judicial Officer. By averring de-novo trial, the entire evidence already recorded will become useless. It will be prejudice to A3, who has already done his part of cross examination. The petitioners are already in custody. By a de novo trial, there is a chance for delay in the proceedings. Already liberty to recall the witnesses was given to the petitioners in Crl.O.P.(MD)Nos.9988 and 10462 of 2020 by this Court.

7. In the above circumstances, there is nothing sufficient enough to interfere in the order of the trial Court. Since the right of speedy trial is granted both to the accused and to the defacto complainant, this Court directs the trial Court to speed up the trial and to dispose of the case within a period of four months from the date of receipt of copy of this order.

8. With the above direction, these Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/responsive>



To

1.The Judicial Magistrate No.III,
Nagercoil.

2. The Inspector of Police,
CBCID Nagercoil,
Kanyakumari District.

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

Crl. R.C.(MD)Nos.316 and 321 of 2021
23.12.2021

MGJ(10.01.2022) 4P 4C