



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 22.12.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**Cr1.O.P. (MD)No.20550 of 2021**

R.Rajkumar

... Petitioner /Petitioner

vs.

Nil

... Respondent

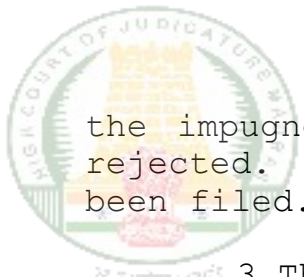
**Prayer:** Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order of rejection of transfer in Memo in SR.No.513/ 19.01.2021 and to pass an order to transfer the cases submitted in the list either to the Courts in which connected cases are pending or to the Family Court, Trichy or to any other Courts in Trichy.

For petitioner : R.Rajkumar (in person)

**ORDER**

The petitioner is an advocate practising primarily in the District Courts and other Courts at Trichirappalli. I consciously refrain from using the words "lower or subordinate". I am reminded of the message issued by the Hon'ble Chief Justice of High Court of Karnataka on 17.01.2020 drawing our attention to the 118<sup>th</sup> Report of the Law Commission which stated that the word "subordinate" in the judicial hierarchy sounds incongruous. Though I wish to pursue this thought, I am afraid that it will be more a diversion even before the journey could begin. Let me therefore stay focussed on the issue on hand.

2.The petitioner is appearing as a counsel in some cases before the Additional Mahila Court, Trichirappalli. He wants them to be transferred to some other court. This is because he feels embarrassed to continue to appear before the incumbent Judge. He feels so because he had given a complaint against the incumbent alleging judicial impropriety and misconduct on his part. His complaint was taken cognizance by the High Court in its administrative side. Disciplinary action was initiated. Pursuant to the witness summon issued to him, the petitioner also testified before the enquiry officer. The petitioner filed a memo requesting the learned Principal Sessions Judge to withdraw the said cases from the file of the Additional Mahila Court and list the same before any other court falling within Trichirappalli Sessions division. By



the impugned order dated 11.11.2021, the petitioner's request was rejected. Questioning the same, this criminal original petition has been filed.

3. The petitioner invoked Section 408 of Cr.PC. It reads as follows :

**"Power of Sessions Judge to transfer cases and appeals.**

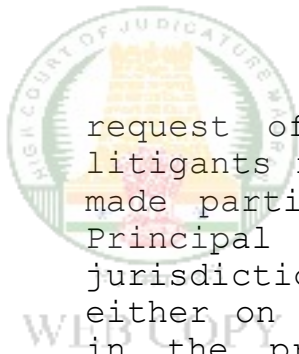
(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under subsection (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty rupees" were substituted.

This provision was considered by the Hon'ble Supreme Court in **Usmangani Adambhai Vahora vs. State of Gujarat and Ors. (2016) 3 SCC 370**. In the said case, earlier decisions reported in AIR 1966 SC 1418 (*Gurcharan Dass Chadha v. State of Rajasthan*), (2000) 6 SCC 204 (*Abdul Nazar Madani v. State of T.N.*), (2009) 6 SCC 260 (*Captain Amarinder Singh v. Parkash Singh Badal and Ors*), (2013) 8 SCC 593 (*Lalu Prasad alias Lalu Prasad Yadav v. State of Jharkhand*), (2011) 1 SCC 307 (*Nahar Singh Yadav and Anr. v. Union of India and Ors*) and 1994 Supp. (1) SCC 540 (*K.P.Tiwari v. State of M.P*) have been referred to. It was held therein that a case can be transferred if there is a reasonable apprehension on the part of the party to a case that justice will not be done. He is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. Mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

4. The impugned order passed by the learned Principal Sessions Judge has to be tested in the light of the aforesaid principle. The



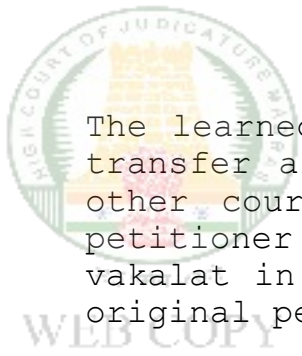
request of the petitioner was declined on the ground that the litigants figuring in the cases mentioned by the petitioner were not made parties in the transfer petition. In my view, the learned Principal Sessions Judge adopted a technical approach. The jurisdiction conferred by Section 408 of Cr.Pc can be exercised either on the report of the lower court (that is the word employed in the provision itself!!) or on the application of a party interested or on his own initiative. In a constitutional democracy, power is coupled with duty. The petitioner brought it to the notice of the Principal District and Sessions Judge that conducting the cases mentioned in his memo will not serve the ends of justice. The Principal Sessions Judge was therefore obliged to consider if the matter warranted invoking the power of transfer on his own initiative.

5.The learned Principal District Judge ought to have applied the principle of useless formality. By hearing the litigants concerned, no purpose will be served. The only question that arose for determination was whether accepting the petitioner's request would be expedient for the ends of justice. The issue does not call for any probe. The petitioner is appearing as counsel in some cases in the Court of Additional Mahila Judge. He is the complainant against the incumbent Judge. Merely because a counsel had given a complaint against a particular Judge, that cannot be a sole ground for effecting transfer of case. There must be something more. In this case, the High Court had taken cognizance of the complaint and ordered disciplinary enquiry. The petitioner had also testified as a witness in the said enquiry. The initial threshold has been more than crossed.

6.Of course, Section 408 of Cr.PC employs the expression "any particular case". This does not mean that the power set out in Section 408 of Cr.Pc is to be exercised only with reference to any particular case. As per Section 13 (2) of the General Clauses Act, 1897, the words in the singular shall include the plural. Hence, the expression "any particular case" also means "any set of cases". The petitioner's clients would definitely have an apprehension that the incumbent Judge will be biased against their counsel. The expression "expedient" has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon as follows :

"apt and suitable to the end in view", "practical",  
"advisable", "appropriate".

Any litigant is entitled to a legitimate expectation that his case will be given a fair disposal on merits and in accordance with law. If a litigant has a reasonable apprehension that the presiding Judge is biased against his counsel, it is certainly appropriate and advisable to transfer the case to some other court. The requirement set out in Section 408 of Cr.PC is amply fulfilled in this case. The order impugned in this criminal original petition is set aside.



The learned Principal Sessions Judge, Trichirappalli is directed to transfer all the cases mentioned in the petitioner's memo to any other court falling under Trichirappalli Sessions Division. The petitioner gives an undertaking that he will not file any change of vakalat in any pending matter before the said Court. This criminal original petition is allowed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

skm

**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.

**To:**

1. The Principal Sessions Judge,  
Tiruchirappalli.
2. The Judge, Family Court, Trichy.

+1 CC to M/s.R.NIRMALA RANI, Advocate ( SR-40499[F] dated 27/12/2021 )

**Crl.O.P.(MD)No.20550 of 2021**  
**22.12.2021**

ss (CO)

TR(24.03.2022) 4P 4C