



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.11930 of 2022

and

Crl.M.P.No.6730 of 2022

Venugopal

...Petitioner

Vs.

State Represented by,

1.The Deputy Superintendent of Police,
CBCID, OCU, Salem.

2.Senthil Kumar

...Respondents

PRAYER: Criminal Original Petition filed under Sections 407 of Criminal Procedure Code, to transfer the case in C.C.No.28 of 2019 from the file of the Chief Judicial Magistrate Court, Salem to any other Chief Judicial Magistrate Court for fair and impartial trial.

For Petitioner : Mr.R.Prabakar

For R1 : Mr.C.Leonard Arul Joseph Selvam
Government Advocate (Crl.side)

For R2 : Mr.P.R.Balsubramanian

ORDER

The petitioner, who was arrayed as A4 in C.C.No.28 of 2019 for the offence under Sections 120B, 467, 471 and 420 r/w 51 of IPC on the file of the Chief Judicial Magistrate Court, Salem, has filed this present petition seeking for transferring the case.

2. The contention of the petitioner is that the petitioner/A4 was only an attester to the disputed documents and the accused A1 and A2 are said to have forged the documents. The



petitioner had filed a discharge petition before the trial Court in Crl.M.P.No.81 of 2019, which was dismissed, against which, he had preferred a revision petition before this Court in Crl.R.C.No.879 of 2021. The said revision petition was argued in full and the case was reserved for orders on 21.02.2022. Thereafter, the same was informed to the trial Court and the case was adjourned to 23.02.2022 and subsequently, it was adjourned to 23.03.2022. The Trial Court, on 23.03.2022, finding that no orders have been received from the High Court and despite the petitioner informing the same, framed the charges against the petitioner and also issued summons for examination of witnesses. Thereafter, the petitioner had approached this Court and brought to the notice of this Court about the irrational manner in which the trial Court has proceeded with. This Court, by order dated 07.04.2022 in Crl.R.C.No.879 of 2021, referred as follows.

'' Strange appears to be the ways. Since, Crl.R.C.No.41 of 2022 is pending consideration before another bench of this Court, this Court refrains from passing any opinion on it, but, insofar as the present case is concerned, Registry is required to call for an explanation from the learned Chief Judicial Magistrate, Salem.''

Thereafter, Crl.R.C.No.41 of 2022 was dismissed on 29.04.2022, with a direction to the trial Court to complete the trial as expeditiously as possible.

3. The apprehension of the learned counsel for the petitioner is that since explanation has been called for from the Chief Judicial Magistrate, Salem, it would not be justifiable that the same Magistrate proceeds further in this case, which would result in injustice to the petitioner. He further submitted that the second respondent/defacto complainant was one of the accused in C.C.No.139 of 2019 and the very same Magistrate had discharged the defacto complainant in that case, against which, Crl.R.C.No.41 of 2022 was filed, which is pending before this Court. Hence, he seeks for transfer of case from Chief Judicial Magistrate, Salem to some other Chief Judicial Magistrate Court.

4. The learned counsel for the second respondent submits that the petitioner's apprehension is unfounded. He also submits that the petitioner is dragging on the proceedings in C.C.No.28 of 2019 without any trial for the past three years. In identical circumstances, this Court in Crl.OP.Nos.23695 and 23696 of 2017 filed by A1 and A2 who are practicing Advocates in Namakkal,



while dismissing the same, had transferred the case to the learned Chief Judicial Magistrate, Salem with a further direction to complete the trial as expeditiously as possible. The petitioner herein is a Clerk of A1 and A2, and hence, the learned counsel opposes for transferring C.C.No.28 of 2019 to Namakkal District.

5. The learned Government Advocate (Crl. Side) appearing for the first respondent submits that there are about 5 witnesses and if the witnesses are produced without any delay, the trial itself would be completed within a period of three months.

6. Considering the submissions made by the learned counsel, this Court finds that apprehension of the petitioner as well as the objection made by the second respondent are reasonable. In view of the same, this Court directs the transfer of trial from the learned Chief Judicial Magistrate, Salem to the learned Judicial Magistrate-I Salem, in order to have a free and fair trial. The Chief Judicial Magistrate, Salem is directed forward the records pertaining to the case in C.C.No.28 of 2019 to the Judicial Magistrate-I Salem and thereafter, the Judicial Magistrate-I Salem is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, this Criminal Original petition is disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Chief Judicial Magistrate,
Salem.

2.The Judicial Magistrate-I,
Salem.



3.The Deputy Superintendent of Police,
CBCID, OCU, Salem.

4.The Public Prosecutor,
High Court of Madras.

+10 CCs to Mr.P.R.Balsubramanian, Advocate sr 31749.
+1 CC to Mr.R.Prabakar, Advocate sr 31978 (21/06/2022)

Crl.O.P.No.11930 of 2022
and
Crl.M.P.No.6730 of 2022

KV (CO)
SP (01/06/2022)