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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2021
PRONOUNCED ON : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.16807 OF 2021 AND
CRL.M.P.NO.9185 OF 2021

Siva @ R.Sivakumar

... Petitioner

Vs.

1. State rep by,
The Inspector of Police,
CBCID, Namakkal,
Crime No.310 of 2020,
Namakkal District.

2. C.Shanmugasundaram

... Respondents

[2nd respondent is impleaded as per
order of this Court, dated
18.11.2021 in Crl.M.P.No.11761 of
2021 in Crl.O.P.No.16807 of 2021.]

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to withdraw the case in S.C.No.69 of 2012 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal and transfer the same to any other Court of competent jurisdiction.

For Petitioner :	Mr.N.Manokaran
For R1 :	Mr.E.Raj Thilak, Additional Public Prosecutor
For R2 :	Mr.T.Gowthaman

ORDER

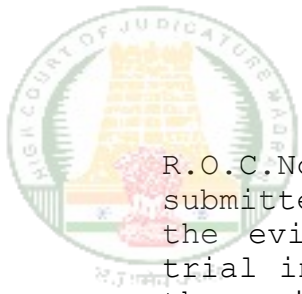
This Criminal Original Petition is filed to withdraw the case in S.C.No.69 of 2012, on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal (Trial Court) and transfer the same to any other Court of competent jurisdiction.



2.The petitioner, who is A1 in S.C.No.69 of 2012, has filed this petition, seeking transfer of the proceedings in S.C.No.69 of 2012 to some other Court for the reason that earlier, he was convicted by the trial Court, by judgment, dated 23.07.2020 in S.C.No.52 of 2013 and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Simple Imprisonment for offence under Section 120(b) IPC and, to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months Simple Imprisonment for offence under Section 366 r/w 120(b) IPC and, to undergo one year Rigorous Imprisonment for offence under Section 342 IPC and, to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months Simple Imprisonment under Section 376(2)(g) IPC and, to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo six months Simple Imprisonment for offence under Section 4 r/w3 of the Tamil Nadu Prohibition of Charging of Exorbitant Interest Act.

3.The learned counsel for the petitioner submitted that the case in S.C.No.62 of 2012 is offshoot to the earlier occurrence which ended in conviction in S.C.No.52 of 2013. The case in S.C.No.52 of 2013 is that the petitioner and Aamaiyan @ Ravi A2 therein are residents of Pallipalayam village and the petitioner used to lend money for exorbitant interest. The victim, who was working as sales girl in Dharani Cards in Erode, borrowed a loan of Rs.1,000/- from the petitioner. Taking advantage of the same and also coming to know about the weakness of the victim that she was interested to get into cine field, the petitioner and Aamaiyan @ Ravi/A2 exploited the situation and sexually harassed the victim and took photographs of her private parts, posted the same in the social media. Since the victim and her family were voiceless, they shifted their residence. Despite the same, torture and harassment by the petitioner and Aamaiyan @ Ravi continued. Since the deceased Velu @ Velusamy was Branch Secretary of the communist party, he took steps to lodge a complaint against the accused, which infuriated the petitioner and Aamaiyan @ Ravi. Hence, on 10.03.2010, at about 10.45 p.m., in front of Sengunthar Om Kaliyamman Temple, Raja Veethi, Pallipalayam Town, the accused in the present case formed themselves into unlawful assembly with an common object to cause death of Velu @ Velusamy, attacked him with metal dagger and deadly weapons, committed the murder, which was witnessed by Jambu @ Shanmughasundaram, Ravi, Sridhar and others.

4.The learned counsel further submitted that at the request of the trial Court, the case in S.C.No.69 of 2012 got transferred from the file of the Principal Sessions Court, Namakkal to the file of the trial Court, vide



R.O.C.No.7263/Sessions/2016, dated 04.08.2016. He further submitted that the trial Court earlier had an occasion to record the evidence of the victim (PW1) and her mother (PW4) during trial in S.C.No.52 of 2013. While being so, the appreciation of the evidence in S.C.No.69 of 2012 would not be independent. Though most of the witnesses examined in S.C.No.52 of 2013 not supported the case of the prosecution, the trial Court had convicted and sentenced the petitioner. In the present case, prosecution has examined 31 witnesses and evidence on the side of the prosecution closed on 05.03.2021 and the petitioner was questioned under Section 313 Cr.P.C., on 10.03.2021. The accused without taking time and delay, had cross examined the prosecution witnesses then and there. One of the accused, filed a recall petition under Section 311 Cr.P.C., to recall PW29 and PW30 which was allowed and the two witnesses were recalled and cross examined. Thereafter, A4 filed petitions under Sections 91 Cr.P.C., 233(3) Cr.P.C., and 294 Cr.P.C., which were dismissed by the trial Court without giving any opportunity to the accused to defend their case. Added to it, the trial Court already convicted and sentenced the petitioner in S.C.No.52 of 2013. The present case is an offshoot. Thus, the apprehension of the petitioner is that it will not be conducive to have a fair trial.

5.He further submitted that the apprehension of the petitioner is neither misconceived nor dubbed as forum shopping. It is normal tendency of a human being to get prejudiced when some materials to project the accused as bad elements. In support of his contention, the learned counsel for the petitioner relied on the decisions of this Court in the cases of "A.C.Chummar Versus R.Vasantha Kumari, represented by Power of Attorney R.Vishnuram Saravanel reported in 2005 (1) CTC 739 and M.Gopalakrishnan and Others Versus Inspector of Police, CBI/ACB/Chennai and others reported in (2009) 4 MLJ (Cr1) 1088." Hence, he prayed for transfer of proceedings to some other Court.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, the apprehension of the petitioner is misconceived for the reason that the judgment in S.C.No.52 of 2013 was rendered by the trial Court on 23.07.2020. The trial in S.C.No.69 of 2012 is progressing now. The learned trial Judge proceeds on the evidence and materials produced in each case independently and no Judge have any personal interest in any case. During the trial, some of the prosecution witnesses were recalled and cross examined by the defence in detail. Now, the case is at the stage of arguments. At this juncture, this petition has been filed, which cannot be entertained. He further submitted that earlier, all the accused in a concerted manner filed one petition or other under various provisions of the Code of Criminal Procedure. The trial Court



disposed all the petitions filed by the accused by giving proper reasons. Now at the fag end of trial, the apprehension of the petitioner is misconceived. This is yet another ploy to further delay and drag on the proceedings.

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7.The transfer of the case in S.C.No.69 of 2012 by the learned Principal Sessions Judge, Namakkal, vide R.O.C.No.7263/Sessions/2016, was done in the year 2016, no objection were made then. Hence, he strongly opposed this petition.

8.The learned counsel for the 2nd respondent submitted that the petitioner was convicted and sentenced in S.C.No.52 of 2013 on 23.07.2020. After 1½ years, the present petition filed seeking transfer of the case. Now, in S.C.No.69 of 2012, examination of all prosecution witnesses was completed and cross examined by the defence side. Thereafter, the accused were questioned under Section 313 Cr.P.C., and defence witnesses also examined. Now, the case is at the closing stage. The transfer of case in S.C.No.69 of 2012 from the file of the learned Principal Sessions Judge, Namakkal to the file of the present trial Court under Section 408 Cr.P.C., is proper. Hence, in the interest of justice, it would be appropriate that the trial Court to dispose the case in S.C.No.69 of 2012 without further delay. The petitioner and other accused by adopting dilatory tactics, filing one petition or other for the past several years and thereby, dragged the case. The plight of the victim to be considered. Hence, this petition to be dismissed with exemplary cost with a direction to complete the trial.

9.This Court considered the rival submissions and perused the materials available on record.

10.It is seen that the petitioner/A1 filed this petition belatedly, that to after four years from the date (04.08.2016) of transfer of the case in S.C.No.69 of 2012 from the file of the Principal Sessions Court, Namakkal. The petitioner was convicted and sentenced by the trial Court, by judgment, dated 23.07.2020 in S.C.No.52 of 2013. The present case might be an offshoot to the previous case. That alone cannot be a reason for transfer of the proceedings.

11.In the present case, examination of prosecution witnesses have been completed and the petitioner was questioned under Section 313 Cr.P.C., thereafter, defence witnesses were examined. The accused in the present case have filed several Miscellaneous Petitions one after other and thereby, delayed the progress of the trial. The trial Court disposed all the petitions filed by the accused by passing reasoned orders. Now, the case is at the penultimate stage. At this stage, the



apprehension of the petitioner is misconceived and farfetched and it cannot be entertained.

11.The citations referred by the learned counsel for the petitioner are not relevant and applicable to the facts of the case.

12.In view of the above, this Court is not inclined to entertain this Criminal Original Petition and the same is liable to be dismissed and, is dismissed. The trial Court is directed to complete the trial preferably within a period of three weeks from the date of receipt of a copy of this order, of course, after lifting of pandemic restriction. This three weeks time is only an outer limit. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

vv2

To

1. The Sessions Judge,
Fast Track Mahila Court, Namakkal.
2. The Inspector of Police,
CBCID, Namakkal,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.2602
+1cc to Mr.T.Gowthaman, Advocate, S.R.No.2490

Cr1.O.P.No.16807 of 2021

SMI (CO)
PM/25/01/2022