



Crl.O.P.(MD) No.10424 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	23.06.2022
Delivered on	13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.10424 of 2022

and

Crl.M.P(MD)No.6519 of 2022

R.Murugavel

...Petitioner

Vs.

1.The Inspector of Police,
Eral Police Station,
Thoothukudi District.

2.Pon Subbiah

... Respondents

PRAYER: Criminal Original Petition filed under Section 407 Cr.P.C. praying to withdraw S.C.No.211 of 2021 from the file of the II Additional District Judge, Thoothukudi and transfer the same to any other Court of competent jurisdiction at Tirunelveli.

For Petitioners : Mr.N.Dlipkumar
For Respondent : Mr.R.Sureshkumar
Govt. Advocate (crl.side) (for R1)



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ORDER

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This petition is filed to withdraw the case in S.C.No.211 of 2021 from the file of the II Additional District Judge, Thoothukudi and transfer the same to any other Court of competent jurisdiction.

2.Fact:- The petitioner is a two-wheeler mechanic running two-wheeler repair shop at Eral. A criminal case is registered against the petitioner in Crime No.46 of 2021 under Sections 353, 307 and 302 IPC alleging that on 01.02.2021, due to previous enmity, he killed the Sub-Inspector of Police V.Balu and attempted to murder the Police Constable Mr.Pon Subbiah by using a Ashok Leyland Dosth vehicle. The respondent police have investigated the case and filed the charge sheet and the same has been taken on file as S.C.No.211 of 2021 and committed to the II Additional District Court, Thoothukudi. Now, the case is pending for trial.

3.The learned counsel appearing for the petitioner/accused submitted that the first respondent police have falsely registered the



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criminal case against the petitioner. The complainant is the police officer and the deceased victim is also police officer and the case is investigated by the Deputy Superintendent of Police. The petitioner was already threatened. Further, several cases are pending against this petitioner, which read as follows:-

S.No	Case Number	Name of the Court	Offences
1	C.C.No.206/2021	Judicial Magistrate No.II, Srivaikundam	457, 380 & 511 IPC
2	STC No.264/2021	-do-	
3	C.C.No.207 of 2021	-do-	457, 379 & 380 IPC
4	C.C.No.198/2021	-do-	294(b) & 506(ii) IPC
5	C.C.No.208/2021	-do-	294(b) & 506(ii) IPC

4.He further submitted that since the victims are the Sub-Inspector of Police and the Head Constable, the atmosphere is not congenial to the petitioner to conduct the trial in the Court. Since the situations are against him, the trial could not be conducted fairly. Hence, the petitioner filed this petition seeking transfer of the case. In support of his argument, the learned counsel relied upon the Judgment of the Hon'ble Supreme Court in the case of **Sri Jayendra Saraswathy Swamigal (II) vs. State of Tamil Nadu and others** reported in (2005)8 SCC 771.



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5.The learned Government Advocate (criminal side) appearing for the respondent police submitted that the accused is a notorious criminal and he involved so many cases. The allegation that there is no congenial circumstances for conducting fair trial, is not true. If the case is transferred, it would result in harassment to the witnesses and expenses. Hence, the prayer for transfer of the case should not be allowed.

6. I have considered the rival submissions of the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the first respondent police.

7. A perusal of the records would show that the petitioner is an accused in S.C.No.211 of 2021 on the file of the II Additional District Court, Thoothukudi for having committed murder of a Sub-Inspector of Police and attempted to murder a Head Constable on 01.02.2021. Admittedly, the petitioner is facing six criminal cases, in which, five cases are pending before the Judicial Magistrate No.II, Srivaikundan,



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which shows that he involved in so many criminal cases. The petition is filed on the ground that the deceased and victim are a Sub-Inspector of Police and a Head Constable and the petitioner is facing criminal cases registered by the same police station. Hence, there is no congenial circumstances for fair trial. Apart from the said ground, no other ground has been raised.

8. A transfer should not readily be granted for any fancied notion of a litigant. In this case, the ground for transfer is victim and the deceased are a Sub-Inspector of Police and a Head Constable of local police station. Therefore, the accused apprehend that he may not get fair trial. The trial is conducted by the Court and the police is only producing the witnesses. Ultimately, the Court has to evolve the evidence and arrive at right and just conclusion. Therefore, mere presumption or apprehension are not sufficient and only good and sufficient grounds alone may be considered. Where the grounds for transfer is not substantiated, the case cannot be transferred.



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9. Further, the reliance placed by the learned counsel for the petitioner is factually distinguishable one. In that case, the petitioner Sri Jayendra Saraswathy Swamigal is very prominent religious leader. At that time, the Government had taken strict legal action and the prosecuting agency and the State Ministry creates reasonable apprehension in the mind of the petitioner and other co-accused that they would not get justice in the State of Tamil Nadu. Therefore, the Hon'ble Supreme Court accepted the contention and the transferred the case to the Pondicherry. But in the present case, that is not situation. Therefore, the decision relied on by the petitioner is not helpful to the case of the petitioner. I find no materials to substantiate the case of the petitioner.

10.In view of the above, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

13.07.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
skn

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WEB COPY To

- 1.The Additional District Judge,
Thoothukudi.
- 2.The Inspector of Police,
Eral Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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