



Crl.O.P.(MD) No.13097 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.07.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13097 of 2022

and

CrL.M.P(MD) No. 8334 of 2022

M.Sekar

... Petitioner/ Accused No.9

Vs

1. The State Represented by
The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
Crime No.94 of 2021

... 1st Respondent/ Complainant

2. Subramanian

... 2nd Respondent/De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 407 of Cr.P.C, praying to transfer the case in S.C.No.528 of 2021, pending on the file of the learned III Additional District and Sessions Judge, Tirunelveli to any near by District Court having, competent jurisdiction for the purpose of further adjudication of the said case.



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For Petitioner : Mr.R.Anand
Advocate.

For R1 : Mr.R.Suresh Kumar
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed seeking to transfer the case in S.C.No.528 of 2021, pending on the file of the learned III Additional District and Sessions Judge, Tirunelveli to any near by District Court, having competent jurisdiction for the purpose of further adjudication of the said case.

2.The learned counsel appearing for the petitioner submitted that the petitioner is the 9th accused in S.C.No.528 of 2021, on the file of the learned III Additional District and Sessions Judge, Tirunelveli. The trial Court initially framed charge against the accused on 24.02.2022, thereafter, on 08.07.2022, again framed charges against the accused persons. But, the apprehension in the mind of the petitioner and other accused is that they have to face two charges. Further, during the pendency of the case the



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second respondent has filed a Writ Petition in W.P(MD) No.6031 of 2021, wherein this Court has directed the District Collector, Tirunelveli District to appoint Special Public Prosecutor. In pursuance of the order of this Court, the Special Public Prosecutor was nominated for conducting the case. The case is sensitive matter and watched by all persons. The Special Public Prosecutor repeatedly has filed a memo and sought for the very same prayer acceded to before the learned Presiding Officer, subsequently, withdrawn the memo that the Presiding Officer entertained the request of the Special Public Prosecutor. The reasonable apprehension in my mind is that the learned Presiding Officer cannot act independently. On that ground, it is pleaded to transfer the case to some other Court.

3. The learned Government Advocate (Crl.Side) appearing for the first respondent opposed to transfer the case to some other district on the ground that it will result in harassment of opposite party and the case is posted for examination of witnesses. He further submitted that the charges mentioned in the transfer petition are not true and there is no merit in the transfer petition. Hence, prayed to dismiss the petition.



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4. I have considered the matter in the light of the submissions made by the learned counsel for both parties and perused the records.

5. A perusal of the records reveals that the petitioner is the 9th accused in S.C.No.528 of 2021, on the file of the learned III Additional District and Sessions Judge, Tirunelveli. The petitioner/ Accused No.9 and other accused are charged for having caused murder of one Chidambaram indiscriminately and they have also attacked the witness Nataraja Perumal. Therefore, the case has been registered in Crime No.94 of 2021, dated 18.04.2021 for the offences punishable under Sections 147, 148, 294(b), 109, 302, 307, 506(ii) and 120 B I.P.C. After investigation, final report has been filed for the above said offences. While framing the charges learned trial Judge failed to frame charge against the 5th accused for the offence committed under Section 307 I.P.C., thereafter, re-framed charges against all the accused on 08.07.2022, which caused prejudice to the accused persons. The earlier charges have no effect by framing of charge on 08.07.2022. Therefore, the apprehension expressed by the learned counsel that the accused is in afraid of facing two charges is unreasonable.



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6. There is no substantial ground for transferring the case to another district on the ground that the Special Public Prosecutor has been appointed without knowledge of the accused.

7. A transfer should not readily be granted for any fancied notion of a litigant and it should be granted to ensure that the applicant gets fair and impartial justice. Mere presumption or possible apprehension are not sufficient only good and sufficient grounds may be considered. Further, transfer of the case from one court to another indirectly casts doubt on the competency and integrity of the judge from whom the case is sought to be transferred. Therefore, the apprehension expressed by the learned counsel for the petitioner is not reasonable and every apprehension does not have a ground to transfer the case. It should be a reasonable apprehension. I find no material to substantiate the fear expressed by the petitioner and no merit in the transfer petition.



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8. Accordingly, this Criminal Original Petition is dismissed.

Consequently, the connected miscellaneous petition is closed.

21.07.2022

Internet: Yes./No

Index: Yes/no

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To

1. The III Additional District and Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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ORDER IN
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