



CrI.O.P.(MD) No.13512 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

CrI.O.P.(MD) No.13512 of 2022

and

CrI.M.P(MD) No.8601 of 2022

G.Raj Kumar,

: Petitioner

Vs

State through the
The Inspector of Police,
Subramaniyapuram Police Station,
Madurai District.
Crime No.2025/2010.

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to transfer the case in S.C.No.192/2015, pending before the learned Sessions Judge, Mahila Court, Madurai to any other Sessions Court in near by District.

For Petitioner : Mr.R.Alagumani

For Mr.R.Venkatesan

For Respondent : Mr.R.Suresh Kumar,

Government Advocate (CrI.Side)



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ORDER

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2.The learned Counsel appearing for the petitioner submitted that the learned Sessions Judge, Mahila Court, Madruai, threatened the petitioner that he is going to convict him. Hence the petitioner is apprehending that he may not get a fair justice from the trial Court and he wants to transfer the case from the Court below to some other Court in another district and also raised allegations against the Judicial Officer in the affidavit.

3.The learned Government Advocate (Crl.Side) submitted that in this case, prosecution witnesses have been examined and Section 313 Cr.P.C proceedings was over and the case was posted for defence side evidence. Previously, the petitioner filed a transfer application in Crl.O.P(MD)No. 12750 of 2022. Subsequently, the same was withdrawn. Again, the petitioner filed this second transfer petition, by raising the allegation against the Judicial Officer. There is no bonafide on the part of the petitioner and also no merit in



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this petition and pleaded to dismiss the same.

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4.I have considered the submissions made by both the learned parties.

5.On a perusal of records, it is seen that the witnesses PW-1 to PW-17 were examined and the Executive Magistrate, who conducted the enquiry with regard to the cause of death of the deceased person was subsequently examined and after completion of examination of prosecution witnesses, Section 313 Cr.P.C proceedings was also over and the case was posted for defence side witnesses. Further, the petitioner filed a transfer petition in CrI.O.P(MD)No.12750/2022 and the same was withdrawn. Now, the petitioner again filed this second transfer petition, by raising the allegation against the Judicial Officer and expressed his apprehension that he may not get a fair trial in the trial Court. In this regard, remarks have been called for from the Judicial Officer and the learned Sessions Judge, Mahila Court, Madurai, submitted his remarks and in which, he denied the allegation raised by the petitioner, which runs as follows:

'2) In fact on 11.10.2021 PW1 was examined in chief by the Learned Special Public Prosecutor. During the chief examination



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PW1 has not deposed in full fledged in par with statement u/s.161 Cr.P.C. Hence the learned Special Public Prosecutor requested the Court to treat the witness hostile. Accordingly I have declared the witness PW1 as hostile and permitted Special Public Prosecutor to cross examine the witness. Thus the learned Special Public Prosecutor cross examined PW1. Further on the same day itself the learned advocate for the accused cross examined PW1 and Ex.D1, Ex.D2 the alleged letters written by the deceased were marked. At, this juncture, I have no interest with witness. What witness had deposed, it has been dictated and recorded. Thereafter the prosecution has examined PW2 to PW17 in subsequent hearings and the case was adjourned. During all these hearings the accused as well as the learned advocate for the accused have extended their co-operation with the Court for conducting trial. If really, allegations were true, definitely accused or his learned advocate would not have conducted the trial.

3) Moreover if really, I have threatened PW1, he would have taken action immediately. Even subsequent to examination of PW1, his sons and daughter were examined by the prosecution as PW9, PW10 and PW11. Therefore the allegations stated in para no.6 of the affidavit is totally false and imaginary. Likewise, if really I openly made statement against accused no.1, definitely the accused would not have participated in the trial until examination of PW17. Even after examination of PW1, accused no.1 regularly appeared in hearings and learned Advocate for



accused also actively participated in the trial. Therefore, I strongly submit to deny the allegations made in para no.6.

4) With regard to allegations in para no.7 that the petitioner had doubt about the authenticity of me in view of evidence of PW11 Tmt.Sathyavathi; sister of the deceased and the evidence of 1)W17 Thiru.Ganesan, investigating officer. Here also I have no role or any interest with the testimony given by PW11 in her chief examination. Whatever the learned Special Public Prosecutor enquired the witness and her evidence was recorded. Even after chief examination, PW11 was cross examined-by the learned advocate for the accused. on the same day itself. Likewise, I have no knowledge about the answer given by PW17 investigating officer during the cross examination pertaining to Ex.D1 and Ex.D2. Therefore the allegation in para no.7 as against me is also false, imaginary and baseless.

5) With regard to allegation in para no.8 that the prosecution filed petition u/s.311 Cr.P.C to add additional witness Mr.Sugumaran, Executive Magistrate which was allowed by me whereas I have dismissed the petition filed by the petitioner/ accused no.1 u/s.311 Cr.P.0 to recall the same witness. I humbly submit to state that prior to committal the copies were furnished u/s.207 Cr.P.0 to both accused including the report of Executive Magistrate. During the trial the learned Special Public Prosecutor found that the Executive Magistrate was not cited as witness. Hence the petition u/s.311 Cr.P.0 was filed by the learned



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Special Public Prosecutor in Cr.M.P. No.652/2022 in which the accused have filed objection. After hearing both sides I have passed Order on 10.06.2022 on merit by allowing the petition. Accordingly Thiru.Sugumaran, Executive Magistrate was added as additional witness and he was examined as PW16 on 21.06.2022. Even on the same day the learned advocate for the accused cross examined PW16. Further PW17 Thiru.Ganesan investigating officer was examined on 30.06.2022 and on the same day the learned advocate for the accused cross examined PW17. After examination of investigating officer, the learned Special Public Prosecutor only closed the prosecution case and hence I have posted the case for examination of accused nos.1 and 2 u/s.313 (1) (b) Cr.P.C. On the same day on 30.06.2022 the accusenate filed-the petition u/s.311 .Cr.P.C in Cr.M.P. No. 838/2022 to recall PW16 Thiru.Sugumaran Executive Magistrate even after cross examination and the petition was posted for objection on 11.07.2022. The learned Special Public Prosecutor filed objection and after hearing both sides, I have passed an Order on merit on 11.07.2022 by dismissing the petition. As per the available records, the Order was not challenged.'

6.It has to be noted that the petitioner participated in the trial and suddenly filed a transfer petition in Cr.L.O.P(MD)No.12750/2022 and later withdrawn the same. Now, the petitioner again filed this second transfer



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petition, by raising the allegation against the Judicial Officer. It exposes the fact that he is in intention not to conduct the case before the trial Court.

7. Transferring a case from one Court to another, will indirectly cause a doubt on the competency and integrity of the learned Judge, from whom the case is sought to be transferred. Mere presumption or possible apprehension are not sufficient. In this case, the petitioner cited the dismissal of the petition filed under Section 313 Cr.P.C for recalling the Executive Magistrate for further cross-examination. It is not a good and sufficient ground to justify his claim. A transfer should not readily be granted for any fancied emotion of a litigant. It should be granted only on a strong reason.

8. Therefore, I find no material to substantiate the fear expressed by the petitioner that he would not get a fair trial. Therefore, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Internet: Yes
Index: Yes/No
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To

1. The Inspector of Police,
Subramaniyapuram Police Station,
Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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