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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2022

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.17324 of 2022

and

CrI.M.P(MD) No.11717 of 2022

M.A.M. Raja

...Petitioner

vs

1. Fathima @ A.Syed Ali Fathima

2. Ayisha

3. Ariff Rahuman

4. The Inspector of Police

Theni Police Station,

Theni, Theni District.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to withdraw the case in C.C. No.239 of 2020 on the file of the learned Judicial Magistrate, Theni and transfer the same to the file of the learned Judicial Magistrate, Usilampatti, Madurai District.

For Petitioner : Mr.Raja M.A.M

Party -in- Person

For R1 to R3 : Mr. Ajmal Khan

Senior Counsel

For R4 : Mr.R.Siva Kumar

Government Advocate(Crl.Side)



ORDER

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This Criminal Original Petition had been filed to to withdraw the case in C.C. No.239 of 2020 on the file of the learned Judicial Magistrate, Theni and transfer the same to the file of the learned Judicial Magistrate, Usilampatti, Madurai District.

2.The Party -in – Person submitted that the third accused in C.C had not surrendered and furnished bail bond. He had filed petition on wrong provision. Section 239 is the correct provision of law. He had filed petition under Section 245 which was numbered and allowed. Further he would submit that the third accused in C.C. No.239 of 2020 is the practising lawyer of Theni Bar and now serving as a Government Pleader in District Court, Periyakulam. He would further submit that CrI.O.P(MD)20179 of 2021 was dismissed by this Court directing them to appear before the Court. It is the further submission of the Party-in – Person that the third accused who is a practising lawyer that till date, the learned Magistrate had not cared to obtain bond from the third accused. Already there was case and Counter case filed by the Petitioner and the third accused against which another First Information Report had



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been registered on the basis of the complaint by the Petitioner herein and referred charge sheet before the very same Magistrate. It is the further submission of the Party-in- Person that he is now practising in Madurai. Whiles, the refer charge sheet was pasted in the residence of the Petitioner and also the very same Investigation Officer who has no jurisdiction over the other FIR to the counter case. Refer Charge Sheet also filed by the very same officer who is not the Investigation Officer in this case. That was also taken on file by the learned Judicial Magistrate. Therefore he is apprehending fair trial before the very same Magistrate. Therefore he seeks transfer of case in C.C. No.239 of 2020 on the file of the learned Judicial Magistrate, Theni to any other Court outside Theni District

3. When the case came up for hearing on 10.11.2022, the learned Senior Counsel Thiru. Ajmal Khan appearing for the Respondents 1 to 3 sought time to try for amicable settlement. This Court considering the request of the learned Senior Counsel, this Court had requested the Party-in-Person to avail the offer. This Court had asked both the parties to report the same before the Court today. Therefore the case was adjourned.



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4. Today, when the case is taken up for hearing, the learned Senior Counsel was about to proceed with the arguments stating that the Petitioner herein protested that he is unable to arrive at amicable settlement and submitted that the case arose out of enmity by the third Respondent who was earlier working a Professor in College. The Petitioner herein as Counsel had appeared for the case. Subsequently the third Respondent had completed law degree, enrolled as an Advocate and practising at Theni. At that stage there was clash between the Petitioner and the third Respondent in which both parties had preferred complaint. Based on which two First Information Reports had been registered as case and case in counter. At that time, the third Respondent in his complaint himself had stated that there was clash between them in the complaint. Whiles, the complaint preferred by the third Respondent was taken to his logical end by filing final report by the Investigation Officer , whereas complaint preferred by the Petitioner herein was closed as ' Mistake of Fact'

5. It is the submission of the Party -in- Person that the First Information Report was registered in the name of the third Respondent



and at the time of filing final report by the Investigation Officer the name of the third Respondent was removed. The then learned Single Judge of this Court in CrI.O.P(MD) 20719 of 2021 filed by A1 and A2 in C.C. No. 239 of 2020 dismissed the petition seeking quashing of the charge sheet and directed the learned Judicial Magistrate, Theni to dispose the case within a period of six months from the date of receipt of copy of the order.

6. The learned Senior Counsel appearing for the Respondents 1 to 3 would submit that the period mentioned by the Court had already been expired. He also relied on the reported ruling of the Hon'ble Supreme Court in **Civil Appeal Nos.943-944 of 2009** in the case of ***J.Kumaradasan Nair and Anr .vs. IRIC Sohan & Ors***[1999 SCC Online Mad 1002], wherein the relevant portion of the order reads as follows: [

“14. 14. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The



court will not apply the beneficial provisions like [Sections 5](#) and [14](#) of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, Sub-section (2) of [Section 14](#) of the Limitation Act per se may not be applicable, but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of [Section 5](#) thereof.

7. The learned Senior Counsel for the Respondent further reported ruling on the Hon'ble Supreme Court in the case of ***Tiruchendur Bar Association .vs. Mrs. Jansi Rani and others***, wherein it reads as follows:

3. Learned counsel for the petitioner contended that the orders passed by the Courts below are not correct. Under [Section 322](#), Cr. P. C. the learned Magistrate can submit a report if he has no jurisdiction to try the case. The reasoning given by the learned Magistrate is not a valid ground for transfer. The learned Magistrate is not personally interested in the subject-matter of the case and the petitioner never raised any question of bias. The ground that maintaining cordial relationship cannot be a ground for refusing to try the case. A Judicial Magistrate is bound to maintain the independence of judiciary at all cost rather than maintaining the cordial relationship with the parties. They cannot be given any special status because of their occupation. The ends of justice and fair play require that the impugned orders are to be set aside and the learned Judicial Magistrate, Tiruchendur is to be directed to proceed with the complaint in accordance with law.



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8. In the light of the submission made by the learned Senior Counsel for the Respondents 1 to 3, this petition is not maintainable and it is liable to be dismissed.

9. In the result, the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition is dismissed.

11.11.2022

Internet: Yes/No

Index: Yes/no

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To

1. The Judicial Magistrate, Theni

2. The Inspector of Police
Theni Police Station,
Theni, Theni District.

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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