



Crl.O.P.(MD) No.21121 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2022

CORAM

THE HON'BLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.O.P(MD)No.21121 of 2022

and

Crl.M.P(MD)Nos.14795 and 14797 of 2022

1.Rajaram

2.Chekkaravarthy

...Petitioners

-VS-

D.Vergely

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to withdraw the case in C.C.No.82 of 2022 on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanniyakumari District and transfer to the any other of the learned Judicial Magistrate, Tirunelveli District.

For Petitioners

: Mr.C.Mayilvahana Rajendran



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ORDER

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This Criminal Original Petition had been filed to withdraw the case in C.C.No.82 of 2012 from the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanniyakumari District to the file of learned Judicial Magistrate, Tirunelveli.

2.It is the submission of the learned Counsel for the Petitioners that the Petitioners are the serving Police Officials. Based on the statement of the witnesses produced by the De-Facto Complainant and the statement of the De-Facto Complainant, the learned Judicial Magistrate had taken the complaint and numbered it as C.C.No.82 of 2012. It is the further submission of the learned Counsel for the Petitioners that when the Petitioners were serving as Officials at Pudukkadai Police Station at that time, the De-Facto Complainant/Respondent herein is alleged to have given a complaint regarding the dispute between his brothers and his brothers' neighbours, for which he had requested the Petitioners herein as the then serving Police Officials to register the case. When the Respondent/Complainant appeared before the Pudukkadai Police Station, as per the complaint, there had been altercation between them, the Police Officials of Pudukkadai Police Station and the



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Respondent/Complainant herein. That is the gist of the complaint.

While so, now the first Petitioner is working as Inspector of Police in Thoothukudi City South Police Station and the Second Petitioner is working as Assistant Commissioner of Police, Madurai City.

3.While so, it is very difficult for the Petitioners to appear before the learned Judicial Magistrate No.II, Kuzhithurai, Kanniyakumari District for every hearing. Further, it is brought to the notice of this Court by the learned Counsel for the Petitioners that in Kanniyakumari District, there was resolution passed by the Bar Association members that whenever the complaint is lodged against the Police Officials, no member from any of the Bar Association in Kanniyakumari District shall appear for the Police Officials. Therefore, it is difficult for the Petitioners to engage a Counsel from Kanniyakumari District. Even if the Petitioners engage a Counsel from outside the Kanniyakumari District, the Counsels are harassed by the members of the Bar Association of Kanniyakumari District. Therefore, the Petitioners seek withdrawal of the said case.

4.The learned Counsel for the Petitioners also would submit that the Petitioners are ready to surrender before the Court concerned and



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seek appropriate orders from the Court concerned, if any Non Bailable Warrant is pending against them.

5.After hearing the learned Counsel for the Petitioners, this Court had ordered the Registry to seek remarks regarding the stage of case and pending of Non Bailable Warrant from the Court of the learned Judicial Magistrate-II, Kuzhithurai by return of fax.

6.Accordingly, in the lunch time, the learned Additional District Munsif-II, who is holding Full Additional In-charge of learned Judicial Magistrate-II, Kuzhithurai, had sent his remarks in letter in D.No. 1970/2022, dated 30.11.2022. As per the remarks, it is found that Non Bailable Warrant is pending against both the Petitioners.

7.As a District Judge, who had served in Kanniyakumari District from September 2015 till December 2017, I am aware of the attitude of the Bar members and constant or regular conflicts between the Police officials serving in Kanniyakumari District and the members of the Bar culminating in registration of cases and its repercussion. Here, the Petitioners are unable to engage a Counsel. The Petitioners, who were serving as Police Officials in Kanniyakumari



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District, were arrayed as accused, apprehending attack on them, while appearing as accused before the Court from the Advocates concerned. They were scared of attending the Court. That is the only presumption available to this Court, from my personal perception, as a person having served in Kanniyakumari District, where, this sort of activities are prevailing.

8.The submission of the learned Counsel for the Petitioners that the Petitioners are unable to attend the Court is found justified from the previous incidents, where, Police officials were attacked by the members of Bar. Also, when the members of other Bar Association outside the District enter appearance on behalf of the very same Police Officials, they are also verbally attacked causing harassment to the members of the Bar from the outside Kanniyakumari District.

9.In the light of the above circumstances, the case in C.C.No.82 of 2012 on the file of the learned Judicial Magistrate-II, Kuzhithurai, is withdrawn and transferred to the Court of the learned Chief Judicial Magistrate, Madurai, on the reasoning that (1)The Petitioners are unable to attend the Court; and (2)The Petitioners are unable to engage a Counsel even from other Districts. The present learned



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Chief Judicial Magistrate, Madurai, who had already served as a Secretary, Legal Services Authority, Kanniyakumari District, will be able to dispose of the case by himself after assigning new number of his Court and issuing notice to the Complainant and accused 1 and 2.

10.The learned Judicial Magistrate-II, Kuzhithurai, is directed to issue notice to the Respondent/De-Facto Complainant stating that the case had been withdrawn from the Court of the learned Judicial Magistrate-II, Kuzhithurai on the ground that the Advocates of Kanniyakumari Bar Association are restraining Advocates from appearing on behalf Accused Nos.1 and 2, who are Police Officials. In that circumstances, NBW had been issued against the serving Officials of the State and now they are not serving in Kanniyakumari District. They are apprehending physical attack on them while appearing before the Court.

11.The Petitioners are directed to appear before the Court of the learned Chief Judicial Magistrate, Madurai and seek recall of NBW pending against them. Usually, this Court will not recall NBW. Here is a peculiar case, where, the complainant is a member of Bar, Kanniyakumari District. The Petitioners are Police Officials, who had



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already served in Kanniyakumari District, now serving outside the Kanniyakumari District and they are scared of attending the Court.

12.The learned Chief Judicial Magistrate, Madurai, shall, on receipt of the records from the Court of learned Judicial Magistrate-II, Kuzhithurai, take it on his file.

In the result, this Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

30.11.2022

Index:Yes/No

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To

- 1.The Chief Judicial Magistrate, Kanniyakumari.
- 2.The Chief Judicial Magistrate, Madurai.
- 3.The Judicial Magistrate-II, Kuzhithurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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