



WEB COPY



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 07.03.2023	Orders pronounced on 16.03.2023
----------------------------------	------------------------------------

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

Leena Manimekalai
represented by
Power Agent Mr.R.Elango

... Petitioner

Vs.

Susi Ganeshan

... Respondent

This Criminal Original Petition is filed under Section 482 Cr.P.C. praying to set aside the order dated 04.03.2022 passed in Transfer Crl.M.P.No.17197 of 2021 on the file of the learned Principal Sessions Judge, Chennai and transfer the proceedings in C.C.No.344 of 2019 on the file of the learned IX Metropolitan Magistrate, Saidapet to that of any other Court.



WEB COPY



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

For Petitioner : Mr.V.Raghavachari, senior counsel
for
M/s.V.S.Senthilkumar

For Respondent : Mr.R.Vivekananthan
for
M/s.S.D.Alexis Sudhakar

ORDER

This petition is filed for setting aside the order dated 04.03.2022 passed in Transfer Crl.M.P.No.17197 of 2021 on the file of the learned Principal Sessions Judge, Chennai and transfer the proceedings in C.C.No.344 of 2019 on the file of the learned IX Metropolitan Magistrate, Saidapet to that of any other Court.

2. Learned counsel for the petitioner submitted that the respondent filed a complaint under section 200 Cr.P.C for the offence of defamation under section 500 of IPC against the petitioner. This complaint ought to have been filed in a court at Egmore, but it was filed and taken cognizance by the learned IX Metropolitan Magistrate, Saidapet. The order



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

taking cognizance is a one line order without giving reasons for taking cognizance. After the respondent entered appearance, respondent filed Crl.O.P.No.11681 of 2020 for the speedy disposal of the case in C.C.No. 344 of 2019. This Court passed an order on 04.08.2020 directing the learned IX Metropolitan Magistrate, Saidapet to dispose the case within a period nine months from the date of receipt of a copy of the order. Respondent filed C.M.P.No.119 of 2020 to impound the travel documents of the petitioner under section 104 Cr.P.C and to direct the passport authorities to impound the passport of the petitioner under section 10(3)(e) of Passports Act, 1967. Petitioner filed affidavit stating that she will appear before the court and cooperate with the trial as and when necessary, either through person or through her counsel. Learned IX Metropolitan Magistrate, Saidapet passed an order on 11.11.2020 closing the petition with liberty to the respondent to reopen the petition whenever there is a breach of the undertaking given by the petitioner. Against the said order, respondent filed Crl.O.P.No.772 of 2021 and that was dismissed by this Court on 21.01.2021. Respondent again filed a petition in C.M.P.No.8098 of 2021 for reopening



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

C.M.P.No.119 of 2020 and for impounding petitioner's travel documents.

Petitioner filed a similar affidavit that she will appear before the court as and when her presence is very much necessary; she had to travel to Canada to complete the Graduate Film Program with Faculty of Graduate Studies. However, learned IX Metropolitan Magistrate, Saidapet passed an order on 06.09.2021 in C.M.P.No.119 of 2020 directing impounding of her passport under section 10(3)(e) of Passports Act. Challenging the said order, petitioner filed Crl.R.C.No.85 of 2021 before the learned Principal Sessions Judge, Chennai. The learned Principal Sessions Judge, Chennai allowed the Revision Case and set the order passed by the learned IX Metropolitan Magistrate, Saidapet in C.M.P.No. 119 of 2020.

3. Thereafter, petitioner filed W.P.No.20411 of 2021 to issue a writ of certiorari to call for the records from the Regional Passport Officer, Chennai and quash the order dated 09.09.2021 bearing letter reference No.IMP/311192857/21. Respondent filed Crl.O.P.No.20337 of 2021 challenging the order passed by the learned Principal Sessions Judge,



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

Chennai in Crl.R.C.No.85 of 2021. This Court by common order dated 03.12.2021 allowed W.P.No.20411 of 2021 and set aside the order dated 09.09.2021 passed by the passport authority with the direction to release the passport to the petitioner and dismissed Crl.O.P.No.20337 of 2021. Against the dismissal of Crl.O.P.No.20337 of 2021, respondent filed Special Leave to Appeal (Crl.) No.9863 of 2021. Special Leave to Appeal (Crl.) No. 9863 of 2021 was disposed on 17.12.2021 giving direction to dispose the case as expeditiously as possible, preferably within a period of four months from the date of communication of the order. The relevant portion of the order reads as follows:-

“It, however, appears that the High Court took note of the direction in the earlier round of litigation to the Trial Court to complete the trial expeditiously. The High Court directed the respondent to submit herself to the trial and have the same completed without getting any unnecessary adjournments.

The High Court also observed that it was



WEB COPY



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

not even necessary for the respondent to be present in person for all hearings. She could be represented by counsel so that the trial could be completed at an early date. As and when presence of the respondent was required, summons would be issued well in advance.

In view of the said direction, it is open to the Trial Court to proceed with the trial. It is not necessary for the accused respondent to be present at the time of the trial.

The trial shall be completed expeditiously, preferably, within four months from date of communication of this order.

In the event the Trial Court feels the necessity to have the presence of the respondent, summons/notice shall be issued with reasonable time notice and in the event, the presence of the respondent does not appear necessary, steps may be taken, in accordance with law.”



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

WEB COPY

4. Learned counsel for the petitioner submitted that the learned IX Metropolitan Magistrate, Saidapet has not followed proper procedure in examination of witnesses. Chief examination of the witnesses were filed in the form of proof affidavit contrary to the law that the witnesses have to be examined in open court. On the memo filed by the respondent to dispense with the evidence of PW.3 to PW.6, learned IX Metropolitan Magistrate, Saidapet, without giving any opportunity to the petitioner, permitted the evidence of PW.3 to PW.6 to be dispensed and scrapped. It is impermissible and not known to law. Whenever any petition is filed or relief is asked, learned IX Metropolitan Magistrate, Saidapet has not considered the prayer of the petitioner favourably and in the manner known to law. On the other hand, whenever any petition is filed by the respondent, that petition was considered favourably. Respondent was given preferential treatment and the petitioner was ill-treated during the course of proceedings. Therefore, a petition is filed in Tr.C.M.P.No..No.17197 of 2021 for transferring the proceedings in C.C.No.344 of 2019 on the file of the learned IX Metropolitan Magistrate, Saidapet to some other court. Without considering



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

petitioner's genuine request, learned Principal Sessions Judge, Chennai dismissed the petition. Therefore this petition is filed.

5. Learned counsel for the respondent submitted that defamation complaint in C.C.No.344 of 2019 is pending from 2019 without any progress. Petitioner is not cooperating with the examination of witnesses and for the completion of the trial. She was not regular in attendance and therefore, respondent filed Crl.O.P.No.11681 of 2020 to fix time frame for the early disposal of the case. Though this Court fixed time limit of nine months for the disposal of this case, due to non-cooperative attitude of the petitioner, the trial could not be completed. She was trying to go abroad, therefore, respondent filed the petition for impounding her passport documents. The undertaking given by her for conduct of the trial was not followed by her and therefore, learned IX Metropolitan Magistrate passed an order impounding her passport. The Hon'ble Supreme Court had also directed the disposal of the case within a period of four months from the date of receipt of the order. Respondent had dispensed with the evidence of



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

P.W.3 to P.W.6 only after the petitioner filed the petition under section 244 Cr.P.C to reject the proof affidavit filed by the petitioner. This is summons case and has to be disposed at the earliest possible time. Despite direction from this Court and the Hon'ble Supreme Court, the case cannot be disposed because of the non cooperation of the petitioner for trial. The allegations made against the IX Metropolitan Magistrate, Saidapet that she was favouring respondent is not correct. False allegations are made against her for the reason that she had disposed the case as directed by the superior Courts. The dismissal of transfer petition is just and proper and therefore, learned counsel for the respondent prays for dismissal of this petition.

6. Considered the rival submissions and perused the records.

7. From the materials produced and the submissions of the learned counsel for the parties, it can be gathered that petitioner is making allegations of favoritism against IX Metropolitan Magistrate, Saidapet in favour of respondent. The allegations are stoutly denied by the learned



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

counsel for respondent and also by the learned Principal Sessions Judge, Chennai in her order dated 04.03.2022. The fact remains that though this case is pending from 2019, even the cross examination of PW.1 is not completed so far. There have been two directions from higher Courts namely this Court and Hon'ble Supreme Court to dispose the case within the time frame. From the records it is seen that the petitioner has not made sufficient arrangements to proceed with the trial in her absence. It is also seen from the records that she wanted to go to Canada in connection with a course. Despite giving an Undertaking that she will cooperate for the smooth conduct of the trial, the trial proceedings shows that the trial was not conducted as desired. Therefore, this Court finds there are no materials available to show that IX Metropolitan Magistrate, Saidapet was siding with the respondent and supporting him and passing orders against the petitioner.

8. The report of the IX Metropolitan Magistrate, Saidapet in Dis.No.1306/2022 dated 12.07.2022 shows that the case in C.C.No.344 of 2019 was taken on file on 28.01.2019. Petitioner appeared, on the receipt of



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

the summons, on 12.07.2019. NBW was ordered against her on 05.08.2019 and then, it was recalled on 06.08.2019. Respondent examined six witnesses in chief by filing proof affidavit. The accused did not come forward to cross examine the witnesses. On 18.02.2020, accused was present and she denied the substance of accusation against her under section 500 IPC and claimed to be tried and thus, case was posted for cross examination of P.W.1 to P.W.6 on 28.02.2020.

9. This report shows that P.W.1 to P.W.6 were examined in chief by filing proof affidavit even before the petitioner/accused was questioned on the substance of allegation against her under section 500 IPC. There are two procedural violations committed here:-

(i) Reception of proof affidavit instead of examining the witnesses on oath in the open court and recording the chief examination.

(ii) Examination of P.W.1 to P.W.6 in chief examination in the form of proof affidavit even before the petitioner/accused was questioned under section 251 Cr.P.C on the substance of accusation.



WEB COPY



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

10. Apart from these violations, there is also violation in the form of permitting the scrapping of the evidence of P.W.3 to P.W.6, without giving opportunity to the petitioner to oppose the memo filed for scrapping the evidence.

11. It is observed by the Hon'ble Supreme Court in the judgment reported in **1966 AIR 1418 (Gurucharan Das ..vs.. State of Rajasthan)** as follows:-

“The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should



WEB COPY



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the State of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

12. In the light of the above procedural violations committed by the IX Metropolitan Magistrate, Saidapet, there is an apprehension created in the mind of the petitioner that justice will not be done to her. This is a ground for transfer as per the observations made by the Hon'ble Supreme Court in the above judgment reported in **1966 AIR 1418 (Gurucharan Das ..vs.. State of Rajasthan)** (cited supra). Thus, this Court is of the view that it is not advisable to continue the proceedings to be conducted by the learned IX Metropolitan Magistrate, Saidapet in C.C.No.344 of 2019. In



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

WEB COPY this view of the matter, this Court sets aside the order passed by the learned Principal Sessions Judge, Chennai in Tr.C.M.P.No..No.17197 of 2021 and orders transfer of the proceedings in C.C.No.344 of 2019 on the file of the learned IX Metropolitan Magistrate, Saidapet to the learned XI Metropolitan Magistrate, Saidapet. Accordingly, this petition is allowed. the learned XI Metropolitan Magistrate, Saidapet is directed to dispose the case as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

16.03.2023

mra

Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Principal Sessions Judge,
Chennai.
2. IX Metropolitan Magistrate,
Saidapet.

14/16



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

WEB COPY

3. XI Metropolitan Magistrate,
Saidapet.
4. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

G.CHANDRASEKHARAN,J.

mra

order in

Crl.O.P.No.5697 of 2022

and

Crl.M.P.No.3140 of 2022

16.03.2023