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Crl.O.P. Nos.15542 & 6104 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **28.11.2023**

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.O.P Nos.15542 & 6104 of 2023
and Crl.M.P. Nos.3825 & 9655 of 2023

Dr.S.Senthilkumar

.. Petitioner in both Crl.O.P.s

Vs.

1.N.Sekar

2.N.Krishnan

3.K.S.Subramniam

4.P.Venugopal

5.State represented by the
Deputy Superintendent of Police
Organized Crime Unit,
Crime Branch CID, Salem City.

..Respondents in both Crl.O.P.s

PRAYER in Crl.O.P. No.15542 of 2023 : Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records with regard to the final report filed in C.C. No.540 of 2022 on the file of the Judicial Magistrate No.I, Salem and set aside the same and consequently transfer the investigation in Crime No.1 of 2015 from the respondent Police to any other Investigation Officer for further investigation and to file final report afresh.



Crl.O.P. Nos.15542 & 6104 of 2023

PRAYER in Crl.O.P. No.6104 of 2023 : Criminal Original Petition has been filed under Section 407 of Cr.P.C, to order transfer of the case in C.C. No.540 of 2022 on the file of the Judicial Magistrate No.1 at Salem to any other Judicial Magistrate Court for fair and impartial trial.

For Petitioner : R.Sankarasubbu
For Respondents 1 & 2 : K.M.Arun for
S.Senthil
For Respondent No.5 : Leonard Arul Joseph Selvam,
Government Advocate
(Criminal side)

COMMON ORDER

These two petitions are filed by the defacto complainant in Crime No.39 of 2012, which is now pending trial in C.C. No.540 of 2022 on the file of the learned Judicial Magistrate No.I, Salem.

2. Narrating certain incidents, the petitioner has initially filed Crl.O.P. No.6104 of 2023 to transfer the case from the file of the learned Judicial Magistrate No.I, Salem to any other learned Judicial Magistrate for fair and impartial trial. This Court, when the matter was taken up for hearing directed the petitioner to file an affidavit if he really stick on to the allegations made against the Judicial Magistrate. This order was passed on 17.03.2023, till today no such affidavit is filed.



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3.The same petitioner has also filed another Crl.O.P. No.15542 of 2022 for transfer of investigation from the respondent police to any other investigation and file final report afresh. Before advertng to the merits of this two petitions, it is necessary to capitalize the background of this case are runs as under:-

"In pursuant to the complaint given by the defacto complainant, a criminal case has been registered in Namakkal DCB Crime No.39 of 2012 for offences under Sections 120(B), 467, 471, 420 and 511 IPC and then the case has been transferred to Namakkal CBCID. The same has been taken on file in Crime No.1 of 2015 for the offences under Sections 120B, 467, 471, 420 and 511 IPC. After investigation, final report has been filed before the Chief Judicial Magistrate Court, Namakkal, which was taken on file in C.C No.16 of 2016 for the offences under Sections 120B, 467, 471, 420 and 511 of IPC. Thereafter the case has been transferred to the Judicial Magistrate No.1, Salem and taken on file in C.C. No.540 of 2022, where the case is pending."

4. So far, five witnesses been examined. The 5th witness by name Saravanan turned hostile, which became a ground of contention when the Application filed under Section 319 of Cr.P.C to array the said Saravanan who was initially named accused in the FIR, but later shown as listed witness by the prosecution, thought fit that he must be arrayed as an accused in this case. However, the same was declined by the learned



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Judicial Magistrate in Crl.M.P. No.5245 of 2022 vide order dated 10.02.2023. Against which, the defacto complainant has preferred a Revision before the High Court in Crl.R.C. No.424 of 2023 and the same came to be dismissed on 26.04.2023.

5. After a dismissal of this Revision Petition, the defacto complainant has filed the second Criminal Original Petition No.15542 of 2023 on 26.06.2023, seeking for direction to change of investigation. The FIR in this case, came to be registered on 11.09.2015 in Crime No.1 of 2015 by CBCID, Namakkal. Pursuant to the direction of this Court, on completion of investigation, final report was filed citing 20 listed witnesses and 14 prosecution documents, the trial had commenced, 5 witnesses had been examined including the defacto complainant. Out of 14 documents listed along with final report, so far, 12 documents already marked.

6. The learned counsel appearing for the petitioner states that Application to receive additional documents was not allowed by the learned Judicial Magistrate and the defacto complainant approached the High Court and the High Court, ordered to receive the additional documents.



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7. It is pertinent to note that from the Regular police case was transferred to CBCID, Namakkal as per the direction of this Court and they have completed the investigation and file a final report as early as on 18th January 2019, before the learned Chief Judicial Magistrate, Salem and the same has been transferred to the learned Judicial Magistrate I, Salem numbered in C.C. No.540 of 2022 and the trial is in the midway.

8. Though some allegations are made the manner in which the trial conducted by the respondent, this Court finds no serious irregularity or ground to order denovo investigation. However, since there are some averments though vague and not substantiated by affidavit against the learned Judicial Magistrate No.I, Salem, it is appropriate to transfer the matter to some other Judicial Magistrate Court within Salem District, so that, the apprehension of the defacto complainant are allayed. Therefore, this Court hereby order transfer of trial from the Judicial Magistrate No.1, Salem to Judicial Magistrate No.IV, Salem, which is dealing with CBCID cases. The learned Judicial Magistrate No.IV, Salem shall take note of the long pendency of this case and complete the trial within reasonable time.

9. With this observation, this Criminal Original Petition No.15542



Crl.O.P. Nos.15542 & 6104 of 2023

WEB COPY

of 2023 is dismissed and Criminal Original Petition No.6104 of 2023 is disposed of with above direction. Consequently, Connected Miscellaneous Petitions are closed.

28.11.2023

Internet : Yes/No

Index: Yes/No

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To

- 1.The Judicial Magistrate No.I,
Salem.
- 2.The Judicial Magistrate,
Namakkal.
- 3.The Judicial Magistrate No.IV,
Salem.
- 4.The Deputy Superintendent of Police
Organized Crime Unit,
Crime Branch CID, Salem City.
- 5.The Public Prosecutor,
Madras High Court,
Madras.



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Dr.G.JAYACHANDRAN, J.

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