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CrI.O.P.No.18692 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.18692 of 2023

- 1.Kailash Jalinder Pakhare
- 2.Vilash Jalinder Pakhare
- 3.Raju Uttam Shinde
- 4.Jayamala Sheetal Kumar
- 5.Vijay Uttam Kamble
- 6.Rabindranath Kar

...Petitioners

vs.

The State rep by
The Inspector of Police,
C2, Elephant Gate Police Station,
Chennai
Crime No.916 of 2020

...Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order dated 07.08.2023 in unnumbered Tr.CrI.M.P.Sr.No.17318 of 2023 passed by the learned Principal Sessions Judge, Chennai and consequently directing the learned Principal Sessions Judge, Chennai to take the transfer petition on file and dispose of the same on merits in accordance with law.



CrI.O.P.No.18692 of 2023

For Petitioners : Mr.G.Pugazhenth

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This criminal original petition has been filed challenging the order passed by the Court below rejecting the transfer application filed by the petitioners under Section 408 of CrPC.

2. Heard the learned counsel for the petitioners and the respondent and also perused the materials available on record.

3. The petitioners are facing trial before the Court below for offence under Section 302 of IPC and Section 27(3) of the Arms Act, 1959. The petitioners filed a petition before the learned Principle Sessions Judge, Chennai seeking for transfer of the case pending in SC.No.315 of 2021 before the learned I Additional District and Sessions Judge, Chennai to any other Court in the same district. The said petition was rejected by the Court below on the ground that the same is not maintainable and that apart, the case is now at the part-heard stage.



CrI.O.P.No.18692 of 2023

4. When the matter came up for admission on 18.08.2023, this Court directed the learned Additional Public Prosecutor to take instructions and to file a status report. Accordingly, when the matter was taken up for hearing today, the status report has been filed.

5. It is seen from the status report that already 33 witnesses have been examined and 40 exhibits and 29 material objects have already been marked. The learned Additional Public Prosecutor submitted that only official witnesses and experts are left and all the other witnesses have already been examined.

6. Considering the stage of the case, this Court thought it fit not to once again send back the matter to the learned Principal Sessions Judge and to take up the issue of transfer in this petition itself.

7. The main grounds, that have been raised in the affidavit filed in support of the petition seeking for transfer, are extracted hereunder:

“12. Trials are an inevitable aspect to bring out justice. But, the trials have to be conducted properly following all the procedures and steps so that it would be fair and free from influences. But, the trial judge has been directly asking questions to witnesses. While the same objects by our counsel,



the Judge shouted at them and told that the Judge has all the powers to put any questions at any point of trial. The learned Judge is went to the extent of saying that he has right to stop the examination of witnesses and has power to record statement as required under Section 313 Cr.P.C.

13. I submit that the trial Judge has omitted in recording cross examination of witnesses by my counsel, if the answers by the witnesses affects the prosecution case and the recording of evidences are at the whims and wishes of the trial Judge. The Judge has been recorded the important crux of statement of witnesses, even if the witnesses kept mum.

14. I submit that on 12.06.2023, while examination of witness No.39, who is the most important witness at the whole case he was following the Judge told to PP that defense counsel absent and it is the right time to take advantage of situation and the Judge had recorded the entire statement of the said witness as copy paste. The Judge has given the case file to typist and she recorded the same. The conduct of Judge is clearly shows his unfairness and against the Justice. The entire episode is witnessed by CCTV footage of the Court.”

8. This is a case, where the learned trial Judge seems to have participated effectively during the course of trial. In other words, the learned Judge seems to be a proactive judge, who had exercised the power given under Section 165 of



CrI.O.P.No.18692 of 2023

the Indian Evidence Act. Many a times, such Judges are mistaken and the transfer is sought for just because they participate more during the course of trial. On carefully reading the grounds raised by the petitioners, this Court does not find any justifiable reason to transfer the case at this stage. If the petitioners were not satisfied with the manner in which the trial had taken place, they should not have awaited for 33 witnesses to be examined and thereafter sought for transfer of the case. The trial is now at a very advanced stage and only the official witnesses and experts have to be examined by the prosecution. If the matter is transferred to another Court at this stage, it will virtually derail the process of trial. The transfer of a case from one Court to another cannot be done in a routine fashion and there must be a strong ground to withdraw the case from one Court and transfer it to another Court. This Court should not be micro managing the manner in which the trial is conducted before the Subordinate Courts. That apart, the learned Judge, who had conducted the trial till now would have seen the demeanor of witnesses, which is one of the important factor for appreciation of evidence.

9. In the light of above discussion, this Court does not find any ground for transfer of the case, that is pending before the Court below at this stage. The Court below shall ensure that proper opportunity is given to the petitioners to



CrI.O.P.No.18692 of 2023

defend themselves efficiently. The matter shall be proceeded further in accordance with law.

10. In the result, this criminal original petition is dismissed.

24.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
nsa

To

- 1.The Principal Sessions Judge,
Chennai
- 2.The I Additional District and Sessions Judge,
Chennai
- 3.The Inspector of Police,
C2, Elephant Gate Police Station,
Chennai
Crime No.916 of 202
- 4.The Public Prosecutor,
Madras High Court,
Chennai 600 104..



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CrI.O.P.No.18692 of 2023

N. ANAND VENKATESH, J.

nsa

CrI.O.P No.18692 of 2023

24.08.2023