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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.17514 of 2023
and Crl.MP.Nos.11444 and 11446 of 2023

1.Gayathri (A-31Y) A2
W/o.Late Kalaiselvan

2.Vasuki (A-72 Y) A3
W/o.Elumalai

.. Petitioners /Petitioners/Accused 2 & 3

.Vs.

1.The State rep.by
The Inspector of Police
Valathi Police Station
Villupuram District.

..Respondent/Respondent/Complainant

2.Ramadass (A-48 Y)
S/o.Elumalai

..Respondent/Respondent/ De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in respect of SC.No.183 of 2021 on the file of the Assistant Sessions Court, Ginjee, Villupuram.

For Petitioners : Mr.D.Rajagopal

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.side)
for R1

Mr.M.Krishna Moorthy for R2



ORDER

This criminal original petition has been filed to quash the proceedings pending in S.C.No.183 of 2021, on the file of the Assistant Sessions Court, Ginjee, Villupuram.

2. When the matter came up for hearing on 8.8.2023, this Court passed the following order:

Mr.A.Damodaran, learned Additional Public Prosecutor, takes notice for first respondent.

2. Notice to second respondent returnable by 05.09.2023. Private notice is also permitted.

3. Learned Additional Public Prosecutor submitted that investigation was conducted by the first respondent in this case and in the counter case in Crime Nos.1144 and 1145 of 2020 and final report was filed in both the cases. Insofar as the present case is concerned, it is pending in S.C.No.183 of 2021 before the Assistant Sessions Court, Ginjee. It is submitted that in this case charges have been framed and it is posted for examination of witnesses (LW-1 to LW-3) on 25.08.2023. Insofar as the counter case is concerned, the same is pending S.C.No.157 of 2020 before the Additional District Court, Tindivanam and in that case, already four witnesses have been examined and it is posted for examination of LW-5 to LW-9 today.

4. In the considered view of this Court, a case in counter can never be tried in this manner. Unfortunately, two different Courts are trying the cases which arose out of the same incident. This runs completely contrary to the judgment of the Apex Court in Nathilal vs. State of U.P. [1990 SCC (Cr.) 638]. The same Court must conduct a trial since there is a common incident and it



cannot be tried by two different Courts.

5. In view of the same, the proceedings in S.C.No.183 of 2021 pending on the file of Assistant Sessions Court, Gingee and the proceedings in S.C.No.157 of 2020 pending on the file of Additional District Court, Tindivanam, is hereby stayed.

6. Learned Additional Public Prosecutor shall take instructions and Crl.M.P.Nos.11444 of 2023 report before this Court. Both cases will have to be tried by the same Court in line with the judgment of the Apex Court in Nathilal referred supra.

Post this case under the caption 'for orders' on 05.09.2023.

3.Heard Mr.D.Rajagopal, learned counsel for the petitioners, Mr.A.Gopinath, learned Government Advocate (Crl.side) for R1 and Mr.M.Krishna Moorthy for R2.

4.The learned counsel for the petitioners submitted that even if the materials available in S.C.No.183 of 2021 is taken as it is, no offence has been made against the petitioners (A2 and A3). The learned counsel therefore submitted that the continuation of the criminal proceedings against the petitioners will result in abuse of process of Court.

5.In the previous order passed on 08.8.2023, this Court had taken into consideration the fact that there was a case and counter and both the cases ended in a final report and they are now tried by two different Courts. Insofar as S.C.No.157 of 2020, is concerned, already four witnesses have been examined.

Whereas in S.C.No.183 of 2021, the charges have been framed and the trial is yet to



commence. This is not the manner in which a case and counter can be tried and it goes against the judgement of the Apex Court and such procedure adopted goes against the judgment of the Apex Court in **Nathilal vs. State of U.P. [1990 SCC (Cri.) 638]**.

6.Taking into consideration the facts and circumstances of the case, this Court is inclined to withdraw the case in S.C.No.183 of 2021, pending before the Sessions Court, Gingee and transfer the same to the file of the Additional District Court, Tindivanam to be tried along with S.C.No.157 of 2020 in line with the judgment of the Apex Court in Nathilal and Others referred supra. The Sessions Court, Gingee shall immediately transfer the case files to the Additional District Court, Tindivanam not later than two weeks from the date of receipt of copy of this order. The Additional District Court, Tindivanam on receipt of the case file shall assign a new number and shall try both the cases in accordance with the judgment of the Apex Court in Nathilal referred supra.

7.The grounds that have been raised by the petitioners in this quash petition is kept open and it is left open to the petitioners to raise all the grounds before the Court below and the same will be considered on its own merits and in accordance with law. The learned counsel for the petitioners requested this Court to dispense with the appearance of the petitioners.

8.Taking into consideration, the facts and circumstances of the case, the



presence of the petitioners is dispensed with and they shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioners shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgement.

9.This criminal original petition is disposed of with a direction to the learned Additional District Court, Tindivanam to dispose of both the cases in S.C.No.157 of 2020 and S.C.No.183 of 2021, within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

05.09.2023

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

To

1. The Inspector of Police
Valathi Police Station
Villupuram District.
2. Assistant Sessions Court
Ginjee, Villupuram.
- 3.Additional District Court,
Tindivanam.
- 4.The Public Prosecutor
High Court of Madras.

N. ANAND VENKATESH,. J.

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