



CrI.O.P.(MD)No.9758 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.9758 of 2023

and

CrI.M.P.(MD) No.7818 of 2023

R.Palanisamy

... Petitioner

Vs.

1. The Inspector of Police,
Gujiliyamparai Police Station,
Gujiliyamparai, Dindigul District.

2. Murugesan
3. Ponnusamy
4. Chinasamy
5. Maruthaian
6. Jaggammal
7. Murugan
8. Thangaraj
9. Chinnadurai

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to issue direction to the learned Chief Judicial Magistrate Dindigul to commit the SC No.161/2017 to the learned Assistant Sessions Judge cum Subordinate Judge Vadasanthur and order to trial simultaneously along with S.C.No.76 of 2022 pending on the file of the learned Assistant Sessions Judge-cum-Subordinate Judge, Vadasanthur.



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For Petitioner : Mr.A.Tamilarasan

For R1 : Mr.SS.Madhavan
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure seeking for a direction to the learned Chief Judicial Magistrate, Dindigul, to commit SC No.161 of 2017 for simultaneous trial along with S.C.No.76 of 2022 to the learned Assistant Sessions Judge cum Subordinate Judge, Vedasanthur, pending on the file of the learned Assistant Sessions Judge cum Subordinate Judge, Vedasanthur.

2. The petitioner should have moved this application under Section 407 of Cr.P.C. instead of Section 482 of Cr.P.C., which is relevant provision seeking for transfer of criminal cases from one Court to another.

3. It is submitted by the learned counsel for the petitioner that there are disputes between the petitioner and other accused with one Suresh Kumar and another in respect of landed properties in S.F.Nos.



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815/2A, 817, 818, 819 and 820 of Aniyapoor Village, Palayam, Vedachanthur. The petitioner stated to have filed O.S.No.57 of 2010, on the other hand, his opponent one Suresh Kumar and another have filed O.S.No.74 of 2011 and both of them are stated to have been pending.

4. On 13.06.2010 at about 10:15 a.m., when the petitioner and his family members were attending the agricultural operations, one Late Karuppusamy and his family members obstructed the petitioner's family members from cultivating. A complaint was lodged against Late Karuppusamy/A1, Late Mukkan @ Pitchaimuthu/A3 and 9 others on the file of the first respondent police. Basing on the said complaint, the first respondent police have registered the FIR in Crime No.174 of 2010 and after completion of investigation, charge sheet has also been filed for the offences under Sections 147, 148, 325, 326, 323, 324, 307 and 149 of IPC and same was taken on file in S.C.No.161 of 2017 and pending on the file of learned Chief Judicial Magistrate, Dindigul.

5. In respect of same incident, Late Karuppusamy also lodged a complaint against the petitioner and others before the first respondent



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police, who has registered a case in Crime No.175 of 2010 for the offences under Sections 147, 148, 324, 506(ii) @ 147, 148, 326, 324, 323, 307 r/w. 149 of IPC. After conclusion of investigation, charge sheet has been filed and same was taken on file in S.C.No.76 of 2022 and pending on the file of learned Assistant Sessions Judge-cum-Subordinate Judge, Vedachanthur.

6. Both the cases are arising out of one and the same incident and since both of them are case and counter case sought for transferring of S.C.No.161 of 2012 to the Assistant Sessions Judge cum Subordinate Court, Vedasanthur, for trying simultaneously along with S.C.No.76 of 2022.

7. Learned Additional Public Prosecutor representing the first respondent police, after taking instruction from the concerned police, reported that the both the cases are pending for trial in two different Courts and that both of them are arising out of same incident.



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8. Law is very much settled in respect of trial of case and cross case which are arising out of a single incident. If two criminal cases are arising out of a same incident, both the cases can be tried simultaneously as joint trial cannot be conducted. The Court required to trial both the cases separately without getting influenced by the material and evidence in one case on the merits of the other case.

9. In *State of Andhra Pradesh represented by the Public Prosecutor v. Mittapalli Sudhakar Reddy*, decided on 17.02.2022 by the High Court of Andhra Pradesh, it is held as under:-

“26. In *Kondaiahgari Venkatappa vs. R.A.Nagireddy and others*¹⁰, the Combined High Court of Andhra Pradesh held that case and counter has to be tried and would be disposed of by one and the same Judge. It was also held that there is 2011 (5) SCC 324 1979 (1) ALT 189 CPK, J & Dr. KMR, J no bar to transfer Calendar Case to the Court of Sessions Judge to be tried along with Sessions Case.

27. From the judgments referred to above, it is clear that in case and counter/case and cross case, (a) both the cases should be tried together by the same Court irrespective of nature of offence involved. The rationale behind is to avoid conflicting judgments, which may lead



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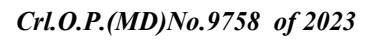
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to disastrous results at times. (b) both the cases should be tried simultaneously one after the other. (c) The learned Public Prosecutor in one case shall not act as a Public Prosecutor in the counter case. (d) The evidence in one case cannot be looked into in the counter case. [Hosakeri Ningappa and another], finally, (e) judgments in both the cases shall be pronounced on the same day.”

10. In view of the above judgment and considering the circumstances, this petition is allowed and SC No.161 of 2017 is transferred to the learned Assistant Sessions Judge cum Subordinate Judge, Vedasanthur to try along with S.C.No.76 of 2022. Learned Assistant Sessions Judge cum Subordinate Judge, Vedasanthur, is directed to try both the cases simultaneously without getting influenced by the materials and evidence in one case on the merits of the other case. Consequently, the connected miscellaneous petition is closed.

26.07.2023

NCC	:	Yes / No
Index	:	Yes / No
Internet	:	Yes / No
PKN		



1. The Inspector of Police,
Gujiliyamparai Police Station,
Gujiliyamparai, Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

PKN

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