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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 27/02/2023

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The Hon'ble Mr. Justice **G. ILANGO VAN**

Crl.OP(MD)Nos.20510 of 2022

and

Crl.RC(MD)Nos.1210 and 1236 of 2022

and

Crl.MP(MD)Nos.14231 and 15107 of 2022

(1)Crl.OP(MD)No.20510 of 2022:-

Thiruvaiya Rathinaraj : Petitioner/
De-fato Complainant

Vs.

1.State:
rep. By Inspector of Police,
Central Police Station,
Thoothukudi.
(Crime No.289 of 2016) : R1/Complainant

2.Venkatakodi
3.Venkatesh
4.Srinivas : Respondents 2 to 4/ A1 to A3

Prayer:- This Criminal Original Petition has been filed under section 407 of the Criminal Procedure Code, to transfer the case in SC No.159 of 2021 pending trial from the file of the Assistant Sessions and Chief Judicial Magistrate Court, Thoothukudi to any other nearby District and pass such other or further orders.



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For Petitioners : Mr.L.Shaji Chellan

For 1st Respondent : Mr.Sakthi Kumar
Government Advocate
(Criminal side)

For R2 and R3 : Mr.K.Ramakrishnan

For 4th Respondent : Mr.M.Manokumar

(2)Cr1.RC(MD)No.1210 of 2022:-

S.Thiravia Rathinaraj : Petitioner/Petitioner/
De-facto complainant

Vs.

The State,
Rep. by The Inspector of Police,
Central Police Station,
Thoothukudi.
(Crime No.289 of 2016)

: Respondent/Respondent/
Complainant

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records relating to the order, dated 24/11/2022 passed in Cr.M.P No.12620 of 2022 in SC No.159 of 2021 on the file of the learned Chief Judicial Magistrate, Thoothukudi and set aside the same and pass such further or order orders.

For petitioner : Mr.L.Shaji Chellan

For Respondent : Mr.Sakthi Kumar
Government Advocate
(Criminal side)

**(3) Cr1.RC(MD) No.1236 of 2022 :-**

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Venkatesh : Petitioner/2
Vs.

1.State rep. by
The Inspector of Police,
Thoothukudi Central Police Station,
Thoothukudi,
Crime No.289 of 2016 : 1st Respondent/Complainant

2.Thiraviya Rathinaraj : 2nd Respondent/
De-fcto Complainant

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records in Cr1.MP No.12620 of 2022 in SC No.159 of 2021, dated 24/11/2022 pending on the file of the Chief Judicial Magistrate, Thoothukudi and set aside the same and pass such other or further orders.

For petitioner : Mr.Ka.Ramakrishnan

For 1st Respondent : Mr.Sakthi Kumar
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.L.Shaji Chellan

COMMON ORDER

Cr1.OP(MD)No.20510 of 2022 has been filed seeking transfer of the case in SC No.159 of 2021 from the file of the Assistant Sessions and Chief Judicial Magistrate Court, Thoothuudi to any other nearby District, whereas Cr1.RC(MD)Nos.1210 and 1236 of 2022 have been filed against the order passed by the trial court by both the de-facto complainant and A2.

**2. The facts in brief:-**

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The de-fact complainant namely S.Thiravia Rathinaraj was serving as a Head Constable attached with Central Police Station, Tuticorin. On 25/03/2016, while he was discharging his official duty, the accused persons deterred from discharging his official duty, criminally intimidated and assaulted him. So he lodged a complaint and on the basis of the complaint, a case in Crime No.289 of 2016 was registered for the offences under sections 294(b), 323, 307, 353, 506(ii) IPC r/w 34 IPC and after completing the formalities of investigation, final report was filed before the trial court and it was taken on file as SC No.159 of 2021.

3.In order to escape from the criminal case, the accused persons instigated one Venkakodi to lodged a complaint and that was referred as false. Thereafter, a petition has been filed by the above said Venkadakodai against the police personnels before the Judicial Magistrate No.II, Tuticorin and in that petition, an order was passed to enquire the matter.



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4.Pursuant to the direction, enquiry was conducted and the complaint was referred as Mistake of Fact. The brother of the accused persons is a practising advocate before the Thoothukudi Sessions Court Campus. The accused persons threatened the petitioner's counsel to withdraw his appearance. So the petitioner filed an application under section 301 Cr.P.C in CrI.MP No.12620 of 2022 to assist the prosecution. That came to be allowed, on 24/11/2022. But however, the right to approach the Presiding Officer directly through his counsel in case of any urgency has been declined.

5.Aggrieved over the same, both the de-facto complainant and the 2nd accused filed two separate revisions. Seeking transfer of the case in SC No.159 of 2021, criminal original petition has been filed by the de-facto complainant.

6.Heard both sides.

7.Only a short point arises for consideration in these matters.



8.The de-facto complainant is the petitioner in Cr1.OP(MD)No.20510 of 2022 and in Cr1.RC(MD)No.1210 of 2022, whereas the 2nd accused is the petitioner in Cr1.RC(MD)No.1236 of 2022.

9.Now the trial is pending before the Chief Judicial Magistrate, Thoothukudi, in SC No.159 of 2021. The de-facto complainant namely Thiruviya Rathinaraj was about to appear before the Sessions Court for evidence. At that time, according to him, trouble was made by the 2nd accused, who is the petitioner in Cr1.RC(MD)No.1236 of 2022. His brother is a practising advocate in Thoothukudi courts. Because of the force and threat made by the brother of the above said person, the learned counsel, who is appearing on his behalf withdrew his vakalath. So, he was not in a position to prosecute the case effectively.

10.He filed a petition under section 301 Cr.P.C seeking permission of the court to engage a private advocate to assist the prosecution. That was allowed, but the rider was made, by which in case of any trouble with the learned Additional Public Prosecutor, who is



11. Now the grievance of the S. Thiraviam Rathinaraj is that such a condition cannot be imposed and the right of the victim to address the court directly in a particular circumstance has been recognized by law as expounded by the Hon'ble Supreme Court in the case of ***Rekha Murarka Vs. State of West Bengal and another (AIR 2020 SUPREME COURT 100)***).

12.Let me extract, the relevant portion as pointed out by the learned counsel,which would run thus:-

"12.5 However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds



that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under [Section 311](#) of the CrPC or [Section 165](#) of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in [Smt. Uma Saha v. State of Tripura](#) (supra) that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself."

13. When this was pointed out by the learned counsel appearing for the de-facto complainant namely S. Thiravia Rathinaraj, the learned counsel appearing for the accused/Venkatesh would submit that absolutely, there was no such situation and the order is perfectly valid, which refers the issue between the de-facto complainant S. Thiravia Rathinaraj and the Public Prosecutor and he can approach only the higher officials of the Public Prosecutor and not the court.



14. Now whatever it may be, since the Hon'ble Supreme Court in the above cited judgment has clarified the role of the Advocate to be appointed by the victim and their right to the extent, a direction may be issued to the concerned court to follow the guidelines in the judgment cited above.

15. The criminal revision preferred by the 2nd accused Venkatesh is concerned, absolutely, I find no reason to interfere into the order of the trial court. His grievance is only with regard to the transfer of the case. So far Thiruviya Rathinaraj is working as Head Constable in the police station, which is situated within the premises of the Sessions Court. According to him, no trouble will be made to him, while giving evidence by any one. In fact, no such trouble can also be made by any one. The above said person must give evidence without any fear of anyone. That will be taken care of by the police. But however, the learned counsel appearing for the above said person would submit that since the learned counsel, who is appearing for him withdrew his vakalat, there is no other alternative available to him. I am unable to accept this line of argument for the reason that he is



the Head Constable working in the Police Department. His fear that he can be threatened by the Advocate, who is the brother of the above said Venkatesh is very remote to be accepted.

16. Even though number of judgments cited by the learned counsels, I am not going into these aspect, since only simple issue is arisen in this issue.

17. So the revision petitions namely Cr1.RC(MD)Nos. 1210 and 1236 of 2022 are **disposed of** by giving a direction to the trial court to follow the procedures set out in the judgment cited above. In respect of Cr1.OP(MD)No.20510 of 2022 for transfer, it stands **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

27/02/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Chief Judicial Magistrate,
Thoothukudi.
- 2.The Inspector of Police,
Central Police Station,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G . ILANGO VAN , J

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Cr1.OP (MD) Nos.20510 of 2022
and
Cr1.RC (MD) Nos.1210 and 1236 of 2022

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