



CrI.O.P.(MD)No.20209 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **07.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

CrI.O.P.(MD) No.20209 of 2023

Nelson

... Petitioner

Vs.

1.The Inspector of Police,
Puthukadai Police Station,
Represented by Public Prosecutor,
Nagercoil, Kanyakumari District.
(Crime No.243 of 2005)

2.Chandra Mohan David

3.Justus Babu

4.Jeba Mohan David

5.Rajan

6.Jebasingh

7.Darwin Rozer @ Dolly,

8.Brucely

9.Raju @ Ramakrishnan

10.Prasad

11.Shajan

12.Albert



13.Alex @ Edison

14.Shaji (Died)

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to transfer the case in S.C.No.65 of 2006 on the files of the learned Sub Court, Kuzhithurai, to any other equivalent competent Court at Nagercoil in Kanyakumari District.

For Petitioner	: Mr.SC.Herold Singh
For R1	: Mr.M.Vaikkam Karunanithi Government Advocate (Crl.side)
For R3 to R8 and R10 to R13	: Mr.V.Kathir Velu, Senior Counsel, for Mr.K.Jeyamohan
For R2 and R9	: Mr.G.Cenil

ORDER

This Criminal Original Petition is filed to transfer the case in S.C.No.65 of 2006 on the files of the learned Sub Court, Kuzhithurai, to any other equivalent competent Court at Nagercoil in Kanyakumari District.

2. P.W.3 filed a petition before the trial Court. The accused are facing charges under Sections 147, 148, 341, 294(b), 307 r/w. 149 and 506(ii) IPC. During the course of trial process, some sort of observation



was made by the concerned trial Judge against conduct, antecedent and the manner of giving evidence by P.W.20. That was objected by this petitioner by filing complaint, stating that the Presiding Officer has prejudice against the prosecution. But the complaint given by some of the parties was not entertained by Principal District Judge, Nagercoil. After that the petition has been filed, making the very same allegations. So, report was called for from the trial Court, for what conditions the above said observation was made by him. A detailed report is submitted by him, which contain the following reasons:

“ This Court issued summon to P.W.20 and he appeared. When he appeared I asked any threat is existing? and he said no threat is existing. Thereafter only I recorded his evidence. During the cross examination the defence counsels were questioned about his character. The accused taken defence that to prolong the case P.W.20 purposely evade from summon and not appeared. In cross each and every questions, he was not answered directly. His body language reflects that he was telling lies in regard to the material facts of the case. Even warning to him to answer the question directly, he was not answered directly.



WEB COPY



I further submit that, in these circumstances, I constrained to made such kind of observation in his evidence. P.W.3 got stab wound on his lower left chest. But in M.O.1, P.W.3's shirt no damage on the said part. In material objects (dresses of the injured) there are stains. But no blood stains smell in the material objects and material objects has not been sent for Forensic test. These aspect questioned during cross examination. How, when the injured got injuries, which hospitals, they were taken treatment, when they took hospital, when informed to the Police asked during cross and he was not answered directly and properly. In these circumstances the said observation was made. To prolong the proceedings, these kinds of petitions were filed.

I humbly submit that, I have no personal interest in this case and I have no intention to cause prejudice to the interest of the victims. Hence, I request the Hon'ble Judge to accept my explanation with your kindness.



WEB COPY

3. The learned Senior Counsel appearing for some of the accused would submit that no doubt that the observation that was made by the trial Judge may not be appropriate, during the trial process. It is also submitted that direction be issued to that trial Judge to pronounce the judgment without being influenced by his own observation in the deposition, since some other injured witnesses are examined.

4. He would further submit that P.W.20's antecedent was taken into account by the Presiding Judge. But again, I make myself refrain from the making any observation against the antecedent of the P.W.20. The evidentiary value can be looked into only at that time of hearing argument and pronounce the judgment, not before that.

5. Similarly, one of the other accused also submitted that P.W.20 is not a reliable person. Rightly the above said observation was made. But again the above said observation ought to have been avoided by the concerned trial Judge.

6. In view of the above said reason and reply stated by the concerned trial Judge, it may not be proper on part of this Court to transfer the case for the purpose of pronouncing the judgment to some



CrI.O.P.(MD)No.20209 of 2023

other judge. Hence, this petition deserves to be dismissed and accordingly dismissed. Of course, there shall be direction to the concerned trial Judge to pronounce the judgment, without being influenced by his own observation.

07.12.2023

NCC :Yes/No

Index :Yes/No

Internet:Yes/No

Indu

To

- 1.The Inspector of Police,
S.S.Colony Police Station,
Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.O.P.(MD)No.20209 of 2023

G.ILANGOVAN. J.

Indu

CrI.O.P.(MD) No.20209 of 2023

07.12.2023