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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.3884 of 2024
and CRL.M.P No.2685 of 2024

1.V.Suresh

2.R.Selvam

...Petitioners

Vs.

1.State Rep. by: The Deputy Superintendent of Police,
Muthupettai Sub Division,
Muthupettai,
Thiruvarur District.
(Crime No.132 of 2018)

2.The Inspector of Police,
Edaiyur Police Station,
Edaiyur.
Thiruvarur District.

3.A.Ramesh

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to transfer the case in S.C.No.44 of 2022 on the file of the Chief Judicial Magistrate, Thiruvarur and along with the Spl.S.C.No.67 of 2019 on the file of the 1st Additional District Judge (PCR Cases), Thanjavur.



For Petitioner : Mr.R.Muruga Bharathi

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor
for R1 and R2

ORDER

This criminal original petition has been filed seeking for transfer of the case pending in S.C.No.44 of 2022 on the file of the Chief Judicial Magistrate, Thiruvarur to the file of the 1st Additional District Judge (PCR Cases), Thanjavur to be tried along with Spl.S.C.No.67 of 2019.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The case and counter was registered in Crime Nos.131 of 2018 and 132 of 2018. The investigation in Crime No.131 of 2018 resulted in the filing of a final report before the learned Chief Judicial Magistrate, Thiruvarur and it was taken on file in S.C.No.44 of 2022. Insofar as Crime No.132 of 2018 is concerned, the same resulted in filing of the final report, which was taken on file in Spl.S.C.No.67 of 2019 on the file of the 1st Additional District Judge (PCR Cases), Thanjavur. Since, both these cases involves a case and counter,



the present petition has been filed before this Court to transfer the case pending in S.C.No.44 of 2022 to the file of the Chief Judicial Magistrate, Thiruvarur to be tried along with Spl.S.C.No.67 of 2019.

4. In the considered view of this Court, a case and counter has to be tried by the same Court. The manner in which the trial has to be conducted has been dealt with by the Apex Court in ***Nathi Lal and others vs. State of Uttarpradesh and another*** reported in ***1990 (Supp) SCC 145***. This judgment was subsequently reiterated by this Court in ***Ganesan and another Vs. State, rep. by the Inspector of Police and another*** reported in ***2011 5 CTC 747*** and the relevant portions are extracted hereunder:

32. The said Judgment of the Hon'ble Supreme Court relates to counter cases. The Hon'ble Supreme Court has held that both the cases, which are counter cases relating to the same occurrence, should be tried by the same judge in the following manner:

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the



arguments but he must reserve the Judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the Judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate Judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the Judgments must be pronounced by the same learned Judge one after the other.”

33. From the above, it is crystal clear that fair trial as guaranteed under Article 21 of the Constitution of India should be afforded to. In simple terms, the evidence, both oral and documentary, let in one case is not evidence in the other case and, therefore, the same cannot be considered for any purpose in the other case. Similarly, as laid down by the Hon'ble Supreme Court, there cannot be a common Judgment delivered in two or more cases. Even in respect of cross cases arising out of a single



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occurrence in respect of each case there has to be a separate Judgment. But, unfortunately, in the case on hand, the Trial Court has not followed the said procedure. As I have already stated, the Trial Court has recorded the evidence in one case and substituted the same in the other case. This procedure is illegal. Thereafter, the Trial Court has delivered a common Judgment considering the evidence in common in respect of the other cases also. Rendering of a common Judgment that too considering the evidences in common itself is illegal. For these reasons, I have no hesitation to hold that the common Judgment delivered in all the four cases is vitiated. In these circumstances, this Court cannot again consider the evidence in common and render a common Judgment solely because all these Appeals are against the common Judgment, as the same would become another illegality. Therefore, these Appeals are disposed of on considering the evidence, if any, available on record in C.C. No. 9 of 2000 alone.

5. In view of the above, the case and counter cannot be tried by two different Courts and it has to be tried only before the same Court. However, the procedure has to be followed as prescribed in **Nathi Lal** case referred *supra*. In view of the same, the case in S.C.No.44 of 2022 on the file of the Chief Judicial Magistrate, Thiruvarur is withdrawn and transferred to the file of the 1st Additional District Judge (PCR Cases), Thanjavur. The learned 1st Additional District Judge (PCR Cases), Thanjavur, shall try these cases in line with the



procedure prescribed in *Nathi Lal* case referred *supra* and the judgment of this

Court in *Ganesan and another Vs. State, rep. by the Inspector of Police and another*. The proceedings shall be completed as expeditiously as possible. The case file shall be transferred to the file of the 1st Additional District Judge (PCR Cases), Thanjavur, within a period of four weeks from the date of receipt of copy of this order.

6.This criminal original petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed.

20.02.2024

Index: Yes/No

Speaking order/Non-speaking Order

Neutral Citation: Yes/No

ssr

To

1.The Chief Judicial Magistrate, Thiruvarur.

2.The 1st Additional District Judge (PCR Cases), Thanjavur.

3.The Deputy Superintendent of Police,
Muthupettai Sub Division,
Muthupettai,
Thiruvarur District.



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4. The Inspector of Police,
Edaiyur Police Station,
Edaiyur.
Thiruvavarur District.

5. The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

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