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Crl.OP.No.18682 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2024

Pronounced on : 27.09.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.OP.No.18682 of 2024

J.Paul Davis

.... Petitioner / Accused

Vs

The State
Rep by Inspector of Police
Vigilance and Anti-Corruption
CC-1, Chennai.
/Complainant

.... Respondent

Prayer : Criminal Original Petition filed under Section 447 r/w. 528 of BNSS praying to withdraw Special Case No.07 of 2015 on the file of the learned Chief Judicial Magistrate, Chengalpet and transfer it to any other court competent to try this in any other nearest district.

For Appellant : Mr.M.Ravi
for Mr.P.Aravindan

For Respondent : Dr.C.E.Pratap
Government Advocate [Crl. Side]



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ORDER

This petition is filed for transfer of Special Case No.07 of 2015 from the file of the learned Chief Judicial Magistrate, Chengalpet.

2.1 The petitioner herein is arrayed as the sole accused in the case, and he seeks transfer of the case from the Court of the learned Chief Judicial Magistrate, Chengalpet, to some other Court on the ground that the learned Chief Judicial Magistrate, Chengalpet has taken a position not to grant time to the petitioner on a day when the case was posted for arguments even though the court was informed that the petitioner's counsel had undergone ophthalmologic surgery. The petition makes the following allegations:

- a) On 22.07.2024, both the accused and his counsel were absent. The accused was on an unavoidable official duty and the counsel Thiru.Kanagaraj was not able to attend the court due to his eye operation.
- b) On the said date, one Mr.Rahothaman, junior to Mr.Kanagaraj, representing the case of the accused, informed the Magistrate that his senior had undergone eye operation and requested the matter to



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be posted on a later date. However, the said request was not conceded to by the Magistrate.

- c) The matter was posted again the next day, i.e on 23.07.2024, and the accused appeared before the Magistrate and recited the same pleas as were stated the day before. The Magistrate asked the accused to change his advocate and posted the matter on 25.07.2024.
- d) On 25.07.2024, the accused attempted to file a petition u/s. 348 of BNSS to recall PW2 who was cross-examined by his counsel on 16.10.2019. The Magistrate did not receive the said petition and asked the accused to appoint another counsel either by himself or by seeking Legal Aid. She warned him that if he failed to do so, she would pass her usual orders.

2.2 The petitioner appears to have entertained an idea that the learned trial Judge possibly has entertained a prejudice against the petitioner. In his additional affidavit he alleged that both the present CrI.O.P. filed before this Court and Spl.C.C.No.7 of 2015 on the file of Chief Judicial Magistrate, Court, Chengalpet came up for hearing on the same day i.e., 05.08.2024. On that day (i.e.,05.08.2024), when the petitioner had brought it to the notice of



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the learned Chief Judicial Magistrate about the filing of Crl.O.P. before this Court and that it was subsequently adjourned to 12.08.2024, the learned Magistrate had expressed her anguish in filing the present Crl.O.P. and posted the case in Spl.C.C. No.7 of 2015 to 13.08.2024. Hence the petitioner was constrained to engage another counsel to represent him, but such other counsel who was so engaged also need time to prepare.

3. The learned Chief Judicial Magistrate, Chengalpet, was required to make available the entire status of this case, and the same was made available. The essential points it discloses are:

- a) That on 22.07.2024, the petitioner did not inform the Court that his counsel had underwent a ophthalmologic surgery. He had merely filed a petition under Section 355 BNSS (equivalent to Section 317 Cr.P.C) stating that the petitioner was not present in the Court due to his ill health. Therefore, the case was posted to next day i.e., 23.07.2024. Since the case has been pending arguments from 18.06.2024, it was taken up for final arguments for the defence, since the prosecution had filed its written arguments even on 18.06.2024.
- b) Whenever the Court posted the case for arguments, the petitioner



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would come out with one application or the other. Indeed on 11.06.2024, he came up with an application to recall prosecution witnesses on 18.06.2024, and the same was allowed by the Court;

- c) It is in this circumstances on 23.07.2024, the petitioner had informed the Court that he had engaged another counsel on his behalf. Therefore, the Court adjourned the matter to 25.07.2024, but on 25.07.2024, the petitioner had appeared in the Court and informed that he had not engaged any counsel yet, but still sought for an adjournment.
- d) On 25.07.2024, the petitioner did not file any petition under Section 348 of BNSS to recall P.W.2. Indeed, P.W.2 had turned hostile during trial.
- e) The case has been pending for more than nine years and there is a necessity to ensure that the case is disposed of at the earliest.

4.1 The narration of facts as disclosed in the status report of the learned Chief Judicial Magistrate disappoints this Court. It might be that on 22.07.2024, the counsel for the petitioner before the trial Court might have undergone a ophthalmology surgery but his overall conduct in participating in the trial does not impress this Court.



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4.2 Now it is more than 45 days since 22.07.2024, and the counsel on record for the petitioner before the trial Court might have fully recovered from the effects of ophthalmologic surgery. In case even if he had engaged another counsel, still the newly appointed counsel required to be given reasonable time to go through the papers.

4.3 It is unfortunate that the petitioner shifts the blame on the Court when he himself is not beyond blames in participating in the trial. However, every case has to be decided on its merit and the leaned trial Judge is mature enough given her experience as a judicial officer, not to build prejudices against the accused person on the basis of the presumption of the petitioner or his counsel (which the petitioner had disclosed in the petition) and not to reflect it in her judgment.

5. In conclusion, this Court does not find merit and the petition is dismissed accordingly.

27.09.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order



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To:

1. The Chief Judicial Magistrate
Chengalpet.
2. The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery order
in Crl.OP.No.18682 of 2024

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