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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 19.01.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**CRL.O.P Nos.21786 & 29205 of 2023**  
**and Crl.M.P.No.15126 of 2023**

**Crl.O.P.No.21786 of 2023**

P.Ramamurthy

...Petitioner

Vs.

1.The State Rep. by,  
The Inspector of Police,  
Cheyur Police Station,  
Tiruppur District.

2.The Deputy Superintendent of Police,  
Avinashi Sub-Division,  
Tiruppur District.

3.Selvan

4.Periarasu @ Perarasu

5.Ravi

6.Dhandapani

7.Ramani Ganesan

...Respondents

**PRAYER** : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to withdraw the case in Special S.C.No.4 of 2014 from the



Court of Special Judge (Judicial Magistrate), Tiruppur District and transfer it to any other Special Court (Constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989) in the neighboring districts to conduct and complete the trial.

For Petitioner : Mr.S.Sathia Chandran

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

**Crl.O.P.No.29205 of 2023**

P.Ramamurthy

...Petitioner

Vs.

The Deputy Superintendent of Police,  
Avinashi Sub-Division,  
Tiruppur District.

...Respondent

**PRAYER** : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 19.12.2023 made in Cr.M.P.No.08 of 2023 in Special Sessions Case No.4 of 2014 by the learned Principal Sessions Judge, Tiruppur and consequently, direct the recall of NBW issued against the petitioner on 19.12.2023.

For Petitioner : Mr.S.Sathia Chandran

For Respondent : Mr.A.Damodaran  
Additional Public Prosecutor



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## **ORDER**

The issue involved in both these criminal original petitions are interconnected and hence, they are taken up together, heard and disposed of through this common order.

2.Crl.O.P.No.21786 of 2023 has been filed by the petitioner (A5) seeking for the transfer of the case pending on the file of the learned Special Judge, Principal District & Sessions Judge, Tiruppur in S.C.No.4 of 2014 to any of the Special Court in the neighbouring District.

3.Crl.O.P.No.29205 of 2023 has been filed challenging the order passed in Cr.M.P.No.08 of 2023 in Spl.S.C.No.4 of 2014, dated 19.12.2023, dismissing the application filed by the petitioner under Section 317 of Cr.P.C., to dispense with his appearance and issuing non-bailable warrant against the petitioner.

4.Heard Mr.S.Sathia Chandran, learned counsel appearing on behalf of the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing on behalf of the respondent police.



5.The petitioner along with five others are facing trial before the Special Court for offence under Section 417, 120(b), 147, 365, 323 and 506(ii) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 read with Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6.The case of the prosecution is that A1 had developed an intimacy with one Gowri and she was sexually abused. Thereafter, he eloped along with Gowri and they were also married. After the marriage, A2 to A6 joined together to separate A1 from the said Gowri. A1 gave a complaint before the police station and it was enquired in CSR No.40 of 2009. On 26.03.2009 at about 8.30 p.m., A2 to A6 are said to have taken the witness Karthik asking him to identify the residence of the said Gowri. She was also abused in filthy language by mentioning her caste. Hence, according to the prosecution, A4 to A6 have aided A2 and A3 and committed offence.

7.In the original final report that was filed before the learned Judicial Magistrate, Avinashi, the petitioner was not made as an accused. Thereafter, an amended charge sheet was filed and the petitioner was added as



accused (A5). At that time, the petitioner was working as the Head Constable of the Cheyur Police Station.

8.The grievance of the petitioner is that he had taken action while performing of his public duty and whereas, he was roped in the case due to some vested interest. The trial commenced and nearly 14 prosecution witnesses were examined. According to the petitioner, no overt act was attributed against the petitioner.

9.While so, on 07.08.2023, when the petitioner appeared before the Trial Court, the Trial Judge is said to have addressed the petitioner and other accused persons that few documents were not produced and that they have been destroyed. They were also directed to settle the matter with the defacto complainant. The petitioner was not willing to settle the dispute.

10.The departmental action was also initiated against the petitioner for the same incident and he was transferred on that ground. A punishment of compulsory retirement was imposed against the petitioner which was put to challenge and subsequently, the petitioner was reinstated into service. Hence,



the petitioner informed the Trial Judge that he has been reinstated into service and that there are no departmental proceedings pending against him.

11.The petitioner has made various allegations against the Trial Judge in the petition filed in CrI.O.P.No.21786 of 2023. The petitioner has also given a complaint against the learned Trial Judge before the Registrar General of the High Court. On receipt of the same, the petitioner was directed to file his sworn affidavit and the petitioner has also filed a sworn affidavit. Supporting affidavits have also been filed by the other accused persons. It is under these circumstances, the petitioner has sought for the transfer of the case to some other Court in the neighbouring District. Since according to the petitioner, the petitioner has a reasonable apprehension that he will not have a fair and impartial hearing before the Trial Court.

12.When the transfer application was pending in CrI.O.P.No.21786 of 2023 before this Court and the petitioner filed an application under Section 317 of Cr.P.C., to dispense with his appearance, the same was also rejected and non-bailable warrant has been issued against the petitioner which has been put to challenge in CrI.O.P.No.29205 of 2023.



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13.The grounds for transferring a case from one Court to another was dealt with by this Court in Crl.O.P.No.28715 of 2023 in Rajesh Das, I.P.S., vs. State Rep. by the Superintendent of Police-II, Crime Branch CID, Chennai – 600 008 and while passing the orders on 09.01.2024, it was held as follows:

*19.This Court has carefully gone through the judgments relied upon by the learned Senior Counsel appearing on behalf of the petitioner. The common thread that runs through all these judgments is that such transfer can be ordered if there is a reasonable apprehension that the accused person will not have a fair and impartial hearing of the appeal. The principle that justice should not only be done but it should be seen to be done, must also be kept in mind by the Court while dealing with the transfer petition. While undertaking this exercise, the Court must look at the grounds raised for transfer from the stand point of view of a reasonable man who would in the circumstances infer that there is a real likelihood of bias. The threshold of such apprehension is higher when it comes to a criminal case, since the consequences are serious. It is not necessary for the Court to decided the question of transfer merely on the ground that there has been any real bias in the mind of the Judge. The Court can take into consideration the*



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*incidents that had happened in the Court which creates in the mind of an accused a reasonable apprehension that he will not get a fair and impartial hearing in the case. It must also be borne in mind that a mere zest shown by the judicial officer in expediting the hearing, cannot be a ground to attribute any motive and transfer the case from the file of that Judge.*

14. While dealing with the transfer application, it is the duty of the Court to see if the grounds that have been raised for transfer from the stand point of view of a reasonable man would in the circumstances will be able to infer that there is a real likelihood of bias. This threshold is also higher when it comes to a criminal case, since the consequences are serious.

15. This Court called for a report from the Trial Court. On going through the report, it is seen that already 14 witnesses have been examined and the Court below ordered for the production of some of the missing records and two more additional witnesses are going to be examined on the side of the prosecution.

16. The petitioner has already given a complaint against the Trial Judge to the Registrar General of the High Court and he has also filed his sworn



affidavit of that effect. In view of the same, the petitioner apprehends that he will not have a fair and impartial hearing before the Trial Court. This apprehension gets fortified since the petitioner has already given a complaint against the Trial Judge before this Court. Hence, even if this Court does not find that there is any real bias in the mind of the Trial Judge, from the stand point of view of a reasonable man, this Court finds that the circumstances of this case makes this Court to infer that there is a likelihood of bias.

17. In the light of the above discussion, this Court is inclined to transfer this case from the file of the Special Court, Tiruppur to the file of the Special Court, Coimbatore.

18. There shall be a direction to the learned Special Judge, Principal District and Sessions Judge, Tiruppur to immediately transfer the entire records in Spl.S.C.No.4 of 2014 to the file of the Special Court for Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act at Coimbatore. This process shall be completed within a period of two weeks from the date of receipt of copy of this order. The Special Court, Coimbatore on receipt of the case records shall assign a new number to the case and shall continue from



the stage on which the trial is pending. Summons shall be issued to the accused persons and date shall be fixed for the continuation of the trial. Upon transfer, it is left open to the petitioner to file an application for recalling the non-bailable warrant issued against the petitioner and order shall be passed in that petition on the same day. The learned Special Judge for Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Coimbatore shall complete the proceedings, within a period of three months thereafter.

19. Both the criminal original petitions are disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

**19.01.2024**

Index: Yes/No  
Speaking order/Non-speaking Order  
Neutral Citation: Yes/No  
SSR

To

1. The State Rep. by,  
The Inspector of Police,  
Cheyur Police Station,  
Tiruppur District.

2. The Deputy Superintendent of Police,



Avinashi Sub-Division,  
Tiruppur District.

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3. The Public Prosecutor,  
High Court, Madras.



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**N.ANAND VENKATESH, J**

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