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Crl.O.P. No. 28301 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

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THE HON'BLE MR. JUSTICE N. ANAND VENKATESH

CRL.O.P. No. 28301 of 2023

&

CRL.M.P.No. 19643 of 2023

Sudhakar

..Petitioner

Vs.

State represented by
The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.

..Respondent

Prayer: Criminal Original Petition filed under Section 407 of Criminal Procedure Code to withdraw and transfer the case in S.C. no. 114 of 2021 on the file of I Additional Sessions Court, Cuddalore to Principal District and Sessions Court, Villupuram.

For Petitioner :: Mr.R. Sankarasubbu

For Respondent :: Mr.A. Gopinath
Govt. Advocate (Crl.Side)



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ORDER

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This petition has been filed seeking for transfer of the case in SC No.114 of 2021 pending on the file of the First Additional Sessions Court, Cuddalore to the Principal District and Sessions Court, Villupuram.

2. When the matter came up for hearing on 20.12.2023, this Court directed the learned First Additional Sessions Judge, Cuddalore, to file a status report with respect to the pending cases in SC No.114 of 2021 and 81 of 2021. Pursuant to this order, a report was sent by the learned First Additional Sessions Judge, dated 26.12.2023. The relevant portions are extracted hereunder :-

I submit that based on the complaint of one Gnanavel S/o.Shanmugam a case in Nellikuppam P.S. Crime No.19 of 2019 was registered under Section 147, 148, 294(b), 452, 324, 302 IPC and 3, 4 (b) of Explosive substances Act, 1908. On completion of investigation, Charge sheet was filed as against subash and 15 others for the offences under Section 14, 148, 294(b), 452, 324, 302, 506(ii), 149, 323 IPC and 3, 4(b) of



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Explosives Substances Act, 1908. The said case was taken on file as SC No.114 of 2021.

Then the Accused No.1/Subash in the aforesaid case was murdered on 19.07.2020. Based on the complaint of one Sudhakar S/o.Subrayan,a case in Nellikuppam P.S.Crime No.1194 of 2020 was registered under Sections 17, 148, 294(b), 324 and 302 of IPC. After completion of investigation, the investigation officer filed charge sheet under Section 147, 148, 294(b), 324, 302 IPC. After completion of investigation, the Investigation officer filed Charge sheet under Section 147, 148, 294(b), 302, 120B, 149 IPC as against Thamodharan and 11 others. The said case was taken on file SC No.81 of 2021.

I submit that in both cases trial proceedings were issued for examination of witnesses.

In S.C.No. 81 of 2021, so for PW1 to PW5 were examined in Chief and the matter stood for Cross Examination from the side of Accused



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In S.C.No. 114 of 2021, it was reported that LW4 was died.

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The matter stands for examination of LW1 to LW3 and LW5.

I humbly submit that that some of the witnesses in S.C.No.81/2021 are Accused in S.C.No.114/2021. During the course of hearing, the learned Additional Public Prosecutor Tr.S.P.Kathirvelavan, submits that the cases in S.C.No.81/2021 and S.C.No.114/2021 are Reciprocal in nature and some of the accused persons are witness in the Reciprocal case. To ensure the fair trial, the Additional Public Prosecutor requested the Court to address this issue with District Collector, Cuddalore for appointment of another Prosecutor in any one of the Sessions Case. The request of the Additional Public Prosecutor found as bonafide, fair and reasonable. The Court is also having bounden duty to ensure fair and unbiased trial to the litigants.

In this regard, I have addressed a Letter vide Ref. No.4 cited,



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to the District Collector, Cuddalore District, to appoint a Prosecutor to conduct any one of the Reciprocal cases covered in S.C.No.81 of 2021 un S.C.No.114 of 2021, apart from Thiru S.P.Kathirvelan, who is presently officiating as Additional Public Prosecutor, I Additional District Court, Cuddalore.

I submit that the Cases in S.C.No.114 of 2021 and S.C.No.81 of 2021 are independent in nature, not Case in Counter, but Cases arising out reciprocal incidents. Both the Sessions Cases are independent of each other. With great respect, I am of the opinion that the Sessions Cases under discussion are not similar to the facts discussed in dictum of Hon'ble Apex Court in Sudhir & Ors. Vs. State Of M.P. [(2001) 2 SCC 688,] & Nathi Lal & ors. Vs. State of U.P. & anr. [1990 (Supp) SCC 145]. Thus, I have decided to conduct the trial of those two Sessions Case, independently. Some of the Accused in SC No.81 of 2021 are Witnesses in S.C.No. 114 of 2021. In this regard, to ensure fair and impartial Trial, I have addressed the



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District Collector, Cuddalore, for the appointment of an another Prosecutor, to conduct any one of the Case. The said request is still pending with District Collector, Cuddalore District.

3. When the matter came up for hearing on 18.01.2024, the learned counsel for the petitioner submitted that one of the main ground that has been raised by the petitioner seeking for transfer is that there is a threat perspective and fair trial cannot be conducted before the Court below. In the light of this submission, this Court directed the learned Government Advocate to take instructions on the complaint that was given by the petitioner in this regard.

4. When the matter was taken up for hearing today, it was brought to the notice of this Court that based on the complaint given by one Kannadasan, an FIR has been registered in Crime No.543 of 2023 dated 06.12.2023 by the Nellikuppam Police Station, Cuddalore. On going through the FIR, it is seen that there is threat exerted on the witnesses, who



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are appearing in SC No.87 of 2023, by the named accused persons.

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5. In the light of the above development, learned counsel for the petitioner submitted that the apprehension raised by the petitioner is now well founded due to the FIR registered by the Police. Therefore, the learned counsel requested this Court to transfer the proceedings in SC No.114 of 2021 to the District and Sessions Court, Villupuram.

6. It is quite apparent from the report submitted by the learned First Additional District and Sessions Judge, Cuddalore, that the cases are arising out of reciprocal incidents. Hence, even though a joint trial cannot be conducted, both the cases must be heard only by the same judge and it cannot be heard by two different judges. This is in view of the fact that the decision in one case will have an impact on the other case and both the cases can be properly understood and appreciated only if it is tried by the same Court. Therefore, if this Court is to transfer SC No.114 of 2021, the other case in SC No.81 of 2021 must also be transferred. This cannot be done without notice to the accused persons there in.



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7. In view of the above, there shall be a direction to the respondent police to take steps to file an application for cancellation of bail against the accused persons, who are now causing threat to the witnesses. This step will effectively take care of the apprehension raised by the petitioner. Ultimately, if the Court below finds that some of the accused persons are involved in causing threat to the witnesses, to ensure fair trial, the Court has to necessarily cancel the bail of the concerned accused persons.

8. The above safeguard given by this Court will sufficiently take care of the apprehension raised by the petitioner.

9. There shall be also be a direction to the District Collector, Cuddalore, to immediately appoint another Public Prosecutor to conduct the case in SC No.114 of 2021. The Court below shall take all efforts to complete both the proceedings as expeditiously as possible.



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10. This Criminal Original Petition is disposed of with the above directions. Consequently, the connected miscellaneous petition is closed.

05.02.2024

Index : Yes / No

Internet : Yes / No

Speaking Order : Yes/No

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To

1. The Principal District and Sessions Court, Villupuram.
2. The First Additional District and Sessions Judge, Cuddalore,
3. The District Collector, Cuddalore,
4. The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.
5. The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH,J.

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