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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 05.01.2024

Pronouncing orders on : 09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28715 of 2023
and Crl.M.P.No.19965 of 2023

Shri.Rajesh Das, I.P.S.,

...Petitioner

vs.

State Rep. By
The Superintendent of Police-II,
Crime Branch CID,
Pantheon Road,
Egmore,
Chennai – 600 008.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to withdraw and transfer the Criminal Appeal in C.A.No.59 of 2023 from the file of the Principal District Judge, Villupuram to any other Sessions Court in any other District.

For Petitioner : Mr.V.Prakash
Senior Counsel for
Mr.M.Vijaya Mehanath

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

**ORDER**

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This criminal original petition has been filed seeking for the withdrawal and transfer of the case in CrI.A.No.59 of 2023 from the file of the learned Principal District Judge, Villupuram to any other Sessions Court within the same Sessions Division.

2.The petitioner faced trial in C.C.No.231 of 2021 for the offence under Section 354A(2) of IPC, Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 341 read with 109 of IPC. The learned Chief Judicial Magistrate at Villupuram by judgment dated 16.06.2023 convicted the petitioner for all the above offences and appropriate sentence was also imposed against the petitioner.

3.The petitioner aggrieved by the judgment of the Trial Court filed an appeal before the learned Principal District Judge, Villupuram and the same was taken on file in C.A.No.59 of 2023.

4.The petitioner has filed this transfer petition on the ground that he will not have a fair and impartial hearing of the appeal and that he has a reasonable apprehension that justice will not be done to him.



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5.The learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner is not alleging or casting any aspersions or motive on the Appellate Judge and that this transfer petition has been filed only on the ground that he has entertained a reasonable apprehension in his mind that he will not have a fair and impartial hearing. In order to substantiate such an apprehension entertained by the petitioner, the learned Senior Counsel brought to the notice of this Court certain events that had taken place in the course of the proceedings.

6.The learned Senior Counsel submitted that there is already an adverse publicity made against the petitioner and that itself is going against the petitioner in effectively defending himself in this case. It was further contended that the petitioner was suffering from heart ailments and he had to take post operative care. When the supporting medical records were filed before the Court below while seeking for an adjournment of the final hearing of the case, it was brushed aside by the Court below and the Court below went to the extent of fixing a date for passing judgment even without hearing the appellant. This order dated 07.10.2023 was put to challenge before this

Court in CrI.R.C.No.1856 of 2023 and this case was disposed of by an order



dated 02.11.2023, by issuing certain directions to the petitioner and the lower Appellate Court. The time limit that was fixed was subsequently modified by an order dated 20.11.2023. Since the petitioner found that the lower Appellate Court was proceeding further with the appeal in a hurried manner without affording sufficient opportunity to the petitioner, a transfer petition was moved before this Court. This was brought to the notice of the lower Appellate Court and in spite of the same, the lower Appellate Court was insisting for arguing the main appeal. Once again, the lower Appellate Court fixed a date for pronouncing the judgment without hearing the side of the petitioner. All these facts, cumulatively have led the petitioner to entertain a reasonable apprehension that he will not get fair justice before the learned Principal Sessions Judge, Villupuram. Therefore, the learned Senior Counsel urged this Court to transfer the case to some other Sessions Court within the same District.

7. The learned Senior Counsel in order to substantiate his submissions relied upon the following judgments:

- (a) *L.A.Raju vs. State of Mysore* reported in (1952) 2 SCC 52.
- (b) *Gurcharan Dass Chadha vs. State of Rajasthan* reported in (1966) 2 SCR 678.



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(c) *S.Parthasarathi vs. State of Andhra Pradesh* reported in (1974) 3 SCC 459.

(d) *Ranjith Thakur vs. Union of India and others* reported in (1987) 4 SCC 611.

(e) *Abdul Nazar Madani vs. State of Tamil Nadu and Another* reported in (2000) 6 SCC 204.

(f) *Nilesh Jap Daru vs. State of Maharashtra* reported in 2005 (1) Mh.L.J. 561.

(g) *Captain Amarinder Singh vs. Prakash Singh Badal and Others* reported in (2009) 6 SCC 260.

(h) *Satish Sakharam Mangle and others vs. State of Maharashtra and another* reported in (2020) 18 SCC 617.

8.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent by bringing to the notice of this Court the daily status of the proceedings, submitted that the petitioner was only trying to drag on with the proceedings. The learned Additional Public Prosecutor further submitted that when the earlier order dated 07.10.2023 was put to challenge before this Court, the petitioner did not allege any bias against the Principal Sessions Judge, Villupuram. This Court had fixed the dates for hearing only upon the instructions given by the petitioner to the counsel. In spite of the same, the petitioner is now attempting to drag on the proceeding

by filing this transfer petition. The learned Additional Public Prosecutor



submitted that the petitioner has been given sufficient opportunity in this case and in spite of the same, he was not willing to argue the main criminal appeal and has now chosen to raise the ground of bias against the Sessions Judge only to further drag on with the proceedings. Hence, the learned Additional Public Prosecutor sought for the dismissal of this criminal original petition.

9.The learned Additional Public Prosecutor in order to substantiate his submissions, relied upon the judgment of the Apex Court in ***Nahar Singh Yadav and another vs. Union of India and others*** reported in ***2011 (1) SCC 307*** and ***Rajesh Talwar vs. Central Bureau of Investigation and others*** reported in ***2012 (4) SCC 217***.

10.This Court has carefully considered the submissions made on either side and also the materials available on record.

11.The petitioner who was aggrieved by the judgment passed by the Trial Court, convicting and sentencing him for commission of certain offences, has filed an appeal before the learned Principal Sessions Judge, Villupuram and the same is pending in C.A.No.59 of 2023. On carefully



going through the daily status of the proceedings that had taken place before the Court below, it is seen that the case was effectively posted for final hearing from 24.08.2023 onwards. The case was adjourned from 24.08.2023 to 08.09.2023. Thereafter, it was adjourned to 27.09.2023. It was further adjourned to 07.10.2023. On 07.10.2023, an adjournment petition was filed under Section 309 of Cr.P.C., and it was dismissed. While doing so, the lower Appellate Court reserved the case for judgment. The case was posted on 06.11.2023.

12.The order dated 07.10.2023 became a subject matter of challenge before this Court in Crl.R.C.No.1856 of 2023. During the pendency of this criminal revision case, the lower Appellate Court was adjourning the case from time to time. The criminal revision case was disposed of by an order dated 02.11.2023. The relevant portions in the order are extracted hereunder:

9.In view of the above discussion, this Court finds reason in the submissions made by the learned Senior Counsel appearing for the petitioner. Though several adjournments have been sought by the petitioner, his heart ailments and post operative care are supported by his medical records and reports, which cannot be brushed aside. The petitioner is taking medical treatment which is confirmed by the medical reports.



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The Cardiologist Doctor gave the certificate, dated 01.11.2023, is consensus to the earlier medical reports and now, seeks three more weeks for resumption of normal activities of the petitioner. The petitioner to instruct his counsel to make effective preparation for his case. The appeal being a statutory appeal cannot be lose sight of. Further, the lower appellate Court fixing the date of judgment without hearing the appeal is not proper.

10.The learned Senior Counsel on instructions submitted that the petitioner shall be present before the lower appellate Court on 21.11.2023 and commence his arguments, in any event, he shall complete the arguments on the next day, i.e., on 22.11.2023. The petitioner might not be reason for any further delay in any manner.

11.In view of the above, this Court directs the petitioner to appear before the lower appellate Court on 21.11.2023. The lower appellate Court to hear the petitioner on that day and thereafter, proceed with the appeal, in accordance with law.

13.It is clear from the above order that instructions were given by the petitioner to the counsel representing him that he will complete his final arguments by 22.11.2023.



WEB COPY 14. The modification petition was filed in CrI.M.P.No.18473 of 2023 to extend the time for a further period of four weeks. This petition was disposed of by an order dated 20.11.2023 and the relevant portions are extracted hereunder:

2. The learned Senior Counsel appearing for the petitioner submitted that the petitioner is not fully recovered, his health condition is not conducive to travel long distance and he will be forced to take the ambulance along with the medical attendant. He further submitted that the Presiding Judge of the Principal District and Sessions Court, Villupuram assigned Other Duty and the petitioner's appearance on 21.11.2023 is only be a ritual, hence, sought for relaxation.

3. The learned Additional Public Prosecutor appearing for the respondent Police submitted that this Court passed the order directing the petitioner to appear before the lower Court on 21.11.2023 and it is for the petitioner to comply with the same. He confirms that the Presiding Judge in the Principal District and Sessions Court, Villupuram is on Other Duty till 08.11.2023 and she likely to join on 12.12.2023.

4. Considering the submissions and perusal of the materials, it is seen that on 21.11.2023, the Presiding Judge therein is on Other Duty, hence, the appearance of the petitioner will serve no purpose, further, the petitioner is also



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under medical care. The learned Senior Counsel on instructions submitted the petitioner can appear any time a week after 11 th November, 2023.

5. In view of the same, the petitioner is directed to appear before the Principal District and Sessions Judge, Villupuram on 18.11.2023 without fail or any day thereafter as fixed by the lower appellate Court and commence his arguments. Accordingly, this Criminal Miscellaneous Petition stands ordered.

15. It is clear from the above order that this Court on the basis of the materials placed before the Court, thought it fit to direct the petitioner to be present before the Court on 18.12.2023 and to commence his arguments.

16. After the above order was passed, the matter was posted before the Court below on 21.11.2023. The attention of the Court was drawn to the order passed in the modification petition. Accordingly, the lower Appellate Court fixed the date as 18.12.2023 for the appearance of the petitioner and for commencement of the arguments.

17. When the matter was posted for hearing on 18.12.2023, it was

brought to the notice of the lower Appellate Court that a transfer petition has



been filed before the High Court and once again, the petitioner sought for an adjournment. The case was posted for hearing on 19.12.2023. Even on that day, the petitioner sought for an adjournment on the ground that transfer petition has been filed in the High Court. The lower Appellate Court came to a conclusion that the petitioner is seeking repeated adjournments only to drag on with the proceedings and therefore, posted the case for judgment on 06.01.2024.

18.This Court had called for a report from the Principal Sessions Judge, Villupuram. On carefully going through the report, it is seen that the learned Principal Sessions Judge had given repeated adjournments to the petitioner and every time, some reason was assigned for taking adjournments. In view of the same, the learned Judge came to a conclusion that the petitioner is unnecessarily dragging on with the proceedings. Therefore, learned Sessions Judge by taking into account the dictum of the Apex Court, came to a conclusion that the Court is competent to dispose of an appeal by perusing the records and after appreciation of the grounds raised. Hence, the matter was posted for passing final judgment. The learned Sessions Judge has also brought to the notice of this Court that A2 had also filed an appeal in Crl.A.No.55 of 2023 and the learned counsel for A2 had



already argued the matter. However, no judgment was passed since both the appeals arise out of a common judgment passed by the Trial Court.

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 decide 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 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.

20. Keeping the above principles in mind, this Court has to see as to whether the facts of this case and the grounds raised by the petitioner, warrants the transfer of the case.

21. This Court has already recorded the proceedings that had taken before the Appellate Court. The Appellate Court decides the case based on the records that are already available before the Court and after hearing both sides. It goes without saying that since the consequence in a criminal case is serious, normally the Court is expected to give sufficient opportunity to the accused person to put-forth his case. The lower Appellate Court has been granting adjournments right from August 2023 onwards. When a subsequent adjournment petition was dismissed and the Court below wanted to proceed further with the appeal, it was put to challenge before this Court by filing a criminal revision case. This Court on considering the health condition of the petitioner, wanted to give an opportunity to the petitioner. This Court took pains to ascertain from the counsel appearing on behalf of the petitioner as to when the petitioner will get ready for making the final arguments. Upon



instructions received by the Counsel, this Court also fixed a date for final hearing on 02.11.2023. This date was further extended up to 18.12.2023, while passing orders in the modification petition on 20.11.2023. Even while fixing the date on 18.12.2023, this Court ascertained the convenience of the petitioner and based on the instructions received by the counsel, the date was fixed. Even thereafter, the petitioner was not willing to proceed further with the final arguments. The petitioner while approaching this Court on an earlier occasion, did not choose to make any allegation of bias against the learned Principal Sessions Judge, Villupuram. After this Court had fixed a date for final hearing, the petitioner had thought it fit to raise the ground of bias against the lower Appellate Court. This conduct on the part of the petitioner assumes a lot of significance. The petitioner is complaining about the previous orders passed by the lower Appellate Court and has taken that as a ground for filing the present transfer petition. Those orders have merged with the orders passed by this Court in the Criminal Revision case.

22. After a date was fixed by this Court by directing the petitioner to appear before the Court below on 18.12.2023 and to commence his arguments, the petitioner without arguing the case, once again filed a memo before the Court below on 18.12.2023 to the effect that a transfer petition



has been filed before this Court. The case was at the stage of final hearing and it is a routine tactic followed by some of the accused persons to file a transfer petition and thereby, drag on with the proceedings endlessly. Therefore, it is not necessary for the lower Appellate Court to act up on such a memo and stall the proceedings. Unless and otherwise, this Court entertains the transfer petition, it is not necessary for the subordinate Courts to keep the proceedings pending on a mere filing of a memo. Therefore, the proceedings of the lower Appellate Court on 18.12.2023 and 19.12.2023, cannot be faulted. The lower Appellate Court was perfectly right in insisting the petitioner to argue the case, since the petitioner had volunteered that he will start the final arguments from 18.12.2023 before this Court.

23. The grounds raised by the petitioner does not warrant the transfer of the case from the learned Principal Sessions Judge, Villupuram. The petitioner by his own conduct is attempting to create an impression as if he has entertained a reasonable apprehension that he will not get a fair and impartial hearing before the lower Appellate Court. If the facts of this case and the grounds raised by the petitioner is put before a reasonable man, he will come to a conclusion that such an apprehension raised by the petitioner is his own making and that there is no ground to infer that there is a



likelihood of bias on the part of the lower Appellate Judge. This Court does not find any merits in this petition and the relief sought for by the petitioner cannot be granted by this Court.

24.The petitioner is directed to be present before the lower Appellate Court on 12.01.2024. The final arguments on the side of the petitioner shall commence from 18.01.2024 and it shall be completed on or before 24.01.2024. Thereafter, the learned Principal Sessions Judge, Villupuram is directed to pass final judgment in the criminal appeal on its own merits and in accordance with law as expeditiously as possible.

25.In the result, this criminal original petition is dismissed with the above directions. Consequently, connected miscellaneous petition is closed.

09.01.2024

Speaking Order
Index: Yes
Internet: Yes
Neutral Citation: Yes
ssr



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To

1.The Principal District Judge, Villupuram.

2.The Superintendent of Police-II,
Crime Branch CID,
Pantheon Road,
Egmore,
Chennai – 600 008.

3.The Public Prosecutor
High Court, Madras.



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N.ANAND VENKATESH.J.,

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Pre-Delivery Order in
Crl.O.P.No.28715 of 2023
and Crl.M.P.No.19965 of 2023

09.01.2024