



Crl.O.P.(MD) No.493 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.02.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P(MD)No.493 of 2024

1.A.Hariharan
2.A.Nandagopal

...Petitioners

VS

1.The State represented by
The Inspector of Police,
M.Pudupatti Police Station,
Virudhunagar District.
(in Cr.No.9 of 2020)

2.Murugan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to direct the learned Judicial Magistrate No.II, Sivakasi, Virudhunagar District to complete the case in C.C.No.56 of 2020 within a stipulated time as fixed by this Court.

For Petitioner : Mr.C.Prithiviraj
For R1 : Mr.M.Veeranthiran
Government Advocate (crl.side)



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ORDER

This Criminal Original Petition had been filed by the Accused Nos.2 and 3 in C.C.No.56 of 2020, pending on the file of the learned Judicial Magistrate No.II, Sivakasi, Virudhunagar District. The learned Counsel for the Petitioner submits that he had filed this Petitioner seeking early disposal of the case in C.C.No.56 of 2020.

2.The Registry was directed to seek remarks from the learned Judicial Magistrate No.II, Sivakasi, Virudhunagar District, regarding the pendency of C.C.No.56 of 2020, whether it can be disposed of on priority basis and also to give out the number of cases year wise.

3.Today, 21.02.2024, when the case came up for hearing, the remarks of the learned Judicial Magistrate No.II, Sivakasi, in letter D.No.217/2024, dated 19.02.2024, was placed before this Court by the Registry.

4.On perusal of the same, it is found that the trial could not proceed due to COVID-19 lockdown. Subsequently, copies were furnished to A1 to



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A4 on 09.11.2020. Charges were framed on 10.11.2020 and posted for trial on 11.01.2021. From 11.01.2021 till 07.02.2024, the Police had not produced the witnesses. On 08.02.2024, LW-1 and LW-2 were produced and they were examined as PW-1 and PW-2. The case was posted to 27.02.2024 for examination of LW-3 to LW-6. Till date, the witnesses had not been produced.

5.Also, the learned Judicial Magistrate No.II, Sivakasi, has given a statement of the pending cases as on January 2024. As per the statement furnished by the learned Judicial Magistrate No.II, Sivakasi, there are 15 PRC cases, 868 CC cases, 286 STC cases, 127 NI Act cases, 41 maintenance cases and 40 Domestic Violence cases are pending on the file of the learned Judicial Magistrate No.II, Sivakasi, in the month end of January 2024.

6.The learned Judicial Magistrate No.II, Sivakasi, shall insist upon the SHO of the Police Station concerned, who had filed the final report to serve summons on the date fixed by the learned Judicial Magistrate. Also, the learned Judicial Magistrate No.II, Sivakasi, shall follow the procedure



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for warrant trial in case of this nature, wherein, prior to the fixing of the date for trial, the number of witnesses to be examined on particular day has to be mentioned and summons to be issued to the SHO of the Police Station for service, as per Chapter 19 of Cr.P.C. Only then, the Court can conclude the trial, as fixed by the learned trial Judge. If the SHO of the Police Station is permitted to issue summons according to his/her whims and fancies, the Court will not be able to control the proceeding in the trial.

7.The Trial Judges are expected to be assertive, while conducting trial either as as a Magistrate or as a Sessions Judge. They shall ensure that the witnesses are produced on the date mentioned in the summons. The witnesses shall not be examined piecemeal, as in a civil case. When the trial commences, it shall be on a day-to-day basis in a warrant trial provided the Court has the service of Assistant Public Prosecutor attached to the Court. Otherwise, the case had been adjourned on the date of appearance of the Assistant Public Prosecutor.

8.Also, the learned Judicial Magistrate is directed that in cases the witnesses are available and they had deposed evidence, the appearing



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Counsel for the Accused has to be persuaded to cross examine the witnesses then and there and the power of recalling the witnesses shall not be exercised leniently thereby, defeating the principle of fair trial, as per the judgment of the Hon'ble Supreme Court in the case of ***Vinod Kumar vs State of Punjab reported in (2015) 3 SCC 220***. Also, the learned Judicial Magistrate shall ensure that the accused are available during trial. If any of the accused does not co-operate with the Court during the trial proceeding, the learned trial Judge shall issue warrant and detain accused on execution of warrant, so that the Accused is detained in prison till the trial is concluded. It will ensure that the accused will not abscond in future, when the trial commence.

9.For the present, the learned Judicial Magistrate is directed to concentrate on the part heard cases, wherein, summons had not been issued, even though the learned Judicial Magistrate had directed the Police Officers to issue summons to the witnesses. If there are lapse on the part of the Police Officers attached to the Police Station concerned, the same shall be brought to the notice of the Superintendent of Police and the Deputy Superintendent of Police of the Sub Division by addressing letters with a



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copy marked to the learned Chief Judicial Magistrate and the learned Principal District Judge, so that they can monitor the cases, when the Head of the Police Unit and the Head of the District Collector is available before the Court on the month end monitoring committee meeting for review of long pending cases. In spite of the same, if there is non co-operation from the Police Department, a report shall be filed to the Registry of this Court, so that the Portfolio Judges will be able to ensure that there is co-operation from the Police Officers for service of summons promptly on the witnesses. Till part heard cases are disposed of, the learned Judicial Magistrate is directed not to open up new cases, as it will cause chocking of the trial system.

10. With the above, the learned Judicial Magistrate No.II, Sivakasi, is directed to dispose of the case on a day-to-day basis, if the Court has the services of Assistant Public Prosecutor attached to the learned Judicial Magistrate No.II, Sivakasi. When he/she is available throughout the week, the case can be taken up on a day-to-day basis from Monday to Friday. In such a way, the entire recording of witnesses can be completed within a reasonable period of 10 to 15 days. Therefore, the learned Judicial



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Magistrate No.II, Sivakasi, is directed to dispose of the case within a reasonable period of two months from the date of receipt of a copy of this order.

In the result, the ***Criminal Original Petition*** is disposed of.

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

21.02.2024

cmr

To

- 1.The Judicial Magistrate No.II, Sivakasi, Virudhunagar District.
- 2.The Inspector of Police,
M.Pudupatti Police Station,
Virudhunagar District.



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SATHI KUMAR SUKUMARA KURUP, J.

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