



Crl.O.P.(MD) No.3647 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.3647 of 2024

and

CRL.M.P (MD) No.2864 of 2024

1. Thangaraj,

2. Edward,

... Petitioners

Vs

The State represented by
The Inspector of Police,
Thuckalay Police Station
Kanyakumari District.
Crime No.325/2013.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to withdraw the case in C.C No.50/2015, from the court of the learned Judicial Magistrate No.1, Padmanabhapuram, Kanyakumari District, and Transfer the same to the competent court of Judicial Magistrate Court, Tirunelveli District.



Crl.O.P.(MD) No.3647 of 2024

For Petitioners : Mr.M.Suri

For Respondent : Mr.M.Veeranthiran
Government Advocate (Crl. side)

ORDER

The learned Counsel appearing for the Petitioners submitted that the the Petitioners had filed this petition seeking to withdraw the case in C.C.No.50 of 2015, from the file of the learned Judicial Magistrate No.I, Padmanabhapuram to any other Court outside Kanniyakumari District.

2.It is the submission of the learned Counsel appearing for the Petitioners that the Bar Association, Padmanabhapuram had passed a resolution that none of its members shall appear for the accused in C.C.No. 50 of 2015, on the file of the learned Judicial Magistrate No.I, Padmanabhapuram, Kanniyakumari District. Also, they had circulated the same resolution to all the members of the Bar Association in Kanniyakumari District. Therefore, the Petitioners seek withdrawal of the case from the file of the learned Judicial Magistrate No.I, Padmanabhapuram, and to transfer it to outside the District.



CrI.O.P.(MD) No.3647 of 2024

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3.This Court had sought remarks from the learned Principal District Judge, Kanniyakumari District at Nagercoil, the learned Chief Judicial Magistrate, Kanniyakumari at Nagercoil, the learned Judicial Magistrate No.I, Padmanabhapuram, regarding such resolution passed by the Bar Association, Padmanabhapuram. All the three Judges had sent separate letters and offered the remarks that no copy of the resolution was received by the learned Principal District Judge, Kanniyakumari District at Nagercoil, the learned Chief Judicial Magistrate, Kanniyakumari at Nagercoil, whereas, the learned Judicial Magistrate No.I, Padmanabhapuram, had caused a notice to the Bar Association, Padmanabhapuram, seeking clarification. As per the remarks of the learned Judicial Magistrate No.I, Padmanabhapuram, the Bar Association had sent a reply stating that no such resolution was passed by the Bar Association, Padmanabhapuram. The learned Judicial Magistrate No.I, Padmanabhapuram in his letter D.No.762/2024, dated 13.03.2024, submitted that even though the accused Nos.1 and 2 in C.C.No.50 of 2015, appeared before the Court, none of the members of the Bar filed either memo of appearance or vakalat for the accused.



CrI.O.P.(MD) No.3647 of 2024

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4.Considering the remarks of the learned Judicial Magistrate No.I, Padmanabhapuram, the submission of the learned Counsel appearing for the Petitioners herein, it is found that indirectly the Bar Association, Padmanabhapuram, is restraining the members of the Bar from appearing for the accused Nos.1 and 2.

5.As per the rights of the citizens guaranteed by the Constitution of India, a citizen has to be provided the right to defend the case in criminal cases. Therefore, either the Bar Association, Padmanabhapuram or any Bar Association for that concerned cannot enforce a rule or order against the professional ethics. A citizen of this Country has a right to be defended by a Counsel by his/her choice. In the absence of the Counsel or the accused unable to engage a Counsel of his or her choice, it is the duty of the trial Court to engage a competent Counsel to defend the accused. This was followed in the trial of cases of former Prime Minister of India, Rajiv Gandhi Assassination case, the former Prime Minister Indhira Gandhi Assassination case and in the latest case of Ajmal Kasab, the terrorist who had attacked the police officers and general public at Bombay. When the



CrI.O.P.(MD) No.3647 of 2024

members of the Bar Association concerned not appeared for the terrorist, the High Court of Bombay had granted service of a Counsel from the Legal Services Authority and defended the accused, even though he is a terrorist.

6.Under those circumstances, the submission of the learned Counsel appearing for the petitioners stating that there has been a resolution is found reasonable. From the remarks offered by the learned Judicial Magistrate No.I, Padmanabhapuram stating that the letter addressed by the learned Judicial Magistrate No.I, Padmanabhapuram to the Bar Association, Padmanabhapuram, was replied by the Bar stating that there is no such resolution. Still none of the members of the Bat at Padmanabhapuram had filed either memo of appearance or vakalat for the accused. Therefore, it is clear that no purpose will be served in retaining the case in C.C.No.50 of 2015, on the file of the learned Judicial Magistrate No.I, Padmanabhapuram. It is also to be noted that the citizens of this Country have right to fair trial. The said right is affected.

7.Therefore, the case in C.C.No.50/2015, on the file of the learned Judicial Magistrate No.I, Padmanabhapuram, Kanniyakumari District is



CrI.O.P.(MD) No.3647 of 2024

withdrawn and the same is transferred to the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District.

8.On receipt of the records, the learned Judicial Magistrate, Valliyoor shall renumber the case as per the cases pending on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District. Also it should be considered as the case of the year 2015 and top priority should be given to this case and shall dispose the case after full trial as if the case is of the year 2015.

9.With the above directions, this criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

19.03.2024

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



Crl.O.P.(MD) No.3647 of 2024

To

1.The Inspector of Police,
Thuckalay Police Station
Kanyakumari District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

1.The Chief Judicial Magistrate,
Tirunelveli District.

2.The Judicial Magistrate,
Valliyoar, Tirunelveli District.

3.The Judicial Magistrate No.I,
Padmanabhapuram, Kanniyakumari.



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Crl.O.P.(MD) No.3647 of 2024

SATHI KUMAR SUKUMARA KURUP, J.

LR

CRL.O.P (MD) No.3647 of 2024

19.03.2024