



*Crl.O.P.(MD).No.4657 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.03.2024

CORAM:

**THE HONOURABLE Mr. JUSTICE SATHI KUMAR SUKUMARA KURUP**

Crl.O.P.(MD).No.4657 of 2024

and

Crl.M.P.(MD).No.3636 of 2024

Ayyammal

...Petitioner

Vs.

1.Mahadevan

2.The Inspector of Police,  
Kamuthi Police Station,  
Ramanathapuram District,  
(In Crime No.64/2021)

...Respondents

**Prayer :** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order passed in Tr.O.P.No.4/2023 dated 29.09.2023 by the learned Principal District Judge, Ramanathapuram.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For R-2 : Mr.B.Thanga Aravindh  
Government Advocate  
(Criminal Side)



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## **ORDER**

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The learned Counsel for the Petitioner submitted that the Petitioner had filed this petition seeking to quash the Tr.O.P.No.4/2023 dated 29.09.2023, passed by the learned Principal District Judge, Ramanathapuram.

2. It is the contention of the learned Counsel for the Petitioner that the FIR in Crime No.311 of 2022 on the file of the second Respondent was registered for the offences punishable under Sections 324, 506(ii) IPC, 3(i)(r), 3(i)(s) of SC/ST(POA), Amendment Act 2015 on 11.08.2022 based on the direction of the Hon'ble High Court in W.P.(MD).No.7724 of 2021 dated 22.02.2022. The persons arrayed as accused are (i) Sampath Kumar, S/o Alagar, (ii) Muthukumar, S/o Gurusamy (iii) Muthu, S/o Alagar (iv) Alwar, S/o Solaiyappa Thevar. The complainant in Crime No.311 of 2022 is Kathiresan son of Sankaran.

3. The learned Counsel for the Petitioner further submits that FIR in Crime No.64 of 2021 was registered on the file of the second Respondent for the offences punishable under Sections 294(b), 324, 506(2) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002, on 28.01.2021, against Mahadevan son of Sankaran, who is the Petitioner herein.



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The complainant in Crime No.64 of 2021 is Ayyammal wife of Azhagar.

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4. In Crime No.311 of 2022, it is found that the complaint was given by the Petitioner's brother Kathiresan, son of Sankaran. From both the FIR, it is found that it is the case and counter.

5. Usually, the case and counter cases are registered by the Investigation Officer, based on the complaint and counter complaint. Here, the Investigation Officer had not registered the complaint of Kathiresan, who had claimed that the accused/Mahadevan in Crime No.64 of 2021 was attacked brutally by the sons of Alagar, for which the Police officials had failed to act. Therefore, the said Kathiresan, who is the brother of Mahadevan, had filed Writ Petition in W.P.(MD).No.7724 of 2021 and this Court vide order dated 22.02.2022 directed the Respondent Police to conduct enquiry and complete the same. Only after obtaining direction from the Hon'ble High Court, FIR was registered in Crime No.311 of 2022 on 11.08.2022, whereas based on the complaint of Ayyammal, wife of Alagar, a case was registered against Mahadevan son of Sankaran in Crime No.64 of 2021 on 28.01.2021 itself. The complainant in Crime No.311 of 2022 is one Kathiresan son of Sankaran and he is also brother of the accused in Crime No.64 of 2021.



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6. It is to be noted that the alleged date of occurrence is 26.01.2021 at 18.00 hours, whereas in the Crime No.311 of 2022 was registered on 11.08.2022. There was wide difference in the consecutive numbers. FIR in Crime No.64 of 2021 is dated 28.01.2021, the date of occurrence is 26.01.2021 at 18.00 hours. FIR in Crime No.311 of 2022 is dated 11.08.2022, the date of occurrence is 26.01.2021 at 18.00 hours. Therefore, both are case and counter. Since the Respondent Police refused to register the case based on the complaint of Kathiresan, the said Kathiresan approached this Court by way of filing Writ Petition in W.P.(MD).No.7724 of 2021, for the occurrence that took place on 26.01.2021. Therefore, the order passed by the learned Principal District and Sessions Judge withdrawing the case from the Court of the learned Judicial Magistrate and transfer the same to the Court of the learned Sessions Judge, Special Court for exclusive trial of cases under SC/ST (POA) Act, Ramanathapuram District is found justified. When the Police had failed to act and register a case based on the complaint of Kathiresan son of Alagar for the injury caused on his brother Mahadevan S/o.Sankaran, who is the sole accused in Crime No.64 of 2021, on the same day, the husband and sons of Ayyammal, the Complainant in Crime No.64 of 2021 are alleged to have attacked Mahadevan son of Sankaran, for which the brother of Mahadevan viz.,



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Kathiresan given a complaint, for which the Respondent Police had not acted.

Only after obtaining direction from this Court in W.P.(MD).No.7724 of 2021, the case was registered in Crime No.311 of 2022 for the offences punishable under Sections 324, 506(ii) IPC, 3(i)(r), 3(i)(s) of SC/ST(POA), Amendment Act 2015, against the husband and sons of the de-facto Complainant in Crime No.64 of 2021. Therefore, both the cases are case and counter.

7. In the ruling cited by the learned Counsel for the Petitioner in the case of *Sudhir and Others Vs State of Madhya Pradesh* reported in (2001) 2 SCC 688, the facts are different. In trial of case and counter, both the cases had to be tried by the same Court. The learned Sessions Judge has the power to try offences exclusively triable by the Court of the learned Judicial Magistrate. The reported decision is with regard to transfer of one of the cases, instead of two cases connected with each other. In only one case, it was withdrawn and transferred to the learned Chief Judicial Magistrate by the learned Sessions Judge, on the ground that what was transferred attracted offences under Sessions Cases, the other cases did not have cases triable by Court of Sessions. Therefore, the learned District Judge in that case had refused to transfer connected cases to the Court of the learned Chief Judicial Magistrate. Therefore, the Hon'ble Supreme Court had stated that it failed to act as per



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***Naithani Lal case*** reported in ***1990 SCC 145***. It is the observation of the above stated reported decision, when the cases are connected with each other, when one case does not attract sessions offences, still if the case arise out of case and counter, then the connected case also has to be posted along with the connected case and tried simultaneously.

8. In the light of the above, the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (POA), is directed that in both the cases, the same Public Prosecutor shall not conduct the case. The case under SC/ST is to be conducted by the Special Public Prosecutor attached to the Special Court for Exclusive Trial of cases under SC/ST (POA) Act. The other case that is withdrawn from the Court of the learned Judicial Magistrate in C.C.No.18 of 2023 is to be tried by the Assistant Public Prosecutor attached to the Court of the learned Judicial Magistrate.

9. The case in Special S.C.No.23 of 2023 to be tried and the trial shall be kept in abeyance at the stage of argument and the trial should proceed in C.C.No.18 of 2023 withdrawn from the Court of the learned District Munsif cum Judicial Magistrate, Kamuthi and transferred to the Special Court for Exclusive Trial of Cases under SC/ST (Prevention of Atrocities) Act, 1989.



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With the help of the Assistant Public Prosecutor attached to the Court of District Munsif-cum-Judicial Magistrate, Kamuthi, the trial in C.C.No.18 of 2023 to be renumbered in the Court of the learned Sessions Judge, Special Court, the trial is to be conducted. The trial shall proceed upto the stage of Section 313 Cr.P.C. Proceedings. The trial concludes with the examination of the Investigation Officer and after Section 313 Cr.P.C, questioning of the accused, the arguments to be heard in both the cases and judgment should be delivered on the same day in both the cases. The trial should commence from the case in Spl.S.C.No.23 of 2023 and it should be kept in abeyance at the stage of arguments. Only then, the trial in C.C.No.18 of 2023 to be conducted and after completion of recording of evidence at the stage of arguments, the arguments shall be heard in both the cases and the judgment to be pronounced on the same day.

10. The order passed in Tr.O.P.No.4/2023 dated 29.09.2023, passed by the learned Principal District Judge, Ramanathapuram is found proper. It does not warrant interference by this Court exercising powers under Section 482 Cr.P.C. The arguments of the learned Counsel for the Petitioner is rejected. As rightly pointed out by the learned Government Advocate (Criminal Side), both the cases are connected.



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11. With the above observations, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

**26.03.2024**

NCC:yes/no  
Index:yes/no  
Internet:yes/no  
Nsr

To

- 1.The Inspector of Police,  
Kamuthi Police Station,  
Ramanathapuram District,
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**SATHI KUMAR SUKUMARA KURUP, J.**

Nsr



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