



Crl.O.P.(MD)No.14494 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14494 of 2024

and

Crl.M.P(MD)No.9020 of 2024

Murugesan

... Petitioner/Defacto Complainant

Vs.

1.State of Tamil Nadu
The Inspector of Police,
Mayanoor Police Station,
Karur District.
Crime No.555 of 2021.

2.Annappan

3.Chellappan

4.Raja

5.Boopathy

... Respondents

PRAYER : Criminal Original Petition filed under Section 447 of BNNS, to withdraw and transfer the case in C.C.No.19 of 2024 on the file of the learned District Munsif cum Judicial Magistrate, Krishnarayapuram, Karur District and transfer the said case to the file of the S.C.No.32 of 2024 on the file of the Principal District Judge, Karur and tried the case jointly.



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For Petitioner : Mr.N.Sudhagar Nagaraj,
For Respondents : Mr.P.Kottai Chamy,
Government Advocate (Criminal Side) for R1.

ORDER

This Criminal Original Petition has been filed, invoking Section 447 B.N.S.S., seeking orders, to withdraw case in C.C.No.19 of 2024 on the file of the learned District Munsif cum Judicial Magistrate, Krishnarayapuram, Karur District and transfer the said case to the file of the learned Principal District Judge, Karur and to direct the learned Principal District Judge, Karur to proceed with the case in C.C.No.19 of 2024 with S.C.No.32 of 2024 jointly.

2. The petitioner is the defacto complainant in C.C.No.19 of 2024 on the file of the learned District Munsif cum Judicial Magistrate, Krishnarayapuram, Karur District and first accused in S.C.No.32 of 2024 on the file of the Principal District Judge, Karur.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the State and also perused the records.



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4. The learned counsel appearing for the petitioner would submit that both cases are case and case in counter; that the learned Magistrate, while committing the sessions case, has not taken steps to commit the case in C.C.No.19 of 2024 to the very same Court and that therefore, the petitioner is constrained to file the petition seeking transfer of the case.

5. The learned Government Advocate (Criminal Side) appearing for the State would fairly concede that the case in S.C.No.32 of 2024 and the case in C.C.No.19 of 2024 are case and case in counter.

6. It is settled law that the case and case in counter are to be tried by the same Court. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***Sudhir and others Vs. State of Madhya Pradesh and others*** reported in ***AIR 2001 SC 826***, wherein, the Hon'ble Apex Court in the situation like this, directed the Magistrate to exercise special power conferred on him by virtue of Section 323 Cr.P.C. and he has to commit the case in counter, which is pending on his file to the Sessions Court and the relevant passages are extracted hereunder:-



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“13. How to implement the said scheme in a situation where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Sessions, but none of the offences involved in the other case is exclusively triable by the Sessions Court. The magistrate before whom the former case reaches has no escape from committing the case to the Sessions Court as provided in Section 209 of the Code. Once the said case is committed to the Sessions Court, thereafter it is governed by the provisions subsumed in Chapter XVIII of the Code. Though, the next case cannot be committed in accordance with Section 209 of the Code, the magistrate has, nevertheless, power to commit the case to the court of Sessions, albeit none of the offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in the Code to meet similar cases also. That section reads thus:

"If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of



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chapter XVIII shall apply to the commitment so made."

14. The above section does not make an inroad into Section 209 because the former is intended to cover cases to which Section 209 does not apply. When a magistrate has committed a case on account of his legislative compulsion by Section 209, its cross case, having no offence exclusively triable by the Sessions Court, must appear to the magistrate as one which ought to be tried by the same Court of Sessions. We have already adverted to the sturdy reasons why it should be so. Hence the magistrate can exercise the special power conferred on him by virtue of Section 323 of the Code when he commits the cross case also to the Court of Sessions. Commitment under Section 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be through the stream channelised by the provisions contained in Chapter XVIII."

7. In the case on hand as already pointed out, since the case in S.C.No.32 of 2024 and C.C.No.19 of 2024 are case and case in counter,



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taking note of the legal position above referred, the learned Judicial Magistrate is to be directed to follow the dictum laid down by the Hon'ble Supreme Court for committing the case in counter, which is pending on his file.

8. In the result, this Criminal Original Petition is allowed and the learned District Munsif cum Judicial Magistrate, Krishnarayauram, Karur District, is directed to follow the dictum laid down by the Hon'ble Supreme Court in ***Sudhir and others Vs. State of Madhya Pradesh and others*** reported in ***AIR 2001 SC 826*** and commit the case in C.C.No.19 of 2024 to the file of the Principal District and Sessions Court, Karur, within a period of 15 days from the date of receipt of copy of this order and the learned Principal District and Sessions Court, Karur, on committal, is directed to take the trial in C.C.No.19 of 2024 and the case in S.C.No.32 of 2024 simultaneously. Consequently, connected Miscellaneous Petition is closed.

02.09.2024

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

- 1.The District Munsif cum Judicial Magistrate,
Krishnarayapuram, Karur District.
- 2.The Principal District Judge, Karur.
- 3.The Inspector of Police,
Mayanoor Police Station,
Karur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Order made in
Crl.O.P.(MD)No.14494 of 2024
and
Crl.M.P(MD)No.9020 of 2024

Dated: 02.09.2024