



Crl.O.P.(MD)No.17725 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.11.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.17725 of 2024

and

Crl.M.P.(MD)No.10978 of 2024

1.R.Gershom
2.C. Rejin
3.K.Sajin
4.S.Subash

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by the Sub-Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(Crime No.97 of 2023)

2.T.Jebin

... Respondents

PRAYER : Criminal Original Petition filed under Section 447 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to transfer the case in C.C.No.354 of 2023, on the file of the Judicial Magistrate Court No.I, Kuzhithurai, Kanyakumari District, to the Judicial Magistrate Court No.II, Tirunelveli.



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For Petitioners : Mr.N.Dilip Kumar

For R1 : Mr.K.Sanjai Gandhi
Government Advocate
(Criminal side)

For R2 : Mr.A.Arun Ramnath

ORDER

This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 07.11.2024, which reads as follows:-

"Pursuant to the order passed by this Court on 18.10.2024, the learned counsel for the petitioners had taken private notice to the second respondent and the same has also been served on the second respondent. However, there is no representation on behalf of the second respondent.

2. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the first respondent submitted that it is a case in counter. The first petitioner herein lodged a complaint against the second respondent and others. Pursuant to the said complaint, a case has been registered and after investigation, a charge sheet has also been filed, which is pending in P.R.C.No. 64 of 2023 before the Judicial Magistrate Court, Kuzhithurai. In the event of a transfer, both the present case and P.R.C.No.64 of 2023 must be transferred out of the District.



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3. Registry is directed to print the name of the second respondent in the cause list and list the matter on 14.11.2024.

4. The learned Additional Public Prosecutor, through the jurisdictional Police, is directed to inform/serve notice to the second respondent/de-facto complainant, informing that the matter will be taken up for hearing on 14.11.2024."

2. Pursuant to the order mentioned above, today, Mr.A.Arun Ramnath, learned counsel, appeared for the second respondent (de-facto complainant), and submitted that the second respondent is an advocate by profession. He has shown due respect and has conducted himself as any other litigant in the Court. He further submitted that so far the second respondent has neither exerted pressure nor influenced the petitioners or the case in any manner.

3. The learned counsel for the second respondent further submitted that in P.R.C.No.64 of 2023, which involves five accused, one of the accused (A4) is a senior citizen with travel restrictions, and therefore, he requested that, his presence be required only when absolutely necessary. For all other hearings, an affidavit confirming that his identity is



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undisputed, along with the understanding that evidence can be recorded in his absence, should be considered liberally.

4. The learned counsel for the petitioners contended that the Bar Association has passed a resolution, and no advocates are willing to represent the petitioners. Furthermore, the petitioners had earlier obtained anticipatory bail, but when they attempted to execute the sureties, it was not permitted. As a result, the petitioners were permitted to execute sureties at the Court in Valliyoor.

5. The learned Additional Public Prosecutor informed the Court that a counter-case exists in P.R.C.No.64 of 2023, and it is also to be transferred to Tirunelveli.

6. In view of the above, this Court hereby orders the transfer of the following cases:-

(i) C.C.No.354 of 2023, now pending before the Judicial Magistrate Court No.I, Kuzhithurai, Kanyakumari District, to be transferred to Judicial Magistrate Court No.III, Tirunelveli.



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(ii) P.R.C.No.64 of 2023, to be transferred to the Judicial Magistrate Court No.III, Tirunelveli. Following the transfer, the case is to be committed accordingly to the Court of Sessions.

7. Since the fourth accused in P.R.C.No.64 of 2023, who is a senior citizen and has certain travel restrictions, his presence is dispensed with on condition that he shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on the hearings, specifically directed by the trial Court. The fourth accused is further directed to give an undertaking in the form of affidavit that he will be duly represented by a counsel on all hearing dates and that the counsel representing him will cross-examine the prosecution witnesses on the same day they are examined in chief. He shall not dispute his identity to the witnesses. He shall appear before the Court in the event his presence is insisted by the learned trial Judge for the purpose of identification. If he adopts any dilatorily tactics, it is open for the trial Court to insist for his appearance and deal with him in accordance with the judgment of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh vs. Shambhu Nath Singh* reported in 2001 (4) SCC 667.



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8. This Criminal Original Petition is disposed of accordingly.

Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No

22.11.2024

Index : Yes / No

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Note:- Issue order copy on 25.11.2024.

To

- 1.The Judicial Magistrate No.I,
Kuzhithurai, Kanyakumari District.
- 2.The Judicial Magistrate No.III,
Tirunelveli.
- 3.The Sub-Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

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Order made in
Crl.O.P.(MD)No.17725 of 2024

Dated: 22.11.2024