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CrI.O.P.(MD)No.19181 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01/11/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

CrI.OP(MD)No.19181 of 2023

and

CrI.MP(MD)No.15130 of 2023

M.Palani : Petitioner/A20

Vs.

- 1.The State rep. by
The Deputy Superintendent of Police,
Thalaisyuthu Sub Division,
Tirunelveli District.
- 2.The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
(Crime No.219 of 2022) : R1 and R2/Complainants
- 3.Alakanantha Muthu : R3/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 408 of the Criminal Procedure Code, to transfer the case in SC No.166 of 2023 pending on the file of the III Additional District and Sessions Judge, Tirunelveli, to any other court having competent jurisdiction in other districts and consequently direct the such transferee court to dispose of the same in the manner known to law and pass such any or other orders.

For Petitioner : Mr.R.Anand

For 1st Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

For 2nd Respondent : Mr.R.Karunanidhi



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O R D E R

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This criminal original petition is filed seeking transfer of the case in SC No.166 of 2023 pending on the file of the III Additional District and Sessions Judge, Tirunelveli, to any other court having competent jurisdiction in other districts and consequently direct the such transferee court to dispose of the same in the manner known to law.

2.The facts in brief:-

The petitioner is the 20th Accused in SC No.166 of 2023 pending on the file of the III Additional District and Sessions Judge, Tirunelveli for the offences punishable under sections 147, 148, 294(b), 109, 302, 307, 506(2), 120B, 149 and 114 IPC. The details of the accusation and the allegations showing the charges are not necessary for disposing this petition.

3.Suffice to say that after committal process, the Principal District Judge, Tirunelveli, made over the case to the III Additional District Sessions Judge, Tirunelveli. The date of hearing was fixed, on 20/11/2023.



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4.Now the grievance of the petitioner is that SC No.528 of 2021 is also pending before the very same Judge. They are facing much difficulties before him. The very conducting of the trial process in SC No.528 of 2021 shows the prejudicial mind of the Judge. In the above said case, a Special Public Prosecutor was appointed as per the order of the District Collector, Tirunelveli. After taking over the charge, the above said Special Public Prosecutor attempted to change the foundation of the case. He started tutoring the witnesses.

5.A petition under section 294 Cr.P.C was filed by the prosecution. That was also allowed in Crl.MP No.7324 of 2022. Against which, they preferred revision before this court in Crl.RC(MD)No.848 of 2022. The said order was partially modified. Even after getting favourable order from this court, they are facing much pain. The learned Judge does not consider the orders of this court. The concerned Special Public Prosecutor is also misleading the court. If the trial is dealt or tried by the very same judge, then their interest will be affected.



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6.In this petition, some other incidents took place during the trial process, are mentioned, such as correction of the depositions, changing the foundation of the case and expunging a portion of the evidence let in by the prosecution.

7.Facing such difficulties, the accused filed a petition under section 408 Cr.P.C in Cr.M.P No.10431 of 2023 before the Principal District and Sessions Judge, Tirunelveli, to get the trial transferred to some other court. In that petition also, the concerned Special Public Prosecutor intervened without any authority. Now those petitions are now pending.

8.In view of the above said development, if the accused are permitted to face the trial before the very same judge, then justice will not be rendered to them. On that ground, this petition has been filed seeking transfer.

9.Heard both sides. The de-facto complainant also intervened and also heard.

10.It is very unfortunate to note that the petitioner wants a judge of his own choice, not only



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that, orders in his favour at all events, at all the occasions.

11. When the argument was advanced by the learned counsel appearing for the petitioner on this line, I made strong objection that the accused cannot have a judge on his own choice. Simply because some adverse orders been passed against the accused persons during the course of trial, no presumption or assumption will arise that the judge is seriously prejudiced. Some of the unfortunate events, according to the petitioner, happened in the form of removing of deposition copies, corrections, etc., that will be dealt with by the Principal Sessions Judge before whom the transfer CMP No.10431 of 2023 is pending. It is for the Principal Sessions Judge to take the decision in the above said issue. Any observation if made by this court in respect of the proceedings in SC No.528 of 2021, may not be appropriate. It may cause prejudice not only to the prosecution, but also to the accused and may create some unnecessary problem. So I am avoiding making any observation in the above said issue.

12. Coming to the present subject matter of the trial process, I am not in a position to understand the grievance of the petitioner.



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13.The learned counsel appearing for the petitioner would submit that section 194 of the Criminal Procedure Code was not properly appreciated by the Principal Sessions Judge, Tirunelveli in making over the trial process.

14.Section 194 Cr.P.C reads as under:-

"S.194 Additional and Assistant Sessions Judges to try cases made over to them: An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try."

15.This provision empowers the Additional Sessions Judge and Assistant Sessions Judge as the case may be, to try the cases, which are made over either by general or special order. Now the powers of the Principal Sessions Judge to make over the case to any judge cannot be called in question stating that without proper application of mind, the power has been exercised in making over the



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case to III Additional Sessions Judge, Tirunelveli.

Simply because the petitioner is facing difficulties in SC No.528 of 2021 before the same Judge, it cannot be stated that the present case ought to have been made over to him. Such a right is not available not only to the accused, but also to the de-facto complainant or any other party, not even the State cannot make any objection. It is not a judicial order amenable to ordinary judicial review. It is an administrative order passed by the Principal Sessions Judge in the ordinary course of business. Absolutely, I find no ground to transfer the trial to some other judge on this account.

16.As noted above, the order passed under section 194 Cr.P.C by the Principal Sessions Judge is purely an administrative in nature. As mentioned above, it is nothing, but distribution business among the Additional District Judges. The administrative order cannot be questioned, unless it is apparently illegal. On that account, this petition is not maintainable.

17.At the conclusion of the hearing, the learned counsel appearing for the petitioner sought permission of this court to grant leave to the petitioner to move the Principal Sessions Judge, Tirunelveli to withdraw the case and transfer to some other court.



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18.The learned counsel appearing for the petitioner would rely upon section 408 Cr.P.C and sought permission of this court and liberty to approach the Principal Sessions Judge once again to transfer the trial to some other Judge. This will in effect amount to transferring the matter to the Principal Sessions Judge, Tirunelveli, which is not permissible under law. The petitioner cannot take the courts for granting for satisfying his requirement. Without any basic ground, this petition has been filed.

19.The learned counsel appearing for the 2nd respondent/de-facto complainant has also brought to the notice of this court when similar request was made by A9 before this court in Crl.OP(MD)No.13097 of 2022 seeking transfer of the trial in SC No.528 of 2021. That was dismissed by this court, by order, dated 21/07/2022. This shows the delaying tactics adopted by the accused. But however, now another attempt has been made by the petitioner by filing Crl.MP No.19431 of 2023 seeking the very same relief, of course, under section 408 of Cr.P.C. Actually, this petitioner wants a similar liberty. As mentioned above, it will amount to clear abuse of process of the court.



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20.This petition deserves no consideration at all and accordingly, it is **dismissed**. The trial must be taken to its logical conclusion as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The III Additional District and Sessions Judge,
Tiruneveli.
- 2.The Deputy Superintendent of Police,
Thalaiyuthu Sub Division,
Tirunelveli District.
- 3.The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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