

Murugesan and Others Vs. State Rep. by the Inspector of Police, Sembanar Koil Police Station, Nagapattinam

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Court : Chennai

Decided On : Feb-10-1999

Reported in : 1999CriLJ3430; 1999(1)CTC591

Judge : M. Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) -- Sections 408; [Indian Penal Code \(IPC\), 1860](#) -- Sections 302 r/w 34 and 304 r/w 149

Appeal No. : Crl. M.P. Nos. 474 and 475 of 1999

Appellant : Murugesan and Others

Respondent : State Rep. by the Inspector of Police, Sembanar Koil Police Station, Nagapattinam

Advocate for Def. : Mr. N.R. Elango, Government Adv., ;Mr. S. Vijayaragavan first Informant

Advocate for Pet/Ap. : Mr. A. Packiaraj, Adv.

Judgement :

ORDER

1. This is a petition filed by the petitioners/ accused in a murder case in S.C.No. 39 of 1998 on the file of the Additional District Sessions Judge-cum-Chief Judicial Magistrate, Nagapattinam to transfer the case to some other court.

2. The facts contained in the affidavits and the counter affidavits filed by the parties depict a sorry state of affairs.

3. The alleged murder took place at Thiruvavarur on 24.9.1996. The chargesheet was filed against the petitioners accused for the offence under Section 302 r/w 34 I.P.C. against A1 to A4 and 304 r/w 149 I.P.C. against A5 and A6. After committal, the charges were framed against the petitioners/accused and the case was posted for trial by the Principal Sessions Judge on 23.4.1998. The petitioners/accused were present on 23.4.1998. However, P.Ws.1 and 2 were not present in the court. Therefore, the said case was adjourned to 9.6.1998 for trial, on which date also the witnesses were not present. So, at the request of the Public Prosecutor of the District, the trial was posted on 14.7.98. On that date also, the petitioners/accused were present in the court. The learned Principal Sessions Judge directed to post this case before the Additional District Judge-cum-Chief Judicial Magistrate, Nagapattinam by making over this case and the accused were directed to appear before the said Court on 20.7.1998. After receipt of the records, the learned Additional District and Sessions Judge, Nagapattinam took the case on file on 20.7.1998 and posted the matter for trial on 10.8.1998 and 11.8.1998. In the meantime, there was an Advocates' boycott. So, the case was periodically adjourned to several dates. Ultimately, the case was listed again for trial on 25.11.1998 and 26.11.1998 at the request of the defence side. Though the petitioners were present on 25.11.1998, the first informant Vijaya sent a telegram to the court asking for adjournment.

4. In the meantime, the first informant Vijaya filed a petition before this Court in CrI.M.P.No. 3393 of 1998 praying to transfer the said case on the ground that the witnesses apprehend danger at the hands of the accused, as they were being threatened by them and that it is not conducive to have the trial at Nagapattinam. This petition was dismissed on 5.8.1998 by this Court.

5. Thereafter, the first informant Vijaya filed a S.L.P. before the Apex Court seeking for the same relief. However, the Apex Court by order dated 15.12.1998 directed the first informant Vijaya to move the concerned court for police protection.

6. Meanwhile, since the witnesses did not appear before the Court, on the request of the Additional Public Prosecutor, the trial court issued a witness warrant and posted the matter on 9.12.1998. On 9.12.1998 also the witnesses were not present. Therefore fresh warrant was issued and the case was posted for trial on 11.1.1999. On the said date, the first informant Vijaya and another witness Kanimozhi were present. The witnesses were recalled, after they were bound over to appear before the court to give evidence on 19.1.1999 and 21.1.1999 as agreed by both the parties.

7. At that stage, the petitioners/accused filed this petition for transfer on 13.1.1999 before this Court on the very same ground which was urged all along by the complainant stating that the accused were being threatened by the complainant and her men. After issue of notice of motion, remarks were called for from the trial court.

8. Mr.S. Vijayaragavan, the learned counsel appearing for the complainant, was also permitted to be impleaded as counsel in this petition during the pendency of this petition before this Court. Since the petitioners did not appear before the trial court, bailable warrants have been issued on 19.1.1999 and the case was posted on 25.1.1999. During the course of arguments, it is brought to the notice of this Court that the case has been again adjourned to some other date.

9. This petition for transfer is now stoutly opposed by the first informant/complainant, though she had also asked for transfer on the very same ground before this Court as well as before the Apex Court. However, it shall be pointed out that through the affidavit filed by the first informant before this court, the witnesses have been directed to go to the trial court and to adduce evidence, since they feel that sufficient police protection is being given to them by the police party. This petition is also opposed by the respondent/police stating that the apprehension expressed by the petitioners with reference to the threatening has no

basis, since they have been directed to give protection to both the parties during the course of trial.

10. Moreover, the Apex Court would specifically observe in the petition filed by the first informant in the following words:

'Suffice to say that if the petitioner needs any protection she can move the concerned Court and the concerned Court will certainly pass appropriate orders.'

11. Therefore, the trial court is directed to take note of the Apex Court's observation, as indicated above and to commence the trial immediately after communication of this order without any further delay. The Superintendent of Police, Nagapattinam is also directed to ensure that sufficient protection is given to the petitioners as well as to the prosecution party when the trial is going on.

12. It is quite unfortunate to notice that both the prosecution as well as the accused party have equally contributed their mite to see that the trial in the murder case is not commenced by filing petition for transfer one after another. At least now, in view of undertaking given by both the parties, this Court feels that both the parties shall cooperate for the conduct of the trial by the trial court, in a calm and quiet atmosphere. The trial court is also directed to get the assistance of the police in creating a conducive atmosphere to have a fair trial.

13. It is brought to my notice that the occurrence of murder in the instant case is sequel to the earlier murder. Therefore, the trial shall be conducted in a smooth atmosphere so that both the parties may come and appear before the court without any fear on being provided with effective police protection.

14. Before concluding, I feel that suitable costs can be imposed on both the parties, since the case is periodically adjourned by the trial court, that too, in a sensational murder case without co-operation by both parties. Therefore, the petitioners/accused party in this case and the first informant Vijaya are directed to pay costs of Rs.5000 each and deposit the same before the trial court on or before 25.2.1999. On the total sum of Rs.10,000 which is to be deposited in the trial court, the trial court shall hand over the same to the President of the Bar

Association, Nagapattinam after obtaining the receipt and the President of the Bar Association, Nagapattinam would spend the said amount for noble purpose.

15. With these observations, the petition, in Crl.M.P.No.474 of 1999, is dismissed. Consequently, Crl.M.P.No.475 of 1999 stands dismissed.

16. The Registry is directed to send the order copy to the Public Prosecutor. High Court, Madras, the Superintendent of Police, Nagapattinam and the trial court immediately.

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