

SUPREME COURT OF INDIA

Sarasamma @ Saraswathiyamma

Vs.

The State Rep. By Deputy Superintendent of Police

Crl.A.No.713 of 2018

(N.V.Ramana and S.Abdul Nazeer,JJ.,)

09.05.2018

JUDGMENT

N.V.Ramana,J.,

SLP(Crl.)No.1878 of 2018

1. Leave granted. (arising out of Special Leave Petition (Criminal) No.1878 of 2018)
2. This Special Leave Petition (Criminal) No.1878 of 2018 is filed, being aggrieved by the impugned order passed by the High Court, wherein it has rejected the prayer seeking transfer of Sessions Case No.81 of 2016 from Hosur to Salem in Tamil Nadu.
3. The brief facts of the case, including its genesis, which are necessary for the purpose of disposal of the case are that in the year 1992, one N. C. Raman, who was alleged to be the head man of Nagamangalam village, was murdered by certain persons. The aforesaid case was registered, as Crime No. 302 of 1992, before the jurisdictional police station. In the context of the aforesaid case N.C.Chandrashekran, husband of the appellant herein, was alleged to have been murdered at Hosur Bus Stand (Tamil Nadu), as N.C.Chandrashekran was an eye witness to the earlier murder of his deceased brother (N. C. Raman).
4. Accordingly, a First Information Report, being FIR No.614 of 1995, dated 15-8-1995, was initially registered under Section 307 of the Indian Penal Code [IPC] at Hosur Police Station but after the death of deceased (N.C.Chandrashekran), Section 307 was altered into Section 302 IPC. In the year 1997, one Ramachandran, son of Marappa, a different person than respondent no. 3 (Ramachandran son of Thimmaiya), along with another accused surrendered before the Magistrate with reference to FIR No.614 of 1995. Thereafter, first Charge-sheet was filed against the said Ramachandran son of Marappa and in the year 2012, the complainant who is the present appellant herein, gave a representation to the concerned Police Station indicating that the original accused viz. Ramachandran son of Thimmaiya (respondent no. 3 herein) was not arrested and in his place, Ramachandran son of Marappa

(an alleged imposter) was shown as an accused. Therefore, she requested that the original accused Ramachandran son of Thimmaiya (respondent no. 3) be arrested and tried.

5. In the context of the representation, the police investigated into the matter and found that certain police men were involved in the active concealment of the real accused. Thereafter, on 30-4-2015, a supplementary charge-sheet was filed, against the present Respondent No.2, Ramachandran son of Thimmaiya (respondent no.3) along with two accused Police officials who were alleged to have actively connived in suppressing the identity of the true accused. It was brought to our notice that further investigation was carried out and proceedings before the Sessions Court have been inordinately delayed. After filing the supplementary Charge-sheet, the Court took cognizance and committed the case to the Sessions Court at Hosur in Sessions Case No.81 of 2016.

6. Learned senior counsel, Mrs. Indira Jaising, appearing on behalf of the Appellant has vehemently contended that said accused Ramachandran son of Thimmaiya (respondent no. 3 herein) was earlier an M.L.A. from the Thalli Constituency and there are about 14 criminal cases pending against him. He is alleged to be a very influential and was being an impediment for the witnesses to depose freely.

7. Learned Senior counsel appearing for the Appellant drew our attention to the fact that one of the witnesses filed a Criminal Original Petition No.8000 of 2017 before the Madras High Court under Section 482 of the Code of Criminal Procedure, 1973 seeking expeditious completion of the trial, accordingly, on 14-6-2017, the High Court has directed the trial court to complete the trial within a period of six months. In this context she argues that, even though such directions were passed by the High Court, the Trial Court has not yet completed the trial. Thereafter, the Appellant apprehended threat to her life and sought transfer of Sessions Case No.81 of 2016 from Additional Sessions Court, Hosur to Principal Sessions Court at Salem, Tamil Nadu.

8. The High Court by the impugned order while rejecting such a request on the ground that the transfer may not be a solution for ameliorating the apprehensions of the Appellant, as such apprehension may continue even after a transfer, but granted liberty to the appellant to approach the concerned jurisdictional police seeking necessary protection for the purpose of deposing evidence.

9. Learned Senior counsel appearing for the Appellant submitted that the transfer, which they are seeking, is essentially on the ground that the manner in which three murders have taken place and the adverse circumstances under which the trial is being conducted. According to the Appellant, the genesis of this criminal case concerning death of a witness (N. C. Chandrashekar) for the earlier criminal case is indicative of the nature of apprehension the Appellants are reeling under.

10. It is stated by the appellant that the accused had earlier threatened the deceased, husband of the complainant, not to give evidence and if he gives evidence against the accused, he will meet the same fate. As the deceased did not oblige the accused, the deceased (N. C.

Chandrashekar), who is the husband of the Appellant herein, was done to death. It was also submitted that the same accused has murdered another person i.e., the husband of the Appellant in the other Special Leave Petition (Crl.) No.1896 of 2018 and in addition to this, learned senior counsel appearing for the Appellant submitted that the accused - respondents are very influential in the locality and according to her, the allegations which are substantiated are supported from the counter affidavit filed by the State of Tamil Nadu. She has relied on the principles enunciated in Abdul Nazar Madani v. State of Tamil Nadu and Anr., (2000) 6 SCC 204, and submitted that there is a reasonable apprehension that there cannot be a fair trial, more so when the witnesses are not coming forward to depose and are turning hostile due to the pressure tactics of the accused. According to her, there are 24 witnesses still to be examined and so far 20 witnesses are examined out of them 16 witnesses already turned hostile. It is further submitted that most of official witnesses turned hostile. In the circumstances, she submits that there is no way that proper and fair trial can be held and justice will be done to the Appellant. Therefore, it is a fit case to transfer under Section 407 of the Code of Criminal Procedure, 1973.

11. On the other hand, Mr. Kapil Sibal and Mr. Sanjay R. Hegde, learned senior counsels appearing for the respondents submitted that there is no reason for transferring the case. They further submitted that the appellant has expressed her apprehension for her life and security, which was properly considered by the High Court and taken care of. They further contended that the respondent no. 3 is no more an M.L.A. and there is no evidence on record concerning the pressure exerted on any of the witnesses. On the aspect of delay, they contend that the trial is being delayed due to the fact that the appellants herein herself is not deposing. So far as the hostile witnesses are concerned, they submit that it is a matter which the Court will examine and even though the witnesses have turned hostile, they can be cross-examined. They further submitted that the statements which sought to be relied upon by the appellants, are filed before this Court for the first time and the same cannot be taken into consideration as they are of questionable veracity. They suggested that respondents can be directed to stay out of the District till the trial is concluded and there is no ground made out for transfer.

12. Heard the learned counsels appearing for the parties and perused the material available on record.

13. In this case at hand, there is no dispute that the F.I.R. was registered way back in the year 1995 and initially the first charge-sheet was filed against Ramachandran son of Marappa. Subsequently, in 2012, the appellant herein had submitted a representation, which ultimately led to the further investigation and filing of the supplementary charge-sheet against the present respondents. A perusal of the affidavit filed by State make it apparent that certain Police officials, who are now arraigned as accused nos. 8 and 9, in collusion with respondent no.3 had wrongly portrayed the other Ramachandran as accused instead of the present respondent no.3.

14. Coming to the manner of conduction of trial, it is not in dispute that as per the information provided before this Court, almost 21 witnesses so far have been examined and out of which 16 witnesses have turned hostile. It is surprising to note that some of the official

witnesses have also turned hostile being P.W. 9, 10 and 11. Still, there are 24 witnesses who are yet to be examined. We cannot ignore that several criminal cases, where the accused - respondents are involved, are pending before the Court. Apart from that, in the affidavit filed on behalf of the State by Respondent No.1, it is admitted that the Village Administrative Officer and the Village Assistant who are punch witnesses have turned hostile.

15. It is also stated in the affidavit by the State that the accused Ramachandran son of Marappa who surrendered before the concerned Court was not the real accused and basing on that, District Judge directed the respondents to conduct further investigation, accordingly, the case was transferred to District Crime Branch. After the investigation, it was found that the real accused i.e., Accused Nos. 1 and 2 in this case are alleged of colluding with the investigating officer and swapping the real accused for an imposter. It is in this context that the police officials have also been added as accused in the supplementary charge-sheet.

16. Taking into consideration the aforesaid allegation which prima facie indicates that the investigation officer at that point of time has not properly conducted the investigation. At this juncture it may be relevant to extract the counter affidavit filed by the State concerning the influence of the respondent no. 3- MLA Tr. Ramachandran and his associates who had maintained an iron grip over 15 villages and had not allowed any political rivals to set up a base were infuriated by the challenge posed by the PDK Party of which the deceased was a prominent local leader. It is apparent from the affidavit filed by the State that the members of the respondents - accused group being public representatives have significant influence in these villages so the apprehension expressed by the appellant cannot be brushed aside. Taking into consideration of the facts and circumstances of this case, we conclude that the apprehension of the complainant - appellant that there is no possibility for conduction of fair and impartial trial at Hosur is reasonable. Further, by transferring the case, the respondents – accused are not prejudiced in any manner. Accordingly, the case (Sessions Case No.81 of 2016) is transferred from Additional Sessions Court, Hosur to Principal Sessions Court at Salem, Tamil Nadu.

17. Taking into consideration the long pendency of the case, we direct the Principal Sessions Judge, Salem, Tamil Nadu to conduct and conclude the trial expeditiously. It may be noted that we have not expressed anything on the merits of the case and trial court is directed to independently consider the case uninfluenced by any observations passed herein.

Criminal Appeal No. 714 of 2018

18. This case is filed seeking transfer of the criminal case being SC NO. 1/2013, pending before the Additional Sessions Court, Hosur to anyplace outside Hosur.

19. A brief factual matrix is that the husband of the appellant herein was murdered on 05.07.2012 by respondent no. 2 to 26 herein. It may not be out of context to note that respondent no. 2 and respondent no. 3 (ex-MLA) are common accused in both the petitions. A FIR, being Crime No. 143 of 2012, was registered under Sections 147, 148, 341, 120 (B),

307, 302 of IPC, Section 25(1)(B) of Arms Act and Section 5 of Explosives Act, by the Appellant's son. Thereafter, a charge-sheet was filed before the Additional District Court, Hosur in SC No. 1 of 2013 on 03.10.2012.

20. It is brought to our notice that on the earlier occasions the Appellant's son had approached the High Court seeking transfer of the case which was dismissed. As the trial was being stalled, the Appellant filed CrI. O.P. No. 28217 of 2017, before the High Court on 20.12.2017. It is apparent from the record in the present case 19 witnesses have been examined since the filing of the transfer petition before the High Court.

21. By the impugned order dated 23.01.2018, the High Court dismissed the transfer petition on the ground that transfer of the case at the belated stage of the trial would be prejudicial instead directed the trial court to dispose of the case expeditiously. Aggrieved by the same the Appellant is in appeal before this Court.

22. Mr. Gopal Shankar Narayan, learned counsel for the Appellant, has contended that the Appellant apprehends that there may not be possibility of fair trial as apparent from the facts of the other case, wherein the witnesses are being pressurized. He adopts the arguments of the learned Senior counsel appearing on behalf of the Appellant in the other case, to contend that the apprehension in the present case are reasonable as apparent from the affidavit filed by the State.

23. Having heard learned counsel appearing on behalf of both parties and perusing the documents available on record, we may note that from the day when the transfer petition has been filed, about 19 witnesses have been examined and 13 among them have turned hostile. Interestingly, nine official witnesses have turned hostile in this case. We are further apprised of the fact that Witness No. 36 to 124 are still to depose. Moreover, it is apparent from the affidavit filed by the State that the accused (respondent no. 3) is supposed to have an iron grip over 15 villages around the area which is indicative of possible influence over the men and machinery in the area.

24. As justice should not only be done, but also seem to have been done, it would be necessary that the trial should take place in a fair and transparent manner, wherein there should be no element of bias or witness tampering. As the appellant has clearly made out a case for transfer, we are inclined to accept the prayer sought by the Appellant in this case. Accordingly, the case being SC No. 1 of 2013 pending before the Additional Sessions Court, Hosur is directed to be transferred to Principal Sessions Court at Salem, Tamil Nadu. Further the trial court is directed to conduct the trial in an expeditious manner and uninfluenced by any observations made herein.

25. Accordingly, the appeals stand allowed in the above terms and pending applications, if any, shall also stand disposed of.