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**(2010) 08 MAD CK 0200**

**In the Madras High Court**

**Case No :** Criminal O.P. No. 17940 of 2010 and M.P. No. 1 of 2010

M. Sudalaikannu Pandian

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 25-08-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 317

**Citation :** (2010) 08 MAD CK 0200

**Hon'ble Judges :** C.T. Selvam, J

**Bench :** Single Bench

**Advocate :** S. Shunmugavelayutham for T. Vijayaraghavan, for the Appellant; I. Paul Nobel Devakumar, GA (Crl. Side), for the Respondent

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## **Judgement**

C.T. Selvam, J.—The petitioners, who are accused 1 and 6 in case pending trial in S.C. No. 10 of 2010 seek transfer thereof to any other Court.

2. The ground urged by Mr. S. Shunmugavelayutham, learned Senior counsel for the petitioners is that the lower Court has, upon appearance of the accused on 30.07.2010 before it informed that the accused should be present on all hearing dates failing which, it would ensure the conduct of the case by having them behind bars. On the very next hearing date and that too four days of the questioning viz., 04.08.2010, one of the accused A6, the petitioner in Crl.O.P. No. 19201 of 2010, who is from Tirunelveli was unable to attend since he was unwell. A petition u/s 317 Cr.P.C. filed by him came to be dismissed and it is informed that such dismissal came about on the lower Court being informed of transfer petition having been moved by the 1st accused before this Court, whereupon the learned Judge had stated that the case could be conducted before any other Court if proceedings before it were not desired. In these circumstances, learned Senior counsel informs of apprehension of the petitioners that they may not get justice at the hands of the lower Court. Learned Senior counsel would inform that a real and genuine apprehension of failure of justice would suffice to make out a case for transfer and that such requisite stands met in the present case. Learned

Senior counsel would refer to the decision of the Honourable Apex Court in *Gurcharan Das Chadha Vs. State of Rajasthan*, wherein it is observed as follows:

13. With regard to the Home Minister Petition he has given five instances in which he apparently crossed the minister's path and gave him room for annoyance. In regard to the two Police Officers he has averred that the Deputy Inspector-General of Police, Ajmer Range (Hanuman Prasad Sharma) and he had some differences on three occasions. He has also given similar instances of hostility towards him entertained by Sultan Singh, Deputy Inspector-General of Police. On the basis of these he says that he entertains an apprehension that he will not receive justice in the State of Rajasthan. The law with regard to transfer of cases is well settled, case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petition is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

3. I have heard the learned Government Advocate (Crl. Side) on the above submissions.

4. Following the rationale set out by the Honourable Apex Court in the decision cited above, this Court transfers the proceedings in S.C. No. 10 of 2010 on the file of the learned Fast Track Court V, Chennai to the learned Fast Track Court IV, Chennai.

5. The Criminal Original Petitions are disposed of with the above direction. Consequently, the connected miscellaneous petitions are closed.