

(1994) 01 MAD CK 0076

In the Madras High Court

Case No : Criminal M.P. No"s. 2807 and 2808 of 1991

P. Subramanyam and Another

APPELLANT

Vs

Poologa Pandian and 6 Others

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407(1)(a), 407(1)(e)

Citation : (1994) 01 MAD CK 0076

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : N. Chandrasekaran, for the Appellant; V. Gopinath, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Singh, J.—One of the prosecution witnesses in C.C. Nos. 429/89 and 430/89 on the file of Judicial Magistrate No. II, Kovilpatti, has filed the respective petitions under S.407(1)(a) and (e) of Code of Criminal Procedure praying for transfer of the above cases from the file of Judicial Magistrate No. II, Kovilpatti, to any one of the Judicial Magistrate"s Courts at Madurai.

2. Short facts are: In C.C. No. 429/89, police have filed charge-sheet against the respondents in CrI.M.P. No. 2807/91 for offences punishable under Ss.147, 149, 341, 332, 427 and 506(II), I.P.C. In C.C. No. 439/89, the police have filed charge sheet against the respondents in CrI.M.P. No. 2808/91 for offence under S.39 of the Indian Electricity Act. For transfer of these cases, these two petitions were filed.

3. Mr. N. Chandrasekaran, learned counsel appearing for the petitioners would submit that, (1) most of the witnesses are residing at Madurai and so, it would be convenient for these witnesses to depose, if the trial is held at Madurai, and (2) the very occurrence was that the petitioners and other officials of electricity department went on a raid and found illegal tapping of electric energy and

removed the instruments used for illegal tapping of electric energy and were bringing it to the, police station, and that violent incidents took place in the very presence of the police officers and that would show that it would pose danger for the safety of the witnesses if they go and depose at the court in Kovilpatti. He would further submit that, even now threatening letters are coming to these witnesses, and in the circumstances the trial at Madurai would save the situation.

4. Per contra, Mr. V. Gopinath, learned counsel appearing for the respondents, would submit that the witnesses can come to court on a single day on which they have to tender evidence, whereas these accused will have to go for every hearing and there are 20 witnesses and the trial would go on for about three to six months and it would be very difficult for these respondents to travel all the way from Kovilpatti to Madurai and it would incur a lot of expenses to them. Learned counsel would further submit that the witnesses would be paid by the prosecution for going over to Kovilpatti and give evidence, whereas the accused will have to go all the way from Kovilpatti to Madurai at their own expenses and they will be very much prejudiced, if the transfer was ordered. He would further submit that if the petitioners apprehend any danger, appropriate directions may be given to the police to ensure their safety and that no transfer of the cases is called for on the facts and circumstances of the case.

5. I have carefully considered the submissions made by the learned counsel. The two grounds on which the learned counsel for the petitioners seeks transfer are, (1) convenience of the witnesses, and (2) safety of the witnesses. Regarding the first ground, inconvenience would be caused to the respondents/accused if the cases are transferred to Madurai and it would easily out-weight small convenience, which the petitioners may get in case the trial was held at Madurai. It has I been rightly pointed out by Mr. V. Gopinath that all the accused have to travel all the way from Kovilpatti to Madurai for all the hearings of the case at their own cost, whereas the witnesses will have to go to the place of trial only on the date on which they have to tender evidence and that too at the cost the prosecution. Regarding the second ground, it is yet to be established in evidence that the violent incidents took place. While so, the concerned police can be directed to give adequate protection to these witnesses ensuring their safety while they go to the court and return, if need be, and see that there is no difficulty in tendering evidence and there is no problem with regard to their safety. Beyond that I am unable to say that on that ground the case is liable to be transferred.

6. In *Ranjit Singh, Niranjana Singh and Karam Singh Vs. Popat Rambaji Sonavane and Others*, the Apex Court had occasion to consider the case where, a witness sought transfer of the case from Pune to Indore on the ground of personal safety apprehending danger from nine accused charged under Ss. 395, 341, 504 and 506, I.P.C. In that case, directions were given to the police to take security measures for the safety of the complainant and the prayer for transfer was rejected. In *Baljit Singh and Another Vs. State of Jammu and Kashmir and*

Others, the Apex Court had held as follows:

Nor do we find that it would be a correct principle to apply to the transfer of criminal cases that they should¹ be heard at the place from where a large number of witnesses are to be examined. The normal course of things should not have been rightly interfered with and the case should have been allowed to be tried by the court which had territorial jurisdiction.

This principle applies squarely to the facts of this case.

7. In view of the above, both these petitions shall stand dismissed. The trial court is directed to give appropriate directions to the police for the safety of the witnesses, if warranted in the circumstances of the case.