

(2009) 09 MAD CK 0067

In the Madras High Court

Case No : Criminal O.P. No's. 17065 and 17066 of 2009 and M.P. No. 1 of 2009
in Criminal O.P. No's. 17065 and 17066

Yeshoda

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120, 147, 148, 149, 302

Citation : (2009) 09 MAD CK 0067

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : K.S. Dinakaran, for the Appellant; N.R. Elango, Assistant Public
Prosecutor, for the Respondent

Judgement

R. Regupathi, J.—The petitioner is one of the accused in S.C. No. 73 of 2009 pending on the file of the learned Principal Sessions Judge,

Chennai for offences punishable under Sections 302, 147, 148, 149 r/w 120(b) IPC. The case was subsequently, transferred to the file of Fast

Track Court V, Additional Sessions Judge, Chennai-1. The petitioner, to question the correctness and legality of the transfer, ordered by the

learned Principal Sessions Judge, Chennai, and intending to get reason for such order passed, preferred certain applications and the same was

declined. The present petition has been filed before this Court to set aside the order passed by the learned Principal Sessions Judge, Chennai.

2. Learned Counsel for the petitioner submits that the learned Principal Sessions Judge, may pass an administrative orders transferring the pending

case in his file to some other courts namely Additional Sessions or Fast Track Court in the same Sessions Division. But in the case on hand,

sighting the letter ROC No. 2448-A/09/F1 dated 23.06.2009 issued by the Registrar General, High Court, Madras, such an order has been

passed and under such circumstances, it cannot be claimed as an administrative order of the Principal Sessions Judge. The representation made by

the wife of the deceased to the Government was forwarded to the High Court and in turn reached the Court of the learned Principal Sessions

Judge. Therefore, it appears that transfer has been effected at the request of a party to the proceedings, in which case, notice should have been

ordered to the opposite party and by Judicial order, a decision would have been taken one way or other. In the case on hand, such practice has

not been adopted by the learned Principal Sessions Judge. Only under such circumstances, the petitioner filed a petition before this Court seeking

for a direction.

3. Per contra, learned Additional Public Prosecutor submits that the learned Principal Sessions Judge transferred the case to the Fast Track Court

for early disposal of the trial of the case. The prosecution is also interested in disposal of the trial at the earliest.

4. Heard the submissions made on either side and perused the materials available on record.

5. A letter from the Registrar General, High Court, Chennai has been issued to the learned Principal Sessions Judge on a some communication

from the Government based on a representation made by the wife of the deceased. On perusal of the contemporaneous records, it appears that

transfer was effected on receipt of the letter from the High Court. The learned Principal Sessions Judge, acted on the basis of the letter. Therefore,

transfer was effected on the basis of the request of the party to the proceedings. Hence, notice would have been issued to the opposite party and

proceedings would have been conducted and thereafter a conclusion would have been reached one way or other. It is appropriate to look into the

observations of the Hon''ble Supreme Court in Nirmal Singh and Others Vs. State of Haryana, , decided in the similar circumstances, wherein it is

held as follows:

The accused (appellant Naib Singh) has, in the Memorandum of his Appeal in this Court challenging the directions of the High Court stated that the

order of transfer had been made behind hisback and without any notice to him or

affording him any opportunity to oppose it. It is also stated that while ordering the transfer the learned single Judge of the High Court did not take into consideration the financial constraints and the inconvenience which would be caused to the accused, who may have to engage new counsel at Chandigarh. The objections raised by the other accused in their appeals are of a similar nature. These objections cannot be said to be devoid of force or merits. Even if the learned single Judge was of the opinion that the case should be transferred in the interest of the justice, it should not have been done without notice to the parties. This we say on the plainest consideration of fair play and justice. We are, therefore, of the opinion that the suo motu directions given by the learned single judge for transfer of the case to the Court of Sessions Judge, Chandigarh cannot be sustained more particularly in view of the difficulties expressed by some of the appellants to face the trial at Chandigarh, where they may have to engage other counsel at fresh fee etc.

Therefore, in view of the facts and circumstances of the case, the order dated 24.06.2009 passed for transfer of the case from the learned Principal

Sessions Judge, Chennai based on a letter dated 23.06.2009 of High Court as aforementioned to the Fast Track Court, Chennai is hereby set

aside and the case is restored to the file of the learned Principal Sessions Judge. On receipt of the case, the learned Principal Sessions Judge,

Chennai may proceed with the case in accordance with law.

6. Accordingly, the Criminal Original Petitions are ordered and consequently, connected Miscellaneous Petitions are closed.