



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2012

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THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

CRL.R.C (MD) No.768 of 2011

and

M.P. (MD) No.1 of 2011

Rajendran

.. Petitioner/2<sup>nd</sup> Respondent

Vs

1. Shivaji

.. 1<sup>st</sup> Respondent/Petitioner

2. The Inspector of Police  
Kamudhi Police Station  
Ramanathapuram District

.. 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Prayer: Criminal Revision case filed under Sections 397 and 401 of Criminal Procedure Code to call for the records from the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Ramanathapuram and set aside the order dated 07.06.2011 passed in Cr.M.P.No.437/2011 whereby transferred the case pending in C.C.No.112/2007 on the file of the Judicial Magistrate, Kamudhi to District Munsif Cum Judicial Magistrate, Thiruvadanai by allowing the Revision Petition.

For Petitioner :Mr.AR.Jeya Rhuthran

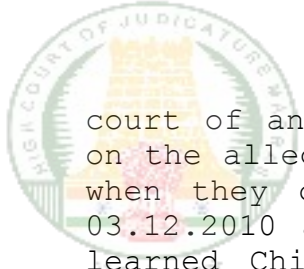
For Respondent :Mrs.S.Prabha  
Govt. Advocate(Crl.Side)

#### ORDER

Though the first respondent, based on whose petition, the impugned order was passed by the court below, has been served with a notice and his name appears in the cause list, he has not chosen to enter appearance either in person or through counsel. The second respondent alone is represented by the learned Government Advocate (Crl.Side). Hence this court deems it fit to hear the submissions of the learned counsel for the petitioner and that of the learned Government Advocate (Crl.Side) and pass an order after perusing the records.

2. Accordingly, the submissions made by Mr.AR.Jeya Rhuthran, learned counsel for the petitioner and by Mrs.S.Prabha, learned Government Advocate (Crl.Side) representing the second respondent are heard. The records are also perused.

3. A case was registered in Crime No.51/2006 on the file of Kamudhi Police Station against Shivaji, the first respondent herein and others for alleged offences punishable under sections 406 and 420 r/w section 34 IPC. After investigation a final report was submitted by the Investigating Officer and the same was taken on file by the learned Judicial Magistrate, Kamudhi on his file as C.C.No.112/2006. While the case was thus pending, Shivaji, the first respondent herein, filed a petition under section 410 Cr.P.C on the file of the learned Chief Judicial Magistrate, Ramanathapuram for transferring the said case to the



court of any other Judicial Magistrate in Ramanathapuram District, based on the allegation that he and other accused were threatened with weapons, when they came out of the court after appearing in the said case on 03.12.2010 and that they apprehended danger to their life and limb. The learned Chief Judicial Magistrate, Ramanathapuram, took it on file as Cr.M.P.No.437/2011 and without issuing notice either to the second respondent herein, namely the Investigating Officer, or to the revision petitioner, namely the de-facto complainant, chose to pass an order withdrawing C.C.No.112/2007 from the file of the Judicial Magistrate, Kamudhi and transferring the case to the file of the District Munsif cum Judicial Magistrate, Thiruvadanai. The said order came to be passed on 07.06.2011. The said order is challenged on the ground that the order was passed behind the back not only of the petitioner, but also of the Investigating Officer and that therefore, the said order is liable to be set aside.

4. Learned counsel for the revision petitioner points out the fact that the Inspector of Police, Kamudhi Police Station and the revision petitioner had been shown as respondents 1 and 2 respectively in the petition filed by the first respondent herein before the Chief Judicial Magistrate, Ramanathapuram under section 410 Cr.P.C and that despite the same, the learned Chief Judicial Magistrate chose to pass an order without issuing a notice to either of them and without giving an opportunity of being heard. The very order of the learned Chief Judicial Magistrate shows that no such notice was given and no opportunity was given to the revision petitioner and the second respondent herein. The short order passed by the Chief Judicial Magistrate, Ramanathapuram is reproduced hereunder:

*" Petition is filed under section 410 Cr.P.C. by the petitioner prays to be ordered to transfer the case in any court in Ramanathapuram District.*

*This petition is coming before this day in the presence of Thiru.Shiek Ibrahim, Advocate for the petitioner and petitioner and on hearing the petitioner side arguments this court delivered the following*

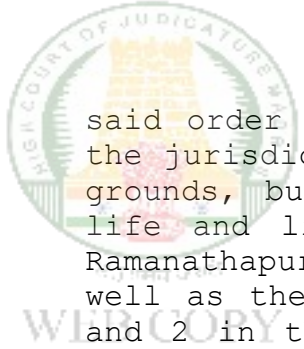
#### ORDER

*Petitioner present. Petitioner counsel present. Heard the petitioner. He stated that the Respondent No.2/Complainant is threatening him when he attends the court for hearing. Hence the case C.C.No.112/07 is ordered to be withdrawn from the file of Judicial Magistrate Court, Kamudhi and transfer to District Munsif-cum-Judicial Magistrate, Thiruvadanai to dispose the case. Petitioner is to appear in District Munsif-cum-Judicial Magistrate Court, Thiruvadanai on 6.7.2001."*

(The order of the court below verbatim-with the mistakes-has been reproduced.)

<https://hcservices.ecourts.gov.in/hcservices/>

5. The same shows that without issuing notice and without hearing the respondents in the petition filed by the first respondent herein, the



said order came to be passed. When an order of transfer of a case from the jurisdictional court to another court is passed not on administrative grounds, but on the basis of an averment that there was danger to the life and limb of the accused, the learned Chief Judicial Magistrate, Ramanathapuram, ought to have given an opportunity to the prosecution as well as the revision petitioner herein, who were shown as respondents 1 and 2 in the petition, when serious allegations were made against the revision petitioner. The said order is against the natural principle of *audi alteram partem*. Hence the order of the learned Chief Judicial Magistrate, Ramanathapuram deserves to be set aside.

6. In the result, the criminal revision case is allowed. The order of the learned Chief Judicial Magistrate, Ramanathapuram dated 07.06.2011 made in Cr.M.P.No.437/2011 in C.C.No.112/2007 is set aside. The learned Chief Judicial Magistrate, Ramanathapuram is directed to restore Cr.M.P.No.437/2011 on file, give notice to the respondents therein and decide the matter after giving opportunity to both the parties. Consequently, connected M.P.(MD) No.1 of 2011 is closed.

sd/-

Assistant Registrar (C.O)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,  
Ramanathapuram.
2. The Judicial Magistrate,  
Kamudhi
3. The Inspector of Police  
Kamudhi Police Station  
Ramanathapuram District
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

CRL.R.C(MD)No.768 OF 2011

29.02.2012

asr

RJ/27.3.12

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