

**(2011) 08 MAD CK 0281**

**Madras High Court (Madurai Bench)**

**Case No:** Criminal Original Petition No. 3863 of 2011

Uthayalakshmi

APPELLANT

Vs

The State, J. Raja, W. Joseph  
Selvaraj and M.S. Vijaya

RESPONDENT

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**Date of Decision:** Aug. 4, 2011

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 406, 498(A)
- Tamil Nadu Prohibition of (Harassment of Woman) Act, 1998 - Section 4

**Hon'ble Judges:** R. Mala, J

**Bench:** Single Bench

**Advocate:** L.J. Soundararajan, for the Appellant; K.V. Rajarajan, G.A. (Crl. Side) for R1 and R. Rajaraman, for R2 to R4, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

R. Mala, J.

This petition has been filed to withdraw the entire case records pertaining to C.C. No. 89 of 2010 pending trial before the Judicial Magistrate, Aundipatty and transfer the same to some other competent court for trial.

2. The learned Counsel appearing for the Petitioner would submit that the Petitioner is the defacto complainant and on the basis of the complaint given by her, a case has been registered for the offence u/s 498(A) and 406 I.P.C and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and charge sheet has been filed, which was taken on file in C.C. No. 89 of 2010. He would further submit that the 2nd Respondent is her husband and the 3rd and 4th Respondents are her in-laws and since the case is pending in C.C. No. 89 of 2010 before the learned Judicial Magistrate, Andipatti and because of the matrimonial dispute, the Petitioner/defacto complainant is residing with her parents at Gujarat and when

they appeared before this Court for Mediation, they were subjected to threat and there was a telephonic threat also and he made allegations against the officer concerned and hence, he prayed for the transfer of the case pending before the learned Judicial Magistrate, Aundipatty to any other Court. To substantiate the same, he relied upon the decision in [Central Bureau of Investigation \(C.B.I.\) Vs. Hopeson Ningshen and Others,](#) .

3. The Respondents 2 to 4 have filed a counter affidavit stating that on 26.07.2007, the Petitioner alone came along with 20 rowdy elements and they are roaming in and around the Mediation Centre and the Petitioner continuously made threat to the Respondents through Emails, messages and phone calls. They have further stated that this application has been filed by the Petitioner with a malafide intention and she alone filed an application for earlier disposal of the case, but when the matter was posted for trial, the prosecution has sought for adjournments. The 4th Respondent is a heart patient and she is so weak and the 3rd Respondent is working as a teacher in a Higher Secondary School, Dndigul and hence, he prayed for the dismissal of the application.

4. Heard the learned Government Advocate (criminal side).

5. This Court, on 23.03.2011, called for a report from the learned Judicial Magistrate, Aundipatty and the report has been received. I have perused the materials as well as the report received from the learned Judicial Magistrate.

6. On the basis of the complaint given by the Petitioner herein, a case has been registered for the offence under Sections 498(A) and 406 I.P.C and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and after investigation, charge sheet has been filed. As per the charge sheet, three witnesses were residing at Gujarat. Admittedly, the documents would show that when the matter was posted for Mediation and there was a problem arose between the Petitioner and the Respondents 2 to 4. Since the Petitioner/defacto complainant is residing at Gujarat along with her parents, she had a threat from the Respondents.

7. At this juncture, it is appropriate to considered the decision relied upon by the learned Counsel appearing for the Petitioner in [Central Bureau of Investigation \(C.B.I.\) Vs. Hopeson Ningshen and Others,](#) , wherein in the Apex Court has quoted the observations made in Menaka Sanjay Gandhi v. Rani Jethmalani (V.R. Krishna Iyer, J. at para 5) (SCC.pp.169-170), which would run thus:

5. A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering or cheering and disrupting the judicial hearing with menaces, noises and worse. This tenancy of toughs and street roughs to violate the serenity of court is obstructive of the course of justice and must surely be stamped out. Likewise, the safety of the person of an accused or

complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquillity at the trial. Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer.

The observations quoted above were also cited with approval in *Zahira Habibulla H. Sheikh v. State of Gujarat*, wherein, the Court has also observed that if the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

8. Considering the above said decision along with the facts of the present case, to give a fair trial, opportunity must be given to the Petitioner to put forth her case and it is a settled law that justice appears to be done and hence, to meet the ends of justice, the case in C.C. No. 89 of 2010 pending before the learned Judicial Magistrate, Aundipatty is transferred to the file of the learned Judicial Magistrate No. 2, Madurai. The learned Judicial Magistrate, Aundipatty is directed to send the entire records in S.C. No. 89 of 2010 pending on his file to the learned Judicial Magistrate No. 2, Madurai and the learned Judicial Magistrate No. 2, Madurai is also directed to dispose of the case within a period of two months from the date of receipt of the records from the learned Judicial Magistrate, Aundipatty.

9. With the above said direction, this petition is allowed. Consequently, connected miscellaneous petition in M.P.(MD) No. 1 of 2011 is closed.