



## IN THE COURT OF SESSIONS AT CHENNAI

Present: **Tmt.S.Alli, M.L.**,  
Principal Sessions Judge  
Friday, the 4<sup>th</sup> day of March, 2022.

Transfer Cr.L.M.P.No.17197/2021

in

C.C.No.344/2019

(On the file of the IX Metropolitan Magistrate, Saidapet, Chennai)



Leena Manimekalai

...Petitioner

-Vs-

Susi Ganeshan

...Respondent

This petition coming on 25.2.2022 before this court for hearing in the presence of M/s.V.S.Senthil Kumar, A.Kripakaran and V.Johnson Yuvaraj, Counsel for the petitioner and of M/s.C.Sangamithirai and D.Alexis Sudhakar, Counsel for the respondent and upon hearing both sides and upon perusing the case-records and having stood over for consideration till this day, this court delivered the following :-

**ORDER**

1. This application has been filed by the petitioner under Sec.408 Cr.P.C for transfer of C.C.No.344/2019, from the file of learned IX Metropolitan Magistrate, Saidapet, Chennai to any other court.

2. The brief averments in the affidavit filed along with the petition are as follows :

The petitioner is an Author, Writer, Director and Producer. He has travelled to 40 countries for film festival, literary festivals, media training, production activities, residencies, conferences and seminars. During 2008, the petitioner posed a tweet on her twitter handle about the physical harassment that she had been put to face at the hands of the respondent herein as early as 2005 and as "Me Too" was much prevalent than she had posted this in her twitter just to express what she had been put to face at her early years. While being so, the

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respondent herein has filed a private complaint as against the petitioner alleging the offence of defamation under Sec.500 IPC in C.C.No.344/2019 and the same is pending on the file of the learned X Metropolitan Magistrate, Saidapet, Chennai. In the above mentioned complaint, the respondent herein preferred a petition under section 104 of Cr.P.C. in CrI.M.P.No.119/2020 seeking to impound the passport of the petitioner herein and the petitioner herein filed an affidavit undertaking to appear before the court as and when necessary either in person or through her counsel and further undertook to intimate the court about her travel if any and recording the said affidavit, the learned Magistrate was pleased to close the petition on 11.11.2020 with the liberty to the petitioner to reopen the same whenever there comes a breach of the undertaking.

3. The respondent filed a petition before the Hon'ble High Court in CrI.O.P.No.11681/2020 seeking a direction for speedy disposal of the case and the Hon'ble High Court by an order dated 4.8.2020 directed the Magistrate to dispose of the case within a period of nine months. The respondent filed a petition to reopen the CrI.M.P.No.119/2020, which was already closed and challenged by the respondent before the Hon'ble High Court and the same was dismissed. The learned Magistrate without even checking the petition, providing the petitioner herein an opportunity to file her counter, violating the principles of natural justice, was pleased to mechanically reopen the petition on the very same day by an order dated 27.8.2021. The petitioner filed a memo resisting the order of reopen. However, the learned Magistrate considering the memo as additional counter passed order dated 6.9.2021 directing the passport authority to impound the passport of the petitioner until further orders. The petitioner approached this court by way of criminal revision and the same is pending.



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4. On 5.8.2019, due to work commitment, the petitioner was not in a position to appear before the learned Magistrate and the learned Magistrate though being well aware that only Bailable Warrant ought to have been issued, for the reasons best known, have issued Non-bailable Warrant which is against the prevailing law in force and various directions of the Hon'ble Supreme Court and High Courts. On the days that the petitioner has appeared, she has been made to wait till evening without any reasons. The case was posted on 29.9.2021 for the respondent to file counter in a petition filed by the petitioner and the petitioner was supposed to file a counter in the memo filed by the respondent and during the said proceedings the respective parties filed the counter at about 11 a.m. and both sought time for advancing arguments as they have to peruse the counter before advancing arguments, but just on the words of the respondent counsel the learned Magistrate was pleased to pass over the same and twice before the lunch break the petitioner's counsel mentioned the case but the learned Magistrate on the insistence of the respondent counsel directed the petitioner to file a petition under section 309 Cr.P.C. and the petitioner's counsel in the said petition specifically narrated what all had happened and also specifically mentioned that he has filed the petition on the insistence of the court. The learned Magistrate refused to receive the petition and passed over the case and finally at about 4 pm., on the repeated mentioning the learned Magistrate adjourned the case and this is more than sufficient to state that the learned Magistrate is biased towards the respondent herein and as such the petitioner cannot be entitled to free and fair trial before the learned Magistrate.

5. The petitioner was represented by a junior of her advocate and as his name was not in the vakalat the respondent counsel insisted the learned Magistrate not to allow his submission

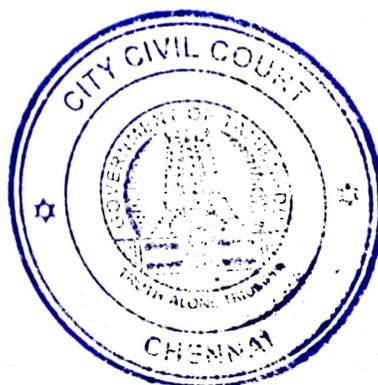


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and record his presence and the learned Magistrate also echoed the very same but on the other hand, the respondent was represented by one Mr. Alex Sudhakar on immediate verification of the vakalat on 20.9.2021, the petitioner came to know that Mr. Alex Sudhakar was also not a counsel on record but the learned Magistrate was pleased to record his presence, arguments and pass orders and this shows the double standard that the learned Magistrate is been adopting in this particular case. On the insistence of the respondent counsel the learned Magistrate without even deciding upon the pending petition is insisting upon me to proceed with the trial for the reasons best known. The petitioner has been constantly ill-treated and humiliated during the court proceedings. The learned Magistrate is biased and is proceeding with the case on the pre-conclusion that conviction is inevitable. Hence, the petition for transfer. No prejudice would be caused to the respondent if this petition is allowed. On the other hand, the petitioner would be put to face serious prejudice, immense hardship and irreparable loss if this petition is not allowed. On 6.9.2021, the learned Magistrate shouted at a media person for entering into the court to follow this case, but on the other hand, the learned Magistrate for the reasons best known is conveniently accommodating more than 10 people from the respondent side during the proceedings. Hence, the petition may be allowed.

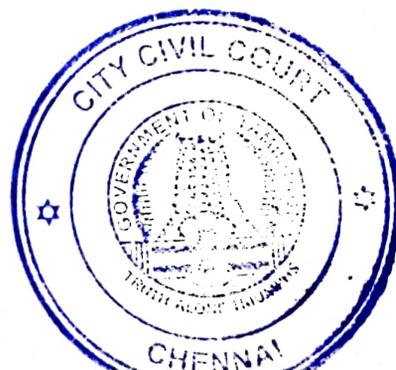
6. The brief averments in the common counter filed by the respondent are as follows :

The case is summon trial on the account of the offences arrayed carrying punishment upto two years and hence, it is obligatory to conclude the trial expeditiously. The trial is pending only for the complainant side evidence cross examination. It was the accused and counsel delayed the trial for no reasonable cause. The trial proceedings pending for cross-examination on her part ever since 4.2.2020. The petitioner's counsel did not pursue to



conduct the examination of witnesses as mandated by Sec.309 Cr.P.C. on day to day basis. The respondent had challenged the order passed by the learned Magistrate in CrI.M.P.No.119/2020 on the grounds that the trial court has passed an order with an option to review its own order. Whereas the Hon'ble High Court has passed a detail order in CrI.O.P.No.772/2021 observing that the order passed by the learned Magistrate in CrI.M.P.No.119/2020 does not suffer any illegality and infirmity and further the Hon'ble High Court in its inherent powers vested under Sec.482 Cr.P.C. jurisdiction has empowered the learned Magistrate to review the order for conducting the trial expeditiously. Therefore, it is crystal clear that the Hon'ble High Court vide its inherent power under Sec.482 Cr.P.C. jurisdiction has endorsed and approved the order passed by the learned Magistrate in CrI.M.P.No.119/2020 to review its own closure order as and when necessary in the interest of conducting fair and speedy trial.

7. The petitioner was ordered to produce all the original documents related to her travel such as Passport, Visa and Admission details for due diligence by the court. The petitioner deliberately failed to comply with the court order pursuant to the affidavit and undertaking. The trial court failed to inspect the visa document which was the vital document that only could prove the fact that the petitioner is likely to abscond from this trial by fleeing India. The petitioner only produced few pages of the passport bearing the visa stamping pages and have not furnished to the court any original documents for inspection. The address was different in the photocopy of the document. As per the order passed in CrI.O.P.No.772/2021 u/s 482 Cr.P.C., the respondent filed a petition to reopen the earlier petition filed under section 104 Cr.P.C. as there was a counter affidavit filed by the petitioner, the court reopened the petition



by providing the petitioner enough time to plead. Hence, there is no violation of natural justice as stated by the petitioner and the petition was not mechanically reopened. The learned trial court did not review its own order but only acted in accordance with the directions of the Hon'ble High Court order passed in CrI.O.P.No.772/2021 u/s 482 Cr.P.C.

8. Though her earlier junior counsel was in the same campus, he did not file any petition for the absence of the petitioner but after issuing the NBW, the very next day the petitioner attended the court and revoked the N.B.W. The N.B.W. was issued by a different Magistrate. The respondent was always present in the court and was ready for examining himself and his witnesses. The petitioner filed a petition with wrong provision of law to delay the trial proceedings. The petitioner and her counsel argued that the documents be not admitted as it was not certified as per Sec.65B of the I.T. Act. The petitioner has not stated as to why she and her counsel were not able to cross-examining the P.W.1. It is the petitioner, who used to humiliate the respondent by reporting false news and false tweets about the case proceedings as if she has already won the case, whenever the respondent's petition was dismissed by the Magistrate Court.

9. The main intention of the petitioner is not to conduct the trial and tried to drag the proceedings as many ways possible like changing the counsel unnecessarily that too without filing any proper change of vakalat. Moreover her earlier counsel got adjournment by pretending to file 317 petition. Neither her counsel has stated as to what bias and what procedures have been overlooked in order to obtain any judicial order for the respondent to either deny or accept. Already a time bound completion mandate stipulated by the Hon'ble High Court admittedly. One of the person who claimed to be a journalist without any proof for



identity was video recording the trial proceedings without any permission of the court which was reported by the court staff and further restrained by the court. Hence, the petition may be dismissed.

10. Now, the point for consideration is :

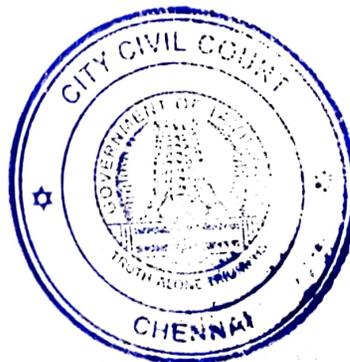
“Whether the transfer petition deserves to be allowed or not?”

**POINT :**

11. Heard both sides. Records perused.

12. The respondent / complainant has filed a private complaint against the petitioner / accused for the offence of defamation u/s 500 IPC and it is pending on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai in C.C.No.344/2019. The respondent has filed a petition before the trial court under Sec.104 of Cr.P.C. in CrI.M.P.No.119/2020, to impound the passport and travel documents of the petitioner / accused in which, the petitioner has filed an affidavit and thereby undertaking to appear before the court as and when necessary and also undertook to intimate the court about her travel, if any, and the same was recorded by the learned Magistrate and the petition has been closed by its order on 11.11.2020 with a liberty to the respondent / complainant to reopen the same whenever there is a breach of undertaking. Again, the respondent / complainant has preferred a CrI.O.P. before the Hon'ble High Court of Madras in CrI.O.P.No.11681/2020 and the Hon'ble High Court has passed an order on 4.8.2020 and directed the IX Metropolitan Magistrate, Saidapet, Chennai to dispose of the C.C.No.344/2019 within a period of nine months from the date of receipt of the copy of the order.

13. Also, the respondent / complainant has filed a petition on 27.8.2021 in



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Crl.M.P.No.8098/2021 to reopen the C.M.P.No.119/2020, which has already been closed by the trial court by its order 11.11.2020 and it has been challenged by this petitioner / accused before the Hon'ble High Court in Crl.O.P.No.772/2021 and the same was dismissed by the order of the Hon'ble High Court dated 21.1.2021. Thereafter, the respondent / complainant has filed an application on 27.8.2021 to reopen the petition filed by him under Sec.104 Cr.P.C. to impound the travel documents and the passport of the petitioner / accused till the pendency of the criminal trial. Those facts have been admitted by both parties and there is no necessity to discuss about those facts.

14. The first and foremost contention of the petitioner / accused is that the reopen petition filed by the respondent / complainant on 27.8.2021 has been allowed mechanically on the same day by the learned IX Metropolitan Magistrate, Saidapet, Chennai without even checking the petition, providing her an opportunity to file counter and thereby violated the principles of natural justice. On perusal of the records, it came to know that the petition filed by the respondent / complainant to reopen the petition in Crl.M.P.No.119/2020 has been filed on 27.8.2021 and numbered as C.M.P.No.8098/2021 and it is also true that it has been allowed by the trial court on the same day. But, it is not correct to say that the petitioner / accused has not been given an opportunity to file her counter on the petition, since, it has been specifically mentioned by the learned Magistrate in her order that both sides were heard before passing order in the petition. Also, an affidavit has been filed by the petitioner / complainant in C.M.P.No.119/2020 and thereafter, after hearing both sides it has been closed with a liberty to reopen the same when there is a breach of undertaking. Therefore, question of filing of counter in C.M.P.No.119/2020 for reopening does not arise. The learned Magistrate has passed an



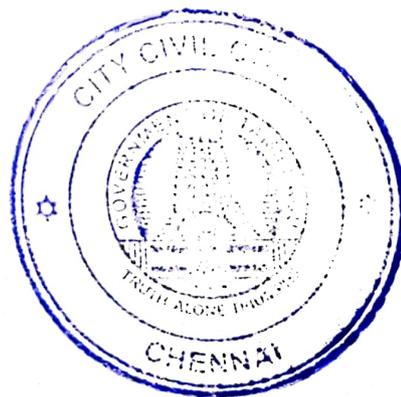
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order to reopen the C.M.P.No.119/2020 on 27.8.2021 after hearing both sides and thereby, she has not violated the principles of natural justice in any way.

15. The petitioner / accused has filed a memo on 6.9.2021 before the trial court disputing the order passed by the court on 27.8.2021 stating that the court cannot review its own order. If a court passes an order / pronounce a judgment, it should be agitated before the higher forum and not before the same forum. In the case on hand, the petitioner / accused has agitated the order of the Magistrate before the same court by filing a memo on 6.9.2021. Also, C.M.P.No.119/2020 has been closed with a liberty to reopen when there is a breach of undertaking, given by the petitioner / accused. The respondent / complainant has satisfied the trial court about the breach of undertaking given by the petitioner / accused and therefore, it has been reopened and it is not a review as claimed by the petitioner / accused.

16. One another contention raised on the side of the petitioner / accused is that the learned Magistrate has issued a Non-bailable warrant though being well aware of the fact that only bailable warrant ought to have been issued. The learned Magistrate in her remarks has specifically denied the said allegation and stated that Non bailable warrant has been issued by her predecessor and not issued by her. Therefore, no amount of allegation can be raised against the Presiding Officer for the issuance of Non-bailable warrant. From those facts, it is made clear that the petitioner has suppressed the real facts and come forward with this transfer petition with false contentions against the Presiding Officer.

17. The next submission made by the learned counsel for the petitioner / accused is that the petitioner was made to wait in the court during the hearing dates without any reasons and all the others appearing before the court have not been made to wait on the days that the

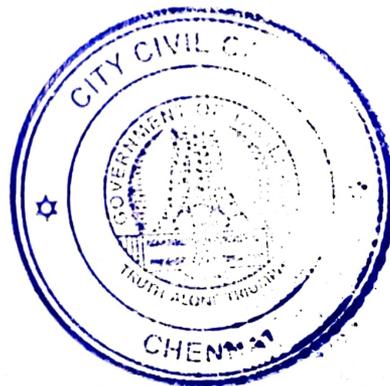


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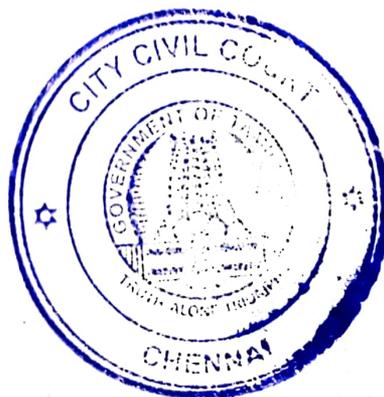
petitioner has appeared and she was made to wait on the request of the counsel for the respondent. In general, parties to the proceedings are made to wait in the court for several reasons and it all depends on the stage of the case. If a party or the counsel concerned is engaged in some other court or work and if they made a request before the court to pass it over, then the court may pass over the matter for some time. Likewise, if the court is engaged in some other work in the court, then also the other parties to the proceedings have to wait for their turn. The petitioner / accused being a well educated woman, should understand the circumstances on which she was made to wait in the court and it cannot be doubted against the Presiding Officer.

18. Further, the learned counsel for the petitioner / accused has submitted before this court that the respondent has filed a petition in C.M.P.No.8098/2021 without even mentioning the provision of law to reopen the petition in C.M.P.No.119/2020, without giving an opportunity to the petitioner to file her counter, the court mechanically allowed the same and it is against the provisions of criminal procedure code. When a petition or application is filed by the party without mentioning the provision of law or mentioning the incorrect provision of law, then the court has to look into the contentions and the relief asked for in the petition or application and to deal with the same without returning or rejecting the petition or application for the reason of non-mentioning of provision of law or incorrect provision of law. Therefore, even if the respondent has not specified the correct provision of law to reopen the petition in C.M.P.No.119/2020, the trial court ought to have deal with the petition legally and thereby, the trial court has followed the procedure and it cannot be termed that the presiding officer has acted against the provisions of criminal procedure code.



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19. The learned counsel for the petitioner / accused would further submit before this court that on 20.9.2021, the proceedings was passed over twice, just on the words of the counsel for the respondent and at the same time, the learned Magistrate has directed the counsel for the petitioner to file a petition u/s 309 Cr.P.C. At the insistence of the court the counsel for the petitioner filed a petition u/s 309 Cr.P.C., but the learned Magistrate refused to receive the same and passed over the case till 4 p.m. and then adjourned the case and it would show that the Magistrate is biased towards the petitioner / accused and therefore, the petitioner cannot be entitled to free and fair trial before the learned Magistrate. The learned Magistrate in her remarks has denied the allegation and also stated that "The learned counsel for the respondent / complainant made a representation on 20.9.2021 in the open court during the calling hours itself that the petitioner / accused has not chosen to prefer any revision against the order passed in CrI.M.P.No.119/2020, dated 6.9.2021 and also represented that there is no stay and so emphasised that he is ready to argue in CrI.M.P.No.8137/2021 u/s 244 Cr.P.C. But, on the other hand, the learned counsel for the petitioner made a representation that either he would prefer a revision or would prefer a writ upon the order passed by this court in CrI.M.P.No.119/2020 and he is not ready to hear the respondent / complainant. Therefore, this court advised the learned counsel for the petitioner / accused to file a memo regarding the same, but the petitioner / accused has chosen to file an application u/s 309 Cr.P.C. While the learned counsel for the respondent / complainant insisted this court to remand the petitioner / accused u/s 309 Cr.P.C. for atleast two days, so that, within that time span, she could complete the trial. But, this court magnanimously rejected the demand for remand made by the counsel for the respondent / complainant and for that reason alone the petition u/s 309 Cr.P.C., filed by

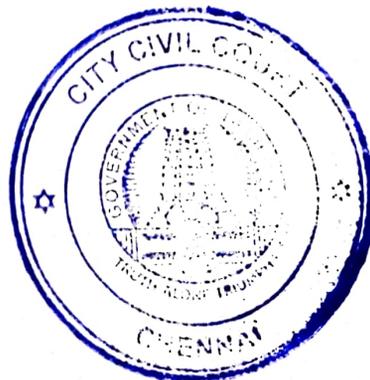


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the accused was given back." It is to be noted that the Hon'ble High Court has already directed the trial court by its order on 4.8.2020 to dispose of the case within nine months from the date of receipt of the copy of the order. Therefore, the learned Magistrate is bound to dispose of the case within the period given by the Hon'ble High Court and therefore, she has to insist the parties or their counsel to proceed with the trial to comply with the order of the Hon'ble High Court.

20. One more submission made by the learned counsel for the petitioner / accused is that the petitioner was represented by a junior advocate and his name was not in the vakalat and therefore, the counsel for the respondent insisted the learned Magistrate not to allow the submission and record his presence and it has been echoed by the learned Magistrate and on the other hand, the respondent / complainant was represented by one Mr. Alex Sudhakar, though he is not a counsel on record, but the learned Magistrate was pleased to record his presence, arguments and pass orders and it shows the double standard that the Magistrate is been adopting in this particular case and officer of the court ought not to have discouraged a junior counsel just on adhering the demands made by the counsel for the respondent. The said allegation has been stoutly denied by the learned Magistrate and also stated that the petitioner / accused has been given with ample opportunity to defend through her previous counsel Mr.P.P.Mohan and M.Subash, who never filed any vakalat on behalf of the petitioner. Therefor, the court is of the considered view that the petitioner / accused has made the allegations against the learned Magistrate without any valid reason to get the case transferred to some other court.

21. It is the argument of the learned counsel for the petitioner that the petitioner /

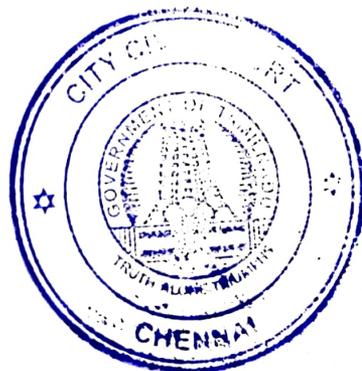


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accused has been constantly ill-treated and humiliated during the court proceedings for the reasons known to the learned Magistrate and she is allowing and encouraging the respondent's counsel to continue the act of humiliation and also the respondent is bringing nearly 10 members, who are non-advocate with an intention to humiliate the petitioner and the learned Magistrate has allowed the same. The Presiding Officer has denied the allegation raised by the petitioner / accused. While the court conducting the proceedings, it cannot look into those facts, stated by the petitioner and if really, something was happened as claimed by the petitioner, it has to be brought to the knowledge of the learned Magistrate, but, no such step has been taken by the petitioner / accused.

22. The learned counsel for the petitioner has vehemently contended that the learned Magistrate has been violated the procedure of law and principles of natural justice and proceeded as per the whims and fancies of the respondent, the learned Magistrate is biased towards the respondent and therefore, the petitioner will not get fair justice and it is just and necessary to transfer the case to some other competent court which will enable the petitioner to have a free and fair trial and to protect her right guaranteed under the Constitution of India. The allegations raised by the petitioner / accused are vague and it has not been substantiated in any way. The learned Magistrate is under an obligation to dispose of the case within the specified time given by the Hon'ble High Court of Madras. Also, the respondent / complainant has insisted for proceeding with the trial and therefore, the act of the learned Magistrate in insisting the petitioner / accused or her counsel to proceed with cannot be considered as biased towards the respondent / complainant.

23. The learned counsel for the petitioner has also pointed out a judgment of the Hon'ble



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High Court of Madras in CrI.O.P.(MD)No.9988 and 10462 / 2020 and CrI.M.P.(MD)Nos.4629 and 4795 of 2020, dated 15.10.2020, in which, our Hon'ble High Court has referred a judgment in AIR 1966 Supreme Court 1418 (Gurucharan Dass vs State of Rajasthan), in which it has been held by the Hon'ble Supreme Court of India that *"The law with regard to transfer of cases is well-settled. A 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 petitioner 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."*

24. In the said judgment, it has been observed by the Hon'ble Supreme Court that a mere allegation that there is apprehension that justice will not be done in a given case, does not survive. The court has further to see whether the apprehension is reasonable or not. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension and it is squarely applies to the case on hand since the allegations made against the Presiding Officer are unfounded and invented for the purpose of transfer petition. Therefore, the court finds absolutely no material in support of the contentions raised on behalf



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of the petitioner / accused and on the basis of such allegations, the case in C.C.No.344 /2019, pending before the learned IX Metropolitan Magistrate, Saidapet, Chennai cannot be withdrawn and transfer to any other competent court as prayed for by the petitioner / accused.

25. In the result, the petition is dismissed.

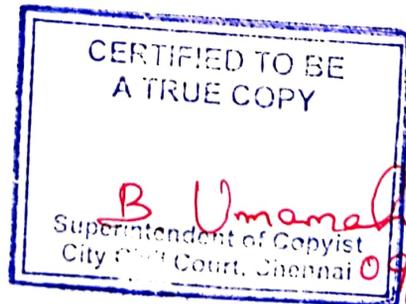
Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court this the 4<sup>th</sup> day of March, 2022.

  
PRINCIPAL SESSIONS JUDGE

Copy to :

1. The IX Metropolitan Magistrate, Saidapet, Chennai.

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Stamps Called for on.....	09	03/22
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