

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
TRANSFER CRIMINAL PETITION No.134 of 2015

ORDER :

The petitioner/accused of C.C. No.417 of 2015 on the file of the Principal Judicial Magistrate of the First Class, Manchirial filed the transfer petition to transfer the said calendar case from the file of that Court to the Court of Judicial Magistrate of the First Class, Laxettipet of the same District or any other nearest Court in the District by showing the State-represented by the Public Prosecutor as 1st respondent and Kapil Chit Funds Pvt. Ltd. of the complainant of the said case as 2nd respondent. In fact, the petitioner went unsuccessful in his transfer petition M.P.No.188 of 2015 before the learned Principal Sessions Judge, Adilabad wide order dated 02.05.2015 thereby he knocked the doors of this Court for the self-same purpose impugning the correctness of the order of the Sessions Judge also.

2) The affidavit in support of the transfer petition filed by the petitioner is that he is a practicing advocate aged about 49 years at Manchirial for the last 25 years and was President of the Bar Association for two terms earlier and elected very recently in May, 2015 and was Chairman of Agricultural Market Committee, Laxettipet, that the calendar case filed was for the offence punishable under Section 138 of the Negotiable Instruments Act against him by the 2nd respondent/complainant, Kapil Chits Private Limited for the amount due of the four chit fund amount due being highest bidder of the instalments due of the chit for Rs.5.00 lakhs payable of Rs.10,000/- per month for 50 months saying having failed to pay the E.M.Is issued the subject cheque No.316556

dated 10.06.2013 that was when presented returned dishonoured from the account inoperative and dormant and his defence is he never issued the cheque and it is a false claim and the 2nd respondent-chit fund company cause filled the blanks of the cheque issued by him at a distant point of time and the provisions of the N.I.Act have no application for no legally enforceable debt for which the cheque shown issued. It is regarding the liability and maintainability of the case now nothing to do with. Coming to the transfer petition averments of him that there was a call given by Advocates Joint Action Committee of all Bar Associations in the State of Telangana to abstain Court work to fulfill the demand for separate High Court for the State of Telangana and the Honourable Judges of all Courts from genuineness of the cause were not taking up the cases and not passing any adverse orders, but for the presiding officer of the Principal Junior Civil Judge's Court, Manchirial in several cases by passing remarks against local advocates by insulting or humiliating the advocates before clients or provoking the clients against advocates and some criminal cases registered against advocates viz., Crime No.57 and 58 of 2015 and the petitioner herein is one of the accused in both cases in which the Superintendent of the II Additional Judicial Magistrate of the First Class, Manchirial was the complainant so far as Crime No.58 of 2015 concerned on the ground that the advocates locked the Court hall and obstructed the Court proceedings, that the presiding officer of the Principal Junior Civil Judge Court, Manchirial thereby developed ill feelings towards advocates and started harassing or insulting them in front of clients during the strike period and later even by making comments in loose language. In fact, these are the common allegations against the presiding officer if at all to transfer all cases not for a particular

case. If not any grievance to be considered by the High Court on administrative side, if at all to transfer the officer and thereby no way sustainable, so far as the case on hand in seeking to transfer concerned those cannot be a ground.

3) The other averments were that the opportunity of cross-examination of P.W-1 by accused herein, the C.C. No.370 of 2013 (sic.340 of 2013) renumbered as C.C. No.417 of 2015 was denied and the matter by closure of evidence of the complainant on 24.03.2015 posted for examination of accused under Section 313 Cr.P.C and it is therefrom the petitioner approached the Sessions Court by filing transfer petition M.P.No.188 of 2015 to transfer the case to Laxettipet Court or any other nearest Court in the District and however, the learned Sessions Judge without discussing actual reasons dismissed the same by granting relief for reopen of P.W-1's evidence with permission to cross-examine P.W-1 by accused (petitioner) and in directing the trial Court to dispose of the matter within one month from the date of receipt of the said order. It is needless to say the closure of the cross-examination of P.W-1 for not done by accused was even without argument from the transfer application grievance, the learned Sessions Judge ordered for opportunity by reopening and in directing the trial Court to permit cross-examination by accused. Undisputedly it was done.

4) The further grievance is pursuant to the direction of the learned Sessions Judge to dispose of the case within one month, the learned trial Judge is posting the case without much time gap to wit by posted on 13.04.2015, 17.04.2015, 06.05.2015, 13.05.2015, 20.05.2015, 25.05.2015, 28.05.2015, 02.06.2015, 03.06.2015, 08.06.2015, 10.06.2015 and by posted the matter for

judgment to 18.06.2015 by saying even though arguments are yet to be advanced. In fact, it is unknown how the petitioner being a practicing advocate by ignoring the spirit of Section 309 Cr.P.C make comment on the trial Judge in posting the matter to the nearer dates even of the Section 309 Cr.P.C mandates of every enquiry or trial proceedings shall be continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment and of the same beyond the following day to be necessary for reasons to be recorded. It is to say the Court has to post the case for trial day to day as per mandate of Section 309 Cr.P.C. Once, such is the case if at all to a later date than next day the Court has to adjourn, otherwise cannot adjourn, it has to assign reasons. When such is the case, the posting of the case on the respective dates cannot be find fault. The advocate cannot ignore his role being officer of the Court, there is no legal concession to him merely because he happen to be an accused. Thereby the adjournments that too even after 26.01.2015 he was taking after cross-examination of P.W-1 despite the direction of the learned Sessions Judge to the learned trial Judge to complete the trial within one month, the learned Magistrate cannot be found fault by the petitioner in this regard.

5) Coming to his other grievance in the affidavit is that the complainant/2nd respondent did not file documents relevant to the chit fund transaction in the Court and he is even disputing the signature on the cheque of the year 2008 that was cause filled by complainant as if given in the year 2013 in presenting for encashment that was return dishonoured and thereby the petitioner/accused filed two petitions M.P.Nos.189 and 190 of 2015 seeking a direction to the complainant to produce the file relating to chit No.MGT 03J and also to send the cheque for expert opinion

for determining the age of the signature on the cheque and both petitions were dismissed on 08.06.2015. It is his contention that the reasons given in dismissal of the two applications are untenable. It is not even his case that the disposal is without assigning reasons. In fact, there is a remedy available to him against the said dismissal orders to vindicate his grievance either by maintaining revision or if not maintainable under section 397 Cr.P.C, by filing an application under Section 482 Cr.P.C and not to make a transfer application. His further averment is he apprehends the trial Judge has developed a prejudice against him and accordingly denied reasonable opportunity to him throughout the trial and he may not get justice and thereby the case be transferred to some other Court. He further averred that his apprehension is not imaginary but based on reasonable grounds and ends of Justice warrant transfer of the case. This is what the sum and substance of his claim or basis for it in seeking transfer.

6) As can be seen from the averments the so called joint action committed boycott call of the Courts resulted in boycotting all Courts is common and not particular to the case and even alleged registering of Crime No.58 of 2015 on the report of the Superintendent of II Additional Judicial Magistrate of the First Class Court against the petitioner and others and not by even Superintendent of the Principal Junior Civil Judge, where the calendar case No.417 of 2015 is pending. So that is also nothing to do muchless connected with the transfer petition averment. The adjournments given by the Court is justified in mandate of the Court as per the mandate of Section 309 Cr.P.C even the accused who is an advocate even taking adjournments time and again. When once P.W-1 come to the witness box not only as per the

mandate of Section 309 Cr.P.C but also as per the circular instructions of the High Court time and again to the Subordinate Courts to cross-examination by accused must be allowed to be completed on same day. If not cross-examined by accused of P.W-1, the trial Court was justified in treating the cross-examination 'NIL'. When complainant reported no more evidence, Court was justified in closing the complainant's evidence with the unchallenged testimony of P.W-1 and posting the matter for examination under Section 313 Cr.P.C from that unchallenged testimony containing the incriminating material against him to afforded opportunity by putting to his notice to elicit answers. Being an Advocate he is supposed to know the same. So far as dismissal of the two criminal petitions concerned, when he himself says in his affidavit para No.7 that the reasons are according to him not tenable. It is not his case of no reasons even given. He did not even produce the reasons as part of the affidavit to verify he did not even file said orders in question for the Court to verify even for his entertaining any little suspension in his mind of any prejudice against him for the learned Judicial Officer.

7) Having regard to the above, there is no basis at all in his allegations. It is needless to say as he being an advocate cannot ignore the mandate of Section 143 of the N.I.Act which speaks the offence under Section 138 of the N.I.Act is a summary trial to be for expeditious disposal. Having regard to the spirit of the law, the short adjournments given by the Court for proceeding with the case either before or even after the direction of the learned Sessions Judge to dispose of within one month, when cannot be find fault there is no basis for him to allege that the learned Magistrate developed any prejudice against him for what are the reasons stated supra. The order of the learned Sessions Judge in

dismissing the transfer application running in 13 paras of 8 pages is supported by reasons. Once the learned Sessions Judge exercised his discretion and also afforded opportunity to cross-examine P.W-1 by accused and also referred Section 309 Cr.P.C the mandate of law there is nothing to find fault on the impugned order of the learned Sessions Judge. The affidavit no more contains any allegation against the officer for any basis to entertain any doubt on the integrity of the officer muchless to impute any prejudice or bias. No doubt the learned counsel for the petitioner placed reliance on the expression of the Apex Court of two judge bench in ***Vikas Kumar Roorkewal V. State of Uttarakhand***^[1] in a transfer petition under Section 406 Cr.P.C the facts were there were grounds in seeking transfer of threat and coercion of the witnesses in the brutal murder of Superintendent Engineer of Irrigation Department of Roorkee, Uttarkhand, where the son of the deceased sought for transfer from Haridwar to Delhi saying that the accused belong to powerful gang operating in the state and petitioner being eye witness from the threats by accused, some witnesses turned hostile and despite summons, the petitioner and other witnesses could not go to Haridwar to depose because of threats by accomplice of accused and the complaint given to the Superintendent of Police, Haridwar and Government of Uttarakhand to provide protection to the witnesses or to thwart to such threats became futile and even police or State not chosen to take steps to cancel bail of the accused despite the circumstances thereby held by the Apex Court in transfer application before it of just to transfer in the factual scenario. There it was observed that mere allegation, there is apprehension that justice will not be done no doubt cannot be basis for transfer, however, the facts discussed supra shows there is reasonable

apprehension in the mind of the party of justice may not be done, to consider the transfer. The Court discussed regarding witnesses protection and the scope of Section 311 Cr.P.C and Section 165 of Indian Evidence Act and power and duties of the presiding Judge in this regard.

8) In fact, the Apex Court in ***Paul Singh V. C.B.***^[2] held that when the case is at fag end, the transfer of the matter is not justified and find fault with the High Court transferring the case from one Court to another Court within its jurisdiction for the sake of asking that too at the fag end. In ***Sathig Jaggi V. State of Chattisgarh***^[3] at para No.3, the Apex Court by reiterating ***Paul Singh*** supra held that when the matter is at fag end of trial does not at all just to transfer the case.

9) This Court in fact elaborately held in ***Madapuram Maddileti Naidu V. State of A.P.***^[4] that transfer is not for mere asking and what are the roles of the Judge vis-à-vis advocate and the litigant and the respect for law and the system as a guidance to follow.

10) Having regard to the above, there are no grounds to transfer the case from the file of learned Judicial Magistrate of the First Class, where the case is pending, reserved for judgment, but for to say if at all judgment not delivered, the petitioner accused at liberty to file any written arguments within two days after receipt of this order.

11) In the result, the transfer petition is dismissed. Consequently, the pending miscellaneous petitions, if any, shall stand closed.

04.09.2015
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[\[1\]](#) (2011)2 SCC 178
[\[2\]](#) (2005)12 SCC 329
[\[3\]](#) (2007)3 SCC 62
[\[4\]](#) 2015(2) ALT (CrI.) 253