

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

(Orders Reserved on : 11.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CrI.R.C.No.349 of 2014

and

M.P.No.1 of 2014

K.Mohammad Rizwan Petitioner/Accused

Vs.

M/s. Hamdaan Leathers,
Rep. by its Prop. K.Nahid Afroze,
S/o. P.K.Khaleeur Rahman,
No.15/3, Shandanmiyan 2nd Street,
NMZ Apartment,
Ambur - 635 802. ... Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, to set aside the order passed in C.M.P.No.1970 of 2013 dated 04.03.2014 on the file of the Chief Judicial Magistrate, Vellore, and transfer the case in C.C.No.86 of 2013 on the file of the Additional District Munsif-cum-Judicial Magistrate, Ambur, to any other Court.

For Petitioner : Mr.C.V.Kumar

For Respondent : Mr.K.Umar

ORDER

This Criminal Revision Case is directed against the order passed by the learned Chief Judicial Magistrate, Vellore, in C.M.P.No.1970 of 2013 dated 04.03.2014, dismissing the petition filed by the petitioner under Section 410 of Cr.P.C.

2. The learned counsel for the petitioner would mainly contend that the trial Court has failed to consider the fact that the junior counsel for the petitioner represented before the trial Court on 04.03.2014 that his senior's father is seriously ill and therefore he is unable to argue the case. The trial Court initially passed over the matter and subsequently, dismissed the same. Further, the trial Court has failed to give an opportunity to the petitioner to put forth his case for

transferring the case from one Court to another Court. It is further contended by the learned counsel for the petitioner that the trial Court has failed to consider the fact that due to the senior counsel's father was seriously ill, he could not argue the case which is bona fide reason. Hence, the learned counsel prayed that the order passed by the trial Court has to be set aside and the criminal revision case has to be allowed.

3. The learned counsel for the respondent would mainly contend that before the trial Court the petitioner and his counsel were not appeared to argue the case. In the said circumstances, the trial Court, correctly dismissed the petition filed by the petitioner and there is no infirmity or illegality in the order passed by the trial Court and hence, the learned counsel prayed that the Criminal Revision Case has to be dismissed.

4. This Court has considered the submissions made by the learned counsel on either side and perused the entire records.

5. On a perusal of the order passed by the learned Chief Judicial Magistrate, Vellore, it is seen that on 04.03.2014, the respondent was present at the time of calling the matter. But, the petitioner was called absent and no representation on his behalf and therefore, the petition was dismissed. Hence, the argument of the learned counsel for the petitioner that junior counsel for the petitioner was represented before the trial Court is not at all acceptable one. Further, on a perusal of records, it is seen that the transfer petition was filed by the petitioner in the year 2013 and the main reason for transferring the case is stated in para 4 of the petition which reads as follows:-

"4. The petitioner humbly submits that the attitude, behaviour of the presiding officer is also reflects the same. The presiding officer in most of the time acting as biased manner and always speaks very favour of the respondent/complainant without go into the merits of the case. It creates lot of apprehension in the mind of the petitioner/accused. In some hearings, if the petitioner/accused asked some convenient hearing dates to come from Chennai but the presiding officer did not give such convenient date on contra if the complainant asks any convenient hearing dates immediately the presiding officer post the case on the particular date. It creates great apprehension on the mind of the petitioner/accused whether he can get true justice from the presiding officer."

6. In this case, the transfer petition was filed in the year

2013 and now, since three years have been elapsed from 2013, the same officer is not presiding. Hence, the reason for transferring the case from the file of the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, to any other Court is not all acceptable. Before the trial Court, even though the respondent was present on 04.03.2014, the petitioner was called absent and no representation on his behalf and hence, the trial Court, correctly dismissed the petition. Therefore, there is no infirmity or illegality in the order passed by the trial Court. This Court finds no reason to interfere with the order passed by the learned Chief Judicial Magistrate, Vellore, which do not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

7. In the result, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jrl

To

- 1 The Chief Judicial Magistrate,
Vellore.
- 2 The Additional District Munsif cum
Judicial magistrate, Ambur

+lcc to Mr.K. Umar, Advocate, S.R.No.61488

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md(10/12/2016)

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