

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.12.2016

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.O.P. No.5563 of 2010
& M.P.Nos.1 & 2 of 2010

Gangadharan ... Petitioner /Accused

versus

M/s.Sun Power Traders,
Rep.by its Partner K.Moorthy,
S/o.S.Karuppanan
No.264, Sasthiri Nagar,
Sadayampalayam Road,
Periyakadu, Erode - 638 002. ... Respondent

PRAYER : Criminal Original Petition filed under Section 407 Cr.P.C to pass an order transferring C.C.No.5 of 2010 now pending on the file of the learned Judicial Magistrate III, Erode, to any other Judicial Magistrate Court in any other District within the jurisdiction of the Madras High Court (Madurai Bench).

For Petitioner : Mr.C.Jayavel
for Mr.A.D.Jagadish Chandira

For Respondent : Mr.K.Ethirajulu
Legal Aid Counsel

O R D E R

This Criminal Original Petition has been filed by the petitioner to transfer the case in C.C.No.5 of 2010 on the file of the learned Judicial Magistrate III, Erode, to the file of any of the Judicial Magistrates (excluding Erode District) coming within the territorial limits of the Madurai Bench of the Madras High Court.

2.The petitioner is the accused in C.C.No.5 of 2010 on the file of the learned Judicial Magistrate III, Erode. It is a private complaint filed by the respondent in terms of Section 200 of Cr.P.C. for an offence punishable under Section 138 read with 141 and 142 of the Negotiable Instruments Amended Act 55 of 2002.

3.The complainant is a partnership firm and it is represented by its Partner, K.Moorthy. Their case is that the petitioner is one of their customers and a sum of Rs.8,06,507/- was payable by him as on 24.09.2008 to their firm. The petitioner issued a cheque dated 31.12.2008 in partial discharge of the said liability. The cheque was drawn on ICICI Bank, Madurai Branch. The cheque was dishonoured when presented for collection on the ground "Funds Insufficient" on 06.05.2009.

4.The complainant issued legal notice dated 20.05.2009 calling upon the petitioner to pay the cheque amount of Rs.1,00,000/- within fifteen days from the date of receipt of the notice. The accused sent a reply denying his liability. Thereafter, the present complaint has been filed by the complainant. The learned learned Judicial Magistrate III, Erode, has taken the complaint on file and issued summons.

5.According to the petitioner, he entered appearance on 04.02.2010 and copies were furnished to him and the matter was posted for questioning on 16.02.2010. He pleaded not guilty. In the affidavit filed in support of this petition, he has stated that he is willing to settle the cheque amount. However, the respondent refused to accept the amount. He would further state that the complainant had come to the Court along with 3 of his relatives and started abusing him using filthy language. They demanded Rs.3.5 lakhs from him to settle the issue. He has further averred that they have threatened him of bodily harm. According to him, the complainant is a rich and influential person in Erode. He apprehends that he may be mentally and physically abused by the respondent and his henchmen. He may not be able to defend his case under threat from the respondent. He prayed for transfer of the case to any other Court of competent jurisdiction coming within the territorial limits of the Madurai Bench of the Madras High Court.

6.The learned counsel for the respondent opposed the petition. According to him, the allegation of threat has no basis and the petitioner has not made out a case for transfer.

7.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

8.The petitioner alleged that he was threatened by the respondent in the said Court on 16.02.2010. If so, nothing prevented him from preferring a complaint to the police having jurisdiction. The allegation that he is being threatened is not supported by any material. There cannot be an order for transfer of the trial for the mere asking in the absence of concrete

materials in support of the allegations. The ipse dixit of the petitioner would not be sufficient for ordering transfer of the case.

9.It is needless to point out that it is the duty of the trial Court to ensure fair trial of the case. In the event of complaint of threat being preferred, it is for the Trial court to dispose of the same in a manner known to law. With these observations, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

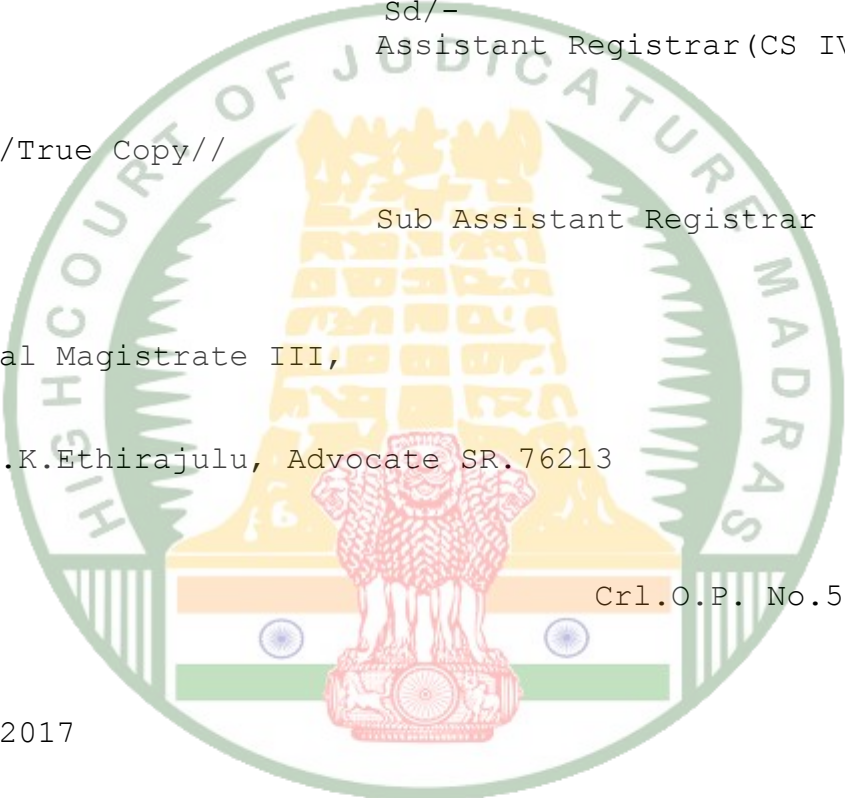
To

The Judicial Magistrate III,
Erode.

+1cc to Mr.K.Ethirajulu, Advocate SR.76213

Cr1.O.P. No.5563 of 2010

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srg 19/01/2017

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a background of horizontal stripes (orange, white, green) and a red border. The text "HIGH COURT OF JUDICATURE MADRAS" is written in a circle around the emblem. Below the emblem, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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