

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.16272 of 2016

R.T.Rani ... Petitioner

Vs

The Inspector of Police,
City Crime Branch,
Coimbatore City,
(Cr.No.47 of 2009) ... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 14.06.2016 passed in Tr.C.M.P.No.1175 of 2015 on the file of the Chief Judicial Magistrate, Coimbatore.

For Petitioner :Mr.I.Abrar Md. Abdullah

For Respondent :Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 14.06.2016 passed in Tr.C.M.P.No.1175 of 2015 on the file of the Chief Judicial Magistrate Court, Coimbatore.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. On the complaint lodged by one Kasi Vishwanathan that his Advocate R.T.Rani has misappropriated his money, the respondent police registered a case in Crime No.47 of 2009 for offences under Sections 409, 420 and 506(ii) IPC and after completing the investigation, the respondent police filed a final report in C.C.No.555 of 2011 before the learned Judicial Magistrate No.VI, Coimbatore. While so, it appears that for the said transaction, R.T.Rani's husband Raju had given a cheque to one Nandhivarman, who is a friend of Kasi Vishwanathan and that cheque had dishonoured. Therefore, Nandhivarman lodged a complaint in C.C.No.27 of 2011 for an offence under Section 138 of the Negotiable Instruments Act,

1881, against Raju, the husband of R.T.Rani, before the Fast Track Court No.II, Coimbatore.

4. Thus, there were two litigations viz., 1. C.C.No.555 of 2011 before the Judicial Magistrate Court No.VI, Coimbatore against Rani and 2. C.C.No.27 of 2011 before the Fast Track Court No.II, Coimbatore, against Raju.

5. Therefore, R.T.Rani filed a petition in Tr.C.M.P.No.415 of 2012 before the Chief Judicial Magistrate, Coimbatore for transferring C.C.No.555 of 2011 and C.C.No.27 of 2011 from the respective Courts and post them before one Court. The Chief Judicial Magistrate, Coimbatore allowed the Tr.CMP.No.415 of 2012 by order dated 20.10.2014 and transferred C.C.No.555 of 2011 and C.C.No.27 of 2011 to the file of the Judicial Magistrate Court No.1, Pollachi. On transfer, C.C.No.555 of 2011 was re-numbered as C.C.No.14 of 2015 and the same is pending on the file of the Judicial Magistrate Court No.I, Pollachi.

6. While so, Rani was not happy with the transfer of both the cases out of Coimbatore to Pollachi. Therefore, she filed transfer C.M.P.No.1646 of 2015 before the Principal District Court, Coimbatore to re-transfer the cases from the file of Judicial Magistrate No.1, Pollachi to any other Court in Coimbatore, which was dismissed by the Principal District Judge, on 04.08.2015. In the meantime, trial in C.C.No.14 of 2015 began before the Judicial Magistrate No.I, Pollachi with the framing of charges on 15.07.2015. The Judicial Magistrate No.I, Pollachi, framed charges and questioned Rani, for which, she pleaded "not guilty". Thereafter, Rani filed transfer CMP.No.1175 of 2015 before the Chief Judicial Magistrate Court, Coimbatore, making allegations against Judicial Magistrate No.I, Pollachi. It is the contention of Rani that when the case was pending as C.C.No.555 of 2011 before the Judicial Magistrate No.VI, Coimbatore, she had filed an application under Section 239 Cr.P.C in CMP.No.3950 of 2012 and ignoring the petition, the Judicial Magistrate No.I, Pollachi, proceeded to frame the charges on 15.07.2015. Further, she alleged that the Judicial Magistrate No.I, Pollachi, was very angry with her in the Open Court and he had stated that, he will write as if she has admitted the offence and pass orders accordingly. Therefore, she felt that she will not get justice at the hands of the Judicial Magistrate No.I, Pollachi. The Chief Judicial Magistrate, Coimbatore, dismissed transfer CMP No.1175 of 2015 on 14.06.2016, aggrieved by which, Rani is before this Court.

7. Mr.I. Abrar Md Abdullah, learned counsel for the petitioner, placed strong reliance on the judgment of the Hon'ble Supreme Court in Ratilal Bhanji Mithani Vs. State of Maharashtra and others [(1979) 2 SCC 179], wherein, paragraph

No. 28 reads as follows:

"28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).

8. Mr.I. Abrar Md. Abdullah, learned counsel for the petitioner contended that when the discharge application under Section 239 Cr.P.C was pending on the file of the Court, the learned Magistrate ought not to have framed charges.

9. Section 239 Cr.P.C states the grounds on which an accused can be discharged, in a case instituted on a police report. Even if an application under Section 239 is not filed, it is the duty of the Magistrate to follow Section 239 Cr.P.C before framing of charges. In cases, where there are more than one accused, it is a general practice for one of the accused to file an application under Section 239 Cr.P.C and after dismissal, another accused will plead for discharge and thus, they will prolong the trial. This practice has been deprecated by this Court. In this case, assuming for a moment that the petition for discharge is said to have been filed by R.T.Rani when the case was on the file of the Judicial Magistrate No.VI, Coimbatore, the framing of charge by the Judicial Magistrate, Pollachi, in effect, implies that the prayer for discharge has been rejected and the Magistrate has come to the conclusion that there are prima facie materials against the petitioner for framing of charge. In Kanti Bharda Shah and Others vs. State of West Bengal [2000 MLJ (Cri) 243 (SC)], the Supreme Court has held that for framing charge, the Court need not have to pass an elaborate order. That apart, R.T.Rani being an Advocate, should have filed an application under Section 309 Cr.P.C. seeking adjournment on 15.07.2015, when the Magistrate proceeded to frame the charge. R.T.Rani did not do that and after the charges were framed and after she pleaded "not guilty" when questioned, she filed the transfer petition before the Chief

Judicial Magistrate by making uncharitable allegations against the Trial Judge.

10. Mr.Abrar Md. Abdullah, learned counsel for the petitioner placed reliance upon the judgment in Kanaklata Vs. State (NCT of Delhi) and others [(2015) 6 SCC 617], where, the Supreme Court has stated that even if there is a strong suspicion in the mind of the accused that he will not get justice, transfer should be ordered.

11. This Court has no quarrel with the aforesaid proposition of law. The said judgment was delivered in the facts and circumstances of that case, whereas, in this case, R.T.Rani is an advocate by profession and she had filed several transfer applications, as narrated above, and has managed to prolong the case from 2009 onwards. If such reckless allegations against judicial officers are countenanced, administration of justice in this country will come to a standstill. In Pramod Kumar Vs. State of Himachal Pradesh [(2001) (5) Supreme Today 433], the Supreme Court has held that, just because the Presiding Judge had refused adjournment, transfer of the case cannot be ordered.

12. In the result, the criminal original petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed.

However, the trial Court is directed to complete the trial in C.C.No.14 of 2015 as expeditiously as possible. The trial Court shall ensure that the accused cross examines the witnesses on the same day they are examined-in-chief as directed by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Crl.) 288].

Sd/-

सत्यमेव जयते
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sms/cad

To

1.The Inspector of Police,
City Crime Branch,
Coimbatore City.

2. The Chief Judicial Magistrate,
Coimbatore.

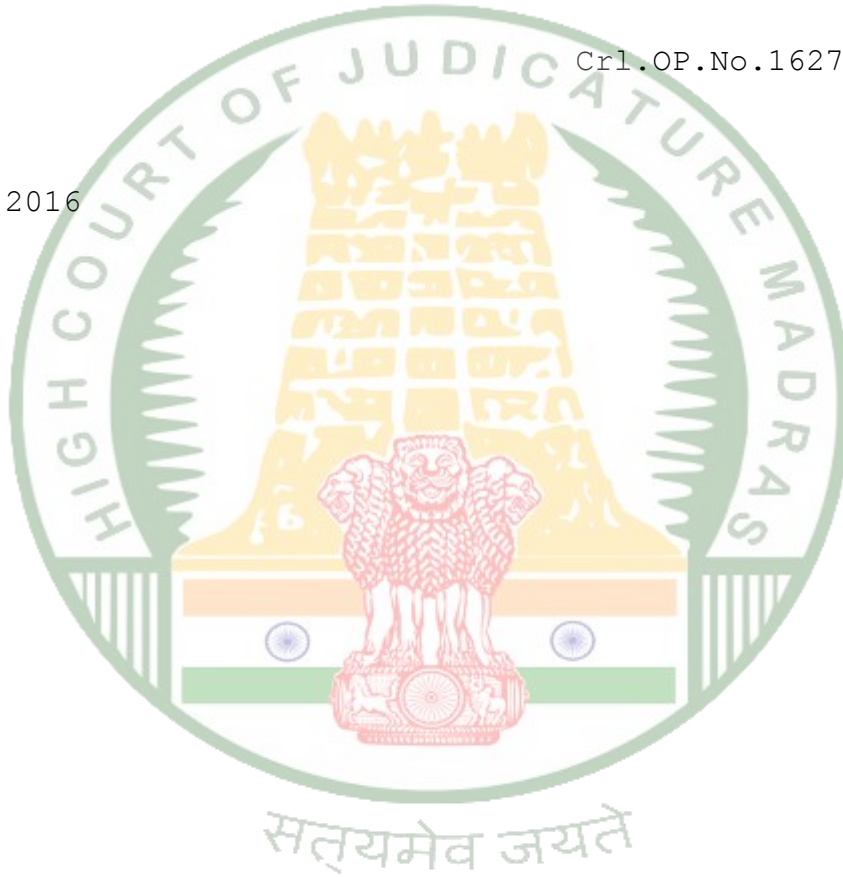
3.The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate No.1,
Pollachi.

1 cc to M/s.I.Abrar Md Abdullah, Advocate, sr.42681

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pvs co
kra 04.08.2016



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