

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.18200 OF 2016 &
CRL.M.P.Nos.8622 & 8623 of 2016

Kavitha .. Petitioner

versus

1. Duraisamy
2. D.Sindhu .. Respondents

Prayer: This petition is filed under Section 482 Cr.P.C., praying to withdraw the complaint filed by the first respondent in STC No.297 of 2015 on the file of the Judicial Magistrate No.I, Poonamallee and transfer the same to Judicial Magistrate No.VII, Coimbatore and try along with C.C.No.379 of 2015.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.S.Sugendran

ORDER

This petition is filed, praying to withdraw the complaint filed by the first respondent in STC No.297 of 2015 on the file of the Judicial Magistrate No.I, Poonamallee and transfer the same to Judicial Magistrate

No.VII, Coimbatore and try along with C.C.No.379 of 2015.

2. For the sake of convenience, the parties will be referred to by their name.

3. The case of Duraisamy 1st respondent and his wife D.Sindhu 2nd respondent is that Kavitha, the petitioner herein, borrowed a sum of Rs.4,75,000/- from them and in discharge of the same, she gave two cheques for Rs.2,00,000/- and Rs.75,000/- in favour of Duraisamy and Sindhu respectively. Duraisamy presented the cheque given in his favour, in Indian Bank, Valsaravakkam Branch on 9.5.2015, which was returned with an endorsment “funds insufficient”. After issuing the statutory notice dated 26.5.2015 to Kavitha, Duraisamy has filed a case in S.T.C.No.297 of 2015 before the Judicial Magistrate No.I, Poonamallee under Section 138 of Negotiable Instruments Act. Likewise, when Kavitha presented the cheque given in her favour, in Canara Bank, Madukkarai Branch, Coimbatore, it was returned with an endorsement “funds insufficient” on which, after issuing the statutory notice on 9.5.2015, Kavitha has filed a case in C.C.No.379 of 2015 before the Judicial Magistrate No.VII, Coimbatore. Now both the above mentioned cases are

pending for trial.

4. Learned counsel appearing for Kavitha, seeks transfer of STC 297 of 2015 from the file of Judicial Magistrate No.I, Poonamallee to the file of Judicial Magistrate No.VII, Coimbatore to try along with C.C.No.379 of 2015, on the ground that the cause of action arose in both the cases, is identical and just because the cheques were presented in two different banks, two separate cases were filed before two different Courts and being lady, Kavitha is unable to run between Poonamalle and Coimbatore and that if joint trial is ordered, it would be convenient for the parties also.

5. Per contra, the learned counsel appearing for Duraisamy and Sindhu contended that this is not fit case for ordering transfer of the cases.

6. This Court has given its anxious consideration to the submissions made by the learned counsel for both sides.

7. On a reading of the complaint, it is seen that both Duraisamy

and Sindhu are residents of Chennai while, Kavitha is resident of Coimbatore. Sindhu has first initiated the prosecution 22.6.2015 before the Judicial Magistrate No.VII, Coimbatore and only thereafter, Duraisamy has initiated the prosecution on 1.7.2015 before the Judicial Magistrate, Poonamallee.

8. Considering the above facts and circumstances and in the interest of justice, this Court is of the view that it is appropriate to order transfer of the case as prayed for. Accordingly, the learned Judicial Magistrate No.I, Poonamallee is directed to send the case records in STC 297 of 2015 to the file of the learned Judicial Magistrate No.VII, Coimbatore, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the case records in STC 297 of 2015, the learned Judicial Magistrate No.VII, Coimbatore is directed to try the same along with C.C.No.379 of 2015 and complete the trial within six months from the date of receipt of the case records. Kavitha shall be released on bail on her executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties to the satisfaction of the learned Magistrate, in terms of Section 436 Cr.P.C. The trial Court shall ensure that Kavitha cross examines the witnesses on the same day when they are examined-in-chief

as directed by the Supreme Court in **Vinoth Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]**. If Kavitha adopts any dilatory tactics, it is open to the trial Court to remand her to judicial custody in terms of the law laid down by the Supreme Court in “**State of Uttar Pradesh v. Shambjunath Singh**” [JT 2001 (4) SC 319].

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P.N.PRAKASH, J.

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