

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.06.2016
DELIVERED ON: 08.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.3919 to 3922 of 2016 and Crl.M.P. Nos.1991 to 1994 of 2016

B. Thamburaj Petitioner in all the Crl.O.Ps.
vs.

Inderchand Nahar Respondent in all the Crl.O.Ps.

Criminal Original Petitions filed under Section 482 Cr.P.C. to order withdrawal and transfer of C.C. Nos.867 of 2012, 869 of 2012, 97 of 2012 and 868 of 2012 from the Court of Judicial Magistrate at Alandur to any other Criminal Court of equal jurisdiction.

For petitioner in Mr. O.R. Abul Kalaam
all the Crl.O.Ps.

For respondent in Mr. S. Santhosh Kumar
all the Crl.O.Ps.

COMMON ORDER

These Criminal Original Petitions have been filed seeking to order withdrawal and transfer of C.C. Nos.867 of 2012, 869 of 2012, 97 of 2012 and 868 of 2012 from the Court of Judicial Magistrate at Alandur, to any other Criminal Court of equal jurisdiction.

2 Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent.

3 For the sake of convenience, the parties will be referred to by their names.

4.1 Inderchand Nahar filed three complaints, viz., C.C. Nos.5290 to 5292 of 2010 before the XVII Metropolitan Magistrate, Saidapet against B.Thamburaj under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"). After receipt of summons in the said three cases, Thamburaj filed a private complaint in C.C. No.97 of 2010 before the Judicial Magistrate, Alandur against Inderchand Nahar, alleging that the latter had committed an offence under Section 420, IPC. Thereafter, Thamburaj filed Criminal O.P. Nos.13666 to 13668 of 2012 before this Court seeking transfer of C.C. Nos.5290 to 5292 of 2010 from the file of the XVII

Metropolitan Magistrate Court, Saidapet, to the file of the Judicial Magistrate Court, Alandur, to be tried along with C.C. No.97 of 2010. This Court allowed Criminal O.P. Nos.13666 to 13668 of 2012 by order dated 28.06.2012, pursuant to which C.C. Nos.5290 to 5292 of 2010 were transferred from the file of the XVII Metropolitan Magistrate Court, Saidapet to the file of the Judicial Magistrate Court, Alandur and were re-numbered as C.C. Nos.867 to 869 of 2012, to be tried along with C.C. No.97 of 2010.

4.2 Taking advantage of the transfer, Thamburaj wantonly slow pedalled the trial in C.C. No.97 of 2010 by deliberately adopting dilatory tactics. During the trial, Thamburaj picked up quarrel with the learned Judicial Magistrate, Alandur and filed an application on 12.01.2016 before the said judicial officer contending that he has no confidence in the Court and sought adjournments on that score. The learned Judicial Magistrate, Alandur, adjourned the cases from time to time, in order to enable Thamburaj to approach the higher forum for transfer of the cases. Under such circumstances, Thamburaj has approached this Court by filing the present Criminal Original Petitions for transferring the three prosecutions under Section 138 of the NI Act, which have been initiated against him by Inderchand Nahar and also to transfer his private complaint in C.C. No.97 of 2010 to any other Court, making certain allegations against the Presiding Officer.

5 This Court called for remarks from the Judicial Magistrate, Alandur and the report dated 02.04.2016 sent by the Judicial Magistrate, Alandur, is indeed heartrending. It may be apposite to extract a paragraph from his report, which, by itself, will show the cantankerous attitude of Thamburaj.

"With regard to the allegations in Para V (ii)

- I humbly submit that as pointed in the above I respectfully submit that after closing defence side witnesses on 08.09.2015 and posted for arguments to 16.09.2015. He had filed another petition on 16.09.2015 under section 311 Cr.P.C to examine bank witness, even though this court could not able to complete the trial within the stipulated time as directed by Hon'ble High Court in Crl.O.P.13666 to 13668 of 2012 dated 28.06.2012, this court have allowed the petition on 16.10.2015 for giving fair opportunity to the accused. Further I respectfully submit that I have assumed charge only on 18.09.2015 for Judicial Magistrate, Alandur. Thereafter on 05.11.2015, Bank witness was partly examined as DW4 and at the request the case was adjourned to 26.11.2015, 08.12.2015 periodically, but the DW4 bank witness had not turned to adduce evidence further, on 08.12.2015 this court directed the accused counsel to take effective steps to produce the witness on 17.12.2015, but on 17.12.2015 accused had not taken any steps to produce the witness DW4, hence this court considering the above all facts coupled with the fact that the Hon'ble High Court

ordered this court to dispose the case within 3 months, but had not able to dispose the case even after lapse of three years, this court closed the DW4's evidence. The said order passed by me was neither challenged by the accused before any appellate court nor chosen to file fresh 311 petition before this court to recall DW4. But the learned counsel for accused had requested long date for arguments, hence at the request of the Mr.Thamburaj's Counsel, the case was adjourned to 07.01.2016 for arguments. I respectfully submit that, I have given sufficient opportunities to the accused to put forth his defence, and it is totally false that, I have not given fair opportunity to the accused.

With regard to the allegations in Para V(iii) - I humbly submit that on 07.01.2016 as requested by the accused counsel the case was posted for arguments, but on that day the accused had filed another petition under Section 315 Cr.P.C. To examine accused as defence side witness. The same was also allowed and the accused was examined as DW5. During the course of examination the accused DW5 had relied one document Exhibit D4 - sale agreement dated 18.03.2007, but on perusal of the records the exhibit D4 - sale agreement 18.03.2007 was not available with the records. On thorough examination of the evidence of PW1's cross, it is found that mistakenly two documents were marked as Exhibit - D4 by this Court, one is sale deed dated 29.08.2007 marked on 04.08.2015 and the another one is sale agreement dated 18.03.2007 marked on 18.08.2015, so I have given necessary instructions to the Bench Clerk to trace the missing Exhibit D4 - sale agreement dated 18.03.2007. After completion of DW5 examination, defence side evidence was closed and heard the complainant side arguments and at the request of the accused counsel the case was further adjourned to 12.01.2016 for defence side arguments. On the next day 08.01.2016 the counsel for accused appeared before me and requested to peruse the case bundles for arguments, but I stated that, "the Ex.D4-sale agreement dated 18.03.2007 was missing in the bundle and given necessary instructions to the staff to trace the same, if the documents were not found I have to take necessary action against the erred person who is liable for same, in the mean time I could not allow you to peruse the records", hence I denied to allow him to peruse the records. I humbly submit that this is what happened on 07.01.2016 and 08.01.2016 but in the affidavit filed before the Hon'ble High Court, the petitioner was made false allegations against me. Further I humbly submit that subsequently the Ex.D4-sale agreement dated 18.03.2007 was traced and produced before me

by the Bench Clerk and it is now available in the part and parcel of the records.

I respectfully submit that with regard to the allegations in para V (iv) - I denied the entire allegations and it is totally false and submitted that even though this Court could not able to complete the trial within the stipulated time fixed by the Hon'ble Court, this Court have given ample and sufficient opportunities to the accused side to put forth his defence. Hence, I respectfully submit that, it is totally false that this Court have not given fair opportunity to the accused.

I respectfully submit that with regard to the allegations in para V(v) - I humbly submit that, on 12.01.2016, the case was posted for defence side arguments, but, on 12.01.2016, the counsel for the accused submitted that "We have no confidence over this Court" and had also filed a memo with false allegations against me and requested time for filing transfer application. Immediately I have adjourned the case on 04.02.2016 for obtaining transfer order. Subsequently the case was adjourned from 04.02.2016 to 25.02.2016 and 24.03.2016 periodically and now, the case was adjourned to 28.04.2016."

6 From the report of the Judicial Magistrate, Alandur, it is obvious to to this Court that Thamburaj has been deliberately delaying the conduct of the cases, despite several judicial directions issued by this Court. The allegations made against the Judicial Magistrate, Alandur, are indeed uncharitable and this Court cannot countenance the attitude of Thamburaj.

7 In the result, these Criminal Original Petitions are dismissed. Though these Criminal Original Petitions are liable to be dismissed with costs, this Court exercises restraint and instead, directs Thamburaj to appear before the Trial Court within a period of one week from the date of receipt of a copy of this order and furnish a bond under Section 88, Cr.P.C. with two sureties to the satisfaction of the Trial Court in C.C. Nos.867 to 869 of 2012. Connected CrI.M.Ps. are closed.

8 It is seen that this Court, by order dated 28.06.2012 while allowing CrI.O.P. No.13666 to 13668 of 2012, has transferred only three Section 138 prosecutions with a direction to the Judicial Magistrate, Alandur, with a further direction that the said cases shall be tried along with C.C. No.97 of 2010 filed by Thamburaj. This does not mean that the three prosecutions under Section 138 of the NI Act have been clubbed along with C.C. No.97 of 2010 and a joint trial has been ordered.

9 Under Civil Procedure Code, a joint trial is permitted, when there is a claim and counter, whereas, in respect of criminal cases, such a procedure is unknown. Therefore, if Thamburaj continues to adopt dilatory tactics in respect of C.C. No.97 of 2010, it is open to the Magistrate to proceed independently with C.C. Nos.866 to 869 of 2012 and pass final judgment thereon.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Judicial Magistrate
Alandur

2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.S. Santhoshkumar, Advocate, S.R.No.30618
+4ccs to Mr.O.R. Abul Kalaam, Advocate, S.R.No.30638, 30639,
30640

CA(CO)
EU(21/06/2016)

Cr1.O.P. Nos.3919 to 3922 of 2016

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