

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.8895 of 2016

and

Crl.M.P.No.4643 of 2016

M/s.Siraj Garments

Rep. By its Proprietor,
R.A.Hadhi

S/o. Abdul Rajith,
8/279, Srinagar 2nd Street,
Pitchampalayampudur,
Tirupur - 641 603.

... Petitioner/Accused

Vs.

T.S.Sivakumar

... Respondent/Complainant

Petition filed under Section 407 of Criminal Procedure Code, seeking to withdraw C.C.No.7 of 1998 on the file of the learned Judicial Magistrate, Avinashi and to transfer the case to Judicial Magistrate Court, Tirupur.

For Petitioner : Mr.K.Balakrishnan

O R D E R

This Criminal Original Petition has been filed seeking to withdraw C.C.No.7 of 1998 on the file of the learned Judicial Magistrate, Avinashi and to transfer the case to Judicial Magistrate Court, Tirupur.

2. For the sake of convenience, the parties are referred to as the complainant and accused.

3. It is the case of the complainant that the accused borrowed a sum of Rs.50,000/- on 20.03.1997 and in connection with the said debt, he had given a cheque dated 22.11.1997, which was dishonoured. After issuing a statutory notice, the complainant has lodged a present complaint in C.C.No.7 of 1998 before the learned Judicial Magistrate, Avinashi, against the accused for the offence under Section 138 of the Negotiable Instruments Act and trial is pending.

4. It is also seen that the complainant had examined his witnesses and after the accused was questioned under Section 313 Cr. P.C. he adduced defence evidence. It is the grievance

of the accused that he wanted to mark three diary extracts, which were not allowed to be marked by the Trial Court and therefore, he has sought for transfer.

5. In the considered opinion of this Court, refusal of the learned Judge to permit the accused to mark the said documents cannot be a reason to transfer the same. Diary extract is a certified copy of the document and it can be proved by producing the same under Sections 76 and 77 of the Indian Evidence Act, 1872. This Court is unable to fathom as to how the contents in the diary extract is going to be of any use to advance the case of the accused. Be that as it may, it is for the accused to decide what evidence he should adduce in prosecution under Section 138 of the Negotiable Instruments Act. The Trial Court should also not deny the opportunity to the accused to mark the diary extract. In such circumstances, this Court directs the Trial Court to permit the accused to mark the diary extract as provided under Section 77 of the Indian Evidence Act, 1872. As regards the relevancy of it, it is for the Trial Court to appreciate the same. Since it is the case of the year 1997, the Trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order. The accused is directed to appear before the trial Court and give a bond under Section 88 Cr.P.C. for Rs.10,000/- with two sureties.

6. With the above direction, this Criminal Original Petition is closed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

The Learned Judicial Magistrate,
Avinashi.

+ 1 cc to Mr.K. Balakrishnan, Advocate Sr.27043

Cr1.O.P.No.8895 of 2016

ALA (CO)
Eu 14.6.16