



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2016

CORAM:

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THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.459 of 2015

and

M.P(MD)No.1 of 2015

Raymond

... Petitioner/Petitioner/Accused

-vs-

Anton Selvakumar ... Respondent/Respondent/ Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to set aside the order passed in Tr.C.M.P.No.544/2015 on the file of the Chief Judicial Magistrate, Tirunelveli dated 24.07.2015 in C.C.No.276/14 on the file of the Judicial Magistrate Court, Valliyoor.

For Petitioner: Mr.H.Arumugam

For Respondent: Mr.K.Sudalayandi

O R D E R

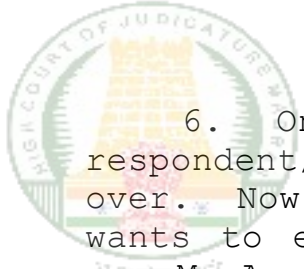
This revision arises out of dismissal of a transfer civil miscellaneous petition by the learned Chief Judicial Magistrate, Tirunelveli.

2. The fight before the learned Judicial Magistrate, Valliyoor in a cheque bouncing case in C.C.No276/2014 is as between a lawyer and a non-lawyer. Complainant is a Lawyer. The accused is a retired teacher. The calendar case reached the stage of examining the accused under Section 313 Cr.P.C. The accused apprehending that she may not get fair justice, because no lawyer came forward to defend her, filed Tr.C.M.P.No.554 of 2015 before the learned Chief Judicial Magistrate, Tirunelveli to transfer the case to to any Magistrate's Court in Tirunelveli.

3. The learned Chief Judicial Magistrate coming to the conclusion that since the accused is being represented by a lawyer, dismissed the transfer petition.

4. As against the said order of dismissal, the present revision has been directed by the accused.

5. The learned counsel for the petitioner would contend that the complainant is a learned Member of the Valliyoor Bar Association and no lawyer is forth coming to appear on behalf of the petitioner, in such circumstances, she will not get fair justice, in such circumstances, the order of the learned Chief Judicial Magistrate, Tirunelveli turning down her transfer request is unsustainable in law.



6. On the other hand, the learned counsel for the respondent/complainant submits that major part of the trial is over. Now to delay the trial, on certain flimsy reason petitioner wants to escape from Valliyoor Court. He would also submit that one Mr.Arulmanickam has filed memo of appearance for the accused cross examined the prosecution witnesses and he is defending the accused, thus transfer has been sought for on certain unfounded grounds. In this circumstances, the learned Chief Judicial Magistrate has rightly dismissed the transfer petition.

7. I have deeply considered the rival submissions, perused the impugned order and also materials on records.

8. The appearance of a lawyer in a criminal case is on a different putting. Article 22(1) of the Constitution of India guarantees that a person accused of a criminal case is constitutionally entitled to be defended by a lawyer of his choice. The word used in the said Article 22(1) is 'legal practitioner'. In the Indian Constitution, legal profession alone has been so specifically mentioned. Conversely, it is the constitutional duty or obligation of a lawyer to defend an accused. This has also been reiterated in Section 303 Cr.P.C. The light of a lawyer is a mission to drive away the darkness. In no way, this Constitutional and statutory right should/could be whittled down.

9. One of the component of principles of criminal trial is that the trial must be a 'fair trial'. A trial conducted, without the assistance of a lawyer or in the absence of a lawyer, is against principles of natural justice. There are many bye lines in Criminal system. It is a darker side of legal system. A small slip will become a flap and land up the accused in jail. If the trial before the learned Judicial Magistrate, Valliyoor, is conducted without the assistance of a Lawyer, the trial will not be a fair trial and it will be an unfair trial, and it is vitiated.

10. In this case, Mr.Arulmanickam has entered appearance for the accused. There is no allegation that he is not defending the accused. So there is no infraction of the constitutional right of the accused.

11. For mere asking, a case cannot be transferred from one court to another court. For mere apprehension or contemplation, a case cannot be so transferred. Even an apprehension must have solid foundation. For transfer a valid ground has to be demonstrated. Now on record, Mr.Arulmanickam is defending the accused. So we find no impropriety and any issue of legality



12. Thus, this Criminal Revision fails and it is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (A.E)

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Sub Assistant Registrar

To:

- 1.The Chief Judicial Magistrate,Tirunelveli.
- 2.The Judicial Magistrate,Valliyoor.

+1cc to M/s.H.Arumugam, Advocate, SR NO: 27292

+1cc to Mr.K.Sudalayandi, Advocate in SR NO: 27289

skn

JA/NGM-MP-SAR-II/8.06.2016/3P-5C

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