

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Transfer Criminal Petition No.175 of 2013

Order:

Petitioner/accused seeks to transfer C.C.No.113 of 2013 which is filed by the first respondent/complainant under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act") from the Court of III Additional Judicial First Class Magistrate, Kothagudem to any Judicial First Class Magistrate Court at Hyderabad.

2a) It is submitted by learned counsel for petitioner that even as per the complaint averments, the Memorandum of Understanding was entered into by the parties at Hyderabad and thus the alleged transactions leading to the issuance of cheques also took place at Hyderabad and no cause of action has taken place at Kothagudem, but the complainant with a view to harass the petitioner presented the cheques at Kothagudem to create jurisdiction to the said Court. The petitioner who is a lady is put to much hardship, as she has to travel all the way to Kothagudem.

b) Learned counsel further submitted that petitioner apprehends that respondent will put the petitioner in trouble during her visit to Kothagudem to defend the case as the petitioner is being stranger to the said place, she may not get any help there and therefore, there is a threat to her security. On these submissions, learned counsel sought for transfer of the case.

3) In oppugnation, learned counsel for respondent/complainant submitted that no doubt, the subject cheques were issued by the petitioner/accused drawing them from IOB, Hyderabad but since the respondent/complainant is a resident of Kothagudem, he presented

the same with his banker i.e. ICICI Bank at Kothagudem and they were bounced with an endorsement “*payment stopped by drawer*” and therefore, the respondent was constrained to file the criminal case under Section 138 of NI Act against the petitioner and there are no *mala fides* in filing the case. Learned counsel vehemently argued that under NI Act the Court at Kothagudem within whose jurisdiction the cheques were bounced has territorial jurisdiction to try the case and therefore, the petitioner cannot raise any objection in that regard. Learned counsel castigated the argument that petitioner will be put to trouble by the respondent if she attends the Court at Kothagudem and that there is no safety for her. Learned counsel argued that said allegations are false and invented for the purpose of filing the transfer application. He thus prayed to dismiss the petition.

4) In the light of above rival arguments, the point for determination is:

“*Whether there are merits in this petition to allow?*”

5) **POINT:** Sofaras jurisdictional aspect is concerned, since the cheques were bounded within the jurisdiction of Court at Kothagudem, the trial Court will have territorial jurisdiction to try the case and to that extent the petitioner cannot have any grievance. There is no material to hold that respondent presented the cheques at Kothagudem only to create jurisdiction to the Court at that place and to cause hardship to the petitioner. Similarly, there is no material to hold that the petitioner will be put trouble if she attends the Court at Kothagudem to defend her case. If she faces such situation, petitioner can as well make a representation to the trial Court and the said Court will pass suitable orders. So at the outset, I find no merits

in the petition to transfer the case from Kothagudem to Hyderabad.

6) Learned counsel alternatively prayed that in case the petition is not allowed, the attendance of the petitioner before the trial Court may be dispensed with. Considering the fact that petitioner is a lady who has to travel all the way from Hyderabad to Kothagudem to attend the Court, her presence before the trial Court is dispensed with except on the occasions when the trial court specifically requires her attendance.

7) With the above observation, this Transfer Criminal Petition is disposed of.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD

RAO, J

Date: 18-04-2016

Murthy