

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

TRANSFER CRIMINAL PETITION No.53 of 2014

ORDER:

This transfer criminal petition is filed seeking transfer of C.C.No.73 of 2011 on the file of the Judicial First Class Magistrate, Rajampet to the Court of the Judicial First Class Magistrate, Nandikotkur to be tried along with C.C.No.37 of 2011.

The background of the case in brief is as follows:

The petitioner is Camp project incharge and the 2nd respondent is Camp accountant working in A.K.R.C.L.Camp which is situated in between Rollapadu-Talamudipi villages, which was intended to do work of construction of structures, including widening of canal from 25.067 km to 56.775 km. The said company got sub-contract from MYTAS NCC (J.V) of Irrigation Department. It is alleged that the 2nd respondent is used to supervising the work of 15 employees and also maintaining the bank, cheque transactions and other transactions pertaining to the company, for which, the company is paying salary of Rs.9,000/- to him. Whereas the contention of the 2nd respondent is that the company was not paying salaries to him and other employees and it fell arrears of more than Rs.4 lakh.

The contention of the petitioner is that in his absence, the 2nd respondent committed criminal breach of trust and shifted the iron material of the company to another company and sold it. It is also contended that the 2nd respondent took away an empty cheque bearing No.684067, pertaining to the joint account, signed by the petitioner. Alleging above, the petitioner lodged a complaint against the 2nd respondent before the concerned police, which culminated into C.C.No.37 of 2011 on the file of the Judicial Magistrate of First Class,

Nandikotkur for the offences under Sections 408 and 506 IPC. Whereas the contention of the 2nd respondent is that towards discharge of arrears of salaries, the petitioner herein on behalf of company issued two cheques, one cheque bearing No.672825, dated 30.08.2008 for an amount of Rs.1,73,311/- and another cheque bearing No.672826, dated 15.09.2008 for an amount of Rs.3,00,000/-. Out of the said two cheques, cheque for Rs.1,73,311/- was credited, but the cheque for Rs.3,00,000/- was not cleared. On repeated demands, the petitioner on behalf of the company issued cheque bearing No.684067, dated 05.09.2010 for Rs.3,20,000/-, adding the interest for late payment, which was subsequently dishonoured. After following due procedure, the 2nd respondent filed complaint in C.C.No.73 of 2011 on the file of the Judicial Magistrate of First Class, Rajampet against the petitioner under Sections 138 and 142 of Negotiable Instruments Act.

Heard the learned counsel appearing for the petitioner as well as the 2nd respondent. Perused the material available on record.

Having heard the learned counsel on both sides and having perused the material available on record, it is noticed that in C.C.No.37 of 2011, filed by the petitioner herein, prosecution evidence was closed, arguments heard and was being posted for judgment. In C.C.No.73 of 2011 filed by the 2nd respondent against the petitioner, trial has not been commenced in view of the stay granted by this Court. As seen from the record, the stay is granted for a limited period and the same was expired long back.

When CC.No.37 of 2011 is ripe for judgment, the petitioner filed CrI.MP.Nos.2059/2012, 2060/2012 and 2061/2012 before the trial Court under Sections 242(3) Cr.PC, 311 Cr.P.C and under Section 311 r/w.242(3) Cr.P.C, and the same were dismissed on 11.08.2014. Aggrieved by the same, the petitioner filed CrI.RP.Nos.68, 69 and 70

of 2014 and the Revisional Court allowed the revisions by order dated 31.10.2014. Against the said orders, the 2nd respondent herein filed Crl.RC.Nos.140, 141 and 142 of 2015 before this Court and according to him, this Court granted interim order on 09.03.2015.

It is also noticed that the petitioner earlier filed Crl.P.No.8640 of 2011 seeking to quash the proceedings in CC.No.73/2011, and when the matter came up for hearing, the petitioner represented that he is withdrawing the criminal petition and requested the Court to dispense with his presence before the trial Court in CC.No.73/2011, and accordingly, the Crl.P.No.8640/2011 was dismissed as withdrawn and the presence of the petitioner before the trial Court in CC.No.73/2011 for every date of adjournment is dispensed with, except on the dates when his presence is specifically required.

Both the cases i.e. C.C.No.73/2011 and CC.No.37/2011 are filed under different provisions of law. CC.No.37/2011 is filed under sections 408 and 506 IPC. CC.No.73/2011 is filed under Sections 138 and 142 of Negotiable Instruments Act. One is police complaint and another is private complaint. Both the cases are different and cannot be clubbed for joint trial.

It is however submitted that the genesis of the dispute in both the cases is one and the same and that all the relevant documents have been filed in CC.No.37/2011 which is pending on the file of the Judicial Magistrate of First Class, Nandikotkur. Since the parties in both the cases are one and the same and for having effective adjudication, I feel that both the cases should be tried by one court to avoid conflict decisions.

In view of the above, the Transfer Criminal Petition is allowed, CC.No.73 of 2011 pending before the Judicial Magistrate of First Class, Rajampet is withdrawn and transferred to the Court of Judicial Magistrate of First Class, Nandikotkur.

Pending miscellaneous applications, if any, shall stand closed
in consequence.

M.S.K.JAISWAL,J

Date: 08.07.2016
Dsr