

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.30096 of 2010 and
M.P.Nos.1 and 2 of 2010

V.Sureshbabu

.. Petitioner

Vs

P.Duraisamy

.. Respondent

PRAYER: Petition filed under Section 407 of the Code of Criminal Procedure to Transfer the Calender Case in C.C.No.696 of 2010 from the file of the Court of the Judicial Magistrate No.1, Coimbatore, to any other competent court in any other District.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.K.Nagarajan

ORDER

The petitioner has filed this original petition under Section 407 of the Criminal Procedure Code to transfer the calender case in C.C.No.696 of 2010 from the file of Court of the Judicial Magistrate I, Coimbatore, to any other competent court in any other District.

2. The facts in a nutshell are as under: The petitioner is the accused and the respondent is the complainant. As per the complaint, the petitioner along with some other persons approached the respondent complainant for financial assistance of Rs.20 lakhs and the same was alleged to be paid by the respondent complainant to the petitioner by way of cash, in lieu of five cheques bearing Nos.946929 to 946933 issued by the petitioner to the respondent complainant with assurance to repay Rs.36 lakhs, i.e., Rs.20 lakhs being the principal and Rs.16 lakhs being the profit amount, within four months.

3. It is stated that the petitioner advised the respondent to fill the cheques and present for collection on 24.11.2009, but the said cheques were returned to the respondent complainant for the reason "account closed".

4. It is stated that based on the persistent demand for payment made by the respondent complainant, the petitioner

issued three cheques valued at Rs.20 lakhs drawn on Axis Bank Limited. However, the said cheques were dishonoured on 6.2.2010 stating "insufficient funds". Therefore, the respondent filed a complaint under Sections 138 and 142 of the Negotiable Instruments Act.

5. It is the case of the petitioner that the respondent complainant also simultaneously filed a private complaint directing the Inspector of Police, B3 Kattur Crime Branch Police Station, Coimbatore to register a case against the petitioner and others for an alleged offence under Section 420 read with Section 120B of the Indian Penal Code and the learned Judicial Magistrate I, vide order dated 25.2.2010 directed the B3 Kattur Police Station to register a complaint against the petitioner and, accordingly, a case in Crime No.1821 of 2010 has been registered against the petitioner and others for the alleged offence under Section 420 read with Section 120B of the Indian Penal Code on 13.8.2010.

6. In such backdrop, the petitioner has filed the present criminal original petition for the relief stated supra.

7. It is the contention of the learned counsel appearing on behalf of the petitioner that as the learned Judicial Magistrate had directed the Police authorities to register a case against the petitioner for the alleged offence under Section 420 read with Section 120B of the Indian Penal Code, he ought not to have entertained the complaint under Sections 138 and 142 of the Negotiable Instruments Act.

8. Per contra, the learned counsel appearing on behalf of the respondent complainant submitted that it is for the Court below to consider the grievance of the accused at the time of trial and there is no necessity to interfere with the entertaining of the present complaint.

9. I heard Mr.J.Franklin, learned counsel for the petitioner and Mr.K.Nagarajan, learned counsel for the respondent and perused the documents available on record.

10. The only ground on which transfer of case is sought by the petitioner is that the learned Judicial Magistrate had directed the Police authorities to register a case against the petitioner for the alleged offence under Section 420 read with Section 120B of the Indian Penal Code, when he had already entertained the complaint under Sections 138 and 142 of the Negotiable Instruments Act and that the learned Magistrate had asked the learned counsel for the petitioner not to seek any adjournment.

11. It is not as if the complaint registered against the petitioner is not maintainable. The complaint petition is maintainable and the disputed incidents can be gone into after taking the evidence.

12. Section 407 of the Criminal Procedure Code empowers the High Court to transfer the case and provides that where it appears to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court Subordinate thereto, or that some question of law of unusual difficulty is likely to arise, or that an order under this section is required by any provision of the Code, or will tend to the general convenience of the parties or witnesses or is expedient for the ends of justice, the High Court is empowered to transfer the cases or and appeals.

13. In the instant case, the only apprehension of the petitioner is that learned Judicial Magistrate has expressed in open Court that no adjournment will be granted. In my considered opinion, transfer of a case on such ground would not be in the interest of justice and would set a bad precedent. It is not the case of the petitioner himself that the offences registered against the petitioner accused are without any basis. In such the circumstances, it is not a fit case to be transferred.

For the foregoing reasons, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To:

The Judicial Magistrate No.1,
Coimbatore.

CRL.O.P.No.30096 of 2010 and
M.P.Nos.1 and 2 of 2010

rrs 29/10/2018