

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2017

CORAM

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

CRL.O.P.No.880 of 2010

and

M.P.No.1 of 2010

D.Moorthy

.. Petitioner

Vs

Palanikumar,
Proprietor M/s.Nethaji Transport Corporation,
No.14, Bharathidhasan Nagar Cross,
1-10, Krishnaghri,
Hosur-635 109.

.. Respondent

PRAYER: Petition filed under Section 407 of the Code of Criminal Procedure seeking to withdraw the case in S.T.C.No.2291 of 2009 on the file of the Judicial Magistrate No.II, Hosur and to transfer the same to try along with C.C.No.273 of 2009 on the file of the learned Judicial Magistrate, Ambattur.

For Petitioner : Mr.K.V.Muthuvisakan
For Respondent : M/s.Jayasri Baskar

ORDER

This Criminal Original Petition is filed seeking to withdraw the case in S.T.C.No.2291 of 2009 on the file of the Judicial Magistrate No.II, Hosur and to transfer the same to try along with C.C.No.273 of 2009 on the file of the learned Judicial Magistrate, Ambattur.

2. The respondent lodged a prosecution in S.T.C.No.2291 of 2009 before the Judicial Magistrate No.II, Hosur against the petitioner for an offence under Section 138 read with 142 of Negotiable Instruments Act.

3. By an order dated 21.8.2013, this Court directed the Judicial Magistrate No.II, Hosur to send a report as to the stage of the proceedings in S.T.C.No.221 of 2009 pending on its file and further directed to inform this Court as to whether the complainant was appearing. Pursuant to the said order, the

Judicial Magistrate No.II, Hosur addressed a letter to this Court stating that S.T.C.No.2291 of 2009 was transferred to learned Fast Track Court (Magisterial Level), Hosur on 28.9.2011 as per the order of the learned Chief Judicial Magistrate, Krishnagiri. Thus, as per the report of the learned Judicial Magistrate No.II, Hosur, S.T.C.No.2291 of 2009 is now pending on the file of learned Fast Track Court (Magisterial Level), Hosur.

4. I heard Mr.K.V.Muthuvisakan, learned counsel for the petitioner and Mr.Jayasri Baskar, learned counsel for the respondent and also perused the materials available on record.

5. The learned counsel for the petitioner submitted that on 14.4.2009 the respondent and his henchmen kidnapped the petitioner and forcibly obtained signatures in two blank cheques and by using the same, the respondent initiated criminal prosecution in S.T.C.No.2291 of 2009 before the Judicial Magistrate No.II, Hosur. He would submit that for the kidnap and forcible obtaining of signatures in the blank cheques by the respondent, the petitioner had lodged a complaint before the TI Ambattur Colony Police Station and the same was registered in Crime No.348 of 2009 under Sections 363, 342 and 506(ii) IPC. After completing the investigation, the Inspector of Police filed charge sheet and the same was taken on file as C.C.No.273 of 2009 by the learned Judicial Magistrate, Ambattur. He would submit that now S.T.C.No.2291 of 2009 is pending on the file of the learned Fast Track Court (Magisterial Level), Hosur.

6. The learned counsel for the petitioner further submitted that since the petitioner was suffering spinal problem and he was getting threaten from the respondent over phone, the petitioner was not in a position to appear before the learned Fast Track Court (Magisterial Level, Hosur), where the case is now pending in all hearing dates. He would further submit that in his legal notice, the respondent had stated that the alleged cheques were issued on 18.12.2008, whereas the respondent said to have presented the cheques for encashment only on 15.5.2009, which would clearly establish that the respondent presented cheques only after the petitioner was kidnapped. Therefore, in order to prove all these things, S.T.C.No.2291 of 2009 needs to be transferred to the file of the learned Judicial Magistrate, Ambattur to be tried along with C.C.No.273 of 2009.

7. Per contra, the learned counsel for the respondent submitted that the allegations set out in the petition are totally false and there is no need to transfer S.T.C.No.2291 of 2009 from the file of the learned Fast Track Court (Magisterial Level), Hosur to the file of the learned Judicial Magistrate, Ambattur to be tried along with C.C.No.273 of 2009. He would submit that in order to drag on the proceedings in S.T.C.No.2291

of 2009, the petitioner had filed the present petition and prayed for dismissal of the same.

8. The case of the petitioner is that his son Arun Kumar was the Proprietor of Sri Arun Transport. M/s.Sri Arun Transport was a goods transport company mainly transport the materials and new cycles of T.I. Cycles of India, Ambattur, Chennai to all over India. The petitioner was managing the day to day affairs and administration of the company. Since the respondent misappropriated accounts and cheated the petitioner, he stopped all the business transactions with the respondent and also complained the same to the officials of the T.I. Cycles of India and requested them not to release any further payment to the respondent or M/s.Nethaji Transport Corporation on behalf of the petitioner.

9. Aggrieved by the same, on 14.4.2009, the respondent along with henchmen kidnapped the petitioner and forcibly obtained signatures in two blank cheques, blank stamp papers and blank white papers and also threatened him to withdraw the complaint against the respondent in T.I. Cycles of India. Therefore, the petitioner lodged a complaint against the respondent and others before T.I. Ambattur Colony Police Station and the same was registered in Crime No.348 of 2009 under Sections 363, 342 and 506(ii) of IPC.

10. According to the petitioner, after escape from the clutches of the respondent, on 17.04.2009, the petitioner sent a letter to the Manager, Vijaya Bank, Avadi Branch to stop payment for all his cheques including Cheque Nos.613186 and 613193, which were illegally taken by the respondent. It was stated that after completing the investigation, the Inspector of Police has filed charge sheet in Crime No.348 of 2009 before the Judicial Magistrate, Ambattur and the same was taken on file as C.C.No.273 of 2009.

11. The factum of lodging of complaint and registration of FIR in Crime No.348 of 2009 under Sections 363, 342 and 506(ii) IPC against the respondent and others and filing of charge sheet by the Sub Inspector of Police, TI Ambattur Colony Police Station and also the same was taken on file by the learned Judicial Magistrate, Ambattur as C.C.No.273 of 2009 have not been denied by the respondent.

12. Since the petitioner alleged that he was kidnapped and forcibly obtained signatures in the blank cheques and with regard the commission of said offence, the petitioner had already initiated criminal prosecution in C.C.No.273 of 2009 on the file of the learned Judicial Magistrate, Ambattur, it would be appropriate to transfer S.T.C.No.2291 of 2009 now pending on

the file of learned Fast Track Court (Magisterial Level), Hosur to the file of the learned Judicial Magistrate, Ambattur to be tried along with C.C.No.273 of 2009, which was filed earlier to the filing of S.T.C.No.2291 of 2009.

13. It is seen from the averments in the petition that the respondent had issued a legal notice stating that the petitioner had issued cheques on 18.12.2008 and the same was presented by the respondent on 15.5.2009. Since the petitioner denied issuance of cheques in favour of the respondent, if S.T.C.No.2291 of 2009 is tried along with C.C.No.273 of 2009, the entire truth will come light. In order to avoid conflict in decisions, to give quietest to the issue, taking note of the convenience of parties, delay in presentation of the alleged cheques by the respondent, the residence of the petitioner, banker of the petitioner situated within the jurisdiction of Judicial Magistrate, Ambattur and the alleged occurrence of kidnap said to have been occurred within the jurisdiction of the aforesaid Court, it would be just and necessary to withdraw the case in S.T.C.No.2291 of 2009 from the file of learned Fast Track Court (Magisterial Level), Hosur and transferred the same to the file of the learned Judicial Magistrate, Ambattur to be tried along with C.C.No.273 of 2009. No prejudice would be caused to the respondent, if S.T.C.No.2291 of 2009 transferred to the file of the learned Judicial Magistrate, Ambattur.

14. In the result, this Criminal Original Petition is allowed. The case in S.T.C.No.2291 of 2009 now pending on the file of learned Fast Track Court (Magisterial Level), Hosur is withdrawn from its file and the same is ordered to be transferred to the file of the learned Judicial Magistrate, Ambattur to be tried along with C.C.No.273 of 2009. Consequently, connected miscellaneous petition is closed.

It is made clear that this Court has not dealt with the merits of the matter and it is for the learned Judicial Magistrate, Ambattur to decide the matter on merits and in accordance with law.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The Fast Track Court (Magisterial Level),
Hosur.

2. The Judicial Magistrate,
Ambattur, Chennai.

+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No.16168

+1cc to M/s.Jayasri Baskar, Advocate, S.R.No.16149

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M.P.No.1 of 2010

CS/30/10/2018



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