IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.Nos.8655 & 8656 of 2012 and
MP.Nos.1 and 1 of 2012

Dr.S.Dhanalakshmi .. Petitioner in both the Crl.OPs

Vs.

M.Ganeshan .. Respondent in Crl.OP.8655/2012

S.Marimuthu .. Respondent in Crl.OP.8656/2012

Prayer in Crl.OP.No.8655/2012.:- Criminal Original Petition filed under Section 407 of the Cr.P.C to withdraw the criminal case in C.C.No.124 of 2010 on the file of the Judicial Magistrate, Tiruhengode and to transfer the same to Judicial Magistrate No.I or No.II, Erode or any other Court having competent jurisdiction to try the case at Erode.

Prayer in Crl.OP.No.8656/2012.:- Criminal Original Petition filed under Section 407 of the Cr.P.C to withdraw the criminal case in S.T.C.No.1641 of 2011 on the file of the Judicial Magistrate, Tiruhengode and to transfer the same to Judicial Magistrate No.I or No.II, Erode or any other Court having competent jurisdiction to try the case at Erode.

(In both Crl.OPs)
For the Petitioner : Mr.N.Manokaran

For the Respondent : No Appearance

COMMON ORDER

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These criminal original petitions were preferred by the petitioner/accused against the proceedings in C.C.No.124 of 2010 and S.T.C.No.1641 of 2011 on the file of the learned Judicial Magistrate, Tiruchengode and to transfer the same to learned Judicial Magistrate No.I or No.II at Erode or any other court having competent jurisdiction.

2.Brief case of the petitioner/accused:

The facts of the case is that the respondent/complainant and several other persons have filed number of private complaints

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against the petitioner/accused for the alleged offence under section 138 of Negotiable Instruments Act alleging that the cheques issued by petitioner/accused were returned unpaid on presentation, and after issuing the legal notice, they have filed complaints in different places only with a view to harass the petitioner/accused. Petitioner/accused is a Doctor and never had any money transaction with the respondent/complainant. The respondent had some transaction with Petitioner/accused husband Saravanan and have misused petitioner/accused cheque leafs to file the complaint. Therefore a complaint was filed before the trail court and the same was taken on file in C.C.No.124 of 2010 and S.T.C.No.1641 of 2011. Aggrieved over the same, this quash petitions are filed.

3.Heard the arguments on behalf of the petitioner and perused the entire materials available on record. No representation on behalf of the respondents.

4.The learned counsel for the petitioner/accused submits that 12 cases are pending before different courts and the petitioner/accused is a doctor by profession and running a clinic at Perundurai to maintain the family.

5.The learned counsel for the petitioner/accused submits that all the cases have been filed in the name of benami of a person who might have had some dealings with the husband of the petitioner/accused Further no witness can be allowed to examine in the absence of accused unless and until petitioner /accused is declared as the proclaimed offender. Since the offence arisen out of one single transaction between the complainants and petitioner/accused husband, it is just and necessary to transfer all the cases to one court for simultaneous trial.

6.The learned counsel for the petitioner/accused submits that the respondent is a stranger and petitioner/accused never had any dealings with him, while so, petitioner/accused cheques leafs have been misused in order to get an unlawful gain. Even assuming, but not admitting the fact that, petitioner/accused signed blank cheques leaves has been used at the instance of the respondent, strictly speaking, it is not a cheques as defined under the act. More so, the admission of the signature in a cheques alone will not constitute admission of the execution of the cheques. All the above complaints absolutely there are no allegation or proof of the fact that the cheques were drawn or executed by petitioner/accused. According to the complainants therein, the only fact alleged in the complaint is that the petitioner/accused gave the cheques. Therefore, it cannot be concluded that, cheques was drawn by petitioner/accused.

7.The learned counsel for the petitioner/accused submits that in all the above complaints some common question of law and fact arises have to be decided by the same court. It will be sufficient if some of the issues are common and some of the

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evidence to be let in is also common especially when the defence in the above cases is one and the same for joint or simultaneous trail. Furthermore, a simultaneous trail would avoid separate overlapping of evidence being taken and it will be more convenient to try them together in the interests of the parties and in the interests of effective trial of the causes. This power inheres in this Hon'ble Court as an inherent power; therefore, it is not possible to expect the complainant to give his consent for simultaneous trial.

8.The learned counsel for the petitioner/accused submits that the subject matter cheques were allegedly given only at Perundurai and Erode, but they were presented for collection in different places and notices were issued to suit the convenience of the respective complainants. However, no part of the cause of action has been taken place outside the Erode District. Therefore, the complaints, if any, ought to have been filed only at Perundurai and the forum chosen by the respondent has no jurisdiction to entertain the complaint.

9.The learned counsel for the petitioner/accused submits that all the factors cumulatively would non suit the respondent to maintain the subject matter complaint in C.C.No.124 of 2010 on the file of the Judicial Magistrate, Tiruchengode. Therefore, in view of the settled position of law, and in the light of the defence taken particularly when no part of the cause of action has taken place outside Perundurai, it is just and necessary to withdraw the complaint in C.C.No.124 of 2010 on the file of the learned Judicial Magistrate, Tiruchengode and to transfer the same to the learned Judicial Magistrate No.I, or No.II Erode to conduct simultaneous trial along with C.C.No.782 of 2009, C.C.No.519 of 2010 and C.C.No.5 of 2011 at Erode or any other court having competent jurisdiction at Erode.

10.Considering the allegations and appreciating the facts and circumstances as pointed out by both parties, I am inclined to allow the transfer petitions.

11.In the result, both the criminal original petitions are allowed and the proceedings in C.C.No.124 of 2010 and S.T.C.No.1641 of 2011 on the file of the learned Judicial Magistrate, Tiruchengode shall be transferred to the learned Judicial Magistrate No.I at Erode.

vs

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate, Tiruchengode.

2.The Judicial Magistrate No.I at Erode.

3. The Judicial Magistrate - II, Tiruppur.

4. The Chief Judicial Magistrate, Namakkal.

5. The Chief Judicial Magistrate, Coimbatore

6. The Judicial Magistrate, Fast TRack Court,
   Theni.

7. The Chief Judicial Magistrate, Erode.

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