



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24 .01.2017

CORAM:

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Cr1.O.P.(MD)Nos.22051 and 22052 of 2015

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Cr1.O.P.(MD)Nos.15793 and 15794 of 2016

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M.P.(MD)Nos.1 & 1 of 2015

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Cr1.M.P(MD)Nos.7543 and 7544 of 2016

(1)Cr1.O.P(MD)No.22051 of 2015:

Nicholas Kennedy

: Petitioner/Accused

Vs.

S.Chellapandian

: Respondent/Complainant

Prayer in Cr1.O.P(MD)No.22051 of 2015: This petition is filed under Section 482 of Cr.P.C., to withdraw the case in STC No.18 of 2014 pending on the file of the District Munsif-cum-Judicial Magistrate, Bhoothapandy, Kanyakumari District and transfer the same to the Judicial Magistrate, Ambasamudram or any other nearby competent court.

2.Cr1.O.P(MD)No.22052 of 2015:

Nicholas Kennedy

: Petitioner/Accused

Vs.

S.Chellapandian

: Respondent/Complainant

Prayer in Cr1.O.P(MD)No.22052 of 2015: This petition is filed under Section 482 of Cr.P.C., to withdraw the case in STC No.512 of 2014 pending on the file of the District Munsif-cum-Judicial Magistrate, Bhoothapandy, Kanyakumari District and transfer the same to the Judicial Magistrate, Ambasamudram or any other nearby competent court.

**3.Crl.O.P(MD)No.15793 of 2016:**

Nicholas Kennedy

: Petitioner/Accused

Vs.

S.Chellapandian

: Respondent/Complainant

Prayer in Crl.O.P(MD)No.15793 of 2016: This petition is filed under Section 482 of Cr.P.C., to expunge the remarks made in the order in Crl.M.P.No.4118 of 2015 in STC No.512 of 2014, dated 24.07.2015 on the file of the District Munsif-cum-Judicial Magistrate, Boothapandy, Kanyakumari District.

4.Crl.O.P(MD)No.15794 of 2015:

Nicholas Kennedy

: Petitioner/Accused

Vs.

S.Chellapandian

: Respondent/Complainant

Prayer in Crl.O.P(MD)No.15794 of 2016: This petition is filed under Section 482 of Cr.P.C., to expunge the remarks made in the order in Crl.M.P.No.4117 of 2015 in STC No.18 of 2014, dated 24.07.2015 on the file of the District Munsif-cum-Judicial Magistrate, Boothapandy, Kanyakumari District.

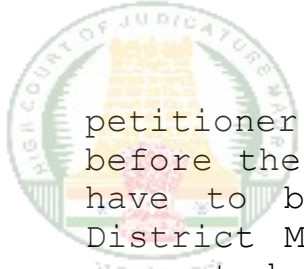
For Petitioners : Mr.K.Prabhu

For Respondent : Mr.S.Palanivelayutham
(in Crl OP(MD)Nos.15793/16
and 22051/15)

COMMON ORDER

Crl.O.P(MD)Nos.22051 and 22052 of 2015 have been filed to withdraw the case in STC Nos.18 and 512 of 2014 from the file of the District Munsif-cum-Judicial Magistrate, Bhoothapandy, Kanyakumari District and transfer the same to the Judicial Magistrate, Ambasamudram or any other nearly competent court, for disposal, whereas Crl.O.P(MD)Nos.15793 and 15794 of 2016 are directed to expunge the remarks made in the order in Crl.M.P.Nos.4117 of 2015 in STC No.18 of 2015 and in Crl.M.P.No.4118 of 2015 in STC No.512 of 2014, dated 24.07.2015 on the file of the District Munsif-cum-Judicial Magistrate, Bhoothapandy, Kanyakumari District.

2.The learned counsel appearing for the petitioner would submit that the District Munsif-cum-Judicial Magistrate, Bhoothapandy has made unwanted remarks in its order against the



petitioner and the learned counsel appearing for the petitioner before the trial court and hence, the remarks stated in the order have to be expunged. It is further submitted that since, the District Munsif-cum-Judicial Magistrate, Bhoothapandy had himself suggested for transfer of the cases from its file to some other court and written a letter to the Principal District Judge, Kanyakumari District and also suggested for transfer of the cases by stating some unwanted remarks against the petitioner and his counsel, the statement made by the District Munsif-cum-Judicial Magistrate, Bhoothapandi, is an abuse of process of law and on that ground, the cases in STC Nos.18 and 512 of 2014 have to be transferred to the Judicial Magistrate, Ambasamudram or any other nearly competent court, for disposal, according to law.

3.The learned counsel appearing for the respondent would fair submitted that he has no objection to transfer the cases to any other court within jurisdiction of Kanyakumari District, but the remarks made by the District Munsif-cum-Judicial Magistrate, Bhoothapandy, should be expunged and that the petitions filed by the petitioner to expunge the order of the District Munsif-cum-Judicial Magistrate, Bhoothapandy are not at all maintainable in law.

4.This court heard the rival submission made on either side and perused the materials available on record.

5.It is seen from the records that the District Munsif-cum-Judicial Magistrate, Bhoothapandy, has passed an order, on 24.07.2015, which reads as follows:-

"Complainant present. Advocate Mr.K.S.Palani represented for complainant side counsels. Accused absent. Counsels not present. Counsel Mr.A.Kennedy represented for accused side counsels. Petition U/s.142(A) of Negotiable Instrument (Amendment) Act 2015 filed by complainant's counsel. The Hon'ble High Court in Crl.M.P.No.16916/14 and 16917/14 has directed to this court to act in accordance with direction given by the Hon'ble Supreme Court in Dashrath Rupsingh Rathod case. As per the Negotiable Instrument (Amendment) Act 2015, only this court has got jurisdiction to entertained this case. But as stated above the said Hon'ble Supreme Court order in Dashrath Rupsingh Rathod case has no consequence as per the Negotiable Instrument (Amendment) Act 2015. The Negotiable Instrument (Amendment) Act 2015 came into force from 15.06.2015 with retrospective effect. In these circumstances this court has to follow the Negotiable Instrument (Amendment) Act 2015 and as per the above act only this court has got jurisdiction. But the accused counsels and the



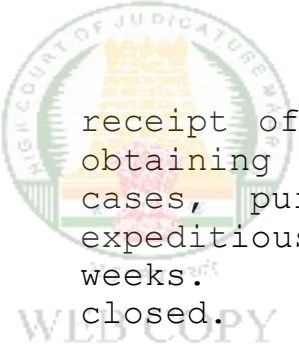
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accused had sent false, baseless allegations with derogatory remarks against this court to the Hon'ble Prl. District Judge, Chief Judicial Magistrate and to the Hon'ble High Court and the Registrar General, High Court, Chennai. The Hon'ble Prl. District Judge and the Hon'ble Chief Judicial Magistrate, called for remarks and I have sent my detailed explanation to them. This court has done its duty and acted according to law. The act of the accused and his counsels has caused mental agony to this court. Accused counsel forced this court to act blindly and interfered in discharging its duty. In these circumstances, this court feels unsecure to conduct the above cases and has prayed the Hon'ble Prl. District Judge to transfer the above said case to some other court in this district. Award order from the Hon'ble District Judge,. Hence posted to 14.03.2015.

6.A plain reading of the above, the District Munsif-cum-Judicial Magistrate, Bhoothapandy has communicated that the accused and his counsel caused mental agony to him and also the accused counsel forced the court to act blindly and interfered in discharging its duty. Further, the accused and his counsel had sent false, baseless allegation with derogatory remarks against the Judicial Magistrate concerned to the Principal District Judge, Chief Judicial Magistrate and the Registrar General, High court, Chennai. Since, the learned Judicial Magistrate has made some remarks against the accused and his counsel and also suggested for transfer of the cases, which are pending on its file to some other court, to meet the ends of justice, the cases in STC Nos.18 and 512 of 2014 have to be transferred to the Judicial Magistrate No.1, Nagercoil, for disposal according to law.

7.It is pertinent to note here that the the District Munsif-cum-Judicial Magistrate, Bhoothapandy, has stated in his order that the accused and his counsel had sent false baseless allegations to the Principal District Judge, Chief Judicial Magistrate and High court, the remarks made by the District Munsif-cum-Judicial Magistrate, Bhoothapandy, in its order, cannot be expunged.

8.In the result, CrI.O.P(MD)Nos.15793 and 15794 of 2016 are **dismissed**. CrI.O.P(MD)Nos.22051 and 22052 of 2015 are allowed and the cases in STC Nos.18 and 512 of 2014 are ordered to be transferred from the file of the District Munsif-cum-Judicial Magistrate, Bhoothapandy, to the file of the Judicial Magistrate No.1, Nagercoil, for disposal according to law. The transferor Court is ordered to transmit the entire records to the file of transferee Court within a period of two weeks from the date of



receipt of a copy of this order and the transferee Court, after obtaining the records on transfer, is directed to dispose of the cases, purely on merits and in accordance with law, as expeditiously as possible, preferably within a period of twelve weeks. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To,

1.The Judicial Magistrate No.1,
Nagercoil.

2.The District Munsif-cum-Judicial Magistrate,
Bhoothapandy, Kanyakumari District.

+1 cc to M/s.K.Prabhu, Advocate in SR.No.4097

+1 cc to M/s.S.Palani Velayutham, Advocate in SR.No.4055

ER

MAS/SV-MMS/09.02.2017 :5P/5C

Cr1.O.P. (MD) Nos.22051 and 22052 of 2015
&
Cr1.O.P. (MD) Nos.15793 and 15794 of 2016
24.01.2017