



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2017**

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WEB COPY

CrI.O.P.(MD)No.3829 of 2017

and

CrI.M.P.(MD)No.2820 of 2017

V.Vinothkumar : Petitioner/Petitioner/Accused

Vs.

Lakshmanan : Respondent/ Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 407 of the Code of Criminal Procedure praying to pass an order to transfer the case from the learned Judicial Magistrate, Bodinayakanur, in connection with S.T.C.No.113 of 2016 to the learned Judicial Magistrate, Uthamapalayam.

For Petitioner : Mr.B.Jeyakumar

O R D E R

For the sake of convenience, the parties will be referred to by name.

2. Lakshmanan has initiated a prosecution under Section 138 of the Negotiable Instruments Act, in S.T.C.No.113 of 2016 before the learned Judicial Magistrate, Bodinayakanur, against Vinothkumar. It is the case of Vinothkumar that whenever he went for appearing before the learned Judicial Magistrate, Bodinayakanur, Lakshmanan is threatening him with his henchmen and, therefore, Vinothkumar filed a petition in Tr.Cr.M.P.No.1360 of 2016 in S.T.C.No.113 of 2016, under Section 408(3) of the Code of Criminal Procedure before the Sessions Court for transfer of the case from the Court of Judicial Magistrate, Bodinayakanur to the Court of Judicial Magistrate, Uthamapalayam. Since Vinothkumar did not pay the batta, nor appeared before the Sessions Court, Tr.Cr.M.P.No.1360 of 2016 was dismissed on 24.08.2016, against which, Vinothkumar is before this Court.

3. Heard Mr.B.Jeyakumar, learned counsel for Vinothkumar.

4. The learned counsel for Vinothkumar submitted that Vinothkumar is being harassed and threatened by the henchmen of Lakshmanan and, therefore, he fears to go and appear before the learned Judicial Magistrate, Bodinayakanur.



5. It is seen that the case is pending from 2016 and after having filed a transfer application in Tr.Cr.M.P.No.1360 of 2016 before the Sessions Court, Vinothkumar did not prosecute the same diligently. Thus, he seems to be adopting dilatory tactics to prolong the trial. Therefore, this is not a fit case to transfer the proceedings as prayed for by Vinothkumar, especially, in the light of the recent amendment to Section 142 of the Negotiable Instruments Act. However, Vinothkumar is directed to surrender before the learned Judicial Magistrate, Bodinayakanur, within a period of two weeks from the date of receipt of a copy of this order and on such surrender, he shall be released on bail under Section 436 of the Code of Criminal Procedure on he executing a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with two sureties to the satisfaction of the learned Judicial Magistrate, Bodinayakanur and, thereafter, Vinothkumar shall appear before the Trial Court for receiving the complaint and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. For the rest of hearings, Vinothkumar shall engage a counsel on special vakalat and if he files an application under Section 317 Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses on the day they are examined in chief, as held by the Hon'ble Supreme Court in **Vinod Kumar vs. State of Punjab** reported in **2015 (1) Scale 542**, in his absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If he absconds, a fresh Information Report can be registered against him under Section 229-A of the Indian Penal Code. If he adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence.

6. This Criminal Original Petition is disposed of with the above direction. Consequently, the connected miscellaneous petition is closed.

SD/-

ASSISTANT REGISTRAR(AD-II)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The Judicial Magistrate,
Bodinayakanur.

+1 CC TO MR.B.JEYAKUMAR,ADVOCATE,SR NO.50418

SML

MAS/SV-MMS:17.04.2017:2P-3C