

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7062 of 2017

AND

TRANSFER CRIMINAL PETITION No.349 of 2014

COMMON ORDER:

Heard learned counsel for the petitioner/ accused in both the petitions, the 1st respondent/ complainant represented by learned counsel from his appearance in Tr.Crl.P.No.349 of 2014 and learned Public Prosecutor representing the 2nd respondent-State in both the matters and taken up for common disposal.

Tr.Crl.P.No.349 of 2014 is filed by the accused/ petitioner to transfer C.C.No.633 of 2013 pending on the file of the I Special Magistrate, Erramanzil, Hyderabad, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), registered on the private complaint of the 1st respondent/ complainant on the ground that as per the expression of the Apex Court in Dasarath Rupsingh Rathod v. State of Maharashtra¹, the learned trial Magistrate has no jurisdiction and the case is to be transferred to some other Court, having jurisdiction pursuant to the said expression.

In the docket order dated 05.11.2014, it is stated by the learned Magistrate that the trial was commenced already and as per the very expression, once trial commenced, the matter could

¹ 2014(3) ALT (Crl.) 129

not be withdrawn. The operative portion of the observations at page-2, 1st para reads as follows:

“It is also seen from the record, that the present complaint was filed on 23.08.2013. The complainant in the case filed his chief affidavit as laid down under Section 145 of N.I.Act on 24.09.2014 itself. Thereafter the complainant got marked the documents and later on the matter reached the stage of defence. At that stage the complainant filed petition to reopen the matter, for his further evidence, and after the said petition was allowed, the complainant examined PW2 in chief, and now it is at the stage of cross examination of PW.2”

No doubt, it is pointed by the learned counsel for the petitioner that the judgment of the Apex Court was dated 01.08.2014 and chief examination affidavit of the complainant was taken on oath on 24.09.2014, to say, as on the date of the judgment was pronounced, trial is not commenced, in view of the guidelines. It is not in dispute that subsequently with retrospective effect the Negotiable Instruments Act is amended, which also confers the jurisdiction on the Magistrate. By virtue of the retrospective operation of the amendment as subsequent event, which the Court cannot ignore. Once such is the case, even the observation of the lower Court in the above order, dismissing the memo filed by the petitioner/accused herein to transfer C.C.No.633 of 2013, pursuant to the guidelines of the Apex Court in Dasarath Rupsingh Rathod (supra) is not sustainable and the Court got jurisdiction by virtue of the subsequent amendment, thereby, by taking into consideration there are no grounds to transfer. Leave it as it is.

The impugned order in CrI.P.No.7062 of 2017 is the docket order dated 29.05.2017 of the learned I Special Magistrate, which reads as follows:

“Complainant present. Complainant counsel present. Accused present. At request of accused counsel the several adjournments granted for filing proof of service of notice on complainant in terms of the order of Hon’ble High Court in Tr.CrI.P.M.P.No.378 of 2015 in Tr.CrI.P.No.349 of 2014 dt.22.12.2015. It is not filed so far. It is not filed till today. On 18.04.2017 itself counsel for complainant brought the above fact to the notice of this Court. Prior to that a Memo was also filed to the above effect on 16.11.2016. Summer Vacation to Hon’ble High Court commenced from 01.05.2017. Prior to that accused has sufficient time to file proof of service. It is not utilized. Hence, it is deemed there is no stay pending in terms of above Hon’ble High Court order. Case stands posted for cross examination of PW-2. Call on 02.06.2017 for the same.”

It is the grievance of the petitioner that despite memo filed of the stay continues, the learned Magistrate did not consider the same. Needless to say, it is the duty of the party for continuation of the stay by filing the order copy and not mere memo and otherwise an affidavit and the lower Court, no doubt, should have been considered. But, a perusal of the docket orders shows despite opportunities even to file the order copy, not filed.

Having regard to the above, once the very Transfer Criminal Petition is disposed of by this order, there is nothing to proceed against the learned Magistrate, pursuant to the docket order.

Accordingly, both the matters are disposed of, directing the lower Court to decide C.C.No.633 of 2013 on own merits, uninfluenced by the observations made in this order.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.08.2017
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