

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CRIMINAL PETITION NO.140 OF 2014

ORDER:

This transfer criminal petition is filed under Section 407 Cr.P.C to withdraw C.C.No.564 of 2013 pending on the file of XIX Special Magistrate, Erramanzil, Hyderabad and transfer the same to the Court of II Special Metropolitan Magistrate, Rajendranagar, for joint trial with C.C.No.263 of 2012.

The petitioner is the accused in C.C.No.564 of 2013 pending on the file of XIX Special Magistrate, Erramanzil, Hyderabad, for the offences punishable under Sections 138 & 142 of Negotiable Instruments Act, on the ground that cheque was issued by this petitioner allegedly for Rs.10 lakhs, drawn on Andhra Bank, Ramakrishnapuram Branch, Hyderabad vide cheque No.4182222 dated 01.12.2011. When the said cheque was presented by the second respondent, the same was dishonoured by the drawee bank i.e. HDFC Bank Limited, Lakdikapool, Hyderabad, on the ground of insufficiency of funds and returned on 22.05.2012. Thereafter, after compliance of necessary formalities required under Section 138 of N.I. Act, filed the complaint.

The main contention of the learned counsel for the petitioner is that, petitioner is also accused in C.C.No.429 of 2012 pending on the file of XIV Special Magistrate, Erramanzil, Hyderabad and the petitioner herein has already filed Tr.Crl.P.No.105 of 2013 before this Court to withdraw C.C.No.263 of 2012 on the file of II Special Magistrate, Rajendranagar, Ranga Reddy District. This

Court vide order dated 07.11.2013 stayed all further proceedings in C.C.No.429 of 2012 pending on the file of XIV Special Magistrate, Erramanzil, Hyderabad, as well as C.C.No.263 of 2012 on the file of II Special Magistrate, Rajendranagar, Ranga Reddy District. The contention of the learned counsel for the petitioner is that the defence set up in both the cases is one and the same and unless, both the calendar cases are tried by the same Court, it would be difficult to prove the defence set up in both the calendar cases. Therefore, sought for withdrawal of C.C.No.564 of 2013 pending on the file of XIX Special Magistrate, Erramanzil, Hyderabad and transfer the same to the Court of II Special Metropolitan Magistrate, Rajendranagar, for joint trial with C.C.No.263 of 2012.

Notice was ordered to the second respondent on 03.12.2015 and sent through registered post with acknowledgment due through speed post. The postal authorities returned with an acknowledgment that the second respondent was absent for seven days. Therefore, it was returned. Notice sent to the second respondent is deemed to have been served, since the notice was sent to the correct address of the second respondent by registered post with acknowledgment due, in view of presumption under Section 27 of the General Clauses Act.

According to the learned counsel for the petitioner, the defence set up by him in both the calendar cases i.e. C.C.No.564 of 2013 and C.C.No.263 of 2012 is one and the same and in case, both the calendar cases are disposed of by two different Courts, there will be a conflict of judgment and to avoid such conflict, the

learned counsel sought for withdrawal of C.C.No.564 of 2013 pending on the file of XIX Special Magistrate, Erramanzil, Hyderabad and transfer the same to the Court of II Special Metropolitan Magistrate, Rajendranagar, for joint trial with C.C.No.263 of 2012.

Taking into consideration of the defence set up by the petitioner before the Trial Court in both the calendar cases, I find that it is appropriate to withdraw C.C.No.564 of 2013 pending on the file of XIX Special Magistrate, Erramanzil, Hyderabad and transfer the same to the Court of II Special Metropolitan Magistrate, Rajendranagar, for trial with C.C.No.263 of 2012, to dispose of both the cases in accordance with law. Therefore the Magistrate concerned is directed to try both the cases, as per his convenience and procedure, to avoid conflicting decisions.

With the above direction, the transfer criminal petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.11.2017

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