

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.991 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') is filed by the petitioner/ accused, having been aggrieved of the order, dated 06.02.2017, of the learned II Additional Judicial Magistrate of First Class, Nellore, passed in CrI.M.P.no.482 of 2017 in C.C.No.586 of 2015.

2. I have heard the submissions of *Sri P.S.P.Suresh Kumar*, learned counsel for the petitioner/ accused, and of the learned Public Prosecutor appearing for the 1st respondent/ State of AP. The personal notice sent to the 2nd respondent by the petitioner by RPAD as directed by this Court is stated to have been returned with an endorsement 'door locked' though it is sent to the last known address of the 2nd respondent. Hence, it is requested that the said service may be treated as deemed service. The 2nd respondent did not enter appearance. I have perused the material record.

3. The chronology of events and the facts necessary for consideration, in brief, are as follows:

Originally, a complaint in C.C.No.642 of 2013 (present C.C.No.586 of 2015) was filed on the file of the Court of the learned V Additional Judicial Magistrate of First Class, Nellore. Later, on administrative grounds, the aforesaid calendar case (hereinafter, '1st case') was transferred to the Court of the learned I Additional Junior Civil Judge, Nellore; and was re-numbered as C.C.No.42 of 2014. However, there was another calendar case in C.C.No.827 of 2013 (hereinafter, '2nd case') originally on the file of the Court of the learned II Additional Judicial Magistrate of First Class, Nellore. Therefore, the

petitioner/ accused filed a transfer petition in Crl.M.P.No.580 of 2015 before the Court of the learned District Judge, Nellore, seeking transfer of the 1st case to the Court of the learned II Additional Judicial Magistrate of First Class, Nellore, for trial along with the 2nd case. The said transfer petition was allowed by the learned Principal District Judge, Nellore, by orders dated 24.07.2015, and accordingly, the 1st case was transferred to the Court of the learned II Additional Judicial Magistrate of First Class, Nellore, to be tried simultaneously or along with the 2nd case on the file of the said Court. However, for some reasons, 2nd case was separated and was transferred, on administrative grounds, from the file of the learned II Additional Judicial Magistrate of First Class, Nellore, to the Court of the learned Special Judicial Magistrate of First Class for Railways, Nellore, and was re-numbered as C.C.No.346 of 2015. Later, on 04.05.2016, the 2nd case was dismissed for default. However, the present calendar case, i.e., the 1st case, remained pending on the file of the Court of the learned II Additional Judicial Magistrate of First Class, Nellore. At that stage, the 2nd respondent/ complainant filed a petition in Crl.M.P.No.482 of 2017 before the Court of the learned II Additional Judicial Magistrate of First Class, Nellore, seeking transfer of the 1st case to the Court of the learned Special Judicial Magistrate of First Class, Mobile Court, Nellore, as the bank of the complainant is situated in Tipparajuvari Street, Nellore, which is located within the jurisdiction of III Town Police Station, Nellore, which is within the territorial jurisdiction of the Court of the learned Special Judicial Magistrate of First Class, Mobile Court, Nellore. The petitioner/ accused resisted the said petition of the 2nd respondent/ complainant. However, on merits and by the orders impugned in this revision, the trial Court allowed the petition of the 2nd respondent/ complainant and transferred the 1st case (C.C.No.586 of 2015) from the file of the Court of the learned II Additional Judicial Magistrate of First Class, Nellore, to the Special

Mobile Court, Nellore, on the point of jurisdiction. Aggrieved thereof, the petitioner/ accused filed this revision case.

4. Learned counsel for the petitioner while stating the chronology of events, which are stated supra, would contend as follows: 'When the 1st case was originally instituted, as per the legal position then prevailing, the Court of the learned V Additional Judicial Magistrate of First Class, Nellore, was having jurisdiction to entertain the said calendar case. However, it was transferred, on administrative grounds, to the Court of the learned I Additional Junior Civil Judge, Nellore. Thereupon, as per the orders of the learned Principal District Judge, Nellore, the said 1st case was transferred to the Court of the learned II Additional Judicial Magistrate of First Class, Nellore, to be tried along with the 2nd case already pending on the file of the said Court. However, later, the 2nd case was separated and transferred to the Court of the learned Special Judicial Magistrate of First Class for Railways, Nellore, and was later dismissed for default. However, the present case, C.C.No.586 of 2015/ 1st case, remained pending on the file of the Court of the learned II Additional Judicial Magistrate of First Class, Nellore, as per the transfer orders of the learned Principal District Judge in Crl.M.P.no.580 of 2015. However, in view of the amendment to the provisions of the Negotiable Instruments Act, 1881, by virtue of the Negotiable Instruments (Amendment) Act, 2015, and in view of the amended provisions, Sections 142 and 142A, the 2nd respondent/complainant filed petition seeking transfer of the case to the Special Mobile Court, Nellore, on the point of jurisdiction and on the ground that the complainant's bank is situated within the jurisdiction of the police station, which is within the territorial jurisdiction of the transferee Court, that is, Special Mobile Court, Nellore. Nonetheless, the only contention of the petitioner/ accused is that though the amended provisions of law are applicable to the present facts of the case, since the transfer orders are made by the learned Principal District Judge

in a transfer petition, the learned Magistrate ought not to have ordered further transfer of the present 1st case from the file of the said Court, i.e., II Additional Judicial Magistrate of First Class, Nellore, to the Special Mobile Court, Nellore.

5. I have given earnest consideration to the facts and submissions.

6. Admittedly, the present case, 1st case, at one stage was transferred to the Court of the learned II Additional Judicial Magistrate of First Class, Nellore, for joint trial/ simultaneous trial along with the 2nd case originally pending on the file of the said Court. However, later, the said 2nd case was separated as it was transferred to the Court of the learned Judicial Magistrate of First Class for Railways, Nellore. Subsequently the 2nd case was dismissed for default, on 04.05.2016. Therefore, the purpose of transfer of the 1st case, i.e., for trial along with the 2nd case no longer subsists. Further, in view of the fact that the present Court lacked jurisdiction in view of the amended provisions of the Act referred to above and as the Court of the Special Judicial Magistrate of First Class, Special Mobile Court, Nellore, is having jurisdiction to try and dispose of the case in view of the legal position applicable, the learned Magistrate was justified in observing that the Court of learned II Additional Judicial Magistrate of First Class, Nellore, is not having jurisdiction and that therefore, the case is to be transferred to the Court of the learned Special Judicial Magistrate of First Class, Special Mobile Court, Nellore. Be that as it may, now it is necessary to deal with the contention of the petitioner/ accused that the learned Magistrate has no jurisdiction to transfer the case from the Court of the learned II Additional Judicial Magistrate of First Class, Nellore to the Special Mobile Court, since the case was transferred to the II Additional Judicial Magistrate's Court at Nellore, by the learned District & Sessions Judge, by way of a judicial order, passed in a transfer criminal petition. It is to be noted that when a

transfer order is made on administrative grounds or by a judicial order in a transfer criminal petition either for convenience of the parties or for trial of two cases either jointly or simultaneously, the said orders passed in a transfer criminal petition do not generally come in the way of the learned Judge dealing with the case on the judicial side to take a decision on merits as to the issue of jurisdiction and pass appropriate orders as the decision on the lack or otherwise of the jurisdiction goes to the root of the matter and vitiates the decision made in case, if it is to be eventually held that the Court is having no jurisdiction.

7. Viewed thus, this Court finds that there is no merit in the revision and the same is liable to be dismissed.

8. In the result, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

24th July, 2017
RAR

M. SEETHARAMA MURTI, J



