



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.03.2018

Date of Reserving the Order	Date of Pronouncing the Order
23.01.2018	05.03.2018

WEB COPY

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAMCRL.O.P.(MD)No.3113 of 2014

D.Justin Jeyaraj ... Petitioner
-vs-

Russel Raj ... Respondent

Prayer: Criminal Original petition is filed under Section 407 of Criminal Procedure Code, to withdraw the case in C.C.No.95 of 2013 on the file of the learned Fast Track Court Magistrate No.I, Nagercoil to Fast Track Court cum Judicial Magistrate Court at Maduari.

For Petitioner : Mr.R.Mathiyalagan
For Respondent : Mr.C.K.M.Appaji

ORDER

This Criminal Original Petition has been filed by the defacto complainant, to transfer the case in C.C.No.95 of 2013, from the file of the learned Fast Track Court (Magistrate Level No.I), Nagercoil to the file of the Fast Track Court (Magistrate Level) at Madurai.

2.The learned counsel appearing for the petitioner has submitted that the petitioner herein has filed a private complaint under Section 138 of Negotiable Instruments Act, against the respondent herein and the same was taken on file in C.C.No.95 of 2013, on the file of the learned Fast Track Court No.I (Magistrate Level), Nagercoil. He further submitted that he has engaged an Advocate one Mr.Paramasivam for filing a private complaint and the said Advocate has handed over the bundle to another Advocate, one Mr.Mathiyalagan and the petitioner has paid a sum of Rs.17,500/- as fees and after the petitioner was examined as P.W.1, no progress has been made in the said case. He further submitted that the petitioner's counsel Mr.Mathiyalagan has demanded more fees and the petitioner is not able to pay the said fees and hence, he made a request to hand over the bundle, but the said Advocate refused to give consent for filing vakalat by another Advocate and abused and also assaulted the petitioner with case bundle. He further submitted that the petitioner has filed a petition before the trial Court permitting him to engage another counsel but, the said



petition has been returned and the case is kept pending without any progress and hence, he requests this Court to transfer the case in C.C.No.95 of 2013, from the file of the Fast Track Court No.I (Magistrate Level), Nagercoil, to any of the Magistrate Court at Madurai.

3.The learned counsel appearing for the respondent has submitted that both the parties are residing in Kanyakumari District and if the case is transferred to Madurai that would cause inconvenience to the respondent to travel to Madurai from Kanyakumari. He further submitted that merely because, the petitioner's counsel refused to give consent for engaging another counsel, the case cannot be transferred from Nagercoil to Madurai when there is no fault on the part of the respondent.

4.Admittedly, the petitioner is not having any grievance against the respondent herein or the Presiding Officer of the concerned Court. According to the petitioner, his counsel has demanded exorbitant fees and for that the petitioner has not agreed and made a request to give consent for engaging another counsel but the present counsel refused to give consent. Merely because, the petitioner's counsel refused to give consent for engaging another counsel, the case cannot be transferred from Nagercoil to Madurai and compel the respondent to travel from Nagercoil to Madurai for each and every hearing. If the petitioner's counsel acted against the interest of the petitioner, then, he has to send a complaint to the bar counsel against his counsel or he may send a letter by Registered Post to his counsel, informing him that he has revoked the vakalat and thereafter, he can engage another counsel and also produce a copy of the said letter along with the postal acknowledgement and make a request before the trial Court to accept the vakalat to be filed by the new counsel. If any such request is made by the petitioner by following the aforesaid procedure, the concerned Judicial Magistrate has to permit the new counsel to conduct the case on behalf of the petitioner. The petitioner's counsel has no right to retain the case bundle and he has no right to refuse to give consent for engaging another counsel. At the most, he can claim fees, if anything is due from the petitioner by taking appropriate proceedings.

5.In the result, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1.The Fast Track Court Magistrate No.I, Nagercoil.

2.The Fast Track Court cum Judicial Magistrate Court,
Madurai.

+One cc to M/s.C.K.M.Appaji, Advocate, SR.No.53492

ia/gsp

RL/4C/2P/JC/SAR1/19/3/2018

CRL.O.P. (MD) No.3113 of 2014