



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.02.2018

Pronounced on : 18.05.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

CRL.OP. (MD) No. 8671 of 2014
and
MP. (MD) No. 1 of 2014

R. Saravanan ..Petitioner/Complainant

versus

Uma Maheswari .. Respondent/Accused

Prayer: Criminal Original Petition is filed under Section 407(2) of the Criminal Procedure Code to pass an order to withdraw the case in STC.No.114 of 2013 on the file of the learned Judicial Magistrate/Fast Track Court, Theni, Theni District and transfer to any other court in the neighbouring Theni District more particularly the learned Judicial Magistrate/Fast Track Court, Uthamapalayam, Theni District forthwith.

For Petitioner : Mr.S.Palanivelayutham

For Respondent : No appearance

O R D E R

This petition has been filed by the complainant u/s.407(2) of the Criminal Procedure Code to transfer the case in STC.No.114 of 2013 from the file of the Fast Track Court (Magistrate Level), Theni to the Fast Track Court (Magistrate Level), Uthamapalayam.

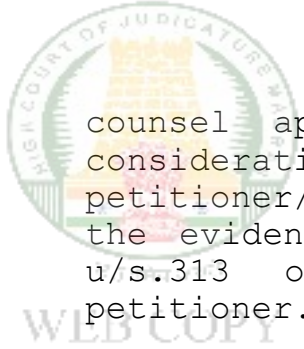
2. Heard Mr.S.Palanivelayutham, learned counsel for the petitioner.

3. Learned counsel for the petitioner has submitted that the petitioner herein has filed a complaint u/s.138 of the Negotiable Instruments Act against the respondent herein in STC.No.114 of 2013 on the file of the FTC (Magistrate Level), Theni. He further submitted that the petitioner is residing at Uthamapalayam, Uthamapalayam Taluk, Theni District and whenever he is going to attend the above case at Theni, the respondent threatened him with rowdy elements and with regard to the said incident, a complaint was lodged on 05.01.2014 before the Sub-Inspector of Police, Theni. He further submitted that the respondent herein has lodged a false



complaint against the witness viz., Karthikeyan before the same police station and thereby, she threatened the witness not to give evidence against her in the aforesaid case. He further submitted that the police has closed the said complaint as false and even thereafter, she is threatening the petitioner and hence he is not able to conduct the case before the Judicial Magistrate at Theni and therefore, the petitioner has filed a transfer petition in CrI.MP.No.184 of 2014 on the file of the Principal District and Sessions Judge, Theni to transfer the aforesaid case to the Judicial Magistrate, Uthamapalalyam. But the learned Principal and Judicial Magistrate had dismissed the said petition on 20.07.2003 without assigning any valid reason. He further submitted that if the case in STC.No.114 of 2013 is transferred to the Judicial Magistrate, Uthamapalalyam, that it would not cause any prejudice to the respondent and therefore, he prayed to transfer the above said case to the Judicial Magistrate, Uthamapalalyam.

4. A perusal of the typed set of papers filed by the petitioner would show that the petitioner herein has filed a case in STC.No.114 of 2013 u/s.138 of the Negotiable Instruments Act on the file of the Fast Track Court (Magistrate Level), Theni against the respondent herein stating that the respondent herein borrowed a sum of Rs.10,00,000/- and when the same was presented before the bank for collection, it was dishonoured and even after receipt of notice, the respondent did not make payment and hence, she is liable to be punished u/s.138 of the Negotiable Instruments Act. The matter was taken up for trial and during trial, the petitioner was examined as PW1 and thereafter, it was posted on 11.12.2013 for further evidence on the complainant's side. From 11.12.2013, the case was adjourned to 19.12.2013 for complainant's side further evidence. On 19.12.2013, the petitioner/complainant was absent. Further there was no representation on his side. However, the accused was present. The learned Judicial Magistrate has closed the complainant's side evidence and posted the matter for questioning the accused u/s.313 of Cr.P.C., The petitioner has not stated any reason for his non-appearance on 19.12.2013 before the trial court. It is also to be pointed out that on that date, his counsel also not appeared. Even though the Magistrate is having power u/s.256 of Cr.P.C., to acquit the accused, when the complainant is absent, in this case, the learned Judicial Magistrate has not acquitted the accused. However, he adjourned the case after closing the petition on the complainant's side evidence. So, the petitioner cannot have any grievance against the Judicial Magistrate. But in the affidavit filed in support of this petition, he has stated that the learned Judicial Magistrate without understanding the situation of the petitioner and without giving an opportunity to the petitioner to establish his case, has closed the petitioner's side evidence in a hurried manner and posted the matter for arguments. The aforesaid allegations are not correct. As already pointed out that the learned Judicial Magistrate gave sufficient opportunity to the petitioner/complainant to adduce further evidence. Further on 19.12.2013, neither the petitioner nor his

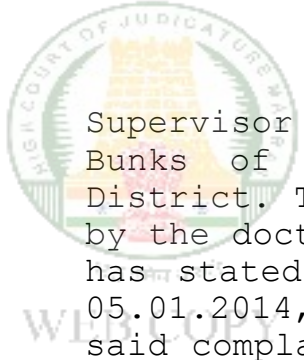


counsel appeared. The learned Judicial Magistrate taking into consideration, already sufficient time has been given to the petitioner/complainant for adducing additional evidence, he closed the evidence and posted the matter for questioning the accused u/s.313 of Cr.P.C., and not for arguments as alleged by the petitioner.

5. A perusal of the order passed by the District and Sessions Judge, Theni, shows that the petitioner herein has filed the transfer petition in CrI.MP.No.184 of 2014 on the file of the Principal District and Sessions Judge, Theni on 11.12.2013 stating that he is having heart disease and doctors have advised him not to travel for a long distance and the said petition was returned for rectifying certain defects and subsequently, it was represented on 07.01.2014 and at that time, the petitioner has removed one sheet which is containing the reason that he is suffering from heart disease and replaced another sheet, in which, he has stated that he has been threatened by the respondent when he was attending the court. The learned Principal District and Sessions Judge, taking into consideration the aforesaid facts, dismissed the said petition as the petition has been filed with an ulterior motive.

6. In order to verify what was stated in the original petition which was filed before the Principal District and Sessions Judge, this court has called for the original records. A perusal of the said records shows that the petitioner has filed a transfer petition along with supporting affidavit on 11.12.2013. The said petition was returned pointing out certain defects and thereafter it was represented on 07.01.2014. At that time, the second sheet of the original affidavit has been removed and a fresh sheet has been attached, in which, it is stated that the petitioner has sworn the affidavit and signed on 07.01.2014. In the fresh sheet which has been attached to the said affidavit, the petitioner has stated that on 20.12.2013 and 04.01.2014, some persons have followed him when he was attending the Court at Theni and with regard to the said incident, he has lodged a complaint on 05.01.2014 before the Sub-Inspector of Police, Theni Police Station. The learned Principal and District and Sessions Judge, in his order has observed that in the copy of the affidavit which was served on the respondent, it was stated that the petitioner was suffering from heart disease and he was advised by the doctors not to travel for a long distance, but contrary to the said averments, he has stated a new reason as if he was threatened by the respondent.

7. The averments made in the affidavit filed in support of the present petition and the averments made in the affidavit filed in support of the transfer petition which was filed before the District and Sessions Court would lead to an inference that since the learned Judicial Magistrate at Theni has insisted the petitioner to conduct the case, the petitioner has filed the Transfer Original Petition before the District and Sessions Court with inconsistent reasons. The petitioner has stated in the affidavit that he was working as



Supervisor in Theni District to rectify the defects in Petrol Bunks of Theni District. So he has to travel to the entire District. Therefore, he cannot take a stand that he has been advised by the doctor not to travel for a long distance. Further though he has stated that a complaint was lodged against the respondent on 05.01.2014, it is not known whether any action was taken on the said complaint by the police. Therefore, this Court is of the view that there is no bonafide in the petition for seeking transfer of the aforesaid case from the Judicial Magistrate Court, Theni to Judicial Magistrate Court, Uthamapalayam.

In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate/Fast Track Court,
Theni,
Theni District.

GV/VS
DS/SV/MMS/SAR-2 :01.6.2018: 4P/2C

ORDER made in
CRL.OP.(MD)No.8671 of 2014
and
MP.(MD)No.1 of 2014
18.05.2018