

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

TRANSFER CRIMINAL PETITION NO.29 OF 2018

ORDER:

This Transfer Criminal Petition is filed under Section 407 of the Code of Criminal Procedure (Cr.P.C.) to withdraw C.C.No.159 of 2015 on the file of the XII Additional Chief Metropolitan Magistrate, Hyderabad and transfer the same to any competent Court at Nampally, Hyderabad.

2. Heard Sri T.Niranjan Reddy, learned senior counsel appearing for the petitioner, the learned Assistant Government Pleader for the first respondent-State, Sri A.B.Lalitha Gayatri, learned counsel for the second respondent and perused the record.

3. Learned counsel for the petitioner would submit that the petitioner filed a private complaint against the second respondent and the same is numbered as C.C.No.37 of 2008 and is pending before the Court of Special Judge for Economic Offences, Hyderabad. Thereafter, the second respondent herein filed Criminal Petition No.5577 of 2008 before this Court to quash the proceedings in C.C.No.37 of 2008. It is alleged that the second respondent filed certain forged and fabricated documents in the said Criminal Petition. Therefore, he filed a complaint under Section 200 Cr.P.C. and the same was referred under Section 156(3) Cr.P.C. to P.S. Charminar. After registering the crime, the police concerned filed charge sheet and the said private complaint resulted in C.C.No.159 of 2015 on the file of the XII Additional Chief Metropolitan Magistrate, Hyderabad for the offences under Sections 465, 466, 468 and 471 IPC. It is also submitted that the

petitioner was examined as P.W.1 in chief on 10.11.2016. Thereafter, the learned Public Prosecutor filed CrI.M.P.No.5888 of 2016 under Section 242(3) Cr.P.C. to receive the original documents and to mark the same as exhibits and the said application was allowed. Thereafter, another application was filed in CrI.M.P.No.5889 of 2016 under Section 91 Cr.P.C. to issue summons to produce documents from the Hon'ble Debts Recovery Tribunal, New Delhi. The said application was allowed. Thereafter, CrI.M.P.No.5890 of 2016 was filed under Section 311 Cr.P.C. to summon the Joint Registrar, High Court of A.P. and CBI Officers as additional witnesses and the same was dismissed on 12.04.2017. Ultimately, the impugned C.C. was posted on 30.10.2017. On 30.10.2017, the Presiding Officer was on C.L. and it was adjourned to 31.10.2017. On 31.10.2017 also, as the Presiding Officer was on leave, it was adjourned to 09.01.2018. But the same was called on 09.11.2017. The adjournment is also available in the web-page of the Court concerned. This was brought to the notice of the Court below. When the matter was taken on 09.11.2017, the Court below passed the following order.

“Accused absent. Petition filed allowed. Petition filed by learned APP that as per case hearing list the date was mentioned as 09.01.2018, but it is called today. Learned counsel for accused reported that they were informed that the matter adjourned to 09.11.2017. As the officer was on leave on that day, concern staff posted the date to 09.11.2018 instead of 09.11.2017. When enquired with the staff they reported that mistakenly they mentioned the year as 2018 instead of 2017, after noticing the same they have rectified it and by mistake it was entered as 09.01.2018, it is due to oversight only. This court never intended to post the matter beyond one month and in fact no matter will be posted to that much of long date. However, accused counsel present and

police also represented that they have also noted the date as 09.11.2017. Hence it is clear that it is not intentional but due to over sight only. This Court found no irregularity or intentional negligence on part of concern clerk. Since the learned APP raised objection, this Court feel it is just and proper to issue notice to complainant. Issue Notice to complainant through police. Call for explanation from concerned clerks. In the circumstances this case is posted to 15.11.2017.”

The next date of adjournment was fixed as 15.11.2017. On that day, the accused was absent and the Presiding Officer was on O.D. and hence, it was adjourned to 23.11.2017. The petitioner (P.W.1) was present on 15.11.2017 and it was recorded. Again, when the matter was called on 23.11.2017, the respondent-accused was absent and the petition filed was allowed. Bailable warrants were issued against the petitioner (P.W.1). The Court below was pleased to issue summons to L.Ws.2 to 4. Thereafter, the matter was adjourned to 04.12.2017.

4. The learned senior counsel appearing for the petitioner would submit that in view of advancing the date of the case and issue of bailable warrants on 23.11.2017 against the petitioner and though there are many old cases pending on the file of the trial Court, instead of expediting the trial of those cases, the Court below expediting the trial of this case, the petitioner apprehends suspicion about impartial trial. He relied on a decision in **Gurcharan Dass Chadha v. State of Rajasthan**¹ and contended that in the circumstances, it is appropriate to withdraw C.C.No.159 of 2015 from the file of the XII Additional Chief

¹ AIR 1966 SC 1418

Metropolitan Magistrate, Hyderabad and transfer the same to any competent Court at Nampally, Hyderabad.

5. Learned counsel for the second respondent would submit that inadvertently some mistake has taken place with regard to posting of the case from 31.10.2017 to 09.11.2017. The Court below also called for explanation from the clerk concerned and the petitioner (P.W.1) was put on notice. It is the right of the accused to have the trial expedited. Charges were framed long back. It is a part-heard case. The petitioner (P.W.1) has been attending the Court in other cases also. No *mala fides* can be attributed to anybody and the apprehension is not based on just cause and ultimately, prayed to dismiss the petition.

6. In view of the contentions put forth by both the sides, the point for determination is, whether the request of the petitioner can be acceded to?

7. As per the records produced, at the request of the petitioner, who deposed as P.W.1, though the criminal case underwent several adjournments, his cross-examination was not completed. When the impugned C.C. was called on 31.10.2017, some mistake had taken place in posting the case to 09.01.2018, thereafter it was called on 09.11.2017 and a detailed order was passed on that day in the impugned C.C. The Court below came to the conclusion that there were no *mala fides* and further cases are not being adjourned beyond one month. However, the Court below called for the explanation from the clerk concerned and thereafter, the petitioner was put on notice and the criminal proceedings are going on in the C.C. The petitioner is apprehending that there

would no fair and impartial trial. But there is no single averment or whisper in the transfer petition attributing any *mala fides* on the Presiding Officer. As per the material available on record, charges were framed on 06.09.2016. Summons was issued on 29.09.2016 and P.W.1 was examined in chief on 10.11.2016. Further, as per the records, the Court is not adjourning part-heard cases beyond one month. All this goes to show that the Court below is conducting the trial of this case as well as other cases expeditiously. When trial of the case is conducted expeditiously, nothing can be attributed by the Presiding Officer or the staff working under his control. Further, as per the mandate under Section 309 Cr.P.C., part-heard cases are required to be taken on day-to-day basis. If any case is posted beyond the next date, the Court has to assign reasons. The manner in which the case is expedited by the trial Court cannot be faulted with. The apprehension of the petitioner that he will not have fair and impartial trial is based on surmises and imagination. Further, when witness did not attend the Court on the day fixed in spite of notice, the Court has to issue bailable warrants. Therefore, issuance of bailable warrants against the petitioner cannot be faulted with.

8. In **Gurcharan Dass Chadha (1 supra)**, the Apex Court held as under.

“A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitable fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the

administration of justice that justice should not be only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.”

9. The facts and circumstances in the above case and the instant case are quite different. There is nothing wrong on the part of the Presiding Officer in expediting the trial of the main C.C. As per the record, there is no single instance from which an inference can be drawn that injustice would be caused to the petitioner. The apprehension of the petitioner is not based on any reasonable ground. On the other hand, the petitioner-P.W.1 was examined in chief on 10.11.2016 and the impugned C.C. had undergone several adjournments for cross-examination of P.W.1. It indicates the petitioner-P.W.1 is seeking adjournment of the case on one reason or the other. There are no merits in the petition. However, it is made clear that the Court below shall not go into the past and present conduct of any of the parties to the litigation, while adjudicating the C.C.

10. With the above observation, the Transfer Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(DR. SHAMEEM AKTHER, J)

7th March 2018
RRB